

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA PETROLEUM MARKETERS)
AND CONVENIENCE STORE)
ASSOCIATION, THORNTONS, INC.,)
RICKER OIL COMPANY, INC.,)
FREEDOM OIL, LLC, and STEVE E. NOE,)

Plaintiffs,)

v.)

CAUSE NO: 1:13-CV-784 RLY-MJD

ALEX HUSKEY, in his official capacity as)
Chairman of the Indiana Alcohol and)
Tobacco Commission,)
THE INDIANA ALCOHOL AND)
TOBACCO COMMISSION, and)
THE STATE OF INDIANA,)

Defendants.)

ANSWER

Defendants, Alex Huskey, in his official capacity as Chairman of the Indiana Alcohol and Tobacco Commission, the Indiana Alcohol and Tobacco Commission (“ATC”), and the State of Indiana (collectively “State Defendants”), by counsel, for their Answer to Plaintiffs’ Complaint for Declaratory Judgment and Injunctive Relief, state as follows:

Plaintiffs use the first paragraph to argue their case. No facts are alleged and, therefore, no response is required. Nevertheless, defendants submit that the provisions challenged in this litigation are valid in all respects.

PARTIES

1. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 1 and therefore deny them.
2. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 2 and therefore deny them.
3. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 3 and therefore deny them.
4. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 4 and therefore deny them.
5. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 5 and therefore deny them.
6. State Defendants admit the material allegations in Paragraph 6.
7. State Defendants admit the material allegations in Paragraph 7.
8. Paragraph 8 does nothing more than summarize Plaintiffs' Complaint. As such, no facts are alleged and no response is required. To the extent that any facts are alleged, State Defendants deny them.

JURISDICTION AND VENUE

9. Paragraph 9 sets forth conclusions of law to which no response is required. To the extent that any facts are alleged, State Defendants deny them.
10. Paragraph 10 sets forth conclusions of law to which no response is required. To the extent that any facts are alleged, State Defendants deny them.

HISTORY OF REGULATION

11. It is admitted only that the Liquor Control Act was passed in 1935. As to the remaining allegations, State Defendants respond that the statute cited in Paragraph 11 speaks for itself and therefore no factual response is required. To the extent that Paragraph 11 makes any material allegations that are inconsistent with this statute, those are denied.
12. The statute cited in Paragraph 12 speaks for itself and therefore no factual response is required. To the extent that Paragraph 12 makes any material allegations that are inconsistent with this statute, those are denied.
13. The statute cited in Paragraph 13 speaks for itself and therefore no factual response is required. To the extent that Paragraph 13 makes any material allegations that are inconsistent with this statute, those are denied.
14. The statutes cited in Paragraph 14 speak for themselves and therefore no factual response is required. To the extent that Paragraph 14 makes any material allegations that are inconsistent with these statutes, those are denied.
15. The statutes cited in Paragraph 15 speak for themselves and therefore no factual response is required. To the extent that Paragraph 15 makes any material allegations that are inconsistent with these statutes, those are denied.

16. Defendants admit that the Indiana Alcoholic Beverage Commission issued Bulletin # 149 in 1963. Bulletin #149 and *State ex rel. Harris v. Superior Court of Marion Cty. (Room No. 4)*, 197 N.E.2d 634, 637 (Ind. 1964) cited in Paragraph 16 speak for themselves and therefore no factual response is required. To the extent that Paragraph 16 makes any material allegations that are inconsistent with this Bulletin and case, those are denied.
17. Bulletin #149 cited in Paragraph 17 speaks for itself and therefore no factual response is required. To the extent that Paragraph 17 makes any material allegations that are inconsistent with this Bulletin, those are denied.
18. Bulletin #149 cited in Paragraph 18 speaks for itself and therefore no factual response is required. To the extent that Paragraph 18 makes any material allegations that are inconsistent with this Bulletin, those are denied.
19. The statutes cited in Paragraph 19 speak for themselves and therefore no factual response is required. To the extent that Paragraph 19 makes any material allegations that are inconsistent with these statutes, those are denied.
20. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegation contained in Paragraph 21 that “many package liquor stores throughout Indiana operate in isolated rural areas that are not regularly policed in the same way as a metropolitan neighborhood,” and therefore deny them. State Defendants deny the remaining material allegations in Paragraph 20.
21. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 21 and therefore deny them.

22. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 22 and therefore deny them.

CURRENT ALCOHOL REGULATIONS

23. The statute cited in Paragraph 23 speaks for itself and therefore no factual response is required. To the extent that Paragraph 23 makes any material allegations that are inconsistent with this statute, those are denied.

24. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 24 and therefore deny them.

25. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 25 and therefore deny them.

26. The statute cited in Paragraph 26 speaks for itself and therefore no factual response is required. To the extent that Paragraph 26 makes any material allegations that are inconsistent with this statute, those are denied.

27. The statute cited in Paragraph 27 speaks for itself and therefore no factual response is required. To the extent that Paragraph 27 makes any material allegations that are inconsistent with this statute, those are denied.

