No. 10-72

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

BRIEF FOR THE STATES OF NEW YORK, ALABAMA, COLORADO, FLORIDA, IDAHO, ILLINOIS, MICHIGAN, NEW MEXICO, NORTH DAKOTA, SOUTH DAKOTA, UTAH, AND WYOMING, AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether, when a State or local government is authorized to impose real property taxes on real property owned by an Indian tribe, the government is nevertheless barred by tribal sovereign immunity from enforcing the tax through foreclosure or other *in rem* collection proceedings.

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INTEREST OF THE AMICI CURIAE

States have a vital interest in safeguarding the economic health of their local political subdivisions and, in particular, in ensuring that local governments can collect real property taxes that Indian nations are obliged to pay on taxable tribal lands. The Second Circuit's holding that the petitioner counties cannot enforce their real property taxes on tribally-owned land that this Court recently held to be taxable, *see City of Sherrill, N.Y. v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005), has rendered the property taxes uncollectible and jeopardized the financial health and well-being of the petitioners as well as of local governments in other parts of New York that were once occupied by Indian tribes. *See, e.g., Cayuga Indian Nation of N.Y. v. Gould,* 930 N.E.2d 233 (N.Y.) (addressing the status of lands recently acquired by the Cayuga Indian Nation of New York), *cert. denied*, 131 S. Ct. 353 (2010). In addition, the decision substantially restricts the power of the State and local governments to enforce their regulatory jurisdiction over taxable tribal lands.

The Second Circuit's reasoning also imperils real property tax collection throughout the United States because it permits Indian tribes nationwide to escape enforcement of lawfully imposed real property taxes. The States and their local subdivisions have a vital interest in continuing to enforce their tax and regulatory jurisdiction over lands they have governed without interruption for centuries.

SUMMARY OF THE ARGUMENT

In *Sherrill*, this Court rejected the claim of the Oneida Indian Nation of New York ("OIN") to "present and future sovereign immunity from local taxation" on lands that the OIN had recently acquired in the open market within an "area that once composed [its] historic reservation." *Id*. at 214, 202. The Court held that laches, acquiescence and impossibility barred the Oneidas' long-delayed assertion of sovereignty because of the substantial disruption to state and local governance the claim would cause. *See id*. at 202-03, 221. Moreover, the Court explained, over the objection of Justice Stevens in dissent, that this equitable bar applied whether the OIN was asserting sovereignty affirmatively in a declaratory judgment action or defensively in the suit by the city to evict the OIN for failure to pay property taxes. *Compare id*. at 214 n.7 (opinion of the Court) *and* 222 (Justice Souter concurring), *with* 225-26 (Justice Stevens dissenting).

Nevertheless, a panel of the Second Circuit has now held, without so much as mentioning the above statement in *Sherrill*, that this Court's earlier decisions in *Kiowa Tribe of Okla. v. Mfg. Tech., Inc.*, 523 U.S. 751 (1998), and *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505 (1991), compel the conclusion that "although the Counties may tax the property at issue here, *see City of Sherrill, N.Y. v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005), they may not foreclose on those properties because the tribe is immune from suit." Appendix to Petition for Certiorari, No. 10-72 ("Pet. App."), 33a (Judges Cabranes and Hall concurring). Two members of the

three-judge panel, in an opinion curiously labeled a "concurring opinion," acknowledged that this result is "anomalous" in view of *Sherrill* and "defies common sense" but believed that it is compelled by this Court's earlier tribal sovereign immunity precedents, which they called upon this Court "to reconsider." *Id.* at 32a-33a.

