Nos. 25-1703/25-1705/25-1754

United States Court of Appeals for the Sixth Circuit

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, et al.,

Plaintiffs - Appellees (25-1703/25-1705)/Cross-Appellants (25-1754)

v.

TOWNSHIP OF PENINSULA, MI,

Defendant - Appellant (25-1703)/Cross-Appellee (25-1754)

PROTECT THE PENINSULA, INC.

Intervenor - Appellant (25-1705)/Cross-Appellee (25-1754)

Appeal from the United Stated District Court
Western District of Michigan, Southern Division
Case No. 1:20-cv-1008, Honorable Paul L. Maloney

APPELLEES/CROSS-APPELLANTS' OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF OF THE AMERICAN FARMLAND TRUST AS AMICUS CURIAE

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INTRODUCTION

A motion for leave to file an amicus brief must state "(A) the movant's interest; and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case." Fed. R. App. P. 29(a)(3). The amicus also must disclose whether other parties or groups contributed to the brief. Fed. R. App. P. 29(a)(4)(E). Failure to make those disclosures requires leave to file the briefs be denied. *Fharmacy Recs. v. Nassar*, 465 F. App'x 448, 451 n.1 (6th Cir. 2012).

Assuming the amicus passes that first hurdle, the Court has discretion to accept an amicus brief where "the proffered information of amicus is timely, useful, or otherwise necessary to the administration of justice." *United States v. State of Mich.*, 940 F.2d 143, 165 (6th Cir. 1991) (citation omitted). "An *amicus curiae* brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court," but an "*amicus curiae* brief which does not serve this purpose simply burdens the staff and facilities of the Court and its filing is not favored." Fed. R. App. P. 29, Committee Notes on Rules—1998 Amendment (quoting Sup. Ct. R. 37.1). The Court should decide "whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs." *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (Posner, J., in

chambers). That is more likely to happen where a party is "inadequately represented," or where "the would-be amicus has a direct interest in another case that may be materially affected by a decision in this case," or where "the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide." *Id.*

Absent those special circumstances, "leave to file an amicus curiae brief should be denied." *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers). Leave should not be granted where amicus briefs are "used as a means of evading the page limitations on a party's briefs." *Glassroth v. Moore*, 347 F.3d 916, 919 (11th Cir. 2003). And an amicus cannot supplement the record on appeal. *Bormuth v. Cnty. of Jackson*, 870 F.3d 494, 501 (6th Cir. 2017) (en banc). Nor can an amicus make arguments not raised below. *Cellnet Commc'ns, Inc. v. F.C.C.*, 149 F.3d 429, 443 (6th Cir. 1998). Nor should leave be granted when "the proposed amicus briefs merely announce the 'vote' of the amici on the decision of the appeal." *Voices for Choices*, 339 F.3d at 545.

ARGUMENT

AFT attacks the District Court's findings while ignoring the evidence in the record. AFT also tries to improperly supplement the record on appeal. Both tactics are improper for an amicus, so this Court should deny AFT's motion for leave.

A. AFT cannot expand the record on appeal.

AFT's motion should be denied because through its proposed brief and appendix it attempts to improperly expand the record on appeal. AFT spends 24 pages discussing general planning and Purchase of Development Rights ("PDR") concepts in an effort to bolster Peninsula Township's argument that its winery ordinances help preserve farmland. (Doc. 52-1, pp. 9-33.) In support of those arguments, AFT attached six new documents spanning more than 200 pages as part of its appendix. (Dkt. 52-2.) These documents were not part of the District Court's record below and cannot be introduced for the first time on appeal.

"[T]he trial on the merits should be the 'main event' … rather than a 'tryout on the road."' *Anderson v. Bessemer City*, 470 U.S. 564, 575 (1985) (quoting *Wainwright v. Sykes*, 422 U.S. 72, 90 (1977)). This Court, sitting en banc, rejected a similar attempt by *amici* to supplement the record when arguing for reversal. *See Bormuth v. Cnty. of Jackson*, 870 F.3d 494, 501 (6th Cir. 2017) (en banc) ("Now the defendants and *amici* urge reversal based in part upon facts that the defendants could have presented to the district court, but chose not to. They are not entitled to burnish the record on appeal" (citations omitted)). Similarly, AFT cannot make new arguments not raised below. *Cellnet Commc'ns, Inc. v. F.C.C.*, 149 F.3d 429, 443 (6th Cir. 1998) ("While an amicus may offer assistance in resolving issues properly before a court, it may not raise additional issues or arguments not raised by the

parties."). AFT's attempt to introduce new evidence is not allowed, and its motion for leave should be denied for that reason alone. At minimum, this Court should strike AFT's appendix.

