No. 14-538

Supreme Court, U.S.
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In The
Supreme Court of the United States

STOCKBRIDGE-MUNSEE COMMUNITY,

Petitioner,

v.

STATE OF NEW YORK, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF *AMICI CURIAE* LAW PROFESSORS AND ONEIDA TRIBE OF INDIANS OF WISCONSIN IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

INTEREST OF *AMICI CURIAE*[1]

Amici curiae listed in the Appendix are law professors who specialize in federal Indian law, federal jurisdiction, and/or remedies. They file this brief to highlight the importance of the ruling below. The court below dismissed a lawsuit based upon long-standing principles regarding Indian property rights, and in so doing, violated separation of powers by contravening the considered judgment of Congress in enacting a governing statute of limitations. As such, the judgment below implicates far-ranging and potentially adverse consequences for the ability of Indian tribes to vindicate their legal rights in other areas, including water rights and treaty hunting and fishing rights.

Amicus Oneida Tribe of Indians of Wisconsin ("Tribe") is a federally recognized Indian tribe, *see* 79 Fed. Reg. 4748, 4751 (Jan. 29, 2014), and successor-in-interest to federal treaties that protected the Tribe and other Oneidas in the possession of their aboriginal territory in New York State. *Cnty. of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 230-31

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. *Amici* law professors file this brief as individuals and not on behalf of the institutions with which they are affiliated. Counsel for all parties received timely notice of intent to file this brief and gave consent to its filing. Correspondence reflecting that consent accompanies this brief.

(1985) (*Oneida II*).[2] For more than half a century, the Tribe successfully litigated its continuing right to possession of and entitlement to trespass damages for the dispossession from Oneida aboriginal lands, including in two appearances before this Court. *Id.*; *Oneida Indian Nation of N.Y. v. Cnty. of Oneida*, 414 U.S. 661 (1974) (*Oneida I*). Ultimately, the U.S. Court of Appeals for the Second Circuit foreclosed any relief for the majority of the Oneida claim, dismissing their action based upon a federal common law doctrine of laches it developed in *Cayuga Indian Nation of New York v. Pataki,* 413 F.3d 266 (2d Cir. 2005)—the same laches doctrine it applied to dismiss petitioner's claims for relief. *Oneida Indian Nation of N.Y. v. New York,* 617 F.3d 114, 118 (2d Cir. 2010) (*Oneida III*).

The Tribe shares the interests of the other *amici* in the formulation and consistent application of fundamental principles of federal Indian law, a field of law shaped largely by this Court's historical solicitude for the protection of tribal property and treaty-based rights. The Tribe also has a particular interest in the continuing vitality of the principles this Court established in *Oneida II*, also known as the Oneida test case. This important precedent appeared to be a

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[2] These treaties are the Treaty of Fort Stanwix, 7 Stat. 15 (Oct. 22, 1784), the Treaty of Fort Harmar, 7 Stat. 33 (Jan. 9, 1789), and the Treaty of Canandaigua, 7 Stat. 44 (Nov. 11, 1794). The Tribe continues to receive annuity payments under the last of these treaties. *Oneida Indian Nation of N.Y. v. Cnty. of Oneida*, 434 F. Supp. 527, 533 (N.D.N.Y. 1977).

dead letter after the Second Circuit's dismissal based on the *Cayuga* laches doctrine. *Oneida III*, 617 F.3d 114, *cert. denied*, 132 S. Ct. 452 (2011). In its recent decision in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962 (2014), however, this Court held that a laches defense is unavailable to bar all relief where the claim is timely filed under the governing statute of limitations. This Court should grant the petition to review the Second Circuit's persistent application of a rule that is contrary to fundamental Indian property rights and is in direct conflict with the Court's recent decision in *Petrella*.

