

Case No. 07-1513
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CHERRY HILL VINEYARD, LLC; PHILIP BROOKS;
Plaintiffs - Appellees

vs.

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

DAN GAWADOWSKY, Director of the Bureau of Alcoholic Beverages
and Lottery Operations.
Defendant

Appeal from a Final Judgment of the United States District Court
for District of Maine

BRIEF OF PLAINTIFFS-APPELLANTS

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STATEMENT OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

Pursuant to Fed. R. App. P 26.1, Cherry Hill Vineyard, LLC, makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? No
2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? No

James A. Tanford
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Date

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I.
JURISDICTIONAL STATEMENT

Plaintiffs commenced this action against Maine state officials in the United States District Court for the District of Maine, alleging that certain Maine statutes concerning the sale of wine were unconstitutional under the Commerce Clause of the U.S. Constitution because they discriminated against interstate commerce. The District Court had jurisdiction under 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.

The District Court entered final judgment on a stipulated record against Plaintiffs on March 5, 2007 (Addendum, *infra* at 61). That judgment disposed of all the parties' claims, and Plaintiffs filed timely notice of appeal on March 28, 2007 (Apx. 188). This Court has jurisdiction pursuant to 28 U.S.C. § 1291, which authorizes the courts of appeals to hear appeals from final decisions of the district court.

II. STATEMENT OF ISSUES FOR REVIEW

Maine law prohibits consumers from buying wine directly from a winery unless they purchase it in person. It also prohibits wineries from shipping wine directly to consumers, and restricts consumers' ability to personally transport wine into Maine. The combined effect of these three rules makes it virtually impossible for consumers to obtain wine directly from out-of-state wineries, but fairly easy for them to obtain wine directly from in-state wineries. The question is whether this scheme violates the Commerce Clause. To answer it, the Court will have to resolve three related issues:

1. Are these statutory prohibitions presumptively invalid under *Granholm v. Heald* and *West Lynn Creamery v. Healy* because they have the practical effect of discriminating against interstate commerce?
2. Can the State's purported justifications for these prohibitions pass strict scrutiny -- that is, has the State shown that there are no reasonable nondiscriminatory alternatives that would adequately advance its interests?
3. Can the 21st Amendment save an otherwise unconstitutional state alcoholic beverage law?

III. STATEMENT OF THE CASE

This appeal concerns a constitutional challenge to three provisions in Maine law that prohibit consumers from buying wine directly from a winery unless they purchase it in person, and even if they appear in person, prohibit them from either shipping or carrying the wine back to Maine. The Plaintiffs are a winery located in Oregon (Cherry Hill Vineyard) and a Maine wine consumer (Philip Brooks). They contend that this statutory scheme has the practical effect of discriminating against nonresident wineries and therefore violates the Commerce Clause and exceeds Maine's 21st Amendment authority to regulate alcoholic beverages. They rely primarily on *Granholm v. Heald*, 544 U.S. 460, 466 (2005) which held that it is unconstitutional for a state to allow "in-state wineries to sell directly to consumers in that State but prohibit out-of-state wineries from doing so, or, at least, to make direct sales impractical from an economic standpoint" (emphasis added). The cost of making a trip from Maine to Oregon when one can neither ship the wine home nor carry back more than 5 bottles makes direct sales by Cherry Hill Vineyard and other west coast producers impractical from an economic standpoint, and few such sales will occur. Maine consumers are effectively forced to buy their wine in Maine from a Maine retailer or winery.

Plaintiffs sued the director of the Maine Bureau of Liquor Enforcement and other state officials seeking a declaratory judgment that the provisions in question were unconstitutional because they discriminated against out-of-state wineries. The Defendants argued that the in-person sales requirement applied equally to both in-state and out-of-state wineries and was the only way to ensure that the purchaser of wine was an adult, so the statutory scheme was constitutionally valid.

The Supreme Court generally recognizes two levels of Commerce Clause scrutiny. If a law discriminates against interstate commerce, it is subject to strict scrutiny. If it does not discriminate, but places only incidental burdens on interstate commerce, it is reviewed by the more lenient *Pike v. Bruce Church* balancing test.¹ In this case, Plaintiffs claim that Maine's statutory scheme is discriminatory and fails strict scrutiny. Plaintiffs do not argue that the regulation also fails the lesser balancing test.

The parties agreed to a stipulated record (Apx. at 26 *et seq*), and submitted briefs to the District Court in support of judgment on it. With the consent of the parties, the Maine and Beer Wholesalers Assoc. also submitted a brief arguing that the law was constitutional. The District Court referred the matter to the Magistrate

¹See *Brown-Forman Distillers Corp. v. N.Y. State Liq. Auth.*, 476 U.S. 573, 579 (1986).

Judge, who on July 27, 2006, issued a report recommending that the court enter judgment in favor of the defendants. (Addendum, *infra* at 41 *et seq*). The magistrate Judge interpreted the Complaint as a narrow challenge to the State's prohibition against direct shipping of wine. She found that the prohibition applied on its face even-handedly to in-state and out-of-state wineries, and that both have some degree of access to the retail market, so there was no discrimination. She therefore subjected the statute to the lesser scrutiny of the *Pike v. Bruce Church*² balancing test, and found that it passed constitutional muster. Plaintiffs filed their objections to the Report, and after consideration, the District Court overruled the objections and adopted the Report as the opinion of the Court. (Addendum, *infra* at 60). The Court therefore entered judgment for the defendants and against the plaintiffs on March 5, 2007. (Addendum, *infra* at 61). On March 28, 2007, plaintiffs filed notice of appeal. (Apx. 188).

² 397 U.S. 137 (1970).

IV. STATEMENT OF FACTS³

Cherry Hill Winery is located in Rickreall, Oregon [Stip. 1, Apx.26] and makes excellent Pinot Noir.⁴ Dr. Philip Brooks lives in Hampden, Maine, and is a regular purchaser of wine. [Stip. 8-9, Apx.27]. Cherry Hill would like to sell its wine to Maine consumers like Dr. Brooks, and Dr. Brooks would like to buy wine from small out-of-state wineries like Cherry Hill. [Stip. 406, 10-13, Apx. 26-28].

