CASE NO. 25-3268
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC., et al.,

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

BRIEF AND SHORT APPENDIX OF PLAINTIFFS-APPELLANTS

On Appeal from the United States District Court
for the Eastern District of Wisconsin
The Honorable William C. Griesbach, Presiding

By: EMINENT DOMAIN SERVICES, LLC
Attorneys for Plaintiffs-Appellants
Erik S. Olsen
State Bar Number: 1056276

6515 Grand Teton Plaza, Suite 241
Madison, WI 53719
Tel: 608-535-6109
fax: 608-338-0889

RULE 26.1 DISCLOSURE STATEMENT

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

1) LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC.
2) TIMOTHY J. HOUSELOG
3) DAWN MAUTHE
4) ROBERT KLINGELHOETS
5) RUSSELL TIMMERS

The five parties listed above are represented by Attorney Erik S. Olsen of Eminent Domain Services, LLC. Attorney Olsen's Wisconsin SBN is 1056276.

LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC. is a corporation.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Eminent Domain Services, LLC (for the five parties listed above)
6515 Grand Teton Plaza, Suite 241
Madison, WI 53719
(608) 535-6109 phone
(608) 338-0889 fax

(3) If the party or amicus is a corporation:
i) Identify all its parent corporations, if any;

None.

and ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None.

Undersigned counsel is Counsel of Record for the above listed five parties pursuant to Circuit Rule 3(d).

Dated this 26th day of January, 2026.

/s/ Erik S. Olsen
EMINENT DOMAIN SERVICES, LLC
Attorneys for Plaintiffs-Appellants
Erik S. Olsen
State Bar Number: 1056276

TABLE OF CONTENTS

RULE 26.1 DISCLOSURE STATEMENT i
TABLE OF CONTENTS iii
TABLE OF AUTHORITIES v
JURISDICTIONAL STATEMENT 1
STATEMENT OF THE ISSUES 2
STATEMENT OF THE CASE 2
Factual Background 2
1. First Cause of Action: Equal Protection Under the 14th Amendment 20
2. Second Cause of Action: Substantive Due Process Under the 14th Amendment 21
3. Third Cause of Action: Violation of the Rule of Uniformity Set Forth in Article VIII, Section 1 of the Wisconsin Constitution 22
4. Fourth Cause of Action: Inverse Condemnation Under the Wisconsin and U.S. Constitutions 22
5. Fifth Cause of Action: Unlawful Use of Eminent Domain Under the Wisconsin and U.S. Constitutions 23
Procedural History 24
SUMMARY OF ARGUMENT 25
STANDARD OF REVIEW 26
ARGUMENT 26
I. Plaintiffs-Appellants had standing to bring this case in federal court. 26
A. The Plaintiffs-Appellants have standing because the complaint alleged injury in fact, fairly traceable to the Defendants-Appellees' actions 27
B. The Plaintiffs-Appellants' claims are redressable in federal court. 32
1. The Plaintiffs-Appellants' claims are redressable through declaratory judgment. 33
2. The Plaintiffs-Appellants' claims are redressable through injunctive relief. 35
II. The district court had subject matter jurisdiction. 46
A. The Tax Injunction Act does not bar this case. 46
B. The doctrine of comity does not bar this case. 50
CONCLUSION 54
CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7) 55

CERTIFICATE OF SERVICE 56
CIRCUIT RULE 30(d) STATEMENT 57
SHORT APPENDIX OF PLAINTIFFS-APPELLANTS 58
TABLE OF CONTENTS FOR SHORT APPENDIX 59

TABLE OF AUTHORITIES

Statutes

28 U.S.C. § 1291 1
28 U.S.C. § 1331 1
28 U.S.C. § 1341 48
28 U.S.C. § 1343(3) 1
28 U.S.C. § 1367(a) 1
28 U.S.C. § 2201 1
28 U.S.C. § 2202 1
42 U.S.C. § 1983 ..... 1, 51
42 U.S.C. § 1988 1
Pub. L. No. 83-397, 68 Stat. 250 (1954) 2
Pub. L. No. 93-197, 87 Stat. 770 (1973) 7
Wis. Stat. § 70.44 ..... 48, 52
Wis. Stat. § 74.33 49
Wis. Stat. § 74.35 ..... 48, 49, 51

Cases

A.F. Moore & Associates, Inc. v. Pappas,
948 F.3d 889 (7th Cir. 2020) 29, 51, 52
Allegheny Pittsburgh Coal Co. v. County Commission of Webster County,
488 U.S. 336 (1989) 40
Allen v. Wright,
468 U.S. 737 (1984) 28
Apex Digital, Inc. v. Sears, Roebuck & Co.,
572 F.3d 440 (7th Cir. 2009) 28
Bontkowski v. Smith,
305 F.3d 757 (7th Cir. 2002) 36
Brown v. Board of Education,
347 U.S. 483 (1954) 41
Brown v. Board of Education,
349 U.S. 294 (1955) 42, 47
DaimlerChrysler Corp. v. Cuno,
547 U.S. 332 (2006) 28, 29, 30
Democratic Party of Wis. v. Vos,
966 F.3d 581 (7th Cir. 2020) 32
Evans v. Fenty,
480 F. Supp. 2d 280 (D.D.C. 2007) 43

Ezell v. City of Chicago,
651 F.3d 684 (7th Cir. 2011) 35
Fair Assessment in Real Estate Association, Inc. v. McNary,
454 U.S. 100 (1981) 29, 51, 52, 55
FDA v. Alliance for Hippocratic Medicine, 6
02 U.S. 367, 144 S.Ct. 1540 (2024) 34
Frothingham v. Mellon,
262 U.S. 447 (1923) 30
Gov't of Province of Manitoba v. Zinke,
849 F.3d 1111 (D.C. Cir. 2017) 43
Griffin v. School Bd. of Prince Edward Cty.,
377 U.S. 218 (1964 ..... 45, 47
Hinrichs v. Speaker of House of Representatives,
506 F.3d 584 (7th Cir. 2007) 31
Holt Civic Club v. City of Tuscaloosa,
439 U.S. 60 (1978) 39
Holt v. Sarver,
300 F. Supp. 825 (E.D. Arkansas 1969) 42
Horne v. Flores, 5
57 U.S. 433, 129 S.Ct. 2579 (2009) 43, 44
Hutto v. Finney,
437 U.S. 678 (1978) 41, 42, 43, 47
Jackson v. Los Lunas Cmty. Program,
880 F.3d 1176 (10th Cir. 2018) 44
Juliana v. United States,
947 F.3d 1159 (9th Cir. 2020) 32, 46
Knick v. Township of Scott, Pennsylvania,
588 U.S. 180, 139 S.Ct. 2162 (2019) 32
Levin v. Commerce Energy, Inc.,
560 U.S. 413, 130 S.Ct. 2323 (2010) 53
Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992) 32, 34
Massachusetts v. Mellon,
262 U.S. 447 (1923) 30
Matthews v. Rodgers,
284 U.S. 521 (1932) 54
Menominee Tribe of Indians v. United States,
391 U.S. 404 (1968) 2, 3
Milliken v. Bradley,
433 U.S. 267 (1977) 41
Noah's Ark Family Park v. Board of Review of the Village of Lake Delton,
216 Wis. 2d 387, 573 N.W.2d 852 (1998) 29

Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville,
508 U.S. 656 (1993) 35
Pappas v. Town of Enfield,
18 F. Supp. 3d 164 (D. Conn. 2014) 47
Perry v. Coles County, Illinois,
906 F.3d 583 (7th Cir. 2018) 54
Protect Our Parks, Inc. v. Chicago Park Dist.,
971 F.3d 722 (7th Cir. 2020) 31
Rosewell v. LaSalle National Bank,
450 U.S. 503, 537 (1981) 29, 50, 51, 52
Sebring v. Milwaukee Public Schools,
569 F. Supp. 3d 767 (E.D. Wis. 2021) 31
Steel Co. v. Citizens for a Better Environment,
523 U.S. 83 (1998) 36
Swann v. Charlotte-Mecklenburg Board of Education,
402 U.S. 1 (1971) 41
Tully v. *Griffin, Inc.,*
429 U.S. 68 (1976) 50
Village of Willowbrook v. Olech,
528 U.S. 562 (2000) 32
Younger v. *Harris,*
401 U.S. 37 (1971) 55

Other Authorities

United States Constitution, 14th Amendment 21, 22
United States Constitution, 5th Amendment 24
Wisconsin Constitution, Article I, Section 13 ..... 24, 25
Wisconsin Constitution, Article VIII, Section 1 23

JURISDICTIONAL STATEMENT

The Appellants, Legend Lake Property Owners Association, Inc., Timothy J. Houselog, Dawn Mauthe, Robert Klingelhoets, and Russell Timmers, submit the following jurisdictional statement:

I. District Court Jurisdiction

A. The district court's jurisdiction over this action was pursuant to Title 28 U.S.C. § 1331 and 28 U.S.C. § 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 28 U.S.C. § 2202. This Court has authority to award attorneys fees and litigation expenses pursuant to 42 U.S.C. § 1988 and the supplemental jurisdiction of the district court under 28 U.S.C. § 1367(a).

II. Appellate Court Jurisdiction

A. This Court's jurisdiction is based on 28 U.S.C. § 1291.

B. The district court granted the Defendants' motions to dismiss in a Decision and Order Granting Defendants' Motions to Dismiss dated November 26, 2025 and entered November 26, 2025. ECF No. 38, App. 001. The judgment was docketed and the case was dismissed on November 26, 2025. ECF No. 39, App. 028.

C. No post-judgment motion tolled the time within which to appeal.

D. Appellants' timely notice of appeal was filed on December 16, 2025. ECF No. 40, App. 029.

E. This case does not involve a direct appeal from a decision of a magistrate judge.

STATEMENT OF THE ISSUES

Issue One: Did the Plaintiffs have standing to pursue their claims? The district court ruled that the Plaintiffs did not meet the standard for redressability.

Issue Two: Did the district court have subject matter jurisdiction over the Plaintiffs' claims? The district court ruled that the case was barred by principles of comity, related to the Tax Injunction Act.

STATEMENT OF THE CASE

Factual Background

The Menominee Indian Tribe of Wisconsin is a federally recognized Indian Tribe whose reservation was established by the Treaty of Wolf River in 1854. ECF No. 38, Decision 2, App. 002; *see also Menominee Tribe of Indians v. United States*, 391 U.S. 404, 405 (1968). One hundred years later, in 1954, the Menominee reservation of approximately 235,523 acres coterminous with what is now Menominee County, was terminated along with the federal recognition of the Tribe's status. ECF No. 38, Decision 2, App. 002. "The purpose of the 1954 Termination Act was ... 'to provide for orderly termination of Federal supervision over the property and members' of the tribe." *Menominee Tribe*, 391 U.S. at 408. The Termination Act set 1958 as the year the termination would take effect. ECF No. 38, Decision 2, App. 002; *see also* Pub. L. No. 83-397, 68 Stat. 250 (1954). Under the Termination Act, "the tribe was to formulate a plan for future control of tribal property and service functions theretofore conducted by the United States." *Menominee Tribe*, 391 U.S. at 408.

A plan was eventually adopted and approved under which, on July 3, 1959, Menominee County[1] was created to become Wisconsin's seventy-second county. ECF No. 38, Decision 2, App. 002; *Menominee Tribe*, 391 U.S. at 408. "The Termination Act provided that ... all federal supervision was to end and 'the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.'" *Menominee Tribe*, 391 U.S. at 410. Under the plan, the Tribe's property was transferred to a corporation called Menominee Enterprises, Inc. ECF No. 38, Decision 2, App. 002; *Menominee Tribe*, 391 U.S. at 408-09. Also under the plan, all enrolled members of the Tribe became shareholders of Menominee Enterprises. *Id.*

From its inception, Menominee County struggled due to an insufficient tax base. ECF No. 2-3, Wisconsin Legislative Audit Bureau 98-3 Menominee County 1. In an effort to create a larger tax base for the new county, Menominee Enterprises undertook a plan to develop and sell property around Legend Lake. *Id.* In 1967, Menominee Enterprises voted to create an economic development zone, and in 1968, Menominee Enterprises contracted with a developer to create what would become the Legend Lake Development. ECF No. 38, Decision 2, App. 002. The Legend Lake Development consisted of 5,160 acres of land and was platted into 2,741 lots, including 41 "beach club" lots through which all lot owners, including those whose lots lacked water frontage, would have lake access. *Id.*

[1] Menominee County only has one town, Menominee Township, which is coterminous with the County. ECF No. 2-3, at 1.

Around the same period, the Menominee Council of Chiefs had formed a non-profit organization and begun a petition requesting restoration of Menominee tribal status and repeal of the Termination Act. *Id.* at 3, App. 003. The activism against the Termination Act apparently created concern in some potential buyers of Legend Lake lots, so in order to assuage such concerns, 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. ECF No. 2-1, Complaint, Exhibit 1, 1970 Kenote Letter. About 1,900 lots in the Legend Lake development were sold to members of the general public. ECF No. 38, Decision 2, App. 002.

As the advocacy for tribal restoration grew, Legend Lake lot owners expressed concern that they would be unfairly taxed on their property if restoration occurred because most of the land in the Town and County would be placed into trust status, and removed from the tax rolls. *Id.* at 3, App. 003. The concern was that Menominee County officials, who would likely be tribal members due to voting demographics, would overtax the non-tribal member property owners who would be virtually the only taxpayers. *Id.* In response to such concerns, a document authored by the Native American Rights Fund was entered into the Congressional record. That document addressed the controversy at issue in this case and read, in part, 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. . . . [T]he basis for this concern is that County officials will probably be Menominee Indians . . . 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. . . . 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. . . . 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. ... 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 limita-tions 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). ... 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, there-fore, not subject to control (or increase) by Menominee County officials. ... 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

ECF No. 23, Complaint ¶31 (citing Hearings on H.R. 7421 Before the Subcomm. on Indian Affairs of the H. Comm, on Interior and Insular Affairs, 93rd Cong. (1973)[2] ("H.R. 7429 Trans.") pp. 51-53) (emphasis supplied). In at least partial reliance on assurances like the Native American Rights Fund's Memorandum, Congress passed the Federal Menominee Restoration Act in 1973. ECF No. 38, Decision 3, App. 003.

[2] Accessed on January 26, 2026 at https://www.govinfo.gov/app/details/CHRG-93hhrg20310/context.

The Menominee Restoration Act repealed the Termination Act. *See* Pub. L. No. 93-197, 87 Stat. 770 (1973). The Restoration Act restored federal recognition of the Menominee Tribe's status and provided that "[t]he Secretary shall accept the real property (excluding real property not located in or adjacent to the territory constituting, on the effective date of this Act, the county of Menominee, Wisconsin) of members of the Menominee Tribe, but only if transferred to him by the Menominee owner or owners." ECF No. 38, Decision 3, App. 003. With restoration, most of the land in Menominee County went back into the federal trust. ECF No. 2-3, at 1. Today, approximately 99% of the land in Menominee County is held in trust by the federal government for the benefit of the Tribe. ECF No. 38, Decision 3, App. 003. Since the Restoration Act, the Tribe's stated goal is to acquire all of the land in Menominee County and to offer it into trust. *Id.*

Within the remaining 1% of the County land are the properties of all of the Plaintiffs-Appellants. These are the lots in the Legend Lake development which were sold to the general public. *Id.* at 4, App. 004. The owners of about 1,800 of Legend Lake lots make up the membership of the Plaintiff-Appellant Legend Lake Property Owners Association, Inc. ("the Association"), which was created in 1972. *Id.* Plaintiffs-Appellants Houselog, Timmers, Mauthe, and Klingelhoets are four members of the Association who own residences on Legend Lake. *Id.* The Plaintiffs-Appellants filed this case against Menominee County, the Town of Menominee, and the Menominee Indian School District ("MISD").

