

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STAN SPRINGER,)	
CYNTHIA SPRINGER,)	
DENNIS NEARY,)	
THE CHICAGO WINE COMPANY ,)	
and DEVIN WARNER)	
)	Case No: 1:19-cv-2785-TWP-DML
)	
Plaintiffs,)	
)	
vs.)	
)	
ERIC HOLCOMB, Governor of Indiana,)	
CURTIS HILL, Attorney General of Indiana,)	
and DAVID COOK Chairman of)	
the Indiana Alcohol and Tobacco Commission)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

Plaintiffs make the following allegations 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 law, practices, and regulations that allow in-state wine retailers to sell and deliver wine directly to consumers but prohibit out-of-state wine retailers from doing so. An out-of-state wine retailer, such as The Chicago Wine Company, and many other wine internet sellers throughout the United States, cannot sell, ship, and deliver to Indiana consumers because Indiana makes this practice illegal. The plaintiffs seek a declaratory judgment that this regulatory scheme is unconstitutional for

two reasons: (1) it violates the Commerce Clause~~-~~because it discriminates against out-of-state wine retailers engaged in interstate commerce and constitutes unlawful economic protectionism, and (2) it violates the Privileges and Immunities Clause of Article IV, section 2, because it denies nonresident wine merchants the privilege of engaging in their occupation in Indiana on terms equivalent to those given to citizens of Indiana. The plaintiffs seek an injunction barring the defendants from enforcing these laws, practices and regulations, and requiring them to allow out-of-state wine retailers to sell, ship, and deliver wine to Indiana consumers upon equivalent terms as in-state wine retailers.

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

PLAINTIFFS

3. Consumer Plaintiffs Stan and Cynthia Springer are residents of Indianapolis, Marion County, Indiana. They are over the age of twenty-one, do not live in a dry county, and are legally permitted to purchase, receive, possess and drink wine at their residence. They are wine collectors and consumers of fine wine and would purchase wine from out-of-state wine retailers which would be added to their wine collection, and have those wines shipped to their residence in Indiana, if Indiana practices and regulations permitted them to do so.

4. Consumer Plaintiff Dennis Neary resides in Indianapolis, Marion County, Indiana and is a wine consumer. He is over the age of twenty-one, does not live in a dry county, and is legally permitted to purchase, receive, possess and drink wine at his residence. He has attempted to purchase unusual wines from online sales sites for K & L Wine Merchants in California, The Chicago Wine Co. in Illinois, the Wine Library in New Jersey, and others but the orders are not processed after he enters Indiana as his state of residence. He would purchase this or similar wine from these sources and have it shipped to his residence in Indiana, if Indiana law, practices and regulations permitted him to do so.

5. Plaintiff The Chicago Wine Company, is an Illinois company that operates a retail store and engages in internet sales and makes deliveries nationwide in states where it is legal to do so. It has customers from all over the country, including many from Indiana. It has developed long-term relationships with customers for whom it makes special purchases. It has received requests that it sell, ship, and deliver wine to Indiana from customers, but is unable to do so because Indiana law makes such interstate sales and deliveries unlawful. It intends to sell, ship, and deliver wines directly to consumers in Indiana if the rules and regulations prohibiting such sales and shipments are removed or declared unconstitutional.

6. Devin Warner is a professional wine consultant, advisor, and merchant who resides in and is a citizen of California. He owns 50% of The Chicago Wine Company located in Illinois.

7. Warner has previously arranged for the sale and delivery of wine through The Chicago Wine Company, which maintains an Internet web site and ships to consumers

nationwide to states where it is lawful to do so. He would sell and deliver wine into Indiana if permitted to do so.

8. Plaintiffs intend to pay all taxes that may be due on such interstate shipments and to comply with all other non-discriminatory state regulations, including obtaining licenses.