If Dr. Brooks lived in almost any other state, buying wine from Cherry Hill would be no problem.⁵ Most states permit adult consumers to order wine from

³ The facts have been stipulated, and the Court has that full stipulation before it in the Joint Appendix. Consistent with Fed. R. App. P. 28(a)(7), Plaintiffs are limiting their statement of facts to those they believe are relevant to the issues. Some additional background data on the wine industry is included in footnotes, all of which consist of facts not subject to reasonable dispute capable of ready and accurate determination from the sources cited, and so may be judicially noticed by this Court. Fed. R. Evid. 201.

⁴ Cherry Hill Winery's Estate Pinot Noir received 91 points by Wine Spectator, <http://www.cherryhillwinery.com/chwpinotnoir.shtml>.

⁵ Cherry Hill wines are available to adults directly from the winery by telephone and mail order. <http://www.cherryhillwinery.com/shop.shtml>. (last visited May 21, 2007).

small out-of-state wineries and have it delivered.⁶ But Dr. Brooks lives in Maine, one of a dwindling number of states that effectively prohibit such direct sales. Maine prohibits ordering wine by Internet, telephone or mail, and requires that all purchases be made in person. Dr. Brooks must appear in person even if he is already known to the winery as a responsible adult, has been a regular customer for years,⁷ or has appeared in person only a few days before. The problem is that Cherry Hill Winery is 2600 miles away [Stip. 7, Apx. 27], so such in-person appearances come only at great cost and inconvenience. It might be worthwhile for a serious wine enthusiast to make wine-buying journeys to the west coast⁸ once or twice a

⁶ See *Cherry Hill Vineyards v. Hudgins*, 2006 U.S. Dist. LEXIS 93266 at *57, n.24 (W.D. Ky. 2006) (32 states allow direct shipping without a face-to-face appearance). See also *Who Ships Where*, Wine Institute, <http://wi.shipcompliant.com/WhoShipsWhere.aspx> (last visited May 17, 2007) listing 39 states that allow direct shipping by common carriers, only 8 of which restrict such shipment to those purchased on site in a face-to-face transaction.

⁷ Many wineries have “wine clubs” that send wine on a regular basis to customers who have previously visited the winery, e.g., Madrona Vineyards, <http://www.madronavineyards.com/clubs/index.shtml> (last visited May 16, 2007); Chateau Thomas Winery, <http://www.chateauthomas.com/clubs/> (last visited May 16, 2007), and Perry Creek Winery, <http://www.perrycreek.com/club.php> (last visited May 16, 2007).

⁸ 93% of American wines are produced in California, Washington and Oregon. See *Wineries By State*, <http://www.wineamerica.org/newsroom/data.htm> (data from U.S. Tax & Trade Bureau, last visited May 16, 2007).

year if he could stock his wine cellar, but Maine will not allow Dr. Brooks either to ship wine home or to carry home more than 5 bottles.⁹ The effect of these combined regulations is to make it economically impractical for Maine residents to buy wine directly from a majority of American wineries.

Although consumers can buy local wine directly from Maine wineries, they are forced to buy almost all their out-of-state wine from Maine retailers. This creates two problems. First, the wine sold at Maine retailers carries a high price tag -- the cost has been marked up by each middleman who has handled it (both the wholesaler and the retailer). [FTC Report, Apx. 75].¹⁰ Second, most out-of-state

⁹ There is a procedure whereby Dr. Brooks could request permission from the State to import more than 5 bottles, which permission might or might not be granted. [Stip. 27, Apx. 29]. At the least, obtaining it would be time consuming. Many wineries, including Cherry Hill, are open only on weekends, see <http://www.cherryhillwinery.com/> (last visited May 21, 2007), when state offices are closed. Dr. Brooks may not know which wines he wants to buy until he tastes them [Stip. 13, Apx. 28]. Once he decided to buy a case of a particular wine, he would have to wait in Oregon for at least several days before he had even the slightest chance of receiving permission. He cannot return to Maine and wait there, because if the order is approved, Dr. Brooks cannot have the wine shipped (shipping is illegal), but would have to make a second trip to Oregon to pick up the wine in person.

¹⁰ Alternatively, an out-of-state winery can theoretically obtain a Maine farm winery permit and then sell its wine directly to a retailer (if it can find one willing to buy the wine), but this, too, requires that the winery sacrifice profit to pay the retailer. [Stip. 22, Apx. 29].

wines are not available through Maine retailers. There are more than 4200 wineries in the U.S.¹¹ Many are small wineries like Cherry Hill, producing as few as 2,000 gallons yearly. [FTC Report, Apx. 59]. These small wineries generally do not have wholesaler distribution, because it is uneconomical for a wholesaler to carry lesser-known wines available only in small quantities. [Id]. The majority of wineries which do not have a wholesaler are foreclosed from the Maine market altogether unless they can take direct orders. [Id., Apx. 67]. Although in theory an out-of-state winery could obtain a farm winery license and try to market its wine directly to a Maine retailer, no winery has yet done so [Stip. 24, Apx. 29], and there is no evidence any retailer is actually willing to go to the expense and trouble of handling direct distribution from out-of-state wineries. Even a retailer willing to carry a few unusual out-of-state wines obtained outside the wholesale distribution system could not afford the cost and shelf space to carry products from 4200 wineries. There are wineries in all 50 states,¹² and it is not realistic to think that any Maine retailer is going to stock up on wines from Indiana, Idaho or Arizona in hopes that they sell.

¹¹ The FTC Report introduced as part of the record gives the number of wineries as over 2000. [Apx. 59]. This number is out-of-date. Today, the number of wineries is over 4200 according to the federal Tax & Trade Bureau that issues winery licenses. See *Wineries By State*, *supra* note 8.

¹² See *Wineries by State*, *supra* note 8.