This Court should reverse. The Second Circuit's decision flies in the face of both the letter and the spirit of *Sherrill*. This Court has already held that the OIN is not immune from the city's eviction proceeding. *See* 544 U.S. at 214, n. 7 (opinion of the Court), 222 (Justice Souter concurring). In addition, tribal sovereign immunity is an attribute of tribal sovereignty generally, and thus, the distinction that the Second Circuit drew between tribal sovereign authority over land and tribal sovereign immunity is illusory. *See* Pet. App. 14a. In *Sherrill*, this Court used the terms "sovereign," "sovereignty" and "sovereign immunity" interchangeably. *See, e.g.,* 544 U.S. at 202, 213, 214. By upholding the OIN's claim of immunity here, the Second Circuit effectively denied the State and local governments the power to enforce against the OIN the regulatory jurisdiction that this Court in *Sherrill* ruled that they, not the OIN, exercise over the OIN's recently acquired lands. *See* 544 U.S. at 220 (granting tax immunity would also imply immunity "from local zoning or other regulatory controls that protect all landowners in the area"). The lack of effective enforcement would create the very disruption of "the governance of central New York's counties and towns" that this Court in *Sherrill* sought to avert. *Id.* at 202, *see also* 219 ("disruptive practical consequences"), 220 n.13 ("[o]ther tribal entities have already sought to free historic

reservation lands purchased in the open market from local regulatory controls"). For these reasons, *Sherrill* bars the OIN from asserting *any* sovereignty-based claims or defenses, including sovereign immunity from suit, with respect to State or local government proceedings to enforce their tax and regulatory jurisdiction over the OIN's recently acquired lands.

In addition, *Sherrill's* holding that the OIN is subject to both the imposition and enforcement of real property taxes is consistent with and follows from this Court's treatment of taxable tribal real property in general. In *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251 (1992), this Court approved the *in rem* foreclosure of taxable tribal real property. The Court recognized that taxability included "forced sale for taxes" and that the assessment and *in rem* collection of taxes on tribal real estate did not disrupt tribal self-government. *See id.* at 264-65. *Yakima* provides an additional ground for reversal here.

Rather than following the clear dictates of *Sherrill* and *Yakima*, the Second Circuit mistakenly relied on this Court's decisions in *Potawatomi* and *Kiowa*. However, the tribal sovereign immunity holdings of those cases, which involved the assertion of *in personam* jurisdiction over the tribes themselves, have no application here in view of *Sherrill* and *Yakima*. Moreover, sound considerations of policy counsel against the court's invocation of tribal sovereign immunity as a bar to foreclosure. As the Second Circuit recognized, its holding would be equally applicable to "land that was never part of a reservation," Pet. App. 32a (Judges

Cabranes and Hall concurring). There is no conceivable justification for granting Indian tribes immunity from foreclosure and other *in rem* tax enforcement proceedings regarding taxable land to which the tribe has no connection beyond current fee title. This Court's precedents reject this unwarranted expansion of tribal power at the expense of the States' "residuary and inviolable sovereignty" under the Constitution. *Alden v. Maine,* 527 U.S. 706, 715 (1999) (*quoting* The Federalist No. 39, 245 (C. Rossiter ed. 1961)(J. Madison)).[1]

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1. Amicus curiae State of New York agrees with petitioners and with amicus curiae Town of Lenox, New York, that the OIN's purported waiver, following the grant of certiorari, of sovereign immunity from enforcement of real property taxation through foreclosure does not moot the issue of sovereign immunity (the first question presented) and that the Court should decide that question. See Brief of Amicus Curiae Town of Lenox, New York, No. 10-72 ("Lenox Br."), at 19-25. Moreover, however the Court resolves that issue, it should decide the question whether the Oneida reservation has been disestablished or diminished (the second question presented). See Lenox Br. at 25-27. The question is hotly contested, *see County of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 269 n. 24 (1985) (Justice Stevens, dissenting) (there is a "serious question" whether the Oneida abandoned their claim when they accepted the 1838 Buffalo Creek Treaty), and it was left open in *Sherrill* (544 U.S. at 215 n.9) despite full briefing and argument on the issue by Amicus Curiae New York. See Brief of Amicus Curiae New York in *Sherrill*, 2004 WL 1835367 (explaining that the reservation was disestablished by the Buffalo Creek Treaty and other events.) The issue affects not only the state taxation question at issue here but also other issues of state and federal law, and continues to warrant this Court's review.