Both Menominee County[3] and the Town of Menominee are municipal corporations which were established under, and are governed by, Wisconsin law. *Id.* Similarly, the Menominee Indian School District and the taxation district it controls are creatures of Wisconsin law. *Id.* However, the mechanisms of Wisconsin law are confounded due to the operation of the Restoration Act, which mandates that the land held in trust for the benefit of the Menominee Tribe is exempt from taxation. *Id.* As a result, property taxes are only levied against about 1% of the land in the County. *Id.* This causes the application of Wisconsin's laws relating to property taxation to produce very unfair results for the taxable property in the County, the majority of which is within the Legend Lake Development. *Id.*

The optimistic prediction in the Native American Rights Fund's Memorandum to Congress that it was "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," ECF No. 23, Complaint ¶31, turned out to be completely erroneous. The Plaintiffs-Appellants' property taxes are excessively high. ECF No. 38, Decision 4, App. 004. The excessively high taxes charged to the Plaintiffs-Appellants are a long-standing problem, the issue was spotted by the Legislative Audit Bureau in 1998. "Tax bills in Menominee County are high in comparison to those in most of the surrounding towns...." ECF No. 2-3, at 1. Recently, the assessed values of the Plaintiff-Appellants' properties were dramatically

[3] Menominee County is the least populous County in Wisconsin. The population of Menominee County was estimated at 4,286 as of July 1st of 2024.
See https://www.census.gov/quickfacts/fact/table/menomineecountywisconsin/PST045224 accessed January 25, 2026.

increased. For example, the assessed value and property taxes for Plaintiff-Appellant Timmers' property for the last four years are shown below:

Year	Assessed Value	Property Taxes
2021	$330,800	$6,433.86
2022	$330,800	$9,050.70
2023	$330,800	$8,725.77
2024	$809,000	$9,886.96

ECF No. 38, Decision 4, App. 004. From 2023 to 2024, the assessed value of Timmers' house rose 145%, even though there had been no renovations or improvements in the last ten years. *Id.* at 5, App. 005. Timmers was charged property taxes at a rate of 1.22% in 2024, 2.64% in 2023, and 2.74% in 2022. *Id.* Mauthe and Klingelhoets were also charged property taxes by the Town at a rate of 2.64% in 2023, which dropped to 1.22% in 2024 after their properties were suddenly reassessed to approximately double the previous assessed value of the year before. *Id.*

Houselog's property on Legend Lake is his primary residence. ECF No. 23, First Amended Complaint, ¶2. The following table shows the assessed value and property taxes which were charged to Houselog.

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

ECF No. 23, First Amended Complaint, ¶3.

As of 2024, the current tax rates on property tax paying parcels in Menominee County are some of the highest in the State of Wisconsin in relation to the actual value of the parcels and the level of municipal services provided. ECF No. 38, Decision 5, App. 005. The property tax rates paid by the Plaintiffs-Appellants are comparable to those levied in major metropolitan areas where municipalities provide a wide array of public services, none of which are provided by Menominee County. *Id.* In Menominee County, the majority of the roads are unpaved and most of the properties are on well and septic. *Id.* There is an extremely small sheriff's department and a minimal budget for governmental staff. *Id.* The entire tax levy falls upon the shoulders of the small minority which pays all of the property taxes. *Id.*

The State of Wisconsin recognized the property tax issues that the Plaintiffs-Appellants are complaining about as early as the 1990s. *Id.* In 1998, a Wisconsin Legislative Audit Bureau Report noted that for all taxable property in Menominee County, "94.4 percent of assessed value is in the lakes area [including the Legend Lake Development] and 5.6 percent is elsewhere." *Id.* The report also observed that tax bills in the 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." *Id.* The

Legislative Audit Bureau Report noted that uncertainty about the 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.

Id. at 6, App. 006.

Over the past 26 years, no progress has been made regarding the concerns identified in the 1998 Wisconsin Legislative Audit Bureau Report - to the contrary the situation has become worse. *Id.* The acquisition of taxable land by the Menominee Tribe and its members has continued over the last 26 years and has increased in recent years. *Id.* Substantial gaming and other revenues have supported the Tribe's additional land purchases, as was predicted by the 1998 Report. *Id.* The Menominee Tribe has received and continues to receive federal and state aid on an annual basis. *Id.* From 2014 through 2023, the Menominee Tribe received nearly $1 billion in

income and government aid. *Id.* In 2023, as an example, the Menominee Tribe's income sources included:

Total Tribe: $43,290,280
Total Federal: $71,468,010
Total State: $6,274,936
Total Local and Other: $2,974,431
Grand Total: $124,007,658

Id. Furthermore, the Menominee Tribe is currently seeking an award of casino rights in Kenosha County which, if approved, will substantially increase its income. *Id.* The Plaintiffs-Appellants are concerned that this income will simply fund additional land acquisitions in Menominee County, thereby removing more properties from the tax rolls, and further increasing the burden on the Plaintiffs-Appellants. *Id.* at 6-7, App. 006-007.

The theory of the Plaintiffs-Appellants' case is that the Defendants-Appellees are waging a discriminatory campaign against them. *Id.* at 7, App. 007. The Defendants-Appellees, in concert with the Tribe, are implementing an illegal and unconstitutional strategy calculated to force the tax-paying minority, most of whom are not tribal, to sell their land to the Tribe or its members so that it can be placed into trust. *Id.* Excessive taxation is one element of this illegal and unconstitutional discriminatory campaign but there are other elements as well. *Id.*

A 2006 Special Agreement entered between the Menominee Tribe and the County allows an additional pool of properties to escape taxation. *Id.* Under the agreement, each year before March 1, the Tribe is allowed to provide the County with a list of properties that it intends to place into trust. *Id.* The County takes those

properties off the tax base for that year. *Id.* The Menominee Tribe has submitted property lists to the County every year from 2006 through 2023. *Id.* To date, 120 otherwise taxable properties have been effectively removed from the tax base, even though with a small number of exceptions none of these properties have been placed into trust. *Id.* There are an additional 154 properties that have been purchased by Menominee Tribal members that have not been placed in trust but have either not been taxed for multiple years or have been taxed with no payment being made. *Id.*

Less than 1% of the yearly property taxes in Menominee County comes from commercial or industrial property taxes. *Id.* For 2023, the commercial property taxes paid to the County only amounted to $84,399, or 0.88% of the County's tax revenue. *Id.* In the rest of the State of Wisconsin, commercial property taxes typically account for 25% to 33% of a county's tax revenue. *Id.* at 7-8, App. 007-008 This has been a long running problem in Menominee County as recognized by the 1998 WLAB Report. ECF No. 23, First Am. Compl. ¶50.

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. *Id.*, ¶60. This task force consisted of members from the County Board, the Tribe, and other government and local representatives. *Id.*, ¶61. The Task Force eventually authored a report, which 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.

Id., ¶62 (citing ECF No. 2-4, at 1). The Task Force noted that the Menominee Tribe was purchasing 1600 acres, but 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 it for business use. *Id.*, ¶63 (citing ECF No. 2-4, at 16). Subsequently, the Tribe purchased Middle Village ("about 1600 acres" per the report). *Id.*, ¶64. 1200 acres were converted to trust and 400 acres were held "in fee" but remained a part of Shawano County not Menominee County. *Id.* 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. *Id.*

Furthermore, 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. *Id.*, ¶65. This was caused by the Tribe purchasing all the remaining "fee" land in that area and converting it to Trust. *Id.* 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 Plaintiffs-Appellants. *Id.*

As noted in State of Wisconsin Department of Revenue email documentation, "Town of Red Springs first reported a [zero] 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…" *Id.*, ¶66 (citing ECF No. 2-5). The Plaintiffs-Appellants contend that the County and the Town have intentionally avoided creating a commercial tax base as part of their ongoing strategy of increasing the tax burden on Plaintiffs-Appellants in order to force the sale of Plaintiffs-Appellants' properties to the Tribe or its members for transfer into the trust. ECF No. 38, Decision 8, App. 008.

This case presents a situation where there is no realistic possibility of seeking relief at the ballot box. In Menominee County, there are at least three non-property tax-paying voters for every property tax-paying voter. *Id.* Thus, the elected officials of the County Board, Town Board, and School Board can approve property tax increases that fall upon those few property tax-payers, who are mostly nontribal members, without any concern for financial consequences (because they do not pay property taxes themselves) or political consequences (because their political decisions favor the goals of the majority of the voters). *Id.* The Plaintiffs-Appellants are also prevented from political recourse because there is a prevalent animus against the mostly non-tribal property tax paying voters. *Id.*

Recent decisions by MISD support the Plaintiffs-Appellants' theory of a discriminatory campaign. For example, MISD decided to build a new $52 million high school and "give away" other school property to the Tribe. *Id.* In 2022, MISD notified taxpayers in a flier mailed to residents of Menominee County of an impending $35 million school referendum to build a new 110,000 square foot high school for a student

population of less than 300 students (as of 2022). *Id*. With interest and fees associated with the loan, the total cost of the project is $52 million. *Id*. Under the plan, the existing 100,000 square foot high school would be repurposed for use as the middle school. *Id*.

Upon investigation, the Plaintiffs-Appellants eventually discovered that no real needs analysis had ever been performed to justify the high-cost referendum. *Id*. The Plaintiffs-Appellants also discovered that, as of March 23, 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. *Id*. at 8-9, App. 008-009. However, MISD then hired a consulting firm to analyze the maximum amount of money it could levy. *Id*. at 9, App. 009. The analysis revealed that, under law, the maximum amount that MISD could levy was approximately $39,500,000, which was based upon a levy of 10% of the total equalized value at the time, or $395,000,000. *Id*.

MISD dramatically increased its operating budget by $1,200,000 from 2022 to 2023, even though previous annual increases in its budget had been around $100,000 per year. *Id*. MISD never articulated any explanation for why the $1,200,000 budgetary increase was needed, and it is clear that MISD and its schools were not previously underfunded. *Id*. To the contrary, as documented by the Wisconsin Department of Public Instruction, 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. *Id*. It is the Plaintiffs-Appellants' contention that MISD simply increased its

operating budget to the maximum amount allowable under applicable law as calculated by its consultants to further its strategy. *Id*. MISD's 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, which is why each of the few remaining taxpayers in the County saw nearly a 100% increase in their school property taxes from 2022 to 2023. *Id*.

On May 7, 2024, MISD entered into an Offer to Exchange with the Menominee Tribe. *Id*. The terms required the Tribe to pay only $1.00 for full ownership of the existing middle school building and property in Neopit, which was owned by MISD. *Id*. The middle school building and property is currently valued at $1.6 million. *Id*. The Offer to Exchange also provided that the Menominee Tribe will lease, as a landlord to MISD, ten acres of land (of which only six acres are buildable), for the development of three baseball diamonds. *Id*. at 9-10, App. 009-110.

Although no lease terms have been made public by MISD or the Tribe, the Plaintiffs-Appellants believe that MISD intends to enter into a lease agreement with the Tribe, which will needlessly increase the budget and will provide a flexible mechanism to transfer funds to the Tribe on a periodic basis. The Plaintiffs-Appellants also believe that MISD intends to spend significant additional sums to build the athletic fields. *Id*. at 10, App. 010. Under Wisconsin law, public school districts are generally not permitted to give away school buildings funded by taxpayers to private entities. *Id*. This transaction was structured in a way that it

benefited the Tribe but harmed the Plaintiffs-Appellants by increasing the property tax burden on them. *Id*.

As mentioned above, in 2024, the Town suddenly increased the assessed values of every tax-paying parcel by an approximate average of 100%, in most cases more than doubling the assessed value of each parcel. *Id*. As an example, the property of Mark and Amy Schoen located on Thunderbird Road on Legend Lake was revalued from $313,800 to $693,200, which is a $379,400 change equal to a 120.9% increase. *Id*.

The increase in assessed values was accomplished on extremely short notice. *Id*. On Thursday, August 22, 2024, the taxpaying property owners received a letter from the Town's assessor, indicating that their properties had been revalued. *Id*. The letter stated that anybody who disagreed with the revaluation was required to attend an open book session four days later, on Monday, August 26, 2024. *Id*. Accordingly, anybody who received such a letter had an extremely limited amount of time to prepare an objection. *Id*.

The revaluation did not immediately increase the net amount of taxes that each taxpayer paid because the mill rate was lowered, however the dramatic 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. *Id*. The equalized value has thus almost doubled to over $690,000,000. *Id*. This will allow MISD to potentially pass another referendum, and then borrow up to an additional $34,000,000. *Id*. This

will allow the Defendants-Appellees to impose substantial additional tax burdens on the Plaintiffs-Appellants. *Id*. at 10-11, App. 010-011.

A final element of the Defendants-Appellees' discriminatory campaign is that throughout the Legend Lake community, houses that have been placed into trust or are slated for transfer into trust are often kept vacant, poorly maintained, and dilapidated. *Id*. at 11, App. 011. The level of sub-standard maintenance of the properties at Legend Lake which are in trust or slated for transfer into trust is inconsistent with the intent of increasing or maintaining property values in Legend Lake. *Id*. However, the abysmal maintenance of the trust properties at Legend Lake *is* consistent with the alleged unconstitutional animus and the motivation of driving the taxpaying landowners out of the County by creating a depressed or even blighted condition at Legend Lake, this is also consistent with a strategy of forcing the Plaintiffs-Appellants to sell to the Tribe. *Id*.

The ever-increasing tax burden, the creation of a growing number of blighted properties, the shrinking tax base, and the questionable decision making are all alleged to be elements of the Defendants-Appellees' discriminatory campaign. ECF No. 23, First Am. Compl. ¶¶3-8, 109-111, 57-66, 72-100. The discriminatory campaign is alleged to be an intentional strategy to cause the value of the Plaintiffs-Appellants' properties to eventually decline to zero which will allow the Tribe to attain its stated goal of having all of the properties in the County acquired by the Tribe and placed into trust. *Id*., ¶¶113-121. These factual allegations give rise to the causes of action pled in the complaint.

1. First Cause of Action: Equal Protection Under the 14th Amendment

The vast majority (99%) of land in the County is held in trust for the Tribe. ECF No. 23, First Am. Compl. ¶37. The Restoration Act provides that all trust property is tax-exempt. In addition to the trust land, there are additional properties in the County that are not in the trust but are unlawfully not being taxed. *Id.*, ¶67. Approximately 120 properties have been taken off the tax base from 2006 through 2023, but the large majority of them have not been placed into the trust. *Id.*, ¶69. There are an additional 154 properties that the Tribe has purchased through agents as part of its efforts to transfer land into the trust. *Id.*, ¶70. These 154 properties have not yet actually been placed in the trust, but they have either not been taxed for multiple years, or they are taxed but no payment has been made and the County has not pursued payment. *Id.*, ¶70. The tax classification of the taxpaying lots is the same classification as many lots that do not pay property taxes. *Id.*, ¶38. Thus, there are many residential lots in the County that do not pay any property tax, but the Plaintiffs-Appellants are required to pay property tax. *Id.*, ¶39. Thus, the Defendants-Appellees are depriving Plaintiffs-Appellants of their right to equal protection under the United States Constitution, 14th Amendment, by treating them differently than similarly situated landowners in the County and by taxing them differently and excessively. *Id.*, ¶114. The Defendants-Appellees' course of conduct constitutes an actual or imminent injury fairly traceable to the Defendants-Appellees' actions by increasing the tax burden on the Plaintiffs-Appellants to such an extent

that if allowed to continue the properties will eventually be rendered valueless. *Id.*, ¶118.

