



Municipal Litigation

Foster Swift has long been involved in complex litigation matters on behalf of municipalities. In addition to land use and zoning litigation, Foster Swift attorneys frequently defend municipalities in cases involving municipal liability, workers' compensation and negligence. A considerable portion of our litigation practice involves the representation of municipal governments in litigation involving civil rights claims, constitutional claims, and governmental immunity. Foster Swift attorneys have also successfully represented several municipalities against lawsuits alleging improper or defective public works construction.

Foster Swift municipal attorneys have handled appellate litigation for its municipal clients as well. Over the years, Foster Swift attorneys have been regularly involved in many of the most important cases before the Michigan Court of Appeals and Supreme Court.

Foster Swift litigation and appellate attorneys assist municipalities of all sizes in the following areas of law:

- 42 USC 1983
- Civil Rights claims under Title VII; ADEA (age); and the Elliott-Larsen Civil Rights Act (such as race and sex discrimination claims)
- Disability Claims pursuant to federal (ADA) and state (PWDCRA) law
- Constitutional Challenges to ordinances, regulations, and land use decision-making
- Due Process
- Environmental liability
- Environmental Regulations
- Equal Protection
- Family Medical Leave Act
- First Amendment Claims
- Freedom of Information Act
- Open Meetings Act
- Harassment claims
- Land Use Litigation

ATTORNEYS

Shareholder

Dora A. Brantley

Michael D. Homier

Anne M. Seurnyck

Associate

Keith T. Brown



- Premises liability and motor vehicle accidents
- Prosecution/ordinance enforcement
- RLUIPA (religious discrimination)
- Takings Claims
- Whistleblower Protection Act

REPRESENTATIVE EXPERIENCE

The Foster Swift litigation team of Jim Doezeema, Josh Richardson, and Brandon Schumacher successfully defended the County of Muskegon in a multi-million dollar breach of contract case filed against the County by a former IT vendor. At trial, the vender sought damages for all outstanding payments under two previously-terminated IT services contracts (approximately \$4 million), as well as lost business value and lost profits on related sales (approximately \$12.2 million). The County retained Foster Swift just months before the damages-only trial. The team's hard work significantly limited vendor's judgment, and no damages were awarded for lost business value or lost sales.

Michigan Court of Appeals upholds dismissal of lawsuit brought by land developers challenging a township's zoning ordinances. Land developers claimed that the township's zoning ordinances, particularly the density restrictions, violated the Land Division Act, the Condominium Act, and were unreasonable and arbitrary. The Court of Appeals affirmed the trial court's dismissal of the lawsuit because the developers had failed to exhaust the administrative remedies provided by the township, and because the zoning ordinances were facially constitutional. The Township Zoning Act enables townships to impose density restrictions in each zoning district, and municipalities can impose stricter requirements than what is required by the Land Division Act.

The Michigan Supreme Court reversed the Court of Appeals and found in favor of the township, dismissing the lawsuit. Plaintiffs claimed the township engaged in exclusionary zoning because the Township's zoning plan did not classify any land as appropriate for a manufactured housing community. The Michigan Supreme Court held that an ordinance is not facially invalid merely because it does not authorize every conceivable lawful use. Additionally, a zoning authority's denial of an application for residential rezoning at a proposed lower-density level does not automatically establish that it would be futile for the property owner to apply for a higher-density use. The futility exception in zoning cases does not apply until property owners have submitted at least one meaningful application for a variance from the challenged zoning regulations. Because the plaintiffs in this case never submitted an application to the township for a use variance or rezoning for a manufactured housing community, plaintiffs claim was dismissed as not ripe for judicial review.

In a case establishing that the ministerial exception exists in Michigan, all employment litigation claims were dismissed. The ministerial exception is rooted in the First Amendment's guarantees of religious freedom and generally bars any inquiry into a religious organization's underlying motivation for a contested employment decision which would limit a religious institution's right to select who would perform particular spiritual functions. The Michigan Supreme Court created a non-exhaustive list of factors to consider when



determining if the ministerial exception applies to a case. In considering this particular case, since the plaintiff performed ministerial responsibilities and provided religious direction to students, the ministerial exception barred her employment claims. The ministerial exception could be applied to both Michigan Civil Rights claims and Whistleblower Protection Act claims that involved a religious institution and a ministerial employee.

