

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Case No. 25-1703

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

Plaintiffs-Appellees/Cross-Appellants, (25-1754)

v.

TOWNSHIP OF PENINSULA, MI, a Michigan Municipal Corporation

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

PROTECT THE PENINSULA, INC.

Intervenor-Appellant. (25-1705)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
USDC NO.: 1:20-cv-1008 (Hon. Paul L. Maloney presiding)

**DEFENDANT-APPELLANT/CROSS-APPELLEE PENINSULA
TOWNSHIP'S RESPONSE IN OPPOSITION TO HOOPES FAMILY
WINERIES' MOTION FOR LEAVE TO FILE AMICUS BRIEF**

Bogomir Rajsic, III

Thomas J. McGraw

Tracey R. DeVries

MCGRAW MORRIS MASUD

Attorneys for Defendant-Appellant/Cross-Appellee Peninsula Township

44 Cesar E. Chavez Avenue SW, Ste 200

Grand Rapids, MI 49503

(616) 288-3703

Defendant-Appellant/Cross-Appellee Peninsula Township (the “Township”) opposes the proposed participation of Hoopes Family Winery Partners, LP, Hoopes Vineyard, LLC, and Lindsay Blair Hoopes (collectively, “Hoopes”) as an amicus in this case. Amicus participation is intended to assist the Court by offering a viewpoint that is independent from the parties and provides insight beyond the arguments already presented. That is not what is offered here. Instead, the proposed amicus brief adds no meaningful, independent contribution to the Court’s analysis and has failed to demonstrate that it meets the standards laid out in Fed. R. App. P. 29 to file an amicus brief.

While the Sixth Circuit generally grants motions for leave to file amicus briefs, the proposed amicus must still explain its interest and why its brief is desirable and *relevant* to the case. *See, e.g., Kentucky v. United States Env’t Protection Agency*, Nos. 23-3216, 23-3225, 2023 WL 11871967, at *4 (6th Cir., July 25, 2023); *YAPP USA Auto. Sys, Inc. v. Nat’l Lab. Relations Bd.*, No. 24-1754, 2024 WL 4489598, at *1 (6th Cir. Oct. 13, 2024). The Court has denied leave to file an amicus brief when the brief “adds nothing helpful to the disposition of th[e] appeal.” *United States v. Hendrickson*, No. 07-1510, 2008 WL 11515005, at *3 (6th Cir. June 11, 2008).

Hoopes' proposed amicus brief presents the rare circumstance where the brief adds nothing meaningful or helpful to the disposition of the appeal. The Township requests that Hoopes' motion be denied and the proposed amicus brief rejected.

I. HOOPES IS REPRESENTED BY THE SAME COUNSEL AS PLAINTIFFS.

Hoopes Vineyard, LLC presents itself as third-party participant, but in their amicus brief they do not disclose a critical fact. While Hoopes discloses that it has filed suit against Napa County, which currently pends before the United States District Court for the Northern District of California, *Hoopes Vineyard, LLC, et al. v. County of Napa*, 3:24-cv-06256-CRB, Hoopes' amicus brief and the current motion omits any disclosure that Hoopes is represented by the same counsel as Plaintiffs in this appeal. That omission is significant, and their brief should be viewed in light of this selectively undisclosed fact. Amicus briefs are meant to provide an independent perspective, but the proposed brief is not an independent contribution to the Court's analysis. The amicus brief does not provide the Court with a distinct viewpoint, instead, it functions as an opportunity to advance the interests of the shared legal representative.

II. PLAINTIFFS SUCCESSFULLY FOUGHT TO EXCLUDE EVIDENCE OF HOW OTHER JURISDICTIONS REGULATE LAND USE, YET HOOPES' BRIEF FOCUSES THE MAJORITY OF ITS ATTENTION TO HOW NAPA COUNTY REGULATES LAND USE.

Hoopes' amicus brief contends that this case demonstrates unconstitutional land-use enforcement and urges this Court to affirm the District Court's liability determination and \$49.2 million damages award. Relying entirely on their own dispute with Napa County, Hoopes argues that local governments can weaponize zoning regulations to impose penalties and suppress business activity. They further assert that municipalities are incentivized to pursue enforcement for financial gain and that substantial damages under 42 U.S.C. § 1988 are necessary both to compensate affected property owners and to deter similar governmental overreach.

