**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW MEXICO**

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| **THE PUEBLO OF POJOAQUE, POJOAQUE PUEBLO GAMING COMMISSION, and POJOAQUE GAMING, INC.,** | ) | |
| **Plaintiffs,** | ) | |
| **v.** | ) | **Case No. 1:21-cv-00373-MV-JHR** |
| **HONORABLE MATTHEW J. WILSON, District Judge, and HENRY MARTINEZ** | ) | |
| **Defendants.** | ) | |

**HONORABLE MATTHEW J. WILSON'S LIMITED RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT [Docs. 25, 25-1]**

The Honorable Matthew J. Wilson, represented by Assistant Attorney General Neil R. Bell, submits this Limited Response to Plaintiffs' Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment ("Motion"). [Docs. 25, 25-1] The Motion should be denied under this Court's discretion to decline jurisdiction over a declaratory judgment action. *See, e.g.*, *U.S. v. City of Las Cruces*, 289 F.3d 1170, 1180 (10th Cir. 2002) ("[A] district court has discretion to withhold its exercise of jurisdiction over 'declaratory judgment actions.'").

Well-established principles of federalism dictate that, as a New Mexico District Court Judge, Judge Wilson is not bound by *Navajo Nation v. Dalley*, 896 F.3d 1196 (10th Cir. 2018). Moreover, Plaintiffs Pueblo of Pojoaque, Pojoaque Pueblo Gaming Commission, and Pojoaque Gaming, Inc. (collectively, "the Pueblo") filed this lawsuit for declaratory relief only after the time for removal of Defendant Henry Martinez's state lawsuit had passed, after the denial of the

Pueblo's motion to dismiss Mr. Martinez's lawsuit, and without exercising their right to apply for interlocutory review. Under these circumstances, the Court should deny the Motion in favor of the pending state court proceedings, which offer the best chance of resolving the conflicting interpretations of federal law recognized in *Dalley*. *See id.* at 1209 (concluding that *Dalley*'s reading of IGRA "is the correct one" and that the New Mexico Supreme Court's reading of IGRA in *Doe v. Santa Clara Pueblo*, 141 N.M. 269, 154 P.3d 644, is "mistaken"). Judge Wilson takes no position on the Pueblo's arguments in Part III of the Motion.

**RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. Judge Wilson has no independent knowledge of the Pueblo's Undisputed Material Fact ("Fact") No. 1 but stipulates to the fact for the purpose of this Response.

2. Judge Wilson has no independent knowledge of Fact No. 2 but stipulates to the fact for the purpose of this Response.

3. Judge Wilson has no independent knowledge of Fact No. 3 but stipulates to the fact for the purpose of this Response.

4. Judge Wilson has no independent knowledge of Fact No. 4 but stipulates to the fact for the purpose of this Response.

5. Judge Wilson has no independent knowledge of the truth or validity of Fact No. 5, which is at issue in Mr. Martinez's lawsuit that is pending before Judge Wilson.

6. Judge Wilson admits Fact No. 6.

7. Judge Wilson has no independent knowledge of Fact No. 7 but stipulates to the fact for the purpose of this Response.

**ADDITIONAL STATEMENT OF UNDISPUTED MATERIAL FACTS**

A. In 2007, the New Mexico Supreme Court held in *Doe v. Santa Clara Pueblo* that "Congress intended the compacting provision of IGRA to allow the states and the tribes broad latitude to negotiate regulatory issues." 2007-NMSC-008, ¶ 45. Applying that interpretation, *Doe* held that Santa Clara Pueblo had "waive[d] its defense of sovereign immunity in connection with any claims for compensatory damages for bodily injury or property damage" via Section 8 of the gaming compact negotiated by the Pueblo and the State of New Mexico (the "Compact"). *Id.* ¶ 7. Under *Doe*, New Mexico state courts thus have jurisdiction over personal injury claims that fall within the scope of Section 8 of the Compact.

B. In 2018, the Tenth Circuit of the United States Court of Appeals reached the opposite conclusion. *Dalley* held that IGRA *does not* authorize tribes to allocate jurisdiction over tort claims that "do[] not directly relate to the licensing and regulation of gambling itself." 896 F.3d at 1210. As a result, *Dalley* held that the waiver of sovereign immunity in Section 8 of the Compact was ineffective and therefore New Mexico state courts *do not* have jurisdiction over personal injury claims that are not directly related to the licensing and regulation of gambling. In reaching that conclusion, the Tenth Circuit acknowledged the contrary ruling in *Doe* and "respectfully conclude[d] that the reading of IGRA that we adopt here is the correct one, and that the district court and the New Mexico Supreme Court are mistaken." *Id.* at 1209.