REASONS FOR GRANTING THE PETITION

I. THE JUDGMENT BELOW CONFLICTS WITH FOUNDATIONAL PRINCIPLES OF FEDERAL COMMON LAW THAT PROTECT TRIBAL RIGHTS FROM PASSAGE OF TIME DEFENSES AND, AS SUCH, PRESENTS AN IMPORTANT QUESTION

The sovereign and property rights of Indian tribes are, more often than not, dependent on treaties and statutes from the eighteenth and nineteenth centuries. *See* Charles F. Wilkinson, AMERICAN INDIANS, TIME, AND THE LAW 13 (1987). Oftentimes, these rights have not been exercised for lengthy periods of time before tribes assert them in federal court. Still, this Court has repeatedly refused to find that tribal rights are barred by this nonuse, even when renewed exercise will upset the settled expectations of non-Indians.

E.g., *United States v. John,* 437 U.S. 634, 652-54 (1978) ("the long lapse in the federal recognition of tribal organization," and significant periods of unchallenged assertions of state jurisdiction over Indians and Indian lands, does not authorize a state to exercise criminal jurisdiction over Indians contrary to federal law); *Fisher v. District Court*, 424 U.S. 382, 390 (1976) (holding that the failure of the tribe to exercise jurisdiction over adoption proceedings prior to 1935 did not bar a modern tribal assumption of jurisdiction over such cases).

There are sound reasons for this Court's refusal to apply passage of time defenses to Indian tribes. The most compelling of these arises from the unique trust responsibility that exists between the United States and Indian tribes. During this country's infancy, Indian tribes placed themselves under the protection of the United States. As they ceded more and more of their land bases, tribes became dependent on the United States, which assumed a duty to protect tribal sovereignty and remaining tribal property rights. *See generally,* Reid Payton Chambers, *Judicial Enforcement of the Federal Trust Responsibility to Indians*, 27 STAN. L. REV. 1213 (1975). But the United States failed to fulfill these obligations. Instead, federal Indian policy promoted the destruction of tribal governments, the reduction or elimination of a tribal land bases, and the assimilation of tribal members.

In the modern era of self-determination, federal policy supports efforts by Indian tribes to reassert

their sovereign rights and to reclaim or make use of their property interest. Using lapse of time defenses to preclude tribes from taking action now to protect their rights would be inequitable and inimical to federal policy. This is especially true because Congress retains the authority to reach a legislative solution, in the event tribal claims seriously threaten good faith reliance interests of non-Indians. *See, e.g.*, Maine Indian Claims Settlement Act of 1980, 25 U.S.C. §§ 1721-35; Taos Pueblo Indian Water Rights Settlement Act, Pub. L. No. 111-291, 124 Stat. 3064 (2010). Additionally, courts are always free to consider the equities when determining what *relief* should be available to Indian tribes, while still acknowledging the validity of their *claims*.

The Second Circuit's decision in *Stockbridge-Munsee Community v. New York*, 756 F.3d 163 (2d Cir. 2014), however, threatens to eviscerate this basic principle that passage of time defenses do not bar Indian rights. In particular, if *Stockbridge* and *Cayuga* are permitted to stand, they could have devastating impacts on treaty fishing rights, water rights, and land claims litigation.[3] This Court plays a special role in the development of federal common law regarding tribal sovereign and property interests, making the

[3] The list of such claims compiled by the United States includes several claims outside the U.S. Court of Appeals for the Second Circuit. *See* discussion *infra* at 22-23.

grant of certiorari in this case particularly appropriate.[4]

Fishing Rights. For cultural, religious, and subsistence reasons, many Indian tribes in the Pacific Northwest[5] specifically negotiated to retain the right to fish at the usual and accustomed places within the territory ceded to the United States in treaties. This traditional activity was "not much less necessary to the existence of the Indians than the atmosphere they breathed." *United States v. Winans*, 198 U.S. 371, 381 (1905). Just a few decades after negotiating these treaties, though, few tribal members exercised their federally protected rights. By 1971, Indian fishermen took just five percent of the salmon caught in the Puget Sound, Charles F. Wilkinson & Daniel Keith Conner, *The Law of the Pacific Salmon Fishery: Conservation and Allocation of a Transboundary Common Property Resource*, 32 KAN. L. REV. 17, 98 n.438 (1983), and all Indian fishing had been discontinued at several historical sites. *United States v. Washington*, 384 F. Supp. 312, 358, 393 (W.D. Wash. 1974).

