No. 12-604

IN THE
Supreme Court of the United States

MADISON COUNTY AND ONEIDA COUNTY, NEW YORK,
Petitioners,

v.

ONEIDA INDIAN NATION OF NEW YORK,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Oneida reservation was disestablished or diminished by the 1838 Treaty of Buffalo Creek.

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BRIEF IN OPPOSITION

The question presented concerns application of well-settled Supreme Court precedent to a single provision, concerning a single Indian tribe, in an 1838 treaty. The question does not implicate any conflict with this Court's precedent, circuit split, or important issue of federal law demanding this Court's attention. What is more, resolution of the question presented will not even necessarily resolve whether the land at issue here is subject to taxation under state law. That question turns on the meaning of New York statutes that exempt certain real property from taxation. *See* N.Y. Real Property Law § 454 ("The real property in any Indian reservation owned by the Indian nation, tribe or band occupying them shall be exempt from taxa-

tion[.]"); *see also* N.Y. Indian Law § 6. The court of appeals deferred to the state courts to interpret and apply these state laws, and those courts may determine that the federal reservation status of Oneida lands controls the state exemptions—or they may not. *See Cayuga Indian Nation* v. *Gould*, 930 N.E.2d 233, 251 (N.Y.) (reserving this question), *cert. denied*, 131 S. Ct. 353 (2010). Certiorari is not warranted to address a hypothetical application of federal law.

The Counties do not contend that the court of appeals' decision on reservation status is inconsistent with those of other courts of appeals, or with any of this Court's disestablishment cases. Petitioners' claim is that the court of appeals' decision is inconsistent with this Court's decision in *City of Sherrill* v. *Oneida Indian Nation of New York*, 544 U.S. 197 (2005), that the Nation may not assert sovereignty as to lands it reacquired by purchase within the Oneida reservation. But *Sherrill* states explicitly that the Court did not reach the disestablishment question and reiterates that "only Congress can divest a reservation of its land and diminish its boundaries." *Id.* at 215 n.9 (citation and internal quotations omitted). *Sherrill* is in this regard consistent with long-settled law recognizing that limits may exist on tribal sovereign authority within the bounds of a recognized reservation, such as limits on tribal authority over non-Indian land or non-Indians within the reservation. There is thus nothing to the Counties' claim that *Sherrill* itself makes the continued federal recognition of the Oneida reservation worthy of this Court's review. Indeed, having declined to review the issue in *Sherrill*, only two years ago this Court once again rejected the Counties' request to decide whether the Oneida reservation had been disestablished when, notwithstanding that the question remained before the

Court after the Nation's waiver of sovereign immunity mooted the first question presented in the Counties' petition for certiorari in No. 10-72, this Court remanded the case to the court of appeals.

Petitioners and their *amici* are left to argue that this Court should take up the disestablishment question because the Nation seeks to "reestablish a vast Indian reservation" of 300,000 acres, and "to reestablish tribal sovereignty over *all* of the historic reservation," resulting in "conflict between Indian and non-Indian communities" over a "large swath of central New York." But they have the facts wrong, and their hypotheses about "uncertainty and confusion in all quarters" are demonstrably false. The relevant property in this case is the 17,370 acres of reacquired reservation land that the Nation owns. As to that land, petitioners and their *amici* have conspicuously failed to identify *any* such consequential dispute that depends on continued federal recognition of the Oneida reservation. Nor do they identify any dispute as to the full 300,000 acres: They focus most extensively on a census map that the federal government has withdrawn and which, even prior to its withdrawal, the government said had no legal effect.

The petition's struggle to identify some concrete effect that reservation status has on the Counties only underscores the absence of any dispute meriting this Court's attention. The petition should be denied.

STATEMENT

I. HISTORICAL BACKGROUND

A. Establishment Of The Oneida Reservation

The Oneidas were one of the six nations of the Iroquois confederation. "Although most of the Iroquois sided with the British" during the Revolution, the

Oneidas allied with the colonies, "prevent[ing] the Iroquois from asserting a united effort against the colonists, and thus the Oneidas' support was of considerable aid." *County of Oneida* v. *Oneida Indian Nation of N.Y.*, 470 U.S. 226, 231 (1985) (*Oneida II*).

"After the War, the new nation sought to reward and protect its valuable ally[.]" *Oneida Indian Nation of N.Y.* v. *County of Oneida*, 434 F. Supp. 527, 533 (N.D.N.Y. 1977). In 1783, the Continental Congress confirmed the Oneidas' possession of their aboriginal lands, comprising six million acres in New York. 25 J. Cont'l Cong. 680, 687. In 1784, the United States entered into the Treaty of Fort Stanwix, providing that the Oneidas "shall be secured in the possession of the lands on which they are settled." 7 Stat. 15, art. 2. Notwithstanding the federal treaty with the Oneidas, New York negotiated on its own the 1788 Treaty of Fort Schuyler, through which the Oneidas ceded millions of acres of this aboriginal land to New York, but reserved 300,000 acres in perpetuity for themselves. *Oneida II*, 470 U.S. at 231.

Twice again, the federal government secured the Oneidas in the possession of their land. The 1789 Treaty of Fort Harmar "again secured and confirmed [the Oneidas] in the possession of their respective lands." 7 Stat. 33, art. 3. In the 1794 Treaty of Canandaigua, the United States "acknowledge[d] the lands reserved to the Oneida." 7 Stat. 44, art. 2; *see Sherrill*, 544 U.S. at 204-205 (discussing Treaty of Canandaigua). With the enactment of the first Nonintercourse Act in 1790, the federal government made invalid any "conveyance of Indian land except where such conveyances were entered pursuant to the treaty power of the United States." *Oneida II*, 470 U.S. at 231-232.

B. Dispossession Of Oneida Land

Between 1795 and 1846, the State of New York entered into agreements with the Oneidas whereby the State purported to acquire land comprising almost the entire Oneida reservation. In the first such transaction, New York purchased about one-third of the land within the reservation (roughly 100,000 acres) without federal approval, and despite the explicit warning of the Secretary of War and the Attorney General that application of the Nonintercourse Act to New York was "too express to admit of any doubt upon the question." 434 F. Supp. at 534 (internal quotation marks omitted); *see also Oneida II*, 470 U.S. at 232-233.

