

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

KAMBIS ANVAR,)	
VINCENT COLAPIETRO,)	
MICHELLE DRUM,)	
and MICHAEL OSEAN)	
)	
Plaintiffs,)	Case No. _____
)	
vs.)	
)	
ELIZABETH TANNER, Director of Dept. of)	
Business Regulation, and)	
PETER NERONHA, Attorney General)	
of Rhode Island,)	
)	
Defendants.)	

COMPLAINT

Plaintiffs make the following allegations 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 Rhode Island law, practices, and regulations that discriminate against interstate commerce by prohibiting out-of-state wine retailers from selling, delivering and shipping wine to Rhode Island residents, when in-state retailers are allowed to do so. Plaintiffs challenge R.I. Gen. L. § 3-4-8(a) and 230 R.I. Admin. Code 30-10-1.4.19 (B)(1), which explicitly prohibit a wine retailer located outside the state from delivering wine directly to consumers, and R.I. Gen. L. §§ 3-5-10, 3-5-11, 3-5-15, 3-5-17, and 3-7-18, and 230 R.I. Admin. Code 30-10-1.4.10 (B) and 30-10-1.4.27, which impose a series of residency, delivery and licensing restrictions that have the practical effect of preventing out-of-state wine retailers from lawfully selling and delivering to Rhode Island consumers. The plaintiffs seek a declaratory

judgment that this regulatory scheme is unconstitutional in violation of the Commerce Clause, because it discriminates against out-of-state wine retailers engaged in interstate commerce and constitutes unlawful economic protectionism for in-state businesses. The plaintiffs seek an injunction barring the defendants from enforcing these laws, practices and regulations, and requiring them to allow out-of-state wine retailers to sell and deliver wine directly to Rhode Island consumers upon equivalent terms as in-state wine retailers.

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 and laws.

2. The Court has authority to grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.

PLAINTIFFS

3. Plaintiff Kambis Anvar is a resident of East Greenwich, Kent County, Rhode Island. He is a wine consumer over the age of twenty-one, does not live in a dry area, and is legally permitted to purchase, receive, possess and drink wine at his residence. He would purchase wine from out-of-state sources and have it delivered to his residence in Rhode Island, if Rhode Island law, practices and regulations permitted such transactions.

4. Plaintiff Vincent Colapietro is a resident of Narragansett, Washington County, Rhode Island. He is a wine consumer over the age of twenty-one, does not live in a dry area, and is legally permitted to purchase, receive, possess and drink wine at his residence. He would purchase wine from out-of-state sources and have it delivered to his residence in Rhode Island, if Rhode Island law, practices and regulations permitted such transactions.

5. Plaintiff Michelle Drum is a resident of Newport, Newport County, Rhode Island. She is a wine consumer over the age of twenty-one, does not live in a dry area, and is legally permitted to purchase, receive, possess and drink wine at her residence. She has attempted to purchase wines from retailers outside Rhode Island, including online sales sites for K & L Wine Merchants in California and the Wine Library in New Jersey, and have that wine delivered to Rhode Island, but those orders have been declined. She would purchase wine from out-of-state sources and have it delivered to her residence in Rhode Island, if Rhode Island law, practices and regulations permitted such transactions.

6. Plaintiff Michael Osean is a resident of Middletown, Newport County, Rhode Island. He is a wine consumer over the age of twenty-one, does not live in a dry area, and is legally permitted to purchase, receive, possess and drink wine at his residence. He would purchase wine from out-of-state sources and have it delivered to his residence in Rhode Island, if Rhode Island law, practices and regulations permitted such transactions. He is a wine professional.

DEFENDANTS

7. Defendants are sued in their official capacities.

8. Defendant Peter Neronha is the Attorney General of Rhode Island and is generally empowered to enforce Rhode Island laws.

9. Defendant Elizabeth Tanner is the Director of the Rhode Island Department of Business Regulation, which is charged under R.I. Gen. L. § 3-2-2 with enforcing Rhode Island liquor control laws and regulations, including the ones challenged in this lawsuit.

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

Commerce Clause Violation

11. A wine retailer located in Rhode Island may obtain a Class A license pursuant to R.I. Gen. L. §§ 3-7-1 or 3-7-3, which authorizes it to sell wine, take orders by telephone or other means that do not require the consumer to appear in person at the store, and deliver the wine from its inventory directly to Rhode Island consumers.

12. A wine retailer located in a state other than Rhode Island is not eligible for a Class A license because it does not have physical premises in a particular city within the state, and R.I. Gen. L. § 3-5-15 provides that only a city or other local licensing authority may issue such a license, and only for premises located within its jurisdiction.

13. A wine retailer located in a state other than Rhode Island cannot become eligible for a Class A license by opening a second physical facility in Rhode Island, because the joint operation of two facilities would violate R.I. Gen. L. § 3-5-11's prohibition against "chain store organizations."

