

STATE OF MINNESOTA
COUNTY OF HUBBARD

DISTRICT COURT
NINTH JUDICIAL DISTRICT

Tara Houska, Winona LaDuke,
AhnaCole Chapman, and
Switchboard Trainers Network

Court File Number: _____

Plaintiffs,

Case Type: Civil / Other

vs.

VERIFIED COMPLAINT

County of Hubbard,
Corwin Aukes, *in his official capacity*; and
Mark Lohmeier, *in his official capacity*,

Defendants.

Plaintiffs Tara Houska, Winona LaDuke, AhnaCole Chapman, and Switchboard Trainers Network file this Complaint against Defendants.

I. PARTIES

1. Plaintiff Tara Houska ("Houska") is a private individual, a tenant and occupant of [REDACTED] (hereinafter "the Property").
2. Plaintiff Winona LaDuke ("LaDuke") is a private individual residing in Becker County, Minnesota whose work and activities frequently take place in Hubbard County.
3. Plaintiff AhnaCole Chapman is a private individual residing in Rice County,

Minnesota.

4. Plaintiff Switchboard Trainers Network (“Switchboard”) is a non-profit organization with headquarters in Denton, TX.
5. Defendant County of Hubbard is a Minnesota corporation with the powers set forth in Minn. Stat. § 373.01.
6. Defendant Corwin Aukes is the Sheriff of Hubbard County. The Sheriff in Hubbard County is an elected county official. Sheriff Aukes is the chief law enforcement authority in the county.
7. Defendant Mark Lohmeier is the Land Commissioner for Hubbard County.

II. JURISDICTION AND VENUE

8. Minn. Stat. §§ 484.01, subd. 1(1) (jurisdiction over civil actions); 559.01 (authorizing tenant to bring this action); Minn. Stat. § 373.01, subd. 1(a)(1); and common law authority provide this Court with jurisdiction over the subject matters of this action.
9. Venue in Hubbard County is proper under Minn. Stat. § 542.02 because the real estate at issue is located in Hubbard County and under Minn. Stat. § 542.09 because Defendants reside in Hubbard County and, independently, because the causes of action arose in Hubbard County.

III. FACTUAL BACKGROUND

10. The currently standing single family structure on the real property located at [REDACTED]

██████████ (parcel no. ██████████) ("the Property") was built in 1970.

Additional structures were built later.

11. The sole means of access to the Property is by a single driveway. The following photo (Fig. 1), from 1978, depicts the driveway (although the driveway pre-dates this photo):

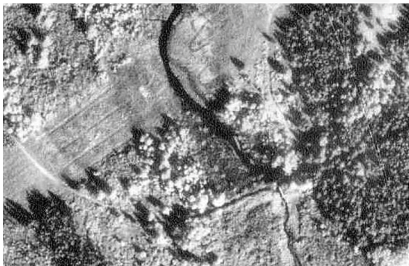


Figure 1: 1978 aerial photograph of ██████████ and the driveway

12. As reflected in the image below (Fig. 2), the driveway extends from ██████████ to the northwest for a short distance connecting that major roadway to the continuation and larger portion of the driveway on the Property and, ultimately to the structures on the Property.
13. The majority of the driveway is on the Property. A small portion of the driveway traverses tax-forfeited Hubbard County land (parcel no. ██████████, the "County Parcel"), which is not otherwise used, to connect the larger portion of the driveway

and the structures on the Property to [REDACTED]. This portion is bounded by the green dotted lines in the image below (Fig. 2).



Figure 2: Image of the driveway to the Property from the Hubbard County GIS system

14. In 1915, the Property was assessed for a state highway running through both parcels, which, upon information and belief, later became [REDACTED]. In 1949, this lien was released by Hubbard County, stating that the owners of the Property "have made full payment of the amount heretofore levied by the Auditor of . . . County of Hubbard to pay the expense of construction" of this highway.
15. The Property was purchased in 2018 by Plaintiff Winona LaDuke. Ms. LaDuke's

deed is recorded.

