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Judge Hannah

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

Alabama-Coushatta Tribes of Texas, Plaintiff, v. Defendant 1: State of Texas, Defendant 2: John Cornyn, in his capacity as Attorney General for the State of Texas; Defendant 3: State Official John Doe; Defendant 4: State Official Jane Doe Defendants	Civ. No. 9:01cv299 ALABAMA-COUSHATTA TRIBES OF TEXAS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMPLAINT

Alabama-Coushatta Tribes of Texas alleges on its own behalf, and on behalf of its entire tribal membership, by and through its undersigned counsel, and pleads against

Defendants State of Texas; John Cornyn, in his capacity as Attorney General for the State of Texas; State Official John Doe; and State Official Jane Doe, as follows:

INTRODUCTION

1. This is an action by the federally recognized Alabama-Coushatta Tribes[1] seeking a determination of their rights and remedies under the provisions of the Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act, P.L. 100-89, 25 U.S.C. §§ 731 et seq. (Restoration Act), the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701 et. seq. ("IGRA"), or otherwise under federal law. The Alabama-Coushatta Tribes seeks injunctive relief that allows the Alabama-Coushatta Tribes to govern gaming activities on its Indian lands, free from interference from Defendants.

2. This action seeks a Declaration that the Alabama-Coushatta Tribes possesses authority to regulate gaming activities on the Tribes' Indian lands, and may authorize and regulate forms of gaming which (1) are not contrary to the public policy of the State of Texas as set forth by the United States Supreme Court in California v. Cabazon Band of Mission Indians et al. 480 U.S. 202 (1987); or (2) are forms of gaming that the State of Texas has not reasonably characterized as completely and affirmatively prohibited for any purpose by any person, organization or entity, including the State of Texas; or (3) are not prohibited by the laws of the State of Texas. These

[1] Please note that although the official name of Plaintiff includes the plural "Tribes," it is a single Tribe as a tribal government recognized by federal law. Accordingly, at first blush the grammar may appear incorrect, even though it properly treats "Tribes" as a single entity.

three options are plead in the alternative based on plausible interpretation of the federal statutes at issue.

3. The Restoration Act, signed into law August 18, 1987, clarified that Alabama-Coushatta Tribes is a federally recognized Indian Tribe possessing the sovereign authority to govern. The date of enactment fell between the landmark Supreme Court decision in Cabazon Band, issued February 25, 1987, and the date of enactment of IGRA, which became law on October 17, 1988. At issue in this action is the applicability and interpretation of these two statutes and other affected federal laws.

4. The Defendant State of Texas, particularly through the actions of the Defendant Attorney General, threatens to deprive the Alabama-Coushatta Tribes of tribal sovereign and statutory gaming rights and/or privileges. The Alabama-Coushatta Tribes is entitled to injunctive relief prohibiting the State of Texas or any entity from interfering with the Tribes' gaming operation.

5. Congress did not intend, and federal courts may not interpret the Restoration Act in a manner that allows the State of Texas to fundamentally change its laws and public policy to allow for a multifaceted and thriving gaming industry and still deprive the Alabama-Coushatta Tribes of exercising its inherent and sovereign and statutory gaming rights on its Indian lands.

JURISDICTION

6. This Court's jurisdiction is invoked pursuant to 28 U.S.C § 1362 , which governs controversies involving an Indian Tribe. The matter in controversy arises under the 28 U.S.C. §§ 1331. The action is brought pursuant to the

Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202. The action seeks declarations regarding the Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act, P.L. 100-89, 25 U.S.C. §§ 731 et seq. , and the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701 et. seq. ("IGRA"), each of which provide for the exclusive jurisdiction of the federal courts. The declarations are sought in the context of the facts and circumstances surrounding the enactment of the two statutes and the fundamental shift in Texas' policy regarding gaming.

