BRIEF · NO. 3

Bloomington banned superintelligence. Its own statute says it couldn't.

A 7–0 vote, $2,500-a-day fines, and a repeal clause that needs 95% of every registered voter. The ordinance cites one law. That law forbids three things the ordinance does. Here is the record, and a complaint an Indiana lawyer can file.

Chris Dukes · Published 7 November 2026

KEY POINTS

- On November 4, 2026, Bloomington's Common Council adopted Ordinance 2026-29 by a 7–0 vote. It bans distributing or deploying "Superintelligence" inside the city, reaches software served "regardless of the physical location of the server," and carries fines of up to $2,500 per violation per day.[1, 2]
- The ordinance cites one source of authority, the Indiana Home Rule Act, IC 36-1-3, with no section number. Section 8(a) of that Act lists sixteen powers a city "does not have." The ordinance exercises at least three of them: conducting an election (§ 8(a)(12)), prescribing the law of private civil suits (§ 8(a)(2)), and legislating beyond the corporate boundary (§ 9(b)).[3]
- The sponsor's memorandum states that the targeted systems "are untestable," that the ordinance "prevents outside commercial tech entities" from deploying in Bloomington, and that it "can help plaintiffs meet their burden of proof" in private lawsuits. Each sentence is an admission against the City on a separate legal theory.[4]
- The repeal clause requires an affirmative vote of more than 95% of *registered* voters, not ballots cast. A unanimous vote fails unless turnout exceeds 95%. Indiana law bars cities from holding elections a statute does not authorize.[1, 3]
- Four federal executive orders since January 2025 declare a national policy against patchwork and extraterritorial AI regulation, and a Justice Department task force exists to sue over it. None of that preempts a city ordinance. A private suit under Indiana's own enabling statute and the Commerce Clause does the work; this brief publishes one.[5, 6]

What Bloomington did

Councilmember Dave Rollo has tried three times in three years to get a government to act against artificial intelligence. A 2023 resolution was withdrawn after Indiana University objected. A June 2026 resolution asking other governments for a moratorium passed 9–0.[7, 8] The third attempt does not ask anyone. It changes Bloomington's municipal code.

Ordinance 2026-29 adds Chapter 14.25, "Prohibition of Superintelligence," to Title 14 of the code. The operative sentence reads: "No person or corporation shall distribute or permit to be distributed nor deployed into the premises of any citizen or business in our City, any Superintelligence for any purpose." Deployment "shall include the remote execution, activation, or utilization of any unauthorized digital agent through a locally accessed interface, browser, API, or connected hardware within the City of Bloomington, regardless of the physical location of the server infrastructure hosting the system."[1]

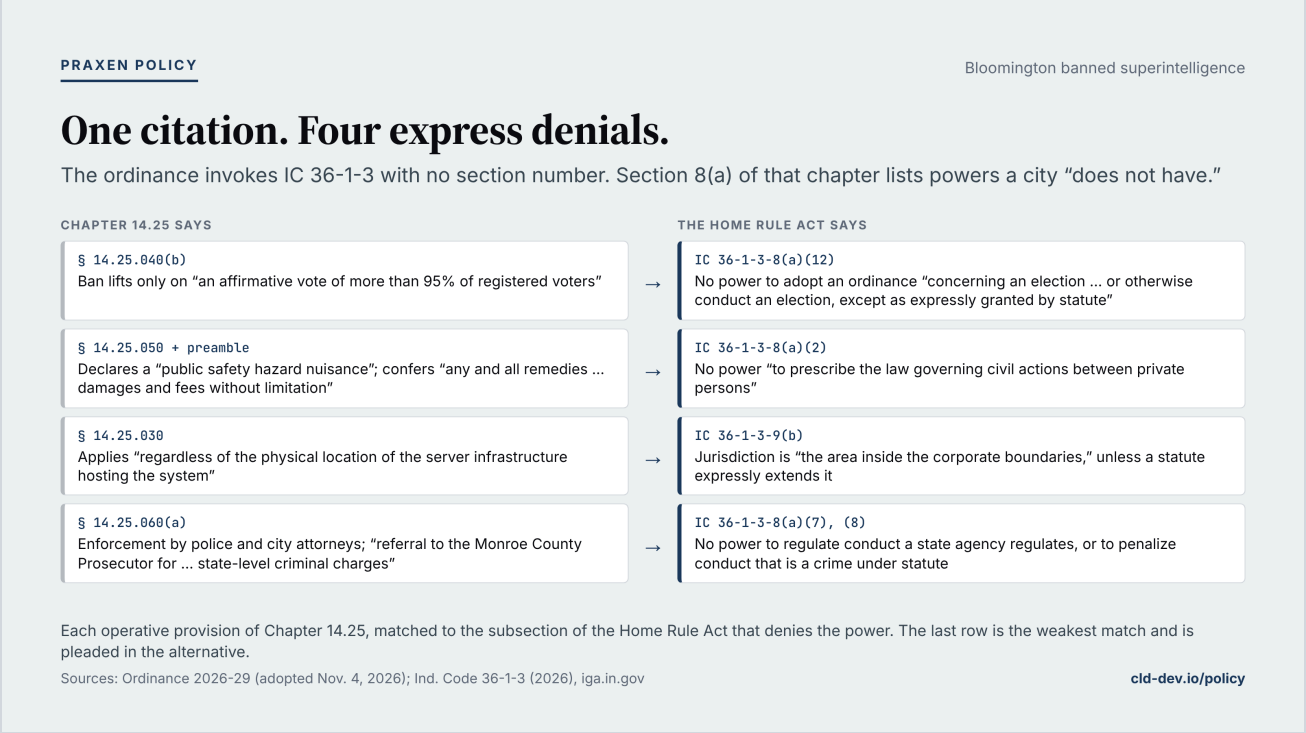


Figure 1. Each operative provision of Chapter 14.25, matched to the Home Rule Act subsection that denies the power. Source: Ordinance 2026-29; IC 36-1-3 (2026).

"Superintelligence" is defined in a single 130-word sentence that ends: "Any intellect that greatly exceeds the cognitive performance of humans in virtually all domains of interest." Violations fall under the code's general penalty, up to $2,500 per violation, with each day of a continuing violation counted separately. Enforcement belongs to the Department of Law and the police, "as a matter of discretion," with referral to the county prosecutor "where appropriate."[1, 7]

The ban lifts only if the Council later finds two things: “broad scientific consensus” of safety at “99.9999% percent certainty,” and “an affirmative vote of more than 95% of registered voters.”[1] It expires on its own only if the Indiana General Assembly enacts “a comprehensive framework for Provably Safe Superintelligence.”

The text adopted on November 4 is the text introduced on October 14. No amendment was offered. No memorandum from the City’s Department of Law appears in either packet. The bond ordinance considered the same night came with a memo co-signed by Corporation Counsel. This one came from the sponsor’s office alone.[9]

The ordinance cites one law. Here is what that law says.

The preamble invokes “the traditional police powers of the City and Indiana Code § 36-1-3 (The Indiana Home Rule Act).” The sponsor’s memo calls this “sovereign authority to regulate public safety hazard nuisances.” Neither document cites a section.[1, 4]

The Home Rule Act is generous. It abolishes the old rule that doubts about a city’s power are resolved against the city, and it grants “all other powers necessary or desirable in the conduct of its affairs.” But it grants them only “to the extent that the power … is not expressly denied by the Indiana Constitution or by statute,” and then, in section 8(a), it expressly denies sixteen of them.[3] Three are in play.

Section 8(a)(12). A city does not have “[t]he power to adopt an ordinance … concerning an election … or otherwise conduct an election, except as expressly granted by statute.” Chapter 14.25 conditions its own repeal on a city-wide vote of registered voters. No statute authorizes Bloomington to hold one. The sponsor’s memo says the point of the clause is that “the ultimate authority to lift the ban is left completely to the local electorate.”[4] An ordinance “concerning an election” that the city cannot hold is void on its face.

Section 8(a)(2). A city does not have “[t]he power to prescribe the law governing civil actions between private persons.” The ordinance declares the technology a “public safety hazard nuisance,” which is a rule of decision in private nuisance suits, and confers “any and all remedies available at law to recover damages and fees without limitation” on anyone harmed by a violation. The memo explains why: “this ordinance and others like it can help plaintiffs meet their burden of proof,” and the resulting liability “could be profound enough to prevent any insurers from providing product liability insurance.”[4] That is a description of prescribing the law of private civil actions.

Section 9(b). “The area inside the corporate boundaries of a municipality comprises its territorial jurisdiction,” unless a statute says otherwise. The ordinance regulates “regardless of the physical location of the server infrastructure.” No statute extends Bloomington’s reach to a data center in Virginia.[3]

A fourth provision, section 8(a)(7), bars regulating "conduct that is regulated by a state agency." The memo asserts that Indiana has enacted nothing. In fact the General Assembly chartered an AI task force in 2024, the Office of Technology inventories and assesses AI systems under IC 4-13.1-5, the state adopted an AI policy built on the NIST framework, and the Consumer Data Protection Act took effect this January.[10, 11, 12] But that regime governs state agencies and profiling, not private deployment, and I would not lead with it. The first three do not need it.

The sponsor's memo does the plaintiff's work

Litigators spend discovery looking for the sentence in which the other side says what it was really doing. Here the sentences are in the public record, under the sponsor's name, attached to the ordinance at both readings.[4]

On vagueness: "These models are untestable because the developers do not understand how their neural networks work. … In short, they are becoming untestable." The ordinance's operative test is whether a system "greatly exceeds the cognitive performance of humans in virtually all domains of interest." The enacting body says that test cannot be run.

On the Commerce Clause: the ordinance "prevents outside commercial tech entities from making high-risk deployments in Bloomington without local permission," and "[i]f those (approximately 350) cities passed similar ordinances in the coming weeks or months, this would create a massive regulatory burden for companies creating ASI." A law passed to burden out-of-state companies as such gets the strictest scrutiny a court has.

On the City's own enforcement capacity: the fiscal statement says the ordinance "will [not] have any impact on the City's finances." No budget, no staff, no detection method. The memo also cites "Section 2.90.040 of Ordinance 2026-29" for enforcement discretion. No such section exists. The reference survived from the October draft into the November packet, which suggests the text was adapted from a template and that nobody in the Department of Law read it closely.[4, 9]

The definition the City says cannot be tested

Vagueness doctrine asks two questions: does the law give a person of ordinary intelligence fair notice of what is prohibited, and does it give enforcers a standard.[13] Chapter 14.25 fails both three times over.

The definition has no benchmark. It names no test, no certifying body, no evidentiary standard. Read one way, its middle clause, which reaches any system "capable of self-modifying its core algorithms, executing code in environments outside its initial sandbox, *or* operating without continuous human oversight," covers a large share of commercial software running today, including the agentic tooling my own company ships. Read the other way, with the "virtually all

domains of interest" clause controlling, it covers nothing that exists. A person of ordinary intelligence cannot tell which reading governs, and the sponsor has said the question is unanswerable.

The prohibition reaches "any unauthorized digital agent." The ordinance defines no authorization process and names no authorizer. Every digital agent is therefore "unauthorized."

Enforcement is "discretionary," "for any purpose," with no criteria for when, against whom, or on what evidence. That is the delegation of policy to "policemen, judges, and juries for resolution on an ad hoc and subjective basis" the Supreme Court has condemned since 1972.[13]

A city cannot legislate the internet

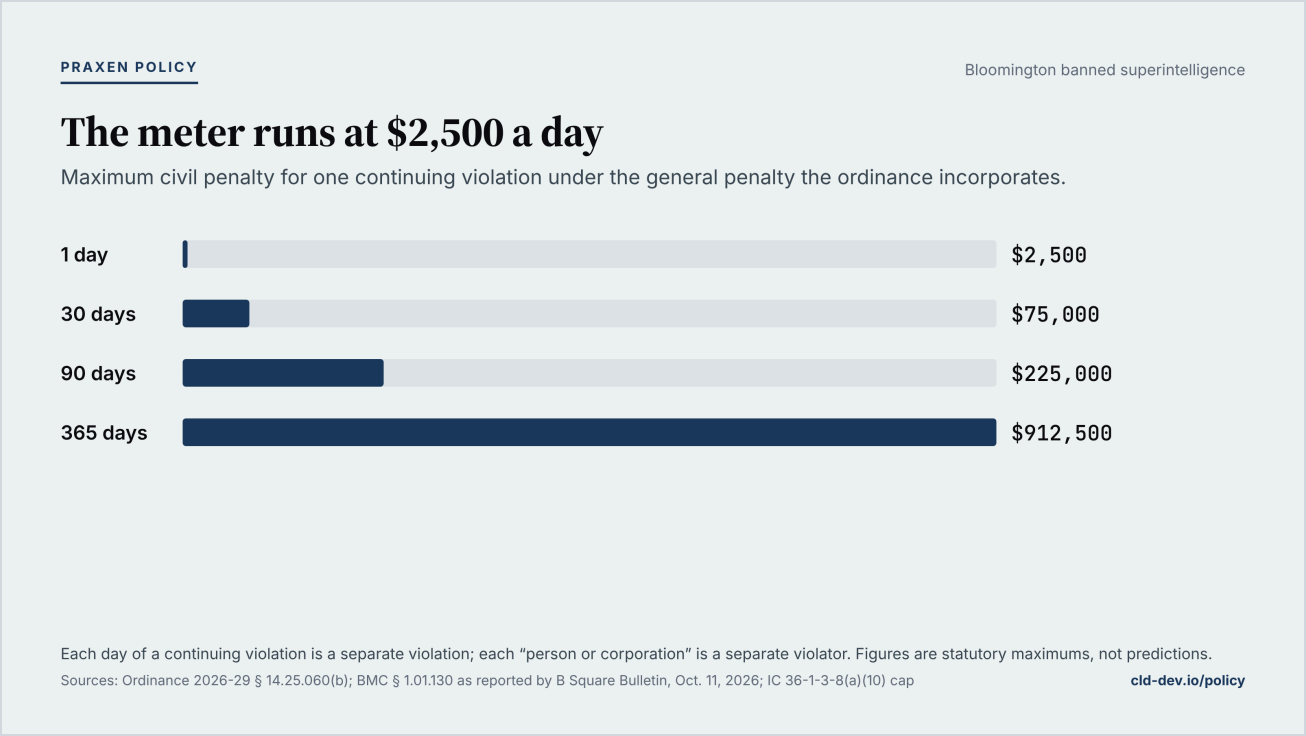


Figure 2. Maximum civil penalty for a single continuing violation, at $2,500 per day, under the general penalty provision the ordinance incorporates. Each "person or corporation" is a separate violator. Source: Ordinance 2026-29 § 14.25.060(b); B Square Bulletin, October 11, 2026.

The Seventh Circuit, which hears appeals from Indiana, has twice struck down Indiana enactments for reaching commerce outside the state. In 2010 it invalidated Indiana's attempt to apply its loan law to transactions completed in Illinois. In 2017 it held that Indiana "may not … try to achieve [legitimate] health and safety goals by directly regulating out-of-state factories and commercial transactions."[14] The Supreme Court's 2023 decision in *National Pork Producers v. Ross* narrowed the broadest version of that doctrine, but it left two things untouched: laws that discriminate

against out-of-state commerce in purpose or effect, and laws whose burden on interstate commerce clearly exceeds their local benefit.[15] The sponsor's memo supplies the purpose. The fiscal statement supplies the absence of benefit.

The repeal clause is built to fail

Section 14.25.040(b) requires "an affirmative vote of more than 95% of registered voters." Not 95% of ballots cast. Of everyone on the roll. The arithmetic is unforgiving: the share of ballots that must be "yes" is 95 divided by turnout. At 80% turnout, every ballot plus nineteen percent more. At 100% turnout, nineteen of every twenty. Below 95% turnout, a unanimous vote fails.

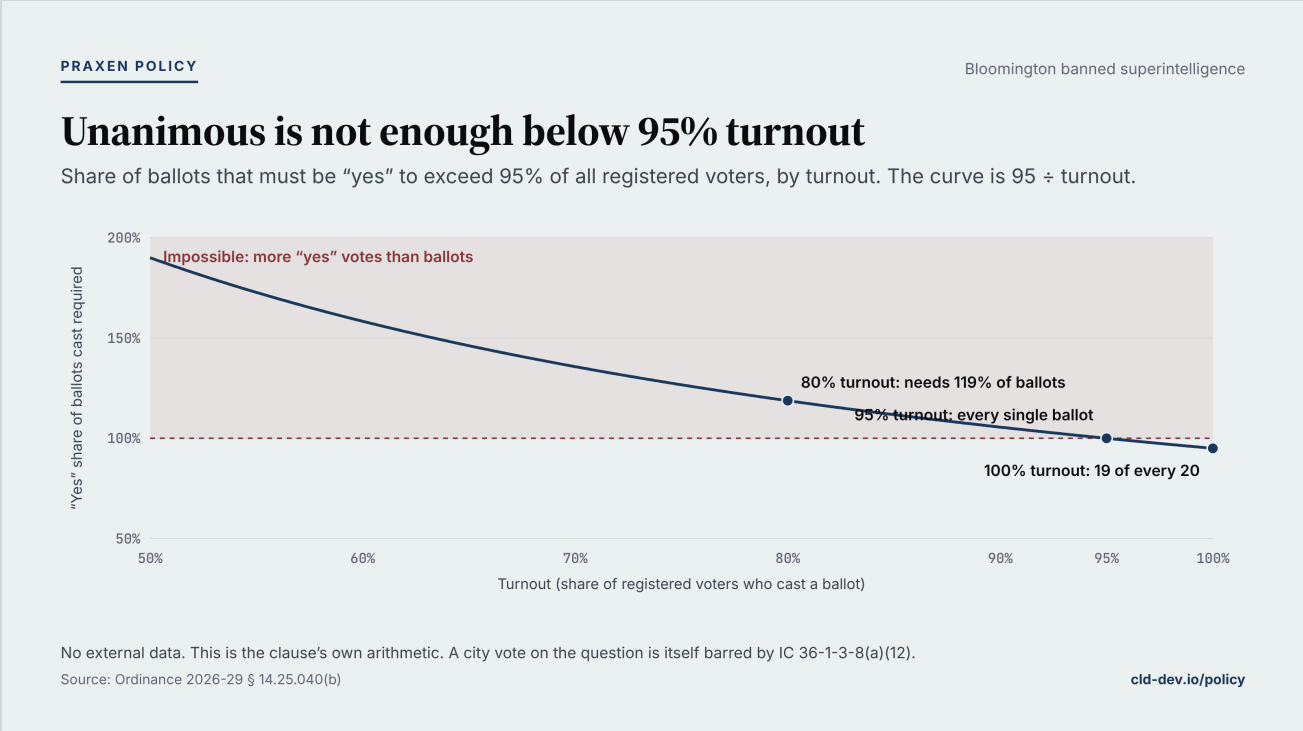


Figure 3. The "yes" share of ballots cast required to exceed 95% of registered voters, as a function of turnout. The curve is above 100% for any turnout below 95%. No external data; this is the clause's own arithmetic. Source: Ordinance 2026-29 § 14.25.040(b).

None of this would matter if the city could hold the vote. It cannot. And a successful vote would not lift the ban anyway; the Council would still have to pass a second ordinance making the "99.9999%" safety finding, a figure the ordinance borrows from nuclear-plant engineering without naming a standard or a method.[1, 7] Nothing, meanwhile, stops a future Council from repealing the chapter by simple majority. The clause binds no one and is void. It is there for the press release.

