Honorable Tana Lin

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Frank's Landing Indian Community, et al.,

*Plaintiff*s,

vs.

Linda Myhre Enlow, in her official capacity as clerk of the Superior Court for Thurston County,

Defendant.

Case No. 3:25-cv-05929

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

NOTED FOR HEARING: Friday, November 21, 2025

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TABLE OF AUTHORITIES

Case Laws

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Statutes

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Plaintiffs respectfully move for a preliminary injunction pursuant to Fed. R. Civ. P. 65, enjoining defendant Linda Myhre Enlow, in her official capacity as clerk of the Superior Court for Thurston County, from performing any ministerial acts that facilitate state court proceedings in Wa He Lut Indian School v. Anza Smith et al., No. 24-2-02515-34, pending final resolution of this action. This relief is necessary to prevent irreparable harm to plaintiffs' federally protected rights of self-governance, treaty rights, and educational autonomy.

I. INTRODUCTION

Plaintiffs are the Frank's Landing Indian Community, a self-governing dependent Indian community, and its community council and members. They seek to enjoin the Thurston County Clerk from facilitating state court proceedings that unlawfully assert jurisdiction over property and governance matters within Indian country, in violation of federal law and the Supremacy Clause. Federal law strictly limits state authority in Indian country and preempts any state action that interferes with federally protected tribal rights of self-government or use and possession of restricted lands. See *McClanahan v. Ariz. State Tax Comm'n,* 411 U.S. 164, 168–69 (1973) (holding that "state laws generally do not apply to tribal Indians on an Indian reservation" absent clear congressional authorization); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980) (state jurisdiction is preempted where it "interferes or is incompatible with federal and tribal interests reflected in federal law"); *Washington State Dep't of Licensing v. Cougar Den, Inc*., 586 U.S. 347, 360, 363 (2019) (treaties and statutes protecting tribal rights must be construed as tribes would have understood them and preempt conflicting state law). See also *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334–35 (1983) (state regulation is

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preempted when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in Indian affairs).

II. LEGAL STANDARD

To obtain a preliminary injunction in the Western District of Washington, a plaintiff must demonstrate (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in the plaintiff's favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 24 (2008). The Ninth Circuit applies a sliding scale approach under which a stronger showing on one element may offset a weaker showing on another, provided all four *Winter* factors are satisfied. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131, 1134–35 (9th Cir. 2011).

When the government is a party, the last two Winter factors (the balance of equities and the public interest) are considered together. *Drakes Bay Oyster Co. v. Jewell,* 747 F.3d 1073, 1092 (9th Cir. 2014).

III. ARGUMENT

A. Plaintiffs Are Likely to Succeed on the Merits

Although Plaintiffs are likely to succeed on the merits, a preliminary injunction is also warranted under the Ninth Circuit's sliding scale approach because Plaintiffs' claims raise at least "serious questions going to the merits," and the balance of hardships tips sharply in Plaintiffs' favor. See *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–34 (9th Cir. 2011). Plaintiffs present weighty federal questions concerning the preemption of state court jurisdiction

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over Indian country, rights protected by federal statute and treaty, and the exclusive federal and tribal authority to determine essential property, governance, and cultural interests.

These questions are substantiated throughout the Complaint (Dkt. No. 1 ("Compl.")), for example: by detailed facts establishing federal set-aside and superintendence of the land (See Compl. ¶¶ 2, 3, 25, 28, 29, 30, 32, Dkt. No. 1) invocation of express statutory bars to state adjudication (Compl. ¶¶5, 10, 53, 72, Dkt. No. 1), and demonstration of the unique harms and deprivation of federal rights that would result from continued state proceedings (Compl. ¶¶6, 11-13, 21-25, 45, 74-76, Dkt. No. 1). Such substantial federal and statutory issues incontrovertibly present serious questions for the Court and are not insubstantial or frivolous.

