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Clerk of Court
United States Court of Appeals
for the Seventh Circuit
Everett McKinley Dirksen
United States Courthouse
219 S. Dearborn Street
Room 2722
Chicago, IL 60604

RE: Response to Supplemental Authority Notice
Oneida Nation v. Village of Hobart, No. 19-1981 (7th Circuit)

Clerk of Court:

On July 9, 2020, counsel of the Appellant Oneida Nation (“Nation”) submitted a letter citing the United States Supreme Court’s recent decision in *McGirt v. Oklahoma*, No. 18-9526. (Doc. 55.)

As the Nation acknowledges in its supplemental letter, “[t]he General Allotment Act was not at issue in *McGirt*.” Rather, *McGirt* involved a question concerning the application of the Major Crimes Act (“MCA”)—specifically, “the statutory definition of ‘Indian country’ as it applies in federal criminal law under the MCA.” *McGirt*, Slip Op. at 39. Further, the *McGirt* decision acknowledges that “[e]ach tribe’s treaties must be considered on their own terms, and the only question before us concerns the Creek.” *Id.* at 37. And, *McGirt* addressed whether the Creek Nation’s reservation had been disestablished; it did not expressly address the question of diminishment. *McGirt* also does not caution against reliance on extratextual sources for determining Congressional intent where there is evidence that Congress’s intent was to diminish the reservation. Nor does *McGirt* suggest that fee owned lands outside a reservation—because such lands were diminished from the reservation—are “Indian Country” under 18 U.S.C. § 1151.

Instead, as presented in the Village of Hobart’s brief (Doc. 40), the present case involves the question of whether the Nation’s reservation was diminished through a series of Congressional Acts, including the General Allotment Act and the 1906 Oneida Provision. As the Village has argued, the 1906 Oneida Provision indicates Congress’s intent to diminish the Oneida Reservation. (*Id.* at 38-44.) Extratextual sources, at the time and subsequent to, confirm Congress’s intent under the 1906 Oneida Provision that the Oneida Reservation was diminished. (*Id.* at 45-58.) Likewise, as it related

to 18 U.S.C. § 1151, the Village pointed out that the district court “properly recognized the relevant question is whether the land at issue in this case was diminished from the Oneida Reservation prior to the passage of § 1151 in 1948.” (*Id.* at 70-71.) The district court properly held the Oneida Reservation was diminished prior to the passage of § 1151.

Very truly yours,

von BRIESEN & ROPER, s.c.

A handwritten signature in black ink, appearing to read "Frank W. Kowalkowski". The signature is fluid and cursive, with the first name "Frank" and last name "Kowalkowski" clearly distinguishable.

Frank W. Kowalkowski

FWK;djlw

By signing, the above certifies this letter contains fewer than 350 words in compliance with Federal Rule of Appellate Procedure 28(j).

cc: All Counsel of Record