No. 16-2228

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PUEBLO OF POJOAQUE, a federally recognized Indian Tribe, JOSEPH M. TALACHY, Governor of the Pueblo of Pojoaque,

Plaintiffs-Appellants,

v.

STATE OF NEW MEXICO, SUSANA MARTINEZ, JEREMIAH RITCHIE, JEFFERY S. LANDERS, SALVATORE MANIACI, PAULETTE BECKER, ROBERT M. DOUGHTY III, and CARL E. LONDENE,

Defendants-Appellees.

Appeal from the United States District Court for the District of New Mexico
Honorable James O. Browning, District Judge
(D.C. No. 1:15-CV-00625-JB-GBW)

BRIEF OF APPELLEES

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Related Appeal: New Mexico v. United States Department of Interior, Nos. 14-2219 & 14-2222 (consolidated).

Prior Appeal: Pueblo of Pojoaque, et al. v. State of New Mexico, et al., No. 15-2187 (Defendants' appeal from preliminary injunction; dismissed).

Introduction

Until June 30, 2015, the Pueblo of Pojoaque conducted Class III (casino-style) gaming on its tribal lands under a compact with the State of New Mexico pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721. On that date the compact expired. The Pueblo's gaming activities continue, notwithstanding that in the absence of a compact those activities are unlawful under IGRA.

The State, through its Gaming Control Board, has initiated regulatory action against State-licensed, non-Indian gaming equipment manufacturers or other vendors who have continued to provide products or services to the Pueblo after expiration of the compact. These businesses are violating state law by furthering or profiting from the Pueblo's illegal gaming. The State's action may potentially affect the conditions under which they may conduct business with, or their ability to continue to conduct business with, State-licensed, non-Indian gaming operators within the state outside Indian lands. The State has taken no action directly against the Pueblo, nor has it prohibited the vendors from continuing to transact business with the Pueblo.

The Pueblo and its Governor (hereinafter, the Pueblo) instituted this action against the State and various officials including members of the Gaming Control Board (hereinafter, the State), based on the proposition that the State's regulatory

actions violate IGRA's prohibition on state regulation of the Pueblo's on-reservation gaming activities and are preempted by IGRA. The district court (the Honorable Robert C. Brack) initially issued a preliminary injunction against the State, but a successor judge (the Honorable James O. Browning) ultimately stayed the injunction and resolved the merits issues in favor of the State. The Pueblo has appealed from the district court's final judgment.

Missing from the Pueblo's opening brief is any acknowledgement either that IGRA's preemptive scope has been held by the United States Supreme Court to reach only the conduct of Indian gaming on Indian lands, which the State has not sought to regulate, or that the State's actions serve its legitimate sovereign interest in ensuring that its gaming licensees operating within the state obey its laws, so that the state's gaming environment remains free of corruptive influences. The Pueblo's generalized invocations of IGRA do not stand up to Judge Browning's thorough and particularized delineation of IGRA preemption and its limits in the district court's final decision on the merits. The State is acting well within its authority when it applies its general gaming laws to regulate State-licensed, non-Indian vendors insofar as they conduct business with State-licensed, non-Indian gaming operators outside of Indian land. The State's exercise of its police power within its jurisdiction is not preempted by IGRA, even if the State's actions have an ancillary effect on the Pueblo's operations.

The district court was correct to reject the Pueblo's claims based on IGRA preemption in its final judgment. That judgment should be affirmed.

Statement of Issues

I. Did the district court correctly conclude that it had jurisdiction to rule on the merits of the Pueblo's claims while the State's interlocutory appeal from a preliminary injunction was pending?

II. Did the district court correctly conclude that IGRA does not preempt the enforcement of New Mexico's general gaming laws against State-licensed, non-Indian gaming equipment manufacturers or other vendors, with respect to their licenses to do business with State-licensed, non-Indian gaming operators outside of Indian lands, when those vendors violate state law by furthering or profiting from illegal gaming activities conducted by an Indian tribe on tribal land?

Statement of the Case

The parties appear largely to agree on the basic historical facts, which are reflected in the Pueblo's complaint and in various papers and evidentiary materials subsequently submitted to the district court by both sides. Of course, the State does not accept the Pueblo's characterization of the State's motives and actions or the projected consequences thereof. And the Pueblo's legal conclusions, freely carried over from the complaint to the Pueblo's opening brief, are not to be taken as true. Berneicke v. Citimortgage, Inc., 708 F.3d 1141, 1144 (10th Cir. 2013).

In 2005, the Pueblo entered into a compact with the State of New Mexico pursuant to IGRA, under which the Pueblo conducted Class III (casino-style) gaming on its lands. When the parties were unable to reach agreement on the terms of a new compact, the Pueblo filed suit against the State in December 2013 alleging that the State had failed to negotiate a compact in good faith. See 25 U.S.C. § 2710(d)(7)(A)(i). The State asserted its Eleventh Amendment immunity, resulting in dismissal of the suit. See Seminole Tribe v. Florida, 517 U.S. 44 (1996). The Pueblo then invoked regulations promulgated by the Secretary of the Interior under which the Pueblo could carry on Class III gaming under procedures approved by the Secretary. See 25 C.F.R. Part 291. The State, however, challenged the validity of those regulations, which allowed gaming procedures to be imposed on a state without the finding of bad faith required by IGRA. The New Mexico federal district court ruled in the State's favor and enjoined the federal government from proceeding to adopt secretarial procedures. An appeal by the government and the Pueblo from that ruling is pending. New Mexico v. Department of Interior, Nos. 14-2219 & 14-2222 (consolidated). (See Aplt. App. at I/116-19.)

Despite further efforts, the State and the Pueblo remained unable to agree on terms to replace the 2005 compact. On June 30, 2015, the compact expired. On that date, the United States Attorney for the District of New Mexico issued a letter

to the Pueblo stating that, as of midnight on June 30, 2015, "continued gaming operations by the Pueblo . . . would violate federal law." (Aplt. App. at I/119-20.) The United States Attorney made this determination in response to a letter from the Governor of the Pueblo indicating that the Pueblo intended to continue its Class III gaming operations notwithstanding the expiration of its compact and requesting forbearance from enforcement. (See Aplee. Supp. App. at 1/140.) The United States Attorney agreed to withhold enforcement action while the Department of Interior appeal was pending, provided the Pueblo met certain conditions. (Id.) The National Indian Gaming Commission (NIGC) similarly issued a letter to the Pueblo stating that it would withhold enforcement action conditionally, despite expiration of the Pueblo's compact. (Aplee. Supp. App. at 1/143.) The Pueblo has continued to conduct casino gaming since the expiration of its compact.

