

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,

Case No: 1:25-cv-1588

Honorable Paul L. Maloney

Plaintiffs,

v

PENINSULA TOWNSHIP, a Michigan municipal corporation,

Defendant.

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AND STONE, PLC

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**PLAINTIFFS' LIST OF WITNESSES FOR PRELIMINARY INJUNCTION HEARING**

Plaintiffs, OV The Farm, LLC, Bowers Harbor Vineyard & Winery, Inc., and Wineries of the Old Mission Peninsula Association intend to call the following witnesses at the hearing on Plaintiffs' Motion for Preliminary Injunction scheduled for April 23, 2026:

1. Todd Oosterhouse
2. Patrick Brys
3. Teri Quimby, by designation of trial testimony from *Wineries of the Old Mission Peninsula v. Peninsula Township*, Case No. 1:20-cv-1008 (W.D. Mich.), ECF No. 607. As stated in the attached declaration, Quimby is unavailable to testify in person on April 23, 2026. Plaintiffs designate the following lines and pages of her testimony for use in the preliminary injunction hearing<sup>1</sup>:
  - 1814:23–1815:05
  - 18118:05–1821:06
  - 1821:22–1822:12
  - 1827:15–21
  - 1837:20–24
  - 1838:19–1839:11
  - 1849:11–1850:16
  - 1851:10–25
  - 1852:24–1853:11
  - 1858:14–1860:03
  - 1860:11–24
  - 1867:02–07

A highlighted copy of Quimby’s testimony is included with this filing.

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<sup>1</sup> The page numbers reference the top-right black font numbering. Plaintiffs have redacted the blue ECF No. and PageID references from the original trial transcript so they are not written-over when re-filed in this case.

Respectfully submitted,

By: /s/ Joseph M. Infante

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Dated: April 2, 2026

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,

Case No: 1:25-cv-1588

Honorable Paul L. Maloney

Plaintiffs,

v

PENINSULA TOWNSHIP, a Michigan municipal corporation,

Defendant.

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**DECLARATION OF TERI QUIMBY**

1. My name is Teri Quimby. I base this declaration on personal knowledge. If called as a witness, I could testify competently to the matters addressed in this declaration.
2. Counsel for the Plaintiffs in this matter have requested that I testify in person for Plaintiffs' Motion for Preliminary Injunction, currently scheduled for April 23, 2026, in Kalamazoo, Michigan.
3. I will be hosting an all-day event on April 23, 2026, and I am therefore unavailable to testify.
4. As the CEO of a statewide trade council, I have sole responsibility over the annual Policy Day at the Capitol, held in Lansing, Michigan, from 8am-6pm on April 23, 2026.
5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 31, 2026

  
Teri Quimby

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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WINERIES OF THE OLD MISSION  
PENINSULA ASSOC. (WOMP), a Michigan  
nonprofit corporation; BOWERS HARBOR  
VINEYARD & WINERY, INC, a Michigan  
corporation; CHATEAU GRAND TRAVERSE,  
LTD, a Michigan corporation; CHATEAU  
OPERATIONS, LTD, a Michigan corporation;  
GRAPE HARBOR, INC, a Michigan  
corporation; MONTAGUE DEVELOPMENT,  
LLC, a Michigan limited liability  
company; OV THE FARM, LLC, a Michigan  
limited liability company; TABONE  
VINEYARDS, LLC, a Michigan limited  
liability company; TWO LADS, LLC,  
a Michigan limited liability company;  
VILLA MARI, LLC, a Michigan limited  
liability company; WINERY AT BLACK  
STAR FARMS, LLC, a Michigan limited  
liability company,

Plaintiffs,

v.

CASE NO: 1:20-CV-1008

PENINSULA TOWNSHIP, a Michigan  
municipal corporation,

Defendant,

and

PROTECT THE PENINSULA, a Michigan  
municipal corporation,

Intervenor-Defendant.

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BENCH TRIAL - VOLUME VIII - May 9, 2024

\* \* \* \*

1 BEFORE: THE HONORABLE PAUL L. MALONEY  
2 United States District Judge  
3 Kalamazoo, Michigan  
4 May 9, 2024

5 APPEARANCES:

6 APPEARING ON BEHALF OF THE PLAINTIFFS:

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17 APPEARING ON BEHALF OF THE DEFENDANT:

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19 BOGOMIR RAJSIC, III  
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HOLLY L. HILLYER  
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1 MR. INFANTE: Thank you, Your Honor.

2 THE COURT: Mr. Infante, go ahead, sir.

3 MR. INFANTE: Thank you, Your Honor. Plaintiffs  
4 call Teri Quimby.

01:44:53 5 THE COURT: Ms. Quimby, please step forward.

6 MS. HILLYER: Your Honor, I'd just like to place  
7 the objection I made yesterday. I won't repeat the  
8 argument.

9 THE COURT: Is that any different than the one you  
01:45:06 10 made yesterday?

11 MS. HILLYER: It is not.

12 MR. MCGRAW: Your Honor, I'll renew the Township's  
13 objection that we made yesterday, but I will reiterate that  
14 that extra time to go through the expert report, there are  
01:45:16 15 four points made, and every one of those four points relates  
16 directly to defendants' brief on preemption and how we are  
17 wrong. That is, there is no planning, there is no zoning.  
18 I don't believe this witness will be offered as a planning  
19 or zoning expert, and based on the report we received, I  
01:45:36 20 have serious concerns.

21 But that's for the record. Thank you.

22 THE COURT: All right. Thank you, sir.

23 **TERI QUIMBY**

24 **was thereupon called as a witness herein, and after having**  
01:45:40 25 **been first duly sworn to tell the truth, the whole truth and**

1 nothing but the truth, was examined and testified as  
2 follows:

3 COURT CLERK: State your full name and spell your  
4 last name for the record, please.

01:46:02 5 THE WITNESS: Teri Quimby, Q-U-I-M-B-Y.

6 MR. INFANTE: Your Honor, I'm going to give her --  
7 it's really just her CV.

8 DIRECT EXAMINATION

9 BY MR. INFANTE:

01:46:30 10 Q. All right. Ms. Quimby, it's good to see you. It's  
11 nice to be the one asking you questions. You used to ask me  
12 questions and grill me.

13 All right. I want to look at Exhibit 207. I just  
14 want to jump into your CV, and Mr. Ragatzki is going to  
01:46:48 15 bring it up on the screen. It's also in the binder right in  
16 front of you there.

17 Ms. Quimby, where did you go do college?

18 A. I went to college at Michigan State University, James  
19 Madison College.

01:47:02 20 Q. Okay. And what degree did you get there?

21 A. At the time it was called justice morality, and  
22 constitutional democracy was the core.

23 Q. Okay. What did that course of study involve?

24 A. It involved a study of not so much political science,  
01:47:20 25 but political philosophy.

1 Q. Okay. And I understand you went to law school as well,  
2 right?

3 A. I did.

4 Q. Where did you go to law school?

01:47:27 5 A. Western Michigan University, Cooley Law School.

6 Q. I understand you have an LLM.

7 A. I do have an LLM.

8 Q. And where did you get the LLM from?

9 A. From Widener.

01:47:41 10 Q. Is it Widener, not Widener? I always say it wrong,  
11 apparently.

12 A. There's different pronunciations apparently for it.

13 Q. Does your LLM have a focus?

14 A. Yes, it did.

01:47:51 15 Q. What was your focus?

16 A. It was an LLM in corporate law with a focus on  
17 compliance and regulatory analysis.

18 Q. And your CV is right there, but can you just walk us  
19 through your employment history, please, I guess starting  
01:48:13 20 from oldest to newest. Looks like it's on the first page  
21 there.

22 A. From oldest to newest?

23 Q. Sure.

24 A. As deputy director and senior legal counsel for the  
01:48:30 25 Michigan House of Representatives, I worked on several

1 highly regulated issue areas, including environment and  
2 public utilities.

3 Q. Okay. It looks like you were there from 1991 to 2006.

4 A. Yes.

01:48:44 5 Q. Pretty good stint. And then after that, you were  
6 mediator for a while?

7 A. I decided the 2:00 a.m. committee meetings, things like  
8 that were something that was fun, but I wanted to move on.

9 So after leaving, I had spent most of my career pulling  
01:49:02 10 people together, facilitating agreements, basically, so  
11 mediation was a natural fit to pursue after that.

12 Q. Okay. And I'm going to want to talk a lot about your  
13 next employment with Michigan Liquor Control Commission, so  
14 let's skip over that for now.

01:49:18 15 Tell us about the Grand Valley State University  
16 Charter Schools Office. What did you do there?