C. Defendant Henry Martinez filed his Complaint in the First Judicial District Court of New Mexico on November 2, 2020. *See* Exhibit 1 (Register of Actions, *Martinez v. Cities of Gold Casino*, No. D-101-CV-2020-02387 (1st Jud. Dist. N.M.)).

D. Mr. Martinez filed his First Amended Complaint on December 9, 2020. [Doc. 1-2]

E. The Pueblo filed its Motion to Dismiss on December 28, 2020, for lack of subject

matter jurisdiction under Rule 1-012(B)(1) NMRA and for failure to state a claim upon which relief may be granted under Rule 1-012(B)(6). *See* Exhibit 1.

F. After full briefing, *see* Exhibit 1, the First Judicial District Court, Hon. Matthew J. Wilson, held a hearing on the Pueblo's Motion to Dismiss on March 31, 2021. [Doc. 1-4] Judge Wilson denied the motion in a written order filed on April 5, 2021, concluding that *Doe* is controlling and that the court therefore has subject matter jurisdiction over Mr. Martinez's lawsuit. [*Id.*] Judge Wilson also authorized the Pueblo to file an application for an interlocutory appeal with the New Mexico Court of Appeals. [*Id.*]

G. The Pueblo filed the instant lawsuit on April 23, 2021, alleging jurisdiction under 28 U.S.C. §§1331, 1362, and 1343 and seeking a declaratory judgment that the New Mexico state courts do not have subject matter jurisdiction over Mr. Martinez's lawsuit under *Dalley*. [Doc. 1]

H. The Pueblo has never removed Mr. Martinez's lawsuit to federal court. *See generally*, Exhibit 1.

## ARGUMENT

### I. *Doe*, and not *Dalley*, Is Binding on Judge Wilson as a New Mexico District Court Judge.

Under our federal system, state and lower federal courts are free to interpret federal law independently. As the Seventh Circuit has explained, state courts are on an equal footing with lower federal courts vis-à-vis federal law, and both are answerable only to the United States Supreme Court:

> The Federal Circuit Courts of Appeals and, in respect to federal law, the state courts of last resort are subject to the supervisory jurisdiction of the Supreme Court of the United States. They are, however, as to the laws of the United States, co-ordinate courts. Finality of determination in respect to the laws of the United States rests in the Supreme Court of the United States. Until the Supreme Court of the United States has spoken, state courts are not precluded from exercising their own judgment upon questions of federal law.

*U.S. ex rel. Lawrence v. Woods*, 432 F.2d 1072, 1075 (7th Cir. 1970); *see also State v. Coleman*, 214 A.2d 393, 403 (N.J. 1965) ("In passing on federal constitutional questions, the state courts and the lower federal courts have the same responsibility and occupy the same position; there is parallelism but not paramountcy for both sets of courts are governed by the same reviewing authority of the Supreme Court."). As a consequence, a split of authority may arise on a question of federal law between a state and lower federal court because neither court's interpretation is binding in the other forum. *See, e.g.*, *Gallardo v. Dudek*, 977 F.3d 1366 (11th Cir. 2020) (denying petition for rehearing) ("Our system of federalism allows for parallel state and federal interpretations of federal law. Moreover, we are not bound by a state court's interpretation of federal law." (internal citation omitted)).

This case presents that very situation. Purporting to interpret and apply the same provisions of IGRA to Section 8 of the Compact, the New Mexico Supreme Court and the Tenth Circuit reached opposite conclusions about whether the Pueblos effectively waived sovereign immunity over personal injury claims. *Compare Doe*, 2007-NMSC-008, ¶ 30 (looking to congressional intent to determine what Congress "meant by 'regulating' gaming activity and what might be 'necessary for the enforcement' of such laws and regulations" in 25 U.S.C. § 2710(d)(3)(C)), *with Dalley*, 896 F.3d at 1207-08 (interpreting the plain language of "class III gaming activity" and "directly related to, and necessary for, the licensing and regulation of such activity" under 25 U.S.C. § 2710(d)(3)(C)). Neither Court's decision was dictated by controlling precedent of the United States Supreme Court. Rather, both Courts relied on statutory interpretation "viewed through the prism" of related, though not dispositive, Supreme Court authority. *Compare Doe*, 2007-NMSC-008, ¶¶ 17-29 (following *Kennerly v. Dist. Ct.*, 400 U.S. 423 (1971) and "look[ing] beyond the plain language of the Compact to determine if IGRA *authorizes* the Pueblos to shift jurisdiction over

personal injury suits to state court"), *with Dalley*, 896 F.3d at 1207-08 ("This conclusion is ineluctable when the plain statutory text is viewed through the prism of [*Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014)]").

