UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRUCE J. HALL,

Plaintiff,

v.

GRETCHEN WHITMER, GOVERNOR OF MICHIGAN; AND ARRON PAYMENT, CHAIRPERSON SAULT STE. MARIE TRIBE,

Defendants.

No. 2:19-cv-11909

HON. DAVID M. LAWSON

MAG. ELIZABETH A. STAFFORD

GOVERNOR'S MOTION FOR SUMMARY JUDGMENT

ORAL ARGUMENT REQUESTED

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GOVERNOR'S MOTION FOR SUMMARY JUDGMENT

The Michigan Governor brings this motion pursuant to Fed. R. Civ. P. 56. She respectfully asks the court to grant her summary judgment against Plaintiff Bruce J. Hall.

In this litigation, Mr. Hall primarily seeks the federal recognition of an Indian tribe (the Mackinac Band) and a tax agreement between the State of Michigan and "indigenous persons." (Complaint, Pg.ID #6.) He also seeks information about treaty rights and the chance to state his grievances concerning a series of other issues that do not involve the

Michigan Governor. He has alleged violations of 42 U.S.C. §§ 1981 and 1983 as the way to present these issues to the court.

As this brief explains in more detail, there are two fundamental flaws with his complaint that cannot be remedied, even by amending it. First, he fails to allege facts necessary to state claims under 42 U.S.C. §§ 1981 and 1983. Second, the Governor has no legal obligation or authority under federal law to grant him the relief he seeks, and she is unconnected to the issues that appear to concern him. Therefore, even at this early stage of the litigation, the court must grant summary judgment to the Governor and dismiss the claims against her with prejudice.

ATTEMPT TO OBTAIN CONCURRENCE

In accordance with Local Rule 7.1(a), Assistant Attorney General Laura LaMore spoke at length with Plaintiff Bruce J. Hall by telephone on the morning of October 30, 2019 to seek concurrence in the Governor's motion for summary judgment. She explained the nature of the motion and its legal basis to Mr. Hall. He indicated that he understood why the motion was being filed, but he would not concur in the motion and expects to file a response.

Respectfully submitted,

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Dated: November 8, 2019

UNITED STATES DISTRICT COURT
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BRIEF IN SUPPORT OF THE GOVERNOR'S MOTION FOR SUMMARY JUDGMENT

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BRIEF IN SUPPORT OF THE GOVERNOR'S MOTION FOR SUMMARY JUDGMENT

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Is the Governor entitled to summary judgment of Plaintiff's claim under 42 U.S.C. § 1981 because he has failed to allege facts supporting each of the elements of that claim and because the Governor has no legal obligation or authority under federal law to grant recognition to the Mackinac Band or require the State of Michigan to enter into a tax agreement with "indigenous persons"?

2. Is the Governor entitled to summary judgment of Plaintiff's claim under 42 U.S.C. § 1983 because he has not sued her in her individual capacity and has failed to allege facts supporting each of the elements of that claim?

3. Is the Governor entitled to summary judgment of Plaintiff's claims that do not involve her?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority:

42 U.S.C. § 1981

42 U.S.C. § 1983

25 C.F.R. Part 83

Fed. R. Civ. P. 56(a)

Gomez v. Toledo, 446 U.S. 635 (1980)

Johnson v. Harrell, 142 F.3d 434, 1998 WL 57356 (6th Cir. 1998)

INTRODUCTION AND STATEMENT OF FACTS

Twelve federally recognized Indian tribes call Michigan home, including the Sault Ste. Marie Tribe of Chippewa Indians (Sault Tribe). (Ex. A, Michigan Tribal Governments.) Plaintiff Bruce J. Hall claims to be an enrolled member of the Sault Tribe. (Hall Response to Def. Payment's Motion to Dismiss, Pg.ID #351.) But he also claims to be a member of the Michilimackinac or Mackinac Band (Mackinac Band). (Complaint, Pg.ID ##9–10.)

