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)

BRIEF OF AMICUS CURIAE THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF THE TOWNSHIP OF PENINSULA, MICHIGAN

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CORPORATE DISCLOSURES

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 25-1703 Case Name: Wineries Old Mission v. Peninsula Twp.

Name of counsel: Eric D. Williams, Nathan Inks

Pursuant to 6th Cir. R. 26.1, International Municipal Lawyers Association
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on February 10, 2026 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Nathan Inks
Bloom Sluggett, PC
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Grand Rapids, MI 49503

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

6th Cir. R. 26.1
DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

(a) **Parties Required to Make Disclosure**. With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed**.

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure. The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

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INTEREST OF AMICUS CURIAE[1]

The International Municipal Lawyers Association ("IMLA") is the nation's largest and oldest organization devoted to the advancement of local government law. Founded in 1935, IMLA comprises more than 2,500 local government entities, including cities, counties, and subdivisions thereof (as represented by their chief legal officers), state municipal leagues, and individual attorneys.

As a non-profit, non-partisan, professional organization, IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and state appellate courts.

IMLA speaks in this case to protect a fundamental pillar of American tripartite governance—the insulation of legislative acts from judicial

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), IMLA certifies that no counsel for any party authored this brief in whole or in part, that party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than IMLA, its members, and its counsel made any monetary contribution to this brief's preparation or submission.

interference. Nothing is more paradigmatic of separation of powers than zoning, where one hundred years of Supreme Court precedent confirm that judges have no place second-guessing reasonable local legislatures. Here, the judicial overreach is shocking: a trial court substituted its judgment for the legislative prerogatives of a small, agricultural township, overriding a zoning scheme that served the locality for a quarter-century and crippling the community with almost $50 million in damages.

That untethered result is wrong on many levels. First, the trial court placed unprecedented reliance on discrepancies in the testimony of Township officials and discerned semantic confusion where none existed to hold the challenged zoning ordinance void for vagueness and violative of the Due Process Clause. Second, the court misconstrued First and Fourteenth Amendment jurisprudence, elevating unremarkable matters to constitutional significance. Third, and most egregious, the court bypassed Michigan law in calculating damages under 42 U.S.C. §§ 1983 and 1988, inexplicably compensating plaintiffs for gross profits—a standard not found in any relevant caselaw, and that never would have materialized. The trial court decision conjures constitutional violations where none exist and misapplies bedrock damages principles, encouraging similar injustices to local governments nationwide.

IMLA urges this Court to confirm the primacy of local legislative authority in zoning regulation and reverse an outrageous damages award.

SUMMARY OF ARGUMENT

This is a case of overreach by a federal trial court into valid zoning determinations by an elected local government. It is blackletter law that zoning ordinances are matters of local control, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), which come "to the courts cloaked with every presumption of validity," *City of Ann Arbor v. Northwest Park Const. Corp.*, 280 F.2d 212, 223 (6th Cir. 1960). "[I]n questions of this kind great caution must be used in overruling the decision of the local authorities," *Laurel Hill Cemetery v. City & Cnty. of San Francisco*, 216 U.S. 358, 365 (1910).

The opinion below reveals that the trial court acted without any such caution. The court gave no deference to the local planning and zoning decisions of Peninsula Township as the locality responded to wineries seeking to expand their operations and sales by hosting larger and more frequent events than allowed under the zoning ordinance. The discretion to regulate commercial land uses in agricultural zones is a legislative, not a judicial function, which belongs solely to Peninsula Township, *Village of Belle Terre v. Boraas*, 416 U.S. 1, 8 (1974).

The trial court improperly presided over this case as a "super-zoning board" despite the strong admonition in caselaw not to do so, *Raskiewicz v. Town of New Boston*, 754 F.2d 38, 44 (1st Cir. 1985), and veered far beyond impartially evaluating the facts and applying the law. Revealing an obvious disdain for the Township Board and its zoning decisions, the court unaccountably pronounced that the zoning ordinance "was never about preserving farmland or rural character" but was "designed to keep land prices lower, so the Township could purchase more development rights, which would . . . protect NIMBY landowners." Opinion, R. 623, PageID.31463. It is not a court's place to evaluate the "wisdom, need or appropriateness of the legislation," *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963), or to punish Peninsula Township and its 6,000 citizens for enacting zoning regulations with which the court disagrees.

