

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JERRY BAINBRIDGE, *et al.*,

Plaintiffs,

vs.

Case No. 8:99-CV-2681-T-27TBM

RICHARD TURNER, Director of the Florida
Division of Alcoholic Beverages and Tobacco,
in his official capacity,

Defendant.

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ORDER

BEFORE THE COURT is Plaintiffs' Agreed Motion for Judgment on the Pleadings (Dkt. 188). Defendant does not oppose Plaintiffs' motion.

Plaintiffs have alleged, and Defendant concedes, that Florida's direct shipment law, codified at §§ 561.54(1)-(2) and 561.545(1), Florida Statutes, is unconstitutional under the authority of *Granholm v. Heald*, 125 S.Ct. 1885 (2005), to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

In *Granholm*, the Supreme Court determined that state statutory schemes which limit or prohibit direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers violate the Commerce Clause. 125 S.Ct. at 1907. The Court reasoned that these schemes increase the cost of out-of-state wines, exclude from the market those out-of-state wineries that cannot find a wholesaler, grant in-state wineries a competitive advantage and otherwise discriminate against interstate commerce in violation of the commerce Clause, U.S. Const., Art I, § 8. *See* 125 S.Ct. at 1895-96.

Florida's direct shipment scheme, codified in §§ 561.54 and 561.545, Florida Statutes, does precisely what was determined to be unconstitutional in *Granholm*. Florida's direct shipment statutes prohibit out-of-state vendors and producers from delivering wine directly to Florida residents whereas in-state producers are not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*.


The statutes at issue apply on their face to all alcoholic beverages. The only beverage at issue in this case, however, is wine. This Order does not address the constitutionality of these statutes with respect to other types of alcoholic beverages, such as beer and spirits.

Plaintiffs' Agreed Motion for Judgment on the Pleadings (Dkt. 188) is GRANTED. It is ORDERED AND ADJUDGED that §§ 561.54 and 561.545, Florida Statutes, violate the Commerce Clause to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

IT IS FURTHER ORDERED that Defendant is ENJOINED from enforcing Florida Statutes §§ 561.54 and 561.545 against out-of-state vendors and producers.

IT IS FURTHER ORDERED that Defendant shall pay costs and reasonable attorneys' fees to Plaintiffs pursuant to 42 U.S.C. § 1988 in an amount to be determined in a subsequent proceeding. The Court reserves jurisdiction to tax costs and award attorneys' fees.

DONE AND ORDERED in chambers this 5th day of August, 2005.


JAMES D. WHITTEMORE
United States District Judge

Copies to: Counsel of Record