UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

JOSHUA D. WILKINSON, et al. Plaintiffs, v. HON. THEODORE E. ROKITA & JESSICA ALLEN Defendants.	)	Case No.: 1:26-cv-248-JPH-MKK

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Plaintiffs filed a complaint asserting Indiana's prohibition on the use of common carriers to deliver beer directly to Indiana consumers violates the dormant Commerce Clause. Plaintiffs' claims should be dismissed because Indiana law prohibits *both* in-state and out-of-state breweries from using common carriers to deliver beer directly to Indiana consumers, while allowing both in-state and out-of-state brewers to use their own employees for deliveries. This common carrier prohibition was upheld just last year by the Seventh Circuit in *Chicago Wine v. Braun*, and Plaintiffs' attempts to circumvent this ruling are unavailing.

PLAINTIFFS' SECOND AMENDED COMPLAINT

As an initial matter, after Defendants filed their motion to dismiss, Plaintiffs filed a Motion for Leave of the Court to File Second Amended Complaint. Dkt. 24. Plaintiffs attached their proposed second amended complaint as an exhibit to the motion. Dkt. 24-1. On April 15, 2026, the Court held a telephonic initial pretrial conference. Defendants did not oppose Plaintiffs' motion for leave to amend and the parties agreed that Second Amended Complaint would not moot Defendants' motion to dismiss. Dkt. 29. Plaintiffs filed their Second Amended Complaint later that day. Dkt. 28.

While Plaintiffs stated in their motion for leave to amend that "[t]he Motion to Dismiss raises certain issues which the Plaintiffs have addressed in the Second Amended Complaint," Dkt. 24, very little has changed between the First Amended Complaint and the Second Amended Complaint. In fact, Plaintiffs added only two sentences to the entire complaint. First, Plaintiffs added "[b]ecause the Consumer Plaintiffs are unable to have desirable craft beer shipped to them from distant states around the country, they are forced to purchase less desirable beer locally." *Compare* Dkt. 9 at 4 *with* Dkt. 28 at 4. Second, Plaintiffs added a similar sentence later in the complaint: "As a result of the near-ban on out-of-state breweries shipping and delivering to Indiana consumers, the Consumer Plaintiffs in this case have had to shift their purchases to less desirable local products." *Compare* Dkt. 9 at 6 *with* Dkt. 28 at 6. Plaintiffs' only other change between the first and second amended complaints removed a reference to Michigan breweries. *Compare* Dkt. 9 at 5 *with* Dkt. 28 at 5. Plaintiffs' Second Amended Complaint continues to incorrectly cite the Maryland Constitution as the source of the Indiana Attorney General's authority, Dkt. 28 at 4; Dkt. 9 at 4. Plaintiffs Second Amended Complaint, like the First Amended Complaint, also states "Consumer Plaintiffs cannot complete the transactions described in paragraphs 20–28," but there are no paragraphs 20–28 in the original Complaint, First Amended Complaint, or Second Amended Complaint. *See* Dkt. 1; Dkt. 9; Dkt. 28.

Plaintiffs' minimal changes between their first and second amended complaints do not address any issues raised in Defendants' motion to dismiss and are of no consequence.

ARGUMENT

I. The common carrier prohibition is nondiscriminatory under *Chicago Wine*

Plaintiffs' claim that *Chicago Wine* is distinguishable and thus non-precedential in this case is without merit. The relevant issue in *Chicago Wine* was whether "the prohibition on retailers shipping wine to Hoosier consumers via common carriers," which by its terms applied to both in-

state and out-of-state retailers, violated the dormant Commerce Clause. *Chicago Wine v. Braun*, 148 F.4th 530, 545 (7th Cir. 2025) (Scudder, J., concurring). In this case, Plaintiffs makes a nearly identical allegation, that while "neither an out-of-state brewery nor an in-state brewery can currently use a common carrier to sell, ship, and deliver its products to Indiana," the prohibition on common carrier use nevertheless violates the dormant Commerce Clause. Dkt. 25 at 3. But Plaintiffs fail to explain how *Chicago Wine*, which upheld the nondiscriminatory common carrier prohibition for all wine retailers, is inapplicable to a case involving the *same* common carrier prohibition for all breweries. The only entities that may use a common carrier to delivery their product directly to an Indiana consumer are specially permitted wineries; no other producer, retailer, or other business may do so. Ind. Code § 7.1-5-11-1.5(a); *see* Ind. Code § 7.1-5-10-5. Plaintiffs offer no explanation or citation to support treating the common carrier prohibition for wine retailers any differently than the common carrier prohibition as to breweries. *See* Dkt. 25 at 2–3. Instead, the plaintiffs just say [t]here are three types of alcohol cases: producer, retailer, and self-distribution." *Id.* at 2. While someone could conceivably categorize challenges to alcohol regulations any number of ways, Plaintiffs do not offer any explanation as to why these categories are relevant to determining whether Indiana's common carrier violates the dormant Commerce Clause.

