

The Wine Dilemma as a result of *Granholm v Heald*.

In its most basic terms, *Granholm v. Heald* said you must treat in-state and out-of-state wineries on even-handed terms. This presented constitutional problems for practically all 50 states, because it is quite common for state legislatures to favor in-state industry, whatever the industry might be. The 21<sup>st</sup> Amendment does not lessen requirements for alcoholic beverages under the Commerce Clause.

Problematic in Arkansas:

1. We have an antiquated, year 1935, mostly 3-tier system of alcoholic beverage control.
2. Arkansas wineries, as manufacturers, have always operated outside the traditional 3-tier system. This is common practice in many states.
3. Some of the rights of Arkansas wineries that are problematic with regard to *Granholm* because in some manner these privileges must now be extended to out-of-state wineries are:
  - (A) Arkansas wineries are allowed to sell *at wholesale* to licensed retail establishments, including grocery and convenience stores.
  - (B) Arkansas wineries are allowed *to ship* to Arkansas residents as consumers.
  - (C) Arkansas wineries are allowed *retail package sales* at the winery. (This is mostly problematic to the wholesalers because it violates the sovereignty of an absolute 3-tier system which requires all sales to go through a wholesaler)

Objections promoted by wholesalers about the wineries *selling at wholesale*.

1. Complaint: It violates the 3-tier system.  
Response:
  - ◆ It has violated the 3-tier system since it was set up.
  - ◆ Granting the exception on a size limited basis to all small wineries, in-state and out-of-state, does not pose an economic threat to the wholesalers and the 3-tier system.
  - ◆ Less than 10% of all wine produced and sold in the U.S. is from small wineries, and most are not sold by wholesalers because of low volume sales.

Objections promoted by wholesalers and others about *shipping to consumers*.

1. Complaint: Can't ensure tax collections.  
Response:

In the words of Justice Kennedy in U.S. Supreme Court *Granholm v. Heald* :

  - ◆ "the States provide little concrete evidence for the sweeping assertion that they cannot police direct shipments by out-of-state wineries"
  - ◆ State "could protect itself against lost tax revenue by requiring a permit as a condition of direct shipping"
  - ◆ "The Tax and Trade Bureau (formerly the Bureau of Alcohol, Tobacco, and Firearms) has authority to revoke a winery's federal license if it violates state law" and "the Twenty-first Amendment Enforcement Act gives state attorneys general the power to sue wineries in federal court to enjoin violations of state law."
  - ◆ "In summary, the States provide little concrete evidence for the sweeping assertion that they cannot police direct shipments by out-of-state wineries."

2. Complaint: Minors will have greater access to alcohol.

Response:

(A) In the words of Justice Kennedy in U.S. Supreme Court *Granholm v. Heald* :

- ◆ “The States provide little evidence that the purchase of wine over the Internet by minors is a problem. Indeed, there is some evidence to the contrary.”
- ◆ “FTC found that the 26 States currently allowing direct shipments report no problems with minors”
- ◆ “Minors are less likely to consume wine, as opposed to beer, wine coolers, and hard liquor.”
- ◆ “Minors who decide to disobey the law have more direct means of doing so.”
- ◆ “Direct shipping is an imperfect avenue of obtaining alcohol for minors who, in the words of the past president of the National Conference of State Liquor Administrators, ‘want instant gratification’ “.
- ◆ “the states can take less restrictive steps to minimize the risk that minors will order wine by mail. ....an adult signature on delivery and a label so instructing on each package”

(B) Current requirements related to shipments of wine by common carrier:

- ◆ Each package is labeled ‘Signature of Person Age 21 or Older Required for Delivery’
- ◆ Upon delivery, proof of age is required and a signature is obtained. A copy of the signature is returned to the winery from which the package was shipped.
- ◆ UPS (and most other common carriers) require their drivers to complete an extensive training course involving delivery of all manner of regulated items such as prescription drugs, hazardous materials, alcoholic beverages, etc.

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