IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
(Fort Pierce)

CASE NO. 2:14-cv-14430-RLR

THE CRAFTED KEG, LLC,

Plaintiff,

v.

KEN LAWSON, in his official capacity as Secretary of the Florida Department of Business And Professional Regulation and WILLIAM SPICOLA, in his official capacity as Director of The State of Florida Division of Alcoholic Beverages And Tobacco,

Defendants.
_____

MOTION TO DISMISS COMPLAINT AND MEMORANDUM IN SUPPORT

Defendants, KEN LAWSON, in his official capacity as Secretary of the Florida Department of Business And Professional Regulation (hereafter, "DPBR") and WILLIAM SPICOLA, in his official capacity as Director of The State of Florida Division of Alcoholic Beverages And Tobacco (hereafter, "ABT"), pursuant to Rule 12(b)(6), Fed. R. Civ. P., hereby move to dismiss the Complaint filed by Plaintiff, THE CRAFTED KEG, LLC, on the following grounds:

PRELIMINARY STATEMENT

Plaintiff claims that it has a constitutional right to sell malt beverages in 64-ounce containers and to fill patrons' containers with 64 ounces of beer. It is incorrect. The Florida Legislature, obviously, found the statue concerned to be necessary to protect an important state interest. It is axiomatic that "a heavy burden rests on those who would attack the judgment of

the representatives of the people." Gregg v. Georgia, 428 U.S. 153, 175, 96 S.Ct. 2909, 2926, 49 L.Ed.2d 859 (1976) (plurality opinion). Regarding a facial challenge, the burden is even higher. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid. (emphasis added)." United States v. Salerno, 481 U.S. 739, 745, 107 S.Ct. 2095, 2099, 95 L.Ed.2d 697 (1987); accord, Horton v. City of St. Augustine, 272 F.3d 1318, 1329 (11th Cir. 2001). It should be noted that, where the Plaintiff seeks to enjoin the enforcement of the entire statute, this is a facial challenge. See AFSCME Council 79 v. Scott, 717 F.3d 851, 862-863 (11th Cir. 2013) (noting that where an injunction reaches beyond the particular circumstances of the Plaintiff, it must satisfy the Supreme Court's standards for a facial challenge).

An as-applied challenge…. addresses whether "a statute is unconstitutional on the facts of a particular case or to a particular party." Black's Law Dictionary at 223. Harris v. Mexican Specialty Foods, Inc., 564 F.3d 1301, 1308 (11th Cir. 2009). Here, the Plaintiff can meet the burden for neither a facial nor an as applied challenge.

ALLEGED FACTS

Plaintiff contends that large corporate sellers of beer can afford to package beer in cans and bottles and the like, but smaller sellers cannot afford the costs that moving to that system of packaging would require. (DE#1, p. 2). It alleges that the 64-ouce growler is the craft brew industry standard, allegedly allowed nearly everywhere, but not in Florida. (DE#1, pps. 2-3). It is alleged that the Plaintiff is a full-time "growler bar" supplying the best crafted beers, wines, ciders and sodas from around the world. (DE#1, p. 4). Every day, a new keg of a different beer is brought in and sold to the public and customers may either drink it at the restaurant or bring it

home in their "growler." (DE#1, p. 4). Plaintiff alleged that a "growler" is a jug and that craft beer restaurants typically sell beer in 64-ounce "growlers". (DE#1, p. 5). It is alleged that the 64-ounce "growler" is the standard industry size. (DE#1, p. 5).

Plaintiff alleges that the statute concerned permits containers of malt beverages of up to 32 ounces and allows sale in bulk, kegs or barrels or in containers of one gallon (128 ounces) or more. (DE#1, p. 5). Penalties include fines of up to $500 and 60 days in jail. (DE#1, p. 6). Allegedly, patrons from other states regularly visit Plaintiff with their 64-ounce growlers, and ask employees to fill them. (DE#1, p. 6). The patrons allegedly regularly inform Plaintiff that they do not believe the law prohibits filling a 64-ounce growler and Plaintiff is attempting to gouge the tourist. (DE#1, p. 6).