After a brief interlude in which New York sought to comply with federal law and requested the appointment of federal commissioners for land purchases in 1798 and 1802, *see Oneida II*, 470 U.S. at 246-247 & nn.19-20, New York resumed making unapproved purchases, because it feared "excessive federal protective intervention" on the Oneidas' behalf, 434 F. Supp. at 535. As a result of these illegal transfers, the Oneidas by 1838 had lost possession of all but 5,000 of the 300,000 acres acknowledged in the Treaty of Canandaigua.

C. The Treaty Of Buffalo Creek

In 1838, the United States entered the Treaty of Buffalo Creek with the New York Indians (including the Oneidas). 7 Stat. 550. Under Articles 1 and 2 of the treaty, the New York Indians agreed to cede to the federal government their rights "to the lands secured to them at Green Bay [Wisconsin] by the Menomonie treaty of 1831," in exchange for a reservation in the Indian Territory, in what is now the State of Kansas, "as

a permanent home for all the New York Indians." Pet. App. 231a-232a; *New York Indians* v. *United States*, 170 U.S. 1, 15 (1898). No New York land is mentioned in Articles 1 or 2.

Article 13 of the treaty set forth "Special Provisions for the Oneidas Residing in the State of New York." Under that provision, the Oneidas "agree[d] to remove to their new homes in the Indian territory, *as soon as they can make satisfactory arrangements with the Governor of the State of New York for the purchase of their lands at Oneida*." Pet. App. 238a (emphasis added). The treaty thus made removal contingent on the Oneidas' satisfaction with terms they might arrive at with New York; and it did not displace the Nonintercourse Act, which required the United States' oversight of negotiations and formal approval of the terms of any future sale.

The Senate amended the treaty on June 11, 1838, providing that it "shall have no force or effect whatever" until "submitted and fully and fairly explained by a commissioner of the United States to each of said tribes or bands, separately assembled in council, and they have given their free and voluntary assent thereto[.]" S. Exec. J. 130 (June 11, 1838). On August 9, 1838, Ransom Gillet, the federal commissioner who negotiated the treaty, gave the Oneidas a written assurance "that the treaty does not and is not intended to compel the Oneidas to remove from their reservation in the State of New York … *unless* they shall hereafter voluntarily sell their lands where they reside *and agree to do so*." No. 10-72 JA196a (emphasis added); *see also Sherrill*, 544 U.S. at 206. Gillet further assured the Oneidas that "they will not be compelled to sell or remove," and that the "treaty gives them lands if they go to them & settle there *but they need not go unless they*

wish to." No. 10-72 JA196a (emphasis added). Gillet reported to the Commissioner of Indian Affairs that "[s]ome of the tribe expressed their fears that they might be compelled to remove, even without selling their land to the State, and desired some evidence from me that such would not be the construction of the papers." On receipt of Gillet's "assurance," however, "a large number signed the written assent." S. Exec. Doc. No. Confidential B, 26th Cong., 1st Sess., at 29-30 (Jan. 14, 1840); *see* Pet. App. 259a.

Removal to Kansas never occurred. The federal government decided not to promote or pay for removal, *New York Indians* v. *United States*, 30 Ct. Cl. 413, 448-451 (1895), and the New York Indians, including the Oneidas, manifested no desire to move to Kansas, *see* H.R. Rep. No. 47-2001, at 1-3 (1883). The United States abandoned even voluntary removal when the President proclaimed the sale of the Kansas lands to other parties. *New York Indians*, 170 U.S. at 34-35.

D. The Oneida Reservation After The Treaty Of Buffalo Creek

Neither the federal government nor the State of New York evidenced any belief that the Treaty of Buffalo Creek disestablished the Oneida reservation. As the Counties have acknowledged, maps prepared for the federal Commissioner of Indian Affairs during the nineteenth century include designations of an "Oneida Reservation," and census data from that time period show Oneidas living on the Oneida reservation. *See* Pet. Br. 51-53 (No. 10-72). The United States continues to recognize the Nation as a sovereign nation occupying reservation land in New York to the present day. *See* Record of Decision (ROD), Oneida Indian Nation of

New York Fee-to-Trust Request § 7.1 (May 2008) (excerpted at No. 10-72 JA246a-312a).

New York also continued to recognize the existence of the reservation. Under an 1842 agreement between the Oneidas and New York, certain Indians sold a portion of their New York land to the State. The agreement explicitly referenced this land as "part of their reservation." *United States* v. *Boylan*, 265 F. 165, 168 (2d Cir. 1920). An 1843 New York state statute made explicit reference to "lands and property in the Oneida reservation." *Id.* at 169 (internal quotation marks omitted); *see also id.* at 169-171 (additional New York enactments concerning an Oneida reservation).

In the early twentieth century, when the Oneidas' land was threatened with foreclosure, the Attorney General of New York represented that the land in question was non-taxable tribal land. *Boylan* v. *George*, 117 N.Y.S. 573 (App. Div. 1909). In a suit brought in federal court by the United States, the Second Circuit ruled that the lands were reservation lands and restored them to Oneida possession, stating that the New York court could not "extinguish the right of occupancy which belongs to the Indians." *Boylan*, 265 F. at 174. The reservation's continued existence was also recognized in New York state court. *See Waterman* v. *Mayor*, 280 N.Y.S.2d 927, 930 (N.Y. Sup. Ct. 1967) ("The proof submitted … indicates that the Oneida Indian Reservation does now exist and that there is an Oneida Indian tribe.").

II. PROCEDURAL HISTORY

A. Acquisition Of Land On The Open Market And This Court's Decision In *Sherrill*

Following this Court's decision in *Oneida II*, the Nation undertook to regain possession of some of its

land through purchases at full market value from willing sellers. The Nation acquired fee title to approximately 17,370 acres within the boundaries of the reservation acknowledged by the Treaty of Canandaigua, which had been acquired by the State between 1795 and 1846. The lands are now home to most of the Nation's cultural and social facilities, children's and elder center, police department, housing units, burial grounds, archeological sites, agricultural lands, and commercial enterprises, including the Turning Stone Resort & Casino. The Nation—ultimately supported by the United States before this Court—took the position that the repurchased reservation land was not subject to state and local taxation as a matter of federal law. Petitioners (and the City of Sherrill) disagreed, and that disagreement led to the litigation culminating in this Court's decision in *Sherrill*.

