

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

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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)

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

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**APPELLEES/CROSS-APPELLANTS' OPPOSITION TO MOTION FOR  
LEAVE TO FILE BRIEF OF THE MICHIGAN TOWNSHIPS  
ASSOCIATION 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).

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,” 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. FCC*, 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

MTA’s motion to participate as an amicus is late and should be denied. Beyond that, MTA ignores binding precedent and the factual findings made below, so its brief is unhelpful. This Court should deny MTA’s motion for leave.

### **A. MTA’s motion is late and should be denied.**

The Court should deny MTA’s motion because it is late. “An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed.” Fed. R. App.

P. 29(a)(6). Peninsula Township’s First Brief was due on February 4, 2026. (Case No. 25-1703, Doc. 25, p.1.) MTA did not file its motion and proposed brief until February 20, 2026. Because MTA did not meet the timing requirements of Federal Rule of Appellate Procedure 29, it should not be given leave to file a brief that, as explained below, is not helpful to the Court.

**B. MTA’s finality argument ignores binding precedent.**

Like Peninsula Township (Case 25-1703, Doc. 54, pp. 32-37), MTA identically argues that the Wineries’ claims are not ripe because they did not achieve the “finality” of a decision from the Peninsula Township Zoning Board of Appeals. (Doc. 59, pp. 15-21.) Yet unlike Peninsula Township, MTA does not cite or even attempt to discuss the two leading cases on this issue: *Knick* and *Pakdel*. MTA’s argument that the Wineries should have gone through Peninsula Township’s administrative process to seek amendment of their permits shows a misunderstanding of the current law and does not help the analysis.

For decades, the Supreme Court’s decision in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), imposed a “finality” requirement that required plaintiffs to receive a decision from the local government—typically the zoning board of appeals—before pursuing land-use litigation in federal court. MTA continues the *Williamson County* argument and chiefly relies on three cases to suggest the Wineries’ claims are not ripe because they

failed to go to the Peninsula Township Zoning Board of Appeals. *See, e.g., Insomnia Inc. v. City of Memphis, Tennessee*, 278 F. App'x 609, 613 (6th Cir. 2008) (“Following *Williamson County*, we extended the first prong of the ripeness inquiry—finality—beyond claims of regulatory takings to various other constitutional claims arising out of land use disputes.”); *Paragon Props. Co. v. City of Novi*, 550 N.W.2d 772, 775 (Mich. 1996) (“*Williamson* articulated the need for finality in the context of land use regulation.”); *Miles Christi Religious Ord. v. Twp. of Northville*, 629 F.3d 533, 541 (6th Cir. 2010) (explaining that *Williamson County* demands “a definitive position on the issue” and claims which turn on the meaning of the ordinances” are not ripe “until the zoning board weighs in, a precondition that goes to finality, not to exhaustion of other remedies.”).

Within the last decade, however, the tide has turned. In *Knick*, The Supreme Court got rid of state-law exhaustion requirements. “The Civil Rights Act of 1871 ... guarantees ‘a federal forum for claims of unconstitutional treatment at the hands of state officials,’ and the settled rule is that ‘exhaustion of state remedies is *not* a prerequisite to an action under 42 U.S.C. § 1983.’” *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 185 (2019) (quoting *Heck v. Humphrey*, 512 U.S. 477, 480 (1994)) (emphasis in original). Two years later, the Supreme Court gutted the “finality” requirement in *Pakdel*. It held that *Williamson County* was based on the “Court’s since-disavowed prudential rule that certain takings actions are not ‘ripe’

for federal resolution until the plaintiff ‘seek[s] compensation through the procedures the State has provided for doing so.’” *Pakdel v. City & County of San Francisco, California*, 594 U.S. 474, 476-77 (2021). The finality requirement “would conflict with the general rule that plaintiffs may bring constitutional claims under § 1983 without first bringing any sort of state lawsuit.” *Id.* (cleaned up).

In *Pakdel*, 594 U.S. at 476-77, the Court stated that the lower court had erred when it held that “*Knick* left untouched *Williamson County*’s alternative holding that plaintiffs may challenge only ‘final’ government decisions” and that “petitioners’ regulatory takings claim remained unripe ....” 594 U.S. at 477 (cleaned up).

