

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, ex rel

Court of Appeals No.
25-1872

Movant,

And

JESSE KOENIG

Plaintiff-Appellant,

v.

KEWEENAW BAY OJIBWA COMMUNITY COLLEGE; LORI ANN SHERMAN, President, Individually and as Representatives of Keweenaw Bay Ojibwa Community College; BETH LOUISE VIRTANEN, Dean of Instruction, Individually and as Representatives of Keweenaw Bay Ojibwa Community College; ROBIN CHOSA, Chairman of the Board, Individually and as Representative of the Keweenaw Bay Ojibwa Community College

Defendants-Appellees.

**Brief of the Keweenaw Bay Indian Community
as *Amicus Curiae*
in support of Defendants-Appellees**

Counsel for Amicus Curiae

May 22, 2026

Office of the Tribal Attorney
Paul Mooney, Assistant Tribal Attorney
16429 Beartown Road
Baraga, MI 49908
Tel: (906) 201-7935
Fax: (906) 353-7174
pmooney@kbic-nsn.gov

*On Appeal from the United States District Court
for the Western District of Michigan
Case No.: 2:23-cv-103
The Honorable Paul L. Maloney*

TABLE OF CONTENTS

Table of Authorities.....	iii
Interest of Amicus Curiae.....	1
Summary of Argument.....	2
Argument.....	4
I. The College is plainly part of the Tribe because it functions as one of many government units the Community uses to provide essential services.....	5
A. The Community provides a comprehensive network of services through a diverse, delegated workforce. And the College has funneled numerous alumni into that workforce.....	6
B. The College is one of these many services the Tribe provides to its members.....	9
II. The College is plainly part of the Tribe because the Tribal Council possesses the unilateral authority—a “kill switch”—to dissolve the institution at any time.....	12
A. The KBIC Constitution establishes the Tribal Council as the governing body with the power to create and dissolve subordinate entities, such as the College.....	12
B. Federal law does not restrict the Tribe’s sovereign right to manage or dissolve the College.....	13
C. Tribal law confirms that the Council’s authority over the College is absolute without a constitutional amendment.....	15
D. The power to destroy is the ultimate proof of the College’s plain connection to the Tribe.....	16
III. The College is plainly connected to the Tribe because of the considerable financial investment it has invested in the College and the funds it would need to invest if the College were gone.....	16

A. The Community has made a massive, long-term investment in the College’s operational success, including direct contributions and essential administrative services.....17

B. The Community would have to expend considerable financial resources to support its Members’ and workforce’s education needs if the College could not do so.....18

Conclusion 19

Word Count Certification..... 24

TABLE OF AUTHORITIES

Cases

- *Dakota v. Shalifoe Edwards*, No. 14-032C (Keweenaw Bay Indian Cmty. Tribal Ct.)..... 12, 15
- *Gauthier v. KBIC*, No. 05-028C (Keweenaw Bay Indian Cmty. Tribal Ct.) 15
- *Keweenaw Bay Indian Community v. Naftaly*, 452 F.3d 514 (6th Cir. 2006) 5
- *Keweenaw Bay Indian Community v. State of Michigan*, 784 F. Supp. 418 (W.D. Mich. 1991)..... 6
- *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341 (7th Cir. 1983)..... 6
- *United States ex rel. Koenig v. Keweenaw Bay Ojibwa Community College*, No. 2:23-cv-103, R. 80 (W.D. Mich. Oct. 20, 2025)17

Treaties

- Treaty with the Chippewa, Oct. 4, 1842, 7 Stat. 591 6

Tribal Constitution, Statutes, Ordinances, and Codes

- Keweenaw Bay Indian Community Constitution preamble, arts. VI, VIII.....12, 15
- Keweenaw Bay Indian Community Ordinance No. 1975-01 (July 12, 1975)..... 13
- Keweenaw Bay Indian Community Tribal Code tit. 14, § 14-35 (2026) 8
- Keweenaw Bay Indian Community Tribal Code tit. 54, ch. 4 (2026)..... 8
- Keweenaw Bay Indian Community Tribal Code tit. 58, §§ 58-1, 58-3, 58-6 (2026) 8
- Keweenaw Bay Indian Community Tribal Code tit. 70, subchapter 2 (2026) 8

