



WINE SHIPMENTS

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Correspondent Elizabeth Brackett of WTTW-Chicago reports on the case currently before the Supreme Court regarding states' importation of wine. Then, Jan Crawford Greenburg of the Chicago Tribune joins correspondent Jeffrey Brown to discuss today's arguments.

ELIZABETH BRACKETT: In Michigan on a sales call, Paul Dean enjoys browsing through the wines in a tasting room at St. Julian's Winery.

But if Dean finds a wine he likes, he can't have it shipped back home to Ohio. That's because in Ohio, Michigan and 22 other states, it's illegal for consumers to receive alcohol shipped from out of state.

PAUL DEAN: I'm always interested in uniquely crafted wines, usually sample them on site, but do not have the opportunity to order either through mail or delivery by that means.

ELIZABETH BRACKETT: Winemaking has been the family business at St. Julian for 85 years. Vineyards in the sandy soil on Lake Michigan's eastern shore boast a wide variety of grapes, from merlots to pinot gris. St. Julian ships lots of wine to Michigan consumers.

Third generation owner Dave Braganini says the ability to ship wine to all states would definitely increase the bottom line, though he says it is the smaller wineries that are really impacted by the ban on direct- to-consumer shipments.

DAVE BRAGANINI: If you're tiny and starting out, it's the difference between making you or breaking you.

So if a consumer comes to your winery, likes the wine and goes home and wants to order some because they can't find it, it severely impedes anybody's ability to sell wine if you're starting out.

SPOKESPERSON: This is an excellent, dry red wine.

ELIZABETH BRACKETT: Declaring their support for free trade, Michigan wine consumers sued the state of Michigan. The consumers wanted to buy wine over the Internet and have out of state wineries ship wine to them.

And they won. The 6th Circuit Federal Appeals Court found Michigan's liquor laws unconstitutional because they violated the commerce clause.

The consumers' attorney, Robert Epstein, a wine lover himself, says the commerce clause protects free trade by prohibiting discrimination between in-state and out-of-state businesses.

ROBERT EPSTEIN: The case is based on discrimination. The discrimination is specifically between Michigan wineries that can ship intrastate and out-of-state wineries that are forbidden from shipping to Michigan consumers.

ELIZABETH BRACKETT: But the state of Michigan says the 21st Amendment, the amendment that repealed prohibition, gives the state the right to make laws to control the transporting and the importing of liquor in their state.

Michigan's liquor control commissioner, Nida Samona, says the 21st Amendment trumps the commerce clause and clearly gives Michigan the ability to control liquor coming into the state.

Without that ability, Samona says, the state would lose liquor tax revenues and would be unable to prevent minors from buying liquor.

NIDA SAMONA: My position is that there should be no interstate, no Internet sale of wine or any alcoholic beverage because we cannot control it, we do not regulate it, we do not know whose hands it's going into.

We have young people under the age of 21 that are allowed to get onto the Internet-- which is as common in our household today as a telephone is-- and to order any type of alcohol.

ELIZABETH BRACKETT: Now all liquor sold in Michigan, as in most states, flows through wholesalers who warehouse and distribute it.

If the Supreme Court rules in favor of the wine consumers, the wholesalers would be cut out of the loop for interstate wine shipments. The president of the Michigan Beer and Wine Wholesalers Association worries that it wouldn't stop there.

MICHAEL LASHBROOK: The 6th Circuit decision that we're appealing to the Supreme Court clearly would render null and void our laws that control the importation and sale of all alcohol-- liquor, wine, beer-- to consumers in Michigan. It just... it's not about a few cases of fine wine.

This is about the integrity of alcohol regulation. I think that they will look very carefully at the facts of this case and base the decision wholly on wine and not on the so-called slippery slope argument of the wholesalers and the state of Michigan.

ELIZABETH BRACKETT: Liquor retailers also have a stake in shipping wine directly to consumers. This suburban Chicago liquor store has lost two-thirds of its wine club members as more states made direct-to-consumer shipments a crime.

The wineries, wine consumers, wholesalers and the state do agree on one argument: The economic stakes are high for all.

JIM LEHRER: Jeffrey Brown takes it from there.

JEFFREY BROWN: This morning, the Supreme Court heard arguments in the wine case. As usual, Jan Crawford Greenburg of the Chicago Tribune was there, and she joins me now.

