

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)

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

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**REPLY TO APPELLEES/CROSS-APPELLANT'S OPPOSITION TO  
MOTION FOR LEAVE TO FILE BRIEF OF THE INTERNATIONAL  
MUNICIPAL LAWYERS ASSOCIATION AS AMICUS CURIAE**

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**Rules**

Fed. R. App. P. 27(a)(4).....1  
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Pursuant to Fed. R. App. P. 29(a) and 27(a)(4), proposed amicus curiae the International Municipal Lawyers Association (“IMLA”) respectfully files this reply to the response of the Appellees/Cross-Appellants to IMLA’s motion for leave to file an amicus brief. The purpose of this reply is twofold: (1) to correct a typo in its certification required by Fed. R. App. P. 29(a)(4)(E) and (2) to respond to Appellees’ contention that IMLA’s brief is not helpful to the Court.

### **CORRECTION OF AMICUS CERTIFICATION**

As noted by Appellees, footnote 1 of IMLA’s proposed brief contained a typo. The word “no” was missing before the phrase “party or party’s counsel made a monetary contribution intended to fund the preparation or submission of this brief[.]” IMLA clarifies that no party or party’s counsel made a monetary contribution intended to fund the preparation or submission of its brief. IMLA is prepared to file a corrected brief to this effect should the Court desire a formal correction be filed.

### **IMLA’S BRIEF IS HELPFUL TO THE COURT**

IMLA respectfully disagrees with Appellees that its brief is not helpful to the Court. Appellees’ opposition to IMLA’s brief is flawed in three respects. First, it is based on a minority, hypercritical view toward amicus

briefs. Second, it incorrectly contends that IMLA merely repeats arguments made by the parties. Third, it incorrectly contends that IMLA has impermissibly introduced new evidence.

First, Appellees repeatedly cite opinions from Seventh Circuit Judge Richard Posner regarding standards for granting leave to file an amicus brief. *See Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (Posner, J., in chambers); *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers). But Judge Posner was “known as a particularly prominent critic of amicus briefs advocating for one party,” and his hostility toward such briefs is the minority position. *Bishop v. Smith*, 112 F. Supp. 3d 1231, 1245 (N.D. Okla. 2015). The prevailing trend in the federal appellate system is toward liberal acceptance of amicus briefs, as evidenced recently by the removal of the party-consent requirement from Supreme Court Rule 37 in 2023.

The Sixth Circuit has not endorsed Judge Posner’s restrictive approach to amici. The Court regularly accepts amicus briefs filed in compliance with the Federal Rules of Appellate Procedure. *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). And it has reserved denial of leave for extraordinary circumstances. *See, e.g., United States v. Hendrickson*, No. 07-1510, 2008 WL 11515005, at \*3 (6th Cir. June 11, 2008) (denying leave when the proposed brief was both untimely and added “nothing helpful”). IMLA encourages the Court to take this opportunity to expressly reject a hostile view toward amicus briefs.

Second, Appellees contend that IMLA merely repeats existing arguments made by the parties. This argument is somewhat perplexing, as Appellees later argue that IMLA improperly raised new arguments.<sup>1</sup> IMLA’s proposed brief does neither. Rather, it addresses three issues that Peninsula Township properly preserved and raised in its brief and augments

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<sup>1</sup> Also perplexing is Appellees’ assertion that IMLA “cites the Township’s brief as authority on multiple occasions[.]” Appellees’ Opposition to IMLA’s Motion, p. 3. IMLA’s proposed brief contains only one direct reference to the Township’s brief, and this was to the Township’s brief *in the trial court*. On page 25, IMLA’s proposed brief notes that the Township cited to Michigan precedent requiring the use of net profits. But this was done to demonstrate that the Township properly raised the issue below, not to regurgitate arguments made by the Township. The only other potential reference to the Township’s brief is the following general statement on page 7: “As ably argued by the Township and Intervenor-Appellant Protect the Peninsula in their filings before this Court, this unwarranted result cannot be allowed to stand.” That statement merely expressed agreement with the ultimate relief requested. Thus, contrary to Appellees’ assertion, IMLA has not cited the Township’s brief as authority on multiple occasions.

the Township's position by addressing the issues from a unique perspective.

*See Shoemaker v. City of Howell*, 795 F.3d 553, 562 (6th Cir. 2015).<sup>2</sup>

Third, Appellees take issue with IMLA's discussion of winery economics, contending that this is an improper expansion of the record. IMLA has not sought to expand the record. Rather, it seeks to provide relevant background information to show the relevant context of the litigation, which is precisely one of the purposes of amicus briefs. *See J. Vicente Aprile II, Amicus Curiae Briefs in Criminal Trial Courts?*, 36 CRIM. JUST. 55, 56 (2021).

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<sup>2</sup> On some level, any amicus brief could be characterized as raising a "new argument" to the extent that it does not limit its discussion of the issues to the precise cases and rationale applied by the party it supports. But such a brief would limit amici's role to simply "parroting the briefs of the parties," in which case "amici would essentially serve no purpose whatsoever." *Id.* The point behind the rule that amici may not raise new issues or arguments is that appellate courts should not resolve issues that the appellant has waived by failing to raise. And although this Court has, at times, taken the position that amici can neither raise new issues nor new arguments, *see id.*, the Supreme Court has distinguished between issues and arguments, explaining that only issues are subject to appellate preservation requirements, *see Yee v. City of Escondido*, 503 U.S. 519, 534-535 (1992); *see also* Andrey Spektor & Michael A. Zuckerman, *Ferrets and Truffles and Hounds, Oh My: Getting Beyond Waiver*, 18 GREEN BAG 2D 77, 83-86 (2014) (discussing the distinction between issues and arguments).

IMLA is fully familiar with the parameters governing amicus briefs, given that it files as an amicus more than 30 times per year in appellate courts across the nation. IMLA is particularly aware of the proscription against merely restating legal arguments in amicus briefs, and the corollary responsibility to provide additional relevant information through such authorship, due to its frequent filings at the United States Supreme Court, whose opening sentence in Rule 37.1 states: “An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court.”

IMLA believes it was of such help to the Court in *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024), where its brief—which was joined by the National League of Cities, the National Association of Counties, and other local government organizations — was cited repeatedly by Justice Gorsuch in his majority opinion in favor of the City of Grants Pass. See, e.g., *id.* at 535-537, 545-555. IMLA believes it will have likewise fulfilled that role in its amicus brief filed in support of the locality in *Pung v. Isabella Cnty.*, 146 S. Ct. 80 (2025), which will be argued before the Court on February 25, 2026.

Overall, much of the Appellees’ opposition to IMLA’s brief is based in disagreement with the arguments IMLA makes. Such disagreement is to be

expected. After all, IMLA seeks to file its brief in support of the Township, not the Appellees. But that disagreement is not a valid basis for this Court to deny IMLA's motion for leave to file its brief.

For these reasons, IMLA respectfully requests that the Court grant its motion for leave to file an amicus brief in support of Appellant Township of Peninsula, Michigan.

Respectfully submitted.

Dated: February 23, 2026

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## CERTIFICATE OF COMPLIANCE

I certify that the document contains 1,273 words total, excluding items exempted by Fed. R. App. P. 32(f), and was prepared with a proportionally spaced typeface (using Microsoft Word, in 14-point Book Antiqua font).

Dated: February 23, 2026

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## CERTIFICATE OF SERVICE

I certify that on February 23, 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.

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