7. Jurisdiction over the individual agents of the State of Texas, in their official capacities, is invoked pursuant to the ex Parte Young , 209 U.S. 123 (1908) exception to Eleventh Amendment immunity. Jurisdiction over Defendant State of Texas is subject to the consent of the State.

8. Upon information and belief, Plaintiff Tribe alleges that Defendants have announced to media sources that Texas will directly interfere with the Tribes' exercise of its sovereign and statutory rights to offer certain gaming activities on Tribal lands. The imminent threat and considerable damage to the Tribe's governance provides a justiciable case and controversy per Article III of the United States Constitution.

VENUE

9. Venue is in the United States District Court for the Eastern District of Texas pursuant to 28 U.S.C. § 1391.

PARTIES

10. The Plaintiff is the Alabama - Coushatta Tribes of Texas ("Tribe" or "Tribes" or "Alabama-Coushatta Tribes"), a federally recognized Indian Tribe restored to federal recognized status by the Restoration Act, possessing the sovereign and statutory powers to govern activities on its Indian lands, including its Reservation, the external boundaries of which lie in Polk County with tribal headquarters located on the Alabama-Coushatta Reservation. The Tribe exercises jurisdiction over said Indian lands within the State of Texas.

11. Defendant 1, State of Texas is a body politic existing pursuant to its relationship with the government of the United States. Agents acting in their capacity as officials of such body politic subjects the State to this action to the extent the United States has imposed a government-to-government relationship between the Tribal government and the State government.

12. Defendant 2, John Cornyn is and at all times pertinent was the Attorney General of the State of Texas. The Office of the Attorney General has taken actions that pose a direct and immediate threat to Plaintiff Tribe. Upon information and belief, Plaintiff asserts that Defendant John Cornyn is poised to take action against the interests of the Alabama-Coushatta Tribes.

13. Defendants 3, State Official John Doe and 4, State Official Jane Doe are officials of the State of Texas who may be necessary in order for the court to construct a remedy consistent with its Declarations. The Plaintiff Tribe will amend or seek leave to amend the pleadings to include such officials as parties as their identity becomes known.

GENERAL ALLEGATIONS

14. The Alabama-Coushatta Tribes is comprised of approximately 1,100 direct descendants of the mound building cultures that occupied the Southeast United States since time immemorial. 513 members of the Tribe reside on the Tribes' current Reservation. Many of those look to the Tribe to provide services and opportunity. Many of the Tribes' members no longer residing on the Reservation have left because of the lack of opportunity. Those employed off the Reservation commute as far as 60 miles. Numerous efforts to foster economic development have not succeeded. The Tribal membership is currently suffering a 46% adult unemployment rate. Only 1% of Tribal members on the reservation have a 4-year college degree. Health conditions should be far better, 147 members are diagnosed to be diabetic. Median Household income of the Alabama-Coushatta is $10,809.

15. The Tribe is responsible for stewardship of its 4,593 acre Reservation, the external boundaries of which fall within Polk County of the State of Texas. The land lies in the Big Thicket area and is generally unsuitable for raising crops or grazing cattle. The Tribes' initial Reservation comprises 5,528,570 acres, 2,850,028 acres of which the Tribe was wrongfully dispossessed by the United States and 2,677,423 acres of which the Tribe was wrongfully dispossessed by the political entity of Texas. However, this Declaratory Judgement Action only seeks declaration of the Tribes' rights regarding the acreage currently held by the United States in trust for the benefit of the Tribe.

16. The Alabama-Coushatta Tribal government's obligations and responsibilities cover a broad range of governmental services, including but not limited to

education, housing, land and resource management, environmental protection, health care including emergency ambulance service and the Chief Kina Health Clinic, lake management, forestry, social services, fire protection, solid waste management, security, cultural preservation, as well as government administration and procurement. The Tribe needs to generate revenues to properly fund its governmental services and administration – without gaming revenues, the Tribes' ability to adequately function as a government is in serious jeopardy.

