

Nos. 25-1703/25-1705/25-1754

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United States Court of Appeals for the Sixth Circuit

**WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, et al.,**

Plaintiffs - Appellees (25-1703/25-1705)/Cross-Appellants (25-1754)

v.

**TOWNSHIP OF PENINSULA, MI,**

Defendant - Appellant (25-1703)/Cross-Appellee (25-1754)

**PROTECT THE PENINSULA, INC.**

Intervenor - Appellant (25-1705)/Cross-Appellee (25-1754)

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Appeal from the United States District Court  
Western District of Michigan, Southern Division  
Case No. 1:20-cv-1008, Honorable Paul L. Maloney

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**APPELLEES/CROSS-APPELLANTS' OPPOSITION TO MOTION FOR  
LEAVE TO FILE BRIEF OF THE MICHIGAN MUNICIPAL LEAGUE  
(MML) LEGAL DEFENSE FUND AS AMICUS CURIAE**

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## INTRODUCTION

A motion for leave to file an amicus brief must state “(1) the movant’s interest; and (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(a)(3). The amicus also must disclose whether other parties or groups contributed to the brief. Fed. R. App. P. 29(a)(4)(E). Failure to make those disclosures requires that leave to file the briefs be denied. *Pharmacy Recs. v. Nassar*, 465 F. App’x 448, 451 n.1 (6th Cir. 2012).

Assuming the amicus passes this hurdle, the Court has discretion to accept an amicus brief where “the proffered information of amicus is timely, useful, or otherwise necessary to the administration of justice.” *United States v. State of Mich.*, 940 F.2d 143, 165 (6th Cir. 1991) (citation omitted). “An *amicus curiae* brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court,” but an “*amicus curiae* brief which does not serve this purpose simply burdens the staff and facilities of the Court and its filing is not favored.” Fed. R. App. P. 29, Committee Notes on Rules—1998 Amendment (quoting Sup. Ct. R. 37.1). The Court need decide “whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.” *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (Posner, J., in chambers). That is more likely to happen where a party is “inadequately

represented,” where “the would-be amicus has a direct interest in another case that may be materially affected by a decision in this case,” or where “the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide.” *Id.*

Absent those special circumstances, “leave to file an amicus curiae brief should be denied.” *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers). Leave should also be denied where amicus briefs are “used as a means of evading the page limitations on a party’s briefs.” *Glassroth v. Moore*, 347 F.3d 916, 919 (11th Cir. 2003). And leave should be denied when “the proposed amicus briefs merely announce the ‘vote’ of the amici on the decision of the appeal.” *Voices for Choices*, 339 F.3d at 545.

### **ARGUMENT**

The Court should reject MML’s amicus brief. First, MML has not fulfilled its disclosure requirements under Rule 29(a)(4)(E). Second, MML’s brief is not helpful. MML largely repeats arguments made by Peninsula Township and PTP, using different words, without a showing that either party is inadequately represented, that MML has a direct interest in a similar case, or that MML has a unique perspective that an actual unit of municipal government—Peninsula Township—does not share. Without any of these, the amicus brief is just a way to expand existing word counts and cast MML’s vote in this case.

**A. MML has not fulfilled its disclosure requirements.**

MML certified that “[n]o counsel for a party authored this Brief in whole or in part. No counsel or party made a monetary contribution to the preparation of this Brief.” (Case 25-1705, Doc. 43, p. 10 n.1.) Federal Rule of Appellate Procedure 29(a)(4)(E), however, requires that MML should have further disclosed whether “a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies the person.” MML’s failure to comply with Rule 29(a)(4)(E) warrants striking its proposed brief. *See Pharmacy Recs.*, 465 F. App’x at 451 n.1.

**B. MML’s repetitive argument that Constitutional rights are “second-tier” issues when it comes to zoning is wrong.**

Given that MML is a group comprised of municipalities, it is not surprising that it believes in the importance of local zoning. Perhaps it was wistful to hope, however, that a group purportedly representing local governments would not so casually characterize Constitutional rights as “second-tier” as compared to zoning ordinances: “[T]his case involves a collection of what might typically be seen as second-tier arguments in a zoning case—void-for-vagueness, free speech, religious issues, dormant commerce clause, etc.” (Doc. 43, p. 12.)

Mirroring the theme from the primary briefs in this case (*see, e.g.*, Case No. 25-1705, Doc. 33, p. 28), MML’s core argument is that federal courts have no business reviewing zoning ordinances because zoning ordinances address local

concerns. (Doc. 43, pp. 11-26.) But the suggestion that a local zoning ordinance is free to violate the Constitution “completely lacks merit.” *Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d 82, 93 (5th Cir. 1992). That argument “is so devoid of legal foundation as to be frivolous, and its attempt to exalt the [the local government’s interests] over the [United States] Constitution is fatuous.” *Id.* (quoting *Nobby Lobby, Inc. v. City of Dallas*, 767 F. Supp. 801, 820 (N.D. Tex. 1991)). To suggest otherwise is a “constitutionally offensive argument ....” *Nobby Lobby*, 767 F. Supp. at 820.

