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Supreme Court Asked to Hear Wine Shipping Case

—Are Wineries But Not Wine Stores Covered by the Commerce Clause? —

(Sacramento, CALIF)—In asking the Supreme Court of the United States to grant a review of the case of *Wine Country Gift Baskets v. Steen*, a coalition of American wine retailers hopes the high court will bring a definitive end to the ongoing interstate trade war over the direct shipment of wine. The battle over direct shipment of wine is one that rages on even in the wake of the groundbreaking 2005 *Granholm v. Heald* Supreme Court wine case, but that has switched battle grounds from wine producers to wine retailers.

At issue in the case of *Wine Country Gift Baskets v. Steen*, decided in the Fifth Circuit Court of Appeals, is whether, notwithstanding the 2005 *Granholm v. Heald* decision that determined States may not discriminate against out-of-state wine producers, the Twenty-first Amendment overrides the Commerce Clause and allows States to discriminate against out-of-state wine stores. The Specialty Wine Retailers petitioning the Supreme Court contend that the Fifth Circuit, as well as the Second Circuit, has turned the *Granholm* decision upside down. Rather than construing the *Granholm* decision as a prohibition against discrimination, these courts have interpreted that decision as a license for states to discriminate against inter-state commerce.

DISCRIMINATORY TEXAS WINE SHIPPING LAW AT ISSUE

Wine Country Gift Baskets v. Steen originated as a lawsuit challenging Texas law that allows Texas wine stores to ship wine direct to Texans, while prohibiting out-of-state wine stores from doing the same. A Federal District Court in Texas ruled the law unconstitutional based on the 2005 *Granholm v. Heald* Supreme Court ruling that declared, “in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.”

That District Court ruling was overturned by the Fifth Circuit Court of Appeals, which did not identify any compelling justification for such discriminatory treatment. Rather, the Appeals Court held that the Twenty-first Amendment, which repealed Prohibition, categorically immunized the Texas law from Commerce Clause scrutiny. If this view is upheld, millions of wine consumers across the country will fall victim to protectionist state laws and hundreds of thousands of wine retailers will see their protection from state based discrimination promised by the Commerce Clause of the Constitution stripped from them.

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“In asking the Supreme Court to hear an appeal of this case we hope the high court will instruct states across the country that laws discriminating against interstate commerce in wine for the purpose of protecting in-state interests cannot stand and violate the fundamental principles of our Constitution and of a national economic union,” said Keith Wollenberg, President of the Specialty Wine Retailers Association.

The Petition for a Writ of Certiorari in Wine Country Gift Baskets was written on behalf of the petitioners by Tracy Genesen and Ken Starr of the firm of Kirkland and Ellis. The case involves critical Constitutional issues of concern to wine retailers across the country and to the foundations of Internet Commerce. Today only 13 states and the District of Columbia allow consumers to have wine shipped them from out-of-state wine stores while 38 states allow such transactions by wine producers, thereby severely limiting access to wine by American consumers. The unconstitutional treatment of American wine retailers occurs despite the fact that both wineries and wine retailers are engaged in an identical retail transaction when they sell wine remotely and ship it to the consumer.

About Specialty Wine Retailers Association

Specialty Wine Retailers Association is an organization of progressive wine retailers from across the United States. They include brick and mortar wine retailers, Internet wine retailers, wine auction houses, and wine clubs along with consumer and industry supporters. To learn more visit <http://www.specialtywineretailers.org>

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