

Justices consider wine shipments

The Supreme Court hears cases on laws banning out-of-state orders.

By Associated Press

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WASHINGTON - The Supreme Court considered Tuesday whether state alcoholic beverage regulations put in place 70 years ago, after Prohibition was lifted, should remain the law of the land in the Internet age.

The court heard three cases challenging laws in Michigan and New York that make it a crime to buy wine directly from wineries in another state. Twenty-two other states, including Florida, have similar statutes. Michigan and New York allow in-state shipping and Internet and telephone sales.

The justices seemed troubled that states could treat out-of-state wineries in a different way from those within their borders. They were equally uncertain, however, about overturning long-established regulations aimed partly at protecting minors.

Alcohol is regulated by a three-tier system: a state-licensed wholesaler brings in the beverages, state-licensed retailers sell them to customers and customers drink them.

Owners of small wineries, which have proliferated in recent years, say they can't compete with huge companies unless they can sell directly to customers over the Internet or by allowing visitors to their wineries to ship bottles home.

During oral arguments, Justice Anthony Kennedy wasn't so sure.

"Under your view, the whole three-tier system falls," Kennedy said, in response to wineries' arguments that the state laws were discriminatory. He raised the unhealthy prospect of dismantling state wine control laws, calling wineries' claims "sweeping."

Justice Ruth Bader Ginsburg suggested the court might remedy the problem of unfair treatment by striking down laws that allow direct shipments only for in-state wineries. "The out-of-state vendors would be no better off, but it would be equal," she said.

At issue is the 21st Amendment, which ended Prohibition in 1933 and explicitly granted states authority to regulate alcohol sales. Twenty-four states subsequently passed laws requiring outside wineries to sell their products through licensed wholesalers in the state.

The Constitution bans states from passing laws that discriminate against out-of-state businesses. That provision has been embraced by winemakers who want to cater to Internet customers looking for vintages not available in their home states.

"A state power over alcohol has ebbed and flowed over the years, but one principle has remained constant: States may regulate alcohol by only one set of rules," Clint Bolick, who represents a family-run winery in Virginia, told justices in urging them to overturn the state bans. The other two challenges were brought by wine consumers in Michigan.

While the 2nd U.S. Circuit Court of Appeals sided with New York in upholding the state restrictions, the 6th Circuit in Cincinnati struck down Michigan's law as unconstitutionally protectionist.

The stakes are high in the \$21.6-billion wine industry. States collect millions of dollars in alcohol taxes and claim the established system helps stem fraud and underage drinking. More than 33 states have filed friend-of-the-court briefs backing Michigan.

Florida Gov. Jeb Bush declined to speculate Monday on how the Supreme Court would rule, but said Florida's ban on interstate shipments of wine was "probably not appropriate."

Just last year, the ban sparked a small-grade embarrassment for Bush. Having placed a 2003 Super Bowl bet with California Gov. Gray Davis, Bush had to wait until he was at a national governor's conference in Colorado a month later to collect the case of Cabernet after the Tampa Bay Buccaneers thumped the Oakland Raiders.

"My position has been that a vineyard in Florida ought to be able to ship to California if there is a Californian who wants our fine wine and vice versa. People ought to be able to purchase wine directly from folks in California," Bush said. "It's big commerce. The tax element ... can be worked out."

During arguments, attorneys for Michigan and New York focused in part on states' ability to regulate a potentially dangerous product. For example, they said, state regulators would be unable to conduct onsite inspections of outside wineries and would have less ability to track alcohol sales and ensure product purity.

"The state draws on local enforcement extensively, and these can't be done out of state," said Caitlin Halligan, New York's solicitor general.

That drew some skeptical questioning from Justice Antonin Scalia, who wondered whether tax interests were more at stake. He noted that New York allows outside wineries to make direct shipments if they simply open a clerical office in the state.

"How does requiring an in-state office somehow prevent shipping to minors out of state? It can't prevent it," said Scalia, an avid wine drinker.

Since 1980, the number of wineries has quadrupled nationally to more than 3,700.

Tuesday's case involves only wine sales, but industry groups representing distributors for beer and other alcoholic beverages have asked the high court to rule for continued state regulation, believing that the justices' decision eventually could apply to them.

Times staff writer Joni James contributed to this report.