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

PUEBLO OF POJOAQUE; and
BUFFALO THUNDER, INC.,

Plaintiffs,

Case No. 1:20-cv-00166-JB-GBW

v.

HONORABLE BRYAN BIEDSCHEID, in his official capacity as District Judge, New Mexico First Judicial District Division VI; and RUDY PENA,

Defendants.

HONORABLE BRYAN BIEDSCHEID'S RESPONSE TO
PLAINTIFFS' MOTION TO RECONSIDER ORDER DENYING SUMMARY JUDGMENT

The Pueblo of Pojoaque and Buffalo Thunder, Inc.'s (collectively, "Pojoaque") Motion to Reconsider the Court's Order Denying Summary Judgment (ECF No. 64) (the "Motion") is premature. The Court has not yet issued a full opinion detailing its reasoning for denying Pojoaque's summary judgment motion, and any reconsideration should await the Court's explication of its reasoning.

Even if the Court considers Pojoaque's motion now, however, it should be denied. Pojoaque does not offer reasons why any of the exceptions to the Anti-Injunction Act's prohibition against injunctions of state court proceedings apply. Nor does Pojoaque establish that the requirements for *Younger* abstention have not been met. The Court correctly denied Pojoaque's motion for summary judgment and the Motion to Reconsider should be denied.

I. The Motion for Reconsideration Is Premature.

To begin, Pojoaque's Motion to Reconsider is premature. The Court noted in its order denying Pojoaque's motion for summary judgment that it "will issue a Memorandum Opinion at a later date fully detailing its rationale for the decision." Order, at 1 n.1 (ECF No. 61) (the "MSJ Order"). If the parties are going to litigate the wisdom of the Court's ruling on Pojoaque's summary judgment motion, including the Court's analysis of the Anti-Injunction Act and various abstention doctrines, such litigation should occur after the Court has fully set forth its reasoning. Waiting for a full opinion would give the parties the benefit of understanding the entire basis of the Court's reasoning and a complete analysis for the parties to critique or endorse. Hearing a motion for reconsideration now would invite successive rounds of reconsideration motions, first with the Court's initial order and then with its full opinion. *Cf. Vallerio v. Vandehey*, 554 F.3d 1259, 1262 (10th Cir. 2009) (interlocutory appeals "are traditionally disfavored and for good reason" because they are disruptive, time-consuming, and expensive). Any reconsideration of the summary judgment ruling should await the Court's full opinion.

II. The Court Was Correct to Conclude That the Anti-Injunction Act Barred Pojoaque's Requested Relief.

Pojoaque does not provide any basis for reconsidering the Court's ruling that the Anti-Injunction Act bars Pojoaque's requested relief. As the Court noted, the Anti-Injunction Act, 28 U.S.C. § 2283, precludes federal courts from enjoining state court proceedings except in three narrow, exceptional circumstances. MSJ Order at 3–4. Pojoaque does not offer any explanation in its Motion to Reconsider why one of these three

exceptions applies here. To the contrary, as the Court noted, state courts are well-equipped to decide questions of federal law, including the jurisdictional issues raised in Pojoaque's summary judgment motion. *See* MSJ Order at 4.

Instead, Pojoaque contends that the Anti-Injunction Act does not apply because—despite requesting injunctive relief in its complaint—the injunctive relief Pojoaque seeks is too contingent to count. Motion at 5–6. If Pojoaque were not seeking injunctive relief, *Brillhart* abstention would apply. Although the Court reasoned that *Brillhart* abstention would not apply even if Pojoaque only sought declaratory relief, the factors identified by the Court support *Brillhart* abstention. MSJ Order at 8. The Court's determination that a "declaratory judgment would not clarify the legal relations at issue" and that Pojoaque has appellate avenues for relief in state court, MSJ Order at 8, weigh in favor of abstaining under *Brillhart*. *See State Farm Fire & Cas. Co. v. Mhoon*, 31 F.3d 979, 983 (10th Cir. 1994) (federal court should not issue declaratory judgment unless declaration of rights will "serve to clarify or settle legal relations in issue" and existence of alternative remedy supports abstention).

Pojoaque, however, *did* seek injunctive relief and explained in its summary judgment motion that the injunctive relief it sought was the reason *Brillhart* abstention did not apply. Pls.' Mem. Support Mot. Summ. J. at 15 (ECF No. 36-1). Pojoaque cannot avoid the application of the Anti-Injunction Act by arguing that its injunctive relief is somehow sufficient to count for *Brillhart* purposes but not enough to be barred by the Anti-Injunction Act. Nor is it clear how the comity purposes of the Anti-Injunction Act are avoided by Pojoaque's request for injunctive relief being contingent on how Judge

Biedscheid responds to any declaratory judgment. *See* Motion at 5–6. Pojoaque's requested relief would interject a federal court into a state-court proceeding mid-litigation, including by preventing the state court from considering the same questions of jurisdictional fact that Pojoaque has raised in its motion for summary judgment in this Court. The Anti-Injunction Act precludes Pojoaque's requested injunctive relief and no exception to the Act applies.

III. The Court Was Correct to Abstain Under *Younger v. Harris*.

The Court was also correct in its decision to abstain under *Younger v. Harris*, 401 U.S. 37 (1971). As the Court determined, all three elements needed for *Younger* abstention exist: the requested relief "(i) must interfere with an ongoing State judicial proceeding; (ii) must involve important State interests; and (iii) the State proceeding must provide an adequate opportunity to raise the federal claims." MSJ Order at 4–5. Pojoaque does not directly attack any of these findings, but comes closest to disputing the Court's conclusion that important state interests exist in the state court proceeding.

