

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 REPLY
BRIEF IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT**

Defendants Menominee County and Town of Menominee (“County/Town”) have moved the Court to dismiss Plaintiffs’ Amended Complaint (ECF No. 23). The moving brief outlined three reasons why this Court should dismiss the complaint altogether, including lack of standing, lack of subject matter jurisdiction, and failure to establish standing of a federal claim. Defendant Menominee Indian School District (“MISD”) also filed a motion to dismiss the amended complaint (ECF No. 26-27). On July 3, 2025, Plaintiffs filed a response brief in opposition to all of Defendants’ motions, claiming all claims should survive the pleadings stage and proceed to trial. However, Plaintiffs failed to meet even the low threshold on their second attempt to survive a motion to dismiss at this stage of litigation, and this case should be dismissed.

I. PLAINTIFFS LACK STANDING TO ASSERT THEIR CONSTITUTIONAL CLAIMS AGAINST THE COUNTY/TOWN.

In order to invoke this Court’s appropriate jurisdiction over a matter, Plaintiffs 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). The required elements include (1) an injury in fact, a casual relationship between the injury and challenged conduct, and (3) a likelihood of the injury will be redressed by a favorable decision. *See Lee v. City of Chicago*, 330 F.3d 456, 468 (7th Cir. 2003). The burden is on the Plaintiffs to establish all three elements. *Id.*

Plaintiffs reiterate in their response brief that they have alleged an actual or imminent personal injury as a result of the Defendants’ unlawful actions, which can be redressed by this Court. (ECF No. 34, p. 11). While the Plaintiffs repeatedly allege a conspiracy between the County/Town, MISD, and even the Menomonee Indian Tribe of Wisconsin (“MITW”), to cause the Legend Lake Property Owners Association, Inc. (“LLPOA”) members to be dispossessed of certain rights, they still fail to meet the injury-in-fact and redressability elements. Despite the Plaintiffs’ allegations and arguments in their response brief, the County/Town does not control, and in fact, is not even involved in the referenda or budgeting completed by the MISD. Accordingly, the County/Town neither controls, or is involved in, the determination of what levies are assessed by the school district. The flip side of that coin is also true, in that the MISD has no control over the allocation and tax billing issued by the County/Town to property owners within the borders of the County/Town. In any event, the Plaintiffs still do not have standing to proceed on this claim.

1. The Plaintiffs fail to meet the injury-in-fact requirement.

By asserting that they have been charged high taxes in recent years, Plaintiffs allege that the Defendants' "unconstitutional" conduct is an injury-in-fact. (ECF no. 34 at 16). They argue that this is more than a generalized grievance and that the Supreme Court decision in *DaimlerChrysler* should not control the standing issues before this Court. The difference in the *state* or *municipal* taxes that were challenged in the *DaimlerChrysler* case does not bar its application, here; however, the *DaimlerChrysler* court held 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 [plaintiffs'] property without due process of law.'" *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 346 (2006). This is identical to the accusation being made in this case. Plaintiffs accuse the Defendants of participating in a grandiose conspiracy with the MITW, which resulted in high tax burdens being placed on their members' properties. (ECF No. 23). Like the *DaimlerChrysler* case, the Plaintiffs here are merely taxpayers who contend that their burden of taxation is too high. The Plaintiffs allege that the process of establishing that burden of taxation was done without due process of law (even though it seems that Plaintiff concedes that the proper procedures to raise property taxes in Wisconsin were followed); thus, it supposedly constitutes a Constitutional violation. In reality, the County/Town is the taxation district, which allocates tax bills according to the tax levies set by MISD (and other taxation jurisdictions within the taxation district). Plaintiffs allege that numerous of the taxation jurisdictions within the taxation district "conspired" to render their properties valueless, thus driving them out of the County/Town. This is almost identical to the arguments made in *DaimlerChrysler*, where the Court held that the plaintiffs lacked standing to proceed.

Despite being allowed a second kick at the can, the allegations in the amended complaint still fail to properly allege any injury-in-fact; therefore, the Plaintiffs have failed to meet the first element outlined in *Lee*.

