

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

OV THE FARM, LLC, a Michigan limited liability company, BOWERS HARBOR VINEYARD & WINERY, INC., a Michigan corporation, and WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION., a Michigan nonprofit corporation,

Plaintiffs,

v

PENINSULA TOWNSHIP, a Michigan municipal corporation,

Defendant.

Case No: 1:25-cv-1588

Honorable: Paul L. Maloney

ORAL ARGUMENT REQUESTED

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

All parties agree that serving food with wine is a good thing. Despite that agreement, Peninsula Township refuses to recognize what Michigan law allows. The Township instead throws up roadblocks with no legal or factual support. Its ripeness argument has been rejected by the United States Supreme Court in a least two different ways and is belied by the allegations in Plaintiffs' complaint. Its preemption argument ignores prior rulings from this Court concerning these parties. Its irreparable harm argument ignores that Plaintiffs' harm is, by definition, irreparable because there is no possibility for Plaintiffs to recover monetary damages. And its public-harm arguments are contradicted by survey results from its own citizens released in the *same month* the Township attorney sent the violation letter to Bonobo.

Underlying those failures is the Township's intentional decision not to present any evidence of its own—declarations, deposition transcripts, trial testimony, or exhibits—to support its claim. There is no declaration from its attorney or minutes from a Township Board meeting disavowing the letter to Bonobo or indicating it does not represent the Township's final position. There are no declarations from neighboring property owners suggesting how they would be injured now if the Wineries served food. This Court should grant Plaintiff's motion for a preliminary injunction.

II. ANALYSIS

A. **This Court has jurisdiction because the letter from the Township's attorney represents the Township's final position on food service.**

The Township begins by arguing that Plaintiffs' claims are not ripe because “[n]o fines were levied, no permits were revoked, and the Township did not even begin the process needed that would, or could, lead to a final decision on Bonobo's use of its property.” (ECF No. 21, PageID.272.) Instead, the Township demands that Bonobo “could ask the Township's Zoning

Board of Appeals (‘ZBA’) to clarify whether its desired use of its property is allowable and made it clear that Bonobo could petition the Township to change the PTZO and allow its provision of full-service meals to continue.” (*Id.*, PageID.272-273.) In essence, the Township’s argument relies on the since-disavowed finality rule from *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson County*, 473 U.S. 172, 187 (1985).

Williamson County set forth that a plaintiff asserting federal takings claims under 42 U.S.C. § 1983 do two things. See *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 187 (2019). First, the plaintiff had to achieve “finality” by seeking a variance from the zoning board of appeals. *Id.* at 187–88. Second, the plaintiff had to “exhaust” his state law remedies for seeking just compensation before suing in federal court. *Id.*

In the last decade, the Supreme Court significantly altered the *Williamson County* analysis. In *Knick*, the Supreme Court overruled the “exhaustion” requirement and held that a property owner can bring a federal lawsuit when the taking occurs without first pursuing available state court remedies. *Id.* at 193–194, 206. Two years later, the Supreme Court further limited the “finality” requirement, explaining that “nothing more than *de facto* finality is necessary.” *Pakdel v. City & Cnty. of San Francisco, California*, 594 U.S. 474, 479 (2021). “Once the government is committed to a position,” any “potential ambiguities evaporate and the dispute is ripe for judicial resolution.” *Id.* Requiring a plaintiff to go through an entire administrative process “is inconsistent with the ordinary operation of civil-rights suits” and is not required. *Id.*

Applying the rules from *Knick* and *Pakdel*, Plaintiffs’ preemption claim is ripe for three reasons. *First*, the Township has “overstated the reach of *Williamson County*” because the Wineries “were never required to ripen” their facial challenges. *San Remo Hotel, L.P. v. City & Cnty. of San Francisco, Cal.*, 545 U.S. 323, 345 (2005). Plaintiffs’ preemption claim is a facial

challenge. There are no circumstances in which Peninsula Township's complete ban on wineries operating restaurants comports with Michigan law. Because the Township's ban on restaurants conflicts with the Michigan Liquor Control Code, it is void and unenforceable in every circumstance. *Ter Beek v. City of Wyoming*, 823 N.W.2d 864, 874 (Mich. Ct. App. 2012), *aff'd*, 846 N.W.2d 531 (Mich. 2014). "Accordingly, because the facial challenge is premised on the idea that regardless of how the statute is applied, it will be unconstitutional, no final decision of the local government applying the particular ordinance to a specific set of facts is necessary to evaluate its constitutionality." *Tini Bikinis-Saginaw, LLC v. Saginaw Charter Twp.*, 836 F. Supp. 2d 504, 518 (E.D. Mich. 2011).

Second, *Williamson County's* finality requirement only applies to certain types of Constitutional claims. *See Miles Christi Religious Ord. v. Twp. of Northville*, 629 F.3d 533, 537 (6th Cir. 2010) (collecting prior cases). Peninsula Township has not cited any cases suggesting the finality requirement would apply to a state-law preemption claim.

Third, even if *Williamson County's* finality requirement does apply to facial state law preemption challenges, Plaintiffs have shown that the Township is committed to a position under *Pakdel's* "modest" requirement. The Township attorney's letter represents the Township's final position. The First Amended Complaint alleges:

141. The Township has taken the position that "the provision of full-service meals is not allowable within the A-1 district." (Exhibit 2: 11/21/25 Letter at 4.)
142. The "provision of full-service meals" is equivalent to a restaurant. *See* Mich. Comp. Laws § 289.1107(t); Mich. Comp. Laws § 436.1111(5).
143. Peninsula Township does not allow any wineries to be operated in any district except the A-1 district.
144. Peninsula Township, therefore, does not allow any winery to operate a restaurant anywhere in Peninsula Township.