14. Even if it could get a license, a wine retailer located outside Rhode Island could not sell and deliver wine directly to a Rhode Island consumer because R.I. Gen. L. § 3-4-8 and 230 R.I. Admin. Code 30-10-1.4.19(B)(1) require that all wine being shipped into the state must be consigned and delivered to a licensed Rhode Island wholesaler and none may be sent directly to a consumer.

15. Even with a license, most retailers located outside Rhode Island could not sell and deliver wine to consumers in the state because 230 R.I. Admin Code 30-10-1.4.10(B) requires that deliveries be made by an employee of the licensee, which is feasible only for local retailers; which administrative restriction is inconsistent with R.I. Gen. L. §§ 3-7-1 and 3-7-3, which give retailers general authorization to deliver wine without restricting the method.

16. It is unlawful to sell and ship wine to a Rhode Island consumer without a license under R.I. Gen. L. § 3-5-1, so most wine retailer located outside Rhode Island will not deliver or ship wine to Rhode Island consumers

17. Kambis Anvar, Vincent Colapietro, Michelle Drum, and Michael Osean are wine consumers, and they would buy wine directly from wine retailers located outside of Rhode Island and have these wines delivered to their residences if it were lawful to do so.

18. Plaintiffs have contacted several out-of-state wine retailers either on the Internet or by telephone, including retailers located in Connecticut that provide home deliveries in the region, and attempted to buy wine and have it delivered to their Rhode Island residences, but have been refused.

19. Rhode Island is a small market for wine, and many rare, unusual, and heavily allocated wines that are distributed in other states are not stocked or sold by Rhode Island retailers, but are readily available from retailers located in Connecticut, New York and California who will ship and deliver to states where it is lawful to do so.

20. Plaintiffs cannot afford the time and expense of traveling to out-of-state wine retailers to purchase wine and personally transport them home, nor can they minimize the per-bottle cost by buying several cases at a time because R.I. Gen. L. §§ 3-1-1(9), 3-4-1, 3-5-1, and 3-5-7 in combination make it unlawful for a consumer to bring into the state more than 15 bottles (3 gallons) for personal use.

21. The only reason plaintiffs cannot purchase wine from out-of-state retailers and have it delivered is because the laws, regulations, and practices of Rhode Island prohibit direct sales and deliveries of wine from out-of-state wine retailers to in-state consumers.

22. Rhode Island does not require that wine sales and deliveries that originate within Rhode Island be made in person, face-to-face, on a retailer premises, but allows wine to be delivered by

retailers, so there is no legitimate reason other than protectionism to prohibit deliveries from out-of-state sellers.

23. Rhode Island allows retail wine orders placed at an out-of-state winery to be shipped directly from the winery's out-of-state premises to the consumer, so there is no legitimate reason other than protectionism to prohibit such direct shipping from out-of-state retailers.

24. By refusing to license out-of-state retailers to sell and deliver to Rhode Island residents, requiring all imports to be consigned to a Rhode Island wholesaler, restricting its own residents from freely bringing wine into the state, and prohibiting retailers from using cost-effective delivery methods such as common carriers, Rhode Island is effectively requiring its residents to buy wine only from in-state retailers, systematically protecting the economic interests of Rhode Island entities and discriminating against interstate commerce, in violation of the Commerce Clause of the United States Constitution.

Request for Relief

WHEREFORE, Plaintiffs seek the following relief:

A. Judgment declaring R.I. Gen. L. § 3-4-8(a) and 230 R.I. Admin. Code 30-10-1.4.19(B)(1) unconstitutional as violating the Commerce Clause of the United States Constitution.

B. Judgment declaring R.I. Gen. L. §§ 3-5-10, 3-5-11, 3-5-15, 3-5-17, 3-7-18, and 230 R.I. Admin. Code §§ 30-10-1.4.19(B)(1), 30-10-1.4-10(B) and 30-10-1.4.27, unconstitutional as applied separately or collectively to prohibit out-of-state retailers from delivering wine directly to consumers as a violation of the Commerce Clause of the United States Constitution.

C. An injunction prohibiting Defendants from enforcing those rules and regulations and requiring them to allow out-of-state wine retailers to sell, ship, and deliver wine directly to customers in Rhode Island.

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/ Scott J. Summer
Scott J. Summer (RI Bar No. 4127)
LAWYERSCOLLABORATIVE
The Calart Tower
400 Reservoir Ave., Suite 3A
Providence, RI 02907
Tel: 833-467-7771
Fax: 401-633-7100
sjs@lawyerscollaborative.com

/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

CIVIL COVER SHEET

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 required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

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

DEFENDANTS

County of Residence of First Listed Defendant (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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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):

Brief description of cause:

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

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.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
)
)
)
)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: