

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK L. BAUDE, LARRY J. BUCKEL,)
KITTY BUCKEL, J. ALAN WEBBER,)
JAN WEBBER, and)
CHATEAU GRAND TRAVERSE, LTD.,)

Plaintiffs,)

vs.)

1:05-cv-0735-JDT-TAB

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

Defendant,)

and)

WINE AND SPIRITS WHOLESALERS)
OF INDIANA,)

Intervenor-Defendant.)

DECLARATORY JUDGMENT and INJUNCTION

The court has considered the parties' motions and cross-motions for summary judgment, their exhibits and briefs, and their oral arguments. As discussed in the Entry issued contemporaneously, the court hereby states, pursuant to Federal Rule of Civil Procedure 65(d), the following reasons for this Order:

1. Indiana Code Section 7.1-3-26-7(a)(6) discriminates against out-of-state wineries by barring wineries that possess wholesale privileges in states other than Indiana from seeking a Direct Wine Seller's permit.

2. This restriction bars the vast majority of out-of-state wineries from obtaining a Direct Wine Seller's permit because many states, including the three states that account for about ninety percent of all non-carbonated wine produced in the United States, grant wholesale privileges to all wineries licensed to do business in their states.

3. Indiana Code Sections 7.1-3-26-6(4) and 7.1-3-26-9(1)(A) discriminate against out-of-state wineries by requiring an initial transaction to be made physically in person between customers and permit holders before a Direct Wine Seller permit holder may ship its products directly to an Indiana.

4. This requirement erects a trade barrier to most-of-state wineries by requiring them to establish a physical presence in Indiana or limit their potential market to those customers willing to under the expense of travel to their states.

5. These discriminations violate the Commerce Clause of the United States Supreme Court.

6. The Supreme Court held in *Granholm v. Heald*, 544 U.S. 460, 493 (2005) that the Twenty-first Amendment, which repealed Prohibition but allowed states to regulate the sale and distribution of alcohol, does not allow states to discriminate against interstate commerce in violation of the Commerce Clause.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECLARED that the Indiana Code Section 7.1-3-26-7(a)(6) is unconstitutional insofar as it bars wineries that possess wholesale privileges in states other than Indiana from seeking a Direct Wine

Seller's permit. Defendant David L. Heath, in his official capacity as Chairman of the Indiana Alcohol and Tobacco Commission, is **ENJOINED** from enforcing this statute to that extent.

IT IS FURTHER ORDERED, ADJUDGED, AND DECLARED that Indiana Code Sections 7.1-3-26-6(4) and 7.1-3-26-9(1)(A) are unconstitutional insofar as they require an initial transaction to be made physically in person between customers and permit holders before a Direct Wine Seller permit holder may ship its products directly to an Indiana resident. Defendant Heath, in his official capacity as Chairman of the Indiana Alcohol and Tobacco Commission, is **ENJOINED** from enforcing these statutes to that extent.

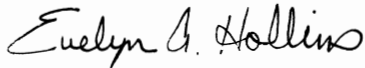
All other claims of the Plaintiffs are **DISMISSED**, and entry of this judgment constitutes a final appealable order.

ALL OF WHICH IS ORDERED this 29th day of August 2007.



John Daniel Tinder, Judge
United States District Court

Laura A. Briggs, Clerk
United States District Court



By Evelyn A. Hollins, Deputy Clerk

Copies to:

Magistrate Judge Tim A. Baker

James Alexander Tanford
INDIANA UNIVERSITY SCHOOL OF
LAW
tanford@indiana.edu

Michael Joseph Donahoe
EPSTEIN COHEN DONAHOE &
MENDES
donahoem@aol.com

Robert David Epstein
EPSTEIN COHEN DONAHOE &
MENDES
rdepstein@aol.com

Chadwick C. Duran
OFFICE OF THE INDIANA ATTORNEY
GENERAL
cduran@atg.state.in.us

Robert B. Wentz
OFFICE OF THE INDIANA ATTORNEY
GENERAL
robert.wentz@atg.in.gov

Thomas M. Fisher
OFFICE OF THE INDIANA ATTORNEY
GENERAL
Tom.Fisher@atg.in.gov

Brian J. Paul
ICE MILLER LLP
brian.paul@icemiller.com
ATTORNEY TO BE NOTICED

Fred R. Biesecker
ICE MILLER LLP
fred.biesecker@icemiller.com

Philip A. Whistler
ICE MILLER LLP
philip.whistler@icemiller.com

April Edwards Sellers
BAKER & DANIELS
april.sellers@bakerd.com