17 A. I was a contract employee providing compliance and  
18 governance consulting, and working with the charter schools  
19 office between the university and the boards for which they  
01:49:41 20 chartered by contract.

21 Q. And, looks like in 2019, you opened your own private  
22 law practice, correct?

23 A. Yes.

24 Q. Okay. And then you also teach at Western Michigan  
01:49:55 25 University, Cooley Law School?

1 A. As an adjunct.

2 Q. And then you teach, it looks like legal writing and  
3 drafting?

4 A. Yes, a required third-year class.

01:50:02 5 Q. Okay. So we skipped over the Michigan Liquor Control  
6 Commission employment. Can you tell us about your role  
7 there and what that job entailed?

8 A. I was appointed by the governor and reappointed by the  
9 governor to two terms with the Michigan Liquor Control  
01:50:21 10 Commission. Unlike some other commissions within the  
11 alcohol industry or elsewhere, this commission is a  
12 hands-on, basically full-time commission where we met  
13 regularly, almost daily, including hearings, appeals every  
14 Tuesdays and Thursdays. And we not only reviewed the code  
01:50:45 15 on a regular basis, but also applied it given all the  
16 meetings that we had for the hundreds of licenses and other  
17 matters each week.

18 Q. Okay. So it's not a ceremonial role; it's a very  
19 hands-on role, correct?

01:50:59 20 A. Yes.

21 Q. And I know I have -- I was in front of you numerous  
22 times.

23 The commission -- There are three administrative  
24 commissioners, correct?

01:51:08 25 A. Correct.

1 Q. And you were one of those three administrative  
2 commissioners?

3 A. Yes.

01:51:15

4 Q. And those administrative commissioners essentially sit  
5 as administrative law judges, correct?

6 A. Yes.

7 Q. Okay. And you are issuing opinions, making orders,  
8 making rulings as relates to licensing matters in alcohol  
9 matters, correct?

01:51:29

10 A. All of that. Correct.

11 Q. And that role included -- Did that role include  
12 creating and enforcing alcohol policy for the State of  
13 Michigan?

14 A. Yes.

01:51:40

15 Q. Okay. How did -- Can you tell us about that?

16 A. Often the laws need interpretation, not any different  
17 than the First Amendment or something like that. When  
18 something is passed, it cannot contemplate every possible  
19 single circumstance, so the commission, of course, would  
20 apply the guidance and the statute to the facts at hand to  
21 issue an opinion.

01:52:06

22 Q. And the commission -- when you were on the commission,  
23 you regularly issued opinions, correct?

24 A. Yes.

01:52:17

25 Q. Interpreting laws and applying them to licensees,

1 correct?

2 A. Yes.

3 Q. And the -- Now, you're familiar, I assume, I know you  
4 are, with the Michigan Liquor Commission Control Code,

01:52:32

5 correct?

6 A. Yes.

7 Q. And as the commission, the commission also had the  
8 ability to pass rules and regulations, correct?

9 A. Yes.

01:52:38

10 Q. That was the authority given by the legislature to the  
11 Michigan Liquor Control Commission?

12 A. Yes.

13 Q. When you were on the Liquor Control Commission, did the  
14 commission have the chance to pass rules and regulations  
15 from time to time?

01:52:50

16 A. Yes, under the Michigan Administrative Procedures Act.

17 Q. Okay. And is one of the purviews of the Michigan  
18 Liquor Control Commission enforcing alcohol consumption  
19 policy?

01:53:09

20 A. Yes.

21 Q. Okay. And I understand the Michigan Liquor Control  
22 Commission actually has an enforce arm, correct?

23 A. Yes.

24 Q. There is a licensing division and an enforcement  
25 division, correct?

01:53:19

1 A. Yes.

2 Q. And that enforcement division fell under the  
3 commissioners -- you and the three other commissioners,  
4 correct?

01:53:25 5 A. Yes.

6 Q. Sorry, two other commissioners.

7 And as part of the enforcement arm of liquor  
8 control -- Michigan Liquor Control looks for, or I guess  
9 regulates licensed entities to ensure they are not  
01:53:41 10 over-serving people, right?

11 A. Yes. That's one of the areas.

12 Q. Okay. And from experience, that's a huge policy area,  
13 a huge regulatory area for the commission, right?

14 A. Often when I'm speaking, I say the two fastest ways to  
01:53:57 15 possibly lose a license is overconsumption and service to  
16 minors.

17 Q. And actually, I think in the code, those are the two  
18 ways you can lose your license in the Liquor Control Code,  
19 right?

01:54:06 20 A. The commission has the authority to revoke licenses for  
21 those and other reasons.

22 Q. And looking at your CV here, you have a number of board  
23 positions, and I just want to ask about a couple of them.

24 You were the president and officer of the National  
01:54:29 25 Conference of State Liquor Administrators from 2015 to 2019;

1 what is that?

2 A. There are two main associations for alcohol regulators.

3 One is for control states. There are 17 control states in

4 the U.S. That organization is NABCA. The all states

01:54:51 5 organization is NCSLA.

6 Q. And that is the National Conference of State Liquor

7 Administrators?

8 A. Yes.

9 Q. And what did you do in your position for that body?

01:55:04 10 A. I served in various roles under the structure from

11 regional positions moving up to actually being the president

12 until I left the Liquor Control Commission.

13 Q. And you mentioned the other association, call it NABCA,  
14 which is for control states, correct?

01:55:25 15 A. Yes.

16 Q. Okay. Is Michigan a control state?

17 A. Michigan is one of 17 control states.

18 Q. Can you briefly tell us, what does it mean to be  
19 control state?

01:55:34 20 A. Control states basically participate in some fashion

21 with the wholesaling or retail selling of alcohol. Some

22 states, for example, have state stores. Michigan does not

23 have state stores. Michigan participates as a market

24 participant in the wholesale of spirits and receives money,

01:56:02 25 several hundred million dollars a year goes into the state

1 general fund from this business endeavor.

2 Q. So it's the, for lack of a better term, it is the  
3 wholesaler for all spirits in the State of Michigan, the  
4 state is?

01:56:16

5 A. Yes.

6 Q. All right. And I look on here, and you were on the  
7 board of trustees for Delta Charter Township?

8 A. Yes.

9 Q. What did you do there?

01:56:24

10 A. I was elected by the voters to serve as board of  
11 trustees. I also served on the township's zoning and sign  
12 boards of appeals.

13 Q. All right. And I don't need to go through the  
14 presentations and the speakings, but it looks like you were  
01:56:42 15 a very regular speaker at alcohol conferences. I see NCSLA  
16 on here, the NALCP, National Association of Licensing  
17 Compliance Professionals, is that another alcohol group?

18 A. Yes.

01:57:09

19 MR. INFANTE: Your Honor, I move that Ms. Quimby be  
20 accepted as an expert witness in the Michigan Liquor Control  
21 Commission, Michigan Liquor Control Code, and alcohol policy  
22 generally.

23 MS. HILLYER: Your Honor, I object to the  
24 qualifications of this witness as an expert. Under Rule  
01:57:27 25 702, she has nothing that she can supply that would be

1 helpful to the trier of fact relevant to any live trial  
2 issue.

3 THE COURT: Regarding qualifications, Mr. McGraw,  
4 go ahead.

01:57:39 5 MR. MCGRAW: Your Honor, I guess what we just  
6 heard, we had a planning expert in Mr. Daniel, who testified  
7 he did not look at the Michigan Liquor Control Code or take  
8 it into account in his decision on planning and zoning. I  
9 mean, he considered the master plan, the ordinance, and  
01:57:57 10 other items related to planning and zoning, but this is a  
11 rebuttal expert solely to Mr. Daniel. So there is no  
12 expertise in planning and zoning, so that's out. So if we  
13 are offering this person as an expert on the liquor control  
14 code, I'm not sure how that applies. I guess I would have a  
01:58:18 15 couple more questions, such as has this person ever served  
16 as an expert before, and in what capacity.

17 THE COURT: Do you want to inquire regarding  
18 qualifications?

19 MR. MCGRAW: If you don't mind, Judge.

01:58:30 20 THE COURT: If that's your request, I'll grant it.  
21 Go ahead.

22 MR. INFANTE: Your Honor, I would object to that,  
23 because this is rebuttal to PTP's expert witness. The  
24 Township doesn't have --

01:58:39 25 THE COURT: That's a good point.

1 MR. INFANTE: The Township doesn't have an expert.  
2 He can't inquire on --

3 MR. MCGRAW: I guess my statement on that is, if  
4 this was a planning expert, they'd probably tell me to get  
01:58:47 5 lost, because we didn't name a planning expert; and that's  
6 the reason I didn't talk to Mr. Daniels, because I read your  
7 prior decisions and I didn't even speak to Mr. Daniel.