The trial court erred in awarding almost $50 million for "gross profits" allegedly lost on events that might have been held from 2017 to 2022. That award is unsustainable on numerous grounds. It gives voice to the Plaintiffs' "reasonable business expectations"—an inappropriate mutation of takings jurisprudence blended with an imaginary stream of commerce that would never exist. The damages award was supported by flimsy evidence, not drawn from financial statements but from ad hoc estimates. The court relied on the testimony of one expert while refusing a contrary expert's appearance. Most fundamentally, it violated a foundational parameter governing federal judiciaries: damages for a § 1983 claim should be calculated according to the law of the forum state. *Appalachian Railcar Servs., Inc. v. Boatright Enters., Inc*, 602 F. Supp. 2d 829, 846 (W.D. Mich. 2008); *J&B Ent. v. City of Jackson*, 720 F. Supp. 2d 757 (S.D. Miss. 2010). Here, that rule mandates applying Michigan common law, which requires proof of lost *net* profits, not lost *gross* profits. *Lawton v. Gorman Furniture Corp.*, 282 N.W.2d 797, 801 (Mich. App. 1979); *Getman v. Matthews*, 125 N.W.2d 671, 673 (Mich. App. 1983), *Fera v. Village Plaza Inc.*, 242 N.W.2d 372, 374 (Mich. 1976).

There is no reported Michigan decision authorizing the award of *gross* profits as a measure of damages. The trial court failed or refused to ascertain the common law of damages in the forum state of Michigan and apply Michigan's common law standard to the Plaintiffs' claims. The court incorrectly relied on *Contract Design Group, Inc. v. Wayne State Univ.*, 635 F. App'x 222, 236 (6th Cir. 2015), as authority to award damages based on the loss of *gross profits*, despite the absence of any support in the holding for that proposition. The result is an erroneous and punitive damages award nearly seven times the Township's annual budget. If imposed on this locality of 6,000 residents, it will require drastic cuts in service and the sale of cherished public properties, and/or a judgment levy on all privately owned property in the Township—and will forever alter the tenor of the community.

IMLA emphasizes that no federal appellate court has authorized a damages award for *gross* profits in a § 1983 case. To the contrary, four federal district court cases involve the award of damages based on lost *net* profits under § 1983: *Hershell Gill Consult. Eng. v. Miami-Dade Cnty.*, 333 F. Supp. 2d 1305 (S.D. Fla. 2004); *Jeanty v. City of N.Y.*, No. 18 Civ. 5920 (S.D.N.Y. Jan 27, 2021); *Schneider v. City of Ramsey*, 800 F. Supp. 815 (D. Minn. 1992); *Sloup v. Loeffler*, 745 F. Supp. 2d 115 (E.D.N.Y. 2010). If not reversed, this case will become a toxic precedent, irresponsibly allowing the award of damages in a § 1983 case based on the loss of gross profits. That precedent would erode local governmental immunity from punitive damages. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

The trial court's errors went beyond damages. It also erred in finding the Peninsula Township Zoning Ordinance ("PTZO") in violation of the First

Amendment. The court employed circular logic, discounting legitimate evidence demonstrating that the PTZO directly advanced the substantial governmental interest of protecting the Township's agricultural land. The court compounded these errors by substituting its own judgment for the reasonable policy decisions made by the Township's elected officials.

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. IMLA urges the Sixth Circuit to confirm that federal district courts must apply the forum state's law in determining damages for lost profits in a § 1983 case, reverse the trial court's misguided holding, and restore to the local government its authority in determining zoning matters.

RELEVANT FACTUAL BACKGROUND

IMLA accepts and relies upon the Statement of Facts submitted by Peninsula Township, while noting that $50 million in damages is approximately seven times Peninsula Township's annual budget.

ARGUMENT

I. Backdrop: America's Wine Industry Is in Crisis

It is myopic to view this conflict without acknowledging fundamental industry realities, because the Plaintiffs' outsized claims rely on an imagery of robust and continual commercial opportunity—a narrative that is at best thinly supported, and most likely chimerical.

The Plaintiffs' enterprises are a subset of an American wine industry in crisis, inexorably the victim of its own runaway success. For many of us, it is difficult not to note that ascendance, spurred by innovative viniculture techniques, societal interest in picturesque getaways, benevolent tax loss policies, and creative marketing campaigns over the past twenty years. It now seems commonplace to glimpse a winery—or two or three—crammed into modest farmland plots along highways or nestled just beyond suburban sprawl. The impression is not mistaken. There were just over 2,000 wineries in America in 2000, and nearly 5,000 only seven years later. Associated Press, *Number of Wineries Nationwide Has Doubled Since 2000*, GAINESVILLE SUN (Aug. 16, 2007), https://www.gainesville.com/story/news/2007/08/16/number-of-wineries-nationwide-has-doubled-since-2000/31534587007/. That dramatic trajectory continued, with one source reporting that as of 2023 there were nearly 11,700 American wineries, from Alaska to Florida and Alabama to Maine, including 233 in Michigan alone. *Review of the Industry – 11,691 Wineries*, WINE BUS. (Feb. 8, 2023), https://www.winebusiness.com/news/article/266918.

