

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE DIVISION  
CASE NO. 3:05CV-289-S

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WESTERN DISTRICT OF KY  
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HUBER WINERY, et al.

PLAINTIFFS

v.

**ANSWER OF DEFENDANTS**

LAJUANA S. WILCHER, in her official capacity  
as Secretary of the Kentucky Environmental  
and Public Protection Cabinet

and

LAVOYED HUDGINS, in his official capacity  
as Executive Director of the Kentucky  
Office of Alcoholic Beverage Control

DEFENDANTS

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Come the Defendants, LaJuana S. Wilcher, in her official capacity as Secretary of the Kentucky Environmental and Public Protection Cabinet, and Lavoyed Hudgins, in his official capacity as Executive Director of the Kentucky Office of Alcoholic Beverage Control, by counsel, and for their Answer herein, state as follows:

**First Defense**

1. The Plaintiffs Huber Winery's, William G. Schneider, Jr.'s and John D. Reilly, Jr.'s, Complaint (hereinafter "Complaint"), fails to state a claim or cause(s) of action upon which relief may be granted.

## Second Defense

2. To the extent that the statements set forth in the Introduction of the Complaint constitute allegations, the Defendants deny said allegations but do not deny any matter of public record or law.

3. The Defendants deny that part of the allegations contained in numerical paragraph 1 of the Complaint that this court has jurisdiction to hear this case. The remaining allegations in said paragraph are admitted.

4. The Defendants admit the allegations contained in numerical paragraphs 2 of the Complaint, but affirmatively state that the Court lacks such authority in this case.

5. The Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in numerical paragraphs 3, 4, 5, 15, 16, 17, 20, 26 and 27 of the Complaint, and therefore deny same.

6. The Defendants admit the allegations contained in numerical paragraphs 6, 8 and 10 of the Complaint.

7. The Defendants deny that part of the allegations contained in numerical paragraph 7 of the Complaint that Defendant Hudgins is the Executive Director of the Kentucky Department of Alcoholic Beverage Control. The Defendants affirmatively state that Defendant Hudgins is the Executive Director of the Kentucky Office of Alcoholic Beverage Control (hereinafter "ABC"). The Defendants admit the remainder of the allegations contained in said paragraph.

8. The Defendants deny that part of the allegations contained in numerical paragraph 9 of the Complaint that the ABC has an office in Jefferson County, Kentucky. The Defendants admit the remainder of the allegations contained in said paragraph.

9. In numerical paragraph 11 of the Complaint, the Plaintiffs reallege and incorporate by reference their prior allegations contained in numerical paragraphs 1 through 10, therefore the Defendants reallege and incorporate by reference their responses to said paragraphs in response to numerical paragraph 11 of the Complaint.

10. The Defendants admit the allegations contained in numerical paragraph 12 of the Complaint, but affirmatively state that certain statutory condition precedents must be met before a licensed small winery or licensed farm winery may engage in the referenced activities.

11. The Defendants admit that part of the allegations contained in numerical paragraph 13 of the Complaint that the ABC is without authority to issue a farm winery license to wineries not located in Kentucky. The Defendants deny the remainder of the allegations contained in said paragraph.

12. The Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity to that part of the allegations in contained in numerical paragraph 14 of the Complaint that Huber would qualify for a small winery or farm winery license if located in Kentucky, and therefore deny same. The Defendants are without sufficient knowledge, information or ability to form a belief as to the truth or falsity of the remaining allegations in said paragraph because they require legal conclusions, legal analysis and speculation regarding hypothetical questions necessitating examination of needed unknown additional facts, and the Defendants therefore deny same.

13. The Defendants are without sufficient knowledge, information or ability to form a belief as to the truth or falsity of the allegations contained in numerical paragraph 18 of the Complaint because they require legal conclusions, legal analysis and

speculation regarding hypothetical questions necessitating examination of needed unknown additional facts, and the Defendants therefore deny same.

14. The Defendants deny the allegations contained in numerical paragraph 19 of the Complaint. The Defendants affirmatively state that 804 KAR 4:330, Section 4 permits Kentucky residents to ship to their home, business, or mailing address, alcoholic beverages which they purchase for personal use while visiting another state or country.

