

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

LEGATO VAPORS, LLC., a Kentucky Limited Liability Company, JET SETTER JUICE LLC, a Florida Limited Liability Company, and DERB E CIGS INDIANA, LLC., a Indiana Limited Liability Company )

PETITIONERS )

CASE NO. 1:15-cv-

vs. )

**PETITION FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF**

DAVID COOK, in his official capacity as Chairman of the Indiana Alcohol and Tobacco Commission, DAVID COLEMAN, in his official capacity as Vice-Chairman of the Indiana Alcohol and Tobacco Commission, DALE GRUBB, in his official capacity as Commissioner of the Indiana Alcohol and Tobacco Commission, MARJORIE MAGINN, in her official capacity as Commissioner of the Indiana Alcohol and Tobacco Commission, and MATT STRITTMATTER, in his official capacity as the Superintendent of the Indiana Excise Police and STATE OF INDIANA )

RESPONDENTS )

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Petitioners, Legato Vapors, LLC., (“Legato”), Jet Setter Juice LLC (“Jet Setter”) and Derb E Cigs Indiana, LLC. (“DerbECigs”), by counsel, make the following allegations for their Petition for Declaratory Judgment and Injunctive Relief against the Respondents, State of Indiana and David Cook, in his capacity as Chairman of the Indiana Alcohol and Tobacco Commission, based upon information and belief, except for the allegations pertaining to them, which are based upon personal knowledge.

**INTRODUCTION**

1. This is a civil rights and declaratory judgment action brought pursuant to 28 U.S.C. §2201, *et. seq.* and 42 U.S.C. §1983 for the purpose of challenging the constitutionality of all, or

portions, of Indiana House Enrolled Act 1432 (“the Enrolled Act”) as adopted by the Indiana Legislature during its 2015 session.

2. The basis for the Petitioners’ challenge is three pronged: (i) the Enrolled Act in its entirety violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by not equally regulating similarly-situated e-liquid manufacturers, bottlers, packagers and distributors, and by not equally defining only certain e-liquids as “tobacco products” despite the similarity of all liquid substances used in electronic cigarette or vaping pen devices; (ii) certain portions of the Enrolled Act violate the Commerce Clause to the United States Constitution by imposing an impermissible extraterritorial regulation upon commercial activity which occurs wholly in another state, and that such challenged provisions are not narrowly tailored to advance a legitimate governmental interest; and (iii) the Enrolled Act in its entirety violates both the Due Process Clause and Equal Protection Clause to the Fourteenth Amendment to the United States Constitution by including e-liquids within the definition of “tobacco products” for purposes of Indiana Code §7.1-3-18.5 without a rational basis for such classification and without being narrowly-tailored to advance a legitimate governmental interest, and such classification impermissibly discriminates between identical liquids based upon which type of device they are to be used without a rational basis for such classification and without being narrowly-tailored to advance a legitimate governmental interest.

3. The Petitioners seek a declaratory judgment with respect to their constitutional claims, and injunctive relief barring the Respondents, the State of Indiana and David Cook, in his capacity as the Chairman of the Indiana Alcohol and Tobacco Commission, from enforcing the challenged portions of the Enrolled Act.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction to hear this case and adjudicate the Petitioners' claims 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.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(1) and (2) because all of the Respondents reside or exist within the subject judicial district and a substantial part of the events giving rise to the claims asserted herein occurred in the subject judicial district.

6. This Court has authority to grant the Petitioners declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

## **PETITIONERS**

7. Legato is a Kentucky limited liability company which owns and operates a business engaged in the manufacturing, bottling, packaging and distribution of bottled liquids which are used in certain types of electronic cigarette vaping devices. Legato manufactures, bottles and packages its products solely at a physical facility located in Louisville, Kentucky. Legato's manufacturing, bottling and packaging operations comply with all applicable state and local laws in force at the place of such facility. Legato sells its products to electronic cigarette retail stores in the State of Indiana.

8. Jet Setter is a Florida limited liability company which owns and operates a business engaged in the manufacturing, bottling, packaging and distribution of bottled liquids which are used in certain types of electronic cigarette vaping devices. Jet Setter manufactures, bottles and packages its products solely at a physical facility located in Windermere, Florida. Jet Setter's manufacturing, bottling and packaging operations comply with all applicable state and local laws

in force at the place of such facility. Jet Setter sells its products to electronic cigarette retail stores in the State of Indiana.