Furthermore, the Compl. (Dkt. No. 1) demonstrates that the balance of hardships tips sharply in Plaintiffs' favor: without an injunction, Plaintiffs will suffer ongoing irreparable harm to self-governance, treaty rights, cultural practices, and educational autonomy, while the Defendant, a state court clerk, faces no legally cognizable harm from being enjoined from unlawful ministerial acts (see, e.g., Compl. ¶¶5-6, 24-26, 45, 62-63, 76-77, Dkt. No. 1). Under Ninth Circuit precedent, this is precisely the kind of showing that justifies preliminary injunctive relief even where the merits are the subject of "serious questions." See *Cottrell*, 632 F.3d at 1134.

The Plaintiffs are likely to succeed on the merits of this case because federal law preempts state court jurisdiction over property rights and self-governance within Indian country. 28 U.S.C. § 1360(b); 18 U.S.C. § 1162(b); 25 U.S.C. § 1322(b). The Wa He Lut Indian School lands are federally set aside and under federal superintendence, satisfying the test for Indian country under *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 526-27 (1998). Congress expressly provided in 1980 that:

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"On and after the effective date of this Act, the following tract of land shall be held by the Secretary of the Interior for the Wa-He-Lute Indian School for its use as an Indian school and community center for educational or cultural purposes... Title to the land described in subsection (a) shall remain in the United States under the administration of the Secretary of the Interior who shall hold the above-described tract of land for the Wa-He-Lute Indian School so long as it is used for any of the abovementioned purposes." Pub. L. No. 96-277, § 5(a)–(b), 94 Stat. 544 (1980). See **Exhibit A**, Declaration of Sarai Cook ("Cook Decl.")

This Congressional mandate is further confirmed by the Department of the Interior, which wrote to Bill Frank, Jr:

"We agree to purchase private land in the vicinity of Frank's Landing which will be conveyed in the same restricted trust status as presently adheres to Frank's Landing under the Medicine Creek Treaty of 1854... While the original 205 acres encompassed the major chum salmon spawning grounds, the 6 acres of Frank's Landing on the lower river provided good access to lower river and Puget Sound fishing sites. Continued access to these sites is assured under this offer by leaving the title and status of Frank's Landing as it is now, regardless of current or future erosion of the land base... The history of Frank's Landing and your family as a center of strength for Indian fishing rights as well as your resistance to State agency attacks against Indian fisherman stand as a symbol of the resoluteness of the Northwest Tribes. It is our intent to ensure continuity of the further protection

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and development of a community and resource which is incapable of replacement." See Cook Decl., **Exhibit B**

Although the land was not formally placed into trust, it is held in fee by the Buraeu of Indian Affairs, a federal agency and administered by the Secretary of the Interior through the Bureau of Indian Affairs for the exclusive benefit of the Community for educational, and cultural purposes. The Supreme Court has made clear that land held by the United States for Indian purposes and subject to federal superintendence qualifies as Indian country, regardless of whether it is held in trust or fee. See *United States v. John*, 437 U.S. 634, 648–50 (1978); *United States v. Sandoval*, 231 U.S. 28, 48 (1913).

The Wa He Lut Indian School lands are subject to ongoing federal superintendence, as required by the Supreme Court's test for Indian country under 18 U.S.C. § 1151(b). See *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 526-27 (1998) (requiring both federal set-aside and federal superintendence).

Federal superintendence is established by the following facts:

Congressional Mandate: Congress expressly provided that "title to the land described in subsection (a) shall remain in the United States under the administration of the Secretary of the Interior who shall hold the above-described tract of land for the Wa-He-Lute Indian School so long as it is used for any of the abovementioned purposes." *See Cook Decl., **Exhibit A***

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i. Federal Administration: The United States, through the Department of the Interior and the Bureau of Indian Affairs (BIA), retains administrative responsibility for the land, including oversight of its use, improvements, and educational programming.