Representatives from the Anishinaabe bands that lived near the Straits of Mackinac are signatories listed on the Treaty with the Ottawas, etc., 7 Stat. 491 (Mar. 28, 1836) (1836 Treaty) as *Michilimackinac* and the Treaty with the Ottawa and Chippewa, 11 Stat. 621 (July 31, 1855) (1855 Treaty) as *Mackinac Bands*. (Ex. B, 1836 Treaty; Ex. C, 1855 Treaty.) The Department of Interior, Bureau of Indian Affairs (BIA) has not granted federal recognition under the 25 C.F.R. Part 83 process to any Indian group claiming to be the Mackinac Band. (List of Federally Recognized Indian Entities, Pg.ID ##247–252.) Nor is any Mackinac group currently petitioning the BIA for federal recognition. (Ex. D, Part 83 Petitions in Process.) There are, however,

multiple groups within Michigan claiming to be the political successors to or the descendants of the historic Mackinac bands. *See Mackinac Tribe v. Jewell*, 829 F.3d 754, 755 (D.C. Cir. 2016) ("several Mackinac groups consolidated to conduct an election"); (Ex. E, Mackinac Bands of Chippewa and Ottawa Indians; Ex. F, Urban Ottawa and Chippewa Indians of Michigan.).

Mr. Hall has provided this Court with documents that he claims trace his ancestry to tribal signatories of several United States treaties, including the 1836 Treaty and the 1855 Treaty. (Complaint, Pg.ID ##9, 14–81; Ex. B, 1836 Treaty; Ex. C, 1855 Treaty.) Mr. Hall claims his ancestors' rights under these treaties as their "next of kin." (Complaint, Pg.ID #9.) He also asserts the right to enforce the treaties as contracts under 42 U.S.C. § 1981. (Complaint, Pg.ID ##9–10.)

Ultimately, Mr. Hall would like to achieve the following outcomes in this litigation: (1) federal acknowledgement of the Mackinac Band outside of the 25 C.F.R. Part 83 recognition process and verification that he is entitled to enforce the treaties that the Mackinac bands entered; (2) a tax agreement with the State of Michigan that would give tax benefits to all "indigenous persons" in Michigan; (3) identification of

his federal rights as a beneficiary of the listed treaties and confirmation that those rights apply outside of Indian country; and (4) an opportunity to air and investigate a series of grievances involving the BIA and the Sault Tribe. (Complaint, Pg.ID #6.)

But Mr. Hall cannot obtain the relief he has requested against the Governor of Michigan. First, 42 U.S.C. § 1981 is neither a vehicle for federal acknowledgement of the Mackinac Band nor a way to establish Mr. Hall as the modern Mackinac Band's representative entitled to enforce its treaties as contracts. Second, federal law does not require states or state officials enter into tax agreements with "indigenous persons." (Complaint, Pg.ID #6.) Third, Mr. Hall does not allege a violation of his federal treaty rights and has not identified any act or omission by the Governor that violates federal law that can be remedied by this Court. Finally, Mr. Hall's remaining grievances do not involve the Governor or are otherwise not actionable against her.

LEGAL STANDARD

The Governor moves for summary judgment pursuant to Fed. R. Civ. P. 56(a) rather than filing a motion to dismiss under Fed. R. Civ. P. 12(b)(6) because she refers to documents outside of the pleadings.

A party moving for summary judgment must demonstrate that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law" concerning the claims or defenses challenged. Fed. R. Civ. P. 56(a). A court reviews all the evidence in the record in the light most favorable to the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A court may enter summary judgment if the non-movant "fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

ARGUMENT

I. The Governor is entitled to summary judgment of Mr. Hall's claim under 42 U.S.C. § 1981 because he has failed to allege facts supporting each of the elements of that claim and because the Governor has no legal obligation or authority under federal law to grant recognition to the Mackinac Band or require the State of Michigan to enter into a tax agreement with "indigenous persons."

Mr. Hall evidently relies on 42 U.S.C. § 1981 as a way to obtain federal acknowledgement of the Mackinac Band and a tax agreement between the State of Michigan and "indigenous persons." (Complaint,

Pg.ID #6.) However, § 1981 does not provide the relief that Mr. Hall desires, and it cannot be the basis of a claim against the Governor.

A. Mr. Hall has failed to allege the elements of a 42 U.S.C. § 1981 claim.

To state a § 1981 claim against the Governor, Mr. Hall must allege that: (1) he is "a member of a racial minority;" (2) the Governor "intended to discriminate" against him "on the basis of race;" and (3) "the discrimination concerned" an activity "enumerated in the statute." (Ex. G, *Johnson v. Harrell*, 142 F.3d 434, 1998 WL 57356 at *2 (6th Cir. 1998)); *see also Burton v. Plastics Research Corp.*, 134 F. Supp.2d 881, 885 (E.D. Mich. 2001) (adopting elements of a § 1981 claim under *Johnson*, *supra*). However, Mr. Hall fails to allege any facts that support the elements of a § 1981 claim.

