To be Argued by:
MARGARET A. MURPHY
(Time Requested: 20 Minutes)

APL-2018-00179
Appellate Division Docket Nos. CA 17-01956 and CA 17-01957

Court of Appeals
of the
State of New York

CAYUGA NATION, by and through its lawful governing body,
the CAYUGA NATION COUNCIL,

Plaintiff-Respondent,

– against –

SAMUEL CAMPBELL, CHESTER ISAAC, JUSTIN BENNETT, KARL HILL, SAMUEL GEORGE, DANIEL HILL, TYLER SENECA, MARTIN LAY, WILLIAM JACOBS, WARREN JOHN, WANDA JOHN, BRENDA BENNETT, PAMELA ISAAC, *et al*.,

Defendants-Appellants,

– and –

DUSTIN PARKER,

Defendant in Default,

– and –

COUNTY OF SENECA,

Defendant-Intervenor-Respondent.

REPLY BRIEF FOR DEFENDANTS-APPELLANTS

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PRELIMINARY STATEMENT

Five individuals, known as the Halftown Council, are responsible for commencing this action on behalf of the Cayuga Nation (the "Nation"), alleging to be the Nation's lawful governing body "chosen by the Nation's citizens" and recognized by the United States Department of Interior, Bureau of Indian Affairs (the "BIA"). (Brief for Plaintiff-Respondent, dated January 10, 2019 [Resp. Br.] at 1, 12). These five individuals are neither condoled chiefs nor clan mothers. (R.[1] 282). Among other things, these individuals seek to enjoin two condoled chiefs, two clan mothers, several clan representatives and other specific Nation citizens from entering properties and businesses owned and operated by the Nation, including the building used by the Nation for Longhouse-related ceremonial purposes. (A.[2] 7-8, R. 242, 364¶10, 376¶2, 401¶48).

In the Brief for Plaintiff-Respondent ("Respondent's Brief"), the Halftown Council attempts to convince this Court that it is the Nation's true leadership and governing body, based on a house of cards. Its first card asserts the Nation "itself has resolved its leadership dispute . . . in a fair and open process." (Resp. Br. at 1). This "fair and open process" initiated by the Halftown Council consisted of a

[1] "R." refers to the Record on Appeal filed in the Appellate Division for the Fourth Judicial Department and subsequently filed with this Court pursuant to Rule 500.14(a)(2).

[2] "A." refers to the Appellants' Appendix filed with this Court pursuant to Rule 500.14 (b) of this Court's Rules of Practice.

campaign to have the Nation's citizens sign a mail-in statement of support for the group led by Clint Halftown. (Resp. Br. at 12). The next card contorts the BIA's role, suggesting the BIA has the responsibility and duty to manage the Nation's internal affairs "specifically to address perceived gaps in law and order – in particular, gaps that resulted from leadership disputes." (Resp. Br. at 5). Its final card uses the laws and Constitution of the State of New York to argue state courts have inherent authority to determine "whether [an] action is, in fact, brought by the Nation's 'governing body'." (Resp. Br. 5, 22).

In this Reply Brief, Defendants-Appellants will expose the shaky foundation upon which the Halftown Council claims to be the undisputed and lawful governing body of the Nation. To be successful in this appeal, Defendants-Appellants do not need to prove to this Court which rival political faction is the Nation's lawful governing body. To the contrary, this Court and other New York courts lack subject-matter jurisdiction to rule upon, or determine issues relating to internal leadership disputes within a sovereign Indian nation. *Bowen v. Doyle,* 880 F.Supp. 99, 112 (W.D.N.Y. 1995)*, citing Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16 (1831) and *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 556 (1832); *accord, Cayuga Nation v. Tanner*, 824 F.3d 321, 327 (2d Cir. 2015); *Ransom v. St. Regis Mohawk Educ. & Community Fund, Inc.,* 86 N.Y.2d 553, 560 fn. 3 (1995).

Once the Court is convinced this case cannot be resolved "without

impermissibly resolving questions of [Cayuga] law," the same position taken by the dissent in the opinion from which this appeal is taken (A. 9), then the Court must respond in the negative to the question of whether the order of the State Supreme Court Appellate Division for the Fourth Judicial Department ("Fourth Department"), entered on July 25, 2018, was properly made. (A. 1) As the dissent observed, each claim brought against the Defendants-Appellants "requires proof that the individual defendants acted without any authority or justification with respect to their use and possession of the Nation's property." (A. 8).

