

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC.,  
TIMOTHY J. HOUSELOG,  
DAWN MAUTHE,  
ROBERT KLINGELHOETS,  
and RUSSELL TIMMERS,

Case No. 24-cv-1369

Plaintiffs,

v.

MENOMINEE COUNTY,  
TOWN OF MENOMINEE,  
and MENOMINEE INDIAN SCHOOL DISTRICT,  
Defendants.

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**FIRST AMENDED COMPLAINT**

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Now come Plaintiffs Legend Lake Property Owners Association, Inc., Timothy J. Houselog, Dawn Mauthe, Robert Klingelhoets, and Russell Timmers by their undersigned counsel and as and for their First Amended Complaint (incorporating all exhibits of the original Complaint) state and allege as follows:

1. Plaintiff Legend Lake Property Owners Association, Inc. (“LLPOA”) is a Wisconsin Corporation established under ch. 181 of the Wisconsin Statutes and is recognized as a non-profit organization under section 501(c)(4) of the Internal Revenue Code. The LLPOA was created in 1972 through the filing of articles of incorporation with the State of Wisconsin and the

Menominee County Register of Deeds. Membership in the Association was declared appurtenant to lot ownership. LLPOA owns several parcels of property on Legend Lake and pays property tax on a yearly basis on that property.

2. Plaintiff Timothy J. Houselog is an adult resident of the state of Wisconsin who owns property on Legend Lake, and who is a member of the LLPOA. Houselog's property on Legend Lake serves as his primary residence.

3. The assessed value and property taxes for Houselog's property are shown in the table below:

Year	Assessed Value	Property Taxes
2015	\$200,500	\$3,750.67
2016	\$215,100	\$3,774.04
2017	\$215,100	\$3,733.06
2018	\$215,100	\$3,843.55
2019	\$215,100	\$4,086.32
2020	\$215,100	\$4,149.84
2021	\$215,000	\$4,215.60
2022	\$215,100	\$5,905.59
2023	\$215,000	\$5,672.64
2024	\$460,200	\$5,391.98

3. Plaintiff Dawn Mauthe is an adult resident of the state of Wisconsin who owns property on Legend Lake, and who is a member of the LLPOA. Mauthe's property on Legend Lake serves as her second residence.

4. The assessed value and property taxes for Mauthe's property are shown in the table below:

Year	Assessed Value	Property Taxes
2015	\$344,900	\$6,472.14
2016	\$344,900	\$5,994.41
2017	\$344,900	\$5,962.66
2018	\$344,900	\$6,133.89
2019	\$325,000	\$6,133.36
2020	\$325,000	\$6,215.48
2021	\$325,000	\$6,322.67
2022	\$325,000	\$8,893.04
2023	\$325,000	\$8,572.71
2024	\$627,200	\$7,667.16

5. Plaintiff Robert Klingelhoets is an adult resident of the state of Wisconsin who owns property on Legend Lake, and who is a member of the LLPOA. Klingelhoets's property on Legend Lake serves as his second residence.

6. The assessed value and property taxes for Klingelhoets's property are shown in the table below:

Year	Assessed Value	Property Taxes
2015	\$262,100	\$4,911.63
2016	\$262,100	\$4,578.04
2017	\$262,100	\$4,540.38
2018	\$262,100	\$4,672.86
2019	\$262,100	\$4,961.77
2020	\$262,100	\$5,033.23
2021	\$262,100	\$5,116.70

2022	\$287,600	\$7,876.38
2023	\$287,600	\$7,585.78
2024	\$656,300	\$8,022.47

7. Russell Timmers is an adult resident of the state of Wisconsin who owns property on Legend Lake, and who is a member of the LLPOA. Timmer's property on Legend Lake serves as his second residence.

8. The assessed value and property taxes for his property are shown in the table below, from 2023 to 2024 the assessed value of Timmers's house rose 145% to \$809,000 even though there had been no renovation or improvements in the last ten years:

Year	Assessed Value	Property Taxes
2015	\$322,400	\$6,048.09
2016	\$322,400	\$5,609.52
2017	\$322,400	\$5,478.35
2018	\$322,400	\$5,736.87
2019	\$330,800	\$6,241.40
2020	\$330,800	\$6,324.15
2021	\$330,800	\$6,433.86
2022	\$330,800	\$9,050.70
2023	\$330,800	\$8,725.77
2024	\$809,000	\$9,886.96

9. Defendant Town of Menominee (the "Town") is a municipal corporation established and governed under the laws of Wisconsin including Wis. Stats. §§ 59.01 *et seq.*, 59.10(5) and Wis. Stats. §§ 60.01 and 60.09 and applicable law.

10. Defendant Menominee County (the “County”) is a municipal corporation established and governed under the laws of Wisconsin including Wis. Stats. §§ 59.01 *et seq.*, 59.10(5) Wis. Stats. §§ 60.01 and 60.09 and applicable law.

11. Defendant the Menominee Indian School District and the taxation district which the Menominee Indian School District controls and has authority over (collectively “MISD”) are state public school district governmental entities organized and enabled pursuant to Wis. Stats. §§ 118, 120 *et seq.* and applicable law.

12. The Plaintiffs in this case receive very little in return for the property taxes that they pay each year. The majority of the roads are unpaved, there is little in the way of municipal utilities as most of the properties are on well and septic, there is an extremely small sheriff’s department, and minimal budget for governmental staff. The only reason that the mill rates paid by the Plaintiffs are comparable to some of the mill rates paid by residents of municipalities which provide the highest service levels in the state is that the entire levy falls upon the shoulders of a small minority in the County which is not exempt from property taxes. The other reason for the high mill rate is that the MISD levies significant taxes on the plaintiffs. This will be discussed in greater detail below.

### **Historical Background Facts**

13. The Menominee Indian Tribe of Wisconsin’s reservation was created on May 12th, 1854 pursuant to a treaty with the United States of America called the Treaty of Wolf River or the Treaty of Keshena Falls.

14. The Treaty of Wolf River was subsequently modified by additional treaties.

15. As of 1954, the Menominee reservation was approximately 235,523 acres in size, and was located within the entirety of what is now Menominee County, Wisconsin.