9. DerbECigs is an Indiana limited liability company which operates a retail electronic cigarette store in Clarksville, Indiana, within the Southern District of Indiana. DerbECigs purchases and sells bottled liquids manufactured by Legato, Jet Setter and other similarly-situated manufacturers who wholly conduct their manufacturing, bottling, and packaging operations outside the State of Indiana.

### **RESPONDENTS**

10. Respondent, David Cook is the Chairman of the Indiana Alcohol and Tobacco Commission (“the Commission”) and the Respondent David Coleman is the Vice-Chairman of the Committee. The Respondents, Dale Grubb and Marjorie Maginn, are Commissioners of the Commission. The Respondent, Matt Strittmatter, is the Superintendent of the Indiana Excise Police. The Respondents Cook, Coleman, Grubb, Maginn and Strittmatter are being each sued in their respective official capacities. In those official capacities, the Respondents Cook, Coleman, Grubb, Maginn and Strittmatter are charged with the enforcement of the challenged provisions of the Enrolled Act.

11. Respondent, State of Indiana (“the State”), is a body politic. The State, acting through its legislature, enacted the Enrolled Act as a part of its governmental function authorized by applicable provisions of the Indiana Constitution and Indiana statutes. The State is made a Respondent herein solely for the purpose of imposing an award of attorney’s fees pursuant to 42 U.S.C. §1988.

12. The Respondents are acting, and have acted, under color of state law with respect to the enactment, enforcement and/or supervision of the enforcement of the Enrolled Acts challenged herein by the Petitioners.

**COUNT I**  
**EQUAL PROTECTION CLAUSE VIOLATION:**  
**DISCRIMINATORY REGULATION OF SIMILARLY-SITUATED**  
**MANUFACTURERS AND PRODUCTS**

13. The Petitioners incorporate herein by this reference the allegations set forth above.

14. The Enrolled Act adds a new section to Indiana Code as Chapter 7.1 for the purpose of enacting regulations related to the manufacture, bottling, packaging, distribution and sale of certain liquid products utilized in electronic cigarettes.

15. For purposes of its embodied regulations, Section 9 of the Enrolled Act (embodied in I.C. 7.1-7-2-10) defines “e-liquids” as being a “substance that:

- (1) is intended to be vaporized and inhaled using a vapor pen; and
- (2) specifically excludes substances contained in nonrefillable sealed cartridges of four (4) milliliters or less used in electronic cigarettes.”

For purposes of such definition, Section 9 of the Enrolled Act further defines the terms “vapor pen” (I.C. 7.1-7-2-23) as being “a powered vaporizer, other than an electronic cigarette, that converts e-liquid to a vapor intended for inhalation” and the term “electronic cigarette” (I.C. 7.1-7-2-9) as being “a powered vaporizer that:

- (1) is the size and shape of a traditional cigarette;
- (2) uses a sealed nonrefillable cartridge containing not more than four (4) milliliters of a liquid; and
- (3) is intended to be vaporized and inhaled.

Such legislative definition, however, excludes those items which the Enrolled Act classifies as a “vapor pen”.

16. Both “electronic cigarettes” and “vapor pens,” as defined by the Enrolled Act, are relatively new technologies which allow a consumer to simulate smoking a cigarette, cigar, or other combustible tobacco product without producing the harmful direct health hazards to such consumer, or the secondary or tertiary health hazards to third-parties who may find themselves in the proximity a consumer.

17. For such reason, both “electronic cigarettes” and “vapor pens” have become popular products among persons seeking to cease or reduce their use of, and dependency upon, combustible tobacco products. On this basis, “electronic cigarettes” and “vapor pens” are thus essentially functional equivalents based upon their purpose and utility.

18. Not surprisingly, the rise in popularity of “electronic cigarettes” and “vapor pens” have resulted in a closely-corresponding reduction in the consumption and use of traditional combustible tobacco products.

19. “Electronic cigarettes” and “vapor pens,” as the Enrolled Act defines such devices, operate by means of either an “open” or “closed” vaping system concept. “Electronic cigarettes” which operate on an open vaping system concept are characterized as utilizing unsealed tanks which a user can fill and re-fill with a variety of different liquids. “Vapor pens,” on the other hand, which operate on a closed vaping systems concept are characterized by utilizing sealed cartridges containing liquids which cannot be filled or re-filled by a user.