28. The statute cited in Paragraph 28 speaks for itself and therefore no factual response is required. To the extent that Paragraph 28 makes any material allegations that are inconsistent with this statute, those are denied.

29. Indiana's current statutes and regulations speak for themselves and therefore no factual response is required. To the extent that Paragraph 29 makes any material allegations that are inconsistent with this statute, those are denied.
30. The statute cited in Paragraph 30 speaks for itself and therefore no factual response is required. To the extent that Paragraph 30 makes any material allegations that are inconsistent with this statute, those are denied.
31. The statute cited in Paragraph 31 speaks for itself and therefore no factual response is required. To the extent that Paragraph 31 makes any material allegations that are inconsistent with this statute, those are denied.
32. The statute cited in Paragraph 32 speaks for itself and therefore no factual response is required. To the extent that Paragraph 32 makes any material allegations that are inconsistent with this statute, those are denied.
33. State Defendants deny that there is any "arbitrary and unfair advantage." After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the remaining allegations contained in Paragraph 33 and therefore deny them.
34. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 34 and therefore deny them.
35. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 35 and therefore deny them.

36. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 36 and therefore deny them.

37. The statute cited in Paragraph 37 speaks for itself and therefore no factual response is required. To the extent that Paragraph 37 makes any material allegations that are inconsistent with that statute, those are denied.

38. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 38 and therefore deny them.

39. Current Indiana law speaks for itself and therefore no factual response is required. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the remaining allegations contained in Paragraph 39 and therefore deny them.

40. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 40 and therefore deny them.

FACTS SPECIFIC TO IPCA

41. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 41 and therefore deny them.

42. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 42 and therefore deny them.

43. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 43 and therefore deny them.

44. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 44 and therefore deny them.

45. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 45 and therefore deny them.

46. The current regulations speak for themselves and therefore no factual response is required. To the extent that Paragraph 46 makes any material allegations that are inconsistent with those regulations, those are denied.

47. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 47 and therefore deny them.

48. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 48 and therefore deny them.

49. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 49 and therefore deny them.

50. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 50 and therefore deny them.

51. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 51 and therefore deny them.

52. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 52 and therefore deny them.

53. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 53 and therefore deny them.

54. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 54 and therefore deny them.

55. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 55 and therefore deny them.

56. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 56 and therefore deny them.

57. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 57 and therefore deny them.

58. State Defendants deny the material allegations in Paragraph 58.

59. The allegation in Paragraph 59 is a legal conclusion to which no factual response is required. To the extent that any facts are alleged, they are specifically denied.

60. The allegation in Paragraph 60 is a legal conclusion to which no factual response is required. To the extent that any facts are alleged, they are specifically denied.

61. State Defendants deny the material allegations in Paragraph 61.

62. State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 62 and therefore deny them.

63. The allegation in Paragraph 63 is a legal conclusion to which no factual response is required. To the extent that any facts are alleged, they are specifically denied.

FACTS SPECIFIC TO NOE

64. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 64 and therefore deny them.

65. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 65 and therefore deny them.

66. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 66 and therefore deny them.

67. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 67 and therefore deny them.

68. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 68 and therefore deny them.

69. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 69 and therefore deny them.

70. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 70 and therefore deny them.

71. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 71 and therefore deny them.

72. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 72 and therefore deny them.

73. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 73 and therefore deny them.

74. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 74 and therefore deny them.

75. After reasonable investigation, State Defendants are without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 75 and therefore deny them.

COUNT I – VIOLATION OF EQUAL PROTECTION

76. State Defendants hereby incorporate their answers to the allegations in Paragraphs 1-75.

77. The Fourteenth Amendment to U.S. Constitution cited in Paragraph 77 speaks for itself and therefore no factual response is required. To the extent that Paragraph 77 makes any material allegations, those are denied.

78. The Fourteenth Amendment to U.S. Constitution cited in Paragraph 77 speaks for itself and therefore no factual response is required. To the extent that Paragraph 77 makes any material allegations, those are denied.

79. Indiana Code §§ 7.1-3-5-3 and 7.1-5-10-11 cited in Paragraph 79 speak for themselves and therefore no factual response is required. To the extent that Paragraph 79 makes any material allegations, those are denied.

80. State Defendants deny the material allegations in Paragraph 80.

81. State Defendants deny that they distinguish between holders of a beer dealer's permit in Indiana and similarly situated beer retailers in any other state in the United States. To the extent that State Defendants may distinguish between holders of a beer dealer's permit in Indiana and similarly situated beer retailers in any other state in the United States, State Defendants deny that there is no rational basis. After reasonable investigation, State

Defendants are without knowledge or information sufficient to either admit or deny the remaining allegations contained in Paragraph 81 and therefore deny them.

82. State Defendants deny the material allegations in Paragraph 82.

COUNT II – VIOLATION OF EQUAL PRIVILEGES

83. State Defendants hereby incorporate their answers to the allegations in Paragraphs 1-82.

84. Article IV of U.S. Constitution cited in Paragraph 84 speaks for itself and therefore no factual response is required. To the extent that Paragraph 84 makes any material allegations, those are denied.

85. Indiana Code § 7.1-3-5-3 cited in Paragraph 85 speaks for itself and therefore no factual response is required. To the extent that Paragraph 85 makes any material allegations, those are denied.

86. Indiana Code § 7.1-3-5-3 cited in Paragraph 86 speaks for itself and therefore no factual response is required. To the extent that Paragraph 86 makes any material allegations, those are denied.

87. Indiana Code § 7.1-5-10-11 cited in Paragraph 87 speaks for itself and therefore no factual response is required. To the extent that Paragraph 87 makes any material allegations, those are denied.

88. To the extent that there is any differential treatment, as alleged in Paragraph 88, State Defendants deny that there is no rational basis.

89. State Defendants deny the material allegations in Paragraph 89.

COUNT III – VIOLATION OF INDIANA EQUAL PRIVILEGES CLAUSE

90. State Defendants hereby incorporate their answers to the allegations in Paragraphs 1-89.

91. Article I of the Indiana Constitution cited in Paragraph 91 speaks for itself and therefore no factual response is required. To the extent that Paragraph 91 makes any material allegations, those are denied.

92. Indiana Code § 7.1-3-5-3 cited in Paragraph 92 speaks for itself and therefore no factual response is required. To the extent that Paragraph 92 makes any material allegations, those are denied.

93. Indiana Code § 7.1-5-10-11 cited in Paragraph 93 speaks for itself and therefore no factual response is required. To the extent that Paragraph 93 makes any material allegations, those are denied.

94. State Defendants deny the material allegations in Paragraph 94.

95. State Defendants deny the material allegations in Paragraph 95.

COUNT IV – VIOLATION OF INDIANA CONSTITUTION ARTICLE I, SECTION 1

96. State Defendants hereby incorporate their answers to the allegations in Paragraphs 1-95.

97. Article I of the Indiana Constitution cited in Paragraph 97 speaks for itself and therefore no factual response is required. To the extent that Paragraph 97 makes any material allegations, those are denied.

98. *Herman v. State*, 8 Ind. 545,558 (Ind. 1855) cited in Paragraph 98 speaks for itself and therefore no factual response is required. To the extent that Paragraph 98 makes any material allegations, those are denied.

99. State Defendants deny the material allegations in Paragraph 99.

100. State Defendants deny the material allegations in Paragraph 100.

GENERAL DENIAL

State Defendants deny any and all remaining allegations set forth in Plaintiffs' Complaint not herein previously admitted or denied.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief may be granted.
2. Plaintiffs' rights, privileges, and immunities secured under the Constitution or laws of the United States have not been violated by any alleged action, inaction, or omission of Defendants and Defendants, at all times, acted in compliance and consistent with the Constitution and laws of the United States.
3. Plaintiffs' rights, privileges, and immunities secured under the Constitution or laws of the State of Indiana have not been violated by any alleged action, inaction, or omission of Defendants and Defendants, at all times, acted in compliance and consistent with the Constitution and laws of the State of Indiana.
4. The statutes, rules, and policies challenged are constitutional.
5. There is no private right of action under the Indiana Constitution.
6. There is no private right of action directly under the U.S. Constitution.
7. Plaintiffs' claims under state and federal law are barred by sovereign immunity and the Eleventh Amendment to the U.S. Constitution.
8. Defendants are entitled to qualified immunity under the law.
9. Defendants are not "persons" pursuant to 42 U.S.C. § 1983
10. Plaintiffs' claims are barred by the doctrine of laches, unclean hands, waiver and/or estoppel.
11. Plaintiffs lack standing to bring the claims in their Complaint.

12. Plaintiffs have failed to bring their claims within the applicable statute of limitations.

13. Defendants reserve the right to amend their answer and defenses as more information is obtained.

WHEREFORE, State Defendants respectfully request that Plaintiffs take nothing by way of their Complaint; that judgment be entered in State Defendants' favor; for the reasonable fees and costs relating to the defense of this action; and for all other just and proper relief in the premises.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By: /s/ Kenneth L. Joel
Kenneth L. Joel
Attorney No. 30271-49
Deputy Attorney General
Indiana Government Center South – 5th Floor
302 W. Washington St.
Indianapolis, IN 46204-2770
Phone: (317) 233-8296
Fax: (317) 232-7979
Email: Kenneth.Joel@atg.in.gov

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2013, a copy of the foregoing was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

John R. Maley
BARNES & THORNBURG LLP
Jmaley@btlaw.com

Mark J. Crandley
BARNES & THORNBURG LLP
mcrandley@btlaw.com

/s/ Kenneth L. Joel
Kenneth L. Joel
Deputy Attorney General

Office of the Indiana Attorney General
Indiana Government Center South – 5th Floor
302 W. Washington St.
Indianapolis, IN 46204-2770
Phone: (317) 233-8296
Fax: (317) 232-7979
Email: Kenneth.Joel@atg.in.gov