UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

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

Plaintiffs,

Case No. 24-cv-01369-WCG

v.

MENOMINEE COUNTY, TOWN OF MENOMINEE AND MENOMINEE INDIAN SCHOOL DISTRICT,

Defendants.

DEFENDANT MENOMINEE INDIAN SCHOOL DISTRICT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

NOW COMES Defendant Menominee Indian School District ("MISD"), by its attorneys, Renning, Lewis & Lacy, s.c., and respectfully submits this Memorandum of Law in Support of Motion to Dismiss First Amended Complaint.

INTRODUCTION

As the Court is aware, MISD moved to dismiss the original complaint filed in this matter by Plaintiff Legend Lake Property Owners Association, Inc. ("LLPOA"), on grounds of lack of standing and lack of subject matter jurisdiction.[1] During the hearing of that motion, the Court granted LLPOA an opportunity to try to cure any pleading deficiencies, and avoid dismissal, by

[1] Doc. 8 (Not. of Mot. and Mot. to Dismiss of Def., MISD); Doc. 9 (Memo. of Law in Supp. of Mot. to Dismiss of Def., MISD); Doc. 20 (Reply Memo. of Law in Supp. of Mot. to Dismiss of Def., MISD).

submitting an amended complaint and, amongst other things, directed LLPOA to add specificity as to the relief it purports to seek in this case.[2] LLPOA submitted such an amended pleading, its First Amended Complaint, on May 13, 2025, which added the following individuals as plaintiffs (all of which, together with LLPOA, are referred to herein as "Plaintiffs"): Timothy J. Houselog ("Houselog"), Dawn Mauthe ("Mauthe"), Robert Klingelhoets ("Klingelhoets"), and Russell Timmers ("Timmers").[3]

Plaintiffs' second kick also missed the cat, however, and dismissal of Plaintiffs' First Amended Complaint remains proper pursuant to Federal Rule of Civil Procedure 12(b)(1). First, while the First Amended Complaint cleared associational standing hurdles, Plaintiffs' claims remain non-justiciable due to lack of standing; specifically, they fail to show an injury-in-fact or that the relief they request (an injunction) will redress their purported injuries. Second, the Court continues to lack subject matter jurisdiction over Plaintiff's federal claims on two grounds—the federal Tax Injunction Act and the comity doctrine. Third, and finally, the Court should decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claim.

MISD, therefore, respectfully requests that the Court grant its Motion to Dismiss First Amended Complaint and dismiss Plaintiffs' claims asserted against it in this matter.

BACKGROUND[4]

Like before, only a handful of allegations set forth in the First Amended Complaint warrant reference at this juncture. As Plaintiffs allege, LLPOA, formed in 1972, is a Wisconsin corporation "recognized as a non-profit organization under section 501(c)(4) of the Internal Revenue Code."

[2] Doc. 22 (Oral Argument).
[3] Doc. 23 (1st Am. Compl.).
[4] The "facts" provided in this section are taken primarily from the First Amended Complaint filed in this matter. MISD does not concede the truth of any of the allegations set forth in the First Amended Complaint and reserves the right to contest any and all such allegations, and raise any and all affirmative defenses, if the Court does not grant its Motion to Dismiss First Amended Complaint.

(Doc. 23 (1st Am. Compl.), ¶ 1.) Membership in LLPOA "was declared appurtenant to lot ownership[,]" specifically "the approximately 1,800 lots on Legend Lake" in Menominee County, Wisconsin. (*Id.*, ¶¶ 1, 40.)

According to Plaintiffs, "as of 2024, approximately 99% of the land in Menominee County" is held in trust by the United States of America for the beneficial use of the Menominee Indian Tribe of Wisconsin and/or its members ("Trust property"). (*Id.*, ¶¶ 32, 34, 37.) As a result, "only 1% of the land [in Menominee County] is taxable[,]" and, thus, "[o]nly 1% or fewer of property owners in Menominee County pay for nearly 100% of the property taxes" in the county. (*Id.*, ¶¶ 37, 38.) "The vast majority of the 1% of property owners who actually pay property taxes to Menominee County" are LLPOA's members. (*Id.*, ¶ 40.)