On June 30, 2015, a spokesman for New Mexico Governor Susana Martinez stated that the United States Attorney's decision not to prosecute the Pueblo for violating federal law "provides no protection to banks, credit card vendors, gaming machine vendors, advertisers, bondholders, and others that are now doing business with an illegal gambling enterprise." (Aplt. App. at I/120; see Aplee. Supp. App. at 1/86.) On July 15, 2015, the State's Gaming Control Board announced that it would hold in abeyance the license renewal applications of certain vendors known

to be dealing with the Pueblo in light of the Pueblo's ongoing illegal operations. (Aplt. App. at I/120.)

The Pueblo instituted the present action in July 2015. (Aplt. App. at I/16.) The case was assigned to district judge Robert C. Brack.

Count I of the Pueblo's complaint alleges that the State failed to conduct compact negotiations in good faith, in violation of IGRA. (Aplt. App. at I/48.) The State again asserted its Eleventh Amendment immunity, resulting in the stipulated dismissal of this count. (Aplee. Supp. App. at 1/20, 2/250.) Hence the Pueblo's allegations of bad faith stand only as allegations, having never been adjudicated. In fact, the State has successfully entered into compacts with every other Pueblo and tribe engaged in Class III gaming in the state. Pojoaque Pueblo is the only outlier. (Aplee. Supp. App. at 4/568-69, 5/787, 788-89.)

Count II of the complaint alleges that the State violated the Supremacy Clause by interfering with a claimed right of the Pueblo to conduct casino gaming operations on Pueblo land free of regulation by the State. (Aplt. App. at I/48-49.) Counts III and IV assert that the State's actions with respect to the vendors are actionable under 42 U.S.C. § 1983 or 42 U.S.C. § 1985. (Aplt. App. at I/49-52.) Count V asserts a pendant state-law claim for tortious interference with contractual relations. (Aplt. App. at I/52.)

In September 2015, the Gaming Control Board issued audit letters to several State-licensed vendors of gaming equipment that had dealt with the Pueblo after the expiration date of the 2005 compact. (Aplt. App. at I/121-22.) The letters cited, inter alia, to New Mexico regulations prohibiting gaming licensees from furthering or profiting from any illegal activity. (Aplee. Supp. App. at 1/95-99.) See 15.1.10.9(N) NMAC. The Board subsequently issued citations to those businesses based on their dealings with the Pueblo after expiration of the compact. (Aplt. App. at I/122.) Any resulting regulatory action taken by the Board would affect only the licensees' ability to do business with State-licensed operators of casino gaming facilities outside of Indian lands, and not their ability to do business with the Pueblo.[1]

On September 25, 2015, the Pueblo moved for a temporary restraining order or preliminary injunction, seeking to enjoin the State from "threaten[ing], . . . punish[ing] or tak[ing] enforcement action against" the licensed vendors. (Aplee. Supp. App. at 1/57.) The Pueblo supplemented its motion in response to developments, including the Board's issuance of the citations, occurring before the

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[1] As the Pueblo acknowledged below, "State licenses are required for the Vendors to do business with non-Indian 'racinos', fraternal and charitable entities, and the State lottery, but are not required for the Vendors to do business with any tribal gaming facility located on Indian lands within the State's borders." (Aplee. Supp. App. at 1/31-32; see also id. at 2/232, 235.)

motion was heard.[2] The Pueblo claimed that the Court should enjoin the State from performing its regulatory functions because, pursuant to IGRA, "states have no jurisdiction over gaming activities occurring on Indian lands except as expressly agreed upon in the context of a tribal-state compact" (Aplt. Supp. App. at 1/43), which no longer existed. Due to the expedited nature of the Pueblo's request for injunctive relief, the State did not have the usual opportunity to fully brief, and the district court therefore did not have the benefit of a complete analysis of, the complicated and core questions of whether the State's exercise of its police power was preempted by IGRA or whether IGRA even reaches actions taken off-reservation.

The district court concluded that preemption applied, expressing the view that the State's actions potentially affecting the vendors' licenses were an attempt "to accomplish indirectly that which Defendants know they are without authority or jurisdiction to accomplish directly." (Aplt. App. at I/76.) The court enjoined the State from "taking any action that threatens, revokes, conditions, modifies, fines, or otherwise punishes or takes enforcement against any licensee in good standing with the New Mexico Gaming Control Board based wholly or in part on grounds

[2] Even later in the litigation, the Pueblo introduced the allegation that the State had interfered with the Pueblo's gaming by "threatening to withhold funding for certain tribal programs." (Aplt. Br. at 8.) In fact, the cited letter regarding funding (Aplt. App. at II/433) was written independently by an official with no involvement in the Pueblo's gaming issues and, when brought to the attention of the governor's office, was promptly rescinded. (Aplee. Supp. App. at 4/604-06.)

that such licensee is conducting business with the Pueblo." (Aplt. App. at I/80.) The injunction was to remain in effect until "30 days after the Tenth Circuit Court of Appeals issues its mandate" in the Department of Interior appeal. (Id.)

The State appealed from the preliminary injunction. Pueblo of Pojoaque v. State of New Mexico, No. 15-2187. After briefing, this Court ordered that appeal held in abeyance pending a decision in the related Department of Interior appeal. (Order, filed Mar. 24, 2016, in No. 15-2187.)

In the district court, a change of counsel by the State at the time of the preliminary injunction appeal precipitated reassignment of the case to district judge James O. Browning. The successor judge first encountered the preliminary injunction in the context of a motion by the Pueblo for civil contempt, which alleged that the State had violated the injunction by deferring licensing action with respect to individuals and businesses dealing with the Pueblo. The propriety of the injunction itself was not at issue. While directing cautionary language to the State, the court denied the contempt motion. (Aplt. App. at I/82-111.)

The State filed motions in the district court seeking, inter alia, to dismiss Counts II-V of the complaint and to stay the preliminary injunction. (Aplee. Supp. App. at 2/259, 283, 297, 3/324, 389, 394, 407, 420, 424.) In connection with these motions, the State presented a substantially more developed analysis of IGRA preemption than it had offered in the preliminary injunction proceedings.