16. When Ms. LaDuke purchased the Property, she sought to confirm the historic use of the driveway by vehicles through a recorded easement. She made an application to the Board of Commissioners of the County of Hubbard (“the County Board”).
17. The County Board resolved to grant the easement for access across the County Parcel expressly finding that “there are no reasonable alternatives to obtain access to the property” besides the driveway and that the “easement will not cause significant adverse environmental or natural management impact.” *See Resolution No. 05151806*, Board of Commissioners of the County of Hubbard (May 15, 2018).
18. The Board resolved to issue “an easement across [the County Parcel] to provide access, ingress and egress, and utility purposes to the following property,” specifying the Property. *Id.*
19. The easement is used solely as an access easement to the property and has no value outside of that function; the County Board expressly described it as “germane only to the above-described parcel.”
20. The easement as approved by the County Board is unrestricted or perpetual in duration, with no provisions for its extinguishment or reversion except for “non-use.”
21. The easement as approved by the County Board specified that upon “valuable consideration” the County “hereby conveys and quitclaims to Winona LaDuke, Grantee/s, and **Grantee’s heirs and assigns**” said easement. (emphasis added).
22. The easement as approved by the County Board recognized “construction and

maintenance of a road on the easement shall be the sole responsibility of the grantee.”

23. The easement as approved by the County Board is a 33-foot-wide corridor that encompasses the portion of the driveway on the County Parcel.

24. The County Board determined the appraised value of the easement to be one hundred and ninety two dollars (\$192.00), and resolved that the easement shall be issued to Ms. LaDuke upon payment of such amount.

25. Ms. LaDuke made full payment of such amount.

26. On May 30, 2018, the easement was recorded.

27. At some point subsequent to the County Board’s approval of the easement but before the easement was recorded, then-Commissioner Johannsen, the sole dissenting vote on the County Board, altered its terms to state that “[a]ny transference of this easement” beyond Grantee, her heirs and assigns, “will require County Board approval.”

28. Commissioner Johannsen’s action was not authorized at any meeting of the County Board.

29. On September 26, 2018, Ms. LaDuke recorded a quitclaim deed conveying the Property “with all hereditaments and appurtenances belonging thereto” to Akiing Land Company, LLC, a holding company on which Ms. LaDuke served as its Board Chair.

30. On November 20, 2020, Akiing recorded a quit claim deed conveying the Property with “with all hereditaments and appurtenances belonging thereto” to Switchboard

Trainers Network whose designee and tenant at the location is Ms. Houska. The deed was executed by Ms. LaDuke as Akiing Board Chair.

31. Ms. LaDuke and Akiing transferred title to the Switchboard Trainers Network ("Switchboard") because she and Akiing recognize that Switchboard is a community organization with which they have a sisterly relationship; that is to say, that Ms. LaDuke is politically supportive of groups or persons engaged in honoring the Earth and engaged in sustainable energy advocacy.
32. With the agreement of Switchboard, Ms. Houska is the tenant and steward of the Property and is authorized to exercise all rights regarding it, including permitting additional tenants, visitors, and invitees.
33. Switchboard orally granted all rights of tenancy in the Property to Plaintiff Tara Houska, including permission for all individuals invited or approved by Ms. Houska (including, but not limited to, Plaintiff Winona LaDuke) to access and use the Property. Switchboard was and is aware that numerous individuals associated with and acting in support of Indigenous tribes, including the Anishinaabe people, would be and are using the Property for associational, political, religious cultural, and familial activities, including advocacy activities in support of sustainable energy.
34. Ms. Houska has occupied and managed the Property with the permission of Switchboard since it became owner of the property in November, 2020.
35. Under Ms. Houska's tenancy and stewardship, the Property has in fact served as a location for members of the Anishinaabe peoples to engage in cultural and spiritual practices, as well as a central organizing point for people who are opposed to the

construction of the Enbridge Line 3 pipeline.