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[4] This Court has been especially active in granting certiorari in federal Indian law cases. Wilkinson, AMERICAN INDIANS, at 125-32 (1987) (demonstrating that between 1970 and 1985, the U.S. Supreme Court heard 65 Indian law cases, or an average of four such cases each year).

[5] Many Indian tribes throughout the United States negotiated to explicitly retain such rights. The Pacific Northwest tribes are highlighted here only because this Court has issued numerous opinions interpreting their treaty fishing rights.

States were largely responsible for this turn of events. States aggressively enforced license fees and other state regulations against Indian fishermen despite the Indians' federally protected rights. *Tulee v. Washington*, 315 U.S. 681, 685 (1942) (holding that tribal members could not be required to pay state license fees); *Dep't of Game of Wash. v. Puyallup Tribe*, 414 U.S. 44, 46, 49 (1973) (holding that the state could regulate Indian fishing rights only if necessary to prevent the extinction of the species). Individual non-Indian commercial and sports fisheries developed in reliance on the absence of Indian fishermen. Despite this reliance, in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, this Court upheld an allocation of up to one-half of all the harvestable fish to Indian fishermen. 443 U.S. 658, 685 (1979). As a result of *Passenger Fishing Vessel*, the State of Washington was obliged to impose moratoriums on the licensing of new vessels; the state also instituted a buy-back program that authorized state purchase of non-Indian vessels. Wilkinson & Conner, *supra*, at 100-01.

Lower federal courts followed the Supreme Court's lead and held that lapse of time defenses may not be used to preclude the exercise of treaty hunting, fishing and gathering rights. *See, e.g.*, *Mille Lacs Band of Chippewa Indians v. Minnesota*, 853 F. Supp. 1118, 1124, 1127 (D. Minn. 1994) (rejecting the State's assertion that the tribe's hunting and fishing rights were barred by "laches, waiver, estoppel, and adverse possession" and citing *Oneida II* for the proposition that "[t]he 1837 Treaty preempts state law and time

delay defenses based on state law do not apply to Indian title claims").

Water Rights. Water law in the West is governed by the prior appropriation system. Under that system, a person acquires the legal right to water by actual use—by diverting it from its natural source and putting it to beneficial use as defined under state law. Water use is assigned a priority date based on the date the water was initially put to beneficial use. In times of drought, the water shortage is not born pro rata. Instead, the holders of "junior" rights (those with later priority dates) must forgo their use of water in favor of "senior" appropriators on the same waterway. Jan Laitos et al., NATURAL RESOURCES LAW 938-39 (2d ed. 2012).

Over the years, western water law systems developed into complex schemes that determined the priority of users, the extent of each right, and the method of giving notice to the public of each use. The right of Indian tribes to reserve water for their own use, however, had not been considered. Then, in 1908, this Court formulated the Indian reserved water rights doctrine. In *Winters v. United States*, the Court held that when the federal government creates an Indian reservation, it reserves, by implication, appurtenant water necessary to accomplish the purposes of the reservation. 207 U.S. 564, 576-77 (1908). This reserved water right is granted a priority date based on the date the reservation was created, regardless of when the actual water use began. *Id.* at 577.

In the arid West, where non-Indians relied heavily on the prior-appropriation system, Indian water rights have substantial potential to disrupt societal expectations. The federal policy of encouraging Indian tribes to remain on reservations began in the 1850's. Francis Paul Prucha, THE GREAT FATHER 1:315-18 (1984); Robert M. Kvasnicka & Herman J. Viola, THE COMMISSIONERS OF INDIAN AFFAIRS 1824-1977, 57-67 (1979). But whether water had been reserved with the land was not addressed until the *Winters* decision a half century later. Quantification of reserved Indian water rights continues to this day. These ancient Indian reserved-water rights preempt continued use of state-law-based water rights by non-Indians.

