

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CHERRY HILL VINEYARD, LLC and
PHILIP BROOKS,

Plaintiffs,

vs.

JOHN E. BALDACCI, Governor of Maine;
G. STEVEN ROWE, Attorney General of Maine;
JEFFREY R. AUSTIN, Supervisor of the Bureau
of Liquor Enforcement, and
PATRICK J. FLEMMING, Commander of
Special Investigations Unit, Bureau of Liquor
Enforcement,

Defendants.

Civil No. 1:05-CV-153-B-W

FIRST AMENDED COMPLAINT
(INJUNCTIVE RELIEF SOUGHT)

For their first Amended Complaint, Plaintiffs make the following allegations based upon information and belief, except for the allegations pertaining to Plaintiffs and their counsel, which are based upon personal knowledge. Plaintiffs have obtained the written consent of the Defendants to file this amended complaint.

INTRODUCTION

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of Maine laws and regulations that restrict out-of-state wineries from selling and delivering wine directly to consumers, restaurants and licensed retailers within the State of Maine. Plaintiffs seek a declaratory judgment that these laws and regulations as applied to shipments of wine originating out of state violate the Commerce Clause of the United States Constitution, and an injunction against their

enforcement.

JURISDICTION

2 Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiffs' rights and privileges to engage in interstate commerce under the Commerce Clause of the United States Constitution without undue interference from state law.

3. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§1331 and 1343(a)(3), which confer original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the United States Constitution.

4. This Court has basic authority to grant declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

PLAINTIFFS

5. Plaintiff Philip Brooks is an adult resident of Maine.

6. Plaintiff Brooks is a regular purchaser and consumer of wine, including fine and rare wines in some cases.

7. Plaintiff Brooks intends to purchase bottled wine from out-of-state wineries and have those wines delivered to his residence in Maine if state law restrictions against direct interstate sales and deliveries of wine to consumers are removed or declared unconstitutional.

8. Plaintiff Cherry Hill Vineyard, LLC, is an out-of-state winery located in Rickreall, Oregon.

9. Plaintiff Cherry Hill Vineyard intends to sell and deliver wines directly to individuals, restaurants and licensed retailers in Maine if state law restrictions against

direct interstate sales and deliveries are removed or declared unconstitutional.

10. Plaintiffs intend to pay all excise or other taxes that may be due on such interstate shipments.

DEFENDANTS

11. Defendants are sued in their official capacities.

12. Defendant, John E. Baldacci, is Governor of Maine and has the duty to execute all state laws, including the statutes challenged herein, and to supervise the conduct of the other Defendants.

13. Defendant, Steven Rowe, is Attorney-General of Maine who represents all state agencies and has the authority to prosecute violations of the statutes challenged herein.

14. Defendant, Jeffrey R. Austin is Supervisor of the Bureau of Liquor Enforcement.

15. Defendant, Patrick J. Flemming is the Commander of the Special Investigations Unit of the Bureau of Liquor Enforcement.

16. The Bureau of Liquor Enforcement has responsibility to administer and enforce the laws concerning the importation, transportation and sale of wine in Maine, and to administer laws relating to licensing and collection of taxes on wine sales.

17. Defendants are acting under color of state law when they enforce or supervise the enforcement of the statutes challenged herein.

COMMERCE CLAUSE VIOLATION

18. Paragraphs 1-17 are realleged and incorporated herein.

19. The laws of the State of Maine prohibit out-of-state wineries from selling

wine directly to consumers within the state of Maine.

20. In-state wineries may obtain a farm winery license that permits them to sell wine directly to consumers within the state of Maine.

21. An out-of-state winery is eligible to obtain a farm winery license.

22. An out-of-state winery that obtained a farm winery license would still not be allowed to sell wine directly to consumers within the state. The consumers would have to travel to the state in which the winery was located to buy the wine.

23. The laws of the State of Maine prohibit out-of-state wineries from using parcel delivery services to ship their wine to consumers whether or not they hold a Maine farm winery license. Maine's liquor laws and regulations prohibit an out-of-state winery from delivering or transporting wine directly to a consumer in Maine. Specifically, Maine Rev. Stat., Title 28-A §§ 1361(4), 2077 and 2077-B prohibit the purchase, sale, transportation and delivery of wine from outside the state directly to a Maine wine consumer.

24. Without advance approval, the laws of the State of Maine prohibits its residents from personally transporting into the state more than four quarts of wine purchased from an out-of-state winery whether or not they hold a farm winery permit.

25. Maine law permits the transportation of unlimited quantities of wine purchased within the state.

26. Some wines Plaintiff Brooks wants to purchase are not available in Maine, and can only be obtained directly from wineries located outside Maine, such as Plaintiff Cherry Hill Vineyard.

27. The cost of traveling to wineries located in other states to purchase wine

four quarts at a time makes it economically impractical and effectively prohibits Plaintiff Brooks from making such transactions.

28. Out-of-state wineries, including Plaintiff Cherry Hill Vineyard, will sell and deliver wine to Plaintiff Brooks and other residents of Maine if the laws prohibiting direct interstate sales and deliveries are repealed or declared unconstitutional.

29. Maine Alcoholic Beverage Laws regulate transactions occurring out of state, have the practical effect of prohibiting direct interstate sales and deliveries of wine to adults, discriminate against interstate commerce, reserve to in-state businesses the exclusive market in wine, and provide a direct economic advantage to in-state wine businesses, all in violation of the Commerce Clause of the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

A. Judgment declaring Maine Rev. Stat. Title 28-A §§ 1361(4), 2077, and 2077-B unconstitutional as applied to preventing out-of-state wineries from selling and delivering wine directly to consumers in the state of Maine, as a violation of the Commerce Clause of the United States Constitution.

B. An injunction prohibiting Defendants from enforcing Maine Rev. Stat. Title 28-A §§ 1361(4), 2077, and 2077-B against direct deliveries of wine from out-of-state wineries, or otherwise prohibiting out-of-state wineries from selling and delivering wine directly to adult consumers in Maine.

C. Plaintiffs do not request that the State be enjoined from collecting any tax due on the sale of wine.

D. An award of costs and expenses, including reasonable attorneys' fees

pursuant to 42 U.S.C. § 1988.

E. Such other relief as the Court deems appropriate to afford Plaintiffs full relief.

January 31, 2006

Respectfully submitted by

/s/ **James A. Tanford**

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