36. Ms. Houska personally conducts classes on treaty rights and decolonization at the camp.

37. Ms. LaDuke continues also to access the Property through the easement as she engages in associational, political, cultural and familial activities with Ms. Houska.

38. Ms. Houska and Ms. LaDuke have a familial relationship as members of the Anishinaabe peoples.

39. During all periods since Ms. LaDuke first came into ownership of the Property, and since the recording of the easement, the use of the driveway for vehicular access, egress, and ingress has been continuous, overt and specifically known to Hubbard County, its County Board, the Hubbard County Sheriff's Office, and the Land Commissioner's Office.

40. Currently, the Property and structures located there are the home of Namewag Camp, a cultural, political, spiritual, and communal camp. It is led by Indigenous women and two-spirit individuals (an Indigenous community non-binary identity) and is intended to protect Mother Earth, defend the sacred, and live in-balance. The tenants' focus is on systemic change that respects Indigenous sovereignty and the severity of the climate crisis. These tenants and their invitees oppose the construction of the Enbridge Line 3 pipeline which violates the treaty rights of Anishinaabe peoples and nations in its path and desecrates and irreparably harms the Earth.

41. The relationships among the occupants of the Property are guided by the values and

traditions of Indigenous people. The camp is run communally, those who reside or use the land have obligations of care and communal responsibilities. Among these responsibilities is respect for persons and violence is not tolerated at the camp.

42. The structures at the camp do not use public utilities. Electricity is generated through renewable solar energy. There is no water utility to the Property. The tenants bring water (as well as food) onto the Property by vehicles.
43. At approximately 6:00 a.m. on the morning of Monday, June 28, 2021, with no prior notice or opportunity to challenge, multiple squad cars from Hubbard County Sheriff's Office arrived to suddenly inform the occupants of the property that the driveway would soon be blockaded.
44. Sheriff's deputies delivered a notice stating that the driveway "will be barricaded" at 10:00 a.m., that "[v]ehicles will not be allowed to enter" to the Property or the camp, and that criminal "enforcement action will be taken [against those who continue to drive upon the driveway] by the Hubbard County Sheriff's Office." Ex. A.
45. The notice cited no legal authority for the dramatic and sudden restriction of access to the Property.
46. The notice also failed to notify those affected of any right to be heard or right to appeal.
47. The blockade announced in the notice extinguished valuable property interests and terminated many decades of routine use of the driveway to access the Property

without previous objection by Hubbard County.

48. Prior to 9:00 a.m. the sheriff's deputies began denying people right of access to the Property and blocking cars. Those who sought to park their cars off of the public roadway and proceed by foot were told that no one could go in and that their cars would be towed.
49. The armed law enforcement officers continued to blockade the camp all day, until about midnight on Monday, June 28, during which time they enforced their blockade and prevented people at or in the camp from departing for any purpose.
50. During this time the Sheriff's Office also blocked people attempting to bring food and water into the camp.
51. Police also made multiple arrests, both while moving up the driveway towards the camp and while patrolling the edge of the property.
52. The deputies returned for a full day on Tuesday, June 29, and then came back on Thursday morning, July 1.
53. The Hubbard County Sheriff's Office, under the direction of Sheriff Aukes, has continued to enforce the blockade, appearing at different times without notice or known schedule. Officers from other jurisdictions have supplemented the blockade, apparently at the request of the Hubbard County's Sheriff's Office.
54. The Sheriff's Office has issued numerous baseless citations to drivers for using the driveway, including Plaintiff AhnaCole Chapman and other persons attempting to leave the Property to obtain food, water, or other necessities.
55. The Sheriff's Office has deployed law enforcement personnel in substantial

numbers to physically blockade the property and to seize and pull over anyone leaving the property by vehicle, citing them for using the only means of exit, thus criminalizing the ability and liberty of persons to come and go from this private property.

56. Hubbard County Sheriff's Office citations have charged drivers who use the driveway with criminal offenses, asserting that the long-standing driveway is now a "trail," no longer amenable to vehicular use.

