

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

STATE OF TEXAS,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	No. 03:17-CV-00179
	§	
YSLETA DEL SUR PUEBLO, the TRIBAL	§	
COUNCIL, and the TRIBAL GOVERNOR	§	
CARLOS HISA or his SUCCESSOR,	§	
<i>Defendants.</i>	§	

**PLAINTIFF STATE OF TEXAS’ ORIGINAL COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff the State of Texas (“Texas”) files this Original Complaint for Declaratory and Injunctive Relief (“Complaint”) against Defendants Ysleta del Sur Pueblo (“Pueblo” or “Tribe”), the Tribal Council of the Ysleta del Sur Pueblo (in its official capacity only), and Tribal Governor Carlos Hisa or his Successor (in his official capacity only). Texas brings this lawsuit to enforce the Restoration Act, 25 U.S.C. § 1300g *et seq.*, which provides that Texas gambling law serves as surrogate federal law on the Pueblo’s reservation. The Pueblo currently operates several thousand one-touch “electronic bingo” slot machines, as well as an unlicensed 24/7 bingo operation, on its El Paso reservation. These activities violate Chapter 47 of the Texas Penal Code, which prohibits illegal lotteries—games involving chance, prize, and consideration. Through this lawsuit, Texas requests declaratory, preliminary and permanent injunctive relief against these violations of the Restoration Act.

I. PARTIES

1. Plaintiff the State of Texas is represented by the Office of the Attorney General of Texas.
2. Defendant Ysleta del Sur Pueblo is a federally recognized Tribe pursuant to the Restoration Act, U.S.C. § 1300g-1, § 1300g-2. The Pueblo is represented by its attorney, Mr. Randolph H. Barnhouse, Johnson Barnhouse & Keegan, L.L.P., 7424 4th Street, N.W., Los Ranchos de Albuquerque, New Mexico 87107, and may be served with citation at that address.
3. Defendant Tribal Council (sued in its official capacity only) and Defendant Tribal Governor Carlos Hisa or his successor (sued in his official capacity only) (collectively, “Pueblo Defendants”), are represented by their attorney Mr. Randolph H. Barnhouse, Johnson Barnhouse & Keegan, L.L.P., 7424 4th Street, N.W., Los Ranchos de Albuquerque, New Mexico 87107, and may be served with citation at that address.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 25 U.S.C. § 1300g-6(c), which provides that “nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.” 25 U.S.C. § 1300g-6(c).
5. Venue is proper in this Court because this is a judicial district “in which a substantial part of the events or omissions giving rise to the claim occurred.” *See* 28 U.S.C. § 1391(b).

III. FACTUAL BACKGROUND

6. On August 18, 1987, Congress restored federal tribal status to the Ysleta del Sur Pueblo. *See* 25 U.S.C. § 1300g-1, § 1300g-2. The Restoration Act, 25 U.S.C. § 1300g *et seq.*, reestablished the trust relationship between the United States and the Tribe—which had been terminated in 1968—and re-invoked the federal assistance and services the Tribe received by virtue of this relationship. *See* Tiwa Indians Act of 1968, Pub. L. 90-287, 82 Stat. 93 (1968) (terminating the

federal trust relationship between the Tribe and the United States); 25 U.S.C. § 1300g-5 (repealing Tiwa Indians Act); 25 U.S.C. § 1300g-2 (restoring the federal trust relationship between the Tribe and the United States).

7. In 1987, to secure passage of the Restoration Act, and to avail itself of the benefits of a trust relationship with the United States federal government, the Tribe pledged to refrain from gambling on its land. This mutually beneficial *quid pro quo*—a commitment to prohibit gambling in exchange for the benefits of a trust relationship with the United States—was so fundamental to the passage of the Restoration Act that the tribal resolution prohibiting “gambling or bingo in any form” appears in the text of the Restoration Act. *See* 25 U.S.C. § 1300g-6a. That tribal resolution reads, in part:

the Ysleta del Sur Pueblo remains firm in its commitment to prohibit outright any gambling or bingo in any form on its reservation . . . the Tribe strongly believes that the controversy over gaming must not be permitted to jeopardize th[e] [Restoration Act] . . . , the purpose of which is to ensure the Tribe’s survival, protect the Tribe’s ancestral homelands and provide the Tribe with additional tools to become economically and socially self-sufficient; . . . the Ysleta del Sur Pueblo respectfully requests its representatives in the United States [Senate] and House of Representatives to amend [§ 107(a) of the Restoration Act] by striking all of that section as passed by the House of Representatives and substituting in its place language which would provide that all gaming, gambling, lottery, or bingo, as defined by the laws and administrative regulations of the State of Texas, shall be prohibited on the Tribe’s reservation or on tribal land.

