No. 19-1981

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

ONEIDA NATION,

Plaintiff-Appellant,

v.

VILLAGE OF HOBART, WISCONSIN,

Defendant-Appellee.

APPEAL FROM THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN, NO. 16-CV-1217-WCG, THE HONORABLE WILLIAM C. GRIESBACH, PRESIDING

# BRIEF OF THE STATE OF WISCONSIN AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT ONEIDA NATION

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## INTRODUCTION

The district court in the present case was called upon to resolve a dispute over whether the Village of Hobart—a Wisconsin-incorporated municipality located entirely within the reservation of the Oneida Nation of Wisconsin—had civil regulatory jurisdiction to require a village permit for a tribal festival held on land within both the village and the reservation. The court ruled in the village's favor, but it did not apply the established tests for determining state or local regulatory jurisdiction on an Indian reservation. Instead, the court took a more sweeping approach and held that the boundaries of the Oneida Reservation had been greatly diminished by the processes of allotment, fee patenting, and alienation of reservation land to non-Indians in the late 19th and early 20th centuries.

In reaching its conclusion, the district court took a novel approach to reservation diminishment that went beyond Supreme Court precedent in several respects and erroneously conflated congressional intent to diminish a reservation with congressional intent to allow states to tax some reservation lands. The district court's decision, if affirmed, could negatively impact cooperative State-tribal relationships, increase State responsibility for providing governmental services in former reservation areas, and create uncertainty about the legal status of tribal gaming facilities. For these reasons, the State of Wisconsin, writing as amicus curiae in support of the Oneida

Nation, urges the Court to vacate the district court decision and remand for further appropriate proceedings.

## INTEREST OF AMICUS CURIAE

The State of Wisconsin has both legal and practical interests in the outcome of the present appeal. Legally, the State has an interest in maintaining clarity in the principles governing the determination of state and tribal jurisdictional boundaries. Practically, the State has an interest in protecting existing State-tribal cooperative relationships in the provision of law enforcement and other governmental services, and in avoiding the introduction of uncertainty into the legal status of tribal gaming facilities and the potential reduction of tribal gaming revenue-sharing payments to the State. The State is authorized to file an amicus brief without requesting the consent of the parties or leave of the Court. Fed. R. App. P. 29(a)(2).

## BACKGROUND

### I. General factual and legal background

In 1822–23 and 1830, two groups of Oneida Indians settled in what later became the State of Wisconsin (the "State") on land held by the Menominee Indians. In 1831 and 1832, the Menominee ceded a portion of their land to the Oneida groups in separate treaties. In 1838, the Oneida entered into a treaty with the United States in which they ceded their claims under their treaties with the Menominee in return for a reservation of approximately 64,000 acres

in what would later become parts of Brown and Outagamie Counties. *See Oneida Tribe of Indians of Wisconsin v. Village of Hobart, Wisconsin*, 542 F. Supp.2d 908, 910 (E.D. Wis. 2008); Treaty with the Oneida, Feb. 3, 1838, 7 Stat. 566.

In the late nineteenth century, most of the Oneida Reservation was allotted in severalty to individual Oneida members pursuant to the General Allotment Act, 24 Stat. 388 (1887). The allotment of the Oneida Reservation began in 1889 and, by 1891, virtually the entire reservation was allotted, with the exception of a small amount of land preserved in tribal ownership for school purposes. *See Oneida Nation v. Village of Hobart, Wisconsin*, 371 F. Supp.3d 500, 507 (E.D. Wis. 2019).

Under the General Allotment Act, once the allotment of a reservation was completed, Congress could provide for the purchase of the remaining unallotted surplus land from the tribe and the opening of those lands to settlement by non-Indians. 24 Stat. 388, § 5; 25 U.S.C. § 348. The Oneida Reservation, however, contained no post-allotment surplus lands. *See Oneida Tribe*, 542 F. Supp.2d at 911; *Oneida Nation*, 371 F. Supp.3d at 507. Congress, therefore, had no occasion to purchase such lands from the Oneida or to enact legislation directly opening any portion of the reservation to non-Indian settlement.

In addition to the opening of surplus lands, however, it was also possible for reservation lands to become available to non-Indians through the allotment and fee-patenting process. The General Allotment Act provided that allotted lands were to be held in trust by the United States for a period of at least 25 years, after which Indian allottees were to receive fee patents, which removed all restraints on alienation and allowed transfer of the land to non-Indians. *See* 25 U.S.C. § 348; *Oneida Nation*, 371 F. Supp.3d at 506. Pursuant to those provisions, trust patents were issued to Oneida allottees in 1892. *Oneida Nation,* 371 F. Supp.3d at 507.