16. On June 17, 1954 Congress passed Public Law 108 (the “Termination Bill”) which terminated the status of the Menominee Indian Tribe of Wisconsin (“MITW”).

17. The Termination Bill established 1958 as the year the termination of the MITW would take effect.

18. On July 3, 1959, Menominee County became Wisconsin's 72nd County.
19. The four years between the passage of the Termination bill and the effective date of termination were to be used to formulate a plan for how the Tribe would dispose of its tribal assets including the land of the reservation (the "Termination Plan").
20. After three one year extensions, the Tribe settled on a Termination Plan under which the tribal property was transferred to a corporation called Menominee Enterprises, Inc.
21. Under the Termination Plan, all of the enrolled members of the Tribe became shareholders of Menominee Enterprises, Inc.
22. In 1962, the Menominee Council of Chiefs was formed as a non-profit organization.
23. In 1964, a number of Menominee members began a petition requesting restoration and the repeal of the Menominee Termination.
24. In 1967, Menominee Enterprises, Inc. voted to create an economic development zone.
25. In 1968, Menominee Enterprises, Inc. contracted with a developer to do the development which later came to be called Legend Lake.
26. Menominee Enterprises, Inc. entered into a partnership called "Lakes of the Menominees" with a professional developer N.E. Isaacson, Inc. to accomplish the development of Legend Lake.
27. The Legend Lake project platted 5,160 acres of land into 2700 lots and 41 "beach club" lots.
28. Lots without lake frontage were deeded an interest in one of the 41 beach club lots so that all owners had lake access.
29. Over 1,900 lots on Legend Lake were then sold to the public, as the political advocacy for restoration continued, the lot owners expressed concern that they would be unfairly taxed with excessive property taxes if the majority of the land in the Town and County were placed into a status of trust, therefore not being taxable.

30. On September 1st, 1970, Menominee County Stock and Voting Trust certified in a letter to the general public that the title to the Legend Lake lots was good. Exhibit 1, 1970 Kenote Letter.

31. Eventually, Congress held hearings to consider restoration, at those hearings a document authored by the Native American Rights Fund was entered into the record in support of restoration. That document addressed the controversy at issue in this case and read as follows:

#### MEMORANDUM RE RESTORATION ACT

Subject: Unreasonable taxation of taxpayers after restoration.

#### STATEMENT OF ISSUE

If the Menominee Restoration Act is passed, all of the land held by MEI and some of the land held by individual Menominee will be held in trust by the United States for the benefit of the Menominee people. All land held in trust will be non-taxable. Inevitably, this means that the tax base in Menominee County will be decreased. Mr. Holmes, of the Wisconsin State Department of Revenue, estimates that as much as 57% of the existing Menominee County tax base will become non-taxable land. Several non-Menominee land owners, who would still be required to pay taxes after restoration, have expressed concern that the above factors might result in increased tax rates because of the decreased tax base. Non -Menominee have also expressed concern that future Menominee County officials will overtax the non-Menominee property holders; the basis for this concern is that County officials will probably be Menominee Indians (because the Menominee voters are in the great majority in the county) and that Menominee office holders would be tempted to take advantage of the non-Menominee land owners, who would be virtually the only taxpayers in the County.

Our conclusion is that neither of the above concerns will be realized. If anything, tax rates in Menominee County should decrease, not increase, after restoration. Furthermore, we know of no basis for fears of overreaching by future Menominee County officials; in addition, there are numerous legal safeguards which will protect non-Menominee land owners if Menominee County officials did attempt to abuse their powers. Our reasoning is as follows:

## DISCUSSION

### *I. The tax burden in Menominee County will not increase after restoration*

The principal factor rendering unnecessary the concern about the adequacy of the reduced Menominee County tax base after restoration is the massive influx of federal funds and services which will necessarily follow restoration. The restored Menominee Tribe will be entitled to many services now supported by taxes collected in Menominee County. Most notably, all county expenses for elementary and secondary education will probably be eliminated by reason of the eligibility of Menominee and Shawano County schools for funds under the Johnson-O'Malley Act, under Public Law 874 (Impact Aid Program), and under various titles of the Indian Education Act. Educational costs represent -approximately 61% of Menominee County's expenditures. Funds from P.L. 874 alone should approximate existing expenditures for education because P.L. 874 funds compensate schools for the educational expenses attributable to children who reside on non-taxable land. We think that virtually any educator in the field will agree that Indians usually more than "pay their way" in regard to educational expenses, due to the large federal expenditures. See, e.g., *An Even Chance*, p. 1, 8 (NAACP Legal Defense and Education Fund, 1971). Bureau of Indian Affairs expenditures on roads and United States Public Health Service expenditures under the Contract Medical Care Program for Indian health will further reduce the need to raise revenue within Menominee County. We have reliable information that budget projections for federal services to the Menominee exist for fiscal 1975, but we have been unable to obtain this data because it is deemed confidential until the federal budgetary process is complete. The one projection which we have seen estimates that the Bureau of Indian Affairs will expend \$1,195,000 annually in providing services to the Menominees, this figure is, by itself, in excess of the present expenditures of Menominee County. The projected large payments of P.L. 874 funds, which are administered by HEW, will increase the total annual federal expenditures by substantially more than \$500,000. One simple example dramatizes this point. As mentioned above, the State of Wisconsin estimates that the tax base in Menominee County will be decreased no more than 57% after restoration. The fact, however, that expenditures will decrease by an even greater amount is underscored by the decrease of 61% for county educational expenditures alone. Education is only one of the many federal expenditures which will further reduce County obligations. Thus it is entirely unrealistic to project the future Menominee County tax burden on the assumption that



county obligations will remain the same after restoration. We think it an inescapable conclusion that the tax burden in Menominee County will not increase after restoration: in fact, expenditures will almost certainly decrease more than revenues.

