No. _____

In The

Supreme Court of the United States

IVO LINDAUER; SIDNEY LINDAUER; RUTH LINDAUER; DIAMOND MINERALS, LLC,

Petitioners,

vs.

ELNA SEFCOVIC, LLC; WHITE RIVER ROYALTIES, LLC; JUHAN, LP; and ROY ROYALTY, INC., individually and on behalf of all others similarly situated; and TEP ROCKY MOUNTAIN, LLC,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A Colorado state court entered judgment approving a class action settlement and expressly retained continuing jurisdiction to enforce the judgment as essential to the performance of its judicial functions. The state court intended its jurisdiction to be exclusive and maintained its exclusive jurisdiction without dismissing the case. Nevertheless, a magistrate judge of the United States District Court for the District of Colorado subsequently entertained a separate lawsuit alleging a breach of the state court-approved settlement and judgment, and approved a new settlement enforcing and modifying the state court settlement and judgment. The Tenth Circuit affirmed.

The following questions are presented:

1. Is the state court's jurisdiction exclusive and ancillary under this Court's decision in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), thereby precluding the exercise of concurrent jurisdiction by the federal district court to enforce and modify the state court settlement and judgment?

2. Does comity require the federal court to abstain from seizing concurrent jurisdiction and ousting the state court's jurisdiction to enforce the settlement and judgment which the state court had approved and over which it retained jurisdiction?

PARTIES TO THE PROCEEDING

Petitioners here, appellants below, are Ivo Lindauer, Sidney and Ruth Lindauer, and Diamond Minerals, LLC.

Respondents here, appellees below, are Elna Sefcovic, LLC, White River Royalties, LLC, Juhan, LP, and Roy Royalty, Inc., individually and on behalf of all other similarly situated, and TEP Rocky Mountain, LLC.

CORPORATE DISCLOSURE STATEMENT

Pursuant to S. Ct. R. 29.6, Petitioners advise the Court that Petitioner Diamond Minerals, LLC, has no corporate members.

RELATED PROCEEDINGS

- *Lindauer, et al. v. Williams Prod. RMT Co.*, No. 2006 cv 317, Garfield County, Colorado, District Court. Judgment entered March 20, 2009; proceedings ongoing.
- *Elna Sefcovic, LLC, et al. v. TEP Rocky Mountain, LLC*, No. 17-cv-01990, U.S. District Court for the District of Colorado. Judgment entered November 9, 2018, judgment vacated January 23, 2019, judgment entered March 15, 2019.
- *Elna Sefcovic, LLC, et al. v. TEP Rocky Mountain, LLC*, No. 19-1121, U.S. Court of Appeals for the Tenth Circuit. Judgment entered March 18, 2020, rehearing denied May 15, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinions of the District Court for the District of Colorado primarily involved herein are reported at *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, No. 17-cv-01990, 2018 WL 7107931 (D. Colo. Nov. 9, 2018) and *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, No. 17-cv-01990, 2019 WL 295564 (D. Colo. Jan. 23, 2019), and reproduced in the Appendix hereto ("App") at 24-50.

The opinion of the Tenth Circuit is reported at *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 953 F.3d. 660 (10th Cir. 2020), and reproduced at App. 1-23. The order denying rehearing or rehearing en banc is not reported but is reproduced at App. 70-71.

JURISDICTION

The Tenth Circuit issued its opinion on March 18, 2020, and denied rehearing or rehearing en banc on May 15. 2020. The deadline to file any petition for writ of certiorari was extended to 150 days by this Court's Order dated March 19, 2020. This Petition is therefore timely filed and this Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTES AND RULES INVOLVED

This case does not involve interpretation of statutory or constitutional provisions.

STATEMENT OF THE CASE

In this case, the *Sefcovic* Class Representatives seek to enforce in federal court the terms of a class action settlement and judgment entered by the Garfield County, Colorado District Court in *Lindauer v. Williams Prod. RMT Co.*, Case No. 2006 cv 317 ("*Lindauer*"). *Lindauer* is ongoing, and has not been dismissed in the state court. The state court has retained "continuing jurisdiction to implement and enforce" its own judgment. Petitioners are named plaintiffs in *Lindauer* and were intervenors below.

The Pending *Lindauer* Class Action and Partial Settlement

In 2009, Williams (now known as TEP Rocky Mountain, LLC ("TEP")) entered into a settlement with the *Lindauer* Class. The *Lindauer* Settlement covers thirteen categories of oil and gas leases operated by Williams in Garfield County, Colorado and resulted in a refund of previous Williams royalty deductions to approximately 1,000 class members.

Section 4 of the *Lindauer* Settlement, titled "Future Royalty Payments," sets out eight paragraphs of agreements which prospectively bind TEP and the Class Members for the remaining thirty- to fifty-year lifespan of their oil and gas leases. App. 88-91. Section 5.2 provides that the state court "has continuing jurisdiction to enforce" Section 4. App. 92. Section 7.7 provides that two reserved claims will be "tried to or otherwise

resolved by the Court."[1] App. 95. The agreed Judgment embodying the settlement provided for litigation of the two reserved claims, contained no dismissal provision, and stated:

> [T]his Court ***shall*** retain continuing jurisdiction of this action to address any issues concerning implementation of the Settlement Agreement and enforcing this Final Judgment.

App. 113 (emphasis added).

Significantly, *Lindauer* was not dismissed and remains pending in the state court. To date, the *Lindauer* Court has utilized its continuing, retained and ancillary jurisdiction to hear and resolve three separate motions to enforce the *Lindauer* Settlement.

The *Sefcovic* Class Action

Terra Energy Partners, LLC purchased the entity previously known as Williams in 2016 and renamed it TEP. In 2017, the *Sefcovic* Class Representatives filed suit in the District Court in and for the City and County of Denver, Colorado, claiming, on behalf of only four of the thirteen *Lindauer* lease categories, that TEP had breached the terms of the *Lindauer* Settlement.

Neither the class representatives nor TEP notified the Denver state court that the *Lindauer* Court retained continuing jurisdiction to implement and enforce its own

[1] Those two reserved claims were later resolved by summary judgment and trial, respectively, and involved two subsequent appeals: *Lindauer v. Williams Prod. RMT Co.*, No. 10CA0798, 2011 WL 1564618 (Colo. Ct. App. Apr. 21, 2011), *cert. denied*, No. 11SC388, 2012 WL 53306 (Colo. Jan. 9, 2012) and *Lindauer v. Williams Prod. RMT Co.*, 381 P.3d 378 (Colo. Ct. App. 2016), *cert. denied*, No. 16 SC321, 2016 WL 4627403 (Colo. Sept. 7, 2016).