8 This isn't a planning and zoning expert. This is  
9 an expert that has a four-part expert opinion that was  
01:59:05 10 drafted, and all it does is -- in four different parts, was  
11 criticize defendant's brief and position on preemption from  
12 a legal aspect from a lawyer's perspective; very much the  
13 same thing plaintiffs' counsel did in their brief against  
14 us.

01:59:24 15 It's simply a legal position. You have taken the  
16 legal position in this case. You are the legal expert in  
17 this case. Mr. Infante's office and my office, we provide  
18 suggestions and you make the decision on the legal matters  
19 in this case. This is an attorney providing an opinion on  
01:59:46 20 preemption and the Michigan Liquor Control Code. And I'm  
21 not sure how that fits into an expertise.

22 And it's certainly a brand new expert, and it's not  
23 rebutting the planning expert. And if we are going to bring  
24 a brand new expert on a brand new issue at trial in this  
02:00:04 25 case, that's where I do think we have a role in that fight.

1 THE COURT: Okay. Miss Hillyer, go ahead.

2 MS. HILLYER: May I inquire --

3 THE COURT: If you want to inquire on  
4 qualifications, go ahead.

02:00:21 5 MS. HILLYER: If that would --

6 THE COURT: I can't hear you, Ms. Hillyer. I'm  
7 sorry.

8 MS. HILLYER: I'm sorry. I keep forgetting my  
9 microphone is over here.

02:00:26 10 Could I inquire on some of her qualifications?

11 THE COURT: Yes.

12 VOIR DIRE EXAMINATION

13 BY MS. HILLYER:

14 Q. Good afternoon, Ms. Quimby.

02:00:44 15 A. Good afternoon.

16 Q. I'm Holly Hillyer, and I am an attorney for PTP in this  
17 case.

18 I understand you're a former commissioner for the  
19 Michigan Liquor Control Commission, right?

02:00:58 20 A. Yes.

21 Q. You are not speaking in any official capacity on behalf  
22 of the commission today, right?

23 A. No.

24 Q. And your opinions in this case would not represent the  
02:01:06 25 position of the commission on anything?

1 A. They would be my opinions.

2 Q. Okay. And they are your own personal opinions.

3 You've never testified as an expert before?

4 A. I have not.

02:01:16 5 Q. And you would not be testifying in this case as an  
6 expert on land use planning, would you?

7 A. No.

8 Q. Okay. Or agricultural zoning?

9 A. No.

02:01:26 10 Q. Farmland preservation?

11 A. No.

12 Q. And you have some experience as a zoning board of  
13 appeals member in the early '90s?

14 A. Yes.

02:01:41 15 Q. Okay. Other than that, do you have any experience with  
16 land use planning or the use of zoning to control land uses?

17 A. With the Michigan Liquor Control Code, there is a great  
18 amount of authority over the licensed premises and where  
19 alcohol can be served. So the use of property for the sales  
02:02:11 20 and service of alcohol is very much under the purview of the  
21 State of Michigan Liquor Control Commission.

22 Q. Sure, I understand that's part of your opinion. But  
23 you don't have any experience with using land use planning  
24 or zoning to regulate land uses, right?

02:02:34 25 A. I'm not sure I'm clearly understanding your question.

1 Do you mean --

2 Q. Are you familiar with the Michigan Zoning Enabling Act?

3 A. I have general familiarity of it from my time serving  
4 on the Township Board.

02:02:49 5 Q. Okay. So you understand that under the MZEA, I'll call  
6 it, Townships have the right to zone, right? They divide  
7 land into districts: Agricultural, commercial, residential,  
8 industrial. And they designate which land uses are  
9 permitted in different districts, right?

02:03:07 10 A. Yes.

11 Q. Okay. So do you have any experience of using that  
12 process, the land use planning and zoning process to  
13 regulate land uses?

14 A. Yes. Because when I was on the Township board for  
02:03:19 15 example, the reason for planning and zoning and all of that,  
16 you would not want, for example, a manufacturing facility  
17 that runs 24 hours a day that is loud and noisy with a lot  
18 of light right next to a school or residential area.

19 Q. So that's -- your experience would come from having  
02:03:36 20 been on the zoning board of appeals from '92 to '96?

21 A. From being on the township board and the zoning board  
22 of appeals in serving as a citizen representative after I  
23 left the township board.

24 Q. Okay. And do you have any land use planning or zoning  
02:03:53 25 experience in using those tools to protect agriculture or to

1 preserve farmland?

2 A. I do not have any specific degrees in that area or held  
3 any specific job titles in that area.

4 Q. Okay.

02:04:10 5 MS. HILLYER: Your Honor, I maintain my objection  
6 to this witness.

7 THE COURT: Okay. Yes?

8 MR. MCGRAW: I guess I would ask if I could inquire  
9 of this witness.

02:04:22 10 THE COURT: This witness is rebutting PTP's  
11 witness, correct?

12 MR. MCGRAW: That is what plaintiffs are saying,  
13 but that's not what is happening. She's a witness in a new  
14 area that has nothing to do with Mr. Daniels.

02:04:42 15 MR. INFANTE: I didn't even ask her a question yet.

16 THE COURT: I'm sorry?

17 MR. INFANTE: I haven't even asked her a question  
18 yet.

19 THE COURT: But I think, Mr. Infante, why don't you  
02:04:52 20 state specifically for the record what subject matter this  
21 witness is going to be testifying about.

22 MR. INFANTE: Sure. I just want to make, for the  
23 record, if your Honor remembers, we had -- the reports were  
24 due on the same day about Ms. Quimby did issue a report. It  
02:05:10 25 was the same day that Dr. Daniels issued his report, so she

1 couldn't actually rebut his report. So we waited until he  
2 testified. She listened. She was on the Zoom to listen to  
3 him testify. I am going to ask her questions based on what  
4 she heard him testify to, and whether or not she agrees  
02:05:25 5 that, for example, that is good alcohol policy. His  
6 opinion, whether it's good alcohol policy. That's one of  
7 the areas I'm going to ask her about.

8 THE COURT: You are talking about the  
9 administration of the Township's zoning provisions?

02:05:47 10 MR. INFANTE: No, his opinions, for example, that  
11 you shouldn't sell -- shouldn't serve any other beverages  
12 except for alcohol. Whether or not she agrees that is good  
13 -- that it's a reasonable opinion, based on her experience  
14 with alcohol policy. Because she's dealt with that from the  
02:06:08 15 state level as a commissioner, the effects that alcohol has  
16 on a person if they are only served alcohol or --

17 THE COURT: Okay. So alcohol policy. Are there  
18 other subject matters that you wish Ms. Quimby to address?

19 MR. INFANTE: Yes. Dr. Daniels took the position  
02:06:27 20 that alcohol should only be served inside of a tasting room,  
21 and from a liquor control perspective, I want to know if she  
22 believes that opinion is right or wrong.

23 THE COURT: Okay. That's two.

24 MR. INFANTE: Do you want me to go through all of  
02:06:40 25 them?

1 THE COURT: Well, in fairness, given the  
2 objections, I think before Ms. Quimby testifies, we need to  
3 find out exactly the issues in response to Mr. Daniels'  
4 testimony that she's going to address.

02:06:53 5 MR. INFANTE: All right. I will preview all of my  
6 questions for Ms. Daniels (sic. Quimby). I'll read them one  
7 by one.

8 So Dr. Daniels testified he did not review the  
9 Michigan Liquor Control Code before issuing his opinion. I  
02:07:06 10 want to know if she has any opinions on that.

11 Dr. Daniels testified he did not review the code of  
12 federal regulations except for those sections related to  
13 AVAs. I want to know if she has an opinion on that.

14 He testified that wine sales should only occur  
02:07:21 15 indoors; we talked about that one. He testified that  
16 limiting wineries to selling only merchandise with the  
17 winery logo is reasonable. I want to ask her about that.  
18 The state has extensive regulations when it comes to  
19 advertising and labeling and logos, so I'm going to ask her  
02:07:39 20 about that.

21 Dr. Daniels gave an opinion that it's reasonable to  
22 limit the size and scale of wine production. I want to ask  
23 her about that, because the Liquor Control Code actually has  
24 specific sections on the size and scale of wine.

02:07:53 25 She also just talked earlier about how the state of

1 Michigan is a control state. The state of Michigan actually  
2 receives excise taxes from the sale of alcohol, which is a  
3 special kind of tax. It's a huge portion of the state  
4 budget is the sale of alcohol, of which the Liquor Control  
02:08:11 5 Commission is the body which collects those taxes, and also  
6 regulates to ensure that the right amount of taxes are paid  
7 from the sale of alcohol.