The federal layer: four orders, one task force, zero preemption

Since January 2025 the White House has issued four executive orders on AI and one Action Plan. EO 14179 revoked the prior administration's order and directed agencies to remove regulatory barriers.[16] Three July 2025 orders addressed data-center permitting, federal procurement of "truthful" models, and AI exports.[17] EO 14365, signed December 11, 2025, is the one that matters here. It declares a policy of "a minimally burdensome national policy framework," states that "State laws sometimes impermissibly regulate beyond State borders, impinging on interstate commerce," orders the Attorney General to stand up an AI Litigation Task Force to challenge state AI laws "on grounds that such laws unconstitutionally regulate interstate commerce, are preempted by existing Federal regulations, or are otherwise unlawful," and orders Commerce to publish a list of "onerous" state laws within ninety days.[5]

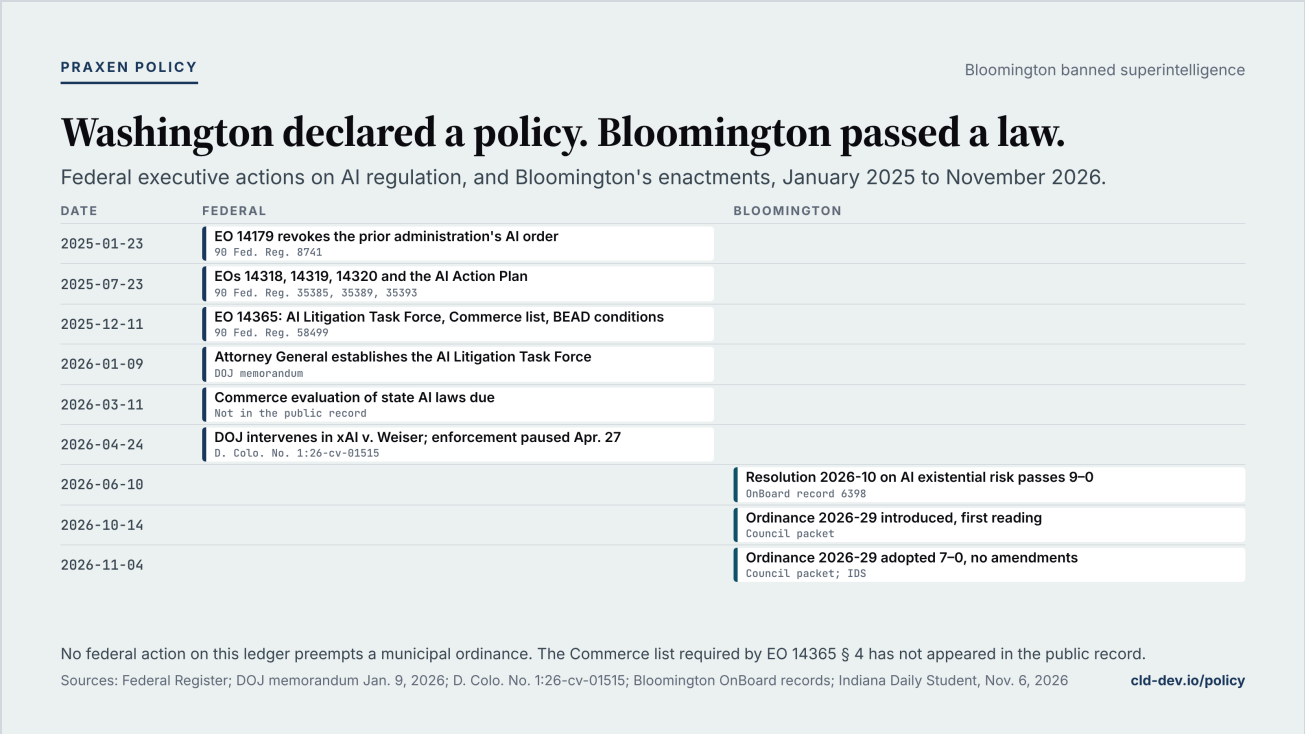


Figure 4. Two tracks. Above the line, federal executive actions on AI regulation. Below it, Bloomington's. Sources: Federal Register; Department of Justice; D. Colo. docket 1:26-cv-01515; Bloomington OnBoard records.

Here is what has happened since. The Task Force was established by memorandum on January 9, 2026.[6] The Commerce list was due March 11; as far as the public record shows, it was never published.[18] The Task Force has taken one action: on April 24, 2026, it intervened in xAI's suit against Colorado's algorithmic-discrimination law, and Colorado agreed three days later to pause enforcement.[19] A White House legislative framework went to Congress on March 21. No preemption statute has passed.[20]

Two points follow, and I made both in Policy Analysis No. 1 in September.[21] First, an executive order preempts nothing. The Supremacy Clause runs through acts of Congress, and there is no act of Congress. The orders are evidence of national policy, which is relevant to a court weighing a local law's burden on interstate commerce, and they are an invitation to the Justice Department to file a statement of interest. They are not a cause of action. Second, you do not need them. The Bloomington ordinance falls under Indiana's own enabling statute and under Commerce Clause doctrine the Seventh Circuit applied to Indiana a decade ago. A private plaintiff with an API key and standing can get there without Washington.

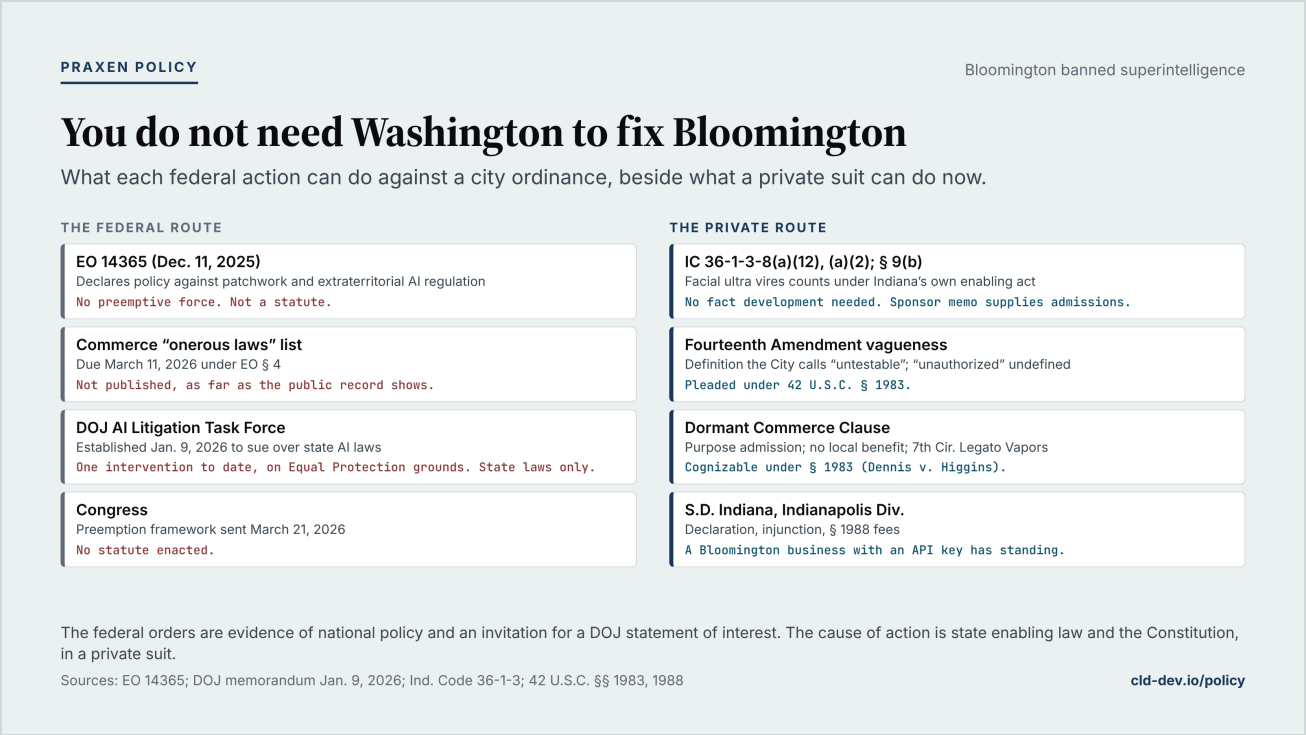


Figure 5. What each federal action can and cannot do against a municipal ordinance, beside what a private suit under state enabling law and the Commerce Clause can do now. Sources: EO 14365; DOJ memorandum of January 9, 2026; IC 36-1-3; 42 U.S.C. § 1983.

What the City will say

The City's best argument is that home rule is broad, doubts are resolved in its favor, and the Indiana Supreme Court upheld a town's groundwater ordinance against a home-rule challenge in *Town of Avon* in 2011.[22] The answer is that section 3 of the Act governs doubt and section 8 governs express denial; there is no doubt to resolve when the statute says "a unit does not have the following." Avon regulated a physical aquifer inside its boundaries. It did not hold an election, design private litigation, or regulate servers in other states.

The City will cite *City of Gary v. Smith & Wesson*, in which the Indiana Supreme Court let a city's public-nuisance suit against gun manufacturers proceed.[23] That was a lawsuit with pleaded facts, not an ordinance declaring a product class a nuisance per se with no local harm alleged. It is also

over: the General Assembly reserved such suits to the State in 2024, and the Court of Appeals ordered the case dismissed last December, calling the city "an agent subject to the control of the State." The Indiana Supreme Court declined to hear it in May.[24]

The City will say the ordinance is interim and yields to the state. An ordinance the city had no power to enact is void from the day it is signed; a sunset clause does not manufacture authority.

The City will say *Ross* ended extraterritoriality doctrine. It did not end discriminatory-purpose analysis or *Pike* balancing, and the memo's "outside commercial tech entities" sentence is a purpose admission that survives *Ross* intact.

Finally, the City will say the precautionary principle justifies acting first on an existential risk. I take the risk seriously enough to have written about it. A city that cannot test for the thing it bans, cannot enforce the ban, and admits both in its own memo has not taken a precaution. It has passed a resolution with a fine attached.

My view

I build AI systems for a living. I have a commercial interest in how this goes, and I say so below. I also think the ordinance is bad law on its own terms, before anyone gets to the policy. A city council that wants to act on AI has real tools: procurement rules, disclosure requirements for city use, data-center siting and utility conditions, which EO 14365 expressly leaves to local government. Bloomington used none of them. It wrote a ban it cannot define, cannot enforce, and cannot lawfully repeal, and it told the public the ban would bind 350 other cities.

The first municipal AI ban to reach a courtroom will decide whether the next 349 get drafted. That is why this one matters, and why the complaint is attached. The mayor can still veto it. If she does not, an Indiana lawyer with a Bloomington client can file.

What is in the package and who it is for

This brief is published with five documents. A research memorandum sets out the questions presented, the facts, and the analysis, with a verification record for every authority. A memorandum of law supports a motion for preliminary injunction in the form a federal court expects. A verified complaint for the Southern District of Indiana carries placeholders for the plaintiffs. A demand letter to the Mayor and Corporation Counsel asks for a veto or a non-enforcement commitment within ten days. A public-records request under IC 5-14-3 asks the City for the Department of Law review, if one exists, and for the template the ordinance was drafted from. Anyone can send that last one; no lawyer is needed.

If you run a business inside Bloomington that calls a frontier-model API, you are a regulated party under section 14.25.030 whether or not the City can tell. If you build AI anywhere and have a customer in Bloomington, so are you. Take the package to Indiana counsel. Praxen is not a law

firm and does not represent anyone in this matter.

NOTES

1. Ordinance 2026-29, Common Council of the City of Bloomington, as introduced October 14, 2026 and adopted November 4, 2026. Mirror of the October 14 packet pages: https://bloomdocs.org/wp-content/uploads/simple-file-list/2026-10-14-Bloomington-city-council-Ord-2026-29-Artificial-Intelligence-Rollo.pdf. The adopted text, identical, is at pages 156–166 of the November 4 packet, https://bloomington.in.gov/onboard/meetingFiles/17709/download. Quotations are verbatim, including "99.9999% percent." ↩
2. Zoe Reed, "Bloomington city council bars superintelligent AI, dismisses removal of commission member," Indiana Daily Student, November 6, 2026, https://www.idsnews.com/article/2026/11/bloomington-city-council-ai-commission-member-removal-udo. Vote reported as unanimous with Zulich and Rosenbarger absent; the sponsor's press release gives 7–0. ↩
3. Indiana Code, Title 36, Article 1, Chapter 3 (2026), https://iga.in.gov/ic/2026/Title_36.html. Sections 3, 4, 5, 8(a)(2), 8(a)(7), 8(a)(12), and 9(b) were read in the 2026 code. Section 8(a)(12) also voids pre-2023 local election ordinances absent express statutory authority. ↩
4. Council Staff Memorandum, "Ordinance 2026-29 On the Existential Risk of Artificial Intelligence," from Council Member Rollo and the Bloomington Council's Office, October 14, 2026, reproduced without change in the November 4 packet (note 1). The "Section 2.90.040" reference appears on page 2 of the memorandum in both packets. ↩
5. Executive Order 14365, "Ensuring a National Policy Framework for Artificial Intelligence," December 11, 2025, 90 Fed. Reg. 58499. Text as reproduced in the notes to 15 U.S.C. § 9401, https://uscode.house.gov/view.xhtml?req=(title:15%20section:9401%20edition:prelim), and at https://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy/. The quoted language is from sections 1, 3, and 4. Section 8 carves out "child safety protections," "AI compute and data center infrastructure," and "State government procurement and use of AI" from any proposed preemption legislation. ↩
6. Office of the Attorney General, memorandum, "Artificial Intelligence Litigation Task Force," January 9, 2026, https://www.justice.gov/ag/media/1422986/dl. ↩
7. Dave Askins, "Analysis: Bloomington's proposed superintelligence ban raises questions about authority, enforcement," B Square Bulletin, October 11, 2026, https://bsquarebulletin.com/analysis-bloomingtons-proposed-superintelligence-ban-raises-questions-about-authority-enforcement/. Source for the $2,500 general penalty, the per-day rule, the 2023 withdrawal after Indiana University's objection, and the observation that a future council could repeal by simple majority. ↩
8. Resolution 2026-10, "On the Existential Risk of Artificial Intelligence," adopted June 10, 2026, 9–0, https://www.bloomington.in.gov/onboard/committees/1/legislation/6398. ↩
9. Common Council Regular Session packet, November 4, 2026, https://bloomington.in.gov/onboard/meetingFiles/17709/download. The Ordinance 2026-30 memorandum, from Mayor Thomson, Corporation Counsel Margie Rice, and Controller Geoff McKim, follows immediately after the 2026-29 material. I read the full packet; no Department of Law material on 2026-29 appears in it. ↩
10. Indiana Legislative Council, Artificial Intelligence Task Force, Final Report (2024), https://iga.in.gov/publications/committee_report/ai-task-force-final-report-2024.pdf; directive at IC 2-5-53.7-8. ↩
11. IC 4-13.1-5-3, https://law.justia.com/codes/indiana/title-4/article-13-1/chapter-5/section-4-13-1-5-3/. ↩

12. Indiana Management Performance Hub, "State of Indiana AI Policy and Guidance," https://www.in.gov/mph/AI/. The Consumer Data Protection Act is IC 24-15, effective January 1, 2026, per Orrick's Indiana tracker, https://ai-law-center.orrick.com/indiana/, a secondary source. ↩
13. *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972); *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983); *FCC v. Fox Television Stations*, 567 U.S. 239, 253 (2012). The "policemen, judges, and juries" language is *Grayned*'s. ↩
14. *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660 (7th Cir. 2010); *Legato Vapors, LLC v. Cook*, 847 F.3d 825, 827 (7th Cir. 2017), https://www.courtlistener.com/opinion/4343620/legato-vapors-llc-v-david-cook/. The quoted sentence is from the opinion's second paragraph. ↩
15. *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023). The controlling portions of the opinion reject an "almost per se" extraterritoriality rule; the anti-discrimination principle and *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), balancing are untouched. ↩
16. Executive Order 14179, "Removing Barriers to American Leadership in Artificial Intelligence," signed January 23, 2025, 90 Fed. Reg. 8741, https://www.federalregister.gov/d/2025-02172. ↩
17. Executive Orders 14318 (data-center permitting, 90 Fed. Reg. 35385), 14319 ("Preventing Woke AI in the Federal Government," 90 Fed. Reg. 35389), and 14320 (AI exports, 90 Fed. Reg. 35393), all signed July 23, 2025, https://www.federalregister.gov/documents/2025/07/28. ↩
18. The section 4 evaluation was due March 11, 2026. Legal 500 reported it unpublished on March 24 (https://www.legal500.com/intelligence/united-states/technology/the-curious-case-of-executive-order-14365%E2%80%99s-impact-on-ai-regulation); an AI-governance tracker corrected its own entry on September 30 to record non-publication as of April (https://aigovernance.com/policy/commerce-department-evaluation-state-ai-laws-2026). Two secondary sources say it was published on the deadline. I searched commerce.gov and ntia.gov on November 7 and found no document. If one exists, I will correct this note. ↩
19. *X. AI LLC v. Weiser*, No. 1:26-cv-01515 (D. Colo., filed April 9, 2026), https://www.courtlistener.com/docket/73171074/; United States' Complaint in Intervention, April 24, 2026, https://www.justice.gov/crt/media/1437846/dl; Ashley Gold, "Justice Department joins xAI challenge to Colorado AI law," Axios, April 24, 2026, https://www.axios.com/2026/04/24/justice-department-joins-xai-challenge-colorado-ai-law. The DOJ complaint pleads Equal Protection only; xAI's complaint carries the Commerce Clause count. ↩
20. White & Case, "State AI laws under federal scrutiny," January 15, 2026, https://www.whitecase.com/insight-alert/state-ai-laws-under-federal-scrutiny-key-takeaways-executive-order-establishing ("Since Congress has not yet passed a federal AI law that preempts state AI laws …"); on the March 21 legislative framework, see the Oregon district-court conference paper "Your AI Is on Display," https://ord.uscourts.gov/2026%20District%20Conference/Effective%20AI%20Panel%20-%20Your%20AI%20is%20on%20Display.pdf, at Part II.C, a secondary source. ↩
21. Chris Dukes, "What four state AI laws actually reach," Praxen Policy, September 17, 2026, https://cld-dev.io/policy/what-four-state-ai-laws-reach/. ↩
22. *Town of Avon v. West Central Conservancy District*, 957 N.E.2d 598 (Ind. 2011), https://www.courtlistener.com/opinion/852108/town-of-avon-v-west-central-conservancy-district/. For the Home Rule Act limits as enforced, *Indiana Department of Natural Resources v. Newton County*, 802 N.E.2d 430, 432–33 (Ind. 2004), https://www.courtlistener.com/opinion/852950/indiana-department-of-natural-resources-v-newton-county/. ↩
23. *City of Gary ex rel. King v. Smith & Wesson Corp.*, 801 N.E.2d 1222 (Ind. 2003). ↩
24. *Smith & Wesson Corp. v. City of Gary*, No. 24A-CT-2381, ¶¶ 43, 48 (Ind. Ct. App. Dec. 29, 2025) (applying IC 34-12-3.5-3, P.L. 170-2024), *trans. denied* (Ind. May 21, 2026). Every case cited in this brief and in the counsel documents was run through a citator pass on November 7, 2026; the results are in Appendix A of the research memorandum. ↩

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DISCLOSURES

Interests

Praxen Development & Engineering, LLC builds and sells AI systems, including agentic systems of the kind Chapter 14.25 may reach, so it has a commercial interest in how AI is regulated. Read this piece with that in mind.