ii. BIE/BIA Oversight: The Bureau of Indian Education (BIE) and BIA provide funding, regulatory oversight, and approval for the operation of the Wa He Lut Indian School and the use of the land for educational and cultural purposes. The BIE's August 2, 2024 letter, filed by the state court plaintiffs in the underlying action, confirms that Wa He Lut is a Tribally Controlled School operated by the Frank's Landing Indian Community, subject to ongoing federal oversight, grant funding, and monitoring. *See Cook Decl.,* ***Exhibit C.*** The letter states:

> *The United States Department of the Interior, Bureau of Indian Education ("BIE") is aware of an ongoing dispute at the Wa He Lut Indian School ("Wa He Lut"), a Tribally Controlled School ("TCS") operated by the Frank's Landing Indian Community... BIE has a statutory responsibility to ensure P.L. 100-297 grant requirements are met by Grantees... a team of BIE staff members will be on site... to conduct a high-risk monitoring assessment of Wa He Lut*." ***Id.***

iii. Federal Restrictions: The land is subject to federal restrictions on alienation and use; it cannot be sold, transferred, or repurposed without federal approval, and must be used for Indian educational and cultural purposes as specified by Congress. *See Cook Decl.,* ***Exhibit A***

iv. Governing Federal Law: Federal statutes and regulations, including the Tribally Controlled Schools Act (25 U.S.C. §§ 2501 et seq.) and BIA regulations (25 C.F.R.

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Part 44), govern the operation of the school and the use of the land. *See Cook Decl., **Exhibit C***

v. Federal Correspondence and Action: The Department of the Interior has issued correspondence confirming its ongoing oversight and protective role, including the letter to Bill Frank, Jr., which states the land would be conveyed in the same restricted trust status as Frank's Landing under the Medicine Creek Treaty of 1854, and that "title and status of Frank's Landing as it is now" would be preserved. *See Cook Decl., **Exhibit B***

These facts collectively demonstrate that the United States exercises continuing authority and control over the Wa He Lut Indian School lands, satisfying the federal superintendence requirement for Indian country under controlling Supreme Court precedent. See *Venetie*, 522 U.S. at 526-27; *United States v. John*, 437 U.S. 634, 648–50 (1978); *United States v. Sandoval*, 231 U.S. 28, 48 (1913).

Further, the Frank's Landing Indian Community is a self-governing dependent Indian community recognized by Congress. *Nisqually Indian Tribe v. Gregoire*, 649 F. Supp. 2d 1203, 1205 (W.D. Wash. 2009). In Nisqually, the court expressly held that Frank's Landing, including the Wa He Lut Indian School lands, constitutes Indian country under 18 U.S.C. § 1151(b) and (c), based on federal set-aside and superintendence. See id. at 1209–12. (Where the court found, based on stipulation of all parties—that Frank's Landing (including the area at issue) constitutes Indian country under 18 U.S.C. § 1151(b)–(c)).

The state court cannot adjudicate the claims for trespass, conversion, and criminal profiteering asserted against Plaintiffs without necessarily determining the ownership, right to

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possession, and use of the Wa He Lut Indian School lands. *See Cook Decl.,* ***Exhibit D.*** These issues are beyond the jurisdiction of state courts under both federal and state law. See 28 U.S.C. § 1360(b); 18 U.S.C. § 1162(b); 25 U.S.C. § 1322(b).

Each of the asserted causes of action requires the court to decide whether Plaintiffs had lawful possession of, or the right to enter and use, the school lands. The court must also determine whether their conduct constituted wrongful interference with another's property interest. For trespass, the court must evaluate whether Plaintiffs' entry was unauthorized. For conversion, the question is whether Plaintiffs exercised dominion over property inconsistent with another's rights. For criminal profiteering, the court must determine whether Plaintiffs' alleged acts were unlawful with respect to property interests located on Indian country.