2. Second Cause of Action: Substantive Due Process Under the 14th Amendment

The Defendants-Appellees have violated Plaintiffs-Appellants' right to substantive due process under the 14th Amendment by taking actions that have resulted in unfair and oppressive property taxes being charged. *Id.*, ¶120. Despite being on notice that the tiny tax base has been causing inequitably high taxes for Plaintiffs-Appellants, the Defendants-Appellees have pursued policies of further decreasing the tax base by failing to tax properties that are not in trust, by failing to pursue payment for some properties that are not paying their taxes, by deciding not to create a commercial tax base, and by pursuing a policy of facilitating the acquisition of non-trust land by the Tribe, which is then placed in the trust and made tax-exempt. *Id.*, ¶¶44-46, 67-71, 103. In addition, the Defendants-Appellees have pursued a policy of dramatically increasing school spending as well as imposing a large school referendum on the tax base. *Id.*, ¶¶72-82. These actions have resulted in some of the highest tax rates in the state and in the nation in relation to the value of the properties and the services provided. *Id.*, ¶100. The Defendants-Appellees' course of conduct constitutes an actual or imminent injury fairly traceable to the Defendants-Appellees' actions by increasing the tax burden on the Plaintiffs-Appellants to such an extent that if allowed to continue their properties will be rendered valueless and they will be driven from their homes. *Id.*, ¶121.

3. Third Cause of Action: Violation of the Rule of Uniformity Set Forth in Article VIII, Section 1 of the Wisconsin Constitution

The Defendants-Appellees' conduct also violates the Rule of Uniformity set forth in the Wisconsin Constitution, Article VIII, Section 1, which requires uniformity of taxation within each local jurisdiction. *Id.*, ¶¶125-126. In addition to the tax-exempt trust land in the County, the Defendants-Appellees are failing to tax 120 parcels that are slated to become trust land but have not yet been placed in the trust, pursuant to the 2006 agreement with the Tribe. *Id.*, ¶69. The Defendants-Appellees are also failing to tax 154 properties that have also not yet actually been placed in the trust, either by not taxing them for multiple years, or by not pursuing payment if they are taxed. *Id.*, ¶¶70-71. The tax classification of the taxpaying lots is the same classification as many lots that do not pay property taxes. *Id.*, ¶38. For example, there are many residential lots in the County that do not pay any property tax, but the Plaintiffs-Appellants do pay property tax. *Id.*, ¶39. The Defendants-Appellees' course of conduct constitutes an actual or imminent injury fairly traceable to the Defendants-Appellees' actions by increasing the tax burden on the Plaintiffs-Appellants' properties to such an extent that if allowed to continue the Plaintiffs-Appellants will be driven from their homes, and their properties will be rendered valueless. *Id.*, ¶118.

4. Fourth Cause of Action: Inverse Condemnation Under the Wisconsin and U.S. Constitutions

The Defendants-Appellees are inversely condemning the Plaintiffs-Appellants' properties in violation of their rights under the United States Constitution, 5th Amendment and the Wisconsin Constitution, Article I, Section 13. *Id.*, ¶128. This is

because the Defendants-Appellees have taken the Plaintiffs-Appellants' property by high property taxes, allowing the neighborhood to become blighted, and simultaneously engaging in a course of conduct calculated to further ratchet up the property tax burden on the Plaintiffs-Appellants whose property will eventually become valueless at which time the Plaintiffs-Appellants will be forced to sell their properties to the Tribe. *Id.*, ¶100-103, 109-111. The Defendants-Appellees' course of conduct constitutes an actual or imminent injury fairly traceable to the Defendants-Appellees' actions by increasing the tax burden on the Plaintiffs-Appellants' properties while simultaneously blighting their neighborhood, and if allowed to continue the properties will be rendered valueless. *Id.*, ¶¶100-103, 109-111, 129.

5. Fifth Cause of Action: Unlawful Use of Eminent Domain Under the Wisconsin and U.S. Constitutions

As pled in the Complaint, the Defendants-Appellees have deprived Plaintiffs-Appellants 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 Association's members' entire property through the course of conduct described above and in the Complaint. *Id.*, ¶131. The Defendants-Appellees have taken the Association's members' property by causing blight in the Plaintiffs-Appellants neighborhood while simultaneously imposing ever higher property taxes such that the properties become valueless and the owners are coerced into selling their properties to the Tribe. *Id.*, ¶¶103, 109-111. Facilitating the acquisition of property by the Tribe is not a valid public purpose for a Wisconsin town, a Wisconsin county, and a Wisconsin public school district. The Defendants-Appellees' course of conduct

constitutes an actual or imminent injury fairly traceable to the Defendants-Appellees' actions by blighting the neighborhood while increasing the tax burden on the Association's members' properties to such an extent that if allowed to continue the properties will be rendered valueless. *Id.*, ¶¶103, 109-111, 132.

Procedural History

Plaintiff-Appellant Legend Lake Property Owners Association, Inc. ("the Association") brought this case on October 25, 2024. ECF No. 1. The Defendants-Appellees moved to dismiss under Rule 12(b)(1), and the district court held oral argument. ECF No. 8, 9, 12, 30. The district court gave the Plaintiff-Appellant leave to amend the complaint. On May 13, 2025, the Association and four of its members (Timothy Houselog, Dawn Mauthe, Robert Klingelhoets, and Russell Timmers) filed an amended complaint. ECF No. 23. The Defendants-Appellees again moved to dismiss under Rule 12(b)(1). ECF No. 26, 27, 28, 29. The district court granted the Defendants-Appellees' motion to dismiss and entered judgment in favor of the Defendants-Appellees. ECF No. 38, 39, App. 001, 028. The Plaintiffs-Appellants timely appealed. ECF No. 40, App. 029.

SUMMARY OF ARGUMENT

The Plaintiffs-Appellants have standing to pursue their claims in federal court. The Plaintiffs-Appellants' injuries, including violation of their equal protection rights, being charged excessively high taxes, declining property values, and imminent loss of their property, are redressable in federal court. The case law is replete with examples of courts granting declaratory and injunctive relief to halt an ongoing constitutional violation. In institutional reform cases, courts have issued broad and detailed injunctions that may involve the court to some extent overseeing the operations of the school district or other local entity until the constitutional violation is resolved. The facts of this case, involving the complex interplay between the federal Menominee Restoration Act, state law, and local procedures, requires federal injunctive relief to resolve.

The relief requested by the Plaintiffs-Appellants is not barred by the Tax Injunction Act or the doctrine of comity. Much of the relief requested by the Plaintiffs-Appellants does not seek to "enjoin" a state tax. In addition, there is no "plain, speedy, and efficient" state law remedy, so federal intervention is warranted here. Finally, the principles of comity that might apply to an ordinary case involving local property taxation do not apply here, where separation between federal and state affairs is already nonexistent due to the influence of the Menominee Termination and Restoration Acts on the current conditions in the County, Town, and School District.

STANDARD OF REVIEW

The standard of review on a motion to dismiss challenging subject matter jurisdiction under Rule 12(b)(1) is de novo. *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009).

ARGUMENT

I. Plaintiffs-Appellants had standing to bring this case in federal court.

The Plaintiffs-Appellants clearly met the standard for standing by alleging actual or imminent personal injury to Plaintiffs-Appellants, as a result of the Defendants-Appellees' unlawful actions, which could be redressed by the court. "A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)). The Defendants-Appellees argued that the Plaintiffs-Appellants did not establish the injury and redressability requirements.

The district court, however, agreed that the Plaintiffs-Appellants established the first two elements of standing. ECF No. 38, Decision 13-17, App. 013-017. The district court agreed that the allegations in the complaint amounted to a concrete and particularized injury, and rejected the Defendants-Appellees' argument under *DaimlerChrysler*. *Id.* at 14-17, App. 014-017. However, the district court held, with the exception of one potential form of relief, that the Plaintiffs-Appellants' claims did not meet the redressability requirement. *Id.* at 17-23, App. 017-023.

A. The Plaintiffs-Appellants have standing because the complaint alleged injury in fact, fairly traceable to the Defendants-Appellees' actions.

There are countless examples in state and federal court in which plaintiffs sued to challenge their own real estate taxes. *See, i.e.*, *Fair Assessment in Real Estate Association, Inc. v. McNary*, 454 U.S. 100, 105 (1981); *A.F. Moore & Associates, Inc. v. Pappas*, 948 F.3d 889 (7th Cir. 2020); *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 537 (1981); *Noah's Ark Family Park v. Board of Review of the Village of Lake Delton*, 216 Wis. 2d 387, 573 N.W.2d 852 (1998). It is simply beyond dispute that a property owner has standing to challenge his own real estate taxes.

The *DaimlerChrysler* case cited by the Defendants-Appellees before the district court is not applicable to let alone "controlling" in the situation at bar. First of all, the taxpayers in *DaimlerChrysler* were not challenging their real estate taxes. The taxpayers in *DaimlerChrysler* were challenging a *state level* franchise tax credit and a municipal partial property tax waiver. *DaimlerChrysler*, 547 U.S. at 338. The Supreme Court decision addressed the state level tax. *Id.* at 340, 354. The plaintiffs alleged that the challenged "franchise tax credit 'depletes the funds of the State of Ohio to which the Plaintiffs contribute through their tax payments' and thus 'diminish[es] the total funds available for lawful uses and impos[es] disproportionate burdens on' them." *Id.* at 343. This injury and theory of *DaimlerChrysler* is totally different from what the Plaintiffs-Appellants alleged in the case at bar.

The Supreme Court explained, "[o]n several occasions, this Court has denied *federal* taxpayers standing under Article III to object to a particular expenditure of

federal funds simply because they are taxpayers." *Id.* (emphasis in original). Therefore, the rule is that *federal* and *state* taxpayers do not have standing simply by being taxpayers because, "interest in the moneys of the Treasury…is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity." *Id.* (quoting *Massachusetts v. Mellon*, 262 U.S. 447, 486-87 (1923)). The Supreme Court concluded that the plaintiffs did not have standing to challenge the *state* level franchise tax. *Id.* at 344.

However, the court noted that the main part of its holding would not apply to *municipal* taxes. The *DaimlerChrysler* court explained that state and federal taxpayers do not have standing simply by being taxpayers, but also noted that this rule does not apply to municipal taxpayers. The Supreme Court explained, "[t]he *Frothingham* Court noted with approval the standing of municipal residents to enjoin the 'illegal use of the moneys of a municipal corporation,' relying on 'the peculiar relation of the corporate taxpayer to the corporation' to distinguish such a case from the general bar on taxpayer suits." *Id.* at 349 (quoting *Frothingham v. Mellon*, 262 U.S. 447, 486-87 (1923)).

In *DaimlerChrysler*, the issue of standing for municipal taxpayers was not raised. *Id.* In the recent Seventh Circuit decision *Protect Our Parks, Inc.*, the court noted that, "[t]he rule remains undisturbed," and "in analyzing whether the plaintiffs' injury is cognizable, we will not ask whether it is concrete and particularized. Instead,

we will ask only whether the elements of municipal taxpayer standing have been satisfied." *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d 722, 733-36 (7th Cir. 2020). *See also Sebring v. Milwaukee Public Schools*, 569 F. Supp. 3d 767, 779-80 (E.D. Wis. 2021) ("the Supreme Court has not overruled its cases recognizing standing for municipal taxpayers, and therefore lower courts must continue to apply it.").

Here, the facts of this case are nothing like *DaimlerChrysler*. The Plaintiffs-Appellants alleged facts that fully establish injury in fact, traceability, and redressability due to being forced to pay unconstitutional taxes levied against their properties, and risking losing those properties entirely due to a discriminatory campaign against them. Plaintiffs-Appellants are municipal property tax payers, making the Defendants-Appellees' citation of the *DaimlerChrysler* case inapposite. *See Hinrichs v. Speaker of House of Representatives*, 506 F.3d 584, 600 n.9 (7th Cir. 2007) ("[S]ince its first pronouncements on taxpayer standing, the Supreme Court has distinguished between the standing requirements for federal and state taxpayers, on the one hand, and municipal taxpayers on the other.").

Furthermore, it is beyond question that a landowner alleging an unconstitutional taking of his property and other violations of his constitutional rights has standing to sue. There are countless examples of Fifth Amendment takings claims and equal protection violation claims proceeding without anyone ever bringing a challenge to the plaintiff's standing. *See, i.e, Knick v. Township of Scott,*

Pennsylvania, 588 U.S. 180, 139 S.Ct. 2162, 2170 (2019); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

Plaintiffs-Appellants clearly alleged a "concrete and particularized" and "actual or imminent" injury and satisfied the injury in fact requirement. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs-Appellants alleged that they have already been charged inequitably high taxes and are being subjected to a discriminatory campaign. This is not a "generalized grievance about the conduct of government." *See Democratic Party of Wis. v. Vos*, 966 F.3d 581, 585 (7th Cir. 2020). The Plaintiffs-Appellants clearly identified the discriminatory scheme and the very high tax rates they are being subjected to, and alleged that these high tax rates will inevitably destroy the values of their properties and drive them out of their properties if unchecked. ECF No. 23, First Am. Compl. ¶¶3-8, 32-38, 46, 58, 100-103. Loss of property value and being driven from one's home was recognized as injury in fact in a case cited by the district court, *Juliana v. United States*, 947 F.3d 1159, 1168 (9th Cir. 2020).

The taxes paid by the Plaintiffs-Appellants compare or exceed what taxpayers in Wisconsin's dense urban communities with the highest service levels pay. Despite living in a County with unpaved roads, minimal municipal utilities, an extremely small sheriff's department, a minimal budget for governmental staff, and school district with just one high school and one middle school, the Plaintiffs-Appellants are paying property taxes that are comparable or exceed the property taxes in municipalities with the highest service levels. ECF No. 23, First Am. Compl. ¶12.

The Plaintiffs-Appellants alleged that the Defendants-Appellees took numerous steps, unrelated to legitimate governmental purposes, to levy extremely high taxes on the Plaintiffs-Appellants, including: failing to tax similar properties which are not in Trust, failing to enforce penalties on non-Trust properties that have stopped paying taxes, initiating a school referendum for a very high amount without a needs analysis, inflating the school operating budget without a needs analysis, giving away school property, intentionally failing to create a commercial tax base, and revaluing the taxpaying parcels with only a few days notice for challenging the reassessments. *Id.*, ¶¶67-71, 72-82, 83-98, 44-46, 104-108. The Defendants-Appellees took these actions, in violation of the Plaintiffs-Appellants' equal protection and other constitutional rights, not for legitimate governmental purposes but for the unconstitutional purpose of facilitating the Tribe's goal of acquiring properties to place in Trust. *Id.*, ¶103.