(ECF No. 14, PageID.139.)

Peninsula Township has not submitted any evidence to indicate the letter does not represent its position. Indeed, Peninsula Township doubles down on that commitment throughout its response. (*See, e.g.*, ECF No. 21, PageID.278 (“Possession of a liquor license does not mean that Bonobo, or any of the other plaintiffs, can operate without any concern for local regulations.”).)

Largely ignoring *Pakdel*, Peninsula Township relies on three cases that are either distinguishable or rely on the pre-*Pakdel* finality requirement.

The Township first cites *Grace Community Church v. Lenox Township*, 544 F.3d 609 (6th Cir. 2008), which predates both *Knick* and *Pakdel* by more than a decade. There, the Lenox Township Planning Commission revoked a church’s special use permit because of alleged violations of the permit’s conditions. *Id.* at 611–12. Rather than appealing to the zoning board of appeals, the church chose not to present any evidence in support of its position to clarify why it was not committing any violations. *Id.* at 612, 617. “The permit was revoked because the Church’s position was *undefined*. In response to evidence of ongoing permit violations, Rev. Pacey stood mute.” *Id.* at 617. The Sixth Circuit affirmed this district court’s dismissal on ripeness grounds because the church had not forced Lenox Township into a final position by appealing to the zoning board of appeals as required by *Williamson County*. *Id.* at 617–18. *Grace Community Church* is thus distinguishable for two reasons. First, *Pakdel* eliminated the need for a plaintiff to go to the zoning board of appeals, so Plaintiffs here are situated differently than the church. Second, and more to the point, Peninsula Township did not revoke a permit based on some amorphous violations. Peninsula Township’s position is crystal clear—no food service in the agricultural district. (ECF No. 14-2, PageID.150.) There is no ambiguity remaining about the parties’ respective positions, and *Grace Community Church* does not change that outcome.

The Township turns next to *Miles Christi*, where a religious order was in a dispute with its local government about the intensity of the order’s land use—specifically, parking on the front lawn. *Miles Christi*, 629 F.3d at 535–36. The order sued after a dispute arose about its new site plan and after the Township filed a state-court ordinance enforcement action. *Id.* at 536–37. The Sixth Circuit affirmed the ripeness dismissal because the record did not contain “a definitive statement from the zoning board, the entity charged with interpreting Northville’s zoning ordinances, about which ordinances apply to Miles Christi and about whether Miles Christi must submit a site plan under the ordinances.” *Id.* at 539. *Miles Christi* is inapplicable for two reasons. First, unlike the religious order, Bonobo and the other Plaintiffs hold licenses from the state, they have no need to seek a variance or modification to their site plans, and the Township’s position on its restaurant ban is well defined. Second, even if those things were not true, *Miles Christi* is bad law because it required the religious order to exhaust the state administrative procedure. *Pakdel*, decided twelve years later, eliminated that requirement. *See Pakdel*, 594 U.S. at 479.

The Township also cites *Grand v. City of University Heights, Ohio*, 159 F.4th 507 (6th Cir. 2025), which at least comes after *Pakdel*. But *Grand* is factually different. There, the plaintiff withdrew his application for a special use permit to use his home as a “place of religious assembly.” *Id.* at 509–11. He sued without ever receiving a final decision on his application. *Id.* at 511. On appeal, the Sixth Circuit explained *Pakdel*’s modest finality showing: “The point of this requirement is not to channel disputes through elaborate local procedures or three layers of state-court review. Its purpose is simply to determine the government’s position, which is why ‘nothing more than *de facto* finality is necessary.’ No such finality exists.” *Id.* at 513 (citing *Palazzolo v. Rhode Island*, 533 U.S. 606, 624 (2001) and quoting *Pakdel*, 594 U.S. at 479). Because the plaintiff withdrew his application before any decision, “we cannot say whether the City has ‘dug

in its heels’ because we still do not know where it stands on this application of the ordinance.” *Id.* at 514 (quoting *Murphy v. New Milford Zoning Comm’n*, 402 F.3d 342, 349 (2d Cir. 2005)). *Grand* is far afield from this case, where every Plaintiff has a liquor license and where Peninsula Township is fully committed to its position.

The Township’s letter is not an isolated tussle with Bonobo; it states a Township-wide position—“the provision of full-service meals is not allowable within the A-1 district”—and threatens SUP revocation for continued food service. All wineries in Peninsula Township are confined to the A-1 district, and WOMP’s members attested they read the letter and credibly fear enforcement. That is more than enough for pre-enforcement standing and *Pakdel’s* de facto finality—no additional local process is required.

Ultimately, the Sixth Circuit has called Peninsula Township’s argument “plainly mistaken” because it conflates ripeness and exhaustion. *Cath. Healthcare Int’l, Inc. v. Genoa Charter Twp., Michigan*, 82 F.4th 442, 448 (6th Cir. 2023). Ripeness “requires only a ‘relatively modest’ showing that the ‘government is committed to a position as to the strictures its zoning ordinance imposes on a plaintiff’s proposed land use.’” *Id.* (quoting *Pakdel*, 594 U.S. at 478–79.) “Ripeness does not require a showing that ‘the plaintiff *also* complied with administrative process in obtaining that decision.’” *Id.* (quoting *Pakdel*, 594 U.S. at 479). *See also HRT Enters. v. City of Detroit, Michigan*, 163 F.4th 319, 328 (6th Cir. 2025) (“HRT’s takings claim is ripe because the permissible uses of HRT’s property are known to a reasonable degree of certainty, meaning its claim does not rest on purely hypothetical or future events.”). Because Peninsula Township has committed to the position that Plaintiffs cannot operate restaurants, Plaintiffs’ claims are ripe.