AI assistance

AI assisted research, drafting and editing. Every statute, executive order and opinion cited was opened in primary form during drafting; the verification record is Appendix A of the research memorandum published with this brief. Chris Dukes reviews every sentence before a piece is published.

Standards

Every factual claim links to its source, and errors are corrected in public with a date. See the editorial standards at cld-dev.io/policy/about/ and the corrections log at cld-dev.io/policy/corrections/.

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Chris Dukes. “Bloomington banned superintelligence. Its own statute says it couldn't.” Praxen Policy, 7 November 2026. https://cld-dev.io/policy/bloomington-banned-superintelligence/
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02

DOCUMENT 2 OF 6

Research Memorandum

Questions presented, brief answers, statement of facts, discussion, and conclusion, with a verification record and subsequent-history (citator) check for every authority cited (Appendix A). Addressed to Indiana counsel evaluating a challenge to Ordinance 2026-29.

21 pages · research work product · not legal advice

MEMORANDUM

TO:	Indiana counsel evaluating a challenge to City of Bloomington Ordinance 2026-29
FROM:	Chris Dukes, Praxen Policy
DATE:	November 7, 2026
RE:	Validity of Bloomington Municipal Code Chapter 14.25 (“Prohibition of Superintelligence”) under the Indiana Home Rule Act, the Indiana Constitution, and the United States Constitution

This memorandum is research work product prepared for review by Indiana-licensed counsel. It is not legal advice. Every authority cited was checked against its primary text on the date above; Appendix A records what was checked and against what.

I. QUESTIONS PRESENTED

1. Whether a municipal ordinance that conditions its own repeal on an affirmative vote of more than ninety-five percent of the city’s registered voters exceeds the City’s power under IC 36-1-3-8(a)(12), which denies a unit “[t]he power to adopt an ordinance … concerning an election … or otherwise conduct an election, except as expressly granted by statute.”

2. Whether an ordinance that declares a class of software a “public safety hazard nuisance,” confers “any and all remedies available at law to recover damages and fees without limitation” on persons harmed by a violation, and is described by its sponsor as a device to “help plaintiffs meet their burden of proof” in private suits, exceeds the City’s power under IC 36-1-3-8(a)(2), which denies a unit “[t]he power to prescribe the law governing civil actions between private persons.”

3. Whether an ordinance that regulates software “regardless of the physical location of the server infrastructure hosting the system” exceeds the territorial jurisdiction fixed by IC 36-1-3-9(b).

4. Whether the ordinance regulates “conduct that is regulated by a state agency” within the meaning of IC 36-1-3-8(a)(7), or prescribes a penalty for conduct that is a crime under state statute within the meaning of IC 36-1-3-8(a)(8).

5. Whether the ordinance is void for vagueness under the Fourteenth Amendment where its operative definition turns on whether a system “greatly exceeds the cognitive performance of humans in virtually all domains of interest,” the sponsor’s memorandum states the systems are “untestable,” and the prohibition reaches any “unauthorized digital agent” without defining “unauthorized.”

6. Whether the ordinance violates the dormant Commerce Clause where it regulates internet-delivered services from out-of-state servers and its sponsor describes its purpose as preventing "outside commercial tech entities" from deploying in Bloomington and creating, across hundreds of cities, "a massive regulatory burden" on the companies that build the technology.

7. Whether the ordinance's prohibition on "distribut[ing]" a class of software "for any purpose" is a content-based restriction on protected expression under the First Amendment and Article 1, Section 9 of the Indiana Constitution.

8. In what forum, by what plaintiff, and on what timeline a challenge should be brought.

II. BRIEF ANSWERS

1. Yes. The provision is an ordinance "concerning an election" and an attempt to "otherwise conduct an election." No statute grants the City that power. The sponsor's memorandum confirms the provision contemplates a municipal vote. The defect is textual and requires no factual development.

2. Yes. The combination of the nuisance declaration, the remedies clause, and the sponsor's stated purpose is an attempt to prescribe the law governing private civil actions. The sponsor's memorandum supplies the admission.

3. Yes, as to the extraterritorial clause. A municipality's territorial jurisdiction is "[t]he area inside the corporate boundaries," and no statute expressly authorizes regulation of persons or infrastructure outside them. The City will respond that the regulated act is local use; the clause as written reaches more than that.

4. Probably not under § 8(a)(7), and only conditionally under § 8(a)(8). Indiana's statutory and administrative AI regime governs state-agency use, not private deployment. The § 8(a)(7) argument should be pleaded but not led. The § 8(a)(8) argument is available in the alternative because the ordinance itself contemplates "referral to the Monroe County Prosecutor for any potential state-level criminal charges."

5. Yes. A prohibition whose enacting body states it cannot be applied does not give fair notice, and "unauthorized" without an authorizing body is a standardless term. Enforcement is committed to police and city attorneys as a matter of "discretion[]" with no governing criteria.

6. Yes, with the analysis framed for *National Pork Producers Council v. Ross*. The strongest strands are discriminatory purpose (the memorandum's own words) and *Pike* balancing (no demonstrated local benefit against a burden that is, by design, a multi-city patchwork). Extraterritoriality under *Legato Vapors* and *Midwest Title Loans* remains available in the Seventh Circuit as a third strand.

7. Probably, as a secondary count. Code is expression; "distribute" is a speech verb; "for any purpose" reaches research and advocacy. The count is worth pleading for the strict-scrutiny posture and the irreparable-harm presumption it carries, but the Home Rule Act and vagueness counts are cleaner.

8. The Southern District of Indiana, Indianapolis Division, under 42 U.S.C. § 1983 with supplemental jurisdiction over the state-law counts; a Bloomington business that deploys frontier-model systems in production as lead plaintiff and an out-of-state developer with Bloomington users as co-plaintiff; filing within days of the ordinance taking effect, with a motion for preliminary injunction. Before the ordinance takes effect, the cheaper instrument is a demand letter to the Mayor requesting a veto.

III. STATEMENT OF FACTS

A. The Ordinance

Ordinance 2026-29 was introduced at the Bloomington Common Council's regular session of October 14, 2026, and adopted on second reading on November 4, 2026, by a vote of 7–0 with Councilmembers Zulich and Rosenbarger absent.[1] It adds Chapter 14.25 to Title 14 ("Peace and Safety") of the Bloomington Municipal Code. The text adopted on November 4 is identical to the text introduced on October 14; no amendment was offered.[2]

The preamble recites that "the Common Council exercises its legislative authority under the traditional police powers of the City and Indiana Code § 36-1-3 (The Indiana Home Rule Act) to regulate conditions that constitute a severe public safety hazard nuisance," declares "the unregulated presence of Superintelligence … a public safety hazard nuisance," and separately asserts "authority over its local land-use, zoning configurations, and municipal utilities via the Unified Development Ordinance (UDO) and Indiana Code § 36-1-3." No provision of the UDO is amended or invoked in any operative section.[3]

Section 14.25.020(a) defines "Superintelligence" as "analogous to an Artificial General Intelligence ('AGI') with capabilities of Agency (A), Generality (G) and Intelligence (I)," then describes "any such autonomous Agentic (A) system capable of self-modifying its core algorithms, executing code in environments outside its initial sandbox, or operating without continuous human oversight while Generally (G) performing any complex goal-oriented task that

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[1] City of Bloomington, Common Council Regular Session Packet, Nov. 4, 2026, https://bloomington.in.gov/onboard/meetingFiles/17709/download (Ordinance 2026-29 and memorandum at pp. 156–166; Ordinance 2026-30 memorandum co-signed by Corporation Counsel Margie Rice at p. 166 et seq.); Zoe Reed, *Bloomington city council bars superintelligent AI, dismisses removal of commission member*, Indiana Daily Student (Nov. 6, 2026), https://www.idsnews.com/article/2026/11/bloomington-city-council-ai-commission-member-removal-udo (7–0 vote; Zulich and Rosenbarger absent).

[2] City of Bloomington, Common Council Regular Session Packet, Nov. 4, 2026, https://bloomington.in.gov/onboard/meetingFiles/17709/download (Ordinance 2026-29 and memorandum at pp. 156–166; Ordinance 2026-30 memorandum co-signed by Corporation Counsel Margie Rice at p. 166 et seq.); Zoe Reed, *Bloomington city council bars superintelligent AI, dismisses removal of commission member*, Indiana Daily Student (Nov. 6, 2026), https://www.idsnews.com/article/2026/11/bloomington-city-council-ai-commission-member-removal-udo (7–0 vote; Zulich and Rosenbarger absent).

[3] Ordinance 2026-29, Common Council of the City of Bloomington, as introduced Oct. 14, 2026 and adopted Nov. 4, 2026, https://bloomdocs.org/wp-content/uploads/simple-file-list/2026-10-14-Bloomington-city-council-Ord-2026-29-Artificial-Intelligence-Rollo.pdf.

may affect municipal infrastructure, financial markets, or public safety, in combination with an extreme level of super-human Intelligence (I),” and closes with the definition “Any intellect that greatly exceeds the cognitive performance of humans in virtually all domains of interest.”[4]

Section 14.25.020(b) defines “Deployment within the City” as local activation or use “through a locally accessed user interface, browser, application programming interface (API), or connected local hardware within the geographic boundaries of the City of Bloomington, resulting in local operational impact.” Section 14.25.020(c) defines “Deployer” as any entity that places such a system into operation “which allows data to enter Bloomington City Limits.” The term “Deployer” appears in no operative section.[5]

Section 14.25.030 provides: “No person or corporation shall distribute or permit to be distributed nor deployed into the premises of any citizen or business in our City, any Superintelligence for any purpose. Deployment, for the purposes of this ordinance, shall include the remote execution, activation, or utilization of any unauthorized digital agent through a locally accessed interface, browser, API, or connected hardware within the City of Bloomington, regardless of the physical location of the server infrastructure hosting the system.”[6] The phrase “unauthorized digital agent” appears nowhere else in the ordinance, and the ordinance establishes no authorization process.

Section 14.25.040 provides that the prohibition “shall remain in effect and shall not be lifted unless” the Council enacts an ordinance finding both (a) “broad scientific consensus” that development “shall be done safely and controllably using a probabilistic risk assessment … similar to the civil engineering standard for nuclear power plants requiring a safety level of 99.9999% percent certainty,” and (b) “voter approval for the development of Superintelligence by the electorate of the City of Bloomington, with an affirmative vote of more than 95% of registered voters.”[7]

Section 14.25.050 preserves private rights of action and provides that “[a]ny person, business, or entity who suffers physical, economic, or other harm resulting from a violation of this chapter shall have any and all remedies available at law to recover damages and fees without limitation.”[8]

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[4] Ordinance 2026-29, Common Council of the City of Bloomington, as introduced Oct. 14, 2026 and adopted Nov. 4, 2026, https://bloomdocs.org/wp-content/uploads/simple-file-list/2026-10-14-Bloomington-city-council-Ord-2026-29-Artificial-Intelligence-Rollo.pdf.

[5] Ordinance 2026-29, Common Council of the City of Bloomington, as introduced Oct. 14, 2026 and adopted Nov. 4, 2026, https://bloomdocs.org/wp-content/uploads/simple-file-list/2026-10-14-Bloomington-city-council-Ord-2026-29-Artificial-Intelligence-Rollo.pdf.

[6] Ordinance 2026-29, Common Council of the City of Bloomington, as introduced Oct. 14, 2026 and adopted Nov. 4, 2026, https://bloomdocs.org/wp-content/uploads/simple-file-list/2026-10-14-Bloomington-city-council-Ord-2026-29-Artificial-Intelligence-Rollo.pdf.

[7] Ordinance 2026-29, Common Council of the City of Bloomington, as introduced Oct. 14, 2026 and adopted Nov. 4, 2026, https://bloomdocs.org/wp-content/uploads/simple-file-list/2026-10-14-Bloomington-city-council-Ord-2026-29-Artificial-Intelligence-Rollo.pdf.

[8] Ordinance 2026-29, Common Council of the City of Bloomington, as introduced Oct. 14, 2026 and adopted Nov. 4, 2026, https://bloomdocs.org/wp-content/uploads/simple-file-list/2026-10-14-Bloomington-city-council-Ord-2026-29-Artificial-Intelligence-Rollo.pdf.

Section 14.25.060(a) authorizes enforcement by the Department of Law and the Bloomington Police Department, describes the power as "discretionary," and permits "civil penalties, injunctive relief, and, where appropriate, referral to the Monroe County Prosecutor for any potential state-level criminal charges." Section 14.25.060(b) applies the general penalty provision, BMC § 1.01.130, under which violations are punishable by fines of up to $2,500 and each day of a continuing violation is a separate violation.[9][10]

Section 14.25.070(a) provides for automatic expiration ninety-one days after the effective date of any state law "establish[ing] a comprehensive framework for Provably Safe Superintelligence." Section 3 provides that the ordinance takes effect upon passage, mayoral approval, and any required publication.[11]

B. Legislative history

In 2023 the same sponsor, Councilmember Dave Rollo, introduced a non-binding resolution calling for an AI moratorium; it was withdrawn after Indiana University raised concerns.[12] On June 10, 2026, the Council adopted Resolution 2026-10, "On the Existential Risk of Artificial Intelligence," by a vote of 9–0; it called for a moratorium on artificial general intelligence development and cited no legal authority.[13]

The ordinance was accompanied by a five-page Council Staff Memorandum dated October 14, 2026, from "Council Member Rollo; Bloomington Council's Office."[14] The memorandum was reproduced without change in the November 4 packet. It bears no signature, co-signature, or review notation from the Department of Law or Corporation Counsel. By contrast, Ordinance 2026-30, considered at the same session, was accompanied by a memorandum co-signed by Corporation Counsel Margie Rice.[15]

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[9] Ordinance 2026-29, Common Council of the City of Bloomington, as introduced Oct. 14, 2026 and adopted Nov. 4, 2026, https://bloomdocs.org/wp-content/uploads/simple-file-list/2026-10-14-Bloomington-city-council-Ord-2026-29-Artificial-Intelligence-Rollo.pdf.

[10] Dave Askins, *Analysis: Bloomington's proposed superintelligence ban raises questions about authority, enforcement*, B Square Bulletin (Oct. 11, 2026), https://bsquarebulletin.com/analysis-bloomingtons-proposed-superintelligence-ban-raises-questions-about-authority-enforcement/ (penalty provision; 2023 resolution history).

[11] Ordinance 2026-29, Common Council of the City of Bloomington, as introduced Oct. 14, 2026 and adopted Nov. 4, 2026, https://bloomdocs.org/wp-content/uploads/simple-file-list/2026-10-14-Bloomington-city-council-Ord-2026-29-Artificial-Intelligence-Rollo.pdf.

[12] Dave Askins, *Analysis: Bloomington's proposed superintelligence ban raises questions about authority, enforcement*, B Square Bulletin (Oct. 11, 2026), https://bsquarebulletin.com/analysis-bloomingtons-proposed-superintelligence-ban-raises-questions-about-authority-enforcement/ (penalty provision; 2023 resolution history).

[13] Resolution 2026-10, "On the Existential Risk of Artificial Intelligence," adopted June 10, 2026 (9–0), https://www.bloomington.in.gov/onboard/committees/1/legislation/6398.

[14] Council Staff Memorandum, "Ordinance 2026-29 On the Existential Risk of Artificial Intelligence," from Council Member Rollo and the Bloomington Council's Office, Oct. 14, 2026, reproduced in the Nov. 4, 2026 packet, supra note 1.

C. The sponsor's memorandum

The memorandum makes the following statements relevant to the analysis below:[16]

- "Under Indiana Code § 36-1-3 (The Home Rule Act), the Common Council has sovereign authority to regulate public safety hazard nuisances within its jurisdiction." This is the only statutory citation in the memorandum.
- "Section 2.90.040 of Ordinance 2026-29 gives the city complete enforcement discretion." No such section exists in the ordinance.
- "These models are untestable because the developers do not understand how their neural networks work. … In short, they are becoming untestable."
- "The ordinance prevents outside commercial tech entities from making high-risk deployments in Bloomington without local permission."
- "Absent state or federal government action, the ultimate authority to lift the ban is left completely to the local electorate via a 95% voter approval threshold."
- Under the heading "Creating Liability for Immensely Unsafe Products": "For people who would choose a private right of action to seek injunctive relief by a court order to stop the race to ASI, this ordinance and others like it can help plaintiffs meet their burden of proof. … [T]he liability costs could be profound enough to prevent any insurers from providing product liability insurance."
- "Over 100 million people live in U.S. cities of Bloomington's size or greater. If those (approximately 350) cities passed similar ordinances in the coming weeks or months, this would create a massive regulatory burden for companies creating ASI. The SAFE AI Forever Institute and other non-profits are poised to encourage other municipalities to adopt their own prohibitions on ASI."
- "Neither the state of Indiana nor the federal government have enacted safety parameters for ASI."
- Fiscal impact: "The City does not anticipate that this Ordinance will have any impact on the City's finances."

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[15] City of Bloomington, Common Council Regular Session Packet, Nov. 4, 2026, https://bloomington.in.gov/onboard/meetingFiles/17709/download (Ordinance 2026-29 and memorandum at pp. 156–166; Ordinance 2026-30 memorandum co-signed by Corporation Counsel Margie Rice at p. 166 et seq.); Zoe Reed, *Bloomington city council bars superintelligent AI, dismisses removal of commission member*, Indiana Daily Student (Nov. 6, 2026), https://www.idsnews.com/article/2026/11/bloomington-city-council-ai-commission-member-removal-udo (7–0 vote; Zulich and Rosenbarger absent).

[16] Council Staff Memorandum, "Ordinance 2026-29 On the Existential Risk of Artificial Intelligence," from Council Member Rollo and the Bloomington Council's Office, Oct. 14, 2026, reproduced in the Nov. 4, 2026 packet, supra note 1.

D. State and federal regulatory context

Indiana has established a legislative Artificial Intelligence Task Force, IC 2-5-53.7, which issued a final report in 2024;[17] has directed the Office of Technology to inventory and assess artificial-intelligence systems, IC 4-13.1-5;[18] and has adopted, through the Office of the Chief Data Officer, a State of Indiana Artificial Intelligence Policy and a State Agency AI Systems Standard incorporating the NIST AI Risk Management Framework, with an AI intake process administered by the Office of Technology.[19] The Indiana Consumer Data Protection Act, IC 24-15, effective January 1, 2026, regulates profiling and solely-automated decisions and is enforced by the Attorney General.[20]

At the federal level, Executive Order 14179 (Jan. 23, 2025) revoked the prior administration's AI order and directed removal of regulatory barriers.[21] Executive Orders 14318, 14319, and 14320 (July 23, 2025) addressed data-center permitting, federal procurement of AI, and AI exports.[22] Executive Order 14365 (Dec. 11, 2025) declared a federal policy of "a minimally burdensome national policy framework for AI," stated that "State laws sometimes impermissibly regulate beyond State borders, impinging on interstate commerce," directed the Attorney General to establish an AI Litigation Task Force to challenge state AI laws "on grounds that such laws unconstitutionally regulate interstate commerce, are preempted by existing Federal regulations, or are otherwise unlawful," and directed the Secretary of Commerce to publish within ninety days an evaluation of state AI laws.[23] The Attorney General established the Task Force by

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[17] Indiana Legislative Council, Artificial Intelligence Task Force, Final Report (2024), https://iga.in.gov/publications/committee_report/ai-task-force-final-report-2024.pdf (statutory directive at IC 2-5-53.7-8).

[18] IC 4-13.1-5-3, https://law.justia.com/codes/indiana/title-4/article-13-1/chapter-5/section-4-13-1-5-3/.