17. By means of the Restoration Act of 1987, the Tribes were restored to federally recognized status. All rights and privileges of the Tribe and its members under any federal treaty, Executive Order, agreement, statute or under any other authority which may have been diminished or lost under the Termination Act of 1954, 25 U.S.C. §§ 721 et seq. have been restored to the Tribes. Federally recognized status is recognition that the Tribe is a distinct political society, capable of managing its own affairs and governing itself, having territorial boundaries within which the Tribes' authority of self-government is exclusive. Federally recognized Tribes retain sovereign authority to regulate their internal and social relations, including the power to make their own substantive law in internal matters and to enforce that law in their own forums.

18. In 1986, amidst a national scenario where several tribes were offering commercial gaming on their lands, while litigation regarding the sovereign authority of federally recognized tribes to govern gaming activities was working its way through the courts, certain members of Congress threatened to block passage of the Restoration Act unless the Tribe agreed

to language that would forever prevent the Tribe from offering any gaming activities on its lands. Under duress, the Tribe was coerced into passing a Resolution that supported certain language, which if passed into law, would have precluded the Tribe from offering any gaming. But Congress did not pass any bill regarding the Tribe's restoration in 1986 and the 1987 Congress rejected the language supported by the Tribe's resolution when it adopted the Restoration Act. The Tribe has since rescinded the Resolution.

19. On February 25, 1987, prior to the passage of the Restoration Act, the United States Supreme Court, in Cabazon, clarified that Indian Tribes have always possessed the inherent sovereign authority to govern gaming activities on Indian lands, and that Tribes could lawfully offer gaming activities which do not contravene a State's public policy towards gaming.

20. At the time of the passage of the Restoration Act, application of the Cabazon decision to Texas' public policy towards gaming rendered little or no gaming opportunities for Tribes with Indian lands within the external boundaries of the State of Texas because, inter alia, the State Constitution prohibited "Lottery" schemes, meaning any gaming activity with the elements of prize, chance, and consideration.

21. Texas' public policy regarding gaming changed to some degree in 1989 when the State Constitution was amended to allow for certain raffle games, and then underwent a monumental change in 1991 when Article 3, § 47 of the Texas State Constitution was changed to allow for the State to engage in games with "Lottery" schemes. Since these changes in Texas State public policy, application of the Cabazon decision to Texas public policy renders substantial and multi-faceted gaming opportunities for the Tribe.

22. The facts and circumstances surrounding the passage of the Restoration Act, when fully and thoroughly considered, do not support a conclusion that Congress intended to deprive the Tribe of its sovereign and inherent authority over gaming activities. Indeed, the facts and circumstances demonstrate that Congress intended to preserve the Tribes' authority such that it would not be precluded from offering gaming activities in the event that Texas State public policy were to change in the future.

23. By official Referendum of the Tribes on October 21, 1999, the General Council of the Tribe voted overwhelmingly for the Tribe to offer gaming activities as a critical source to generate badly-needed tribal governmental revenues. Pursuant to this mandate, the Tribal Council (1) enacted a Gaming Ordinance to authorize and regulate gaming activities on its Indian lands, (2) established a Gaming Agency to regulate gaming activities in a manner that preserves the integrity and honesty of the games, and (3) directed tribal officials to proceed with the construction of an entertainment facility on its Indian lands, to offer a large variety of gaming activities.

24. The Entertainment Facility is now open for members of the Tribes' private gaming club. The Entertainment Facility is not open to non-members. The Entertainment Facility is authorized to offer gaming activities which contain the elements of prize, consideration and chance. The Entertainment Facility is authorized to utilize a broad range of dispensers, electronic or electro-mechanical aids and gambling devices including but not limited to random number generators, electronic ticket dispensers, electronic pull tabs, spinning reel slots, and video lottery devices.

25. The Tribe's Reservation and lands of the Tribe are a private place to which non-members of the Tribe may attain access only by invitation of the Tribe.

