

**NOT INTENDED FOR PUBLICATION IN PRINT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

PATRICK L. BAUDE,	)	
LARRY J. BUCKEL,	)	
KITTY BUCKEL,	)	
J. ALAN WEBBER,	)	
JAN WEBBER,	)	
WHITE OWL WINERY, INC.,	)	
CHATEAU GRAND TRAVERSE, LTD.,	)	
	)	
Plaintiffs,	)	
vs.	)	NO. 1:05-cv-00735-JDT-TAB
	)	
DAVID L. HEATH,	)	
	)	
Defendant.	)	

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WHITE OWL WINERY, Inc., and )  
CHATEAU GRAND TRAVERSE, LTD., ) 1:05-cv-0735-JDT-TAB  
)  
Plaintiffs, )  
)  
vs. )  
)  
DAVID L. HEATH, in his official capacity as )  
Chairman of the Indiana Alcohol and )  
Tobacco Commission, )  
)  
Defendant. )

**ENTRY GRANTING WINE AND SPIRITS WHOLESALERS OF INDIANA’S MOTION  
TO RECONSIDER (Docket No. 30)<sup>1</sup>**

Plaintiffs bring this civil rights action pursuant to 42 U.S.C. § 1983 challenging the constitutionality of Indiana Code § 7.1-5-11-1.5 and related laws (the “wine distribution laws”) against Defendant, acting in his official capacity for the State of Indiana. This matter comes before the court upon Wine and Spirits Wholesalers of Indiana’s (the “Trade Association”) Motion to Reconsider (Docket No. 30) the court’s entry denying the Trade Association’s Motion to Intervene.

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<sup>1</sup> This Entry is a matter of public record and will be made available on the court’s web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

On August 29, 2005, this court denied the Trade Association's motion to intervene, subject to reopening the decision should the circumstances change in a way that threatens the Association's interest. The Trade Association now asks the court to reconsider its decision and requests the following alternative relief: (a) an Order granting the Association's motion to intervene, or (b) an Order vacating the denial of the Association's motion to intervene and treating the motion as a standby or conditional motion for leave to intervene on which the court will defer ruling.

First, the Trade Association asks the court to grant its motion to intervene. As set forth in the court's August 29, 2005 Entry (the "Entry") (Docket No. 26), the court denied the Association's motion to intervene because the Association failed to show that the named Defendant, represented by the Indiana Attorney General, was not adequately defending the validity of the wine distribution laws at issue. Only weeks later, the Association again asserts that the Attorney General's office is failing to adequately defend the wine distribution laws. However, there has been no change of circumstances since the court's Entry that justifies granting intervention in favor of the

Association.<sup>2</sup> Thus, in so far as the Association's motion to reconsider seeks the court to grant intervention at this time, the motion is DENIED.

In the alternative, the Trade Association asks the court to vacate its denial of the Association's motion to intervene and to treat its motion to intervene as a standby or conditional motion for leave to intervene on which the court will defer ruling. Otherwise, as the Association argues, it would be forced to file an appeal of the court's Entry by September 28, 2005, or it would forfeit its right to appeal. This is true. However, the court's Entry stated that the denial was "subject to reopening the decision should the circumstances change." Thus, the Association retains the right to move the court to reopen the decision at a future point in time if circumstances have changed. If the court were to deny such a motion at that time, then the Association would still be able to appeal that decision.

Nonetheless, the court is willing to appease the Association here and, in effect, change the wording of its Entry. The result is the same: the Association remains a nonparty to the case, but it preserves the right to move the court to intervene when the

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<sup>2</sup> The Association suggests the circumstances have changed due to "two significant developments" since the court's Entry denying intervention. (Assoc.'s Mot. to Recons. 2.) First, the Association complains that the Attorney General's office has "refused to cooperate with or provide any information to the Association." (*Id.*) As the court explained in its Entry denying intervention, the Trade Association is not a party to the case and "will not be entitled to the same rights enjoyed by a party." Thus, the Association has no right to discovery of information from the Attorney General's office. Second, the Association continues to express its concern that the Attorney General's office will settle this dispute. This concern is merely speculative and fails to constitute a showing of inadequacy.

Association is prepared to demonstrate inadequacy.<sup>3</sup> Thus, the court will vacate the denial of the Association's motion to intervene and treat the motion (Docket No. 20) as a standby or conditional motion for leave to intervene on which the court will defer consideration of the question of adequacy of representation until the applicant is prepared to demonstrate inadequacy.

### **CONCLUSION**

For the foregoing reasons, the Association's Motion to Reconsider (Docket No. 30), in so far as it seeks the court to grant intervention at this time, is **DENIED**. However, the Entry (Docket No. 26) denying the Trade Association's Motion to Intervene is **VACATED**. Accordingly, the court will recognize and treat the Trade Association's Motion to Intervene (Docket No. 20) as a standby or conditional motion for leave to intervene on which the court will defer consideration of the question of adequacy of representation until the Trade Association is prepared to demonstrate inadequacy.

ALL OF WHICH IS ENTERED this 23rd day of November 2005.

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John Daniel Tinder, Judge  
United States District Court

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<sup>3</sup> As noted in the Entry and in the court's September 21, 2005 Notice of Briefing Schedule on Dispositive Motions, the court will still take into consideration the possibility of granting the Association leave to participate as amicus curiae to file appropriate briefs on the dispositive issues that may arise in this case.

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