First, it is plain (and seemingly undisputed) that Pojoaque's requested relief would interfere with the state court proceeding before Judge Biedscheid. Indeed, stopping that proceeding is the point of this lawsuit. The third element—that the State proceeding affords an opportunity for Pojoaque to raise its federal claim that IGRA precludes jurisdiction over the state-court lawsuit—is also easily met. In fact, in addition to the opportunity for appellate review of this jurisdictional question noted by the Court, MSJ Order at 6, Pojoaque could also seek summary judgment or a determination at trial of the jurisdictional facts that it contests in the motion for summary judgment here. *See* MSJ

Order at 11–12 (reviewing record of accident video for jurisdictional determination).[1] The state court's evaluation of jurisdictional facts provides an answer to the problem, noted in the Order, of a party pleading allegations to support jurisdiction that are not borne out by the facts. *See* Order at 13 n.5.

The state court's consideration of jurisdictional facts is also proper under *Navajo Nation v. Dalley*, 896 F.3d 1196 (10th Cir. 2018). Pojoaque argues that *Dalley* finally determined that state courts lack jurisdiction over all slip-and-fall cases at casinos under New Mexico's tribal gaming compacts. Motion at 3. It is unclear how this argument bears on the Court's *Younger* analysis, but even if it does, *Dalley* did not determine whether jurisdiction exists for all factual scenarios. *See* Hon. Bryan Biedscheid's Resp. Pls.' Mot. Summ. J. at 7–8 (discussing limits of ruling in *Dalley*). State courts are well-situated to interpret IGRA and apply federal law to the facts in a particular case.

The Court also correctly determined that the state court's examination of its jurisdiction under IGRA and the state-tribal compact was "'uniquely in furtherance of the state courts' ability to perform their judicial function.'" MSJ Order at 5 (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 73 (2013)). Enjoining a state court's determination of its own jurisdiction disrupts the state court's ability to perform its judicial function. Therefore, "[u]nder *Younger* abstention doctrine, strong public policy and principles of

[1] The Order states that Judge Biedscheid's response to the motion for summary judgment asserted that it is undisputed that Mr. Pena was sitting at a slot machine when he fell. The quote for this proposition on page 11 of the Order is not in Judge Biedscheid's response. Rather, the response provides that it is undisputed that Pena *alleged in his state court complaint* that he was sitting at a slot machine when he was asked to move and fell. Hon. Bryan Biedscheid's Resp. Pls.' Mot. Summ. J. at 3, Add'l Fact No. 1 (ECF No. 43).

federalism support that the federal courts should defer to the state courts to determine their own jurisdiction." *Ute Indian Tribe of Uintah & Ouray Reservation v. Lawrence*, 289 F. Supp. 3d 1242, 1256 (D. Utah 2018); *see also Braverman v. New Mexico*, No. CIV 11-0829 JB/WDS, 2012 WL 5378292, at *23–*24 (D.N.M. Sept. 30, 2012) (case seeking injunction of state court proceeding challenging process underlying state court adjudication involves "issue that is uniquely in furtherance of the state court's ability to perform [its] judicial functions"). In particular, state courts should be permitted to make factual determinations necessary to determine whether jurisdiction exists under federal law. "State courts have adequately handled the task and there is no bar to state courts continuing to do so." *Navajo Nation v. Rael*, No. 1:16-cv-888 WJ/LF, 2017 WL 3025917, at *6 (D.N.M. Apr. 11, 2017) (noting that state courts may make factual determination of "whether an 'offense' was committed on 'Indian country'").

Pojoaque contends that its requested relief does not interfere with state courts' ability to perform their judicial functions because the summary judgment motion "seeks only a declaration of federal law, not an order enjoining state court proceedings." Motion at 6. But the practical effect of both a declaratory judgment and an injunction would be to halt state court proceedings, including the state court's determination of its own jurisdiction. The need for abstention—and avoiding unnecessary interference with state court proceedings—exists regardless of the procedural mechanism by which the federal court would intervene. *See Courthouse News Serv. v. N.M. Admin. Office of the Courts*, No. 1:21-cv-710 JB/LF, 2021 WL 4710644, at *35 (D.N.M. Oct. 8, 2021) (citing authority that

Younger abstention appropriate where relief would have the practical effect of enjoining state proceedings).

Lastly, the Court was correct to hold that *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), requires a party to exhaust state court remedies before avoiding *Younger* abstention in federal court. MSJ Order at 7. This exhaustion requirement only does not apply if one of *Younger's* exceptions exists, such as bad faith or blatantly unconstitutional actions in the state court case. *See Huffman*, 420 U.S. at 608; *Winn v. Cook*, 945 F.3d 1253, 1258–59 (10th Cir. 2019) (describing exceptions where *Younger* abstention is not mandatory). Pojoaque argues that *Huffman's* exhaustion requirement does not apply because *Younger* does not apply. *See* Motion at 8–9. As discussed above, the elements of *Younger* abstention exist, and the Court should permit the state court to determine its own jurisdiction, including by deciding the jurisdictional facts contested in Pojoaque's motion for summary judgment. *See supra* pp. 4–7.

Therefore, Judge Biedscheid respectfully requests that Plaintiffs' Motion to Reconsider the Court's Ruling on Summary Judgment be denied.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2022, I filed the foregoing document electronically via the CM/ECF electronic filing system, which caused service to all counsel of record.

/s/ Nicholas M. Sydow