*II. There is no historical basis for concern that Indian officials will overtax non-Indian landowners*

We have reviewed records in Ashland, Bayfield, and Vilas Counties, in order to determine the effects in other counties where Indian electorates are large enough consistently to control local units of government. The Town of Sanborn in Ashland County is controlled by an Indian town board. The effective millage levy in that town is approximately 41 1 / 2 mills, based upon state equalized or recommended valuation. The city of Ashland, controlled by a non-Indian government, imposes a millage levy which amounts to approximately 43 mills on state equalized or recommended valuation. Thus, notwithstanding the substantial tax exempt land in the Bad River Reservation in the Town of Sanborn, the millage rates on full fair market value in the city of Ashland and the Town of Sanborn are substantially equal.

We know of no reason that the experience in Menominee Town and Country should be any different than the above. Officials like Ben Miller have, we suggest, always acted in the utmost good faith toward non-Menominee landowners.

*III. Wisconsin law will fully protect non-Indian landowners after restoration*

Wisconsin law provides safeguards against unfair taxation in Menominee' County following restoration. First, Wisconsin statutes provide explicit limitations with respect to Menominee County. The Town of Menominee is presently limited by a 1.5% ceiling on taxes as measured against the assessed valuation of real estate in the town, except for taxes on schools. Wis. Stats., 1971, §60.18(1) (a). Menominee County, having only one town within its boundaries, is subject to a similar ceiling upon its taxing powers:

“In counties containing one town only, the total amount of county taxes assessed, levied, and carried out against taxable property of such county, in any one year shall not exceed in the whole 1 1/2% of the total valuation of said county for the current year as fixed by the Department of Revenue.” Wis. Stats., 1971, §70.62(2) (a).

*These important statutes set a mandatory ceiling on total tax revenue and provide full protection to owners of taxable land after restoration.* We have consulted with officials of the Wisconsin State Department of Revenue and they fully agree with this conclusion. Second, Menominee County lacks legal authority and discretion to determine the revenue to be raised for the state or for Shawano Joint District No. 8. The amount allocable to Menominee County for these purposes is certified by the state to the county. This large portion of the total tax burden is, therefore, not subject to control (or increase) by Menominee County officials. Third, the restoration bill, in section (b), does not contemplate automatic tax-exempt status for lands held by individual Menominees. To the extent that Menominees do not place their individual lands in trust, significant numbers of Menominees will be motivated by the precise desire that the non-Indian tax-payers share: tax rates in Menominee County ought not to exceed the level necessary to finance needed county services. Fourth, erroneous assessments and levies of taxation may be reviewed by local Boards of Review, by the Department of Revenue (Wis. Stats., 1971, §70.85) and ultimately by the courts of the state. Finally, the Wisconsin Constitution, Article VIII, §1, provides that "the rule of taxation shall be uniform, but the legislature may empower cities, villages, or town to collect and return taxes on real estate located therein by optional methods." (Emphasis supplied.) Although the Wisconsin Constitution permits variations in tax rates between cities, villages and towns, uniformity of taxation is constitutionally mandated within each local jurisdiction. There are, then, statutory safeguards against abuse of non-Indian landowners. Equally important, we know of no factors which would indicate that the Menominee people have the slightest tendency to engage in such practices.

In the absence of any evidence whatsoever, we think it unreasonable to impute improper—and indeed illegal—motives to the officials of Menominee Town or County.

NATIVE AMERICAN RIGHTS FUND,

Boulder, Colo., May 23, 1973

Hearings on H.R. 7421 Before the Subcomm. on Indian Affairs of the H. Comm, on Interior and Insular Affairs, 93rd Cong. (1973)<sup>1</sup> ("H.R. 7429 Trans.") pp. 51-53. Accordingly, Congress

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<sup>1</sup> Accessed on October 21st, 2024 at <https://www.govinfo.gov/app/details/CHRG-93hhrg20310/context>

received assurances that the Restoration Act would not result in unfair or inequitable taxation of the property tax paying landowners in Menominee County.

32. At least partly in reliance on the memorandum from the Native American Rights Fund, The Federal Menominee Restoration Act passed through Congress and was signed into law on December 22, 1973, thereby restoring federal recognition of the MITW and creating a trust (“the Trust”). The Act provided for the retention of the property rights and privileges for landowners who had purchased, which were to be governed by the existing Menominee County administration.

33. The MITW then developed a Constitution and Bylaws.

34. Since that time, it has been the MITW’s stated goal to acquire all of the lots in Menominee County and to place them all into the Trust, therefore the MITW’s stated goal is to acquire all of the lots owned by LLPOA members, and it has been the Town’s and County’s policy, custom, or widespread practice to make decisions to facilitate the acquisition of all of the lots of the LLPOA and its members by MITW by burdening the LLPOA’s and its Members lots with excessive property taxes.

35. In the late 1970’s or early 1980’s, MITW initiated a program of buying lots on Legend Lake and putting them back into the Trust, thereby taking them out of taxable status.

36. Initially, MITW had significant success in repurchasing properties on Legend Lake and placing them into the Trust. Every property taken out of taxable status and placed into the Trust had the effect of increasing the burden on the remaining residential taxpayers. This practice will ultimately drive taxes so high as to make LLPOA members’ ownership of property tax paying parcels prohibitively expensive and unaffordable thereby forcing their sale.

37. As of 2024, approximately 99% of the land in Menominee County is in the Trust and only 1% of the land is taxable.

38. Only 1% or fewer of property owners in Menominee County pay for nearly 100% of the property taxes. The tax classification of the taxpaying lots is the same classification as many of the lots that do not pay property taxes.

39. For instance, there are many residential lots in Menominee County that do not pay any property tax, but the lots of the LLPOA members, which are also classified as residential, do pay property tax.

40. The vast majority of the 1% of property owners who actually pay property taxes to Menominee County are the owners of the approximately 1,800 lots on Legend Lake, which property owners also make up the membership of LLPOA.

41. In Menominee County, there are currently at least three non- property tax paying voters for every property tax paying voter according to data from the 2020 U.S. Census, again the tax classification of the properties that pay property taxes, whether residential or commercial, is the same tax classification as many of the properties that do not pay property taxes.

42. The result of the situation described above is that there is effectively a permanent 75% to 25% voting majority of people who do not pay property taxes. The non property tax paying voters can vote their preferred candidates onto the County Board and the MISD School Board. The elected officials can, and do, cause additional property tax burdens to fall on the group of taxpaying mostly non-tribal members which include the Plaintiffs. Due to the minority status of the 25% there is no means of redress at the ballot box. This dynamic has witnessed the County Board, Town Board, and School Board approve property tax increases that fall upon the minority of property tax paying property owners without concern for any financial consequences (they do not pay property taxes themselves) or political consequences (their political decisions favor the goals of the 75% majority of their voters).