B. The Township’s preemption arguments misstate Michigan law and ignore this Court’s prior ruling between these parties.

Plaintiffs are highly likely to succeed on their conflict preemption claim. The Michigan Liquor Control Code allows them to operate restaurants as part of their on-premises tasting rooms. *See Mich. Comp. Laws § 436.1536(7)(h)*. Peninsula Township does not allow wineries to operate restaurants. (*E.g.*, ECF No. 14-2, PageID.150 (“Because facility rentals and full-service meals are absent from the listed uses in the A-1 district or within the Former PTZO winery chateau provisions, those uses are excluded and are not presently allowable.”).) That direct conflict renders Peninsula Township’s restaurant ban void and unenforceable.

The Township cites several Michigan cases which found that local zoning ordinances were not preempted by state law, but each is distinguishable from this dispute. For example, in *Jott, Inc. v. Charter Township of Clinton*, 569 N.W.2d 841, 843 (Mich. Ct. App. 1997), Clinton Township limited topless entertainment to districts zoned B-3 business use. The Michigan Court of Appeals upheld the zoning ordinance as an appropriate time, place, and manner restriction because it “does not ban topless dancing, but, rather, merely restricts the location of such forms of adult entertainment.” *Id.* at 847. *Jott* also considered a challenge to Clinton Township’s definition of nudity. *Id.* at 851. In upholding the definition, the Court of Appeals reasoned that preemption was not appropriate because the Liquor Control Commission “has adopted Rule 436.1409(1), explicitly recognizing the authority of local governmental units to prohibit different types of nudity in establishments holding liquor licenses.” *Id.* at 854. Thus, Clinton Township was acting under authority that the Liquor Control Commission provided to it.

Next, the Township cites *Maple BPA, Inc. v. Bloomfield Charter Township*, 838 N.W.2d 915 (Mich. Ct. App. 2013). There, a gas station sought local approval to sell beer and wine to go with a specially designated merchant license. *Id.* at 918. Bloomfield Township denied the gas

station's request because the alcohol would be sold too close to fuel pumps to comply with Michigan law. *Id.* at 918–19. The Township subsequently amended its ordinance to prohibit drive-thru sales and to impose location setbacks from major thoroughfares and residential areas. *Id.* at 919. The gas station argued that the Township's amended zoning ordinance was preempted by the Michigan Liquor Control Code, and the Michigan Court of Appeals rejected that argument for two reasons. First, the Court of Appeals held that the Liquor Control Code does not occupy the regulatory field because “the Legislature did not intend to preempt every local zoning statute that concerns alcoholic beverage sales.” *Id.* at 921. Second, and relevant here, the Court of Appeals held that the Township's amended zoning ordinance did not conflict with the Liquor Control Code because “the Legislature has not expressly spoken concerning the sale of alcohol in buildings with drive-thru windows, the minimum building area of buildings at which alcohol is sold, or the number of parking spaces required for a building from which alcohol is sold.” *Id.* at 922. The amended zoning ordinance did not “prohibit what the statute permits,” so there was no conflict. *Id.*

Here, unlike *Jott*, Peninsula Township does not cite any authority given to it by the Liquor Control Commission to regulate restaurants. And unlike *Maple BPA*, the Legislature has spoken directly on the issue. Winemakers and small wine makers “may own and operate a restaurant or allow another person to operate a restaurant as part of the on-premises tasting room on the manufacturing premises.” Mich. Comp. Laws § 436.1536(7)(h). Peninsula Township is not regulating in an area where the legislature is silent. Peninsula Township's ban on restaurant operations at wineries with winemaker and small wine maker licenses directly conflicts with, and is preempted by, Michigan law.

The Township’s remaining arguments do not move the needle. For instance, the Township references the Michigan Zoning Enabling Act’s grant of authority to municipalities to regulate the use of land within their borders. (ECF No. 21, PageID.275.) If the Township were correct, and the MZEA’s grant of authority were that broad, then no zoning ordinance could ever be preempted. But the Michigan Supreme Court has rejected that argument. “[T]he fact that the Ordinance is a local zoning regulation enacted pursuant to the MZEA does not save it from preemption.” *Ter Beek v. City of Wyoming*, 846 N.W.2d 531, 542 (Mich. 2014). Michigan law is replete with examples of state laws preempting local ordinances. *See, e.g., Ter Beek*, 846 N.W.2d at 544 (local ordinance conflicted with Michigan Medical Marijuana Act); *Nat’l Amusement Co. v. Johnson*, 259 N.W. 342, 343 (Mich. 1935) (City’s walkathon ban conflicted with state law authorizing walkathons).

Next, the Township complains that Plaintiffs do “not cite a single case that has interpreted § 436.1536(7)(h) of the MLCC as a trump card overruling local regulation.” (ECF No. 21, PageID.276.) That’s true, but unsurprising. Plaintiffs are not aware of any other municipality that bans wineries from serving food with alcohol because it is such an obvious way to promote health, safety, and welfare for local residents. MLCC’s information sheet says that wineries “[m]ay serve food or have a restaurant in conjunction with the On-Premises Tasting Room Permit.” (ECF No. 16-4, PageID.248.) It says nothing about local approval on that point. And the lack of case law is not a barrier because Michigan’s conflict preemption principles are well-defined. This Court has made that same observation in response to the same argument from Peninsula Township in *WOMP*. (*WOMP*, Case No. 1:20-cv-1008, ECF No. 301, PageID.10690–91 (“The Court agrees with the Wineries’ characterization of the principles of conflict preemption. There exists a plethora of case

law generally outlining the steps in a conflict preemption analysis, which the Court has already conducted in this very case[.]”).)