[19] Indiana Management Performance Hub, *State of Indiana AI Policy and Guidance*, https://www.in.gov/mph/AI/ (AI Policy v1.1, Dec. 2024; AI Systems Standard; unified AI intake via the Office of Technology as of Aug. 2026).

[20] Orrick, *US AI Law Tracker: Indiana*, https://ai-law-center.orrick.com/indiana/ (Indiana Consumer Data Protection Act, IC 24-15, effective Jan. 1, 2026; SB 256 and HB 1271 (2026)). Secondary source; confirm codification against iga.in.gov.

[21] Exec. Order No. 14179, *Removing Barriers to American Leadership in Artificial Intelligence*, 90 Fed. Reg. 8741 (Jan. 31, 2025) (signed Jan. 23, 2025), https://www.federalregister.gov/d/2025-02172.

[22] Exec. Order No. 14318, *Accelerating Federal Permitting of Data Center Infrastructure*, 90 Fed. Reg. 35385; Exec. Order No. 14319, *Preventing Woke AI in the Federal Government*, 90 Fed. Reg. 35389; Exec. Order No. 14320, *Promoting the Export of the American AI Technology Stack*, 90 Fed. Reg. 35393 (all July 28, 2025; signed July 23, 2025), https://www.federalregister.gov/documents/2025/07/28.

[23] Exec. Order No. 14365, *Ensuring a National Policy Framework for Artificial Intelligence*, 90 Fed. Reg. 58499 (Dec. 11, 2025), §§ 1–4, reproduced at https://uscode.house.gov/view.xhtml?req=(title:15%20section:9401%20edition:prelim) and https://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy/.

memorandum dated January 9, 2026.[24] The Commerce evaluation was due March 11, 2026; as of this writing the public record does not show that it was published.[25] The Task Force's only litigation to date is its April 24, 2026 intervention in *X. AI LLC v. Weiser*, No. 1:26-cv-01515 (D. Colo.), a challenge to Colorado's SB 24-205, in which enforcement was stayed by agreement on April 27, 2026.[26]

None of these executive actions preempts state or local law of its own force. An executive order is not a statute, and preemption under the Supremacy Clause requires an act of Congress.[27] Their relevance here is evidentiary: they establish a declared national policy against patchwork regulation and extraterritorial state and local AI regulation, which bears on the *Pike* balance and on whether the United States might file a statement of interest.

IV. DISCUSSION

A. The Home Rule Act framework

The Home Rule Act abrogates the rule that doubts about a unit's powers are resolved against the unit, IC 36-1-3-3, and grants units "all other powers necessary or desirable in the conduct of [their] affairs, even though not granted by statute," IC 36-1-3-4(b)(2). But a unit may exercise a power only "to the extent that the power … is not expressly denied by the Indiana Constitution or by statute," IC 36-1-3-5(a)(1), and section 8(a) enumerates sixteen powers that "a unit does not have."[28] The rule of liberal construction in section 3 governs doubt; it has no application where the General Assembly has stated in terms that the power does not exist.

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[24] Office of the Attorney General, Memorandum, *Artificial Intelligence Litigation Task Force* (Jan. 9, 2026), https://www.justice.gov/ag/media/1422986/dl.

[25] EO 14365 § 4 required publication within ninety days, i.e., by March 11, 2026. Trackers reported the evaluation unpublished as of March 24, June 3, and October 2026. Matthew Hays, *The Curious Case of Executive Order 14365's Impact on AI Regulation*, Legal 500 (Mar. 24, 2026), https://www.legal500.com/intelligence/united-states/technology/the-curious-case-of-executive-order-14365%E2%80%99s-impact-on-ai-regulation; AI Governance, *Commerce Department Evaluation of State AI Laws* (corrected Sept. 30, 2026), https://aigovernance.com/policy/commerce-department-evaluation-state-ai-laws-2026. Two secondary sources assert it was published on the deadline; no primary document could be located on commerce.gov or ntia.gov on Nov. 7, 2026.

[26] *X. AI LLC v. Weiser*, No. 1:26-cv-01515 (D. Colo. filed Apr. 9, 2026), https://www.courtlistener.com/docket/73171074/; United States' Complaint in Intervention (Apr. 24, 2026), https://www.justice.gov/crt/media/1437846/dl; Ashley Gold, *Justice Department joins xAI challenge to Colorado AI law*, Axios (Apr. 24, 2026), https://www.axios.com/2026/04/24/justice-department-joins-xai-challenge-colorado-ai-law.

[27] See Norton Rose Fulbright, *The federal government weighs in on artificial intelligence governance* (Dec. 2025), https://www.nortonrosefulbright.com/en/knowledge/publications/41cf855b/the-federal-government-weighs-in-on-artificial-intelligence-governance ("The AI EO does not create national AI governance regulations or preempt any state laws by itself.").

[28] Ind. Code tit. 36, art. 1, ch. 3 (2026), https://iga.in.gov/ic/2026/Title_36.html; see also IC 36-1-3-8, https://law.justia.com/codes/indiana/title-36/article-1/chapter-3/section-36-1-3-8/.

The Indiana Supreme Court applies section 8 as written. In *Indiana Department of Natural Resources v. Newton County*, 802 N.E.2d 430 (Ind. 2004), the Court held county ordinances "invalid exercises of county authority" where they imposed duties on a state agency, restating the test from *Hobble ex rel. Hobble v. Basham*, 575 N.E.2d 693, 697 (Ind. Ct. App. 1991): local units may "impose additional, reasonable regulations, and … supplement burdens imposed by non-penal state law, provided the additional burdens are logically consistent with the statutory purpose," but an ordinance that "seeks to prohibit that which a statute expressly permits," or by which "the state law is frustrated," is invalid.[29] The City will cite *Town of Avon v. West Central Conservancy District*, 957 N.E.2d 598 (Ind. 2011), which upheld a town's groundwater ordinance against a home-rule challenge; that case involved a physical resource inside the town's boundaries, no election, no private-litigation design, and no extraterritorial clause.[30]

B. IC 36-1-3-8(a)(12): the ordinance conditions its repeal on an election the City cannot hold

Section 8(a)(12) denies a unit "[t]he power to adopt an ordinance, a resolution, or an order concerning an election described by IC 3-5-1-2, or otherwise conduct an election, except as expressly granted by statute," and voids pre-2023 ordinances of that kind absent express statutory authority.[31] Section 14.25.040(b) makes "voter approval … by the electorate of the City of Bloomington, with an affirmative vote of more than 95% of registered voters" a precondition to repeal. The sponsor's memorandum describes this as leaving "the ultimate authority to lift the ban … completely to the local electorate via a 95% voter approval threshold."[32]

No statute grants Bloomington the power to conduct a municipal referendum on artificial intelligence. The provision is therefore an ordinance "concerning an election" that the City has no power to adopt. The argument is facial and textual.

Two consequences follow. First, section 14.25.040(b) is void. Second, because section 14.25.040 states that the prohibition "shall not be lifted unless" both conditions are met, and because the sponsor presented the voter-approval condition as integral, the provision is not severable in the ordinary sense: striking it leaves a prohibition the Council intended to be lifted only with voter approval, now liftable only by the "99.9999%" finding, which (see Part IV.F) is itself unintelligible. The better reading is that the Council would not have enacted the prohibition without the repeal mechanism it designed, and the chapter falls with it. Plead non-severability and, in the alternative, the independent invalidity of the remaining sections.

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[29] *Ind. Dep't of Nat. Res. v. Newton County*, 802 N.E.2d 430, 432–33 (Ind. 2004), https://www.courtlistener.com/opinion/852950/indiana-department-of-natural-resources-v-newton-county/.

[30] *Town of Avon v. W. Cent. Conservancy Dist.*, 957 N.E.2d 598 (Ind. 2011), https://www.courtlistener.com/opinion/852108/town-of-avon-v-west-central-conservancy-district/.

[31] Ind. Code tit. 36, art. 1, ch. 3 (2026), https://iga.in.gov/ic/2026/Title_36.html; see also IC 36-1-3-8, https://law.justia.com/codes/indiana/title-36/article-1/chapter-3/section-36-1-3-8/.

[32] Council Staff Memorandum, "Ordinance 2026-29 On the Existential Risk of Artificial Intelligence," from Council Member Rollo and the Bloomington Council's Office, Oct. 14, 2026, reproduced in the Nov. 4, 2026 packet, supra note 1.

The City's likely response, that section 14.25.040(b) merely sets a condition the Council may or may not ever satisfy and does not itself "conduct" an election, does not meet the statutory text. Section 8(a)(12) reaches ordinances "concerning" an election, not only ordinances that administer one.

C. IC 36-1-3-8(a)(2): the ordinance prescribes the law governing private civil actions

Section 8(a)(2) denies a unit "[t]he power to prescribe the law governing civil actions between private persons."[33] Three features of the ordinance, read with the sponsor's memorandum, bring it within that denial.

First, the preamble "declare[s]" the unregulated presence of the defined technology "a public safety hazard nuisance." A legislative nuisance-per-se declaration is a rule of decision in private nuisance litigation; it relieves a plaintiff of proving unreasonableness.

Second, section 14.25.050 provides that any person who "suffers physical, economic, or other harm resulting from a violation of this chapter shall have any and all remedies available at law to recover damages and fees without limitation." Whatever the City's intent, the sentence reads as a conferral of remedies, including fee-shifting, on private litigants.

Third, the sponsor's memorandum states the purpose: "this ordinance and others like it can help plaintiffs meet their burden of proof," expose developers "to lawsuits reflecting imminent harm to people and property," and impose "liability costs … profound enough to prevent any insurers from providing product liability insurance."[34] That is a description of prescribing the law governing civil actions between private persons.

The City will argue that section 14.25.050 is a savings clause and creates no new cause of action. The response is that section 8(a)(2) is not limited to the creation of causes of action; it reaches any attempt to "prescribe the law governing" private suits, and a nuisance-per-se declaration enacted for the stated purpose of shifting burdens of proof is such an attempt. *City of Gary ex rel. King v. Smith & Wesson Corp.*, 801 N.E.2d 1222 (Ind. 2003), which the City may cite, involved a common-law public-nuisance suit by the city with pleaded facts; it did not involve a legislative declaration that a product class is a nuisance per se.[35] The subsequent history of that litigation cuts against the City on this count: the General Assembly reserved such suits to the State in 2024, the Court of Appeals held the reservation statute validly ended Gary's twenty-six-year-old case, and in doing so it described a city as "an agent subject to the control of the State" with no constitutional protection against the State's reallocation of litigating authority. *Smith & Wesson Corp. v. City of Gary*, No. 24A-CT-2381, slip op. ¶¶ 43, 48 (Ind. Ct. App. Dec. 29, 2025), *trans.*

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[33] Ind. Code tit. 36, art. 1, ch. 3 (2026), https://iga.in.gov/ic/2026/Title_36.html; see also IC 36-1-3-8, https://law.justia.com/codes/indiana/title-36/article-1/chapter-3/section-36-1-3-8/.

[34] Council Staff Memorandum, "Ordinance 2026-29 On the Existential Risk of Artificial Intelligence," from Council Member Rollo and the Bloomington Council's Office, Oct. 14, 2026, reproduced in the Nov. 4, 2026 packet, supra note 1.

[35] *City of Gary ex rel. King v. Smith & Wesson Corp.*, 801 N.E.2d 1222 (Ind. 2003).

denied (Ind. May 21, 2026).[36] A political subdivision that cannot keep its own lawsuit alive against the State's wishes cannot legislate the terms of other people's.

D. IC 36-1-3-9(b): the extraterritorial clause

"The area inside the corporate boundaries of a municipality comprises its territorial jurisdiction, except to the extent that a statute expressly authorizes the municipality to exercise a power in areas outside its corporate boundaries." IC 36-1-3-9(b).[37] Section 14.25.030 regulates distribution and deployment "regardless of the physical location of the server infrastructure hosting the system," and section 14.25.020(c) reaches any developer whose system "allows data to enter Bloomington City Limits." No statute expressly authorizes the City to regulate persons, servers, or transactions outside its boundaries.

The City's best response is that the regulated act, "local activation, execution, or utilization," occurs inside the City. That reading would save the "Deployment within the City" definition in section 14.25.020(b) but not the "distribute or permit to be distributed" prohibition in section 14.25.030, which is directed at the distributor wherever located. Plead the clause as void to the extent it reaches persons and conduct outside the corporate boundaries, which is the same as-applied posture the Seventh Circuit adopted in *Legato Vapors*.

E. IC 36-1-3-8(a)(7) and (a)(8)

Section 8(a)(7) denies the power "to regulate conduct that is regulated by a state agency, except as expressly granted by statute."[38] The sponsor's memorandum asserts that "[n]either the state of Indiana nor the federal government have enacted safety parameters for ASI."[39] That is inaccurate as a description of Indiana's regime (Part III.D), but the regime governs state-agency acquisition and use of AI, and the Consumer Data Protection Act governs profiling, not deployment as such. A court is likely to find that private deployment of general-purpose AI is not "conduct that is regulated by a state agency" in the sense the statute uses. The count should be pleaded, with the *Newton County* "frustration" framing, but not led.

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[36] *Smith & Wesson Corp. v. City of Gary*, No. 24A-CT-2381 (Ind. Ct. App. Dec. 29, 2025), https://www.courtlistener.com/opinion/11232581/; *trans. denied* (Ind. May 21, 2026), reported in Tom Davies, *Gary's 27-year lawsuit against gun industry dies with Indiana Supreme Court decision*, Indiana Capital Chronicle (May 22, 2026), https://indianacapitalchronicle.com/2026/05/22/garys-27-year-lawsuit-against-gun-industry-dies-with-indiana-supreme-court-decision/. The Reservation Statute is IC 34-12-3.5-3 (P.L. 170-2024).

[37] Ind. Code tit. 36, art. 1, ch. 3 (2026), https://iga.in.gov/ic/2026/Title_36.html; see also IC 36-1-3-8, https://law.justia.com/codes/indiana/title-36/article-1/chapter-3/section-36-1-3-8/.

[38] Ind. Code tit. 36, art. 1, ch. 3 (2026), https://iga.in.gov/ic/2026/Title_36.html; see also IC 36-1-3-8, https://law.justia.com/codes/indiana/title-36/article-1/chapter-3/section-36-1-3-8/.

[39] Council Staff Memorandum, "Ordinance 2026-29 On the Existential Risk of Artificial Intelligence," from Council Member Rollo and the Bloomington Council's Office, Oct. 14, 2026, reproduced in the Nov. 4, 2026 packet, supra note 1.

Section 8(a)(8) denies the power "to prescribe a penalty for conduct constituting a crime or infraction under statute."[40] The ordinance authorizes "referral to the Monroe County Prosecutor for any potential state-level criminal charges." If the City contends the prohibited conduct is a state crime, the municipal penalty is barred; if it does not, the referral language is surplusage that confirms there is no criminal predicate. Plead in the alternative.

F. Void for vagueness

A law is void for vagueness if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012); *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).[41] The Seventh Circuit applies the same standard to municipal ordinances. *Bell v. Keating*, 697 F.3d 445, 455 (7th Cir. 2012).[42]

Three defects are independently sufficient.

The definition cannot be applied. The operative test is whether a system "greatly exceeds the cognitive performance of humans in virtually all domains of interest." The ordinance supplies no benchmark, test, certifying body, or evidentiary standard, and the sponsor's memorandum states that the systems in question "are untestable."[43] A standard the enacting body says cannot be applied is, by definition, one that gives no fair notice. The definition is also internally inconsistent: read disjunctively, its middle clause ("capable of self-modifying its core algorithms, executing code in environments outside its initial sandbox, *or* operating without continuous human oversight") reaches a large share of commercial software in current use; read conjunctively with the closing clause, it reaches nothing known to exist.

"Unauthorized" has no referent. Section 14.25.030 reaches "any unauthorized digital agent." The ordinance defines no authorization process and names no authorizing official. On its face, every digital agent is "unauthorized."

Enforcement is standardless. The ordinance applies "for any purpose," commits enforcement to the Department of Law and the Police Department "as a matter of discretion," and provides no criteria for when, against whom, or on what evidence that discretion is exercised. That is the delegation of "basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis" that *Grayned* and *Kolender* condemn.

Because the ordinance imposes civil penalties, contemplates criminal referral, and burdens expression, the stricter vagueness standard applies. Severability does not help the City: strike the definition and nothing operative remains.

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[40] Ind. Code tit. 36, art. 1, ch. 3 (2026), https://iga.in.gov/ic/2026/Title_36.html; see also IC 36-1-3-8, https://law.justia.com/codes/indiana/title-36/article-1/chapter-3/section-36-1-3-8/.

[41] *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012); *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983); *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

[42] *Bell v. Keating*, 697 F.3d 445, 455 (7th Cir. 2012).

[43] Council Staff Memorandum, "Ordinance 2026-29 On the Existential Risk of Artificial Intelligence," from Council Member Rollo and the Bloomington Council's Office, Oct. 14, 2026, reproduced in the Nov. 4, 2026 packet, supra note 1.

G. Dormant Commerce Clause

The Commerce Clause, by negative implication, forbids state and local laws that discriminate against interstate commerce, that directly regulate commerce occurring wholly outside the enacting jurisdiction, or whose burdens on interstate commerce are "clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *Healy v. Beer Institute*, 491 U.S. 324, 336 (1989).[44] A claim under the Commerce Clause is cognizable under 42 U.S.C. § 1983. *Dennis v. Higgins*, 498 U.S. 439, 447–51 (1991).[45] Political subdivisions are subject to the same limits as states.

National Pork Producers Council v. Ross, 598 U.S. 356 (2023), must be addressed at the outset. A plurality rejected an "almost per se" rule against laws with extraterritorial effects, but the Court left intact the anti-discrimination principle and *Pike* balancing, and it did not disturb the price-affirmation line of cases on which *Healy* rests.[46] The Seventh Circuit has not revisited *Legato Vapors, LLC v. Cook*, 847 F.3d 825 (7th Cir. 2017), which held that Indiana may not "try to achieve [legitimate health and safety] goals by directly regulating out-of-state factories and commercial transactions," or *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660 (7th Cir. 2010), which invalidated Indiana's attempt to apply its loan law to transactions completed in Illinois.[47] Post-*Ross*, the counts should be framed as follows.

Discriminatory purpose. The sponsor's memorandum states that the ordinance "prevents outside commercial tech entities from making high-risk deployments in Bloomington" and that adoption by "approximately 350" cities "would create a massive regulatory burden for companies creating ASI."[48] A law enacted to burden out-of-state actors as such is subject to the strictest scrutiny and survives only if the jurisdiction shows it has no other means to advance a legitimate local interest. The City has not identified any local harm that has occurred, any mechanism for identifying a covered system, or any alternative it considered.

Pike balancing. The putative local benefit is symbolic; the City's own fiscal statement contemplates no enforcement expenditure, and the ordinance supplies no detection method. The burden is the exposure of every developer in the nation whose software can be reached from a browser in Bloomington to per-day penalties and injunctive proceedings, under a template its sponsor intends to replicate in hundreds of municipalities. The prospect of inconsistent local regimes is precisely the "interact[ion] with the legitimate regulatory regimes of other states" that *Healy* identified as the Commerce Clause's concern.[49]

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[44] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *Healy v. Beer Inst.*, 491 U.S. 324, 336–37 (1989).

[45] *Dennis v. Higgins*, 498 U.S. 439, 447–51 (1991).

[46] *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023).

