UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAYUGA NATION, *et al.*	)	
Plaintiffs,	)	
v.	)	Civil Action No. 17-01923 (CKK)
RYAN ZINKE, *et al*.	)	
Defendants.[1]	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO PLAINTIFFS' OPPOSITION TO FEDERAL DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

Table of Contents

[1] Tara Sweeney was sworn in as Assistant Secretary – Indian Affairs on July 30, 2018. Pursuant Federal Rule of Civil Procedure 25(d), Ms. Sweeney automatically replaces Acting Assistant Secretary John Tahsuda III in the case caption. Plaintiffs have included "Mike Black in his official capacity as Acting Assistant Secretary-Indian Affairs" in the caption of their recent filings, but Mr. Black was replaced by Mr. Tahsuda more than a year ago. There is no basis for including Mr. Black in any capacity in the caption of this case.

TABLE OF AUTHORITIES

Federal Cases

Statutes

Regulations

I. INTRODUCTION

Plaintiffs challenge a decision by the Assistant Secretary – Indian Affairs (AS-IA Decision) to recognize a group led by Clint Halftown (Halftown Group) as the governing body of the Cayuga Nation (Nation). Plaintiffs move for summary judgment, seeking vacatur and remand of the AS-IA Decision. However, Plaintiffs have failed to demonstrate that the AS-IA Decision violated the Administrative Procedure Act (APA). This Court should grant Federal Defendants' Motion for Summary Judgment and dismiss Plaintiffs' Complaint.

II. DISCUSSION

1. The AS-IA's interpretation of Cayuga law was not arbitrary and capricious.

Plaintiffs allege that the AS-IA committed numerous procedural errors in the course of issuing the AS-IA Decision, which Federal Defendants will address in further detail below. But the crux of Plaintiffs' Complaint is whether the AS-IA's affirmance of a decision of the Bureau of Indian Affairs (BIA) Eastern Regional Director (RD Decision) upholding the Statement of Support initiative (Initiative) that recognized the Halftown Group as the Nation's lawful government was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). In their Reply, Plaintiffs claim that the Department of the Interior (Department) has consistently held that Cayuga law forbids the selection of leaders via Initiative, and that the AS-IA Decision unlawfully "sanctioned and supported the radical change carried out through the Halftown Group's 2016 SOS campaign." ECF No. 55 at 6.

This allegation fails as a matter of law. "The 'arbitrary and capricious' standard of review as set forth in the APA is highly deferential," and courts must "presume the validity of agency action." *Am. Horse Prot. Ass'n v. Yeutter*, 917 F.2d 594, 596 (D.C. Cir. 1990). An agency's decision will be considered arbitrary and capricious if the agency "entirely failed to

consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Cumberland Pharm. Inc., v. Food & Drug Admin.*, 981 F. Supp. 2d 38, 47–48 (D.D.C. 2013) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). The AS-IA Decision satisfies this "highly deferential" standard.

Plaintiffs first assert that the AS-IA violated the APA by failing to base his Decision on the Haudenosaunee Great Law of Peace, which all parties agree is the source of Cayuga law. Plaintiffs do not deny, however, that the Great Law states that matters of great importance or emergency "must be submitted to the decision of the people." This provision brings the Great Law in line with applicable federal court precedent holding that tribal members are the ultimate arbiters of tribal law. *See, e.g.*, *Timbisha Shoshone Tribe v. Salazar*, 678 F.3d 935, 937-38 (D.C. Cir. 2012) (dismissing suit by a tribal government faction where the AS-IA determined that the Tribe's election of an opposing faction constituted the Tribe's valid internal resolution of their leadership dispute); *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 146 (D.D.C. 1999) (upholding BIA deference to the interpretation of tribal law as articulated by "the members of the Tribe . . . the ultimate non-judicial tribal forum"). Respect for the primacy of a body politic in establishing and interpreting the laws of that polity justifies the AS-IA's finding that the Initiative was valid in principle.

Plaintiffs next assert that the AS-IA Decision was arbitrary and capricious because the Department did not justify its departure from its allegedly "consistent" recognition that Cayuga "Clan Mothers, pursuant to the authority vested in them by the Great Law of Peace, have always

had the sole responsibility for appointing and removing members of the Nation's Council." ECF No. 55 at 6. These allegations fail to establish an APA violation.