Despite the disruption of non-Indian expectations, this Court has never held that Indian water rights could be barred by laches or other passage of time defenses. In *Arizona v. California*, for example, this Court heard a contentious dispute among seven states over water rights to the Colorado River. 373 U.S. 546, 595-96 (1963). Among other things, the *Arizona* decision confirmed the water rights of five Indian tribes to more than 900,000 acre-feet of water from the Lower Basin Colorado River. *Arizona v. California*, 376 U.S. 340, 344-45 (1964) (decree). Even though the tribes had not exercised their reserved water rights for more than 100 years, those rights were later validated.[6] This Court held that potential

[6] One of the reservations was the Colorado River Reservation, which had been created by Congress in 1865. *Arizona*, 373

(Continued on following page)

diversions to satisfy these rights "are to be charged against that State's apportionment" when Indian tribes begin to use such water. *Arizona*, 373 U.S. at 601.

Eastern Land Claim Cases. In 1974, this Court opened the federal courthouse doors to the eastern tribal land claim cases in an action by the *amici* Tribe and other Oneida plaintiffs to challenge a 1795 transaction between the Oneidas and New York State. The Oneida plaintiffs alleged that the transaction was void for having violated the Trade and Intercourse Act, federal common law, and federal treaties. *Oneida I*, 414 U.S. at 664. The district court dismissed the claim and the court of appeals affirmed on the ground that the complaint failed to plead federal question jurisdiction. Those courts reasoned that the claim, essentially one sounding in ejectment, arose under state law. This Court reversed unanimously. *Id.*

The Court accepted the lower courts' premise that the "case was essentially a possessory action," but deemed it one based upon federal law. The Court held that, there being no federal statute making New York State law applicable, "the controlling law remained federal law; and, absent federal statutory guidance the governing rule of decision would be

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U.S. at 596. In 1964, this Court's decree confirmed that by creating the reservation, Congress had reserved enough water to irrigate all of the practicably irrigable acreage on the reservation, which was quantified at more than 700,000 acre-feet of water. *Id.* at 600; 376 U.S. at 344-45.

fashioned by the federal court in the mode of the common law." *Oneida I*, 414 U.S. at 674.

On remand, the district court found a violation of federal treaty, statutory, and common law, and awarded trespass damages to the Oneida plaintiffs in the amount of $16,694.00, plus interest.[7] The Second Circuit Court of Appeals affirmed, notwithstanding the claimed "catastrophic implications" from the award. Instead, the court of appeals analogized the claim to an ejectment action and affirmed the award of damages as the remedy. *Oneida Indian Nation of N.Y. v. County of Oneida*, 719 F.2d 525, 530, 544 (2d Cir. 1983).

"Recognizing the importance of the Court of Appeals' decision not only for the Oneidas, but potentially for many eastern Indian land claims," this Court granted certiorari "to determine whether an Indian tribe may have a live cause of action for violation of its possessory rights that occurred 175 years ago" and held "that the Court of Appeals correctly so ruled." *Oneida II*, 470 U.S. at 230. Specifically, the Court found a violation of federal common law, citing well-established principles from its earlier cases, and

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[7] The only defendants were Madison and Oneida Counties, which occupied approximately 870 acres of the area subject to the challenged 1795 transaction with the State. The Oneida plaintiffs sought and were awarded trespass damages for the two years preceding the filing of the complaint in 1970. The damages award was plainly premised upon the Oneidas' continuing right to possession of the subject land. *Oneida*, 434 F. Supp. at 532, 540.

concluded that the rule of decision would be fashioned by the federal court in the mode of the common law. *Id.* at 235-36.

Regarding passage of time defenses, this Court rejected the notion that the most analogous state statute of limitations should be applied to the action, there being no governing federal statute of limitations at the time the action was filed. The Court found that congressional policy plainly opposed the application of state statutes of limitation. *Id.* at 241.[8] The Court also commented on a possible laches defense, noting that it would be novel to apply the laches defense to the Oneidas' action at law. Further, the logic of other authority of the Court indicated that laches cannot give vitality to an illegal transaction purporting to extinguish Indian title when to do so requires a sovereign act. *Id.* at 241 n.16. But the Court did not rule on the laches defense because the petitioners had not reasserted the defense on appeal. *Id.* at 245. Although aware of "the potential consequences of affirmance," the Court could find no basis