In due course, the district court reached the State's motions challenging the injunction and attacking the Pueblo's legal theories. The court dismissed the Pueblo's claims and stayed the preliminary injunction. (Aplt. App. at I/113, 257-58.) The court concluded that IGRA "does not preempt New Mexico's regulatory actions with respect to non-Indian, state-licensed vendors doing business with non-Indian gaming operators." (Aplt. App. at I/232.)

Following the court's entry of a final judgment, the Pueblo brought the present appeal. (Aplt. App. I/262.) Because this appeal encompasses all issues, the State voluntarily dismissed its appeal from the preliminary injunction. (Order, filed Nov. 30, 2016, in No. 15-2187.)

After the district court denied the Pueblo's post-judgment motion to stay the court's rulings, the State took the view that entry of the final judgment freed it to resume its regulatory actions with respect to the licensees that had continued dealing with the Pueblo. However, on the Pueblo's motion, this Court entered and then extended a temporary injunction against the State mirroring the injunction originally entered by the district court. (Orders filed Mar. 1 & Mar. 14, 2017.)[3]

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[3] Because the district court ruled while the State's appeal from the preliminary injunction was pending, the court stayed the injunction pursuant to Federal Rule of Civil Procedure 62(c) and Federal Rule of Appellate Procedure 8(a)(1) (Aplt. App. at I/250-56) and also issued an indicative ruling pursuant to Fed. R. Civ. P. 62.1 noting that it would "dissolve or vacate" the injunction if the preliminary injunction appeal were to be dismissed or remanded and the court regained jurisdiction to do so (Aplt. App. at I/256-57). The court did not further address the

Consequently, the Pueblo continues its unlawful Class III gaming, and this appeal presents the very real question whether IGRA renders the State powerless to exert its authority over its licensees: non-Indian gaming equipment manufacturers and other vendors that are violating the State's laws by supporting illegal gaming operations that are being conducted by an Indian tribe on its tribal lands.

Summary of Argument

I

The district court had jurisdiction to rule on the merits of the Pueblo's claims. It is well established that a district court may proceed to determine an action on the merits while an interlocutory appeal from the grant or denial of a preliminary injunction is pending. The ouster-of-jurisdiction rule on which the Pueblo relies is inapplicable to the present proceedings.

II

The State's regulatory actions affecting non-Indian gaming equipment manufacturers or other vendors insofar as they are licensed to do business with

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injunction after the State's appeal was dismissed. The court's disposition of the Pueblo's claims on the merits, however, had the effect of terminating the preliminary injunction. See United States ex rel. Bergen v. Lawrence, 848 F.2d 1502, 1512 (10th Cir. 1988) ("With the entry of the final judgment, the life of the preliminary injunction came to an end[.]" (internal quotation marks & citation omitted)); see generally 11A Charles A. Wright et al., Federal Practice and Procedure § 2947 (3d ed. 2013). It appears, then, that the operative injunction at this time is the temporary injunction entered and extended by this Court's March 1 and March 14, 2017, Orders.

State-licensed, non-Indian gaming operators outside of Indian land are not preempted by IGRA.

The Pueblo's ongoing Class III gaming operations in the absence of a state-tribal compact are indisputably illegal. The State has a legitimate interest in exercising its police power under the Gaming Control Act to ensure that its licensees obey its laws and do not engage in conduct that threatens to corrupt the gaming environment in the state.

IGRA's preemptive scope is limited to the conduct of Indian gaming on Indian land. Although the Pueblo is acting unlawfully, the State has made no attempt to prosecute the Pueblo, to seize Pueblo property, or to enter Pueblo lands. Nor does the State's action prevent any business from continuing to deal with the Pueblo. IGRA does not preempt the State's authority to regulate State-licensed, non-Indian gaming equipment manufacturers or other vendors who have continued to deal with the Pueblo in violation of State law, to the extent the State's actions may affect the vendors' licensure to transact business with State-licensed, non-Indian gaming operators conducting gaming activities outside Indian land. The State may enforce its general gaming laws within its jurisdiction for the protection of the public even if there is a resultant, ancillary effect on the Pueblo's illegal enterprise.

The district court's judgment in favor of the State should be affirmed in all respects, and the injunction remaining in effect against the State should be permanently dissolved.

Argument

I. THE DISTRICT COURT HAD JURISDICTION TO RULE ON THE MERITS OF THE PUEBLO'S CLAIMS WHILE THE STATE'S INTERLOCUTORY APPEAL FROM THE PRELIMINARY INJUNCTION WAS PENDING.

Standard of Review: "We review de novo whether the district court had jurisdiction to act." Dutcher v. Matheson, 733 F.3d 980, 985 (10th Cir. 2013).

The Pueblo would require a remand of this case to the district court so that the district court can do once again what it already has done. (Aplt. Br. at 16.) According to the Pueblo, the district court lacked jurisdiction to rule on the merits of the Pueblo's claims while the State's interlocutory appeal from the preliminary injunction was pending. (Aplt. Br. at 11-16.) As the district court correctly recognized, the law of this Circuit is squarely to the contrary. (Aplt. App. at I/205-09.) See Free Speech v. Fed. Election Comm'n, 720 F.3d 788 (10th Cir. 2013).

The Pueblo asserts that "[t]he District Court's reliance on Free Speech" over a general rule of jurisdictional divestiture when an interlocutory appeal is taken, see, e.g., Stewart v. Donges, 915 F.2d 572 (10th Cir. 1990), "is not supported by governing case law." (Aplt. Br. at 15.) This statement is not correct, as Free Speech is directly on point and controlling. There, this Court recognized that "in

an appeal from an order granting or denying a preliminary injunction, a district court may nevertheless proceed to determine the action on the merits." 720 F.3d at 791 (internal quotation marks & citation omitted). The Court went on to note the utility of such a rule, given "[t]he desirability of prompt trial-court action in injunction cases." Id. at 791-92 (internal quotation marks & citation omitted); see generally 16 Charles A. Wright et al., Federal Practice and Procedure § 3921.2 (3d ed. 2012). The district court is divested of jurisdiction in an interlocutory appeal when allowing the district court to proceed would defeat the purpose of the appeal, such as when a defense of qualified immunity or double jeopardy has been denied. See Stewart, 915 F.2d at 576 ("If the defense is valid, then no part of the action should proceed against the defendant."); see also Hardin v. First Cash Fin. Servs. Inc., 465 F.3d 470 (10th Cir. 2006) (same result upon denial of motion to compel arbitration).

