

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

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

Plaintiffs,

Case No. 24-CV-1369

v.

v.

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

Defendants.

**DEFENDANTS MENOMINEE COUNTY AND TOWN OF MENOMINEE'S BRIEF IN
SUPPORT OF THEIR MOTION TO DISMISS AMENDED COMPLAINT**

Defendants, Menominee County and Town of Menominee, by their attorneys, Crivello, Nichols & Hall, S.C., hereby supplement the Motion to Dismiss filed by co-defendants Menominee Indian School District ("MISD") (Doc. 8-9) and joining briefing filed by the County and Town (Doc. 11-12), pursuant to Fed. R. Civ. P. 12(g)(1) and Fed. R. Civ. P. 12(b)(1).

INTRODUCTION

Plaintiff Legend Lake Property Owners Association, Inc. ("LLPOA") originally filed this lawsuit against the Town and County of Menominee and MISD on October 25, 2024. (Doc. 1 (Compl.)). The initial Complaint contains a handful of allegations, including that all Defendants violated the LLPOA's members' Equal Protection Rights (Compl. ¶¶ 96-104), their Substantive

Due Process Rights (Compl. ¶¶ 102-104), and various rights afforded by the Wisconsin Constitution. (Compl. ¶¶ 105-115).

In lieu of an Answer, MISD filed a Motion to Dismiss the Complaint on January 31, 2025. (Doc. 8-9). In its motion, MISD argued Plaintiff lacked actual or associational standing to make these claims, the Court did not have subject matter jurisdiction over these claims, and the Court does not have jurisdiction over Plaintiff's state law claims. On February 13, the Town and County filed a Notice of Joinder and Brief in support of Joining MISD's Motion to Dismiss and accompanying arguments. (Doc. 11-12). This Court held a hearing on the pending motion to dismiss on April 22, 2025, at which the Court granted Plaintiff leave to amend the complaint within 21 days and to "be more specific with the prospective injunctive relief" it seeks. (Doc. 22).

On May 13, 2025, Plaintiffs filed their amended complaint, naming four property owners and members of the LLPOA as Plaintiffs. (Doc. 23). The Plaintiffs' Amended Complaint has the same allegations and prayer for relief as the initial complaint, and Plaintiffs still fail state a claim for which this court could grant any redress. For these reasons, and the reasons incorporated in Defendants' Initial Motion to Dismiss briefings, this Court should dismiss Plaintiff's Amended Complaint.

MOTION TO DISMISS STANDARD

A party may also move to dismiss an action for lack of a justiciable controversy under Federal Rule of Civil Procedure 12(b)(1). *See Retired Chicago Police Ass'n v. City of Chicago*, 76 F.3d 856, 862 (7th Cir. 1996). Under the Rule 12(b)(1) motion standard, "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). A motion to dismiss

pursuant to Rule 12(b)(1) may take the form of either a facial or factual attack. *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). To determine whether in subject matter jurisdiction exists, “[t]he district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue.” *Id.*, quoting *Capitol Leasing Co. v. FDIC*, 999 F.2d 188, 191 (7th Cir. 1993). At the pleadings stage, courts review justiciability based on the well-pled allegations in the complaint under the Fed. R. 12(b)(6) standard. *See Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4 1002, 1007-08 (7th Cir. 2021), The Plaintiff carries the burden of establishing standing. *Id.*

ARGUMENT

Despite the Court’s warning at the last hearing, Plaintiffs’ Amended Complaint pleads few actual facts distinct from the initial complaint that would allow it to survive the motion to dismiss stage. Instead, it relies on vague assertions, a brief recitations of the history of the LLPOA, and a brief explanation on the taxing practices of Menominee County and Town in conjunction with MISD. Plaintiffs still lack standing to bring such Constitutional violation claims against the Town/County. Even if this Court found Plaintiff to have standing, the Court has no jurisdiction over the claims based on the Tax Injunction Act and comity doctrine, both of which were briefed extensively in MISD’s initial Motion to Dismiss briefing (Doc. 9) and argued at the April 22, 2025 hearing. Plaintiffs’ fundamental deficiencies are fatal, and this Court should grant the Defendants’ Motion to Dismiss and dismiss this action and all claims against the Defendants, with prejudice, and with costs and disbursements.