B. AFT mirrors PTP's arguments about Dr. Daniels' credibility.

Like PTP (Case 25-1705, Doc. 33, pp. 45-48), AFT attacks the District Court's finding that Dr. Daniels was not credible. (Doc. 52-1, pp. 24-25.) AFT summarily contends that "the district court merely recited portions of Daniels' testimony before summarily concluding he was not credible." AFT's argument is unhelpful because it ignores the record.

AFT overlooks that when finding that Dr. Daniels "was not credible," the District Court explained that "Plaintiffs' counsel stretched Dr. Daniels' credibility on cross examination and was plainly able to impeach his testimony. Aside from effective cross examination, Dr. Daniels' testimony was largely dispelled by Plaintiffs' rebuttal expert witnesses, Teri Quimby and Gary McDowell. The court has no trouble concluding that the facts at trial largely favored Plaintiffs." (R. 623, Page ID # 31416.)

Problems with Dr. Daniels's credibility, which the District Court was able to observe through live testimony, were made apparent on cross-examination. He conceded that he did not review the Michigan Liquor Control Code when considering his land-use opinions because it was not "something [he] was asked to

look at" by PTP's attorneys. (R. 604, Page ID # 23930.) Ms. Quimby, a former Commissioner at the Michigan Liquor Control Commission, took issue with the fact that Dr. Daniels ignored an "essential law" that governed licensed premises. (R. 607, Page ID ## 24759-27462.)

Dr. Daniels also did not review Michigan's Right to Farm Act or Farm Market Generally Accepted Agricultural and Management Practices (GAAMPS). (R. 604, Page ID # 23875, 23956.) Mr. McDowell, the former Executive Director of the Michigan Department of Agriculture and Rural Development, on the other hand, testified how critical the Right to Farm Act and Farm Market GAAMPs were in helping farmers preserve agriculture. (R. 609, Page ID # 25227-25230.) He explained that GAAMPS "make sure the farmers can do the job properly, but also remain profitable. And by doing that, by keeping those farmers profitable, that land will stay in farmland. That's the most effective way you can protect the farmland." (*Id.*, Page ID ## 25229-25230.)

Dr. Daniels opined that it was reasonable to restrict the Wineries' commercial transactions but then conceded on cross-examination that selling wine was a commercial transaction. (R. 604, Page ID ## 23946-23948.) And once again, Mr. McDowell disagreed with Dr. Daniels' opinion and explained that GAAMPS allows farmers to sell farm products and generic and non-logoed merchandise. (R. 609, Page ID ## 25233-25235.) Similarly, Ms. Quimby disagreed that a winery should

be limited to selling merchandise with the winery logo because the Liquor Control Code allows wineries to advertise their businesses in other ways, such as using logos of specific products. (R. 607, Page ID ## 24763-24764.)

Likewise, Dr. Daniels opined that the Wineries should not sell bottled water, unaware that Mich. Comp. Laws § 436.1537(7) allows wineries to sell bottled water (R. 604, Page ID ## 23950-23952.) Dr. Daniels opined that Wineries should not offer any food, to avoid competing with businesses that are zoned commercial, but he was unaware that there were only three restaurants in the Township, one of which was zoned residential. (*Id*., Page ID ## 23952-23955.) Ms. Quimby pointed out that limiting the sale of food, or the types of food, when selling alcohol was not smart and not Michigan policy, explaining "from a health, safety, welfare standpoint, it would not be in anyone's best interests to not offer food along with alcohol. And not just any food; food that is more substantial or has more fats or carbohydrates, things like that." (R. 607, Page ID ## 24770-24771.) This is promoted in the Liquor Control Code. (*Id*., Page ID # 24771.) Ms. Quimby explained that restrictions on food do not "promote health safety and welfare." (*Id*., Page ID # 24772.)

Dr. Daniels testified he was worried about the Wineries from becoming "bars serving alcohol other than wine" and becoming "wine shops." (R. 604, Page ID ## 23957-23958.) But he admitted he was unaware of something to which Ms. Quimby

testified—the Liquor Control Code prohibits wineries from serving alcohol they do not manufacture. (*Id*.; R. 607, Page ID ## 24767-24770.)