- Keweenaw Bay Indian Community Tribal Code tit. 110 (2026)
..... 8
- Keweenaw Bay Indian Community Tribal Code tit. 114, ch. 2
(2026) 13

Other Authorities

- Restatement of the Law of American Indians §§ 13, 14, 15, 16, 51
..... 2, 13, 14
- U.S. Census Bureau, QuickFacts: Baraga County, Michigan
..... 7, 10
- U.S. Census Bureau, QuickFacts: Marquette County, Michigan
..... 7

INTEREST OF AMICUS CURIAE

The Keweenaw Bay Indian Community (Community or Tribe) is a federally recognized Indian tribe and the successor to the L'Anse and Ontonagon bands of Lake Superior Chippewa. As a sovereign nation, the Community possesses the inherent authority to organize its government and provide for the welfare of its members. This authority includes the power to create, fund, and control subordinate entities—such as the Keweenaw Bay Ojibwa Community College (College)—to perform essential governmental functions.

The Community has a vital interest in this litigation because an adverse decision from this Court could threaten the Tribe's ability to organize itself to serve its membership's needs. The College is not a private contractor or an independent business; it is a creature of tribal law, willed into existence by the Tribal Council. The Community appears as amicus curiae to show that the College is plainly connected to the Tribe and to protect the Community's ability to deliver services through its chartered departments.

SUMMARY OF ARGUMENT

The Appellant argues that the College’s success demonstrates it has killed (“secularized”) its Indian roots. The opposite conclusion is correct. The College’s success—its financial independence, expanded campus, and increased student population—is due to its connection with the Tribe.

This Court should uphold the District Court’s decision. Although the Community agrees with the District Court’s conclusion, it does not believe the arm-of-the-tribe inquiry is necessary. The Court should reserve this test for cases involving complex or ambiguous institutional arrangements.¹ Here, the College is plainly connected to the Tribe. This plain connection imbues the College with the Tribe’s sovereign immunity.

The College is plainly connected to the Tribe for three reasons:

First, the College is an integral government unit within a network of tribal services. The Community provides a wide array of services to its 3,500-plus members—from healthcare and social services to natural

¹ Restatement of the Law of American Indians § 51 cmt. d.

resource management. The College serves as the government's branch for college education. It is integrated into the Tribe's administrative fabric by providing college education to the Tribe's members and by serving as a direct professional pipeline, with nearly 30 percent of its degree-holding alums working for the tribal government.

Second, the Tribal Council possesses the unilateral authority to dissolve—to kill—the College at any time. Control is defined by ultimate authority, not daily management. Under the KBIC Constitution, the College exists only at the Council's pleasure. Because the Council retains the “kill switch”—the power to repeal the College's charter with a single vote—the College is legally and structurally subordinate to the Tribe's supreme governing body.

Third, the Community has contributed significant funds to the College and would lose considerable funds if the College faltered. The Tribe has invested considerable financial resources, including direct contributions and in-kind services, in the College. If the College were to disappear, the financial burden of providing the College's essential

educational services would fall squarely and immediately back onto the tribal treasury.

