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Seven Federal Circuits Split on Wine Shipping Laws as Supreme Court Weighs Arizona Appeal

Conflicting rulings over interstate wine sales highlight constitutional clash and billions in potential impact for consumers and retailers

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The ongoing debate over interstate wine shipping may soon return to the U.S. Supreme Court, as a recent case from Arizona has been appealed to the nation’s highest court. The case, known as Day v. Henry, centers on whether states can require wine retailers

to have a physical presence within their borders in order to ship wine to consumers. This issue has already been litigated in several other states, including New Jersey, North Carolina, Missouri, Illinois, Indiana, and Rhode Island. In each instance, consumers who wanted to buy wine from out-of-state retailers challenged state laws that restrict shipping privileges to in-state businesses.

Federal appeals courts across seven different circuits have issued conflicting decisions on the matter. The central question is whether the requirement for a retailer to be physically present in the state is a necessary part of the three-tier system that most states use to regulate alcohol distribution. This system separates producers, distributors, and retailers in an effort to control the sale and distribution of alcohol.

In the Arizona case, a divided panel of the Ninth Circuit Court of Appeals ruled 2-1 in favor of upholding Arizona’s law. The majority found that the state’s requirement did not violate constitutional protections. However, Judge Danielle J. Forrest dissented, arguing that previous Supreme Court decisions made it clear that states must provide evidence of a legitimate health or safety benefit if they wish to discriminate against out-of-state retailers.

The legal conflict arises from the tension between two parts of the U.S. Constitution: the dormant Commerce Clause, which prohibits states from discriminating against products from other states, and the 21st Amendment, which ended Prohibition and gave states broad authority to regulate alcohol within their borders. While many states adopted the three-tier system after Prohibition ended, the 21st Amendment does not specifically mention this structure.

The Supreme Court has addressed related issues twice before in recent decades. In 2005, it ruled that Michigan and New York could not allow their own wineries to ship directly to consumers while blocking out-of-state wineries from doing so. However, that decision focused on wineries rather than retail stores. In 2019, the Court struck down a Tennessee law requiring liquor store owners to live in the state for two years before opening a business. Although this case was about residency requirements rather than shipping, several justices suggested during oral arguments that its reasoning could apply more broadly to retail shipping restrictions.

Despite these rulings, many states have continued to enforce laws requiring retailers to be physically present in-state before they can ship wine directly to consumers. States argue that these regulations are necessary for effective oversight and tax collection. Critics say such laws are protectionist and limit consumer choice.

The current makeup of the Supreme Court could influence how this issue is resolved if the justices decide to hear the case. Since 2019, only two justices have changed: Stephen Breyer retired and Ruth Bader Ginsburg passed away; both were replaced by Ketanji Brown Jackson and Amy Coney Barrett. Barrett has emerged as a key swing vote on several issues.

Industry groups are watching closely. Tom Wark, executive director of the National Association of Wine Retailers, said that resolving this issue is crucial for both businesses and consumers. He noted that billions of dollars are at stake and emphasized the importance of consumer access to legal products.

However, there is no guarantee that the Supreme Court will take up the case. The Court receives hundreds of petitions each year but hears only a small fraction of them. For now, wine lovers hoping for broader access to out-of-state retailers will have to wait and see if this long-running legal battle finally reaches a national resolution.