Houselog is a member of LLPOA, and his property on Legend Lake is his primary residence. (*Id.*, ¶ 2.) Mauthe, Klingelhoets and Timmers also are members of LLPOA, but their Legend Lake properties serve as their "second residence[s]." (*Id.*, ¶¶ 3[5], 5, 7.) For 2023, Houselog, Mauthe, Klingelhoets and Timmers all were charged property taxes by the Town of Menominee at a rate (calculated by dividing total tax by assessed property value) of approximately 2.74% in 2022 and 1.17% in 2024. (*Id.*, ¶¶ 3, 4, 6, 8.) The assessed values of their properties increased from 2023 to 2024. (*Id.*)

MISD is a public school district organized and operated under Wisconsin statutes. (*Id.*, ¶ 1.) MISD's territory includes all of the Town of Menominee and Menominee County along with a small portion of the Town of Red Springs within Shawano County, Wisconsin. It calculates a

[5] The First Amended Complaint includes two Paragraphs 3. (Doc. 23 (1st Am. Compl.), p. 2.)

levy on an annual basis, which it then forwards to the Town of Menominee for allocation and billing to the owners of taxable property within its territory.[6]

Turning to Plaintiffs' specific allegations against MISD, Plaintiffs allege that MISD made school funding decisions, specifically its decisions to pursue its 2022 referendum and to increase its 2022-23 operating budget, "with the specific intention of increasing the tax burden on the 25% minority of property tax payers in the County[.]" (*Id.*, ¶¶ 75, 77. This "25% minority of property tax payers" appears to refer to the portion of eligible voters within MISD's boundaries who pay property taxes. (*Id.*, ¶ 42.) In this vein, Plaintiffs also allege that MISD structured a property transaction, which they describe as "the give away of the [former MISD] middle school," in a way that will cause Plaintiffs, and LLPOA's members, to "bear the burden of the associated loss of revenues and obligations of the MISD in the form of higher annual property taxes." (*Id.*, ¶ 98.)

Plaintiffs claim these actions of MISD, along with other actions of Defendants Town of Menominee (the "Town") and Menominee County (the "County"), demonstrate "a concerted effort [of MISD, the Town and the County] 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" Menominee Indian Tribe of Wisconsin ("MITW"), a non-party to this litigation. (*Id.*, ¶ 103.) In claiming this concerted effort between Defendants (and, inherently, MITW) violates the 14th Amendment's Equal Protection and Substantive Due Process clauses, as well as the 5th Amendment's Takings and Public Purpose clauses, Plaintiffs repeatedly allege, "[t]he course of conduct pled above constitutes an actual or imminent injury fairly traceable to the Defendants'

[6] Plaintiffs did not allege these facts in their Amended Complaint, but they are necessary to an explanation of why the Court lacks jurisdiction over Plaintiff's claims against MISD. *Ezekiel v. Michel*, 66 F.3d 894. 897 (7th Cir. 1995). In addition, they are not subject to any good faith dispute.

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." (*Id.*, ¶¶ 118, 121, 129, 132.) Regarding their Takings clause claim, Plaintiffs' claim that as a result of the alleged concerted activities, their properties, and the LLPOA's members' properties, have already decreased in value and they have incurred significant sums. (*Id.*, ¶ 129.)

For relief, Plaintiffs ask the Court to declare that "Defendants are engaging in an illegal or unconstitutional course of conduct in respect to the Plaintiffs and the LLPOA and its members" and to "[e]njoin any further unconstitutional actions of the type pled in this Complaint." (*Id.*, p. 29.)

Other alleged facts that are pertinent to MISD's arguments are referenced below.

MOTION TO DISMISS STANDARD

MISD brings its Motion to Dismiss First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1). Such a motion "challenges a federal court's subject-matter jurisdiction." *Bilgo v. United States Postal Serv.*, No. 20-CV-606-SCD, 2020 WL 3470252, *1 (E.D. Wis. June 25, 2020). "A court lacks subject-matter jurisdiction if a plaintiff doesn't have standing." *Mahwikizi v. Ctrs. for Disease Control & Prevention*, 573 F.Supp.3d 1245, 1249 (N.D. Ill. 2021), citing *Taylor v. McCament*, 875 F.3d 849, 853 (7th Cir. 2017). When reviewing Rule 12(b)(1) motions, "the district court must accept as true all well-pleaded factual allegations, and draw reasonable inferences in favor of the plaintiff." *Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995). In addition, "'[t]he district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists.'" *Id.*, quoting *Capitol Leasing Co. v. FDIC*, 999 F.2d 188, 191 (7th Cir. 1993).