57. Through these seizures and baseless citations, the Hubbard County Sheriff's Office has taken and recorded the identities of persons coming to and from the Property.

58. At times Hubbard County Sheriff's Office vehicles have been deployed to physically block the driveway for up to twelve hours a day.

59. When not physically barricading the Property, deputies monitor the driveway from a power corridor easement on the Property.

60. Occupants of and invitees to the Property continually risk citation for traversing the driveway anytime they attempt to leave or enter the Property by car, even when bringing in food, water, or other necessary supplies.

61. The undated notice was signed by Sheriff Cory Aukes and Land Commissioner Mark Lohmeier and the aforementioned enforcement actions were undertaken under the authority of Sheriff Aukes, who mounted what might be the State's most militarized response to an easement dispute in history. Moreover, no one at the property even knew that there was any alleged dispute over the easement until law

enforcement showed up in force to shut down the driveway.

62. The overuse and display of force and authority without notice reflects the reality that this was nothing less than an overt political blockade using the power of the State to disrupt and penalize opposition to the building and expansion of the Enbridge pipeline.
63. Sheriff Aukes admitted that his intention was to target political protest activity. Specifically, when asked why the blockade was happening now, after many decades of unobjected-to usage of the County Parcel to access the Property, Sheriff Aukes stated, “We decided that now is the time for obvious reasons. All hell breaks loose at certain times, and we’re hoping to stop that. And if this is the way to do it, then this is the way to do it.”
64. No factual basis exists for Sheriff Aukes’ allegation that “all hell breaks loose” on the Property at any time during the current tenancy.
65. The blockade significantly infringes on Ms. Houska’s, Ms. LaDuke’s, and Switchboard’s abilities to access and use the Property.
66. The actions of defendants have extinguished fundamental property rights, without lawful basis, and in the absence of notice and opportunity to challenge.
67. The property is now landlocked either by law enforcement’s physical blockade of access or by law enforcement’s issuance of citations, criminalizing and penalizing

access to the property.

IV. CLAIMS FOR RELIEF

A. COUNT ONE: DECLARATORY RELIEF AS TO EASEMENT

68. Plaintiffs repeat the allegations in paragraphs above as if fully set forth herein.

69. Plaintiffs are entitled to a declaration that an easement over the County Parcel for access, ingress and egress to the Property exists, and that such an easement runs with the land and is not contingent on any approval, past or future, of the County Board. Such easement follows the legal description in the express easement granted to Ms. LaDuke in 2018.

1. The 2018 express easement runs with the land.

70. The express easement granted to Ms. La Duke is an easement appurtenant that runs with the land, and thus continues to the benefit of subsequent owners and occupiers of the Property.

71. The County Board resolution contains no limiting language suggesting that the easement would not be permanent; to the contrary, it recognizes that the easement provides the only reasonable means of access to the Property.

72. The language of the express easement itself, stating that it benefits Ms. LaDuke's heirs and assigns, and benefits her in her capacity as the owner of the property, all indicates that it is an easement appurtenant that runs with the land.

73. Plaintiffs are therefore entitled to declaratory relief that any limiting language in the express easement is null and void and to an order of the Court directing that

the county recorder strike the language from the title record.

2. In the alternative, the 2018 express easement can be assigned by Ms. LaDuke.

74. In the alternative, the 2018 express easement is an easement in gross, personal to Ms. LaDuke, that she has assigned according to the express terms of the easement.
75. The easement's express language allows Ms. LaDuke to assign the easement to anyone, for the purpose – access to the Property – stated in the easement.
76. The easement contains no language indicating that Ms. LaDuke's rights will terminate or be extinguished, except upon non-use, which has not occurred.
77. Ms. LaDuke has in fact assigned access rights under the easement to the subsequent owners and occupiers of the Property, and their invitees, including all Plaintiffs.
78. Plaintiffs are therefore entitled in the alternative to declaratory relief that all owners and occupiers of the Property, and their invitees, are entitled to use the easement for access to the Property based on Ms. LaDuke's assignment of the easement to Switchboard.