2. *The Plaintiffs fail to establish any redressability for their claims.*

According to the Amended Complaint, there are no monetary damages sought by the Plaintiffs. (ECF No. 23, p. 29). The Plaintiffs rather seek an order of 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”) as well as an injunction by this Court. (ECF No. 23, p. 29). The redressability prong outlined in *Lee v. City of Chicago* requires a likelihood that the injury will be redressed by a favorable decision. *Lee v. City of Chicago*, 330 F.3d 456, 468 (7th Cir. 2003). Unfortunately for the Plaintiffs, seeking this declaratory judgment or injunction fails to meet this standard.

In the Amended Complaint, Plaintiffs ask this Court to issue a detailed injunction to abate alleged Constitutional violations. In making this assertion, Plaintiffs compare this case to other Federal cases where injunctions were granted. For example, Plaintiffs rely on the *Hutto v. Finney* case, in which a District Court entered remedial orders for prison conditions in Arkansas. (ECF No. 34, p. 19, citing *Hutto v. Finney*, 437 U.S. 678 (1978)). Plaintiffs similarly reference *Brown v. Board of Education*, the seminal case where the Supreme Court issued orders prohibiting racial discrimination in schools. (ECF No. 34, p. 20, citing *Brown v. Board of Education*, 349 U. S. 294 (1955)). Here, Plaintiffs are asking the Court to declare that the conduct of the Defendants (who were acting within their statutory rights and obligations by levying or collecting property taxes) unconstitutional. Even if this Court ultimately made such a determination, the Plaintiffs would be provided no relief.

What is it the Plaintiffs want them to do? The did not control the referendum passed by MISD, and the County/Town has no legal authority to limit an amount levied against property owners in a separate taxation jurisdiction—like MISD. As the taxing district, the Town/County is responsible for simply applying the levy as provided by MISD and issuing the tax bills to property owners withing the taxation district. In other words, the Town/County has no control over the amount of tax levied by MISD.

The Plaintiffs would have the Court go even further. Neither the Court nor any of the named Defendants can require that a private property owner sell or not sell a parcel to a particular party. In fact, such a requirement would obviously be in violation of a number of federal and state laws, including The Fair Housing Act, which prohibits discrimination based on race or color, religion, sex, national origin, familial status, or disability. 42 U.S.C. 3601. It should be pretty obvious that this Court cannot bar a homeowner on Legend Lake to sell to their house to a Native American member of MITW, but that is essentially what the Plaintiffs are seeking in this case. The Plaintiffs may take issue with the causal effects of the Restoration Act and the complications they view have stemmed from it; regardless, the Plaintiffs' concern about the effect of the Restoration Act does not amount to a Constitutional violation and certainly not one that can be remedied by this court. Nor does it permit discrimination against Native Americans by prohibiting the sale of property to members of MITW.

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. THIS COURT STILL DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER THE PLAINTIFFS' AMENDED COMPLAINT.

Defendants challenged the Court's subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), asserting that the Tax Injunction Act ("TIA") and comity doctrine bar plaintiffs' claims against the Defendants. Plaintiffs fall short on their arguments that the County/Town have failed to demonstrate there is a "plain, speedy, and efficient remedy" to pursue its claims in state court. Further, Plaintiffs argue that the Defendants do not develop a legal argument explaining how the Plaintiffs claims should have been brought. That is not what the law requires, and Plaintiffs have failed to establish that this Court has subject-matter jurisdiction over these claims. Therefore, the Amended Complaint should be dismissed.

Despite the Plaintiffs' frustration, the burden to prove there is an avenue to relief in state law is not the Defendants' to bear; rather, it is the Plaintiffs who must convince the Court that they "do *not* have a plain, speedy, and efficient remedy" available in state court. *See Admiral Theatre, Inc. v. Cook Cty. Dept. of Rev.*, 534 F.Supp.3d 929, 933 (N.D. Ill. 2021) (emphasis added). Further, this case does not warrant federal jurisdiction solely because of the intertwining of the federal Restoration Act and the local property taxes. The Seventh Circuit held in *Scott Air Force Base Properties* that the TIA applies to challenges of "any state tax, including municipal and local taxes." *Scott Air Force Base Props., LLC, v. Cty. of St. Clair, Ill.*, 548 F.3d 516, 520 (7th Cir. 2008) (emphasis in original). Plaintiffs contend that the allegations in the Amended Complaint "far exceed" the scope of the "garden variety tax proceeding", likely because they intertwine the "troubled" history of the Restoration Act. (ECF No. 34, p. 25). Regardless of whether the Plaintiffs alleged Constitutional violations, the relief sought would potentially significantly diminish state tax revenue levied by MISD and collected by the County/Town. By attempting to reframe the

issues in this case to allege constitutional violations in the Amended Complaint does not permit the Plaintiffs to pursue an end around the TIA. (“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)).