The Plaintiffs-Appellants alleged the specific amounts of inequitably high taxes that they have already been charged, as well as the reasons why those amounts were unconstitutionally high. *Id.*, ¶¶3-8, 67-71, 72-82, 83-98, 44-46, 104-108. Plaintiffs-Appellants alleged an unconstitutional course of conduct that amounted to a discriminatory campaign against them. *Id.,* ¶¶113-118. Plaintiffs-Appellants alleged a scheme to take their property by driving them to sell. *Id.,* ¶¶113-121. This all sufficiently alleged the injury in fact needed to establish standing. Therefore, the injury and causality elements of standing are met.

B. The Plaintiffs-Appellants' claims are redressable in federal court.

The district court held that, with the exception of one possible form of relief, the Plaintiffs-Appellants' claims were not redressable. This was unusual because most standing cases hinge on the first two elements. "If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury." *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 144 S.Ct. 1540**,** 1555 (2024). If a plaintiff challenging "the legality of government action or inaction" is the object of the action, "there is ordinarily little question that the action or inaction has caused him injury, *and that a judgment preventing or requiring the action will redress it.*" *Lujan*, 504 U.S. at 561-62 (emphasis added). The district court, however, thought that this was one of the more unusual cases where redressability was an independent bar. *See Alliance for Hippocratic Medicine*, 144 S.Ct. at 1555 n.1.

The Plaintiffs-Appellants requested declaratory and injunctive relief in the complaint. ECF No. 23, at 29. To meet the redressability requirement, the requested relief must be likely to remedy the injuries alleged in the complaint. *Lujan*, 504 U.S. at 561. The district court had two issues with the Plaintiffs-Appellants' requested relief, first, that declaratory relief would not remedy the injury of reduced property value, and second, that most of the injunctive relief was too broad for the court to grant. ECF No. 38, Decision 18-23, App. 018-023. However, both forms of relief would appropriately remedy the Plaintiffs-Appellants' injuries.

1. The Plaintiffs-Appellants' claims are redressable through declaratory judgment.

The district court erred by narrowly construing the Plaintiffs-Appellants' injuries as solely "diminution in property value," and then concluding that a declaratory judgment would not restore the property values. ECF No. 38, Decision 18-23, App. 018-023. However, the injuries that the Plaintiffs-Appellants alleged included a discriminatory scheme and the ongoing levy of inequitably high property taxes, ongoing property devaluation, the imminent risk of losing their properties, and an ongoing violation of their right to equal protection and due process. The ongoing violation of the Plaintiffs-Appellants' constitutional rights is its own injury, separate from any additional harm. *See Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011); *see also Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (injury in fact in an equal protection case is the denial of equal treatment, not the harm resulting from the unequal treatment).

In this section of the decision, the district court limited its analysis to the single injury of lost property value, and concluded that a declaratory judgment would merely "punish" the Defendants-Appellees and not provide real relief for past damage to the Plaintiffs-Appellants' property values. ECF No. 38, Decision 18, App. 018. However, the district court did not consider that if the Defendants-Appellees' discriminatory campaign is terminated, then the Plaintiffs-Appellants' property values can be restored. The district court's reasoning thus does not make sense for

injuries that are ongoing as opposed to finished, and that are not limited to lost property value.

The *Steel Co.* case relied on by the district court dealt with "purely past violations." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 86 (1998). In *Steel Co.*, the defendant company had failed to file required reporting forms related to toxic chemicals. *Id.* at 87-88. Before the plaintiff filed suit, the company filed all the overdue forms, but the plaintiff filed suit anyway. *Id.* at 88. The court held that the plaintiff lacked standing because of redressability. *Id.* at 105. In particular, the court found that the request for declaratory judgment that the company violated the reporting statute was pointless, because everyone already agreed that the company had violated the statute by failing to file the reports on time, so a judgment to that effect would be "worthless." *Id.* at 106.

In contrast, here, a declaratory judgment that the Defendants-Appellees' *ongoing*, not past, conduct is unconstitutional would not be worthless because the Defendants-Appellees do not currently agree that their actions are unconstitutional. To the contrary, a declaratory judgment that the Defendants-Appellees' actions are unconstitutional is necessary to get them to change. The court in *Bontkowski* explained that one of the purposes of a declaratory judgment is a "prelude or substitute for injunctive relief" when "the plaintiff wants a change in the defendant's conduct but believes that it will ensue from a declaration of the plaintiff's rights, and by seeking just the declaration the plaintiff avoids the burden of formulating and

justifying a precise injunctive remedy." *Bontkowski v. Smith*, 305 F.3d 757, 761 (7th Cir. 2002).

The Plaintiffs-Appellants requested a declaratory judgment that the Defendants-Appellees are engaging in an illegal or unconstitutional course of conduct. ECF No. 23, Compl. 29. The course of conduct complained of by the Plaintiffs-Appellants was the entirety of the discriminatory campaign. ECF No. 23, First Am. Compl. ¶¶67-71, 72-82, 83-98, 44-46, 104-108. A declaratory judgment that some or all of this conduct is violating the Plaintiffs-Appellants' right to equal protection and other constitutional rights would likely serve to change the Defendants-Appellees' ongoing conduct, and would therefore remedy the Plaintiffs-Appellants' ongoing injuries.

2. The Plaintiffs-Appellants' claims are redressable through injunctive relief.

The district court found that the Plaintiffs-Appellants' request for injunctive relief was generally too broad and not within the power of a federal court to grant. ECF No. 38, Decision 18-22, App. 018-022. However, the district court did believe that the narrow relief of requiring the County to keep non-Trust parcels on the tax roll could be an appropriate injunction that could redress the Plaintiffs-Appellants' injuries. *Id.* at 22-23. The district court was correct to allow this form of relief, but was too quick to reject the other potential forms of injunctive relief.

The Plaintiffs-Appellants requested that the court "Enjoin any further unconstitutional actions of the type pled in [the] Complaint." ECF No. 23, Compl. 29. Reading that sentence alone, the district court believed that the requested injunctive

relief was too broad. However, the unconstitutional actions of the type pled in the complaint were levying extremely high taxes on the Plaintiffs-Appellants, failing to tax similar properties which are not in Trust, failing to enforce penalties on non-Trust properties that have stopped paying taxes, initiating a school referendum for a very high amount without a needs analysis, inflating the school operating budget without a needs analysis, giving away school property, intentionally failing to create a commercial tax base, blighting the neighborhood by allowing properties in trust and slated for transfer to trust to become and remain dilapidated, and revaluing the taxpaying parcels with only a few days notice for challenging the reassessments. ECF No. 23, First Am. Compl. ¶¶67-71, 72-82, 83-98, 44-46, 104-108. An injunction prohibiting the continuation of these actions by MISD, the Town, and the County would not be too broad. As alleged in the complaint, these acts were taken to discriminate against the Plaintiffs-Appellants and to drive them out and take their property for the benefit of the Tribe in violation of the Constitution. It is sufficiently specific, and was within the authority of the district court, to issue an injunction enjoining such acts, and further unconstitutional actions of the same type.

The district court did recognize that the Plaintiffs-Appellants' final requested relief, that the court "Order such other and further injunctive relief as the Court deems just and proper under the circumstances" could meet the redressability standard. ECF No. 38, Decision 20, App. 020. However, the Court rejected most of the examples of potential relief that the Plaintiffs-Appellants identified during the briefing. *Id*. at 20-22, App. 020-022.

In accordance with the legislative history of the Restoration Act, which contemplated that the tax burden on taxpaying properties in the County would actually decrease due to additional funding sources, and that there was no good reason why an overburdening of the taxpayer would come to pass, ECF No. 29, First Am. Compl. ¶105, the Plaintiffs-Appellants suggested several examples of injunctive relief in their brief before the district court. Depending on the facts that are discovered and proven during the litigation process, an injunction could address the specific acts in the complaint or read as broadly as the six specific examples that the Plaintiffs-Appellants provided in their brief to the district court. ECF No. 34, Pls.' Br. 21-22.

Depending upon what is learned during discovery, other details of the injunction might be appropriate in addition to, or in lieu of, those suggested in the Plaintiffs-Appellants' brief to the district court. The district court's willingness to consider relief not explicitly demanded in the complaint was in accordance with applicable law. *See Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 65-66 (1978) (omissions of prayers for relief "are not in and of themselves a barrier to redress of a meritorious claim.") *See also* Federal Rules of Civil Procedure 54(c) ("every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.").

The reason why a flexible approach to equitable relief is warranted in this case is because this case presents an unintended consequence of the Restoration Act that can and should be remedied. Congress obviously did not want things to unfold as they

have. The Restoration Act stipulates that as properties are returned to the Trust, those properties are taken off of the tax rolls and become non-taxable properties. The number of taxable properties will slowly dwindle. If the number of taxable properties reaches zero, the County, Town, and MISD will have to fund themselves entirely without property tax revenue of any type. For the time being, however there are a limited number of remaining taxable parcels in the County, and as pled in this matter, they are being subjected to a discriminatory campaign for the reason of unconstitutionally "driving off" the Plaintiffs-Appellants from their properties. Federal court intervention is needed to protect the constitutional rights of the minority of tax paying property owners in Menominee County.

The district court, however, rejected all the ideas in the brief's potential injunction other than the part of the potential order that no parcels be left untaxed pursuant to the 2006 agreement. ECF No. 38, Decision 23, App. 023. The district court was correct that cases such as *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336, 341–43 (1989) supported that part of the district court's decision allowing that specific relief to go forward.

The district court's rationale for rejecting other relief, however, was that some of the relief would require the court to oversee the operations and funding of the Defendants-Appellees, and to "substitute its judgment for that of the elected officials." ECF No. 38, at 20, App. 020. The court believed that some of the potential relief would exceed the court's authority. *Id.* at 21, App. 021. However, federal district courts do have the authority to order relief when a plaintiff is suffering a constitutional injury

with no possibility of redress at the ballot box, and sometimes this relief will involve overseeing the operations of a school district or local government entity to some extent.

Federal courts have the power to issue detailed injunctions to abate violations of the Constitution. Examples include prison reform, the reform of mental institutions, environmental protection, public housing, and school desegregation. In the prison reform context, the Supreme Court has explained that while "state and local authorities have primary responsibility for curing constitutional violations ... [if the] 'authorities fail in their affirmative obligations. . . judicial authority may be invoked.'" *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978) (citing *Milliken v. Bradley*, 433 U.S. 267, 281 (1977) (quoting *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 15 (1971))). "Once invoked, 'the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.'" *Id.*

In the prison reform and school desegregation contexts, the injunctive relief often begins with a general order that the status quo is unconstitutional and that the defendants must cease the unconstitutional conduct, and embark on a new, constitutional course of action. If this does not happen, then the court would issue more detailed orders and continue supervision of the case.

For example, in *Brown v. Board of Education*, the Supreme Court declared that school segregation was a denial of equal protection of the laws. *Brown v. Board of Education*, 347 U.S. 483, 495 (1954). The Court then requested additional briefing in

order to formulate the appropriate relief. *Id.* In *Brown II*, the Court remanded the cases to the local district courts to fashion the appropriate injunctive relief and to retain jurisdiction while the school districts came into compliance. *Brown v. Board of Education*, 349 U.S. 294, 299-301 (1955). The Court described the nature of equitable relief in that context as follows: "Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs." *Id.* at 300.

Therefore, it is clear that the plaintiffs in *Brown* did not need to formulate the exact injunctive relief in their initial complaint in order to vindicate their constitutional rights. The Supreme Court declared that their constitutional rights had been violated, and then the lower courts formulated specific injunctions based on fact-finding and the local circumstances of each school district. The Supreme Court explained that: "School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles." *Id.* at 299.

Similarly, in *Hutto*, the district court first found the prison conditions to be unconstitutional under the Eighth Amendment, and "did not immediately impose a detailed remedy of its own." *Hutto v. Finney*, 437 U.S. 678, 683 (1978). Instead, the district court ordered the defendant to "'make a substantial start'" on improving conditions. *Id.* (quoting *Holt v. Sarver*, 300 F. Supp. 825, 833-34 (E.D. Arkansas 1969)). The district court retained jurisdiction, and the parties underwent several

rounds of hearings on the progress of the conditions and additional court orders with increasing levels of detail. *Hutto*, 437 U.S. at 683-85. The Supreme Court approved of the district court's handling of the case, specifically upholding the most recent detailed order. *Id.* at 685-89.

There are many other examples as well. *Horne* involved institutional reform litigation involving the Equal Educational Opportunities Act of 1974 and English-Language Learners in the state of Arizona. *Horne v. Flores*, 557 U.S. 433, 129 S.Ct. 2579, 2587-88 (2009). In deciding the case, the Supreme Court explained that "institutional reform injunctions often raise sensitive federalism concerns. Such litigation commonly involves areas of core state responsibility, such as public education." *Id.* at 2593. While the Supreme Court in *Horne* determined that the injunction should be modified, it did not question that in the proper case an injunction to ameliorate ongoing violations is appropriate. *Id.* ("[I]njunctions issued in such cases often remain in force for many years, and the passage of time frequently brings about changed circumstances - changes in the nature of the underlying problem, changes in governing law or its interpretation by the courts, and new policy insights - that warrant reexamination of the original judgment."); *see also Evans v. Fenty,* 480 F. Supp. 2d 280, 298, 325 (D.D.C. 2007).

Another case, *Zinke,* involved an injunction governing the Northwest Area Water Supply Project, a massive effort to provide drinking water to 81,000 North Dakotans. *Gov't of Province of Manitoba v. Zinke,* 849 F.3d 1111, 1114-15 (D.C. Cir. 2017). The Court of Appeals for the D.C. Circuit, considering a motion to modify the

injunction, cautioned that "courts should keep in mind how long-term injunctions can impact a State's ability 'to make basic decisions' for itself and its citizens." *Id.* at 1118 (citing *Horne,* 557 U.S. at 447 n.3). The *Zinke* court did not, however, suggest that there was anything inherently improper about injunctions in the context of institutional reform litigation.

Another example, *Jackson*, involved litigation to correct federal constitutional and statutory deficiencies relating to the conditions under which developmentally disabled people were kept at Fort Stanton and Los Lunas. *Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1201 (10th Cir. 2018). The decision explained that "[a]fter a prolonged trial, the district court [had] issued ... an extensive Memorandum Opinion and Order (1990 Order) ... [where] the court 'made detailed findings of fact regarding almost every aspect of the conditions' at the two institutions ... and determined that the conditions were statutorily and constitutionally deficient in eighteen areas ...." *Id.* at 1182. The district court in *Jackson* "ordered the parties to work together in good faith 'to formulate by agreement a plan to correct' the eighteen areas of deficiencies ... to designate persons responsible at each institution for implementing the correction plans ... and to develop a 'detailed timetable establishing deadlines ....'" *Id.* at 1182-83. The *Jackson* court then engaged in a lengthy analysis of the Rule 60(b)(5) motion at issue in that case. *Id.* at 1191-1207. Detailed factfinding and fairly intrusive injunctive relief may be warranted when a federal court finds that the guarantees of the constitution and federal statutes are being violated.

Issuing broad relief that in some respects is like "overseeing the operations" of a local school district or government entity is within the district court's power in the proper case. As another example, in *Griffin,* a follow-up case to the *Brown v. Board of Education* decision, "[t]he District Court enjoined the county officials from paying county tuition grants or giving tax exemptions and from processing applications for state tuition grants so long as the county's public schools remained closed." *Griffin v. School Bd. of Prince Edward Cty.*, 377 U.S. 218, 232-33 (1964). The Supreme Court held, "[w]e have no doubt of the power of the court to give this relief to enforce the discontinuance of the county's racially discriminatory practices." *Id.* The Supreme Court further held, "[f]or the same reasons the District Court may, if necessary to prevent further racial discrimination, require the Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system in Prince Edward County like that operated in other counties in Virginia." *Id.* at 233.