3. In the alternative, Plaintiffs are entitled to an easement based on Hubbard County's notice of an existing driveway when taking title.

79. Upon information and belief, Hubbard County had actual notice of the existence of the driveway when it took title to the County Parcel in or about 1928.
80. An easement exists when a party taking title to a property has "actual knowledge of facts that would put one on further inquiry." *Levine v. Bradley Real Estate Trust*,

457 N.W.2d 237, 240 (Minn. App. 1990).

81. Plaintiffs are therefore entitled in the alternative to declaratory relief that all owners and occupiers of the Property, and their invitees, are entitled to use the easement for access to the Property because an easement has existed as a matter of law since at least 1928.

4. In the alternative, Plaintiffs are entitled to an easement by necessity.

82. An easement by necessity exists when ““(1) [there is] a separation of title; (2) the use of which gives rise to the easement shall have been so long continued and apparent as to show that it was intended to be permanent; and (3) that the easement is necessary to the beneficial enjoyment of the land granted.”

Romanchuk v. Plotkin, 215 Minn. 156, 160–61, 9 N.W.2d 421, 424 (1943).

83. The separate ownership of the Property and the County Parcel constitutes a separation of title.

84. The usage of the driveway as the sole means of access to the Property for over a century constitutes proof that an easement over the County Parcel was intended to be permanent.

85. The fact that the driveway is the sole means of access to the Property renders an easement necessary to beneficial enjoyment of the Property.

86. Plaintiffs are therefore entitled in the alternative to declaratory relief that an easement by necessity, appurtenant to the Property, exists allowing access to the

Property along the current driveway.

5. In the alternative, Plaintiffs are entitled to an easement because the Property is a landlocked cartway.

87. An easement must be granted to provide a cartway linking a property to the only available road. Minn. Stat. § 164.08, subd. 2.

88. The driveway on the Property is the only connection to the only available road,

[REDACTED]

89. Plaintiffs are therefore entitled in the alternative to declaratory relief that an easement, appurtenant to the Property, exists allowing access to the Property along the current driveway connecting the Property to [REDACTED].

6. Plaintiffs are entitled to an easement pursuant to the Minnesota Constitution.

90. The Minnesota Constitution, Art. X, § 1, provides: “The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation.”

91. In 1915, Hubbard County, which qualifies as a municipal corporation, assessed a road lien against the Property for the construction of the road that is now [REDACTED]

[REDACTED]

92. In 1949, this lien was released, indicating that the assessment had been satisfied.

93. This assessment would violate the Constitution if the Property were not benefited from the construction of the road.

94. Therefore, Plaintiffs have a right to a declaration that an easement for access to [REDACTED] exists across the County Parcel, along the reasonably necessary route that Hubbard County has already recognized.

**B. COUNT TWO: DECLARATORY AND INJUNCTIVE RELIEF
REGARDING BLOCKADE NOTICE**

95. Plaintiffs repeat the allegations in paragraphs above as if fully set forth herein.

96. As an easement existed as a matter of law at the time of the issuance of the undated notice issued by Commissioner Lohmeier and Sheriff Aukes, Plaintiffs are entitled to a declaration that the notice is null and void and to a permanent injunction barring the issuance or enforcement of the notice or any subsequent notice substantially similar in effect.

**C. COUNT THREE: DECLARATORY AND INJUNCTIVE RELIEF
REGARDING CITATIONS**

97. Plaintiffs repeat the allegations in paragraphs above as if fully set forth herein.

98. As an easement existed as a matter of law at the time of the issuance of the undated notice issued by Commissioner Lohmeier and Sheriff Aukes and at the time of all subsequent enforcement actions, Plaintiffs are entitled to a declaration that all citations issued for purported land-use violations or other offenses alleged pursuant to enforcement of the notice are null and void and to a permanent injunction barring the issuance of any subsequent citations on substantially similar

grounds.

99. Plaintiffs are entitled to an injunction directing that the Sheriff's Office expunge all information, including identity information, it has obtained as a result of its unlawful seizures of persons driving to and from the Property, including any such information that has been shared outside the Sheriff's Office and/or placed in any data repositories.

V. PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court award Plaintiffs:

- a. A declaration that the Property enjoys an easement by necessity or, in the alternative, a permanent easement by approval of the County Board permitting use of the County Parcel for vehicular access to the Property;
- b. A permanent injunction barring Defendants from blockading, obstructing, or otherwise interfering with access to the Property;
- c. A declaration that the undated notice issued by Commissioner Lohmeier and Sheriff Aukes is null and void;
- d. A permanent injunction barring Defendants from issuing or enforcing any substantially similar notice impairing use of the easement over the County Parcel;
- e. A declaration that citations issued pursuant to enforcement actions arising from the notice are null and void;
- f. A permanent injunction barring Defendants from issuing substantially similar citations to persons traversing the driveway leading to the Property

except pursuant to the request of the Property owner or authorized tenants;

- g.** A permanent injunction directing Defendants to expunge and destroy all copies of identity and other information obtained through the baseless seizure and citation of persons coming to and from the Property, including all such information shared with others and/or entered into any data repository;
- h.** A permanent injunction barring Defendants from sharing any personally identifying information obtained as a result of Defendants' activities referenced herein with Enbridge or any other party;
- i.** Attorneys' fees and costs as allowed by law;
- j.** Any other relief that this court deems just and proper.

Dated: July 16, 2021

/s/ Jason Steck

Jason Steck (#0393077)
Law Office of Jason Steck
525 Park Street, Suite 320
St. Paul, MN 55103
(763) 402-1829
jason@jasonstecklaw.com

Mara Verheyden-Hilliard*
mvh@JusticeOnline.org
Carl Messineo*
cm@JusticeOnline.org
Amanda Eubanks*
amanda.eubanks@protestlaw.org
Center for Protest Law and Litigation
at the Partnership for Civil Justice Fund
617 Florida Avenue NW
Washington, DC 20001
202.232.1180

Marco Simons*
Marissa Vahlsing*
Benjamin Hoffman*
Patrick Boyle*
Deirdre Dlugoleski*
EarthRights International
1612 K St. NW, Suite 800
Washington, D.C. 20006
phone: 202-466-5188
fax: 202-466-5189

Attorneys for Plaintiffs

* Not admitted in Minnesota. Appearing only on the signature block at this time pursuant to Minn. R. Gen. Prac. 5.01(b).

MINNESOTA
JUDICIAL
BRANCH

I DECLARE UNDER PENALTY OF PERJURY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE CLAIMS MADE IN THIS VERIFIED COMPLAINT ARE TRUE AND CORRECT.

July 16, 2021
Date

/s/ Tara Houska
Tara Houska

July 16, 2021
Date

/s/ Winona LaDuke
Winona LaDuke

July 16, 2021
Date

/s/ AhnaCole Chapman
AhnaCole Chapman

July 16, 2021
Date

/s/ Ronald Seifert
Ronald Seifert
for Switchboard Trainers Network

MINNESOTA
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BRANCH



Cory Aukes, Sheriff

Hubbard County Sheriff's Office

301 Court Avenue

Park Rapids, MN 56470

218-732-3331 Fax: 218-732-2550



To protect and serve citizens of Hubbard County

NOTICE

This serves as notice that due to no easement for the current landowner of parcel number [REDACTED], the trail will be closed to vehicular traffic. This Hubbard County owned trail between Big Buck Dr and the gate at blue number [REDACTED] is not open to vehicular traffic per Hubbard County's Land Use Ordinance. The trail will be barricaded beginning on June 28th 2021 at 10:00am. Vehicles will not be allowed to enter for any reason after this time. Vehicles driving on this Hubbard County owned trail are in violation of the Hubbard County Land Use Ordinance and enforcement action will be taken by the Hubbard County Sheriff's Office.

Signed: *Cory Aukes* Hubbard County Sheriff

Signed: *Mark Johnson* Hubbard County Land Commissioner