DEFENDANTS

9. Defendants are sued in their official capacities.

10. Defendant Eric Holcomb is the Governor of Indiana and is the chief executive officer.

11. Defendant Curtis Hill is the Attorney General of Indiana and is generally empowered to enforce Indiana laws.

12. Defendant David Cook is the Chairman of the Indiana Alcohol and Tobacco Commission, which is charged with enforcing Indiana liquor control laws and regulations, including the ones challenged in this lawsuit.

13. Defendants are acting under color of state law when they enforce or supervise the enforcement of the statutes and regulations challenged herein.

Count I: Commerce Clause Violation for Discrimination

14. A package store located in Indiana may sell wine at retail to consumers for consumption off the premises if it obtains a wine dealer permit from the state, under the terms of which it may sell and deliver wine directly to Indiana consumers any wine that it has in its inventory using its own vehicles and employees.

15. The Chicago Wine Company is not located in Indiana and is not eligible for a wine dealer permit because Ind. Code § 7.1-3-21-3 imposes a five-year residency

requirement on the issuance of a dealer's permit. No other permit is available from Indiana that would allow it to sell or deliver wine from its inventory directly to consumers in Indiana and selling wine without a permit is unlawful.

16. The Chicago Wine Company has its own vehicles and employees and would make deliveries to Indiana consumers if permitted to do so.

17. Because The Chicago Wine Company is located outside Indiana, Ind. Code § 7.1-5-11-1.5(a) allows it only to import wine into Indiana if it sells it to a wine wholesaler.

18. Stan and Cynthia Springer are wine consumers and they want the opportunity to buy wine directly from The Chicago Wine Company and other wine retailers outside of Indiana and to have these wines delivered to their residence.

19. The Springers have contacted several out-of-state wine retailers either on the Internet or by telephone and attempted to buy wines they cannot find in Indiana and have them delivered, but have been refused.

20. Many wine retailers who carry rare and unusual wine are located out of state including New York, Illinois, and California. Stan and Cynthia Springer cannot afford the time and expense of traveling to out-of-state wine retailers to purchase a few bottles of rare wine and personally transport them home.

21. Dennis Neary is a wine consumer who has attempted to buy wine directly from The Chicago Wine Company and other wine retailers located outside of Indiana and to have these wines delivered to his residence.

22. He has been unable to complete those purchases after he gives Indiana as his state of residence, which has prevented him from obtaining some wines from out-of-state wine retailers which he wanted and could not find for sale in Indiana..

23. Some wines that Mr. Neary tried to buy were wines he could not locate in retail stores in Indiana but are available from retail stores in other states. This includes older vintages no longer generally available except at specialty wine retailers located outside Indiana, and current vintages that have sold out locally after receiving favorable reviews or because few bottles of limited production wine were allocated to Indiana.

24. The consumer Plaintiffs cannot complete the transactions described in paragraphs 18-23 because the laws, regulations, and practices of Indiana prohibit direct sales and deliveries of wine from out-of-state wine retailers to in-state consumers and state officials will not issue any kind of license that would allow such transactions.

25. If The Chicago Wine Company were permitted to sell and deliver its wine directly to consumers in the State of Indiana, it would obtain a license if one were available and would comply with the same rules concerning labeling, shipping, reporting, obtaining proof of age, and paying taxes as in-state wine dealers do.

26. By refusing to allow it to sell and deliver wine upon the same terms as retail in-state wine dealers, the State of Indiana is discriminating against interstate commerce and protecting the economic interest of local businesses by shielding them from competition, in violation of the Commerce Clause of the United States Constitution.

Count II: Violation of the Commerce Clause for Economic Protectionism

27. Plaintiffs repeat and re-allege paragraphs 1-26 as if set out fully herein.

28. Indiana law requires retail wine dealers locate in the state to use their own vehicles and employees to deliver wine to consumers, and prohibits the use of common carriers.

29. The Chicago Wine Company is located in Chicago, Illinois, and cannot afford to deliver wine in its own vehicles to all Indiana consumers throughout the state.