The Federal Trade Commission has studied the problem of market access by small wineries, and concluded that state laws like Maine's, which prevent direct sales and force producers to use wholesalers, are causing a closed market. [FTC Report, Apx. 56, 59, 76-77]. The constricted availability of wine is due in large part to the three-tier system itself, in which states give wholesalers a monopoly on bringing wine into a state. As the number of wineries has grown, the number of wholesalers has shrunk through mergers and acquisitions. Some states are served by as few as five or six distributors of American wine. The small number of wholesalers simply cannot handle the large number of wineries. The increasing winery-to-wholesaler ratio means that many small wineries do not produce enough wine or have sufficient consumer demand to make it economical for wholesalers to carry their products. This is a significant problem, because restricting direct sales limits consumer access to thousands of labels from smaller wineries. [Id.]. See also *Granholm*, 540 U.S. at 467.¹³

¹³ A more in depth analysis of the wine industry is summarized in Thomas E. Rutledge, *Who's Selling the Next Round: Wines, State Lines, the Twenty-first Amendment and the Commerce Clause*, 33 N. Ky. L. Rev. 1 (2006); James Molnar, *Under the Influence: Why Alcohol Direct Shipping Laws Are a Violation of the Commerce Clause*, 9 U. Miami Bus. L. Rev. 169, 171-177 (2001); and Duncan Baird Douglass, *Constitutional Crossroads: Reconciling the Twenty-first Amendment and the Commerce Clause to Evaluate State Regulations of Interstate Commerce in Alcoholic Beverages*, 49 Duke L.J. 1619, 1648-53 (2000).

In the District Court, the State tried to justify this market constriction by asserting that a face-to-face appearance at wineries was necessary to prevent minors from obtaining alcohol, but the facts do not bear this out. More than 30 states allow some kind of direct sales and shipment of wine without requiring an in-person appearance.¹⁴ States that permit interstate direct shipping generally require an adult signature for delivery and report few or no problems with shipments to minors. [Id., Apx. 57, 78-91]. The National Academies of Science reports that underage persons are in fact obtaining their wine from local outlets that require a face-to-face appearance. [Reducing Underage Drinking, Apx. 41]. The stipulated record shows that there have been several successful stings in which minors obtained alcohol through on-line sales, but does not show that any of these incidents involved direct wine sales from wineries. All the liquor involved came from retailers.

Nothing in the record shows that on-line ordering of wine contributes to the problem of youth access. Minors rarely drink the kind of premium wine that is

¹⁴ See *Cherry Hill Vineyards v. Hudgins*, 2006 U.S. Dist. LEXIS 93266 at *57, n.24 (W.D. Ky. 2006) (32 states allow direct shipping without a face-to-face appearance). See also Who Ships Where, Wine Institute, <http://wi.shipcompliant.com/WhoShipsWhere.aspx> (last visited May 17, 2007) listing 39 states that allow direct shipping by common carriers, only 8 of which restrict such shipment to those purchased on site in a face-to-face transaction.

hand-sold directly by wineries to its customers,¹⁵ rarely are willing to wait several days for a shipment to arrive, and rarely have a safe address for it to be shipped to where their parents will not find out. [FTC Report, Apx.65, 78-91]. Remote ordering of wine without a face-to-face appearance accounts for little or no youth access. [Stip. 37, Apx. 31; Reducing Underage Drinking, Apx. 40-41]. To the extent that some youth might be deterred from attempting to purchase alcohol by the requirement that they produce an ID, this effect can be achieved by requiring the common carrier who delivers the wine to verify the age of the recipient. All major package delivery services have programs to facilitate this. [FTC Report, Apx. 89].¹⁶ The record shows that sometimes a delivery driver will neglect to check an ID, but does not show this incidence of error is any higher for delivery drivers than for the clerks at retail stores who are also supposed to check IDs. In addition, the winery itself can verify age through on-line services such as ChoicePoint.¹⁷ The record

¹⁵ Cherry Hill's Estate Pinot Noir costs \$29.00 per bottle, and its Sweeney Reserve Pinot Noir costs \$40.00 per bottle. <http://www.cherryhillwinery.com/form.shtml> (last visited May 21, 2007).

¹⁶ See <http://www.fedex.com/us/wine/> (last visited May 16, 2007); <http://www.ups.com/content/us/en/resources/service/terms/service.html> (last visited May 16, 2007).

¹⁷ See http://www.choicepoint.net/business/financial/ageverif_fs.html, last visited May 16, 2007.

contains no evidence that the State has ever evaluated or considered an alternative method of restricting youth access, nor that the alternatives identified by the FTC are any less effective than the in-person requirement.

V. SUMMARY OF ARGUMENT

Maine law prohibits consumers from buying wine directly from a winery unless they travel to that winery and purchase it in person. Since 93% of U.S. wineries are located on the west coast, which is a 5200-mile round trip from Maine, few such sales will take place. Although it is conceivable that a few consumers might be able to afford a once-a-year trip to the west coast to buy wine in person if they could buy several cases at a time, Maine has foreclosed this possibility. It prohibits either shipping purchases home or personally carrying back more than five bottles per trip. The combination of the in-person requirement, the shipping ban, and the 5-bottle limit has the same practical effect as if Maine had enacted a statute that flatly prohibited out-of-state wineries from making direct sales to consumers. It makes such sales virtually impossible from an economic standpoint, and stands as a trade barrier preventing interstate commerce.

Whether this barrier against direct sales violates the Commerce Clause depends in large measure on whether in-state wineries are similarly affected. If in-

state and out-of-state wineries are equally burdened, if the impact on interstate commerce is only incidental, and if any commercial advantage enjoyed by local wineries is merely a by-product of natural market conditions, then the scheme is presumptively valid and subject only to minimal level of scrutiny under a balancing test to make sure the restrictions advance a legitimate state interest. *Pike v. Bruce Church*, 397 U.S. 137 (1970). However, if in-state wineries are given preferential access to the direct-sale market, whether intended or not, the Supreme Court holds that the differential treatment constitutes discrimination against interstate commerce that is “virtually per se invalid” under the Commerce Clause. Such laws are subject to strict scrutiny. *Granholm v. Heald*, 544 U.S. 460, 466 (2005); *Chemical Waste Mgmt., Inc. v. Hunt*, 504 U.S. 334, 342 (1992); *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979). The question of whether a law is discriminatory or merely burdensome is not a question of whether the statute is even-handed on its face. The Supreme Court has said repeatedly that it is a question of practical effect, and the Commerce Clause prohibits both absolute trade barriers and regulatory schemes that make interstate commerce economically impractical.