8 I want to ask her about the state's interest in  
9 these wineries actually selling more wine than the Township  
02:08:25 10 is limiting them to.

11 THE COURT: How is that important?

12 MR. INFANTE: How is that important? Because it  
13 goes to the credibility.

14 THE COURT: Increased revenue in the state coffers,  
02:08:37 15 how is that relevant?

16 MR. INFANTE: How is that relevant? Because the  
17 state has an interest in increasing taxes and revenue, but  
18 it also goes to discredit Dr. Daniels.

19 Frankly, this all goes to discredit Dr. Daniels  
02:08:50 20 because he buried his head in the sand, and he didn't review  
21 relevant laws. And Ms. Quimby is going to talk about those  
22 relevant laws. He didn't review any of the Liquor Control  
23 Code.

24 THE COURT: Well, I'm not at all sure that impact  
02:09:02 25 on the state revenue stream is an issue for this case.

1 MR. INFANTE: Okay.

2 THE COURT: Anything else?

3 MR. INFANTE: He testified that he was concerned  
4 the wineries would become wine shops and bars selling  
02:09:14 5 alcohol made by other businesses. Ms. Quimby is going to  
6 testify that that is a legal impossibility. I want to note  
7 on that one, I gave Ms. Andrews the chance to withdraw that  
8 opinion and she refused to withdraw that opinion. She  
9 insisted that his entire report go in; that it has all of  
02:09:30 10 these opinions in there. That frankly cannot happen in the  
11 state of Michigan.

12 Ms. Quimby is also going to talk about the  
13 three-tier system in Michigan, which Dr. Daniels said he  
14 never even heard of, so she's going to talk about that. He  
02:09:44 15 gave an opinion that it's reasonable to limit the sale of  
16 food and drinks, especially non-wine drinks. She's going to  
17 talk about the need to offer non-alcoholic beverages to  
18 customers.

19 She's also going to talk about the state -- the  
02:09:58 20 interest in having food served and the effects of not  
21 serving food and the policy decisions that were made by the  
22 commission when she was on the commission to actually  
23 promote the sale of food and the offering of food at  
24 establishments that sell alcohol or serve alcohol.

02:10:15 25 And then generally, his overall opinion that the

1 ordinances promote health, safety, and welfare. I think she  
2 can testify that -- I think she's going to testify that she  
3 believes these ordinance do not promote health, safety, and  
4 welfare because they conflict with policy decisions made by  
02:10:31 5 the Liquor Control Commission and how they want to promote  
6 health, safety, and welfare.

7 I think I covered them all.

8 THE COURT: Okay.

9 MR. MCGRAW: Your Honor, this is a brand new expert  
02:10:43 10 witness. We have been told, second bite of the apple, which  
11 I've understood this whole case. We're new to this case and  
12 I didn't want bring up -- we understood what the Court  
13 ruled. And now we have a brand new expert witness who has  
14 testified that they have no expertise whatsoever in land  
02:10:56 15 use, planning, and zoning. And we have just heard that --

16 THE COURT: I didn't hear much about land use,  
17 planning, and zoning in what Mr. Infante just said.

18 MR. MCGRAW: That's right. There is none. And  
19 this is a rebuttal expert to a land use planner.

02:11:08 20 THE COURT: Well, let me ask this question.

21 MR. MCGRAW: She's not rebuttal; she's brand new.

22 THE COURT: Are you asserting that the opinions  
23 that Mr. Daniels outlined in his report, which is in  
24 evidence, are not subject matters addressed by Mr. Infante  
02:11:25 25 moments ago?

1 MR. MCGRAW: Many of them are not. And he referred  
2 to a number of things. He said they exchanged reports on  
3 the same day, and he's referred to a number of things in Mr.  
4 Daniels' report that were not even addressed in his  
02:11:38 5 testimony yesterday.

6 If they wanted an expert witness on the Michigan  
7 Liquor Control Code, they have had more time than we have  
8 had -- we've only had a year and a half. They've had more  
9 time than us to list a witness on the Michigan Liquor  
02:11:51 10 Control Code, and they didn't do so.

11 Now they are trying to bootstrap it through a land  
12 use planning expert as a rebuttal expert to him, and this  
13 person just testified that they are not an expert in land  
14 use planning and zoning at all. So it's a new expert  
02:12:03 15 witness.

16 THE COURT: What is your response to that?

17 MR. INFANTE: Your Honor, the disclosure of Dr.  
18 Daniels was broad. We actually said in our disclosure we  
19 didn't know what he was going to testify to. So we named  
02:12:19 20 three experts to counter what he might say. And his report  
21 is fairly broad ranging and verbose. He taps into things  
22 that are, you know, certainly deal with zoning, but  
23 certainly things that deal with the Right To Farm Act,  
24 that's why we're going to have Gary McDowell from MDARD.

02:12:39 25 THE COURT: I'm just interested in this witness at

1 the moment.

2 MR. INFANTE: He touches on alcohol policy and  
3 alcohol restrictions and why he believes those are  
4 reasonable. He compares those, if you read his report --  
02:12:49 5 which really should be redacted -- he says these  
6 restrictions are reasonable because that is what they do in  
7 Napa or that's what they do in Sonoma. Ms. Quimby can say  
8 they are not reasonable because that's not what we do here.

9 THE COURT: Does your papers outline Ms. Quimby as  
02:13:06 10 an expert on liquor control?

11 MR. INFANTE: Yes.

12 THE COURT: Okay.

13 MR. INFANTE: She was disclosed as an expert on  
14 liquor control.

02:13:14 15 THE COURT: Ms. Hillyer, I'll give you one more  
16 opportunity.

17 MS. HILLYER: Thank you, your Honor.

18 Dr. Daniels' report were required disclosures under  
19 Rule 26 at the time they were made, but we specifically  
02:13:26 20 limited his testimony. He did not opine on anything related  
21 to --

22 THE COURT: You moved his report into evidence,  
23 correct?

24 MS. HILLYER: Yes.

02:13:34 25 THE COURT: Why isn't plaintiff entitled to rebut

1 that, assertions in the report, in light of the fact that  
2 the report is in the record?

3 MS. HILLYER: Your Honor, to redact the report --

02:13:51

4 THE COURT: Please answer my question. Your  
5 report -- His report is in evidence?

6 MS. HILLYER: Yes.

7 THE COURT: Why isn't plaintiff entitled to bring a  
8 witness in to rebut the assertions in the report?

02:14:04

9 MS. HILLYER: Well, beyond the report, because most  
10 of what Mr. Infante just addressed is not relevant to any  
11 live trial issues. This is not a commercial speech issue.

12 THE COURT: But you put the entire report into the  
13 record, correct?

14 MS. HILLYER: It was admitted.

02:14:22

15 THE COURT: On whose motion?

16 MS. HILLYER: It was admitted on PTP's motion to  
17 summarize some of his --

18 THE COURT: Then you're stuck with it and the  
19 plaintiff can rebut it.

02:14:32

20 Ms. Quimby is qualified to address the issues that  
21 Mr. Infante just outlined in his presentation with the one  
22 exception. Other than that, I'm going to allow her to  
23 testify.

24 Objections are overruled. Go ahead.

02:14:45

25 MR. INFANTE: Your Honor, the exception was the tax

1 issue?

2 THE COURT: Yes.

3 MR. INFANTE: Okay. Thank you. Just so I'm clear.

4 DIRECT EXAMINATION (continued)

02:14:52 5 BY MR. INFANTE:

6 Q. Okay. Miss Quimby, you were virtually present on  
7 Monday when Dr. Daniels testified. You were on the Zoom  
8 call, correct?

9 A. Correct.

02:15:04 10 Q. Okay. So you listened to him testify?

11 A. Yes.

12 Q. Okay. You got a nice preview there of what I'm going  
13 to ask you, so we will start right in.

14 So Dr. Daniels testified that he did not review the  
02:15:14 15 Michigan Liquor Control Code before issuing his opinion? Do  
16 you take issue with that?

17 A. Yes, I do.

18 Q. Why? Why do you take issue with that?

19 A. For several reasons. One, no statute is singular in  
02:15:30 20 nature. Different statutes need to be read together if they  
21 go together. For example, the Michigan Liquor Control Code  
22 governs activities; not just the service of alcohol,  
23 activities on the licensed premise. The lack -- I'm trying  
24 to use the right word here -- the lack of review of an  
02:16:06 25 essential law governing a licensee -- a licensed premise,

1 which all of these businesses are, would be integral to all  
2 of the issues in this case, in my opinion.

02:16:36 3 Q. You mentioned the Liquor Control Code allows activities  
4 in addition to sale of alcohol, those are things that a  
5 licensee could actually ask -- There are certain things a  
6 licensee can ask the liquor control and get permission to  
7 do, such as promotions, contests, and things of that nature;  
8 correct?

