UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

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

Plaintiffs,

**CITY OF BLOOMINGTON, INDIANA, et al.,**

Defendants.

Case No. 1:26-cv-_____

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# 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,

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

[Firm]

[Address]

[Phone] · [Email]

*Counsel for Plaintiffs*

Dated: _____, 2026

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## 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]