

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS- SPRINGFIELD DIVISION

FULL PULL WINES, LLC,)
TIMOTHY FREEHAN)
and)
JOSEPH GRODY)

Plaintiffs,)

vs.)

21-cv-3212

CYNTHIA BERG, Commissioner and)
Chairman of the Illinois Liquor Control)
Commission and)
THOMAS GIBBONS,)
PATRICIA PULIDO SANCHEZ,)
MELODY SPANN COOPER)
JULIETA LAMALFA)
DONALD G. O'CONNELL)
& STEVEN POWELL,)
Commissioners of the Illinois Liquor Control)
Commission)

Defendants.)

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 235 IL Comp. L. 5/5-1(d) and 235 IL Comp. L. 5/6-29.1(b) which allow Illinois wine retailers to sell, ship and deliver wine directly to consumers within the state of Illinois, while prohibiting out-of-state retailers from doing so. Plaintiffs seek a declaratory judgment that this statutory scheme is unconstitutional because 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).

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 Illinois.

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. Plaintiff Timothy Freehan is a resident of Cook County, Illinois. 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 fine wine. He has attempted to buy wine from out-of-state retailers and have it delivered to him but has been unable to do so because Illinois law prohibits such transactions. He intends to purchase wines from out-of-state retailers and have them shipped to his residence in Illinois if it were lawful to do so.

4. Plaintiff Joseph Grody is a resident of Cook County, Illinois. 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 fine wine. He has attempted to buy wine from out-of-state retailers and have it

delivered to him but has been unable to do so because Illinois law prohibits such transactions. He intends to purchase wines from out-of-state retailers and have them shipped to his residence in Illinois if it were lawful to do so.

5. Plaintiff Full Pull Wines, LLC is a Washington company that operates a wine retail store in Seattle, Washington. Full Pull Wines has been in business for many 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. Full Pull Wines has received requests that it sell and ship wine to Illinois from customers who have moved to Illinois or who wish to send gifts of wine to Illinois residents, but is unable to do so as a result of the Illinois ban. It intends to sell and ship wines directly to consumers in Illinois if the laws prohibiting such sales and shipments are removed or declared unconstitutional.

6. Full Pull Wines 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.

7. 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

8. Defendants are sued in their official capacities.

9. Defendant Cynthia Berg is a Commissioner and the Chairman of the Illinois Liquor Control Commission, which is charged with enforcing the Illinois liquor control laws, including the ones challenged in this lawsuit.

10. Defendant Thomas Gibbons is a Commissioner of the Illinois Liquor and Control Commission and is charged with enforcing the Illinois liquor control laws, including the ones challenged in this lawsuit.

11. Defendant Patricia Pulido Sanchez is a Commissioner of the Illinois Liquor and Control Commission and is charged with enforcing the Illinois liquor control laws, including the ones challenged in this lawsuit.

12. Defendant Melody Spann Cooper is a Commissioner of the Illinois Liquor and Control Commission and is charged with enforcing the Illinois liquor control laws, including the ones challenged in this lawsuit.

13. Defendant Julieta LaMalfa is a Commissioner of the Illinois Liquor and Control Commission and is charged with enforcing the Illinois liquor control laws, including the ones challenged in this lawsuit.

14. Defendant Donald G. O'Connell is a Commissioner of the Illinois Liquor and Control Commission and is charged with enforcing the Illinois liquor control laws, including the ones challenged in this lawsuit.

15. Defendant Steven Powell is a Commissioner of the Illinois Liquor and Control Commission and is charged with enforcing the Illinois liquor control laws, including the ones challenged in this lawsuit.

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

17. The Defendants, collectively and individually, intend to enforce the Illinois laws being challenged that regulate wine shipping from retailers to consumers.

COMMERCE CLAUSE VIOLATION

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

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

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

21. Full Pull Wines, LLC, is not located in Illinois, is not eligible for an Illinois off-premises license, and is prohibited by law from selling, delivering or shipping wine from its inventory directly to consumers in Illinois.

22. Timothy Freehan has attempted to purchase wine from out-of-state retailers and have it shipped to him in Illinois, but was unable to complete the transaction because Illinois law prohibits out-of-state retailers from shipping wine directly to Illinois consumers.

23. Freehan has tried on other occasions to buy wine directly from retailers located outside of Illinois and to have these wines delivered to him in Illinois but was unable to complete those purchases when those retailers indicated they could not ship to Illinois because it was unlawful.

