

## Wine Cases Go Before Supreme Court in December

Oct. 05, 2004

By: **Melissa Campanelli**  
Senior Editor  
[melissa@dmnews.com](mailto:melissa@dmnews.com)

The U.S. Supreme Court opened its new term yesterday and said it would hear arguments Dec. 7 involving two cases challenging New York's and Michigan's bans on interstate, direct-to-consumer shipments of wine.

At issue is whether states can allow intrastate, direct-to-consumer wine shipments while denying the same privilege to out-of-state wineries.

The court will examine laws in Michigan and New York that small wineries and customers say discriminate against out-of-state vintners by allowing their products to be sold only through distributors and retailers.

The 6th Circuit U.S. Court of Appeals ruled last summer that Michigan's ban on direct, interstate shipments was unconstitutional, overturning a lower court ruling. The state's petition for a rehearing was not granted, but Michigan Attorney General Mike Cox petitioned the state's case to the high court.

In February, the 2nd Circuit Court upheld New York's provision in which in-state wineries are allowed to ship directly to New York consumers but out-of-state wineries are required to establish a "physical presence" in New York.

The Institute for Justice, which represents the consumer and winery plaintiffs, petitioned the case to the U.S. Supreme Court in March. Direct-shipping bans also have been challenged in other states, including North Carolina, Texas, Indiana and Florida.

The Supreme Court has narrowed the cases to one core question: Does the 21st Amendment permit states to discriminate against out-of-state wineries? It will consider whether these states violate the Commerce Clause.