First, and most importantly, the plain text of both the RD and AS-IA Decisions explained why Federal Defendants accepted the use of the Initiative even though the Department had declined to do so in the past. AR 003565-66; 003882; 003886-87. The choice confronting the Department in this case was between accepting or rejecting the right of the Nation's citizens to define and interpret its own law. The AS-IA, like the RD, concluded that the Nation had expressed its will and its understanding of their law, and deferred to the Nation's resolution of its dispute. Where the Nation itself has chosen to make a change in its governance, the Department is duty-bound to respect the Nation's decision.

Second, the Record does not support Plaintiffs' claim of an unwavering BIA recognition of tribal leadership by the Clan Mothers. *See generally George v. E. Reg'l Dir.*, 49 IBIA 164 (IBIA 2009), AR 000065 *et seq.* (elaborating on internal disputes, and affirming the BIA's recognition of Halftown as "federal representative"). In making this claim, Plaintiffs cite to then-Regional Director Keel's 2011 recognition of a Cayuga Nation Council put in place by the Clan Mothers. AR 000424-27. But Plaintiffs fail to disclose that less than two years later, the Interior Board of Indian Appeal (IBIA) held that Mr. Keel lacked jurisdiction to make such an identification and vacated his decision. 58 IBIA 171 (IBIA 2014), AR□002126□AR□002142. Mr. Keel's 2011 decision is accordingly neither a binding nor persuasive expression of BIA policy. Finally, one year after the IBIA decision, Acting Eastern Regional Director Tammy Poitra issued a decision (Poitra Decision) identifying two groups vying for recognition as Nation leadership. AR 003216-24. In her "interim recognition decision," Poitra noted, but declined to act on, assertions by a group of tribal members "who believe that Clint Halftown was properly

removed from the Nations council and his position as federal representative by the Heron clan mother." AR 003217. None of these agency actions and opinions demonstrate unwavering Departmental acceptance of Plaintiffs' views of the role of the Clan Mothers.

In sum, the AS-IA decision did not reverse a settled Department understanding concerning the role of the Clan Mothers under Cayuga law. Nor did it upset any other interpretation of Cayuga law, by any authority. And in any event, the bases for AS-IA's Decision were thoroughly explained and substantiated. The AS-IA's conclusions regarding the validity of the Initiative as implemented readily pass the APA's deferential standard of review, and Plaintiffs are not entitled to summary judgment.

2. Plaintiffs suffered no due process violation.[2]

Plaintiffs next claim that the AS-IA Decision denied Plaintiffs due process. ECF No. 55 at 6-10. These arguments similarly fail – the Record demonstrates that Plaintiffs were clearly provided a "notice and opportunity for hearing appropriate to the nature of the case," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950), "before a neutral decisionmaker." *Propert v. District of Columbia*, 948 F.2d 1327 (D.C. Cir. 1991). Plaintiffs' specific due process allegations are accordingly unavailing.

a. Plaintiffs lack protectable liberty or property interests upon which to predicate a due process claim.

At the outset, Plaintiffs have not demonstrated a liberty or property interest at issue in the AS-IA Decision, and therefore have not met the threshold requirement for a due process claim.

[2] Federal Defendants address Plaintiffs' due process arguments despite the fact that, as this Court has noted, "Plaintiffs appear to not have meaningfully raised these arguments below, and may have therefore waived them." ECF No. 42 at 12 n.4 (quoting *Power v. Fed. Labor Relations Auth.*, 146 F.3d 995, 1002 (D.C. Cir. 1998) ("Claims of bias must be raised as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist.") (internal quotation marks and modifications omitted)).

"A cognizable liberty or property interest is essential because 'process is not an end in itself.'" *Roberts v. United States*, 741 F.3d 152, 161 (D.C. Cir. 2014) (citations omitted); *see also Ky. Dep't. of Corrections v. Thompson*, 490 U.S. 454 (1989) ("We examine procedural due process questions in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the State.").