Rather than recognize that this case challenges the same common carrier prohibition at issue in *Chicago Wine*, Plaintiffs instead argue the Court should compare the common carrier prohibition to the New York regulatory scheme at issue in *Granholm v. Heald*, 544 U.S. 460 (2005). But the New York regulatory scheme at issue in *Granholm* is easily distinguishable. New York law required "[o]ut-of-state wineries . . . to establish a distribution operation in New York in order to gain the privilege of direct shipment." *Granholm*, 544 U.S. at 475. Out-of-state wineries were required to "open a branch office and warehouse in New York," to ship directly to New York

consumers, while in-state producers could ship direct to consumers from their wineries." And even if an out-of-state winery established a physical presence in New York, those wineries remained ineligible for equivalent licenses that would allow direct shipment of wine to consumers. *Granholm*, 544 U.S. at 475. Instead, out-of-state wineries could obtain only a lesser license and were then required to obtain an additional certificate from the State authorizing direct shipments to New York consumers. *Id.* In contrast, Indiana law does not require out-of-state breweries to establish a physical presence in the state to sell or deliver their beer to Indiana consumers on equal terms with in-state breweries. Instead, Indiana law prohibits in-state and out-of-state breweries from using common carriers to deliver directly to consumers with equal force. There is no disparate treatment.

Regardless of any explanation Plaintiffs could have offered why *Chicago Wine* is inapplicable here, the Seventh Circuit's decision counsels in favor of dismissal. Like *Chicago Wine*, Plaintiffs concede that "there is no facial discrimination" because all breweries, both in-state and out-of-state, are prohibited from using common carriers to deliver their beer directly to Indiana consumers. Dkt. 25 at 3; *see Chicago Wine*, 148 F.4th at 545 ("Chicago Wine concedes that the common carrier ban is 'facially neutral' because it applies to both in-state and out-of-state wine retailers."). Because the common carrier prohibition applies equally to in-state and out-of-state entities, "Indiana's regime in this regard does not explicitly discriminate against interstate commerce." *Chicago Wine*, 148 F.4th at 545. And the common carrier prohibition makes no distinction between producers or retailers, it applies to any business seeking to sell alcohol in Indiana, with the single exception of specially permitted wineries located inside and outside Indiana's borders. Ind. Code § 7.1-5-11-1.5(a); *see* Ind. Code § 7.1-5-10-5; *Chicago Wine*, 148 F.4th at 532. *Chicago Wine* held that the common carrier prohibition challenged here does not discriminate against interstate commerce, and that decision is binding. Chicago Wine's pending

petition for certiorari to the U.S. Supreme Court, *see* Dkt. 25 at 3, does not change the Seventh Circuit holding.

II. Plaintiffs' argument as to discriminatory effect is both inapplicable and meritless

Plaintiffs' contends that Indiana's common carrier prohibition is discriminatory in effect and thus a violation of the dormant Commerce Clause, despite it being facially neutral. This claim can be easily dispensed with because it ignores direction from the Seventh Circuit . And in any event, Plaintiffs' claims that a state effectively discriminates against an out-of-state brewery by virtue of a brewery being farther away from Indiana is meritless.

While Courts typically separate statutes subject to a dormant Commerce Clause challenge into three categories—facially discriminatory, discriminatory in effect, and even-handed laws that incidentally burden interstate commerce—this is not the case where the challenged statute is a state alcohol regulation. *Chicago Wine*, 148 F.4th at 536. Instead, courts "first ask whether the challenged regulation discriminates against interstate commerce." *Id.* "If not, the inquiry (at least under current law) proceeds to *Pike* balancing." *Id.* If the law discriminates against interstate commerce, the inquiry shifts to whether the statute can be justified as a "public health or safety measure or on some other legitimate nonprotectionist ground." *Id.*

Chicago Wine held that Indiana's common carrier prohibition does not discriminate against interstate commerce, thus this Court's analysis should proceed to *Pike* balancing. *Id.* at 545. Yet in their response, Plaintiffs urge the Court to take a different path by claiming while facially neutral, the common carrier prohibition is nonetheless discriminatory in effect. But even if this Court were free to reject the Seventh Circuit's contrary conclusion, Plaintiffs' arguments on this point are misguided. Plaintiffs' argument as to discriminatory effect is simple: "the farther away from the Indiana border, the greater the burden on out-of-state breweries." Dkt. 25 at 4, 6. But that is not discrimination under Seventh Circuit precedent, and the Seventh Circuit has repeatedly

rejected similar arguments. In *Baude* and *Lebamoff*, the Seventh Circuit concluded that, while distant wineries may face an increased burden to verify the age of Indiana consumers, "that . . . is not unlawful discrimination given the state's interest." *Lebamoff*, 666 F.3d at 461 ("It is true that the farther away from the consumer a winery is, the harder it is to induce consumers to come for face-to-face age verification at the winery."); *Baude*, 538 F.3d at 615 ("The cost of verification per winery rises with distance . . . [t]hat is not enough to declare a law unconstitutional."). And outside the context of alcohol regulations, the Seventh Circuit held in *Park Pet Shop, Inc. v. City of Chicago* that while a puppy-mill ordinance may confer a benefit to breeders located closer to Chicago than those farther away, because "those breeders are as likely to be located in nearby Wisconsin or Indiana as they are in suburban Chicago or downstate Illinois" 872 F.3d 495, 503 (7th Cir. 2017). Being farther away from Chicago thus "does not establish that the ordinance has a discriminatory effect on breeders located out of state." *Id.*