Judgment, nor that *Lindauer* remained pending without dismissal, nor that the *Lindauer* Settlement contains a forum selection clause.

TEP then removed the *Sefcovic* Case to the United States District Court for the District of Colorado, again without either party apprising the federal court[2] that: the *Lindauer* Court retained continuing jurisdiction to implement and enforce its own Judgment; *Lindauer* remained pending without dismissal; or that the *Lindauer* Settlement contains a forum selection clause.

After conducting informal discovery, and prior to any filings regarding class certification or the merits of the case, TEP and the *Sefcovic* Class Representatives reached a settlement. Following preliminary approval by the Magistrate, notice of the settlement was mailed to members of the putative *Sefcovic* Class.

After receiving notice of the *Sefcovic* Settlement, Petitioners filed a Motion to Intervene and a Motion to Dismiss for lack of subject matter jurisdiction. The Magistrate struck the Motion to Dismiss as "improvidently docketed" and denied the Motion to Intervene as moot, but nevertheless examined subject matter jurisdiction under the court's "independent obligation," and dismissed the *Sefcovic* Case without prejudice, on jurisdictional grounds. App. 24-40.

In that initial Order, the Magistrate held that: (1) *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), enabled the state court to retain jurisdiction over the *Lindauer* Settlement, App. 31; (2) when a state court retains exclusive

[2] The Magistrate presided over settlement approval by consent of TEP and the *Sefcovic* Class Representatives. All references to the federal district court herein refer to proceedings conducted by the Magistrate in the District of Colorado.

jurisdiction, "any federal lawsuit within the scope of that jurisdiction should be dismissed," App. 33; (3) retained jurisdiction to enforce a settlement is exclusive, even though the word "exclusive" is not used, App. 34-36; (4) *Flanagan v. Arnaiz*, 143 F.3d 540 (9th Cir. 1998), contained a "materially identical provision" which the *Flanagan* court held served to retain exclusive jurisdiction, App. 36; (5) Colorado law provides once a court takes jurisdiction "it thereafter has exclusive jurisdiction over the subject matter and parties," App. 35; (6) "the state court action demonstrates an intent to retain exclusive jurisdiction over the alleged breaches of the Settlement Agreement." App. 37; and (7) the *Younger* abstention doctrine[3] directs the federal court to abstain from exercising jurisdiction. App. 38-39.

The Magistrate concluded:

> [The state court] is better informed about the nuances of the [*Lindauer*] Settlement Agreement, having overseen it for well over a decade, and has expressly retained continuing jurisdiction. The state court's intimate familiarity will allow it to better assess the claims of the *Sefcovic* plaintiffs, as well as any objections to the proposed class settlement, within the context of the entire state court litigation.

App. 39. The action was therefore dismissed. *Id*.

After the *Sefcovic* plaintiffs moved for reconsideration, the Magistrate reversed course and vacated the dismissal. This second order affirmed that the initial order was correct in that the "vast majority of federal cases would defer subject matter jurisdiction" when "that state court retained jurisdiction over implementation of the settlement." App. 41. The Magistrate then clarified the original order as follows:

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[3] *Younger v. Harris*, 401 U.S. 37, 44 (1971).

> (1) courts are authorized to retain jurisdiction over settlement agreements, and (2) when a court has done so, and that jurisdiction is explicitly (or implicitly under the totality of circumstances) exclusive.

App. 45. Up to that point, the analysis in the second order was consistent with the first, and, significantly, the Magistrate did not alter his prior finding that the state court in *Lindauer* intended to retain exclusive jurisdiction over the implementation and enforcement of its own Judgment.

But then the Magistrate suddenly changed course and leapt to a new and different conclusion—that the federal court ***does*** have subject matter jurisdiction over enforcement of the *Lindauer* Judgment, because of "comity." Declaring that Petitioners were required to intervene and present their motion regarding lack of subject matter jurisdiction at some time before the *Sefcovic* Settlement, and failed to do so, the Magistrate ruled that Petitioners had somehow waived their right to challenge jurisdiction.[4] He then held that, because of that supposed waiver, "comity" compelled the federal court to divest the state court of its exclusive and ancillary jurisdiction to enforce its own judgment. App. 46-48. The Magistrate also ruled that *Younger* abstention was not required because the contempt proceedings the Petitioners had commenced in *Lindauer* to enforce the *Lindauer* Settlement were not filed prior to the initial *Sefcovic* complaint.[5] App. 48.

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[4] This Court has repeatedly held that subject matter jurisdiction cannot be waived and can be raised at any time. Section I.D, *infra*.

[5] The Magistrate entirely ignored the fact that *Lindauer* has been pending, without dismissal, since it was filed in 2006, long before the *Sefcovic* complaint was filed. Section I.A, *infra*.

Thereafter, Petitioners filed a Renewed Motion to Intervene, asserting the federal court lacked subject matter jurisdiction because: (1) *Lindauer* remains pending, without dismissal, and under Colorado law that court retains exclusive jurisdiction over the parties and the subject matter; (2) the state court's retained jurisdiction is exclusive, precluding concurrent jurisdiction of other courts; (3) the *Lindauer* Settlement includes a binding forum selection clause providing that the state court is the exclusive forum in which to enforce the *Lindauer* Judgment and Settlement; and (4) the *Younger* abstention doctrine precludes the federal court from exercising jurisdiction over claims to enforce the *Lindauer* Judgment. The Magistrate subsequently denied the Renewed Motion as moot, having delayed ruling on that motion until entry of the Order Approving Final Settlement. (App. 57-67 and 68-69). As a result, the much broader grounds for lack of subject matter jurisdiction in Petitioners' motions to intervene and motions to dismiss were never considered by the court.

Petitioners appealed and the Tenth Circuit affirmed the Magistrate's holding that comity authorized the court to seize concurrent jurisdiction and oust the *Lindauer* Court from its original and retained continuing, exclusive and ancillary jurisdiction to enforce its own judgment. Without any substantive analysis of comity or the state court's exclusive and ancillary jurisdiction, the Tenth Circuit simply stated that it is "beyond reasoned dispute that the district court had subject matter jurisdiction in this case" because Congress enacted the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d). App. 12.