Finally, the Township asserts Mich. Admin. R. 436.1003(1) “clearly requires [Plaintiffs] to comply with the Township’s zoning ordinances.” (ECF No. 21, PageID.276.) The Township made that exact same argument in *WOMP*, and this Court addressed it and rejected it.

[T]he Township challenges the Wineries’ preemption claim in general, arguing that none of the Township Ordinances can be preempted because the MLCC requires licensees to comply with local zoning rules (ECF No. 174 at PageID.6575-76). However, the Court rejects this argument because only zoning rules that are not contrary to law are enforceable. Because the Court ruled that numerous sections of these zoning ordinances are unconstitutional or contrary to law, they are preempted. *See Sheffield c. City of Fort Thomas*, 620 F.3d 596, 604 (6th Cir. 2010) (“Where a municipal ordinance conflicts with a constitutional provision or statute, the ordinance is preempted.”).

(*WOMP*, Case 1:20-cv-1008, ECF No. 211, PageID.7808–09.) Issue preclusion—also known as collateral estoppel—prevents Peninsula Township from re-litigating that Mich. Admin. R. 436.1003(1) immunizes its zoning ordinance from state law preemption.¹ *See Baker by Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 233 n.5 (1998) (“an issue of fact or law, actually litigated and resolved by a valid final judgment, binds the parties in a subsequent action, whether on the same or a different claim”). “The purposes of collateral estoppel are to shield litigants (and the judicial system) from the burden of re-litigating identical issues and to avoid inconsistent results.” *Gilbert v. Ferry*, 413 F.3d 578, 580 (6th Cir. 2005). Collateral estoppel should apply here to bar Peninsula Township from re-litigating an argument it already lost.

In total, the Wineries are likely to prevail on the merits of their preemption argument.

¹ R. 436.1003 is also an administrative rule and, under basic statutory hierarchy, it cannot nullify permissions granted by statute in MCL 436.1536.

C. Plaintiffs will be irreparably harmed because the Township’s new ban on food service upends the status quo.

The Township contends that Plaintiffs cannot demonstrate irreparable harm because their motion seeks to upend the status quo. That framing is not correct—the proper inquiry is whether irreparable harm will result absent a preliminary injunction. “Rather than trying to determine what course of action best preserves the ‘status quo,’ the Sixth Circuit directs district courts to issue preliminary injunctions so as to avoid the irreparable injury.” *Erebsloeh Aluminum Sols., Inc. v. MueKo Mach., Inc.*, No. 1:22-CV-537, 2022 WL 4986608, at *3 (W.D. Mich. Aug. 11, 2022) (citing *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 925 (6th Cir. 1978)). And on that inquiry, the Township ignores the Wineries’ argument that the Township’s immunity from monetary damages on the preemption claim means the Wineries’ harm is, by definition, irreparable. (*See* ECF No. 16, PageID.216-217.)

Next, the Township asserts that the “only arguable ‘harm’ Bonobo faces is continuing its business in the same manner it has for years – the literal status quo.” (ECF No. 21, PageID.279.) The Township’s attorney’s letter says otherwise: “At present, however, the rental of Bonobo’s facilities and the provision of full-service meals is not allowable within the A-1 district. . . . Accordingly, Bonobo must cease its engagement in these activities or risk revocation of SUP #118, as amended, or other similar action.” (ECF No. 14-2, PageID.150.) So, as of the date of its letter the Township recognized that Bonobo had already been providing full-service meals. And, as stated in the declarations of the members of WOMP, each has been engaging in expanded offerings since the WOMP decision last July. If the Township’s attorney does not speak for the Township, then the Township should have disclaimed that letter through a declaration or submitted meeting minutes from the Township Board stating the letter does not represent the Township’s position. It did neither. Therefore, the only evidence before the Court is the Township’s stated position that

full-service meals are not allowed, despite declarations from Plaintiffs that they have served food in the past and would like to continue serving food, and expand their food offerings, in the future. (ECF No. 16-1, ECF No. 16-2, ECF No. 16-3.) Injunctive relief would prevent irreparable harm to Plaintiffs by preventing the Township from fundamentally altering their business operations while this litigation proceeds.

As a last gasp, the Township suggests that Bonobo should have gone through the administrative process. (ECF No. 21, PageID.280.) But as explained above, *Pakdel* does not require Bonobo to do that, especially under threat of revocation of its right to operate.

D. The residents have spoken—they want food in the agricultural district—and the Township’s unsupported assertions to the contrary cannot change the fact that the Township has no interest in enforcing an unlawful ordinance.

The Township asserts—again, sans evidence—that allowing the Wineries to serve food “would have a significant deleterious effect on the resident of the Township and their ability to enjoy their property without unreasonable disturbance from neighboring businesses.” (ECF No. 21, PageID.282.) That amorphous argument is wrong on the law and the facts.

On the law, it does not matter what the residents’ supposed preferences are. If the law is preempted, it is void and unenforceable. *Ter Beek*, 823 N.W.2d at 874. The Township and its citizens have no interest in the enforcement of unlawful ordinances. *See, e.g., Martin-Marietta Corp. v. Bendix Corp.*, 690 F.2d 558, 568 (6th Cir. 1982) (the state “has no right to the unconstitutional application of state law”); *EMW Women’s Surgical Ctr., P.S.C. v. Friedlander*, 591 F. Supp. 3d 205, 215 (W.D. Ky. 2022) (“the State has no interest in enforcing laws that are unconstitutional. An order or injunction preventing a State from enforcing unconstitutional acts, therefore, does not irreparably harm the State” (internal citations and quotations omitted)); *NetChoice, LLC v. Yost*, 716 F. Supp. 3d 539, 561 (S.D. Ohio 2024) (same).