HISTORICAL CONTEXT

The Florida Legislature, in 1965, added what became §561.47(6), Fla. Stats. (1965) to restrict the container sizes of containers of malt beverages:

> (6) All malt beverages packaged in bottles or cans sold or offered for sale by vendors at retail in this state shall be in containers containing only eight ounces, twelve ounces, sixteen ounces, or thirty-two ounces of such malt beverages; provided however, that nothing contained in this subsection shall affect malt beverages packaged in bulk or in kegs or in barrels or in any container containing one gallon or more of such malt beverage regardless of container type.

It was modified in 2001 to its present form, which reads:

> (6) All malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state shall be in individual containers containing no more than 32 ounces of such malt beverages; provided, however, that nothing contained in this section shall affect malt beverages packaged in bulk or in kegs or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

§ 563.06, Fla. Stat. (2014).

This statute is part of a comprehensive system for the regulation of alcoholic beverages which, among other things, limits the size of individual wine containers to 1 gallon (§ 564.05, Fla. Stat. (2014)), limits the size of liquor containers which may be purchased by clubs (§ 565.05, Fla. Stat. (2014)), requires clubs to sell by the individual drink (§ 565.06, Fla. Stat. (2014)), limits the size of containers in which distilled spirits may be sold to 1.75 liters (§ 565.10, Fla. Stat. (2014)) and bans refilling bottles of liquor for sale. (§ 565.11, Fla. Stat. (2014)).

The Eighteenth Amendment to the United States Constitution, ratified in 1919, banned the manufacture, sale or transportation of intoxicating liquors within the United States. It was repealed in 1933 by the Twenty-First Amendment, which states:

> **Section 2.** The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

U.S. Const. amend. XXI.

Thus, regulation of alcoholic beverages was returned to the State, which was given power to preclude transportation, importation or possession thereof. There is no question that the State may completely outlaw the possession, sale or transportation of any alcoholic beverages within its jurisdiction. See, 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 514, 116 S.Ct. 1495, 1514, 134 L.Ed.2d 711 (1996) ("Section 1 of the Twenty-first Amendment repealed that prohibition, and § 2 delegated to the several States the power to prohibit commerce in, or the use of alcoholic beverages."). Indeed:

> It is firmly established that the state through the 21st Amendment has a broad right to regulate traffic in intoxicating liquors in the valid exercise of its police power. Crowley v. Christensen, 137 U.S. 86, 11 S.Ct. 13, 34 L.Ed. 620 (1890); Joseph E. Seagram & Sons, Inc. v. Hostetler, 384 U.S. 35, 86 S.Ct. 1254 (1966); Hornsby v. Allen, 326 F.2d 605 (1964). Moreover, the Fourteenth Amendment admits of the exercise of a wide scope of discretion in this regard. It only prohibits

> what is done when it is without any reasonable basis and therefore is purely arbitrary. E.g., Block v. Hirsh, 256 U.S. 135, 41 S.Ct. 458, 65 L.Ed. 865 (1920); Mestre v. City of Atlanta, 255 F.2d 401 (5th Cir. 1958). Moreover, the exercise of the power in connection with the liquor industry particularly allows the widest discretion and is subject to minimal demands of the Fourteenth Amendment's due process and equal protection requirements. See United States v. Frankfort Distillers, 324 U.S. 293 at 299(5), 65 S.Ct. 661, 89 L.Ed. 951 (1945); Atlanta Bowling Center, Inc. v. Allen, 389 F.2d 713 (5th Cir. 1968); Lewis v. City of Grand Rapids, 356 F.2d 276 (6th Cir. 1966).

Parks v. Allen, 426 F.2d 610, 613 (5th Cir. 1970).

