IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTHERN INDIANA

(Southern Division)

JOSHUA D. WILKINSON, MICHAEL CENTO,

JENNIFER CENTO, & ALMA MADER BREWING,

Plaintiffs, Case No. 1 :26-cv-00248 JPH-MKK

v.

THE HON. THEODORE. E. ROKITA & JESSICA ALLEN

Defendants.

MOTION FOR LEAVE OF THE COURT TO FILE SUR-REPLY

COMES NOW Plaintiff's Joshua D. Wilkinson, Michael Cento, Jennifer Cento, & Alma Mader Brewing, by undersigned counsel, moves the Court for leave to file a Sur-Reply to their reply pursuant to S.D. Ind. L.R. 56-1 and states:

1. Plaintiffs commenced this action on 02/05/2026 by filing a complaint against the Defendant.
2. Plaintiffs filed a Second Amended Complaint on 04/15/2026.
3. Plaintiffs seek to file a Sur-Reply in response to Defendant's Reply in Support of Defendants' Motion to Dismiss for Failure to State a Claim.
4. Leave to file a Sur-Reply should be freely given when the nature of the Sur-Reply is to address evidentiary objections or new evidence raised in a reply brief as outlined in S.D. Ind. L.R. 56-1.d.
5. The proposed sur-reply attached as Exhibit A will serve to further explain Plaintiff's arguments, in particular the debate surrounding the true nature of what it means to be a retailer, producer, or self-distributor case and how the Defendants have conflated the

three categories and thus why it continues to incorrectly apply the standard set out in *Chicago Wine v. Braun*, 148 F.4th 530, 545 (7th Cir. 2025). Thus, satisfying the addressing of evidentiary objections requirement.

6. Plaintiffs' lawsuit is a case of First Impression in the 7th Circuit Court.
7. Plaintiffs' Sur-Reply is attached as (Exhibit A).

WHEREFORE, Plaintiffs, by undersigned counsel, pray that the Court grant Plaintiffs leave to file the Sur-Reply attached as (Exhibit A), direct the Clerk to file the Sur-Reply as of the date of the Court's order, and grant all other just and proper relief.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April 2026, I served the foregoing document by using the CM/ECF e-filing system to all counsel of record.

Bradley Davis

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Defendants.

SUR-REPLY TO DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

On April 21, 2026, the Defendants filed a reply in support of their Motion to Dismiss for failure to state a claim. In their Reply, the Defendants raise several arguments against the Plaintiff's claims and explain why the Court should not hear them, on the ground that their case is without merit. In response, the Plaintiffs provide the following Sur-Reply.

ARGUMENT

I. Analysis and distinction between producer, retail, and self-distribution cases.

Before getting into the merits of the Reply, Plaintiff believes a review and analysis of the landscape of the present case is in order.

EXHIBIT A

This case is one of the three alcohol cases being litigated under the Commerce Clause of the U.S. Constitution. As a self-distribution case, it is the first of its kind in the Seventh Circuit.

The three types of cases include a producer case, in which a producer has sought to declare the statutes unconstitutional, thereby preventing producers from shipping directly to consumers. These cases are typically known as DTC (Direct-to-Consumer) cases.

The most important case in this constitutional dispute is *Granholm v. Heald*, 544 U.S. 460 (2005), in which consumers in Michigan and New York complained that they could not have wine shipped into their jurisdictions. The facts were different for each of the two states. In Michigan, a Michigan winery could sell, ship, and deliver wine directly to consumers, while there was no provision for an out-of-state winery to do the same. In New York, a New York winery could sell, ship, and deliver its wine directly to a New York consumer. An out-of-state winery could do so only if it established a physical presence, such as a warehouse or office. The Supreme Court struck down both states' statutes as discriminatory and unconstitutional. Michigan was struck down as facially discriminatory, while New York was discriminatory in effect, based on the economic cost of having a physical presence for an out-of-state winery; this was deemed discrimination "in effect."

The second type of case is a retail case. In these cases, an out-of-state retailer seeks the ability to sell, ship, and deliver its wine directly to consumers in different states. That is the case in the matter of *Chicago Wine Company v. Mike Braun*, No. 21-2068 (7th Cir. 2025). These cases are still up in the air regarding whether the US Supreme Court will decide the issue. Currently, there are two pending Petitions for Certiorari filed with the US Supreme Court, asking that the court take up the matter of Chicago Wine. *Id.* and *Day v. Henry*, No. 23-16148 (9th Cir. 2025),

for resolution. Currently, about 15 states allow retail shipping from out-of-state wineries to consumers in their own states.

The third type of case is known as a self-distribution case. That is what we have in the present case. A self-distribution case means that an out-of-state producer wishes to sell, ship, and deliver its product directly to a retailer or consumer in another state without the product passing through a wholesaler. There have been other cases adjudicated in this area. One of them, *Buckell Family Wines, LLC v. Mosiman*, No. 4:23-cv-00256-RGE-WPK (S.D. Iowa 2024), was decided upon cross motions for summary judgment in the Southern District of Iowa. Iowa attempted to defend the lawsuit by asserting a certain interest that outweighs the harm to the plaintiff. The court in its ruling stated, "The court finds defendants' asserted interests do not justify Iowa's discriminatory laws under Section 2 of the 21st Amendment." Therefore, Iowa law violated the dormant commerce clause, Article 1, Clause 3. " Another similar case was filed in the state of Maryland in the matter of *Furlong v. Brown*, No. RDB-23-2045 (D. Md 2024). This case involved two out-of-state breweries, one from Pennsylvania, 3 miles from the Maryland border, and the second from the state of Washington. Maryland law permitted a Maryland brewery to deliver beer to a customer, provided the brewery used its own vehicle and personnel. Vortex Brewery in Pennsylvania indicated that they could use their own vehicle to make deliveries in Maryland. The second brewer, Varietal, from the state of Washington, said it could only deliver to its consumers in Maryland if it could use a common carrier. This case was heard in a bench trial on December 8-9, 2025. In a ruling that came down on December 23, 2025, in a sixty-eight-page opinion. The Court ruled that the offending Maryland statute was unconstitutional and entered an order allowing both breweries to use a common carrier to deliver to customers in

Maryland. It should be noted that this case is now on appeal before the Fourth Circuit Court of Appeals.