The Tenth Circuit also held that: (1) Petitioners waived their ancillary jurisdiction arguments, and it made the conclusory statement that there is no ancillary jurisdiction because *Lindauer* and this case are "separate and distinct," App. 12, n.10; (2) *Younger* abstention is not mandated because the Tenth Circuit could not discern any interference with the state court's contempt proceedings, rather than the indirect interference asserted by Petitioners with *Lindauer* itself, App. 13-19; and (3) the forum selection provisions in the *Lindauer* Settlement are permissive rather than mandatory. App. 19-23. Petitioners' motion for rehearing or rehearing en banc was denied. App. 70-71.

REASONS FOR GRANTING CERTIORARI

This case now stands alone against uniform federal authority regarding the questions presented. All cases Petitioners have identified are contrary to the Tenth Circuit's holding that: (1) comity authorizes the federal court to oust the state court of its original and retained continuing exclusive and ancillary jurisdiction in this case; (2) the federal court can seize jurisdiction over a matter ancillary to *Lindauer* which remains ongoing, without dismissal, when all that remains is to enforce the state court judgment; and (3) the federal court's lack of subject matter jurisdiction in a class action can be waived or barred by the passage of time, based on the perceived inaction of a single absent class member.

The Tenth Circuit's opinion undermines the established use of consent decrees to retain continuing and exclusive jurisdiction over class actions, and actively

encourages the circumvention of such judgments. This defeats the purposes of ongoing judicial supervision and consistency and departs from the accepted and usual course of judicial proceedings.

Class action settlements are often administered and enforced by a single court to avoid interference with complex issues already decided and those interrelated issues which remain to be refined; and to avoid the confusion, inconsistency, and expense that accompanies conflicting decisions in multiple courts. *See Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 882 (11th Cir. 1989). By not disclosing jurisdictional facts to the Denver District Court and the federal district court, TEP and the *Sefcovic* Class Representatives circumvented this effective and time-honored practice.

The Magistrate's vacation of his order of dismissal, on the false premise that a putative class member's failure to challenge subject matter jurisdiction prior to the filing of any motion for class certification somehow required the misapplication of "comity" to deprive the state court of its original and retained exclusive and ancillary jurisdiction over an ongoing class action, is an outlier and contrary to the uniform body of federal authority, including *Kokkonen*. Further, no federal court has previously exercised jurisdiction over a matter ancillary to an ongoing state court action, when all that remained was to enforce the judgment. The Tenth Circuit has opened the door to a broad erosion of settled and uniform federal law.

This re-invention of "comity," purporting to authorize federal courts to divest state courts of jurisdiction even with an express and undisturbed finding that the retention of jurisdiction was intended to be exclusive, will undermine appropriate

federal deference to the jurisdiction of state courts, which lies at the heart of our federal system. The holding that lack of subject matter jurisdiction can be waived departs from the accepted and usual course of federal judicial proceedings on this important, long-settled matter and has the potential to fracture an otherwise uniform body of federal law. More egregiously, the holding that a perceived waiver by one putative class member must control, and alter, the jurisdictional analysis in a class action, is an affront to the due process rights of hundreds of other absent class members.

For these reasons, Petitioners respectfully request certiorari review be granted.

I. THE TENTH CIRCUIT OPINION CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS WHICH HOLD RETAINED JURISDICTION TO ENFORCE A JUDGMENT IS EXCLUSIVE, AND EXCLUSIVE JURISDICTION IN ONE COURT PRECLUDES CONCURRENT JURISDICTION IN OTHERS.

A. Retained Jurisdiction to Enforce a Court's Own Judgment over Future Conduct Is Exclusive.

The Tenth Circuit did not even consider whether the state court's retention of jurisdiction to implement and enforce the *Lindauer* Settlement and Judgment was exclusive, nor whether its original and retained jurisdiction precludes concurrent jurisdiction in other courts.

It is both obvious and axiomatic that exclusive jurisdiction in one court precludes concurrent jurisdiction in other courts. *Manges v. McCamish, Martin, Brown & Loeffler, P.C.*, 37 F.3d 221, 224 (5th Cir. 1994) (where a settlement and judgment provide that a court retains exclusive jurisdiction to enforce the settlement, concurrent jurisdiction in other courts to enforce the settlement "is eliminated."); *United States v.*

Am. Soc'y of Composers, Authors and Publishers (In re Karmen), 32 F.3d 727, 731-32 (2d Cir. 1994) ("ASCAP") (same); *Battle*, 877 F.2d 877 (same).

When a complex judgment is entered which empowers the parties to seek future orders to carry out the judgment, retained jurisdiction is necessarily exclusive in order to prevent the orders of other courts from frustrating and interfering with the enforcement of the original judgment and the jurisdiction of the retaining court. *ASCAP*, 32 F.3d at 731-732.

Likewise, when jurisdiction is retained to enforce the terms of a settlement when the judgment is entered, that jurisdiction is exclusive regardless of whether or not the word "exclusive" is used, and precludes concurrent jurisdiction in other courts. *Flanagan*, 143 F.3d at 544-545.

Applying *Flanagan* to the facts here,[6] in the *Lindauer* Judgment, the Colorado state court retained exclusive jurisdiction over enforcement of the *Lindauer* Settlement, which covers approximately 1,000 class members and involves enforcement of complex agreements regarding future royalty payments under thirteen categories of royalty instruments over the remaining thirty- to fifty-year lifespans of those instruments. *See also, e.g.*, *EnCana Oil & Gas (USA), Inc. v. Miller*, 405 P.3d 488, 493 (Colo. Ct. App. 2017) (certified class of royalty owners survived for the life of the settlement agreement, which extended for the respective lives of the underlying oil and gas leases). The prospective terms in the *Lindauer* Settlement effectively operate as

[6] Even the Magistrate found the *Flanagan* reasoning persuasive: "[A] district court can retain exclusive jurisdiction without necessarily using the word "exclusive"; furthermore, I find the *Flanagan* reasoning to be very persuasive." App. 37.

an injunction. Notably, courts often retain jurisdiction to enforce their judgment in order to protect the integrity of the settlement with their contempt powers. *E.g.*, *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983) (and cases cited therein).