First, Mr. Hall has not alleged that he is a member of a racial minority. (Ex. G, *Johnson*, 1998 WL 57356 at *2.) He claims to be an enrolled member of the Sault Tribe, a member of the Mackinac Band, and a "federally recognized Native American." (Hall Response to Def. Payment's Motion to Dismiss, Pg.ID #351; Hall Motion for Court

Appointed Attorney, Pg.ID #354.) But he never claims to be a member of a racial minority.

Assuming Mr. Hall's allegations concerning his tribal membership are true, being a member of a federally recognized Indian tribe is a political designation, not a racial category. The Supreme Court considered this issue in *Morton v. Mancari*, 417 U.S. 535, 553 n. 24 (1974), where it concluded that a BIA employment preference for members of federally recognized tribes—as opposed to all individuals "who are racially to be classified as 'Indians'"—was a political preference and not racial discrimination. The *Morton* decision recognized the unique historical and trust relationship that the United States has with federally recognized tribes, which is unlike its relationship with any other groups. *Id.* at 552–54.

Mr. Hall specifically claims to be a member of a federally recognized Indian tribe and a member of the Mackinac Band, which he claims is entitled to federal recognition based on its treaties with the United States. (Complaint, Pg.ID #10.) The status that he invokes for himself in this case is political because it involves tribal-federal government-to-government relations and his alleged familial

relationship to individuals who signed treaties—again, a political act. Therefore, Mr. Hall's claim is not based on any status he may have as a member of a racial minority.

Second, if he is suing as a member of a racial minority, Mr. Hall has not alleged that the Governor intended to discriminate against him on the basis of race. (Ex. G, *Johnson*, 1998 WL 57356 at *2.) Mr. Hall alleges that the State of Michigan "discriminate[s] service areas" and that he is being deprived of services and rights because he is living "off reservation." (Complaint, Pg.ID #10; Hall Motion for Court Appointed Attorney, Pg.ID #354.) If there are services or benefits that Mr. Hall believes he is entitled to receive, he has not identified them or explained why federal law would compel the Governor or the State of Michigan to provide these services to him as a tribal member.

Mr. Hall also appears to pin some aspect of his § 1981 claim on state taxes. The Sault Tribe and the Michigan Department of Treasury (Treasury) entered into a tax agreement in 2003 (Tax Agreement) that clarifies the administration of specific state taxes and provides for certain tax treatment under state law. (Tax Agreement, Pg.ID ##152–204.) The Tax Agreement defines an Agreement Area where the Sault

Tribe's resident tribal members receive that tax treatment. (Tax Agreement, Pg.ID ##156, 205–18.) The Sault Tribe's Agreement Area is located near Sault Ste. Marie, where its governmental headquarters are located; but Mr. Hall currently lives in Oakland County. (Tax Agreement Pg.ID ##205–18; Complaint, Pg.ID #2.) By choosing to live hundreds of miles outside of the relevant Agreement Area, Mr. Hall is not entitled to receive benefits of the Sault Tribe's Tax Agreement.

Mr. Hall alleges that state taxes should not apply to him. (Complaint, Pg.ID #10.) But federal law allows states to impose their tax laws on tribes and tribal members outside of Indian country. *See Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148–49 (1973). As the Supreme Court has explained, "Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Id.* Mr. Hall does not allege that he resides in any federally recognized tribes' Indian country. *See* 18 U.S.C. § 1151 (defining Indian country). To the contrary, he alleges he lives on ceded territory, which is subject to state jurisdiction. (Hall Motion for Court Appointed Attorney, Pg.ID #354).

In any case, Mr. Hall has not alleged the discrimination required for a § 1981 claim because he has been extended the *same* treatment as other citizens. Section 1981 is not a method for him to obtain *more* benefits than what all other citizens have in the form of additional tax immunities and benefits. The Sixth Circuit has made clear that § 1981 "does not require that persons be accorded preferential treatment because of their race." *Long v. Ford Motor Co.*, 496 F.2d 500, 505 (6th Cir. 1974). If Mr. Hall wishes to receive benefits under the Sault Tribe's Tax Agreement, his option is to move to the Agreement Area. Mr. Hall has not identified any discrimination based on race, yet alone intentional discrimination by the Governor whether related to taxation or any other issue. Therefore, he has failed to identify any rights that all other citizens have which he has been denied.