[47] *Legato Vapors, LLC v. Cook*, 847 F.3d 825, 829–35 (7th Cir. 2017), https://www.courtlistener.com/opinion/4343620/legato-vapors-llc-v-david-cook/; *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660, 665–69 (7th Cir. 2010).

[48] Council Staff Memorandum, "Ordinance 2026-29 On the Existential Risk of Artificial Intelligence," from Council Member Rollo and the Bloomington Council's Office, Oct. 14, 2026, reproduced in the Nov. 4, 2026 packet, supra note 1.

Extraterritoriality. Section 14.25.030 by its terms regulates "regardless of the physical location of the server infrastructure." In the Seventh Circuit, *Legato Vapors* and *Midwest Title Loans* remain good law for the proposition that Indiana jurisdictions may not regulate commercial relationships formed and performed outside their borders; neither has been overruled, limited, or questioned by the Seventh Circuit, and *Legato* was applied on remand to enjoin the Indiana statute. Counsel should know that *Midwest Title Loans* sits on one side of a circuit split: the Tenth Circuit upheld application of Kansas's payday-lending law to a Utah internet lender in *Quik Payday, Inc. v. Stork*, 549 F.3d 1302, 1307–08 (10th Cir. 2008), and at least one district court outside the circuit has criticized *Midwest Title*'s reliance on *Quill*.[50] Neither binds the Southern District of Indiana. Internet-specific authority from other circuits (*American Libraries Ass'n v. Pataki*, 969 F. Supp. 160 (S.D.N.Y. 1997); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999); *PSINet, Inc. v. Chapman*, 362 F.3d 227 (4th Cir. 2004); *American Booksellers Foundation v. Dean*, 342 F.3d 96 (2d Cir. 2003)) supports the same point and should be cited with a candid acknowledgment of *Ross*.[51] *Pataki* has been confined, not rejected: the Fifth Circuit declined to extend its uniformity reasoning to ordinary commerce that merely touches the internet, while acknowledging that "[w]hen considering laws that directly regulate internet activities, this alleged need for uniformity may well prevail." *Ford Motor Co. v. Tex. Dep't of Transp.*, 264 F.3d 493, 505 (5th Cir. 2001). Chapter 14.25 is a law that directly regulates internet activity.

H. First Amendment and Indiana Constitution Article 1, Section 9

Source code is expression protected by the First Amendment. *Junger v. Daley*, 209 F.3d 481, 484–85 (6th Cir. 2000); *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 445–49 (2d Cir. 2001); *Bernstein v. U.S. Department of State*, 922 F. Supp. 1426, 1434–36 (N.D. Cal. 1996), *aff'd sub nom. Bernstein v. U.S. Department of Justice*, 176 F.3d 1132 (9th Cir.), *reh'g en banc granted and opinion withdrawn*, 192 F.3d 1308 (9th Cir. 1999).[52] *Bernstein* must be cited with its full history: the Ninth Circuit panel opinion affirming it was withdrawn when rehearing en banc was granted, and the case became moot after the export regulations changed, so the district court opinion stands as persuasive authority only. *Junger* and *Corley* are the appellate holdings to lead

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[49] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *Healy v. Beer Inst.*, 491 U.S. 324, 336–37 (1989).

[50] *Quik Payday, Inc. v. Stork*, 549 F.3d 1302, 1307–08 (10th Cir. 2008); see also *North Dakota v. Heydinger*, 825 F.3d 912 (8th Cir. 2016) (contrasting *Quik Payday* with *Midwest Title*). The district-court criticism appears in an E.D. Pa. opinion, No. 2:21-cv-02964 (2021–22), which faults *Midwest Title*'s reliance on *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), overruled by *South Dakota v. Wayfair, Inc.*, 585 U.S. 162 (2018). None of these decisions binds a court in the Seventh Circuit.

[51] *Am. Libraries Ass'n v. Pataki*, 969 F. Supp. 160, 169–77 (S.D.N.Y. 1997); *ACLU v. Johnson*, 194 F.3d 1149, 1160–61 (10th Cir. 1999); *PSINet, Inc. v. Chapman*, 362 F.3d 227, 239–41 (4th Cir. 2004); *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 103–04 (2d Cir. 2003).

[52] *Junger v. Daley*, 209 F.3d 481, 484–85 (6th Cir. 2000); *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 445–49 (2d Cir. 2001); *Bernstein v. U.S. Dep't of State*, 922 F. Supp. 1426, 1434–36 (N.D. Cal. 1996), *aff'd sub nom. Bernstein v. U.S. Dep't of Justice*, 176 F.3d 1132 (9th Cir.), *reh'g en banc granted and opinion withdrawn*, 192 F.3d 1308 (9th Cir. 1999); *Reno v. ACLU*, 521 U.S. 844, 870 (1997).

with. Section 14.25.030 prohibits any person from "distribut[ing]" a defined class of software "for any purpose," which on its face reaches research publication, education, and advocacy. The restriction is content-based because it turns on what the software is capable of expressing and doing, and it is not narrowly tailored because it bans rather than regulates and supplies no standard.

The count is secondary. The ordinance's practical target is deployment rather than distribution of code, and a court may characterize the regulated activity as conduct. The count is nonetheless worth pleading: it supplies strict scrutiny, the presumption of irreparable harm that attends First Amendment violations, and a parallel claim under Article 1, Section 9 of the Indiana Constitution, which protects "the right to speak, write, or print, freely, on any subject whatever."[53]

I. Indiana Constitution Article 1, Section 12

Article 1, Section 12 guarantees that "every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law." A penalty imposed under a standard so indefinite that it cannot be applied is not "due course of law." The claim parallels the federal vagueness count and should be pleaded for completeness.

J. Forum, plaintiff, and timing

Forum. The Southern District of Indiana, Indianapolis Division, is recommended. Monroe County lies within that division. 28 U.S.C. § 94(b)(1).[54] Federal jurisdiction rests on 28 U.S.C. §§ 1331 and 1343(a)(3) for the § 1983 counts and § 1367(a) for the state-law counts. Municipalities have no Eleventh Amendment immunity, *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 280–81 (1977), so *Pennhurst* does not bar the Home Rule Act counts.[55] The alternative is Monroe Circuit or Superior Court under the Uniform Declaratory Judgments Act, IC 34-14-1-2, which expressly confers standing on any person "whose rights, status, or other legal relations are affected by a … municipal ordinance."[56] The federal forum offers § 1988 fees and Seventh Circuit precedent on extraterritoriality; the state forum offers a clean Indiana appellate ruling on section 8. Do not split.

Plaintiff. Standing is pre-enforcement under *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159–64 (2014): an intention to engage in conduct arguably affected with a constitutional interest, arguably proscribed, under a credible threat of enforcement.[57] The enactment of a penal ordinance with two named enforcement agencies, together with the sponsor's public statements that the ordinance targets "outside commercial tech entities," satisfies the third element. In order of preference: (1) a Bloomington-based business that uses frontier-model APIs and agentic

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[53] Ind. Const. art. 1, §§ 9, 12.

[54] 28 U.S.C. § 94(b)(1), https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title28-section94&num=0&edition=prelim.

[55] *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280–81 (1977); *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978).

[56] IC 34-14-1-2 (2026), https://iga.in.gov/laws/2026/ic/titles/34.

[57] *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159–64 (2014); *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

workflows in production inside the city; (2) an out-of-state developer with Bloomington users, who supplies the *Legato* as-applied posture; (3) a trade association with such members, under *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977); (4) an Indiana University affiliate as amicus or declarant rather than plaintiff.

Defendants. The City (the *Monell* defendant; the ordinance is policy); the Mayor, Council, Corporation Counsel, and Chief of Police in their official capacities. Do not name the sponsor; legislative immunity applies, *Bogan v. Scott-Harris*, 523 U.S. 44 (1998), and nothing is gained.[58]

Timing. The ordinance takes effect only after mayoral approval and any required publication. The Mayor vetoed Ordinance 2026-12 on June 19, 2026, and the override failed.[59] If the ten-day approval window under IC 36-4-6-16 remains open, a demand letter requesting a veto is the least expensive instrument available. Penal ordinances must also be published before taking effect; the city provision should be confirmed and the publication proofs obtained from the Clerk.[60] File within days of the effective date, with a motion for preliminary injunction supported by declarations.

V. CONCLUSION

Ordinance 2026-29 is invalid on its face under IC 36-1-3-8(a)(12) and (a)(2), and void to the extent of its extraterritorial reach under IC 36-1-3-9(b). It is void for vagueness under the Fourteenth Amendment on three independent grounds, each supported by the sponsor's own memorandum. It violates the dormant Commerce Clause under the discriminatory-purpose and *Pike* strands that survive *Ross*, with *Legato Vapors* and *Midwest Title Loans* available in the Seventh Circuit as a third strand. The First Amendment and Indiana constitutional counts are secondary but worth pleading. A challenge should be brought in the Southern District of Indiana by a Bloomington business that deploys the regulated technology in production, promptly after the ordinance takes effect, with a preliminary-injunction motion filed with the complaint.

APPENDIX A. TABLE OF AUTHORITIES, VERIFICATION RECORD, AND SUBSEQUENT HISTORY

Every authority below was checked against primary text on November 7, 2026. The "Subsequent history and treatment" column records a citator pass run the same day against CourtListener's citing-opinions index and a second full-text index of federal and state court opinions, searching later opinions that cite each authority for reversal, vacatur, overruling, abrogation, supersession, or express criticism. "Clean" means no negative treatment was found; it is not a Westlaw KeyCite or Lexis Shepard's report, and counsel should run one before filing.

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[58] *Bogan v. Scott-Harris*, 523 U.S. 44, 54–55 (1998).

[59] WBIW, *Bloomington Common Council considers housing regulations, AI prohibitions, and $6.8M bond issue* (Nov. 2, 2026), https://www.wbiw.com/2026/11/02/bloomington-common-council-considers-housing-regulations-ai-prohibitions-and-6-8m-bond-issue/ (June 19 veto of Ordinance 2026-12; override failed July 22).

[60] The county provision, IC 36-2-4-8(b), requires that an ordinance prescribing a penalty be published once a week for two consecutive weeks before it takes effect; the parallel city provision in IC 36-4-6 should be read and cited by counsel.

Authority	Cited for	Verified against	Subsequent history and treatment (as of Nov. 7, 2026)
Ordinance 2026-29 and Council Staff Memorandum (Oct. 14, 2026)	Text; admissions	Council packet Nov. 4, 2026, pp. 156–166; bloomdocs.org mirror	Adopted 7–0 Nov. 4, 2026 without amendment; mayoral action unconfirmed
Resolution 2026-10 (June 10, 2026)	Legislative history	City OnBoard record, legislation no. 6398	Adopted; no subsequent action located
IC 36-1-3-3, -4, -5, -6, -8, -9	Home Rule Act	iga.in.gov, 2026 Indiana Code, Title 36	Current through the 2026 Indiana Code
IC 34-14-1-2	Declaratory-judgment standing	iga.in.gov, 2026 Indiana Code, Title 34	Current
IC 2-5-53.7; IC 4-13.1-5; IC 24-15	Indiana AI regime	iga.in.gov; Justia 2025 Code; Orrick tracker (secondary)	Current; IC 24-15 effective Jan. 1, 2026
IC 36-4-6-16 (mayoral approval); city penal-ordinance publication section	Timing	Not read this session; county analogs IC 36-2-4-8 read	**Counsel to confirm**
28 U.S.C. § 94(b)(1)	Venue	U.S. Code (OLRC)	Current
Ind. DNR v. Newton County, 802 N.E.2d 430 (Ind. 2004)	Home Rule limits; *Hobble* test	Opinion text	Clean; remains the leading Home Rule Act decision
Hobble ex rel. Hobble v. Basham, 575 N.E.2d 693 (Ind. Ct. App. 1991)	Frustration test; severability	Citation record; quoted in *Newton County*	Clean; quoted and applied in *Newton County*
Town of Avon v. W. Cent. Conservancy Dist., 957 N.E.2d 598	Adverse; distinguished	Opinion located; holding	Clean

Authority	Cited for	Verified against	Subsequent history and treatment (as of Nov. 7, 2026)
(Ind. 2011)		confirmed	
City of Carmel v. Duke Energy Ind., LLC, 234 N.E.3d 816 (Ind. 2024)	State-agency expertise	Opinion text; Ind. Sup. Ct. 2023–24 Annual Report	Clean; companion case *Duke Energy Ind., LLC v. City of Noblesville*, 234 N.E.3d 173 (Ind. 2024) (ordinances presumptively apply to utilities; IURC decides unreasonable interference)
City of Gary ex rel. King v. Smith & Wesson Corp., 801 N.E.2d 1222 (Ind. 2003)	Adverse; distinguished	Citation record	Holding not overruled. Litigation ended by statute: IC 34-12-3.5-3 (P.L. 170-2024) reserved such suits to the State; *Smith & Wesson Corp. v. City of Gary*, No. 24A-CT-2381 (Ind. Ct. App. Dec. 29, 2025) (reversing; remanding with instructions to dismiss; city is "an agent subject to the control of the State"), *trans. denied* (Ind. May 21, 2026) (4–1, Goff, J., dissenting)
Legato Vapors, LLC v. Cook, 847 F.3d 825 (7th Cir. 2017)	Extraterritorial reach	Opinion text	Clean; not revisited by the Seventh Circuit after *Ross*
Midwest Title Loans, Inc. v. Mills, 593 F.3d 660 (7th Cir. 2010)	Extraterritorial reach	Citation record; quoted in *Legato*	Good law in the Seventh Circuit. Circuit split: *Quik Payday, Inc. v. Stork*, 549 F.3d 1302 (10th Cir. 2008) (contra, internet payday lender); criticized by an E.D. Pa. district court (2021–22) for reliance on *Quill*, overruled by *Wayfair* (2018). Cite with *Legato*, not alone
Park Pet Shop, Inc. v. City of Chicago, 872 F.3d 495 (7th Cir. 2017)	Adverse (local ordinance upheld); *Pike* framing	Citation record	Clean
Nat'l Pork Producers	Limits on	Citation record	Controlling; see Part IV.G

Authority	Cited for	Verified against	Subsequent history and treatment (as of Nov. 7, 2026)
Council v. Ross, 598 U.S. 356 (2023)	extraterritoriality		
Am. Libraries Ass'n v. Pataki, 969 F. Supp. 160 (S.D.N.Y. 1997)	Internet and the Commerce Clause	Citation record	Not overruled; confined by *Ford Motor Co. v. Tex. Dep't of Transp.*, 264 F.3d 493, 505 (5th Cir. 2001), to laws that "directly regulate internet activities"; weaker after *Ross*
ACLU v. Johnson, 194 F.3d 1149 (10th Cir. 1999); *PSINet, Inc. v. Chapman*, 362 F.3d 227 (4th Cir. 2004); *Am. Booksellers Found. v. Dean*, 342 F.3d 96 (2d Cir. 2003)	Internet and the Commerce Clause	Citation records	Clean; extraterritoriality reasoning weaker after *Ross*
Junger v. Daley, 209 F.3d 481 (6th Cir. 2000); *Universal City Studios, Inc. v. Corley*, 273 F.3d 429 (2d Cir. 2001)	Code as speech	Citation records	Clean
Bernstein v. U.S. Dep't of State, 922 F. Supp. 1426 (N.D. Cal. 1996)	Code as speech	Citation record	*Aff'd sub nom. Bernstein v. U.S. Dep't of Justice*, 176 F.3d 1132 (9th Cir.), *reh'g en banc granted and opinion withdrawn*, 192 F.3d 1308 (9th Cir. 1999); case later mooted. Persuasive only; always cite with full history
Bell v. Keating, 697 F.3d 445 (7th Cir. 2012)	Vagueness, municipal ordinance	Citation record	Clean
Mays v. Dart, 974 F.3d 810 (7th Cir. 2020); *Ill. Republican Party v. Pritzker*, 973 F.3d 760 (7th Cir. 2020); *Speech First, Inc. v. Killeen*, 968 F.3d 628 (7th Cir.	Preliminary-injunction standard	Citation records	Clean; *Pritzker* states the current likelihood-of-success showing ("more than a mere possibility") and is cited alongside *Mays*

Authority	Cited for	Verified against	Subsequent history and treatment (as of Nov. 7, 2026)
2020); *Cassell v. Snyders*, 990 F.3d 539 (7th Cir. 2021); *Higher Soc'y of Ind. v. Tippecanoe County*, 858 F.3d 1113 (7th Cir. 2017); *Joelner v. Vill. of Washington Park*, 378 F.3d 613 (7th Cir. 2004)			
Ezell v. City of Chicago, 651 F.3d 684 (7th Cir. 2011)	Irreparable harm for constitutional violations	Citation record	Clean; routinely cited in the Seventh Circuit for the proposition that a constitutional violation is presumptively irreparable
Kolender v. Lawson, 461 U.S. 352 (1983); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *FCC v. Fox Television Stations*, 567 U.S. 239 (2012)	Vagueness	Settled citations	Clean
Pike v. Bruce Church, 397 U.S. 137 (1970); *Healy v. Beer Inst.*, 491 U.S. 324 (1989); *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93 (1994); *Maine v. Taylor*, 477 U.S. 131 (1986); *Dennis v. Higgins*, 498 U.S. 439 (1991)	Commerce Clause	Settled citations	*Healy*'s extraterritoriality strand limited by *Ross*; its anti-discrimination and inconsistent-regulation language untouched. Others clean
Susan B. Anthony List v. Driehaus, 573 U.S. 149 (2014); *Monell*, 436 U.S. 658 (1978); *Mt. Healthy*, 429 U.S. 274 (1977); *Winter v. NRDC*, 555 U.S. 7 (2008); *Elrod v. Burns*, 427 U.S. 347 (1976);	Standing, § 1983, injunction standards, immunity	Settled citations; pin cites to be confirmed by counsel	Clean

Authority	Cited for	Verified against	Subsequent history and treatment (as of Nov. 7, 2026)
Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333 (1977); *Bogan v. Scott-Harris*, 523 U.S. 44 (1998); *Reno v. ACLU*, 521 U.S. 844 (1997)			
EO 14179, 90 Fed. Reg. 8741; EO 14318, 90 Fed. Reg. 35385; EO 14319, 90 Fed. Reg. 35389; EO 14320, 90 Fed. Reg. 35393; EO 14365, 90 Fed. Reg. 58499	Federal policy context	Federal Register; OLRC notes to 15 U.S.C. § 9401	In force; no preemptive effect of their own
DOJ, AI Litigation Task Force memorandum (Jan. 9, 2026)	Federal enforcement posture	justice.gov	In force
X. AI LLC v. Weiser, No. 1:26-cv-01515 (D. Colo. filed Apr. 9, 2026)	Only Task Force action to date	CourtListener docket	Pending; enforcement stayed by agreement Apr. 27, 2026

03

DOCUMENT 3 OF 6

Memorandum of Law in Support of Motion for Preliminary Injunction

In filing form for the United States District Court for the Southern District of Indiana. Bracketed placeholders for the parties and counsel. Counsel should confirm pin cites and local-rule formatting (S.D. Ind. L.R. 5-1, 7-1) before filing.

12 pages · model pleading · attorney review required

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

[PLAINTIFF A, LLC] and [PLAINTIFF B, INC.],

Plaintiffs,

CITY OF BLOOMINGTON, INDIANA, et al.,

Defendants.

