

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ALBA VINEYARD AND WINERY; and  
GRAPES THE WINE COMPANY,

Plaintiffs,

v.

NEW YORK STATE LIQUOR AUTHORITY;  
LILY FAN, in her official capacity as Chair of  
the New York State Liquor Authority; EDGAR  
DE LEON, in his official capacity as  
Commissioner of the New York State Liquor  
Authority,

Defendants.

Docket No. 1:23-cv-08108

Civil Action

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff Alba Vineyard and Winery (“Alba”), and Plaintiff Grapes the Wine Company (“Grapes”), bring this complaint for declaratory and injunctive relief against Defendant New York State Liquor Authority, Defendant Lily Fan in her official capacity as Chair of the Authority, and Defendant Edgar De Leon in his official capacity as Commissioner of the Authority.

**PRELIMINARY STATEMENT**

1. This lawsuit challenges the constitutionality of New York wine shipping rules that discriminate against out-of-state wineries. Under New York’s Alcoholic Beverage Control Act, New York wineries may bypass New York wholesalers and sell directly to New York retailers, but out-of-state wineries may not. That structure violates the dormant Commerce Clause.

2. Generally, New York’s regulatory scheme funnels wines sales through three tiers: producers sell to wholesalers, who sell to retailers, who sell to consumers. But there are exceptions

to the default three-tiered system. One such exception is the ability of New York wineries to sell directly to retailers. That direct-to-retail exception, however, is available only to New York wineries—and not to out-of-state wineries.

3. Access to the direct-to-retail exception is valuable. Many wineries, especially small ones, find it extraordinarily difficult to find wholesalers to carry their wines. Wholesalers are also costly and collect margins that cut into profits. And wholesalers rarely market wines as effectively and vigorously as the wineries themselves.

4. By granting in-state wineries, but not out-of-state wineries, access to the direct-to-retail exception, New York's wine shipping rules discriminate against and unduly burden interstate commerce—and thereby run afoul of the dormant aspect of the Constitution's Commerce Clause. The Supreme Court has long held that the Commerce Clause not only empowers Congress to regulate commerce among the States, but it also encompasses a "negative aspect" that "prevents the States from adopting protectionist measures and thus preserves a national market for goods and services." *Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449, 2459 (2019).

5. Indeed, the anti-discrimination principle animating the dormant Commerce Clause is deeply rooted. Removing state trade barriers was a principal reason why the framers scrapped the Articles of Confederation and adopted the Constitution. The framers were determined to halt "interference with the arteries of commerce," which "was cutting off the very life-blood of the nation." M. Farrand, *The Framing of the Constitution of the United States* 7 (1913). The framers would similarly condemn the New York wine regime, which impermissibly interferes with the interstate flow of wine and unjustifiably elevates the interests of in-state wineries over those of out-of-state wineries. So, putting aside Benjamin Franklin's musing that wine is "proof that God loves us," New York's restrictive and protectionist wine shipping rules cannot withstand

constitutional scrutiny because they are antithetical to the nation's bedrock commitment to interstate commerce—a commitment that is undeniably woven into the tapestry of the Constitution's Commerce Clause. *See* Letter from B. Franklin to A. Morellet (July 1779), in 7 Writings of Benjamin Franklin 437 (A. Smyth ed. 1907).

6. Nor may New York seek refuge in the Twenty-first Amendment. In *Granholm v. Heald*, 544 U.S. 460 (2005), the Supreme Court struck down New York rules that (i) allowed in-state wineries to sell directly to customers, bypassing wholesalers and retailers, but that (ii) prohibited out-of-state wineries from doing the same. The Court held that granting only in-state wineries, but not out-of-state wineries, access to the direct-to-consumer exception violated the dormant Commerce Clause. The Court further held that the Twenty-first Amendment could not salvage from the unconstitutional dustbin a measure that had no non-protectionist justification.

7. So too here, allowing only in-state wineries, but not out-of-state wineries, access to the direct-to-retail exception is unconstitutional under the dormant Commerce Clause, and the Twenty-first Amendment is unavailing.

8. At bottom, the relief that Plaintiffs seek is the logical and inescapable consequence of *Granholm's* reasoning: the New York rules allowing in-state wineries to sell directly to New York retailers, while prohibiting out-of-state wineries from doing the same, should be declared unconstitutional, and their enforcement should be enjoined.

### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because the action arises under the U.S. Constitution, thus raising federal questions.

10. This Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) because this action, which U.S.C. § 1983 authorizes, seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs, and usages of New York State and political subdivisions thereof,

of rights, privileges, or immunities that the U.S. Constitution secures.