20. In general, a substantial portion, if not all, “vapor pens,” as defined by the Enrolled Act, (*i.e.* closed vaping system devices) are manufactured and distributed by traditional tobacco companies such as Altria Group (MarkTen and Nu Mark brands), Reynolds American (VUSE brand), Lorillard Inc. (Blu brand) and British American Tobacco, PLC (VYPE brand). At the present time, upon information and belief, such traditional tobacco companies do not produce or

distribute liquid substances intended for use in devices classified by the Enrolled Act as “electronic cigarettes” (*i.e.* open vaping system devices).

21. On the other hand, manufacturers such as Legato, Jet Setter and other similarly-situated companies produce liquid substances intended for use exclusively in “electronic cigarettes” (open vaping system devices).

22. Despite this legislative distinction between “electronic cigarettes” and “vapor pens” created by the Enrolled Act, the liquid substances utilized in both open vaping system devices (subject to regulation) and closed vaping system devices (exempted from regulation) are virtually identical in both their chemical composition in that they contain substantially the same component ingredients (*i.e.* water, propylene glycol, glycerin, flavor additives, and perhaps nicotine) and in their functional use.

23. By its terms, the Enrolled Act (embodied in I.C. 7.1-7-4-1) regulates the manufacturers and retailers of the liquids used in “electronic cigarettes” (open vaping system devices), but not the manufacturers and retailers of liquids used in “vapor pens” (closed vaping system devices), by requiring them to obtain a permit from the Commission as a condition of selling such products in Indiana.

24. In addition, the Enrolled Act further requires that e-liquid manufacturers adhere to rigorous dictates and protocols in manufacturing, bottling and packaging any products to be sold in Indiana. Among the protocols required by Section 9 of the Enrolled Act are:

- Submission of plans for the construction and operation of a manufacturing facility which includes a “clean room” for mixing, bottling and packaging the e-liquids [I.C. 7.1-7-4-1(d)];
- The manufacturing facility must enter into a minimum five year agreement with a security company to provide security services to the facility. Such security company must satisfy certain national and international standards

and have experience in video surveillance system design, installation and monitoring [I.C. 7.1-7-4-1(d)(2) and 7.1-7-4-1(d)(3)];

- A statement by the manufacturer of the projected output in liters per year for the facility [I.C. 7.1-7-4-1(d)(6)];
- Consent to the Indiana State Police to perform a criminal background check on all persons listed on the license application [I.C. 7.1-7-4-1(d)(9)];
- Consent for the Commission to conduct on-site inspections, sample the e-liquid products and conduct audits [I.C. 7.1-7-4-1(d)(10)];
- Installation of child-proof caps on each e-liquid bottle [I.C. 7.1-7-4-6(1)];
- Securing of each e-liquid bottle using either ring seals or plastic wrap [I.C. 7.1-7-4-6(2)];
- Bottle labeling which states the active ingredients [I.C. 7.1-7-4-6(3)];
- Inclusion of a separate statement on the label if the bottle contains nicotine [I.C. 7.1-7-4-6(4)];
- Inclusion of the manufacturing date and batch number on the label [I.C. 7.1-7-4-6(5)];
- Inclusion of a scanable code tied to each batch on the label [I.C. 7.1-7-4-6(6)];
- Prohibition against selling an e-liquid container more than 2 years after manufacture date [I.C. 7.1-7-4-6(7)];
- the manufacturing facility must conduct all mixing, bottling, and packaging in a “clean room” as defined by the Enrolled Act which satisfies the same Indiana standards for public health and cleanliness applicable to commercial kitchens operating in Indiana [I.C. 7.1-7-4-6(8)];
- the manufacturing facility must store ingredients in a secure area [I.C. 7.1-7-4-6(10)];
- the manufacturing facility must ensure that only authorized personnel are able to access the secure area [I.C. 7.1-7-4-6(10) and 7.1-7-4-6(14)];
- the manufacturing facility must have a remotely monitored security system in areas where e-liquids are mixed, bottled and packaged [I.C. 7.1-7-4-6(11)];

