IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RETAIL LIQUOR ASSOCIATION OF OKLAHOMA, an Oklahoma non-profit corporation; and JOSEPH P. RICHARD, an individual,

Plaintiffs,

v.

OKLAHOMA ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION; and KEITH A. BURT, in his official capacity as Director of Oklahoma Alcoholic Beverage Laws Enforcement Commission,

Defendants.

Case No. CIV-17-49-C

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants' Motion for Summary Judgment (Dkt. No. 20). Plaintiffs have responded and the Motion is now at issue.

I. Background

On May 27, 2016, the Oklahoma Legislature passed Senate Joint Resolution 68, which placed a proposition on the November 8, 2016, general election ballot called State Question 792 ("S.Q. 792"). S.Q. 792 reformed Oklahoma's alcohol regulatory framework by repealing Article 28 of the Oklahoma Constitution and replacing it with Article 28A. Plaintiffs circulated an initiative petition for another proposed constitutional amendment, State Question 791, but it did not receive enough support to be placed on the ballot.

Package Licenses for the sale of alcoholic beverages and Wholesale Distributor's Licenses may only be issued to an individual or general limited partnership; these entities are without limited liability protections. See Okla. Const. Art. 28 §§ 4, 10. Applicants for Retail Package Licenses and Wholesale Distributor's Licenses must have lived in Oklahoma for at least ten years immediately preceding the date of license application and felons may not obtain a license. See Okla. Const. Art. 28 § 10. A person or partnership may only hold one Retail Package License and only alcoholic beverages may be sold on the premises. See Okla. Const. Art. 28 § 4.

Article 28 permits winemakers to sell wine to a licensed wholesale distributor or directly to consumers present in the winery or at festivals and tradeshows. Winemakers who produce less than ten thousand gallons of wine per year may elect to ship their product directly to licensed retail package stores and restaurants within Oklahoma, but making the election prevents them from also using a licensed wholesale distributor. See Okla. Const. Art. 28 § 3(A).

B. Article 28A

Article 28A makes several changes to the regulatory system, beginning with the sale of alcohol. The state will issue Retail Spirits Licenses, allowing the sale of all refrigerated and non-refrigerated alcohol and any grocery store items, so long as the sale of non-alcoholic items does not exceed 20% of the store's monthly sales. See Okla. Const. Art. 28A § 3(A)(1). These licenses have a reduced five-year residency requirement and a person or partnership may hold two licenses. See Okla. Const. Art. 28A § 4(A).

Civ. P. 56(c). All facts and reasonable inferences therefrom are construed in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

III. Equal Protection

A. Equal Protection Standard

In this case, Plaintiffs challenge a state constitutional amendment approved by the legislature and ratified by voters. The parties agree the proper standard of review is the rational basis test. (Pls.' Am. Resp. to Mot. Summ. J., Dkt. No. 24, p. 17.) Accordingly, Plaintiffs must establish Article 28A's regulatory scheme treats its members differently than others similarly situated and the difference is not "rationally related to furthering a legitimate state interest." Vance v. Bradley, 440 U.S. 93, 97 (1979) (quoting Mass. Bd. of Ret. v. Murgia, 427 U.S. 307, 312 (1976). Rational basis review creates a "strong presumption of validity" concerning the classification and if Defendants identify "plausible reasons" for the measure, then the court's "inquiry is at an end." F.C.C. v. Beach Commc'ns, Inc., 508 U.S. 307, 313-14 (1993) (quoting U.S. R.R. Ret. Bd. v. Fritz, 449 U.S. 166, 179 (1980)). To overcome the Motion, Plaintiffs bear the burden "to negative every conceivable basis which might support it." Id. at 315 (citations and internal quotation marks omitted).

"[T]hose challenging the judgment of the people must convince the court that the facts on which the classification is apparently based could not reasonably be conceived to be true by the decisionmaker." Gregory v. Ashcroft, 501 U.S. 452, 473 (1991) (citations, internal quotation marks, and internal alterations omitted). A court "will not overturn such

The parties present varying evidence to show whether wine and beer are similar to spirits. Defendants demonstrate spirits are associated with binge drinking, a litany of health concerns, crime, and increased risk for vehicular accidents when compared to wine and beer. Plaintiffs rebut these facts by presenting counter-studies or arguing Defendants should rely on Oklahoma-specific data. However, the government "is not compelled to verify its legislative assumptions with empirical evidence" and may use "common sense propositions" to "uphold social and economic legislation analyzed under the rational relationship test." Okla. Educ. Ass'n v. Alcoholic Beverage Laws Enf't Comm'n, 889 F.2d 929, 934 (10th Cir. 1989) (citations omitted). As a matter of general knowledge, wine and beer are materially different products from spirits due to their social uses and alcohol content. To support this concept, Defendants cite to twenty-three other states that regulate wine and beer differently from spirits. (Aff. of William Kerr, Dkt. No. 20-3, pp. 7-9.) This general knowledge coupled with Defendants' evidence makes it rational to conclude all alcohol sellers holding licenses in Oklahoma are not similarly situated.[1]