The central theme of the allegations against the County/Town in the Plaintiffs Amended Complaint is that the LLPOA members are being taxed too much, and MITW members are not being taxed enough (or perhaps at all). Plaintiffs are requesting the Court to enjoin and restrain the County/Town from collecting the taxes that were lawfully levied by the MISD taxing jurisdiction; however, Plaintiffs have failed to identify how either of the named Defendants have violated the law (or more importantly, the Plaintiff’s constitutional rights) by performing their statutory duties under Wisconsin law. Plaintiffs’ grievance likely lies with the legislature in drafting laws and treaties that permit the property tax exemption of certain properties in Menominee County that are in held in a MITW tribal trust. While Plaintiffs’ Amended Complaint is rooted in allegations of unconstitutional tax schemes and conspiracies amongst the Defendants and MITW, but the reality is that the Defendants have done nothing other than to follow the letter of the law. To survive the Motion to Dismiss, Plaintiffs 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 moving briefs of both Defendants identified more than one avenue of redress and potential relief available to the Plaintiffs under state law. The Plaintiffs may not like the state law remedies available to them, but they cannot deny that they are readily available to them. It is the Plaintiffs’ burden to establish that there is no plain, adequate, and complete state remedy available to them, and they have failed to meet it.

Much like the TIA, the comity doctrine also bars this court from exercising subject matter jurisdiction. Plaintiffs argue that *Levin* “has nothing to do with this case” in an attempt to convince this Court to disregard a ruling that favors the Defendants. The Plaintiffs attempt to distinguish and downplay the *Levin* holding by claiming that this case is more than just an allegation of an unfair property tax. (ECF No. 34, p. 28). The Plaintiffs argue that even though the Defendants properly exercised their statutory powers *and* duties (i.e. by failing to tax properties in trust by MITW) that the comity doctrine does not apply. While the Restoration Act allows MITW tribal owned properties to be tax exempt, such a consequence does not give rise to a federal claim under § 1983. The MISD moving brief hits the nail on the head by directly comparing this matter to *Levin*. (ECF No. 27, p. 17). Simply put, the comity doctrine requires that this Court respect the statutory state court functions of assessing claims of unlawful taxation, and deny subject matter jurisdiction.

The TIA and comity doctrine are both applicable here, and this Court does not have subject matter jurisdiction over these claims. The burden is on the Plaintiffs to prove that this lawsuit is the *only* avenue for seeking the injunction or declaratory order that they seek. They have failed to meet that burden. Accordingly, this Court should grant the County/Town’s Motion to Dismiss the Amended Complaint.

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

As Plaintiffs have no standing, and the Court has no subject matter jurisdiction over Plaintiffs’ federal claims, there is no reason for the Court to retain supplemental jurisdiction over Plaintiffs’ remaining claim (violation of the Wisconsin constitution) after granting the

County/Town's Motion to Dismiss the Amended Complaint. These Defendants, accordingly, request that the Court decline to exercise supplemental jurisdiction following dismissal of the Amended Complaint.

CONCLUSION

Menominee County is in a unique situation where the taxation district is funded by the levies allocated by the lone taxing jurisdiction, the MISD. The levies (which are by no means calculated in an unlawful manner) are presented to the County/Town for collection. The Plaintiffs continuously contend that there is some sort of overarching conspiracy and will-ill intention by the Defendants, in conjunction with the Menominee Tribe, to eviscerate non-tribal members from the county by bringing the purported constitutional violations identified in the Amended Complaint. Despite being afforded a second opportunity to do so, the Plaintiffs have failed to establish that they have standing to assert their claims or that this Court has subject matter jurisdiction over same.

Therefore, the County/Town respectfully requests that the Court grant its Motion to Dismiss the Amended Complaint and all claims asserted against them in this action.

Dated this 17th day of July, 2025.

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BY: *Electronically signed by Kevin R. Landgraf*

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