That remarkable growth was unsustainable. Tens of thousands of acres were converted to grape farming, in ignorance (or defiance) of simple economics. As *Forbes* recently stated: "The main reason U.S. vineyards are in crisis boils down to an oversupply of wine in the market and in winery inventories, caused by a variety of factors. These include a decline in alcohol consumption, changing consumer demographics, rising inflation pushing wine prices higher, [and] an increase in anti-alcohol groups . . ." Liz Thach, *Why America's Vineyards Are In Crisis—And How Growers Are Responding*, Forbes (Nov. 13, 2025), https://www.forbes.com/sites/lizthach/2025/11/13/crisis-in-us-vineyards-whats-next-for-american-wine-growers/.

Confronting various headwinds, growth began "flattening out in 2018," *id.*, the very period for which the Plaintiffs now seek a bailout. "By the end of 2024, total U.S. wine sales had declined by 9%, prompting the removal of American vineyards." *Id.*

The decline is also documented in an authoritative industry overview, the *State of the US Wine Industry 2026*, published annually for over 30 years:

> Since 2020, wine consumption and spending has endured a notable downward slide, particularly in lower-priced segments, from a high of $94B in 2020 to $74.3B in 2025, a decline of about 4% annually. It peaked just before 2020, popped back for a few months during COVID, and then resumed the same downward

> slope evident in the volume declines we first noted in late 2017. [Rob McMillan, *State of the US Wine Industry 2026*, SILICON VALLEY BANK, https://www.svb.com/globalassets/trendsandinsights/reports/wine/2026-svb-state-of-the-u.s.-wine-industry-report.pdf.]

The *Forbes* review provides a broad perspective, citing data and reports from eight of the nation's largest wine-producing states. In each, declining demand has caused the wasting of 20% or more of the grape harvest. California, which produces more than 80% of all United States wine, has been hit particularly hard; according to the President of the Sonoma County Winegrowers Association, "[i]t is estimated that around 30% of Sonoma County grapes went unsold [in 2025]." *Thach*, *supra*. (It is not surprising then, that the other jurisdiction targeted by a virtual mirror image of the complaint pushing WOMP's grandiose damages claims in this case lies in the heart of California wine country: Napa County. There, the same playbook has not succeeded. The County has enjoined the wineries' unpermitted hosting of wine tasting events (*Napa Cnty. v. Hoopes Family Winery Partners, LLC*, No. 22-cv-001262 (Sup. Ct. Napa Cnty. Nov. 3, 2025)) and their federal case was dismissed (*Hoopes Vineyard LLC v. Cnty. of Napa*, No. 24-cv-04256 (N.D. Cal. Mar. 25, 2025)).

At the core of the Plaintiffs' difficulties is a fundamental fact of winery economics: the vast majority of wineries are not profitable based merely on production and wholesale business. Unlike true "agricultural" operations —purveyors of corn or soybeans or strawberries—most wineries cannot survive without significant income from in-person customers, whether by promoting their vintages at over-the-counter tasting facilities, or at larger gatherings where wine plays a cameo role—weddings, concerts, birthdays, anniversaries, graduations, and more. As the *State of the Wine Industry 2026* report reveals, direct-to-consumer sales ("DTC"), largely stimulated by in-person experiences at winery facilities, are the very lifeblood of the industry.

DTC requires in-person visitors, and the industry works to attract them. The pressure on local governmental permitting authorities—Peninsula Township in this case—is inevitable as wineries seek to build ever-larger tasting facilities, add events, increase operating hours, weaken noise limits, sell a wider array of unrelated food and merchandise, and offer peripheral services ("Guest Activities")—all under the rubric of the limited agricultural activity for which they were granted permission to operate.

It is equally inevitable that inconsistencies and misstatements will arise as profit-driven enterprises relentlessly press local authorities to interpret legacy zoning ordinances that were enacted to reflect the community's original and fully legitimate desire to maintain an agricultural character. Painting those conflicts with the supernal constitutional gloss wielded by the Plaintiffs (for example, anointing the service of wine in a tasting room as a form of protected First Amendment expression, or morphing inconsistent governmental statements into a colossal Due Process violation), all accepted wholesale by the court below, is essentially ignoring the 500-pound gorilla in the room: continued winery growth, with its associated increase in visitors and vehicles, and demands on other public infrastructure, is incompatible with longstanding zoning regulations. When a court reflexively dismisses zoning restraints on that expansion as "NIMBYism," Opinion, R. 623, PageID.31463, it reveals a judicial hostility that has no place in interpreting a zoning ordinance.