> Here, although the complaint alleges that defendants' unlawful conduct began on April 28, 2014, the complaint also alleges that the "Nation's leadership dispute was [not] brought to a final resolution until the July 14, 2017 decision of the Acting Assistant Secretary of Indian Affairs . . . ." Thus, the court will be required to resolve issues of tribal law, specifically the parties' conflicting claims of their legitimate representation of the Nation, to the extent that the complaint seeks relief for defendants' actions prior to July 14, 2017….That intrusion into matters of tribal law falls outside the court's jurisdiction. (Citation omitted)

(*Id.*). Based on the pleadings contained in the Record of Appeal, this Court should order the complaint in this matter be dismissed and the preliminary injunction be vacated.

REBUTTAL ARGUMENT

I

UNDER CAYUGA LAW, A MAIL-IN CAMPAIGN INITIATED BY ONE POLITICAL FACTION TO SOLICIT CITIZEN SUPPORT IS NOT A VALID MECHANISM FOR RESOLVING GOVERNANCE DISPUTES.

Plaintiff-Respondent successfully argued to the majority of the justices on the Fourth Department that 60% of Cayuga citizens had signed statements of support, identifying the five individuals led by Clint Halftown (i.e Halftown Council) as the Cayuga Nation Council, and thereby the tabulations of these support statements constituted a resolution of the leadership dispute by a valid tribal mechanism. (A. 5-6; R. 54). But the Halftown Initiative had several components, including both a Statement of Support for the Cayuga Nation's Traditional Form of Government (the "Governance Statement") (R. 54, 57, 281) and a Statement of Support for the Cayuga Nation's Leaders (the "Support Statement") (R. 54, 57, 281). A review of these separate statements demonstrates that critical governance issues relating to the composition of the Nation's Council and the authority of the Halftown Council have not been resolved by the Cayuga people.

A. The Governance Statement Does Not State a Mail-in Support Statement Can Be Used to Confirm the Lawful Members of the Nation's Governing Body.

Cayuga citizens who signed the Governance Statement acknowledged

reviewing a document entitled the "Cayuga Nation of New York Governance and Leadership Selection Process" (the "Governance Summary") (A. 281). After reading the Governance Summary, the signer then confirmed his/her understanding as to how the Cayuga traditional process purportedly selects and removes leaders. (*Id.*).

The Governance Summary was prepared by the Halftown Council with technical assistance from the BIA. (R.54). No condoled chief or clan mother was involved in the drafting of the Governance Summary. (R. 57, 139 fn 2). The condoled chiefs and clan mothers, named as Defendants-Appellants in this action, objected to each component of the Halftown Initiative. (R. 57). They objected on the grounds the entire Initiative "was inconsistent with traditional Cayuga law and customs, as well as previous BIA determinations." (R. 57, 58).

In 2015, the BIA had rejected a prior effort by the group led by Clint Halftown to have the BIA verify and confirm its status on the Nation's Council based on results from a similar "Campaign Support" Statement. (A. 50). At that time, the BIA stated it was "aware of no applicable authority that provides verification of elections or allows BIA to provide any independent confirmation of results of a 'Campaign Support' under these circumstances," and therefore, declined to verify the results. (A. 50). In the BIA's view, the "significance" of such a Support Statement "is purely a matter of Nation law and policy, upon which

it would be inappropriate for BIA to intrude." (*Id.*). The BIA further noted that Mr. Halftown had previously rejected the notion governance disputes could be resolved by majority rule. (*Id. citing George v. Eastern Regional Director*, 49 IBIA 164, 168 (2009). The BIA then held, and continues to hold today, the position that the "Nation needs to come to a common understanding of what role, if any, a campaign of support should play in the election or retention of its leadership." (A. 50). "Going forward, the meaning of the statement of support is a question of Cayuga Nation law." (A. 38).