02:16:51 9 A. Yes. There are a variety of licenses, permits, and  
10 permissions that can be requested from the Michigan Liquor  
11 Control Commission.

12 Q. Okay. Now, Dr. Daniels also testified that he did not  
13 review the Code of Federal Regulations, except the sections  
14 related to AVAs. Do you have an issue with that?

02:17:07 15 A. Yes, I do.

16 Q. What is your issue with that?

17 A. Again, the federal law governing these licensees is an  
18 integral part of any discussion for anything on the licensed  
19 premises.

02:17:23 20 Q. Okay. And am I correct that the code of federal  
21 regulations and Michigan Liquor Control Code actually work  
22 in tandem together?

23 A. Yes.

02:17:37 24 Q. Okay. And the Liquor Control Code actually cross  
25 references the Code of Federal Regulations?

1 A. It does.

2 MR. McGRAW: Your Honor, can I object as to  
3 leading. This is an expert witness. I understand as a  
4 bench trial, we have done this all the whole trial, but with  
02:17:45 5 an expert witness on these precise legal issues, can I just  
6 ask that there be no leading questions.

7 THE COURT: Okay. That's fair.

8 MR. McGRAW: Thank you.

9 MR. INFANTE: I'm sorry about that.

02:17:52 10 THE COURT: Tighten up the questions.

11 MR. INFANTE: I will, your Honor.

12 BY MR. INFANTE:

13 Q. Okay. Can you tell us -- you understand that we're  
14 talking about wineries here.

02:18:01 15 Is there a portion of the wineries operations that  
16 are covered by the Code of Federal Regulations?

17 A. Yes. Some regulations are covered at the federal  
18 level; some regulations are covered at the state level.

19 Q. What is covered at the federal level?

02:18:14 20 A. The federal level covers manufacturing. It does not  
21 cover, for example, any retail parts.

22 Q. Okay. So when you say manufacturing, what are you  
23 talking about there?

24 A. There are several provisions in the federal law that  
02:18:33 25 govern the basic types of permits before one can apply at

1 the state level.

2 Q. To then actually make alcohol?

3 A. Yes. So they work in tandem.

02:18:51 4 Q. I think you said the state level, the Liquor Control  
5 Code, that covers the retail or sales side of it; is that  
6 right?

7 A. Yes. And again, it does reference federal provisions  
8 in several places.

02:19:05 9 Q. Okay. All right. Dr. Daniels testified that wine  
10 tasting should occur only indoors.

11 Do you agree with that?

12 A. No. I do not agree with that.

13 Q. Why do you not agree with that?

02:19:24 14 A. For several reasons. The Liquor Control Code allows  
15 for outdoor service. There are many places, for example, an  
16 orchard that has requested to have service throughout the  
17 entire property, to have the experience of being on the  
18 property extended to the outside of the building. There are  
19 many outdoor service areas for on premise as well as off  
02:19:52 20 premise licensees. It is not uncommon at all for alcohol  
21 sales and service to be outside of a building for an entire  
22 property even, such as a golf course.

02:20:13 23 Q. When you were on the Michigan Liquor Control  
24 Commission, did you have the occasion to grant a licensee a  
25 permit for the service of alcohol outside?

1 A. Yes.

2 Q. And did that happen on regular basis?

3 A. Yes.

02:20:31

4 Q. Dr. Daniels testified that limiting a winery to selling  
5 merchandise only with their logo is reasonable.

6 Do you agree with that?

7 A. No.

8 Q. Why not?

02:20:44

9 A. Under customary trade practices, which is a big part of  
10 the alcohol industry laws and customer practices, there are  
11 established provisions in the Liquor Control Code and rules  
12 that govern advertising and where brands can be displayed,  
13 and not just for brand as the company name, but also  
14 products.

02:21:08

15 For example, something that comes to mind is going  
16 to Founders or Bell's, for example, with beer and seeing a  
17 t-shirt made for every different type of product. Or a lot  
18 of them that they have, there is lots of provisions already  
19 established in the liquor control code.

02:21:27

20 Q. Okay. You mentioned Founders and Bell's. Talking  
21 about Bell's, we are in Kalamazoo here.

22 Are you saying there are provisions in the code of  
23 when and where Bell's could use the name Bell's, or perhaps  
24 Two Hearted or Oberon; is that what you are saying?

02:21:42

25 A. For example, for sponsorships of sports teams, things

1 like that, there are laws and rules on the usage. Some of  
2 this is to prevent, again, what is called the trade practice  
3 violations, where there is, quick summary, inappropriate  
4 usage or who provides what type of issues with those with  
02:22:09 5 merchandise.

6 Q. You used the phrase "trade practice." Is that an  
7 advertising issue?

8 A. It is an advertising issue and it goes into again,  
9 the -- the nature of what the item is and how the brands are  
02:22:38 10 presented, and whether or not it is a brand promotion versus  
11 something beyond a mere logo that would increase alcohol  
12 consumption, something like that.

13 Q. Does the commission or does the Liquor Control Code  
14 have rules on brand promotions and advertising and logos?  
02:23:01 15 Does it have its own rules?

16 A. Yes.

17 Q. Yes?

18 A. Yes.

19 Q. When you were a liquor control commissioner, did you  
02:23:07 20 have the chance to enforce those rules on promotions and  
21 logos and advertising and the like?

22 A. If you're asking me to recall a specific case, I can't  
23 recall a specific case.

24 Q. But that's a common -- that was a common thing to come  
02:23:23 25 before the commission?

1 A. Yes.

2 Q. Okay. And I know this wasn't in -- the commission has  
3 rules on signage that license premises too, doesn't it?

4 A. Yes. There are rules on signage.

02:23:38 5 Q. I think my favorite one is about neon signs. There's  
6 rules on neon signs, right?

7 A. There is rules. There is attorney general opinions as  
8 well on signage.

9 Q. All at the state level?

02:23:50 10 A. Yes.

11 Q. Okay. Dr. Daniels gave an opinion that it is  
12 reasonable to limit the size and scale of wine production.

13 Do you have issue with that opinion, setting aside  
14 the excise tax issues?

02:24:04 15 A. Yes. Again, state law governs, and the definitions as  
16 well as the context of the laws need to be looked at. And  
17 for a small winery, for example, the cap is 50,000 gallons  
18 in a calendar year.

19 Q. Okay. And do you understand that 10 of the 11  
02:24:28 20 plaintiffs here are small winemakers?

21 A. Yes.

22 Q. Okay. And one of the plaintiffs here, Mr. O'Keefe in  
23 the back, is a winemaker. Do you understand the difference  
24 between the two?

02:24:38 25 A. Yes.

1 Q. Okay. Is there a cap on production for a winemaker  
2 like Mr. O'Keefe in the back?

3 A. No.

02:24:50

4 Q. So the Michigan Liquor Control Commission allows him to  
5 make as much wine as he wants?

6 A. From a public policy standpoint, if there was a cap,  
7 I'm not sure where he would go once he met that cap.

8 Q. And if a small winemaker reached the 50,000 gallon cap,  
9 do they have to close or do they have options?

02:25:07

10 A. They have options. Of course, the small winemaker,  
11 there are certain -- I'm going to call them extra  
12 privileges, such as perhaps extra farmers market permits  
13 that they can get. There are certain public policy  
14 interests of nurturing a small business under the small  
15 winemaker license.

02:25:27

16 If a small winemaker wanted to apply to the  
17 commission, they could certainly submit an application, pay  
18 any differential in fee, and move to a different license  
19 category if approved by the commission.

02:25:40

20 Q. So they could just convert up to the larger license,  
21 larger cap?

22 A. If approved, yes.

23 Q. All right. Dr. Daniels testified that in reaching his  
24 opinion, he was concerned that the wineries would become

02:25:54

25 wine shops and bars, selling alcohol made by other

1 businesses. Do you take issue with that opinion of his?

2 A. Yes.

3 Q. Why do you take issue with that opinion?

4 A. It's not possible.

02:26:05 5 Q. How is it not possible?

6 A. With the three-tier system and the different licensing  
7 categories, the prohibitions of holding licenses in  
8 different categories, the wineries could not possibly become  
9 that.

02:26:26 10 Q. I guess we need to explain.

11 What are the different licensing categories in the  
12 three-tier system?

13 A. Let me start with the three-tier system. In brief  
14 explanation, we need to look back before prohibition. When  
02:26:42 15 a business owner wanted to get into business, they would  
16 look to one manufacturer to set them up in business. The  
17 manufacturer would provide the necessities; tables, chairs,  
18 things like that, to get into the business. However, the  
19 business owner would then be tied to that one manufacturer;  
02:27:04 20 hence, the term tied house.