- the manufacturing facility must have a high security key system which limits access to areas where e-liquids are mixed, bottled and packaged [I.C. 7.1-7-4-6(12)];
- the manufacturing facility must be subject to 24 hour video recording where the e-liquids are mixed, bottled and packaged [I.C. 7.1-7-4-6(13)];
- the manufacturing facility must store three (3) ten (10) milliliter sample bottles from each production batch for at least three years in a secure, limited access area which has security cameras [I.C. 7.1-7-4-6(15)];
- the manufacturing facility must submit to random inspections and audits by the Commission [I.C. 7.1-7-4-6(16)]; and
- the manufacturing facility cannot have anyone with a financial interest who has been convicted of a felony or an offense involving controlled substances [I.C. 7.1-7-4-6(19)].

25. The Enrolled Act (embodied in I.C. 7.1-7-5-1) prohibits a manufacturer from selling e-liquids in Indiana without a permit, or if such e-liquids were not manufactured in accordance with the aforementioned protocols.

26. The Enrolled Act (embodied in I.C. 7.1-7-5) further prohibits retailers such as DerbECigs which are located in Indiana from possessing or selling e-liquids either manufactured by an un-permitted manufacturer, or which fail to adhere to the aforementioned manufacturing protocols.

27. The Enrolled Act (embodied in I.C. 7.1-7-6) provides for civil and administrative penalties against manufacturers who violate its provisions, and for civil and criminal penalties against retailers who violate its provisions.

28. Section 9 of the Enrolled Act (embodied in I.C. 7.1-7-1-2) articulates the legislative goals of the aforementioned regulations are to:

- (a). Ensure the safety and security of e-liquids manufactured for sale in the State of Indiana;
- (b). Ensure that e-liquids manufactured or sold in the State of Indiana conform to appropriate standards of identity, strength, quality, and purity; and

- (c). Ensure that e-liquids are not contaminated or adulterated by the inclusion of ingredients or other substances that might pose unreasonable threats to public health and safety.

29. The Enrolled Act does not evenhandedly regulate similarly-situated, if not identically-situated, liquid substances because it operates upon the presumption the liquid substances contained in vapor pens (closed vaping systems) are manufactured in such a manner which satisfies the aforementioned legislative goals, while the liquid substances distributed for use in open vaping system devices do not satisfy such legislative goals.

30. The Respondents, however, lack a rational basis for either such presumption because they lack any evidence that liquid substances manufactured for use in closed vaping systems are any safer, more secure, purer, and/or higher quality than those liquid substances manufactured for use in open vaping systems, or that the liquid substances manufactured for use in open vaping system devices are any less so. This is the case because there is no evidence that Legato, Jet Setter or any other open vaping system e-liquid manufacturer manufacture products which are harmful to their users, or at least any more harmful than the liquid products manufactured for use in closed vaping systems.

31. Further, the legislative presumption that the liquids manufactured for use in closed vaping devices satisfy the aforementioned goals is negated by the fact the combustible tobacco industry, the same industry which controls the closed vaping system market, has a well-documented history of manipulating their tobacco products, including the addition of chemicals, for the purpose of making them more addictive to users.

32. Based upon the foregoing, the Petitioners verily allege the Enrolled Act was specifically adopted for the purpose of benefiting those manufacturers who control the closed vaping system market under the false guise of promoting public safety and welfare, while imposing

undue and unequal regulatory burdens on those manufacturers who serve the open vaping system market with virtually identical products.

33. Based upon the foregoing, the regulations and protocols imposed by the Enrolled Act, and specifically Section 9 thereof, are impermissibly discriminatory both on their face and as applied to Legato, Jet Setter and other similarly-situated e-liquid manufactures in violation of the rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and such regulations and protocols do not further any legitimate, substantial, or compelling governmental interest.

34. Instead, the Petitioners assert the true purposes of the Enrolled Act was to protect the economic interests of the traditional tobacco companies which now manufacture and distribute closed vaping system devices, and thus protect its future payments due under the Master Tobacco Settlement with such traditional tobacco companies. The Petitioners assert such purpose does not further the stated legislative goals of the Enrolled Act.