The U.S. District Court for the Northern District of New York and the Second Circuit held that, because the Nation's lands fell within the boundaries of the Oneida reservation, state taxation of the land was barred under federal law. *Oneida Indian Nation of N.Y.* v. *City of Sherrill*, 337 F.3d 139 (2d Cir. 2003) (Pet. App. 102a-172a); *Oneida Indian Nation of N.Y.* v. *City of Sherrill*, 145 F. Supp. 2d 226 (N.D.N.Y. 2001).

Among other arguments they made before the Second Circuit, petitioners contended that the Oneida reservation had been disestablished by the Treaty of Buffalo Creek. The court of appeals rejected that argument. It studied the extensive record amassed at summary judgment, evaluated it in the light of this Court's precedent on reservation disestablishment and Indian treaty interpretation, and held that the treaty language itself, as well as its well-documented negotiation history, confirmed that neither Congress nor the

Oneidas intended the treaty to disestablish the Oneida reservation. Pet. App. 141a-145a. The court of appeals further held that the state and local treatment of the reservation, including the pattern of its settlement by non-Indians and its jurisdictional history, could not override the treaty and did not effect a *de facto* disestablishment of the reservation. *Id.* at 148a.

This Court granted Sherrill's petition for certiorari and reversed the court of appeals. Although Sherrill—as well as petitioners (as *amici*)—urged this Court to hold that the Oneida reservation had been disestablished, the Court declined that invitation, instead ruling on a ground "not discretely identified in the parties' briefs." 544 U.S. at 214 n.8. Specifically, it held that equitable considerations prevented the Nation from unilaterally reestablishing "sovereign control" over reservation land by repurchasing it on the open market—and that, accordingly, federal law imposed no impediment to the taxation of such lands under state and local law.

At the same time, the Court never expressed any doubt that New York had unlawfully acquired the Oneida land, nor did it suggest that the state purchases disestablished the Oneida reservation. In view of full briefing on the disestablishment issue by the parties, as well as by the Counties, the State, and the United States as *amici*, the Court once again confirmed that "'only Congress can divest a reservation of its land and diminish its boundaries,'" and declined to examine the Second Circuit's holding that the Oneida reservation had not been disestablished by the Treaty of Buffalo Creek. 544 U.S. at 215 n.9 (quoting *Solem* v. *Bartlett*, 465 U.S. 463, 470 (1984)). This Court's determination that the land was subject to taxation because of equitable considerations was not a *sub silentio* disestablish-

ment of the reservation. Indeed, disestablishment would have resolved the taxability of Oneida land under federal law without resort to the equitable considerations that formed the basis of the Court's decision.

B. The Secretary Of The Interior's Trust Decision

The Court in *Sherrill* observed that the Secretary of the Interior's statutory land-into-trust process "provides the proper avenue for [the Nation] to reestablish sovereign authority" over the reacquired lands, rendering them "'exempt from State and local taxation.'" 544 U.S. at 220-221 (quoting 25 U.S.C. § 465). By vesting the Secretary with authority to acquire land in trust for Indians, Congress "provided a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area's governance and well being," and which is "sensitive to the complex interjurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory." *Id.*

Within a week of this Court's decision, the Nation applied to have its reacquired lands (17,370 acres) taken into trust. In connection with its application, the Nation posted letters of credit to satisfy outstanding tax liens if the state courts resolve the dispute over state tax exemptions in the Counties' favor. No. 10-72 SJA1-24. The letters cover *all* of the 17,370 acres of land at issue in this litigation (*see* No. 10-72 JA284a) and are not contingent on *any* of the lands being taken into trust. No. 10-72 JA281a, JA301a-302a.[1]

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[1] The letters of credit do not cover the full extent of the tax liens on the casino property because the Interior Department "de-

The Secretary provided for extensive public deliberation on the application, including preparation of an environmental impact statement; notice, comment, and multiple public hearings; and a record of decision. *See* No. 10-72 JA246a-312a. Notably, the Counties and the State participated in that process, voicing many of the same concerns that they now claim merit a grant of certiorari. The Secretary addressed each of those concerns in his various public decision documents, attending, for example, to "concerns raised by New York State and local governments" about "the acquisition's potential impacts on regulatory jurisdiction." No. 10-72 JA275a. The Secretary also addressed concerns that acceptance of Oneida lands into trust would deprive municipal and State government of tax revenue, finding that the Nation had made (and continued to make) extensive payments to local governments and the State, which, "in combination with other direct and indirect contributions that the Nation has made to the State and local governments, more than offset the alleged annual loss of revenue resulting from the Nation's nonpayment of real property taxes." No. 10-72 JA264a.

In May 2008, the Secretary granted the application as to approximately 13,000 of the Nation's reacquired 17,370 acres, allowing the Nation to transfer its fee title to those lands to the United States to be held in trust. Petitioners promptly sued to block the Department's trust determination. No land has been transferred during the pendency of judicial review.

C. The Decisions Below

Following this Court's decision in *Sherrill*, the Nation and the City of Sherrill signed a compact that re-

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termined that the Turning Stone Casino is being assessed unlawfully[.]" No. 10-72 JA281a.

solves prior tax disputes, commits the Nation to pay the full amount of future City tax bills, facilitates enforcement of municipal regulations, and waives the Nation's sovereign immunity to enforcement. No. 10-72 JA40a-45a. The Nation signed a similar agreement with the City of Oneida. *See* No. 10-72 JA305a-308a. The Nation and the cities now cooperate and have avoided any post-*Sherrill* litigation. Petitioners rebuffed the Nation's efforts to reach the same resolution. Instead, immediately following *Sherrill*, the Counties sought to foreclose on the Nation's reacquired reservation land for non-payment of taxes.

In suits brought by the Nation, the district court granted summary judgment and enjoined the Counties from foreclosing on the Nation's lands on four separate grounds: (i) the Nation has sovereign immunity from suit; (ii) foreclosure would violate the Nonintercourse Act's restrictions on alienation of Indian land; (iii) the Counties failed to give the notice required under New York law in violation of due process; and (iv) the land in question falls within New York's statutory tax exemptions for land within the boundaries of an Indian reservation, N.Y. Indian Law § 6; N.Y. Real Prop. Tax Law § 454.

The court of appeals affirmed on the ground that the foreclosure actions were barred by the Nation's sovereign immunity and did not reach the other grounds. The court yet again rejected the Counties' argument that the reservation was disestablished, citing its prior ruling that "the Oneidas' reservation was not disestablished" (Pet. App. 86a-87a)—a holding left undisturbed by this Court's decision in *Sherrill*.