In contrast to these examples, the district court relied on the Ninth Circuit *Juliana* case to hold that relief was outside the authority of the court. ECF No. 38, Decision, App. 021. However, the unconstitutional situation faced by the Plaintiffs-Appellants in this case, involving the discrete actions of a single County, Town, and small school district, are much more like the scope of the problem and solution in *Griffin*, *Hutto* or the other examples above, and not at all like the national (or even global) problem and solution complained of in *Juliana*.

In *Juliana*, the plaintiffs, complaining of a violation of their due process right to a "climate system capable of sustaining human life" (a right that the Ninth Circuit was not sure existed), sought "an injunction requiring the government not only to cease permitting, authorizing, and subsidizing fossil fuel use, but also to prepare a plan subject to judicial approval to draw down harmful emissions." *Juliana v. United States*, 947 F.3d 1159, 1169-70 (9th Cir. 2020). The plaintiffs had sued the President, the United States, and federal agencies. *Id.* at 1165. The plaintiffs admitted that this sweeping relief issued against the whole of the federal government would not "stop catastrophic climate change or even ameliorate their injuries." *Id.* at 1170. The Ninth Circuit was therefore skeptical that any relief it could afford would be likely to redress their injuries. *Id.* at 1171.

The court held that the relief sought by the plaintiffs, which was essentially "the adoption of a comprehensive scheme to decrease fossil fuel emissions and combat climate change," was not within the power of an Article III court. *Id.* The court held that such wide ranging policy decisions "must be made by the People's 'elected representatives, rather than by federal judges interpreting the basic charter of Government for the entire country.'" *Id.* at 1172 (citation omitted). Given the "complexity and long-lasting nature of global climate change," the court declined to exercise supervision over the entire federal government's tackling of the problem. *Id.* For similar reasons, the court held that a declaration that the defendants violated the constitution was unlikely to remediate the plaintiffs' injuries. *Id.* at 1170.

The Ninth Circuit *Juliana* case was clearly an ambitious and idealistic attempt by the young plaintiffs to attempt to address an "environmental apocalypse" caused by "global climate change." *Id.* at 1163, 1172. In contrast, the case at hand involves a discrete set of property tax paying landowners, in a single Wisconsin County/Town, facing the unconstitutional actions of one County/Town and one school district, during a discrete period of time. The problem and the solution are manageable in scope, and could be resolved by a court order against the named Defendants-Appellees.

The district court also relied on a Connecticut district court case for the proposition that, "'[a] federal court's function is to protect individuals and groups against intentional discriminatory and disparate treatment, not to oversee the operations of local governments and agencies.'" ECF No. 38, Decision 22, App. 022 (quoting *Pappas v. Town of Enfield*, 18 F. Supp. 3d 164, 178 (D. Conn. 2014)). However, this language from the non-binding *Pappas* case was not about standing or redressability, rather, it was about whether a landowner had an equal protection claim in the first place. *Id.* It is clear that in some situations, courts do "oversee the operations of local governments and agencies" when the constitutional violation warrants such relief. *See, i.e., Hutto*, 437 U.S. at 683-85; *Brown*, 349 U.S. at 300; *Griffin*, 377 U.S. at 232-33.

At the motion to dismiss phase, the Plaintiffs-Appellants' complaint leaves open the possibility for either broad declaratory and injunctive relief or more narrow and tailored relief that could address only specific aspects of the Defendants-

Appellees' conduct. The Plaintiffs-Appellants' constitutional injuries are clearly redressable by declaratory and injunctive relief that would change the behavior of the Defendants-Appellees so that the unconstitutional and illegal conduct would cease. Therefore, the Plaintiffs-Appellants have standing and the case should proceed.

II. The district court had subject matter jurisdiction.

A. The Tax Injunction Act does not bar this case.

The Tax Injunction Act prohibits the district courts to "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." 28 U.S.C. § 1341. The district court observed that the limited relief that survived the first part of its analysis, requiring the non-Trust parcels to be on the taxrolls, would not "enjoin, suspend or restrain the assessment, levy, or collection" of a state law tax. ECF No. 38, Decision 23, App. 023. This relief, along with all the other relief requested by the Plaintiffs-Appellants, would not violate the Tax Injunction Act. Other examples of the relief requested by the Plaintiffs-Appellants, including an order that MISD seek alternative funding and that MISD and the County/Town document sound cost-benefit analyses in their financial decision making, would also not enjoin any state law tax. *See* ECF No. 34, Pls.' Br. 21-23.

For the injuries complained of here, there is also no "plain, speedy, and efficient remedy" available in state courts. The district court and the Defendants-Appellees suggested that Wis. Stat. § 74.35, "Recovery of Unlawful Taxes" is the state law remedy to which the Plaintiffs-Appellants should have availed themselves. ECF No.

38, Decision 25, App. 025. The district court also believed that Wis. Stat. § 70.44, "Assessment; property omitted" could provide a state law remedy. *Id.* However, neither of these statutes provide a plain, speedy, and efficient remedy to the Plaintiffs-Appellants in this case.

Wis. Stat. § 74.35 allows a person to file a claim to recover an "unlawful tax" assessed against his or her property. The text of Wis. Stat. § 74.33 lays out a very limited and specific list of errors that give rise to a rebate claim under the "unlawful tax" framework of Wis. Stat. § 74.35. The Defendants-Appellees did not develop an argument as to which category of Wis. Stat. § 74.33 they believe applies to this case. Notably absent from the list of "unlawful taxes" in Wis. Stat. § 74.33 is any right to challenge a situation where the allegations are that one or more units of government are working together to intentionally manipulate the mechanism of taxation as a means of acquiring private property of United States citizens for the benefit of an inherently sovereign Tribe, and without paying just compensation. There is also no item on the list that addresses any other constitutional claims. Instead of clearly explaining how Wis. Stat. § 74.35 and § 74.33 would provide a "plain, speedy and efficient remedy" or even how it would apply to this case at all, the Defendants-Appellees actually argued against the applicability of Wis. Stat. § 74.35 in a separate, recent case involving property taxes in Menominee County.

Before the district court, the Defendants-Appellees argued that one of the Association's directors has been involved in a separate state court lawsuit, with a different plaintiff, captioned *Menominee County Taxpayers Association v. Menominee*

Indian School District, et al., Menominee County Case No. 23-CV-02. The Defendants-Appellees argued that the different plaintiff in that case brought claims under Wis. Stat. § 74.35. ECF No. 27, MISD Br. 15. In Menominee County Case No. 23-CV-02, the Defendants-Appellees themselves raised uncertainty regarding the availability of a remedy under Wis. Stat. § 74.35. "'[U]ncertainty concerning a State's remedy may make it less than "plain" under 28 U. S. C. § 1341.'" *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 516-17 (1981) (quoting *Tully* v. *Griffin, Inc.,* 429 U.S. 68, 76 (1976)). In Case No. 23-CV-02, the Town, County, and MISD apparently argued that Wis. Stat. § 74.35 *did not* provide a remedy to the plaintiff. MISD even argued that Wis. Stat. § 74.35 does not apply *at all* to MISD because, according to their position in the other case, MISD is a "taxing Jurisdiction" and therefore outside of the ambit of Wis. Stat. § 74.35: "Procedurally, Wis. Stat. § 74.35 does not apply to claims alleging error by a *Taxing Jurisdiction* such as MISD." Menominee County Case No. 23-CV-02, ECF No. 71, MISD Brief in Support of Motion to Dismiss Amended Complaint and Third Party-Complaint, at 6. MISD then argued that "Wis. Stat. § 74.35 is Inapplicable to Plaintiff's Claims." *Id.* MISD argued that the plaintiff's claims were not "arithmetic, transpositional or other errors," in reference to Wis. Stat. § 74.33(1)(f). *Id.* at 9. The County also argued that Wis. Stat. § 74.35 would not be the correct remedy for allegations that the County was failing to collect taxes on taxable properties in the County: "If the allegation by Plaintiff is that the County is purposefully failing to collect taxes on properties it is lawfully able to tax, as improperly alleged in the complaint, the only possible resolution does not fit the

requirements of Wis. Stat. § 74.35." Menominee County Case No. 23-CV-02, ECF No. 79, County's Brief Joining Third-Party Defendant's Motion to Dismiss Plaintiff's Amended Complaint, at 5.

In the case at bar, the Defendants-Appellees argued that Wis. Stat. § 74.35 is a "plain, simple, and efficient" remedy for these claims, yet in the separate state case, they argued that Wis. Stat. § 74.35 was not available. This alone should demonstrate that a remedy under Wis. Stat. § 74.35 is not at all plain, and that this Court should allow the claims in this case to proceed. Lastly, if the Defendants-Appellees are contending that the Plaintiffs-Appellants were required to bring their 42 U.S.C. § 1983 claim in state court, this is simply incorrect. *Rosewell*, 450 U.S. at 537.

Not every piece of state legislation which provides for tax rebates in some circumstances satisfies the TIA. To satisfy the TIA, the state remedy must allow a "'full hearing and judicial determination' at which [the taxpayer] may raise any and all constitutional objections to the tax...." *A.F. Moore & Associates*, 948 F.3d at 893 (quoting *Rosewell*, 450 U.S. at 515-16 n.19). While it is true that the TIA is applied "restrictively because the Act is meant to dramatically curtail federal-court review" of municipal taxation, the TIA clearly does not close the doors of the federal courthouse in all situations. *Id*.

The facts pled in the complaint far exceed the scope of any garden variety tax proceeding because they involve the long and troubled history of the Restoration Act, and allege a complicated scheme to use the mechanisms of municipal taxation to confiscate private property that the Restoration Act intended to protect. Unlike the

situation in *McNary*, this is not a typical property tax challenge in which homeowners are dissatisfied with the valuations placed on their homes. *See Fair Assessment in Real Estate Association, Inc. v. McNary*, 454 U.S. 100, 106 (1981). Nor is Plaintiffs-Appellants' case likely to throw state taxation practices into "disarray" because the facts of this case are limited to the unique circumstances of the effect of the Restoration Act on a discrete set of landowners. *See Rosewell*, 450 U.S. at 527. Resolving this situation will require federal court intervention to craft specific injunctive or similar relief to provide durable guardrails which will guide the litigants into a more just future.

The district court believed that Wis. Stat. § 70.44, "Assessment; property omitted" could provide a remedy "for the intentional omission of Tribally owned, non-trust property from the County tax rolls." ECF No. 38, Decision 25, App. 025. However, the district court did not explain how a landowner would bring a private cause of action under that section, or how that section could possibly address the rest of the Plaintiffs-Appellants' constitutional claims.

B. The doctrine of comity does not bar this case.

The case is also not barred by the doctrine of comity. The lack of a plain, speedy, and efficient remedy under the Tax Injunction Act analysis also precludes the application of the doctrine of comity. "The Court has explained that the 'plain, adequate, and complete' requirement in the comity analysis is identical to the 'plain, speedy and efficient' requirement under the Tax Injunction Act." *A.F. Moore & Associates*, 948 F.3d at 896 (citing *McNary*, 454 U.S. at 116 n.8).

The district court believed that the doctrine of comity barred the case because the remedy for a tax-related problem should be left in the hands of the state. ECF No. 38, Decision 24-25, App. 024-025. However, the unique facts of this case suggest that a federal solution is warranted. The circumstances of this case have nothing to do with the *Levin* case cited by the district court and the Defendants-Appellees. *Levin* involved a challenge to Ohio's state-level regulatory framework for taxing natural gas distributors. *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 130 S.Ct. 2323, 2328 (2010). Unlike the purely state-level regulation in *Levin*, the case at bar addresses a problem inextricably intertwined with federal causes, which will require a federal solution. In addition, in the case at bar, the Plaintiffs-Appellants are not seeking to challenge Wisconsin's legitimate tax scheme. Rather, Plaintiffs-Appellants are seeking court action to prevent the County, Town, and MISD from abusing the unique taxation situation that arose out of the federal Menominee Termination and later Restoration Acts.

The troubles engulfing the litigants in this case are deeply intertwined with the federal cause of these problems: the Menominee Termination and Restoration Acts. This can only be adequately addressed on the federal level. This has long been recognized by the State of Wisconsin, as documented in the 1998 Wisconsin Legislative Audit Bureau Report. ECF No. 2-3, at 3. Needless to say, this conclusion, that state and federal intervention were necessary to ward off the financial problems besetting Menominee County taxpayers, shows that this is a completely different situation than the ordinary municipal taxpayer dissatisfied with his local taxes. The

1999 Report of the Menominee County Management Review Task Force to the Wisconsin Legislature, which was formed to suggest solutions to the problems laid out in the 1998 Wisconsin Legislative Audit Bureau Report, also concluded that the County's property tax problems were a federal problem requiring a federal solution. ECF No. 2-4, at 1, 27. These sources explain how the County is in an "untenable" situation that was caused in large part by federal actions, and requires federal intervention.

The district court acknowledged that, "[i]f the allegations of the amended complaint are true, the unfairness to the property tax-paying citizens of the Town, County, and School District is apparent." ECF No. 38, Decision 26, App. 026. However, the district court believed that this unfairness could not be remedied via a federal lawsuit, because it was outside the court's authority and barred by principles of comity. *Id.* The district court's conclusion ignored the fact that the unfairness faced by the Plaintiffs-Appellants stems from the unique interaction of federal law (the Termination and Restoration Acts) with the local county, town, and school district.

A Wisconsin county not interacting with a federal Indian reservation would not be facing these problems. By first dissolving, and then reinstating a federal Indian reservation on nearly the same boundaries as a Wisconsin county, the federal government has already not shown "scrupulous regard for the rightful independence of state governments." *See Perry v. Coles County, Illinois*, 906 F.3d 583, 587-88 (7th Cir. 2018) (quoting *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932)). To the contrary,

the social, political, and governmental challenges of Menominee County are not at all independent of the federal government.

The *McNary* case described the underlying rationale for the comity doctrine as follows: "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways." *McNary*, 454 U.S. at 112 (quoting *Younger* v. *Harris,* 401 U.S. 37, 44 (1971)). The County and Town of Menominee, and MISD, are already not separate from the national government. The issue here is that, due to the outsized impact of federal policy on Menominee County, the local institutions are not "left free to perform their separate functions in separate ways." Rather, local property taxation is inextricably bound up with federal law and policy in regard to the Menominee Indian Tribe. Federal policy has ensured that the County, Town, and school district will not operate independently from the Menominee Reservation. Because of the federal cause of the problem and ongoing influence of federal law, it does not offend the principles of comity for a federal court to be part of the solution to these problems.

CONCLUSION

For the above reasons, Plaintiffs-Appellants respectfully request that this Court reverse the order of the district court, and remand this case for further proceedings. If the Court reverses the district court, then the district court would resume jurisdiction over the Plaintiffs-Appellants' state law claims, as well.

Dated January 26, 2026.

EMINENT DOMAIN SERVICES, LLC

/s/ Erik S. Olsen
Erik S. Olsen
SBN 1056276
erik@eminentdomainservices.com
Eminent Domain Services, LLC
6515 Grand Teton Plaza, Ste 241
Madison, WI 53719
(608) 535-6109

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)

This document complies with the type limitations provided in the Federal Rule of Appellate Procedure 32(a)(7), supplemented by Circuit Rule 32(c) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 13,754 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-styles requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 12 pt. Century Schoolbook font.