Instead, “[t]he finality requirement is relatively modest. All a plaintiff must show is that there is no question about how the regulations at issue apply to the particular land in question.” *Id.* at 478 (cleaned up). “The rationales for the finality requirement underscore that nothing more than *de facto* finality is necessary. This requirement ensures that a plaintiff has actually been injured by the Government’s action and is not prematurely suing over a hypothetical harm.” *Id.* at 479 (internal quotation omitted). “Once the government is committed to a position ... these potential ambiguities evaporate and the dispute is ripe for judicial resolution.” *Id.*

An approach “that a conclusive decision is not ‘final’ unless the plaintiff *also* complied with administrative processes in obtaining that decision—is inconsistent with the ordinary operation of civil-rights suits. [Section 1983] ‘guarantees a federal

forum for claims of unconstitutional treatment at the hands of state officials.” *Id.* (quoting *Knick*, 588 U.S. at 185) (emphasis in original). “That guarantee includes ‘the settled rule’ that ‘exhaustion of state remedies is *not* a prerequisite to an action under § 1983.” *Id.* (cleaned up, emphasis in original). A “demand that a plaintiff seek ‘an exemption through the prescribed state procedures’ ... plainly requires exhaustion.” *Id.* (cleaned up). The Court’s holding in *Pakdel* is clear that “once the government has adopted its final position,” a § 1983 claim becomes ripe, and “ordinary finality is sufficient.” *Id.* at 480-81.

This Court has applied *Pakdel* and reversed a district court which adopted the position argued by MTA here. As this Court has explained:

The district court’s mistake was to conflate ripeness (sometimes called “finality” in this context) and exhaustion. Specifically, the court reasoned that “only if the local regulatory process was exhausted will a court know precisely how a regulation will be applied to a particular parcel or use.” That was the same mistake the Ninth Circuit made in *Pakdel*. Ripeness, in the land-use context, requires only a “relatively modest” showing that the “government is committed to a position” as to the strictures its zoning ordinance imposes on a plaintiff’s proposed land use. Ripeness does not require a showing that “the plaintiff *also* complied with administrative process in obtaining that decision.” Yet that was the showing the district court demanded here.

*Catholic Healthcare Int’l, Inc. v. Genoa Charter Twp., Michigan*, 82 F.4th 442, 488 (6th Cir. 2023) (cleaned up).

Peninsula Township was certainly committed to its position that the winery ordinances applied to and should be enforced against the Wineries. The Township

took that position before the District Court and the District Court made that same conclusion. (R. 142, Page ID ## 4974-4975; R. 143, Page ID # 5351; R. 162, Page ID #5984, nn. 4-6.) The District Court concluded that “[t]he record here ... shows ... pervasive enforcement of the PTZO by the Township and an attempt by the Wineries to remedy these issues prior to filing suit. These circumstances demonstrate a concrete factual scenario for the Court to work with, and forgoing adjudication now will likely amount to a refiled action in the near future. This Court will not employ the finality doctrine because it would be futile and would likely make waste of the parties’ and court’s resources.” (R. 518, Page ID # 20733.)

The District Court continued, “the Wineries operating under an SUP sought and received a determination from the Township sufficient for this Court to find a ‘definitive position’ as to ‘how the regulations at issue apply to the particular land in question.’” (*Id.* at Page ID # 20734 (quoting *Pakdel*, 594 U.S. at 478).) The District Court then spent three pages providing examples of the Township taking definitive positions as to the application of the various ordinances to the Wineries. (*See id.* at Page ID ## 20734-20736.)

Because the Township took the position that the ordinances at issue applied to the Wineries’ land uses, there was no other administrative process for the Wineries to go through. The Wineries are challenging the constitutionality of the ordinances, and, under Michigan law, a government agency cannot rule on constitutional claims.