30. The Chicago Wine Company has received requests for wine delivery from Indiana residents who live in places such as Indianapolis and Bloomington, which are too far from Chicago to make such deliveries economically feasible, and has been unable to complete these transactions.

31. When the consumer plaintiffs are deciding where to purchase wine and which sellers to purchase from, they prefer entities that will deliver the wine to them and consider this an important factor in the decision to buy wine; they have in the past and will in the future do more business with sellers who will deliver than from those who will not.

32. The consumer plaintiffs have been unable to have wine delivered to them from out-of-state retailers located in states that do not border Indiana, including K & L Wine Merchants in California, and The Wine Library in New Jersey, because it is not economically feasible for such retailers to deliver into this state using its own vehicles and employees.

33. Indiana law already permits common carriers to deliver wine within the state for other kinds of transactions, including retail sales and deliveries from out-of-state wineries to consumers.

34. By authorizing retail wine dealers to deliver to consumers using their own vehicles and employees, and forbidding the use of common carriers, Indiana is assuring that only in-state wine dealers will be able to make home deliveries and is protecting them from competition from out-of-state wine sellers, in violation of the Commerce Clause of the United States Constitution.

Count III: Privileges and Immunities Clause Violation

35. Plaintiffs repeat and re-allege paragraphs 1-34 as if set out fully herein.

36. Devin Warner is a professional wine consultant, advisor, and merchant who resides in and is a citizen of Illinois. He owns and operates The Chicago Wine Company in Illinois. He makes his living in the wine business.

37. Mr. Warner develops personal relationships with many of his customers, makes special wine purchases for them, consults with them about wine in person, by telephone and by Internet, and sells wine and arranges delivery to them.

38. Mr. Warner has also received requests from his customers to send wine to residents of Indiana but was unable to ship the specifically requested wines because the laws, practices, and regulations of Indiana prevent him from doing so

39. Some wines wanted by Mr. Warner's customers are difficult to obtain because they are old and only sold at auction, available only in limited allocated amounts or only for a limited time, or scarce because of their popularity. Many of these wines are not available in Indiana through its three-tier system.

40. Mr. Warner wants to practice his profession as a wine merchant in Indiana by consulting with, obtaining wines for, and delivering wines to Indiana residents, but is prevented from doing so by Indiana law, rules, and regulations.

41. Mr. Warner is the owner of The Chicago Wine Company and has personally suffered economic harm by not being able to complete sales to Indiana customers.

42. Mr. Warner has not applied to Indiana officials for a retail wine dealer license because it would be futile to do so since he is not a resident of Indiana.

43. If a license were available on terms equivalent to those for Indiana citizens, Mr. Warner would obtain it. He does not ask for the right to engage in the unlicensed sale of wine in Indiana.

44. Being a professional wine merchant who sells and ships wine to Indiana residents is a lawful activity for citizens of Indiana.

45. No substantial reason exists for denying citizens of Illinois the same privilege to consult about, advise on, obtain, sell, ship, and deliver wine to Indiana consumers as is given to citizens of Indiana.

46. Indiana's ban on wine sales and deliveries by out-of-state merchants denies Mr. Warner the privilege to engage in his occupation in the state upon the same terms as Indiana citizens, and therefore violates the Privileges and Immunities Clause in Article IV of the United States Constitution.

Request For Relief

WHEREFORE, Plaintiff seeks the following relief:

A. Judgment declaring Ind. Code §§ 7.1-3-21-3, 7.1-5-11-1.5, and other related laws, practices and regulations that prohibit out-of-state win retailers from selling, delivering, and shipping wine directly to Indiana consumers unconstitutional as a violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring Indiana's law, practices and regulations that prohibit a nonresident from obtaining a license to sell, ship, and deliver wine directly to Indiana consumers unconstitutional as a violation of the Privileges and Immunities Clause of the United States Constitution.

C. An injunction prohibiting Defendants from enforcing those rules and regulations and requiring them to allow out-of-state wine retailers to obtain licenses and to sell, ship, and deliver wine directly to customers 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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