Dated January 26, 2026.

/s/ Erik S. Olsen
EMINENT DOMAIN SERVICES, LLC
Attorneys for Plaintiffs-Appellants
Erik S. Olsen
State Bar Number: 1056276

erik@eminentdomainservices.com
Eminent Domain Services, LLC
6515 Grand Teton Plaza, Ste 241
Madison, WI 53719
(608) 535-6109

CERTIFICATE OF SERVICE

I hereby certify that on January 26th of 2026, I electronically filed the foregoing Brief of Plaintiffs-Appellants and the accompanying Short Appendix of Plaintiffs-Appellants with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated January 26, 2026.

/s/ Erik S. Olsen
EMINENT DOMAIN SERVICES, LLC
Attorneys for Plaintiffs-Appellants
Erik S. Olsen
State Bar Number: 1056276

erik@eminentdomainservices.com
Eminent Domain Services, LLC
6515 Grand Teton Plaza, Ste 241
Madison, WI 53719
(608) 535-6109

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the appendix.

Dated January 26, 2026.

/s/ Erik S. Olsen
EMINENT DOMAIN SERVICES, LLC
Attorneys for Plaintiffs-Appellants
Erik S. Olsen
State Bar Number: 1056276

erik@eminentdomainservices.com
Eminent Domain Services, LLC
6515 Grand Teton Plaza, Ste 241
Madison, WI 53719
(608) 535-6109

CASE NO. 25-3268
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC., et al.,

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

SHORT APPENDIX OF PLAINTIFFS-APPELLANTS

On Appeal from the United States District Court
for the Eastern District of Wisconsin
The Honorable William C. Griesbach, Presiding

By: EMINENT DOMAIN SERVICES, LLC
Attorneys for Plaintiffs-Appellants
Erik S. Olsen
State Bar Number: 1056276

6515 Grand Teton Plaza, Suite 241
Madison, WI 53719
Tel: 608-535-6109
fax: 608-338-0889

TABLE OF CONTENTS FOR SHORT APPENDIX

Decision and Order Granting Defendants' Motions to Dismiss.....App. 001

Judgment in a Civil Case.....App. 028

Notice of Appeal.....App. 029

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC., et al.,

Plaintiffs,

v. **Case No. 24-C-1369**

MENOMINEE COUNTY, et al.,

Defendants.

DECISION AND ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

Plaintiff Legend Lake Property Owners Association, Inc. (the Association) brought this 42 U.S.C. § 1983 action against Defendants Menominee County, the Town of Menominee, and the Menominee Indian School District (MISD), seeking relief from the increasing taxes assessed against the property of its members. The Association alleged Defendants violated the Fourteenth Amendment by denying the Association's members' rights to equal protection of the law and substantive due process as well as the Fifth Amendment by unlawful exercise of eminent domain. The Association also alleged violations of the Wisconsin Constitution.

On January 31, 2025, MISD filed a motion to dismiss the original complaint. Dkt. No. 8. The County and Town joined the motion on February 13, 2025. Dkt. No. 11. The court held oral argument on the motion on April 22, 2025. During the hearing, the court invited the Association to file an amended complaint to cure potential defects identified by Defendants and the court. The Association filed an amended complaint on May 13, 2025. The amended complaint added Timothy J. Houselog, Russell Timmers, Dawn Mauthe, and Robert Klingelhoets as plaintiffs, all of whom are members of the Association. On June 3, 2025, MISD filed a motion to dismiss the

amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1). Dkt. No. 26. That same day, the County and Town filed their own motion to dismiss. Dkt. No. 28. Both motions are now fully briefed and ready for decision. For the following reasons, Defendants' motions will be granted and the case dismissed.

BACKGROUND

The Menominee Indian Tribe of Wisconsin is a federally recognized Indian Tribe, whose reservation was established by the Treaty of Wolf River in 1854. Am. Compl. ¶ 13, Dkt. No. 23; *see also Menominee Tribe of Indians v. United States*, 391 U.S. 404, 405 (1968). In 1954, the Menominee reservation was approximately 235,523 acres in size and was located within the entirety of what is now Menominee County, Wisconsin. Am. Compl. ¶ 15. That same year, Congress enacted the Menominee Indian Termination Act, which terminated the status of the Menominee Tribe and set 1958 as the year the termination would take effect. *Id.* ¶¶ 16–17; *see also* Pub. L. No. 83-397, 68 Stat. 250 (1954). On July 3, 1959, Menominee County became Wisconsin's seventy-second county. Am. Compl. ¶ 18. Menominee Township is coterminous with the County.

Several years after the Termination Act took effect, the Tribe settled on a Termination Plan under which the tribal property was transferred to a corporation called Menominee Enterprises, Inc. *Id.* ¶ 20. Under the Termination Plan, all enrolled members of the Tribe became shareholders of Menominee Enterprises. *Id.* ¶ 21. In 1967, Menominee Enterprises voted to create an economic development zone, and in 1968, Menominee Enterprises contracted with a developer to create the development which came to be called Legend Lake. *Id.* ¶¶ 24–25. The Legend Lake Development consisted of 5,160 acres of land and was platted into 2,741 lots, including 41 "beach club" lots through which all lot owners would have lake access. *Id.* ¶¶ 27–28. About 1,900 of the lots in the Legend Lake development were sold to members of the general public. *Id.* ¶ 29.

Even before Menominee Enterprises had voted to create an economic development zone and contracted with the Legend Lake developer, the Menominee Council of Chiefs had formed a non-profit organization and began a petition requesting restoration of tribal status and repeal of the Menominee Termination Act. *Id.* ¶¶ 22–23. As the political advocacy for tribal restoration grew, Legend Lake lot owners expressed concern that they would be unfairly taxed on their property if the Menominee Reservation was restored and most of the land in the Town and County were placed into trust status and thus removed from the tax rolls. *Id.* ¶ 29. The concern was that Menominee County officials, who would likely be Menominee Indians since tribal members made up the vast majority of voters in the County, would overtax the non-tribal member property owners who would be virtually the only taxpayers in the County. *Id.* ¶¶ 29, 31. At congressional hearings on the Restoration Act, Congress was assured that passage of the Act would not result in unfair or inequitable taxation of the property tax paying landowners in Menominee County. In at least partial reliance on such assurances, Congress passed the Federal Menominee Restoration Act in 1973. *Id.* ¶¶ 31–32.

The Menominee Restoration Act repealed the Termination Act and its prior termination policies. *See* Pub. L. No. 93-197, 87 Stat. 770. The Restoration Act restored federal recognition of the Menominee Tribe and provides that "[t]he Secretary shall accept the real property (excluding real property not located in or adjacent to the territory constituting, on the effective date of this Act, the county of Menominee, Wisconsin) of members of the Menominee Tribe, but only if transferred to him by the Menominee owner or owners." *Id.* at 773. Since the Restoration Act restored the Menominee Tribe's status, the Tribe's stated goal is to acquire all of the lots in Menominee County and to place them in trust. Am. Compl. ¶ 34.

Today, approximately 99% of the land in Menominee County has been transferred to the Secretary and is held in trust by the federal government for the benefit of the Tribe. *See id.* ¶ 37.

Within the remaining 1% of the County land are the lots in the Legend Lake development that were sold to members of the general public. The owners of about 1,800 of those lots make up the membership of the Association, which was created in 1972. *Id.* ¶¶ 1, 40. Houselog, Timmers, Mauthe, and Klingelhoets are four members of the Association who own residences on Legend Lake.

Menominee County and the Town of Menominee are municipal corporations established under and governed by Wisconsin law. *Id.* ¶¶ 9–10. The Menominee Indian School District and the taxation district it controls are organized under and enabled by Wisconsin law. *Id.* ¶ 11. Annually, MISD calculates a property tax levy, which it forwards to the Town for allocation and billing to the owners of taxable property. Land held in trust for the benefit of the Menominee Tribe is not subject to taxation. *Id.* ¶ 35. As a result, property taxes are only levied against about 1% of the land in the County. *Id.* ¶ 38. The majority of the taxable property in the County is within the Legend Lake development. *Id.* ¶ 40. Plaintiffs assert that the yearly assessed values of their homes and property taxes are excessively high.

As an example, Timmers owns property on Legend Lake that serves as his second residence. *Id.* ¶ 7. The assessed value and property taxes for his property for the last ten years are shown below:

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

Id. ¶ 8. From 2023 to 2024, the assessed value of Timmer's house rose 145%, even though there had been no renovations or improvements in the last ten years. *Id.* Timmers was charged property taxes by the Town at a rate of 1.22% in 2024, 2.64% in 2023, and 2.74% in 2022. *Id.* The property tax rates are calculated by dividing the total tax amount by the assessed property value. Mauthe and Klingelhoets were also charged property taxes by the Town at a rate of 2.64% in 2023, which dropped to 1.22% in 2024 after their properties were reassessed. *Id.* ¶¶ 4, 6. Houselog's property tax rate in 2023 was 2.64% and 1.17% in 2024. *Id.* ¶ 3.

Plaintiffs assert that, as of 2024, the current tax rates on property tax–paying parcels in the County are not only the highest in the State of Wisconsin but are some of the highest in the nation. *Id.* ¶ 52. They allege that these property tax rates are comparable to those levied in major metropolitan areas where municipalities provide an array of public services not provided by Menominee County. *Id.* ¶ 12. They assert that 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 there is minimal budget for governmental staff. *Id.* Plaintiffs contend that the reason their rates are so high is because "the entire levy falls upon the shoulders of a small minority in the County which is not exempt from property taxes" and MISD levies significant taxes on them. *Id.*

Plaintiffs note that the State of Wisconsin recognized the property tax issues that the Association complains of as early as the 1990s. *Id.* ¶ 47. In 1998, a Wisconsin Legislative Audit Bureau Report noted that for all taxable property in the County, "94.4 percent of assessed value is in the lakes area and 5.6 percent is elsewhere." *Id.* ¶ 48. The report also observed that tax bills in the 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." *Id.* ¶ 49. It noted that uncertainty about the 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.

Id. ¶ 50. Plaintiffs allege that, over the past 26 years, very little progress has been made regarding the concerns identified in the Wisconsin Legislative Audit Bureau Report and that the situation has become worse. *Id.* ¶ 51.

Plaintiffs contend that the acquisition of taxable land by the Menominee Tribe has continued over the last 26 years and has increased in recent years. *Id.* ¶ 53. Substantial gaming and other revenues have supported the Tribe's additional land purchases, as was predicted by the 1998 Report. *Id.* ¶ 54. Plaintiffs assert that the Menominee Tribe has received and continues to receive federal and state aid on an annual basis. *Id.* ¶ 55. From 2014 through 2023, the Menominee Tribe received nearly $1 billion in income and government aid. *Id.* ¶ 57. In 2023, in particular, the Menominee Tribe's income sources included:

Total Tribe:	$43,290,280
Total Federal:	$71,468,010
Total State:	$6,274,936
Total Local and Other:	$2,974,431
Grand Total:	**$124,007,658**

Id. ¶ 56. Plaintiffs contend that the Menominee Tribe is currently seeking an award of casino rights in Kenosha County which, if approved, will substantially increase its 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 tax–payers. *Id.* ¶ 58.

According to Plaintiffs, Defendants and the Tribe maintain a discriminatory campaign wherein taxation is used to force nontribal residents—like Plaintiffs—to sell their land to the Tribe so that it can be placed into trust. Plaintiffs point to a number of practices that they allege reflect this discriminatory campaign.

First, Plaintiffs cite to a 2006 Special Agreement entered between the Menominee Tribe and the County. *Id.* ¶ 67. The 2006 Agreement was executed by Karen Washinawatok, Tribal Chair, and Randy Reiter, Menominee County Board Chair and an enrolled member of the Menominee Tribe. *Id.* ¶ 68. Under the agreement, each year before March 1, the Tribe is allowed to provide the County with a list of properties that it intends to place into trust. *Id.* ¶ 67. Once the County receives the list of properties, the County takes those properties off the tax base for that year. *Id.* The Menominee Tribe has submitted property lists to the County every year from 2006 through 2023. *Id.* ¶ 69. To date, 120 formerly taxable properties have been taken off the tax base, even though the large majority of the properties have not been placed into trust. *Id.* In addition to the properties removed from the tax base under the 2006 Agreement, Plaintiff alleges that there are 154 properties purchased by Menominee Tribal members that have not been placed in trust and 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. *Id.* ¶¶ 70–71.

Second, less than 1% of the yearly property taxes in Menominee County comes from commercial or industrial property taxes. *Id.* ¶ 44. According to the account coordinator for the County's Assessor, for 2023, while the overall property taxes paid to the County totaled $9,566,399, the commercial property taxes paid to the County only amounted to $84,399, or 0.88% of the County's tax revenue. *Id.* ¶ 45. Plaintiffs assert that, in the rest of the State of Wisconsin,

commercial property taxes typically account for 25 to 33% of a county's tax revenue. *Id.* ¶ 46. They conclude that the County and the Town have avoided creating a commercial tax base as part of an intentional effort to increase the tax burden on the Association and its members in order to force the sale of those properties to the Menominee Tribe. *Id.*

Third, Plaintiffs assert that, in Menominee County, there are at least three non-property tax–paying voters for every property tax–paying voter. *Id.* ¶ 41. As a result, the non-property tax–paying voters can vote their preferred candidates onto the County Board and the MISD School Board. *Id.* ¶ 42. Plaintiffs contend that the elected officials of the County Board, Town Board, and School Board approve property tax increases that fall upon those few property tax–payers, who are mostly nontribal members, without any concern for financial consequences (because they do not pay property taxes themselves) or political consequences (because their political decisions favor the goals of the majority of the voters). *Id.* They assert that there is a prevalent animus against the voters who are property tax–payers. *Id.* ¶ 43.

Plaintiffs point to recent decisions to build a new $52 million high school and "give away" other school property to the Tribe. In 2022, MISD notified taxpayers in a flier mailed to residents of Menominee County of an impending $35 million school referendum to build a new 110,000 square foot high school for a student population of less than 300 students (as of 2022). *Id.* ¶ 72. With interest and fees associated with the loan, the total cost of the project is $52 million. *Id.* Under the plan, the existing 100,000 square foot high school would be repurposed for use as the middle school. *Id.* ¶ 73.

Plaintiffs allege that Menominee County taxpayers, including many members of the Association, asked questions about the purpose and basis for the referendum prior to its passage but did not receive any answers. *Id.* ¶ 74. They assert that it was eventually uncovered that no real needs analysis had been performed to justify the high-cost referendum. Taxpayers also

discovered that, as of March 23, 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. *Id.* MISD then hired a consulting firm to analyze the maximum amount of money MISD could levy. The consulting firm's analysis revealed that, under law, the maximum amount that MISD could levy was approximately $39,500,000, which was based upon a levy of 10% of the total equalized value at the time, or $395,000,000. *Id.*

Plaintiffs contend that MISD also increased its operating budget by $1,200,000 from 2022 to 2023, even though previous annual increases in its budget had been around $100,000 per year. *Id.* They allege that MISD never articulated any need or explanation for the $1,200,000 budgetary increase and that MISD and its schools are not underfunded. *Id.* ¶¶ 75–76. To the contrary, as documented by the Wisconsin Department of Public Instruction, 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. *Id.* ¶ 76. Plaintiffs believe that MISD simply increased its operating budget to the maximum amount allowable under applicable law as calculated by its consultants. *Id.* ¶ 75. They maintain that 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. *Id.* ¶ 78.

