

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

SARASOTA WINE MARKET, LLC)
d/b/a MAGNUM WINE AND TASTINGS,)
HEATH CORDES,)
and MICHAEL SCHLUETER)
)
Plaintiffs,)
)
vs.)
)
JAY NIXON, Governor of Missouri,)
CHRIS KOSTER, Attorney General of Missouri,)
and LAFAYETTE LACY, Supervisor of the)
Missouri Division of Alcohol and Tobacco)
Control,)
)
Defendants.)

COMPLAINT

Plaintiffs make the following allegations for their Complaint based upon information and belief, except for the allegations pertaining to Plaintiffs, which are based upon personal knowledge.

INTRODUCTION

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of Mo. Stat. §§ 311.462 and 311.060, which allow Missouri wine retailers to sell, ship and deliver wine directly to consumers within the state of Missouri, while prohibiting out-of-state retailers from doing so unless they are located in one of the few states which afford Missouri retailers a reciprocal shipping privilege. Plaintiffs seek a declaratory judgment that this statutory scheme is unconstitutional for two reasons: It deprives them under color of law of their constitutional rights to engage in interstate

commerce in violation of the Commerce Clause and *Granholm v. Heald*, 544 U.S. 460 (2005); and it denies Heath Cordes the same privilege to engage in his profession as a wine retailer on terms equivalent to that given to citizens of Missouri, in violation of the Privileges and Immunities Clause in Article IV. Plaintiffs seek an injunction barring Defendants from enforcing these laws to prohibit out-of-state wine retailers from selling, shipping and delivering wine directly to consumers in Missouri.

JURISDICTION

1. 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.

2. The Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

PLAINTIFFS

3. Consumer Plaintiff Michael Schlueter is a resident of St. Louis, Missouri. He is over the age of twenty-one, does not live in a dry county, and is legally permitted to purchase, receive, possess and drink wine at his residence. He is a regular purchaser and consumer of fine wine and would purchase wine from out-of-state retailers and have those wines shipped to his residence in Missouri, if Missouri law permitted him to do so.

4. Plaintiff Sarasota Wine Market, LLC, d/b/a Magnum Wine and Tastings is a Florida limited liability company that operates a wine retail store in Sarasota, Florida. Magnum Wine and Tastings is located on the mainland in Sarasota, which is a major tourist location. Magnum Wine and Tastings has customers from all over the country,

including many from Missouri, who visit while on vacation or have retired to Sarasota. It has developed long-term relationships with customers for whom it makes special purchases. It has received requests from customers to sell and ship wine to Missouri for their personal use or as gifts which it cannot do because Missouri law prohibits it. It intends to sell and ship wines directly to consumers in Missouri if the laws prohibiting such sales and shipments are removed or declared unconstitutional.

5. Magnum Wine and Tastings obtains and sells many wines that cannot be obtained in retail stores in Missouri, including older vintage wines, limited production allocated wines, private label wines, and wines that have sold out in Missouri.

6. Magnum Wine and Tastings maintains an Internet web site that advertises personal attention to wine consumers and the development of lasting relationships with his customers. It regularly handles deliveries and shipments of wine.

7. Heath Cordes is the owner of Sarasota Wine Market. He is a professional wine merchant and consultant who develops personal relationships with his customers, makes special purchases for them, consults with them about wine in person, by telephone and by Internet, and sells and delivers wine to them. Many of his regular customers live part of the year in Florida and part of the year in other states, including Missouri.

8. Plaintiffs intend to pay all taxes that may be due on such interstate shipments and to comply with all other non-discriminatory state regulations.

DEFENDANTS

9. Defendants are sued in their official capacities.

10. Defendant Jay Nixon is the Governor of Missouri and is the chief executive officer.

11. Defendant Chris Koster is the Attorney General of Missouri and is generally empowered to enforce Missouri laws.

12. Defendant Lafayette Lacy is the Supervisor of the Missouri Division of Alcohol and Tobacco Control and is also empowered to enforce the alcohol laws of the State of Missouri.

13. The Missouri Division of Alcohol and Tobacco Control is charged with enforcing the provisions of the Missouri Liquor Control code, including the statute challenged herein.

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

I.
COMMERCE CLAUSE VIOLATION—
DISCRIMINATION AGAINST OUT-OF-STATE WINE RETAILERS WITH RESPECT TO SALE
TO CONSUMERS

15. In the State of Missouri, a wine retailer can obtain an alcoholic beverage license from Defendants which allows it to sell, ship and deliver wine directly to Missouri consumers any wine that it has in its inventory.

16. In-state retail licensees are also allowed to ship wine by common carriers and parcel delivery services directly to Missouri consumers.

17. The Defendants will issue a retail license for off-premises delivery described in the previous paragraphs only to wine retailers located in the State of Missouri, and only to citizens of Missouri.