Significantly, both the *Lindauer* Court and the lower court in *Flanagan* utilized *Kokkonen's* recommended procedure to deliberately retain continuing jurisdiction over their own judgments. *See Kokkonen*, 511 U.S. at 381 ("The situation would be quite different if the parties' obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal—either by separate provision (such as a provision "retaining jurisdiction" over the settlement agreement) or by incorporating the terms of the settlement agreement in the order. In that event, a breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist."). *Kokkonen* thus empowered the *Lindauer* Court to elect to either (1) retain jurisdiction and enforce its judgment as a matter ancillary to the ongoing *Lindauer* class action, or (2) not retain jurisdiction, which would allow TEP and the class members to bring a breach of contract "civil action" in any court. Under *Kokkonen*, the analysis from *Flanagan* is even more compelling here, because if retained jurisdiction were concurrent rather than exclusive, the outcome is identical to not retaining jurisdiction at all (i.e., multiple courts concurrently enforcing a complex judgment in various breach of contract actions). The holding that retained jurisdiction is concurrent nullifies both *Kokkonen's* holding and the *Lindauer* Court's choice to retain jurisdiction.

Moreover, by maintaining *Lindauer* as an active case on its docket after 2009, without dismissal, the state court made the deliberate choice to continue its exclusive original jurisdiction over the subject matter and parties pursuant to Colorado law. The Tenth Circuit conveniently overlooked the Magistrate's express finding that the *Lindauer* Court intended to retain exclusive jurisdiction:

> In the end, I look at the whole picture to assess whether Garfield County District Court intended to retain exclusive jurisdiction over the alleged breaches of the Settlement Agreement. In light of the complex nature of the *Lindauer* litigation, the resources expended by the Garfield County District Court, the involved mediation within that lawsuit officiated by former state district judge and Colorado Supreme Court Justice William Neighbors, the statement by the parties in the Settlement Agreement recognizing the continuing jurisdiction of the state district court, and that court's ultimate order retaining continuing jurisdiction over "any issues concerning implementation of the Settlement Agreement and enforcing this Final Judgment" (which judgment incorporated the Settlement Agreement), ***I conclude that the state court action demonstrates an intent to retain exclusive jurisdiction over alleged breaches of the Settlement Agreement.***

App 37 (emphasis added). The Magistrate never vacated this fact finding regarding the intent of the *Lindauer* Court.

Upon reconsideration, the Magistrate clarified his analysis, and affirmed his prior application of *Flanagan*, by stating: "courts are authorized to retain jurisdiction over settlement agreements . . . and that jurisdiction is explicitly (or implicitly under the totality of circumstances) exclusive." App. 45. Then, the Magistrate inexplicably held that, despite finding intentional retention of exclusive jurisdiction by the state court, "comity" somehow compelled the federal district court to exercise concurrent

jurisdiction. App. 45. To the contrary, *Flanagan* holds that retained jurisdiction is exclusive and precludes concurrent jurisdiction to enforce the judgment by other courts. 143 F.3d at 544-545.

Prior to this case, all federal courts addressing the issue have required dismissal of a federal action for lack of subject matter jurisdiction where a state court has retained jurisdiction to enforce its own judgment, whether or not the word "exclusive" is used by the retaining court. *E.g.*, *Tomerlin v. Johns Hopkins University*, *Inc.*, 689 Fed. Appx. 578 (9th Cir. 2017) (citing *Flanagan*, 143 F.3d at 778); *Chevaldina v. Katz*, No. 17-22225-CIV, 2018 WL 10517555, at *6-7 (S.D. Fla. Feb. 21, 2018); *Weaver v. Aegon USA, LLC*, No. 4:14-cv-03436-RBH, 2015 WL 5691836, at *32 (D.S.C. Sept. 28, 2015), *modified*, 2016 WL 1570158 (D.S.C. Apr. 19, 2016), *appeal dismissed*, No. 16-1576 (4th Cir. June 13, 2016); *Hankins v. CarMax Inc.*, No. RDB-11-03685, 2012 WL 113824, at *5-6 (D. Md. Jan. 13, 2012), *appeal dismissed*, No. 12-1083 (4th Cir. Apr. 20, 2012); *Bar Codes Talk, Inc. v. GS1 US Inc.*, No. 8:10-cv-1462-T-30MAP, 2010 WL 4510982, at *1-3 (M.D. Fla. Nov. 2, 2010); *Jones v. Total Plan Servs., Inc.*, No. CIV-04-0619-HE, 2005 WL 8157770, at *2 (W.D. Okla. Dec. 30, 2005); *Petroskey Inv. Grp., LLC v. Bear Creek Twp.*, No. 5:03-CV-14, 2005 WL 1796130, at *8-9 (W.D. Mich. July 27, 2005).

Contrary to the Tenth Circuit's holding, the decisions of this Court and other Courts of Appeal mandate that the *Lindauer* Court's original and retained continuing jurisdiction to enforce the *Lindauer* Settlement and Judgment is exclusive and precludes the concurrent jurisdiction of the federal district court.

B. Federal Courts Are Precluded from Exercising Concurrent Jurisdiction over a Matter Ancillary to a State Court Action Without Obtaining Jurisdiction over the Pending Main State Court Action Itself.

The Tenth Circuit also departed from fundamental jurisdictional precedent by holding enforcement of the *Lindauer* Judgment is a "separate and distinct" civil action from *Lindauer*, rather than an ancillary proceeding which is inextricably intertwined with *Lindauer*. The *Lindauer* Court deliberately retained both its original and ancillary jurisdiction to implement and enforce its own judgment. But the Tenth Circuit failed to follow the long line of federal jurisdictional decisions that create the black-letter law that "proceedings that are ancillary to an action pending in state court cannot be removed separately from the main claim" because they are not "civil actions." 14C CHARLES ALAN WRIGHT & ARTHUR MILLER, FEDERAL PRAC. & PROC. § 3721.1 (Rev. 4th Ed. 2020).

It is a common practice for judgments to retain jurisdiction to implement and enforce settlements, including those in class actions. For example, in a similar royalty underpayment class action, a Colorado court dismissed the case after approving the settlement and reserved jurisdiction to implement and enforce the settlement. The Colorado appellate court held that the class remained in existence and the state district court "retains jurisdiction to give effect to the agreement" for the life of the leases. *EnCana*, 405 P.3d at 493.[7]

[7] "Judicial approval of [the] settlement agreement places the power and prestige of the court behind the compromise struck by the parties. . . . Once approved the prospective provisions of the [settlement] operate as an injunction. Th[is] injunctive quality . . . compels the court to: 1) retain jurisdiction over the [settlement] during the terms of its existence, [and] 2) protect the integrity of the [settlement] with its contempt powers . . . ." *Williams*, 720 F.2d at 920 (citations omitted).

