

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK L. BAUDE,)	
LARRY J. BUCKEL,)	
KITTY 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)	

DEFENDANT’S CROSS-MOTION FOR SUMMARY JUDGMENT

Comes now the Defendant, by counsel, Steve carter, Indiana Attorney General, and Robert B. Wentz, Deputy Attorney General, and Chad C. Duran Deputy Attorney General, and moves this Court pursuant to Fed. R. Civ. P. 56(a) to grant summary judgment in favor of the Defendant. In support of its motion, the Defendant states the following:

1. The Plaintiffs have challenged the constitutionality of multiple Indiana statutes which govern the sale, distribution, and transportation of alcoholic beverages in the State of Indiana.
2. The Plaintiffs’ challenge to Indiana’s laws was filed immediately after the Supreme Court in *Granholm v. Heald*, 125 S. Ct. 1885 (2005), before any legislative or administrative response could be made to this groundbreaking decision.

3. The *Granholm* decision does not mandate that a state permit the direct shipment of alcoholic beverages to its residents as the Plaintiffs assert, but rather it requires that a state's alcoholic beverage laws not discriminate in favor of in-state interests unless that are no non-discriminatory alternatives.

4. In response to inquiries from the wine industry and from consumers the Chairman of the Indiana Alcohol and Tobacco Commission ("ATC") issued an enforcement bulletin on May 20, 2005 which recited that the Indiana alcoholic beverage laws do not permit any winery, in-state or out-of state, to directly ship wine to consumers.

5. Furthermore, the Indiana ATC stands willing to accept applications from out-of-state wineries for Indiana farm winery permits and will not enforce the Indiana residency or native fruit requirements in light of *Granholm*. To date, however, no out-of-state winery, including the two winery plaintiffs has applied for a permit.

6. Indiana's laws, in light of the enforcement posture of the Indiana ATC, are constitutional in light of *Granholm* and do not offend the Commerce Clause of the United States Constitution.

WHEREFORE, for reasons more completely articulated in the memorandum submitted with this motion the Defendant requests that this Court issue a judgment and order:

- A) Granting Defendant's Cross-Motion for Summary Judgment;
- B) Dismissing the Plaintiffs' claims as unripe for failing to exhaust their administrative remedies, or, in the alternative, if the Plaintiffs' claims are not dismissed;

C) Declaring that the following Indiana Code sections challenged by the Plaintiffs are constitutional and do not offend the Commerce Clause.

1. Ind. Code § 7.1-5-11-1.5;
2. Ind. Code § 7.1-3-14-4;
3. Ind. Code § 7.1-3-15-3;
4. Ind. Code § 7.1-3-12-3;
5. Ind. Code § 7.1-3-12-4;
6. Ind. Code § 7.1-5-11-1;
7. Ind. Code § 7.1-5-11-15.

D) Declaring each party shall bear its own costs; and

E) Awarding all other just and proper relief

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Attorney No. 4150-64

By: */s/ Robert B. Wentz*

Robert B. Wentz, Atty No. 1182-29
Deputy Attorney General

/s/ Chad C. Duran

Chad C. Duran, Atty. No. 18615-53
Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was filed electronically on this 21st day of November 2005. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Chad C. Duran

Chad C. Duran
Deputy Attorney General

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