Dr. Daniels opined that wine tastings should not occur outside, but once again admitted his opinion was constrained by what he did not review: "I have not reviewed [the Liquor Control Code], so I honestly don't know [if that is allowed]." (R. 604, Page ID ## 23962-23963.) Ms. Quimby explained that the Liquor Control Code allows for outdoor service. (R. 607, Page ID # 24762.)

Dr. Daniels opined that farm weddings should not be allowed because they would add more cars to the road, but he admitted he is not a traffic expert, did not perform a traffic study, and has no idea how many cars the Township roads can safely handle. (R. 604, Page ID ## 23965-23966.) Mr. McDowell explained that in testifying that farm weddings should not be allowed, maybe it was "another state that Dr. Daniels was talking about, but he wasn't talking about Michigan." (R. 609, Page ID # 25239.) Mr. McDowell explained that on-farm activities, like weddings, preserve agriculture and promote the sale of agricultural products. (*Id*., Page ID ## 25240-25241.) Dr. Daniels finally conceded, on cross-examination, that in Michigan, "farm weddings are a form of agricultural tourism." (R. 604, Page ID ## 23966-23967.)

Dr. Daniels testified that increased traffic would also make it difficult for farmers to use Township roads, but aside from admitting that he did not review any

traffic studies, he also admitted he has no idea how many farm vehicles use Township roads or at what time of day they might do so. (*Id*., Page ID # 23972.)

Dr. Daniels testified he was worried that absent the ordinances at issue, land values might go up, meaning "it will be more expensive for Peninsula Township to buy that land for its PDR program." (*Id*., Page ID ## 23974.) Put another way, PTP's expert admitted that the Township had enacted ordinances to keep land values low, so that the Township could buy more land rights. Mr. McDowell also took issue with this, explaining that farmers do not have 401(k)s or pension plans and so a farmer's ability to borrow and his net worth is based on the value of his land. (R. 609, Page ID ## 25231-25232.) Mr. McDowell summed up the issue of preserving agriculture succinctly, "[e]verything goes back to that profitability. To save our farmland we have to make sure our farmers are successful." (R. 609, Page ID # 25236.)

Given the above, and that Dr. Daniels also conceded he did not review any of the Wineries' licenses or permits, nor the depositions of any of the winery witnesses, nor the depositions of former Township Supervisor Manigold or former Zoning Director Christina Deeren, nor any of the Township Board or Planning Commission meeting minutes, (R. 604, Page ID ## 23874-23875, 23927-23928), perhaps it was understandable that the District Court found that Dr. Daniels' credibility was "stretched," that his testimony was impeached, and that Mr. McDowell and Ms.

Quimby "largely dispelled" his testimony. (R. 623, PageID.31416.) AFT cannot fix that record on appeal, and its attempts to try are unhelpful.

C. AFT's standing argument merely copies PTP's and similarly ignores the Township Board's authorization of winery uses on land subject to conservation easements.

Broadly speaking, AFT's entire amicus brief focuses on the benefits of a PDR program. But this case relates to PDR in only the most ancillary way. Although small portions of Black Star and Bonobo's property are restricted by PDR easements, no other Winery is subject to a PDR easement. And Peninsula Township's PDR program is effectuated through its PDR Ordinance, Ordinance No. 23, which is not one of the ordinances the Wineries challenged in this lawsuit nor is it an ordinance the District Court found unconstitutional. That generic discussion is unhelpful.

In a more focused discussion, AFT argues that Black Star and Bonobo lack standing because their claims are barred by conservation easements on their respective properties. (Doc. 52-1, pp. 34-38.) Both Peninsula Township (Case 25-1703, p. 62) and PTP (Case 25-1705, pp. 75-76, 80-81) made this identical argument. And while AFT "strongly agrees" with Peninsula Township and PTP, its "vote on the "decision of the appeal" is irrelevant. *Voices for Choices*, 339 F.3d at 545. More importantly, it is wrong.

The District Court parsed the text of the conservation easements and ruled that "Black Star and Bonobo have the right to sell agricultural products under the easements, which is an inherently commercial function." (R. 559, Page ID # 21901.) It then ruled that Black Star and Bonobo had standing because "the easements are not so sweeping as to preclude Black Star and Bonobo from having standing." (*Id.*)

AFT argues the "district court could only have reached its conclusion if it ignored other relevant sections of the easements" and then cites to various provisions related to "retail and wholesale sales" "roadside stands" and "processing of agricultural products." (Doc. 52-1, p. 35.) But the District Court addressed the same provisions in its standing opinion: "Different kinds of 'agricultural use' are specifically delineated and include retail and wholesale sales of agricultural products grown on the farm, roadside stands selling products, and building greenhouses and other structures for an agricultural purpose." (R. 559, Page ID # 21900.) The District Court did not ignore these portions of the easements.

