

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

PATRICK L. BAUDE	)	
LARRY J. BUCKEL	)	
J. ALAN WEBBER,	)	
JAN WEBBER,	)	
WHITE OWL WINERY, Inc., and	)	
CHATEAU GRAND TRAVERSE, Ltd.)	)	CIVIL ACTION
	)	
Plaintiffs,	)	NO: 1:05-cv-0735-JDT-TAB
	)	
v.	)	
	)	
DAVID L. HEATH, in his official capacity	)	
as Chairman of the Indiana Alcohol	)	
and Tobacco Commission	)	
	)	
Defendant.	)	

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Come now plaintiffs, by counsel, and move the Court pursuant to FED. R. CIV. P. 56(a) to grant summary judgment in favor of plaintiffs for the relief requested in the complaint. As grounds therefore, plaintiffs assert:

1) This case challenges the constitutionality of Indiana laws that prohibit out-of-state wineries from selling and delivering wine directly to customers in Indiana.

2) On May 16, 2005, the Supreme Court issued a decision in *Granholm v. Heald*, 125 S.Ct. 1885 (2005), in which it struck down similar laws in Michigan and New York as unconstitutional. The Court held that it was a violation of the Commerce Clause for a state to allow in-state wineries to sell wine directly to consumers but to prohibit out-of-state wineries from doing so. The Court said that the states' interests in protecting minors, raising revenue, and

regulating distribution were inadequate to justify the prohibition

3) Indiana law allows in-state wineries to sell and deliver their wine directly to consumers and licensed retail wine sellers, but prohibits out-of-state wineries from doing so.

This statutory scheme is unconstitutional on its face under *Granholm*.

4) Indiana law allows only Indiana residents to obtain a license to sell and deliver wine directly to consumers and licensed retail wine sellers. This residency requirement violates the Commerce Clause.

5) Indiana law prohibits its citizens from personally importing or transporting wine into that state that they have bought at out-of-state wineries. There is no such restriction on transporting wine purchased within the state. This statutory scheme violates the Commerce Clause.

WHEREFORE, as more fully elaborated in the accompanying memorandum, plaintiffs request that this Court issue a judgment and order:

a) Granting plaintiffs' motion for summary judgment.

b) Declaring Indiana Code sections 7.1-5-11-1.5, 7.1-3-14-4, and 7.1-3-15-3 unconstitutional to the extent that they prohibit out-of-state wineries from selling and delivering wine directly to consumers and licensed retail wine sellers in the State of Indiana, as a violation of the Commerce Clause of the United States Constitution, and enjoining their enforcement.

c) Declaring the portions of Indiana Code sections 7.1-3-12-3 and 7.1-3-12-4 that limit the issuance of licenses to Indiana residents making wine from Indiana fruit unconstitutional as a violation of the Commerce Clause, and enjoining their enforcement.

d) Declaring the provisions in Indiana Code sections 7.1-5-11-1 and 7.1-5-11-15 that

prohibit or limit residents from personally importing or transporting wine purchased from out-of-state wineries unconstitutional as a violation of the Commerce Clause, and enjoining their enforcement.

e) Awarding costs and expenses to Plaintiffs, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

Dated: October 13, 2005.

Respectfully submitted by  
Attorneys for Plaintiffs:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically on the 13th day of October, 2005. Notice of this filing will be sent to counsel of record for all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's PACER system.

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