Case No. 1:26-cv-_____

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

On November 4, 2026, the City of Bloomington enacted Ordinance 2026-29, adding Chapter 14.25, "Prohibition of Superintelligence," to its Municipal Code. The Ordinance makes it unlawful for "any person or corporation" to "distribute or permit to be distributed nor deployed into the premises of any citizen or business in our City, any Superintelligence for any purpose," including "the remote execution, activation, or utilization of any unauthorized digital agent through a locally accessed interface, browser, API, or connected hardware within the City of

Bloomington, regardless of the physical location of the server infrastructure hosting the system." BMC § 14.25.030. Violations carry civil penalties of up to $2,500 per day. BMC §§ 14.25.060, 1.01.130.

Plaintiffs are a Bloomington business that uses the regulated technology in its daily operations and an out-of-state developer that supplies it to Bloomington customers. They ask the Court to preliminarily enjoin enforcement of Chapter 14.25 because they are likely to succeed on the merits of at least four independent claims: the Ordinance exceeds the City's authority under the Indiana Home Rule Act on its face; it is void for vagueness; it violates the dormant Commerce Clause; and it restricts protected expression. The remaining preliminary-injunction factors follow from the first. The City will suffer no cognizable harm from being enjoined from enforcing a law it has no power to enact, and the public interest is never served by the enforcement of an unconstitutional ordinance.

STATEMENT OF FACTS

The facts are set out in the Verified Complaint and the accompanying declarations and are summarized here.

The Ordinance. Ordinance 2026-29 was introduced on October 14, 2026, and adopted without amendment on November 4, 2026, by a vote of 7–0. Compl. ¶ 16; Ex. A. It cites a single source of legal authority, "Indiana Code § 36-1-3 (The Indiana Home Rule Act)," without reference to any section. Compl. ¶¶ 28–29. It defines "Superintelligence" by reference to whether a system "greatly exceeds the cognitive performance of humans in virtually all domains of interest," Compl. ¶ 18; prohibits distribution or deployment of such a system "for any purpose" and reaches "any unauthorized digital agent" without defining "unauthorized," Compl. ¶¶ 21–22;

conditions its own repeal on "an affirmative vote of more than 95% of registered voters," Compl. ¶ 23; confers "any and all remedies available at law to recover damages and fees without limitation" on persons harmed by a violation, Compl. ¶ 24; and commits enforcement to the Department of Law and the Police Department as a matter of "discretion[]," Compl. ¶ 25.

The sponsor's memorandum. The Council Staff Memorandum that accompanied the Ordinance at both readings states that the targeted systems "are untestable"; that the Ordinance "prevents outside commercial tech entities from making high-risk deployments in Bloomington"; that if "approximately 350" other cities adopt it, "this would create a massive regulatory burden for companies creating ASI"; that the Ordinance "can help plaintiffs meet their burden of proof" in private suits; and that "the ultimate authority to lift the ban is left completely to the local electorate via a 95% voter approval threshold." Compl. ¶¶ 33–37; Ex. A. The memorandum's fiscal statement anticipates no enforcement expenditure, and neither the memorandum nor the Ordinance identifies any method for determining whether a given system is a "Superintelligence." Compl. ¶ 38. The memorandum was not reviewed or co-signed by the City's Department of Law. Compl. ¶ 31.

Plaintiffs. [Plaintiff A] operates inside Bloomington and uses, through browsers and APIs served from outside Indiana, large-language-model systems that execute code outside their initial sandbox and perform multi-step tasks without continuous human oversight. Compl. ¶¶ 9, 41; Decl. of [A] ¶¶ **. [Plaintiff B] distributes such systems from outside Indiana to customers inside Bloomington and has no means short of geofencing the City to prevent Bloomington users from accessing them. Compl. ¶¶ 10, 42; Decl. of [B] ¶¶** . Both intend to continue. Compl. ¶ 43.

LEGAL STANDARD

A plaintiff seeking a preliminary injunction must show that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In this Circuit, the movant must first show "some likelihood of success on the merits," that traditional legal remedies are inadequate, and that it will suffer irreparable harm absent relief; the court then weighs the harm to the movant against the harm to the non-movant and the public, "employ[ing] a sliding scale approach" under which the more likely the plaintiff is to win, the less heavily the balance of harms need weigh in its favor. *Mays v. Dart*, 974 F.3d 810, 818 (7th Cir. 2020); *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762–63 (7th Cir. 2020) (likelihood of success requires "a strong showing," more than "a mere possibility"); *Cassell v. Snyders*, 990 F.3d 539, 544–45 (7th Cir. 2021); *Speech First, Inc. v. Killeen*, 968 F.3d 628, 637 (7th Cir. 2020). Where the challenge is to a law that burdens First Amendment rights, "the likelihood of success on the merits will often be the determinative factor." *Higher Soc'y of Ind. v. Tippecanoe County*, 858 F.3d 1113, 1116 (7th Cir. 2017) (quoting *Joelner v. Vill. of Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004)).

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

A. The Ordinance exceeds the City's powers under the Indiana Home Rule Act on its face.

The Home Rule Act permits a unit to exercise a power only "to the extent that the power … is not expressly denied by the Indiana Constitution or by statute." IC 36-1-3-5(a)(1). Section 8(a) of

the Act then enumerates the powers "a unit does not have." IC 36-1-3-8(a). The rule that doubts are resolved in favor of a unit's powers, IC 36-1-3-3(b), governs doubt; it does not apply where the General Assembly has stated in terms that the power does not exist. The Indiana Supreme Court enforces these limits as written. *Ind. Dep't of Nat. Res. v. Newton County*, 802 N.E.2d 430, 432–33 (Ind. 2004) (county ordinances "invalid exercises of county authority"; an ordinance that "seeks to prohibit that which a statute expressly permits," or by which "the state law is frustrated," is void) (citing *Hobble ex rel. Hobble v. Basham*, 575 N.E.2d 693, 697 (Ind. Ct. App. 1991)).

1. Section 8(a)(12). A unit lacks "[t]he power to adopt an ordinance, a resolution, or an order concerning an election described by IC 3-5-1-2, or otherwise conduct an election, except as expressly granted by statute." IC 36-1-3-8(a)(12). Section 14.25.040(b) conditions repeal of the prohibition on "an affirmative vote of more than 95% of registered voters" of the City, and the sponsor's memorandum describes the provision as leaving "the ultimate authority to lift the ban … completely to the local electorate." No statute grants Bloomington the power to hold such a vote. Section 14.25.040(b) is an ordinance "concerning an election" and is void. Because the Council made that provision the exclusive path to repeal, the Court should decline to sever it; in the alternative, the remaining provisions fall independently for the reasons below.

2. Section 8(a)(2). A unit lacks "[t]he power to prescribe the law governing civil actions between private persons." IC 36-1-3-8(a)(2). The Ordinance "declare[s]" a class of software "a public safety hazard nuisance"; confers on any person harmed by a violation "any and all remedies available at law to recover damages and fees without limitation," BMC § 14.25.050; and, by its sponsor's account, exists in part to "help plaintiffs meet their burden of proof" in private suits and to make product-liability insurance unavailable to developers. A nuisance-per-se declaration

enacted for the stated purpose of altering burdens of proof in private litigation is an attempt to prescribe the law governing civil actions between private persons.

3. Section 9(b). "The area inside the corporate boundaries of a municipality comprises its territorial jurisdiction, except to the extent that a statute expressly authorizes the municipality to exercise a power in areas outside its corporate boundaries." IC 36-1-3-9(b). Section 14.25.030 regulates "regardless of the physical location of the server infrastructure hosting the system," and section 14.25.020(c) reaches any developer whose system "allows data to enter Bloomington City Limits." No statute authorizes the City to regulate persons or infrastructure outside its boundaries. The Ordinance is void to that extent.

4. Sections 8(a)(7) and 8(a)(8). A unit lacks the power "to regulate conduct that is regulated by a state agency, except as expressly granted by statute," IC 36-1-3-8(a)(7), and "to prescribe a penalty for conduct constituting a crime or infraction under statute," IC 36-1-3-8(a)(8). The State of Indiana regulates the assessment and deployment of artificial-intelligence systems through the Office of Technology and the Office of the Chief Data Officer, IC 4-13.1-5, and through the Attorney General under the Consumer Data Protection Act, IC 24-15; a flat prohibition "frustrate[s]" rather than "supplement[s]" that regime. *Newton County*, 802 N.E.2d at 433. And the Ordinance's own authorization of "referral to the Monroe County Prosecutor for any potential state-level criminal charges" either concedes a criminal predicate, in which case the municipal penalty is barred by section 8(a)(8), or concedes there is none, in which case the referral language confirms the Ordinance's standardlessness.

These claims arise under Indiana law, but the Court may decide them. Defendants are a municipality and its officers, not the State, and have no Eleventh Amendment immunity. *Mt.*

Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280–81 (1977). Supplemental jurisdiction is proper under 28 U.S.C. § 1367(a).

B. The Ordinance is void for vagueness.

A law is void for vagueness if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012); *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972); *Bell v. Keating*, 697 F.3d 445, 455 (7th Cir. 2012). The standard is more exacting where, as here, the law carries penalties and burdens expression. *Fox*, 567 U.S. at 253–54.

The Ordinance fails on three independent grounds. *First*, its operative definition turns on whether a system "greatly exceeds the cognitive performance of humans in virtually all domains of interest," a question the Ordinance supplies no benchmark, test, or certifying body to answer, and one the sponsor's own memorandum says cannot be answered because the systems "are untestable." A standard that the enacting body concedes cannot be applied does not give fair notice. The definition is also internally inconsistent: read disjunctively, its middle clause reaches a large share of commercial software in use today; read conjunctively with its closing clause, it reaches nothing that exists. *Second*, section 14.25.030 bans the use of "any unauthorized digital agent," but the Ordinance establishes no authorization process and names no authorizing body; on its face, every digital agent is "unauthorized." *Third*, the Ordinance applies "for any purpose" and commits enforcement to police officers and city attorneys "as a matter of discretion" with no governing criteria, which is precisely the delegation of "basic policy matters to policemen,

judges, and juries for resolution on an ad hoc and subjective basis" that *Grayned* condemns. 408 U.S. at 108–09.

C. The Ordinance violates the dormant Commerce Clause.

The Commerce Clause forbids state and local laws that discriminate against interstate commerce in purpose or effect, that directly regulate commerce wholly outside the enacting jurisdiction, or whose burdens on interstate commerce are "clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *Healy v. Beer Inst.*, 491 U.S. 324, 336–37 (1989). Such claims are cognizable under § 1983. *Dennis v. Higgins*, 498 U.S. 439, 447–51 (1991). Political subdivisions are bound as states are.

National Pork Producers Council v. Ross, 598 U.S. 356 (2023), narrowed the "almost per se" extraterritoriality rule but left the anti-discrimination principle and *Pike* balancing fully intact. Plaintiffs are likely to prevail under both. *Discrimination.* The sponsor's memorandum states that the Ordinance "prevents outside commercial tech entities from making high-risk deployments in Bloomington" and that its multiplication across "approximately 350" cities "would create a massive regulatory burden for companies creating ASI." A law enacted to burden out-of-state actors as such receives the strictest scrutiny and survives only if the jurisdiction demonstrates it has no other means of advancing a legitimate local purpose. *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 99–101 (1994); *Maine v. Taylor*, 477 U.S. 131, 138 (1986). The City has identified no local harm, no means of identifying a covered system, and no alternative it considered. *Pike.* The local benefit is, on the City's own fiscal statement, unfunded and undetectable; the burden is the exposure of every developer whose software can be reached from a browser in Bloomington to per-day penalties under a template its sponsor intends to replicate in

hundreds of cities. That is the "inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of other States" the Clause exists to prevent. *Id.* at 336–37.

Extraterritoriality. In this Circuit, *Legato Vapors, LLC v. Cook*, 847 F.3d 825 (7th Cir. 2017), and *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660 (7th Cir. 2010), hold that Indiana jurisdictions may not "achieve [legitimate] health and safety goals by directly regulating out-of-state factories and commercial transactions." *Legato Vapors*, 847 F.3d at 827, 834–35. Section 14.25.030 regulates "regardless of the physical location of the server infrastructure." As applied to [Plaintiff B], which has no presence in Indiana, the Ordinance is direct extraterritorial regulation. Courts addressing state regulation of the internet have reached the same conclusion. *Am. Libraries Ass'n v. Pataki*, 969 F. Supp. 160, 169–77 (S.D.N.Y. 1997) (New York statute reaching internet communications regardless of sender's location); *see Ford Motor Co. v. Tex. Dep't of Transp.*, 264 F.3d 493, 505 (5th Cir. 2001) (confining *Pataki* to laws that "directly regulate internet activities," which Chapter 14.25 does by its terms); *ACLU v. Johnson*, 194 F.3d 1149, 1160–61 (10th Cir. 1999); *PSINet, Inc. v. Chapman*, 362 F.3d 227, 239–41 (4th Cir. 2004); *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 103–04 (2d Cir. 2003).

D. The Ordinance restricts protected expression.

Computer code is expression protected by the First Amendment. *Junger v. Daley*, 209 F.3d 481, 484–85 (6th Cir. 2000); *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 445–49 (2d Cir. 2001); *Bernstein v. U.S. Dep't of State*, 922 F. Supp. 1426, 1434–36 (N.D. Cal. 1996), *aff'd sub nom. Bernstein v. U.S. Dep't of Justice*, 176 F.3d 1132 (9th Cir.), *reh'g en banc granted and opinion withdrawn*, 192 F.3d 1308 (9th Cir. 1999). The internet receives full First Amendment protection. *Reno v. ACLU*, 521 U.S. 844, 870 (1997). Section 14.25.030 prohibits

"distribut[ing]" a class of software "for any purpose," including research publication, education, and advocacy. The restriction is content-based because it turns on what the software is capable of expressing and doing, and it cannot survive strict scrutiny because it bans rather than regulates, supplies no standard, and reflects no consideration of less restrictive alternatives.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality); *Higher Soc'y*, 858 F.3d at 1116. The Seventh Circuit treats the infringement of constitutional rights generally as irreparable because such harm "cannot be fully remedied by monetary damages." *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011). Beyond the constitutional injury, Plaintiffs face per-day civil penalties that accrue from the Ordinance's effective date, the threat of injunctive proceedings and criminal referral, and the practical choice between ceasing lawful business in Bloomington and operating under an indeterminate prohibition. Those harms are not compensable in damages against a municipality that has preserved every immunity available to it. BMC § 14.25.060(a).

III. THE BALANCE OF HARMS AND THE PUBLIC INTEREST FAVOR AN INJUNCTION.

The City suffers no cognizable harm from being enjoined from enforcing an ordinance it had no power to enact. The City's own fiscal statement contemplates no enforcement activity and no expenditure, and the Ordinance disclaims any "mandatory duty on the part of the City to prevent or abate every violation." BMC § 14.25.060(a). The City has identified no local harm that has occurred or is imminent. On the other side of the scale, "injunctions protecting First Amendment

freedoms are always in the public interest," *Joelner*, 378 F.3d at 620, and the public has a strong interest in the orderly limits the General Assembly placed on municipal power and in the free flow of interstate commerce. The sliding scale therefore tips decisively toward relief: Plaintiffs' likelihood of success is high, and the harm to the City from an injunction is nil.

IV. NO BOND, OR A NOMINAL BOND, SHOULD BE REQUIRED.

Rule 65(c) commits the amount of security to the Court's discretion, and courts in this Circuit routinely waive or set a nominal bond where, as here, the defendant is a governmental body that will incur no monetary loss from an injunction against enforcement. Plaintiffs request that the Court set no bond or a nominal bond of $100.

CONCLUSION

Plaintiffs respectfully request that the Court preliminarily enjoin Defendants, their officers, agents, employees, and all persons acting in concert with them, from enforcing or threatening to enforce Ordinance 2026-29 and Bloomington Municipal Code Chapter 14.25 pending final judgment.

Respectfully submitted,

_____

[Attorney Name], Atty. No. [#####-##]

[Firm]

[Address]

[Phone] · [Email]

Counsel for Plaintiffs

Dated: _____, 2026

CERTIFICATE OF SERVICE

I certify that on _____, 2026, a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice to all counsel of record, and was served by [email / certified mail] on the City of Bloomington Department of Law, 401 N. Morton Street, Suite 220, Bloomington, Indiana 47404.

_____

[Attorney Name]

04

DOCUMENT 4 OF 6

Verified Complaint for Declaratory and Injunctive Relief

Eighty-three paragraphs and seven counts: three under the Indiana Home Rule Act, and four under the Fourteenth Amendment, the Commerce Clause, the First Amendment, and the Indiana Constitution. Verification block under 28 U.S.C. § 1746.

23 pages · model pleading · attorney review required

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

[PLAINTIFF A, LLC], an Indiana limited liability company, and [PLAINTIFF B, INC.], a [State] corporation,

Plaintiffs,

CITY OF BLOOMINGTON, INDIANA; KERRY THOMSON, in her official capacity as Mayor of the City of Bloomington; THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON; MARGIE RICE, in her official capacity as Corporation Counsel of the City of Bloomington; and [NAME], in [his/her] official capacity as Chief of the Bloomington Police Department,

Defendants.

Case No. 1:26-cv-_____

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs [Plaintiff A, LLC] and [Plaintiff B, Inc.], by counsel, for their Verified Complaint against Defendants, allege as follows:

PRELIMINARY STATEMENT

1. On November 4, 2026, the Common Council of the City of Bloomington, Indiana, voted 7–0 to adopt Ordinance 2026-29, which adds a new Chapter 14.25, "Prohibition of Superintelligence," to Title 14 of the Bloomington Municipal Code (the "Ordinance"). The Ordinance makes it unlawful for "any person or corporation" to "distribute or permit to be distributed nor deployed into the premises of any citizen or business in our City, any Superintelligence for any purpose," and it reaches "the remote execution, activation, or utilization of any unauthorized digital agent through a locally accessed interface, browser, API, or connected hardware within the City of Bloomington, regardless of the physical location of the server infrastructure hosting the system." BMC § 14.25.030.

2. The Ordinance rests on a single asserted source of authority: the Indiana Home Rule Act, IC 36-1-3, cited generically and without reference to any section. But the Home Rule Act, in the same chapter the City invokes, expressly denies municipalities four of the powers the Ordinance purports to exercise. A unit of local government in Indiana does not have "[t]he power to prescribe the law governing civil actions between private persons," IC 36-1-3-8(a)(2); does not have the power to "conduct an election, except as expressly granted by statute," IC 36-1-3-8(a)(12); does not have the power to "regulate conduct that is regulated by a state agency, except as expressly granted by statute," IC 36-1-3-8(a)(7); and exercises its powers only within "[t]he area inside the corporate boundaries of the municipality," IC 36-1-3-9(b). The Ordinance violates each of these limits on its face.

3. The Ordinance is also unconstitutionally vague. Its operative term, "Superintelligence," is defined by reference to a capability threshold that the Ordinance's own sponsor concedes cannot

be measured: the sponsor's memorandum to the Council states that the systems in question "are untestable because the developers do not understand how their neural networks work." The Ordinance then bans the use of any "unauthorized digital agent" without defining "unauthorized" or identifying any body with the power to authorize. No person of ordinary intelligence can determine what the Ordinance prohibits, and the City's police and law departments are given unbounded discretion to decide.

4. The Ordinance directly regulates interstate commerce. By its terms it governs software delivered over the internet from servers anywhere in the world to any browser or API endpoint inside Bloomington, and the sponsor's memorandum states the Ordinance's purpose without euphemism: it "prevents outside commercial tech entities from making high-risk deployments in Bloomington," and if "approximately 350" other cities adopt it, "this would create a massive regulatory burden for companies creating" the targeted technology. That is a municipality legislating against out-of-state commerce as such, a thing the Commerce Clause forbids. See *Legato Vapors, LLC v. Cook*, 847 F.3d 825 (7th Cir. 2017); *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660 (7th Cir. 2010).