26. The public policy of the State of Texas is to promote and protect commercial, high-stakes gaming, allowing for extensive exposure to a great variety of gaming opportunities for residents and visitors throughout the State. The State of Texas sanctions and promotes a broad range of commercial and casino gaming activities, including a multifaceted State Lottery, an extensive pari-mutuel horse racing industry, an extensive commercial "slot parlor" market, charitable carnival or casino nights, high-stakes bingo, raffles, casino "cruises-to-nowhere," and widespread use of "amusement devices," which are slot machines that require a modicum of skill.

27. Pleading in the alternative, the State of Texas has embraced a policy of willful blindness or deliberate non-enforcement as thousands of video "eight-liner" games are placed in hundreds of establishments throughout the State of Texas, such that the public policy of the State is to allow for such private, non-governmental "Lottery" games.

28. The Texas State Lottery and the Texas State Horse Racing Commission each have the regulatory/discretionary authority to offer a wide variety of games on gambling devices. Such gambling devices within their authority possess the same fundamental characteristics as the gambling devices authorized by the Tribe. If there are differences, there is no reasonable characterization of the difference that renders devices authorized by the Tribe "prohibited" by the laws of the State of Texas.

29. The State allows for the same gaming activities authorized by the Tribe for some entities for some purposes, such that the games cannot be characterized as "prohibited" by the laws of the State of Texas.

30. The State cannot reasonably characterize any gaming activity authorized by the Tribe as a form of gaming activity distinct from those gaming activities authorized by the State.

31. The games authorized by the Tribe do not contravene the State of Texas' public policy regarding gaming.

32. The Attorney General for the State of Texas has responded to communication initiated by the Tribe that the position of his office is that the Tribe's offering of gaming is unlawful. The Attorney General and members of his staff have been quoted in newspapers stating that the Attorney General will take action designed to directly interfere with and impede the Tribe's exercise of its sovereign and statutory authority over gaming activities on the Tribe's Indian lands.

33. The Attorney General and his agents have attempted to deprive the Alabama-Coushatta Tribes of their day in court by subjecting it to a district court decision in another federal district in which the Alabama-Coushatta Tribes are not a party, and misapplying non-binding dictum in an appellate court case. Additionally, the Tribe that was a party to that litigation has yet to be able to have the federal court give proper consideration of a thorough record of the facts and circumstances surrounding the passage of the Restoration Act and the gaming activities available in the State of Texas.

34. The Alabama-Coushatta Tribes and its members will incur irreparable harm, not compensable by monetary damages, if games and gambling devices of

any sort remain unavailable for play. Such harm includes but is not limited to: (1) interference with the Tribe's rights to self-governance; (2) interference with the exercise of the Tribe's inherent sovereign gaming rights including the exclusive right to regulate gaming activities on tribal lands; (3) an erosion of public confidence in the gaming operation in the face of continued challenges and threats regarding the authority of the Tribe to offer the games at issue; (4) loss of economic opportunity, that plead in the alternative, is not compensable against the State of Texas or the United States, and will never be recovered; (5) loss of desperately needed tribal governmental revenues to properly fund Tribal programs; and (6) furthering and promoting the scheme of the State of Texas to deprive Tribes of their gaming rights through tactics of intimidation and delay in an effort to intimidate and unduly influence decisions of sovereign tribal governments.

TRIBE'S CLAIM FOR RELIEF:

DECLARATORY JUDGMENT & INJUNCTIVE RELIEF

35. Paragraphs 1 through 34 are incorporated herein by reference.

36. Congress did not intend, and federal courts may not interpret the Restoration Act in a manner that allows the State of Texas to fundamentally change its laws and public policy to allow for a multifaceted and thriving gaming industry and still deprive the Alabama-Coushatta Tribes of exercising its inherent and sovereign and statutory gaming rights on its Indian lands.

