

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CIVIL ACTION NO. 3:11-cv-18-H

MAXWELL'S PIC-PAC, INC.
786 Miller Avenue
Louisville, KY 40217

and

FOOD WITH WINE COALITION, INC.
622 Shelby Street
Frankfort, KY 40601

PLAINTIFFS

v.

ROBERT VANCE, in his official
capacity as Secretary of the Kentucky
Public Protection Cabinet
5th Floor
Capital Plaza Tower
500 Mero Street
Frankfort, KY 40601

TONY DEHNER, in his official capacity
as Commissioner of the Kentucky
Department of Alcoholic Beverage
Control
1003 Twilight Trail
Frankfort, KY 40601

and

DANNY REED, in his official capacity as
the Distilled Spirits Administrator of the
Kentucky Department of Alcoholic
Beverage Control
1003 Twilight Trail
Frankfort, KY 40601

DEFENDANTS

COMPLAINT

For their Complaint, Plaintiffs, Maxwell's Pic-Pac, Inc. ("Maxwell's"), and Food With Wine Coalition, Inc. ("Food With Wine") state as follows:

JURISDICTION

1. This Court has jurisdiction to hear this action pursuant to 28 U.S.C. §§1331 and 1343(a)(3) in that it alleges violations of the Constitution of the United States and 42 U.S.C. §1983.

2. This Court has authority to grant declaratory relief and further necessary and proper relief pursuant to 28 U.S.C. §§2201 and 2202.

3. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b) and 1392.

4. This Court has pendent jurisdiction over the claims asserted in Counts Two and Four.

PLAINTIFFS

5. Plaintiff Maxwell's is a corporation created under the laws of the Commonwealth of Kentucky. Maxwell's owns a grocery store located in Louisville, Jefferson County, Kentucky.

6. Plaintiff Food With Wine is a non-profit corporation created under the laws of the Commonwealth of Kentucky. The members of Food With Wine are owners of grocery stores located in Kentucky.

DEFENDANTS

7. The Defendants are sued in their official capacities.

8. Defendant Robert Vance is the Secretary of the Kentucky Public Protection Cabinet, which is the agency of Kentucky state government charged with oversight of the Kentucky Department of Alcoholic Beverage Control.

9. Defendant Tony Dehner is the Commissioner of the Kentucky Department of Alcoholic Beverage Control, which is the unit of Kentucky state government charged with the authority to enforce the Kentucky statutes and regulations relating to the sale of alcoholic beverages, including the issuance of licenses for the sale of alcoholic beverages.

10. Defendant Danny Reed is the Distilled Spirits Administrator of the Kentucky Department of Alcoholic Beverage Control, and as such serves as the director of the Division of Distilled Spirits which administers the laws in relation to the sale of wine and distilled spirits.

11. Both the Public Protection Cabinet and the Department of Alcoholic Beverage Control have offices and agents throughout Kentucky, including Jefferson County, and undertake enforcement actions in their official capacities in Jefferson County.

12. Defendants are acting under color of Kentucky state law when they enforce the statutes and regulations challenged herein.

COUNT ONE – VIOLATION OF FEDERAL EQUAL PROTECTION

13. The allegations of paragraphs 1 through 12 are incorporated by reference.

14. KRS §243.230(5) states as follows:

(5) No retail package or drink license for the sale of distilled spirits or wine shall be issued for any premises used as or in connection with the operation of any business in which a substantial part of the commercial transaction consists of selling at retail staple groceries or gasoline and lubricating oil.

15. For purposes of interpreting KRS §243.230(5), the regulations adopted by the Kentucky Department of Alcoholic Beverage Control undertake to define “substantial part of the commercial transaction” and “staple groceries” in 804 KAR 4:270 as follows:

Section 1. For the purpose of enforcing KRS 243.230(5) “substantial part of the commercial transaction” shall mean ten (10) percent or greater of the gross sales receipts as determined on a monthly basis.

Section 2. For the purpose of enforcing KRS 243.230(5) staple groceries shall be defined as any food or food product intended for human consumption except alcoholic beverages, tobacco, soft drinks, candy, hot foods and food products prepared for immediate consumption (11 Ky. R. 1007; Am. 1124; eff. 2-12-85).

16. Because of KRS §243.230(5) and 804 KAR 4:270, the grocery stores that are members of Food with Wine, and Maxwell’s, are unable to obtain a license from the Kentucky Department of Alcoholic Beverage Control to sell wine and distilled spirits at retail because “ten (10) percent or greater of [their] gross sales receipts as determined on a monthly basis” are attributable to “retail staple groceries or gasoline and lubricating oil.”

17. Sellers at retail of anything other than “staple groceries” or “gasoline and lubricating oil” are not prohibited by statutes or regulation from obtaining a license to sell wine and distilled spirits at retail.

18. The classification of sellers at retail of “staple groceries” or “gasoline and lubricating oils” differently from sellers of other retail goods bears no rational relationship to a legitimate state interest.

19. Because of this lack of a rational relationship to a legitimate state interest, KRS §243.230(5) and 804 KAR 4:270 are in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, and pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202 Plaintiffs are entitled to a declaration to that effect and an injunction prohibiting Defendants from applying KRS §243.230(5) and 804 KAR 4:270 in the issuance of licenses to sell wine and distilled spirits at retail.

COUNT TWO – VIOLATION OF STATE EQUAL PROTECTION

20. The allegations of Paragraphs 1 through 19 are incorporated by reference.

21. Because there is also no reasonable basis or substantial and justifiable reason for the classification in KRS §243.230(5) and 804 KAR 4:270, they also violate the equal protection guarantee of Sections 1, 2 and 3 of the Kentucky Constitution, and Plaintiffs are entitled to a declaration to that effect and an injunction prohibiting Defendants from applying KRS §243.230(5) and 804 KAR 4:270 in the issuance of licenses to sell wine and distilled spirits at retail.

