

JONI J. JONES (7562)
KYLE J. KAISER (13924)
Assistant Utah Attorneys General
Office of the Utah Attorney General
160 East 300 South, Sixth Floor
PO BOX 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Attorneys for Defendants
E-mail: jonijones@utah.gov
E-mail: kkaiser@utah.gov

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**UTAH HOSPITALITY ASSOC.,
INC.**, a nonprofit corporation licensed to do
business in the State of Utah, John Doe I, an
individual owning a social club; and John
Doe II, an individual denied a social club
license,

Plaintiffs,

v.

Gary R. Herbert, Governor of the State
of Utah, in his official capacity, Mark
Shurtleff, Attorney General for the State of
Utah, in his official capacity, Richard J.
Sperry, Jeffrey Wright, Kathleen
McConkie Collinwood, and David Gladwell
in their official capacities as members of the
Department of Alcohol and Beverage
Control Commission, John Does III-X,

Defendants.

DEFENDANTS' MOTION TO DISMISS

Case No. 2:11-CV-00612

Judge Bruce S. Jenkins

Defendants Gary R. Herbert, Governor of the State of Utah; Mark L. Shurleff, Attorney General for the State of Utah; and Dr. Richard J. Sperry, Jeffrey Wright, David Gladwell, and Kathleen McConkie Collinwood, Commissioners of the Utah Department of Alcoholic Beverage Control, by and through counsel Joni J. Jones and Kyle J. Kaiser, pursuant to Federal Rule of Civil Procedure 12(b)(6), move to dismiss Plaintiffs' Amended Complaint ([doc. 3](#)). The basis for the Defendants' Motion includes:

- The portions of Senate Bill 314 challenged by the Plaintiffs do not violate the Sherman Antitrust Act because:
 - SB 314's restriction on happy hour is a unilateral, not a hybrid restraint, and thus does not fall within the scope of the Sherman Act.
 - SB 314's restriction on happy hour is not a *per se* violation of the Sherman Act, but would be subject, at most, to a Rule of Reason analysis. Because it is not a *per se* violation of Sherman Act, SB314's happy hour restriction cannot, as a matter of law, be invalid pursuant to the Sherman Act.
 - SB 314's restriction on happy hour is protected by the State Action Doctrine in antitrust law.
 - SB 314's restriction on happy hour is lawful as a proper exercise of the State of Utah's right to control the importation and distribution of alcoholic beverages under Section 2 of the Twenty-first Amendment.
 - SB 314's restriction on the number of licenses, and tying liquor licenses to population and law enforcement numbers is a unilateral restraint not subject to regulation under the Sherman Act.

- The portions of Senate Bill 314 challenged by the Plaintiffs do not violate the Due Process and Equal Protection Clauses of the United States and Utah State Constitutions because:
 - Plaintiffs have no property interest in a license they have not yet received.
 - Plaintiffs cannot demonstrate that they have satisfied the license requirements.
 - Plaintiffs cannot demonstrate that they were treated differently from other applicants.
- The LDS Church's practice of offering its view to legislators on SB 314 does not void SB 314 as unconstitutional violation because, under the state and federal constitutions, religious groups and individuals have a right to participate in the political process regardless of religious affiliation, and neither the Federal Establishment Clause nor the State "Domination" Clause compels a contrary result.

Accordingly, and for the reasons stated in the Memorandum filed contemporaneously herewith, the Defendants respectfully request that Plaintiffs' Amended Complaint be dismissed with prejudice.

DATED this 12th day of January, 2012.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Kyle J. Kaiser
KYLE J. KAISER
JONI J. JONES
Assistant Utah Attorneys General
Attorneys for Defendants