Jan, welcome. The sale of wine, at least on its face, does not seem like a major constitutional issue. And yet this has gotten a lot of attention. What makes it an interesting case?

JAN CRAWFORD GREENBURG: Well, as we saw in the previous piece, the stakes are high because there's big money involved. This is a \$21 billion industry, it affects thousands and thousands of wineries across the country.

The number of these wineries has tripled in the last 10 to 20 years. So they want to be able to open up new markets. They say these little wineries can't even get their products on the shelves nationally.

The states have their own argument about the minors and being able to collect taxes. The wholesalers say it would undermine laws in 50 states across the country.

So we have practical concerns. But then we have these sweeping constitutional issues, the power of the federal government, the power of Congress, versus power of the states.

We have these two provisions, constitutional provisions running into each other. We've got the commerce clause, which gives Congress the power to regulate commerce.

The framers thought that was very important because they wanted a national economy. They don't want states coming out with a hodgepodge laws, discriminating against out of state businesses.

And we have the 21st Amendment on the other hand that gives states the power to regulate alcohol, it ended of prohibition. Those are at odds and those are big sweeping constitutional issues which obviously, as we see, have real world consequences.

JEFFREY BROWN: So the two sides came to court today, each armed with its piece of the constitution. So how did the arguments play out?

JAN CRAWFORD GREENBURG: Well, a lawyer for the wineries and particularly some of the smaller wineries, one in Virginia, argued first.

And he said that these state laws discriminate against out of state wine producers, and that the commerce clause is clear, that states cannot pass those kinds of discriminatory laws.

That's the core concern of the commerce clause regardless of what the 21st Amendment says. States simply can't do this. It's discrimination.

JEFFREY BROWN: That goes back to early, the very beginning of the Constitution, right?

JAN CRAWFORD GREENBURG: Right. And regardless of what the 21st Amendment says, we can't have these kinds of discriminatory laws by the states.

Now, of course, a lawyer for the state of Michigan, a lawyer for the state of New York, made the other point. They said look, the 21st Amendment is really clear. It came after.

It's later and it says states can regulate the sale of liquor. They can control the way that liquor is imported across their state lines.

And there are many good reasons that states would want to do this, for example, in this case, as we discussed and as they mentioned today, they're worried about the sale of alcohol to minors. They're worried about being able to collect taxes and revenues on the sale.

But as the lawyers for the state of Michigan argued today, at the end of the day, that doesn't even matter. States, according to the 21 Amendment, could pass this legislation even if they were trying solely to protect wineries within their borders. They could discriminate.

JEFFREY BROWN: All right. So the Justices are there, and they have these two competing provisions. What stood out in their questioning today?

JAN CRAWFORD GREENBURG: This is a really interesting argument because these Justices didn't line up like we think they do.

You know, we hear a lot about this being a closely divided court, 5-4 on the contentious issues. We get the five more conservative Justices often joining together to scale back federal powers, certainly in recent years giving states greater authority.

So a lot of people went into the case today thinking it might shake out like that. We also know this is a court that the conservatives emphasized looking at the words of the Constitution.

The words of the Constitution, in this case, at least the 21 Amendment are clear: States can regulate. So, you know, we went in thinking okay, the conservatives may side with the states here.

But what happens here? Justice Atonin Scalia right out of the box suggested by his questions that he is very skeptical of the states arguments, very disturbed the states are discriminating, that the commerce clause does not envision that kind of discrimination, that that's why the framers thought we needed a commerce clause for the national economy.

We have Justice Scalia, I think, indicating with his questions, that he is on the side of the wineries. We have Justice Stephens, the more liberal justice, some of his questions, some of the things he has written in the past on this issue, suggesting he may come down on the side of the states here.

So it may not shake out like some of these cases have in the past 5-4, the five conservative, the four more liberal Justices.

JEFFREY BROWN: All right. And the decision by the spring, I guess, huh?

JAN CRAWFORD GREENBURG: We'll expect something by the end of their term in June. I don't think this one is going to be unanimous.

JEFFREY BROWN: Interesting case out of a case of wine. Jan Crawford Greenburg, thanks again.

JAN CRAWFORD GREENBURG: You're welcome.