A Takings Clause claim and other constitutional claims were dismissed against a township because Michigan state courts must be given an opportunity to adjudicate the issue of just compensation before a takings claim based on unjust compensation can be brought in federal court. Landowners sought to rezone their farmland for a trailer park and other residential development. The Sixth Circuit Court of Appeals upheld the Michigan Eastern District court's dismissal of the lawsuit because Michigan's laws provided an adequate procedure for seeking just compensation, and the landowners were required to give the state court an opportunity to decide the issue of just compensation before seeking a declaration from the federal courts that the state had failed to provide just compensation.

PUBLICATIONS & ALERTS

Foster Swift Prevails at Michigan Supreme Court in Major Victory for County Treasurers, *Foster Swift Municipal Law News E-blast*, September 30, 2024

Extreme Risk Protection Orders: Q&A on Michigan's Red Flag Gun Laws, *Foster Swift Municipal Law News*, July 23, 2024

Q&A: New DOJ Rule Requires State & Local Government Websites, Apps to be ADA Accessible, *Foster Swift Municipal Law News E-blast*, April 22, 2024

Lindke v. Freed: When Public Officials Can Be Held Liable for Blocking Individuals on Social Media, *Foster Swift Municipal Law News*, March 25, 2024

Short-Term Rental Regulation Act: What Local Governments Need to Know, *Foster Swift Municipal Law News*, March 20, 2024

Summary Language Approved for Proposed Ballot Initiative to Repeal Renewable Energy Siting Law, *Municipal Law News E-blast*, January 22, 2024

Update: Whitmer Signs Energy Bills, Restricting Facilities, *Foster Swift Municipal Law News E-blast*, November 30, 2023

Proposed Bills to Affect Energy Facilities, *Foster Swift Municipal Law News E-blast*, November 16, 2023

The Next Controversial Land Use: Utility-Scale Battery Facilities, *Foster Swift Municipal Law News*, September 18, 2023

What Does Tyler v Hennepin County Mean for Foreclosures in Michigan?, *Foster Swift Municipal Law News*, June 15, 2023

Distribution of Michigan's \$81M Share of Opioid Settlement to Begin, *Foster Swift Municipal Law News*, February 2, 2023

Eligible Municipalities Encouraged to Register in Historic Opioid Settlement, *Foster Swift Municipal Law News E-blast*, December 6, 2021



Michigan Court of Appeals Holds Drone Surveillance a Search Under Fourth Amendment, *Foster Swift Municipal Law News*, November 18, 2021

Court of Appeals Holds Nuisance Claims Must Be Brought within Six Years, *Foster Swift Municipal Law News*, March 8, 2021

Recent Developments Require Libraries to Adopt New Procedures and Policies, *Foster Swift Library Law News E-blast*, November 17, 2020

Zoning for Dollars, *Michigan Township Focus Magazine*, February 2020

Five Ways to Avoid Violating the Open Meetings Act, *Foster Swift Municipal Law News*, February 14, 2020

REMINDER: November 1 is Deadline for Municipalities to "Opt Out" of Recreational Marijuana Establishments, *Foster Swift Municipal Law News E-blast*, October 17, 2019

Marijuana Emergency Rules: What Municipalities Should Know, *Foster Swift Municipal Law News*, August 8, 2019

A Look at State and Federal FOIA, *Foster Swift Municipal Law News*, August 7, 2019

November 1 is Deadline for Municipalities to "Opt Out" of Recreational Marijuana Establishments, *Foster Swift Municipal Law News E-blast*, July 18, 2019

New amendments to the Michigan Fireworks Safety Act, *Foster Swift Municipal Law News E-blast*, January 23, 2019

Foster Swift Secures Major Victory for Almer and Ellington Townships in Lawsuits Brought by Wind Energy Company, *Foster Swift Municipal Law News*, November 8, 2018

Five Policies that Every Michigan Library Should Have in Place, *Foster Swift Municipal Law News*, November 7, 2018

Michigan Voters Approve Recreational Marijuana Ballot Proposal , *Foster Swift Municipal Law E-blast*, November 7, 2018

New Case Law Restricts Local Zoning Control Over Medical Marijuana, *Foster Swift Municipal Law E-blast*, November 1, 2018

The Dos and Don'ts of Leasing Property Owned by a Municipality, *Foster Swift Municipal Law News*, August 15, 2018