Tribal Resolution No. T.C.-02-86 (1986); *Ysleta del Sur Pueblo v. State of Tex.*, 36 F.3d 1325, 1328 (5th Cir. 1994) (“*Ysleta I*”) (quoting Tribal Resolution No. T.C.-02-86 (1986); citing Restoration Act’s legislative history).

8. The Restoration Act incorporated the Pueblo’s disavowal of gambling, and provided for Texas gambling law to operate as federal law on the Pueblo’s reservation. 25 U.S.C. § 1300g-6(a) (“All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited

on the reservation and on lands of the tribe The provisions of this subsection are enacted in accordance with the tribe’s request in Tribal Resolution No. T.C.-02-86.”).

9. The Fifth Circuit held in *Ysleta I* that the Tribe is, first, organized pursuant to the Restoration Act, and second, that “[a]ll gaming activities which are prohibited by the laws of the State of Texas are prohibited on the reservation and on lands of the [T]ribe.” 36 F.3d at 1332. As such, under the Restoration Act, Texas law “functions as surrogate federal law” on the Tribe’s reservation. *Id.* at 1335. The Court continued

the Tribe has already made its ‘compact’ with the State of Texas, and the Restoration Act embodies that compact. If the Ysleta del Sur Pueblo wishes to vitiate the compact it made to secure passage of the Restoration Act, it will have to petition Congress to amend or repeal the Restoration Act[.]

Id.

10. Despite this unambiguous legal framework, the Tribe has been offering various types of illegal gambling on its reservation for much of the past two decades. Courts have consistently found that—mutable as they have been—these gaming activities share one commonality: they all violate the Restoration Act, by violating chapter 47 of the Texas Penal Code.

11. In 2002, the Pueblo was found to be operating illegal “slot machines” and illegal “card and dice games.” *Tex. v. del Sur Pueblo*, 220 F. Supp. 2d 668, 674-75 (W.D. Tex. 2001), *modified* May 17, 2002 (“*del Sur Pueblo*”) (Eisele, J.). The district court observed that the Pueblo “ha[d] embarked upon a long-continued habitual course of conduct clearly violative of the Gambling Laws of the State of Texas and that [the Pueblo], unless enjoined, w[ould] continue such habitual illegal activities[.]” *Id.* at 700. The Court then issued an injunction (the “2002 Injunction”) prohibiting the Pueblo from engaging in illegal gambling in violation of Chapter 47 of the Texas Penal Code. *Id.* at 697-98. The Fifth Circuit upheld that decision on appeal. *State of Tex. v. Pueblo*, 69 F. App’x 659 (5th Cir. 2003).

12. Further litigation regarding the 2002 Injunction ensued. *See, e.g., Tex. v. Ysleta del Sur Pueblo*, 431 F. App'x 326, 329 (5th Cir. 2011); *Tex. v. Ysleta del sur Pueblo*, No. EP-99-CV-320-KC, 2015 WL 1003879, at *4 (W.D. Tex. Mar. 6, 2015) (Cardone, J.); *State of Tex. v. Ysleta del Sur Pueblo*, No. EP-99-CV-320-KC, 2016 WL 3039991, at *26-27 (W.D. Tex. May 27, 2016).

13. The Pueblo Defendants govern the Ysleta del Sur Pueblo, retain control over and approved the violations of the Restoration Act described in this Complaint, and must be enjoined from further violations of the Restoration Act in order to afford the State the equitable relief it seeks.