In this case, the restrictions on direct wine sales have the practical effect of allowing in-state wineries to sell wine directly to consumers in Maine, but prohibiting out-of-state wineries from doing so, or, at the least, making direct sales

impractical from an economic standpoint. In-state wineries are given a competitive advantage over wineries located beyond the States' borders. It is easy for Maine residents to get to local wineries, and once there, they may buy and transport home as much wine as they want, so many will make the trip. It is expensive and difficult for Maine residents to travel to the west coast where most American wineries are located, so few will do so, especially since they are limited to bring home only 5 bottle per trip. The combination of the difference in cost between a local trip and a 5600-mile west coast trip, and the different rules on how much wine can be transported home from a local winery and an out-of-state winery, operates as a *de facto* trade barrier that effectively prohibits out-of-state wineries from making direct-to-consumer sales.¹⁸

The fact that the product in this case is wine rather than books is irrelevant. Although the 21st Amendment authorizes states to impose more restrictions on remote wine sales than they do on Internet book sales, the Supreme Court squarely held in *Granholm* that the Twenty-first Amendment “does not allow States to

¹⁸ The 5-bottle transportation limit is discriminatory on its face because it only applies to transportation from out-of-state wineries. Me. Rev. Stat., tit. 28-A, § 2077(1-A). It is not being directly challenged because even if it were removed, and a consumer could transport unlimited amounts of wine home from California, it would still not be economically practical to drive 5200 miles to do so, so the in-person rule would still have a discriminatory effect. See *Cherry Hill Vineyards v. Hudgins*, 2006 U.S. Dist. LEXIS 93266 at *40-*54 (W.D. Ky. 2006).

regulate the direct shipment of wine on terms that discriminate in favor of in-state producers.” 544 U.S. at 476.

The Supreme Court holds that when a law is discriminatory in effect, it violates the Commerce Clause unless the State can prove that there are no reasonable non-discriminatory alternatives that would adequately advance the state’s legitimate regulatory interests. *E.g., New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278-79 (1988). The State has the burden of proof on this issue, and made no such showing. The State’s justification for the in-person sales requirement is that a face-to-face appearance at the time of sale is the only way to prevent youth access to alcohol, but they offered no evidence that a face-to-face appearance at the time of delivery is any less effective, nor that other methods of age verification at the point of sale, such as the online service ChoicePoint, would be less effective. They offered no evidence as to why a face-to-face transaction at the time of delivery is less effective. The State did not even try to justify why repeated face-to-face appearances are necessary to verify age, and offered no evidence that requiring only a one-time appearance at a winery would not be equally effective -- we’re not getting any younger, after all. Nor did the State try to justify why it is necessary to limit transportation from out-of-state wineries to 5 bottles at a time when there is no such limit on purchases made in-state.

Maine's statutory scheme has the practical effect of prohibiting direct interstate sales and deliveries of wine to adults, discriminating against interstate commerce, reserving to in-state businesses the exclusive market in selling wine directly to consumers, and provides a direct economic advantage to in-state wine businesses, all in violation of the Commerce Clause of the United States Constitution.

VI. STANDARD OF REVIEW

The standard of review of a judgment entered on a stipulated record where the essential dispute between the parties is a matter of law is *de novo*. Review is like that for summary judgment, except that the facts need not be taken in the light most favorable to the non-movant because they are stipulated. *See Auburn Police Union v. Carpenter*, 8 F.3d 886, 892 (1st Cir. 1993). Plenary review is appropriate when the issue is one of law or how the law applies to the facts, especially in constitutional cases. *Wessman v. Gittens*, 160 F.3d 790, 795 (1st Cir. 1998) (whether state justification for discrimination satisfied strict scrutiny is reviewed *de novo*); *Globe Newspaper Co. v. Beacon Hill Arch. Comm'n*, 100 F.3d 175, 181 (1st Cir. 1996) (whether ordinance violated newspaper's first amendment rights reviewed *de novo*). Plenary review in constitutional cases is necessary to make sure

the federal courts remain zealous protectors of constitutional rights. *Id.*, 100 F.3d at 181-82.

VII. ARGUMENT

A. MAINE’S LAWS ON DIRECT WINE SALES AFFECT IN-STATE AND OUT-OF-STATE WINERIES DIFFERENTLY

No one may sell, ship or transport wine in Maine without a license issued by the Bureau of Liquor Enforcement. Me. Rev. Stat., tit. 28-A, § 2078.¹⁹ The only license that allows a winery to sell directly to consumers is called a Farm Winery License. Stip. 21 [Apx. 28]; Me. Rev. Stat., tit. 28-A, § 1355(3).²⁰ Without the license, a winery may sell only to a Maine wholesaler. Me. Rev. Stat., tit. 28-A, § 1361.²¹

Both in-state and out-of-state wineries are eligible for a farm winery license and both are constrained by the fact that the license authorizes a winery to sell wine

¹⁹ The statute provides: “Any person who, or any person whose employee or agent, sells liquor within the State without a valid license commits a Class E crime.”

²⁰ The statute provides: “A holder of a farm winery license ... may sell, on the premises, wine produced at the winery by the bottle [or] by the case...”

²¹ The statute provides: “No manufacturer [of] wine may ... sell or ... transport ... wine unless the manufacturer ... has obtained from the bureau a certificate of approval [and] No certificate of approval holder except a ... Maine farm winery licensee ... may sell .. wine to any person to whom a Maine wholesale license has not been issued by the bureau.”

directly to consumers only “on the premises.” Maine Rev. Stat., tit. 28-A, § 1355(3)(D). However, the “equal treatment” stops here and is illusory.²² When one tries to apply the terms of the license to real-world situations in which consumers want to buy wine directly from the winery, one discovers that things are not equal. The rules operate quite differently for in-state and out-of-state wineries.