At bottom, federal courts have authority to review local zoning ordinances to determine whether they violate the Constitution. MML’s suggestion to the contrary, no matter how biting the language, is wrong and unhelpful.

**C. MML ignores the record when trying to support Dr. Daniels’ testimony.**

The District Court found that PTP’s expert, Dr. Thomas Daniels, was not credible. MML criticizes the court for having done so in what it calls “conclusory terms” and “[w]ithout factual explanation.” (Case 25-1705, Doc. 43, p. 18.) MML also voices its belief that it was “noteworthy that Dr. Daniels’ Report was redacted.” (*Id.* p. 19 n.5.) More noteworthy is that MML is wrong and ignores the record.

PTP’s counsel acknowledged that by the time of trial, the court’s rulings had narrowed certain issues for trial. (R. 604 Page ID # 23923.) Because of this, when PTP moved Dr. Daniels’ entire report into evidence, the Wineries tendered a version

of his report redacted to remove materials that were no longer relevant. (*Id.*, Page ID ## 23922-23924.) Noting that “[s]ometimes the judge comes up with very effective resolution of potential objections,” the District Court suggested both versions (unredacted and redacted) be admitted, to which the parties agreed. (*Id.*, Page ID ## 23924-23925.) As a result, both Exhibit H (unredacted) and H-1 (redacted) were admitted and filed. (*See* R. 616). While MML does not explain why it finds the redactions “noteworthy,” its point is erroneous in any event.

As to the credibility determination, MML overlooks that when finding that Dr. Daniels “was not credible,” the District Court explained that “Plaintiffs’ counsel stretched Dr. Daniels’ credibility on cross examination and was plainly able to impeach his testimony. Aside from effective cross examination, Dr. Daniels’ testimony was largely dispelled by Plaintiffs’ rebuttal expert witnesses, Teri Quimby and Gary McDowell. The court has no trouble concluding that the facts at trial largely favored Plaintiffs.” (R. 623, Page ID # 31416.)

Problems with Dr. Daniels’s credibility, which the District Court was able to observe through live testimony, were made apparent on cross-examination. He conceded that he did not review the Michigan Liquor Control Code when considering his land-use opinions because it was not “something [he] was asked to look at” by PTP’s attorneys. (R. 604, Page ID # 23930.) Ms. Quimby, a former Commissioner at the Michigan Liquor Control Commission, took issue with the fact

that Dr. Daniels ignored an “essential law” that governed licensed premises. (R. 607, Page ID ## 24759-27462.)

Dr. Daniels also did not review Michigan’s Right to Farm Act or Farm Market Generally Accepted Agricultural and Management Practices (GAAMPS). (R. 604, Page ID # 23875, 23956.) Mr. McDowell, the former Executive Director of the Michigan Department of Agriculture and Rural Development, on the other hand, testified how critical the Right to Farm act and Farm Market GAAMPS were in helping farmers preserve agriculture. (R. 609, Page ID # 25227-25230.) He explained that GAAMPS “make sure the farmers can do the job properly, but also remain profitable. And by doing that, by keeping those farmers profitable, that land will stay in farmland. That’s the most effective way you can protect the farmland.” (*Id.*, Page ID ## 25229-25230.)

Dr. Daniels opined that it was reasonable to restrict the Wineries’ commercial transactions but then conceded on cross-examination that selling wine was a commercial transaction. (R. 604, Page ID ## 23946-23948.) And once again, Mr. McDowell disagreed with Dr. Daniels’ opinion and explained that GAAMPS allows farmers to sell farm products and generic and non-logoed merchandise. (R. 609, Page ID ## 25233-25235.) Similarly, Ms. Quimby disagreed that a winery should be limited to selling merchandise with the winery logo because the Liquor Control

Code allows wineries to advertise their businesses in other ways, such as using logos of specific products. (R. 607, Page ID ## 24763-24764.)

Likewise, Dr. Daniels opined that the Wineries should not sell bottled water, unaware that Mich. Comp. Laws § 436.1537(7) allows wineries to sell bottled water (R. 604, Page ID ## 23950-23952.) Dr. Daniels opined that Wineries should not offer any food, to avoid competing with businesses that are zoned commercial, but he was unaware that there were only three restaurants in the Township, one of which was zoned residential. (*Id.*, Page ID ## 23952-23955.) Ms. Quimby pointed out that limiting the sale of food, or the types of food, when selling alcohol was not smart and not Michigan policy, explaining “from a health, safety, welfare standpoint, it would not be in anyone’s best interests to not offer food along with alcohol. And not just any food; food that is more substantial or has more fats or carbohydrates, things like that.” (R. 607, Page ID ## 24770-24771.) This is promoted in the Liquor Control Code. (*Id.*, Page ID # 24771.) Ms. Quimby explained that restrictions on food do not “promote health safety and welfare.” (*Id.*, Page ID # 24772.)