II. The Trial Court Improperly Acted as a "Super-Zoning Board"

The court below exceeded its authority by interfering in a quintessentially local matter: zoning. "[D]espite the temptation it is not the province of a federal court to act as a super-zoning board." *Schenck v. City of Hudson*, 114 F.3d 590, 594 (6th Cir. 1997). The court gave in to this temptation,[2] contrary to well established federal and Michigan precedent that "great caution must be used in overruling the decision of the local authorities, or in allowing it to be overruled," *Laurel Hill*, 216 U.S. at 365, and that courts "do not substitute [their] judgment for that of the legislative body charged with the duty and responsibility in the premises," *Brae Burn v. City of Bloomfield Hills*, 86 N.W.2d 166, 169 (Mich. 1957).

The Supreme Court described the circumscribed role of state and federal courts in determining the constitutionality of local legislation in *Ferguson*:

> We are not concerned with the wisdom, need, or appropriateness of the legislation. Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to subject the state [or local governmental unit] to intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure. [*Ferguson*, 372 U.S. at 730 (citations and quotations marks omitted).]

The *Ferguson* Court washed its hands of prior decisions, *Lochner v. New York*, 198 U.S. 45 (1905); *Coppage v. State of Kansas*, 236 U.S. 1 (1915); *Adkins v.*

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[2] Remarkably, the court proposed that a noise ordinance would address traffic congestion. See, e.g., Opinion, R. 623, PageID.31464 ("[A] simple noise ordinance could be a narrowly tailored solution to serve many of the same interests in protecting the quiet enjoyment of the Township.").

Children's Hosp. of D.C., 261 U.S. 525 (1923), much like this one, which are significant departures from "the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson*, 372 U.S. at 730.

The powerful dissents of Justice Holmes in *Lochner*, *Coppage*, and *Adkins* offer a cogent rebuttal to the trial court's judicial overreach here:

> This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. [*Lochner*, 198 U.S. at 75 (Holmes, J. dissenting).]

> The criterion of constitutionality is not whether we believe the law to be for the public good. [*Adkins*, 261 U.S. at 570 (Holmes, J. dissenting).]

Violating those precepts, the trial court infused its own parochial views into this litigation, stating, "[The PTZO] was never about preserving farmland or rural character. These provisions were designed to keep land prices lower so the Township could purchase more development rights, which would again, protect NIMBY landowners." Opinion, R. 623, PageID.31463.

The derisive "NIMBY" label given by the court to local citizens who supported Township zoning regulations preserving rural agricultural land and limiting its permitted uses speaks volumes. The remarks reveal the court's hostility to zoning regulations the Plaintiffs disingenuously blamed for "decades of strife," Opinion, R. 623, PageID.31410, by not allowing them large and small events "in a manner consistent with reasonable business expectations," Opinion, R. 623, PageID.31475—a misplaced takings analysis. See *Penn Central Transp. Co v. City of New York*, 438 U.S. 104, 124 (1978) (holding that the extent to which zoning regulations "interfered with distinct investment-backed expectations" is a relevant consideration in a takings analysis under the Fifth Amendment). That hostility is unfounded. The court either misunderstood or ignored the fact that the challenged regulations *allowed* large and small events and *permitted* the Plaintiffs to grow into multimillion dollar operations over the prior three decades. The court's unwarranted criticism of Township planning cannot be substituted for substantive legal analysis of the PTZO's constitutionality, *Adkins*, 261 U.S. at 570 (Holmes, J. dissenting); characterizing the zoning ordinance as "NIMBYism" is not a basis for invalidating the planning and zoning decisions of the Township Board, *Lochner*, 198 U.S. at 75 (Holmes, J. dissenting).

Peninsula Township is the local governmental entity responsible for planning and enacting local land use regulations under Michigan's Zoning Enabling Act, Mich. Comp. Laws § 125.3101 *et seq*. Township officials are responsible for recognizing the competing interests of residential, agricultural, and commercial property owners. The regulation of commercial land uses in agricultural zones is a classic local legislative function, not a judicial function. *Village of Belle Terre*, 416 U.S. at 8. If the PTZO provisions at issue here "are not satisfying to a majority of the citizens, their recourse is to the ballot—not the courts." *Euclid*, 272 U.S. at 393 (citations omitted).