In 1903, the Wisconsin Legislature created two new towns within the boundaries of the Oneida Reservation: the Town of Hobart and the Town of Oneida. *Id.*

In 1906, Congress amended the General Allotment Act through the Burke Act, 34 Stat. 182 (May 8, 1906), which authorized the Secretary of the Interior to issue fee patents to competent Indian allottees prior to the expiration of the 25-year trust period established by the General Allotment Act. *See Oneida Tribe*, 542 F. Supp.2d at 911; *Oneida Nation*, 371 F. Supp.3d at 507. The Burke Act also expressly provided, in part, that upon issuance of a patent conveying an allotment in fee simple, "all restrictions as to sale, incumbrance, or taxation of said land [would] be removed." 25 U.S.C. § 349; *see Oneida Tribe*, 542 F. Supp.2d at 911; *Oneida Nation*, 371 F. Supp.3d at 507.

During the same 1906 session in which the Burke Act was passed, Congress also enacted an appropriation bill that included a provision ("the 1906 Oneida Provision") specifically authorizing the issuance of fee patents for allotted lands on the Oneida Reservation, and providing that "the issuance of such patent shall operate as a removal of all restrictions as to the sale, taxation and alienation of the lands so patented." 34 Stat. 325 ch. 3504; *see Oneida Tribe*, 542 F. Supp.2d at 911–12; *Oneida Nation*, 371 F. Supp.3d at 507. The 1906 Oneida Provision essentially restated provisions of the Burke Act with specific reference to the Oneida Reservation.

Over the years that followed, fee patents were issued for the vast majority of allotted land on the Oneida Reservation and most of that land fell out of Indian ownership. By the early 1930s, the Oneida Tribe owned less than 90 acres of the original reservation and several hundred additional acres of individual allotments continued to be held in trust, but at least 95 percent of the land in the reservation was no longer owned by Indians. *See Oneida Tribe*, 542 F. Supp.2d at 912; *Oneida Nation*, 371 F. Supp.3d at 507–08.

## II. The present litigation and the decision of the district court.

The present case arose out of a 2016 dispute over whether the Village of Hobart,[1] pursuant to its special events permit ordinance, could require the

[1] The Town of Hobart incorporated under state law as a Village in 2002. *See Oneida Tribe*, 542 F. Supp.2d at 913.

Oneida Nation to obtain a permit for an annual tribal festival held on land located within the Village, which lies entirely within the 1838 boundaries of the Oneida Reservation. *Oneida Nation,* 371 F. Supp.3d at 503. The district court held that the Treaty of 1838 created a reservation for the Oneida Nation and that the reservation has not subsequently been disestablished. However, the district court further held that the 1838 boundaries of the Oneida Reservation have been diminished and that the Village of Hobart, therefore, had jurisdiction to enforce its special event permit ordinance on lands within those boundaries that had lost their reservation status and that are not presently held in trust by the United States for the benefit of the Nation. *Id.*

The district court found that Congress had explicitly expressed an intent to diminish the reservation in the General Allotment Act, the Burke Act, and the 1906 Oneida Provision, and further reasoned that, once the allotment trust period had run its course or was otherwise ended, and unrestricted fee patents were issued, "the intent unequivocally expressed by Congress in its enactment of the allotment acts was realized and either then or with the further conveyance of the land to non-Indians, the original reservation was diminished." *Id.* at 515.

The district court purported to acknowledge the established principle that the General Allotment Act and related allotment statutes did not themselves directly abolish or diminish reservations, but rather contemplated that

reservations would continue to exist during the time when the allotted reservation lands remained in trust. *Id.* at 514. The district court construed that principle, however, as applying only so long as each allotted parcel remained in trust. Once an unrestricted fee patent was issued giving a tribal allottee complete control over an allotted parcel—including the power to convey ownership of the parcel to non-Indians—the federal government no longer retained control of that parcel and the parcel lost its reservation status either at that point or at the point when it was actually conveyed to a non-Indian. *Id.* at 514–15.

## ARGUMENT

### I. The district court decision expanded the test for reservation diminishment beyond Supreme Court precedent and threatens to introduce uncertainty into the law of diminishment by conflating congressional intent to diminish a reservation with intent to allow states to tax fee-patented reservation parcels.