In *Kokkonen*, this Court made clear that, where a court dismisses the case and retains jurisdiction to enforce a settlement in its judgment implementing the settlement:

> [A] breach of the [settlement] agreement [is] a violation of the order, and ancillary jurisdiction to enforce the agreement [as a judgment] therefore exist[s].

511 U.S. at 381.

Conversely, where a court (1) does not "embody the settlement contract in its dismissal order" or (2) does not "retain jurisdiction over the settlement contract," upon dismissal, no ancillary jurisdiction exists to enforce the settlement. *Id.* Significantly, *Kokkonen's* procedure for retaining ancillary jurisdiction to enforce a settlement has been adopted in Colorado. *EnCana*, 405 P.3d at 493-94.

Following *Kokkonen*, the manner in which the judgment is entered and continuing jurisdiction is retained, or not, dictates whether the court's judgment is enforced as a judgment in the original court and is a matter ancillary to the case in which the judgment was entered, or the settlement is enforced as a separate "civil action" for breach of contract. The Garfield County District court has thus far utilized its continuing, ancillary jurisdiction to hear and resolve three motions to enforce the *Lindauer* Settlement.[8]

In accordance with the practice for retaining ancillary jurisdiction established by this Court in *Kokkonen*, the *Lindauer* Judgment deliberately retained continuing

[8] "The purpose of ancillary jurisdiction . . . is to enable [the] court to render a judgment that resolves the entire case before it and to effectuate its judgment once it has been rendered." *Peacock v. Thomas*, 516 U.S. 349, 355-59 (1996).

exclusive jurisdiction to implement and enforce the *Lindauer* Settlement and Judgment. The state court was well aware that a breach of the future royalty payment terms of Section 4 could occur at any time during the life of the applicable leases, and with this knowledge in hand, the state court also continued its broader original jurisdiction by not dismissing *Lindauer*.

Under Colorado law, "once a court takes jurisdiction of an issue and of the parties, it thereafter has exclusive jurisdiction of the subject and matters ancillary thereto." *Utility Bd. of City of Lamar v. Southeast Colorado Power Ass'noc.*, 468 P.2d 36, 37 (Colo. 1970). Such exclusive jurisdiction "includes not only the power to hear and determine a cause, but to enter and enforce a judgment." *Williams v. Hankins*, 225 P. 243, 245 (Colo. 1924); *see also City of Englewood v. Reffel*, 522 P.2d 1241, 1243 (Colo. Ct. App. 1974). By not dismissing *Lindauer*, the *Lindauer* Court deliberately retained continuing exclusive original jurisdiction over the subject matter and parties, together with all matters ancillary thereto[9].

It is settled law that when a court retains jurisdiction to implement and enforce its own judgment, claims that the judgment has been breached are ancillary to the civil action in which the judgment was entered, and do not comprise separate and distinct "civil actions." *Kokkonen*, 511 U.S. at 381; *EnCana*, 405 P.3d at 493-94.[10]

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[9] "Trial judges are presumed to know the law and to apply it in making their decisions." *People v. White*, 870 P.2d 424, 440 (Colo.), *cert. denied*, 513 U.S. 841 (1994) (quoting *Walton v. Arizona*, 497 U.S. 639, 653 (1990)).

[10] As this Court has explained, without ancillary jurisdiction to enforce its own judgments, "the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred." *Peacock*, 516 U.S. at 356.

The Tenth Circuit's holding that the enforcement of the *Lindauer* Settlement is a separate and distinct action from the still pending *Lindauer* Class Action is clearly contrary to the holdings in *Kokkonen*, *Utility Bd. of Lamar*, and *EnCana.* Enforcement of the *Lindauer* Judgment is ancillary to the pending *Lindauer* Class Action itself, over which the *Lindauer* Court has retained both original and ancillary exclusive jurisdiction.

Further, when the *Sefcovic* complaint was filed in the Denver District Court, it did not create a separate action nor alter the fact that enforcement of the Lindauer Judgment is ancillary to the pending *Lindauer* Class Action. The Denver District Court was without both personal and subject matter jurisdiction, because the Garfield County District Court then maintained its original jurisdiction over the still pending *Lindauer* Class Action, together with ancillary jurisdiction to enforce its own judgment. *See Utility Bd. of Lamar*, 468 P.2d at 37. Because the Denver District Court lacked jurisdiction under Colorado law, no action taken by that court would be enforceable. *See Williams*, 225 P. at 245. And no separate and distinct "civil action" was created by filing the *Sefcovic* complaint in the Denver District Court. At the time of removal to federal court, the only properly pending action in the Colorado courts was the *Lindauer* Class Action.

The Tenth Circuit approved the district court's seizure of the *Lindauer* Court's deliberately retained original and ancillary jurisdiction to implement and enforce its own judgment, and failed to follow the long line of federal jurisdictional decisions that hold "proceedings that are ancillary to an action pending in state court cannot be

removed separately from the main claim" because they are not "civil actions." WRIGHT & MILLER, *supra*, § 3721.1;[11] *see also Ohio v. Doe*, 433 F.3d 502, 507 (6th Cir. 2006) ("[W]hen all that remains of [the state court] action is the enforcement of a judgment, removal to the federal court is not authorized.").

Contrary to the Tenth Circuit's holding, these jurisdictional limitations cannot be waived and may be raised at any time. *Fort Bend Cty., Texas v. Davis*, —U.S.—, 139 S. Ct. 1843, 1849, 204 L. Ed. 2d 116 (2019) (challenges to subject matter jurisdiction may be raised at any point in litigation and courts must consider them *sua sponte*); *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (an objection to removal based on a jurisdictional defect may be raised at any time and "subject-matter delineations must be policed by the courts on their own initiative even at the highest level").

Because this proceeding to enforce the *Lindauer* Judgment is ancillary to *Lindauer*, the federal district court had no jurisdiction to enforce that judgment and the embodied settlement. *See Hurt v. Dow Chemical Co.*, 963 F.2d 1142, 1145 (8th Cir. 1992) (if any jurisdictional requirement is not met, "the district court has no jurisdiction.").

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[11] The Wright & Miller section explains that this "sensible judge-made limitation" stems from 28 U.S.C. §1441(a), which "permits only removal of 'civil actions,'" and at footnote 27 cites the line of supporting federal decisions, including *First Nat'l Bank v. Turnbull & Co.*, 83 U.S. (16 Wall.) 190, 193 (1872); *Barrow v. Hunton*, 99 U.S. 80, 82 (1878); *Ohio v. Doe*, 433 F.3d 502 (6th Cir. 2006); and *Federal Sav. & Loan Ins. v. Quinn*, 419 F.2d 1014, 1018 (7th Cir. 1969).