ARGUMENT

I. *Sherrill* Bars the OIN's Claim of Sovereign Immunity.

In *Sherrill*, this Court held that the OIN is precluded by laches and other delay-based doctrines from asserting sovereignty regarding its recently acquired lands. The Court specifically concluded that the OIN had no immunity from the city's tax enforcement proceedings. The OIN had sued, among others, the City of Sherrill in federal court after the city initiated eviction proceedings against the OIN following the OIN's nonpayment of taxes and the city's administrative foreclosure. *See Sherrill*, 544 U.S. at 211; *see also Oneida Indian Nation of N.Y. v. City of Sherrill, N.Y.*, 145 F. Supp. 2d 226, 236-40 (N.D.N.Y. 2001) (in *Sherrill*, the OIN sought to bar local governments from foreclosing or otherwise enforcing their real property taxes), *aff'd*, 337 F.3d 139 (2d Cir. 2003), *rev'd and remanded*, 544 U.S. 197 (2005). The OIN sought "declaratory and injunctive relief recognizing its present and future *sovereign immunity from local taxation* on parcels of land the [OIN] purchased in the open market." *Sherrill*, 544 U.S. at 214 (emphasis added).

This Court rejected the OIN's assertion of sovereign immunity from local taxation, holding that the OIN "cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue." *Id.* at 203; *see also id.* at 222 (Justice Souter concurring) (the OIN "is not now immune from the taxing authority of local government"). In particular, the Court held that the OIN could not invoke immunity to defend against the city's

real property tax enforcement proceedings. In his dissent, Justice Stevens suggested that tribal immunity could be raised "as a *defense* against a state collection proceeding" and observed that *Sherrill* itself presented that very issue. *Id*. at 225. However, the Court's majority squarely rejected that argument:

> The dissent suggests that, compatibly with today's decision, the Tribe may assert tax immunity defensively in the eviction proceeding initiated by *Sherrill*. *Post*, at 225. *We disagree. The equitable cast of the relief sought remains the same whether asserted affirmatively or defensively*.

Id. at 214 n.7 (emphasis added); *see also id*. at 222 (Justice Souter concurring) (rejecting claim of tribal sovereignty, "whether affirmative or defensive"). Accordingly, in *Sherrill* this Court rejected the very claim of immunity from tax enforcement mistakenly upheld below.

The Second Circuit did not even attempt to explain away this Court's rejection of the OIN's defensive use of immunity. Instead, that court found that *Sherrill* did not apply to the OIN's claim of sovereign immunity, based in part on the court's mistaken distinction between tribal sovereign authority over land and tribal sovereign immunity. The court found that the OIN had sovereign immunity from tax enforcement although it acknowledged that the OIN was barred from exercising sovereignty over the land. Pet. App. 14a-20a. But this Court drew no such distinction in *Sherrill*, repeatedly using the words "sovereign" and "sovereignty" in

holding that the OIN's claim of "sovereign immunity from local taxation" was barred. 544 U.S. at 214; *see also id*. at 202, 203, 213, 214, 215 n.9, 216, 219, 220, 221 n.14. As the term implies, "sovereign immunity" is an attribute of sovereignty generally. *See Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16, 24-25, 30-31 (1st Cir. 2006) (en banc) ("tribal sovereign immunity is most accurately considered an incidence or subset of tribal sovereignty" and "[t]he Tribe has not explained how being subject to the *enforcement* of the State's cigarette tax scheme is an infringement on its retained sovereignty when being subject to the *requirements* of the scheme is not"). Indeed, this Court's decision in *Potawatomi* recognized that tribal sovereign immunity is part of the tribes' "inherent sovereign authority over their members and territories." *Potawatomi*, 498 U.S. at 509 (suits against Indian tribes "are *thus* barred by sovereign immunity") (emphasis added).

Similarly, the OIN argued in opposition to the petition for certiorari, Br. in Opp., No. 10-72, at 22-23, that *Sherrill's* holding that the OIN could not assert "tax immunity" defensively in the city's eviction proceeding does not bar its assertion of sovereign immunity from suit as a defense to these foreclosures. This argument is not persuasive. The eviction case squarely presented the very issue presented here — whether a local government may enforce its real property tax against the OIN. *See Sherrill*, 544 U.S. at 225 (Justice Stevens dissenting). Because the enforcement issue was before the Court, its decision cannot reasonably be interpreted to have left open the possibility that, although the OIN is precluded from

asserting "tax immunity" as a defense to the eviction proceeding, the proceeding is nevertheless absolutely barred by the OIN's sovereign immunity from suit whether or not the property is taxable. On the contrary, *Sherrill's* context makes clear that the Court was permitting the city's eviction proceeding to go forward over the OIN's sovereignty-based objections. Thus, the sovereignty that *Sherrill* bars the OIN from exercising regarding these lands necessarily includes the assertion of sovereign immunity from foreclosure and other enforcement proceedings.