III. The Trial Court's Damages Award Is Erroneous and Should Be Reversed

A. The Damages Award Defies Law—and Logic

It seems unlikely that Michigan, or the Old Mission Peninsula, is a utopia exempt from the factors flattening growth in every other major wine state across the nation. While Plaintiffs might hope to be perceived as operating in an oasis, their own history mirrors the larger pattern: six of the eleven Plaintiffs sprang up after 2000, with the most recent starting business in 2019. More significantly, Old Mission Peninsula is hardly the only option for visitors to the celebrated Traverse City Vinifera region—equally renowned is nearby Leelanau Peninsula, also sited on Grand Traverse Bay, which seeks to entice visitors to its own 26 wineries. *How Traverse City Became Known for its Wineries and Vineyards*, MOLLY BUTTLEMAN, https://mollybuttleman.com/blog/how-traverse-city-became-known-for-its-wineries-and-vineyards (last visited Feb. 3, 2026). There are at least 200 more competitors in the state. Surely competition, demographics, and evolving consumer preferences would depress Plaintiffs' revenues and profits. But in this case, there are no financials of Plaintiffs to evaluate in the record. Instead, the trial court accepted unsubstantiated numbers provided by the Plaintiffs themselves, filling in the blanks with wishful numbers of events and attendees, price paid per attendee, and critically, the *net* profit margin.

The damages award—five-plus years of alleged gross profits at a margin of 65%—contradicts Michigan law, which limits damages to net profits. Beyond legal error, the award also strains credulity. The bedrock assumption that Plaintiffs operate at a 65% gross profit margin—based not on actual financial reports but on the assertions of an expert citing a generalized accounting guideline—is itself contradicted by wine industry analysts: "as a general guideline, the gross profit margin for wineries is often reported to range between 40% to 60%." *Understanding Winery Profit Margins*, BEVERAGE POWER PARTNERS (Mar. 7, 2023), https://bevpowerpartners.com/f/understanding-winery-profit-margins. On that basis alone, the damages award is upwards of 50% overstated. But more egregious is the basic proposition that *gross* profits would form the basis for awarding damages. That best-of-all-possible-worlds damages model is unsupportable, generating a massive and indefensible windfall to the Plaintiffs. The only plausible damages calculation in this case, whether in terms of law or logic, is the far lower *net profits* calculation for wineries: "net profit margins, which take into account all operating expenses, can range from 5% to 15%." *Id*. On that basis, the 65% gross margin award is as much as 13 times overstated.

Regrettably, that error is only part of the travesty visited on the Township in the damages award. Despite ample opportunity to allow the Township's expert to testify, the court refused. As a result, unverified attendance and pricing statistics and dubious profitably figures escaped rigorous challenge by a domain specialist. Beyond ignoring the industry dynamics described above, the damages award appears to ignore the subsequent impact of COVID-19 on Plaintiffs' event revenues. That crisis shuttered virtually all in-person activities, commercial or otherwise, eliminating any of Plaintiffs' "large events" or "small events" for at least six months. *Gatherings and Face Mask Order*, STATE OF MICHIGAN (Nov. 15, 2020), https://www.michigan.gov/coronavirus/resources/orders-and-directives/lists/executive-directives-content/gatherings-and-face-mask-order-4.

The impact of this erroneous and punitive award, which is roughly seven times the Township's annual budget, *Budget Report for Peninsula Township*, Peninsula Twp., https://www.peninsulatownship.com/uploads/1/0/4/3/10438394/2025_2026_approved_budget.pdf (last visited Feb. 4, 2026), will be severe. Its insurer already is denying coverage. Rose White, *After Michigan Peninsula Lost $50M Winery Lawsuit, Insurer Fights Paying It*, MLive (Aug. 12, 2025), https://www.mlive.com/news/2025/08/after-michigan-peninsula-lost-50m-winery-lawsuit-insurer-fights-paying-it.html. In order to pay such an extortionate amount, the Township will have to cut services and reduce salaries for years to come. Beth Milligan, *Peninsula Township Considers Measures from Shutting Down Department to Selling Off Parkland in Response to Lawsuit Damages*, THE TICKER (July 31, 2025), https://www.traverseticker.com/news/peninsula-township-considers-measures-from-shutting-down-departments-to-selling-off-parkland-in-response-to-lawsuit-damages/. And it is evaluating the sale of several cherished public properties. *Id.* These repercussions will only widen the fractures in the community and exacerbate the conflict.