ANALYSIS

As MISD explains below, Plaintiffs' claims are ripe for dismissal under Federal Rule of Civil Procedure 12(b)(1). First, Plaintiffs lack standing to bring such claims against MISD; they have no injury-in-fact, and redressability is lacking. Second, even if Plaintiffs could establish standing, the Court has no jurisdiction over such claims based on both the Tax Injunction Act and the comity doctrine. Third, and consequentially, as such claims are ripe for dismissal, the Court also should decline to exercise supplemental jurisdiction over Plaintiffs remaining state law claim (alleging a violation of Article VIII, Section 1 of the Wisconsin Constitution).

I. PLAINTIFF LACKS STANDING TO BRING ITS CLAIMS AGAINST MISD.

"Standing doctrine implements Article III's Case or Controversy requirement." *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 95 F.4th 501, 505 (7th Cir. 2024). This ensures that "[a] plaintiff seeking to invoke a federal court's jurisdiction must have 'standing' or a 'personal stake' in the outcome of the case." *Dusterhoft v. OneTouchPoint Corp.*, No. 22-cv-0882-bhl, 2024 WL 4263762, *5 (E.D. Wis. Sept. 23, 2024). "When a plaintiff lacks standing, a federal court lacks jurisdiction." *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1007 (7th Cir. 2021).

The plaintiff "bears the burden of establishing the required elements of standing." *Lee v. City of Chicago*, 330 F.3d 456, 468 (7th Cir. 2003). Those required elements are:

> (i) an injury in fact, which is an invasion of a legally protected interest that is concrete and particularized and, thus, actual or imminent, not conjectural or hypothetical; (ii) a causal relationship between the injury and the challenged conduct, such that the injury can be fairly traced to the challenged action of the defendant; and (iii) a likelihood that the injury will be redressed by a favorable decision.

Id. These elements commonly are referred to as the "injury in fact," "traceability" and "redressability" elements of standing. See *Dusterhoft,* 2024 WL 4263762 at *8. "A plaintiff must

establish standing for each claim asserted and each form of relief sought." *Id.* When a plaintiff's standing is challenged pursuant to Federal Rule of Civil Procedure 12(b)(1), the operative complaint "must 'clearly allege facts demonstrating' each element of standing.'" *Id.*, quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). The elements of injury-in-fact and redressability are central to MISD's Motion to Dismiss First Amended Complaint.[7]

A. The First Amended Complaint does not set forth an injury-in-fact.

To satisfy the "injury-in-fact" element, a plaintiff's complaint must contain "'sufficient factual allegations of a legally cognizable injury resulting from the defendants' conduct.'" *Stencil v. Johnson*, 605 F.Supp.3d 1109, 1116 (E.D. Wis. 2022), quoting *Robertson v. Allied Solutions, LLC*, 902 F.3d 690, 695 (7th Cir. 2018). The injury in fact must be "'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo*, 578 U.S. at 339, quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Injury allegations "premised on a speculative chain of possibilities" do not satisfy the injury-in-fact element of standing. *Parents Protecting Our Children,* 657 F.Supp.3d at 1171 ("Plaintiff's entire standing argument is premised on a speculative chain of possibilities, including future choices made by individuals who have not yet been identified, indeed who *cannot* yet be identified because they have *not* acted, and they might *never* act. This will not suffice.").

Because the alleged injury needed to establish standing must be concrete and particularized, it must be more than "a generally available grievance." *Stencil*, 605 F.Supp.3d at 1117. In this regard, "[a] plaintiff may not rely on only a 'generalized grievance about the conduct of government.'" *Democratic Party of Wis. v. Vos*, 966 F.3d 581, 585 (7th Cir. 2020), quoting *Gill*

[7] MISD reserves the right to challenge standing, based on any element thereof, in a later stage in this litigation if the Court does not grant its Motion to Dismiss First Amended Complaint. *Keep Chicago Livable v. City of Chicago*, 913 F.3d 618, 621 (7th Cir. 2019).

v. Whitford, 585 U.S. 48, 68 (2018). This is because an injury that confers standing "must be personal, individual, and distinct, not general and undifferentiated." *Bost v. Ill. State Bd. of Elections*, 114 F.4th 634, 640 (7th Cir. 2024).