37. In contrast to the irreparable harm suffered by the Tribe if the State is allowed to interfere, the State will not suffer any irreparable harm if the State

is prevented from interfering with the Alabama-Coushatta Tribes exercising its inherent and sovereign and statutory gaming rights on its Indian lands.

38. The Alabama-Coushatta Tribes is entitled to a Declaration that the Alabama-Coushatta Tribes possesses authority to regulate gaming activities on the Tribe's Indian lands and may authorize and regulate forms of gaming which are not contrary to the public policy of the State of Texas as set forth by the United States Supreme Court in California v. Cabazon Band of Mission Indians et al. 480 U.S. 202 (1987).

39. Plead in the alternative, The Alabama-Coushatta Tribes is entitled to a Declaration that the Alabama-Coushatta Tribes possesses authority to regulate gaming activities on the Tribe's Indian lands and may authorize and regulate forms of gaming which are forms of gaming that the State of Texas has not reasonably characterized as completely and affirmatively prohibited for any purpose by any person, organization or entity, including the State of Texas.

40. Plead in the alternative, The Alabama-Coushatta Tribes are entitled to a Declaration that the Alabama-Coushatta Tribes possess authority to regulate gaming activities on the Tribe's Indian lands and may authorize and regulate forms of gaming, which are not prohibited by the laws of the State of Texas, meaning that if the gaming activity is allowed for any entity under any circumstance, it can not be deemed "prohibited" in the context of the Restoration Act.

41. In the event the Court provides any of the three Declarations set forth in paragraphs 38 - 40, or any comparable Declaration, the appropriate remedy is to issue an injunction precluding the State of Texas from interfering with

the governance decisions of the Alabama-Coushatta Tribes regarding gaming.

PRAYER FOR RELIEF

WHEREFORE, the Alabama-Coushatta Tribes of Texas respectfully prays this honorable court for:

1. An Order declaring that the Alabama-Coushatta Tribes possesses authority to regulate gaming activities on the Tribe's Indian lands and may authorize and regulate forms of gaming which are not contrary to the public policy of the State of Texas as set forth by the United States Supreme Court in California v. Cabazon Band of Mission Indians et al. 480 U.S. 202 (1987);
2. An Order declaring that the Alabama-Coushatta Tribes possesses authority to regulate gaming activities on the Tribe's Indian lands and may authorize and regulate forms of gaming that the State of Texas has not reasonably characterized as completely and affirmatively prohibited for all purposes by any persons, organizations or entities, including the State of Texas.
3. An Order Declaring that the Alabama-Coushatta Tribes possesses authority to regulate gaming activities on the Tribe's Indian lands and may authorize and regulate forms of gaming, which are not prohibited by the laws of the State of Texas, meaning that if the gaming activity is allowed for any entity under any circumstance, it can not be deemed "prohibited" in the context of the Restoration Act.
4. An Order enjoining the State of Texas and all Defendants from taking any action that would interfere with the Alabama-Coushatta Tribes' governance

over gaming activities on its Indian lands; specifically, an Order preventing Defendants from taking any action to prevent or impede the Tribe from offering gaming activities consistent with the Declarations of law.

5. In the event the State threatens actions other than seeking an Order of this Court against the Tribe, the Tribe pray for this Court to issue preliminary injunctive relief that prevents Defendants from taking any action to prevent or impede the Tribe from offering gaming activities pending the Court's final decision on the Declarations of law sought herein.

6. Permanent injunctive relief precluding the State of Texas from interfering with the governance decisions of the Alabama-Coushatta Tribes regarding gaming consistent with the Declarations of Law.

7. An award to the Alabama-Coushatta Tribes of such other and further relief as this Court deems just under the circumstances.

8. An award of attorneys' fees and costs.

DATED: November 21, 2001

Respectfully submitted

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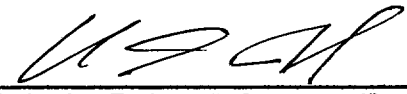

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