In addition, on May 7, 2024, MISD entered into an Offer to Exchange with the Menominee Tribe. *Id.* ¶ 86. The terms of the Offer to Exchange required that the Tribe pay only $1.00 for full ownership of the existing middle school building and property in Neopit, which is owned by MISD. *Id.* ¶ 87. The middle school building and property is currently valued at $1.6 million. *Id.* ¶ 88. The Offer to Exchange also provided that the Menominee Tribe will lease, as a landlord to MISD, ten acres of land (of which only six acres are buildable), for the development of three

baseball diamonds. *Id.* ¶ 89. Plaintiffs believe that MISD will enter into a separate lease agreement, under which it will be obligated to pay monthly lease payments to the Tribe and spend large sums to build the athletic fields. *Id.* No lease terms have been made public by MISD or the Tribe. Plaintiffs assert that, 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. *Id.* ¶ 83. They contend that this transaction was structured in a way that it benefited the Tribe and increased the property tax burden on Plaintiffs and the Association's members. *Id.* ¶ 89.

Fourth, in 2024, the Town increased the assessed values of taxpaying parcels by an average of 114% on short notice. On Thursday, August 22, 2024, the taxpaying property owners received a letter from the Town's assessor, Accurate Appraisal, LLC, indicating that their properties had been revalued. *Id.* ¶ 104. As an example, the property of Mark and Amy Schoen located on Thunderbird Road on Legend Lake was revalued from $313,800 to $693,200, which is a $379,400 change equal to a 120.9% increase. *Id.* ¶ 105. The letter indicated that if landowners disagreed with the revaluation, they were required to attend an open book session four days later, on Monday, August 26, 2024. *Id.* ¶ 106. The landowners had extremely limited time to prepare an objection and many received no notice if, for example, they were away at the time the letter was sent. *Id.* ¶ 107.

Plaintiffs contend that the revaluation did not immediately increase the net amount of taxes that each taxpayer paid because the mill rate was lowered. *Id.* ¶ 108. They allege that 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. Plaintiffs assert that this will allow 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. *Id.* ¶ 108.

Finally, throughout the Legend Lake community, houses that have been placed into trust or are slated for transfer into trust are often kept vacant, are often poorly maintained, and are often allowed to become dilapidated. *Id.* ¶ 109. Plaintiffs assert that the level of 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. *Id.* ¶ 111. They contend that 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 eventually cause the values of their properties to decline to zero if left unchecked. *Id.*

Based on these allegations, Plaintiffs assert five causes of action against Defendants. First, Plaintiffs assert that Defendants deprived them of their Fourteenth Amendment right to equal protection by causing Plaintiffs to be treated differently than other similarly situated landowners in Menominee County. *Id.* ¶ 114. Alternatively, Plaintiffs claim that Defendants intentionally treated Plaintiffs differently by taxing them differently and excessively. *Id.* ¶ 115. Second, Plaintiffs assert that Defendants deprived them of their Fourteenth Amendment right to substantive due process because Defendants' course of conduct has resulted in unfair and oppressive property taxes being charged to Plaintiffs, the Association, and its members and, if left unchecked, will allow the de facto confiscation of Plaintiffs' homes. *Id.* ¶ 120. Third, Plaintiffs allege that Defendants violated the rule of uniformity as set forth in Article VIII, Section 1 of the Wisconsin Constitution, which mandates uniformity of taxation. *Id.* ¶¶ 124–25. Fourth, Plaintiffs assert that Defendants are inversely condemning Plaintiffs' and the Association's property in violation of the Fifth Amendment of the United States Constitution and Article I, Section 13 of the Wisconsin Constitution. *Id.* ¶ 128. Fifth, Plaintiffs claim that Defendants deprived Plaintiffs and the

Association of their rights under the "public purpose" clause of the Fifth Amendment and Article I, Section 13 of the Wisconsin Constitution by taking Plaintiffs' and the Association's members' entire property for the benefit of the Menominee Tribe. *Id.* ¶ 131. Plaintiffs request that the court grant the following 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.

Id. at 29.

ANALYSIS

Defendants argue that this court does not have subject matter jurisdiction over Plaintiffs' federal law claims. The court lacks subject matter jurisdiction, Defendants contend, because Plaintiffs lack Article III standing and their federal claims are barred by the Tax Injunction Act, 28 U.S.C. § 1341, as well as established principles of comity. Absent subject matter jurisdiction over Plaintiffs' federal claims, Defendants contend that the court should decline to exercise jurisdiction over Plaintiffs' remaining state-law claims under 28 U.S.C. § 1367.

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the jurisdiction of a federal court over the subject matter of an action. Fed. R. Civ. P. 12(b)(1). "[A] plaintiff faced with a Rule 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).

A. Article III Standing

Article III of the United States Constitution limits judicial power to "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. If a dispute before the court is not a proper case or controversy under Article III, "the courts have no business in deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). One "landmark" of the case-or-controversy requirement is the doctrine of standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). "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) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101–02 (1998)). The doctrine of standing is not an esoteric doctrine that courts use to avoid difficult decisions; it "serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). To establish standing, the litigant must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citations omitted). "The party invoking federal jurisdiction bears the burden of establishing these elements," and "each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Lujan*, 504 U.S. at 561 (citations omitted). Defendants argue that Plaintiffs have failed to show an injury in fact and that their claims are not redressable by this court.

1. Injury in Fact

"To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). "For an injury to be particularized, it must affect

the plaintiff in a personal and individual way." *Id.* (internal quotation marks omitted). In other words, the plaintiff must suffer some actual or threatened injury. *Id.* Moreover, the injury must be concrete; it must actually exist and is not simply abstract or speculative. *Id.* at 340.

Plaintiffs assert that this requirement is easily met. They contend that the Association and its individual members are facing high taxes on their own property which they are required to personally pay. Indeed, according to the amended complaint, notwithstanding the fact that Plaintiffs receive little in return by way of municipal services or improvements, "[a]s of 2023, Plaintiff and [the Association's] members were paying some of the highest property taxes in the nation." Am. Compl. ¶¶ 12, 100. Plaintiffs allege that the practices they seek to challenge, if allowed to continue, "will ultimately drive property taxes so high as to make [the Association] members' ownership of property tax paying parcels prohibitively expensive and unaffordable thereby forcing their sale." *Id.* ¶ 58. The actions of the defendants, Plaintiffs allege, represent a concerted effort to take the property of the plaintiffs and other members of the Association by forcing property taxes to become so high that the owners of taxable land will be coerced into selling their land to the Menominee Tribe, which will then have it placed in trust, thereby accomplishing the Tribe's goal. From these allegations, it would appear that Plaintiffs have alleged a concrete and particularized injury in fact, i.e., the diminution or loss of their property, both personal and real.

Defendants contend, however, that this issue is controlled by the Supreme Court's decision in *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006) In that case, a group of taxpayers challenged an agreement under which DaimlerChrysler was offered local and state tax benefits in return for the expansion of its jeep manufacturing operation in Toledo, Ohio. The promised benefits included a credit against the state franchise tax and a partial waiver of local property taxes. *Id.* at 338–39. The plaintiff taxpayers sued, "alleging that their local and state tax burdens were

increased by the tax breaks for DaimlerChrysler, tax breaks that they asserted violated the Commerce Clause." *Id.* at 338. The Court concluded it had no need to decide whether the taxation arrangement violated the Commerce Clause because the plaintiff taxpayers did not have "standing to press their complaint in federal court." *Id.*

In so ruling, the Court relied in part upon *Frothingham v. Mellon*, 262 U.S. 447 (1923), in which a federal taxpayer sued the Secretary of the Treasury to enjoin the expenditure of federal funds for a program that allegedly exceeded Congress' constitutional authority to enact. The taxpayer argued that she would suffer injury if the funds were expended in the form of higher taxes and, thus, a taking of her property without due process of law. *Id.* at 486. The Court rejected this argument, noting that the interest of a federal taxpayer in the moneys of the treasury "is shared with millions of others, is comparatively minute and indeterminable, and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity." *Id.* at 487. In *DaimlerChrysler*, the Court held that *Frothingham*'s rationale for rejecting taxpayer standing "applies with undiminished force to state taxpayers." 547 U.S. at 345. Defendants contend that the same rationale applies here and, thus, Plaintiffs' claims meet the same fate as those of the taxpayers in *DaimlerChrysler*.

Plaintiffs note, however, that neither *Frothingham*, nor *DaimlerChrysler*, decided whether payers of real estate taxes imposed by a municipal or county government could have standing to sue in federal court. The plaintiff in *Frothingham* was a federal taxpayer challenging federal spending, and the plaintiff taxpayers in *DaimlerChrysler* challenged a franchise tax credit granted by the state. Although *DaimlerChrysler* also involved a municipal property tax waiver, the plaintiffs failed to raise any issue regarding their standing as municipal taxpayers in the Supreme Court. 547 U.S. at 349 ("Plaintiffs here challenged the municipal property tax exemption as

municipal taxpayers. That challenge was rejected by the Court of Appeals on the merits, and no issue regarding plaintiffs' standing to bring it has been raised."). Thus, *DaimlerChrysler* did not reject municipal taxpayer standing; to the contrary, the Court observed that "the *Frothingham* Court noted with approval the standing of municipal residents to enjoin the 'illegal use of the moneys of a municipal corporation,' relying on 'the peculiar relation of the corporate taxpayer to the corporation' to distinguish such a case from the general bar on taxpayer suits." *Id.* (quoting *Frothingham*, 262 U.S., at 486–87); *see also ASARCO, Inc. v. Kadish*, 490 U.S. 605, 613–14 (1989) ("We have indicated that the same conclusion may not hold for municipal taxpayers, if it has been shown that the peculiar relation of the corporate taxpayer to the [municipal] corporation makes the taxpayer's interest in the application of municipal revenues direct and immediate." (internal quotation marks omitted)). The Seventh Circuit has characterized municipal taxpayer standing as "a bit of a relic" but has also noted that the rule "remains undisturbed," though "increasingly anomalous." *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 733 (7th Cir. 2020). Because the Supreme Court has not overruled its cases recognizing standing for municipal taxpayers, however, lower courts must continue to apply it. *Id.* at 734.

Municipal taxpayer standing has two requirements: (1) the plaintiff must actually be a taxpayer of the municipality he wishes to sue; and (2) the plaintiff must establish that the municipality has spent tax revenues on the allegedly illegal action. *Id.* The individual Plaintiffs and the Association's members clearly meet the first requirement. They are taxpayers of the County, the Town, and the School District. The second requirement is intended to ensure that "the taxpayer's action . . . is a good-faith pocketbook action." *Id.* (quoting *Doremus v. Bd. of Educ.*, 342 U.S. 429, 434 (1952)). "The plaintiff must be able to show that she has the requisite financial interest that is, or is threatened to be, injured by the municipality's illegal conduct." *Id.* (internal quotation marks omitted). This requirement is also met.

Plaintiffs allege that Defendants have acted unconstitutionally and with purpose and intent to increase their property taxes to a level that will force them to sell their property to the Menominee Tribe. Am. Compl. ¶ 103. Plaintiffs further allege that MISD has transferred valuable property to the Tribe for substantially less than fair market value, entered into contracts with the Tribe that are not in the public interest or the interest of MISD, and removed from the tax rolls property owned by the Tribe or its agents without authorization.

This is enough to show an injury in fact, at least at the pleading stage. But to establish standing under Article III, Plaintiffs must also show that their injury is likely to be redressed by a favorable decision by the court. It is to that requirement that the court now turns.

2. Redressability

To show that a claim is redressable, a plaintiff must demonstrate that there is "a 'substantial likelihood' that the requested relief will remedy the alleged injury in fact." *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 771 (2000) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 45 (1976)). "Redressability turns on the 'connection between the alleged injury and the judicial relief requested.'" *Pavlock v. Holcomb*, 35 F.4th 581, 588 (7th Cir. 2022) (quoting *Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984)). "Redressability requires that the court be able to afford relief through the exercise of its power, not through the persuasive or even awe-inspiring effect of the opinion explaining the exercise of its power." *Haaland v. Brackeen*, 599 U.S. 255, 294 (2023) (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 825 (1992) (Scalia, J., concurring in part and concurring in judgment)). "To establish Article III redressability, the plaintiffs must show that the relief they seek is both (1) substantially likely to redress their injuries; and (2) within the district court's power to award." *Juliana v. United States*, 947 F.3d 1159, 1170 (9th Cir. 2020).

In this case, Plaintiffs assert that Defendants' actions which, if allowed to continue, will eventually render their properties valueless. Am. Compl. ¶¶ 118, 121, 126, 129, 132. The amended complaint requests that the court enter judgment granting them two forms of relief: (1) declaring "that the Defendants are engaging in an illegal or unconstitutional course of conduct in respect to the Plaintiffs" (declaratory relief); and (2) enjoining "any further unconstitutional actions of the type pled in this Complaint" (injunctive relief). *Id.* at 29. Neither form of relief, as stated, meets the redressability requirement for Article III standing.

For starters, Plaintiffs' request for declaratory relief fails to redress their alleged injury. Although Plaintiffs' alleged injury is diminution in property value, their request for declaratory relief merely asks the court to pronounce that Defendants are violating the Constitution. Such declaratory relief would not repair Plaintiffs' property values, however. What Plaintiffs seek through their request for declaratory relief is a "vindication of the rule of law—the 'undifferentiated public interest' in faithful" adherence to constitutional imperatives. *Steel Co.*, 523 U.S. at 106 (quoting *Lujan*, 504 U.S. at 577). But it is not enough that a plaintiff "will be gratified by seeing [a defendant] punished for its infractions and that the punishment will deter the risk of future harm." *Id.* at 106–07. "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court." *Id.* at 107. In short, Plaintiffs have not plausibly alleged that their injuries are redressable by the declaratory relief they seek.

Plaintiffs' request for injunctive relief suffers from a different problem. The injunctive relief Plaintiffs seek is quite broad in that it simply asks that the court "[e]njoin any further unconstitutional actions of the type pled in this Complaint." Am. Compl. at 29. Granting such an injunction would violate Rule 65(d)(1)(C), which requires that every order granting an injunction "describe in reasonable detail . . . the act or acts restrained." Fed. R. Civ. P. 65(d)(1)(C). "The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive

orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). "Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Id.* Moreover, entry of such an order would in effect place the court in the position of the elected officers of Defendants: "When 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." *Wisconsin Right to Life, Inc. v. Paradise*, 138 F.3d 1183, 1187 (7th Cir. 1998).

Citing *Hutto v. Finney*, 437 U.S. 678 (1978), and *Brown v. Board of Education*, 349 U.S. 294 (1955), Plaintiffs argue that federal courts have exercised broad equitable power to bring ongoing constitutional violations to a halt. Dkt. No. 34 at 19–20. But the injunctive relief Plaintiffs seek is far broader and less defined than the injunctive relief upheld in *Huto* or *Brown*. *Huto* dealt with the conditions under which inmates in a state prison were being held, conditions which were found to constitute cruel and unusual punishment in violation of the Eighth Amendment. 437 U.S. at 681–83. The district court eventually entered a remedial order "that placed limits on the number of men that could be confined in one cell, required that each have a bunk, discontinued the 'grue' diet, and set 30 days as the maximum isolation sentence." *Id.* at 684. This is far more specific than the injunctive relief Plaintiffs request here and falls well within the kind of relief courts are empowered to provide. And in *Brown*, the Court remanded to the lower courts out of which the case arose to enter appropriate orders effectuating the Court's decision holding racial segregation of public schools unconstitutional. An order to the end racial segregation in a local school district is sufficiently detailed for any reasonable person to understand. Here, by contrast, Plaintiffs ask

the court to "[e]njoin any further unconstitutional actions of the type pled in this Complaint." Am. Compl. at 29. Left unsaid is what those actions are that Plaintiffs wish the court to enjoin.