The legal standard for reservation diminishment articulated by the district court may significantly impact the State and its relations with the Oneida and other tribes with similar allotment histories. The district court decision expanded the test for finding congressional intent to diminish a reservation beyond the existing holdings of the Supreme Court, introducing confusion and uncertainty into both the diminishment analysis and the interpretation of the legal consequences of the reservation allotment policy of the late 19th and early 20th centuries. In particular, the district court's attempt to derive an intent to

diminish reservation boundaries from the General Allotment Act and the Burke Act mistakenly conflates Congress's intent to authorize states to tax fee-patented reservation parcels with the intent to remove such parcels from reservations status.

### A. The district court decision expanded the test for reservation diminishment beyond Supreme Court precedent.

The first principle of diminishment is that "only Congress can divest a reservation of its land and diminish its boundaries." *Solem v. Bartlett*, 465 U.S. 463, 470 (1984). The intent to diminish a reservation "will not be lightly inferred." *Id.* Rather, Congress must "clearly evince an 'intent to change boundaries' before diminishment will be found." *Id.* (citation omitted). The Supreme Court has repeatedly applied these principles to surplus land acts enacted during the allotment era, in which Congress acquired title to the unallotted surplus portions of an allotted reservation and opened those lands to settlement by non-Indian homesteaders. *See id.* at 466–67. In such legislation, Congress acted "on a reservation-by-reservation basis, with each surplus land act employing its own statutory language, the product of a unique set of tribal negotiation and legislative compromise." *Id.* at 467.

In construing such surplus land acts, the Court looks for evidence of an intent to diminish a reservation both in the statutory text of the relevant acts of Congress and in "any 'unequivocal evidence' of the contemporaneous and

subsequent understanding of the status of the reservation." *Nebraska v. Parker*, 136 S. Ct. 1072, 1079 (2016) (citation omitted). Common textual indications that Congress intended opened lands to lose their reservation status include language evidencing the present and total surrender of all tribal interests in those lands, an unconditional congressional commitment to pay the tribe a sum certain for the lands, and language expressly restoring the opened lands to the public domain. *Id.* In contrast, reservation boundaries are not diminished by statutes that merely allow non-Indian settlers to own land on a reservation while making any compensation to the tribe contingent upon "the uncertain future proceeds of settler purchases." *Id.* at 1079–80 (citation omitted).

Where the Supreme Court has found the requisite congressional intent to diminish a reservation, it has thus been in the context of surplus land acts in which Congress has directly altered the legal status of particular tracts of reservation land at a particular point in time. *See, e.g., DeCoteau v. Dist. Cty. Court for the Tenth Judicial Dist.*, 420 U.S. 425, 441–42 (1975); *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 587–88 (1977); *Hagen v. Utah*, 510 U.S. 399, 412 (1994); *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 338–40 (1998).

The district court's approach to diminishment in the present case went beyond the above principles in three respects.

First, unlike the district court, the Supreme Court has not found congressional intent to diminish in legislation—like the General Allotment Act or the Burke Act—which dealt with tribal reservations in general, rather than with particular reservations and circumstances.

Second, the Supreme Court has not found intent to diminish in allotment legislation—even when tribe-specific—that merely provided for making reservation land freely alienable, including to non-Indians. Absent evidence of a more specific congressional intent to diminish a reservation, the Supreme Court, unlike the district court, has construed such allotment legislation not as changing reservation boundaries, but as simply providing for non-Indians to settle within those boundaries. *See, e.g., Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351, 356 (1962); *Solem*, 465 U.S. at 470.

Third, the Supreme Court, unlike the district court, has not found intent to diminish reservations on a gradual, parcel-by-parcel basis, contingent upon events that might not occur until some indefinite time in the future.

### B. The district court conflated congressional intent to diminish a reservation with congressional intent to allow states to tax fee-patented reservation parcels.

In addition to the general departures from Supreme Court precedent noted above, the district court also specifically erred by deriving congressional intent to diminish reservations from statutory provisions in which Congress

authorized states to tax some fee-patented reservation lands. In the General Allotment Act and the Burke Act, Congress provided for particular parcels of allotted reservation lands to become taxable as they are patented in fee simple, with no restrictions on alienation or encumbrance. But Congress has not legislated similarly with respect to the diminishment of reservation boundaries.