Dr. Daniels testified he was worried about the Wineries from becoming “bars serving alcohol other than wine” and becoming “wine shops.” (R. 604, Page ID ## 23957-23958.) But he admitted he was unaware of something to which Ms. Quimby testified—the Liquor Control Code prohibits wineries from serving alcohol they do not manufacture. (*Id.*; R. 607, Page ID ## 24767-24770.)

Dr. Daniels opined that wine tastings should not occur outside, but once again admitted his opinion was constrained by what he did not review: “I have not reviewed [the Liquor Control Code], so I honestly don’t know [if that is allowed].” (R. 604, Page ID ## 23962-23963.) Ms. Quimby explained that the Liquor Control Code allows for outdoor service. (R. 607, Page ID # 24762.)

Dr. Daniels opined that farm weddings should not be allowed because they would add more cars to the road, but he admitted he is not a traffic expert, did not perform a traffic study, and has no idea how many cars the Township roads can safely handle. (R. 604, Page ID ## 23965-23966.) Mr. McDowell explained that in testifying that farm weddings should not be allowed, maybe it was “another state that Dr. Daniels was talking about, but he wasn’t talking about Michigan.” (R. 609, Page ID # 25239.) Mr. McDowell explained that on-farm activities, like weddings, preserve agriculture and promote the sale of agricultural products. (*Id.*, Page ID ## 25240-25241.) Dr. Daniels finally conceded, on cross-examination, that in Michigan, “farm weddings are a form of agricultural tourism.” (R. 604, Page ID ## 23966-23967.)

Dr. Daniels testified that increased traffic would also make it difficult for farmers to use Township roads, but aside from admitting that he did not review any traffic studies, he also admitted he has no idea how many farm vehicles use Township roads or at what time of day they might do so. (*Id.*, Page ID # 23972.)

Dr. Daniels testified he was worried that absent the ordinances at issue, land values might go up, meaning “it will be more expensive for Peninsula Township to buy that land for its PDR program.” (*Id.*, Page ID ## 23974.) Put another way, PTP’s expert admitted that the Township had enacted ordinances to keep land values low, so that the Township could buy more land rights. Mr. McDowell also took issue with this, explaining that farmers do not have 401(k)s or pension plans and so a farmer’s ability to borrow and his net worth is based on the value of his land. (R. 609, Page ID ## 25231-25232.) Mr. McDowell summed up the issue of preserving agriculture succinctly, “[e]verything goes back to that profitability. To save our farmland we have to make sure our farmers are successful.” (R. 609, Page ID # 25236.)

Given the above, and that Dr. Daniels also conceded he did not review any of the Wineries’ licenses or permits, nor the depositions of any of the winery witnesses, nor the depositions of former Township Supervisor Manigold or former Zoning Director Christina Deeren, nor any of the Township Board or Planning Commission meeting minutes, (R. 604, Page ID ## 23874-23875, 23927-23928), perhaps it was understandable that the District Court found that Dr. Daniels’ credibility was “stretched,” that his testimony was impeached, and that Mr. McDowell and Ms. Quimby “largely dispelled” his testimony. (R. 623, PageID.31416.) MML cannot fix that record on appeal, and its attempts to try are unhelpful.

**D. MML repeats the Township’s and PTP’s preemption arguments and MMLs’ preemption argument is based on its misunderstanding of the record.**

As noted above, leave to file an amicus brief should be denied when the brief “essentially duplicates a party’s brief.” *Voices for Choices*, 339 F.3d at 544. MML’s preemption arguments mirror those of PTP, (Case 25-1705, Doc. 33, pp. 72-74), and thereby Peninsula Township, which does nothing more than adopt and incorporate PTP’s argument, (Case 25-1705, Doc. 54, p. 87). MML simply adds unnecessary words to existing arguments. Where MML does argue, it gets the record wrong.

MML argues that the District Court granted the Wineries summary judgment on two preemption claims, amplified music and catering, repeatedly citing R. 162. But the District Court set aside “the entirety of the analysis on preemption” contained within that earlier ruling. (R. 301, PageID.10697.) Thereafter, preemption continued to be litigated and, with respect to the amplification of music, MML ignores the record yet again. In R. 525, the District Court granted summary judgment to the Wineries on the issue of amplified music, finding:

the complete prohibition of amplified instrumental music is preempted by Michigan law, which expressly allows certain licensees to have musical instrument performances without a permit. However, the limitation on the amplification level of music is merely a limitation and not a prohibition. Thus, the “No amplified instrumental music is allowed” language is preempted by Mich. Comp. Laws § 436.1916(11), but the regulation of the amplification level of music—a mere limitation—is not preempted.

