

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
TRIAL COURT

---

COFFEESHOP LLC, d/b/a )  
UPPERWEST )  
Plaintiff, )  
v. )  
ALCOHOLIC BEVERAGES )  
CONTROL COMMISSION, )  
Defendant. )

---

CIVIL ACTION NO. 19-3415

**MOTION FOR JUDGMENT ON THE PLEADINGS ON BEHALF OF  
PLAINTIFF COFFEESHOP LLC, D/B/A UPPERWEST**

Pursuant to Superior Court Rule 9A and Superior Court Standing Order 1-96, Plaintiff Coffeeshop LLC, d/b/a UpperWest (“UpperWest”) respectfully moves this Court for Judgment on the Pleadings. This Court should reverse the decision of the Alcoholic Beverages Control Commission (“ABCC”), in which the ABCC concluded UpperWest violated three criminal statutes and related local rules, and imposed a three-day license suspension, based purely on UpperWest’s exercise of the constitutionally protected right verbally to challenge law enforcement officers’ misapplication of law. The ABCC decision is legally unsupportable: nothing about UpperWest’s conduct amounted to a violation of statutes or applicable rules, and if those laws are interpreted to cover such conduct, as applied here, they violate UpperWest’s constitutional rights of free speech. As the United States Supreme Court has made clear, “freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principle characteristics by which we distinguish a free nation from a police state.” City of Houston v. Hill, 482 U.S. 451, 463–64 (1987).

In further support of this motion, Plaintiff respectfully refers the Court to the accompanying memorandum of law and the Administrative Record filed by the ABCC as its answer in this matter.

WHEREFORE, Plaintiff respectfully requests that the Court reverse the ABCC decision and, pursuant to Count 3 of the Complaint, enter declarations that the statutes and rules at issue were applied here, and in the future must not be applied, to penalize protected free speech rights.

Respectfully submitted,

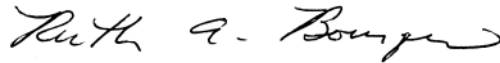
COFFEESHOP LLC, d/b/a  
UPPERWEST

By its attorneys,



---

Howard Cooper, BBO 543842  
hcooper@toddweld.com  
Benjamin Wish, BBO 672743  
bwish@toddweld.com  
Maria Davis, BBO 675447  
mdavis@toddweld.com  
Todd & Weld LLP  
One Federal Street, 27th Floor  
Boston, MA 02110  
(617) 720-2626



---

Ruth A. Bourquin, BBO 552985  
rbourquin@aclum.org  
American Civil Liberties Union  
Foundation, Inc.  
211 Congress Street  
Boston, MA 02110  
(617) 482-3170\*

Date: October 26, 2020

**CERTIFICATE OF SERVICE**

I, Benjamin J. Wish, hereby certify that on October 26, 2020 the foregoing was served via first class mail and email upon:

Eric A. Haskell, Esq.  
Assistant Attorney General  
One Ashburton Place  
Boston, MA 02108  
Eric.Haskell@state.ma.us

With a courtesy copy also served by email on counsel for the Local Board:

Keplin K. U. Allwaters, BBO # 675113  
Katherine Sarmini Hoffman, BBO #679185  
City of Cambridge Law Department, City Hall  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139  
(617) 349-4121  
khoffman@cambridgema.gov  
kallwaters@cambridgema.gov



---

Benjamin J. Wish