Although interpretations of the 21st Amendment have gone through some modifications in the years since its adoption regarding its primacy over commerce clause and first amendment cases, it is certainly still true, as reiterated by the Supreme Court, that, "[t]he Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." Granholm v. Heald, 544 U.S. 460, 490, 125 S.Ct. 1995, 1905, 161 L.Ed.2d 796 (2005) (citing to California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97, 100 S.Ct. 937, 63 L.Ed.2d 233 (1980); accord, North Dakota v. United States, 495 U.S. 423, 431, 110 S.Ct. 1986, 109 L.Ed.2d 420 (1990)(plurality opinion). "For present purposes, we note that the 21st Amendment's express grant of authority to the states, if it means anything in this context, provides legitimacy to the state's interest in restricting access to alcohol. *See Granholm v. Heald,* 544 U.S. 460, 486, 493, 125 S.Ct. 1885, 161 L.Ed.2d 796 (2005) (noting that the states 'have broad power to regulate liquor under § 2 of the Twenty–First Amendment')." Maxwell's Pic-Pac, Inc. v. Dehner, 739 F.3d 936, 941 (6th Cir. 2014).

Given that consumers are significantly more likely to attempt to consume an amount of beer greater than 32 ounces, but less than 128 ounces at one sitting if they can buy that amount at one time in one container, the prevention of intoxication and its collateral evils is a rational basis for such a restriction, especially given that an opened container of beer is a perishable

commodity. This is the context in which the constitutionality of the statute concerned must be examined.

MOTION TO DISMISS

1. The Complaint should be dismissed as an improper "shotgun pleading."
2. There is no due process violation.
3. There is no equal protection violation.

MEMORANDUM

I. The Complaint Is An Improper Shotgun Pleading.

Fed. R. Civ. 8(a)(2) forbids a "shotgun" pleading, that is, a pleading that makes it "virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." Anderson v. District Bd. of Tr. of Cent. Florida Cmty Coll., 77 F.3d 364, 366 (11th Cir. 1996). The Eleventh Circuit states that "since 1985 we have explicitly condemned shotgun pleadings upward of fifty times." Davis v. Coca–Cola Bottling Co., 516 F.3d 955, 979 n. 54 (11th Cir.2008). This is because shotgun pleadings:

> impede the administration of the district courts' civil dockets in countless ways. The district court, faced with a crowded docket and whose time is constrained by the press of other business, is unable to squeeze the case down to its essentials. It is therefore left to this court to sort out on appeal the meritorious issues from the unmeritorious ones, resulting in a massive waste of judicial and private resources; moreover, the litigants suffer, and society loses confidence in the courts' ability to administer justice.

Starship Enterprises of Atlanta, Inc. v. Coweta County, Ga., 708 F.3d 1243, 1250, n. 7 (11th Cir. 2013) (quoting PVC Windoors, Inc. v. Babbitbay Beach Const., N.V., 598 F.3d 802, 806 n.4 (11th Cir. 2010)). The typical shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (i.e., all but the first) contain irrelevant factual allegations and legal conclusions. Strategic

Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp., 305 F.3d 1293, 1295 (11th Cir. 2002). "Shotgun pleadings are those that incorporate every antecedent allegation by reference into each subsequent claim for relief or affirmative defense. *Magluta v. Samples,* 256 F.3d 1282, 1284 (11th Cir.2001) (per curiam). '[S]hotgun pleadings wreak havoc on the judicial system.' *Byrne v. Nezhat,* 261 F.3d 1075, 1130 (11th Cir.2001). Such pleadings divert already stretched judicial resources into disputes that are not structurally prepared to use those resources efficiently." Wagner v. First Horizon Pharm. Corp., 464 F.3d 1273, 1279 (11th Cir. 2006). Here, the counts are for separate remedies, not for separate claims, but all prior paragraphs are realleged, complicating the process of responding even further. (See, DE#1, ¶¶ 19, 26).

II. **There is no Due Process Violation.**

Plaintiff alleges that, because it cannot sell 64-ounce growlers, an ongoing loss of business is inflicted upon it, it is deprived of liberty without due process of law and its, "freedom of economic liberty" is abridged. (DE#1, p. 7). Plaintiff contends that it is denied its right to pursue its chosen occupation.

