Office of the New York State Attorney General

Letitia James Attorney General

January 16, 2026

The Honorable James M. Wicks
United States Magistrate Judge
100 Federal Plaza
Central Islip, N.Y. 11722

Re: **Shinnecock Indian Nation v. Hochul et al.**
Civil Action No.: 2:25-cv-7034-NJC-JMW

Dear Judge Wicks:

Defendants, Governor Kathleen C. Hochul, Attorney General Letitia A. James, and Commissioner of Transportation Marie Therese Dominguez, sued in their official capacities ("Defendants") move for a discovery stay pursuant to Fed. R. Civ. P. 26(c) until their motion to dismiss under Fed. R. Civ. P. 12(b)(1) and (b)(6) has been fully briefed and decided. Plaintiff Shinnecock Indian Nation consents to the stay.

Plaintiff's Amended Complaint[1] (ECF No. 22) asks this court to enjoin litigation pending in the New York State Supreme Court, Suffolk County, under Index No. 610010/2019, on the ground that the litigation itself amounts to an ongoing violation of federal law because Defendants obtained their permanent easement for highway purposes across land owned by the Nation, also known as the Westwoods in violation of the Non-Intercourse Act, 25 U.S.C. § 177. The Amended Complaint also asserts that the 2025 designation of Westwoods by the United States Department of Interior ("DOI") as "restricted fee lands" applies retroactively and renders the State's permanent easement for highway purposes illegal and void *ab initio*.

As set forth in the December 31, 2025 Minute Entry for the conference on Plaintiff's Motion for a Temporary Restraining Order, Judge Choudhury has set a briefing schedule for Defendants' motion to dismiss. While the "mere filing of a dispositive motion, in and of itself, does not halt discovery obligations," a court may stay discovery during the pendency of a motion to dismiss for "good cause." *Concern for Indep. Living, Inc. v. Town of Southampton*, 2025 WL 327983, at * 3 (E.D.N.Y. Jan. 29, 2025) (Wicks, M.J.).

[1] On January 13, 2026, Plaintiff filed an Amended Complaint adding Defendant Supreme Court Justice Maureen T. Liccione. No appearance has been entered on behalf of Justice Liccione at this time. As of the filing of this letter, no affidavit of service has been filed for Justice Liccione.

> In evaluating whether a stay of discovery pending resolution of a motion to dismiss is appropriate, courts consider: (1) whether the defendants has made a strong showing that the plaintiff's claim is unmeritorious; (2) the breadth of discovery and the burden of responding to it; and (3) the risk of unfair prejudice to the party opposing the stay. In addition, consideration of the nature and complexity of the action, whether *some* or *all* defendants joined in the request for a stay, as well as the posture or stage of the litigation. The fact that Plaintiff consents to a stay is only a factor to be considered.

Id. at * 3-4. In this case, good cause exists to stay discovery until the motion to dismiss has been fully briefed and decided.

The first factor weighs in favor of a stay. Defendants intend to move for dismissal on jurisdictional grounds. Such jurisdictional challenges favor a stay of discovery. *See Hachette Distribution, Inc. v. Hudson County News Co., Inc.*, 136 F.R.D. 356, 358 (E.D.N.Y. 1991). The parties previously litigated the status and use of the property known as the Westwoods before Judge Bianco in the Eastern District of New York, wherein the Court ruled against the Nation. *See New York v. Shinnecock Indian Nation*, 523 F. Supp. 2d 185, 188 (E.D.N.Y. 2007), *amended*, 560 F. Supp. 2d 186 (E.D.N.Y. 2008), *vacated on other grounds*, 686 F.3d 133 (2d Cir. 2012). The Second Circuit vacated the decision, holding that the federal court lacked jurisdiction because the complaint only alleged violations of State law and that the Nation's tribal immunity defense did not create a federal question. *See New York v. Shinnecock Indian Nation*, 686 F.3d 133, 141 (2d Cir. 2012). In this case, the Shinnecock Indian Nation is again asserting sovereignty over the Westwoods parcel as a defense to the pending State court litigation which alleges that the Nation's Trustees and business partners were violating State law. *See Commissioner of N.Y. State Dept. of Transportation v. Polite*, 236 A.D.3d 82 (2d Dep't 2024). Defendants will argue that the Non-Intercourse Act and federal preemption claims should not be before the federal court as they are defenses to the State court litigation that happen to be grounded in federal law. Judge Choudhury has asked the parties to brief the Court's jurisdiction and the availability of a private right of action for the Non-Intercourse Act and federal preemption claims. *See* Dec. 31, 2025 Minute Entry. Further, Plaintiff's causes of action for a declaratory judgment and injunctive relief are forms of relief and not independent causes of action. *See Animal Welfare Inst. v. Romero*, 718 F. Supp. 3d 252, 266 (E.D.N.Y. 2024).