This Court granted the Counties' petition for certiorari, agreeing to review: (1) whether the doctrine of

tribal sovereign immunity barred the Counties' foreclosure actions, and (2) whether the Oneida reservation was disestablished. 131 S. Ct. 704 (2010). This Court disposed of the case before argument when the primary question was mooted by the Nation's waiver of sovereign immunity, notwithstanding the Counties' argument that "there are many other questions to be resolved in this litigation, including the second question presented to this Court (whether the ancient Oneida reservation in New York was disestablished or diminished)." Ltr. from David M. Schraver, Counsel of Record for Petitioners, to Hon. William K. Suter, Clerk of Court 3, No. 10-72 (Dec. 1, 2010).

On remand, the court of appeals reversed the district court's due process ruling and declined to exercise supplemental jurisdiction over the parties' remaining dispute—the application of two New York statutes that exempt certain land in an Indian reservation from property taxation—holding that the state courts were the proper forum in which to resolve that question.[2] The court again rejected the Counties' request for a ruling that the reservation was disestablished, holding that neither this Court's decision in *Sherrill*, nor its vacatur and remand in No. 10-72, "upset [the court of appeals'] determination" in its 2003 *Sherrill* decision that the reservation persisted. Pet. App. 68a. The Second Circuit denied the Counties' petition for rehearing *en banc*; the Counties petitioned for certiorari.

[2] The Nation did not pursue its claim under the Nonintercourse Act on remand, and the court deemed it waived. Pet. App. 26a-31a.

ARGUMENT

I. PETITIONERS HAVE FAILED TO IDENTIFY ANY CONCRETE DISPUTE THAT WOULD BE RESOLVED BY THIS COURT'S DECISION ON THE QUESTION PRESENTED

Petitioners and their *amici* insist that the Nation wrongfully asserts "primary jurisdiction" over lands within "a 300,000-acre present-day reservation," and that these actions result in "uncertainty, confusion and jurisdictional conflict." *See* N.Y. Br. 3, 18; Pet. 2-4, 19, 22-28. That is not correct. After *Sherrill*, the Nation lacks sovereign control over the 17,370 acres it owns, much less the roughly 280,000 acres of the reservation that it does not. As a result, notwithstanding their allegations of widespread disorder across central New York, neither petitioners nor their *amici* have identified a single concrete consequence of reservation status that adversely affects their rights or interests—apart from the application of New York's statutory tax exemptions, which are the subject of parallel state-court litigation.

1. The Counties argue that this Court should address the disestablishment issue because the status of the Oneida reservation may be relevant to the resolution of the parties' state-court dispute over the application of New York tax law. That contention suggests neither an error in the court of appeals' decision nor a question of national importance warranting this Court's review. Petitioners' speculation that the federal reservation status of Oneida land might dictate the state courts' resolution of the scope of a state statutory property tax exemption is too attenuated to warrant certiorari.

New York statutes exempt Indian reservation land from property taxation. *See* N.Y. Real Property Law

§ 454; N.Y. Indian Law § 6. The New York legislature has neither amended nor repealed those exemptions in the nearly eight years since *Sherrill* (or the seven years since the district court held them applicable to Oneida land), and the New York courts of appeal have yet to construe them.

The New York Court of Appeals has held that, with respect to cigarette taxation on reservation land, New York law looks to federal reservation status for purposes of New York tax exemptions—even when the tribe lacks sovereignty over those lands under *Sherrill*. *See Cayuga Indian Nation* v. *Gould*, 930 N.E.2d 233, 241-242 (N.Y.), *cert. denied*, 131 S. Ct. 353 (2010). *Cayuga*, however, expressly reserved whether the rule it adopted for cigarette tax exemptions would apply to the real-property tax exemptions codified at N.Y. Real Property Law § 454 and N.Y. Indian Law § 6. 930 N.E.2d at 330-331. Although the Nation believes that these exemptions likewise apply to federal reservations, the question remains unsettled under New York law.[3]

The possibility that federal reservation status might ultimately be relevant to an as-yet-undecided question of state law in pending, parallel state-court litigation is no ground for certiorari. Petitioners' real

[3] Petitioners have taken the position that the New York state courts are free to disregard the federal courts' ruling on the question whether the Oneida reservation was disestablished (Pet. 20; *see also* CA2 Reh'g Pet'n 13), but that is wrong. While the state courts may decide, as a matter of state law, that the state real-property tax exemption does not extend to the Oneidas' reacquired lands, they are not free to decide the federal question of the reservation's status differently from the federal courts, whose decision on the issue is preclusive as to the Counties under federal and state law.

grievance appears to be with the New York legislature, which has kept in place the statutory tax exemption for reservation lands, even after this Court's decision in *Sherrill* and the New York Court of Appeals' decision in *Cayuga*. But the fact that the New York legislature might have independently decided, as a matter of state policy, to include federal reservations in according Indian lands state-law tax exempt status is not a reason for this Court to take up the reservation question as a matter of federal law.[4]

2. Petitioners and their *amici* contend that the Nation is wrongfully exploiting the reservation status of its lands in connection with the Secretary of the Interior's land-into-trust determination and related litigation. But the Secretary's decision did not depend on the current reservation status of the land, and this Court's reexamination of its status in this case would not dictate the outcome of the trust process.

Applying the "on reservation" trust regulations cited by this Court in *Sherrill*, 544 U.S. at 221 (citing 25 C.F.R. § 151.10 (2004)), the Secretary of the Interior granted the Nation's land-into-trust application as to approximately 13,000 acres. No. 10-72 JA272a. The

[4] Petitioners and the State argue that the district court's decision in the unrelated *Cayuga* foreclosure litigation evidences "uncertainty, confusion and jurisdictional conflict" arising from the court of appeals' decision on the reservation status of Oneida lands. *See* Pet. 32-34; N.Y. Br. 18. But that misstates *Cayuga*, in which the district court said nothing about the relevance of the Oneidas' reservation status; it relied only on the Second Circuit's distinction between tribal sovereign immunity and sovereign authority. *See Cayuga Indian Nation of N.Y.* v. *Seneca Cnty.*, No. 11-cv-6004, 2012 WL 3597761, at *4 (W.D.N.Y. Aug. 20, 2012). In any event, the Cayugas and the Oneidas are different tribes, and whether the Cayuga reservation was disestablished turns on different treaty provisions and different negotiation history.

