

PUBLIC UPDATE

WOMP vs PENINSULA TOWNSHIP

US DISTRICT COURT CASE NO: 20-cv-01008

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Preparatory Components

1. Date lawsuit was filed – 10/21/2020

2. Scheduling order dates:

A. Completion of discovery – 11/15/2021

B. Dispositive Motions – 12/15/2021

C. Settlement Conference – 7/5/2022 at 1:30 pm

D. Final Pretrial Conference - 7/25/2022 at 9:00 am

E. Trial – 8/16/2022 at 8:45 am (estimated 6 days

3. Status of Motion Practice:

Preparatory Components

4. A. Protected Discussions/Settlement – Rule 408

B. Facilitation Rules

5. Complaint Allegations

A. Count I – Facial Challenge to Violation of Freedom of Speech, Freedom of Expression and Free Exercise of Religion under the First and Fourteenth Amendments (42 U.S.C. § 1983). For example:

“Activities such as weddings, receptions and other social functions for hire are not allowed...”

“A Farm Processing Facility may only sell merchandise which ‘is directly related to the consumption and use of the fresh and/or processed agricultural produce.’”

“Plaintiffs are prohibited under the ordinance, for example, from hosing a meeting of the United Way, Special Olympics, American Heart Association, etc.”

“Guest Activities also ‘do not include entertainment, weddings, wedding receptions, family reunions or sale of the wine by the glass.’ This places a burden on the free exercise of religion.”

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5. Complaint Allegations (continued)

B. Count II – As-Applied Challenge to Violation of Plaintiff’s Freedom of Speech, under the First and Fourteenth Amendments (42 U.S.C. § 1983). For example:

“A Remote Winery Tasting Room may only sell non-food items which promote the winery of Peninsula Township agriculture and has the logo of the winery permanently affixed to the product. Non-logoed products are not allowed to be sold. Promotional items are limited to ‘corkscrews, wine glasses, gift boxes, t-shirts, bumper stickers, etc.”

“Examples of merchandise which is not allowed are “a) Clothing; b) Coffee Cups; c) Bumper Stickers.” “Thus, a winery operating under the Farm Processing Facility ordinance cannot sell a t-shirt bearing its logo.”

C. Count III –Violation of Freedom of Association under the First and Fourteenth Amendments (42 U.S.C. § 1983). For example:

“Activities such as weddings, receptions and other social functions for hire are not allowed...”

“Plaintiffs are prohibited under the ordinance, for example, from hosting a meeting of the United Way, Special Olympics, American Heart Association, etc.”

“Guest Activities also ‘do not include entertainment, weddings, wedding receptions, family reunions or sale of wine by the glass.”

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5. Complaint Allegations (continued)

D. Count IV – Violation of Due Process (42 U.S.C. § 1983). For example:

“The Winery Ordinances are unconstitutionally vague because the person of average intelligence cannot tell from the face of the Winery Ordinances what constitutes a “Guest Activity” prohibited under the Winery Ordinances and cannot govern his or her behavior to comply with the Winery Ordinances.”

E. Count V – Dormant Commerce Clause (Discrimination against Interstate Commerce). For example:

“Under this ordinance, [t]he majority of the produce sold fresh or processed has to be grown on the specific farm operation (land owned or leased for the specific farm operation) of the party owning and operating the Specific Farm Processing Facility.”

“Further, [e]ighty-five (85) percent of the produce sold fresh or processed has to be grown on Old Mission Peninsula.”

F. Count VI – Dormant Commerce Clause (Excessive Burden on Interstate Commerce). For example:

“Thus, for the right to have Guest Activities at their winery, Plaintiffs are required to either grow on acreage other than the winery acreage or purchase from a grape grower in Peninsula Township 1.25 tons of grapes for each person participating in a Guest Activity.”

“The...appellation requirement, given federal law governing wine appellations, limits the Guest Activities only to wine where not less than 75% of the wine was produced from grapes grown in Peninsula Township.”

“Plaintiffs cannot serve wine made from California or other states’ grapes at Guest Activities.”

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5. Complaint Allegations (continued)

G. Count VII – Regulatory Taking (Fifth and Fourteenth Amendment). For example:

“In addition to a minimum lot size of fifty acres, the Winery-Chateau ordinance mandates that at least ‘seventy-five (75%) percent of the site shall be used for the active production of crops that can be used for wine production, such as fruit growing on vines or trees.”

“While the Winery-Chateau ordinance allows for accessory uses in addition to the principal winery use, “[a]ccessory uses such as facilities, meeting rooms, and food and beverage services shall be for registered guests only.”

H. Count VII (sic) – State Law Preemption. For example:

“Section 8.7.3(10)(u)(5)(b) conflicts with Mich. Admin Code R. 436.1403(1), which allows wineries to serve alcohol until 2:00 AM every night.”

“Section 8.7.3(10)(u)(5)(g) conflicts with MCL 436.1916(11), which grants wineries the right to host ‘[t]he performance or playing of an orchestra, piano, or other types of musical instruments, or singing,’ without a permit.”

“The Winery Ordinances, including Section 8.7.3(10)(u)(5)(i), conflict with MCL 436.1536, which states a “wine maker [or] small wine maker...may own and operate a restaurant...as part of the on-premises tasting room...” and with MCL 436.1547, which allows Plaintiffs to [sic] a restaurant to cater private events off their premises where they may serve food and alcohol they manufacture.”

I. Count IX – Violation of Michigan Zoning Enabling Act. For example:

“Peninsula Township’s Winery Ordinances do not promote public health, safety, and welfare” under Michigan’s Zoning Enabling Act, MCL 125.3101, et seq.

J. Count X – Injunctive Relief. For example:

“Plaintiffs will be irreparably harmed if an injunction does not issue preventing Peninsula Township from continuing to enforce the Winery Ordinances.”

“Peninsula Township will not be harmed if it is prohibited from enforcing its illegal Winery Ordinances.”

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Public Comment