Third, Mr. Hall has not alleged that any discrimination against him concerned an activity enumerated in the statute, such as the right to make and enforce contracts. (Ex. G, *Johnson*, 1998 WL 57356 at *2.) Mr. Hall claims that the State of Michigan refuses to recognize his treaty rights and that he has the right to enforce those treaties as a descendant of its signatories. (Complaint, Pg.ID ##9–10.) He requests

that this Court afford him unidentified treaty rights as "next of kin" to the treaty signatories. (Complaint, Pg.ID ##6, 9–10.)

However, even if Mr. Hall is a descendant of a party to the treaties, he is not named as a beneficiary in the treaties that he wishes to enforce, and he does not have any individual rights under the treaties. *See Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006) (plaintiff must have rights under the contract in a § 1981 claim). Treaty rights are specific to each treaty and each tribe, and the rights vest with the *tribe* when the treaty is signed. *See United States v. Washington*, 520 F.2d 676, 692 (9th Cir. 1975) (rights vest with tribes at "the signing of the treaties"); *see also United States v. Michigan*, 471 F. Supp. 192, 271–72 (W.D. Mich. 1979) (reserved treaty rights do not belong to individual tribal members).

Mr. Hall wants to enforce treaty rights as an individual, but he is not the party that holds the rights, he has not identified which rights he wants to enforce, and he has not identified any right he has been denied because of a racial identity. Therefore, Mr. Hall has not alleged that the Governor committed any discriminatory acts that are prohibited by the statute, such as making and enforcing contracts.

Mr. Hall has clearly failed to allege any of the elements required to establish a claim under § 1981 against the Governor.

B. 42 U.S.C. § 1981 is not a path to federal recognition for the Mackinac Band, particularly because it has failed to exhaust its administrative remedies.

Mr. Hall attempts to use 42 U.S.C. § 1981 to obtain federal recognition of the Mackinac Band. His "next of kin" or descendant-based argument is, evidently, aimed at showing that he meets the ancestry requirements in the 25 C.F.R. Part 83 federal recognition process that determines whether an Indian group and its members have rights under a specific treaty. But he cannot achieve federal recognition in a claim against the Governor.

The Indian Commerce Clause, U.S. Const. art. I, § 8, cl. 3, gives Congress plenary authority over Indian affairs. *See Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989) ("the central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs"). Relying on powers Congress granted the Department of Interior (Interior), Interior has adopted a process under which the BIA acknowledges tribes. *See* 25 U.S.C. § 2 (granting power over Indian affairs to Interior and Commissioner of

Indian Affairs); 25 C.F.R. Part 83. A group seeking recognition under Part 83 must submit a petition to Interior documenting required criteria, and if the petition is successful, the group is added to the list of federally recognized Indian tribes published by Interior. *See* 25 C.F.R. § 83.11(a)–(c), (e) (identifying petition criteria); *see also* 25 U.S.C. § 5131 (successful petitions added to list of federally recognized tribes).

However, "when a court is asked to decide whether a group claiming to be a currently recognized tribe is entitled to be treated as such, the court should for prudential reasons refrain from deciding that question until the Department [of Interior] has received and evaluated a petition under Part 83." *Mackinac Tribe*, 829 F.3d at 757; *see also United Tribe of Shawnee Indians v. United States*, 253 F.3d 543, 550 (10th Cir. 2001) ("exhaustion is required when, as here, a plaintiff attempts to bypass the regulatory framework for establishing that an Indian group exists as an Indian tribe").

Mr. Hall has not alleged that his Mackinac group has exhausted the Part 83 process and the Governor has found no evidence that it has done so. If it has exhausted that process, its next step would be to challenge any adverse decision by the BIA under the federal

Administrative Procedure Act (APA), 5 U.S.C. § 702. But this lawsuit is not a challenge under the APA. The *Mackinac Tribe* decision by the D.C. Circuit has already held that another group claiming to be the very same tribe must exhaust those administrative procedures. *See Mackinac Tribe*, 829 F.3d at 757. BIA is best suited to decide competing claims by groups that each assert they are the true Mackinac Band.