Plaintiffs assert vaguely that "the constitutional status and historical tradition of Indian sovereignty undergirds Plaintiffs' liberty interest" and that "the Indian right of sovereignty qualifies as a liberty interest." ECF No. 55 at 7. This fails to establish that Plaintiffs were deprived of a liberty interest for three reasons. First, Plaintiffs identify no case law whatsoever supporting this claim. Rather, they cite generally to due process cases and from there claim to have extrapolated a "rule" that "tribal sovereignty" in the abstract is a protectable liberty interest. This is not only an unsupportable logical leap, but to the contrary, the Supreme Court has repeatedly held that the general federal trust responsibility towards tribes to which Plaintiffs allude, ECF No. 55 at 7, does not create tribally-enforceable duties on behalf of the United States. *See, e.g.*, *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011) ("The Government assumes Indian trust responsibilities only to the extent it expressly accepts those responsibilities by statute."); *United States v. Navajo Nation*, 556 U.S. 287, 295-302 (2009); *United States v. Navajo Nation*, 537 U.S. 488, 507–08 (2003). Second, even accepting Plaintiffs' argument that "tribal sovereignty" in the abstract is a liberty interest, the AS-IA honored that liberty interest by properly deferring to the express will of the Cayuga citizenship. Third, courts have explained that "[l]iberty under law extends to the full range of conduct which the individual is free to pursue." *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). Plaintiffs have not identified any conduct they cannot pursue resulting from the AS-IA Decision.

Plaintiffs' claims of a due process property interest likewise fail. Plaintiffs assert that their property interest "derives from their reasonable expectations that the benefits the BIA and other federal agencies provide to Indian nations and their recognized government will continue as long as such recognition stays in place." ECF No. 55 at 8. But Plaintiffs never identify any such "property interest" that they, or the Nation as a whole, were receiving before the AS-IA Decision, and stopped receiving because of the AS-IA Decision. Nor could they – as tribal members, the Individual Plaintiffs retain all eligibility for federal benefits to which they were entitled during the pendency of the leadership dispute. Nor does the mere fact that certain Individual Plaintiffs claim to be federally-recognized tribal leadership itself qualify as a property interest. To the extent that any of the Nation's government's federal benefits would be protectable interests for due process purposes, that interest would belong to the Nation as a whole, and not a given leadership faction.

Accepting Plaintiffs' theory would mean that any individual Indian who claims to be in a position of tribal leadership, with or without merit, and disputed or otherwise, could sustain a due process suit against the United States on behalf of the Tribe as a whole. Plaintiffs' sole cited case in support of this extraordinary premise, *Cherokee Nation v. Babbitt*, 117 F.3d 1489, 1498, n.9 (D.C. Cir. 1997), is inapposite. That court found that the Cherokee Nation had suffered an injury in fact within the meaning of a prudential standing analysis because a Department decision to federally acknowledge a separate Tribe could affect Cherokee Nation funding. *Cherokee Nation* says nothing whatsoever about due process property interests of individual Indians claiming to represent a tribal government, or about the right of those individuals to claim a personal due process interest in benefits inuring to the tribe.

Because Plaintiffs have alleged neither a protectable liberty nor property interest, they cannot sustain a due process claim and are not entitled to summary judgment on this point.

b. Plaintiffs were afforded due process.

In previous briefing before this Court, Federal Defendants explained that allegations of unconstitutional bias on the part of a federal agency must demonstrate that the decision maker is "not capable of judging a particular controversy fairly on the basis of its own circumstances." ECF No. 52 at 14 (quoting *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 493 (1976)). This standard is met when a challengers shows that the decision maker's mind is irrevocably closed on a disputed issue: for example, "definitively and publicly supporting one side of a dispute, publicly disparaging a party to a dispute, or having a pecuniary interest in the outcome of a dispute." *Id.* at 14-15 (citing cases); *see also Lead Industries Ass'n, Inc. v. E.P.A.*, 647 F.2d 1130, 1178 (D.C. Cir. 1980) ("[A] decisionmaker "is [not] disqualified simply because he has taken a position, even in public, on a policy issue related to a dispute, in the absence of a showing that he is not 'capable of judging a particular controversy fairly on the basis of its own circumstances.'") (citations omitted). "Further, familiarity with the facts of a case, gained by an agency when performing its statutory role, does not disqualify the agency decisionmaker on the ground of predisposition." *City of Alma v. United States*, 744 F. Supp. 1546, 1560–61 (S.D. Ga. 1990) (citing, *e.g.*, *Hortonville Joint School Dist. v. Hortonville Educ. Ass'n*, 426 U.S. 482, 493 (1976)).

Plaintiffs identify no such bad faith or any other disqualifying action on the part of the Federal Defendants. Again, Plaintiffs cite only a single case, *Professional Air Traffic Controllers Organization v. Federal Labor Relations Authority*, 685 F.2d 547, 563 (D.C. Cir. 1982), which does not support their argument. There, the Court was construing 5 U.S.C. § 557,

which by its own terms, "applies . . . when a hearing is required to be conducted in accordance with section 556 of this title." 5 U.S.C. § 557(a). In the absence of any such statute-specific considerations, *Professional Air Traffic Controllers* is inapposite to this case.