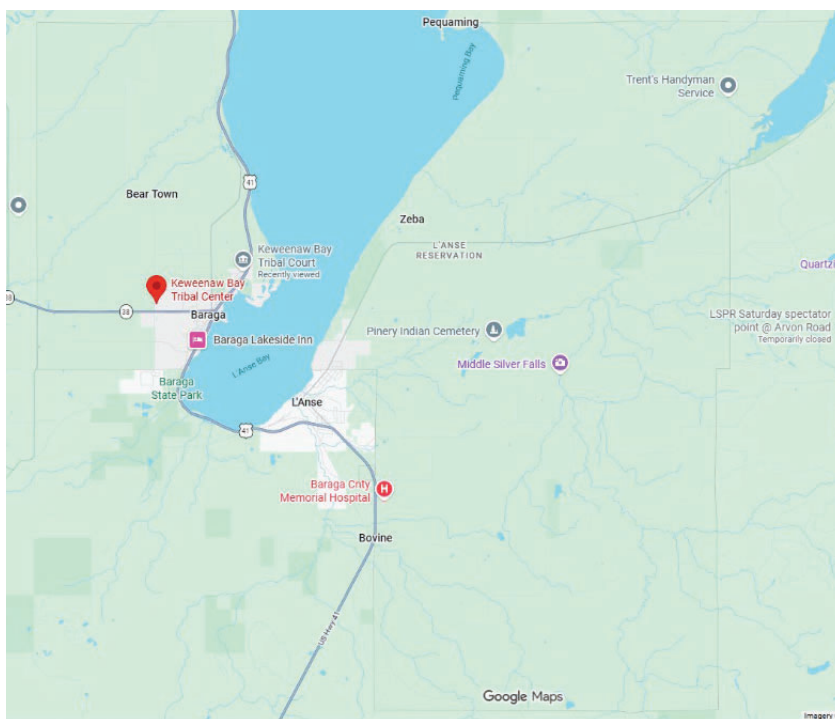
Because the College was created by tribal law, provides services the Community intended, and was supported by the tribal treasury, it is plainly part of the Tribe and is entitled to sovereign immunity. Holding otherwise would cause considerable harm to an important tribal resource.

ARGUMENT

The College is plainly part of the Tribe, which imbues the College with sovereign immunity. This conclusion is correct for three reasons. First, the College serves as one of the Community's many government units that provide essential services. Second, the Tribal Council possesses the unilateral authority to dissolve the institution at any time. Finally, stripping the College of its immunity places the Community's financial investment in immediate jeopardy. If litigation cripples the College, the Tribe must bear the staggering cost of rebuilding its entire college infrastructure from the ground up. The Community cannot afford to pay twice for the same essential service.

- I. The College is plainly part of the Tribe because it functions as one of many government units the Community uses to provide essential services.

The Community is more than a historical entity; it is a modern, complex government. As the successor to the L'Anse and Ontonagon bands of Lake Superior Chippewa,² the Community exercises self-governance over 3,564 members. The Community's primary land base is the L'Anse Indian Reservation, which is located in Baraga County, Michigan³:



² *Keweenaw Bay Indian Community v. Naftaly*, 452 F.3d 514, 516 (6th Cir., 2006).

³ *Naftaly*, 452 F.3d at 516.

Although the 1854 Treaty established the L'Anse Indian Reservation,⁴ the Tribe's people have lived at the mouth of the bay since time immemorial.⁵ For generations, they subsisted on hunting and fishing⁶—traditions they still protect through their 1842 Treaty rights.⁷

But the modern needs of the membership have evolved. To meet these challenges, the Community has built a sophisticated infrastructure that provides for the health, safety, and education of its people. The College is simply one part of this complex infrastructure that the Community has created to meet its members' needs.

A. The Community provides a comprehensive network of services through a diverse, delegated workforce. And the College has funneled numerous alumni into that workforce.

A tribal member today may rely on the Community for nearly every facet of daily life. This reliance is not a matter of abstract rights but of mechanical service delivery. A member can receive the following services

⁴ *Keweenaw Bay Indian Community v. State of Michigan*, 784 F.Supp. 418, 419-420 (W.D. Mich. 1991).

⁵ *Id.* at 420 (“From the earliest records there existed a band of Lake Superior Chippewa Indians near the mouth of the Bay[.]”).

⁶ *Id.*

⁷ Treaty with the Chippewa, Oct. 4, 1842, 7 Stat. 591; *see also Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341 (1983) (upholding treaty fishing rights for a signatory of the 1842 Treaty).

from the Community: (1) *Healthcare Access*: See a dentist or doctor at the KBIC Health System. (2) *Housing*: Lease a home through the Housing Department or Real Estate Office, (3) *Licensing*: Register a vehicle or receive a business license at the Licensing Department, (4) *Safety*: Call the Tribal Police during an emergency, (5) *Elder Support*: Receive home-delivered meals from the Elder Nutrition Program.