Yet even if resident preference mattered, the residents have spoken. Peninsula Township commissioned an online and telephone survey of its residents between September 12 and 19, 2025. (Exhibit 5: Survey Results.) Residents were asked about the opinion on “commercial activities on farms.” (*Id.* at 44.) 64% of telephone respondents and 60% of online respondents supported “Meal service using ingredients NOT produced on the land.” (*Id.*) These results were published in November 2025—the same month Township counsel sent the violation letter to Bonobo.

The Township also ignores the testimony from Teri Quimby in Plaintiffs’ initial brief in support of this motion. (*See* ECF No. 16, PageID.208, 215–216, 218.) Quimby explained why the public’s health, safety, and welfare benefits when food is served with alcohol. (*Id.*, PageID.208.) The Township makes no attempt to respond to that evidence, which is yet another basis on which this Court should grant this motion.

In the face of that evidence, the Township submits nothing. No declaration, no study, no testimony from any public official or resident swearing under oath why food service should be banned. The Township has no basis, and certainly no basis in evidence, to assert that wineries operating restaurants will have a “significant deleterious effect” on its citizens.

III. CONCLUSION

In a conflict between state law and local zoning, state law wins. The State of Michigan made a policy determination that wineries in Michigan should serve food to their guests because serving food is in the public interest. “[F]ood should be offered when any alcohol is served,” because “[i]f someone consumes alcohol without food, it is more quickly absorbed into the body without the food obstacle there to slow it down. So from a healthy, safety, welfare standpoint, it would not be in anyone’s best interests to not offer food along with alcohol.” (Teri Quimby Testimony, Case No. 1:20-cv-1008, ECF No. 607, Page ID.24770.) Plaintiffs are asking for an injunction allowing them to serve food consistent with the rights afforded to them under Michigan

law. Peninsula Township's contrary position conflicts with, and is preempted by, Michigan law and must be enjoined.

Respectfully submitted,

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Dated: March 17, 2026

CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.3(b)(ii)

1. This Brief complies with the type-volume limitation of L. Civ. R. 7.2(c) because this Brief contains 4,174 words.

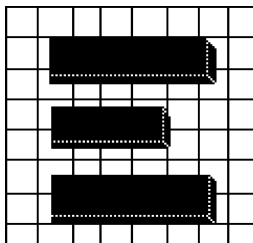
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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2026, I filed the foregoing Brief in Support of Motion for Preliminary Injunction via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante
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Exhibit 5



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Peninsula Township Phone and Online Survey Report on Important Local Issues

Executive Summary and Demographic Analysis

- Educational
- Political
- Industrial
- Consumer

- Market
- Research
- Analysis

November 2025

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METHODOLOGY

EPIC ▪ MRA administered live telephone interviews with 200 residents of Peninsula Township. The interviews were conducted using live operator telephone interviewers, with 71 percent of all interviews conducted via cell phone. The survey was conducted from September 12 through September 19, 2025.

An online survey was also conducted from September 29 through October 13, 2025, with 1,305 Peninsula Township residents participating in the survey

Respondents for the interviews were randomly selected from records of Peninsula Township residents age 18 or older who had commercial landline and/or cell phone telephone numbers available. The sample was stratified so that every geographic area of Peninsula Township was represented in the sample according to its contribution to the adult population of the Township.

For the online survey, our internal voter database of all registered voters, as well as a file provided by the Township Assessors Office, was used to invite all Township residents to participate online or request a paper questionnaire to fill out.

Generally, in interpreting survey results, all surveys are subject to error; that is, the results of the survey may differ from those which would have been obtained if the entire population was interviewed. Sampling error depends on the total number of respondents asked a specific question. The table on the next page represents the sampling error for different percentage distributions of responses based on sample sizes.