Plaintiffs further rely on *Professional Air Traffic Controllers* for the notion that the Department's alleged *ex parte* communications with the Halftown Group violate due process. ECF No. 55 at 9-10. But as this Court has noted, "*ex parte* communication are not prohibited for the purposes of appeals—like the administrative appeal in this case—governed by 25 C.F.R. Part 2." ECF No. 42 at 13 (citing *Navajo Nation*, 537 U.S. at 513 (2003)). And contrary to Plaintiffs' suggestion that Federal Defendants have argued that "the United States cannot comply with due process without impairing its statutory responsibility for the welfare of Indian tribes," ECF No. 55 at 10 (quotations and internal citations omitted), Federal Defendants have made no such claim. Rather, Department communications with the Halftown Group during the Initiative process were meant to "fulfill [the Department's] responsibility to assist Indian Nations with leadership disputes." ECF No. 42 at 13. There was nothing illegal, or even nefarious, about such interactions.

Finally, Plaintiffs claim that the RD had shown bias against them by saying that "a 'Statement of Support" process would be a viable way of involving the Cayuga people in a determination of the form and membership of their tribal government" prior to receiving briefing from Plaintiffs on this point. ECF No. 55 at 9-10. This argument fails for three reasons. First, the RD Decision is not before the Court in this case. ECF No. 40 at 12-13. Second, even if the RD Decision was still at issue, the AS-IA reviewed it as part of the AS-IA Decision. Any bias

on the part of the RD is irrelevant in light of the AS-IA's intervening review of the Record and independent affirmance of the RD Decision.[3]

Third, this Court has already rejected all of Plaintiffs' arguments concerning the RD at the preliminary injunction stage. Plaintiffs complain that the RD "worked closely with the Halftown Group to design and plan the [Initiative] to the exclusion of Plaintiffs," ECF No. 55 at 12, but they still "have not pointed to any legal requirement that the BIA only meet with a tribal leadership faction if other factions are present as well." ECF No. 42 at 13. Plaintiffs maintain that the RD "pronounced the [Initiative] a viable method to resolve the Cayuga government dispute," ECF No. 55 at 12, even though in reality, the letter to which they refer merely "indicates [the RD's] fairly unremarkable belief that a mail-in survey that asked for the input of the Cayuga Nation's citizens on their choice for government would be one way of involving the Cayuga people in the determination of their government." ECF 42 No. at 12. And as this Court has observed, and to which Plaintiffs offer no new rebuttal, "[t]here is no reason to think that Defendants had predetermined how they would decide these issues before giving Plaintiffs . . . opportunities to be heard." ECF No. 42 at 12. In short, Plaintiffs have not shown that the AS-IA Decision should be vacated due to impermissible bias on the part of any Department decision maker, much less by the "'clear and convincing' test . . . necessary to rebut the presumption of administrative regularity." *Ass'n of Nat. Advertisers, Inc. v. F.T.C.*, 627 F.3d 1151, 1170 (D.C. Cir. 1979). Plaintiffs are not entitled to summary judgment on their due process claims.

3. The AS-IA did not apply the wrong standard of review.

[3] As discussed *infra*, the AS-IA Decision reflects a *de novo* review of Cayuga law and thus obviates Plaintiffs' complaints about the RD's allegedly faulty interpretation. And the Record in this case establishes that the AS-IA did not take part in the RD Decision in any way. *See generally* ECF No. 33-1 (Dec. of Michael S. Black).

Plaintiffs assert that they are entitled to summary judgment because the AS-IA did not conduct *de novo* review of the RD Decision.[4] ECF No. 55 at 1-2. This claim fails for several reasons.

First, the AS-IA did conduct *de novo* review of the RD Decision. *See* AR-003876-906. The AS-IA identified Plaintiffs' various objections to the RD's analysis, analyzed the RD's reasoning with regard to each specific objection, assessed the RD's reasoning, concluded that the RD's determination was valid in each instance, and independently upheld the RD Decision on the merits. Plaintiffs have not cited any applicable law suggesting that the AS-IA's review requires anything more.