> A procedural due process analysis requires a two-part inquiry: (1) has the plaintiff been deprived of a protected property interest; and (2), if so, was due process accorded. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428, 102 S.Ct. 1148, 1153, 71 L.Ed.2d 265 (1982); *see also Bailey v. Board of Commissioners,* 956 F.2d 1112, 1122 (11th Cir.1992); *Woodruff v. United States,* 954 F.2d 634, 641 (11th Cir.1992).

Shaw v. Oconee Cnty., Ga., 863 F. Supp. 1578, 1581 (M.D. Ga. 1994).

Plaintiff's claim here appears to be that it has been deprived of the "economic liberty" to sell beer in 64-ounce containers or to fill such containers with the beer it sells. (DE#1, p. 11). Presumably, but speculatively, its profits are diminished from what they would be if they could sell such containers.

The first problem with this, of course, is that there is no right to sell alcoholic beverages at all, much less to sell them in 64-ounce "growlers". (See, U.S. Const., amend. XXI). Thus, there cannot possibly be a liberty interest in selling 64-ounce growlers of beer. See McKinney v. Pate, 20 F.3d 1550, 1556 (11th Cir. 1994) (en banc) (noting that the substantive component of the due process clause protects only those rights which are implicit in the concept of ordered liberty).

Indeed, the Plaintiff can claim neither a property nor a liberty interest in such ability to sell alcoholic beverages. In an analogous case involving the alleged right to obtain a liquor license from a city, the alleged property interest was discussed as follows:

> Property interest are not created by the [United States] Constitution but are 'defined by existing rules or understandings that stem from an independent source such as state law' and arise only where the plaintiff demonstrates a 'legitimate claim of entitlement.' "*Polenz v. Parrott*, 883 F.2d 551, 555 (7th Cir.1989) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972)). Thus, the court must look to the state statute applicable to this case.

Arrington v. Dickerson, 915 F. Supp. 1503, 1508 (M.D. Ala. 1995).

Therefore, the Plaintiff cannot have any property right to see or fill 64-ounce growlers because there is no such right under state law.

The liberty interest discussion is similar:

> Similarly, the court finds that Mr. Arrington does not have a liberty interest in obtaining a liquor license. The Supreme Court of Alabama has held that "[a] license to engage in the sale of intoxicants is merely a privilege with no element of property right or vested interest of any kind. Selection of the beneficiaries of a mere privilege may be committed to the discretion of the body created for that purpose." *Id.* Because a license to sell liquor in Alabama is a privilege not a right, Alabama has extinguished any liberty interest. *See Polenz*, 883 F.2d at 556 (citing *Scott v. Village of Kewaskum*, 786 F.2d 338, 341 (7th Cir.1986)). As a result of the foregoing, Mr. Arrington's substantive and procedural due process claims are due to be dismissed.

Arrington, at 1509 (M.D. Ala. 1995).

The Supreme Court of Florida has held, similarly to the Supreme Court of Alabama, "[i]t is generally recognized that the act of engaging in the sale of intoxicating liquors may be forbidden or prohibited. The **sale thereof is a privilege** to be granted pursuant to law under restricted terms or conditions because of the injurious effect of its use on the health and general welfare." State ex rel. Hoffman v. Vocelle, 159 Fla. 88, 94, 31 So. 2d 52, 55-56 (1947) (emphasis added).

Moreover, the Supreme Court of Florida has recognized that courts must defer to the legislature's judgment in regulating alcoholic beverages:

> We should also retain in our thinking the proposition that the regulation and control of the alcoholic beverage business is peculiarly a legislative function. In this connection, as in all similar situations, when the legislative branch of the government exercises a legislative power in the form of a duly enacted statute or ordinance it is not the function of a court to explore the wisdom or advisability of the enactment in order to bring its enforceability into question.