Secretary observed that the application would be granted "even if the Oneida reservation has been diminished or disestablished as the State and local governments contend," because, under Department regulations, "[w]here there has been a final judicial determination that a reservation has been diminished or disestablished, 'Indian reservation' also includes the area of land constituting the former reservation of the tribe as defined by the Secretary." *Id.* Furthermore, the Secretary noted that he would acquire the subject lands into trust even under the "off-reservation" trust regulations. No. 10-72 JA274a-275a; *see* 25 C.F.R. § 151.11. The current reservation status of the land thus does not control the Secretary's disposition of the Nation's land-into-trust application.[5]

Further, as discussed above (*see supra* pp.11-12), the Secretary decided to take the Oneidas' land into trust in full view of the jurisdictional, regulatory, and economic concerns expressed on the public record by the Counties and the State—the same concerns they voice here. As this Court noted in *Sherrill*, that is the benefit of the statutory land-into-trust mechanism, which requires the Secretary to consider "the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls," as well as "[j]urisdictional problems and potential conflicts of land use which may arise." 544 U.S. at 221 (quoting 25 C.F.R. § 151.10 (2004)). While consummation of the Secretary's land-into-trust determination would subject the relevant lands to a stable and predictable regulatory status, the Counties and State have sued to block

[5] As to the remaining 4,370 acres at issue in this litigation that the Secretary did not to take into trust, their taxability under state law will be decided in the state-court tax case.

the land transfer.[6] Any resulting lack of jurisdictional clarity is of their own making.

3. Petitioners' scattershot allegations of jurisdictional "uncertainty and confusion" resulting from the existence of the reservation (Pet. 19) fare no better. For example, they complain that the Nation improperly exploited the reservation status of its land in connection with the Department of the Interior's acceptance of administrative custody of an 18-acre parcel—which previously had been used by the United States as an annex to an Air Force base in Verona, New York—to be held in trust for the benefit of the Nation. Pet. 22. But, as the district court observed, the "DOI's acceptance of custody of land which has been transferred from a different federal agency and owned by the federal government for decades," *Upstate Citizens for Equality* v. *Salazar*, No. 5:08-cv-0633, 2010 WL 827090, at *15 (N.D.N.Y. Mar. 4, 2010), did not inflict any legally cognizable harm on the Counties. *New York* v. *Salazar*, No. 6:08-cv-644, 2009 WL 3165591, at *10-11 (N.D.N.Y. Sept. 29, 2009). The court specifically rejected the Counties' contention "that the transfer would impair [their] ability to exercise sovereign jurisdiction over the parcel" because the United States already owned the land, so "state and local jurisdiction is already impaired." *Id.* at *10.

Likewise, Petitioners and their *amici* fail to explain how the census map depicting the reservation boundaries is disruptive, as they do not identify any legal con-

[6] In September 2012, the district court remanded the matter to the Department of the Interior for a determination under *Carcieri* v. *Salazar*, 555 U.S. 379 (2009), as to whether the Nation was under federal jurisdiction when 25 U.S.C. § 465 was enacted in 1934. *See New York* v. *Salazar*, Nos. 6:08-cv-644, 2012 WL 4364452 (N.D.N.Y. Sept. 24, 2012).

sequences that flow from the map (which has, in any event, been withdrawn). *See* Pet. 22-29; N.Y. Br. 18. Indeed, before withdrawing the map, the Director of the Census Bureau informed Senator Schumer that the redrawn boundary line on the Census map was "for statistical purposes only. *No legal inference should be drawn from our depiction of the boundary*."[7] The Department of the Interior agreed both "that the Oneida Reservation has not been disestablished and is intact," and that the Census map was without legal effect.[8]

4. Petitioners are in no position to complain about the application of federal statutes to reservation land, or that the existence of the Oneida reservation "confounds the administration of federal laws designed to help Indians." Pet. 30 (capitalization modified). The federal government has repeatedly stated its view that the reservation continues to exist and treated it accordingly for purposes of the federal programs for which reservation status is relevant. Petitioners fail to identify any adverse consequences that flow from the federal government's recognition of the reservation in the context of those programs. Nor can the State be heard to complain about jurisdictional "uncertainty and confusion" engendered by the reservation status of Oneida land. Federal statutes have long granted New York "jurisdiction over offenses committed by or against Indians on Indian reservations," 25 U.S.C. § 232, as well as "jurisdiction in civil actions and proceedings between

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[7] Ltr. from Robert M. Groves, Director, to Hon. Charles Schumer (Feb. 1, 2011) (emphasis added), *available at* http://www.census.gov/foia/pdf/boundary.pdf.

[8] Ltr. from Scott Keep, Asst. Solicitor, to Timothy F. Trainor, U.S. Census Bureau (Feb. 3, 2011), *available at* http://www.census.gov/foia/pdf/boundary.pdf.

Indians or between one or more Indians and any other person or persons," *id.* § 233.

Petitioners contend that the adverse consequences of continued federal recognition of the Oneida reservation are "almost limitless." Pet. 37. But the Counties' failure to identify *any* concrete, non-speculative grievance speaks volumes.

II. THE COURT OF APPEALS' DECISION FAITHFULLY APPLIES THIS COURT'S DISESTABLISHMENT PRECEDENT AND IS ENTIRELY CONSISTENT WITH *SHERRILL*

The Court has long stressed that recognition of an Indian reservation—and any subsequent disestablishment or diminishment—is committed to the political branches. As recently as *Sherrill*, the Court reiterated that "'only Congress can divest a reservation of its land and diminish its boundaries.'" 544 U.S. at 215 n.9 (quoting *Solem* v. *Bartlett*, 465 U.S. 463, 470 (1984)). This Court has developed "a fairly clean analytical structure" to evaluate whether an Indian reservation has been disestablished or diminished. *Solem*, 465 U.S. at 470: Only Congress can disestablish or diminish a reservation, and it must "clearly evince" its intention to do so. *Id.* The Second Circuit properly applied the standards this Court has established, and there is no additional clarity to be gained from reviewing their application to the Oneida reservation.[9]

