

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. _____
vs.)	
)	
DAVID L. HEATH, in his official capacity)	
as Chairman of the Indiana Alcohol)	
and Tobacco Commission)	
)	
Defendant)	

COMPLAINT

Plaintiffs make the following allegations for their Complaint based upon information and belief, except for the allegations pertaining to Plaintiffs, which are based upon personal knowledge.

INTRODUCTION

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of Indiana Code § 7.1-5-11-1.5 and related laws of the state of Indiana which prohibit out-of-state wineries from selling and delivering wine directly to consumers and licensed retail wine sellers within the state of Indiana. Plaintiffs seek a declaratory judgment that these laws violate the Commerce Clause of the United States Constitution and that plaintiffs have been deprived under color of law of their

constitutional rights and privileges to engage in interstate commerce. Plaintiffs seek an injunction requiring defendant to issue winery licenses without regard to residence, and barring defendant from enforcing Indiana Code § 7.1-5-11-1.5 and related laws to prohibit out-of-state wineries from selling and shipping wine directly to consumers and licensed retail wine sellers.

JURISDICTION

1. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§1331 and 1343(a)(3), which confer original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the United States Constitution.

2. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

PLAINTIFFS

3. Plaintiff Patrick L. Baude resides in Monroe County, Indiana. Plaintiffs Larry and Kitty Buckel (“the Buckels”) reside in Hamilton County, Indiana. J. Alan and Jan Webber (“the Webbers”) reside in Marion County, Indiana. They are over the age of twenty-one and legally permitted to purchase, receive, possess and drink wine. They are regular purchasers and consumers of wine, and would purchase bottled wine from Chateau Grand Traverse, White Owl Winery and other out-of-state wineries and have those wines shipped to their residences if Indiana law permitted them to do so.

4. White Owl Winery is an out-of-state winery located in Flat Rock, Illinois. It holds all necessary Illinois and federal licenses and permits to manufacture and sell wine in interstate commerce. It would sell and ship wines directly to Plaintiffs Baude, the Buckels, the Webbers, and other consumers at their residences, and to licensed retail

wine sellers at their places of business, in the state of Indiana, if state law permitted it to do so.

5. Chateau Grand Traverse is an out-of-state winery located in Traverse City, Michigan. It holds all necessary Michigan and federal licenses and permits to manufacture and sell wine in interstate commerce. It would sell and ship wines directly to Plaintiffs Baude, the Buckels, the Webbers, and other consumers at their residences, and to licensed retail wine sellers at their places of business, in the state of Indiana, if state law permitted it to do so.

6. Plaintiffs intend to pay all taxes that may be due on such interstate shipments and to comply with all other state regulations.

DEFENDANT

7. Defendant David Heath is sued in his official capacity.

8. Defendant Heath is the Chairman of the Indiana Alcohol and Tobacco Commission, which is located in Marion County, Indiana, and charged with the authority to enforce the Indiana laws relating to the sale and delivery of alcoholic beverages and to regulate the issuance of permits to wineries who wish to sell, deliver or ship wine in Indiana.

9. Defendant Heath is acting under color of state law when he enforces or supervises the enforcement of the statutes and regulations challenged herein.

**COMMERCE CLAUSE VIOLATION COUNT I:
DISCRIMINATION AGAINST OUT-OF-STATE WINERIES WITH RESPECT
TO SALES TO CONSUMERS**

10. In the state of Indiana, an in-state winery may sell and deliver its wine directly to consumers, at the winery premises and at a second location, in unlimited

quantities, without going through a separate wholesaler and retailer, if the winery obtains a farm winery license from the defendant.

11. The defendant will issue a farm winery license only to wineries located within the state of Indiana that are making wine from Indiana fruit, and only to persons who are Indiana residents. The defendant will not issue a farm winery license to White Owl Winery, Chateau Grand Traverse, or other wineries located out of state and owned by nonresidents.

12. White Owl Winery, Chateau Grand Traverse, and other wineries located outside the state of Indiana may not sell, deliver or ship their wine directly to consumers in the state of Indiana, nor establish a second location within the state for the purpose of direct sales, but may only sell their wine through a separate wholesaler and retailer.

13. Plaintiffs Baude, the Buckels, and the Webbers want to buy wine directly from White Owl Winery, Chateau Grand Traverse, and other out-of-state wineries by Internet and telephone order, and in person on the wineries' premises, and to have the wine delivered to their residences. They are willing to pay all taxes on such purchases.

