

DOCKET NO. CA 11-01193

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND GORSKI, JJ.

---

SENECA NATION OF INDIANS, PLAINTIFF-APPELLANT,

V

STATE OF NEW YORK, NEW YORK STATE DEPARTMENT OF TAXATION  
AND FINANCE, THOMAS H. MATTOX, ACTING COMMISSIONER OF  
THE DEPARTMENT OF TAXATION AND FINANCE,  
AND ERIC T. SCHNEIDERMAN, NEW YORK STATE  
ATTORNEY GENERAL, DEFENDANTS-RESPONDENTS.

---

Appellant having moved, upon the return of an order to show cause dated June 9, 2011, and an amended order to show cause dated June 10, 2011, granted by the Honorable Jerome C. Gorski, for a preliminary injunction pending this Court's determination of the appeal taken herein from an order of the Supreme Court entered in the Office of the Clerk of the County of Erie on June 9, 2011,

Now, upon reading and filing the affirmation of Carol E. Heckman, Esq. dated June 8, 2011, said show cause orders with proof of service thereof, the affirmation of Andrew D. Bing, Esq. dated June 13, 2011, the affirmation of Robert D. Plattner, Esq. dated June 13, 2011, the memoranda of appellant and respondents, and the briefs amicus curiae of New York Association of Convenience Stores, New York State Association of Tobacco and Candy Distributors, Inc., and St. Regis Mohawk Tribe, and due deliberation having been had thereon,

**It is hereby ORDERED** that the motion is denied, and

**It is further ORDERED** that the temporary restraining orders contained in the show cause orders granted by the Honorable Jerome C. Gorski are hereby vacated.

Entered: June 21, 2011

PATRICIA L. MORGAN, Clerk