*See Houdini Props., LLC v. Romulus*, 743 N.W.2d 198 (Mich. 2008) (“The zoning board of appeals did not have jurisdiction to decide the plaintiff’s substantive due process and takings claims.”). Even if the Wineries had brought their grievances to the ZBA and appealed an adverse decision to the local circuit court, that court would also be without jurisdiction to hear the constitutional issues because it sits as a court of appeals and is limited to deciding issues for which the ZBA had jurisdiction. *Jon Jon’s Inc. v. City of Warren*, 534 F. App’x 541, 544 (6th Cir. 2013).

MTA’s arguments rest on a myopic view of garden-variety zoning claims being litigated in state courts following administrative processes without any appreciation for constitutional challenges. Because MTA’s brief is premised on a misunderstanding of the law, it is not helpful.

**C. MTA’s vagueness argument ignores the record developed across five years of litigation.**

Like Peninsula Township (Case No. 25-1703, Doc. 54, pp. 37-50) and PTP (Case No. 25-1705, Doc. 33, pp. 53-62), MTA contends that the District Court got its vagueness ruling wrong. Relying solely on R. 162, MTA asserts that the District Court based its vagueness ruling “principally from a set of differing statements made by various Township officials as to their own personal interpretations of the Ordinance language.” (Doc. 59, p. 26.) Although MTA announces its “vote” on this issue, *Voices for Choices*, 339 F.3d at 545, MTA is wrong because it ignores the District Court’s ruling and its subsequent clarifications.

The District Court unequivocally did not rest its decision on testimony from the Township Supervisor and Township Director of Zoning and Zoning Administrator (although their deposition testimony certainly confirmed that no one knew what a Guest Activity Use was). Before the District Court, the Township argued the court “should have *only* looked at the text of the Ordinance on its face, rather than the depositions of the Township representatives who testified about the interpretation of ‘Guest Activity Use.’” (R. 211, Page ID # 7812 (emphasis in original).) The District Court responded: “First, the Court finds that it correctly reviewed the deposition testimony of the Township representatives as a tool of statutory interpretation because their testimony established the Township’s varying interpretations of the definition of ‘Guest Activity Use.’” (*Id.*) The District Court, however, then found that it need not have reviewed deposition testimony because the ordinance was vague on its face:

even if the Court only reviewed the text of the Ordinance on its face, the term is clearly vague. “Guest Activity Use” is defined as “Activities by persons who may or may not be registered guests.” See § 8.7.3(10)(u)(2). It is not necessary for the Court to utilize tools of statutory interpretation to find that this definition, which encompasses quite literally all activities (activities that do involve registered guests as well as activities that do not involve registered guests), is vague. And although the Township asserts that the activities listed—wine and food classes, cooking classes, meetings of non-profit groups, and meetings of agricultural groups—are the only permissible Guest Activity Uses, the Township Ordinances fail to state that this list of Guest Activity Uses is exhaustive. The Court thus rejects the Township’s arguments regarding the vagueness of the term “Guest Activity Use.”

*Id.* And if there were any doubt, the District Court reiterated its ruling when PTP asked to set the ruling aside; “[l]ooking at the Township Ordinances on their face, the term ‘Guest Activity Use’ is vague and it is unconstitutional for the reasons that the Court has previously articulated[.]” (R. 301, Page ID # 10698.)

MTA does not even reference R. 211 or R. 301, and instead attacks only the statements in R. 162, because MTA apparently did not read the entire record. And MTA makes no attempt to say what is allowed or not allowed as a Guest Activity Use, precisely because no one knows what it means. That lack of context again proves why MTA’s brief will not help the Court and why leave should be denied.

**D. MTA’s arguments about the Wineries’ rights to host events ignore the Michigan Liquor Control Code and Michigan Right to Farm Act.**

Like Peninsula Township (Case No. 25-1703, Doc. 54, pp. 61-62) and PTP (Case No. 25-1705, Doc. 33, pp. 62-66), MTA falls back on mere attorney argument that no winery in Peninsula Township can host events, full stop. (Doc. 59, pp. 29-31.) But the problem with that theory—which the District Court already rejected—is twofold.