State ex rel. Eichenbaum v. Cochran, 114 So. 2d 797, 800 (Fla. 1959); See also State ex rel. First Presbyterian Church of Miami v. Fuller, 136 Fla. 788, 795, 187 So. 148, 150 (1939). (emphasis added).

There is no liberty interest in the right to sell alcoholic beverages in 64-ounce containers.

Where Plaintiff has no property interest and no liberty interest in the alleged right it seeks, there can be no due process violation.

III. There is no Equal Protection Violation.

The initial problem the Plaintiff has is that it cannot establish the violation of any constitutional right:

> Section 1983 is a statutory vehicle for addressing the violation of civil rights. It provides as follows:
> In a § 1983 action, a court must determine "whether the plaintiff has been deprived of a right secured by the Constitution and laws." *Baker v. McCollan,* 443 U.S. 137, 140, 99 S.Ct. 2689, 2692, 61 L.Ed.2d 433 (1979). If a constitutional

> violation cannot be established, then a plaintiff's case is meritless. *Id* (footnote omitted).

Glenn v. Brumby, 632 F. Supp. 2d 1308, 1312-13 (N.D. Ga. 2009).

Plaintiff has not identified what class it contends it is a member of, but it certainly cannot be a suspect class, nor can the "right" to sell beer in 64-ounce growlers be deemed a fundamental right. Therefore the following analysis applies:

> If the plaintiff claims that the regulation acts against him or her because of race or another suspect class or that the regulation involves a fundamental right, then the regulation is subject to strict scrutiny. *See San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 16–17, 93 S.Ct. 1278, 1287–88, 36 L.Ed.2d 16 (1973) and cases cited therein. However, if the claim is simply that the regulation treats the plaintiff different from someone else and neither a suspect class nor a fundamental right is involved, the regulation (and its classification) must only be rationally related to a legitimate government purpose.

Eide v. Sarasota Cnty., 908 F.2d 716, 722 (11th Cir. 1990).

Here, interestingly enough, not only has Plaintiff not claimed it is a member of s suspect class[1] or that it has been deprived of a fundamental right, it doesn't even claim that it is treated differently than any other retail seller of malt beverages. (DE#1).

The burden is on the Plaintiff to establish that there is no possible rational justification for the law concerned:

> The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these: 1. The equal-protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the

[1] A suspect classification is one that makes a distinction based on race or national origin. Williams v. Pryor, 240 F.3d 944, 947 (11th Cir.2001).

> time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.

Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79, 31 S. Ct. 337, 340, 55 L. Ed. 369 (1911).

Indeed, the Court need not rely on the motivating rationale of the legislature, any possible rational explanation is sufficient:[2]

> Instead, a classification "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Beach Communications, supra,* 508 U.S., at 313, 113 S.Ct., at 2101. See also, *e.g., Nordlinger, supra,* 505 U.S., at 11, 112 S.Ct., at 2334; 2643 *Sullivan v. Stroop,* 496 U.S. 478, 485, 110 S.Ct. 2499, 2504, 110 L.Ed.2d 438 (1990); *Fritz, supra,* 449 U.S., at 174–179, 101 S.Ct., at 459–461; *Vance v. Bradley,* 440 U.S. 93, 111, 99 S.Ct. 939, 949, 59 L.Ed.2d 171 (1979); *Dandridge v. Williams, supra,* 397 U.S., at 484–485, 90 S.Ct., at 1161–1162.
> 3 A State, moreover, has no obligation to produce evidence to sustain the rationality of a statutory classification. "[A] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data."

Heller v. Doe by Doe, 509 U.S. 312, 320, 113 S. Ct. 2637, 2642-43, 125 L. Ed. 2d 257 (1993).

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[2] The Interim Project Report of The Florida Senate Interim Project Report 2000-65, Sept. 1999 stated that:

> An argument has been made that the current container size restrictions encourage moderation by prohibiting container sizes greater than 32 ounces. If true, a logical extension of the argument would be that eliminating restrictions on container sizes smaller than 32 ounces (and particularly those smaller than the common 12-ounce size) also would encourage moderation.
>
> Container sizes larger than 32 ounces may promote excessive drinking or send the wrong message to young people. To avoid these negative effects, the safe course would be not to allow such large sizes.