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[8] Congress enacted a statute of limitations in 1966 that would have governed had the Oneida claim been filed by the United States. 28 U.S.C. § 2415. This statute was made applicable to claims filed by tribes in 1982. *See* Indian Claims Limitation Act of 1982, Pub. L. No. 94-394, 96 Stat. 1976, note following 28 U.S.C. § 2415. There was, however, no applicable federal statute of limitations when the Oneida suit was filed in 1970. In any event, the Court noted that, if the Oneidas' claim for damages was deemed to be one involving the continuing vitality of aboriginal title, it would be exempt from the statute of limitations under subsection c thereof.

for barring the Oneidas' claims dating back more than a century and a half. *Id.* at 253.[9]

Thus, this Court has exhibited marked regard for Indian property and treaty rights and formulated federal common law rules that largely protect such rights from non-use or passage of time defenses in general, even where potential consequences are allegedly enormous. The very claims for relief asserted by Petitioner are based on federal common law rules fashioned by this Court to vindicate the Oneidas' interests in their aboriginal territory lost through violation of federal law and treaties. As the authority discussed above indicates, these common law rules are the foundation of tribes' most fundamental rights to water, land, and treaty-reserved rights. Departure from these principles regarding one species of tribal rights, such as the judgment below, is possible precedent for departure from these principles regarding

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[9] The Court famously expressed no opinion on whether equitable considerations should limit the relief available to the Oneida plaintiffs at the end of the day. *Oneida II*, 470 U.S. at 253, n.27. This Court explicitly noted its reservation on this point in *City of Sherrill v. Oneida Indian Nation of N.Y.,* 544 U.S. 197, 209, 213 (2005), when it declined to uphold remedies that projected into the present and future, as distinguished from the damages award in *Oneida II.* Petition for Certiorari, *Stockbridge-Munsee Community v. State of New York*, No. 14-538, at 8-9 (Nov. 12, 2014) ("Petition for Certiorari").

other tribal rights.[10] The departure from important principles formulated by this Court warrants review.

II. THE JUDGMENT BELOW CONTRADICTS THIS COURT'S DECISION IN *PETRELLA V. METRO-GOLDWYN-MAYER, INC.* AND VIOLATES THE SEPARATION OF POWERS

A. The Conflict With *Petrella*

The Second Circuit took it upon itself to formulate a new rule on laches that required dismissal of the Petitioner's claims, and all other similar tribal land claims, in *Cayuga Indian Nation of N.Y. v. Pataki*, 413 F.3d 266 (2d Cir. 2005). As formulated by the court of appeals and applied in later cases, the

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[10] The *Cayuga* laches doctrine has already been raised by litigants and applied by federal courts outside of the Second Circuit in numerous cases. *See, e.g.*, *Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony v. City of L.A.*, 2007 WL 521403, *9-11 (E.D. Cal. Feb. 15, 2007) (conceding the application of the *Cayuga* laches doctrine to an action for ejectment based on actions occurring in the twenty-first century, but reserving a decision on the merits of such a defense until after the development of a factual record); *Saginaw Chippewa Indian Tribe v. Granholm*, 2008 WL 4808823, *17-24 (E.D. Mich. Oct. 22, 2008) (rejecting application of the *Cayuga* laches doctrine to reservation boundary litigation and noting that any testimony regarding "disruptive" results of confirming the tribe's reservation boundary would be reserved for the remedies stage); *Quapaw Tribe of Okla. v. Blue Tee Corp.*, 653 F. Supp. 2d 1166, 1191-92 (N.D. Okla. 2009) (discussing the defendants' claims that *Cayuga*-type laches precluded the tribe from suing to remedy a public nuisance on tribal land).

Cayuga laches doctrine was specially fashioned for tribal land claim cases, and was a doctrine that the court felt free to apply because the Supreme Court had reserved on the laches issue in *Oneida II*. Kathryn Fort, *Disruption and Impossibility: The New Laches and the Unfortunate Resolution of the Modern Iroquois Land Claims*, 11 WYO. L. REV. 375, 395 (2005). This specialized laches doctrine conflicts with the holding in *Petrella* that laches, and the equity considerations underlying it, cannot be applied to dismiss a claim in its entirety where the claim is timely under a governing statute of limitations.