For in-state wineries, the requirement that sales take place on the premises poses no significant problem. Their premises are located in Maine, so they may sell directly to consumers in the state without being forced to pay a middleman (either a wholesaler or retailer) to sell it for them. [Stip. 20, Apx. 28]. Consumers may reach Maine wineries without leaving the state, may buy wine, and then may transport the wine home. Maine places no limitation on the quantity of wine that may be purchased in this way, Me. Rev. Stat., tit. 28-A, § 2077(2),²³ and requires no special approval from the State.

For out-of-state wineries like Cherry Hill, the situation is different. Cherry

²² With a license, both in-state and out-of-state wineries may sell wine to wholesalers or directly to retailers for re-sale to consumers, but that issue is not involved in this case. This case involves only direct-to-consumer sales that do not involve a middleman.

²³ The statute provides: “A person other than a licensee may not transport ... wine, in a quantity greater than 4 quarts, within the State unless it was purchased from an off-premise retail licensee.”

Hill is located in Oregon, so a license authorizing it to sell wine on its premises only authorizes it to sell directly to consumers in Oregon -- not in Maine. To sell their wine directly to consumers in Maine, Cherry Hill would have to establish a retail location in the state (Stip. 22, Apx. 29), because Maine forbids consumers to buy wine from an out-of-state winery by mail-order. Me. Rev. Stat., tit. 28-A, § 2077-B. Of course, a Maine consumer could conceivably travel to Oregon to buy wine on Cherry Hill's premises, but how would he get the wine home? The winery is not allowed to ship the wine (Answer ¶ 23, Apx. 23),²⁴ and the consumer is not allowed to personally transport home more than 4 quarts (5 bottles) from an out-of-state source, Me. Rev. Stat., tit. 28-A, § 2077(1-A),²⁵ unless he has special permission from the Bureau of Liquor Enforcement. To obtain such permission, the person must send a letter to the Bureau regarding the type and quantity of wine he wants to bring in, something he probably cannot know in advance of tasting the wine at the winery [Stip. 13, Apx. 28], and then wait for the Bureau to get around

²⁴ Plaintiffs alleged in the Amended Complaint ¶ 23 that "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," Apx. 18, and the Defendants admitted this allegation. Apx. 23.

²⁵ The statute provides: "A person ... may not transport or cause to be transported ... wine into the State in a quantity greater than ... 4 quarts ... unless it was legally purchased in the State."

to acting on the application. The request may or may not be granted. Me. Rev. Stat., tit. 28-A, § 2073(3)(A) (Bureau “may” grant permission); Stip. 27 [Apx. 29] (permission generally, but not always, granted).

B. MAINE DISCRIMINATES AGAINST OUT-OF-STATE WINERIES AS A MATTER OF PRACTICAL EFFECT IN VIOLATION OF THE COMMERCE CLAUSE

Maine’s wine laws discriminate against out-of-state wineries and favor in-state ones. They make direct sales by out-of-state wineries virtually impossible, while direct sales by in-state wineries are easy. This is a classic case of discrimination against interstate commerce.

The dormant Commerce Clause²⁶ prohibits a State from discriminating against the products and producers of other states by placing them at a competitive disadvantage compared to local businesses. The Supreme Court has repeatedly held that a state law that discriminates against interstate commerce “is virtually *per se* invalid,” *e.g.*, *Oregon Waste Sys. v. Dept. of Environmental Quality*, 511 U.S. 93, 100 (1994), and “at a minimum ... invokes the strictest scrutiny.” *E.g. New Energy*

²⁶ The Commerce Clause provides that “Congress shall have Power...to regulate Commerce ... among the several States...” U.S. Const., Art. I, §8. The Supreme Court has always held that this provision grants exclusive power to Congress and the States may not interfere with it. *Associated Industries of Missouri v. Lohman*, 511 U.S. 641, 646-47 (1994). This is known as the “dormant” commerce clause principle, first articulated in *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 231-232, 239 (1824).

Co. v. Limbach, 486 U.S. 269, 278-79 (1988). Discrimination in the context of commerce simply means “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter,” *Oregon Waste Systems*, 511 U.S. at 98-99, or otherwise places an out-of-state product or producer at a “substantial commercial disadvantage” compared to in-state products and producers. *New Energy*, 486 U.S. at 275.²⁷

The Court’s most recent case involving commerce in alcoholic beverages is *Granholm v. Heald*, 544 U.S. 460 (2005). Building on prior cases, the Supreme Court held that this non-discrimination principle applied with full force to commerce in wine, and that “discrimination is neither authorized nor permitted by the Twenty-first Amendment.” 544 U.S. at 466.²⁸ Although Section 2 of that

²⁷ Discrimination does not have to be intended, and the offending statute need not have been enacted in a deliberate attempt to give in-state interests a competitive advantage. The intent of the legislature is not relevant so “a court need not inquire into the purpose or motivation behind a law to determine that in actuality it impermissibly discriminates against interstate commerce.” *Assoc. Indus. v. Lohman*, 511 U.S. at 653 (a good motive is not a defense to a charge of discrimination).

²⁸ The Court reiterated this principle two more times in the opinion, holding that “Section 2 does not allow States to regulate the direct shipment of wine on terms that discriminate in favor of in-state producers,” 544 U.S. at 476, and that “the Twenty-first Amendment does not supersede other provisions of the Constitution and, in particular, does not displace the rule that States may not give a discriminatory preference to their own producers.” 544 U.S. at 486.

Amendment²⁹ gives states broad power to regulate the importation, distribution and sale of alcoholic beverages, such regulation must be consistent with a state's other constitutional obligations.³⁰ The 21st Amendment repealed Prohibition -- it did not repeal the Commerce Clause when liquor is involved, as the Supreme Court has repeatedly made clear. *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 331-32 (1964); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 275 (1984); *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 584 (1986); *324 Liquor Corp. v. Duffy*, 479 U.S. 335, 346-47 (1987).³¹ The Court then applied these principles and struck down a Michigan rule restricting direct wine shipments that discriminated against out-of-state wineries on its face, and a New

²⁹ Section 2 provides: "The transportation or importation into any State ... for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

³⁰ See *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 516 (1996) (21st Amendment does not override 1st Amendment and give states power to restrict liquor advertising), *Craig v. Boren*, 429 U.S. 190, 204-09 (1976) (21st Amendment does not override Equal Protection Clause and give states power to set different minimum drinking age based on gender); *Department of Revenue v. James B. Beam Distilling Co.*, 377 U.S. 341, 345-46 (1964) (21st Amendment does not override Export-Import Clause and allow states to tax imported whisky).