Even though several property owners now have been included as plaintiffs in this matter, the Supreme Court's decision in *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006), continues to establish that Plaintiffs have not sustained a constitutional injury-in-fact related to their property taxes. To reiterate, in *DaimlerChrysler*, the City of Toledo and the State of Ohio offered the plaintiff local and state tax benefits if it expanded its Jeep manufacturing operation in Toledo. *Id.* at 337. Specifically, in exchange for the plaintiff's agreement to expand its Jeep assembly plant, the City of Toledo "agreed to waive the property tax for the plant, with the consent of the two school districts in which the plant is located." *Id.* at 338-39. "Taxpayers in Toledo sued, alleging that their local and state tax burdens were increased by the tax breaks for DaimlerChrysler," which the taxpayers asserted violated their constitutional rights (specifically their rights under the Commerce Clause). *Id.* at 338. They specifically alleged that by not charging DaimlerChrysler property taxes, the government depleted the "fisc" and "impos[ed] disproportionate burdens" on the taxpayers. *Id.* at 345.

The Supreme Court never had to decide whether such a taxation arrangement violated the taxpayers' constitutional rights, finding that the complaining taxpayers did not have "standing to press their complaint in federal court" because they failed to allege an actionable injury-in-fact. *Id.* In so holding, the Supreme Court relied upon *Frothingham v. Mellon*, 262 U.S. 447 (1923), in finding that standing is not established by alleged injuries "based on the asserted effect of the allegedly illegal activity on public revenues, to which the [suing] taxpayer contributes." *DaimlerChrysler*, 547 U.S. at 344. It further cited *Frothingham* to find that standing is not

established by an "allegation of injury that the effect of government spending 'will be to increase the burden of future taxation and thereby take [plaintiff's] property without due process of law.'" *Id.* at 346, quoting *Frothingham*, 262 U.S. at 486.

In making this decision, the Court importantly stated:

> State policymakers, no less than their federal counterparts, retain broad discretion to make "policy decisions" concerning state spending "in different ways … depending on their perceptions of wise state fiscal policy and myriad other circumstances." Federal courts may not assume a particular exercise of this state fiscal discretion in establishing standing; a party seeking federal jurisdiction cannot rely on such "[s]peculative inferences … to connect [his] injury to the challenged actions of [the defendant[.]" Indeed, because state budgets frequently contain an array of tax and spending provisions, any number of which may be challenged on a variety of bases, affording state taxpayers standing to press such challenges simply because their tax burden gives them an interest in the state treasury would interpose the federal courts as "'virtually continuing monitors of the wisdom and soundness'" of state fiscal administration, contrary to the more modest role Article III envisions for federal courts.

Id. (citations omitted).

Plaintiffs' claims meet the same fate as those of the taxpayers in *DaimlerChrysler*. These plaintiffs' claims against MISD in this matter can be boiled down to one central theme—because MISD does not, because it cannot, levy taxes upon trust property, Plaintiffs' property tax burdens are unconstitutionally high and, in relation, MISD unconstitutionally takes their property without due process of law. (See Doc. 23 (1st Am. Compl.).) Plaintiffs go on to allege that unless the "conspiracy" between the defendants and MITW to continue placing properties into trust is stopped, the unconstitutionally high tax burdens will render their properties valueless. (*Id.*) That is, for all intents and purposes, the same argument made by the plaintiffs in *DaimlerChrysler*, i.e., "because you don't tax them, you tax us too much."[8] Such allegations, though, do not establish an "injury in fact" necessary to establish standing. Plaintiffs' claims are ready for dismissal.

[8] In fact, any such argument by a member of Plaintiff is weaker than the argument in *DaimlerChrysler*. In that case, the City of Toledo and the State of Ohio decided to excuse the plaintiff from paying property taxes. Here, as a non-

B. The First Amended Complaint does not establish redressability.

Per the prayer for relief in the First Amended Complaint, and statements made in response to MISD's initial Motion to Dismiss, Plaintiffs are not seeking monetary damages in this case. (Doc. 23 (1st Am. Compl.), p. 29; Doc. 15 (P.'s Br. in Opp'n to Defs.' Mot. to Dismiss), pp. 17-18.) Rather, Plaintiffs seek declaratory relief (declaring that the defendants "are engaging in an illegal or unconstitutional course of conduct in respect to the Plaintiffs and the LLPOA and its members") and an injunction (enjoining "any further unconstitutional actions of the type pled in this Complaint"). (Doc. 23 (1st Am. Compl.), p. 29.) Such allegations fail to satisfy Article III standing's redressability prong.