43. There is a prevalent animus against the approximately 25% of the Town of Menominee voters (who are the group of taxpaying mostly non-tribal members which include the Plaintiffs) within the 75% of the voters who are almost all non-taxpaying tribal members. Examples of this animus manifest, for example, in public comments and statements which characterize the 25% of the taxpaying voters as “non-Menoms” and “Legend Lakers” and “Outsiders” who are encroaching on the lands of the 75% majority population.

**Menominee County Has Almost Zero Commercial Tax Base and this Causes Increased Tax Burden on the Plaintiffs and Members of LLPOA**

44. Less than 1% of yearly property taxes in Menominee County comes from commercial or industrial property taxes.

45. According to the account coordinator for the County's Assessor, total Commercial property taxes paid to the County for 2023 was \$84,399. Total overall property taxes for 2023 was \$9,566,399, resulting in the percent of Commercial taxes at 0.88% (\$84,399 / \$9,566,399). See Exhibit 2, E-mail from Dana Remien, Account Coordinator, Accurate Assessors, to Jim Skulstad and Gregg Malmstrom (Oct. 7, 2024).

46. Upon information and belief, this is very different from the rest of the state where Commercial property taxes typically account for 25% to 33% of the tax revenue. On information and belief, the County/Town has, via decisions by their final decision-making authority, avoided creating a commercial tax base as part of an intentional effort to increase the tax burden on the taxable properties of the Plaintiffs and the LLPOA and its members in order to force the sale of those properties to MITW.

**The State of Wisconsin has Recognized the Property Tax Issues that Plaintiffs and LLPOA Members Are Complaining of in this Complaint**

47. In the 1990s, the State of Wisconsin undertook a study of the situation involving the County, the School Board, the MITW and the Legend Lake Property Owners Association and its property owners and tax payers.

48. The issues of high tax bills and lack of tax base were identified in the 1998 Wisconsin Legislative Audit Bureau report:

There were 2,351 taxable parcels in the county in 1997, only 1,306 of which were improved. Of the improved parcels, an estimated 850 are owned by non-residents; 200 are owned by permanent residents in the lakes area, some of whom are Menominee; and some 250 are owned by Menominee in other parts of the county. For all taxable property in the county, 94.4 percent of assessed value is in the lakes area and 5.6 percent elsewhere.

49. The Report also noted that:

Tax bills in Menominee County are high in comparison to those in most of the surrounding towns and in comparison to bills paid in other towns with lake property. A sample of 164 improved parcels showed that between 1992 and 1997, the taxes on the median parcel increased 59.3 percent in the Legend Lake area and 86.8 percent around the other lakes. The tax bill for the median parcel located outside the lakes area declined 34.9 percent during the same period.

50. The Report included the following concerns:

Uncertainty about Menominee County's financial future is created by:

- . an existing deficit in both the county and the town that will be difficult to eliminate given the statutory limit on the county's levy;
- . current tax bills that are among the highest in the area and that are high in comparison with other areas where property values have increased rapidly;
- . the very limited potential for growth in the tax base by other than continued increases in the value of existing property;
- . the potential for further acquisitions of currently taxable land by the Tribe if gaming compact negotiations result in an expansion of gaming activity and increased revenues to the Tribe; and
- . uncertainty about the Tribe's interest in holding some of its land outside the federal trust and on the tax rolls in order to encourage development.

See Exhibit 3, 1998 Wisconsin Legislative Audit Bureau Report.

51. Over the past 26 years, very little progress has been made regarding the concerns identified in the 1998 WLAB report and as described herein, the situation has become worse since that time.

52. As of the beginning of 2024, the current tax rates on property tax paying parcels in Menominee County were not only the highest in the State of Wisconsin, but are also some of the highest in the nation.

53. Acquisition of taxable land by the MITW has continued over the last 26 years since the 1998 WLAB Report and has increased in recent years as described further herein.

54. Substantial gaming and other revenues have supported MITW's additional land purchases as was predicted in the 1998 WLAB Report.

55. MITW also has received and continues to receive very substantial Federal and State aid on an annual basis.

56. In 2023, MITW's income sources included:

1) "Total Tribe" \$43,290,280,

2) "Total Federal" \$71,468,010,

3) "Total State" \$6,274.936,

4) "Total Local & Other" \$2,974,431.

"Grand Total" \$124,007,658.

Menominee Indian Tribe of Wisconsin Annual Report 2023.<sup>2</sup>

57. MITW's annual reports for 2014 through 2023, which are publicly available online, taken collectively show that the Tribe has received nearly \$1 Billion in income and government aid during that nine (9) year period. This is a significant amount of money, and a portion of it was used to buy taxable properties in Menominee County and remove them from the tax base with no discussion of providing property tax relief for the tax paying properties.

58. MITW is currently seeking an award of casino rights in Kenosha County, which if approved will substantially increase their income sources and fund additional land acquisitions in Menominee County, removing these properties from the tax rolls, and further increasing the burden on the remaining property taxpayers. If this practice is allowed to continue it will ultimately drive property taxes so high as to make LLPOA members' ownership of property tax paying parcels prohibitively expensive and unaffordable thereby forcing their sale.

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<sup>2</sup> Accessed 10/21/24 at <https://www.menominee.nsn.gov/GovernmentPages/Documents/AnnualReports/2023%20MITW%20Annual%20Report.pdf>

59. At the May 10th, 2024, Menominee County Planning Commission meeting, it was stated during the public discussion that the only, or primary, reason MITW is seeking to develop the casino in Kenosha is to have revenue to buy back further land in Menominee County.

60. In the wake of the 1998 WLAB Report, the elected and other officials of the County created the “Menominee County Management Review Task Force” in 1999 to follow up on the WLAB report and work on this issue.

61. This task force consisted of members from the County Board, MITW, and other government and other local representatives.