15. The Defendants deny the allegations contained in numerical paragraphs 21 and 28 of the Complaint.

16. In numerical paragraph 22 of the Complaint, the Plaintiffs reallege and incorporate by reference their prior allegations contained in numerical paragraphs 1 through 21, therefore the Defendants reallege and incorporate by reference their responses to said paragraphs in response to numerical paragraph 22 of the Complaint.

17. The Defendants admit the allegations contained in numerical paragraph 23 of the Complaint, but affirmatively state that certain statutory condition precedents must be met before a licensed small winery or licensed farm winery may engage in the referenced activities.

18. The Defendants are without sufficient knowledge, information or ability to form a belief as to the truth or falsity of the allegations contained in numerical paragraph 24 of the Complaint because they require legal conclusions, legal analysis and speculation regarding hypothetical questions necessitating examination of needed unknown additional facts, and the Defendants therefore deny same. The Defendants affirmatively state, to their knowledge and belief, that neither Huber nor any other out-of-state winery has ever applied for a Kentucky small winery license.

19. The Defendants are without sufficient knowledge, information or ability to form a belief as to the truth or falsity of the allegations contained in numerical paragraph 25 of the Complaint because they require legal conclusions, legal analysis and speculation regarding hypothetical questions necessitating examination of needed unknown additional facts, and the Defendants therefore deny same. The Defendants affirmatively state, to their knowledge and belief, that neither Huber nor any other out-of-state winery has ever applied for a Kentucky small winery license.

20. The Defendants are without sufficient knowledge, information or ability to form a belief as to the truth or falsity of the allegations contained in numerical paragraph 28 of the Complaint because they require legal conclusions, legal analysis and speculation regarding matters of law necessitating examination of needed unknown additional facts, and the Defendants therefore deny same.

21. The Defendants deny any and all allegations contained in the Complaint not specifically admitted or denied previously herein.

### **Third Defense**

22. The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, due to lack of standing and/or lack of injury in fact.

### **Fourth Defense**

23. The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, due to Sovereign Immunity.

**Fifth Defense**

24. The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, due to Eleventh Amendment Immunity.

**Sixth Defense**

25. The Plaintiff's claims are precluded/barred and should be dismissed, in whole or in part, due to official Absolute Immunity or Qualified Immunity.

**Seventh Defense**

26. The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, due to Twenty-first Amendment Preemption.

**Eighth Defense**

27. . The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, as not being ripe for adjudication.

**Ninth Defense**

28. The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, by the applicable statute of limitations.

**Tenth Defense**

29. The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, for failure to name indispensable parties.

**Eleventh Defense**

30. The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, for failure to comply with KRS 418.075(1).

### **Twelfth Defense**

31. The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, because the court lacks subject matter jurisdiction.

### **Thirteenth Defense**

32. The Plaintiffs' claims are precluded/barred and should be dismissed, in whole or in part, under the doctrine of failure to exhaust administrative remedies.

### **PRAYER FOR RELIEF**

WHEREFORE, the Defendants, LaJuana S. Wilcher, in her official capacity as Secretary of the Kentucky Environmental and Public Protection Cabinet, and Lavoyed Hudgins, in his official capacity as Executive Director of the Kentucky Office of Alcoholic Beverage Control, PRAY as follows:

1. That Plaintiffs, Huber Winery, William G. Schneider, Jr., and John D. Reilly, Jr.'s, case herein be dismissed, held for naught, and that the Plaintiffs take nothing thereby;
2. That Defendants recover their court costs and reasonable attorney fees in defense of this suit pursuant to 42 U.S.C. § 1988; and,
3. That Defendants recover any and all other relief to which they may appear entitled.

Respectfully submitted,

**EPPC-OLS-CHARITABLE GAMING AND  
ABC LEGAL DIVISION**

By: 

Stephen B. Humphress  
General Counsel  
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Frankfort, Kentucky 40601  
(502) 564-4850  
COUNSEL FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this Answer was served by mailing a copy hereof, postage prepaid by United States Postal Service to the Hon. Alan N. Kinker, Joseph H. Cohen, and J. Gregory Troutman, One Riverfront Plaza, Suite 1000, 401 West Main Street, Louisville, Kentucky 40202, Hon. Robert D. Epstein, Epstein, Cohen, Donahoe & Menders, 50 S. Meridian St., Suite 505, Indianapolis, Indiana 46204, and the Hon. James A. Tanford, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405, counsels for Petitioners, on this 30<sup>th</sup> day of June, 2005.

  
COUNSEL FOR DEFENDANTS