It is not a matter of Stewart v. Donges never having been overruled. (See Aplt. Br. at 14.) As the district court recognized, Free Speech and Stewart are based on "entirely different considerations. In short, both cases can be good law; Stewart v. Donges is simply inapplicable to the present case." (Aplt. App. at I/209.) Under Free Speech, the district court had jurisdiction to address the merits of the Pueblo's claims.

II. THE STATE'S REGULATORY ACTIONS ARE NOT PREEMPTED BY IGRA.

Standard of Review: "On appeal, we review the district court's preemption determination de novo." Ute Mountain Ute Tribe v. Rodriguez, 660 F.3d 1177, 1185 (10th Cir. 2011) (internal quotation marks & citation omitted) (alteration omitted).

Whether the Pueblo's theory of IGRA preemption is correct presents the only issue of substance in this appeal. The district court dismissed Count I of the complaint, alleging failure to negotiate in good faith, and all other claims against the State of New Mexico because the State invoked its Eleventh Amendment immunity. (Aplt. App. at I/246-49.) It dismissed the federal claims for monetary damages against the individual Defendants based on qualified immunity. (Aplt. App. at I/239-44.) It dismissed the Pueblo's claims in Counts III and IV brought under 42 U.S.C. § 1983 because "[e]ven assuming that IGRA preempts the Individual Defendants' actions, the Pubelo does not identify a federal right that is cognizable under § 1983." (Aplt. App. at I/236.) It dismissed the Pueblo's claims in Counts III and IV brought under 42 U.S.C. § 1985 because "[t]he Plaintiffs do not allege . . . [a] conspiracy involv[ing] any 'racial or class-based invidiously discriminatory animus.'" (Aplt. App. at I/238 (citation omitted).) It dismissed Count V, the pendent state law tort claim, as to all Defendants based on the State's sovereign immunity. (Aplt. App. at I/249-50.) In its appeal, the Pueblo makes no

challenge to any of these rulings. The only count at issue is Count II – the Pueblo's claim for declaratory and injunctive relief under the Supremacy Clause.

The Pueblo contends that the district court erred in holding that it lacked jurisdiction to entertain Count II of the complaint seeking declaratory and injunctive relief on preemption grounds. (Aplt. Br. at 17.) Actually, the district court held that the Pueblo had failed to state a claim on which relief could be granted: "Count II, as pled, . . . is not a cause of action brought pursuant to the Court's equitable power." (Aplt. App. at I/234.) The court further held that there was no basis for equitable relief because "IGRA does not preempt . . . state law." (Id.)

Assuming, arguendo, that Count II can be construed to state a claim for equitable relief on the basis of IGRA preemption, the district court should be affirmed because it correctly concluded that IGRA does not preempt the State's regulatory actions at issue in this case.

A. The Pueblo's Continued Engagement in Class III Gaming Activities in the Absence of a Compact Is Unlawful.

The Pueblo's compact with New Mexico expired on June 30, 2015. Following expiration of the compact, the Pueblo has continued its Class III gaming activities. There is no question that in doing so it is acting unlawfully. (See Aplt. App. at I/220-22.) IGRA provides that Class III gaming is permitted on Indian lands only if it is conducted "in conformance with a Tribal-State compact entered

into by the Indian tribe and the State . . . that is in effect." 25 U.S.C. § 2703(8)(C). "[A] tribe cannot conduct class III gaming on its lands without a compact[.]" Michigan v. Bay Mills Indian Cmty., 134 S. Ct. 2024, 2035 (2014); see also United States v. 162 Megamania Gambling Devices, 231 F.3d 713, 718 (10th Cir. 2000) ("Class III gaming . . . is allowed only where a tribal-state compact is entered.").

The United States Attorney and the NIGC had no difficulty reaching the obvious conclusion that the Pueblo's uncompacted Class III gaming is illegal under IGRA. Supra p. 5. Indeed, the Pueblo acknowledged as much when it approached the U.S. Attorney to request forbearance despite its intent to continue gaming after its compact expired. Id.

Moreover, nothing in IGRA prohibits the State from taking note of the fact that the Pueblo's Class III gaming absent a compact violates federal law. (Aplee. Supp. App. at 5/765-67.) The State must be able to mark the existence of unlawful gaming activities, whether within the state, outside it, or on Indian land within its borders, in order to enforce its own laws that prohibit gaming licensees from furthering or profiting from illegal activity. It is true that where there is no tribal-state compact "the only enforcement provided for in [ ] IGRA is through the federal government." Wyandotte Nation v. Sebelius, 337 F. Supp. 2d 1253, 1257 (D. Kan. 2004), aff'd in pertinent part, 443 F.3d 1247 (10th Cir. 2006). But, as the district court observed, "New Mexico has merely asserted that Pojoaque Pueblo is

violating federal law, and has accordingly taken actions to enforce its own law outside of Indian country" with respect to its own licensees. (Aplt. App. at I/221.) It has taken no enforcement action against the Pueblo.

B. The State Has a Sovereign Interest in Enforcing Its Gaming Laws Against Licensees That Further or Profit From Illegal Activity.

The police power of a state "extends to all matters affecting the public health or the public morals." Stone v. Mississippi, 101 U.S. 814, 818 (1879). A state has a "sovereign interest in being in control of, and able to apply, its laws throughout its territory." Mashantucket Pequot Tribe v. Town of Ledyard, 722 F.3d 457, 476 (2d Cir. 2013).

The New Mexico Supreme Court has "firmly assert[ed]" the State's authority to exercise its police power over gaming activities within its jurisdiction. Srader v. Verant, 1998-NMSC-025, ¶ 16, 964 P.2d 82. By law and regulation, New Mexico strictly and comprehensively regulates gaming activity within the State's borders. See generally New Mexico Gaming Control Act, NMSA 1978, §§ 60-2E-1 to -62 (1997, as amended), and its implementing regulations, 15.1 NMAC. Gaming activity is permitted in New Mexico if it is "strictly regulated to ensure honest and competitive gaming that is free from criminal and corruptive elements and influences." NMSA 1978, § 60-2E-2(A) (1997).

The provisions of the Act are carried out by the Gaming Control Board. Among other powers and responsibilities, the Board promulgates regulations

necessary to implement and administer the Act, conducts audits and investigations, and issues licenses for persons to engage in gaming activity within the State. Id. § 60-2E-7 (2009).

