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Final Briefs Filed In Critical Wine Shipping Case

—Specialty Wine Retailers Association Seeks Justice for Retailers and Consumers—

Discrimination at any level of the three tiers of the alcohol distribution chain is unconstitutional. Further, a State may not require an in-state physical presence to participate in interstate commerce.

SACRAMENTO, Calif—This was the core message embodied in [Specialty Wine Retailers Association](#)'s final brief submitted today in the case of Siesta Village Market v. Steen, now at the Fifth Circuit Court of Appeals. SWRA is challenging Texas law that discriminates against out-of-state retailers by barring them from shipping to consumers in the state. [The comprehensive, sixty-page brief](#) prepared by SWRA legal counsel [Kirkland & Ellis LLP](#) will be followed by oral arguments later this year to be delivered by [Ken Starr](#), Of Counsel at Kirkland & Ellis.

SWRA's case against Texas is critical to the future of consumer's ability to access fine wine. To-date, most state legislatures have adhered to the pleas of wine wholesalers across the country who argue that the principle of non-discrimination explained in the groundbreaking [2005 Granholm v Heald Supreme Court case](#) and 40 years of legal opinions from the Supreme Court did not apply to retailers, but instead just to wineries. As a result, many states, including Texas, have chosen to protect wholesalers' interests by barring consumers from having wine shipped to themselves from out-of-state retailers, while allowing it from in-state retailers.

“Simply put, the Commerce Clause precludes discrimination at any level of the three tiers (including the retailer level). Granholm emphatically embraced this nondiscrimination principle, and no basis exists for the State's and Wholesaler's misguided efforts to limit Granholm's scope,” reads the recently submitted brief.

Texas wholesalers and the state of Texas are appealing a [Texas District Court's January 2008 opinion](#) that confirmed this very point. SWRA is appealing that same judge's remedy for the unconstitutional discrimination that requires out-of-state retailers to maintain a physical presence in Texas in order to ship wine to Texans. The SWRA brief explains:

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“By Judicially extending the Texas retailer permits to out-of-state retailers, the district court imposed a condition (the wholesaler purchase requirement) which has the effect of barring out-of-state retailers from Texas’s direct shipping market. The reason is this: it is legally impossible for an out-of-state retailer to purchase wine from a Texas wholesaler without establishing a store in Texas....The Supreme Court has made clear, however, that a State cannot require an out-of-state business to establish a physical presence within its borders in order to participate in Interstate commerce. The district court’s remedy imposes precisely such a discriminatory physical presence requirement.”

Wine lovers and the wine industry both are watching this case very closely as it has the potential to fundamentally change the relationship that consumers have with the national wine market.

“The very cynical post-Granholm games played by the wholesalers have cut off consumers in most states from thousands of fine wines they otherwise would have access to, “said Tom Wark, executive director of SWRA. “We are fortunate to live in a country where laws that ignore the U.S. Constitution, for simple economic gain and to the detriment of citizens, rarely survive the balanced scales of Justice.”

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Contact:

Tom Wark, Specialty Wine Retailers Association
707-935-4424 • twark@specialtywineretailers.org