62. The County Report highlighted the following concerns and recommendations:

Because a key component of Menominee County’s situation is the lack of a tax base in the county, the Task Force discussed the tax base and ways in which that base might be enhanced. The Task Force found that economic development is important to Menominee County, particularly in view of the county’s economic situation and tax base.”

See Exhibit 4 Report of the Menominee County Management Review Task Force, June 1999, page 1.

63. The Task Force noted that the Menominee Tribe had at that time announced its intentions to keep the 400 acres of “fee” land at Middle Village as “fee” (i.e. property tax paying) land, and intended to develop the parcel for business use (industrial and / or commercial use). See Exhibit 4 Report of the Menominee County Management Review Task Force, June 1999, page 16.

64. Subsequently, MITW purchased Middle Village (“about 1600 acres” per the report). 1200 acres were converted to trust and 400 acres were held “in fee” but remained a part of Shawano County not Menominee County. However, the 400 acres were never annexed into Menominee County and converted into private commercial property so as to increase the tax base as recommended by the Task Force.

65. Contrary to the intention and recommendation of the 1999 Task Force, in 2018, the Town of Red Springs, which had previously been listed on the tax bills in Menominee County as a separate municipality and taxing jurisdiction, disappeared entirely. This was caused by MITW



purchasing all the remaining “fee” land and converting it to Trust. These actions were directly contrary to the 1998 WLAB Report and the County’s 1999 Task Force recommendations and further exacerbated the growing tax burden on the remaining tax paying properties, many of which are LLPOA members.

66. As noted in State of Wisconsin Department of Revenue email documentation, “Town of Red Springs first reported a 0 assessed value for the MISD in 2019. At the time, we questioned the assessed value change and were notified by Shawano County many properties had transferred to the United States of America in Trust for the Menominee Indian Tribe of Wisconsin. As a result, those properties are exempt from property assessment and property taxes...” See Exhibit 5, Email from Deb Werner, Wisconsin Department of Revenue, Local Government Services Bureau, to Jim Skulstad (Mar. 4, 2024).

**The County Board and the MITW Entered Into Agreements to Remove Properties from Tax Base Prior to Those Properties Being Placed Into the Trust**

67. In 2006, MITW and the County entered into a special agreement whereby each year, before March 1st, MITW is allowed to provide the County with a list of properties that it intends to try to place into Trust via the Bureau of Indian Affairs (BIA). Under the contract the County must then take these properties off the tax base for that current year. See Exhibit 6, 2006 Agreement.

68. The 2006 Agreement was executed by Karen Washinawatok, Tribal Chair, and Randy Reiter, Menominee County Board Chair. Mr. Reiter was an enrolled member of the MITW at the time and remains so.

69. The MITW has submitted lists each year from 2006 through 2023. To date, 120 formerly taxable properties have been taken off the tax base even though the large majority of them have not been placed into Trust.

70. In addition to the 120 properties removed from the tax base under the 2006 agreement, there are 154 properties that LLPOA believes that MITW has purchased over the past years. The reason that LLPOA believes that MITW has purchased these properties is that it appears they have been purchased using names known to be associated with the efforts to transfer land into

the Trust as the purchaser of these properties including “Guy Keshena,” “Keshena Guy,” “MITW (Guy Keshena),” “MITW; Keshena, Guy” and sometimes the name Leslie Peters.

71. These 154 properties are not in Trust, but have either not been taxed for multiple years, or have been taxed and no payment has been made and penalties continue to accrue but are not pursued by the County.

### **MISD Acquired \$52 Million in School Debt Without a Rigorous Needs Analysis and Without Concern For Taxpayer Approval**

72. In 2022, the Menominee Indian School District notified taxpayers in a flier mailed to residents of Menominee County, one month before the vote, of an impending \$35,000,000 school referendum (\$52,000,000 total cost with the interest and fees associated with the loan) to build a new 110,000 sq ft. high school for a small student population (less than 300 students in 2022). See Exhibit 7, Flier.

73. Under the plan, the existing 100,000 sq ft. high school would be repurposed for use as the middle school.

74. Menominee County taxpayers including many members of LLPOA asked questions about the purpose and basis for the referendum prior to its passage but did not receive answers.

75. It was eventually uncovered that no real needs analysis was done to justify this high-cost referendum, however the taxpayers did discover through Open Records litigation that as of March 23rd, 2021, MISD had been exploring a plan to renovate the school at a cost of only \$14,400,000 which included \$2,200,000 for classrooms, \$10,300,000 for a fieldhouse, and \$1,900,000 for a bus garage, but that MISD had then hired a consulting firm to analyze what was the maximum amount that the MISD could levy. The consulting firm’s analysis revealed that under law, the maximum amount that MISD could levy was approximately \$39,500,000 based upon a levy of 10% of the total equalized value at the time which was \$395,000,000. Members of LLPOA and MCTA asked for copies of any needs or similar analysis prepared by MISD and/or its outside consultants. MISD provided several documents purporting to address the issue but they were not responsive. Upon information and belief, no needs analysis was ever performed supporting the referendum. In addition to the referendum, MISD also increased its operating

budget by \$1,200,000 from 2022 to 2023 even though previous annual increases in their budget had been around \$100,000 per year. MISD never articulated any need or explanation for the \$1.2 million budgetary increase from 2022 to 2023. On information and belief, MISD simply increased its operating budget to the maximum amount allowable under applicable law calculated by their consultants. The Plaintiffs in this lawsuit allege that the decisions made by MISD pled herein were not made for legitimate reasons, but rather were made with the specific intention of increasing the tax burden on the 25% minority of property tax payers in the County with the motivation of making it expensive and uncomfortable for them to afford their properties so that MITW and its agents can more easily purchase their properties and offer them to the trust.

76. MISD and its schools are not underfunded, to the contrary they were extremely well funded prior to the referendum. As documented by the WI Department of Public Instruction (“DPI”), MISD funding prior to the 2022 referendum was \$25,000 per student which is nearly \$9,000 above the state average of \$16,000 per student.