21 After prohibition, the middle tier, the third tier,  
22 was from a public policy standpoint thought to break up the  
23 tie between the two houses and offer, through the combined  
24 distribution, being able to work with more manufacturers,  
02:27:26 25 offer them more choices to consumers.

1 I think anybody who goes into a grocery store --  
2 licensed grocery store in Michigan today can look to the  
3 left and to the right to see all of the choices, as compared  
4 to back to one particular manufacturer was tied to that  
02:27:44 5 business.

6 Q. Talking about a tied house. A tied house is  
7 essentially a bar that serves one kind of alcohol; might be  
8 Budweiser or Miller if they could have it; is that right?

9 A. One manufacturer, yes.

02:27:57 10 Q. And that's no longer allowed in the United States,  
11 right?

12 A. No.

13 Q. Okay. And the -- So what are the three types of  
14 licenses in the state of Michigan?

02:28:09 15 A. There are on premise licenses for retail, off premise  
16 license for retail, wholesale licenses; and then from the  
17 manufacturing tier, wineries, distilleries, breweries.

18 Q. Okay. So there is the retail tier, the distribution  
19 tier, and the manufacturing tier?

02:28:30 20 A. Yes.

21 Q. And what tier are the wineries in?

22 A. Manufacturing --

23 Q. Okay.

24 A. -- tier.

02:28:36 25 Q. And, you know, down the street, you know, there is a

1 Burdick's. There is a bar down the street called Burdick's  
2 bar/restaurant. What tier is Burdick's in, a bar or  
3 restaurant?

4 A. I would likely say they were in the retail tier.

02:28:52 5 Q. Okay. A more general example, Chili's or Applebee's?

6 A. Retail tier.

7 Q. Okay. If I walk into a Chili's or Applebee's, I can  
8 get a Jack Daniels; I can get a Budweiser, I can get any  
9 kind of wine I want -- well, whatever they are selling,  
02:29:06 10 right?

11 A. Yes.

12 Q. Is that what we commonly call a Class C liquor license,  
13 right?

14 A. Yes.

02:29:12 15 Q. All right. The wineries -- Is it possible for the  
16 wineries in this case to obtain a Class C liquor license?

17 A. No. The law specifically prohibits that.

18 Q. Okay. And is a Class C liquor license necessary to be  
19 a bar as described by Dr. Daniels?

02:29:31 20 A. Yes.

21 Q. So they cannot be a bar as described by Dr. Daniels?

22 A. No.

23 Q. You mentioned a -- like a -- in the retail tier, there  
24 is also grocery stores and Costco and Meijer, correct,  
02:29:46 25 right?

1 A. Yes.

2 Q. Okay. Those are also in the retail tier?

3 A. Yes, selling to consumers.

02:29:55 4 Q. Okay. Is it possible for the wineries to get the same  
5 type of license that a Meijer or a Costco has to sell  
6 alcohol made by somebody else?

7 A. No.

8 Q. So they cannot become a wine shop as Dr. Daniels  
9 opined?

02:30:09 10 A. No.

11 Q. Okay. Dr. Daniels gave an opinion that it's reasonable  
12 to limit the sale of food and drink, especially non-wine  
13 drinks. Do you agree with his opinion?

14 A. I do not.

02:30:18 15 Q. Why do you not agree with him?

16 A. For several reasons. First, it's common knowledge that  
17 food should be offered when any alcohol is served. This  
18 comes from a basic, I would say, elementary school physics  
19 lesson of when something is put into motion, it continues  
02:30:42 20 unless there is an obstacle to slow it down or stop it. If  
21 someone consumes alcohol without food, it is more quickly  
22 absorbed into the body without the food obstacle there to  
23 slow it down. So from a health, safety, welfare standpoint,  
24 it would not be in anyone's best interests to not offer food  
02:31:06 25 along with alcohol. And not just any food; food that is

1 more substantial or has more fats or carbohydrates, things  
2 like that.

02:31:25

3 Q. Is this something that you dealt with when you were at  
4 the Michigan Liquor Control Commission, the idea of public  
5 policy in serving food with alcoholic beverages?

6 A. Yes.

7 Q. Was this something that the commission is focused on,  
8 the slowing the effects of alcohol on consumers?

9 A. It's a good business practice.

02:31:40

10 Q. Okay. Is this something that the commission wanted  
11 businesses to do, to provide food?

12 A. The commission -- Under the laws, the commission would  
13 of course enforce the laws, but there are provisions in the  
14 laws that promote the ability to have food, such as the  
15 ability of wineries to have restaurant operations. That is  
16 in the law.

02:32:03

17 Q. Okay. You mentioned that you disagree with Dr.  
18 Daniels' opinion that it's reasonable to limit the sale of  
19 drinks, especially non-wine drinks. Do you disagree with  
20 that opinion as well?

02:32:20

21 A. I do.

22 Q. Why do you disagree with that?

23 A. Again, I look to the plain reading of the state law as  
24 well as common sense; to only promote and serve alcohol to  
25 people would not be in the state's -- the promotion of the

02:32:39

1 state's interest of moderation and temperance. The ability  
2 to have water available is now in law.

3 And the providing or selling of other nonalcoholic  
4 beverages, a lot of these licensed establishments are family  
02:33:05 5 environments. There are children there. There are pregnant  
6 women there. There are other people there who, for a  
7 variety of reasons, may not want to consume an alcohol  
8 product; yet that would be the only thing available if there  
9 were not other products available.

02:33:23 10 Q. Dr. Daniels testified that the overall purpose of the  
11 Peninsula Township ordinances is to promote health, safety,  
12 and welfare. And given just the opinions that we talked  
13 about that he had, do you believe that, from a state liquor  
14 control perspective, these ordinances promote health,  
02:33:45 15 safety, and welfare?

16 A. I do not.

17 Q. Why not?

18 A. The limitation on food, again, is not in the best  
19 interests of the individual or extended to the, you know,  
02:34:01 20 community to give someone only alcohol and then send them  
21 out to their car to drive away is not in the best interests  
22 of society generally. And the prohibition of being able to  
23 sell food, hypothetically speaking, could be an issue, not  
24 only for the business, but possibly the local unit of  
02:34:38 25 government prohibiting that, in my opinion.

1 Q. Now, about being an issue, over consumption is an issue  
2 both for the public, but for these businesses, right?

3 A. Yes.

02:34:54

4 Q. I think you told us that serving an intoxicated person,  
5 that is a way to lose your license from the State?

6 A. Yes.

7 Q. So if these wineries were forced to only serve alcohol  
8 with nothing else, that might put their licenses in  
9 jeopardy?

02:35:06

10 MR. MCGRAW: Object as to foundation. There is  
11 zero evidence in this case that these wineries do not  
12 provide food. We have heard it through the entire case,  
13 every one of them provides food.

14 MR. INFANTE: Ms. Quimby testified that they should  
15 be serving more substantial food than cheese and crackers.

02:35:21

16 THE COURT: Well, that's not what she said. She  
17 said food.

18 MR. INFANTE: Okay.

19 THE COURT: Most of the witnesses representing the  
20 wineries have indicated they serve some sort of food.

02:35:32

21 MR. INFANTE: Okay. I can inquire on that.

22 THE COURT: Okay.

23 BY MR. INFANTE:

24 Q. Most of the witnesses, I will say, some of the  
25 witnesses here, some of these wineries serve cheese and

02:35:39

1 crackers and charcuterie, and some of them do small plates  
2 of food. Is that the type of food that you're discussing  
3 when you say it's good policy to serve food to guests?

4 A. It is good policy to offer substantial types of food  
02:36:06 5 with any alcohol. If -- cheeseburgers and fries come to  
6 mind because they are substantial food items.

7 Q. Maybe a sandwich?

8 A. A sandwich.

9 Q. Slice of pizza?

02:36:26 10 A. A slice of pizza, yes. Anything that would again,  
11 create that food obstacle barrier in someone's stomach.

12 Q. Thank you.

13 THE COURT: Ms. Hillyer, you may inquire.

14 CROSS EXAMINATION

02:36:40 15 BY MS. HILLYER:

16 Q. Hello again, Ms. Quimby.

17 A. Hello.

18 Q. So you talked a little bit about a Meijer, right. And  
19 you testified that the commission oversees the retail sales  
02:37:24 20 of alcohol in Meijer, right?

21 A. Yes.

22 Q. Now, it's not your opinion, though, that a Township  
23 can't say that a Meijer can't be located in a residential  
24 neighborhood, right?

02:37:39 25 A. No, that is not my opinion.