Moreover, Part 83 does not give states or state officials the authority to grant federal recognition to Indian tribes. As the Ninth Circuit stated, "an American Indian tribe does not exist as a legal entity unless the *federal government* decides that it exists." *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir. 2004) (emphasis added). Thus, there is no basis in federal law for Mr. Hall to sue a state governor for the federal government's failure or refusal to recognize a tribe.

Further, Michigan has no constitutional or statutory process for the Governor to grant recognition to a tribe. If there were authority for state recognition, it would not compel the federal government to recognize the tribe. Consequently, this Court cannot grant Mr. Hall the federal recognition, rights, benefits, or services he desires in this litigation based on a claim against the Governor.

Alternatively, Mr. Hall may seek recognition through federal legislation. For example, Congress has reaffirmed or recognized three Michigan tribes through special legislation: Little Traverse Bay Bands of Odawa Indians, Little River Band of Ottawa Indians, and Pokagon Band of Potawatomi Indians. Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act, Pub. L. No. 103-324, 108 Stat. 2156 (1994); An act to restore Federal services to the Pokagon Band of Potawatomi Indians, Pub. L. No. 103-323, 108 Stat. 2152 (1994). These Congressional acts reaffirmed or restored the federal government's relationship with each tribe. *See id.* But the Governor has no authority to enact any legislation, much less a federal act, recognizing the Mackinac Band or any of its treaty rights.

In sum, there is no authority supporting a claim against a state official under § 1981 as a substitute for either the Part 83 process or Congressional legislation to achieve recognition of the Mackinac Band.

C. 42 U.S.C. § 1981 does not require the State of Michigan to enter into a tax agreement with Mr. Hall or "indigenous persons."

Whether Mr. Hall claims that § 1981 gives him a right to enter into a state tax agreement with the State of Michigan is unclear.

(Complaint, Pg.ID #6.) If he is making that argument, Mr. Hall is not entitled to his own personal tax agreement or a tax agreement on behalf of other persons for a variety of reasons that are explained in more detail in Section II.B.

For the purposes of a § 1981 claim, there is no federal law that requires a state or state official to enter into a state tax agreement with individuals. The Supreme Court has voiced support for voluntary tribal-state tax agreements. *See Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 514 (1991). But the Supreme Court has never held that federal law *requires* states to enter into tax agreements with tribes, much less with individuals. Additionally, states generally govern taxation through their own laws, not contracts. Mr. Hall is not being denied rights other citizens have to enter into a tax contract.

Even if state law were relevant to this federal question case, Mr. Hall is not entitled to a tax agreement because he is an individual, not a federally recognized tribe. *See* Mich. Comp. Laws § 205.30c (tax agreements may only be provided to federally recognized tribes). He has also sued the incorrect party because, assuming he wants a tax

agreement like the Sault Tribe's, Treasury has the statutory authority to enter into that type of tax agreement in Michigan, not the Governor. *See* Mich. Comp. Laws § 205.30c. Therefore, a claim under § 1981 cannot provide the relief Mr. Hall is requesting.

II. The Governor is entitled to summary judgment of Mr. Hall's claim under 42 U.S.C. § 1983 because he has not sued her in her individual capacity and has failed to allege facts supporting each of the elements of that claim.

Mr. Hall seems to use 42 U.S.C. § 1983 to obtain a tax agreement between the State of Michigan and "indigenous persons." (Complaint, Pg.ID #6.) However, § 1983 cannot provide this relief because Mr. Hall has not sued the Governor in her individual capacity and has not alleged facts to support any element of a claim under § 1983.

A. Mr. Hall has failed to sue the Governor in her individual capacity as required for a 42 U.S.C. § 1983 claim.

Mr. Hall has sued the Governor under § 1983 because "treaties have been signed" and requests that the State of Michigan be compelled to enter into a tax agreement with "indigenous persons." (Complaint, Pg.ID #6; Pg.ID #11.) A claim under § 1983 can be brought only against defendants in their individual capacities because a state official acting

in an official capacity is not a "person" under § 1983. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) (a suit against the official is the same as a suit against the state itself). Mr. Hall is not entitled to any relief under § 1983 because he has sued the Governor in her official capacity.