Section 5 of the General Allotment Act provided that allotted parcels would be patented to individual Indians and held in trust by the United States for a 25-year period, after which the federal government would convey title to the individual allottees "in fee, discharged of said trust and free of all charge or incumbrance whatsoever." 25 U.S.C. § 348. The alienability of allotted lands after fee patenting under that provision manifested a clear congressional intent to allow state taxation. *See Cty. of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation,* 502 U.S. 251, 263–64 (1992); *Cass Cty., Minnesota v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 112–13 (1998).

The 1906 Burke Act subsequently amended the General Allotment Act to authorize the Secretary of the Interior to issue fee simple patents to competent Indians allottees before the end of the trust period, and further provided that, where such a fee patent was issued, "all restrictions as to sale, incumbrance, or taxation of said land shall be removed." 25 U.S.C. § 349. That provision

made explicit the taxability of fee-patented allotted lands that had already been established by § 5 of the original General Allotment Act. *Cty. of Yakima*, 502 U.S. at 264; *Cass Cty.*, 524 U.S. at 112–13.

The district court construed the above provisions of the General Allotment Act and the Burke Act *not only* as authorizing taxation of unrestricted fee parcels, *but also* as evidencing congressional intent to extinguish the reservation status of those parcels as they received unrestricted fee patents over the course of time. That construction, however, goes far beyond any interpretation the Supreme Court has given to those statutes.

In the General Allotment Act and the Burke Act, Congress legislated generally and expressly concerning the extension of state property tax laws to reservation lands based on changes in the title to those lands, but Congress has not legislated with the same generality or explicitness regarding the diminishment of reservation boundaries based simply on changes of title. And the Supreme Court has been clear that, without a more specific statutory anchor, Congress's general expectations in the late 19th and early 20th centuries concerning the future of reservations after allotted fee parcels passed into non-Indian ownership are not sufficient to establish congressional intent to gradually diminish reservations on a parcel-by-parcel basis, as parcels are conveyed to non-Indians. *See Solem*, 465 U.S. at 468–69.

Where a reservation has been diminished and land has been freed of reservation status, the State has plenary jurisdiction over the land. *See id.* at 467. The scope of state jurisdiction under the General Allotment Act and the Burke Act, in contrast, is not plenary, but rather is limited to the taxation, sale, and alienability of fee-patented lands within an Indian reservation. The fact that a state may have the authority to tax fee-patented lands within a reservation thus does not affect the exterior boundaries of the reservation. In *County of Yakima*, for example, the Court held that the state had jurisdiction to impose its property tax on reservation fee lands, but did not have jurisdiction to impose a state excise tax on the sale of such lands. *Cty. of Yakima*, 502 U.S. at 266–70. This illustrates how Congress has authorized states to impose property taxes on fee-patented reservation lands without eliminating the reservation status of those lands. The district court thus erred by equating the intent to allow property taxation with the intent diminish a reservation. That error merits reversal.

## II. Changes to state and tribal territorial jurisdiction under the district court decision could negatively impact cooperative state-tribal relationships and create uncertainty about the legal status of tribal gaming facilities.

In addition to its conceptual problems, the district court decision also could have significant practical effects on the State and its relationship with the Oneida and other tribes. The State and each of its eleven federally-recognized

tribes—including the Oneida—have important cooperative government-to-government relationships aspects of which could be detrimentally affected by the district court's view of diminishment. Those principles, if upheld, potentially could affect the land base not only of the Oneida, but also of seven other Wisconsin tribes whose reservations were allotted during the allotment era.[2]

Since 2004, state government agencies have operated under gubernatorial executive orders that affirm the sovereignty of the tribes, recognize the unique legal relationship between state and tribal governments, and direct state officials to engage the tribes with the same respect accorded to other governments.[3] Pursuant to those executive orders, almost all state agencies have established written policies that provide a framework for interaction with

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[2] In addition to the Oneida, the potentially affected tribes are the Forest County Potawatomi Community, the St. Croix and Sokaogon Chippewa Communities, and the Bad River, Lac Courte Oreilles, Lac du Flambeau, and Red Cliff Bands of Lake Superior Chippewa Indians. The lands of the Ho-Chunk Nation and the Menominee Indian Tribe of Wisconsin are largely, if not exclusively, held in trust by the United States, and thus presumably would not be directly affected by the district court's approach to reservation diminishment. The reservation of the Stockbridge-Munsee Band of Mohican Indians was previously held by this Court to have been disestablished by acts of Congress in 1871 and 1906. *See Wisconsin v. Stockbridge-Munsee Community,* 554 F.3d 657 (7th Cir. 2009). Lands subsequently restored to the Stockbridge-Munsee are held in trust, like the Ho-Chunk and Menominee lands.