Because no condoled chief or clan mother were consulted or participated in the drafting of the Governance Summary, the documents cannot and do not accurately convey the Nation's oral laws and traditions, which have been passed down for centuries only to condoled chiefs and clan mothers. (R.54). For example, the Governance Summary erroneously asserts the appointment of a clan representative to the Nation's Council "is for life." (R. 278).

Only a condoled chief serves on the Nation's Council for life. The purported summary even acknowledges, clan representatives are known as "seatwarmers," introduced to the Nation's Council by his Clan Mother before becoming members of the Nation's Council. (R. 277). A seatwarmer holds a seat on the Council for his clan until a chief has been condoled by the Haudenosaunee Grand Council. *George,* 49 IBIA at 167. A clan representative may only serve on the Nation's

Council for life if he becomes a condoled chief.[3] No one within the Halftown Council is a condoled chief. (R. 203, 274). While these clan representatives must abide by the traditions, customs, and laws of the Cayuga (R. 277), their actions are guided by the condoled chiefs and clan mothers, who have the responsibility for interpreting these unwritten customs, laws and traditions.

The purported Governance Summary asserts decisions within the Nation are reached by consensus and that all citizens are entitled to voice his/her opinion during clan or council meetings. (R. 277 ["Decisions *at a clan meeting* are made on a consensual basis." Emphasis added], 279 ["Each Cayuga member *attending a Nation meeting* has an equal opportunity to *voice his or her opinion during the discussions*." Emphasis added]). As Defendants-Appellants stated in its principal brief to this Court, the process of reaching consensus under Cayuga law involves a deliberative process of listening, questioning, discussing and exchanging ideas before reaching a decision. (R. 338 ¶33). These deliberations are facilitated by clan mothers. (*Id.*). Federal and state courts use this same deliberative, consensus process in jury deliberations. No court would ever ask a juror to deliberate alone or to take home a mail-in verdict sheet. For the same reasons, the condoled chiefs and clan mothers who are Defendants-Appellants in this appeal oppose the Halftown Initiative and reject the notion any mail-in support campaign is

[3] Surprisingly, the Governance Summary makes no reference to "chiefs" or the process of condolence to become a chief.

consistent with the process of reaching consensus, under the Haudenosaunee Great Law of Peace.

B. The Governance Statement Contradicts the Support Statement.

The Halftown Governance Statement contradicts assertions made in its Support Statement. The Governance Statements states the Nation has four active clans (i.e. the Turtle, Heron, Bear and Wolf Clans), all of which are represented on the five-member, Halftown Council. (R. 276). However, only three of the four clans have had clan mothers since this leadership dispute began. (R. 278). The Wolf Clan has no clan mother. (*Id.*).

Although a clan representative is to be nominated and presented to the Nation's Council by his Clan Mother before being seated (R.277), two of the clan representatives on the Halftown Council, Michael Barringer and Donald Jimerson, were never nominated or presented to the Nation's Council by a clan mother. (A. 34) (as noted in the BIA decision "Michael Barringer is identified as being from the Wolf Clan and there is no Wolf Clan Mother according to the mailing sent by the Halftown Council, and Donald Jimerson is not accepted by the Bear Clan Mother as serving on the Council.").

Appellant Bear Clan Mother Pamela Isaac Tallchief declared, under oath, Donald Jimerson was never nominated and designated by the Bear Clan as its Council representative. (R. 140 ¶72, 283 ¶7; A. 34). According to Tallchief, the

Bear Clan is currently represented on the Nation's Council by Sachem Chief Samuel George and Clan Representative Alan George. (R. 283 ¶6). Sachem Chief George is one of the Appellants. Clan Representative George was never named as a defendant in this action. (R. 28). Additionally, the Governance Summary states, "The Wolf Clan does not currently have any full-blooded members who are eligible to be a Clan Representative . . . ." (R. 276). Consequently, no Nation citizens, signing both the Governance Statement and the Support Statement, could acknowledge these two self-proclaimed clan representatives as lawfully serving on the Nation's Council in accordance with the Nation's customs, laws and traditions.