Finally, the Second Circuit's cramped reading of *Sherrill* is at war with the very practical concerns cited by this Court in support of its holding that laches, acquiescence and impossibility "render inequitable the piecemeal shift in governance this suit seeks unilaterally to initiate." *Sherrill*, 544 U.S. at 221. Indeed, the Second Circuit's decision treats *Sherrill* as a mere theoretical exercise that is devoid of any practical significance. *Sherrill* made clear that the disruption of the long established local governance that would result if the OIN were held to be immune from the counties' tax and regulatory jurisdiction justified the Court's invocation of laches, acquiescence and impossibility. That reasoning is equally applicable to the OIN's assertion of sovereign immunity.

If the State and the local governments are unable to enforce their tax and regulatory jurisdiction against the OIN, then as a practical matter the OIN cannot be compelled to pay the real property taxes that this Court held it owes or to comply with state and local land

regulations.[2] Depriving the counties of their enforcement authority will inevitably result in the "disruptive practical consequences," including jurisdictional "checkerboard[ing]," that led this Court to reject the OIN's unilateral revival of sovereignty in the first place. *Sherrill*, 544 U.S. at 219; *see id.* at 220 and n. 13 (observing that the OIN's claim would also immunize it "from local zoning or other regulatory controls that protect all landowners in the area"); *see also New York v. Shinnecock Indian Nation*, 523 F. Supp. 2d 185, 298 (E.D.N.Y. 2007) (finding of immunity from enforcement would "completely undermine" *Sherrill*'s holding because the state and local governments could not use the courts to avoid the disruptive impact that the Court "clearly stated they have the equitable right to prevent") (appeal pending); *Oneida Tribe of Indians of Wis. v. Village of Hobart, Wis.*, 542 F. Supp. 2d 908, 921 (E.D. Wis. 2008) (*Sherrill* permits forced sale of land for nonpayment of taxes). Therefore, contrary to the holding of the Second Circuit, the same equitable principles of laches, acquiescence and impossibility that barred the OIN's claim of sovereignty in *Sherrill* bar the OIN's similarly disruptive assertion of sovereign immunity here.

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2. The harm to state and local governance is not mitigated by the land-to-trust process. Although the U.S. Department of the Interior decided to take into trust for the OIN approximately 13,000 of the 17,000 acres of land at issue here, the Second Circuit's decision will preclude state and local tax and regulatory enforcement over the 4,000 acres of OIN land that were not taken into trust as well as over future purchases by the OIN and other tribes. In addition, the State and others have challenged the Interior Department's trust determination. *See, e.g., New York v. Salazar*, No. 6:08-cv-644, 2010 WL 2346317 (N.D.N.Y. June 9, 2010).

II. *Yakima* Permits the *In Rem* Tax Foreclosure of Taxable Tribal Real Property.

Sherrill found the bars of laches, etc., sufficient to preclude the OIN's sovereignty claims, including its claim of immunity from the city's eviction proceeding. As explained above, *Sherrill* suffices to defeat the OIN's sovereign immunity claim here. In addition, *Sherrill's* holding that the OIN is subject to both real property taxation and eviction for unpaid taxes is consistent with and follows from this Court's treatment of taxable tribal real property in general. The Court's decision in *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251 (1992), permitted the *in rem* foreclosure of tribal land that was subject to local taxation without regard to tribal sovereign immunity. *Yakima* provides an additional ground for reversal here.