That Plaintiff Alma Mader Brewery, located in Kansas City, Missouri, may be farther away from Indiana than other breweries, does not make the common carrier prohibition effectively discriminatory against interstate commerce under Seventh Circuit precedent. *Family Winemakers of Cal. v. Jenkins*, 592 F.3d 1 (1st Cir. 2010), cited in Plaintiffs' reply, does not hold otherwise.[1] Indiana law does not impose a gallonage cap that excludes all non-Indiana breweries from shipping directly to consumers, unlike the Massachusetts's statute that excluded all non-Massachusetts wineries from doing so. *Id.* at 12 ("Section 19F confers a clear competitive advantage to 'small' wineries, which include *all* Massachusetts's wineries, and creates a comparative disadvantage for 'large,' wineries, *none* of which are in Massachusetts." (emphasis added)). Plaintiffs recognize

[1] In any event, *Family Winemakers of Cal. v. Jenkins* is not binding on this Court, and Plaintiffs have not offered any case law that contradicts the Seventh Circuit's holdings in *Baude*, *Lebamoff*, or *Park Pet Shop*. *See* Dkt. 25 at 4–5.

that out-of-state breweries are not excluded from using their own employees to make deliveries directly to Indiana consumers and that it may be convenient for out-of-state breweries located closer to the Indiana border to do so. *See* Dkt. 9 at 6; Dkt. 28 at 6. Plaintiffs' chief complaint far more closely resembles those at issue in *Baude*, *Lebamoff*, and *Park Pet Shop* than Plaintiffs' proffered First Circuit case. The Seventh Circuit has already held that the common carrier prohibition is nondiscriminatory. It makes no difference that Plaintiff Alma Mater Brewery may be farther from Indiana than other out-of-state breweries.

Because the common carrier prohibition "regulates even-handedly and only incidentally burdens interstate commerce," it is examined under the test articulated in *Pike v. Bruce Church, Inc. Id.* Under *Pike*, courts will uphold a nondiscriminatory statute "unless the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits." *Id.* at 545. Judge Easterbrook saw no reason to engage in *Pike* balancing to reweigh the constitutionality of the common carrier prohibition as it was upheld in *Baude v. Heath*, 538 F.3d 608 (7th Cir. 2008) and *Lebamoff Enterprises, Inc. v. Husky*, 666 F.3f 455 (7th Cir. 2012), thus his concurrence in the judgment would counsel in favor of dismissing Plaintiffs' complaint without further consideration. *See Chicago Wine*, 148 F.4th at 533 (Easterbrook, J., concurring).

While Judge Scudder did undertake *Pike* balancing, he rejected the same arguments against the common carrier prohibition raised by Plaintiffs in this case. As in *Chicago Wine*, Plaintiffs here claim that it would not be economically feasible for *some* out-of-state breweries located farther away from Indiana to deliver their beer to Indiana consumers without using a common carrier. Dkt. 125 at 6 ("[T]he farther away from the Indiana border, the greater the burden on out-of-state breweries."). *Chicago Wine*, 148 F.4th at 547 ("[M]any out-of-state retailers are located far beyond Indiana's borders."). But the Court ultimately held that "[a]summing the *Pike* test continues to apply in the domain of alcohol regulation, any burden the common carrier ban

imposes on interstate commerce is not excessive in relation to its local benefits." *Id.* at 546. Plaintiffs here are challenging the same common carrier prohibition for breweries using the same arguments rejected by *Chicago Wine* for wine retailers. That counsels in favor of dismissal.

CONCLUSION

The Court should dismiss this case because the Challenged Statute and other Indiana alcohol statutes are well within the bounds of the dormant Commerce Clause. In-state and out-of-state breweries are subject to equal treatment under the law, and binding Seventh Circuit precedent forecloses Plaintiffs' claims to the contrary.

Respectfully submitted,

THEODORE E. ROKITA
Indiana Attorney General
Attorney No. 18857-49

Date: April 21, 2026 By: Bradley S. Davis
Deputy Attorney General
Attorney No. 38172-53

OFFICE OF ATTORNEY GENERAL TODD ROKITA
Indiana Government Center South, 5th Floor
302 West Washington St.
Indianapolis, IN 46204-2770
Phone: (317) 233-5601
Fax: (317) 232-7979
Email: Bradley.Davis@atg.in.gov