(R. 525, PageID.31133.)

MML takes issue with the statute not using the word “amplified,” but given the broad language used, it is implied. Mich. Comp. Laws § 436.1916(11) applies to the “performance” or “playing” of music and the fact that both words are used suggests a difference between them. The correct interpretation of this language means that a licensee can have a person “perform” music (live, in-person) or the licensee can “play” music (which is pre-recorded). Pre-recorded music, however, cannot be played without some sort of amplification; a speaker is necessary to “play” music whether the recording is on iTunes or portable media like a CD. Next, as for live performances, presumably some musicians *could* perform without amplification, depending on the type of music and instrument. But, given that Mich. Comp. Laws § 436.1916(11) encompasses “other types of musical instruments” after the examples of “orchestra” and “piano,” rather than using the phrase “similar types of musical instruments,” the statute necessarily encompasses *all* types of musical instruments. Many instruments, such as electric guitars, can only be played with amplification. The District Court correctly concluded that while the Township cannot regulate whether music is amplified, it may regulate the amplification level.

MML’s motion also demonstrates that it misunderstands the factual record. MML argues that the PTZO only prohibits amplified instrumental music, but the Township admitted enforcing a broader prohibition and admitted having no clue why its ordinance focused on amplified instrumental music. During a 2022 hearing, the

District Court asked the Township “you do have an absolute prohibition on amplified music, correct?” (R. 159, PageID.5894.) Counsel responded, “We do, your honor.”

(*Id.*)

Township witnesses were in accord:

- Q. Well, this says amplified music is allowed, amplified voice is allowed, but amplified instrumental music is not allowed. What is it about amplified instrumental music that the government needs to control?
- A. No amplified music is allowed.
- Q. No, it says no amplified instrumental music is allowed.
- A. Yeah, but it also says no amplified instrumental music is allowed.
- Q. Read it again.
- A. Yeah, I am. I don't know the difference between the instrumental and the amplified voice. I'd have to look that up. It's probably in the minutes someplace.
- Q. You don't know the difference or you don't know why they're treated differently?
- A. I don't know why they're treated differently.
- Q. But you'd agree with me that you're discriminating against instrumental music –
- A. It's not that I agree with you on anything.
- Q. You just said you're discriminating. So what is it about, you know, an electric guitar versus a trombone that makes a trombone less offensive?
- A. I would have to look that up. To me, I can't explain that one to you right now.
- Q. Because under this ordinance, I mean, we could put a marching band out there. We could have some tubas, some base drums, some trombones, some flutists?
- A. I'm sure there was a reason, but I don't know at this time at the table.
- Q. Is Peninsula Township enforcing a complete prohibition on amplified music at wineries?
- A. I'm going to say yes.

(R. 611-154, Page ID ## 28004-28009 (former Supervisor Robert Manigold).

The Township's former Director of Zoning likewise testified:

- Q. ... But, say, an electric guitar, someone playing electric guitar in person would not be allowed?
- A. Not if it's not -- as long as it's not amplified. They could play an electric guitar as long as it's not amplified. They could play acoustic guitar as long as it's not amplified. Does that make sense?
- Q. I think so. But someone could play a trombone as long as it's not amplified?
- A. Yeah.
- Q. Someone could play a base drum as long as it's not amplified?
- A. Right.
- Q. So a marching band, so long as it's not amplified, would be allowed?
- A. I don't know the answer to that.

(R. 611-151, Page ID ## 27802-27803 (former Director Christina Deeren).

The PTZO does not address noise levels, as a marching band playing heartedly is permissible, while amplified instrumental music playing softly is impermissible. And again, the Township was enforcing prohibitions that did not exist in its own ordinances, because the Township did not permit any amplified music, to the extent it even understood its prohibitions.

### **CONCLUSION**

MML ignores the record on multiple issues and its proposed brief does nothing more than increase the word count in this case without adding value. Stated another way, its brief is not "useful, or otherwise necessary to the administration of justice," *State of Mich.*, 940 F.2d at 165, and this Court should reject it.

Respectfully submitted,

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Dated: February 23, 2026

**CERTIFICATE OF COMPLIANCE**

I certify that this 3,256-word brief complies with the Court's type-volume limitations.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on February 23, 2026, I electronically filed this document with the Clerk of the Court using the ECF system, which will send notification of the filing to all ECF filing participants.

Respectfully submitted,

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