In *Cayuga,* the court of appeals misunderstood this Court's decision in *City of Sherrill* to bar all claims for relief, not just the far-reaching relief asserted there. "We understand *Sherrill* to hold that equitable doctrines, such as laches, acquiescence, and impossibility, can, in appropriate circumstances, be applied to Indian land claims, even when such a claim is legally viable and within the statute of limitations." *Cayuga*, 413 F.3d at 273. Although it noted that the *City of Sherrill* Court did not disturb the money damages award affirmed in *Oneida II*, the court below nonetheless held that laches barred damages relief in tribal land claims. The court of appeals reconciled its reading of *City of Sherrill* with *Oneida II* as follows: "Because the Supreme Court in *Oneida II* expressly declined to decide whether laches would apply to such claims, *see Oneida II,* 470 U.S. at 244-45, 253 n.27, this statement in *Sherrill* is not dispositive of whether laches would apply." *Cayuga*,

413 F.3d at 274. Thus, the court of appeals concluded that *City of Sherrill* "addresses the question reserved in *Oneida II*." *Id.* at 277.[11] As a result, the court below concluded it could fashion and apply a laches defense to bar all forms of relief in the *Cayuga* land claim. *Id.*

Soon afterwards, the Oneida tribal land claim for ejectment was dismissed by the district court, and affirmed by the court of appeals, as barred by an unadorned laches defense based on *Cayuga*. *Oneida Indian Nation of N.Y. v. New York*, 500 F. Supp.2d 128, 133 (N.D.N.Y. 2007), *aff'd in part*, 617 F.3d at 128. On their claim for money damages, the Oneida argued on appeal that laches required determinations that their delay in bringing suit was unreasonable and that the defendants had relied on that delay to their detriment. In holding otherwise, the court of appeals described the *Cayuga* laches doctrine as distinct from traditional laches, depending upon "related, equitable considerations that [the *Cayuga* court] drew from *Sherrill*." *Oneida III*, 617 F.3d at 128. Later, the Second Circuit summarily dismissed the Onondaga and Petitioner Stockbridge-Munsee's land claims on the *Cayuga* laches doctrine. *Onondaga Nation v. New*

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[11] As the petitioner demonstrates, the court of appeals was simply wrong on this point. *City of Sherrill* addressed the other issue reserved in *Oneida II,* i.e., whether equity considerations might limit relief available to the claim, not whether laches was available to bar the claim altogether. Petition for Certiorari at 17-18.

York, 500 Fed. Appx. 87 (2d Cir. 2012); *Stockbridge-Munsee*, 756 F.3d at 166. In both orders, the court of appeals described the *Cayuga* laches doctrine as based upon "equitable principles of laches, acquiescence, and impossibility." *Stockbridge-Munsee*, 756 F.3d at 164.

Clearly, the court of appeals formulated a federal common law rule based principally upon laches, which it applied to bar all remedies for tribal land claims—Cayuga, Oneida, Onondaga, and Stockbridge-Munsee. The court reasoned it could do so without offending *Oneida II* because this Court had reserved on the laches issue there. Further, the *Cayuga* laches doctrine was informed in every instance by the same historical considerations, i.e., long passage of time between the violation and assertion of the claim, extensive development in the interim, and reliance of state and local governments on their uncontested governing authority. These considerations produced the disruptive consequences that justified application of the *Cayuga* doctrine in the lower court's view.[12] While the court of appeals in later cases expanded its tag for the defense from simple laches to "equitable considerations of laches, acquiescence, and impossibility," the judgment in every case was obviously driven by laches. In effect, the court of appeals has formulated a federal common law rule of laches that bars all tribal land claims, one

[12] The lower court did so without mention of this Court's notice of the same historical circumstances in *Oneida II*.

that conclusively presumes the traditional elements of laches from historical circumstances without regard to timeliness under the federal statute of limitations.

