

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

PUEBLO OF POJOAQUE, a federally recognized  
Indian Tribe; et al.,

Plaintiffs,

vs.

Case No. 1:15-cv-00625 JB/GBW

STATE OF NEW MEXICO, et al.,

Defendants.

**STATE OF NEW MEXICO'S REPLY IN SUPPORT OF ITS MOTION TO MODIFY  
THE PRELIMINARY INJUNCTION AND DISMISS THE STATE OF NEW MEXICO  
BASED ON THE STATE'S ELEVENTH AMENDMENT SOVEREIGN IMMUNITY**

Defendant State of New Mexico ("State") submits this reply in support of its Motion to Modify October 7, 2015 Preliminary Injunction and to Dismiss Defendant State of New Mexico Based on the State's Eleventh Amendment Sovereign Immunity ("Motion"). Although Plaintiffs largely concur in this Motion, Plaintiffs appear to resist the dismissal of the entire Complaint as against the State. For the reasons stated below, the Court should reject Plaintiffs' argument, modify the Court's October 7, 2015 Preliminary Injunction to remove the State as an enjoined party, and dismiss Plaintiffs' Complaint as against the State in its entirety.

Plaintiffs admit that the State's assertion of its Eleventh Amendment sovereign immunity divests this Court of jurisdiction to hear Counts I, II, and V,<sup>1</sup> which requires the dismissal of these counts as against the State and modification of the Preliminary Injunction to clarify that the State is not so enjoined. (Pls.' Resp. to Mot. at 2-3, Dkt. No. 88.) Nonetheless, Plaintiffs inexplicably appear to resist the dismissal of the entire Complaint against the State and instead refer the Court to their response in opposition to Defendants' motion to dismiss Counts III and

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<sup>1</sup> Although Plaintiffs do not explicitly state in their response to the Motion that they concede to the dismissal of Count V, and instead point the Court to their response in opposition to Defendants' separate motion to dismiss Count V, in that response Plaintiffs do, in fact, concede that the State's assertion of its immunity requires the dismissal of Count V. (See Pl.'s Resp. to Defs.' Mot. Dismiss Ct. V, Dkt. No. 89.)

IV for their position on those counts – counts that on their face do not appear to be asserted against the State but as to which Plaintiffs sought relief against the State in their Preliminary Injunction Motion. (*See id.* at 3; *see also* Compl. at ¶¶ 135-142, Dkt. No. 1; Mot. for TRO at 18-20, Dkt. No. 23.) Furthermore, review of Plaintiffs’ response to Defendants’ motion to dismiss Counts III and IV in fact reveals no argument whatsoever regarding Plaintiffs’ ability to maintain either count against the State, given the State’s decision not to waive its sovereign immunity. (*See* Pl.’s Resp. to Mot. Dismiss Cts. III & IV, Dkt. No. 87.) Instead, in that response, Plaintiffs’ correctly note that the Court has already ruled that Count IV should be dismissed, rendering that portion of the motion moot. (*See id.* at 2.) With respect to Count III, where Plaintiffs bring claims under 42 U.S.C. §§ 1983 and 1985 for prospective equitable relief, Plaintiffs address only Joseph Talachy’s standing to bring Count III, the sufficiency of their Section 1985 claim, and incorporate by reference arguments from their other briefs regarding preemption and their claims against Individual Defendants Governor Susana Martinez and Jeremiah Ritchie. (*See id.* at 3-6.) At no point do Plaintiffs support, or even argue, how they can maintain their Section 1983/1985 claim as against the State, as opposed to the Individual Defendants, given the State’s assertion of its sovereign immunity. Accordingly, Plaintiffs have identified no basis upon which to contest the State’s entitlement to dismissal of the *entire* Complaint as against the State.

For the reasons stated above and in the Motion, the State respectfully requests that the Court dismiss the entire Complaint against the State and modify the October 7, 2015 Preliminary Injunction to remove the State as an enjoined party.

Respectfully submitted,

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**CERTIFICATE OF SERVICE:**

I hereby certify that on February 23, 2016, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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