B. Testimony by Elected Township Officials Is Not a Legal Basis to Declare the PTZO Void for Vagueness and Award Damages Under 42 U.S.C. § 1983

A more formal legal critique of the damages award begins with the fact that it is solely based on the alleged vagueness of "Guest Activity Uses" under the PTZO. Opinion, R. 623, PageID.31475. "Based on multiple . . . depositions," the trial court determined "there appears to be ***clear confusion*** as to what constitutes a 'Guest Activity,' and consequently, whether Winery-Chateaus may host certain activities and what regulations are applicable during different activities." Opinion, R. 162, PageID.6018 (emphasis added). The court cited the deposition testimony of two Township officials, one of whom testified that "Guest Activities" applied to overnight guests, while the other testified that "Guest Activities" applied to guests who did not stay overnight. *Id.*

Although it may be "disturbing that [Township] officials demonstrated such confusion regarding the straightforward Ordinance they were responsible for implementing," the Plaintiffs "[have] not shown that the Ordinance itself is unconstitutionally vague." *600 Marshall Entertainment Concepts, LLC v. City of Memphis*, 705 F.3d 576, 577 (6th Cir. 2013). Differing interpretations of a zoning ordinance, or apparent "clear confusion," Opinion, R. 162, PageID.6018, by representatives of the governmental unit is not the standard of vagueness articulated in *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972), which the trial court cited in support of its ruling that the term "Guest Activity" was unconstitutionally vague. Opinion, R. 162, PageID.6017. An ordinance is void for vagueness under the Due Process Clause of the Fourteenth Amendment if the ordinance fails to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," and "provide explicit standards" for enforcement. *Grayned*, 408 U.S. at 108.

The vagueness test enunciated in *Grayned* "should not, of course, be mechanically applied." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982).

> [E]conomic regulation is subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action. Indeed, the regulated enterprise may have the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process. The Court has also expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe. [*Id.* at 498-499.]

The trial court's application of *Grayned* is incorrect; differing testimony of Township officials and business owners and "clear confusion" over the meaning of "Guest Activity Uses," Opinion, R. 162, PageID.6018, are not valid legal reasons for declaring that the "Guest Activity" provisions of the PTZO are unconstitutionally vague. *600 Marshall*, 705 F.3d at 577.

IMLA is deeply troubled by the trial court's position that a municipality may be liable under 42 U.S.C. § 1983—to the tune of nearly $50 million—because public officials hold differing views about the meaning of words or phrases in a zoning ordinance in effect for thirty years. This ruling defies the long line of decisions following *Monell v. Dep't of Soc. Servs. of City* *of New York*, 436 U.S. 658 (1978), which held that municipalities are not liable for § 1983 damages by *respondeat superior*. The trial court's ruling flouts the well-established law that municipal liability arises only from official "policy or custom", *id.* at 694, and not from errant statements by public officials or employees. This trial court ruling must be reversed to preserve the critical safeguard for the survival of local governments provided by *Monell*.

IMLA suggests that the "clear confusion" over local regulations arising out of "decades of strife," Opinion, R. 623, PageID.31410, is an unremarkable disagreement about exactly what type of "Guest Activities" are allowed as "large events" and "small events" at winery businesses in the agricultural zoning district. Over a thirty-year period, differing opinions, variations in enforcement, and disagreements over limits on commercial growth, do not make zoning ordinance terms unconstitutionally vague.

C. The Trial Court Failed to Recognize and Apply Binding Michigan Law on the Award of Net Profits Rather than Gross Profits

As noted above, the erroneous use of gross profits produces an award that vastly overstates whatever damage the Plaintiffs might have incurred, if they could have launched their highly conjectural range of events. The trial court should have followed *J&B Ent.*, 720 F. Supp. 2d at 763-764:

> This court is guided by Title 42 USC §1988 to determine the measure of damages in the instant case by reference to the common law, as modified and changed by the constitution and statutes of the State wherein this court has jurisdiction over the civil cause at hand. Thus, the applicable law in this case shall be drawn from this court's jurisdictional base, the State of Mississippi, in accordance with §1988, and this law shall be applied so far as it is not inconsistent with the Constitution and laws of the United States. If any inconsistency is encountered, or if Mississippi law has not addressed the topic at hand, this court shall look to the decisions of the United States Court of Appeals for the Fifth Circuit, and then to any combination of federal law, common law, and state law as will be best 'adapted to the object' of the civil rights laws and which will assist this court in arriving at a proper measure of damages, and to facilitate, rather than hinder, the vindication of civil rights.' [Citation omitted.]

J&B Ent. noted, "[T]he Mississippi Supreme Court holds that when calculating the loss of profits, the loss to be calculated is that of net profits, not gross profits." *Id*. at 764 (citations omitted).

Federal courts must apply the law of the "jurisdictional base", as recognized in the Sixth Circuit, and previously by the trial court judge: federal courts "must accord the same precedential value to a state-court decision as it would be accorded by that state's courts," and "anticipate how the relevant state's highest court would rule in the case and are bound by controlling decisions of that court." *Appalachian Railcar Servs., Inc v. Boatright*

Enters., Inc, 602 F. Supp. 2d 829, 846 (W.D. Mich. 2008), quoting *Nat'l Union Fire Ins. Co. of Pittsburgh v. Alticor, Inc.*, 472 F.3d 436, 438 (6th Cir. 2007).