77. MISD also decided in 2022-2023 to increase their operating budget in excess of ten times of what it was the prior three years. Annual increases in 2019, 2020 and 2021 were \$100,000 per year. The 2022-23 increase was \$1,200,000. Again, the Plaintiffs in this lawsuit allege that the decisions made by MISD pled herein were not made for legitimate reasons, but rather were made with the specific intention of increasing the tax burden on the 25% minority of property tax payers in the County with the motivation of making it expensive and uncomfortable for them to afford their properties so that MITW and its agents can more easily purchase their properties and offer them to the trust.

78. The operating budget increase was almost as much as the amount charged for the first year’s referendum principal and interest payment of \$1,295,000 and is why each taxpayer in the County saw nearly a 100% increase in their school property taxes from 2022 to 2023 while the “non-taxable” did not incur any financial burden.

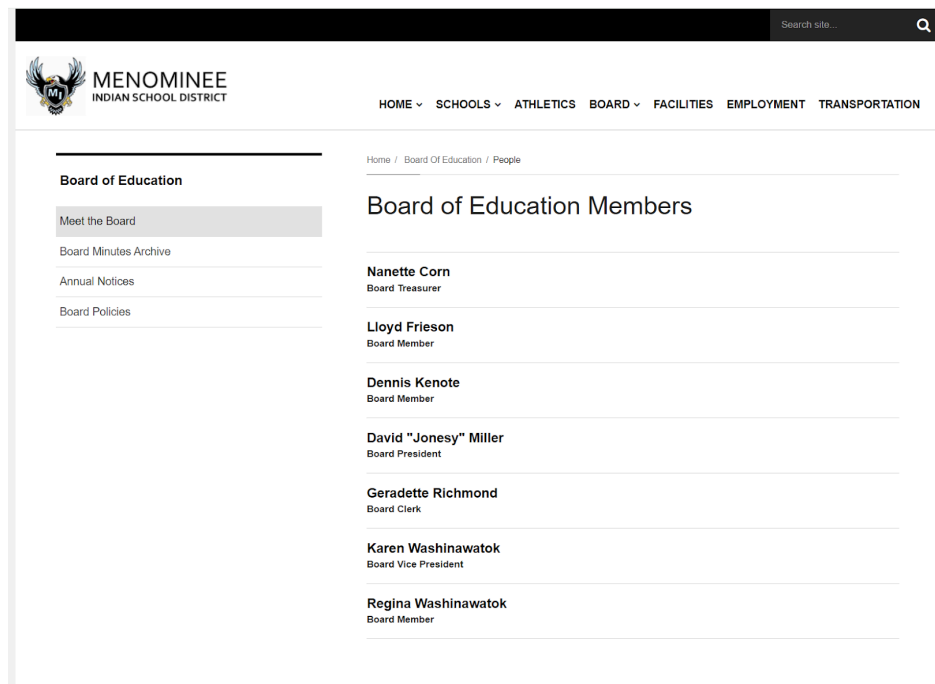
79. Based on the school bonds which were purchased by MISD pursuant to the referendum, the annual loan payments for the next twenty years of the referendum bond will average over \$2,500,000 per year or nearly double the first year’s \$1,295,000 charge. This financial burden

will be borne by the Plaintiffs and LLPOA members in the amounts shown in the table below which is copied from page seventeen of the bond.

INDEBTEDNESS OF THE DISTRICT					
<u>Direct Indebtedness</u>					
Set forth below is the direct general obligation indebtedness of the District including principal and interest payments due on existing debt service as well as debt service on the Notes. Interest on the Notes has been calculated using an average rate of 4.41 percent.					
Year	The Bonds		The Notes		Total Debt Service Requirements
	Principal	Interest	Principal	Interest	
2023		\$1,295,037			\$1,295,037
2024		1,195,419	\$190,000	\$474,394	1,859,813
2025		1,195,419	635,000	345,575	2,175,994
2026		1,195,419	940,000	306,200	2,441,619
2027		1,195,419	1,150,000	253,950	2,599,369
2028		1,195,419	1,235,000	194,325	2,624,744
2029	\$350,000	1,186,669	945,000	139,825	2,621,494
2030	1,525,000	1,139,794	0	116,200	2,780,994
2031	1,600,000	1,061,669	0	116,200	2,777,869
2032	1,685,000	979,544	0	116,200	2,780,744
2033	1,770,000	893,169	2,905,000	58,100	5,626,269
2034	1,860,000	802,419	0	0	2,662,419
2035	1,945,000	717,019	0	0	2,662,019
2036	2,025,000	637,619	0	0	2,662,619
2037	2,110,000	553,600	0	0	2,663,600
2038	2,200,000	464,706	0	0	2,664,706
2039	2,295,000	370,563	0	0	2,665,563
2040	2,395,000	270,900	0	0	2,665,900
2041	2,495,000	166,988	0	0	2,661,988
2042	2,605,000	56,984	0	0	2,661,984
	26,860,000	16,573,771	8,000,000	2,120,969	53,554,740
Less 2023 Sinking Funds	0	(1,295,037)	0	0	(1,295,037)
TOTAL	<u>\$26,860,000</u>	<u>\$15,278,734</u>	<u>\$8,000,000</u>	<u>\$2,120,969</u>	<u>\$52,259,703</u>

80. Most school boards across Wisconsin need to take taxpayer considerations into their planning. This is not the case in Menominee County because the vast majority, if not all, of these students' families do not pay property taxes.

81. The MISD School Board in 2022 (and today) consists entirely of MITW members.



82. The \$35 Million referendum which is in reality a \$52 Million referendum causes a significant increase in the tax burden on taxable properties of the Plaintiffs.

**Other MISD Transactions Have Been Structured So as to Benefit MITW and Burden the Plaintiffs**

83. In Wisconsin, public school districts are generally not permitted to give away school buildings funded by taxpayers to private entities without due legal process and following strict regulations.

84. Public schools and their assets are publicly owned, and their transfer or disposal must align with state laws, local policies, and guidelines related to public property. However, Wisconsin law allows public school districts to sell or lease unused or underutilized school properties under certain conditions.

85. School property is considered public, so transferring or selling a building must generally be accomplished in a way that protects the public interest.

86. Related to the projects for which the referendum was held, MISD entered into a contract with the MITW on May 7, 2024. The contract is entitled Offer to Exchange. A copy of that contract is attached hereto as Exhibit 8, Contract.