Plaintiffs instead claim that the AS-IA "impermissibly deferred to [the RD's] erroneous legal determination as 'reasonable.'" ECF No. 55 at 2 (citing AR 003888). Plaintiffs support this argument with a spate of case law inapposite to Part 2 appeals.[5] Moreover, nothing in the AS-IA Decision suggests casual deference to the RD. Rather, the AS-IA Decision's plain text demonstrates that the AS-IA independently considered the interpretation of Cayuga law and other legal considerations urged by the Plaintiffs, weighed that against the RD Decision and legal arguments from the Halftown Group, and concluded that the Initiative complied with Cayuga law. Plaintiffs do not show how this fails to satisfy *de novo* review under Part 2.

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[4] While this discussion argues that the AS-IA properly reviewed the RD Decision *de novo*, Federal Defendants incorporate by reference their previous claim that Plaintiffs have not established that 25 C.F.R. Part 2 (Part 2) requires *de novo* review. *See* ECF No. 52 at 6-7.

[5] *See, e.g.*, *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 965 (2018) (standard applicable to a federal court of appeals reviewing the decision of a bankruptcy judge); *Salve Regina Coll. v. Russell*, 499 U.S. 225 (1991) (standard applicable to a federal court of appeals reviewing a federal district court's application of state law); *Citizen Potawatomi Nation v. Salazar*, 624 F. Supp. 2d 103 (D.D.C. 2009) (standard applicable to a district court review of whether a decision from the IBIA is preclusive under Federal Rule of Civil Procedure 19).

Plaintiffs next suggest that Federal Defendants have proposed an erroneous standard of *de novo* review under which an AS-IA's decision in a Part 2 appeal need only be lengthy, in-depth, and non-pretextual. ECF No. 55 at 1-2. Federal Defendants have made no such argument. Rather, Federal Defendants merely pointed out that the thoughtfulness of the AS-IA Decision undergirds the fact that the AS-IA applied the proper standard of review under Part 2 and did not merely rubber stamp the RD Decision, as Plaintiffs claim. ECF No. 52 at 6-7.

Finally, even assuming arguendo that the AS-IA did not conduct *de novo* review on questions of Cayuga law (which Federal Defendants vigorously deny), Plaintiffs would not be entitled to summary judgment. The APA requires district courts to conduct *de novo* review of the agency's determinations on questions of law. *See, e.g.*, *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991) ("When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law."); *accord Citizens for Responsibility and Ethics in Wash. v. Fed. Election Comm'n*, 892 F.3d 434, 440 (D.C. Cir. 2018). Thus, irrespective of whether the AS-IA's review of the RD's interpretation of Cayuga law was improperly deferential, the remedy lies with this Court, in this litigation: as part of its APA review of the challenged decision, this Court must determine whether the Department's construction of Cayuga law was irrational. *See, e.g.*, *Alto v. Black*, 738 F.3d 1111, 1124 (9th Cir. 2013) ("That the substantive law to be applied in this case is tribal law does not affect our jurisdiction over an APA challenge to the BIA's decision.").[6]

[6] Federal Defendants further note that *Professional Air Traffic Controllers*, which Plaintiffs erroneously cited in support of their due process claims, supports Federal Defendants' argument that this Court's review of the AS-IA's conclusions of law cures any vulnerabilities in the AS-IA Decision. *See* 685 F.2d at 575 ("The principal issues decided by the [Federal Defendants],

The AS-IA Decision reflects *de novo* review of the RD's interpretation of Cayuga law. Even if it did not, this Court has a duty under the APA to "decide all relevant questions of law" during its adjudication of the case. Each of these points provides a sufficient and compelling basis to deny Plaintiffs' request for summary judgment, vacatur, and remand.

4. The Initiative was not unlawfully weighted against Plaintiffs.

Plaintiffs next allege that they are entitled to summary judgment because the AS-IA Decision erroneously determined that the text of the Initiative "[gave] Cayuga citizens a lawful choice" between the positions of the Halftown Group and Plaintiffs. ECF No. 55 at 3. Federal Defendants simply point out that both the RD, AR 003573-75, and the AS-IA, AR 003900-01, specifically considered, addressed, and rejected this precise argument. While Plaintiffs "may disagree with [the AS-IA] decision, there is nothing in the record to suggest that the agency's decision . . . was 'plainly erroneous. . . .'" *In re Polar Bear Endangered Species Act Listing & Section 4(d) Rule Litig.--MDL No. 1993*, 709 F.3d 1, 12 (D.C. Cir. 2013). The AS-IA's acceptance of the Initiative language satisfies the APA and Plaintiffs are not entitled to summary judgment. *See, e.g.*, *Envtl. Def. Fund, Inc. v. Costle*, 657 F.2d 275, 283 (D.C. Cir. 1981) (APA arbitrary and capricious standard "mandates judicial affirmance if a rational basis for the agency's decision is presented, even though we might otherwise disagree") (citations omitted).