5. Plaintiffs develop, license, and use advanced artificial-intelligence systems in and into Bloomington. They face a credible threat of civil penalties of up to $2,500 per violation, with each day of a "continuing" violation treated as a separate offense, injunctive proceedings by the City's Department of Law, and referral to the Monroe County Prosecutor. Plaintiffs seek a declaration that the Ordinance is void and an injunction against its enforcement.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over Plaintiffs' federal claims under 28 U.S.C. §§ 1331 and 1343(a)(3), because those claims arise under the Constitution of the United States and 42 U.S.C. § 1983. The Court has supplemental jurisdiction over Plaintiffs' state-law claims under 28 U.S.C. § 1367(a), because they form part of the same case or controversy. Defendants are a municipal corporation and its officers, not the State of Indiana, and are therefore not entitled to Eleventh Amendment immunity from the state-law claims. See *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280–81 (1977).

7. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57. Injunctive relief is authorized by Fed. R. Civ. P. 65 and 42 U.S.C. § 1983.

8. Venue lies in this District under 28 U.S.C. § 1391(b)(1) and (b)(2) because all Defendants reside in this District and the events giving rise to the claims occurred here. Monroe County is within the Indianapolis Division. 28 U.S.C. § 94(b)(1).

PARTIES

9. Plaintiff [Plaintiff A, LLC] is an Indiana limited liability company with its principal place of business in Bloomington, Monroe County, Indiana. [Plaintiff A] [describe: e.g., builds and operates software products for law firms and other professional-services clients that call frontier large-language-model APIs offered by third-party developers, and runs agentic workflows in which those models execute code, call tools, and complete multi-step tasks without step-by-step human supervision]. [Plaintiff A] performs that work from, and delivers it into, premises inside the corporate boundaries of the City of Bloomington.

10. Plaintiff [Plaintiff B, Inc.] is a [State] corporation with its principal place of business in [City, State]. [Plaintiff B] [describe: e.g., develops and licenses large-language-model systems and agentic software that customers, including customers located in Bloomington, Indiana, access through a web browser and an application programming interface served from infrastructure located outside Indiana]. [Plaintiff B] has no office, employees, or servers in Bloomington.

11. Defendant City of Bloomington, Indiana (the "City") is a municipal corporation organized under the laws of the State of Indiana. The City is a "person" within the meaning of 42 U.S.C. § 1983. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). The Ordinance is an official legislative enactment of the City and therefore constitutes official municipal policy.

12. Defendant Kerry Thomson is the Mayor of the City of Bloomington and its chief executive officer. She is sued in her official capacity. The Mayor is responsible for the execution and enforcement of City ordinances and supervises the Department of Law and the Bloomington Police Department, the two entities the Ordinance authorizes to enforce it. BMC § 14.25.060(a).

13. Defendant Common Council of the City of Bloomington (the "Council") is the legislative body of the City. It enacted the Ordinance and is the body that, under BMC § 14.25.040, holds exclusive power to lift the prohibition.

14. Defendant Margie Rice is the Corporation Counsel of the City of Bloomington and head of its Department of Law. She is sued in her official capacity. The Ordinance authorizes the Department of Law to enforce it through "civil penalties, injunctive relief, and, where appropriate, referral to the Monroe County Prosecutor." BMC § 14.25.060(a).

15. Defendant [Name] is the Chief of the Bloomington Police Department and is sued in [his/her] official capacity. The Ordinance authorizes the Bloomington Police Department to enforce it. BMC § 14.25.060(a).

FACTUAL ALLEGATIONS

A. The Ordinance

16. Ordinance 2026-29, entitled "An Ordinance Amending the Bloomington Municipal Code to Prohibit the Development, Deployment, or Delivery of Superintelligence Within the City of Bloomington, Indiana," was introduced at the Council's regular session on October 14, 2026, and adopted on second reading at the Council's regular session on November 4, 2026, by a vote of 7–0 with two members absent. A true and correct copy of the Ordinance, together with the Council Staff Memorandum that accompanied it, is attached as **Exhibit A**.

17. Section 1 of the Ordinance adds Chapter 14.25 to Title 14 ("Peace and Safety") of the Bloomington Municipal Code.

18. BMC § 14.25.020(a) defines "Superintelligence" as follows:

> "Superintelligence" shall be analogous to an Artificial General Intelligence ("AGI") with capabilities of Agency (A), Generality (G) and Intelligence (I), wherein an AGI does possess super-human capability in all three aspects, of AGI, as an AGI wherein any such autonomous Agentic (A) system capable of self-modifying its core algorithms, executing code in environments outside its initial sandbox, or operating without continuous human oversight while Generally (G) performing any complex goal-oriented task that may affect municipal infrastructure, financial markets, or public safety, in combination with an extreme level of super-human Intelligence (I), and defined by the AI Industry standard terminology "Superintelligence" herein defined as "Any intellect that greatly exceeds the cognitive performance of humans in virtually all domains of interest."

19. BMC § 14.25.020(b) defines "Deployment within the City" as "the local activation, execution, or utilization of a Superintelligence through a locally accessed user interface, browser,

application programming interface (API), or connected local hardware within the geographic boundaries of the City of Bloomington, resulting in local operational impact."

20. BMC § 14.25.020(c) defines "Deployer" as "any commercial entity, organization, or developer that places a Superintelligence system into operation for public, enterprise, or external use, which allows data to enter Bloomington City Limits." The term "Deployer" does not appear in any operative provision of the Ordinance.

21. BMC § 14.25.030, the operative prohibition, provides in full:

> No person or corporation shall distribute or permit to be distributed nor deployed into the premises of any citizen or business in our City, any Superintelligence for any purpose. Deployment, for the purposes of this ordinance, shall include the remote execution, activation, or utilization of any unauthorized digital agent through a locally accessed interface, browser, API, or connected hardware within the City of Bloomington, regardless of the physical location of the server infrastructure hosting the system.

22. The phrase "unauthorized digital agent" appears nowhere else in the Ordinance. The Ordinance does not define "unauthorized," does not establish any licensing, permitting, registration, or certification process, and does not identify any person or body with power to "authorize" a digital agent.

23. BMC § 14.25.040, entitled "Conditions for Dissolution of Prohibition," provides that the prohibition "shall remain in effect and shall not be lifted unless the Common Council of the City of Bloomington enacts an ordinance making specific findings that both of the following conditions have been met":

(a) There is broad scientific consensus that the development of Superintelligence shall be done safely and controllably using a probabilistic risk assessment examining the catastrophic risk, which shall be similar to the civil engineering standard for nuclear power plants requiring a safety level of 99.9999% percent certainty; and

(b) There is voter approval for the development of Superintelligence by the electorate of the City of Bloomington, with an affirmative vote of more than 95% of registered voters.

24. BMC § 14.25.050, entitled "No Limitation on Private Right of Action," provides that nothing in the Chapter limits "any person's, business's, or entity's private right of action, under state or federal law, against a violator of this provision," and that "[a]ny person, business, or entity who suffers physical, economic, or other harm resulting from a violation of this chapter shall have any and all remedies available at law to recover damages and fees without limitation."

25. BMC § 14.25.060(a) authorizes the City, "through its Department of Law and the Bloomington Police Department," to enforce the Ordinance, states that "[t]his enforcement power is discretionary," and provides that the City "may seek civil penalties, injunctive relief, and, where appropriate, referral to the Monroe County Prosecutor for any potential state-level criminal charges." BMC § 14.25.060(b) subjects "[e]very person or entity who violates this chapter" to the general penalty provisions of BMC § 1.01.130, under which each violation is punishable by a fine of up to $2,500 and each day of a continuing violation constitutes a separate violation.

26. BMC § 14.25.070(a) provides that if the Indiana General Assembly "enacts legislation that establishes a comprehensive framework for Provably Safe Superintelligence this Chapter shall be deemed preempted and shall automatically expire ninety-one (91) days after the effective date of such state law." BMC § 14.25.070(b) directs the Corporation Counsel to "immediately draft amendments to harmonize this Chapter" with any future state legislation that "does not explicitly prohibit local municipal enforcement or stricter local safety thresholds."

27. Section 2 of the Ordinance contains a severability clause. Section 3 provides that the Ordinance takes effect "from and after its passage by the Common Council, approval by the Mayor, and any publication required by law."

28. The preamble to the Ordinance recites that "the Common Council exercises its legislative authority under the traditional police powers of the City and Indiana Code § 36-1-3 (The Indiana Home Rule Act) to regulate conditions that constitute a severe public safety hazard nuisance," and separately that the Council "maintains authority over its local land-use, zoning configurations, and municipal utilities via the Unified Development Ordinance (UDO) and Indiana Code § 36-1-3." The preamble declares that "the unregulated presence of Superintelligence is hereby declared a public safety hazard nuisance." No provision of the Unified Development Ordinance is amended or invoked by any operative section of the Ordinance.

29. Apart from the generic citation to IC 36-1-3, the Ordinance and its accompanying memorandum cite no provision of the Indiana Constitution, no section of the Indiana Code, no decision of any court, and no statute or regulation of the United States.

B. Legislative history and the sponsor's admissions

30. The Ordinance was sponsored by Councilmember Dave Rollo. It was accompanied by a five-page "Council Staff Memorandum" dated October 14, 2026, from "Council Member Rollo; Bloomington Council's Office" (the "Memorandum"). The Memorandum was included, without change, in the Council's packet for the November 4, 2026 meeting at which the Ordinance was adopted.

31. The Memorandum was not signed, co-signed, or reviewed on its face by the City's Corporation Counsel or Department of Law. By contrast, Ordinance 2026-30, considered at the same November 4, 2026 session, was accompanied by a memorandum co-signed by Corporation Counsel Margie Rice. On information and belief, the Department of Law did not issue any written legal opinion on the City's authority to adopt the Ordinance before the Council voted.

32. The Memorandum states that the Ordinance "gives the city complete enforcement discretion" by reference to "Section 2.90.040 of Ordinance 2026-29." No Section 2.90.040 exists in the Ordinance. On information and belief, the Memorandum and the Ordinance were adapted from a template prepared or promoted by a third-party advocacy organization identified in the Memorandum as the "SAFE AI Forever Institute."

33. The Memorandum states that the systems the Ordinance targets "are untestable because the developers do not understand how their neural networks work," that developers "can only attempt to test their capabilities," and that "[i]n short, they are becoming untestable."

34. The Memorandum states that the Ordinance "prevents outside commercial tech entities from making high-risk deployments in Bloomington without local permission."

35. The Memorandum states that "[o]ver 100 million people live in U.S. cities of Bloomington's size or greater," that "[i]f those (approximately 350) cities passed similar ordinances in the coming weeks or months, this would create a massive regulatory burden for companies creating ASI," and that the "SAFE AI Forever Institute and other non-profits are poised to encourage other municipalities to adopt their own prohibitions."

36. The Memorandum states, under the heading "Creating Liability for Immensely Unsafe Products," that "[f]or people who would choose a private right of action to seek injunctive relief

by a court order to stop the race to ASI, this ordinance and others like it can help plaintiffs meet their burden of proof," that the targeted companies "are therefore exposed to lawsuits reflecting imminent harm to people and property," and that "the liability costs could be profound enough to prevent any insurers from providing product liability insurance."

37. The Memorandum states that "the ultimate authority to lift the ban is left completely to the local electorate via a 95% voter approval threshold."

38. The Memorandum's Fiscal Impact Statement states that "[t]he City does not anticipate that this Ordinance will have any impact on the City's finances, including to its revenues, expenditures, or any new debt obligation." The Memorandum and the Ordinance identify no method by which the City will detect, measure, or adjudicate whether any particular software system is a "Superintelligence," and no budget, personnel, or technical standard for doing so.

39. The Memorandum asserts that "[n]either the state of Indiana nor the federal government have enacted safety parameters for ASI." In fact, the Indiana General Assembly has established an Artificial Intelligence Task Force, IC 2-5-53.7; has directed the Indiana Office of Technology to inventory and assess artificial-intelligence systems, IC 4-13.1-5; and the State of Indiana, through its Office of the Chief Data Officer and Office of Technology, has adopted a statewide Artificial Intelligence Policy and State Agency Artificial Intelligence Systems Standard incorporating the National Institute of Standards and Technology AI Risk Management Framework. The Indiana Consumer Data Protection Act, IC 24-15, effective January 1, 2026, regulates automated processing and profiling and is enforced by the Indiana Attorney General.

40. On June 10, 2026, the Council adopted Resolution 2026-10, "On the Existential Risk of Artificial Intelligence," also sponsored by Councilmember Rollo, which called for a moratorium

on artificial general intelligence development. In 2023, a prior resolution by the same sponsor was withdrawn after Indiana University raised concerns about its effect on university research.

C. Plaintiffs' conduct and the threat of enforcement

41. [Plaintiff A] uses, in its ordinary business inside Bloomington, large-language-model systems that are capable of executing code in environments outside their initial sandbox and of operating without continuous human oversight while performing complex goal-oriented tasks. Those systems are accessed through browsers and APIs from premises inside the City, and the servers hosting them are located outside Indiana. [Plaintiff A] cannot determine whether any of those systems "greatly exceed[] the cognitive performance of humans in virtually all domains of interest," and neither can the City.

42. [Plaintiff B] distributes, through browsers and APIs served from outside Indiana, software systems that meet one or more of the capability descriptions in BMC § 14.25.020(a), to customers who access them from premises inside Bloomington. [Plaintiff B] has no practical means of preventing a Bloomington customer from accessing its services short of geofencing the City, and no means of determining at what point its systems would be deemed by the City to constitute a "Superintelligence."

43. The Ordinance applies to Plaintiffs' conduct on its face. Plaintiffs intend to continue that conduct. The City has enacted the Ordinance with a penalty provision, has designated two enforcement agencies, and has publicly described the Ordinance as a measure that will prevent "outside commercial tech entities" from deploying in Bloomington. Plaintiffs therefore face a credible threat of enforcement sufficient to establish injury in fact. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159–64 (2014).

44. Plaintiffs have already incurred, and will continue to incur, costs in attempting to determine whether and how to comply with the Ordinance, including legal review, engineering review, and evaluation of whether to withdraw services from, or cease operating in, Bloomington. Those costs are a present injury traceable to the Ordinance.

45. Each day the Ordinance remains enforceable, Plaintiffs are subject to accruing per-day civil penalties and to the chilling of lawful commercial and expressive activity. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

COUNT I — Ultra Vires: The Ordinance Conditions Its Own Repeal on an Election the City Has No Power to Conduct (IC 36-1-3-8(a)(12); IC 34-14-1-2)

46. Plaintiffs incorporate the preceding paragraphs.

47. The Home Rule Act provides that a unit may exercise a power only "to the extent that the power … is not expressly denied by the Indiana Constitution or by statute." IC 36-1-3-5(a)(1).

48. The Home Rule Act expressly denies units "[t]he power to adopt an ordinance, a resolution, or an order concerning an election described by IC 3-5-1-2, or otherwise conduct an election, except as expressly granted by statute." IC 36-1-3-8(a)(12).

49. BMC § 14.25.040(b) conditions the lifting of the prohibition on "voter approval for the development of Superintelligence by the electorate of the City of Bloomington, with an affirmative vote of more than 95% of registered voters." The sponsor's Memorandum confirms that this provision contemplates a municipal election: "the ultimate authority to lift the ban is left completely to the local electorate via a 95% voter approval threshold."

50. No statute expressly grants the City the power to conduct a municipal election or referendum on the subject of artificial intelligence. BMC § 14.25.040(b) is therefore an ordinance "concerning an election" and an attempt to "otherwise conduct an election" in violation of IC 36-1-3-8(a)(12), and is void.

51. Because BMC § 14.25.040 states that the prohibition "shall not be lifted unless" both conditions are met, and because the Council has declared that the voter-approval condition is integral to the Ordinance's design, the invalid provision is not severable from the remainder of Chapter 14.25. In the alternative, even if severable, the remaining provisions are independently void for the reasons stated in Counts II through VII.

52. Plaintiffs are persons "whose rights, status, or other legal relations are affected by a … municipal ordinance" and are entitled to a declaration of the Ordinance's invalidity. IC 34-14-1-2.

COUNT II — Ultra Vires: The Ordinance Prescribes Law Governing Civil Actions Between Private Persons (IC 36-1-3-8(a)(2); IC 34-14-1-2)

53. Plaintiffs incorporate the preceding paragraphs.

54. The Home Rule Act expressly denies units "[t]he power to prescribe the law governing civil actions between private persons." IC 36-1-3-8(a)(2).

55. BMC § 14.25.050 declares that "[a]ny person, business, or entity who suffers physical, economic, or other harm resulting from a violation of this chapter shall have any and all remedies available at law to recover damages and fees without limitation."

56. The sponsor's Memorandum states that the purpose of the Ordinance is, in part, to "help plaintiffs meet their burden of proof" in private civil actions against developers of the targeted technology, to expose those developers "to lawsuits reflecting imminent harm," and to impose "liability costs … profound enough to prevent any insurers from providing product liability insurance."

57. By declaring a class of software a "public safety hazard nuisance" by legislative fiat, by declaring that any harm "resulting from a violation" gives rise to recovery of "damages and fees without limitation," and by expressly designing the Ordinance to alter the burden of proof in private litigation, the City has attempted to prescribe the law governing civil actions between private persons in violation of IC 36-1-3-8(a)(2). BMC § 14.25.050 and the nuisance declaration in the preamble are void.

COUNT III — Ultra Vires: Extraterritorial Reach and Regulation of a Field Occupied by State Agencies (IC 36-1-3-9(b); IC 36-1-3-8(a)(7); IC 36-1-3-8(a)(8); IC 34-14-1-2)

58. Plaintiffs incorporate the preceding paragraphs.

59. The Home Rule Act provides that "[t]he area inside the corporate boundaries of a municipality comprises its territorial jurisdiction, except to the extent that a statute expressly authorizes the municipality to exercise a power in areas outside its corporate boundaries." IC 36-1-3-9(b).

60. BMC § 14.25.030 purports to regulate "any person or corporation" that distributes or deploys software "regardless of the physical location of the server infrastructure hosting the system," and BMC § 14.25.020(c) purports to reach any "developer that places a Superintelligence system into operation for public, enterprise, or external use, which allows data to enter Bloomington City

Limits." No statute expressly authorizes the City to regulate persons, servers, or commercial activity located outside its corporate boundaries. The Ordinance exceeds the City's territorial jurisdiction and is void to that extent.

61. The Home Rule Act further denies units "[t]he power to regulate conduct that is regulated by a state agency, except as expressly granted by statute." IC 36-1-3-8(a)(7). The State of Indiana, through the Indiana Office of Technology, the Office of the Chief Data Officer, and the Attorney General, regulates the assessment, deployment, and use of artificial-intelligence systems under IC 4-13.1-5, IC 24-15, and the State of Indiana Artificial Intelligence Policy and Standard. An ordinance that prohibits outright what state agencies assess, inventory, permit, and regulate "frustrate[s]" rather than "supplement[s]" state law and is invalid. *Ind. Dep't of Nat. Res. v. Newton County*, 802 N.E.2d 430, 432–33 (Ind. 2004); *Hobble ex rel. Hobble v. Basham*, 575 N.E.2d 693, 697 (Ind. Ct. App. 1991).