Next, the Court will determine whether Article 28A's regulatory scheme is rationally related to furthering a legitimate state interest. Defendants state the broad goals of the Oklahoma legislature are to reduce access to products with high alcohol content and steer society towards lower ABW products. Oklahoma attempts to achieve these goals by increasing the price of alcohol through taxation and limiting the availability of alcohol by

[1] Because rational basis review of the Equal Protection Clause first requires the classes be similarly situated and then that the disparate treatment is rationally related to furthering a legitimate state interest, the Court's inquiry could be at an end. However, in the interest of justice, the Court will address each argument advanced by the parties.

D. 20% Restriction on Non-Alcoholic Items

Plaintiffs complain the requirement that no more than 20% of monthly Retail Spirit Licenses sales may come from non-alcoholic merchandise is arbitrary. Defendants state the reason for the requirement is to ensure retail liquor stores do not become *de facto* grocery stores. Plaintiffs argue this is a poor method of advancing the goal because it ignores the fact that people under the age of twenty-one must not enter liquor stores. While this may be true, the government is not required to implement the best measure, merely a rational one. See Gregory, 501 U.S. at 473. Second, Plaintiffs argue the measure is overly burdensome to store owners who would be forced to keep nearly daily accountings in order to comply with the 20% sales cap.[4] They offer Florida's regulation of non-alcoholic merchandise sales as a comparison, which restricts the type of goods permitted for sale within liquor stores rather than restricting the amount. See Fla. Stat. § 565.04. While Florida's system might benefit retail liquor stores, it is not for the Court "to judge the wisdom, fairness, or logic of legislative choices." Beach Commc'ns, Inc., 508 U.S. at 313 (citations omitted). The measure is rationally related to a legitimate governmental interest.

E. Residency Requirements and Entity Restrictions

Plaintiffs object to the residency requirements and entity restrictions imposed by Article 28A. Plaintiffs agree the residency and entity restrictions ensure personal responsibility for those conducting business within Oklahoma, but argue the restrictions

[4] Notably, Plaintiffs' proposed State Question 791 imposes a similar 30% cap on retail package stores and retail grocery wine stores. Although Article 28A does not set sales caps for Retail Wine and Beer Licensees, as previously stated, the measure is rationally related to the legitimate state interest to limit access to higher ABW products than wine and beer.

by a favorable decision. Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992) (citations, internal quotation marks, and internal alterations omitted). When a plaintiff's asserted injury arises from the government's regulation (or lack thereof) of another person, standing is "substantially more difficult to establish." Id. at 562 (citations and internal quotation marks omitted). In this circumstance, "[t]he existence of one or more of the essential elements of standing depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict." Id. (citations and internal quotation marks omitted). This requires a plaintiff to "adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury." Id. (citation omitted).

B. Regulation of Wholesalers

Plaintiffs object to Article 28A's regulation of wholesalers pertaining to ownership because it is not congruent to the ownership requirements of businesses with Retail Spirits Licenses. Defendants argue Plaintiffs are not wholesalers and do not compete with them, thus they are not injured by the regulation. Plaintiffs offer no response to the standing challenge. The argument Plaintiffs assert that is most helpful to the issue is the fact that allowing 50% corporate ownership of wholesalers will result in cheaper wine and beer prices and retail liquor stores could also offer reduced prices if regulated similarly. This is not sufficient for Plaintiffs to establish an injury in fact because Plaintiffs will enjoy lower prices from goods supplied by wholesalers, not an injury. In total, Plaintiffs have failed to assert any standing argument from which the Court can draw a meaningful conclusion.

regulation is allowing small local wineries to expand their customer base and broadening consumer choice while balancing public health concerns by limiting the quantity of wine that may be shipped. Plaintiffs do not successfully negate these justifications. Thus, Plaintiffs' argument must fail for reasons of lack of standing, the parties are not similarly situated, and the government has identified plausible reasons for the measure.

CONCLUSION

Accordingly, Plaintiffs have not upheld the burden under rational basis review of equal protection for their requested declaratory relief. The Court will not strike down as unconstitutional Article 28A of the Oklahoma Constitution; therefore, this conclusion precludes the requested injunctive relief. For the reasons stated, Defendant's Motion for Summary Judgment (Dkt. No. 20) is GRANTED. A separate Judgment shall issue.

IT IS SO ORDERED this 24th day of August, 2017.

ROBIN J. CAUTHRON
United States District Judge