Resolving these claims would require the state court to determine core questions of ownership, possession, and land use within Indian country. Federal law expressly prohibits state jurisdiction over such matters when the property at issue is federally restricted. See 28 U.S.C. § 1360(b); 18 U.S.C. § 1162(b); 25 U.S.C. § 1322(b). Washington law also bars state courts from adjudicating "the ownership or right to possession of such property or any interest therein" when the property is held by the United States and subject to federal restrictions. Wash. Rev. Code § 37.12.010 (2024); see also Wash. Rev. Code § 37.12.021 (2024). Accordingly, the state court lacks subject matter jurisdiction to hear these claims or to issue a permanent injunction excluding Plaintiffs from federally restricted Indian lands.

This jurisdictional bar is not merely procedural but substantive, reflecting Congress's intent to preserve tribal self-governance and federal superintendence over Indian lands. Any state

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court order purporting to adjudicate property rights or exclude the Community from Indian country would be void for lack of jurisdiction and in direct conflict with the Supremacy Clause.

B. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief

Plaintiffs have already suffered, and continue to face, imminent and irreparable harm due to ongoing interference with their access to sacred lands, their cultural practices, and their self-governance rights. Over the past year, they have experienced the loss or impairment of access to culturally significant sites, the disruption of associated traditions and fishing rights, and interference with their community governance and educational autonomy. These harms cannot be remedied by monetary damages or later equitable relief.

The ongoing state-court proceedings threaten irreparable harm to plaintiffs' federally protected rights of self-governance, treaty rights, and educational autonomy. Federal courts have repeatedly recognized that interference with tribal self-government, loss of access to sacred sites and cultural practices, and being compelled to litigate in a forum lacking jurisdiction over Indian country constitute irreparable harm as a matter of law. See *Seneca-Cayuga Tribe v. Oklahoma*, 874 F.2d 709, 716 (10th Cir. 1989) (finding irreparable injury where threatened loss of revenue and jobs created "prospect of significant interference with [tribal] self-government"). See also *Kiowa Tribe v. Hoover,* 150 F.3d 1163, 1172 (10th Cir. 1998) (irreparable harm where tribe was forced to defend in a court without jurisdiction, and seizure of tribal assets and loss of revenues threatened tribal governance).

This harm is not theoretical. Ervina "Binah" McCloud, an elder in the Frank's Landing Indian Community with over 30 years of experience in tribal education, was hired as

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Superintendent of Wa He Lut Indian School pursuant to a three-year contract with the Community. She left her prior position at Chief Leschi Schools, where she earned $161,000 annually, to accept the role. As a result of the ongoing jurisdictional dispute and resulting instability, her contract has been breached, she has been unable to secure comparable employment, and she currently earns $20 per hour. In addition to severe financial loss, she has suffered reputational harm within her professional and tribal communities. Her experience exemplifies the concrete and ongoing damage to tribal educational institutions and governance. See ¶¶ 2–7 and **Exhibit A** of Declaration of Ervina "Binah" McCloud ("McCloud Decl.").

Federal courts have likewise recognized that the loss of access to sacred sites and cultural practices constitutes irreparable harm. The *Hualapai Indian Tribe v. Haaland* court observed that "[d]amage to or destruction of any cultural or religious sites easily meets the irreparable harm requirement," and that impairment of a site's sacred character or traditional use is irreparable, regardless of the project's duration or whether some impacts might appear temporary, 755 F. Supp. 3d 1165, 1197–98 (D. Ariz. 2024). See also *Quechan Tribe of Fort Yuma Indian Reservation v. United States*, 755 F. Supp. 2d 1104, 1120 (S.D. Cal. 2010) (damage to or destruction of cultural or religious sites "easily meets" the irreparable harm standard). Likewise, the Ninth Circuit has stated that "environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable." *Sierra Club v. Bosworth,* 510 F.3d 1016, 1033 (9th Cir. 2007) (cited in Hualapai).

In *Hualapai,* the court credited testimony that tribal ceremonies at culturally significant sites could only occur at specific times and were not reparable by any form of post-injury relief, and found that threats to the integrity of such sites—either through physical damage or

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diminishment of their natural or cultural environment—constituted irreparable harm. 755 F. Supp. 3d at 1197.