18. An out-of-state wine retailer located in a state that afford Missouri retailers reciprocal shipping privileges may sell and ship wine to Missouri citizens from its inventory, without a license, and regardless of whether the wine was obtained from a Missouri-licensed wholesaler.

19. Magnum Wine and Tastings is located in Florida. It may not sell, ship or deliver its wine directly to consumers in Missouri. It does not qualify for a Missouri off-premises license and is not located in a state that afford Missouri retailers reciprocal shipping privileges.

20. The Consumer Plaintiff wants to buy wine directly from Magnum Wine and Tastings and other wine retailers outside of Missouri and to have these wines delivered to his residence.

21. Consumer Plaintiff wants to obtain wines that he cannot obtain from Missouri retailers but which he can obtain from out-of-state retailers, including Magnum Wine and Tastings, including older vintages that retailers must obtain at auction, special production wines, private label wines, wines that have sold out in Missouri, and allocated wines.

22. Plaintiffs cannot complete the transactions described in paragraphs 20 and 21 because the laws of the State of Missouri prohibit them.

23. If Magnum Wine and Tastings were permitted to sell, ship and deliver its wine directly to consumers in the State of Missouri, it would comply with all applicable laws and regulations, including those concerning labeling, proof of age, reporting and taxation, to the same extent as other out-of-state wine retailers located in states that afford Missouri retailers reciprocal shipping privileges.

24. The laws of the State of Missouri treat interstate sales, shipment and delivery of wine by retailers less favorably than intra-state sales, shipment and delivery of wine. This statutory scheme discriminates against out-of-state wine retailers, and provides economic advantages and protection to wine retailers in Missouri, in violation of the Commerce Clause of the United States Constitution.

II.
PRIVILEGES AND IMMUNITIES CLAUSE VIOLATION—
OUT-OF-STATE WINE MERCHANT DENIED SAME PRIVILEGES AS MISSOURI
CITIZENS WITH RESPECT TO SALE TO CONSUMERS

25. Plaintiffs repeat and re-allege paragraphs 1-24 as if set out fully herein.

26. Heath Cordes is a professional wine consultant, advisor, and merchant who resides in and is a citizen of Florida. He owns and operates Magnum Wine and Tastings in Sarasota.

27. Mr. Cordes develops personal relationships with many of his customers, makes special wine purchases for them, consults with them about wine in person, by telephone and by Internet, and sells and delivers wine to them. Many of his regular customers live part of the year in Florida and part of the year in other states, including Missouri.

28. Some wines wanted by Cordes' customers are difficult to obtain because they are old and only sold at auction or are available only in limited allocated amounts or only for a limited time.

29. Older wines sold at auction often come from estates. Because Sarasota, Florida is a popular retirement destination with a substantial elderly population, Cordes

can often obtain older wines from estates that are hard to find in Missouri. Some of this older wine comes up for sale in Florida at a time of the year when Mr. Cordes' customers are living in Missouri.

30. Wine can be damaged by heat or cold, so Cordes must sometimes wait to safely deliver wine purchases until after his customers have left Florida.

31. Mr. Cordes wants to practice his profession as a wine merchant in Missouri by consulting with, obtaining wines for, and delivering wines to Missouri residents, but is prevented from doing so by Mo. Stat. § 311.462.

32. But for MCL §§ 311.462 and 311.060, Heath Cordes could engage in his occupation in Missouri, because being a professional wine merchant who sells and ships wine to Missouri residents is a lawful activity for citizens of Missouri and citizens of states that afford Missouri retailers reciprocal shipping privileges..

33. No substantial reason exists for denying citizens of Florida the same privilege to consult about, advise on, obtain, sell, deliver and ship wine to Missouri consumers as is given to citizens of Missouri.

34. Missouri's ban on wine sales and deliveries by out-of-state merchants denies Mr. Cordes the privilege to engage in his occupation in the state upon the same terms as Missouri citizens, and therefore violates the Privileges and Immunities Clause in Article IV of the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

A. Judgment declaring Mo. Stat. §§ 311.462 and 311.060 unconstitutional to the extent that they prohibit out-of-state wine retailers from selling, shipping and delivering

wine directly to Missouri consumers as a violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring Mo. Stat. §§ 311.462 and 311.060 unconstitutional to the extent that they prohibit out-of-state wine merchants from obtaining licenses and engaging in their occupations in Missouri as a violation of the Privileges and Immunities Clause of the United States Constitution.

C. An injunction prohibiting Defendants from enforcing those statutes and requiring them to allow out-of-state wine retailers to sell, ship, and deliver directly to customers in Missouri.

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

E. An award of costs and expenses, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

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

Respectfully submitted,

Attorneys for Plaintiffs

/s/ Alan S. Mandel
Alan S. Mandel (Missouri Attorney No. 29137)
Mandel & Mandel LLP
1108 Olive Street, Fifth Floor
St. Louis, MO 63101
Tel: 877-893-1256
Fax: 314-621-4800
dsmm001@aol.com