The Township accurately briefed this principle for the court, citing controlling Michigan precedent that requires the use of *net* profits, and rejects the use of *gross* profits, as the proper measure of damages. *Lawton*, 282 N.W.2d at 801; *Getman*, 125 N.W.2d at 673. The trial court rejected Michigan common law on damages for business losses because the decisions were in "contract cases," Opinion, R. 623, PageID.31472, and erroneously relied on *Contract Design*, 635 F. App'x at 236, which contains no holding authorizing the use of gross profits. In *Contract Design*, this Court declined to disturb a jury award when testimony by an expert witness about the loss of "gross profits" did not result in an award of damages for any lost profits. *Id* at 236. There is no reported Michigan case that allows or authorizes the award of damages based on the loss of *gross* profits.

Compounding that oversight, the court did not analyze or find an inconsistency between Michigan law on damages for lost net profits and federal law on damages under § 1988, as was considered in *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 600-601 (6th Cir. 2006). The trial court should have realized and acknowledged that "the basic purpose of the § 1983 damages" is to compensate injured persons for their actual harm, *id.*, citing *Memphis Cmty. Sch. Dist. v. Stachura,* 477 U.S. 299, 307 (1986). Here, the Plaintiffs' financial documents that would reveal actual profits or losses were inexplicably "not in the record," Opinion, R. 623, PageID.31468, resulting in a damages award based purely on speculation rather than the reasonable degree of certainty required by Michigan law. *Fera*, 242 N.W.2d at 374. The trial court compensated Plaintiffs for far more than "their actual harm," contrary to §§ 1983 and 1988, which is reversible error that must be corrected.

IV. The Trial Court Misunderstood and Misapplied the Standard from *Central Hudson*

In *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980), the Supreme Court established the test for determining whether a restriction on commercial speech violates the First Amendment. Where, as here, the commercial speech concerns a lawful activity and is not misleading, the government must (1) identify a "substantial governmental interest" to be achieved by the regulation, (2) show that the regulation "directly advances" that interest, and (3) show that the regulation "is not more extensive than necessary to serve that interest." *Id*. at 564-566.

Although the trial court purported to apply this test, its analyses for the second and third prongs were fundamentally flawed. Those provisions are "complementary" and examine the "fit" between the legislature's identified interests and the means it chose to protect those interests. *Discount Tobacco City & Lottery, Inc. v. United States*, 574 F.3d 509, 523 (6th Cir. 2012). The trial court erred by substituting its judgment for how the Township could best protect agriculture in place of the Township Board's own reasonable efforts to provide for such protections through the PTZO.

A. The Trial Court Erred in Determining that the PTZO Did Not Directly Advance a Substantial Governmental Interest

The trial court improperly evaluated the subjective understanding of Township officials to determine whether the PTZO directly advanced the substantial governmental interests that it had identified—preserving agriculture and regulating for the health and safety of its residents. The court found that the Township Supervisor explained that the "challenged sections of the PTZO do not advance the stated interests[.]" Opinion, R. 623, PageID.31457.[3] There are two problems with this finding. First, it is a

[3] The challenged provisions regulated advertising, sales, and outdoor displays.

misstatement: the Supervisor never said that the PTZO did not advance the identified governmental interests; rather, he was unsure of how the PTZO did so. Opinion, R. 623, PageID.31457-31458. Second, and more importantly, the *Central Hudson* test is an objective one, with the relevant inquiry being whether there is a sufficient connection between the regulation and the governmental interest. *Central Hudson*, 447 U.S. at 564, 569. By treating one official's inability to articulate the PTZO's purpose as evidence that it did not advance the governmental interests, the court effectively imposed a subjective-intent requirement that the Supreme Court has never recognized.

Furthermore, the trial court's rationale for disregarding the Township's evidence on credibility grounds was circular. The court found the Township's other witnesses not credible and stated that the challenged "PTZO provisions make[] operating a farm or winery more difficult." Opinion, R. 623, PageID.31461. In other words, having concluded that the PTZO did not further the preservation of agriculture, the court then treated that conclusion as grounds for rejecting the Township's explanations as not credible. But *Central Hudson* requires an objective assessment of whether the regulation sufficiently advances the asserted interests; it does not permit a court to reject evidence simply because it disagrees with the land-use policies that justify the regulation.