The three remaining members of the Halftown Council have been removed and replaced by their clan mothers. (R. 158, 165-166; A. 34). (See Brief for Defendants-Appellants, filed on November 27, 2018, at pp. 6-9, setting forth further details). While this fact remains in dispute, no New York court may exercise subject-matter jurisdiction to grant any relief dependent upon it. Nor may a state court take sides with one political faction against two Appellants, Pamela Isaac Tallchief and Brenda Bennett, whom all parties agree to be clan mothers and tribal officers.

Finally, Cayuga citizens who signed the Support Statement were never given the opportunity to acknowledge the individuals whom they understood represented them on the Nation's Council, or to identify their respective clan mother. (R. 282).

In the Support Statement, citizens were urged to sign based on claims that the Unity Council (aka Jacobs Council) were involving "persons outside the Cayuga Nation in [the] Nation's internal affairs." (R. 282). Ironically, it has been the Halftown Council, not the Jacobs Council, which brought two state court actions, seeking to resolve a land dispute between rival political factions within the Nation. The Support Statement, therefore, cannot be viewed as authorizing the Halftown Council to seek relief against two condoled chiefs, two clan mothers and other clan members and representatives.

II

THE BIA DECISIONS WERE ISSUED SOLELY FOR THE PURPOSE OF ADMINISTRATING AND DISTRIBUTING FEDERAL FUNDS AND NOT FOR THE PURPOSE OF RESOLVING AN INTERNAL GOVERNANCE DISPUTE BETWEEN TWO FEUDING, POLITICAL FACTIONS

The Halftown Council argues the Congress has given the BIA the authority and obligation to intervene and resolve internal disputes of a sovereign Indian nation, thereby requiring state courts to give deference to any determination made by the BIA. (Resp. Br. at 4, 6-7, 13, 18, 26-27, 32-36, 49). Its position is not only contrary to law, but also contrary to its own position taken with the Interior Board of Indian Appeals ("IBIA"), an appellate review body, exercising the authority delegated by the Secretary of the Interior to issue final administrative decisions in appeals originating from Indian matters pending before the BIA. *Cayuga Indian*

Nation of New York v. Eastern Regional Director ["*CIN v Eastern Regional Director*"], 58 IBIA 171, 177 (2014).

In *CIN v Eastern Regional Director*, the group lead by Clint Halftown appealed to the IBIA, seeking to vacate a decision issued by the Regional Director (R. 156-159), which recognized the Jacobs Council as the Nation's lawful governing body, and recognized Chiefs Jacobs and George as the newly appointed federal representative, replacing Clint Halftown and Tim Twoguns. 58 IBIA at 177. (R. 167) (Halftown group arguing "the Decision should be vacated because the BIA does not have authority to intervene in a tribal dispute unless a separate matter required BIA action and, in turn implicated the government-to-government relationship and necessitates a BIA decision addressing the merits of the tribal dispute."). The Regional Director, on the other hand, argued the "BIA has an independent obligation to decide whom to recognize when internal tribal processes for resolving the dispute have been exhausted and there is a danger that the tribe may be incapable of sorting out the dispute by itself, thus leading to tribal governmental paralysis." The IBIA rejected the Regional Director's argument and vacated the Regional Director's recognition determination. 58 IBIA at 186.

The IBIA found the Regional Director "read judicial and [IBIA] precedent too broadly." *Id.* at 178. To the extent these "precedent may have been unclear or even arguably inconsistent," the IBIA clarified and confirmed these precedent

reflect "the principles of tribal sovereignty and self-determination that serve to constrain the BIA's intrusion into internal tribal disputes, unless it is truly necessary as an incident to satisfying some separate Federal obligation." *Id.* at 178-79.

> But disfunctionality or even paralysis within a tribal government, standing alone, does not necessarily, or even ordinarily, mean that *BIA* has created a hiatus in the tribal government, nor does it trigger some free-standing obligation for BIA to end the stalemate to ensure that the tribal government remains functional, even when the government-to-government relationship is not, at the time, implicated in any concrete way. As [Halftown group] argue, and as the Board has held, no statute or regulation imposes on BIA a free-standing obligation to intervene in a tribal dispute solely for the *tribe's* sake—i.e., to save a tribe from its own disfunctionality, even when the tribal dispute has not yet in fact affected BIA's ability to carry out its responsibilities.