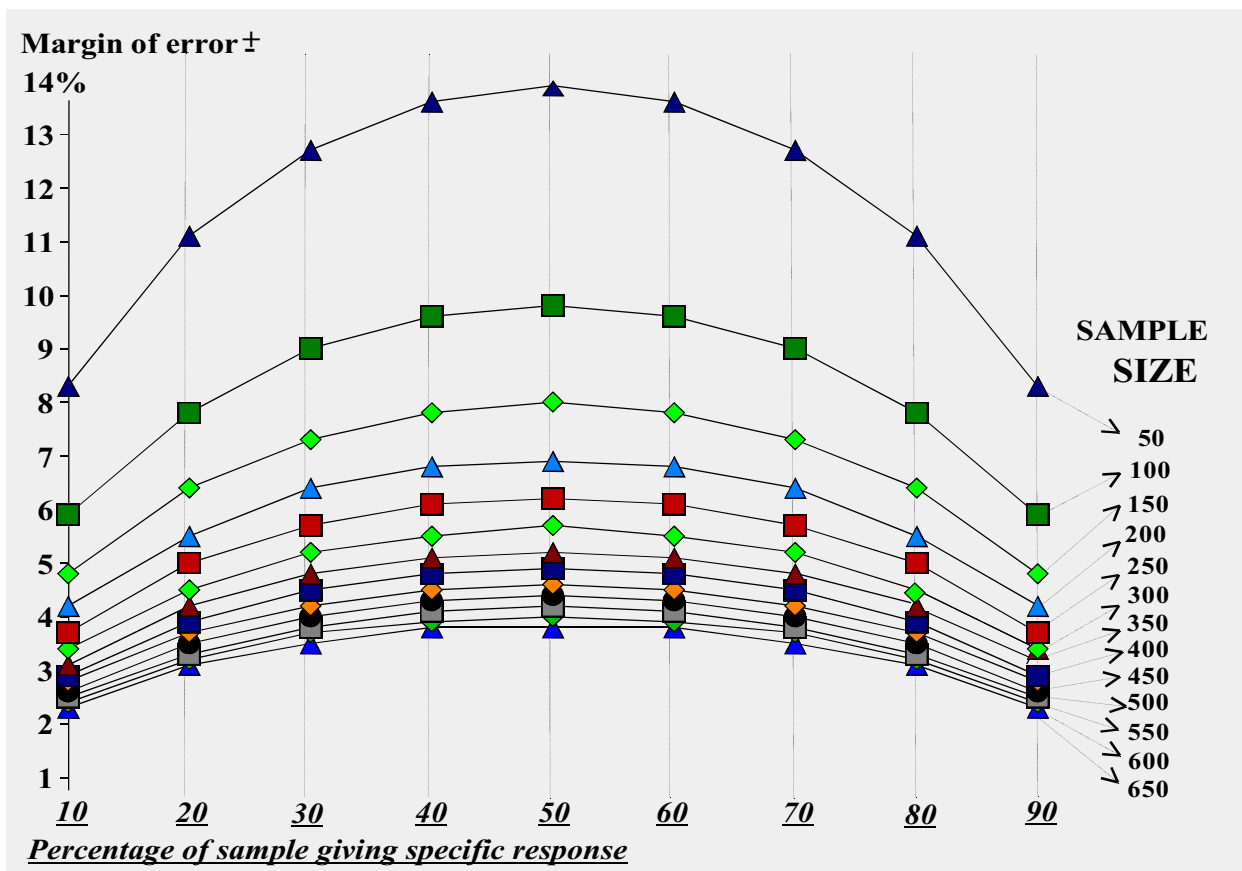
For example, when all phone survey respondents were asked if they support or oppose a tax increase of 3 quarters of a mill increase to fund \$600,000 in upgrades per year, a bare 50% majority of all survey respondents said they support the proposed tax increase (Q.33). As indicated in the chart that follows, this percentage would have a sampling error of plus or minus 6.9 points; meaning that with repeated sampling, it is very likely (95 out of every 100 times), that the percentage for the entire population would fall between 43.1 percent and 56.9 percent, hence 50 percent \pm 6.9 points.

In another example using the same question (Q.33), a 49% near-majority of online survey respondents said they would oppose the proposed tax increase, with 44% saying they support it. With 1,305 respondents participating in the online survey, the 49% result opposed to a tax increase would have a sampling error of 2.9 points; meaning that with repeated sampling, it is very likely (95 out of every 100 times), that the percentage for the entire population would fall between 46.5 percent and 51.5 percent, hence 49 percent \pm 2.5 points.

SAMPLING ERROR BY PERCENTAGE (AT 95 IN 100 CONFIDENCE LEVEL)

EPIC • MRA

SAMPLE SIZE	<i>Percentage of sample giving specific response</i>								
	<u>10</u>	<u>20</u>	<u>30</u>	<u>40</u>	<u>50</u>	<u>60</u>	<u>70</u>	<u>80</u>	<u>90</u>
	% Margin of error ±								
700	2.2	3.0	3.3	3.7	3.6	3.7	3.3	3.0	2.2
650	2.3	3.1	3.5	3.8	3.8	3.8	3.5	3.1	2.3
600	2.4	3.2	3.7	3.9	4	3.9	3.7	3.2	2.4
550	2.5	3.3	3.8	4.1	4.2	4.1	3.8	3.3	2.5
500	2.6	3.5	4	4.3	4.4	4.3	4	3.5	2.6
450	2.8	3.7	4.2	4.5	4.6	4.5	4.2	3.7	2.8
400	2.9	3.9	4.5	4.8	4.9	4.8	4.5	3.9	2.9
350	3.1	4.2	4.8	5.1	5.2	5.1	4.8	4.2	3.1
300	3.4	4.5	5.2	5.5	5.7	5.5	5.2	4.5	3.4
250	3.7	5	5.7	6.1	6.2	6.1	5.7	5	3.7
200	4.2	5.5	6.4	6.8	6.9	6.8	6.4	5.5	4.2
150	4.8	6.4	7.3	7.8	8	7.8	7.3	6.4	4.8
100	5.9	7.8	9	9.6	9.8	9.6	9	7.8	5.9
50	8.3	11.1	12.7	13.6	13.9	13.6	12.7	11.1	8.3



Opinion On Commercial Activities On Farms - Q.34 to Q.38

Four of the five areas received support from 53% to 93% with overnight camping on farms opposed by a 52% to 42% majority.

LIVE OPERATOR TELEPHONE SURVEY:

TOT SUPT	Strong Supt	TOT OPP	Strong Opp	
93%	75%	6%	4%	Farmers' markets
82%	56%	15%	8%	Farm related recreational activities, such as corn mazes, hay rides, yoga classes and other similar activities
64%	36%	26%	18%	Meal service using ingredients NOT produced on the land
53%	35%	43%	36%	Large events, such as concerts, entertainment events, wedding receptions, reunions and parties
42%	16%	52%	39%	Overnight camping on farms

Three of the five areas received support from 60% to 89% with large events tied at 47% support and opposition, and overnight camping on farms opposed by a 50% to 41% majority.