"To demonstrate redressability, the plaintiff must show 'a 'substantial likelihood' that the requested relief will remedy the alleged injury in fact.'" *Giasson v. MRA – Management Association, Inc.*, No. 24-CV-839-JPS-JPS, 2025 WL 1025713, *5 (E.D. Wis. Apr. 7, 2025) (citations omitted). "'Redressability turns on the 'connection between the alleged injury and the judicial relief requested.'" *Id*. (citations omitted). Importantly, "'[r]elief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.'" *Perry v. Sheahan*, 222 F.3d 309, 314 (7th Cir. 2000), quoting *Steel Co. v. Citizens for a Better Environ.*, 523 U.S. 83, 107 (1998).

Regarding requests for declaratory relief, "'[a] plaintiff lacks standing to seek declaratory judgment where a declaration of the parties' legal rights will provide no relief.'" *Giasson*, 2025 WL 1025713 at *6, quoting *Thompson v. Ortiz*, 619 F.App'x 542, 544 (7th Cir. 2015). Standing does not exist in situations where a plaintiff simply seeks a declaration that his, hers or its rights have been violated, as any such sought-after declaration would not "redress the injuries alleged in

debatable matter of law, MISD *cannot* levy taxes upon trust property. Even if MISD wanted to spread its tax burden to all properties within its borders, including trust property property, it simply cannot do so.

the complaint." *Id.* This is especially true when a request for declaratory relief is a predicate to a claim for costs. *Thompson*, 619 F.App'x at 544.

As for requests for injunctive relief, such requests must be specific; without making a specific demand, "the Court cannot analyze" whether the sought-after relief "'will prevent or redress' an 'actual and imminent' concrete injury." *O'Dea v. RB Health (US) LLC*, No. 2:24-cv-07048-SB-BFM, 2025 WL 1212835, *4 (C.D. Cal Apr. 22, 2025), quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). A request for an injunction that generally orders a defendant not to violate a plaintiff's right in the future fails to satisfy the redressability requirement, as same "effectively appoints a federal judge as the administrator" of future behavior. *Wisconsin Right to Life, Inc. v. Paradise*, 138 F.3d 1183, 1187 (7th Cir. 1998) ("[w]hen the only way to make relief effective is to write an order so broad that it becomes advisory, and so meddlesome that it effectively appoints a federal judge as the administrator of the state statute, a court can be sure that the case is not justiciable"). In addition, redressability cannot be found when the ultimate relief depends on "the unfettered choices made by independent actors." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989).

Plaintiffs' First Amended Complaint fails to demonstrate redressability. As for its request for declaratory relief, a declaration by the Court that MISD "engage[d] in an illegal or unconstitutional course of conduct in respect to the Plaintiffs and the LLPOA and its members" would provide Plaintiffs no relief. Such a declaration would change nothing, and while Plaintiffs may find satisfaction in obtaining such a declaration, "psychic satisfaction" does not establish grounds for redressability. See *Soule by Stanescu v. Conn. Ass'n of Schs., Inc.*, 57 F.4th 43, 52 (2d Cir. 2022) ("a ruling from this Court would give Plaintiffs nothing more than 'psychic satisfaction,'

which, on its own, 'is not an acceptable Article III remedy because it does not redress a cognizable Article III injury'").

Plaintiffs' request for injunctive relief similarly fails the redressability test. The First Amended Complaint continues to beg the question—exactly what do Plaintiffs want the Court to order MISD to refrain from doing? A generalized request for an injunction ordering MISD not to violate Plaintiffs' constitutional rights does not satisfy the redressability requirement. Neither MISD, the other defendants, nor the Court should have to guess as to what Plaintiffs truly desire via this lawsuit, which is exactly why it is a plaintiff's burden to demonstrate redressability and why the Court allowed LLPOA (and, in turn, the additional plaintiffs) an opportunity to amend the complaint. Yet, the First Amended Complaint still fails to provide any explanation as to exactly what injunctive relief to which Plaintiffs believe they are entitled.