14. Prompted by media reports¹ in the summer of 2016 that the Tribe was “transitioning to bingo,” Texas inspected the Pueblo’s gaming facility on May 17, 2017. During that inspection, the State found the Tribe offering the following to the public:

- a variant on traditional, paper-based bingo, in which balls were drawn from a hopper and called by an attendant while players, seated close together at long tables, marked paper cards. Most players had before them multiple cards of several different sizes and varieties;
- 90-card bingo card minders—portable electronic devices that tracked multiple electronic cards, only a few of which were visible on the device’s screen at any one time. These consoles worked in parallel to the paper-based bingo, and automatically “marked” the card for the player when the attendant pulled a ball and input the number into a wireless system linking the card minder console to the attendant’s input station;
- pull tabs, a paper-based, lottery ticket-like game available and playable at any time at the counter that dispensed the card minders; and
- thousands of slot machines operating “electronic bingo,” in which wheels turned lining up various graphics and, in subordinate view, electronic bingo cards were displayed. One play resulted in an instantaneous complete bingo game across several cards—one corresponding to each slot wheel—and, depending on whether it was a win or not, a

¹¹ A July 23, 2016 *El Paso Times* article reported that the Pueblo was “transitioning to bingo” gambling activities. Marty Schladen, [Tiguas ending sweepstakes, starting bingo](http://www.elpasotimes.com/story/news/local/el-paso/2016/07/23/tiguas-ending-sweepstakes-starting-bingo/87458650/), EL PASO TIMES, July 23, 2016, <http://www.elpasotimes.com/story/news/local/el-paso/2016/07/23/tiguas-ending-sweepstakes-starting-bingo/87458650/>. Beginning on March 21, 2016, the State initiated attempts to schedule an inspection of the Tribe’s gaming facility. On April 20, 2017, the State and the Tribe agreed that the State would conduct an inspection to be governed by the provisions of Federal Rule of Civil Procedure 34.

concomitant spin and line up of the wheel icons, accompanied by flashing lights and sound effects and a notification of the amount won.

15. The Tribe offered this illegal lottery in a dim, casino-like atmosphere with a bar and bar tables extending down at least one row of slot machines, to the sound of electronic bells, whistles, and other auditory effects emitted from thousands of colorful, flashing slot machines. The machines announced their maximum respective jackpots in blinking, marquis-style lights, some ranging as high as 40-plus thousands of dollars.

16. The Tribe's slot machines operating so-called "electronic bingo" involved the payment of cash consideration into a game of chance which pays out cash prizes. This constitutes an illegal lottery under Texas law. *See* TEX. PENAL CODE § 47.01(7); TEX. CONST. art. III § 47(a).

17. By operating such a lottery via "electronic bingo" slot machines the Pueblo is engaged in, at minimum, the following activities illegal under Texas law: gambling under Texas Penal Code § 47.02; operating a gambling promotion under Texas Penal Code § 47.03(a)(1) and (a)(5); keeping a gambling place under Texas Penal Code § 47.04(a); and possessing gambling devices, equipment, or paraphernalia under Texas Penal Code § 47.06(a) and (c), and/or under Texas Penal Code § 47.06(a) (with respect to the servers owned by the vendors, which are a "subassembly or essential part of a gambling device.").

18. Because the Restoration Act federalizes Texas gambling law on the Pueblo's reservation, each of the aforementioned violations of Texas law is also a violation of the Restoration Act.

19. Further, the Pueblo's card minder and paper-based bingo violate Texas's Bingo Enabling Act. These violations of Texas law, as noted above, equate to breaches of federal law.

20. Both the Tribe's slot machines purporting to offer "electronic bingo," and its paper and card minder-based bingo, involve the elements of an illegal lottery in Texas: chance, prize, and consideration. TEX. PENAL CODE § 47.01(7); TEX. CONST. art. III § 47(a).

21. The Bingo Enabling Act establishes parameters for certain qualified Texas operators to obtain licenses from the Lottery Commission and lawfully offer approved types of bingo. *See Dep't of Tex., Veterans of Foreign Wars of U.S. v. Tex. Lottery Comm'n*, 760 F.3d 427, 431 (5th Cir. 2014); TEX. OCC. CODE § 2001.001 *et seq.* (Bingo Enabling Act).

