

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

STAN SPRINGER, CYNTHIA)	
SPRINGER, DENNIS NEARY,)	
THE CHICAGO WINE COMPANY,)	
And DEVIN WARNER,)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 1:19-CV-02785-TWP-DML
)	
ERIC HOLCOMB, Governor of)	
Indiana; CURTIS HILL, Attorney)	
General of Indiana; and DAVID)	
COOK, Chairman of the Indiana)	
Alcohol and Tobacco Commission;)	
)	
Defendants.)	

ANSWER TO AMENDED COMPLAINT

Defendants Eric Holcomb, Governor of Indiana; Curtis Hill, Attorney General of Indiana; and David Cook, Chairman of the Indiana Alcohol and Tobacco Commission, for their answer and statement of defenses, state the following:

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.

Answer: The defendants admit that the plaintiffs have filed a lawsuit making certain allegations. The defendants deny the allegations in the introductory paragraph to the extent the defendants are accused of any wrongdoing and deny that the plaintiffs are entitled to any relief.

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.

Answer: The cited statutes speak for themselves. The State admits that this Court has subject-matter jurisdiction. Defendants deny any allegations that the defendants violated the plaintiffs' rights or privileges.

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

Answer: The cited statutes speak for themselves. The State admits that this Court has general authority to grant relief. Defendants deny that the plaintiffs are entitled to any relief.

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.

ANSWER: The defendants are without sufficient information to admit or deny the allegation in paragraph 3.

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.

ANSWER: The defendants are without sufficient information to admit or deny the allegation in paragraph 4.

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.

ANSWER: The defendants are without sufficient information to admit or deny the allegation in paragraph 5.

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.

ANSWER: The defendants are without sufficient information to admit or deny the allegation in paragraph 6.

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.

ANSWER: The defendants are without sufficient information to admit or deny the allegation in paragraph 7.

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.

ANSWER: The defendants are without sufficient information to admit or deny the allegation in paragraph 8.

DEFENDANTS

9. Defendants are sued in their official capacities.

ANSWER: Admit.

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

ANSWER: Admit.

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

ANSWER: Defendants admit Curtis Hill, Jr., is the Attorney General of Indiana, but the statutory duties of the Attorney General are laid out in the Indiana Code, which speaks for itself.

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.

ANSWER: Defendants admit David Cook is the Chairman of the Indiana Alcohol and Tobacco Commission, but the Chairman's duties are laid out in the Indiana Code, which speaks for itself.

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

ANSWER: Paragraph 13 sets forth a legal conclusion to which no response is required.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 14 because the allegations are vague and speculative. Paragraph 14 further implicitly asserts legal conclusions to which no response is required.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 15. Paragraph 15 further implicitly asserts legal conclusions to which no response is required.

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

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 16.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 17.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 18.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 19.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 20.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 21.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 22.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 23.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 24.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 25.

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.

ANSWER: Deny.

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.

ANSWER: Defendants repeat and re-assert their responses to paragraphs 1-26.

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

ANSWER: Indiana law speaks for itself, and the paragraph sets forth a legal conclusion to which no response is required.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 29.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 30.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 31.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 32.

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.

ANSWER: The referenced Indiana law speaks for itself.

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.

ANSWER: Deny.

Count III: Privileges and Immunities Clause Violation

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

ANSWER: Defendants repeat and re-assert their responses to paragraphs 1-34.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 36.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 37.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 38.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 39.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 40.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 41, but deny that any harm Mr. Warner suffered is caused by any wrongdoing by the defendants.

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.

ANSWER: The defendants are without sufficient information to admit or deny why Mr. Warner may have decided not to apply for a retail wine dealer license.

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.

ANSWER: The defendants are without sufficient information to admit or deny any factual allegations in paragraph 43.

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

ANSWER: Paragraph 44 sets forth a legal conclusion to which no response is required.

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.

ANSWER: Any factual allegations in paragraph 45 rest on an incorrect legal premise, and the defendants deny the allegations in paragraph 45.

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.

ANSWER: Deny.

Request For Relief

WHEREFORE, Plaintiff [sic] 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.

ANSWER: The request for relief sets forth legal conclusions to which no response is required. The defendants deny that the plaintiffs are entitled to any relief.

GENERAL DENIAL

Defendant denies any and all remaining allegations set forth in Plaintiffs' Complaint not previously admitted or denied.

DEFENDANTS' STATEMENT OF AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief may be granted.
2. Some of Plaintiffs' claims are barred because there is no case or controversy.
3. Plaintiffs' alleged injuries are speculative.
4. Plaintiffs lack standing to bring one or more claims asserted.
5. All challenged statutes and regulations are constitutional.
6. The defendants reserve the right to assert any and all additional affirmative and other defenses that may become applicable based on information learned during discovery or for other appropriate reasons.

Respectfully submitted,

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Date: September 23, 2019

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