But the amended complaint also requests "such other and further injunctive relief as the Court deems just and proper under the circumstances." *Id.* Plaintiffs offer greater specificity as to what such relief might look like in their brief in opposition to Defendants' motion to dismiss. There they suggest that, depending on what is produced in discovery, MISD could be ordered to "create and implement a plan that will ensure that MISD funding will be primarily obtained from sources other than the taxation of the taxable parcels within the County and that no parcel of taxable property within Menominee County and the Town of Menominee shall be charged an amount of additional tax by MISD which deviates by more than 10% above the average additional tax charged per thousand dollars of value in [neighboring] Shawano County . . . ." Dkt. No. 34 at 21. Plaintiffs also argue that the court could overturn the 2006 agreement between the Menominee Indian Tribe and the County under which some 270 properties owned by the Tribe or agents of the Tribe have been removed from the tax roll even though they have not been transferred to the United States in trust for the Tribe. They argue that the court could order Defendants "to implement immediate measures to ensure enforcement of penalties on non-Trust properties that have stopped paying taxes." *Id.* Finally, Plaintiffs suggest that court could order Defendants "to create and implement a plan to document and ensure that no financial decisions are based on the unconstitutional motivation of increasing the tax burden on the Plaintiffs, to provide transparency, and to document sound cost-benefit analyses." *Id.* Under Plaintiffs' proposal, the court would "retain jurisdiction of this matter to ensure adequate compliance with [the court's] order." *Id.*

In effect, some of the relief Plaintiffs suggest would require the court to oversee the funding and operation of the County, Town, and MISD and substitute its judgment for that of the elected officials charged with implementing the policies favored by those who placed them in office. The

Wisconsin Constitution provides that "the [Wisconsin] legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods." Art. VIII, § 1. The State's Constitution also empowers municipalities, including school districts, to determine their local affairs and government, debt limit, and taxes, subject to the limitations therein. Art. XI, § 3. Plaintiffs' suggestion that the court can order the County, Town, and MISD to set a tax rate for Plaintiffs' property or "to create and implement a plan to document and ensure that no financial decisions are based on the unconstitutional motivation of increasing the tax burden on the Plaintiffs, to provide transparency, and to document sound cost-benefit analyses" exceed this court's authority. Dkt. No. 34 at 21. The Ninth Circuit's decision in *Juliana v. United States* is instructive on this point. 947 F.3d at 1169–73.

In *Juliana*, twenty-one young citizens, an environmental organization, and a "representative of future generations" brought an action seeking declaratory and injunctive relief against the United States, the President, and various federal officials, alleging that the defendants continued to permit, authorize, and subsidize fossil fuel extraction, development, consumption, and exportation, thereby allowing carbon dioxide emissions to escalate and cause harmful climate change. The plaintiffs asserted claims for violations of substantive due process, equal protection, the Ninth Amendment, and the public trust doctrine. *Id.* at 1164. After denying the government's motions to dismiss and for summary judgment on standing grounds, the district court certified its orders for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). *Id.* at 1165–66. On appeal, the Ninth Circuit reluctantly concluded that "such relief is beyond our constitutional power" and that the plaintiffs' case for redress "must be presented to the political branches of government." *Id.* at 1165.

In so ruling, the court noted that "[t]he crux of the plaintiffs' requested remedy is an injunction requiring the government not only to cease permitting, authorizing, and subsidizing

fossil fuel use, but also to prepare a plan subject to judicial approval to draw down harmful emissions." *Id.* at 1169. The plaintiffs thus seek, the court explained, "not only to enjoin the Executive from exercising discretionary authority expressly granted by Congress, . . . but also to enjoin Congress from exercising power expressly granted by the Constitution over public lands . . . ." *Id.* (citations omitted). Even assuming that the relief plaintiffs requested would reduce the damage to the planet allegedly caused by fossil fuel emissions, the court concluded, the plaintiffs failed to establish that the specific relief they sought was "within the power of an Article III court." *Id.* at 1171.

Similarly, in this case, Plaintiffs seek not only to enjoin Defendants from carrying out their constitutional duties as elected members of their respective governing bodies, but to have this court create and implement a plan that would assure Plaintiffs that the taxes assessed on their property are fair and reasonable by both setting the rate and controlling the expenditures of the governmental entity imposing them. These are powers the court does not have. "A federal court's function is to protect individuals and groups against intentional discriminatory and disparate treatment, not to oversee the operations of local governments and agencies." *Pappas v. Town of Enfield*, 18 F. Supp. 3d 164, 178 (D. Conn. 2014). "When 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." *Wisconsin Right to Life*, 138 F.3d at 1187.

The same considerations may not apply to Plaintiffs' request that the court "overturn the 2006 agreement between the Menominee Indian Tribe and the County under which some 270 properties owned by the Tribe or agents of the Tribe have been removed from the tax roll even though they have not been transferred to the United States in trust for the Tribe." Dkt. No. 34 at 22. Granting this narrow relief would not require the court to take over the financing and

operations of the School District. In *Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County*, the Court held that assessments on real property by a West Virginia county violated the equal protection clause where recently sold property was assessed at 50% of the purchase price, which was roughly 8 to 35 times more than comparable neighboring property which had not been recently sold and those discrepancies had continued for more than ten years. 488 U.S. 336, 341–43 (1989). If the kind of discrepancy shown in that case violates the Equal Protection Clause of the Fourteenth Amendment, it is hard to see how removing parcels owned by the Tribe or its agents entirely from the tax rolls would not. *See also Morton Salt Co. v. City of South Hutchinson*, 159 F.2d 897, 902 (10th Cir. 1947) ("The allegation in the complaint to the effect that the taxpayer will be required to pay 46% of the tax burden for a city improvement which will not be available to it, and from which it can receive no benefit, certainly poses a serious constitutional question."). And while it is not clear that including those parcels on Defendants' tax rolls would provide much, if any, redress to Plaintiffs, at least at this point the court is unable to say it would not. Accordingly, at least as to this potential form of relief, the court is unable to conclude from the amended complaint that Plaintiffs lack standing.

B. Tax Injunction Act and Comity

Defendants further contend, however, that the Tax Injunction Act (TIA), 28 U.S.C. § 1341, and principles of comity bar the court from granting even this limited relief. The TIA states: "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." Ordering the inclusion of other parcels on the tax rolls would "not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law." 28 U.S.C. § 1341. Thus, it is hard to see how allowing the case to go forward for this limited relief would violate the Act. But considerations underlying the doctrine of comity reach more broadly than the Tax Injunction Act.

Levin v. Commerce Energy, Inc., 560 U.S. 413, 424 (2010) (noting that "our precedents affirm that the comity doctrine is more embracive than the TIA").

The comity doctrine "reflects the reluctance of federal courts to 'interfere by injunction with [states'] fiscal operations' and the concomitant desire to show 'scrupulous regard for the rightful independence of state governments.'" *Perry v. Coles County, Illinois*, 906 F.3d 583, 587–88 (7th Cir. 2018) (quoting *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932)). More specifically, "the comity doctrine bars taxpayers from asserting § 1983 claims against 'the validity of state tax systems' via federal lawsuits." *Id.* at 588 (quoting *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 116 (1981)); *see also Capra v. Cook Cnty. Bd. of Review*, 733 F.3d 705, 713 (7th Cir. 2013) ("*Fair Assessment* has been applied consistently to bar plaintiffs from bringing section 1983 suits challenging the validity or imposition of state and local taxes in federal courts unless the available state remedies for those injuries are not adequate, plain, and complete.").

One reason that federal district courts are required to abstain from entertaining lawsuits challenging state or local taxing schemes is that, upon finding unlawful discrimination, a federal district court would have to determine the remedy. Discriminatory tax treatment can be remedied either by lowering the tax paid by the complaining party or increasing the tax on others. *Levin*, 560 U.S. at 426–27. The manner in which the violation is cured is a question for the state legislature. *See Stanton v. Stanton*, 421 U.S. 7, 17–18 (1975) (how State eliminates unconstitutional discrimination "plainly is an issue of state law").

For this reason, "with the State's legislative prerogative firmly in mind, [the Supreme] Court, upon finding impermissible discrimination in a State's allocation of benefits or burdens, generally remands the case, leaving the remedial choice in the hands of state authorities." *Levin*, 560 U.S. at 427. The Supreme Court's remand "leaves the interim solution in state-court hands, subject to subsequent definitive disposition by the State's legislature." *Id.* at 428. But federal

district courts have no authority to remand a case to the state or local municipality. As *Levin* explained, "[i]f lower federal courts were to give audience to the merits of suits alleging uneven state tax burdens, however, recourse to state court for the interim remedial determination would be unavailable. That is so because federal tribunals lack authority to remand to the state court system an action initiated in federal court." *Id.* "These limitations on the remedial competence of lower federal courts," *Levin* concluded, "counsel that they refrain from taking up cases of this genre, so long as state courts are equipped fairly to adjudicate them." *Id.*

Thus, under both the TIA and the principles of comity, the crucial question is whether there is "a plain, speedy and efficient remedy" available in the courts of State of Wisconsin. 28 U.S.C. § 1341. Wisconsin clearly provides such a remedy. Section 74.35(2)(a) of the Wisconsin Statutes provides: "A person aggrieved by the levy and collection of an unlawful tax assessed against his or her property may file a claim to recover the unlawful tax against the taxation district which collected the tax." Subsection (3)(d) states: "If the taxation district disallows the claim, the claimant may commence an action in circuit court to recover the amount of the claim not allowed." Wis. Stat. 74.35(3)(d); *see also Saint John's Communities, Inc. v. City of Milwaukee*, 2022 WI 69, 404 Wis. 2d 605, 982 N.W.2d 78 (affirming remedy but holding that taxpayer must pay the challenged tax prior to filing claim under Wis. Stat. § 74.35); *Timber Ridge Associates by Lerner v. City of Hartford*, 578 F. Supp. 221, 224 (E.D. Wis. 1984) ("The only issue which remains is whether Wisconsin makes available to Timber Ridge a 'plain, speedy and efficient remedy' under its laws. I believe that Wis. Stat., § 74.73 provides the remedy which § 1341 requires."). A similar state-law remedy exists for the intentional omission of Tribally owned, non-trust property from the County tax rolls. Wis. Stat. § 70.44 Assessment; property omitted; *see also Semple v. Langlade Cnty.*, 75 Wis. 354, 44 N.W. 749 (1890) (affirming trial court's holding that assessment, and sale for nonpayment of taxes thereunder, can be set aside at the instance of one who has been compelled

to pay more than his share of the taxes by the assessor's intentional inequality in assessments, and arbitrary omissions of taxable property).

Given these readily available state law remedies, the court is satisfied that the well-established principles of comity preclude this court's exercise of jurisdiction over the federal claims asserted by Plaintiffs in this action. State courts have the same obligation to decide claims arising under the United States Constitution as federal courts. *Levin*, 560 U.S. at 421. "If the [state] scheme is indeed unconstitutional, surely the [state] courts are better positioned to determine—unless and until the [state] Legislature weighs in—how to comply with the mandate of equal treatment." *Id.* at 429.

If the allegations of the amended complaint are true, the unfairness to the property tax–paying citizens of the Town, County, and School District is apparent. Yet Plaintiffs' concerns cannot be remedied by a federal lawsuit. A court can only act within its authority. To grant the relief Plaintiffs request is for the most part beyond the power conferred upon the federal judiciary. *See Bowles v. Russell*, 551 U.S. 205, 212 (2007) ("Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider."). To the extent it is not, principles of federal/state comity counsel against exercising jurisdiction over Plaintiffs' federal claims. That is not to say that Plaintiffs are entirely without recourse. As noted above, relief may be available in state court. Another possibility is to petition the legislature. Indeed, anyone who believes that a law is unfair must go to the legislature itself to change that law. Perhaps there are other possibilities. But the answer does not lie with this court. Because the injunctive relief Plaintiffs seek from this court is, for the most part, beyond the court's authority to grant and, in any event, is precluded by established principles of comity, Plaintiffs federal claims must be dismissed.

C. State Law Claims

What remains are Plaintiffs' state law claims. "A district court's decision whether to exercise [supplemental] jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009); *see* 28 U.S.C. § 1367(c)(3). The Seventh Circuit has described a "sensible presumption that if the federal claims drop out *before trial*, the district court should relinquish jurisdiction over the state-law claims." *Williams Elecs. Games, Inc. v. Garrity*, 479 F.3d 904, 907 (7th Cir. 2007); *see also Groce v. Eli Lilly & Co.*, 193 F.3d 496, 502 (7th Cir. 1999) (noting that the rule is dismissal unless state claims are frivolous or a "no brainer"). Nothing in this case suggests that the presumption should be ignored. Therefore, Plaintiffs' state law claims will be dismissed without prejudice so that they may be pursued in a state forum.

CONCLUSION

For these reasons, Defendants' motions to dismiss the amended complaint (Dkt. Nos. 26 & 28) are **GRANTED** with respect to the federal claims, and such claims are dismissed. Plaintiffs' state law claims are dismissed without prejudice. The Clerk is directed to enter judgment accordingly.

SO ORDERED at Green Bay, Wisconsin this 26th day of November, 2025.

William C. Griesbach
United States District Judge

United States District Court

EASTERN DISTRICT OF WISCONSIN

LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC., et al.,

Plaintiffs,

v.

JUDGMENT IN A CIVIL CASE
Case No. 24-C-1369

MENOMINEE COUNTY, et al.,

Defendants.

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict

☒ **Decision by Court.** This action came before the Court for consideration.

IT IS HEREBY ORDERED AND ADJUDGED that the plaintiff takes nothing, and the case is dismissed.

Dated: November 26, 2025

LINDA M. KLEMM
CLERK OF COURT

s/ Jennifer Mariucci
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

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

Plaintiffs,

v.

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

Case No. 24-cv-1369

Defendants.

NOTICE OF APPEAL

Notice is hereby given that all plaintiffs in the above named case, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the Decision and Order Granting Defendants' Motions to Dismiss dated November 26th, 2025. Judgment in favor of all defendants, by a separate document dated November 26th, 2025, was entered in this action on November 26th, 2025.

Dated at Madison, Wisconsin, this December 16th, 2025.

__/s/Erik S. Olsen_____
Erik S. Olsen
SBN 1056276
erik@eminentdomainservices.com
Eminent Domain Services, LLC
6515 Grand Teton Plaza, Ste 241
Madison, WI 53719
(608) 535-6109

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, being duly sworn on oath depose and state that on this December 16th, 2025, I caused a copy of the foregoing document to be served on all attorneys of record via the ECF System of the Eastern District of Wisconsin.

__/s/Erik S. Olsen_____
Erik S. Olsen
SBN 1056276
erik@eminentdomainservices.com
Eminent Domain Services, LLC
6515 Grand Teton Plaza, Ste 241
Madison, WI 53719
(608) 535-6109