COUNT THREE – VIOLATION OF FEDERAL EQUAL PROTECTION

22. The allegations of paragraphs 1 through 21 are incorporated by reference.

23. The definition in 804 KAR 4:270, Section 1 of “substantial part of the commercial transactional” as “ten (10) percent or greater of the gross sales receipts as determined on a monthly basis” creates classifications of certain sellers at retail of “staple groceries” or “gasoline and lubricating oil” which are ineligible and eligible for licenses to sell wine and distilled spirits.

24. The classification of sellers at retail of “staple groceries” or “gasoline and lubricating oil” in amounts less than “ten (10) percent” of the “gross sales receipts as determined on a monthly basis” as being eligible to obtain a license to sell wine and distilled spirits, while making sellers at retail of “staple groceries” or “gasoline and lubricating oil” whose sales of such items are “ten (10) percent or greater” of their “gross sales receipts on a monthly basis” ineligible to obtain a license to sell wine and distilled spirits, is not rationally related to a legitimate state interest.

25. Because of this lack of a rational relationship to a legitimate state interest, the classification in KRS §243.230(5) and 804 KAR 4:270, Section 1 permitting sellers at

retail of “staple groceries” or “gasoline and lubricating oil” to obtain a license to sell wine and distilled spirits when their sales of these items are less than “ten (10) percent” of the “gross sales receipts as determined on a monthly basis” violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, and pursuant to 42 U.S.C. §1983, and 28 U.S.C. §§2201 and 2202, Plaintiffs are entitled to a declaration to that effect and an injunction prohibiting Defendants from applying KRS §423.230(5) and 804 KAR 4:270, Section 1 in the issuance of licenses to sell wine and distilled spirits at retail.

COUNT FOUR – VIOLATION OF STATE EQUAL PROTECTION

26. The allegations of paragraphs 1 through 25 are incorporated by reference.

27. Because there is also no reasonable basis or substantial and justifiable reason for the classification in KRS §243.230(5) and 804 KAR 4:270, Section 1 permitting sellers at retail of “staple groceries” or “gasoline and lubricating oil” to obtain a license to sell wine and distilled spirits when their sales at retail of “staple groceries” or “gasoline and lubricating oil” are less than “ten (10) percent” of the “gross sales receipts as determined on a monthly basis,” the classification also violates the equal protection guarantee of Sections 1, 2 and 3 of the Kentucky Constitution, and Plaintiffs are entitled to a declaration to that effect and an injunction prohibiting Defendants from applying KRS §423.230(5) and 804 KAR 4:270, Section 1 in the issuance of licenses to sell wine and distilled spirits at retail.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Maxwell’s Pic-Pac, Inc. and Food With Wine Coalition, Inc. demand as follows:

1. Judgment on Count One declaring that KRS 243.230(5) and 804 KAR 4:270 violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by prohibiting, without a rational relationship to a legitimate state interest, certain sellers at retail of “staple groceries or gasoline and lubricating oil” from obtaining licenses for the retail sale of wine and distilled spirits while allowing sellers of other goods at retail to obtain such licenses;

2. Judgment on Count Two declaring that KRS §243.230(5) and 804 KAR 4:270 violate the equal protection guarantee of Sections 1, 2 and 3 of the Kentucky Constitution by prohibiting, without a reasonable basis or substantial and justifiable reason, certain sellers at retail of “staple groceries or gasoline and lubricating oil” from obtaining licenses for the retail sale of wine and distilled spirits while allowing sellers of other goods at retail to obtain such licenses;

3. Judgment on Count Three declaring that KRS 243.230(5) and 804 KAR 4:270, Section 1 violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by prohibiting, without a rational relationship to a legitimate state interest, businesses whose sales at retail of “staple groceries or gasoline and lubricating oil” exceed “ten (10) percent or greater of the gross sales receipts as determined on a monthly basis” from obtaining licenses for the retail sale of wine and distilled spirits while allowing businesses whose sales at retail of “staple groceries or gasoline and lubricating oil” are less than “ten (10) percent” of the “gross sales receipts as determined on a monthly basis” to obtain licenses for the retail sale of wine and distilled spirits;

4. Judgment on Count Four declaring that KRS 243.230(5) and 804 KAR 4:270, Section 1 violate the equal protection guarantee of Sections 1, 2 and 3 of the Kentucky Constitution by prohibiting, without a reasonable basis or substantial and justifiable reason, businesses whose sales at retail of “staple groceries or gasoline and lubricating oil” exceed “ten (10) percent or greater of the gross sales receipts as determined on a monthly basis” from obtaining licenses for the retail sale of wine and distilled spirits while allowing businesses whose sales at retail of “staple groceries or gasoline and lubricating oil” are less than “ten (10) percent” of the “gross sales receipts as determined on a monthly basis” to obtain licenses for the retail sale of wine and distilled spirits;

5. An injunction under Counts One, Two, Three and Four prohibiting the Defendants from refusing to issue licenses to sellers at retail of “staple groceries or gasoline and lubricating oil” for the sale of wine and distilled spirits at retail for any of the reasons stated in KRS §243.230(5) and 804 KAR 4:270;

6. An award of costs and expenses, including reasonable attorneys’ fees pursuant to 42 U.S.C. §1988; and

7. Such further and other relief as the Court shall deem appropriate.

Respectfully submitted,

/s/ M. Stephen Pitt

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