Anyone who manufactures or distributes gaming devices used in New Mexico must obtain a license from the Board to do so. Id. § 60-2E-13. Racetrack casinos and nonprofit fraternal and veterans' organizations may be licensed to conduct gaming operations. Id. §§ 60-2E-3(GG), 60-2E-26(I). The Board also licenses gaming equipment and issues certifications or work permits for individuals involved in gaming. Id. § 60-2E-14 (2007). A corporation seeking licensure under the Gaming Control Act is subject to broad information disclosure requirements and to a detailed investigation of the corporate entity and its key personnel. See id. §§ 60-2E-14(E), -16(C), -18 through -25. The Act prohibits issuance of a license unless the Board determines that the applicant is "a person whose prior activities, . . . habits and associations do not pose a threat to the public interest or to the effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming." Id. § 60-2E-16(B)(2) (2009).

It is the responsibility of licensees to employ and maintain "suitable methods of operation" consistent with State law. 15.1.10.8(B) NMAC. Unsuitable methods of operation include "engaging in, furthering, or profiting from any illegal activity

or practice." 15.1.10.9(N) NMAC. Violation of any provision of the Act or its implementing regulations by a licensee is grounds for suspension or revocation of the license or imposition of a civil fine. 15.1.10.11(A) NMAC.

The executive director of the Board is empowered to issue an administrative citation to any licensee "upon a reasonable belief that the licensee has violated or is violating any provision of the Gaming Control Act or regulations of the [B]oard." NMSA 1978, § 60-2E-10(D)(3) (2002). The Board takes enforcement action against a licensee by issuing a complaint and affording the licensee a hearing with full due process protections. See id. §§ 60-2E-32 & -59 (2002). Final action by the Board is subject to judicial review. Id. § 60-2E-60 (2002).

There is no doubt that the Board, in citing licensees for regulatory violations, suspending or revoking licenses, imposing fines, or otherwise carrying out its responsibilities to ensure that gaming activities in New Mexico are conducted in accordance with the law, is exercising the State's police power. Srader, 1998-NMSC-025, ¶ 11, 964 P.2d at 87; see also Kearns v. Aragon, 1959-NMSC-102, ¶ 16, 333 P.2d 607, 610 (observing that the State exercises its police power "to insure so far as possible the decent and orderly conduct of a business affecting the public health, morals, safety and welfare").

C. The District Court Correctly Concluded That IGRA Preemption Does Not Bar the State from Applying Its General Gaming Laws to State-Licensed, Non-Indian Gaming Equipment Manufacturers or Other Vendors With Respect to Their Ability to Deal With State-Licensed, Non-Indian Gaming Operators Outside Indian Lands, When Those Vendors Violate State Law by Supporting Illegal Gaming Conducted by an Indian Pueblo on Tribal Land.

This is not, as the Pueblo would have it, "a tale of two judges" (Aplt. Br. at 24): the original judge who granted the Pueblo a preliminary injunction and the successor judge who ruled against it on the merits. Rather, it is a tale of two proceedings: the expedited proceedings on the Pueblo's motion for a temporary restraining order and preliminary injunction and the subsequent proceedings on the State's motions to dismiss the Pueblo's claims and for relief from the injunction. In granting injunctive relief, the original judge accepted the Pueblo's theory of preemption, which was fully developed in the Pueblo's motion papers (Aplee. Supp. App. at 1/23-205) but was not addressed in any depth in the State's hastily prepared response (see Aplee. Supp. App. at 2/206-46). Addressing the merits, the successor judge had the benefit of full briefing on the preemption issue. (E.g., Aplee. Supp. App. at 2/266-76.) The successor judge's more considered view, set forth in the district court's comprehensive, analytical opinion on the merits, is the correct one.

1. IGRA Does Not Expressly Preempt the State's Off-Reservation Regulation of Its Gaming Licensees.

In California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987), the Supreme Court concluded that, in light of tribal sovereignty interests and the evident federal interest in promoting tribal development, states could not, in the absence of Congressional authorization, apply their laws to gambling conducted by an Indian tribe on tribal land. Congress responded with IGRA. See United States v. Wheeler, 435 U.S. 313, 323 (1978) (stating that tribes retain their historic sovereignty "until Congress acts"). The preemptive scope of IGRA is at issue in this appeal. (See Aplt. Br. at 10.)

IGRA reflects an attempt to balance federal, tribal, and state interests with regard to Indian gaming. Alabama v. PCI Gaming Auth., 801 F.3d 1278, 1300 (11th Cir. 2015). By no means does IGRA confer the kind of supremacy on Indian tribes that the Pueblo assumes. For instance, states hold a veto power: no matter how much a tribe may wish to engage in a type of Class III gaming, it cannot do so at all if the state does not permit such gaming for any purpose by any other entity. 25 U.S.C. § 2710(d)(1)(B). For Class III gaming permitted by a state, a tribe may conduct such gaming on its lands only in conformity with a tribal-state compact, but the state's regulation of the tribal gaming is limited to what the compact allows. Id. § 2710(d)(1)(C), (d)(7)(A)(ii). A state may not criminally enforce its laws against a tribe conducting gaming on tribal land in the absence of a compact;

only the federal government may do so. See 18 U.S.C. § 1166(d). But a state has "capacious" regulatory power over tribal gaming outside Indian territory, Michigan v. Bay Mills Indian Cmty., 134 S. Ct. 2024, 2034 (2014) – as it does, of course, over non-Indian gaming within the state.

In the memorandum opinion supporting its final judgment (Aplt. App. at I/113), the district court undertook a comprehensive analysis of whether IGRA preempts, explicitly or impliedly (by field or conflict preemption), the State regulatory actions at issue in this case. The court correctly found that there is no preemption.

First, the court relied on the background and purpose, legislative history, language, and controlling judicial interpretations of IGRA by the Supreme Court and this Court in determining that IGRA gives no indication that Congress intended to expressly preempt the State's traditional state police power to regulate its own gaming licensees in their relations with other non-Indian gaming licensees outside of Indian lands. (Aplt. App. at I/217-19.) The court concluded that "[n]othing in IGRA's language suggests that IGRA preempts a state's regulation of gaming within its own jurisdiction." (Aplt. App. at I/227.)

As noted above, IGRA was adopted in the aftermath of Cabazon to address the ouster of state authority over Indian gaming on Indian lands brought about by that decision. See Bay Mills, 134 S. Ct. at 2034. IGRA's legislative history

indicates that the statute is intended "to expressly preempt the field in the governance of gaming activities on Indian lands." S. Rep. No. 100-446, at 6-7 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3076.

