

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MAINE**

CHERRY HILL VINEYARD, LLC, et al.,

Plaintiffs,

v.

JOHN E. BALDACCI, in His Official  
Capacity as the Governor of the State of  
Maine, *et al.*,

Defendants.

CIVIL ACTION NO.: 05-cv-153-B-W

**DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT**

Now come the defendants, John E. Baldacci, in his official capacity as the Governor of the State of Maine, G. Steven Rowe, in his official capacity as the Attorney General of the State of Maine, and Dan A. Gwadosky, in his official capacity as the Director of the Maine Bureau of Alcoholic Beverages & Lottery Operations, and answer plaintiffs' complaint as follows:

1. Defendants admit that plaintiffs seek to bring this lawsuit pursuant to 42 U.S.C. § 1983 and are challenging the constitutionality of certain provisions of Maine law regulating the sale and shipment of wine. Defendants further admit that plaintiffs seek a declaration that said provisions, as applied to shipments of wine originating out-of-state, violate the Commerce Clause, and seek an injunction against their enforcement. Defendants deny that the provisions of Maine law at issue operate in the manner alleged by plaintiff, and deny that plaintiffs are entitled to the relief they seek.

2. Denied. Under Maine law, holders of farm winery licenses, whether located in-state or out-of-state, may sell wine directly to customers. No winery, whether located in-state or out-of-state, may ship wine directly to consumers.
3. Defendants admit that, under Maine law, residents may purchase limited quantities of wine and transport the wine home from in-state holders of farm winery licenses and off-premises retail licensees. Defendants further admit that Maine law restricts the amount of wine purchased out-of-state that a resident may bring into the state, and that additional quantities may be brought into the state for personal consumption provided that the resident obtains prior permission from the Bureau of Liquor Licensing and Inspections.
4. Defendants admit that plaintiffs purport to bring this action pursuant to 42 U.S.C. § 1983, and deny that plaintiffs have been deprived of any right or privilege secured by the United States Constitution.
5. Admitted.
6. Admitted.
7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.
8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.
9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.
10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

15. Defendants admit that plaintiffs are purporting to sue them in their official capacities.

16. Defendants admit that, pursuant to Article V, Part 1, Section 1, “the supreme executive power of this State shall be vested in a Governor.” Defendants deny the remaining allegations contained in this paragraph.

17. Defendants admit that the state’s Attorney General has the authority to prosecute violations of the statutes at issue here, and otherwise deny the remaining allegations contained in this paragraph.

18. Denied.

19. Admitted.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

22. Defendants admit the allegations contained in the first two sentences of this paragraph. With respect to the allegations contained in the third sentence, defendants admit that Maine law prohibits out-of-state wineries from shipping wine directly to consumers in Maine, and deny the remaining allegations. Defendants further state that no winery, whether located in the state or out of the state, may ship wine directly to Maine residents.

23. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

24. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

25. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

31. Admitted.

32. Denied.

33. Denied.

34. Denied.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

36. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

38. Defendants admit that there is no license or permit that would allow Cherry Hill Vineyard, LLC to ship wine directly to residents of Maine, and otherwise deny the remaining allegations contained in this paragraph.

39. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore deny same.

#### AFFIRMATIVE DEFENSES

##### FIRST AFFIRMATIVE DEFENSE

Plaintiffs fail to state claims upon which relief may be granted.

##### SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by sovereign immunity.

##### THIRD AFFIRMATIVE DEFENSE

Defendants' conduct did not violate any clearly established statutory or constitutional right of which a reasonable official would have known, and defendants are thus entitled to qualified immunity.

##### FOURTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing.

FIFTH AFFIRMATIVE DEFENSE

The matter is not ripe.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to exhaust their administrative remedies.

SEVENTH AFFIRMATIVE DEFENSE

The Court should abstain from adjudicating plaintiffs' claims.

WHEREFORE, defendants request that the Court dismiss all counts of the plaintiffs' complaint and enter judgment in the defendants' favor and award the defendants their costs, plus attorney's fees.

DATED: December 2, 2005

Respectfully submitted,

G. STEVEN ROWE  
Attorney General

/s/ Christopher C. Taub  
CHRISTOPHER C. TAUB  
Assistant Attorney General  
[Christopher.C.Taub@maine.gov](mailto:Christopher.C.Taub@maine.gov)  
MICHELLE ROBERT  
Assistant Attorney General  
[Michelle.Robert@maine.gov](mailto:Michelle.Robert@maine.gov)  
Six State House Station  
Augusta, Maine 04333-0006  
Tel. (207) 626-8800  
Fax (207) 287-3145

**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 2<sup>nd</sup> day of December, 2005, I electronically filed the above document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

ROBERT D. EPSTEIN  
rdepstein@aol.com

RICHARD SILVER  
rsilver@rlslaw.com tleclair@rlslaw.com

JAMES A. TANFORD  
tanford@indiana.edu

To my knowledge, there are no non-registered parties or attorneys participating in this case.

/s/ Christopher C. Taub  
CHRISTOPHER C. TAUB  
Assistant Attorney General  
Six State House Station  
Augusta, Maine 04333-0006  
Tel. (207) 626-8800  
Fax (207) 287-3145  
[Christopher.C.Taub@maine.gov](mailto:Christopher.C.Taub@maine.gov)