

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MATTHEW LEVINSON,

Plaintiff,

v.

Cause No. 004-02645

THE STATE OF MISSOURI, ET AL.

Div. No. 3

Defendants.

**FIRST AMENDED  
PETITION IN EQUITY OR FOR A DECLARATORY JUDGMENT  
OR FOR BOTH**

**NOW COMES** the Plaintiff Matthew Levinson and for his claim for relief alleges:

Common Allegations Applicable to All Counts

1. Section 2 of Article I of the Constitution of 1945 of the State of Missouri provides that all persons, including citizens and residents of the State of Missouri, “have a natural right to . . . the enjoyment of the gains of their own industry.”
2. Since before January 1, 1997, Plaintiff Levinson has been a citizen and resident of the state of Missouri, therefore having the natural right to the enjoyment of the gains of his own industry.
3. On or about June 23, 2000, Plaintiff Levinson was convicted in the United States District Court in and for the Eastern District of Missouri, at file No. 4:00 CR 52 DJS of using a false social security number, in violation of Title 42, Section 408(a)(7)(B) of the United States Code. A true copy of such conviction and sentence is attached hereto as Plaintiff’s Exhibit No. 1 and incorporated herein by reference.
4. At the time of his conviction and sentence, Defendant Levinson was employed as a bartender, as

defined by 11 CSR § 70-2.140(11), for a restaurant licensed to serve alcoholic beverages pursuant to either Chapters 311 or 312 of the Revised States of Missouri or both and Title 11, Division 70 of the Missouri Code of State Regulations.

5. Section 311.060.2(2) of the Revised Statutes of Missouri provides, in part:

(2) No license issued under this chapter or chapter 312, RSMo, shall be denied, suspended, revoked or otherwise affected based solely on the fact that an employee of the licensee has been convicted of a ***felony unrelated*** to the manufacture or sale of intoxicating liquor ***so long as any such employee does not directly participate in retail sales of intoxicating liquor***. Each employer shall report the identity of any employee convicted of a felony to the division of liquor control. The division of liquor control shall promulgate rules to enforce the provisions of this subdivision.

Following his conviction, Plaintiff was placed on probation for a period of three years. Plaintiff's federal probation officer then advised Plaintiff that he would have to cease his employment as a bartender, because such continued employment would violate the foregoing statute and regulation. Plaintiff asked that his federal probation officer inquire of the State of Missouri or the Division of Liquor Control or both whether Levinson's conviction was a felony within the meaning of Section 311.060.2(2). Defendant Levinson terminated his employment rather than face a charge of violation of the terms of probation, imposed as a condition of his sentence, on being informed by his federal probation officer that State of Missouri or the Division of Liquor Control or both contended Levinson's conviction was a felony within the meaning of Section 311.060.2(2). Thus, there is a bona fide dispute between Plaintiff and Defendants over the construction and application and meaning of Section 311.060.2(2).

6. Section 311.060.2(2) further provides, "The division of liquor control shall promulgate rules to enforce the provisions of this subdivision."

7. Upon information and belief, the Division of Liquor Control has failed and refused to adopt any regulations implementing Section 312.060.2(2).

8. The Division of Liquor Control was in error to contend that Levinson's conviction in a federal district court was a felony within the meaning of Section 312.060.2(2) because such statute applies only to felony convictions in a Missouri state court, prosecuted under Missouri's criminal laws.

9. If the General Assembly of the State of Missouri included felony convictions in other jurisdictions within Section 311.060.2(2), then such was an improper delegation of the legislative power of the State of Missouri, which is vested by Section 1 of Article 3 of the Constitution of 1945 of the State of Missouri solely "in a senate and house of representatives" and not in the federal government.

10. If the General Assembly of the State of Missouri included felony convictions in other jurisdictions arising under laws such as Title 42, Section 408(a)(7)(B) enacted after passage of Section 311.060.2(2), then such was an improper delegation of the legislative power of the State of Missouri, which is vested by Section 1 of Article 3 of the Constitution of 1945 of the State of Missouri solely "in a senate and house of representatives."

11. The Division of Liquor Control has adopted a regulation, 11 CSR 70-2.140(11), a copy of which is attached as Plaintiff's Exhibit 2.

12. Given that such Regulation does not recite that it was adopted pursuant to Section 311.060.2(2), such regulation is invalid, null, and void.

13. Until a valid regulation is adopted pursuant to Section 311.060.2(2), Defendants cannot enforce Section 311.060.2(2).

14. Given that Section 311.060.2(2) bans and bars Plaintiff Levinson for life from engaging in the lawful occupations of bar manager, bartender, waiter, waitress, cashier or sales clerk for a restaurant licensed to serve alcoholic beverages pursuant to either Chapters 311 or 312 of the Revised States of Missouri, such law unconstitutionally deprives Plaintiff of his natural right to the enjoyment of the gains of his own industry.

15. Section 2 of Article I of the Constitution of 1945 of the State of Missouri provides that all persons, including citizens and residents of the State of Missouri, “are created equal and are entitled to equal rights and opportunity under the law.”

16. Given that the ban under Section 311.060.2(2) is a lifetime ban, imposed without any hearing or opportunity to seek return to a lawful vocation, such ban is irrational, arbitrary and capricious, in violation of either or both of the foregoing clauses of Section 2, especially given that Missouri neither automatically bars and permits other persons convicted of felonies to resume their employment in such other lawful occupations as:

1) The practice of law. *See RSMO § 484.190(1)*. *See generally In the Matter of McClendon*, 337 S.W.2d 56 (1960) (attorney guilty of federal felonies of income tax evasion indefinitely suspended and given permission to reapply for admission after three years).

