

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

HUBER WINERY, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No. 3:05-cv-289-S
)	
LAJUANA S. WILCHER, et al.)	
)	
Defendants)	
)	
and)	
)	
WINE AND SPIRITS WHOLESALERS OF)	
KENTUCKY, INC.,)	
)	
Intervening Defendant)	
_____)	

PLAINTIFFS’ MOTION FOR JUDGMENT ON THE PLEADINGS

Come now the Plaintiffs, Huber Winery, a division of Huber Orchards, Inc. , William G. Schneider, Jr., and John D. Reilly, Jr., by counsel, and respectfully move the Court for judgment on the pleadings under Fed. R. Civ. P. 12(c) for the relief requested in their Complaint. In support of this motion, Plaintiffs would demonstrate:

- 1). This case challenges the constitutionality of Kentucky laws that prohibit out-of-state wineries from selling and shipping wine directly to customers in Kentucky.
- 2). On May 16, 2005, the United States Supreme Court decided *Granholm v. Heald*, 125 S.Ct. 1885 (2005), holding similar laws from Michigan and New York unconstitutional.

3). Because of the decision by the Supreme Court in *Granholm*, no matters outside the parties' respective pleadings are needed to enter judgment in favor of Plaintiffs as a matter of law.

WHEREFORE, as Plaintiffs more fully elaborate in the accompanying memorandum of law, they respectfully request that this Court issue a judgment and order:

- a). Granting Plaintiffs' Motion for Judgment on the Pleadings.
- b). Declaring Ky. Rev. Stat. §§ 243.032 and 244.165 unconstitutional to the extent that they prohibit out-of-state wineries from selling and delivering wine directly to consumers and retail wine sellers in the Commonwealth of Kentucky, as a violation of the Commerce Clause of the United States Constitution.
- c). Declaring Ky. Rev. Stat. §§ 241.010(22), 241.010(45), 243.155 and 243.156 unconstitutional to the extent that they limit the issuance of licenses authorizing wineries to sell and ship wine directly to consumers and retail wine sellers to wineries located in Kentucky or using fruit or honey produced in Kentucky, as a violation of the Commerce Clause of the United States Constitution.
- d). Enjoining defendant from enforcing Ky. Rev. Stat. §§ 241.010, 243.032, 243.155, 243.156 and 244.165 so as to prohibit out-of-state wineries from selling and shipping wine directly to consumers and retail wine sellers in Kentucky.
- e). Awarding costs and expenses to Plaintiffs, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

Dated: July 21, 2005.

Respectfully submitted,

MORRIS, GARLOVE, WATERMAN &
JOHNSON PLLC

By: /s/ J. Gregory Troutman
JOSEPH H. COHEN
ALAN N. LINKER
J. GREGORY TROUTMAN
One Riverfront Plaza, Suite 1000
401 West Main Street
Louisville, KY 40202
(502) 589-3200
E-mail: jgt@mgwj.com

ROBERT D. EPSTEIN
EPSTEIN COHEN DONAHOE & MENDES
50 S. Meridian St., Suite 505
Indianapolis, IN 46204
(317) 639-1326
E-mail: Rdepstein@aol.com

JAMES A. TANFORD
Indiana University School of Law
211 South Indiana Avenue
Bloomington, IN 47405
(812) 855-4846
E-mail: tanford@indiana.edu

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing was served either electronically or by United States mail on this 21st day of July, 2005 to:

Steven Humphress
General Counsel
Department of Alcoholic Beverage
Control
1003 Twilight Trail
Frankfort, KY 40601
Counsel for State Defendants

Kenneth S. Handmaker
Middleton & Reutlinger
2500 Brown & Williamson Tower
Louisville, KY 40202

Daniel R. Meyer
311-B Wendover Avenue
Louisville, KY 40207

/s/ J. Gregory Troutman