87. The terms of the Offer to Exchange require the MITW to pay only \$1.00. For that amount, the MITW will be given full ownership of the existing middle school building and property in Neopit, which is owned by MISD.

88. The middle school building and property is currently valued at \$1.6 Million, as disclosed by MISD superintendent Waukau at a March 6, 2024 special meeting.

89. MITW does not have to provide any further consideration. The Offer of Exchange also provides that MITW will lease, as a landlord to MISD, 10 acres of land, of which only 6 acres is buildable, for the development of three baseball diamonds. Upon information and belief, MISD will enter into this separate lease agreement under which it will be obligated to pay monthly lease payments to MITW, as well as spend large sums to build the athletic fields. No lease terms have been made public by MISD or MITW though that information has been requested. Plaintiffs assert that this transaction was structured in a way that it benefitted MITW and increased the property tax burden on the Plaintiffs and LLPOA members thereby benefiting (MITW) and burdening part of the public (the Plaintiffs, LLPOA members and other Menominee County property tax payers).

90. As part of this plan, MISD will also be building a brand new High School, a project which will also increase the property tax burden on the LLOPA members.

91. Most districts engage in a competitive bidding process to sell public school property, ensuring the sale is fair, and to obtain reasonable market value.

92. At no time was any information released to the public indicating that the school district was engaged in a competitive bidding process.

93. From the outset of the initial release of referendum information, it was continually stated by MISD and its representatives that there would be a “swap” – the 10 acre property owned by

MITW for the existing middle school building in Neopit owned by MISD. The actual terms of the Offer of Exchange were never discussed orally or in writing during the lead up to the referendum or thereafter.

94. Directly giving away a building without receiving adequate financial consideration or a public benefit is improper.

95. Wisconsin Statute § 120.13(17) allows school boards to sell or lease property but does not explicitly permit gifting property to private entities.

96. Based on the initial ‘swap’ designation described in the Offer of Exchange, and the nominal \$1.00 amount negotiated for the opportunity to lease the 10 acre property for the three baseball diamonds, it appears this transaction is, in effect, a gift of public property to the MITW.

97. The loss of the middle school building in Neopit valued at \$1.6 Million means that amount will not be obtained as it would be in a proper market sale of the property. The loss of revenue that would have been realized from a proper sale will be borne by the remaining taxable properties in the County. In addition, the MISD will be obligated to pay MITW under the yet-to-be-established lease for the 10 acres, further increasing the property tax burden.

98. As a result of both the 2022 \$52 Million referendum, and the give-away of the middle school, Plaintiffs and LLPOA members will bear the burden of the associated loss of revenues and obligations of the MISD in the form of higher annual property taxes.

99. Upon information and belief, the vast majority of the parents that use the school experience minimal or no impact from the property tax increases. This is known to the members of the MISD and the Town and County Boards.

100. As a result of the actions described above, property tax paying properties in Menominee County pay some of the highest taxes in the State of Wisconsin as a percentage of property value. As of 2023, Plaintiff and LLPOA’s members were paying some of the highest property taxes in the nation.

101. With the 3-to-1 voting advantage of non-property tax paying to property tax paying voters, the Town Board, County Board, and MISD School Board are dominated by leaders who are not impacted by the property tax increases that they cause and approve. This is an extremely unfair, oppressive, and unconstitutional situation.

102. As shown above, the Plaintiffs and the LLPOA and its members' properties are a portion of the very small portion of the properties in the County which bear almost the entire burden of funding the yearly property tax levy for the Town, County and the MISD, while many properties enjoy the benefits of Town, County and MISD services and facilities but without paying for them.

103. The facts above demonstrate that the Defendants' actions over the past years have been taken with the intent and purpose to continually increase the tax burden on the Plaintiffs and the LLPOA and its members' properties which are part of that very small portion of the taxable properties in the County. The actions of the Defendants are a concerted effort to take the property of the Plaintiffs and the LLPOA and its members by forcing the property taxes to become so high that the owners of taxable land will be coerced into selling their land, which the Defendants' goal is to cause to be returned to the MITW.

**In 2024 the Town of Menominee Increased the Assessed Values of Taxpaying Parcels by an Average of 114% on Short Notice**

104. On or around Thursday, August 22nd of 2024 the taxpaying property owners in the Town of Menominee received a letter ("the 2024 Revaluation Letter") from the Town's Assessor, Accurate Appraisal, LLC, indicating that their properties had been revalued.

105. As an example, the property of Mark and Amy Schoen located on Thunderbird Road on Legend Lake was revalued from a total of \$313,800 to \$693,200 which is a \$379,400 change equal to a 120.9% increase.

106. The Revaluation Letter indicated that if landowners disagreed with the revaluation they were required to attend an open book on Monday, August 26th of 2024.



107. Accordingly, the landowners had extremely limited time to prepare an objection, and many received no effective notice if, for example, they were away at that time.

108. The revaluation did not immediately increase the net amount of taxes that each taxpayer was paying because the mill rate was lowered, however the increase in each property's assessed value, which in many cases was extremely unrealistic and unrelated to actual value, has the effect of increasing the equalized value of the taxing jurisdictions by almost 100% from 2021 to 2024 to over \$690,000,000 of equalized value which will then allow the MISD to propose another referendum and borrow as much as another \$34,000,000 which will have the effect of imposing substantial additional tax burdens on the property tax paying properties.

**Legend Lake Properties Which are In Trust or Slated for Transfer to the Trust are Often Left Vacant and are Allowed to Become Dilapidated**

109. Throughout the Legend Lake community houses that have been placed into trust, or are slated for transfer into the trust, are often kept vacant, are often poorly maintained, and are often allowed to become dilapidated.

110. The Wisconsin Statutes state that "Blighted area" means any of the following:

1. An area, including a slum area, in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

2. An area which by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special

assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

3. An area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

66.1333(2m)(b).1-.3

111. The level maintenance of trust properties at Legend Lake and properties slated for transfer into trust is inconsistent with the intent of increasing or maintaining property values in Legend Lake, but it is consistent with the alleged unconstitutional animus and motivation of driving the taxpaying landowners out of the County by creating a depressed or even blighted condition at Legend Lake which will coerce the Plaintiffs and LLPOA Members to sell and will eventually cause the values of their properties to decline to zero if left unchecked.