As a result, any implication that *Dalley*'s interpretation of IGRA is controlling on New Mexico state courts is simply mistaken. [*See* Doc. 25-1, at 5] *See Lockhart v. Fretwell*, 506 U.S. 364, 376 (Thomas, J., concurring) ("The Supremacy Clause demands that state law yield to federal law, but neither federal supremacy nor any other principle of federal law requires that a state court's interpretation of federal law give way to a (lower) federal court's interpretation."). Put simply, lower federal courts have no authority to overrule a state court and thus lack direct authority over state courts on issues of federal law absent controlling precedent from the United States Supreme Court. *See Woods*, 432 F.2d at 1075 ("[B]ecause lower federal appellate courts exercise no appellate jurisdiction over state tribunals, decisions of lower federal courts are not conclusive on state courts."). As the Pennsylvania Supreme Court has put it, "Within our federal system of governance, there is only one judicial body vested with the authority to overrule a decision that this Court reaches on a matter of federal law: the United States Supreme Court." *Hall v. Penn. Bd. of Prob. & Parole*, 851 A.2d 859, 865 (2004).

Thus, Judge Wilson properly concluded that he was bound by the New Mexico Supreme Court's holding in *Doe*, notwithstanding the Tenth Circuit's contrary holding in *Dalley*. *See, e.g.*, *State v. City of Las Vegas*, 2004-NMSC-009, ¶ 21, 135 N.M. 375, 89 P.3d 47 ("'Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality.'" (quoting *Hohn v. U.S.*, 524 U.S. 236, 252-53 (1998)). Judge Wilson, as a New Mexico District Court Judge, is subject to the appellate jurisdiction of the New Mexico Supreme Court and the Supreme Court of the United States; lower

federal courts, including the Tenth Circuit and this Court, are not in that chain of authority. *See Woods*, 432 F.2d at 1075; *cf. Lockhart*, 506 U.S. at 376 (reasoning that if a state district court follows a lower federal court's interpretation of federal law, "it does so only because it chooses to and not because it must"). Until the New Mexico Supreme Court revisits *Doe* or the Supreme Court of the United States definitively addresses the issue, *Dalley* is not controlling in State court proceedings. *See People v. Battease*, 74 A.D.3d 1571, 1577 n.3, 904 N.Y.S.2d 241, 247 n.3 (N.Y. Sup. Ct. 2010) ("This conflict will continue until resolved by the United States Supreme Court [or] reconciled by the Court of Appeals upon review[.]"). As explained below, these circumstances weigh against exercising this Court's discretion to grant declaratory relief in this case.

## II. This Court Should Exercise its Discretion To Refuse the Pueblo's Request for Declaratory Relief.

"[D]istrict courts are 'under no compulsion' to grant declaratory relief but have discretion to do so." *U.S. v. City of Las Cruces*, 289 F.3d 1170, 1180 (10th Cir. 2002) (quoting *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 494-95 (1942)). "[A] district court has discretion to withhold its exercise of jurisdiction over 'declaratory judgment actions.'" *City of Las Cruces*, 289 F.3d at 1180 (citing *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995) and *State Farm Fire & Cas. Co. v. Mhoon*, 31 F.3d 979 (10th Cir. 1994)). That discretion arises under the Declaratory Judgment Act itself, which provides that a court "*may* declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a) (emphasis added); *Wilton*, 515 U.S. at 286-87. Significantly, a district court has discretion to entertain a declaratory judgment action "even though an independent jurisdictional basis for the suit . . . exist[s]":

> The nature of the relief requested by the plaintiff, not the jurisdictional basis of the suit, is the touchstone. . . . If the plaintiff only requests a declaration of its rights, not coercive relief, the suit is a declaratory judgment action for purposes of determining whether the district court has broad discretion under *Brillhart* to refuse to entertain the suit.

*City of Las Cruces*, 289 F.3d at 1181.

In *Mhoon*, the Tenth Circuit articulated a list of five factors that a district court should evaluate when deciding whether to exercise jurisdiction over a declaratory judgment action:

> [1] whether a declaratory action would settle the controversy; [2] whether it would serve a useful purpose in clarifying the legal relations at issue; [3] whether the declaratory remedy is being used merely for the purpose of procedural fencing or to provide an arena for a race to *res judicata*; [4] whether use of declaratory action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction; and [5] whether there is an alternative remedy which is better or more effective.