35. As a collateral effect of such impermissible discrimination, electronic cigarette retailers such as DerbECigs will be forced from the marketplace to the extent that e-liquid manufacturers are unwilling or unable to sell their products in Indiana as a result of the enactment and enforcement of the Enrolled Act. Further, electronic cigarette retailers such as DerbECigs will be harmed by the collateral effects of the discrimination complained of above due to the civil and/or criminal penalties resulting from continuing to conduct business with e-liquid manufacturers who fail or refuse to comply with aforementioned unconstitutional provisions of the Enrolled Act.

36. The Petitioners have accordingly suffered, or will suffer, substantial and tangible harm from the impermissible and unconstitutional actions described above, and are entitled to a

Judgment which both strikes down the Enrolled Act in its entirety, and permanently enjoins the Respondents from their enforcement of the Enrolled Act.

**COUNT II**  
**COMMERCE CLAUSE VIOLATION: EXTRATERRITORIAL REGULATION**

37. The Petitioners incorporate herein by this reference the allegations set forth above.

38. The regulations set forth in the Enrolled Act, as highlighted in numerical paragraph 24 above, apply to both in-state and out-of-state manufacturers of e-liquids.

39. Legato operates solely and exclusively in the State of Kentucky with respect to the manufacturing, bottling, packaging and distribution of its e-liquid products. Legato's only connection with the State of Indiana is the sale of its e-liquid products to retail electronic cigarette stores.

40. Jet Setter operates solely and exclusively in the State of Florida with respect to the manufacturing, bottling, packaging and distribution of its e-liquid products. Jet Setter's only connection with the State of Indiana is the sale of its e-liquid products to retail electronic cigarette stores.

41. The manufacturing regulations and protocols set forth in the Enrolled Act will force Legato, Jet Setter and other similar out-of-state e-liquid manufacturers to both alter their production methods and systems with respect to commercial activities occurring wholly outside the State of Indiana, and subject themselves to regulation by the Respondents with respect to such out-of-state commercial activities, as a condition of selling their products to retailers and consumers in the State of Indiana.

42. As such, the manufacturing regulations and protocols set forth in the Enrolled Act, as highlighted in numerical paragraph 24 above, constitute the imposition of an extraterritorial regulatory authority and burden by the Respondents upon commerce occurring solely outside of

the State of Indiana by Legato, Jet Setter and other similarly-situated manufacturers in violation of the Commerce Clause to the United States Constitution.

43. Further, based upon the allegations set forth above, the Enrolled Act is not tailored to further any legitimate, substantial, or compelling governmental interest necessary to overcome the constitutional impairment of any extraterritorial regulatory actions by the Respondents.

44. The Petitioners have accordingly suffered, or will suffer, substantial and tangible harm from the impermissible and unconstitutional actions described above, and are entitled to a Judgment which both strikes down those portions of the Enrolled Act set forth in numerical paragraph 24 above, and permanently enjoins the Respondents from their enforcement of such provisions.

**COUNT III**  
**DUE PROCESS AND EQUAL PROTECTION CLAUSE VIOLATIONS:**  
**LACK OF RATIONAL BASIS FOR CLASSIFYING E-LIQUID AS A**  
**“TOBACCO PRODUCT” AND DISCRIMINATORY EXCLUSION OF**  
**IDENTICAL LIQUIDS WITHIN SUCH CLASSIFICATION**

45. The Petitioners incorporate herein by this reference the allegations set forth above.

46. In adopting the Enrolled Act, the Indiana Legislature sought to regulate those e-liquids utilized in open vaping system devices as if they were the functional equivalent of combustible tobacco products such as cigarettes and cigars. Such regulatory action is articulated in Section 8 of the Enrolled Act (embodied in I.C. 7.1-3-18.5) which defines the term “tobacco product” as being a product that:

- (1) contains tobacco, including e-liquid (as defined by IC 7.1-7-2-10) that contains tobacco; and
- (2) is intended for human consumption.

47. Upon the Petitioners’ information and belief, the liquid substances utilized in both open vaping system devices and closed vaping system devices do not themselves contain any

actual tobacco. However, some, but not all, liquid substances utilized in both open vaping system devices and closed vaping system devices may contain certain quantities of nicotine which was synthesized from tobacco.

48. The Petitioners verily believe the Respondents intend to interpret and enforce the Enrolled Act in such a way as to include and encompass all e-liquids within the definition of “tobacco product” even if such substances do not contain any actual tobacco simply because such e-liquids may contain nicotine synthesized from tobacco.