Here, plaintiffs have demonstrated that they have lost, and continue to lose, access to cultural ceremonies, fishing rights, community governance, and educational autonomy that are essential to their way of life. These ongoing harms are not compensable by money damages and, as with *Hualapai* and the other authorities cited above, will persist and potentially become permanent without immediate judicial intervention.

Clarence Sidney Mills, age 77, is a lifelong member of the Frank's Landing Indian Community and a cultural leader. He was present at Frank's Landing during the fish wars and the Boldt decision, and for decades fought to defend the treaty rights of Native people from multiple tribes who gathered at Frank's Landing beginning in the 1950s. He has led cultural ceremonies and practices on the parcels of land reserved for community use since that time. However, for the past year, he has been barred from accessing these lands and conducting cultural practices. These parcels, though deeded in the name of the school, were originally owned by his mother-in-law, Maiselle Bridges, and reserved by deed for the community's cultural use. Mr. Mills states that to his knowledge, no cultural activities have taken place on the land over the past year. See ¶¶ 2–6 and **Exhibit A** of Declaration of Clarence Sidney Mills ("Sidney Mills Decl.").

Yesmowit Mills, grandson of Maiselle Bridges, submits that his grandmother's vision was to provide educational excellence for Native students. He and his children are members of the Frank's Landing Indian Community, and he wishes for his children to attend Wa He Lut in the tradition of their grandmother's legacy. However, the school has become one of the lowest-performing Indian schools in the country and has repeatedly failed audits due to critical special

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education deficiencies. As a result, he and his children are being deprived of the opportunity for a culturally appropriate Native education. See ¶¶ 3– 8 of Declaration of Yesmowit Mills.

Sy-Kay Mills John, a former member of the Wa He Lut School Board, declares that she has been intentionally excluded from information about school operations and governance, despite her prior role and her ongoing stake as a community member and parent. This exclusion has interfered with her ability to protect and preserve the community's educational autonomy. See ¶¶ 3– 6 of Declaration of Sy-Kay Mills.

C. The Balance of Equities Favors Plaintiffs

The balance of equities tips sharply in Plaintiffs' favor. Federal courts have consistently held that when plaintiffs face ongoing deprivation of federal rights and irreparable harm, and the defendant would be restrained only from acts beyond lawful authority, the balance of hardships weighs in favor of injunctive relief. See *State of Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) (balance of equities and public interest strongly favor injunction where federal rights are at stake); *hiQ Labs, Inc. v. LinkedIn Corp*., 31 F.4th 1180, 1207 (9th Cir. 2022); *California Chamber of Commerce v. Council for Education and Research on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022). In the Indian-law context, the equities and public interest overwhelmingly favor the protection of tribal rights and sovereignty, particularly where the requested relief prevents ongoing violations of federal law. See *Seneca-Cayuga Tribe v. Oklahoma*, 874 F.2d 709, 716 (10th Cir. 1989); *Kiowa Tribe v. Hoover,* 150 F.3d 1163, 1172 (10th Cir. 1998).

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Equity favors federal intervention where continued ministerial acts would facilitate proceedings that intrude upon areas of exclusive federal and tribal authority. Courts sitting in equity have long recognized that when the rights at issue turn on core questions of federal law—such as whether land constitutes "Indian country" under 18 U.S.C. § 1151 and whether state jurisdiction is preempted by federal statute or treaty—those determinations must be made by a court vested with the authority and institutional competence to decide them. See *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 177 (1973); *Williams v. Lee*, 358 U.S. 217, 219–20 (1959). Federal courts possess original jurisdiction under 28 U.S.C. §§ 1331 and 1362 to resolve such questions, and fairness dictates that Plaintiffs not be forced to defend federally protected rights in a forum that lacks authority to decide the threshold issue of jurisdiction.