Id., p. 2.

This report was relied on in the Senate Staff Analysis and Economic Impact Statements of January 17, 2001 and April 5, 2001 for the bill in question.

Nevertheless, a window on the general legislative intent regarding alcoholic beverage regulation would appear to be of some value in determining if there could be a rational basis for the act concerned:

> It is the intent of the Legislature to:
> (1) Eliminate the sale of alcoholic beverages to, and consumption of alcoholic beverages by, underaged persons.
> (2) Reduce intoxication-related accidents, injuries, and deaths in the state.
> (3) Encourage alcoholic beverage vendors and their employees to prevent drug activity on their premises.
> (4) Encourage alcoholic beverage vendors to be prudent in their serving practices and to restrict the sanctions that may be imposed in administrative proceedings against those vendors who comply with responsible practices in accordance with this act.
> (5) Encourage alcoholic beverage vendors to implement responsible policies for serving and promoting alcoholic beverages and, by so doing, prevent the over-service of alcoholic beverages to customers and prevent the over-consumption of alcoholic beverages by customers while on the licensed premises of vendors.
> (6) Promote an attitude of professionalism and responsibility on the part of vendors who sell or serve alcoholic beverages which is expressed in a commitment to responsible service.

§ 561.702 Fla. Stat. (2014).

Subsection (5) above would certainly appear to be a rational reason for capping beer containers at 32 ounces.

The equal protection clause "allows government bodies wide latitude in enacting social and economic legislation; the federal courts do not sit as arbiters of the wisdom or utility of these laws." Alamo Rent-A-Car v. Sarasota-Manatee Airport Auth., 825 F.2d 367, 370 (11th Cir. 1987).

> "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). Thus, a court will not overturn the legislation "'unless the varying treatment of different ... persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.'" *Price v. Tanner*, 855 F.2d 820, 823

(11th Cir.1988) (quoting *Vance v. Bradley*, 440 U.S. 93, 97, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979)).

Gary v. City of Warner Robins, Ga., 311 F.3d 1334, 1339 (11th Cir. 2002).

The Sixth Circuit, in reviewing a statute that barred convenience store and individual operators from selling package liquor or wine, but permitted drug stores and others to do so, recently found that courts sustain similar provisions against equal protection challenges, noting that it had upheld a provision subjecting taverns, but not breweries, to local referenda prohibiting packaged beer sales. Maxwell's Pic-Pac, Inc. v. Dehner, 739 F.3d 936, 941 (6th Cir. 2014).

It is submitted it cannot be considered irrational that, if individuals may buy beer in bottles or jugs of over 32 ounces, but less than one gallon, they may assume that it is reasonable for an individual to drink such bottles or jugs. Further, they could honestly say, if asked by a spouse, friend or police officer about their drinking, that they had only had, "one beer". It is inevitable that some persons who might have ordered a 64-ounce growler may decide, after consuming 32 ounces, that they have had enough. Therefore, the statute meets its rationale of helping to deter excessive drinking. The restriction is rationally designed to help discourage excessive drinking.

CONCLUSION

Where the Plaintiff has no constitutional right to sell 64-ounce jugs of beer and where the discouraging of excessive drinking is a rational basis for the statute concerned, Plaintiff's Complaint should be dismissed, even if it were considered to meet the requirements of Rule 8, which it does not.

Respectfully submitted,

/s/ Charles M. Fahlbusch
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 19, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices or Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are authorized to receive electronically Notices of Electronic Filing.

/s/Charles M. Fahlbusch
Charles M. Fahlbusch
Special Counsel Assistant Attorney General

SERVICE LIST

The Crafted Keg, LLC v. Secretary of the State of Florida Department of Business and Professional Regulation, et al.
CASE NO. 2:14-cv-14430-RLR
United States District Court, Southern District of Florida

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