

JUN 22 2005

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By: \_\_\_\_\_ DEP. CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

SCOTT L. BEAU, and )  
WYNCROFT, LLC )

Plaintiffs, )

vs. )

ROBERT S. MOORE, Jr., in his official )  
capacity as Director of the Arkansas )  
Alcoholic Beverage Control Division, and )  
CARL E. KIRKLAND, in his official )  
capacity as Director of the Arkansas Alcoholic )  
Beverage Control Enforcement Division )

Defendants )

No. 4-05 CV 0000903 SW

This case assigned to District Judge \_\_\_\_\_  
and to Magistrate Judge \_\_\_\_\_  
*Wright Young*

**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 Arkansas Code §§ 3-2-403, 3-3-205, 3-7-106, which prohibit out-of-state wineries from selling and shipping wine directly to consumers and restaurants within the State of Arkansas. Plaintiffs seek a declaratory judgment that this statutory scheme violates the Commerce Clause of the United States Constitution and that plaintiffs have been deprived under color of law of their constitutional rights and

privileges to engage in interstate commerce. Plaintiffs seek an injunction barring defendant from enforcing these laws to prohibit out-of-state wineries from selling and shipping wine directly to consumers and restaurants.

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

### **PLAINTIFFS**

6. Scott L. Beau is a resident of Little Rock, Arkansas, which is in Pulaski County. 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 wine, and would purchase bottled wine from out-of-state wineries and have those wines shipped to his residence if Arkansas law permitted him to do so.

7. Wyncroft, LLC, is a Michigan corporation that operates a winery in Buchanan, Michigan. It holds all necessary Michigan and federal licenses and permits to manufacture and sell wine in interstate commerce. It intends to sell and ship wines directly to Scott L. Beau and other consumers at their residences, and to licensed restaurants at their places of business, in the State of Arkansas, if the laws prohibiting such sales and shipments are removed or declared unconstitutional.

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

**DEFENDANTS**

9. Defendants are sued in their official capacities.

10. Defendant Moore is the Director of the Arkansas Alcoholic Beverage Control Division.

11. Defendant Kirkland is Director of the Arkansas Alcoholic Beverage Control Enforcement Division.

12. The Alcoholic Beverage Control Division and Alcoholic Beverage Control Enforcement Division are jointly charged with enforcing the provisions of the Arkansas Alcohol Control Act, including the statutes challenged herein.

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

**COMMERCE CLAUSE VIOLATION COUNT I:  
DISCRIMINATION AGAINST OUT-OF-STATE WINERIES WITH RESPECT  
TO SALES TO CONSUMERS**

14. In the State of Arkansas, an in-state winery may obtain a license from Defendants which allows it to sell native wine made from Arkansas fruit directly to individuals and retailers without going through a separate wholesaler.

15. In-state wineries are also allowed to ship wine by commercial carriers and parcel delivery services directly to customers.

16. The Defendants will issue the license described in paragraphs 14 and 15 only to wineries located within the State of Arkansas that are making native wine from

Arkansas fruit. The Defendants will not issue a farm winery license to Wyncroft Winery or other wineries located outside the State.

17. Wyncroft and other wineries located outside the State of Arkansas may not sell, deliver or ship their wine directly to consumers in the State of Arkansas. They may only sell their wine through a separate wholesaler.

18. Scott L. Beau wants to buy wine directly from Wyncroft and other wineries outside Arkansas, and to have the wine delivered to his residence. He is willing to pay all taxes on such purchases.

19. Wyncroft Winery is located in the state of Michigan, produces bottled wine for commercial sale, and wants to sell its wine directly to Scott Beau and other consumers in the State of Arkansas, and to ship the wine to the customers' residences.

20. Wyncroft Winery has previously received requests from residents of the State of Arkansas to sell, deliver and ship wine to them.

21. Plaintiffs cannot complete the transactions described in paragraphs 18-20 because the laws of the State of Arkansas prohibit them.

22. If Wyncroft were permitted to sell and deliver its wine directly to consumers in the State of Arkansas, it would comply with all applicable laws and regulations concerning permits, licenses, labeling, reporting, proof of age, and payment of taxes.

23. The laws of the State of Arkansas treat interstate sales and shipments of wine to adults differently from intra-state sales and shipments of wine to adults, discriminate against out-of-state wineries, and provide economic advantages and

protection to wineries in Arkansas, all in violation of the Commerce Clause of the United States Constitution.

**COMMERCE CLAUSE VIOLATION COUNT II:  
DISCRIMINATION AGAINST OUT-OF-STATE WINERIES WITH RESPECT  
TO SALES TO LICENSED RETAIL WINE DEALERS**

24. In the State of Arkansas, an in-state winery may sell, deliver and ship its wine directly to retail wine dealers, including restaurants, for resale to consumers, if the winery obtains a license to manufacture native wine from the Defendants.

25. The Defendants will issue the license described in paragraph 24 only to wineries located within the State of Arkansas that are making native wine from Arkansas fruit. The defendants will not issue the license to Wyncroft or other wineries located outside the State.

26. Wyncroft and other wineries located outside the State of Arkansas may not sell, deliver or ship their wine directly to licensed retail dealers in the State of Arkansas, but may only sell their wine through a separate wholesaler.

27. Wyncroft Winery is located in the state of Michigan, produces bottled wine for commercial sale, and wants to sell its wine directly to restaurants and other retail dealers in the State of Arkansas, but is prohibited from doing so by the laws of the State of Arkansas.

28. If Wyncroft were permitted to sell and deliver its wine directly to retail wine dealers, it would comply with all applicable laws and regulations concerning permits, licenses, reporting, labeling, proof of age, and payment of taxes.

29. The laws of the State of Arkansas treat interstate sales and delivery of wine to retail wine dealers differently from intra-state sales and delivery of wine to retail dealers, discriminate against out-of-state wineries, and provide economic advantages and protection to Arkansas wineries, all in violation of the Commerce Clause of the United States Constitution

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs seek the following relief:

A. Judgment declaring Arkansas Code §§ 3-2-403, 3-3-205, 3-7-106, unconstitutional, to the extent that they prohibit out-of-state wineries from selling and shipping wine directly to consumers and retail wine dealers in the State of Arkansas, as a violation of the Commerce Clause of the United States Constitution.

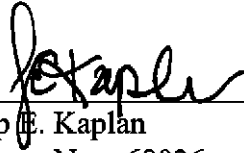
B. An injunction prohibiting Defendants from enforcing those statutes and requiring them to allow out-of-state wineries to sell and ship wine directly to consumers and retail wine dealers in Arkansas.

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.

Respectfully submitted,



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