Recent Court Decisions Make Clear that Municipalities Must Identify Specific Litigation to be Discussed During Closed Meeting, *Foster Swift Municipal Law News*, August 14, 2018

Can Your Community Get Connected to Broadband?, *Foster Swift Municipal Law News*, April 24, 2018

The Opioid Crisis: Legal Updates on the Nationwide Lawsuit and How it May Affect Your Local Government, *Foster Swift Municipal Law News*, April 24, 2018

Different Categories of Property Tax Exemptions in Michigan, *Foster Swift Municipal Law News*, March 15, 2018

After Menard Inc. v City of Escanaba, What's Next for Big Box Store Appeals?, *Foster Swift Municipal Law Newsletter*, November 28, 2017



NEWS

Foster Swift Files Appeal on Behalf of Over 70 Michigan Municipalities to Protect Local Control Over Renewable Energy Regulations, *Meltwater Newswire*, November 8, 2024

Brantley and Cermak Named Fellows of the Michigan State Bar Foundation, *Michigan State Bar Foundation*, September 11, 2024

Brantley Honored as a 2024 "Influential Woman of Law", *Michigan Lawyers Weekly*, August 12, 2024

Dora Brantley Receives "Excellence in Defense" Award, *Michigan Defense Trial Counsel*, March 21, 2024

Seurynck Listed in Crain's as Notable Woman in Law, *Crain's Grand Rapids Business Journal*, February 21, 2024

Foster Swift Listed in "Best Law Firms" 2024, *Best Lawyers in America*, November 2, 2023

Foster Swift Wins Major Victory for County Treasurers, *Foster Swift Municipal Law News E-blast*, October 26, 2023

Foster Swift Attorneys Named 2024 Best Lawyers in America, *Best Lawyers in America*, August 17, 2023

Fortune 500 Defense Litigator Joins Foster Swift, *Detroit Legal News*, June 1, 2023

Grand Rapids Law Firm Welcomes Two Associates, *Grand Rapids Legal News*, November 14, 2022

Foster Swift Listed in "Best Law Firms" 2023, *Best Lawyers "Best Law Firms"*, November 3, 2022

Meagher Receives 2022 Theodore W. Swift Civility Award, October 26, 2022

Genovich Featured in Interview on Mentorship, Automation, and Teaching Legal Writing, *Clearbrief*, October 17, 2022

Foster Swift Wins Victory for City in Marihuana Ordinance Appeal, *Foster Swift Municipal Law News*, July 18, 2022

Firm Continues to See Steady Growth Entering 2022, January 11, 2022

Koerner Discusses Dapper Dads on Michigan Business Network, *Michigan Business Network*, August 19, 2021

Foster Swift Participates at the 2020 MTA Conference, *Foster Swift Municipal Law News*, February 16, 2020

Firm Elects Executive Committee Members for 2019, *Michigan Lawyers Weekly*, March 7, 2019

Foster Swift Presents at 2019 MTA Conference, February 8, 2019

Genovich Quoted in Herald-Palladium Regarding Income Tax Challenge, *The Herald-Palladium*, January 24, 2019

Foster Swift Elects Executive Committee Members for 2018, February 13, 2018

EVENTS

Municipal Case Law Review, *Michigan Township Association (MTA)*, April 22, 2024

Litigation Series: What To Know If You Are Planning To Sue, *Foster Swift Second Wednesday Morning Break*, July 13, 2022



What to Do with a Marijuana Initiative Referendum, *Michigan Townships Association Annual Conference*, April 27, 2022

The Latest on Marihuana in Michigan, *Michigan Municipal League*, March 16, 2022

Municipal Ordinances, *Michigan Rural Water Association Annual Conference*, February 21, 2022

Marijuana Petitions Ballot Proposals, *Michigan Municipal League (MML)*, September 24, 2021

Meeting Myths, Mysteries and Misconceptions, *Michigan Townships Association (MTA) Conference*, April 21, 2021

Cost Recovery Options (And Hurdles!), *Michigan Township Association (MTA), Emerging Issues in Emergency Services*, September 25, 2019

Working with Weed: How Marijuana Laws Will Affect Your Business, *Old Town Commercial Association*, May 20, 2019

Zoning Law Updates, *Legal Institute - MTA Annual Conference & Expo, April 2019*, April 1, 2019