Moreover, as the district court noted, the text of IGRA is replete with "provisions explicitly referencing regulation of gaming on Indian lands." (Aplt. App. at I/218 (citing examples).) Construing the scope of IGRA in Bay Mills, the Supreme Court observed that "[e]verything – literally everything – in IGRA affords tools (for either state or federal officials) to regulate gaming on Indian lands, and nowhere else." 134 S. Ct. at 2034. This Court, too, has concluded that IGRA is intended "to expressly preempt the field in the governance of gaming activities on Indian lands." United Keetoowah Band of Cherokee Indians v. Oklahoma, 927 F.2d 1170, 1179 (10th Cir. 1991) (internal quotation marks & citation omitted); see also Seneca-Cayuga Tribe of Oklahoma v. Nat'l Indian Gaming Comm'n, 327 F.3d 1019, 1032 (10th Cir. 2003) ("[T]hrough IGRA, Congress spoke specifically to the federal government's regulatory scheme over certain forms of authorized gambling within Indian country."). See also Mashantucket Pequot Tribe, 722 F.3d at 469 (rejecting tribe's contention that IGRA "completely preempts all state legislation affecting the field of gaming").

Because IGRA's scope is limited to the regulation of Indian gaming on tribal land, the statute simply does not address, and therefore cannot expressly preempt,

state regulation of non-Indian gaming licensees regarding their ability to do business with other, non-Indian gaming operators outside of Indian land. As the district court noted, the State "ha[s] taken no regulatory action on Pojoaque Pueblo's tribal lands. . . . [T]he [State's] actions do not prohibit Pojoaque Pueblo from continuing its gaming operations, nor do they prevent vendors from supplying equipment to Pojoaque Pueblo for such operations." (Aplt. App. at I/219.)

The Pueblo attempts to bring the State's regulatory actions within the preemptive reach of IGRA by pointing to the "on-reservation location of the tribal gaming activities." (Aplt. Br. at 22.) But that does not mean that the State is regulating Indian gaming on Indian land contrary to IGRA. Such a contention is factually unsupportable. It is undisputed that the State has taken no regulatory action whatsoever against the Pueblo. The State has not prohibited the Pueblo from conducting its gaming operations, entered Pueblo lands, seized any gaming equipment, or prohibited any business from dealing with the Pueblo. The State's actions are directed only to its own non-Indian gaming licensees, and those actions only affect the licensees' ability to conduct business with non-Indian, licensed gaming operators outside the Pueblo's lands. Supra p. 7. Thus the Pueblo's reliance on cases like Wyandotte Nation (see Aplt. Br. at 23-24), involving a state's attempt to enforce its laws on tribal land by raiding a tribal casino and

seizing gaming equipment and proceeds, 443 F.3d at 1251, is entirely inapt. Likewise, the Pueblo's assertion that IGRA preempts states from "threaten[ing] third parties that deal with Indian tribes regarding gaming governed by IGRA" (Aplt. Br. at 24), for which it cites AT&T Corp. v. Coeur d'Alene Tribe, 295 F.3d 899 (9th Cir. 2002), is too broadly stated. AT&T involved a tribal lottery which, for purposes of that decision, was determined to be operating consistently with IGRA. The Pueblo, in contrast, is operating in violation of IGRA. Cf. 295 F.3d at 910 (noting that if legitimacy of tribal lottery were to be successfully challenged, states "then will have the authority" to issue warning letters to long-distance telephone carrier providing toll-free call service to tribe in support of lottery).

The Pueblo also argues that preemption applies because the State's actions "were based solely on and sought directly to disrupt the Pueblo's on-reservation gaming activity" and did have "on-reservation effects" that detrimentally impacted the Pueblo's gaming enterprise. (Aplt. Br. at 21-22.) These arguments, too, are unavailing.

First, the basis for the State's actions was not the Pueblo's gaming on its own lands. The State concededly cannot – and it has not attempted to – apply its laws to control the Pueblo's on-reservation activities. Rather, as the district court recognized, the basis for the State to apply its gaming regulations to non-Indian vendors holding state gaming licenses is the vendors' violation of state law insofar

as they are supporting and profiting from the Pueblo's gaming conducted in violation of federal law. (Aplt. App. at I/221.) The New Mexico Supreme Court has emphasized the State's important interest in enforcing its anti-gambling laws against non-Indians outside of Indian country by holding that IGRA does not bar the State's law enforcement officials from enforcing state law against individuals or entities conducting business with illegal gaming enterprises operating on tribal land. Srader, 964 P.2d at 86, 88.

The State cannot be said to have targeted the Pueblo exclusively. (Aplee. Supp. App. at 5/764-65.) Currently, the Pueblo is running the only illegal game in town. The State's regulation, however, prohibits licensees from "furthering, or profiting from any illegal activity or practice." 15.1.10.9(N) NMAC (emphasis added). To ensure that the gaming environment in New Mexico is kept free from corruptive elements or influences, the State is both entitled and obligated to enforce its general laws against licensees who promote or profit from illegal gaming wherever the illegal activity occurs – whether within the state, in another state, or on an Indian reservation within the state's boundaries. The Pueblo has not pointed to any instance in which the State has failed to enforce its laws against a gaming licensee that supported or profited from illegal gambling.

Second, as the district court held, IGRA does not preempt intention or disruption; it preempts State regulation of Indian gaming on Indian land absent a

compact. (Aplt. App. at I/220.) To be sure, the State's primary intention was an entirely legitimate one: to maintain the upright and law-abiding character of the State's gaming environment. In any event, no preempted activity occurred here. The State "ha[s] regulated only non-Indian vendors operating outside of Pojoaque Pueblo's lands – the motivation behind [that] regulation does not does not itself establish an actual regulation of Pojoaque Pueblo." (Aplt. App. at I/220.)

Furthermore, an interpretation that would trigger IGRA preemption if a state's action were to burden a tribal gaming operation would be contrary to the design of the statute, substituting a sliding scale of "burdensomeness" for the statute's bright-line preemption standard: "the governance of gaming activities on Indian lands." United Keetoowah Band, 927 F.2d at 1179. Moreover, a standard of preemption based on burdening or interfering with tribal gaming would confer a derivative barrier to state regulation on non-Indians doing business with the Pueblo. It would allow tribal vendors to blunt state regulatory efforts by claiming that any regulatory action against the vendor is preempted because it would indirectly affect the tribe's gaming activities.