1 Q. Okay. We talked a little about Bell's. They are in  
2 Comstock, right?

3 A. I'm not sure exactly what location they are in.

02:37:53

4 Q. You know, they have got a large manufacturing facility,  
5 and the MLCC would license and oversee the manufacturing of  
6 all of the Bell's beer, right?

7 A. Yes.

02:38:07

8 Q. But it's not your opinion that a township or a city  
9 could not restrict the location of a large manufacturing  
10 facility to, say, an industrial district?

11 A. Going back to my township days, there was always the  
12 saying of you can regulate, but you can't prohibit.

02:38:33

13 Q. Okay. So are you saying that a community could not  
14 prohibit locating a factory in, say, a residential  
15 neighborhood?

16 MR. INFANTE: Your Honor, she's not an expert on  
17 zoning. She's asking her to opine on zoning. I'm not sure  
18 of the relevance of that question.

19 MS. HILLYER: May I respond?

02:38:43

20 THE COURT: Sure.

21 MS. HILLYER: I think we're -- We're talking about  
22 preemption, right? Like, we're talking about two bodies of  
23 law that essentially, she's arguing, are in conflict with  
24 one another. I think it's important to think about both  
02:38:54 25 bodies of law, and I'm trying to get an understanding of

1 what she understands about zoning and the extent to which  
2 these two things might conflict.

3 THE COURT: So why don't you go ahead and restate  
4 your question and we will move on from there.

02:39:12

5 BY MS. HILLYER:

6 Q. So, do you have an understanding that the community  
7 could still restrict the location of a factory to an area  
8 outside, say, a residential neighborhood?

9 A. That's part of the planning process for the community.

02:39:23

10 Q. Through zoning and planning, yes.

11 And you testified about trade practices, right?

12 A. Yes.

13 Q. And logos.

02:39:43

14 It's not your opinion, though, that a community  
15 couldn't allow a winery to sell a t-shirt with its logo on  
16 it in its tasting room, is it?

17 A. Could you --

02:40:04

18 Q. I apologize for the double negative. But I'm just  
19 trying to clarify. You are not opining that a township  
20 couldn't allow a winery to sell its own t-shirts with its  
21 own logos in its own tasting room, right?

22 A. If you're asking whether or not the Liquor Control Code  
23 controls and governs the state law basis, the trade  
24 practices, and the merchandise advertising and other  
02:40:27 25 requirements that are in the state laws and rules, that

1 would govern over a local unit of governance ordinance or  
2 other type of policy trying to allow or prohibit -- I'm  
3 still confused by your question, I'm sorry.

02:40:49 4 Q. Allow. So we heard testimony, and I'm not sure how  
5 much you heard, but we heard testimony, we saw pictures from  
6 Mr. O'Keefe's winery earlier -- I'm not sure if you were  
7 here. But they have a gift shop, I think he called it, and  
8 t-shirts with their logo hanging in their gift shop.

02:41:05 9 It's not your position that the Michigan Liquor  
10 Control Code would prevent them from doing that, right? Or  
11 prevent a township from allowing them to do that?

12 MR. INFANTE: I'm going to object that it's a vague  
13 question with a double negative. I think the witness is  
14 confused.

02:41:19 15 THE WITNESS: I am confused.

16 THE COURT: If the witness didn't understand the  
17 question, she can say so.

02:41:26 18 THE WITNESS: I am confused. If it's allowed by  
19 state law, they are allowed to do it. If you're asking --  
20 the way I'm hearing the question is, if it's already allowed  
21 by state law, can the Township allow it too, which is  
22 confusing me. Because if it's already -- if it's already  
23 allowed under state law, it's allowed under state law.

24 MS. HILLYER: Okay. Understood.

02:41:45 25 Your Honor, I have one exhibit. And I understand

1 that there is -- let's see, there is an HDMI cable here, if  
2 I can go get my laptop.

3 This will be Exhibit 9xR. And I'm going to bring  
4 it up on the screen so you won't need a binder.

02:42:24

5 BY MS. HILLYER:

6 Q. You're a law professor, right?

7 A. I have served as an adjunct at Western Michigan  
8 University Law School.

02:42:39

9 Q. Okay. So do you tell your students about the  
10 difference between shall and may?

11 A. Yes.

12 Q. And shall is mandatory, right?

13 A. Actually, I look to Bryan Garner.

02:42:55

14 Q. I am on the same page. I'm not a fan of "shall," but  
15 it's everywhere.

16 A. My students hear from that. So I advise them if they  
17 want to use the word shall, I suggest that they use it in an  
18 appropriate manner; otherwise, it is best to stay away from  
19 it.

02:43:06

20 Q. And you would agree that may is permissive?

21 A. May is permissive.

22 Q. Okay. All right. One second.

23 (Pause in proceedings.)

02:43:32

24 MS. HILLYER: Apparently, the battery life here is  
25 zero. The ELMO might be faster. It appears that my laptop

1 has chosen this moment to --

2 THE COURT: Well, let's get it up on the ELMO.

3 MR. INFANTE: I'm not going to touch that thing.

4 I'll probably break it.

02:44:30 5 THE COURT: It would take me years to replace it.

6 MR. INFANTE: It's a nice one. It looks new.

7 MR. McGRAW: You don't have that state court budget  
8 anymore.

9 MR. INFANTE: Not like the old ones that were just  
02:44:44 10 massive.

11 BY MS. HILLYER:

12 Q. Okay. So this is an exhibit. This is Exhibit Rx9.

13 This was already admitted by stipulation.

14 And you testified earlier that in your capacity as  
02:45:07 15 commissioner, you approved liquor licenses. You issued  
16 orders as a commissioner?

17 A. Yes.

18 Q. Okay. And is it your understanding that all of those  
19 orders reference Rule 43610003, which says that "a licensee  
02:45:29 20 shall comply with all state and local building, plumbing,  
21 zoning, sanitation, and health laws, rules and ordinances as  
22 determined by the state and local law enforcement officials  
23 who have jurisdiction over the licensee?"

24 A. Yes. There is one less zero up there: 1003.

02:45:45 25 Q. Thank you. So I want to look at an order approving a

1 license for one of the plaintiffs in this case just as an  
2 example. Okay.

3 And is that your name at the top of this one?

4 A. Yes.

02:46:08

5 Q. Okay. So under Paragraph C, it says under  
6 Administrative Rule R4361003 subpart 1, "The licensee shall  
7 comply with all state and local building, plumbing, zoning,  
8 sanitation, and health laws, rules and ordinances as  
9 determined by the state and local law enforcement officials  
10 who have jurisdiction over the licensee."

02:45:38

11 Under Administrative Rule R4361003 subpart 2, "A  
12 licensee shall not use a license at the licensed premises  
13 unless a temporary or permanent certificate of occupancy has  
14 been issued by the local unit of government having  
15 jurisdiction over the location of the licensed premises or  
16 the licensed complies with the Administrative Rule 4361003  
17 subpart 1. An approval by the Michigan Liquor Control  
18 Commission does not waive these requirements. The licensee  
19 must obtain all other required state and local licenses,  
20 permits, and approvals before opening the business for  
21 operation." Did I read that right?

02:47:08

02:47:27

22 A. Yes.

23 Q. Okay. And below that, "Failure to comply with all laws  
24 and rules may result in revocation of the approval contained  
25 in this order," right?

02:47:39

1 A. Yes.

2 Q. And that's your signature?

3 A. Yes.

02:47:44 4 MR. INFANTE: Your Honor, I'll just place an  
5 objection. You've already ruled that this rule here  
6 obviously doesn't apply if the local rule or regulation is  
7 preempted or unconstitutional. You've already made that  
8 decision in this case.

9 THE COURT: Objection is noted.

02:47:54 10 BY MS. HILLYER:

11 Q. And in this context, "shall" there means it's  
12 mandatory, right? It's not a suggestion?

13 A. With legislative drafting, "shall" is, in most states,  
14 the preferred word for the systematic legislative service  
02:48:30 15 bureau of systematic drafting. I can speak to why this  
16 language was put into the orders, even though it speaks for  
17 itself in the rule.

18 Q. That's okay. I just wanted to know if "shall" is  
19 mandatory in this context.

02:48:49 20 A. It is mandatory for appropriately promulgated laws and  
21 rules and guidance, etcetera.

22 Q. And a court like this would determine what is  
23 appropriate, right?

24 A. Yes.

02:49:09 25 Q. Okay.

1 MS. HILLYER: I have no further questions. Thank  
2 you for bearing with me with my technical difficulties.

02:49:22

3 MR. INFANTE: Your Honor, I see Mr. McGraw standing  
4 up. I don't think he should be allowed to inquire on this  
5 witness's rebuttal to Dr. Daniels. It's not his expert.