### **JURISDICTION & JURY DEMAND**

112. This Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§ 1331 and 1343(3) in that the controversy arises under the United States Constitution and under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202. Venue is proper in this Court because all Defendants are located in this district in Menominee County, Wisconsin, and the lead Defendant is located in this district, with its address being in Keshena, Wisconsin. 28 U.S. Code § 1391(a)(1) (“a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located”). This Court has authority to award attorneys fees and litigation expenses pursuant to 42 U.S.C. § 1988. Plaintiffs further invoke the supplemental jurisdiction of this Court under 28 U.S.C. § 1367(a) to hear and adjudicate state law claims to the extent that any are intertwined with the questions presented in this case. Each and all of the acts alleged herein were

done by Defendants, or their officers, agents, and employees, under color and pretense of the statutes, ordinances, regulations, customs and usages of state law. The Plaintiffs request a jury.

## **CAUSES OF ACTION**

### **Cause I - 42 U.S.C. Section 1983: Equal Protection Under The 14th Amendment**

113. The Plaintiffs repeat and reallege the above paragraphs as though fully set forth herein.

114. As pled above, the Defendants, acting under color of state law, deprived the Plaintiffs of their 14th Amendment right to equal Protection, by causing the Plaintiffs to be treated differently than other similarly situated landowners in Menominee County.

115. In the alternative, the Defendants' different treatment of the Plaintiffs is a spiteful effort to 'get' the Plaintiffs for reasons wholly unrelated to any legitimate state interest.

116. In the alternative, the Defendants intentionally treated the Plaintiffs differently by taxing them differently and excessively and as set forth above.

117. There was no legitimate public purpose for the Defendants' course of conduct described above, although there is an illegitimate ulterior motive which was to cause the Plaintiffs and the LLPOA's and its members' property to be acquired by the Trust.

118. The course of conduct pled above constitutes an actual or imminent injury fairly traceable to the Defendants' actions by increasing the tax burden on the Plaintiffs and LLPOA's members' properties which if allowed to continue will eventually render their properties valueless.

### **Cause II - 42 U.S.C. Section 1983: Substantive Due Process Under the 14th Amendment**

119. The Plaintiffs repeat and reallege the above paragraphs as though fully set forth herein.

120. As pled above, the Defendants, acting under color of state law, deprived the Plaintiffs of their 14th Amendment right to substantive due process because the course of conduct described above resulted in unfair and oppressive property taxes being charged to Plaintiffs and the

LLPOA and its members, and if left unchecked will allow the de facto confiscation of the Plaintiffs' homes.

121. The course of conduct pled above constitutes an actual or imminent injury fairly traceable to the Defendants' actions by engaging in a course of conduct in relation to the Plaintiffs and the LLPOA's members which if allowed to continue will eventually render their properties valueless.

**Cause III - Violation of the Rule of Uniformity set Forth in Art. VIII, sec. 1, Wis. Const.**

122. The Plaintiffs repeat and reallege the above paragraphs as though fully set forth herein.

123. The Wisconsin Constitution, Article VIII, §1, provides that "the rule of taxation shall be uniform, but the legislature may empower cities, villages, or towns to collect and return taxes on real estate located therein by optional methods."

124. The Wisconsin Constitution permits variations in tax rates between cities, villages and towns, uniformity of taxation is constitutionally mandated within each local jurisdiction.

125. As pled above, the Defendants, acting under color of state law, deprived the Plaintiffs and the LLPOA's members of the protections of the Wisconsin Constitution, Article VIII, §1.

126. The course of conduct pled above constitutes an actual or imminent injury fairly traceable to the Defendants' actions by increasing the tax burden on the Plaintiffs and the LLPOA's members' properties which if allowed to continue will eventually render their properties valueless.

**Cause IV - Violation of Article I, Section 13 of The Wisconsin Constitution and 42 U.S.C. Section 1983: 5th Amendment Unlawful Use of Eminent Domain - Inverse Condemnation**

127. The Plaintiffs repeat and reallege the above paragraphs as though fully set forth herein.

128. As pled above, the Defendants, acting under color of state law, are inversely condemning the Plaintiffs' and the LLPOA's property in violation of their 5th Amendment rights and their rights under Article I, Section 13 of the Wisconsin Constitution.

129. The course of conduct pled above constitutes an actual or imminent injury fairly traceable to the Defendants' actions by increasing the tax burden on the Plaintiffs' and the LLPOA's members' properties which has already decreased their value and cost significant sums, and if allowed to continue will eventually render their properties valueless.

**Cause V - Violation of Article I, Section 13 of the Wisconsin Constitution and 42 U.S.C.  
Section 1983: Unlawful Use of Eminent Domain - Public Use**

130. The Plaintiffs repeat and reallege the above paragraphs as though fully set forth herein.

131. As pled above, the Defendants, acting under color of state law, deprived the Plaintiffs and the LLPOA of their 5th Amendment right under the "public purpose" clause of the 5th Amendment and Article I, Section 13 of the Wisconsin Constitution by taking the Plaintiffs' and the LLPOA's members' entire property through the course of conduct described above for the benefit of MITW.

132. The course of conduct pled above constitutes an actual or imminent injury fairly traceable to the Defendants' actions by increasing the tax burden on the Plaintiffs' and the LLPOA's members' properties which if allowed to continue will eventually render their properties valueless.

WHEREFORE, the Plaintiffs pray that this Court grant the following prospective injunctive relief:

- (a) Enter judgment making the following orders and declarations: 1) that the Defendants are engaging in an illegal or unconstitutional course of conduct in respect to the Plaintiffs and the LLPOA and its members;
- (b) Enjoin any further unconstitutional actions of the type pled in this Complaint;
- (c) Award Plaintiffs their costs, interest and reasonable attorneys' fees for this action pursuant to 42 U.S.C. §1988 and other relevant statutes; and,
- (d) Order such other and further injunctive relief as the Court deems just and proper under the circumstances.

Dated this 13th day of May, 2025.

*/s/ Erik S. Olsen*

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