The Community provides these services through a diverse, skilled workforce. Of the 333 government employees, 38% are non-tribal members.⁸ In the Tribe's casinos, non-native employees outnumber members two to one. This diversity is a practical necessity; less than 14% of Baraga County is Native American.⁹ And a much smaller percentage of Native Americans reside in Marquette County.¹⁰ The Community must hire specialized talent—regardless of membership—to achieve its service goals.

⁸ These numbers do not include employees of the College.

⁹ U.S. Census Bureau, *QuickFacts: Baraga County, Michigan*, <https://www.census.gov/quickfacts/fact/table/baragacountymichigan/PST045224> (last visited May 13, 2026).

¹⁰ U.S. Census Bureau, *QuickFacts: Marquette County, Michigan*, <https://www.census.gov/quickfacts/fact/table/marquettecountymichigan/PST045224> (last visited May 13, 2026).

No single person or board manages this vast operation. Instead, the Community routinely delegates authority to specialized units to ensure efficient governance: (1) The Gaming Commission regulates all gaming and exercises quasi-judicial power,¹¹ (2) The Department of Natural Resources protects the Community's homeland by enforcing essential environmental and public health laws,¹² (3) The Keweenaw Bay Tribal Maintenance Department maintains the public water and sewer utilitizes on the L'Anse Reservation,¹³ (4) The Chief Executive Officer is authorized via the Community's procurement policy to sign numerous contracts on behalf of the Community, and (5) Tribal Social Services manages childcare placements and advises the Tribal Court.¹⁴

¹¹ Keweenaw Bay Indian Cmty. Tribal Code tit. 70, subchapter 2 (2026), https://library.municode.com/tribes_and_tribal_nations/keweenaw_bay_indian_community/codes/code_of_ordinances?nodeId=PTIICOOR_TIT70GA_CH2GACO. *This section establishes the Commission's regulatory authority, including the power to hold hearings and issue orders, which constitutes its quasi-judicial function.*

¹² Keweenaw Bay Indian Cmty. Tribal Code tit. 54, ch. 4 (2026), https://library.municode.com/tribes_and_tribal_nations/keweenaw_bay_indian_community/codes/code_of_ordinances?nodeId=PTIICOOR_TIT54EN_CH4HASUCO; Keweenaw Bay Indian Cmty. Tribal Code tit. 110 (2026), https://library.municode.com/tribes_and_tribal_nations/keweenaw_bay_indian_community/codes/code_of_ordinances?nodeId=PTIICOOR_TIT110SOWAMA.

¹³ Keweenaw Bay Indian Cmty. Tribal Code tit. 58, §§ 58-1, 58-3, 58-6 (2026) https://library.municode.com/tribes_and_tribal_nations/keweenaw_bay_indian_community/codes/code_of_ordinances?nodeId=PTIICOOR_TIT58PUWO.

¹⁴ Keweenaw Bay Indian Cmty. Tribal Code tit. 14, § 14-35 (2026), https://library.municode.com/tribes_and_tribal_nations/keweenaw_bay_indian_community. *This*

The College serves as a crucial training ground for the Tribe's workforce. As of April 2026, nearly 30 percent of all College associate-degree alums (41 of 147) were employed directly by the Community. These graduates do not just find work on the Reservation; they staff the very government units that deliver essential services to the membership. The College's primary output is the professional workforce required to maintain the Tribe's sovereign operations.

The Community created the College as one of these essential government units. It is the vehicle the Tribe uses to meet its members' educational needs at the college level. And the college's alums participate in the Tribe's workforce.