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[9] The present case is no more worthy of certiorari than any of the others in which the Court declined to address reservation-specific questions of disestablishment. *See, e.g.*, *Osage Nation* v. *Irby*, 131 S. Ct. 3056 (2011); *Yankton Sioux Tribe* v. *Daugaard*, 131 S. Ct. 3026 (2011); *Yankton Sioux Tribe* v. *U.S. Army Corps of Eng'rs*, 131 S. Ct. 3026 (2011); *Daugaard* v. *Yankton Sioux Tribe*, 131 S. Ct. 3024 (2011); *Hein* v. *Yankton Sioux Tribe*, 131 S. Ct. 3024 (2011); *Yellowbear* v. *Salzburg*, 131 S. Ct. 1488 (2011); *Gould*

A. The Treaty Of Buffalo Creek Did Not Disestablish The Oneida Reservation

The Treaty of Buffalo Creek does not "clearly evince" an intention by Congress to disestablish the Oneida reservation, much less the Oneidas' agreement in the treaty to give up their rights to that land, which had been secured by prior treaties. The text of the treaty contains no "present and total surrender of all tribal interests" in New York. *Solem*, 465 U.S. at 470. And the history of the treaty negotiations shows that the Oneidas did not agree to relinquish their interests in New York. *See id.* at 476-477 (discussing negotiations with the tribe in the context of construing statute). Under the treaty, the Oneidas' removal from New York was to be entirely voluntary, and was expressly contingent on eventualities that never came to pass. The government did not compel the Oneidas to leave New York; rather, it offered them the opportunity to move to lands promised in Kansas. The Oneidas, however, never took that opportunity; while some Oneidas left New York, they did so for Canada and Wisconsin, not Kansas. The United States quickly decided not to support removal; and removal to Kansas never materialized. At the end of the day, the treaty left the Oneidas where they were before—in possession of a reservation in New York, as promised by the federal commissioner who secured the Oneidas' consent to the treaty.

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v. *Cayuga Indian Nation of N.Y.*, 131 S. Ct. 353 (2010). The flurry of petitions addressed to disestablishment questions does not suggest that there is some lack of clarity in this Court's jurisprudence—four of these petitions arose from the same dispute involving the same Tribe and, as the United States observed in its invited *amicus* brief recommending denial of the Osage Nation petition, this Court's framework for disestablishment analysis is clear and straightforward, and the courts of appeals have no difficulty applying it. *See* U.S. Br. 9-13, No. 10-537 (U.S.).

Under the treaty, the New York Indians agreed to "*cede and relinquish* to the United States all their right, title and interest to *the lands secured to them at Green Bay* [Wisconsin] by the Menomonie treaty of 1831," with the exception of a specified tract on which some New York Indians were then residing. Pet. App. 231a (emphasis added). "In consideration of the above cession and relinquishment," the United States agreed to "set apart" a tract of approximately 1.8 million acres in the Indian Territory, in what is now the State of Kansas, "as a permanent home for all the New York Indians." Pet. App. 231a-232a; *see New York Indians*, 170 U.S. at 15. As the court of appeals acknowledged, Articles 1 and 2 thus "summarize[d] the central bargain between the New York Indians and the federal government: the cession of the New York Indians' *Wisconsin lands* in exchange for reservation land in Kansas." Pet. App. 141a (emphasis added). No New York land is mentioned in Articles 1 or 2.

In contrast to the principal treaty terms, the treaty referred to the Oneidas' New York land only in "Special Provisions for the Oneidas Residing in the State of New York." Pet. App. 238a. Under Article 13, these Oneidas "agree[d] to remove to their new homes in the Indian territory, as soon as they can make satisfactory arrangements with the Governor of the State of New York for the purchase of their lands at Oneida." *Id.* But, as the treaty text and negotiating history make clear, removal to Kansas was purely voluntary, and, as the Nonintercourse Act ensured, the Oneidas' land could only be lawfully sold with the express approval of the United States (which was not obtained).

The treaty did not impose on the Oneidas any obligation to leave New York, and it certainly did not disestablish the Oneidas' New York reservation. Article 1

shows that Congress understood how to invoke the language of disestablishment and that it did so selectively. Thus, while Article 1 provided that tribes "*cede and relinquish* to the United States all their right, title and interest to the lands secured to them at Green Bay," Article 13 contained no such language of disestablishment. To the contrary, it merely provided the Oneidas with the opportunity—which they did not exercise—voluntarily to remove to Kansas upon the "satisfactory" sale of the tribe's land.[10]

Moreover, the negotiation history of the treaty confirms the absence of any intent—on the part of Congress or the Oneidas—to disestablish the reservation. As this Court has noted, "review of the history of the negotiations of the agreements is central to the interpretations of treaties," and tribal understanding, as revealed by this history, is controlling. *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196, 202 (1999). That history—including a formal written assurance that the Oneidas did not have to leave New York—dispositively refutes the claim that the

[10] In addition to observing that the Article 13 terms were "speculative," the court of appeals noted that the Treaty contained "no specific cession language, and no fixed-sum payment for opened land in New York." Pet. App. 142a-143a. Petitioners object to the court of appeals' determination that the absence of these terms was probative of Congress's intent, arguing that such provisions would only be found in surplus land act cases. *See* Pet. 14-15. But the point of those cases is that congressional intent to disestablish a reservation can be discerned from how decisively the terms of the relevant legislation provide for the sale or other certain disposition of Indian lands. That rule applies *a fortiori* to ascertaining the intent of the parties to a treaty. And the treaty provisions applicable to the Oneidas (including the Special Provision) contemplated only that future negotiations subject to federal approval would take place and the Oneidas would have the opportunity voluntarily to remove.

Treaty of Buffalo Creek should be understood as eradicating the Oneida reservation pursuant to a policy of mandatory removal.

As explained above (*supra* pp.6-7), the Senate provided that the treaty would take effect only after it had been "fully and fairly explained by a commissioner of the United States" and the signatory tribes had given their "free and voluntary assent thereto." *New York Indians*, 170 U.S. at 21-22. Gillet provided the Oneidas with a written assurance that "the treaty does not, & is not intended to compel the Oneidas to remove from their reservation in the State of New York *unless* they shall hereafter voluntarily sell their lands where they reside *& agree to do so*," and that the Oneidas could "choose to ... remain where they are forever." No. 10-72 JA196a (emphasis added). Petitioners disparage this assurance as an after-the-fact declaration "reporting that some New York Oneidas were told that they did not have to leave New York." Pet. 15. That description gravely understates the force of Gillet's promise, which was a formal declaration required by the Oneidas as a condition of their assent to the treaty. *See* No. 10-72 JA170a. That assent must be understood as predicated on Gillet's explanation. *See Mille Lacs*, 526 U.S. at 202; *see also Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 667-668 & n.11, 677-678 (1979) (relying on similar assurances from a federal commissioner-negotiator in construing treaty).[11]

[11] An affidavit executed by Gillet in 1851 states that the Oneidas specifically bargained for the contingency embodied in Article 13. No. 10-72 JA170a. The Nation's specific bargaining for this provision gives controlling force to the promise it embodies.