Before closing out this issue, one additional point warrants mention. To the extent Plaintiffs, via this lawsuit, desire an injunction preventing any property within MISD's boundaries from being sold to MITW, or an agent thereof, and being placed into trust, such relief is unavailable. Nobody—whether MISD, Plaintiffs, or the Court—can control whether a private landowner wishes to sell property, to MITW or anyone else, or whether MITW, upon purchasing property, chooses to place such property into trust. Regardless of what happens in this lawsuit, that still may, and perhaps will, happen. It bears further noting that the last entity that would want all MISD property to be placed into trust is MISD itself—if all of its territory were held in trust, MISD would not be able to exist, as it depends on property tax dollars to fund its operations. Without any property tax dollars, there is no school district. Nowhere do Plaintiffs explain why MISD would conspire to reduce its own tax revenue.

For these reasons, Plaintiffs have failed to demonstrate that they have standing to maintain their claims against MISD in this matter. Such claims, accordingly, should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1).

II. THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS.[9]

In addition to challenging standing, a motion to dismiss made pursuant to Federal Rule of Civil Procedure 12(b)(1) challenges the Court's subject-matter jurisdiction over a plaintiff's claims. Motions under this rule "are meant to test the sufficiency of the complaint, not to decide the merits of the case[,]" and "a plaintiff faced with a 12(b)(1) motion to dismiss bears the burden of establishing that the jurisdictional requirements have been met." *Ctr. for Dermatology & Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588-89 (7th Cir. 2014).

While federal courts initially possess subject matter jurisdiction over claims purportedly arising under the United States Constitution and 42 U.S.C. § 1983, 28 U.S.C. §§ 1331, 1343, such jurisdiction is statutorily limited or otherwise judicially declined with regard to certain types of claims. Such claims include constitutional and/or civil rights claims pertaining to state taxation such as Plaintiffs'. As explained below, the Court should find it does not hold subject matter jurisdiction over Plaintiffs' claims due to the Tax Injunction Act and the comity doctrine.

A. The Tax Injunction Act bars Plaintiffs' claims against MISD..

The Tax Injunction Act (the "Act"), codified at 28 U.S.C. § 1341, provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

[9] None of the changes between the initial Complaint and the First Amended Complaint impact MISD's argument concerning the Court's lack of subject matter jurisdiction. Accordingly, and for efficiency's sake, MISD reiterates its entire argument here, with minimal changes and updates.

This law "divests the district courts of subject matter jurisdiction in 'cases in which state taxpayers seek federal-court orders enabling them to avoid paying state taxes.'" *Scott Air Force Base Props., LLC v. Cty. of St. Clair, Ill.*, 548 F.3d 516, 520 (7th Cir. 2008), quoting *Hibbs v. Winn*, 542 U.S. 88, 107 (2004). "Put another way, if the relief sought would diminish or encumber state tax revenue, then the Act bars federal jurisdiction over claims seeking such relief." *Id.* "The TIA strips the district courts of the power to hear suits seeking not only injunctive but also declaratory relief from state taxes." *Id.* "In addition, the Act applies to *any* state tax, including municipal and local taxes." *Id.* (emphasis in original).

"It is well settled that allegations of deprivations of constitutional rights do not render the Act inapplicable." *Schneider Transp., Inc. v. Cattanach*, 657 F.2d 128, 131 (7th Cir. 1981). So, "[a]n allegation of a constitutional violation does not allow a federal court to overlook the requirements of the [Act]." *Rajterowski v. City of Sycamore*, No. 06 C 50236, 2008 WL 11518123, *2 (N.D. Ill. Mar. 10, 2008).

"[W]here a § 1983 action is grounded in an allegation of an unconstitutional tax scheme, to survive dismissal [a] plaintiff must demonstrate that there is no plain, adequate, and complete state remedy available." *Lindsey v. City of Racine*, No. 04-C-107, 2005 WL 1324973, *5 (E.D. Wis. Jun. 3, 2005), citing *Winicki v. Mallard*, 783 F.3d 1567 (11th Cir. 1986). The Eastern District of Wisconsin has concluded that "where 'a full hearing and judicial determination of the controversy is assured,' a state has provided a plain, speedy, and efficient remedy." *Fox River Valley R.R. Corp. v. Dept. of Rev.*, 863 F.Supp. 893, 896 (E.D. Wis. 1994), quoting *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 513-14 (1981). A state tax appeals process offers such a plain, speedy, and efficient remedy. *Garner v. Katona*, No. 22-2495, 2023 WL 5923773, *1 (7th Cir. Sept. 12, 2023), citing *Hay v. Ind. State Bd. of Tax Comm'rs*, 312 F.3d 876, 880 (7th Cir. 2002).