³¹ The history of the 21st Amendment is developed in *Granholm*, 544 U.S. at 476-89, and in Duncan B. Douglass, *Constitutional Crossroads: Reconciling the Twenty-first Amendment and the Commerce Clause to Evaluate State Regulation of Interstate Commerce in Alcoholic Beverages*, 49 DUKE L.J. 1619, 1631-36 (2000) (reviewing historical reasons for enactment of section 2).

York law that appeared even-handed but was discriminatory in practical effect.

The nondiscrimination principle prevents a state from banning out-of-state products or producers from the local market, *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978); raising the cost of out-of-state products in relation to in-state products; *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 193 (1994); *Oregon Waste Sys., Inc. v. Dep't of Env't'l Quality*, 511 U.S. 93 (1994), giving in-state producers preferential access to the market, *Granholm v. Heald*, 544 U.S. at 474, requiring a nonresident to establish a physical presence in the state in order to do business, *Granholm v. Heald*, 544 U.S. at 475; *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 72 (1963), or requiring that out-of-state products be processed locally prior to distribution. *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383 (1994).

Maine's wine law embodies all these prohibited effects. The law requires nonresident wineries to establish a physical presence in the state in order to have access to the direct sale market,³² in violation of *Granholm* and *Halliburton*. Without such a presence, nonresident wineries are prevented from selling wine directly to consumers and are forced to use two local processors (a Maine wholesaler and a Maine retailer) to sell their wine, in violation of *C & A Carbone*.

³² See Stip. 22, Apx. 29.

The extra costs tacked on by these middlemen raises the price of out-of-state wine in relation to in-state wine in violation of *West Lynn Creamery* and *Oregon Waste Systems*. If they cannot find a wholesaler, out-of-state producers are excluded from the entire Maine wine market, in violation of *Philadelphia v. New Jersey*. In-state wineries face no such hurdles, costs and barriers, which gives them preferential access to the direct sale market, in violation of *Granholm*.

Maine does not impose an outright ban on direct sales by out-of-state wineries. A statute that explicitly provided that in-state wineries could sell directly to consumers, but out-of-state wineries could not, would obviously be unconstitutional. *Granholm v. Heald*, 544 U.S. 460, 466 (2005); *Huber Winery v. Hudgins*, 2006 U.S. Dist. LEXIS 60237 (W.D. Ky 2006). Instead, Maine has enacted a combination of three laws that appear on their face to treat in-state and out-of-state wineries equally, but in practical effect operate exactly like an outright ban. Maine wineries may sell directly to consumers in the state, but out of state wineries may not.

The core provision is Me. Rev. Stat., tit. 28-A, § 1355(3)(D) , which says that any winery, wherever located, may obtain a farm winery license and sell directly to consumers, as long as the sale is made in person “on the premises.” This looks equal on its face, but in practical effect imposes such steep financial burdens on

direct interstate sales that few direct sales between Maine residents and out-of-state wineries will actually occur. Like the famous observation that “the rich and poor are equally forbidden to sleep under the bridges of Paris,”³³ the discrimination is not in the language of the law, but in its practical effect.

Discrimination *de jure* and *de facto* are equally unconstitutional. The Supreme Court has said repeatedly that discrimination is not simply a question of whether a statute is even-handed or discriminatory on its face, but of whether it discriminates against out-of-state businesses in practical effect.

[W]e repeatedly have focused our Commerce Clause analysis on whether a challenged scheme is discriminatory in "effect," and we have emphasized that "equality for the purposes of . . . the flow of commerce is measured in dollars and cents, not legal abstractions."

Assoc. Indus. of Missouri v. Lohman, 511 U.S. at 654 (citations omitted)

[W]e must inquire ... whether the challenged statute regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect.... [W]hen considering the purpose of a challenged statute, this Court ... will determine for itself the practical impact of the law.

Hughes v. Oklahoma, 441 U.S. at 336 (citations omitted)..

³³ Loosely translated from Anatole France, *Le Lys Rouge* (1894).

Our Commerce Clause jurisprudence is not so rigid as to be controlled by the form by which a State erects barriers to commerce. Rather our cases have eschewed formalism for a sensitive, case-by-case analysis of purposes and effects. As the Court declared over 50 years ago: "The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce." *Best & Co. v. Maxwell*, 311 U.S. 454, 455-456, 85 L. Ed. 275, 61 S. Ct. 334 (1940).

West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 201-02 (1994). See also *Maine v. Taylor*, 477 U.S. 131, 138 (1986) (a state law may discriminate either on its face or in practical effect, both kinds of discrimination violate Commerce Clause); *Chemical Waste Mgmt, Inc. v. Hunt*, 504 U.S. 334, 342 (1992) (discrimination a matter of "practical effect"). In *Granholm*, the Court struck down a wine distribution law from New York that was even-handed on its face but had the practical effect of "mak[ing] direct sales impractical from an economic standpoint." 544 U.S. at 466; *see also id.* at 472, 493.

In this case, the in-person sale requirement by itself would have the practical effect of erecting an economic barrier to blocking out-of-state wineries access to the direct-sale market. Few Maine residents will be willing to incur the substantial expense of a 5600-mile journey to the west coast just to buy wine. When one adds

in the laws that flatly prohibit wine shipping and limit personal interstate transportation to 5 quarts per trip, the combined effect is to create an absolute trade barrier. No one will make a trip to California in order to bring back five bottles of wine.

The impact of this trade barrier is neither trivial nor incidental. Ninety-three percent of US wine is produced in California, Oregon and Washington. Without the ability to make direct sales, wineries must try to distribute their wine through wholesalers, and fewer than 20% of American wineries have national wholesale distribution. Distribution through a separate wholesaler and retailer is expensive for the winery and problematic for the wholesaler if the winery is small and has little consumer demand. [FTC Report, Apx. 77-78]. Maine's wine sales laws not only exclude out-of-state wineries from competing in the direct-sale market, but also have the effect of excluding most US wineries from the Maine market altogether.