Mr. Hall's complaint does not specifically state whether he has sued the Governor in her official or individual capacity. (Complaint, Pg.ID ##1–12.) However, when a complaint is silent regarding capacity for a § 1983 claim, the Sixth Circuit applies the "course of proceedings" test determine whether it is an individual- or official-capacity suit. *See Kentucky v. Graham*, 473 U.S. 159, 167 n. 14 (1985) (course of proceedings typically indicate the capacity); *see also Moore v. City of Harriman*, 272 F.3d 769, 773 (6th Cir. 2001) (looking to the course of proceedings to determine capacity).

Here, Mr. Hall's complaint refers to the Governor by her title and thereafter only discusses his allegations or claims against the State of Michigan. (Complaint, Pg.ID ##1–2, 6, 9–12.) In later filings, he again refers to the Governor solely by her title as "Michigan's governor" or "governor of Michigan[]," and he clarifies that, "Defendants positions

they hold in office are the subject of this litigation." (Hall Response to Def. Payment's Motion to Dismiss, Pg.ID #351; Hall Motion for Court Appointed Attorney, Pg.ID #354.) He never refers to conduct by Gretchen Whitmer as an individual.

Mr. Hall's course of proceedings can be differentiated from those analyzed in *Moore*, where the Sixth Circuit found that the defendants were sued in their individual capacities. *See Moore*, 272 F.3d at 773–74. The complaint in *Moore* listed the officers' names, not their official titles, referred to the officers as "individual defendants," and sought money damages against each defendant. *Id.* at 773. Additionally, subsequent filings stated that the officers were being sued in their individual capacities. *Id.* at 774. No similar facts exist here.

Based on Mr. Hall's course of proceedings, he clearly intended to sue the Governor in her official capacity, not Gretchen Whitmer as an individual. Therefore, the Governor is entitled to summary judgment of this claim because she has not been sued in her individual capacity as a claim under § 1983 requires.

B. Mr. Hall has failed to allege the elements required for a claim under 42 U.S.C. § 1983.

The Governor is entitled to summary judgment because Mr. Hall fails to allege the elements required for a § 1983 claim and he cannot do so in this case. A claim under § 1983 requires Mr. Hall to allege that (1) a person has deprived him of a federal right and (2) the person acted under the color of state law. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980) (two allegations required to state a cause of action under § 1983).

First, Mr. Hall does not allege that the Governor has deprived him of his federal rights. He instead alludes to a violation of state law because he has been denied the benefits of a tax agreement under state law. (Complaint, Pg.ID ##6, 10.) Essentially, Mr. Hall requests that this Court order the State of Michigan, not the Governor, to enter into a tax agreement under state law. He never identifies what federal law or federal treaty right has been violated that would require Michigan to offer him a state tax agreement. (Complaint, Pg.ID ##6, 11.) Violations of state law, alone, do not support a claim under § 1983. *See Baker v. McCollan*, 443 U.S. 137, 144 (1979) (claims arising under state law do not always give rise to a claim under the Constitution); *see also White by Swafford v. Gerbitz*, 892 F.2d 457, 461 (6th Cir. 1989) ("detention

may have violated state law, [but] the violation, without more, was not a constitutional violation for purposes of section 1983"). The Governor has found no federal law that requires a state or state official to enter into a tax agreement with individuals, including "indigenous persons." (Complaint, Pg.ID #6.) Mr. Hall has not alleged a violation of his federal rights as a § 1983 claim requires.

Second, assuming there is a violation of federal law, Mr. Hall failed to allege that the Governor acted under the color of state law to deny him his federal rights. *See Gomez*, 446 U.S. at 640. "[A] defendant in a § 1983 suit acts under color of state law when he abuses the position given to him by the State." *West v. Atkins*, 487 U.S. 42, 50 (1988) (citations omitted). But the Governor could not have acted under state law to deny Mr. Hall or other individuals a state tax agreement because she has no authority to grant a tax agreement in the first place.

Treasury is charged with administering and enforcing state tax laws under the Revenue Act, Mich. Comp. Laws § 205.1. Consistent with that authority, the Michigan Legislature authorized Treasury to enter into tax agreements, and to do so solely with federally recognized Indian tribes located within the State of Michigan. *See* Mich. Comp.

Laws § 205.30c. With this authorization, Treasury entered into separate, comprehensive agreements concerning the administration and enforcement of specific taxes with ten federally recognized tribes in Michigan. The Sault Tribe is one of the ten tribes with a tax agreement. (Tax Agreement, Pg.ID #152.) Mich. Comp. Laws § 205.30c does not authorize tax agreements with individuals, even "indigenous persons." (Complaint, Pg.ID #6.)