I. PLAINTIFFS LACK STANDING TO BRING THIS ACTION AGAINST THE TOWN AND COUNTY.

“Article III of the Constitution limits the jurisdiction of federal courts to ‘Cases’ and ‘Controversies.’” *Pierre v. Midland Credit Management, Inc.*, 29 F.4th 934 (7th Cir. 2022) (quoting U.S. Const., Art. III, § 2). “The case-or-controversy requirement ensures that the judiciary ‘confines itself to its constitutionally limited role of adjudicating actual and concrete disputes, the resolutions of which have direct consequences on the parties involves.’” *Pierre*, 29 F.4th at 937 (quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71, 133 S.Ct. 1523, 185 L.Ed.2d 636 (2013)). “[P]laintiffs bear the burden of demonstrating that they have standing. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 430, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). “To establish Article III standing, a plaintiff must show (1) an ‘injury in fact,’ (2) a sufficient ‘causal connection between the injury and the conduct complained of,’ and (3) a ‘likel[i]hood’ that the injury ‘will be redressed by a favorable decision.’” *Id.* at 157-58 (quoting *Lujan*, 504 U.S. at 560-61).

“At the pleading stage, the standing inquiry asks whether the complaint ‘clearly...allege[s] facts demonstrating each element’ in the doctrinal test.” *Larkin v. Fin. Sys. Of Green Bay, Inc.*, 982 F.3d 1060, 1064 (7th Cir. 2020) (quoting *Spokeo Inc. v. Robins*, 578 U.S. 330, 338 (2016)). 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 alleged injury must be

particularized, i.e., it must be more than “a generally available grievance.” *Id.* 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 v. Whitford*, 585 U.S. 48, 68 (2018).

Plaintiffs fail to show they have suffered an “injury in fact” in their amended complaint. Similar to the initial complaint, Plaintiffs raised four Constitutional violation claims under § 1983, alleging specific violations of the 14th and 5th Amendments. (Doc. 23, ¶¶ 113-126). The crux of these allegations is that the Town/County increased the tax burden on the Plaintiffs which “if allowed to continue will eventually render their properties valueless.” (Doc. 23, ¶ 126). Despite this Court’s blatant order to do so, by failing to expound on their initial complaint, Plaintiffs fail to identify the injury in fact that gives them standing to proceed on the Amended Complaint. The Plaintiffs name four taxpayers who are allegedly members of the LLPOA, but do not make any individual complaints on behalf of those members other than identifying their tax rates and the increase in assessed values over the course of the last few years. These blanket allegations fail to constitute valid claims.

Plaintiffs also cannot establish they have established standing through an associational standing theory, despite naming four individuals as plaintiffs; however, this tactic still does not prevent this action from being dismissed, as the Supreme Court established that complaining taxpayers did not have “standing to press their complaint in federal court.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 345 (2006). This argument was already raised by MISD in its moving brief to dismiss the initial complaint (Doc. 9, p.7-8), which these Defendants joined. The Plaintiffs here are alleging that all Defendants are not taxing certain property holders (owned by members of the Menominee tribe) and thus increasing the tax burden on the LLPOA members.

In addition to establishing that the defendants cannot legally tax property owned by tax exempt members of the Menominee tribe, MISD also establishes, that this allegation does not constitute an “injury in fact” and fails to establish standing.

Plaintiff’s prayer for relief requests this Court to enter an order “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” –which mirrors the prayer for relief in the initial complaint—and to “enjoin any further unconstitutional actions of the type pled in this Complaint.” (Doc. 23, p. 29). Despite this Court requesting Plaintiffs be more specific in their prayer for relief, Plaintiffs have still not established the “redressability” element of standing. *Dusterhoft v. OneTouchPoint Corp.*, No. 22-cv-0882-bhl, 2024 WL 4263762, *5 (E.D. Wis. Sept. 23, 2024). Without reiterating the arguments by MISD, the prayer for relief here is synonymous with the *Duncan Place Owners Association* case (Doc. 9, p. 10). Even though the Plaintiffs amended their complaint to add four individual homeowners, the LLPOA and its members do not have a viable claim for prospective relief, and this Court cannot grant their prayer for declaratory and injunctive relief. Plaintiffs fail to establish they have even an associational standing, so their claims in the Amended Complaint fail and Plaintiffs’ Amended Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1).