ONLINE SURVEY:

TOT SUPT	Strong Supt	TOT OPP	Strong Opp	
89%	64%	4%	2%	Farmers' markets
78%	42%	16%	8%	Farm related recreational activities, such as corn mazes, hay rides, yoga classes and other similar activities
60%	31%	28%	14%	Meal service using ingredients NOT produced on the land
47%	22%	47%	34%	Large events, such as concerts, entertainment events, wedding receptions, reunions and parties
41%	16%	50%	30%	Overnight camping on farms

UNPUBLISHED CASES

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Only the Westlaw citation is currently available.

United States District Court, W.D.
Michigan, Southern Division.

ERBSLOEH ALUMINUM
SOLUTIONS, INC., Plaintiff,

v.

MUEKO MACHINERY, INC., Defendant.

No. 1:22-cv-537

I

Signed August 11, 2022

Attorneys and Law Firms

Max J. Newman, Bloomfield Hills, MI, Paul Mathew Mersino, Louis Francis Ronayne, III, Detroit, MI, for Plaintiff.

Denise A. Lazar, Brian W. Lewis, Allison Lee Lantero, Barnes & Thornburg LLP, Chicago, IL, for Defendant.

OPINION AND ORDER DENYING MOTION FOR STAY AND ORDER ESTABLISHING DEADLINE TO COMPLY WITH PRELIMINARY INJUNCTION

Paul L. Maloney, United States District Judge

*1 Defendant MueKo Machinery filed a motion to stay a preliminary injunction pending appeal. (ECF No. 35.) The Court will deny the motion.

On Friday, July 29, 2022, the Court issued an opinion and order granting a preliminary injunction in Plaintiff Erbsloeh Aluminum Solutions’ favor. The Court ordered, among other things, Defendant to turn over passwords to the software used in two assembly lines. On Tuesday, August 2, 2022, Defendant filed a notice of appeal of the preliminary injunction and also filed this motion to stay.

Defendant asserts at least two errors in the preliminary injunction and relies on those errors as justifications for the motion to stay. First, Defendant argues that the Court erred by ruling on Plaintiff’s motion for a preliminary injunction before ruling on Defendant’s motion to compel arbitration. Second, Defendant argues the Court abused its discretion because the preliminary injunction does not maintain the status quo.

Plaintiff filed a response. (ECF No. 37.) Plaintiff contends that Defendant has neither identified the relevant factors for the relief sought nor explained how the circumstances of this lawsuit meet the four factors.

A.

Rule 62 of the Federal Rules of Civil Procedure addresses stays of proceedings following a court’s order granting an injunction. When deciding whether to grant a request to stay the proceedings, a district court must consider four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); see *Michigan Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). “These four factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together.” *Griepentrog*, 945 F.2d at 153. Because this Court has already considered these factors and granted a preliminary injunction, the burden on the party seeking a stay is higher; “[i]n essence, a party seeking a stay must ordinarily demonstrate to a reviewing court that there is a likelihood of reversal.” *Id.* The decision to grant or deny a stay of an injunction pending appeal falls within the district court’s discretion. See *Nken v. Holder*, 556 U.S. 418, 433 (2009).


Defendant does not address the four factors that must be considered when deciding whether to issue a stay. Defendant does allege two errors in this Court’s decision to grant the preliminary injunction. The Court considers those errors in the context of the first factor, whether Defendant is likely to succeed on the merits of the appeal.

1.

Defendant first argues that the Court should have resolved the motion to compel arbitration before resolving the motion for a preliminary injunction. At times, Defendant couches this alleged error as a jurisdictional concern—“The Court

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had no jurisdiction to issue such an order under the FAA” (PageID.1137).



*2 On this first issue, Defendant has not established a likelihood of success on the merits. The holding in  *Performance Unlimited Incorporated v. Questar Publishers, Incorporated*, 52 F.3d 1373 (6th Cir. 1995) undermines Defendant's argument.



After a thorough review of the relevant case law, we adopt the reasoning of the First, Second, Third, Fourth, Seventh, and arguably the Ninth Circuits and hold that in a dispute subject to mandatory arbitration under the Federal Arbitration Act, a district court has subject matter jurisdiction under § 3 of the Act to grant preliminary injunctive relief provided that the party seeking relief satisfies the four criteria which are prerequisites to the grant of such relief. We further conclude that a grant of preliminary injunctive relief pending arbitration is particularly appropriate and furthers the Congressional purpose of the Federal Arbitration Act, where the withholding of injunctive relief would render the process of arbitration meaningless or a follow formality because an arbitral award, at the time it was rendered, “ ‘could not return the parties substantially to the status quo ante.’ ”

Id. at 1380 (quoting  *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley*, 756 F.2d 1048, 1053 (4th Cir. 1985)).


2.

Defendant next argues that the Court erred in granting the preliminary injunction because the injunction does not preserve the status quo. Defendant asserts that the holding in *Performance Unlimited* is limited to situations where the preliminary injunction preserves the status quo.