Although the Thurston County Superior Court has declined to dismiss for lack of subject-matter jurisdiction, that ruling is not binding here and does not resolve the federal question presented. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280, 292 (2005) ("[A] state court's judgment does not deprive a federal court of jurisdiction to decide a claim raising a federal question, even when the issues overlap."). Plaintiffs do not seek appellate review of a state court judgment—they seek original federal adjudication of a live federal dispute. Preserving the status quo by temporarily halting state proceedings in Indian country while this Court evaluates the jurisdictional question is precisely the function of equitable relief.

Federal law has long recognized that state officials may be enjoined from performing even ministerial acts when such acts would perpetuate conduct preempted or prohibited by federal law. See *Ex parte Young*, 209 U.S. 123 (1908). The limited injunction sought here would simply pause docketing, filing, and related ministerial activities that facilitate a state proceeding

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over which jurisdiction is expressly withheld by 28 U.S.C. § 1360(b), 18 U.S.C. § 1162(b), and 25 U.S.C. § 1322(b). Because the State has no lawful authority to proceed in that forum, enjoining further clerical facilitation of that process imposes no cognizable harm on the Defendant.

Moreover, the equities compellingly warrant federal relief where the state forum is manifestly incapable of safeguarding paramount federal rights. The record establishes that Plaintiffs were threatened with sanctions merely for asserting jurisdictional objections, thereby chilling—if not wholly suppressing—their exercise of treaty and statutory defenses secured by federal law. Such circumstances fall squarely within the core holding of *Gibson v. Berryhill*, 411 U.S. 564, 573 (1973), which authorizes immediate equitable intervention by federal courts where systemic bias, intimidation, or procedural inadequacy foreclose meaningful adjudication of federal claims. Here, the narrowly tailored relief sought would not impede any legitimate state interest, but is essential to forestall ongoing and irreparable injury to tribal self-government, treaty-guaranteed rights, and the constitutional supremacy of the federal framework governing Indian country.

D. The Public Interest Favors an Injunction

The public interest is served by upholding federal supremacy, protecting tribal self-governance, and ensuring compliance with federal law. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 341–44 (1983). Federal courts have repeatedly emphasized that preventing unlawful state intrusion into Indian country vindicates not only private rights but a paramount federal interest in the integrity of the

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government-to-government relationship between the United States and Native communities. See *Williams v. Lee*, 358 U.S. 217, 223 (1959).

Here, congress has spoken, Frank's Landing Indian Community is "self-governing". The injunction would preserve the status quo while this Court resolves the federal question of jurisdiction; it would not disrupt ordinary state-court administration or broader state interests. By contrast, allowing the clerk to continue docketing and processing filings in a case that intrudes on Indian country would undermine the uniform application of federal law and erode confidence in the protection of treaty-based rights. The public interest therefore overwhelmingly favors the requested injunction.

IV. PRAYER FOR RELIEF

For the foregoing reasons, plaintiffs respectfully request that the Court grant a preliminary injunction prohibiting defendant Linda Myhre Enlow, in her official capacity as clerk of the Superior Court for Thurston County, from performing any ministerial acts that facilitate state court proceedings in Wa He Lut Indian School v. Anza Smith et al., No. 24-2-02515-34, pending final resolution of this action.

Dated the 24th day of October, 2025 at Oklahoma City, OK

Respectfully Submitted,

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CERTIFICATE OF CONFERAL

Pursuant to Section D and Section III.G of the applicable rules, the undersigned counsel hereby certifies that the parties have met and conferred regarding the subject of the motion, in good faith, prior to its filing.

On October 24, 2025, at 11:00 a.m. PST, the undersigned counsel participated in a telephonic meet and confer conference with the following counsel for the opposing party:

1. Julie Carignan (julie.carignan@co.thurston.wa.us), Thurston County Prosecutor
2. Karen Horowitz, Thurston County Prosecutor

During this conference, the parties discussed the matters in dispute. Despite this effort, the parties were unable to reach a resolution, necessitating the filing of the present motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated the 24th day of October, 2025 at Oklahoma City, OK

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be served on all parties or their counsel of record on the date indicated below, by electronic mail via PACER. Counsel for Defendant:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 24th day of October, 2025.

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