First, Peninsula Township authorizes “accessory uses,” which are uses “[c]ustomarily incidental and subordinate to the principal use.” (PTZO § 3.1, R. 615-7, Page ID # 28525.) The District Court made a finding of fact that “Many activities the Wineries wish to engage in are accessory uses at wineries and farms in Michigan.” (R. 623, Page ID # 31425.) And neither Peninsula Township, nor PTP,

nor MTA, nor any of the other proposed amici have challenged that finding of fact as clearly erroneous. *See* Fed. R. Civ. P. 52(a)(6) (“Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court’s opportunity to judge the witnesses’ credibility.”). “If the district court’s account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.” *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573–74 (1985). Giving proper deference to the District Court, and absent evidence in the record to the contrary, the Wineries were authorized to host events at the properties because they are accessory uses.

Second, Peninsula Township’s Zoning Ordinance does not exist in a vacuum. The District Court also made a finding of fact that the Wineries “are allowed to engage in ‘promotional and educational activities at the farm market incidental to farm products with the intention of selling more farm products. These activities include, but are not limited to, farm tours (walking or motorized), demonstrations, cooking and other classes utilizing farm products, and farm-to-table dinners.’” (ECF No. 623, Page ID # 31425 (quoting Michigan GAAMPs).) The District Court credited Gary McDowell’s testimony on the issue. McDowell, the former Director of the Michigan Department of Agricultural and Rural Development, “testified that

to preserve agriculture, farms need to be profitable and have the opportunity to engage in typical accessory uses and marketing.” (*Id.*, Page ID # 31463 (citing R. 609, Page ID # 25240).) Again, this Court must defer to the District Court’s factual findings because they are supported by record evidence and are not clearly erroneous.

MTA’s brief is not helpful because it ignores these factual findings and instead relies on attorney argument divorced from the record below.

**E. MTA’s continual references to the judgment amount and how it will be collected are improper and misleading.**

Finally, MTA resorts to hyperbole. Repeatedly calling the District Court’s reasoned damages award “astonishing,” “grossly excessive and astonishing,” and “egregious,” MTA ignores the ten days of trial testimony supporting the damages award. But MTA does not stop there. It then suggests that Peninsula Township would have to double its budget and take more than 25 years to pay off the judgment amount with interest.

That argument is irrelevant to this appeal of a compensatory damages award. “A Defendant’s financial status may generally be considered by a jury in determining a level of punitive damages if such are potentially due, but if unrelated to this point such evidence would be irrelevant and should be excluded.” *Sullivan v. Detroit Police Dep’t*, No. 08-CV-12731, 2009 WL 1689643, at \*3 (E.D. Mich. June 17, 2009) (citing *Johnson v. Howard*, 24 F. App’x 480, 488 (6th Cir. 2001)).

Yet even if the Township's ability to pay was relevant, MTA's assertions are simply wrong, and astonishingly so for the group whose "mission is to provide education, information, and guidance to and among township officials to enhance the administration of township services in Michigan." (MTA Motion, para 1.) The "sole remedy" to collect any money judgment against a Michigan township is to place the judgment on the tax rolls, not empty the Township's bank accounts. *Payton v. City of Highland Park*, 536 N.W.2d 285, 286 (Mich. App. 1995) (citing Mich. Comp. Laws § 600.6093). The Township could also issue a judgment bond. *See* Mich. Comp. Laws Ann. § 600.6097. In either case, MTA's arguments about Peninsula Township's budget are wrong and do not help this Court.

### **CONCLUSION**

MTA's proposed brief is not "timely, useful, or otherwise necessary to the administration of justice." *State of Michigan*, 940 F.2d at 165. MTA filed its motion too late, and this Court should deny the motion for that reason alone. Yet even if this Court were to consider excusing MTA's delay, it should not because MTA's brief ignores the District Court's factual findings and rulings.

Respectfully submitted,

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Dated: February 25, 2026

## CERTIFICATE OF COMPLIANCE

I certify that this 3,293-word brief complies with the Court's type-volume limitations.

Respectfully submitted,

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Dated: February 25, 2026

## CERTIFICATE OF SERVICE

I certify that on February 25, 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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