In making this argument, Hoopes spends a significant portion of their proposed brief arguing the alleged similarities between Napa County and the Township. This position is odd as the District Court – at Plaintiffs' urging – refused to permit the Township and PTP to present evidence that the Township's land use was consistent with other municipalities around the country. The Court should give no weight to Hoopes' amicus brief.

The record reflects that Plaintiffs themselves previously took the exact opposite position to Hoopes regarding the relevance of other jurisdictions' land-use regulations. Leading into trial, Plaintiffs specifically sought to exclude via motion *in limine* any evidence regarding zoning ordinances enacted by other municipalities, arguing that such material was irrelevant and would waste time. **Brief on Motion *In Limine*, RE 532, PageID ##21289-21290.** Plaintiffs moved to exclude testimony

from PTP's land use expert, Dr. Thomas Daniels, to the extent his expert report relied on winery regulations from other jurisdictions, including Napa County, asserting that how other jurisdictions interpret or apply their own laws has no bearing on the issues in this case. *Id.* Plaintiffs went further, arguing that how other jurisdictions regulate land use is wholly irrelevant to their claims. *Id.* at Page ID #21290.

Plaintiffs successfully argued that the regulatory approaches taken by other jurisdictions are irrelevant and inadmissible. The Hoopes amicus brief does precisely what Plaintiffs sought to and succeeded in excluding. The amicus brief relies entirely on experiences from another jurisdiction to advocate for a particular outcome here. Plaintiffs previously insisted that this perspective has no relevance but now they invite this Court to consider it simply because it favors their position. Plaintiffs cannot have it both ways.

III. THE AMICUS BRIEF DOES NOT ADDRESS THE ISSUES ON APPEAL.

Once the reader moves past the lengthy discussion of how another jurisdiction regulates land use – which was exorcised from the current case by the District Court – Hoopes' brief otherwise fails to address the issues on appeal in any meaningful way. The Township's appeal raises specific and substantial legal errors, including the District Court's lack of subject-matter jurisdiction, its misapplication of constitutional standards including vagueness and First Amendment theories, its

exclusion of expert testimony, and its award of damages that is unsupported by causation. Hoopes' amicus brief addresses none of these issues.

Instead of responding to the Township's positions or the governing law, it focuses entirely on Hoopes' own unrelated dispute with Napa County and Hoopes' criticisms of land-use regulations. It does not analyze the Peninsula Township Zoning Ordinance, nor does it address the District Court's reasoning, and it offers no meaningful analysis that would assist this Court in resolving the issues on appeal.

Indeed, Hoopes takes its narrative as far as questioning the District Court's sound decision to stay the enforcement of the judgment while this case is on appeal, arguing without any support that the Township would "rather spend the money elsewhere." It is interesting that Hoopes could read far enough to find the District Court's decision on the motion to stay enforcement, but ostensibly could not be bothered to read the briefing or opinion noting that the Township residents, not the municipal corporation, would be on the hook for the errant \$49.2 million judgment. Contrary to Hoopes' sophomoric representations, the Township is interested in protecting its residents, not "spend[ing] the money elsewhere." This narrative is separate and distinct from the issues presented on appeal.

CONCLUSION

Hoopes' amicus brief consists of the airing of personal grievances from separate litigation against Napa County and offers no relevant or independent

perspective and provides no assistance to the Court. The Court should deny Hoopes' motion and reject the proposed amicus brief.

McGRAW MORRIS, P.C.
Attorney for Appellant/Cross-Appellee

Dated: May 4, 2026

BY: /s/ Bogomir Rajsic, III
Bogomir Rajsic, III (P79191)
44 Cesar E. Chavez Avenue SW, Ste 200
Grand Rapids, MI 49503
(616) 288-3703
brajsic@mcgrawamorris.com

CERTIFICATE OF SERVICE

I certify that on May 4, 2026 the foregoing document was served on all parties or their counsel of record through the CM/ECF system which will serve all parties who have appeared or their attorneys of record.

McGRAW MORRIS, P.C.
Attorney for Appellant/Cross-Appellee

Dated: May 4, 2026

BY: /s/ Bogomir Rajsic, III
Bogomir Rajsic, III (P79191)