14. White Owl Winery and Chateau Grand Traverse are located outside the state of Indiana, produce bottled wine for commercial sale, and want to sell their wine directly to Plaintiffs Baude, the Buckels, the Webbers, and other consumers in the state of Indiana by Internet and telephone ordering, and in face-to-face transactions on their premises or at second locations, and to deliver the wine to the customers' residences.

15. White Owl Winery and Chateau Grand Traverse have previously received requests from residents of the state of Indiana to sell, deliver and ship wine to them.

16. Plaintiffs cannot complete the transactions described in paragraphs 13-15, because the laws of the state of Indiana prohibit them.

17. Plaintiffs Baude, the Buckels, the Webbers, and other consumers may not transport into the state of Indiana wine purchased at an out-of-state winery in quantities greater than one quart.

18. If White Owl Winery and Chateau Grand Traverse were permitted to sell and deliver their wine directly to consumers in the state of Indiana, they would comply with all applicable laws and regulations concerning permits, licenses, labeling, reporting, proof of age, and payment of taxes.

19. The laws of the state of Indiana treat interstate sales and delivery of wine to adults differently from intra-state sales and delivery of wine to adults, discriminate against out-of-state wineries, and provide economic advantages and protection to in-state wineries, all in violation of the Commerce Clause of the United States Constitution.

**COMMERCE CLAUSE VIOLATION COUNT II:
DISCRIMINATION AGAINST OUT-OF-STATE WINERIES WITH RESPECT
TO SALES TO LICENSED RETAIL WINE SELLERS**

20. In the state of Indiana, an in-state winery may sell, deliver and ship its wine directly to licensed retail wine sellers, for resale to consumers, without going through a separate wholesaler, if the winery obtains a farm winery license from the defendant.

21. The defendant will issue a farm winery license only to wineries located within the state of Indiana that are making wine from Indiana fruit, and only to persons who are Indiana residents. The defendant will not issue a farm winery license to White

Owl Winery, Chateau Grand Traverse, or other wineries located out of state and owned by nonresidents.

22. White Owl Winery, Chateau Grand Traverse, and other wineries located outside the state of Indiana may not sell, deliver or ship their wine directly to licensed retail wine sellers in the state of Indiana, but may only sell their wine through a separate wholesaler.

23. White Owl Winery and Chateau Grand Traverse are located outside the state of Indiana, produce bottled wine for commercial sale, and want to sell their wine directly to licensed retail wine sellers in the state of Indiana, but are prohibited from doing so by the laws of the state of Indiana.

24. If White Owl Winery and Chateau Grand Traverse were permitted to sell and deliver their wine directly to licensed retail wine sellers, they would comply with all applicable laws and regulations concerning permits, licenses, reporting, labeling, proof of age, and payment of taxes.

25. The laws of the state of Indiana treat interstate sales and delivery of wine to licensed retail wine sellers differently from intra-state sales and delivery of wine to retail wine sellers, discriminate against out-of-state wineries, and provide economic advantages and protection to in-state wineries, all in violation of the Commerce Clause of the United States Constitution

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

A. Judgment declaring Indiana Code § 7.1-5-11-1.5 and related laws 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.

B. Judgment declaring Indiana Code § 7.1-3-12-3 and related laws unconstitutional, to the extent that they impose a residency requirement on the issuance of permits for wineries to sell 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.

C. An injunction requiring the defendant to allow out-of-state wineries to sell and deliver wine directly to consumers and licensed retail wine sellers in Indiana.

D. Plaintiffs do not request that the State be enjoined from collecting any tax due on the sale of wine.

E. An award of costs and expenses, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

F. Such other relief as the Court deems appropriate to afford Plaintiffs full relief.

Respectfully submitted,

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- 1) Complaint
- 2) Cover sheet (2004 version)
- 3) Corporate disclosure (LR 7.2)
- 4) Summons
- 5) \$250 filing fee
- 6) Registration for ECF
- 7) File stamped copy of documents
- 8) Hand deliver copy of summons and complaint to AG's office, 302 W Wash 5th floor
- 9) Hand deliver summons and complaint to Heath at ATC, 302 W Wash E114
- 10) If Heath not in, leave copy and send original via certified mail
- 11) Return to court and file proof of service