31 F.3d at 983 (quotations omitted). In considering these factors, "[n]o one factor is determinative." *Bd. of Cty. Comm'rs v. Rocky Mountain Christian Church*, 481 F. Supp. 2d 1181, 1187 (D. Colo. 2007) (citing *City of Las Cruces*, 289 F.3d at 1183). And a district court's decision to decline jurisdiction will not be overturned unless the court's assessment of the factors "was so unsatisfactory as to constitute an abuse of discretion." *City of Las Cruces*, 289 F.3d at 1179.

In this case, the Pueblo's "Complaint for Declaratory Judgment" requests only declaratory relief. The Pueblo seeks declarations that IGRA "does not permit the shifting of jurisdiction from tribal courts to state courts over tort claims like those brought in the *Martinez* Lawsuit," and that "the New Mexico state courts do not have jurisdiction over the *Martinez* Lawsuit." [Doc. 1, at 5] The Pueblo also clarified in the Motion that, although it believes that "it is incumbent on the federal courts . . . to enjoin state court actions such as this," the Pueblo is *not* seeking coercive relief in this case. [Doc. 25-1, at 4 n.3] As a result, this Court's broad discretion about whether to entertain the Pueblo's request for declaratory relief is squarely implicated. As shown below, each of the *Mhoon* factors weighs against granting declaratory relief in this case.

**A. The First Two *Mhoon* Factors Clearly Weigh Against Declaratory Relief.**

Declaratory relief in this case would neither clarify the legal relations at issue nor settle this

controversy. As explained above, the legal relations of the parties are well understood. Under *Doe*, Mr. Martinez may sue the Pueblo in New Mexico state court, and Judge Wilson, as a New Mexico District Court Judge, is constrained by controlling authority of the New Mexico Supreme Court to exercise jurisdiction over Mr. Martinez's lawsuit. In this Court and forum however, *Dalley* is conclusive that New Mexico state courts do not have jurisdiction over Mr. Martinez's lawsuit.[1] A declaratory judgment pursuant to *Dalley* would merely confirm the status quo and do little to change or clarify the relations between the parties in this case.

Such a declaration also would do little to settle the controversy, either in this Court or in state court. Indeed, the immediate effect of a declaratory judgment in this case would be further litigation and uncertainty. The preclusive effect in state court of a declaratory judgment by this Court would have to be determined. And the Pueblo has implied that it may seek injunctive relief from this Court if Judge Wilson proceeds with Mr. Martinez's state lawsuit. [Doc. 25-1, at 4 n.3] Rather than resolving the controversy at hand, a declaratory judgment would simply spawn further litigation in both state and federal court about the effect of the Court's judgment and whether it would be enforceable before a definitive ruling from the United States Supreme Court.

As a further point, the Tenth Circuit has emphasized that the first two *Mhoon* factors are "designed to shed light on the overall question of whether the controversy would be better settled in state court." *City of Las Cruces*, 289 F.3d at 1187. That is clearly the case here, where *Dalley* is not binding on New Mexico state courts and where the New Mexico Supreme Court has not revisited *Doe* since *Dalley* was decided. Allowing Mr. Martinez's case to work its way through the

[1] Judge Wilson takes no position on Mr. Martinez's argument that this lawsuit falls within the exception recognized in *Dalley* for personal injury claims that are directly related to class III gaming activities. *See Dalley*, 896 F.3d at 1210 n.7 (clarifying the scope of the Court's ruling and positing fact patterns that may support state court jurisdiction under IGRA). [Doc. 28-1, at 7-9] However, Judge Wilson assumes for the purpose of the arguments made in this Response that the exception does not apply.

state courts would either resolve the state-federal split on this issue of federal law or give the Pueblo the opportunity to seek a definitive ruling from the United States Supreme Court. Either outcome would settle the controversy in this case and would clarify the relations of the parties in this and in future cases. And to the extent that the Pueblo asserts it would be harmed from having to participate in the state court proceeding, that is a calculated risk taken by the Pueblo when it negotiated Section 8 of the Compact. [Doc. 1-3, § 8.A ("For purposes of this Section, any such claim may be brought in state district court, including claims arising on tribal land, unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.")].

**B. The Pueblo Is Engaged in Procedural Fencing.**

The third *Mhoon* factor weighs heavily against granting declaratory relief. Faced with a state lawsuit that raised an obvious basis for federal jurisdiction and a favorable outcome for the Pueblo in federal court, the Pueblo elected to allow the 30-day deadline for removal to pass and instead pursued a ruling from Judge Wilson on its motion to dismiss. *See* 28 U.S.C. § 1441(a) (setting forth the right to removal generally); *id.* § 1446(1)(b) (providing that a notice of removal "shall be filed within 30 days after receipt by the defendant . . . of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based"). The Pueblo filed this lawsuit only after Judge Wilson denied the motion to dismiss and after the time for removal had expired. The Pueblo also filed this lawsuit without exercising the right granted by Judge Wilson to apply for interlocutory review.