II. THIS COURT *STILL* DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER PLAINTIFFS’ CLAIMS.

This Court afforded the Plaintiffs an opportunity to Amend their complaint to expound on the challenges of jurisdiction raised by MISD and joined by the Town/County in the initial pleadings. Despite this extra kick at the can, Plaintiffs still fail to state a claim for which this Court is afforded jurisdiction over their prayers for relief. Specifically, this Court’s jurisdiction is

limited or absent over Plaintiffs' constitutional violation claims. Supplementing arguments previously made by the Defendants, this Court should find that it does not have subject matter jurisdiction because the claims are barred by the Tax Injunction Act ("TIA") and the comity doctrine.

Plaintiffs are essentially requesting this Court to enjoin, suspend or restrain the MISD assessment, levy, and/or collection of taxes under Wisconsin law, specifically where a sufficient and appropriate remedy may be pursued in the state court. This is exactly what the Tax Injunction Act is meant to prevent. *See* 28 U.S.C. § 1341. Granting the relief that Plaintiffs seek would be an improper invasion of the province of the State and its municipal subdivisions, (specifically the Town/County) and their ability to levy and collect taxes. The Tax Injunction Act prevents actions seeking monetary damages as well as those for declaratory and injunctive relief. *Nat'l Priv. Truck Council, Inc. v. Okla. Tax Comm'n*, 515 U.S. 582, 586–88 (1995). The "TIA strips the district courts of the power to hear suits seeking not only injunctive but also declaratory relief from state taxes." *Scott Air Force Base Props., LLC v. Cty. of St. Clair, Ill.*, 548 F.3d 516, 520 (7th Cir. 2008). This is the exact scenario we find ourselves in here, as the LLPOA's prayer for relief requests this Court to supersede state law and the available remedies for challenging the property taxation in the Town/County. Additionally, as MISD notes (Doc. 9, p. 13-14), a similar separate court action in the state court is already proceeding under a similar premise.

Plaintiffs request this Court to enter an order enjoining and restraining MISD from levying property taxes, and the Town/County from collecting said taxes, in accordance with its' complaint despite the ability (and obligation) under Wisconsin law of MISD and the Town/County to do so. (Doc. 23, p. 29). Such is the type of request Congress, through the Act, directed federal courts to avoid becoming entangled. The Court should steer clear of these issues,

as Plaintiffs’---including the four named individuals, 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.”

Despite Plaintiffs being afforded the chance to amend their complaint, there is nothing substantial that differentiates the insufficient claims brought in the original pleading from the Amended Complaint. For the same reasons already argued by MISD and joined by the Town/County, this Court should hold Plaintiffs do not have subject matter jurisdiction and dismiss the Amended Complaint altogether.

III. SUPPLEMENTAL JURISDICTION SHOULD BE DENIED ON PLAINTIFFS’ STATE LAW CLAIMS.

Plaintiff alleges violations of Article VIII, § 1 of the Wisconsin Constitution by generally asserting that all Defendants deprived the LLPOA and its members of constitutional protections. If this Court determines there is no standing or subject matter jurisdiction for Plaintiffs’ § 1983 claims as analyzed above and in previous briefings, this Court shall not have jurisdiction over the remaining state law claims. *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). Thus, this Court should relinquish jurisdiction over those claims as well. *Id.* In conjunction with granting all Defendants’ motions to dismiss the Amended Complaint on the §1983 claims, the Town/County respectfully request this Court decline to exercise supplemental jurisdiction over the remaining claims, and dismiss the Amended Complaint altogether.

Conclusion

For the reasons stated above, and previously briefed by all Defendants, the Town and County respectfully request this Court grant this Motion to Dismiss the Amended Complaint and all claims asserted against these Defendants in this matter.

Dated this 3rd day of June, 2025.

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