This is precisely the reasoning that this Court rejected in *Petrella.* There, the Ninth Circuit Court of Appeals had applied laches to bar all relief for a claim under the Copyright Act, even though the claim was timely under that Act's limitation period. The Court held that Congress' determination regarding an appropriate limitation for a federal claim is binding, that the Court had never sanctioned the application of laches to bar a claim in its entirety when the claim was filed within a federally prescribed limitations period. Indeed, the Court cited *Oneida II,* among others, as authority for the proposition that laches cannot cut off a claim that is timely under the governing statute of limitations. 134 S. Ct. at 1973-74. In its counterpoint, the *Petrella* dissent cited the lower court's *Cayuga* laches ruling as authority. *Id.* at 1984. This Court in *Petrella* clearly understood the *Cayuga* doctrine as one grounded in laches that forecloses all remedies in tribal land claims, notwithstanding timeliness under the federal statute of limitations.

Neither is there anything in the disruptive consequences from the delayed suit, recited as the basis for the *Cayuga* laches doctrine that distinguishes *Petrella.* The Court in *Petrella* acknowledged that there may be extraordinary circumstances under which "delay in commencing suit may be of sufficient

magnitude to warrant, at the very outset of the litigation, curtailment of the relief equitably awardable." 134 S. Ct. at 1977. But, as the Court concluded in *Petrella,* courts cannot treat such extraordinary equity considerations as a complete bar to suit. *Id.* This is precisely the error made by the court below—it developed a federal common laches doctrine that foreclosed *all* remedies for tribal land claims based on equitable considerations that are available only to curtail relief.

B. Violation of Separation of Powers

In *Petrella*, this Court recognized that separation of powers prevents judges from superimposing additional timeliness requirements upon those prescribed by Congress in a statute of limitations. This holding has even greater effect here, given Congress' role in federal Indian law. This Court has recognized Congress' primary authority in Indian affairs, describing it as exclusive and plenary. *United States v. Lara*, 541 U.S. 193, 200 (2004); *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989). Moreover, Congress has the institutional competence necessary to balance the relative equities of tribal claims (which are premised upon a government-to-government relationship with the United States) and the claims of States and/or private citizens (which reflect economic and other interests consistent with the status quo). Because Congress enacted the Indian Claims Limitation Act's statute of limitations, after having explicitly preserved these claims for more

than fifteen years through amendment after amendment to 25 U.S.C. § 2415, courts may not apply laches or any other equitable doctrine to constrict them.

Separation of Powers in Federal Indian Law. Separation of powers constrains the judicial role in statutory interpretation. In interpreting statutes, courts must "put aside" their "individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978). *See also United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497 (2001) ("Courts of equity cannot, in their discretion, reject the balance that Congress has struck in a statute."). It is "the exclusive province of the Congress . . . to formulate legislative policies." *Id.* These limits on the judicial role are especially important in the field of federal Indian law. The Indian Commerce Clause vests in Congress the power to regulate commerce with the Indian tribes. U.S. CONST. art. I, § 8, cl. 3. "[T]he central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs." *Cotton Petroleum Corp.*, 490 U.S. at 192. *See also Lara*, 541 U.S. at 200; *Washington v. Confederated Bands and Tribes of Yakima Nation*, 439 U.S. 463, 470-71 (1979). When Congress has spoken to an issue of tribal rights or powers, courts should therefore refrain from common law decisionmaking that undermines congressional priorities. *See Lara*, 541 U.S. at 205-06.

Laches is Not a Viable Defense Within the Indian Claims Limitation Act's Statutory Limitations Period. Where Congress has enacted a statute of limitations, courts may not use laches to further limit that time period. *Holmberg v. Armbrecht*, 327 U.S. 392, 395 (1945) ("If Congress explicitly puts a limit upon the time for enforcing a right which it created, there is an end of the matter. The Congressional statute of limitation is definitive."); *United States v. Mack*, 295 U.S. 480, 489 (1935) ("Laches within the term of the statute of limitations is no defense at law."). This is because the laches defense is redundant of a statute of limitations. Laches itself is a "rule of limitations" that applies only "in the absence of any [applicable] statute of limitations," and is based on "delay alone." *Russell v. Todd*, 309 U.S. 280, 287 (1940). Thus, "laches is not available where the legislative body has fixed a period within which the action may be brought." 30A C.J.S. EQUITY § 138, at 428 (2d ed. 2007). This is precisely what this Court held in *Petrella*, and Congress set just such a limitation when it enacted the Indian Claims Limitation Act of 1982.

