



INSTITUTE FOR JUSTICE
MINNESOTA

June 27, 2019

VIA ELECTRONIC COURT FILING

Michael E. Gans, Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street,
Room 24.329
Saint Louis, Missouri 63102

RE: *Alexis Bailly Vineyard, Inc. et al. v. Harrington*, No. 18-1846.

Dear Mr. Gans,

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellants write to inform the Court of a recent U.S. Supreme Court decision relevant to this appeal. One of the issues in this appeal is whether the Minnesota farm winery license, which requires that farm wineries produce wine with a majority of in-state ingredients, unconstitutionally discriminates against out-of-state commerce. *See* Br. of Appellants at 61-73.

On June 26, 2019, the Supreme Court ruled that a 2-year in-state residency requirement to obtain a license to operate a liquor store was unconstitutional under the Commerce Clause. *Tenn. Wine and Spirits Retailers Ass'n v. Thomas*, No. 18-96, 2019 WL 2605555, at *3 (2019). A copy of the slip opinion is included here.

The Court affirmed “that the Commerce Clause by its own force restricts state protectionism[.]” Slip Op. at 7. Notably, the Court rejected the argument that *Granholm v. Heald*, 544 U.S. 460, 472-73 (2005), is limited in applicability to state discrimination against out-

of-state interests. Slip Op. at 27 (“[W]hen a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry.” *Id.* (quotation and emphasis omitted)); *but see* Br. of Appellees at 16–17.

Moreover, the Court reaffirmed that the Twenty-First Amendment does not insulate alcohol regulations incorporated into the three-tier alcohol system from Commerce Clause review. Slip Op. at 27–28 (citing *Granholm*, 544 U.S. at 488–89) (“Although *Granholm* spoke approvingly of that basic model, it did not suggest that §2 sanctions every discriminatory feature that a State may incorporate into its three-tiered scheme.”). Just the opposite, state alcohol laws are subject to constitutional limits. Slip Op. at 11–12, 24. The Twenty-First Amendment “is not a license to impose all manner of protectionist restrictions on commerce in alcoholic beverages.” *Id.* at 2. Thus, *Tennessee Wine and Spirits* reconfirms that it is unconstitutional to pass laws that protect in-state interests at the expense of out-of-state interests. Br. of Appellants at 62–67.

Respectfully submitted,

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