Id. at 179. Now for its own self-serving purposes, the Halftown Council urges this Court to divert from the "bedrock principle of federal Indian law that every tribe is 'capable of managing its own affairs and governing itself.'" *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008), *quoting Cherokee Nation*, 30 U.S. (5 Pet.) at 16).

In the Fourth Department, the majority mistakenly opined "deference" must be given by state courts "to judgment of the Executive Branch as to who represents a tribe." (A. 7) *quoting Timbisha Shoshone Tribe v. Salazar,* 678 F.3d 935, 938 (D.C. Cir. 2013). This quotation has been taken out-of-context and contradicts the bedrock principles that sovereign Indian nations have exclusive jurisdiction to

resolve disputes over internal affairs. *See, e.g., Tanner*, 824 F.3d. at 327; *Bowen,* 880 F. Supp. at 115. (*See* pages 19-27 of Brief for Defendants-Appellants, filed November 27, 2018 for a complete discussion on the BIA's role).

In *George v. Eastern Regional Director*, the IBIA held "when an intra-tribal disputes has not been resolved and the [BIA] must deal with the tribe for government-to-government purposes, the [BIA] may need to recognize certain individuals as tribal officials on an interim basis, pending final resolution by the tribe." 49 IBIA at 186, *quoting LaRocque v. Aberdeen Area Director*, 29 IBIA 201, 203 (1996). "BIA's decision is ***secondary*** to the final decision of the tribal forum." *George*, 49 IBIA at 186, *citing Wanetee v. Acting Minnepolis Area Director,* 31 IBIA 93, 95 (1997)(emphasis added) . The BIA has no authority to "serve as the arbiter for tribal disputes for the convenience of other agencies or third parties." *CIN,* 58 IBIA at 182. The IBIA has specifically stated, "[t]he scope of the Bureau's recognition of Mr. Halftown as the Cayuga Nation's representative does not extend to the Nation's dealings with any state or local government, other sovereign entities, corporation or other entities. . . ." *George*, 49 IBIA at 174.[4]

In conclusion, Congress has not given the BIA any authority or obligation to intervene or resolve the internal disputes of a sovereign Indian nation. *Cayuga*

[4] Although BIA has recognized Clint Halftown as the Nation's federal representative to facilitate communications between the BIA and the Nation for government-to-government purposes, the EPA has not accepted Mr. Halftown as the Nation official vested with the authority to apply for HETF grants. *George,* 49 IBIA at 192.

Indian Nation, 58 IBIA at 179. To the contrary, principles of tribal sovereignty and self-determination serve to constrain the BIA from intruding upon the Nation's internal affairs. *Id.* at 178. This Court, therefore, should not give any deference to the BIA recent determinations, requiring the BIA to pick between competing ISDA 638 proposals from the Jacobs and Halftown Councils, made solely for the purposes of administrating and distributing federal funds under an ISDA contract with the federal government to the Cayuga people.

III

CONGRESS HAS PREEMPTED NEW YORK COURTS FROM EXERCISING JURISDICTION OVER INTERNAL GOVERNANCE DISPUTES RELATING TO DOMINION AND CONTROL OF THE NATION'S PROPERTY AND BUSINESSES.

In yet another last-ditch effort to avoid the dismissal of its claims, the Halftown Council cites several cases involving civil disputes over church property to support the argument state courts have inherent subject matter jurisdiction to hear this internal governance disputes involving land. (Resp. Br. at 46-49 *citing First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States*, 62 N.Y.2d 110 (1984); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 728-29 (1871); *Jones v. Wolf*, 442 U.S. 595, 602 (1979). [collectively referred as the "Church Cases."]). In these Church

Cases, courts were required to resolve the underlying property dispute without "determining ecclesiastical questions in the process of resolving" such disputes, thereby triggering First Amendment considerations. *Presbyterian Church*, 393 U.S. at 447. In *Presbyterian Church,* the United States Supreme Court recognized a "State has a legitimate interest in resolving property disputes, and that a civil court is the proper forum for that resolution." 339 U.S. at 445. In *First Presbyterian*, the New York Court of Appeals found state courts could apply a "neutral principles" approach allowing such state courts to examine documents, such as deeds and charters, then applying state law to resolve the dispute. 62 N.Y.2d at 122.