AFT also fails to advise this Court that the District Court's ruling was consistent with how Peninsula Township had previously interpreted the easements. When Bonobo applied for its SUP, the Township found "that according to the subject property's PDR easement, agricultural development of the land with structures in this area is allowed, more specifically, a winery-chateau is considered an acceptable agricultural use upon the land." (R. 615-17, Page ID # 29689.) The Township

continued, "the board finds that the proposed winery-chateau is an agricultural use. This type of land use is specifically supported within the 2011 Master Plan as one of the goals in this district to encourage local growers to produce, process and market agricultural products." (*Id*., Page ID # 29690.)

As for Black Star, it is a Farm Processing Facility and a use by right, which did not require an SUP, but its easement is nearly identical to that of Bonobo, so its operations must also be considered agricultural uses. This is consistent with its Land Use Permit which allows for "Retail sales / Tasting." (R. 611-22, Page ID # 25633.) The conservation easements themselves allow for "Agricultural uses" which include retail and wholesale sales, roadside stands selling products, agricultural buildings, processing agricultural products and other agricultural practices approved by the Township Board. (R. 615-23, Page ID # 30348.) The District Court did not err by reaching the same conclusion as the Peninsula Township Board.

Ultimately, restrictive covenants must be reasonably construed, *Boston–Edison Protective Association v. Paulist Fathers, Inc.*, 10 N.W.2d 847, 848 (Mich. 1943), and construed against the party seeking to enforce them, with all doubts being resolved in favor of the free use of property, *City of Livonia v. Dep't of Social Services*, 378 N.W.2d 402, 430 (Mich. 1985). A restriction cannot be "enlarged or extended by construction or implication beyond the clear meaning of its terms, even to accomplish what it may be thought the parties would have desired had a situation

which later developed been foreseen by them at the time when the restriction was written." *Flajole v. Gallaher*, 93 N.W.2d 249, 250–51 (Mich. 1958). Here, the clear intent of the winery ordinances and the conservation easements is to allow agricultural and accessory uses.

That intent is consistent with Michigan's Right to Farm Act, where a "farm" and a "farm operation" include the "commercial production, harvesting, and storage of farm products …." Mich. Comp. Laws §§ 286.472(a), (b). Michigan's GAAMPs recognize that farms may engage in marketing and other promotional activities. AFT's argument that conservation easements preclude Bonobo and Black Star from operating their agricultural businesses in accordance with Michigan's Right to Farm Act is nonsensical. Nothing in the easements preclude Bonobo or Black Star from operating their agricultural businesses. To the contrary, each specifically allows for retail and wholesale sales.

AFT's position is also contradicted by Peninsula Township's treatment of the Wineries for tax purposes. A witness for each Winery testified that although their property is zoned agricultural, the Township taxes their winery location as commercial. (R. 600, Page ID # 22993-94 (Bonobo); R. 601, Page ID # 23232 (Mari); R. 602, Page ID # 23429 (Black Star); R. 602, Page ID # 23594-95 (Tabone); R. 603, Page ID # 23722, Page ID # 23746 (Brys Estate); R. 604, Page ID # 24050 (Bowers Harbor); R. 605, Page ID # 24233, R. 606, Page ID # 24297 (Hawthorne);

R. 606, Page ID # 24343 (Peninsula Cellars); R. 606, Page ID # 22467 (Chateau Chantal); R. 607, Page ID # 14661 (Chateau Grand Traverse); R. 608, Page ID # 24850-51 (Two Lads).) Peninsula Township cannot treat the Wineries as commercial entities for tax purposes and then complain that commercial activities may occur on their property.

AFT's position on this issue ignores the record developed at trial and is simply not consistent with reality. As such, it is unhelpful.

CONCLUSION

AFT's seeks to add its view on agricultural preservation to this appeal while misrepresenting the District Court's decisions and ignoring the record that was developed over five years of litigation and ten trial days. An amici does not fulfill its purposes as a "friend of the court" by deliberately misleading the court. AFT's motion should be denied. At minimum, this Court should strike AFT's appendix.

Respectfully submitted,

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Dated: February 23, 2026

CERTIFICATE OF COMPLIANCE

I certify that this 3,062-word brief complies with the Court's type-volume limitations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 23, 2026, I electronically filed this document with the Clerk of the Court using the ECF system, which will send notification of the filing to all ECF filing participants.

Respectfully submitted,

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