As previously explained, Plaintiffs' claims against MISD in this matter boil down to a single premise—Plaintiffs' belief that they, and all other taxpaying members of LLPOA, have been overcharged, and will continue to be overcharged, by MISD in terms of property taxes because they pay property taxes and others do not. As such, Plaintiffs have asked the Court to enter an order enjoining and restraining MISD from doing something, presumably from levying property taxes, or certain amounts of property taxes, despite its ability (and obligation) under Wisconsin law to do so. (Doc. 23 (1st Am. Compl.), p. 29.) Such is the type of request Congress, through the Act, directed federal courts to avoid handling. The Court should do so, as Plaintiffs have a plain, speedy, and efficient remedy to address these grievances in state court—Wis. Stat. § 74.35, which is entitled "Recovery of unlawful taxes."

It bears noting that Plaintiffs have no good faith basis for asserting they have no such plain, speedy and efficient remedy under Wisconsin law. As an exhibit to its Complaint in this matter, Plaintiffs attached a series of e-mails between individuals with the Wisconsin Department of Revenue, on the one hand, and two gentlemen named Jim Skulstad and Gregg Malmstrom, on the other hand. (Doc. 2-5 (Compl., Ex. 5).) Mr. Malmstrom and Mr. Skulstad are members of LLPOA's Board of Directors. Legend Lake Property Owners Association, *LLPOA Directors and LLPRD Commissioners*, LEGENDLAKE.INFO/LLPOA-DIRECTORS-AND-LLPRD-COMMISSIONERS/ (last accessed Jan. 29, 2025). Neither Plaintiffs nor LLPOA's members can deny that Mr. Malmstrom has been intricately involved in a separate state court lawsuit entitled *Menominee County Taxpayers Association v. Menominee Indian School District, et al.,*, Case No. 23-cv-002 currently pending before the Menominee County, Wisconsin, Circuit Court, a case in which that plaintiff has requested property tax-related relief from MISD pursuant to Wis. Stat. § 74.35. Not only does a plain, speedy and efficient remedy for Plaintiffs' claims exist under

Wisconsin law, but some, or all, of Plaintiffs and LLPOA's members currently are pursuing that remedy against MISD in state court.

As such, pursuant to the Tax Injunction Act, the Court lacks subject-matter jurisdiction over Plaintiffs' claims against MISD. Dismissal of same on such grounds is warranted.

B. The comity doctrine bars Plaintiffs' claims against MISD.

Like the Tax Injunction Act, the comity doctrine dictates that the Court does not have subject-matter jurisdiction over Plaintiffs' claims against MISD. Comity "is defined as a 'proper respect for state functions.'" *Barichello v. McDonald*, 98 F.3d 948, 954 (7th Cir. 1996), quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971). Per this doctrine, "absent unusual circumstances, a federal court must refrain from entertaining injunctive relief which might interfere with" state processes or other processes "when important state interests are involved." *Id.* Put another way, "[c]omity, in sum, serves to ensure that '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.'" *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 431 (2010), quoting *Younger*, 401 U.S. at 44.

In *Levin,* the United States Supreme Court extensively discussed the impact of the comity doctrine on federal lawsuits alleging unconstitutional state taxation. That case involved commercial competitors in the Ohio retail natural gas sales industry, specifically independent marketers, or "IMs," who sell natural gas, and local distribution companies, or "LDCs," who both sell and deliver natural gas. 560 U.S. at 418. Because IMs do not own or operate distribution pipelines, customers who purchase natural gas from IMs receive it via facilities owned by LDCs. *Id.*