Those Church Cases are distinguishable from the case at bar. First, although churches do have First Amendment protection restraining any court from interpreting and resolving ecclesiastical questions, the rights and title to church property ultimately a question of state law. Here, the question as to who may exercise dominion and control over the Nation's property and business is a question of Cayuga law. Second, churches are not entities having sovereign immunity or protection by federal treaties and statutes, limiting the jurisdiction of state court to exercise subject matter jurisdiction over its internal affairs. Consequently, these Church Cases do little to resolve the jurisdictional issues presented in this appeal.

Another case cited by the Halftown Council to support its jurisdictional claim is likewise unavailing. *Golden Hill Paugussett Tribe of Indians v. Town of Southbury*, 651 A.2d 1246 (Conn. 1995). *Golden Hill* involved an action to quiet title on lands that had originally belonged to a state-recognized Indian tribe. The case had nothing to do with an internal governance disputes and sheds no light on the jurisdiction issues presented in this appeal, for several reasons. First, the plaintiff was not a federally recognized Indian nation or tribe whose sovereignty was recognized by federal treaties or by the BIA. (Resp. Br. at 30). Second, there was no federal statute that preempted Connecticut courts from exercising jurisdiction. Third, like *Tanner*, the action was brought to determine the tribe's right to hold title to certain property and to quiet claims asserted by the Town and its residents, not to cast judgment on the Nation's internal leadership dispute. 651 A.2d at 1248. In this appeal, by contrast, the Court must examine, as a matter of law, whether the provisions of 25 U.S.C. § 233 and the Nation's federal treaties preempted the lower court from exercising subject matter jurisdiction. The legal issues presented to the Connecticut Supreme Court's in *Golden Hill* are distinguishable from the legal issues presented in this appeal. Consequently, the holding by the Connecticut Supreme Court in *Golden Hill* fails to show New York courts have subject matter jurisdiction to resolve internal land disputes involving feuding, political factions within an Indian nation

"[W]hen it comes to Indian affairs on the reservation, state courts are courts of limited jurisdiction and can only act pursuant to [an] Act of Congress, and there is no such Act that would allow the State Court to exercise jurisdiction in this instance." *Bowen,* 880 F. Supp. at 138. In 1950, Congress enacted 25 U.S.C. § 233 giving New York courts limited subject matter jurisdiction to hear ***private*** disputes "between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings . . . ." Without such congressional consent, the laws and the Constitution of the State of New York could not extend subject matter jurisdiction to even these private disputes involving one or more Indians for conduct taking place within a Nation's sovereign land. *Williams v. Lee*, 358 U.S. 217, 223 (1959).

The Halftown Council has cited a number of New York cases, decided prior to 1950, in which New York courts impermissibly exercised subject matter jurisdiction over civil disputes involving Indians. (Resp. Br. at 25). These cases were decided prior to the enactment of 25 U.S.C. § 233. (*Id.*). If these state courts already had jurisdiction under the laws and Constitution of the State of New York, then Congress would have had no reason to enact 25 U.S.C. § 233. Congress, however, cannot mandate any state court to exercise jurisdiction without the

approval of a state legislature. Indian Law §§ 5 and 11-a,[5] cited by the Halftown Council in its brief, therefore must be constrained consistently with the congressional grant of civil jurisdiction limited to private causes of action.

In the Fourth Department's Memorandum and Order, the entire panel of justices agreed, it lacked subject matter jurisdiction to resolve the Cayuga Nation's leadership dispute or to intrude upon issues involving the Cayuga Nation's internal governance. (A. 6, 7). This position is consistent with the federal district court's holding in *Bowen.*

In *Bowen,* the United States District Court for the Western District of New York rejected the assertion that 25 U.S.C. § 233 was a congressional grant of jurisdiction to state courts to hear disputes over the internal governance of a Indian nation. *Id.* The district court held there existed no "clear and plain" showing that Congress intended to interfere with an Indian nation's exclusive authority over internal affairs and governance. *Id.* at 116.