The clear import of this Court's decision in *Yakima* is that tribal sovereign immunity does not bar the foreclosure of taxable tribal real property. In *Yakima*, the Court held that section 5 of the General Allotment Act permitted the county to impose an ad valorem tax on reservation land patented in fee pursuant to the Act. *See Yakima*, 502 U.S. at 270. The Court reasoned that, when section 5 rendered the allotted lands alienable and encumberable, "it also rendered them subject to assessment *and forced sale for taxes*." *Id.* at 263-64 (emphasis added). In so holding, the Court did not distinguish between "fee patented lands held by the Tribe or its members," although the county sought to foreclose on reservation parcels "in which the Tribe or its members had an interest." *Id.* at 256. The Court noted that "[l]iability for the ad valorem tax flows

exclusively from ownership of realty on the annual date of assessment" and "creates a burden on the property alone." *Id.* at 266. The Court also observed that unlike *in personam* jurisdiction, the "mere power to assess and collect a tax on certain real estate" is not significantly disruptive of tribal self-government. *Id.* at 265; *see also Permanent Mission of India to the United Nations v. City of New York*, 551 U.S. 193, 199 (2007) ("[a]s a threshold matter, property ownership is not an inherently sovereign function").

This Court's reasoning in *Yakima* is equally applicable here. The Court treated taxability and tax enforcement as two sides of the same coin—the alienability of the lands made them subject to *both* "assessment" and "forced sale for taxes." *Yakima*, at 263-64. In *Sherrill*, this Court determined that the OIN's parcels were subject to local real property taxation. Under New York law, the unpaid property taxes are liens upon the OIN's parcels, and the proceedings to foreclose the tax liens are proceedings *in rem*. *See* N.Y. Real Prop. Tax Law §§ 902, 1120 (McKinney 2000).[3] Consequently, the OIN's parcels are subject to the same *in rem* remedies, including foreclosure, as were the taxable tribal parcels in *Yakima*.

The OIN argued in opposition to the petition for certiorari, *see* Br. in Opp. at 24-25 and n. 13, that *Yakima* has no relevance here because that case did not involve

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3. Oneida County follows an *in rem* process, which is described in the district court's decision below. *See* Pet. App. 37a-39a; *see also* Brief for Petitioners, No. 10-72 at 10, n.5, and 20-21, n. 8.

the forced sale of tribally-owned parcels, but that is not the way the Yakima Tribe presented its case to this Court. In its brief, the tribe said it brought the action "to invalidate the County's imposition and collection of real estate taxes on fee lands of the Tribe and of tribal members." *See* Resp. Br., 1991 WL 521292 at *9; *see also* Jt. App., Nos. 90-408, 90-577, at 5 (Complaint ¶ XI ["The defendants have scheduled a public tax sale of approximately 40 parcels of real estate located within the Yakima Indian Reservation in which the Yakima Nation and/or its members have a fee patent interest"]); Pet. Br., 1991 WL 521727, at *5 (county commenced foreclosure proceeding in state court against "several properties owned in fee by the Yakima Tribe or individual Yakima members").

In addition, the Yakima Tribe specifically argued that it retained its "sovereign immunity from suit" and, citing this Court's then-recent decision in *Potawatomi*, asserted that "[a] confrontation over non-payment of property taxes would have left the State in the embarrassing position of being unable to judicially enforce property taxes which may have been assessed." Resp. Br., 1991 WL 521292 at *35. The Tribe would not have made this argument, which the OIN also makes here, unless its own properties were at stake. But this Court held that the taxable tribal land was subject to "forced sale for taxes." *Yakima*, 502 U.S. at 264. Thus, under *Yakima*, tribal sovereign immunity does not preclude the *in rem* real property tax foreclosure proceedings here.

III. *Potawatomi* and *Kiowa* Do Not Support Tribal Sovereign Immunity From These Foreclosure Proceedings.

Misconstruing *Sherrill* and disregarding *Yakima*, the Second Circuit mistakenly concluded that this Court's decisions in *Potawatomi* and *Kiowa* compelled the conclusion that the OIN was immune from the counties' foreclosures. Pet. App. 14a-23a. First, as explained in Point I, *Sherrill* bars the OIN from asserting *any* sovereignty-based claims it might otherwise have, including tribal sovereign immunity from suit, in connection with the State and local governments' enforcement of their tax and regulatory jurisdiction over the OIN's recently acquired lands.