Third, IGRA does not preempt state actions that have indirect or ancillary effects on tribal gaming but only the direct regulation by a state of Indian gaming on Indian land. IGRA permits states and tribes to agree by compact regarding the application of state regulations that are directly related to licensing and regulating

Class III gaming. 25 U.S.C. § 2710(d)(3)(C)(i).[4] It follows that in the absence of a compact such direct regulation is preempted. But IGRA has no comparable provision relating to the application of state regulations that may have an indirect effect on tribal gaming. See Gaming Corp. of Am. v. Dorsey & Whitney, 88 F.3d 536, 549 (8th Cir. 1996) (stating that IGRA preempts "[a]ny claim which would directly affect or interfere with a tribe's ability to conduct its own licensing process"); United Keetoowah Band, 927 F.2d at 1177 (IGRA "appears to leave no other direct role for such State gaming enforcement."). (See Aplt. App. at I/223.)

This result is consistent with cases not involving IGRA in which this Court and the Supreme Court have held that a state may exercise its authority on its own lands to protect its sovereign interests even if doing so has a consequential impact on reservation-based activity by an Indian tribe. As this Court has noted, "the Supreme Court has not found that application of state law outside Indian country infringes on tribal sovereignty." Muscogee (Creek) Nation v. Pruitt, 669 F.3d 1159, 1182 (10th Cir. 2012).

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[4]The provision states:

> Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to –
> (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity. . . .

25 U.S.C. § 2710(d)(3)(C)(i) (emphasis added).

Thus, in Muscogee (Creek) Nation, this Court held that the state's legitimate authority permitted it to seize, on state land, cigarettes lacking tax stamps that were being shipped into Indian country for sale by Indian dealers. 669 F.3d at 1178-79. The Court explained that, although "[t]he alleged ancillary effect of these laws based on the State's off-Indian country enforcement of them, is that [the tribe's] members cannot buy contraband cigarettes . . . such an indirect effect does not establish a preemption or an infringement of tribal sovereignty claim." Id. at 1183; see also Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505, 514 (1991) ("States may of course collect the sales tax from cigarette wholesalers, either by seizing unstamped cigarettes off the reservation or by assessing wholesalers who supplied unstamped cigarettes to the tribal stores." (citation omitted)).

In Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 (1980), the tribes sought to prevent the State of Washington from collecting its cigarette excise tax on sales by tribally authorized tobacco outlets on the reservation to non-tribal members. The sales deprived the state of tax revenues from the on-reservation sales. A great majority of the sales were to non-Indians who purchased cigarettes from the Indian dealers in order to avoid the state tax. That business would "dry up" if the price advantage associated with tax-free, on-reservation purchases were to be eliminated. Id. at 145.

The Supreme Court held nonetheless that the state could tax the sales made on the reservation to non-members of the tribes. Although the tribes argued that they would be deprived of substantial revenues that they used to provide essential government services, the Court held that "principles of federal Indian law, whether stated in terms of pre-emption, tribal self-government, or otherwise," did not prevent the state from imposing its excise tax. Id. at 154-55; see also id. at 156 ("Washington does not infringe the right of reservation Indians to 'make their own laws and be ruled by them' merely because the result of imposing its taxes will be to deprive the [t]ribes of revenues which they currently are receiving." (citation omitted)).

Moreover, the Supreme Court held that the state could seize on state land cigarettes bound for the reservation dealers that did not bear the state's tax stamps. The cigarettes were merchandise to the dealers on the reservation, but they were contraband under state law on state land. "It is significant," the Court wrote, "that these seizures take place outside the reservation, in locations where state power over Indian affairs is considerably more expansive than it is within reservation boundaries." Id. at 162. In this case, the State's action falls far short of what was allowed in Colville: depriving Indian merchants of the very goods they sought to sell. Here the State is not preventing the Pueblo from continuing to carry on its gaming activities. (See Aplt. App. at I/226-27.)

In Cabazon, the Supreme Court suggested that underlying Colville is the notion that the tribes "had no right to market an exemption from state taxation," 480 U.S. at 219 (internal quotation marks & citation omitted), whereas tribes that conduct on-reservation gaming derive the associated revenue from legitimate activities developed through the tribes' own efforts to provide recreational opportunities and other value to non-tribal members, id. at 201-20. The element of legitimacy is critically lacking here. Just as the Supreme Court observed in Colville that imposing the state's cigarette tax "d[id] not burden commerce that would exist on the reservations without respect to the tax exemption." 447 U.S. at 157, here the State's actions with respect to its licensees, to the extent they have an impact on the Pueblo's illegal gaming, do not burden an activity that would exist if the Pueblo were in compliance with IGRA.

2. IGRA Does Not Impliedly Preempt the State's Off-Reservation Regulation of Its Gaming Licensees.

Continuing with its thorough preemption analysis, the district court concluded that there is no basis to find that IGRA impliedly preempts the State's ability to regulate its gaming licensees as it has done here. Because, given IGRA's limited scope, "Congress intended to leave much of state gaming law intact[,] it is difficult to conclude that there is field preemption." (Aplt. App. at I/230.) The Pueblo does not appear to rely on field preemption as a basis for its arguments.

As to conflict preemption, the Pueblo argues – again referring to the ancillary effects of the State's actions – that preemption arises if a state imposes a burden on tribal gaming that "interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." Cabazon, 480 U.S. at 216 (internal quotation marks & citation omitted). (Aplt. Br. at 23.) While this language from Cabazon may be a fair formulation for analyzing conflict preemption, IGRA has rebalanced the scales since Cabazon originally struck the balance so heavily in favor of tribal autonomy and state impotence. As the district court recognized, when analyzed in light of IGRA any impacts of the State's regulatory actions on Pojoaque Pueblo's revenues "do not stand as an obstacle to IGRA's objectives," notwithstanding any Congressional desire to strengthen tribal economies and governments, "because Congress did not intend for Indian tribes to conduct Class III gaming operations without a compact in the first place." (Aplt. App. at I/231.) On the other hand, the State has a strong interest in ensuring the integrity of the gaming environment in New Mexico and the honesty of gaming licensees who operate within the state by taking regulatory measures against non-Indian licensees who violate state law by furthering or profiting from illegal gaming activities occurring on tribal lands or elsewhere.