C. Because the *Lindauer* Parties Agreed to a State Forum, the Holdings of this Court Preclude Concurrent Jurisdiction in Federal Court.

The *Lindauer* Settlement Agreement mandated that the *Lindauer* Court be the forum to address issues regarding the implementation of the Agreement and enforce any dispute which arises out of Section 4 of the Agreement. It also provided that *Lindauer* would not be dismissed upon approval of the *Lindauer* Settlement. App. 92-95. Williams (now TEP) and the *Lindauer* Class agreed to these terms, and the *Lindauer* Court approved them and incorporated them into its Judgment. Both TEP and the *Sefcovic* Class Members (as members of the *Lindauer* Class) are bound by them.

When the parties agree to a state forum, dismissal of a federal lawsuit to enforce the same agreement is required under the doctrine of *forum non conveniens*. *Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 66 n.8 (2013) ("[W]hen [a party] has violated a contractual obligation by filing suit in a forum other than the one specified in a valid forum-selection clause . . . dismissal would work no injustice on [that party].")

When construing a settlement, the court should not read it in a vacuum but should consider the context in which the parties were operating, the circumstances surrounding the order and give deference to the interpretation of the court which entered the order. *United States v. Knote*, 29 F.3d 1297, 1299 (8th Cir. 1994); *White v. Nat'l Football League*, 585 F.3d 1129, 1141 (8th Cir. 2009).

As required by *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), federal courts apply state substantive law in diversity matters, including those filed under CAFA. *See McCracken v. Progressive Direct Ins. Co.*, 896 F.3d 1166, 1170 n.5 (10th Cir. 2018) (CAFA gives federal district courts jurisdiction over state law disputes). Colorado law provides the legal context for the *Lindauer* Settlement and holds that prior to dismissal, the adjudicating court retains exclusive jurisdiction over the parties and the subject matter of the action. *Utility Bd. of Lamar*, 468 P.2d at 37. The settling parties are presumed to contract with reference to existing law and their relationship is governed by the rules mandated by law. *Dean Witter Reynolds, Inc. v. Variable Life Ins. Co.*, 373 F.3d 1100, 1106 (10th Cir. 2004) (applying Colorado law). The legal context also includes the fact that any proceeding to enforce the *Lindauer* Settlement is ancillary to the main action and cannot be separately removed.

Likewise, class actions involving years of litigation, complex issues and voluminous paperwork are often treated as "the virtual equivalent of a res," and are often administered exclusively by a single court to avoid interference with the administration of the complex issues already decided and those interrelated issues which remain to be refined; and to avoid the confusion, dysfunction and expense engendered by conflicting decisions from multiple courts. *Battle*, 877 F.2d at 882; *In re Baldwin-United Corp.*, 770 F.2d 328, 337 (2d Cir. 1985). The practical need for enforcement of the *Lindauer* Judgment by a single court is also a part of the context of the *Lindauer* Settlement.

The Tenth Circuit's holding also conflicts with Colorado law, by concluding that the *Lindauer* forum selection clause is permissive because "it neither requires that 'all' actions be brought there, nor places any restrictions on the parties' ability to bring suit elsewhere." App. 21. But, as the Tenth Circuit admitted, Colorado does not require any specific language for a forum selection provision to be mandatory. "The clause need only contain clear language showing the appropriate forum consists of that which has been designated." App. 20-21 (quoting *Vanderbeek v. Vernon Corp.*, 25 P.3d 1242, 1248 (Colo. Ct. App. 2002), *aff'd*, 50 P.3d 866 (Colo. 2002)).

In clear language, the *Lindauer* Settlement designates that "the Court" that has continuing jurisdiction to implement and enforce the *Lindauer* Settlement is the "Colorado State Court for Garfield County Colorado." App. 74, 91-92. Although that should be sufficient under Colorado law, the *Lindauer* Judgment amplifies it by using the mandatory word "shall": " . . . this Court shall retain continuing jurisdiction of this action to address any issues concerning implementation of the Settlement Agreement and enforcing this Final Judgment." App. 113.

The plain terms of the *Lindauer* Settlement, read as a whole and in legal and factual context, designate that enforcement of that settlement and the judgment embodying it "shall" be exclusively in the Garfield County District Court. TEP, as party to the *Lindauer* Settlement and bound by the *Lindauer* Judgment, and the *Sefcovic* Class Representatives, as *Lindauer* Class Members, are precluded from enforcing the *Lindauer* Settlement and Judgment in the federal district court.

D. Petitioners' Intervention Was Timely and TEP and the *Sefcovic* Class Representatives Failed to Disclose Known Jurisdictional Facts Which Preclude Concurrent Jurisdiction in the Federal District Court.

Petitioners' counsel are also Class Counsel for the *Lindauer* Class.[12] The Tenth Circuit emphasized that Petitioners' counsel was "aware" of this lawsuit and criticized him for monitoring the case "in order to determine what action would be in his clients' best interest." App. 16-17 n.11. However, such monitoring is both necessary and common when multiple class actions involving the same subject matter are pending, because Fed. R. Civ. P. 24(a)(2) provides that the Petitioners could not intervene in this lawsuit without demonstrating that their ability to protect their interests was impaired and that those interests were not being adequately represented.

The Tenth Circuit's criticism conflicts with well-established law holding that the time period for intervening does not begin to run until the class is certified. *See, e.g., In re Community Bank of N. Virginia*, 418 F.3d 277, 314 (3d Cir. 2005) ("Not until the existence and limits of the class [have] been established and notice of membership sent does a class member have any duty to take note of the suit . . . ."); *Crawford v. Equifax Payment Servs., Inc.*, 201 F.3d 877, 881 (7th Cir. 2000) ("As a rule the time for unnamed members of the class to intervene cannot commence until notice under Rule 23 [is received].").

Here, Petitioners had no grounds to intervene until they received notice of the *Sefcovic* Settlement. After receiving that notice, they timely filed their Motion to

[12] Under Colorado law, the *Lindauer* Class remains in existence for the "life of the leases" to enforce the *Lindauer* Judgment and Settlement. *EnCana*, 405 P.3d at 493-94.