22. The Pueblo's card minder and paper-based bingo, as observed by Texas's representatives on May 17, 2017, violate these legal parameters, in—at minimum—the following ways:

- The Tribe does not possess a license from the Texas Lottery Commission to conduct its card minder or paper-based bingo activities.
- The Tribe conducts its card minder and-paper based bingo activities 24 hours a day, seven days a week.
- The Tribe's card minders exceeded the allowed number of cards under the Bingo Enabling Act.
- The Tribe's pull-tab bingo does not appear to have been approved by the Texas Lottery Commission.

23. *See* TEX. OCC. CODE §§ 2001.401; 2001.419; 16 TEX. ADMIN. CODE § 402.322(r); 16 TEX. ADMIN. CODE § 402.300. Accordingly, the Tribe's card minder and paper-based bingo violate the Texas Penal Code because they are not being played in accordance with the requirements of the Bingo Enabling Act, and are not licensed by the Texas Lottery Commission.

24. Through its card minder and paper-based bingo operations, the Pueblo is engaged in, at minimum, the following activities illegal under Texas law: gambling under Texas Penal Code § 47.02; operating a gambling promotion under Texas Penal Code §§ 47.03(a)(1) and (a)(5); keeping a gambling place under Texas Penal Code § 47.04(a); and possessing gambling devices, equipment, or paraphernalia under Texas Penal Code. §§ 47.06(a) and (c).

25. Because the Restoration Act federalizes Texas gambling law on the Tribe's reservation, each of the aforementioned violations of Texas law is also a violation of the Restoration Act.

IV. CLAIMS FOR RELIEF

COUNT I: DECLARATORY JUDGMENT

26. Texas incorporates Paragraphs 1-25 above as though fully set forth herein.

27. Declaratory relief is available under the federal Declaratory Judgments Act to “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

28. As described above, the operation of “electronic bingo” slot machines and the Tribe’s card minder and paper-based bingo violate Texas law’s prohibition of illegal lotteries, in addition to other gambling prohibitions found in Chapter 47 of the Texas Penal Code. More specifically, the Tribe is currently violating Texas Penal Code §§ 47.01(7) (prohibition on lotteries); 47.02 (gambling); 47.03(a)(1) and (a)(5) (operating a gambling promotion); 47.04(a) (keeping a gambling place); and 47.06(a) and (c) (possessing gambling devices, equipment, or paraphernalia).

29. Under the Restoration Act, those provisions are federalized, and all Defendants are therefore engaged in violations of both Texas and federal law.

30. Accordingly, Texas seeks a declaratory judgment that the Tribe’s gambling activities described herein violate the Restoration Act.

COUNT II: INJUNCTIVE RELIEF

31. Texas incorporates Paragraphs 1-30 above as though fully set forth herein.

32. For the reasons set out above and in the Application for Preliminary Injunction, this Court should enter a preliminary injunction pursuant to FED. R. CIV. P. 65, *et seq.*, to enforce the gambling prohibitions in the Restoration Act because (1) there is a substantial likelihood that Texas will prevail on the merits; (2) there is a substantial threat of irreparable injury if an injunction does not issue; (3) the threatened injury outweighs any possible harm to Defendants; and (4) the public

interest weighs in favor of issuing the requested injunction. *See Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

33. A permanent injunction should be entered following trial on the merits of this case to prohibit the Pueblo Defendants from violating federalized Chapter 47 Texas Penal Codes prohibitions on illegal lotteries.

PRAYER

Texas respectfully requests the following relief:

A. A declaratory judgment that the Tribe's gambling activities described herein violate the Restoration Act;

B. A preliminary and a permanent injunction holding that all Defendants are violating the Restoration Act; requiring Defendants to cease all electronic and paper bingo activities on their reservation that violate Texas law, to remove all illegal gambling devices from the facility, and to refrain from any gambling activities that violate the Restoration Act prohibitions against gambling;

C. The award of attorney's fees and costs from the date of the May 17, 2017 physical inspection until the date of the Court's final judgment; and

D. Such further relief to which it may be justly entitled.

Respectfully submitted.

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