[3] *See* 2004 Wis. Exec. Order 39, witribes.wi.gov/docview.asp?docid=23379&locid=57 (last visited, September 20, 2019) ; 2019 Wis. Exec. Order 18, witribes.wi.gov/docview.asp?docid=28829&locid=57 (last visited, September 20, 2019).

tribes under which state and tribal officials regularly consult about programs, initiatives, or issues of mutual concern. Through those interactions, valuable state and tribal resources are put to more effective use delivering governmental services in a more streamlined, coordinated, and economically efficient manner.

The diminishment of tribal reservations under the district court's approach could have a significant impact on state and tribal territorial jurisdiction, which in turn could affect the respective scope of state, tribal, and federal responsibility for government services. Subject to exceptions in federal statutes or court decisions, primary jurisdiction over land within an Indian reservation generally rests with the federal government and the Indian tribe inhabiting the reservation. *See Alaska v. Native Vill. of Venetie*, 522 U.S. 520, 527 n.1 (1998); 18 U.S.C. § 1151(a). Conversely, where a reservation has been diminished and land has been freed of reservation status, the state has jurisdiction over the land. *Solem*, 465 U.S. at 467. Therefore, to the extent that the district court's approach might lead to an increase in reservation diminishment, it also may increase state jurisdiction and state responsibility for providing government services in the diminished areas.

In particular, reservation diminishment could increase the State's responsibility for providing criminal law enforcement services in areas that pass from tribal to state jurisdiction. Pursuant to 18 U.S.C. § 1162(a), the State

possesses the power to enforce state criminal law against all persons—both Indian and non-Indian—within all Indian country in the State except the Menominee Reservation.[4] Tribes, however, generally do not possess criminal jurisdiction over non-Indians who commit crimes on a reservation. *See Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).[5] Tribes also have no inherent authority to enforce state criminal laws (as opposed to tribal or federal laws) on the reservation, even as to crimes involving Indians. The State, however, has provided by statute that tribal law enforcement officers acting within their reservations may exercise the same state law enforcement powers possessed by state officers, provided the tribal officers meet the same training and certification requirements required for state-certified officers. *See* Wis. Stat. § 165.92.

The tribal police departments of the Oneida and six other Wisconsin tribes currently exercise state law enforcement powers pursuant to that statute.[6]

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[4] On March 1, 1976, by proclamation of the Governor of Wisconsin, the State retroceded its criminal jurisdiction over the Menominee Reservation to the United States, pursuant to 25 U.S.C. § 1323. *See State ex rel. Pyatskowit v. Montour*, 72 Wis. 2d 277, 280–81, 240 N.W.2d 186 (1976).

[5] The Violence Against Women Reauthorization Act of 2013, 25 U.S.C. § 1304, created a narrow statutory exception to *Oliphant* for domestic or dating violence crimes committed by certain non-Indians against an Indian victim.

[6] The other tribes are the Lac Courte Oreilles, Lac du Flambeau, Red Cliff, St. Croix, Sokaogon, and Ho-Chunk. *See Tribal Law Enforcement Agencies,* WILEnet, https://wilenet.org/html/tribal/index.html (last visited, September 20, 2019).

Within the reservations or trust lands of those seven tribes, therefore, tribal law enforcement officers are full partners with the State in providing state law enforcement services. If this Court affirms the district court's diminishment of the Oneida Reservation, the statutory state law enforcement powers of the Oneida tribal police in the diminished areas would be reduced and the law enforcement responsibilities of non-tribal officers in those areas would be correspondingly increased.[7] *See* Wis. Stat. § 165.92(2)(b) (generally restricting the exercise of state law enforcement powers by tribal officers to the tribe's reservation or trust lands). Similar consequences could also result for five of the other six tribes currently operating under Wis. Stat. § 165.92, if any of their reservations were to be ruled diminished in the future pursuant to the district court's reasoning.[8]

Another important practical impact of the district court's diminishment decision could be on tribal gaming in Wisconsin. The Oneida operate five Class III gaming facilities within the 1838 boundaries of their Reservation, pursuant to a tribal-state gaming compact entered under the Indian Gaming

[7] In diminished areas that contain an incorporated municipality with its own police department, these state law enforcement responsibilities would primarily rest with the municipality. In unincorporated areas, law enforcement responsibilities would primarily rest with the county sheriff.