Intervene, and a Motion to Dismiss on Jurisdictional Grounds, within the objection period. It is fundamental that absent class members, such as Petitioners, cannot take any action which will somehow waive their ability to raise the lack of subject matter jurisdiction in the federal district court at any time. *See Fort Bend Cty.*, 139 S. Ct. at 1848-49.

In the same footnote where it criticized Petitioners' counsel, the Tenth Circuit also criticized TEP for not disclosing jurisdictional facts to the court. App. 16-17 n.11. In these proceedings, TEP and the *Sefcovic* Class Representatives, as the parties asserting subject-matter jurisdiction, must overcome the presumption against jurisdiction. *Kokkonen*, 511 U.S. at 377.[13] Defying their duty to come forward with the facts that establish jurisdiction, TEP and the *Sefcovic* Class Representatives acted in concert to attempt to evade the continuing jurisdiction of the state court in *Lindauer* by withholding jurisdictional facts from both the Denver District Court in which suit was originally commenced and the federal district court to which it was removed. These known but undisclosed facts demonstrate a lack of subject matter jurisdiction to implement and enforce the *Lindauer* Judgment in both of those courts.

It is axiomatic that TEP and the *Sefcovic* Class Representatives cannot establish jurisdiction in federal court "by concealing for a time the facts which conclusively establish that it does not exist." *Lambert Run Coal Co. v. Baltimore & Ohio R.R. Co.*, 258 U.S. 377, 382 (1922).

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[13] "[A] suit commenced in state court must remain there until cause is shown for its transfer under some act of Congress." *Great N. Ry. Co. v. Alexander*, 246 U.S. 276, 280 (1918); *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941) (procedures for removal strictly construed against removal).

II. THE TENTH CIRCUIT OPINION CONFLICTS WITH THE DECISIONS OF THIS COURT WHICH HOLD THAT COMITY REQUIRES THE FEDERAL COURTS TO AVOID INTERFERENCE WITH STATE COURT PROCEEDINGS.

A. Comity Does Not Authorize Federal Courts to Seize Concurrent Jurisdiction to Usurp the Original and Retained Exclusive and Ancillary Jurisdiction of State Courts.

"The comity doctrine counsels lower courts to resist engagement in certain cases within their jurisdiction." *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 421 (2010). It is not a means of usurping the jurisdiction of state courts. Comity is central to our federal system and "preserves the integrity, dignity and residual sovereignty of the States . . . [and thereby] secures to citizens the liberties that derive from the diffusion of sovereign power." *Bond v. United States*, 564 U.S. 211, 221 (2011). As this Court has explained:

> [C]omity . . . is . . . a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This . . . is referred to by many as "Our Federalism" . . . . What the concept does represent is a system in which there is a sensitivity to the legitimate interests of both State and National Government, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

Younger v. Harris, 401 U.S. 37, 44 (1971).

As developed by the decisions of this Court, comity compels federal courts to respect and avoid interference with state courts' central judicial functions, including enforcement of their judgments. The Magistrate departed from this Court's mandates

by holding that "comity" somehow creates unfettered discretion in the federal district court to seize concurrent jurisdiction, and to thereby usurp the original and retained exclusive and ancillary jurisdiction of the *Lindauer* Court to enforce its own Judgment.

The Court of Appeals affirmed the district court's holding, based on its misperception that Petitioners had waived any jurisdictional challenge, and the general rule that, prior to judgment being entered, "[t]he pendency of an action in [a] state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 73 (2013). But contrary to the lower courts' perversion of the concept, comity actually requires the federal courts, even where they otherwise have concurrent jurisdiction, to accord "a proper respect for state functions" and to defer to the jurisdiction of state courts. *Id.* at 77-78. Accordingly, this Court explained that *Younger* abstention is an exception to the general rule relied upon by the Tenth Circuit. *Id.* Consistent with the *Sprint* holding, Congress has consistently "manifested a desire to permit state courts to try state cases free from interference by federal courts." *Younger*, 401 U.S. at 43.

The holdings below are plainly the opposite of comity. Overriding the state court's deliberate retention of continuing, exclusive, original and ancillary jurisdiction to implement and enforce its own judgment undeniably interferes with the state court's jurisdiction, its ability to perform its necessary judicial functions, the administration of *Lindauer*, and the integrity of our federal system of governance.

Instead, this Court has instructed that comity is promoted by granting state court judgments full faith and credit, including res judicata and collateral estoppel

effect. *Allen v. McCurry*, 449 U.S. 90, 96 (1980); *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 523 (1985) ("[T]he important values of federalism and comity [are] embodied in the Full Faith and Credit Act."). Giving full faith and credit to the *Lindauer* Judgment requires that it be given the preclusive effect it possesses under the rules, statutes, and common law of Colorado. *See Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481-82 (1982). Here, the Magistrate expressly found that the *Lindauer* Court's jurisdiction is "exclusive," and that it intended to retain exclusive jurisdiction. The Magistrate's finding is consistent with the preclusive effect of Colorado law. *See Utility Bd. of Lamar*, 468 P.2d at 37.

"Due regard for the rightful independence of state governments, which should actuate the federal courts, requires that the they scrupulously confine their own jurisdiction to the precise limits which the statute has defined." *Healy v. Ratta*, 292 U.S. 263, 270 (1934). Consistent with comity and federalism, 28 U.S.C. §1738 requires the district court to give the *Lindauer* Judgment the preclusive effect it has in the Colorado courts. *See Parsons*, 474 U.S. at 523. *Parsons* precludes the Magistrate from rewriting the *Lindauer* Judgment to substitute concurrent jurisdiction for the exclusive jurisdiction established by Colorado law, and which the Magistrate himself found was the *Lindauer* Court's intent. *Long v. Sec'y Dep't of Corr.*, 924 F.3d 1171, 1179 (11th Cir.) (federal court must accept the preclusive effect of a state court judgment under state law, without alteration), *cert. denied*, —U.S.—, 139 S. Ct. 2635, 204 L. Ed. 2d 280 (2019). Comity is promoted by giving full faith and credit to the *Lindauer* Judgment.

Comity is undeniably undermined by the judgment in this case. There is no authority which supports the Magistrate's unique inversion of comity to conclude that it somehow authorizes the federal district court to seize concurrent jurisdiction over the enforcement of the *Lindauer* Judgment after finding that the Garfield County District Court intended to retain exclusive jurisdiction and, in fact, did so. The Magistrate's holding is directly contrary to this Court's holdings in *Bond*, *Younger*, *Sprint*, *Allen*, *Kremer*, *Parsons*, and *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1 (1987), which clearly define comity as requiring federal courts to ***defer to***, rather than interfere with, the state court's implementation and enforcement of its own judgment and to require federal courts to afford full faith and credit to the state court judgment.