49. The e-liquids manufactured by Legato, Jet Setter and other similarly-situated manufacturers do not contain any actual tobacco, and the vaporization of such e-liquids do not produce smoke which results in the emission of the types of toxic and harmful substances generally associated with the combustion of traditional tobacco products.

50. Based upon the foregoing, there is no rational basis for the inclusion of e-liquids which do not actually contain any tobacco within the definition of “tobacco product” for purposes of interpreting and enforcing the Enrolled Act, and such inclusion does not further any legitimate, substantial, or compelling governmental interest.

51. In the absence of a legitimate, substantial, or compelling governmental interest, the inclusion of e-liquids in the definition of a “tobacco product” in Section 8 of the Enrolled Act violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

52. Further, the definition of “tobacco product” in the Enrolled Act includes only those liquid substances used in open vaping system devices, while specifically exempting those liquid substances utilized in closed vaping system devices.

53. As alleged in numerical paragraph 22 above, the liquid substances utilized in open vaping system devices (regulated by the Enrolled Act) are virtually identical in their chemical

composition and functional use to the liquid substances utilized in closed vaping system devices (exempted from regulation by the Enrolled Act).

54. Despite such fact, the Enrolled Act enacts an impermissibly discriminatory classification which defines one group of liquid substances as “tobacco products” and does not so define a virtually identical group of liquid substances. Such discriminatory classification embodied in Section 8 of the Enrolled Act is in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution both on its face and as applied to Legato, Jet Setter and other similarly-situated e-liquid manufactures, and does not further any legitimate, substantial, or compelling governmental interest.

55. The Petitioners have accordingly suffered, or will suffer, substantial harm from the impermissible and unconstitutional actions described above, and are entitled to a Judgment which strikes down Section 8 of the Enrolled Act, and enjoins the Respondents from its enforcement.

### **REQUEST FOR RELIEF**

WHEREFORE, Petitioners seek the following relief:

A. A Judgment declaring the Enrolled Act is unconstitutional in its entirety both on its face and as applied in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution on the basis that such provisions do not equally regulate similarly-situated e-liquid manufacturers, and does not advance a legitimate government interest;

B. A Judgment declaring those portions of the Enrolled Act embodied in:

I.C. 7.1-7-4-1(d)(1);

I.C. 7.1-7-4-1(d)(2);

I.C. 7.1-7-4-1(d)(3);

I.C. 7.1-7-4-1(d)(6);

I.C. 7.1-7-4-1(d)(9);  
I.C. 7.1-7-4-1(d)(10);  
I.C. 7.1-7-4-6(1);  
I.C. 7.1-7-4-6(2);  
I.C. 7.1-7-4-6(3);  
I.C. 7.1-7-4-6(4);  
I.C. 7.1-7-4-6(5);  
I.C. 7.1-7-4-6(6);  
I.C. 7.1-7-4-6(7);  
I.C. 7.1-7-4-6(8);  
I.C. 7.1-7-4-6(10);  
I.C. 7.1-7-4-6(11);  
I.C. 7.1-7-4-6(12);  
I.C. 7.1-7-4-6(13);  
I.C. 7.1-7-4-6(14);  
I.C. 7.1-7-4-6(15);  
I.C. 7.1-7-4-6(16); and  
I.C. 7.1-7-4-6(19)

are unconstitutional in violation of the Commerce Clause to the United States Constitution on the basis that its provisions seek to impose an impermissible extraterritorial regulation upon commercial activity occurring wholly in another state and that such provisions do not advance a legitimate government interest;

C. A Judgment declaring the Enrolled Act unconstitutional in its entirety in violation of the Due Process Clause and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution on the basis that no rational basis exists for including “e-liquids” within the definition of “tobacco products” for purposes of I.C. 7.1-3-18.5, that such definition is impermissible discriminatory on its face and as applied, and that such classification does not advance a legitimate governmental interest;

D. A permanent injunction which restrains and enjoins the Respondents from enforcing the challenged provisions of the Enrolled Act; and

E. An award of costs and expenses, including reasonable attorney’s fees against the State pursuant to 42 U.S.C. § 1988; and

F. Such other relief as the Court deems appropriate to afford Petitioners full relief.

Respectfully submitted,

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