Petitioners contend that the Second Circuit erred by giving "almost no weight to the federal removal policy that motivated and informed the 1838 Treaty" when it held that the Oneida reservation was not disestablished or diminished. Pet. 13; *see also id.* at 14 (asserting an "unambiguous Federal policy to force Eastern tribes to give up their reservations"). Even if they were accurate, these generalized statements of policy cannot contravene the clear text and negotiation history of a federal Indian treaty, which must be read to favor the tribe's interests.

Moreover, petitioners' description of federal Indian policy as monolithically in favor of forced westward removal is overly simplistic and particularly inaccurate with respect to the Oneidas, the United States' crucial ally in the Revolution. With respect to the Oneidas, federal policy at the time was not one of forced removal; rather, it favored removal predicated on tribal consent. The 1830 Indian Removal Act, provisions of which were explicitly incorporated into the Treaty of Buffalo Creek, contemplated voluntary removal, restricting its application to "such tribes or nations of Indians as *may choose* to exchange the lands where they now reside." 4 Stat. 411, § 1 (emphasis added); *see* Cohen, *Handbook of Federal Indian Law*, ch. 2, § B1d, at 91 (1982) ("[T]he Indian Removal Act contemplated voluntary migration of the Indian tribes[.]"); Gunther, *Governmental Power and New York Indian Lands—A Reassessment of a Persistent Problem of Federal-State Relations*, 8 Buff. L. Rev. 1, 8 (1958) (cited in *Sherrill*, 544 U.S. at 203 n.1, 205, 214, 224 n.4).

In the end, the removal to Kansas anticipated by the treaty never occurred. The Senate had deleted a provision from the treaty that would have required removal of the New York Indians (S. Exec. J. 127 (June

11, 1838)), and instead included provisions leaving removal to the discretion of the President (arts. 3 & 15). The President and Congress decided not to promote or pay for removal, *New York Indians*, 30 Ct. Cl. at 448-451, and the New York Indians manifested no desire to remove to Kansas. Eventually, the President and Congress decided to sell the Kansas lands and abandoned even voluntary removal. *New York Indians*, 170 U.S. at 34-35.[12] The treaty thus left the Oneidas on their own land, and accordingly cannot be understood as having eliminated the Oneida reservation in New York by exchanging it for a reservation in Kansas that never materialized. Given the explicit treaty terms, Gillet's assurances, and the decision by the federal government

[12] Pointing to the "large number of Oneidas who resettled in Wisconsin" (Pet. 13 n.8), petitioners contend that the Oneidas were successfully removed from New York. *See also* N.Y. Br. 7, 13. The decision to move by individual Oneidas was independent of anything in the Treaty of Buffalo Creek, which, above all, was intended to open land in Wisconsin for non-Indian settlement, not to relocate Indians from New York to Wisconsin. Despite some emigration of individual Oneidas to Wisconsin (joining the by-then separate Oneida tribe there) or to Canada, an Oneida tribe remained on the reservation in New York. Nor does movement to Wisconsin or Canada support the State's claim (N.Y. Br. 7, 14) that the Treaty of Buffalo Creek disestablished the Oneida reservation under the reasoning of *United States* v. *Santa Fe Pacific R.R. Co.*, 314 U.S. 339 (1941). After Congress created a reservation for the Walapai Indians and "ma[de] an offer to the Indians" to cede their ancestral lands in exchange for the reservation, the Walapais stayed in their ancestral home, and "[n]o further attempt was made to force them onto the … reservation." *Id.* at 353-356 This Court rejected the claim that Congress's removal effort disestablished the reservation. *Id.* Here, too, Congress's offer and abandoned effort at Oneida removal did not disestablish the reservation. The Court held that the Walapais' later acceptance of a different reservation, created by the federal government at their request, was a relinquishment of their homeland, *id.* at 356-358, but the Oneidas never asked for or accepted any new reservation.

not to effectuate removal to Kansas, but instead to sell the Kansas lands, the treaty cannot be read to compel the Oneidas' abandonment of their reservation in New York.

B. No Other Relevant Factor "Unequivocally" Evidences Congressional Intent To Disestablish Or Diminish The Oneida Reservation

Petitioners contend that the history of non-Indian settlement and governance on which this Court relied in *Sherrill* as the basis for an equitable bar to tribal sovereignty is evidence of the requisite congressional intent to disestablish the reservation, or that, at the very least, it sheds light on the meaning of the Treaty of Buffalo Creek. Neither contention has merit.

This Court has instructed that demographic patterns subsequent to a putative congressional instrument of disestablishment may provide "one additional clue as to what Congress expected," but nonetheless are the "least compelling" evidence of reservation disestablishment. *South Dakota* v. *Yankton Sioux Tribe*, 522 U.S. 329, 356 (1998). The problem for petitioners is that, here, the demographic changes upon which they rely are unconnected to the treaty. By the time the Oneidas signed the Treaty of Buffalo Creek in 1838, state land transactions had dispossessed the Oneidas of ownership of all but 5,000 of the 300,000 acres acknowledged in the Treaty of Canandaigua. Thus, as the court of appeals explained, "the flood of non-Indians into the area is not clearly linked to the Treaty," because that phenomenon predated the treaty, and "the gradual reduction in the number of Oneidas living on their reservation does not reflect a clear congressional intent to disestablish it." Pet. App. 148a. In other words, the non-Indian settlement and governance of the area that

this Court in *Sherrill* determined to have engendered certain justifiable expectations arose before and independent of congressional action—not as a result of the Treaty of Buffalo Creek.