5. The existence of the supplemented Administrative Record does not entitle Plaintiffs to summary judgment.

Plaintiffs next make much of Federal Defendants' accurate statement that "in briefing before the AS-IA, Plaintiffs did not cite a single source of Cayuga law that was included in the

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therefore, are legal. We, of course, will independently review those legal issues. Any arguable taint that may remain will therefore be cured.") (citations omitted).

expanded Administrative Record materials that they now accuse AS-IA of having ignored. AR-003776-875." ECF No. 52 at 3 (citing ECF No. 52 at 7). Plaintiffs argue in response that they cited the expanded Administrative Record before *the RD*, and not the AS-IA, and that that fact somehow means that the AS-IA failed to review the RD Decision *de novo*. *Id.* at 3-4.[7]

This argument is specious. First, the fact that the AS-IA did not agree with Plaintiffs' proffered interpretation of Cayuga law, after both Plaintiffs and the Halftown Group submitted multiple rounds of briefing on this precise point, does not mean that the AS-IA's extensive explanations of his Record-based Decision violated the APA. Second, settled law belies Plaintiffs' insinuation that the mere existence of an expanded Administrative Record suggests agency malfeasance or an improper standard of review. *See, e.g.*, *N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, No. 5:10-CV-476-D, 2011 WL 12544193, at *2 (E.D.N.C. May 10, 2011) (case law does not support claim that "agency who voluntarily and timely adds documents to an administrative record at the request of the opposing party before a merits decision by a reviewing court somehow waives the presumption that the administrative record, as amended, conforms with legal requirements" because the "presumption of regularity attaches to the administrative record proffered by the agency because courts presume that public officers properly discharge their official duties") (citing *United States v. Chem. Found.*, 272 U.S. 1, 14–15 (1926)). And Plaintiffs present no case law suggesting that agency decision makers need to cite to, and explain their treatment of, every piece of evidence in an administrative record. Because the AS-IA

[7] In support of their contention, Plaintiffs cite generally *Bose Corp. v. Consumers Union of United States., Inc.* 466 U.S. 514 (1984). The absence of a pin cite accurately reflects the absence of any language in *Bose* that applies to this case. In *Bose*, the Supreme Court found that the "clearly-erroneous standard of Rule 52(a) of the Federal Rules of Civil Procedure does not prescribe the standard of review to be applied in reviewing a determination of actual malice in a case governed by *New York Times Co. v. Sullivan.*" Plaintiffs have not alleged "actual malice," this case is not governed by *Sullivan*, and *Bose* is inapplicable.

Decision demonstrably reflects an independent analysis of Cayuga law and the Administrative Record, Plaintiffs are not entitled to summary judgment.

III. CONCLUSION

When an Indian tribe resolves an internal dispute via an internal tribal mechanism, the Department must respect that exercise of tribal self-determination. *See Timbisha Shoshone Tribe*, 678 F.3d at 938 (noting that "[the Tribe] resolved its *own* leadership dispute through a valid *internal* tribal process") (emphasis in original). Here, the Nation stated its support for the Halftown-led tribal government via the Initiative. The RD carefully – and objectively – considered evidence and argument presented by Plaintiffs and Intervenors before rendering a detailed decision. Plaintiffs appealed, and the AS-IA again independently considered evidence and argument presented by Plaintiffs and Intervenors before rendering a detailed decision. As elaborated above and in previous briefing, *see generally* ECF No. 52, the AS-IA Decision is neither arbitrary or capricious nor otherwise not in accordance with the law within the meaning of the APA. This Court should affirm the AS-IA Decision, grant Federal Defendants' motion for summary judgment, and deny Plaintiffs' motion for summary judgment.

Respectfully Submitted,

JESSIE K. LIU
D.C. BAR # 472845
United States Attorney
for the District of Columbia

DANIEL F. VAN HORN
D.C. BAR # 924092
Civil Chief

By: /s/

BENTON G. PETERSON, BAR # 1029849
Assistant United States Attorney
U.S. Attorney's Office
555 4th Street, N.W. - Civil Division
Washington, D.C. 20530
(202) 252-2534