On this second issue, Defendant has not persuaded the Court that Defendant will succeed on its appeal. The phrase “status quo” in the context of a preliminary injunction is shorthand for *status quo ante litem*; in the past, courts used the entire phrase. *See, e.g.*,  *Feller v. Brock*, 802 F.2d 722, 727 (4th Cir. 1986) (“The foundational principle for preliminary relief is that ‘it is a sound idea to maintain the *status quo ante litem*, provided that it can be done without imposing too excessive an interim burden upon the defendant.’”) (citation omitted);  *In re Uranium Antitrust Litig.*, 617 F.2d 1248,

1259 (7th Cir. 1980) (“Since a preliminary injunction seeks to preserve the status quo ante litem”); *Bhd. of R.R. Carmen of America, Local No. 429 v. Chicago and North Western Ry. Co.*, 354 F.2d 786, 799 (8th Cir. 1965) (“It is so well settled as not be require [sic] citation of authority that the usual function of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits.”);  *Los Angeles Mem. Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980) (“A fundamental principle applied in such courts is that the basic function of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits.”). The Latin phrase *status quo ante* loosely translates as the way things were before some event. *See Black's Law Dictionary*, 8th ed. 2004. The phrase “ad litem” refers to the pending lawsuit. *Id.* Thus, when courts write that the purpose of a preliminary injunction is to preserve the status quo or *status quo ante litem*, the courts refer to the relationship between the parties before the controversy arose and not to the relationship between the parties at the time the complaint was filed. *See*  *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014) (“As this language from *McCormack* suggests, the ‘status quo’ refers to the legally relevant relationship *between the parties* before the controversy arose.”) (emphasis in original). By preserving the status quo or the *status quo ante litem*—the situation that existed before the controversy giving rise to the lawsuit—courts seek to prevent the irreparable injury alleged by the party seeking the preliminary injunction.

*3 Defendant presumes that the status quo to be preserved is one where Defendant does not have to disclose software passwords to Plaintiff. Defendant certainly declined to provide the software passwords before Plaintiff filed this lawsuit. But, Plaintiff alleges that Defendant was contractually obligated to provide all of the passwords, making Defendant's version of the status quo a contested one.

See Tanner Motor Livery. Ltd. v.  Avis, Inc., 316 F.2d 804, 808 (9th Cir. 1963) (“It has been said, and we agree, that: ‘The status quo is the last uncontested status which preceded the pending controversy.’”) (citation omitted).



Rather than trying to determine what course of action best preserves the “status quo,” the Sixth Circuit directs district courts to issue preliminary injunctions so as to avoid the irreparable injury. The court reasoned that too often errors arise when the district court tries to determine what relationship best represents the status quo, especially in

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breach of contract situations where performance has already begun.


It is not essential that we determine which relationship represented the status quo at the time this action was commenced. To do so would require resolution of a number of important fact issues. Where parties to a contract have reached a misunderstanding after performance has begun it is difficult to restore them to the exact status quo which formerly existed. The prevention of irreparable harm should outweigh re-establishment of the status quo in fashioning interlocutory relief in such a case. And this should be done with a minimum of contract interpretation at the preliminary injunction state of the proceedings.


Too much concern with the status quo may lead a court into error.

 *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 924-25 (6th Cir. 1978) (internal citation omitted). The panel in *Sternberg* then favorably quoted a lengthy passage from the Fifth Circuit Court of Appeals in  *Canal Authority of Florida v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974), a passage that seems particularly relevant to the specific argument raised by Defendant in this motion.

It is often loosely stated that the purpose of a preliminary injunction is to preserve the status quo. Indeed, some such notion may have influenced the district judge in this case, since he wrote of a “status quo that would normally be entitled to temporary protection.” It must not be thought, however, that there is any particular magic in the phrase “status quo.” The purpose of a preliminary injunction is always to prevent irreparable injury to as to preserve the court's ability to render a meaningful decision on the merits. It often happens that this purpose is furthered by preservation of the status quo, but not always. If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury, either by returning to the last uncontested status quo between the parties, ..., by the issuance of a mandatory injunction, ..., or by allowing the parties to take proposed action that the court finds will minimize the irreparable injury. The focus must always be on prevention of injury by a proper order, not merely on preservation of the status quo.

 *Stenberg*, 573 F.2d at 925 (quoting  *Callaway*, 489 F.2d at 576) (internal citations omitted).

Some twenty years after *Stenberg*, the Sixth Circuit reaffirmed the holding in  *United Food Commercial Workers Union, Local 1099 v. Southwest Ohio Reg'l Transit Auth.*, 163 F.3d 341, 348 (6th Cir. 1998). The panel acknowledged that, in some instances, a preliminary injunction might require a party to take affirmative action instead of prohibiting a party from acting. *Id.* In the circumstance where the moving party seeks affirmative rather than prohibitory action, the panel explicitly declined to impose a heightened evidentiary burden on the moving party. *Id.* The panel then reiterated that the focus of a preliminary injunction must always be on the prevention of injury, explaining that “[w]e see little consequential importance to the concept of the status quo, and conclude that the distinction between mandatory and prohibitory injunctive relief is not meaningful.” *Id.*

*4 Overlooked by Defendant in this motion is the narrow relief granted in the preliminary injunction. Although the Court required Defendant to provide all of the software passwords to Plaintiff, the Court severely limited Plaintiff's use of the passwords. Plaintiff could use the passwords only for the purpose of getting the assembly lines operational during this lawsuit to reduce the risk that Plaintiff could not meet the just-in-time demands for the running boards. The Court similarly limited Plaintiff's use of the source code that could be accessed by the software passwords. The narrow relief does not provide Plaintiff with the relief sought in the complaint. The narrow relief effectively preserves the Court's ability to render a meaningful decision on the merits. *See*  *Stenberg*, 573 F.2d at 925.

B.

The Court declines to enter a stay of the injunction pending appeal. Defendant has not demonstrated a likelihood of success on the merits and Defendant did not address any of the other three factors relevant to a stay.

ORDER

For the reasons set forth in the accompanying Opinion, the Court **DENIES** MueKo Machinery's motion to stay enforcement pending appeal. (ECF No. 35.)

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MueKo Machinery must comply with the preliminary injunction by Friday, August 19, 2022, at 12:00 p.m. (noon).

IT IS SO ORDERED.

All Citations

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