Nor does subsequent state and federal treatment of reservation lands "unequivocally" show disestablishment or diminishment, as required by this Court's jurisprudence. *Solem*, 465 U.S. at 471. This Court has occasionally considered non-textual evidence to confirm congressional intent, already manifest in an allotment act, to disestablish or diminish a reservation. The Court has done so, however, only when that evidence "unequivocally reveal[s] a widely-held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation," such that the Court has "been willing to infer that Congress shared the understanding that its action would diminish the reservation." *Id.* The Court has never suggested that this non-textual method of analysis is appropriate in construing a *bilateral treaty* with an Indian tribe, in which the tribe's understanding of the treaty, not just Congress's intent, is controlling. In any event, the subsequent history petitioners recite (Pet. 11-13) is at most equivocal and certainly does not reveal any understanding on the Nation's part—much less a "widely-held, contemporaneous understanding"—that the reservation was disestablished. *See Hagen* v. *Utah*, 510 U.S. 399, 420 (1994); *see also supra* pp.7-8 (discussing continued federal and state recognition of reservation after Treaty of Buffalo Creek).

C. The Second Circuit's Decision Is Entirely Consistent With *Sherrill*

According to Petitioners and their *amici*, continuing federal recognition of the Oneida reservation is in-

consistent with this Court's decision in *Sherrill*, because sovereignty is the *sine qua non* of reservation status. However, the Court's decision in *Sherrill* plainly treated tribal sovereignty and federal reservation status as distinct; indeed, it would have been unnecessary to take up the question of equitable considerations precluding the assertion of tribal sovereignty if the two issues were in fact inseparable. The Court held that the passage of time had deprived the Nation of sovereign authority over its reservation land, but did not question the continuing existence of the reservation. Rather, it reiterated that "'only Congress can divest a reservation of its land and diminish its boundaries,'" 544 U.S. at 215 n.9 (quoting *Solem*, 465 U.S. at 470), and expressly disavowed any decision on the disestablishment question (*id.* ("The Court need not decide today whether, contrary to the Second Circuit's determination, the 1838 Treaty of Buffalo Creek disestablished the Oneidas' Reservation, as Sherrill argues.")).[13]

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[13] Petitioners cite the *Oneida II* dissent's observation that "[t]here is also a serious question whether the Oneida did not abandon their claim to the aboriginal lands in New York when they accepted the Treaty of Buffalo Creek of 1838[.]" 470 U.S. at 269 n.24 (Stevens, J., dissenting). That question was premised on the United States' *amicus* statement that it had not "reached a concluded view on the relinquishment question." U.S. Br. 33, *County of Oneida* v. *Oneida Indian Nation of N.Y.*, Nos. 83-1065, 83-1240 (U.S. filed July 23, 1984), *available at* 1984 WL 566161. By the time it filed its *amicus* brief in *Sherrill*, the United States had reached a concluded view, and argued that neither the Treaty nor any subsequent development disestablished the Oneida reservation. *See* U.S. Br. 17-24, *City of Sherrill* v. *Oneida Indian Nation*, No. 03-855 (U.S. filed Sept. 30, 2004), *available at* 2004 WL 2246334.

The United States agrees that *Sherrill* "did not hold that the Oneidas have no reservation or that the reservation has been disestablished." U.S. Br. 7, *Cayuga Indian Nation* v. *Gould*, No. CA-

Petitioners' (and their *amici*'s) most insistent refrain is that the Oneida reservation is a "legal fiction" because there can be no reservation where the Tribe cannot exercise sovereignty over the reservation lands. *See, e.g.*, Pet. 8-9. To the contrary, *Sherrill* demonstrates that there is nothing contradictory about the existence of a federally recognized reservation over which the tribe does not exercise full tribal sovereignty, but that remains subject to federal authority. In this respect, *Sherrill* is consistent with long-settled law recognizing diminished tribal authority as to non-Indian land and non-Indians within reservation boundaries. *See, e.g.*, *Strate* v. *A-1 Contractors*, 520 U.S. 438, 446 (1997) (noting "general rule" that "Indian tribes lack civil authority over the conduct of nonmembers" on "non-Indian land within a reservation"); *Brendale* v. *Confederated Tribes*, 492 U.S. 408 (1989) (tribe lacks zoning authority over fee lands owned by non-Indians in "open" areas within reservation boundaries); *Montana* v. *United States*, 450 U.S. 544 (1981) (tribe lacks authority to regulate hunting and fishing on fee lands owned by non-Indians within reservation boundaries); *see also Cayuga Indian Nation* v. *Gould*, 930 N.E.2d 233, 314 (N.Y.) (*Sherrill* does not call into question the reservation status of land when "the Indian nation cannot fully exercise sovereign power over it"; rather, "*Sherrill* suggests precisely the opposite"), *cert. denied*, 131 S. Ct. 353 (2010).[14]

08-02582, 930 N.E.2d 233 (N.Y. filed Mar. 12, 2009); *see also* U.S. Br. 3 n.1, *Oneida Indian Nation* v. *Madison Cnty.*, No. 05-6408-cv (2d Cir. July 25, 2008) (same).

[14] To the extent petitioners believe that "the federal equity principles articulated in *Sherrill*" (Pet. 9) can disestablish the Oneida reservation, they are mistaken. In view of petitioners' *amicus* submission that "equitable considerations" (Counties'

Notwithstanding *Sherrill*'s effect on the Nation's sovereignty over its reacquired land, reservation status remains essential to tribal self-determination, the authority of the federal government to protect the welfare of tribes and their members, how the tribe governs itself and its members, and tribal economic development—all of which federal Indian policy has long sought to promote.[15] In light of petitioners' failure to identify any concrete adverse consequence wrought on them by continuing federal recognition of the Oneida reservation, and in light of the deep cultural and economic significance of the reservation to the Nation and its members, the petition should be denied.

Sherrill Amicus Br. 1 (quoting *Oneida II*, 470 U.S. at 253)) should factor into this Court's disestablishment analysis, the Court reiterated in *Sherrill* the cardinal principle of disestablishment jurisprudence—that "only Congress can divest a reservation of its land and diminish its boundaries." 544 U.S. at 215 n.9 (citation and internal quotations omitted).

[15] *See, e.g.*, 25 U.S.C. § 2020(d) (No Child Left Behind Act of 2001; federal grants for "facilitat[ing] tribal control" in "matters relating to the education of Indian children on reservations"); Tribal Law and Order Act of 2010, Pub. L. No. 111-211, §§ 202-266, 124 Stat. 2258, 2262-2301 (codified at scattered sections of 25 U.S.C.) (increasing certain federal powers and responsibilities regarding crimes committed on reservations; strengthening tribal courts and police departments).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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