> Nowhere in the language of § 233 is there a "clear and plain" statement that § 233 abrogates the Nation's treaty rights to self-government and exclusive jurisdiction over its internal affairs. . . . Nor does the legislative history of § 233 show that Congress intended to

[5] The Halftown Council relies upon New York Indian Law § 11-a to bolster its argument that it has the authority, as the Nation's *lawful* governing body to bring an action in the Nation's name "to recover the possession of lands of such nation . . . *unlawfully* occupied by others and for damages resulting from such occupation." (Emphasis added). (Resp. Br. at 5, 23, 38-39). As the dissenters in the Fourth Department has already noted, the BIA determination does not preclude Defendants-Appellants "from contending they had and continue to have a legitimate claim under traditional law to exercise authority over the property at issue" as a tribal officials who are immune from suit. (A. 9).

> abrogate the Nation's treaty rights. To the contrary, the legislative history contains an express disclaimer of any intention to affect treaty rights. S.Rep. No. 1836, 81st Cong., 2d Sess. 2 (1950) ("This proposed legislation expressly subjects the Indians in the State of New York to the civil laws of that State, without impairing any ... rights under existing treaties with the United States.").

Id. Accordingly, the federal court held Congress never intended state courts "to become embroiled in internal political disputes amongst officials of the [Indian] Nation's government." *Id.* at 118.

Contrary to the legal assertions made by the Halftown Council, state courts do not have inherent jurisdiction over Indians or conduct occurring within a reservation. (Resp. Br. at 22). "Neither the constitution of the State nor any act of its legislature, however formal or solemn, whatever rights in may confer on those Indians or withhold from them, can withdraw them from the influence of an act of Congress . . . ." *United States v. Holliday*, 70 U.S. 407, 419 (1865). "Any other doctrine would make the legislature of the State the supreme law of the land, instead of the Constitution of the United States, and the laws and treaties made in pursuance thereof." *Id.* at 419-20.

Since Congress enacted 25 U.S.C. § 233 in 1950, federal and state courts have uniformly held Haudenosaunee nations have the ***exclusive*** authority to resolve internal disputes relating to governance, land, and the interpretation of their laws. *See, e.g., Tanner*, 824 F.3d at 327; *Bowen,* 880 F. Supp. at 115; *Ransom,* 86 N.Y.2d at 560 fn. 3 (1995) *Alexander v. Hart,* 64 A.D.3d 940, 942 (3d Dep't.

2009)("State courts do not violate an Indian nation's sovereign right to self-government by exercising jurisdiction over disputes between private civil litigants on matters that have no bearing on the internal affairs of the tribal nation's government"); *Seneca v. Seneca*, 293 A.D.2d 56, 58-59 (4th Dep't. 2002)(finding a state court exercising subject matter jurisdiction over a dispute that does not implicate the internal affairs of an Indian nation does not violate the Nation's right to self-government); *Cayuga Nation v. Jacobs*, 44 Misc.3d 389 (Seneca Co. Sup. Ct. 2014) *appeal dismissed* 132 A.D.3d 1264 (4th Dep't. 2015)*; Valvo v. Seneca Nation of Indians,* 170 Misc.2d 512 (Erie Co. Sup. Ct. 1996)(finding 25 U.S.C. § 233 does no confer jurisdiction over tribal officials who are immune from suit); *Bennett v. Fink Construction Co., Inc.*¸ 47 Misc.2d 283, 285 (Erie Co. Sup. Ct. 1965)(Justice Matthew J. Jasen finding an Indian nation "has the power of self government and in its capacity of a sovereign nation, is not subservient to the orders and directions of the courts of New York State."). Contrary to the flawed arguments offered by the Halftown Council, no state court has the subject matter jurisdiction to resolve this internal dispute over which political faction should exercise dominion and control over the Nation's property and businesses.

CONCLUSION

For the reasons stated above, Defendants-Appellants respectfully request this Court issue an Order, responding in the negative to the certified questions submitted by the Fourth Department, and directing the Fourth Department to enter an order reversing the Order of Acting Supreme Court Justice Dennis F. Bender, entered on September 18, 2017, granting Defendants-Appellants' motion to dismiss, and vacating the preliminary injunction.

Dated: Hamburg, New York
January 27, 2019

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NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word

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Dated: January 27, 2019

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