

# Los Angeles Times

## Wine Sale Curbs Lifted

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WASHINGTON - The Supreme Court opened the way Monday for vintners to sell their wines directly to consumers across the nation, a major victory for California's \$15 billion-a-year wine industry.

The 5-4 decision struck down laws in New York and Michigan on the grounds that they discriminated against out-of-state wineries by prohibiting them from selling directly to consumers while letting local vintners do so.

The ruling, especially important for hundreds of small wineries, is likely to spur sales on the Internet.

About half of California's 1,200 wineries sell less than 5,000 cases a year, and they struggle to get their vintages onto store shelves and wine lists. Except for cult wines, distributors are interested in large accounts -- wineries that make hundreds of thousands, or millions, of cases annually.

"This could turn into a big deal for us," said Joe Hart, owner of Hart Winery in Temecula.

It also may give restaurants and wine shops around the nation a new and cheaper way to stock an assortment of distinctive wines. And holiday gift-givers are likely to find it easier to send wine to family and friends in other states. But the effect of the ruling on California wine drinkers may be minimal.

Californians already have the right to buy directly from vintners in their state -- which produces 90% of the nation's wine -- and in 26 others, including Washington and Oregon, that allow direct shipping of wine. Texas became the latest state to allow for direct shipping when Gov. Rick Perry signed legislation last week.

Monday's decision brings the laws of eight states that have inconsistent regulation into question. The remaining 15 states do not allow any direct shipment of wine.

The nation has an estimated 3,000 wineries, the court said, with at least one in every state, but only the largest ones have the clout to distribute their wines across the country through a network of state-licensed wholesalers.

"This is the best day for wine lovers since the invention of the corkscrew," said Clint Bolick, counsel for the Institute for Justice in Washington, which represented family owned wineries in California and Virginia in challenging the state bans on direct sales. "This is a landmark victory for consumers and small businesses, and a defeat for economic protectionism."

Despite the celebratory mood within the industry, Monday's ruling only narrowly diminishes the power of the states to regulate the sale of alcohol.

Since 1933, when the 21st Amendment repealed the national prohibition on "intoxicating liquors," states have had nearly complete authority over how beer, wine and liquors are sold. They can ban the sale of alcohol products entirely. They also can give that power to counties, some of which remain "dry" to this day.

Most states use some version of a three-tiered regulatory system, where producers sell their alcohol through licensed wholesalers who, in turn, sell to licensed retailers. But there are variations. In California, wineries can sell to consumers, restaurants and retailers without going through a middleman.

The Supreme Court said it did not intend to undermine the three-tiered regulatory system. However, states such as New York and Michigan already have undercut it by allowing local wineries to sell directly to local consumers.

The court's majority said the states could not adopt a system that favored their wineries at the expense of out-of-state producers.

The Michigan law was challenged as unconstitutional by Eleanor and Ray Heald, wine critics who said they wanted to order sample bottles through the mail.

The New York law was challenged by Juanita Swedenburg, a Virginia vintner, and David Lucas, owner of a small winery near Lodi, Calif.

The Constitution was designed to protect the free flow of commerce among the states, and this "is essential to the foundation of the Union," Justice Anthony M. Kennedy said Monday in declaring the two state laws unconstitutional. Otherwise, the nation could face interstate trade wars or descend into "economic Balkanization," he said.

Although all the justices agreed on the importance of free trade across state lines, they disagreed on whether alcohol deserved special treatment.

The four dissenters included the three senior members of the court; they said that the 21st Amendment gave the states the power to bar out-of-state wines.

Justice John Paul Stevens, 85, recalled the “moral condemnation of the use of alcohol” that was the backdrop for the struggle over Prohibition.

“Today many Americans, particularly those members of younger generations ... regard alcohol as an ordinary article of commerce,” he said, but that was not the view of the generation that adopted the 21st Amendment.

Along with Chief Justice William H. Rehnquist and Justices Sandra Day O’Connor and Clarence Thomas, he said the states deserved the power to regulate alcohol as they saw fit, including banning direct sales to consumers.

But Kennedy spoke for an unusual alliance that said the principle of free and nondiscriminatory trade prevailed. “If a state chooses to allow direct shipment of wine, it must do so on evenhanded terms,” he said.

His opinion in *Granholm vs. Heald* was joined by Justices Antonin Scalia, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

Kennedy discounted claims by some states that they sought to prevent minors from buying alcohol. He said it was quite unlikely that teenagers were going to order cases of expensive wine from out- of-state vineyards. Moreover, states may impose regulations that require an adult to sign for the purchase.

The ruling presents state lawmakers with a choice. They may forbid all direct sales of wine to consumers.

However, if they do so, they would be forced to repeal their special benefits for home-state wineries.

“In some states, local wineries can sell their wine through a restaurant or a wine shop,” said Indiana University law professor J. Alexander Tanford, who filed the challenge to the Michigan law. If the state permits such sales, “logically the same rule should apply” so that these restaurants and wine shops could purchase wine directly from out-of-state vintners, he said.

“Now consumers throughout the country will finally be able to obtain the same wine enjoyed by Miles and Jack in the movie ‘Sideways,’ “ he added.

But the head of Michigan’s liquor control commission said Monday that she would urge state lawmakers to ban all direct wine sales to consumers.

Monday’s ruling is not likely to affect wines that are produced outside the United States. Nor is it likely to affect other alcohol products, such as liquor and spirits.

Some lawyers said it could affect specialty beers, however, since states have given micro-brewers the authority to sell their beers directly to consumers. If so, out-of-state consumers may be able to purchase this beer through the mail.

The ruling could have other ramifications, including for a closely watched lawsuit brought by Costco Wholesale Corp., the nation’s largest wine retailer. It has challenged liquor distribution rules in its home state of Washington as a violation of the Sherman Antitrust Act.

Costco’s Washington stores would like to purchase wine directly from producers to lower its cost. It can buy directly from Washington wineries, but is barred from similar purchases from out- of-state producers, said David Burman, the lawyer representing the retailer in the case. Burman likened Costco’s position to a consumer in New York who could purchase from a local winery but until Monday’s ruling was barred from buying directly from a California vintner.

“There is a discrimination against out-of-state wineries selling to retailers,” he said.

Meanwhile, at Charles Creek Vineyard in Sonoma, owner Bill Brinton is looking to upgrade his Internet site to capture business from consumers in states affected by the ruling.

“We turn down a lot of direct wine sales everyday because of these laws,” Brinton said.