The trial court's misapplication of *Central Hudson* led it to discount legitimate evidence supporting the Township's position. For example, the court criticized testimony about the Township Master Plan on the ground that the PTZO was adopted before the Master Plan. Opinion, R. 623, PageID.31459-31460. But this missed the point of the testimony—that the Township had consistently emphasized agricultural protection.

Relatedly, by treating evidence of economic burden on individual wineries as effectively dispositive, the court substituted its policy judgments on zoning matters for those of Township policymakers. The trial court hung its hat on the wineries' testimony "explain[ing] how the PTZO hindered *their* agricultural operations[.]" Opinion, R. 623, PageID.31462 (emphasis added). But the relevant question is not whether the PTZO makes the Plaintiffs' preferred business models less profitable. It is whether the challenged provisions, viewed objectively, sufficiently advance the Township's interest in preserving agricultural land and preventing the incremental conversion of farms into general commercial retail uses. A zoning regulation does not fail *Central Hudson* simply because *some* farms or wineries could generate additional revenue absent the regulation.

B. The Trial Court Erroneously Applied Strict Scrutiny to the Issue of Narrow Tailoring

One of the significant differences between *Central Hudson*'s intermediate-scrutiny test and the strict-scrutiny test for content-based regulations is the degree to which the regulation must be narrowly tailored. Under strict scrutiny, the regulation must be the "least restrictive means" of achieving the governmental interest. *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). But the Supreme Court expressly rejected this standard for purposes of *Central Hudson*, explaining that all that is required is a reasonable "fit." *Bd. of Trustees of State University of New York v. Fox*, 492 U.S. 469, 480 (1989). The scope of the regulation must be "in proportion to the interest served" and "narrowly tailored to achieve the desired result," but it need not be "the single best disposition[.]" *Id*. This leaves room for legislative discretion to decide "what manner of regulation may be best employed." *Id*.

The trial court failed to recognize this distinction and applied a least-restrictive-means test. Indeed, in its prior summary judgment opinion, the trial court expressly referred to least restrictive means. Opinion, R. 559, PageID.21919. Although the bench opinion did not use the phrase, elements of a least-restrictive-means inquiry exist throughout its analysis. For example, the trial court relied on deposition testimony about whether the Township had considered any less-restrictive means. Opinion, R. 623, PageID.31458.[4] An affirmative requirement to consider and reject other means is consistent with a strict-scrutiny analysis, not intermediate scrutiny. See *Washington v. Klem*, 497 F.3d 272, 284 (3d Cir. 2007). Most indicative of the trial court's misapplication of *Central Hudson* is the following statement: "Perhaps the easiest way to support agriculture on the [Peninsula] would be to support the farms there, and the PTZO does not do that." Opinion, R. 623, PageID.31463. That is entirely inconsistent with the Supreme Court's recognition that *Central Hudson* does not require "the single best disposition," and it disregarded the discretion left to Township decision-makers to "judge what manner of regulation may be best employed." *Fox*, 492 U.S. at 480.

In misapplying *Central Hudson*, the trial court transformed the inquiry into a search for the single best land-use policy, substituting its own views

[4] The trial court discussed the deposition in its analysis of advancement of governmental interests, but that section also discussed the narrow-tailoring requirement.

on agricultural preservation or promotion for those of Township decisionmakers. That approach is incompatible with *Central Hudson*, which leaves such policy judgments to legislative decision-makers if the regulation is within the bounds of achieving a reasonable fit between the ends and the means of achieving them. *Fox*, 492 U.S. at 480.

CONCLUSION

As articulated above, this appeal challenges a holding that melds inaccurate facts with erroneous law. Relying on contrived financial data and an improper gross profits metric, it freighted the Township with an unconscionable damages award. To do so, the trial court wrongfully elevated the Plaintiffs' "reasonable business expectations" to a constitutionally protected status over the Township's planning and zoning authority. The court unlawfully substituted its judgment for that of the Township Board to allow the additional events the Plaintiffs sought. Concerned primarily with the Plaintiffs' ability to maximize profits, the court violated *Central Hudson,* disregarding ample evidence that the zoning ordinance reasonably advanced the Township's legitimate governmental interests.

IMLA supports Peninsula Township's appeal to reverse the trial court's findings of unconstitutionality and to vacate a manifestly improper damages award. That award compensates the Plaintiffs for more than any "actual harm" they suffered and threatens the public fisc of Peninsula Township with the legal equivalent of punitive damages from which local units of government are immune under § 1983.

Dated: February 10, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting requirements contained in Fed. R. App. P. 29(a)(5). I certify that the document contains 6,494 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).

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CERTIFICATE OF SERVICE

I certify that on February 10, 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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