[8] As previously noted, the Ho-Chunk are unlikely to be affected by the diminishment issues here.

Regulatory Act, 25 U.S.C. §§ 2701–21.[9] The legality of some of those facilities could be affected by the diminishment of the reservation.

In conformance with a tribal-state compact, a tribe may lawfully conduct Class III gaming only on land within the limits of its reservation or on land held in trust by the United States for the tribe or a tribal member. 25 U.S.C. §§ 2703(4) and 2710(d)(1). In addition, on lands acquired in trust after October 17, 1988, a tribe may conduct gaming only if the land is within or contiguous to the boundaries of the tribe's reservation, or if tribal gaming on the land has been approved through a special two-part federal-state approval process. 25 U.S.C. § 2719(a)(1) and (b)(1)(A). Because none of the Oneida's existing gaming facilities has gone through that special approval process, the Oneida can lawfully conduct gaming only on land that is within or contiguous to their reservation, or on land that was acquired in trust before October 17, 1988.

In light of the above provisions, the diminishment holding of the district court may throw the legal status of some Oneida facilities into doubt.

Three of the Oneida's five gaming facilities are located on parcels that were conveyed to the United States in trust after October 17, 1988. Gaming on those parcels is thus lawful only if the parcels are within or contiguous to the current

[9] Class III gaming includes most forms of casino-type gambling. *See* 25 U.S.C. § 2703(6)–(8).

boundaries of the reservation. Under the district court's decision, whether those parcels are still within the reservation turns on the history of the fee-patenting of each parcel and on whether each parcel has ever been conveyed in fee simple to a non-Indian. Depending on the outcome of the analysis of those issues, a legal shadow could be cast on gaming at those locations.

That uncertainty could also impact the State's treasury. Under section XXXII.A. of the State's gaming compact with the Oneida, the Nation is required to annually pay to the State 4.5 or 5.5% of the net win from its Class III gaming operations during the previous fiscal year, minus a deduction for any amounts paid to local units of government pursuant to service agreements.[10] If the district court's diminishment of the reservation were to cause any temporary or permanent reduction in the scope of Oneida's gaming operations, it is likely there could be a corresponding reduction in the Nation's revenue sharing payments to the State.

Moreover, the decision could create similar uncertainty regarding some gaming operations of the other seven Wisconsin tribes whose reservations could be affected by the district court's diminishment principles. And like the

[10] *See Second Amendment to the Oneida Tribe of Indians of Wisconsin and the State of Wisconsin Gaming Compact of 1991,* § XXXII.A., https://doa.wi.gov/Gaming/ONE_Second_Amendment.pdf (last visited September 20, 2019).

Oneida, each of those tribes also pays to the State a share of its annual gaming revenue. The district court's holding thus has the potential to disrupt tribal gaming operations in Wisconsin, with a corresponding potential impact on annual tribal revenue-sharing payments to the State.

The district court's reservation diminishment analysis, if upheld, could lead to changes to State and tribal territorial jurisdiction that would negatively impact cooperative State-tribal relationships, increase State responsibility for providing law enforcement and other governmental services in former reservation areas, create uncertainty about the legal status of tribal gaming facilities, and reduce tribal gaming revenue sharing payments to the State.

## CONCLUSION

The Court should vacate the judgment of the district court and remand for further proceedings consistent with the Court's decision.

Dated this 20th day of September, 2019.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), typeface requirements of Fed. R. App. P. 32(a)(5), and type style requirements of Fed. R. App. P. 32(a)(6).

> This brief contains 4,604 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 13 point Century Schoolbook.

Dated this 20th day of September, 2019.

s/ Thomas C. Bellavia
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Assistant Attorney General

## CERTIFICATE OF SERVICE

I certify that on September 20, 2019, I electronically filed the foregoing Brief of the State of Wisconsin as Amicus Curiae in Support of Plaintiff-Appellant Oneida Nation with the clerk of court using the CM/ECF system, which will accomplish electronic notice and service for all participants who are registered CM/ECF users.

Dated this 20th day of September, 2019.

s/ Thomas C. Bellavia
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