62. In the alternative, to the extent the City contends, as BMC § 14.25.060(a) implies by authorizing "referral to the Monroe County Prosecutor for any potential state-level criminal charges," that the conduct prohibited by the Ordinance constitutes a crime or infraction under state statute, the City lacks "[t]he power to prescribe a penalty for conduct constituting a crime or infraction under statute." IC 36-1-3-8(a)(8).

COUNT IV — Void for Vagueness (Fourteenth Amendment; 42 U.S.C. § 1983)

63. Plaintiffs incorporate the preceding paragraphs.

64. The Due Process Clause of the Fourteenth Amendment prohibits the enforcement of a law that fails to give a person of ordinary intelligence fair notice of what is prohibited or that is so standardless that it invites arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461

U.S. 352, 357 (1983); *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972); *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012); *Bell v. Keating*, 697 F.3d 445, 455 (7th Cir. 2012).

65. The Ordinance's definition of "Superintelligence" turns on whether a system "greatly exceeds the cognitive performance of humans in virtually all domains of interest." The Ordinance supplies no benchmark, no test, no certifying authority, and no evidentiary standard by which that question is to be answered. The City's own sponsor has stated that the systems in question are "untestable." A standard the enacting body concedes cannot be applied is, by definition, one that fails to give fair notice.

66. The definition is internally inconsistent. It first describes a system with "super-human capability in all three aspects" of agency, generality, and intelligence, then describes any system "capable of self-modifying its core algorithms, executing code in environments outside its initial sandbox, or operating without continuous human oversight while … performing any complex goal-oriented task that may affect municipal infrastructure, financial markets, or public safety." Read disjunctively, the second description reaches a large share of ordinary commercial software in use today. Read conjunctively with the "virtually all domains of interest" clause, it reaches nothing that is known to exist. A person of ordinary intelligence cannot tell which reading governs.

67. BMC § 14.25.030 prohibits the use of "any unauthorized digital agent." The Ordinance does not define "unauthorized," establishes no authorization process, and names no authorizing official. On its face the provision bans every digital agent, because none can be "authorized."

68. The Ordinance applies to distribution or deployment "for any purpose" and vests enforcement in the Department of Law and the Police Department as a matter of "discretion[]," with no standards governing when, against whom, or on what evidence that discretion is to be exercised. The Ordinance therefore impermissibly delegates basic policy matters to police officers and city attorneys for resolution on an ad hoc and subjective basis. *Kolender*, 461 U.S. at 358.

69. Because the Ordinance imposes civil penalties and contemplates referral for criminal prosecution, and because it burdens expressive and commercial activity, it is subject to a heightened standard of definiteness that it cannot meet. The Ordinance is void for vagueness on its face and as applied to Plaintiffs.

COUNT V — Dormant Commerce Clause (U.S. Const. art. I, § 8, cl. 3; 42 U.S.C. § 1983)

70. Plaintiffs incorporate the preceding paragraphs.

71. The Commerce Clause, by negative implication, prohibits a State or its political subdivisions from enacting laws that discriminate against interstate commerce, that directly regulate commerce occurring wholly outside the enacting jurisdiction, or that impose burdens on interstate commerce clearly excessive in relation to their putative local benefits. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989); *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023); *Legato Vapors, LLC v. Cook*, 847 F.3d 825, 829–34 (7th Cir. 2017); *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660, 665–69 (7th Cir. 2010). A claim for violation of the Commerce Clause is cognizable under 42 U.S.C. § 1983. *Dennis v. Higgins*, 498 U.S. 439, 447–51 (1991).

72. The Ordinance regulates the delivery of software services over the internet from servers located outside Indiana to users inside Bloomington. The internet is a quintessential instrumentality of interstate commerce, and a municipality cannot regulate what is served into its borders over the internet without regulating conduct that occurs, and commercial relationships that are formed, wholly outside the municipality. See *Am. Libraries Ass'n v. Pataki*, 969 F. Supp. 160, 169–77 (S.D.N.Y. 1997); *ACLU v. Johnson*, 194 F.3d 1149, 1160–61 (10th Cir. 1999); *PSINet, Inc. v. Chapman*, 362 F.3d 227, 239–41 (4th Cir. 2004); *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 103–04 (2d Cir. 2003).

73. The Ordinance discriminates against interstate commerce in purpose and effect. The sponsor's Memorandum states that the Ordinance "prevents outside commercial tech entities from making high-risk deployments in Bloomington without local permission," and describes the Ordinance as a template whose adoption by hundreds of municipalities "would create a massive regulatory burden for companies creating" the targeted technology. The Ordinance's object is to burden out-of-state developers as such. A law enacted with the purpose of burdening interstate commerce is subject to, and cannot survive, strict scrutiny.

74. The Ordinance imposes burdens on interstate commerce that are clearly excessive in relation to any putative local benefit. The City has identified no local harm that has occurred, no mechanism by which it will identify a "Superintelligence," no budget for enforcement, and no local benefit beyond the symbolic. Against that absence of benefit, the Ordinance exposes every developer in the nation whose software can be reached from a browser in Bloomington to per-day penalties and injunctive proceedings, and, by the sponsor's own design, invites a patchwork of inconsistent municipal regimes. That is precisely the "interact[ion] with the legitimate

regulatory regimes of other states" that the Commerce Clause exists to prevent. *Healy*, 491 U.S. at 336–37; *Legato Vapors*, 847 F.3d at 834–35.

75. The Ordinance violates the Commerce Clause on its face and as applied to Plaintiffs.

COUNT VI — First Amendment (U.S. Const. amends. I, XIV; 42 U.S.C. § 1983)

76. Plaintiffs incorporate the preceding paragraphs.

77. Computer code, including the source code, weights, and outputs of artificial-intelligence systems, is expression protected by the First Amendment. *Junger v. Daley*, 209 F.3d 481, 484–85 (6th Cir. 2000); *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 445–49 (2d Cir. 2001); *Bernstein v. U.S. Dep't of State*, 922 F. Supp. 1426, 1434–36 (N.D. Cal. 1996), *aff'd sub nom. Bernstein v. U.S. Dep't of Justice*, 176 F.3d 1132 (9th Cir.), *reh'g en banc granted and opinion withdrawn*, 192 F.3d 1308 (9th Cir. 1999). The internet is entitled to the full protection of the First Amendment. *Reno v. ACLU*, 521 U.S. 844, 870 (1997).

78. BMC § 14.25.030 prohibits any person from "distribut[ing]" or "permit[ting] to be distributed" a class of software "for any purpose," including research, education, journalism, and political advocacy. It is a content-based restriction on the distribution of expressive material, defined by what the software is capable of saying and doing, and is subject to strict scrutiny.

79. The Ordinance is not narrowly tailored to any compelling interest. It bans rather than regulates; it applies "for any purpose"; it supplies no standard; and the City has identified no less restrictive alternative it considered. The Ordinance is also substantially overbroad, reaching a vast quantity of protected expression in relation to any legitimate sweep.

80. The Ordinance violates the First Amendment on its face and as applied to Plaintiffs.

COUNT VII — Indiana Constitution, Article 1, §§ 9 and 12 (IC 34-14-1-2)

81. Plaintiffs incorporate the preceding paragraphs.

82. Article 1, Section 9 of the Indiana Constitution provides that "[n]o law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever." Article 1, Section 12 guarantees that "every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law."

83. For the reasons stated in Counts IV and VI, the Ordinance restrains the free interchange of thought and opinion and the right to write and print freely, and it subjects Plaintiffs to penalties under a standard so indefinite that it denies due course of law. The Ordinance violates Article 1, Sections 9 and 12 of the Indiana Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare, pursuant to 28 U.S.C. § 2201 and IC 34-14-1-2, that Ordinance 2026-29 and Bloomington Municipal Code Chapter 14.25 are void and unenforceable in their entirety because they exceed the powers of the City under the Indiana Home Rule Act, IC 36-1-3-5, 36-1-3-8(a)(2), (a)(7), (a)(8), and (a)(12), and 36-1-3-9(b);

B. Declare that Ordinance 2026-29 and Bloomington Municipal Code Chapter 14.25 violate the First and Fourteenth Amendments to the United States Constitution, the Commerce Clause of the United States Constitution, and Article 1, Sections 9 and 12 of the Indiana Constitution;

C. Issue a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendants, their officers, agents, employees, and all persons acting in concert with them, from enforcing or threatening to enforce Ordinance 2026-29 or Bloomington Municipal Code Chapter 14.25;

D. Award Plaintiffs their reasonable attorneys' fees and costs under 42 U.S.C. § 1988;

E. Award Plaintiffs their costs of this action; and

F. Grant such other and further relief as the Court deems just and proper.

VERIFICATION

I, [Name], am the [Title] of [Plaintiff A, LLC] and am authorized to make this verification on its behalf. I have read the foregoing Verified Complaint. The factual allegations concerning [Plaintiff A] in paragraphs 9, 41, 43, 44, and 45 are true and correct based on my personal knowledge. The remaining factual allegations are true and correct to the best of my knowledge, information, and belief, based on the public records cited and attached. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on _____, 2026, at Bloomington, Indiana.

_____

[Name], [Title]

[Plaintiff A, LLC]

[Parallel verification block for Plaintiff B.]

Respectfully submitted,

_____

[Attorney Name], Atty. No. [#####-##]

[Firm]

[Address]

[Phone] · [Email]

Counsel for Plaintiffs

Dated: _____, 2026

EXHIBIT LIST

- **Exhibit A** — Ordinance 2026-29 as adopted November 4, 2026, with Council Staff Memorandum dated October 14, 2026 (Common Council packet, November 4, 2026, pp. 156–166).
- **Exhibit B** — Resolution 2026-10, adopted June 10, 2026.
- **Exhibit C** — Common Council packet, November 4, 2026, memorandum accompanying Ordinance 2026-30 (showing Corporation Counsel co-signature), for comparison.
- **Exhibit D** — Declaration of [Plaintiff A representative].
- **Exhibit E** — Declaration of [Plaintiff B representative].
- **Exhibit F** — Certified copy of the Ordinance from the Bloomington City Clerk, with mayoral approval and publication proofs (to be obtained).

05

DOCUMENT 5 OF 6

Pre-Suit Demand Letter (Template)

For Indiana counsel to send to the Mayor and Corporation Counsel of the City of Bloomington. Requests a veto if the approval window is open, or a written non-enforcement commitment, within ten days. Includes a preservation demand.

3 pages · template · to be sent by counsel

[FIRM LETTERHEAD]

[Date], 2026

VIA EMAIL AND CERTIFIED MAIL

The Honorable Kerry Thomson, Mayor City of Bloomington 401 N. Morton Street Bloomington, Indiana 47404

Margie Rice, Corporation Counsel City of Bloomington Department of Law 401 N. Morton Street, Suite 220 Bloomington, Indiana 47404

cc: Isak Nti Asare, President, Common Council cc: Nicole Bolden, City Clerk

Re: Ordinance 2026-29 ("Prohibition of Superintelligence," BMC Chapter 14.25) — Demand for Veto or Non-Enforcement; Notice of Intent to Seek Declaratory and Injunctive Relief; Preservation Demand

Dear Mayor Thomson and Ms. Rice:

This firm represents [Client], a [description: e.g., Bloomington-based software company / developer of artificial-intelligence systems used by customers in Bloomington]. We write regarding Ordinance 2026-29, adopted by the Common Council on November 4, 2026, which would add Chapter 14.25 to the Bloomington Municipal Code.

1. The Ordinance exceeds the City's authority on its face.

The Ordinance cites one source of authority: the Indiana Home Rule Act, IC 36-1-3, cited generically. That Act expressly denies the City each of the following powers, and the Ordinance exercises each of them:

- **IC 36-1-3-8(a)(12)** denies the City "[t]he power to adopt an ordinance … concerning an election … or otherwise conduct an election, except as expressly granted by statute." BMC § 14.25.040(b) conditions the repeal of the prohibition on "an affirmative vote of more than 95% of registered voters" of the City. No statute authorizes that election. The Council's own memorandum confirms the provision contemplates one: "the ultimate authority to lift the ban is left completely to the local electorate via a 95% voter approval threshold."
- **IC 36-1-3-8(a)(2)** denies the City "[t]he power to prescribe the law governing civil actions between private persons." BMC § 14.25.050 purports to confer "any and all remedies available at law to recover damages and fees without limitation," and the sponsor's memorandum states the Ordinance's purpose is to "help plaintiffs meet their burden of proof" in private suits and to make product-liability insurance unavailable to the targeted companies.
- **IC 36-1-3-9(b)** confines the City's jurisdiction to "[t]he area inside the corporate boundaries of the municipality." BMC § 14.25.030 purports to regulate software "regardless of the physical location of the server infrastructure hosting the system."

- **IC 36-1-3-8(a)(7)** denies the City the power to regulate conduct regulated by a state agency. The State of Indiana regulates the assessment and deployment of artificial-intelligence systems through the Office of Technology and Office of the Chief Data Officer (IC 4-13.1-5; State of Indiana AI Policy and Standard) and through the Attorney General under IC 24-15.

Each of these is an express statutory denial. The rule that doubts are resolved in favor of municipal power, IC 36-1-3-3(b), has no application where the General Assembly has stated that "a unit does not have" the power in question.

2. The Ordinance is unconstitutionally vague.

The Ordinance prohibits distribution or deployment of any "Superintelligence," defined as a system that "greatly exceeds the cognitive performance of humans in virtually all domains of interest." The Council's memorandum states that the systems in question "are untestable." A prohibition whose enacting body concedes it cannot be applied does not give fair notice. BMC § 14.25.030 then bans "any unauthorized digital agent" without defining "unauthorized" or identifying any body with power to authorize. The Ordinance vests enforcement "discretion" in the Department of Law and the Police Department with no governing standard. *Kolender v. Lawson*, 461 U.S. 352 (1983).

3. The Ordinance violates the Commerce Clause.

The Ordinance regulates software delivered over the internet from outside Indiana. The Seventh Circuit has twice invalidated Indiana enactments for reaching commerce outside the State. *Legato Vapors, LLC v. Cook*, 847 F.3d 825 (7th Cir. 2017); *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660 (7th Cir. 2010). The Council's memorandum states the Ordinance's purpose is to prevent "outside commercial tech entities" from deploying in Bloomington and to create, across hundreds of cities, "a massive regulatory burden for companies creating" the targeted technology. That is a stated purpose to burden interstate commerce.

4. Demand.

[Client] intends to continue its lawful business. It faces, under BMC §§ 14.25.060 and 1.01.130, civil penalties of up to $2,500 per violation with each day treated as a separate violation, injunctive proceedings, and referral to the Monroe County Prosecutor. That is a credible threat of enforcement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014).

We therefore request, within **ten (10) days** of the date of this letter, one of the following:

(a) **If the Ordinance has not yet been approved by the Mayor:** that the Mayor veto Ordinance 2026-29 under IC 36-4-6-16 and return it to the Council with a message stating the reasons set out above; or

(b) **If the Ordinance has been approved:** a written commitment from the Corporation Counsel, on behalf of the City, that the City will not enforce Chapter 14.25 against any person pending repeal, and that the administration will place a repealing ordinance before the Council at its next regular session.

Absent one of these, [Client] will file a Verified Complaint for Declaratory and Injunctive Relief in the United States District Court for the Southern District of Indiana under 42 U.S.C. § 1983 and IC 34-14-1-2, together with a motion for preliminary injunction, and will seek its attorneys' fees under 42 U.S.C. § 1988. A draft of that complaint is enclosed so that the City may evaluate its exposure.

5. Preservation demand.

The City is on notice of reasonably anticipated litigation. The City, the Council, the Office of the Mayor, the Department of Law, the Office of the Clerk, and each councilmember must preserve all documents and electronically stored information, in any form and on any device or account (including personal email, text, and messaging accounts used for City business), relating to Ordinance 2026-29, Resolution 2026-10, the "SAFE AI Forever Institute" or any affiliated person, any template or model ordinance from which Ordinance 2026-29 was derived, any legal review of Ordinance 2026-29, and any enforcement planning. Please suspend any auto-deletion policies that would affect such material.

6. Public records.

A request under the Indiana Access to Public Records Act, IC 5-14-3, is being delivered to the Clerk under separate cover. Nothing in this letter waives the City's obligations under that Act.

We would welcome a conversation before any filing. Please direct all communications regarding this matter to the undersigned.

Very truly yours,

[Attorney Name] [Firm] Atty. No. [#####-##] [Phone] · [Email]

Enclosure: Draft Verified Complaint

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DOCUMENT 6 OF 6

Public Records Request under IC 5-14-3

Eight categories of records, including any Department of Law review of the ordinance, communications with the SAFE AI Forever Institute, the template the ordinance was adapted from, and any enforcement guidance. Anyone may send it; no lawyer is needed.

2 pages · template · ready to send

[Date], 2026

VIA EMAIL (council@bloomington.in.gov; clerk@bloomington.in.gov) **AND U.S. MAIL**

Nicole Bolden, City Clerk City of Bloomington 401 N. Morton Street, Suite 201 Bloomington, Indiana 47404

Office of the Common Council 401 N. Morton Street, Suite 110 Bloomington, Indiana 47404

Re: Request for Public Records under the Indiana Access to Public Records Act, IC 5-14-3 — Ordinance 2026-29

Dear Ms. Bolden:

Under the Indiana Access to Public Records Act, IC 5-14-3-3, I request copies of the following public records. "Records" includes paper and electronic documents, email, text and instant messages, calendar entries, drafts, attachments, and metadata, in the possession of the City of Bloomington, the Common Council, the Office of the Mayor, the Department of Law, the Office of the Clerk, or any councilmember or employee acting in an official capacity, from **January 1, 2026 to the date of your response**.

1. The final adopted text of Ordinance 2026-29 as signed by the Council President and attested by the Clerk, together with the record of its presentation to the Mayor (date and time), any mayoral approval or veto message, and any proof of publication under IC 5-3-1.

2. All drafts of Ordinance 2026-29 and of the Council Staff Memorandum dated October 14, 2026, including any draft containing a "Section 2.90.040."

3. All communications between any councilmember, the Council Office, the Office of the Mayor, or the Department of Law and any representative of the "SAFE AI Forever Institute," or any other person or organization outside City government, concerning Ordinance 2026-29, Resolution 2026-10, or model or template ordinances concerning artificial intelligence.

4. All communications between the Council Office or any councilmember and the Department of Law or Corporation Counsel concerning the City's legal authority to adopt or enforce Ordinance 2026-29, including any legal memorandum, opinion, or review, and any request for one.

5. All communications with Indiana University, the Indiana University Office of the Vice President and General Counsel, or any IU faculty or administrator concerning Ordinance 2026-29 or Resolution 2026-10.

6. All records concerning how the City intends to detect, evaluate, or adjudicate whether a software system is a "Superintelligence" within the meaning of BMC § 14.25.020(a), and any enforcement guidance, training material, or procedure concerning BMC Chapter 14.25 provided to the Department of Law or the Bloomington Police Department.

7. The audio and video recording, and any minutes or transcript, of the Common Council regular sessions of October 14, 2026 and November 4, 2026, as they pertain to Ordinance 2026-29.

8. All records reflecting the fiscal analysis underlying the statement in the Council Staff Memorandum that the Ordinance will have no impact on City finances.

If any portion of a record is withheld, please identify the record, state the specific statutory exemption relied upon, and produce the remainder. IC 5-14-3-6; IC 5-14-3-9. Please provide electronic copies where available. I agree to pay reasonable copying costs up to $50; please contact me before incurring costs above that amount.

This request is submitted in writing and should be acknowledged within seven (7) days under IC 5-14-3-9(b). Please direct responses and questions to the undersigned.

Thank you.

[Name] [Organization] [Address] [Email] · [Phone]