Maine wineries face no such economic obstacles. They can sell directly without having to pay the wholesalers' markup, and they can sell wine in Maine even if no wholesaler will distribute them. They are not on the wrong side of an insurmountable trade barrier that prevents Maine residents from having access to their products. The Maine direct sales laws produce exactly the same effect

condemned in *Granholm* -- it “grants in-state wineries access to the State's consumers on preferential terms” by giving them exclusive access to the direct-sale market, driving up the cost of out-of-state wine distributed through separate wholesalers and retailers, and excluding 80% of US wine from the market altogether. 544 U.S. at 474-75. This runs contrary to the Court’s admonition that States cannot require an out-of-state firm “to become a resident in order to compete on equal terms,” *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 72 (1963), and that the mere fact of nonresidence should not foreclose a producer in one State from access to markets in other States. *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 539 (1949). This mandate “reflect[s] a central concern of the Framers that ... in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation.” *Hughes v. Oklahoma*, 441 U.S. 322, 325-326 (1979).

C. THE STATE HAS NOT PROVED THAT THIS BAN IS THE ONLY FEASIBLE WAY TO ADVANCE ITS REGULATORY INTERESTS

In the Court below, the State defended its statutory scheme on the grounds that an in-person appearance at the point of sale and prohibiting direct shipping

were necessary to preventing youth access to alcohol. The argument is unavailing for five reasons.

First, it does not explain, or even address, why Maine allows a consumer to carry home an unlimited amount of wine purchased at an in-state winery, but must limit consumers to bringing home only 5 bottles of wine from an out-of-state winery.

Second, it does not explain why *repeated* face-to-face appearances are necessary for age verification. Since we are not getting any younger, it would seem that one verification of age would be enough.

Third, it does not explain why a face-to-face appearance will be a deterrent to youth access only if it takes place at the point of sale but not if it takes place at the point of delivery. Retail clerks and UPS drivers seem equally trainable to check IDs, and one would think that an ID check at either purchase or delivery would make a minor think twice about the chances of being caught illegally buying alcohol. Indeed, it would seem more important to verify age on delivery in order to prevent minors from actually receiving alcohol than at the time of purchase when they do not take immediate possession.

Fourth, it does not explain why it is necessary for a consumer to personally carry the wine home rather than ship it after the consumer has made a face-to-face

purchase. If an adult purchaser intends to deliver the wine to a minor, he may equally accomplish this by shipping the wine to a minor or by delivering it to a minor after carrying it home. Indeed, the preference for personal transportation rather than common carrier shipping would seem contrary to the state's purported interest in preventing youth access. If wine is personally transported by the purchasers, nothing prevents them from driving around the corner and giving the wine to minors. Studies show that this is in fact one of the commonest ways minors obtain alcohol. [Reducing Underage Drinking, Apx. 41]. If wine is delivered by common carrier, then an adult signature will be required,³⁴ so that attempts by an adult to ship wine to a minor will be far less successful than hand delivery.

Fifth, the youth-access argument fails to meet the Supreme Court's standard for what constitutes a defense to a charge of discrimination. The Court holds that discrimination against interstate commerce cannot be justified simply because a state law serves legitimate local concerns. The Court has repeatedly struck down laws that advanced important state interests but discriminated against nonresidents in the process. *See H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525 (1949) (New York cannot discriminate against Vermont dairy products in the interests

³⁴ All common carriers have wine shipping programs that include the requirement of an adult signature and age verification prior to delivery. See n.16, *supra*; FTC Report, Apx. 89-90.

of protecting public health); *Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979) (Oklahoma cannot discriminate in the interest of protecting a scarce resource); *Hunt v. Wash. State Apple Advertising Comm’n*, 432 U.S. 333, 351 (1977) (North Carolina cannot discriminate against Washington apple growers in the interest of consumer protection); *Philadelphia v. New Jersey*, 437 U.S. 617 (1978) (New Jersey cannot discriminate against out-of-state waste in the interest of conserving diminishing landfill space); *Chemical Waste Mgmt., Inc. v. Hunt*, 504 U.S. 334 (1992) (Alabama cannot discriminate against hazardous waste from other states in the interest of public safety).

The Court requires a State to show not only that the regulation serves an important interest, but also that no reasonable non-discriminatory alternative exists that would adequately advance such interests. *E.g., Hughes v. Oklahoma*, 441 U.S. 332, 336-37 (1979); *C & A Carbone*, 511 U.S. at 393.

Our cases leave open the possibility that a State may validate a statute that discriminates against interstate commerce by showing that it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives....[T]he standards for such justification are high.

New Energy Co., 486 U.S. at 278. At a minimum, “discrimination invokes the strictest scrutiny of any purported legitimate local purpose and of the absence of

nondiscriminatory alternatives.” *Hughes v. Oklahoma*, 441 U.S. at 337. See also *Oregon Waste Systems*, 511 U.S. at 101 (the state’s purported justification must “pass the ‘strictest scrutiny.’”). The burden of proof on this issue rests with the State. *Chemical Waste Mgmt*, 504 U.S. at 342 (“the burden falls on the State”); *Hunt v. Washington State Apple Adv. Comm’n*, 432 U.S. at 342 (“the burden falls on the State”); *Maine v. Taylor*, 477 U.S. at 138 (“burden falls on the State”).

It is difficult for a state to meet this burden. The Court has only rarely found that discrimination was justified, and then only upon an extensive factual record clearly demonstrating the absence of workable alternatives. See *Maine v. Taylor*, 477 U.S. 131, 140-43 (1986) (imported baitfish could introduce non-native parasites that could harm Maine fish; experts testified no way to prevent it other than a total ban); *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941, 956-57 (1982) (reserving ground water for own citizens in time of drought). In this case, no such record has been established.