Second, as explained in Point II, *Yakima* permits *in rem* real property tax foreclosure proceedings against taxable tribal lands. Thus, the OIN has no sovereign immunity from the counties' *in rem* real property tax foreclosures. In contrast, *Potawatomi* and *Kiowa* involved *in personam* actions against the tribes and arose in circumstances very different from this case. In addition, this Court decided *Potawatomi* shortly before *Yakima* was briefed and argued, and the Yakima Tribe cited the decision to no effect in support of its claim to "sovereign immunity from suit." Resp. Br., 1991 WL 521292, at *35. And although *Kiowa* held that Indian tribes enjoyed sovereign immunity even from suits based on contracts entered into outside the reservation, 523 U.S. at 760, that conclusion did not abrogate *Yakima's* earlier holding that taxable land owned by an Indian tribe within reservation boundaries was subject to forced sale for taxes. *Yakima,* rather than *Potawatomi*

and *Kiowa*, governs *in rem* tax foreclosure of taxable tribal real property.

Third, sound policy reasons counsel against extending *Potawatomi* and *Kiowa* to the foreclosure context. In *Potawatomi*, this Court held that Oklahoma could not sue the tribe for payment of the cigarette taxes that the tribe was required to collect on its reservation sales to non-tribal members. The Court relied on the availability of other enforcement options regarding cigarette taxes. *See Potawatomi*, 498 U.S. at 514 (noting that the State, although barred from suing the tribe to collect its cigarette taxes, could in the alternative sue tribal officers, enforce against wholesalers, enter agreements with the tribes or seek relief from Congress). The Second Circuit stated that similarly, an alternative remedy was available here, because tribal officers "remain susceptible to suits for damages and injunctive relief." Pet. App. 23a.

The Second Circuit's reliance on *Potawatomi*'s list of alternative cigarette tax enforcement strategies does not support a finding of immunity here because there is no meaningful real property tax enforcement alternative to a foreclosure action. The action to foreclose a lien for unpaid real property taxes provides a high probability of prompt payment, and thus foreclosure is a venerable and universal tax collection mechanism. *See L.K. Land Corp. v. Gordon*, 136 N.E.2d 500, 504 (N.Y. 1956) (tax lien foreclosure action is "the primary means of enforcing a claim," as opposed to "other remedies, uncertain and less efficacious"). In contrast, the Second Circuit's suggested alternative involves uncertainty and delay. *See* Brief for Petitioners, No. 10-72, at 24, n. 11.

And although *Kiowa* acknowledged that tribal sovereign immunity may bar suits by involuntary claimants such as tort victims, 523 U.S. at 758, *Kiowa* itself involved a private lender's action against the tribe on a promissory note — a garden-variety voluntary commercial loan transaction. But the counties here did not choose to enter their relationship with the OIN, and unlike a private tort victim, the counties are the local governments that this Court held to be sovereign over these lands. Accordingly, *Kiowa* cannot reasonably be extended to bar these *in rem* foreclosure proceedings.

Finally, as a majority of the Second Circuit panel recognized, its application of *Potawatomi* and *Kiowa* here extends tribal sovereign immunity to bar tax foreclosure even as to "land that was never part of a reservation." Pet. App. 32a (Judges Cabranes and Hall concurring). Under the court's analysis, the OIN, or any other Indian tribe, could buy real property anywhere in the United States, *e.g.*, the Empire State Building, refuse to pay real property taxes, and invoke sovereign immunity from suit as an absolute defense to the resulting foreclosure action. The Second Circuit's holding does not depend on the tribal history or legal status of the land but follows solely from the fact of tribal fee ownership today. There is no conceivable policy justification for a decision that could disrupt state and local governance in every community in the United States. The Court should reject the Second Circuit's dramatic expansion of tribal power at the expense of all the States and their local subdivisions and hold instead that *Sherrill* and *Yakima*, not *Kiowa* and *Potawatomi*, govern this case.

CONCLUSION

For the foregoing reasons, the amici curiae States respectfully urge this Court to reverse the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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