In 1966, Congress passed a statute authorizing Indian tribes to bring civil suits arising under federal law, without the consent of the United States and without any minimum amount in controversy. 28 U.S.C. § 1362. *See also Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 472 (1976) (noting that the purpose of Section 1362 was "to open the federal courts to the kind of claims that could have been brought by the United States as trustee, but for whatever reason were not so brought"). No statute of

limitations was placed on these claims. That same year, in July 1966, Congress enacted a general statute of limitations on the United States as a plaintiff seeking money damages for tort and contract claims on behalf of Indian tribes. Act of July 18, 1966, Pub. L. No. 89-505, § 1, 80 Stat. 304; *codified at* 28 U.S.C. § 2415. This statute stated that all claims arising prior to July 1966 would be deemed to have accrued on that date.

As a result of concerns expressed by the Department of the Interior about its ability to meet the new statutory deadline given the volume of claims, Congress extended the limitations period through amendments enacted in 1972, 1977, and 1980. Act of October 13, 1972, Pub. L. No. 92-485, 86 Stat. 803; H.R. Rep. 95-375 (1977); Act of Aug. 15, 1977, Pub. L. No. 95-103, 91 Stat. 842; H.R. Rep. 96-807 (1980); Act of March 27, 1980, Pub. L. No. 96-217, 94 Stat. 126; S. Rep. 96-569 (1980).

In the 1980 extension, Congress required the Secretary of the Interior and the Attorney General to submit legislative proposals to Congress by June 30, 1981 "to resolve those Indian claims . . . that the Secretary of Interior or the Attorney General believes are not appropriate to resolve was not complied with, and on December 30, 1982, Congress enacted the Indian Claims Limitation Act, Pub. L. No. 94-394, 96 Stat. 1976, note following 28 U.S.C. § 2415. That statute required the Secretary of the Interior to publish a list of Indian claims, and, acknowledging that the United States was unlikely to pursue most of

these claims, for the first time it established a statute of limitations for *tribal* claimants. A one-year limitations period was placed on tribal claimants to bring suit once the Secretary of Interior published in the Federal Register a notice rejecting that particular claim, and a three-year limitations period was set for tribal claims once the Secretary submitted legislation or a legislative report to Congress to resolve those claims. 28 U.S.C. § 2415(a).

In *Stockbridge*, the Second Circuit cited *Oneida II* for the proposition that "Congress has not fixed a statute of limitations for Indian land claims." 756 F.3d at 166. But *Oneida II* arose from a lawsuit brought in 1970, long before the Indian Claims Limitation Act of 1982 was enacted. Since that Act governed the Stockbridge-Munsee Community's land claims suit, which was filed in 1986, *Stockbridge*, 756 F.3d at 164, the Second Circuit's decision violates established principles of separation of powers. Congress was in a unique position to balance the equities when considering the viability of eighteenth and nineteenth century Indian land claims because it had created the federal Indian policies and laws that, as a practical matter, precluded tribes from seeking legal relief for violations of the Trade and Intercourse Acts sooner. *See* Joseph William Singer, *Nine-Tenths of the Law: Title, Possession & Sacred Obligations*, 38 CONN. L. REV. 605 (2006) (discussing legal barriers that prevented Indian tribes from bringing land claims litigation sooner).

CONCLUSION

This Court made plain in *Petrella* that *Oneida II* is not a dead letter. It remains persuasive authority for the proposition that damage remedies are available for claims that are timely under the governing statute of limitations, even though equities may foreclose particular remedies. Unless this Court grants certiorari to review the lower court's judgment, however, *Oneida II* remains viable authority only for non-tribal plaintiffs—not tribal plaintiffs. Surely this result is unjust. For the above reasons, the *amici* request that this Court grant certiorari.

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