

U.S. judge upholds law on direct buys from wineries

Statute doesn't favor vintners in Arizona, she says

by **Howard Fischer** - Apr. 24, 2008 12:00 AM
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A federal judge has refused to void an Arizona law that dictates who can and cannot order wine directly from producers.

An out-of-state winery, as well as some Arizona wine lovers, argued that the law gives favorable treatment to Arizona wineries and, as a consequence, is an unconstitutional infringement on interstate commerce.

Judge Mary Murguia acknowledged that a 2006 law might be of more benefit to wineries in Arizona than elsewhere, but she ruled that the statute, by itself, does not discriminate.

Robert Epstein, the lead lawyer in the case for the winery that sued, said the judge got it wrong. But Epstein said no decision has been made whether to appeal.

Central to the dispute is Arizona's three-tiered system: Manufacturers can sell only to wholesalers, and retailers can buy only from wholesalers.

A 1982 law designed to help the state's nascent wine industry created an exception: Arizona wineries producing less than 75,000 gallons a year could sell directly to consumers. More importantly, they also are allowed to ship directly to both retailers and consumers, bypassing the wholesalers.

The idea was that many wholesalers would not bother with unknown Arizona wines.

All went well until the U.S. Supreme Court in 2005 voided similar laws in other states. The justices concluded that special privileges granted by legislators to only that state's wineries violated the commerce clause of the U.S. Constitution.

That led to a pitched battle at the state Capitol, with some wholesalers pushing to scrap the exemption entirely.

They said direct shipments to consumers make it easier for underage drinkers to get alcohol. And they questioned whether the state would be cheated out of its taxes on alcoholic beverages.

In the end, the key provision of the new law enacted in 2006 allows any winery anywhere that produces less than 20,000 gallons a year to ship directly to customers and retailers in Arizona.

But Epstein said the net effect was the same: discrimination against out-of-state wineries. He filed suit on behalf of Black Star Farms as well as several Arizonans.

Epstein said the 20,000 gallon figure was set

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to give unfair advantage to in-state wineries: Every Arizona winery but one produces less than that.

Murguia acknowledged that point. But she said it does not follow that their benefit comes at the expense of out-of-state companies.

"The simple fact that there are more out-of-state wineries than in-state wineries that produce more than 20,000 gallons of wine per year and are thus required to adhere to the three-tiered distribution system in order to gain access to Arizona's wine market does not by itself establish patent discrimination in effect against interstate commerce," the judge wrote.

Murguia also said the challengers ignored the fact that more than half of all U.S. wineries - about 2,000 in 2004 - are able to take advantage of that volume cap and ship their wine directly to Arizona consumers.

"In fact, the number of out-of-state wineries that produce less than 20,000 gallons of wine per year and are thus able to take advantage of this direct-shipment exception dwarf the number of in-state wineries that are able to take advantage of the exception," she said.

The judge said that any burden the Arizona law places on interstate commerce is incidental.

One of the plaintiffs in the case is John Norton, who served as undersecretary of Agriculture in the Ronald Reagan administration.

Norton, founder of J.R. Norton Co., a Phoenix-based agricultural firm, said the law hurts Arizonans who want specialty wines

that are not sold here. He said the statute is designed solely to protect the profits of the liquor industry.

They're restricting trade, Norton told Capitol Media Services when legal action was first filed years ago.

Norton said no one in Arizona stocks the wine he likes that is produced in Virginia, and the small winery has no relationship with an Arizona wholesaler to get it to him.

Norton, contacted after the latest court ruling, said he personally is not going to pursue an appeal. He said that would be up to any out-of-state wineries to decide.

The case is *Black Star Farms v. Oliver* (CV 05-2620 PHX).

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