Moreover, in a class action, perceived inaction by an absent class member should have no effect on the court's examination of its jurisdiction, which affects all other absent class members. Comity is necessarily founded upon the relationship between federal and state courts, not the conduct of individual litigants.

B. *Younger* Abstention Is Required, and Indirect Interference with a Pending State Court Proceeding Is Presumed, Where Exercise of Federal Jurisdiction May Have a Preclusive Effect on Matters Before the State Court.

As previously summarized by the Tenth Circuit:

> The *Younger* doctrine, as developed, requires abstention when federal proceedings would (1) interfere with an ongoing state judicial proceeding (2) that implicates important state interests and (3) that affords an adequate opportunity to raise the federal claims. A case warrants *Younger* abstention only if each of these three criteria are satisfied. However, *Younger* abstention is not discretionary once the above conditions are met absent extraordinary

> circumstances that render a state court unable to give state litigants a full and fair hearing on their federal claims.

J.B. ex rel. Hart v. Valdez, 186 F.3d 1280, 1290-91 (10th Cir. 1999) (citations omitted).

This Court also requires that federal courts must abstain from deciding a case otherwise within the scope of their jurisdiction in three extraordinary circumstances where the prospect of interference with state proceedings counsels against federal relief: (1) "state criminal prosecutions"; (2) "civil enforcement proceedings"; and (3) "civil proceeding involving certain orders that are uniquely in furtherance of the state courts' ability to perform their own judicial functions." *Sprint,* 571 U. S. at 72; *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 100 n.3 (1998) (noting that this Court has treated *Younger* abstention as jurisdictional).

There is no question that the third *Sprint* criterion is satisfied here, because this Court chose the "[s]tate's interest in enforcing judgments and orders of its courts" as an example of the third type of exceptional circumstance. 571 U.S. at 72-73 (citing *Pennzoil*). This Court has also stated, "when a litigant has not attempted to present his federal claims in related state court proceedings, a federal court should assume that the state court will provide an adequate remedy." *Pennzoil*, 481 U.S. at 15. There has been no evidence presented in this case that the *Lindauer* Court will not adequately enforce its own judgment.

The Tenth Circuit also mischaracterized Petitioners' position as suggesting "the mere presence of contempt proceedings in state court required the district court to abstain under *Younger*." App. 17. To the contrary, the contempt proceeding in *Linda*uer is ancillary to the state court's original and retained exclusive jurisdiction to

implement, interpret, and enforce of its own judgment in *Lindauer*, which has remained pending since 2006. It is the interference with *Lindauer* that requires *Younger* abstention.

The Tenth Circuit acknowledged that interference with the state court's ability to perform its judicial function may be either direct or indirect. App. 16 (citing *Joseph A. ex rel. Wolfe v. Ingram*, 275 F.3d 1253, 1272 (10th Cir. 2002) ("*Younger* governs whenever the requested relief would interfere with the state court's ability to conduct proceedings, regardless of whether the relief targets the conduct of the proceeding directly."). Nevertheless, the Tenth Circuit concluded that *Younger* abstention was not required because it could not "discern" any interference with the state court contempt proceeding.

Here again, the Tenth Circuit focused solely on the state court contempt proceeding and failed to recognize that when the district court seized concurrent jurisdiction it unquestionably interfered with the state court's original and retained exclusive jurisdiction over *Lindauer*.

Younger requires abstention where interference with state court proceedings occurs indirectly, by the filing of an action in federal court seeking either a declaratory judgment or monetary relief. *Samuels v. Mackell*, 401 U.S. 66, 73 (1971); *Gilbertson v. Albright*, 381 F.3d 965, 978-80 (9th Cir. 2004); *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1228 (10th Cir. 2004), *cert. denied*, 544 U.S. 1050 (2005). Indirect interference is presumed and is treated in the same manner as direct interference (i.e., a federal injunction), because (1) the party seeking relief may obtain an injunction to

enforce the judgment of the federal court, and (2) the federal judgment may have a preclusive effect on the ongoing state court proceeding. *D.L.*, 392 F.3d at 1228. Accordingly, *Younger* abstention extends to claims for monetary relief when a judgment for the plaintiff could have preclusive effects on a pending state-court proceeding. *Id.*[14] Here, the Magistrate entered a judgment approving the *Sefcovic* Settlement, which contains terms both new to and inconsistent with, the *Lindauer* Settlement, and which might have preclusive effects on proceedings in *Lindauer* over the next thirty-to-fifty years. The Tenth Circuit's holding conflicts with established law because nothing more is required to demonstrate indirect interference.

Here, however, direct and actual interference is manifest. This case seeks monetary relief and interferes with *Lindauer* by ousting that court from its original and retained exclusive jurisdiction to implement and enforce its own judgment and to ensure fair, reasonable and consistent enforcement now and in the future. The very act of exercising jurisdiction over only a limited part of the *Lindauer* Class has fragmented that class into numerous subgroups, including, without limitation, each *Sefcovic* subclass, the opt-outs, and the nine *Lindauer* lease categories not included in the *Sefcovic* case. This Balkanization and the creation of conflicting judgments in multiple courts plainly interferes with the *Lindauer* Court's ability to effectively and comprehensively implement and enforce its own Judgment in the future. Approval of

[14] *See also Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 730 (1996) (federal courts applying abstention principles in damages actions are required to enter a stay but are not permitted to dismiss the action altogether); *Lucas v. Henrico Cty. Pub. Sch. Bd.*, 767 Fed. Appx. 444, 448 (4th Cir. 2019) (applying *Quackenbush* stay holding to *Younger* abstention).

the *Sefcovic* Settlement also undermines the integrity of consent decrees and opens the door for similar disconnected results in other class action cases in the future.

The Tenth Circuit's holding that its expressed inability to "discern" any interference with the *Lindauer* contempt proceeding precludes *Younger* abstention conflicts with established law. Instead, indirect interference is presumed from the potential preclusive effects of a federal court judgment on *Lindauer*. *See Samuels*, 401 U.S. at 73. Even if the district court otherwise had concurrent subject matter jurisdiction, abstention is mandated under *Younger*, and that court must be required to vacate its approval of the *Sefcovic* Settlement and stay these federal proceedings pending the enforcement of the *Lindauer* Judgment by the *Lindauer* Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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