6 MR. MCGRAW: Your Honor, this is Michigan liquor  
7 control questions, with -- Mr. Daniels had nothing to do  
8 with. This is an expert that was not listed throughout this  
9 entire case. I have 60 seconds of questions.

02:49:38

10 MR. INFANTE: She was disclosed. Of course we  
11 disclosed her as an expert witness. We did it when PTP  
12 joined the case. She was disclosed two years ago.

13 MR. MCGRAW: She was listed as rebuttal --

02:49:52

14 MR. INFANTE: And you've already denied the motion  
15 in limine on Ms. Quimby specifically. So I'm not sure why  
16 he keeps saying she wasn't disclosed.

17 THE COURT: What do you want to ask the witness?

02:50:03

18 MR. MCGRAW: I just want to make sure these things  
19 that she indicated the township don't allow, I just wanted  
20 to go through the list and ask her if these eight things are  
21 okay, if the Township allows them.

22 THE COURT: What is your objection?

02:50:24

23 MR. INFANTE: This is -- she's a rebuttal witness  
24 to PTP. The Township did not disclose any witnesses  
25 whatsoever, or expert witnesses whatsoever in this case, and

1 they shouldn't get the chance to, you know, inquire. That's  
2 why I didn't inquire on Dr. Daniels. He wasn't their  
3 expert, Your Honor. You have ruled that they have no expert  
4 witnesses in this case. This does not relate to any of  
02:50:39 5 their expert witnesses. She's solely a rebuttal expert here  
6 to Dr. Daniels.

7 THE COURT: Why isn't that right?

8 MR. McGRAW: Because if it was land use and  
9 planning, I would sit down, just like I did with Dr. Daniel.  
02:50:48 10 I didn't know him. I didn't ask him a question. I read  
11 your orders. This has nothing to do with planning and  
12 zoning. This goes to all of these other issues in this  
13 case. This isn't a typical rebuttal expert, which is  
14 usually an expert in the same area as the person they are  
02:51:00 15 rebutting.

16 This is essentially an additional expert that's  
17 coming up, and all of these issues are related directly to  
18 our issues in this case. And I just -- one minute of  
19 questions, and I think it will be brief and I think it's  
02:51:14 20 appropriate --

21 THE COURT: Well, I'll take the witness's questions  
22 and answers over objection. I'll make a decision about  
23 whether it's viable or not later. Let's get it on the  
24 record so we can move on.

02:51:24 25 MR. INFANTE: Thank you, Judge.

CROSS EXAMINATION

BY MR. MCGRAW:

Q. Ms. Quimby, you mentioned outdoor drinking. You are aware that all these wineries allow outdoor drinking on the patios, vines, and all over the properties. Are you aware of that?

A. I have been to every one of the wineries at some point in my adult over-21 life.

Q. Right. You're okay that they allow that outdoor drinking?

A. It doesn't matter what I personally think. The law -- I mean, I could have a personal opinion on whether or not it's nice to sit on the patio under a sunset and have a glass of wine. But if you're asking a Liquor Control Commissioner, my authority is set by the Constitution and by state laws, and I am bound by that authority.

Q. Okay. Every question I ask you today will be as an expert in the area of liquor control, okay.

Logos on merchandise. If all of these wineries indicate they enjoy selling their logos on their own merchandise, is the state okay with that?

MR. INFANTE: Objection, Your Honor. I'm not sure that's true for every winery.

THE COURT: I'm sorry?

MR. INFANTE: I'm not sure that's true for every

1 winery, but we're also not limiting --

2 THE COURT: Well, it's pretty close.

3 MR. INFANTE: Okay.

4 BY MR. McGRAW:

02:52:27 5 Q. These wineries sell wine. They sell ice wine. They  
6 sell apple wine. They sell cherry wine. They have even  
7 gotten very, very heavy into hard cider that's made on the  
8 peninsula, and even more so than wine, it's shipped all over  
9 the state of Michigan for resale.

02:52:42 10 Is the state okay with that?

11 A. I cannot speak for the state. I can tell you that the  
12 Liquor Control Code speaks for itself. If the Liquor  
13 Control Code, for example, allows a manufacturer of wine to  
14 enter into a collaborative agreement with another  
02:52:57 15 manufacturer of wine, to ship un-bottled wine basically, or  
16 something like that, then the law provides for it.

17 Q. There was a point in time where the Township required  
18 all winery owners to make water available for free. It can  
19 be in a cup. It could be in a bottle. It could be in a  
02:53:18 20 fountain, any way, shape, or form.

21 If a township required -- and since then, they now  
22 require them to also allow the sale of bottled water.

23 Is the state okay with that?

24 A. Again, I can't speak to the state of Michigan, but when  
02:53:33 25 a law is passed, having spent many years of my adult life in

1 the Michigan legislature working with people who are voting  
2 on the laws, when a law is passed -- I believe I heard a  
3 witness earlier saying it was unanimously passed -- the  
4 presumption is that the collective body made an intentional  
02:53:53 5 decision in putting each and every word into the statute  
6 that exists.

7 Q. All right. I'm going to list a small selection of  
8 foods that are offered at the wineries and I'll ask you if  
9 those are all okay at the end. I'll just list them all real  
02:54:05 10 quickly at first, okay: Smoked whitefish; pate; cheese;  
11 chocolate; charcuterie with olives, meats, fruits, and  
12 crackers; macaroons; croissants, some filled with butter,  
13 some filled with chocolate; green bean mushroom casserole;  
14 sliced bread loaves with small plates; short ribs; tempura  
02:54:19 15 zucchini; tacos, beef pork with chicken; pretzel bites --  
16 oh, artichoke dip, I couldn't read my own writing again.  
17 And then, one even offers five soups, which isn't my choice  
18 when drinking wine or alcohol, but they also offer bread  
19 with that.

02:54:38 20 From a state's perspective, those sound like pretty  
21 good foods that you might want to offer with alcohol?

22 A. Again --

23 MR. INFANTE: Your Honor, I want to lodge an  
24 objection. He is misrepresenting testimony here. I think  
02:54:50 25 he is lumping in what these wineries do at their wine and

1 food pairing dinners and not what they do every day, and  
2 some of them aren't on the menu, barely any food at all. So  
3 he is mischaracterizing the testimony.

02:55:04 4 MR. MCGRAW: I didn't mischaracterize the  
5 testimony, Your Honor. We have been through all of those  
6 foods in this case, and that is the end of my question.

7 THE COURT: Well, was -- Mr. Infante's objection  
8 related to the list that you gave, was not exclusively to  
9 tasting rooms or the winery, but was moving over into  
02:55:28 10 other --

11 MR. MCGRAW: They have all been through foods I  
12 believe we have actually specifically asked the witnesses,  
13 each of the foods that they went through. And we didn't  
14 even get through a portion of the list. I don't want to go  
02:55:38 15 through it all. But these are foods that they offer at  
16 their intended food pairings, at their tastings.

17 THE COURT: And your question of the witness is?

18 MR. MCGRAW: She made -- I believe she was given  
19 the question that all we offered were charcuterie boards and  
02:55:55 20 that that was sufficient and safe. And so I was just making  
21 the record clear these are what the witnesses have testified  
22 to in this case and asking her if that would be --

23 THE COURT: Ms. Quimby, can you answer that  
24 question?

02:56:09 25 THE WITNESS: Yes.

1 THE COURT: Go ahead.

2 THE WITNESS: The commission did not approve menu  
3 selections, but from a common knowledge and public health,  
4 safety, welfare standpoint, logic indicates that the more  
02:56:24 5 substantial the food, the more alcohol is, you know,  
6 absorbed into the food rather than directly and immediately  
7 into an empty stomach and bloodstream.

8 MR. McGRAW: Thank you for coming, and thank you  
9 for answering my questions.

02:56:41 10 THE WITNESS: Thank you.

11 THE COURT: Mr. Infante, any other questions?

12 MR. INFANTE: No, thank you, your Honor.

13 THE COURT: All right. Thank you.

14 Ms. Quimby, you may step down.

02:56:48 15 THE WITNESS: Thank you.

16 THE COURT: Okay. We will take the afternoon  
17 recess and we will resume at 3:15 with cross examination of  
18 Mr. O'Keefe.

19 MR. INFANTE: Thank you, Your Honor.

02:57:12 20 COURT CLERK: All rise, please. Court is in  
21 recess.

22 (At 2:57 p.m., recess.)

23 (At 3:19 p.m., proceedings continued.)

24 THE COURT: We're back on the record in 20-1008.

03:19:27 25 All counsel are present. Mr. Rajsic, you may cross examine.

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C E R T I F I C A T E

I, Kathleen S. Thomas, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/

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