If state law allowed tax agreements with individuals, whether or how to identify the "indigenous persons" Mr. Hall requests have such an agreement and the federal rights the agreement would grant is unclear. (Complaint, Pg.ID #6.) Further, a requirement to enter into tax agreements with "indigenous persons" would impose a substantial burden on Treasury's administration of state taxes and negatively impact state tax revenue.

By asking this Court to order the State of Michigan to enter into a tax agreement with individuals, Mr. Hall seeks relief to which he is not entitled under any federal or state law. *See* Mich. Comp. Laws § 205.30c. Therefore, Mr. Hall has failed to allege or show that the

Governor acted under the color of state law to deny his federal right to a state tax agreement.

In sum, the Governor is entitled to summary judgment in her favor because Mr. Hall has not alleged the elements of a § 1983 claim.

III. The Governor is entitled to summary judgment of Mr. Hall's claims that do not involve her.

Mr. Hall makes a variety of other claims and allegations that do not involve the Governor. Therefore, they also fail to state the grounds on which Mr. Hall could be entitled to relief against the Governor and she is entitled to summary judgment.

Mr. Hall requests that this Court appoint the Department of Justice (DOJ) as his counsel. (Complaint, Pg.ID #6.) But the DOJ cannot act as Mr. Hall's counsel because the United States Attorney's Offices do not represent individuals in lawsuits. (Ex. H, U.S. Attorney's Office FAQ.) The DOJ "only represent[s] the United States, its officers, agencies and employees." (Ex. H, U.S. Attorney's Office FAQ.)

Mr. Hall also requests that this Court order the DOJ and Interior to investigate certain claims. (Complaint, Pg.ID #6.) Specifically, he wants an investigation into (1) a claim to mineral rights in Michigan,

(2) the Sault Tribe's enrollment of Michilimackinac descendants, and (3) agreements between the Sault Tribe and the State of Michigan. (Complaint, Pg.ID #6.) However, the DOJ and Interior are not parties to this litigation. Generally, nonparties cannot be bound by a court's judgment. *See Taylor v. Sturgell*, 553 U.S. 880, 884 (2008) ("'one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process'") (quoting *Hansberry v. Lee*, 311 U.S. 32, 40 (1940)).

Further, the Governor is not involved in DOJ investigations. The DOJ or federal law enforcement agency investigations are discretionary, and there is no federal law that requires the DOJ to investigate treaty claims to mineral rights. Neither an Indian tribe nor a tribal member can "force the government to take a specific action unless a treaty, statute or agreement imposes, expressly or by implication, that duty." *See Shoshone Bannock Tribes v. Reno*, 56 F.3d 1476, 1482 (D.C. Cir. 1995). The United States is not "bound to file and defend meritless claims to water rights allegedly derived" from treaty provisions. *Id.*

Additionally, Mr. Hall's request to investigate the Sault Tribe's enrollment of members is also misplaced. Each federally recognized

Indian tribe has its own right to define its membership. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (Indian tribes retained the inherent power to manage their internal matters, including membership). The Sault Tribe's constitution defines its membership requirements and it has an Enrollment Department to oversee tribal membership. (Ex. I, Sault Tribe's Constitution pp. 3–4; Ex. J, Sault Tribe's Tribal Enrollment Information.) The Governor has no authority over the Sault Tribe's membership decisions.

Mr. Hall also claims that the State of Michigan obstructed justice or interfered with the Sault Tribe's federal recognition. (Complaint, Pg.ID #10.) However, neither the Governor nor the State of Michigan decides federal recognition of Indian tribes.

In sum, Mr. Hall's other claims or allegations fail to state any grounds that this Court could grant relief, and the Governor is entitled to summary judgment in her favor.

CONCLUSION AND RELIEF REQUESTED

In this motion, the Governor raises the arguments that would swiftly resolve all the claims against her in their entirety. But she has numerous other defenses. If the court does not grant summary judgment fully in the Governor's favor, she will seek leave of the court to raise her other defenses.

For the reasons stated above, the Governor respectfully asks that the court grant this motion, enter judgment in her favor, and deny all relief to Mr. Hall.

Respectfully submitted,

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Dated: November 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2019, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record. A copy of the above document(s) was also served via First Class Mail upon Plaintiff Bruce J. Hall at 1802 Rochester Road, Leonard, MI 48367.

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