II. How Chicago Wine is inapplicable to this matter.

The Chicago Wine, *Id.*, decision focused on retailers, not producers, and certainly not on self-distribution. Courts have recognized that producers, such as wineries or breweries, may face unique challenges under state alcohol laws. For instance, in *Granholm, Id.,* the Supreme Court struck down laws that allowed in-state wineries to bypass the three-tier system to make in-state deliveries while requiring out-of-state wineries to use wholesalers. If a common carrier prohibition for breweries disproportionately affects out-of-state breweries, such as in this matter, and their ability to self-distribute, it could be viewed as discriminatory, This is true even if facially neutral, unless the state demonstrates that the regulation serves a legitimate local purpose that cannot be achieved through nondiscriminatory means. This conclusion may be determined by the balancing test of *Pike v. Bruce Church*, 397 U.S. 137 (1970).

While *Chicago Wine, Id.,* upheld Indiana's common carrier prohibition, as defendants have noted, the plaintiffs' argument is that this prohibition disproportionately burdens smaller or out-of-state breweries without sufficient justification. For example, if breweries are unable to use common carriers for self-distribution, they may face significant logistical and economic barriers, particularly if they lack the resources to establish their own delivery networks. Courts have in the past scrutinized whether such a prohibition is necessary to achieve the state's regulatory goals or whether less restrictive alternatives exist. While *Chicago Wine, Id., upheld Indiana's common carrier prohibition for wine retailers, other courts* have emphasized the need to evaluate the discriminatory effects of alcohol regulations on a case-by-case basis. For example, in *Granholm*

v. Heald, *Id.*, and subsequent cases, courts have invalidated state laws that, while facially neutral, had the effect of favoring in-state producers over out-of-state competitors.

III. Plaintiffs' argument as to the discriminatory effect of Indiana law is applicable and has merit.

The prohibition that exists under the current legal regime prevents an out-of-state brewery from efficiently delivering its products to consumers in Indiana or imposes high additional costs that make participation in the market economically unfeasible and thus constitutes a substantial burden. Courts have emphasized that the analysis "turns on the interstate flow of goods." This theory of applying the *Pike* test means that a court's decision, "turned on the interstate flow of goods, not on where the retailers were incorporated, what the out-of-state market shares of sales [**25] and profits were, or whether competition would be affected by the statute." *Nat'l Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1153 (9th Cir. 2012).

In following the logic of this approach, the Plaintiffs in this matter highlight how the current Indiana legal regime affects the interstate flow of goods, not by its supposed uniformity. The burden on interstate commerce is "clearly excessive" in relation to the putative local benefits that the state receives from the current legal regime.

The Defendants in this matter have, of course, stated that their interest in maintaining the current order is to preclude underage individuals from successfully obtaining alcohol, to which the state contends that the current legal regime helps them accomplish this legitimate interest. This interest could be achieved through less burdensome means, however. For instance, if the

state could ensure compliance with alcohol regulations or public safety through measures that do not prohibit common-carrier delivery (e.g., requiring age verification at delivery), this would achieve the same effect as the current legal regime without burdening interstate commerce.

The mere existence of these alternatives calls into question the current legal regime's validity. Courts have consistently considered whether the local interest "could be promoted as well with a lesser impact on interstate activities". *Pike v. Bruce Church, Id.*

IV. Miscellanies discrepancies.

Plaintiffs in their Second Amended Complaint never cite the Maryland Constitution as the source of the Indiana Attorney General's Authority. The Plaintiffs mention in their Second Amended Complaint that the Attorney General's authority comes from

1. Ind. Codde Ann. § 4-6-1-6.
2. State ex rel. Attorney State ex rel. Sendak v. Marion Cnty Superior Court, Room No.2, 268 Ind. 3, 5, 373 N.E.2d 145, 147 (1978).
3. Md, Const. Art. V § 3(a)(2) is given as a reference to the similar authority that the Attorney General of Maryland possesses, which is similar in function to Burns Ind. Code Ann. § (4-6-2-1. a) and § 4-6-3-2(a) imply that the Attorney General may represent the State in federal courts in matters where the State has an interest.
4. 27 U.S.C. § 7.1 - 3 – 2 – 2.

Plaintiff sent a second set of discovery requests to Defendant. At the status conference on April 17, 2026, the Plaintiff agreed to stay the request for interrogatories pending the Motion to Dismiss. Defendant has also opined that the Plaintiff's Second Amended

Complaint has only minor changes. The additional verbiage has been deemed necessary to establish the harm under the Commerce Clause.

CONCLUSION

The Court should hear this case on its merits, as the current Indiana legal regime has violated the dormant Commerce Clause and imposed a significant burden on interstate commerce that is "clearly excessive" relative to the putative local benefits the state receives from it.

Respectfully Submitted,

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ORDER GRANTING MOTION FOR LEAVE OF THE COURT TO FILE SUR-REPLY

The Court, having considered the Motion for Leave of the Court to File Sur-Reply, by counsel, and being duly advised in the premises, now finds that the Motion should be, and hereby is, GRANTED.

All of which is ordered this _____ day of _____, 2026.

Date_____ _____

JUDGE, United States District Court