Under these circumstances, the Court should deny the Pueblo's requested relief. *See, e.g.*, *City of Las Cruces*, 289 F.3d at 1190 (affirming the district court's finding that a party engaged in procedural fencing when the party "filed the instant action just a short time after the last

jurisdictional objections to the New Mexico adjudication were rejected and it became clear that the adjudication will proceed to judgment"); *Rocky Mountain Christian Church*, 481 F. Supp. 2d at 1188 (finding that the plaintiff engaged in procedural fencing when the declaratory judgment action "is merely an effort to seize a more advantageous procedural status"); *see also Plymouth & Brockton St. Ry. Co. v. Leyland*, 941 F. Supp. 14, 15 (D. Mass. 1996) ("[P]laintiff failed to timely remove this action . . . and cannot use a declaratory judgment action as a subterfuge to achieve the removal."); *cf., e.g.*, *Chavez v. Kincaid*, 15 F. Supp. 2d 1118, 1125 (D.N.M. 2013) (holding that the defendants waived their right to removal "by proceeding in state court after they were aware of the possible federal question issues"); *City of Albuquerque v. Soto Enters.*, No. Civ. 16-99 JAP/WPL, 2016 WL 9408547, at *3 (D.N.M. Apr. 11, 2016) ("[F]iling a substantive motion to dismiss (a motion seeking dismissal on the merits) generally waives the right to remove, unless the motion was necessary to preserve the defendant's rights."). To hold otherwise would reward the unnecessary consumption of state court resources when removal presents a clear path to relief. *Cf. Soto Enters.*, 2016 WL 9408547, at *3 ("The Court finds that a firm rule—treating substantive motions to dismiss as waivers of the right to remove—is more workable, better preserves state court resources, and offers the clearest guidance to defendants contemplating a potential removal.").

### C. A Declaratory Judgment Would Increase Friction Between State and Federal Courts and Improperly Encroach upon State Jurisdiction.

The fourth *Mhoon* factor similarly weighs against granting declaratory relief in this case as such a ruling would create difficult questions in both state and federal forums about the effect and enforceability of the declaratory judgment. A declaration that New Mexico state courts lack jurisdiction over Mr. Martinez's lawsuit would necessarily place Judge Wilson at odds with either the New Mexico Supreme Court or this Court. And if the Pueblo follows through on its promise to

pursue injunctive relief, this Court would likely be forced to determine whether and how to enforce its judgment against a fellow member of the judiciary. These outcomes could be avoided by exercising the Court's broad discretion to deny the Pueblo's requested relief.

Moreover, a declaratory judgment in this case would disregard the settled authority of the New Mexico Supreme Court to reach its own conclusions about a question of federal law when the United States Supreme Court has not spoken on the issue. *See, e.g.*, *Wood*, 432 F.2d at 1075. Again, *Dalley* is not determinative of state court jurisdiction in this case because the Tenth Circuit has no appellate jurisdiction over New Mexico courts. States are free to determine their own jurisdiction under federal law—just like any other question of federal law—absent controlling Supreme Court authority. *Cf., e.g.*, *Jena Band of Choctaw Indians v. Tri-Millennium Corp.*, 387 F. Supp. 2d 671, 675 (W.D. La. 2005) (holding that state court's determination that it had subject matter jurisdiction under IGRA in a breach of contract action against the tribe was res judicata). Exercising the Court's discretion to deny the Pueblo's requested relief would have the salutary effect of respecting the New Mexico Supreme Court's authority to interpret federal law.

**D. The State Lawsuit Offers the Best Opportunity for Resolving the Conflicting Interpretations of IGRA.**

Finally, the Pueblo has alternative remedies in state court that would be more effective than declaratory relief in this case. Denying relief in favor of the state court proceedings would give the Pueblo the opportunity to fully litigate the case in New Mexico, including whether *Doe* should be reconsidered in light of *Dalley*, and to seek review from the United States Supreme Court if necessary. As previously discussed, that course of action would definitively settle the state-federal split of authority on the question presented in this case. And regardless of the outcome of Mr. Martinez's case, the Pueblo would have the right to litigate future cases as it sees fit, including the right to seek dismissal after timely removal to federal court, if appropriate.

## CONCLUSION

Judge Wilson respectfully requests that the Court deny the Motion and the Pueblo's request for declaratory relief in this cause of action.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE** was served via the CM/ECF on this 24th day of September, 2021, to all counsel of record.

*/s/ Neil R. Bell*