

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

LEBAMOFF ENTERPRISES, INC.,)	
JOSEPH DOUST)	
JACK STRIDE)	
JACK SCHULZ)	
and)	
RICHARD DONOVAN)	
)	2:17-cv-10191-AJT-SDD
Plaintiffs,)	
)	
vs.)	
)	
RICK SNYDER, Governor of Michigan,)	
WILLIAM SCHUETTE, Attorney General of Michigan,)	
AND ANDREW J. DELONEY, Chairperson of the)	
Michigan Liquor Control Commission)	
)	
Defendants.)	

FIRST AMENDED 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 Senate Bill 1088 also known as 2016 Mich. Pub. Laws, Act 520 which amends MCL 436.1203 ("Senate Bill 1088"). and allows Michigan wine retailers to sell, ship and deliver wine directly to consumers within the state of Michigan, while prohibiting out-of-state retailers from doing so. 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 Joseph Doust and Lebamoff Enterprises Inc. the same privilege to engage in their profession as a wine merchants on terms equivalent to that given to citizens of Michigan, 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 Michigan.

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 Plaintiffs Jack Stride, Jack Schulz, and Richard Donovan are residents of Michigan. They are all over the age of twenty-one, do not live in a dry county, and are legally permitted to purchase, receive, possess and drink wine at their individual residences. They are regular purchasers and consumers of fine wine and would purchase wine from out-of-state retailers and have those wines shipped to their residences in Michigan, if Michigan law permitted them to do so. Jack Stride and Jack Schulz live in Wayne County.

4. Plaintiff Lebamoff Enterprises Inc. ("Lebamoff Enterprises") is an Indiana corporation that operates 15 wine retail stores in Fort Wayne, Indiana. Lebamoff

Enterprises has been in business in Fort Wayne for fifty-five years. In that time, it has developed an extensive base of loyal customers who trust it to recommend, obtain, supply, sell and deliver wine to them. Lebamoff Enterprises has received requests that it sell and ship wine to Michigan from customers who have moved to Michigan or who wish to send gifts of wine to Michigan residents, but is unable to do so as a result of the Michigan ban. It intends to sell and ship wines directly to consumers in Michigan if the laws prohibiting such sales and shipments are removed or declared unconstitutional.

5. Lebamoff Enterprises maintains an Internet web site, has previously handled deliveries and shipping of wine that was purchased from its retail stores or ordered through national wine clubs, and intends to continue to do so.

6. 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

7. Defendants are sued in their official capacities.

8. Defendant Rick Snyder is the Governor of Michigan and is the chief executive officer.

9. Defendant William Schuette is the Attorney General of Michigan and is generally empowered to enforce Michigan laws.

10. Defendant Andrew J. Deloney is the Chairperson of the Michigan Liquor Control Commission, which is charged with enforcing the Michigan liquor control laws, including the ones challenged in this lawsuit.

11. The Michigan Liquor Control Commission is charged with enforcing the provisions of the Michigan Liquor Control Code, including the statute challenged herein.

12. 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

13. In the State of Michigan, a wine retailer can obtain an off-premises license from Defendants which allows it to sell, ship and deliver wine directly to Michigan consumers any wine that it has in its inventory.

14. In-state off-premises licensees are also allowed to ship wine by common carriers and parcel delivery services directly to Michigan consumers.

15. The Defendants will issue an off-premises license described in the previous paragraphs only to wine retailers located in the State of Michigan.

16. Lebamoff Enterprises is not located in Michigan, is not eligible for a Michigan off-premises license, and is prohibited by law from selling, delivering or shipping wine from its inventory directly to consumers in Michigan.

17. The Consumer Plaintiffs want to buy wine directly from Lebamoff Enterprises and other wine retailers outside of Michigan and to have these wines delivered to their residences, including wines that have sold out in Michigan but are still available from retail stores in other states, older vintage wines and limited production allocated wines.

18. Plaintiffs cannot complete the transactions described in paragraphs 16 and 17 because the laws of Michigan prohibit them.

19. If Lebamoff Enterprises were permitted to sell, ship and deliver its wine directly to consumers in the State of Michigan, it would comply with applicable laws and regulations concerning permits, licenses, labeling, reporting, proof of age, and payment of taxes.

20. The laws of the State of Michigan treat interstate sales, shipment and delivery of wine by retailers differently and 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 Michigan, 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 MICHIGAN
CITIZENS WITH RESPECT TO SALE TO CONSUMERS

21. Plaintiffs repeat and re-allege paragraphs 1-20 as if set out fully herein.

22. Joseph Doust is a professional wine consultant, advisor, and merchant who resides in and is a citizen of Indiana. He is wine manager for Lebamoff Enterprises.

23. Mr. Doust and Lebamoff Enterprises develop personal relationships with many of their customers, make special wine purchases for them, consult with them about wine in person, by telephone and by Internet, and sell and deliver wine to them. Some of their customers have moved to Michigan but want to continue to do business with them.

24. Some wines wanted by Mr. Doust's and Lebamoff Enterprises' customers are difficult to obtain because they are old and only sold at auction, available only in limited allocated amounts or only for a limited time, or scarce because of their popularity.

25. Mr. Doust and Lebamoff Enterprises want to practice the profession as wine merchants in Michigan by consulting with, obtaining wines for, and delivering wines to Michigan residents, but are prevented from doing so by Michigan law.

26. Being a professional wine merchant who sells and ships wine to Michigan residents is a lawful activity for citizens of Michigan.

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

28. Michigan's ban on wine sales and deliveries by out-of-state merchants denies Mr. Doust and Lebamoff Enterprises the privilege to engage in the profession in the state upon the same terms as Michigan 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 Senate Bill 1088 unconstitutional to the extent that it prohibits out-of-state wine retailers from selling, shipping and delivering wine directly to Michigan consumers, as a violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring Senate Bill 1088 unconstitutional to the extent that it prohibits out-of-state wine merchants from obtaining licenses and engaging in their occupations in Michigan, 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 consumers in Michigan.

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,

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