2) The practice of medicine. *See RSMO § 334.100.2(2)*

3) The practice of dentistry *See RSMO § 332.321.2(2)*

4) The practice of accounting. *See RSMO § 336.130.2(2)*

17. This Court has jurisdiction pursuant to the Uniform Declaratory Judgment Act, *RSMO § 527.010*, et seq. Venue of this action is proper pursuant to *RSMO § 508.010(1)* or (6) or both.

### COUNT 1

18. Section 561.016.1 provides:

**Basis of disqualification or disability.**

1. No person shall suffer *any legal disqualification or disability* because of a finding of guilt or conviction of a crime or the sentence on his conviction, unless the disqualification or disability involves the deprivation of a right or privilege which is

- (1) Necessarily incident to execution of the sentence of the court; or
- (2) Provided by the constitution or the code; or
- (3) Provided by a statute other than the code, when the conviction is of a crime defined by such statute; or
- (4) Provided by the judgment, order or regulation of a court, agency or official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, when the commission of the crime or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived.

- 19. The debarment of plaintiff from employment as a bartender by Section 311.060.2(2) has caused plaintiff to suffer a legal disqualification or disability by denying to Plaintiff his liberty and property arising under Section 2 of Article I of the Constitution of 1945 of the State of Missouri which provides that all persons, including citizens and residents of the State of Missouri, “have a natural right to . . . the enjoyment of the gains of their own industry.”
- 20. Such debarment is not provided by the criminal code or the Constitution.
- 21. Such debarment is not provided by a statute which is a part of the code.
- 22. Such debarment is not reasonably related to the competency of Plaintiff to exercise the right or privilege of which he has been deprived, towit, working gainfully as a bartender.
- 23. Therefore, Plaintiffs debarment violates Section 561.016.1

**COUNT 2**

- 24. Section 311.060.2(2) makes no mention whether or not it applies to federal felonies.
- 25. When Missouri intends that a federal felony be the basis for a disqualification, it has specifically so provided. Thus, Section 561.021 provides in part:

1. A person holding any public office, elective or appointive, under the government of this state or any agency or political subdivision thereof, who is convicted of a crime shall, upon sentencing, forfeit such office if:

(1) He is convicted under the laws of this state of a felony *or under the laws of another jurisdiction of a crime which, if committed within this state, would be a felony*, or he pleads guilty or nolo contendere of such a crime; or

26. Given that no part of Section 311.060.2(2) states that it applies to convictions in other jurisdictions, it has no application to Plaintiff's federal conviction.
27. Even 311.060.2(2) applies to convictions in other states or federal convictions, or both, such section denies Plaintiff the equal protection of the laws, in violation of Art. 1, § 2 which provides "that all persons are created equal and are entitled to equal rights and opportunity under the law" because such statute has not been interpreted or applied to persons convicted of crimes in foreign countries.

### **COUNT 3**

28. The Division of Liquor Control has adopted a regulation, 11 CSR 70-2.140(11), a copy of which is attached as Plaintiff's Exhibit 2.
29. Given that such Regulation does not recite that it was adopted pursuant to Section 311.060.2(2), such regulation is invalid, null, and void.
30. Until a valid regulation is adopted pursuant to Section 311.060.2(2), Defendants cannot enforce Section 311.060.2(2).

### **COUNT 4**

31. Since Section 311.060.2(2) was adopted, the sale and distribution of alcoholic beverages has changed completely. Whereas, at the time Section 311.060.2(2) was adopted, few people were engaged in the retail sale of alcoholic beverages and it could be argued that

the sale of liquor was not an ordinary pursuit, such is no longer the case.

32. Today, the sale of liquor is an ordinary pursuit. Liquor or beer is sold everywhere, at restaurants of all kinds, bars, casinos, service stations, convenience stores, grocery stores, retail stores, sports stadiums, concerts, wine and cheese stores, and over the Internet.
33. Consequently, the power of the State to regulate liquor sales can no longer be distinguished under the police power from other gainful occupations and Section 311.060.2(2) is no longer a valid exercise of the police power of the State of Missouri.

#### **COUNT 5**

34. Section 2 of Article 1 of the Missouri Constitution provides, “that all persons are created equal and are entitled to equal rights and opportunity under the law.”
35. Section 1 of Amendment 14 of the United States Constitution provides, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
36. By making and enforcing Section 311.060.2(2) and debaring Plaintiff from employment as a bartender, Missouri has violated each of the foregoing constitutional prohibitions because persons engaged in other occupations in which the State has an equal or greater interest in the the competency of other individuals to exercise the right or privilege of such occupations are afforded:
  - a. A hearing before debarment
  - b. An opportunity, after debarment, to apply for reinstatement in such occupation.
37. Thus, Section 311.060.2(2) engages in the kind of arbitrary and disparate treatment that

violates the equal protection clause. Whereas upper economic class occupations, like law and medicine are not automatically debarred from employment by a felony conviction and may, in fact seek reinstatement, Plaintiff, having been employed in a lower class occupation, finds himself debarred for life, with no opportunity for re-in statement.

WHEREFORE, Plaintiff prays for a judgment of this Court, as follows:

1. A declaratory judgment that Section 311.060.2(2) does not apply to his federal felony conviction;
2. In the alternative, a declaratory judgement that section 311.060.2(2) is invalid and unconstitutional;
3. A permanent injunction against enforcement of Section 311.060.2(2) against Plaintiff; and/or
4. Jointly, or in the alternative, for such other and further relief as the Court deems just and proper and costs of this action.

Respectfully submitted,

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