Under Ohio law, IMs and LDCs are treated differently for tax purposes, specifically in that LDCs are afforded three tax exemptions not provided to IMs pertaining to sales/use taxes, commercial activities taxes and gross receipts taxes. *Id.* The plaintiffs in that case, two IMs and an individual who purchased natural gas from an IM, sued the Ohio Tax Commissioner, "[a]lleging discriminatory taxation of IMs and their patrons in violation of the Commerce and Equal Protection Clauses" and seeking "declaratory and injunctive relief invalidating the three tax exemptions LDCs enjoy and ordering the Commissioner to stop 'recognizing and/or enforcing' the exemptions." *Id.* at 419. The Supreme Court summarized the plaintiffs' claims as follows: "[r]espondents complaint that they are taxed unevenly in comparison to LDCs and their customers[,]" because state action " 'selects [them] out for discriminatory treatment by subjecting [them] to taxes not imposed on others of the same class.'" *Id.* at 426, quoting *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946).

The Supreme Court held that the comity doctrine justified dismissal of that federal court action. *Id.* at 432. In doing so, it stated:

> A confluence of factors in this case, absent in *Hibbs*, leads us to conclude that the comity doctrine controls here. First, respondents seek federal-court review of commercial matters over which Ohio enjoys wide regulatory latitude; their suit does not involve any fundamental right or classification that attracts heightened judicial scrutiny. Second, while respondents portray themselves as third-party challengers to an allegedly unconstitutional tax scheme, they are in fact seeking federal-court aid in an endeavor to improve their competitive position. Third, the Ohio courts are better positioned than their federal counterparts to correct any violation because they are more familiar with state legislative preferences and because the TIA does not constrain their remedial options. Individually, these considerations may not compel forbearance on the part of federal district courts; in combination, however, they demand deference to the state adjudicative process.

Id. at 431-32.

Levin squares with this matter.[10] Here, Plaintiffs (including LLPOA's members) are the IMs, and the owners of tax-exempt properties within MISD's boundaries are the LCGs. Like the IMs, Plaintiffs (including LLPOA's members) think it is unfair that it costs more for them to own property within MISD's boundaries than it does for those who are exempt from paying property taxes, i.e., to compete with those who own property or reside in MISD but do not pay property taxes. So, like the IMs in *Levin*, they filed a federal lawsuit alleging such circumstances violate the Constitution—but in reality, what they want is federal-court assistance in changing the property-tax playing field to their benefit.

As the Supreme Court did in *Levin*, the Court should decline Plaintiffs' invitation to participate in this matter and, instead, conclude that it does not have subject matter jurisdiction over Plaintiffs' claims pursuant to the comity doctrine and order them dismissed.

III. THE COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER PLAINTIFF'S REMAINING STATE LAW CLAIM.

In addition to its Section 1983 claims, Plaintiff asserts a claim against MISD pursuant to Article VIII, § 1 of the Wisconsin Constitution, alleging MISD deprived Plaintiff and its members the protections of same. (Doc. 1 (Compl.), ¶¶ 105-109.) Upon granting MISD's Motion to Dismiss as to Plaintiff's Section 1983 constitutional claims, the Court will lack original jurisdiction over the state law claim, and a relinquishment of jurisdiction over that claim is presumed. *Gumm v. Molinaroli*, 569 F.Supp.3d 806, 860 (E.D. Wis. 2021), quoting *Walker v. McArdle*, 861 Fed.Appx. 680, 687 (7th Cir. 2021). The Court, therefore, should decline to exercise supplemental jurisdiction over Plaintiff's Wisconsin constitutional claim, per 28 U.S.C. § 1367(c)(3), and dismiss same in conjunction with dismissing Plaintiff's Section 1983 claims.

[10] The only substantive distinction between this case and *Levin* are the underlying rules of the game. In *Levin*, the Ohio legislature chose to provide tax benefits to LCGs and not IMs. Here, MISD has no such choice; it cannot, by law, levy property taxes on trust property or any other tax-exempt property within its boundaries.

CONCLUSION

For these reasons, the defendant, Menominee Indian School District, respectfully requests that the Court grant its Motion to Dismiss First Amended Complaint and dismiss all claims asserted against it in this matter.

Dated: June 3, 2025.

RENNING, LEWIS & LACY, S.C.
Attorneys for Defendant,
Menominee Indian School District

/s/ Anthony J. Steffek
Anthony J. Steffek
State Bar No. 1053615
205 Doty Street, Suite 201
Green Bay, WI 54301
(920) 283-0714
asteffek@law-rll.com