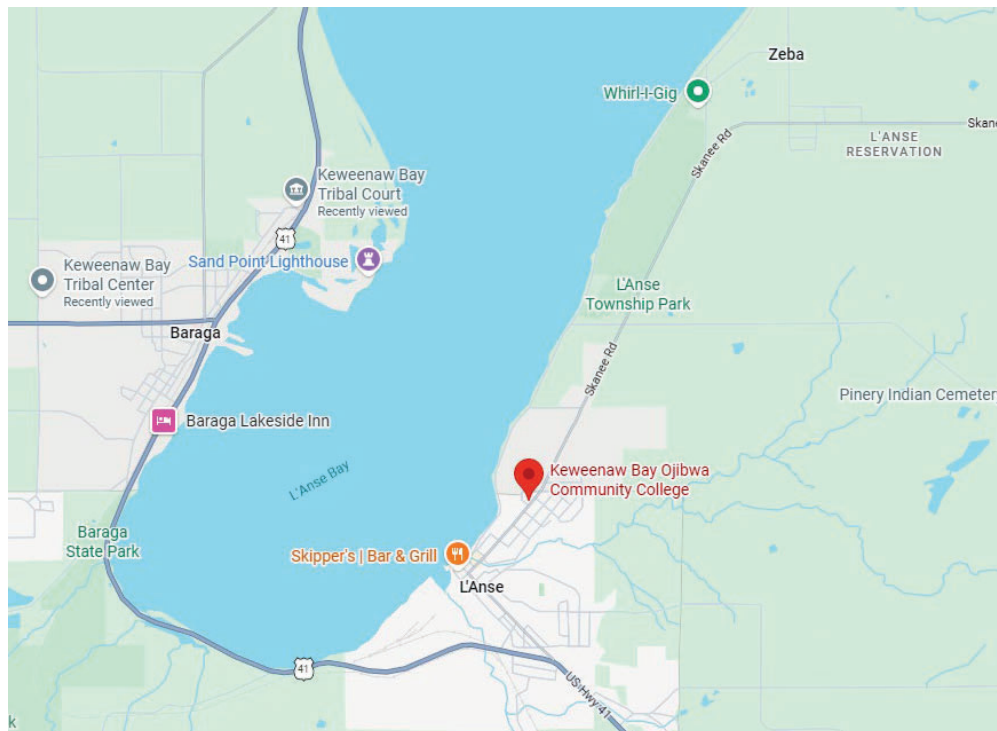
B. The College is one of these many services the Tribe provides to its members.

The College helps solve an access problem for those living on or near the Reservation. For a tribal member in L'Anse, a college degree was once a geographic impracticality. Attending Michigan Technological University, Northern Michigan University, or another community college

section defines the duties of Tribal Social Services regarding child placement, protective services, and their advisory role to the Tribal Court in welfare proceedings.

requires a 40- to 60-minute one-way commute. In a region where the median household income is significantly lower than the national average,¹⁵ the cost of that commute is a significant barrier to entry.

The College broke that barrier. Today, the main campus is located in the Village of L'Anse, adjacent to the Reservation:



This placement brings education within ten minutes of the Reservation's most populated areas (Zeba, Baraga, and L'Anse).

¹⁵ *QuickFacts: Baraga County, Michigan; United States*, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/baragacountymichigan,US> (last visited May 13, 2026) (reporting a median household income of \$55,327 for Baraga County compared to a national average of \$80,734).

Aside from the service the College provides to the Community's members, the Community and the College are also woven together via the students and faculty. The College has many faculty members who are Tribal Council Members or Community employees. These faculty members—the same officials responsible for the Community's daily governance and administration—teach the same courses that may prepare a future Community employee.

The College is simply another government unit that the Tribe has intentionally developed to serve its members' needs. The Community provides numerous services for its members' modern needs. College education is one of them. And the Community provides this service through an institution that funnels numerous alumni back into the Community to serve it. All of these facts demonstrate a plain connection to the Tribe.

- II. The College is plainly part of the Tribe because the Tribal Council possesses the unilateral authority—a “kill switch”—to dissolve the institution at any time.

Control is not defined by daily micromanagement; it is defined by ultimate authority. Under the KBIC Constitution, the Tribal Council possesses broad, inherent sovereign powers. These powers are limited only by express federal law or the KBIC Constitution. Because neither source restricts the Council’s authority to create or eliminate educational entities, the College exists solely at the Council’s pleasure.

- A. The KBIC Constitution establishes the Tribal Council as the governing body with the power to create and dissolve subordinate entities, such as the College.