24. Joseph Grody attempted to purchase wine from out-of-state retailers and have it shipped to him in Illinois, but was unable to complete the transaction because Illinois law prohibits out-of-state retailers from shipping wine directly to Illinois consumers.

25. Grody has tried on other occasions to buy wine directly from retailers located outside of Illinois and to have these wines delivered to him in Illinois but was unable to complete those purchases when those retailers indicated they could not ship to Illinois because it was unlawful.

26. Some wine retailers located outside of Illinois have wines for sale that Plaintiffs Freehan and Grody want to buy and which are not available at Illinois retailers in their areas, including rare, unusual, older vintage, or other limited-supply wines, wines not stocked by Illinois wholesalers, and wine originally distributed in Illinois but no longer available because the wholesalers have depleted their supply.

27. Plaintiffs Freehan and Grody cannot afford the time and expense of traveling to out-of-state wine retailers to purchase a few bottles of rare wine and personally transport them home, so they are effectively prohibited from buying unique wines for sale in other states.

28. Some wine retailers located outside of Illinois have wines for sale at prices lower than consumers can find at Illinois retailers. Because Illinois prohibits out-of-state retailers from selling and shipping wine directly to consumers, consumers including Freehan and Grody are forced to pay higher prices.

29. Full Pull Wines has received requests through its website, or made in person at its Washington premises, to sell and ship wine to Illinois residents, but has been unable to do so directly because Illinois law prohibits such transactions.

30. The Plaintiffs cannot complete the commercial transactions described in paragraphs 21-27 because the laws and regulations of Illinois prohibit direct sales and

shipments of wine from retailers located outside Illinois to in-state consumers, and state officials will not issue any kind of license that would allow such interstate transactions.

31. If Full Pull Wines, LLC were permitted to sell, ship and deliver its wine directly to consumers in the State of Illinois, it would comply with applicable laws and regulations concerning permits, licenses, labeling, reporting, proof of age, and payment of taxes.

32. The laws of the State of Illinois 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 Illinois, in violation of the Commerce Clause of the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

A. Judgment declaring 235 IL ST 5/5-1(d) and 235 IL ST 5/6-29.1(b), unconstitutional to the extent that they prohibit out-of-state wine retailers from selling, shipping and delivering wine directly to Illinois consumers, as a violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring 235 IL ST 5/5-1(d) and 235 IL ST 5/6-29.1(b), unconstitutional to the extent that they prohibit out-of-state wine merchants from obtaining licenses and engaging in their occupations in Illinois, 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 Illinois.

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,

Attorneys for Plaintiffs

/s/ Jerrold H. Stocks
Jerrold H. Stocks (ARDC #620198)
FEATHERSTUN, GAUMER, STOCKS,
FLYNN & ECK, LLP
101 S State St #240
Decatur, IL 62523
Tel: (217) 429-4453
jstocks@decatur.legal

/s/ Robert D. Epstein
Robert D. Epstein (Indiana Attorney No. 6726-49)
EPSTEIN COHEN SEIF & PORTER
50 S. Meridian St., Suite 505
Indianapolis, IN 46204
Tel: 317-639-1326
Fax: 317-638-9891
Rdepstein@aol.com

/s/ James A Tanford
James A. Tanford (Indiana Attorney No. 16982-53)
EPSTEIN COHEN SEIF & PORTER
50 S. Meridian St., Suite 505
Indianapolis, IN 46204
Tel: 812-332-4966
Fax: 317-638-9891

tanfordlegal@gmail.com

/s/ Joseph Beutel

Joseph Beutel (Indiana Attorney No. 35085-49)

EPSTEIN COHEN SEIF & PORTER

50 S. Meridian St., Suite 505

Indianapolis, IN 46204

Tel: 317-639-1326

Fax: 317-638-9891

joe@beutellaw.com

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is to be used for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Full Pull Wines, LLC; Timothy Freehan; Joseph Grody

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Featherstun Gaumer Stocks Flynn & Eck, LLP; 101 S. State St., Suite 240, Decatur, IL 62523 (217)429-4453

DEFENDANTS

Cynthia Berg (Commissioner and Chair- IL Liquor Commission) Thomas Gibbons. Patricia Pulido Sanchez. County of Residence of First Listed Defendant Sangamon (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 1983

Brief description of cause:

IL state law prohibition of out-of-state wine retailers from selling, shipping and delivering wine directly to customers- declaration and injunctive

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

October 1, 2021 /s/ Jerrold H. Stocks

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.