Limiting youth access to alcoholic beverages is a legitimate state interest, but there is not a shred of evidence proving that other methods will be ineffective. Indeed, the argument is implausible, because a majority of states manage to protect their young people without so severely curtailing direct sales to adults. *Cherry Hill Vineyards v. Hudgins*, 2006 U.S. Dist. LEXIS 93266 at *57, n. 24 (W.D. Ky. 2006)

(noting that 32 states allow direct shipping without a face-to-face appearance). *See also Jelovsek v. Bredesen*, 2007 U.S. Dist. LEXIS 23814 at *2-3 (E.D. Tenn. 2007)(number of states that currently prohibit the direct shipment of wine from out-of-state wineries to in-state consumers is steadily decreasing). On-line age verification services, such as ChoicePoint, are readily available.³⁵ Maine can require a nonresident winery to obtain a state license, consent to state jurisdiction, use reasonable means to verify the age of a purchaser, label the shipping cartons as containing alcohol, and use only those common carriers that have put special wine shipping procedures into place, such as FedEx, UPS and DHL. Maine can require the common carrier to check the ID of the recipient and obtain an adult signature before turning over a case of wine. *See, e.g., Mich. Comp. L. § 436.1203*. This preserves whatever deterrent effect a face-to-face appearance might provide -- it simply shifts it from the point of sale to the point of actual transfer of the wine to the recipient.

This alternative of allowing licensed and regulated direct sales and shipments was found to be reasonably effective in preventing youth access by the FTC. [Apx. 91-95]. It was endorsed by the Supreme Court in *Granholm*. 544 U.S. at 490. It was therefore incumbent upon the State to demonstrate that something has changed

³⁵ *See supra* note 17.

since *Granholm*, or that there is something unique about Maine that would make this alternative ineffective, or to offer new evidence that this alternative is any less reliable than the current in-person ID system, which leaks like a sieve. See Reducing Underage Drinking, Apx. 40-41 (describing ways minors obtain alcohol under current system). The State totally failed to do so. The discriminatory ban on direct sales does not pass strict scrutiny.

VIII CONCLUSION

Maine's statutory scheme has the practical effect of making direct interstate wine sales impossible and giving preferential access to the direct-sales market to in-state wineries. The State has not justified it as the only reasonable method for advancing its regulatory interests, so the statutory scheme violates the Commerce Clause. The defect cannot be cured simply by striking the 5-bottle limit on the amount a consumer can transport home, because the fundamental economic impediment to direct sales is the 5200-mile journey that is required to buy wine in person, and that impediment would remain. This Court should reverse the District Court and declare unconstitutional the in-person requirement of Me. Rev. Stat., tit. 28-A, § 1355(3)(D), the 4-quart transportation limit of Me. Rev. Stat., tit. 28-A, § 2077(1-A and 2), and the ban on mail-ordering wine in Me. Rev. Stat., tit. 28-A,

§ 2077-B, and should remand the case to the District Court with instructions to enter judgment in favor of the Plaintiffs and to issue an injunction preventing the defendants from enforcing the unconstitutional portions of those statutes.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH FRAP 32(a)(7)

I hereby certify that the above Proof Brief of Appellees complies with the type-volume requirements of Fed.R.App.P. 32(a)(7)(B) because such Brief contains 8397 words, excluding the parts of the Brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii) as determined by the word processing program WordPerfect 11.0.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by United States mail on this the 25th day of May, 2007 to:

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A. CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The Commerce Clause, U.S. Const., Art. I, § 8.

The Congress shall have Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

2. The 21st Amendment, § 2, U.S. Const.

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

3. Me. Rev. Stat., tit. 28-A, § 1355:

1. ISSUANCE OF LICENSES. The bureau may issue manufacturer licenses to distill, rectify, brew or bottle spirits, wine or malt liquor to distillers, rectifiers, brewers, bottlers and wineries, as defined in section 2, operating under federal law and federal supervision.

* * *

3. FARM WINERIES. The following conditions apply to farm wineries.

* * * *

D. A holder of a farm winery license may sell or deliver the product to licensed retailers and wholesalers and may sell, on the premises, wine produced at the winery by the bottle, by the case or in bulk to licensed retailers, including, but not limited to, off-premise retail licensees, restaurants and clubs.

5. Maine Rev. Stat., tit. 28-A, § 1361:

1. CERTIFICATE OF APPROVAL REQUIRED. No manufacturer or foreign wholesaler of malt liquor or wine may hold for sale, sell or offer for sale in intrastate commerce, or transport or cause to be transported into the State for resale, any malt liquor or wine unless the manufacturer or foreign wholesaler has obtained from the bureau a certificate of approval.

* * * *

4. NO SALES OF MALT LIQUOR OR WINE TO PERSON WITHOUT WHOLESALE LICENSE. No certificate of approval holder, except a small Maine brewery or Maine farm winery licensee allowed to sell directly to retailers, may sell or cause to be transported into the State any malt liquor or wine to any person to whom a Maine wholesale license has not been issued by the bureau. Malt liquor or wine must be delivered to the place of business of the wholesaler as shown in the wholesaler's license, must be unloaded and inventoried at the wholesaler's premises upon the wholesaler's receipt of the shipment and must come to rest before delivery is made to any retailer to enable the bureau to inspect and inventory wholesale warehouses for the purpose of verifying taxes that are required to be paid on malt liquor and wine purchased by importers.

6. Maine Rev. Stat., tit. 28-A, § 2077:

1-A. IMPORTATION OF MALT LIQUOR OR WINE INTO STATE. A person other than a wholesale licensee, small brewery licensee or farm winery licensee may not transport or cause to be transported malt liquor or wine into the State in a quantity greater than 3 gallons for malt liquor or 4 quarts for wine, unless it was legally purchased in the State. ...

* * *

2. TRANSPORTATION OF MALT LIQUOR AND WINE WITHIN STATE. A person other than a licensee may not transport malt liquor, in a quantity greater than 3 gallons, or wine, in a quantity greater than 4 quarts, within the State unless it was purchased from an off-premise retail licensee.

7. Maine Rev. Stat., tit. 28-A, § 2077-B:

A person may not sell, furnish, deliver or purchase liquor from an out-of-state company by mail order.

8. Maine Rev. Stat., tit. 28-A, § 2078:

Any person who, or any person whose employee or agent, sells liquor within the State without a valid license commits a Class E crime.