The Tribal Council, as empowered by the Constitution, is the governing body of the Tribe. The KBIC Constitution governs the Community.¹⁶ The KBIC Tribal Court has stated that the KBIC’s Constitution is the “supreme law of the land.”¹⁷ This Constitution established the Tribal Council as the governing body of the Tribe.¹⁸ As

¹⁶ Keweenaw Bay Indian Cmty. Const. pmbl.,

https://library.municode.com/tribes_and_tribal_nations/keweenaw_bay_indian_community.

¹⁷ *Dakota v. Shalifoe Edwards* at 15* (14-032C). The KBIC’s Tribal Court cases are available upon request from the Keweenaw Bay Tribal Court. Anyone may call the Court at (906) 353-8124.

Alternatively, the Community’s attorney can provide them to the Court at the Court’s request.

¹⁸ *Id.* at 12* (“Through the Constitution, [t]he People created a parliamentary system of government, of which the governing body is the Tribal Council.”)

the governing body for the Tribe, the Council enacted Ordinance No. 1975-01.¹⁹ This Ordinance established the College. This legislative act is the “birth certificate” of the institution. Today, the Tribal Council has codified the College under Tribal Code Title 114.²⁰

Just as the Council used its sovereign authority to create the College to meet the membership’s needs, it retains the identical authority to repeal Title 114 and extinguish the entity. In tribal governance, the power to create is, by definition, the power to destroy.

B. Federal law does not restrict the Tribe’s sovereign right to manage or dissolve the College.

Although tribal sovereignty is subject to the plenary power of Congress,²¹ federal law does not interfere with a tribe’s internal decision to maintain or dissolve a tribal college.

¹⁹ Keweenaw Bay Indian Cmty. Ordinance No. 1975-01 (July 12, 1975); *United States ex rel. Koenig v. Keweenaw Bay Ojibwa Cmty. Coll.*, No. 2:23-cv-103, R. 80 (Dist. Ct. Order), PageID.1799-1800.

²⁰ Keweenaw Bay Indian Cmty. Tribal Code tit. 114, ch. 2 (2026).

²¹ Restatement of the Law of American Indians § 14.

1. *Inherent Sovereignty*: Tribes are “domestic dependent nations” that retain all aspects of historic sovereignty not expressly divested by Congress.²²
2. *Lack of Relevant Federal Restriction*: No federal statute—including the Indian Civil Rights Act—mandates that a tribe must continue to operate a chartered college once created.²³
3. *Internal Governance*: Absent a clear expression of Congressional intent to the contrary, the decision to fund or dissolve a tribal program remains an internal matter of self-government.²⁴

Given the lack of federal restrictions, there is no federal “safety net” that would allow the College to exist if the Tribal Council voted to end it. The institution’s survival depends entirely on the Council’s legislative will.

²² *Id.* at §§ 13, 14.

²³ *See id.* at §§ 15, 16.

²⁴ *See id.* at §§ 13, 14.

C. Tribal law confirms that the Council’s authority over the College is absolute without a constitutional amendment.

The Community’s legal framework treats the Council’s authority as the default state of governance. Once the Constitution grants the Council a power, that power cannot be divested absent an amendment to the Constitution. The Tribal Court said it plain enough: the Tribal Council is the “ultimate authority on the reservation.”²⁵

The Council’s authority is superior to any ordinance or title.²⁶ For the Council to lose its “kill switch” over the College, the Community’s membership would have to formally amend the Constitution to remove education from the Council’s jurisdiction.²⁷ No such amendment exists, and the Tribal Court has confirmed that even a referendum vote of the people is not “legally binding” unless it formally amends the Constitution.²⁸

²⁵ *Gauthier v. KBIC* at 3* (05-028C).

²⁶ *See Dakota* at 15*.

²⁷ Keweenaw Bay Indian Cmty. Const. arts. VI, VIII.

²⁸ *Gauthier v. KBIC* at 4* (05-028C).

D. The power to destroy is the ultimate proof of the College’s plain connection to the Tribe.

The College has no right to exist: it is tethered to the Council’s legislative will. If the Council determines tomorrow that the College no longer serves the Community’s strategic interests, it can dissolve the institution with a single vote. This total, unilateral control is not a “partnership”—it is a subordinate relationship. Because the Council holds the life-and-death power over the College’s charter, the College’s connection to the Tribe is plain.