Defendants also intend to move for dismissal pursuant to the abstention doctrine recognized in *Younger v. Harris*, 401 U.S. 37 (1971). The *Younger* abstention doctrine extends to civil enforcement proceedings and "civil proceedings involving certain orders in furtherance… uniquely in furtherance of the state court's ability to perform their judicial functions." *See Sprint Comm'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). Defendants submit that this federal action, which seeks to order a sitting state-court judge to refrain from taking further action in state-court litigation, would unduly interfere with the State's ongoing action to enforce State laws. *See Polite*, 236 A.D.3d at 130 (granting preliminary injunction against defendants).

Defendants additionally intend to move to dismiss under Fed. R. Civ. P. 12(b)(6) because the Amended Complaint fails to state a cause of action for a violation of the Non-Intercourse Act. *See Seneca Nation of Indians v. New York*, 382 F.3d 245, 258 (2d Cir. 2004) (a plaintiff must show that: "(1) it is an Indian tribe, (2) the land at issue was tribal land at the time of the conveyance, (3) the United States has never approved the conveyance, and (4) the trust

relationship between the United States and the tribe has not been terminated"). In this case, Plaintiff was not a federally recognized tribe until 2010. *See* Am. Comp. ¶ 29. Nor was the Westwoods parcel "tribal land" when the State acquired its permanent easement in 1959. *See New York v. Shinnecock Indian Nation*, 523 F. Supp. 2d 185, 188 (E.D.N.Y. 2007) (evidence demonstrated that the Nation lost aboriginal title to the Westwoods "in a plain and unambiguous manner" when it sold the land to non-Native Americans), *vacated on other grounds*, 686 F.3d 133 (2d Cir. 2012); *see also* Index No. 610010/2019 Doc. 468 at 12-13. Therefore, Plaintiff has failed to allege a prima facie case of a violation of the Non-Intercourse Act.

Moreover, the parties have extensively litigated the significance of the 2025 designation of the Westwoods parcel as restricted fee land in the pending State action. On October 17, 2025, State Supreme Court Justice Liccione denied the Nation's Trustees' renewed motions to dismiss in which they argued, *inter alia*, that the 2025 DOI's designation of the land as restricted fee invalidated the State's 1959 easement over the Westwoods. Doc. 468 at 16. The Nation's attempt to relitigate issues of fact or law raised in the pending State action is barred by collateral estoppel since those issues have been decided against parties in privity with the Nation. *See, e.g., Gramatan Home Investors Corp. v. Lopez*, 46 N.Y.2d 481, 485 (1979).

As to the second factor, it would be burdensome to require Defendants to participate in discovery before deciding their motion to dismiss. Discovery in this complex case would include the exchange of voluminous colonial era documents as well as information regarding the State's 1959 easement. Indeed, the prior litigation between the parties before Judge Bianco involved a bench trial, "which lasted 30 days, and included over 20 witnesses, over 600 exhibits, and over 4,000 pages of transcripts." *See New York v. Shinnecock Indian Nation*, 523 F. Supp. 2d 185, 188 (E.D.N.Y. 2007). A stay is warranted "to avoid the potentially unnecessary expenditure of party, municipal, and judicial resources." *Concern for Indep. Living,* 2025 WL 327983, at * 4.

As to the third factor, this case is at its early stages and no discovery schedule has been entered. There is no risk of unfair prejudice given the fact that Plaintiff consents to a stay of discovery. *Id.* at * 4.

Therefore, Defendants respectfully request that the Court stay discovery and adjourn the Initial Conference scheduled for January 27, 2026.

Thank you for your courtesies.

Respectfully submitted,

Christopher M. Gatto

Christopher M. Gatto
Assistant Attorney General

CC: All counsel of record (*Via ECF*)