As the district court rightly concluded,

> IGRA does not preempt New Mexico's regulatory actions with respect to non-Indian, state-licensed vendors doing business with non-Indian gaming operators. Consistent with the policies underlying IGRA's enactment, the Court is mindful of Pojoaque Pueblo's inherent sovereign authority and interests. The Court is also mindful, however, of New Mexico's sovereign interest in being in control of, and able to apply, its laws throughout its territory. This case presents questions how to balance and respect these two competing interests. Having considered the statutory text and the weight of authority interpreting IGRA, the Court holds that IGRA is not preemptive of the [State's] off-reservation regulatory actions. The [State] ha[s] taken no direct action towards Pojoaque Pueblo, nor have they asserted any authority on Pojoaque Pueblo's lands. The [State] ha[s] not regulated Pojoaque Pueblo; they have only regulated New Mexico licensees. IGRA does not preempt these actions.

(Aplt. App. at I/232 (internal quotation marks & citations omitted).)

D. The District Court's Preemption Analysis Honors IGRA's Careful Balancing of Interests.

As should appear from the foregoing, the district court diligently observed the "careful balance among federal, state, and tribal interests," PCI Gaming Auth., 801 F.3d at 1300 (internal quotation marks & citation omitted), made manifest through the language, design, and legislative history of IGRA and authoritative judicial constructions of the statute. The Pueblo argues that because Seminole Tribe v. Florida allows the State to invoke its Eleventh Amendment immunity against the Pueblo's IGRA-based cause of action for bad faith failure to negotiate, the State can coerce the Pueblo into accepting compact terms that are prohibited by IGRA. (See Aplt. Br. at 11, 25-26.) The Supreme Court has accepted that, after Seminole Tribe, states have substantial "leverage" in compact negotiations

"because a tribe cannot conduct class III gaming on its lands without a compact and cannot sue to enforce a State's duty to negotiate a compact in good faith." Bay Mills, 134 S. Ct. at 2035 (citation omitted). But even after Seminole Tribe, IGRA can function largely as intended, because the United States can bring suit against a bad-faith state on behalf of a tribe. See United States v. Spokane Tribe of Indians, 139 F.3d 1297, 1301 (9th Cir. 1998) (recognizing suit by United States that would force a bad-faith state into a compact as one possibility under which "IGRA could work as intended"). (See also Aplee. Supp. App. at 5/786.) Furthermore, the fact that a compact must be approved by the Secretary of the Interior, see 25 U.S.C. § 2710(d)(3)(B), provides a check against compact terms that violate IGRA.

E. The Federal Government's Forbearance from Enforcing Federal Law Against the Pueblo Does Not Require the State To Forbear from Enforcing Its Laws Against Its Non-Indian Gaming Licensees Outside the Pueblo.

The Pueblo's final point begins with the accepted proposition that states cannot "regulate non-compacted Indian gaming in Indian country," even though it is illegal. (Aplt. Br. at 26.) But from there the Pueblo asserts that IGRA preempts state gaming regulation whenever "such regulation interferes with a tribe's gaming activities on Indian lands." (Aplt. Br. at 28.) That is an incorrect reading of IGRA, as previously discussed. Supra pp. 27-28. Although the Pueblo contends that "interference" with on-reservation gaming triggers preemption according to "consistent federal authority," id., the authorities it cites here and throughout its

opening brief do not support IGRA preemption where, as in the present case, a state is regulating its non-Indian licensees with respect to their ability to do business with other non-Indian gaming licensees outside Indian lands.

It is far from obvious that the Pueblo has done "everything IGRA requires it to do" and that the parties' failure to achieve a compact is a consequence of alleged bad faith on the part of the State. (Aplt. Br. at 27.) After all, the State has successfully entered compacts with every other pueblo and tribe in New Mexico; only the Pueblo of Pojoaque resists the compact terms. Supra p. 6.

United States v. Spokane Tribe, cited by the Pueblo (Aplt. Br. at 27), determined that in the circumstances presented there the United States was not entitled to an injunction against a tribe that was conducting casino gaming without a compact. 139 F.3d at 1302. The court remanded the case for the district court to consider whether the tribe itself had failed to act in good faith, among other things, before deciding whether any renewed request for an injunction under IGRA should be granted. Id. at 1301. Spokane Tribe may bear on the United States Attorney's decision regarding what measures the government may take against the Pueblo's illegal gaming, but Spokane Tribe has no bearing on the question presented here, regarding the State's regulation of its gaming licensees.

The fact that the federal authorities have agreed to forbear temporarily from enforcing against the Pueblo IGRA's prohibition on uncompacted Class III gaming

and that they continue to provide oversight over the Pueblo's gaming activities does not affect the outcome in this case. The federal government's exercise of prosecutorial discretion is not binding on the State, and the State has made no commitment to forbear from enforcing its laws with respect to the non-Indian holders of State gaming licensees that are supporting and profiting from the Pueblo's illegal activities. The State, not the federal government, oversees the State's gaming licensees and has full authority to require them to comply with state law.

Conclusion

The district court had jurisdiction to rule on the merits of the Pueblo's claims and correctly decided the merits in the State's favor. IGRA does not prevent the State of New Mexico from exercising its police power to regulate State-licensed, non-Indian gaming equipment manufacturers or other vendors, affecting their ability to do business with State-licensed, non-Indian gaming operators outside Indian lands, if the vendors violate State law by furthering or profiting from illegal gaming – even if the illegal gaming is conducted by an Indian tribe on tribal land, and even if the State's actions have an ancillary effect on the tribe's illegal operations. The final judgment entered by the district court should be affirmed, and the injunction entered against the State pending appeal should be permanently dissolved.

Statement Regarding Oral Argument

The State concurs in the Pueblo's statement regarding oral argument. This appeal has been set for argument on May 9, 2017.

Respectfully submitted,

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RODEY, DICKASON, SLOAN, AKIN
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By *__/s/ Edward Ricco__________*
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By *\/s/ Edward Ricco*
Edward Ricco

CERTIFICATE OF SERVICE

I certify that on March 29, 2017, I filed the foregoing pleading electronically through the CM/ECF system, which caused all other parties or counsel in this matter to be served by electronic means as more fully reflected on the Notice of Docket Activity.

RODEY, DICKASON, SLOAN, AKIN
& ROBB, P.A.

By *\/s/ Edward Ricco*
Edward Ricco