III. The College is plainly connected to the Tribe because of the considerable financial investment it has invested in the College and the funds it would need to invest if the College were gone.

The Community would suffer at least two financial losses if the College were financially impacted. First, it would lose the funds it has invested. The College does not exist nor did it develop on a private island of self-funding; it is thriving today because the Community has chosen to subsidize it. Second, the Community would have to step in to support the College’s services. If the College were to disappear, the Community would not simply walk away from the vacancy—it would be forced to financially step in to fulfill its sovereign obligation to educate its members.

A. The Community has made a massive, long-term investment in the College's operational success, including direct contributions and essential administrative services.

The Community does not treat the College as a third-party contractor; it treats it as a high-priority government initiative. The Community has invested considerable resources into the College.²⁹ These financial commitments reflect a deliberate, long-term capital investment in the Community's own human infrastructure.

But the Tribe's investment extends far beyond cash. The Community actively subsidized the College's daily operations for years by providing critical in-kind services, including: (1) IT infrastructure and support, (2) personnel and administrative sharing, (3) facility maintenance, and (4) accounting services. The Tribe provided these services at great expense. And the Tribe would lose these investments if the College were to incur litigation-related losses.

²⁹ *United States ex rel. Koenig v. Keweenaw Bay Ojibwa Cmty. Coll.*, No. 2:23-cv-103, R. 80 (Dist. Ct. Order), PageID.1807-1808.

- B. The Community would have to expend considerable financial resources to support its Members' and workforce's education needs if the College could not do so.

The College's plain connection to the Tribe is laid bare when we consider the "but-for" reality of the region. If the College were to vanish tomorrow, the Community's legal and moral obligation to its membership would not vanish with it.

The cost of inaction is too high. To maintain its government and meet its members' needs, the Tribe may have to:

1. Start a New College: The Tribe would have to start over from scratch, investing millions to build a brand-new college—its members' needs have not disappeared.
2. Subsidize Distant Education: Pay high travel stipends for members to attend distant universities in Houghton, Marquette, or elsewhere.
3. Recruit at a Premium: Spend exorbitant sums to recruit, relocate, and retain non-local professionals to work in an isolated, economically constrained region.

4. Lose Tribal Representation: Accept a decline in tribal member employment within its own government, undermining the goal of self-governance.

If the College were to fail, the Tribe would have no choice but to absorb the astronomical cost of replacing it.

CONCLUSION

The College is not an independent school that happens to bear the name Ojibwa. It is a legislative creation of the Tribal Council, a financial investment of the Tribe, and a crucial training engine for the tribal government's workforce. To separate the College from the Tribe would require this Court to ignore the constitutional reality of the Council's absolute power to dissolve the College at any time. The Council willed the College into existence and retains the 'kill switch' to dissolve it—confirming it is, and always has been, a subordinate part of the sovereign. Given these facts, the Court should recognize this plain connection and hold that the College has sovereign immunity from suit.

Respectfully submitted,

Paul Mooney Digitally signed by Paul Mooney
Date: 2026.05.22 10:08:24 -04'00'

Paul Mooney (P83258)
Assistant Tribal Attorney
16429 Beartown Road
Baraga, MI 49908
Tel: (906) 353-4107
Fax: (906) 353-7174
pmooney@kbic-nsn.gov

Word Count Certification

I, Paul Mooney, certify that KBIC's Amicus Brief complies with Fed. R. App. Proc. 29(a)(5), as it is 3416 words. I also certify that the brief complies with Fed. R. App. Proc. 32's typeface requirements.

Respectfully submitted,

Paul Mooney Digitally signed by Paul Mooney
Date: 2026.05.22 10:08:39 -04'00'

Paul Mooney (P83258)

Assistant Tribal Attorney
16429 Beartown Road
Baraga, MI 49908
Tel: (906) 353-4107
Fax: (906) 353-7174
pmooney@kbic-nsn.gov