11. 28 U.S.C. §§ 2201–02 authorize Plaintiffs’ claims for declaratory and injunctive relief, and 42 U.S.C. § 1988 authorizes their claim for attorney’s fees.

12. Venue lies in this Court under 28 U.S.C. § 1391 because Defendants have offices located in, and perform their official duties in, the Southern District of New York, and they are therefore considered to reside within this district.

### **PARTIES**

1. Plaintiff Alba is a winery located in Milford, New Jersey that holds a plenary winery license from the New Jersey Division of Alcoholic Beverage Control, under which it may produce an unrestricted amount of wine. *See* N.J. Stat. § 33:1-10 (2a).

2. Plaintiff Grapes is a limited liability company operating a wine retail business in White Plains, New York.

3. Defendant New York State Liquor Authority is the agency empowered to administer and enforce the New York Alcoholic Beverage Control Law. It has offices throughout New York State, including New York City, Albany, and Buffalo. The agency is required to be joined as a party under Section 124 of the Alcoholic Beverage Control Law.

4. Defendant Lily M. Fan is the Chair of the New York State Liquor Authority and, at all times relevant to this complaint, was acting under color of state law. She has supervisory authority over the agency. Acting with other agency members, she has the power to administer the Alcoholic Beverage Control Law, make determinations on licenses and permits, and take disciplinary actions.

5. Defendant Edgar De Leon is a Commissioner of the New York State Liquor Authority and, at all times relevant to this complaint, was acting under color of state law. Acting with other agency members, he has the power to administer the Alcoholic Beverage Control Law,



make determinations on licenses and permits, and take disciplinary actions.

### STATEMENT OF FACTS

#### A. New York's Discriminatory Scheme for Wine Distribution

1. Like most States, New York tries to funnel alcoholic-beverage sales through a three-tier system. Producers sell to wholesalers, who sell to retailers, who sell to consumers. But the three-tier system is porous, especially for wine. There are notable exceptions to the default system. This case concerns one of those exceptions.
2. Under the New York Alcoholic Beverage Control Law, in-state wineries may sell their wines not only to in-state wholesalers, but also directly to in-state retailers, thereby bypassing the wholesaler tier. *See* N.Y. Alco. Bev. Cont. Law § 76(d).
3. Out-of-state wineries, however, are not afforded this privilege. They are not permitted to bypass the wholesaler tier and sell directly to in-state retailers.
4. An out-of-state winery may ship directly to New York retailers only if it becomes a licensed New York winery, which requires establishing “a branch factory, office or storeroom within the state of New York.” *See* N.Y. Alco. Bev. Cont. Law § 3(37).
5. In *Granholm v. Heald*, 544 U.S. 460 (2005), the U.S. Supreme Court dealt with a different exception to New York's three-tier default system for wine. There, the Court struck down, as unconstitutional under the dormant Commerce Clause, provisions of the Alcoholic Beverage Control Law that (i) permitted New York wineries to sell their wines directly to New York consumers—thereby bypassing wholesalers and retailers—but that (ii) prohibited out-of-state wineries from doing the same. As the Court observed, while “[s]tate policies are protected under the Twenty-first Amendment when they treat liquor produced out of state the same as its domestic equivalent,” “straightforward attempts to discriminate in favor of local producers” are “contrary to the Commerce Clause and [are] not saved by the Twenty-first Amendment.” *Id.* at 489.

6. *Granholm*'s reasoning with respect to New York's direct-to-consumer exception applies with equal force to New York's direct-to-retail exception.

**B. The Impact of New York's Discriminatory Scheme on Alba and Grapes**

7. Alba's 93-acre estate is nestled among the rolling hills of Warren County, New Jersey, on the north side of the Musconetcong river valley.

8. Alba prides itself on producing wines of exceptional quality, distinctive character, and consistency year after year.

9. Alba's wines have fared well in competitions beyond New Jersey. For example, its Cabernet Franc won a gold medal in the 2016 Tasters Guild International Wine Competition. Its Pinot Noir won a double gold medal in the 2017 Atlantic Seaboard Association Wine Competition, and a gold medal in the 2016 Finger Lakes International Wine Competition. And its Chardonnay won a double gold medal in the 2017 Jefferson Cup Invitation Wine Competition.

10. Alba desires to sell its wines directly to New York retailers, including New York stores, restaurants, and bars.

11. Gaining the ability to sell its wines directly to New York retailers—a process known as self-distribution—would allow Alba to avoid the difficulties and expenses associated with finding wholesalers to carry its wines. Wholesalers are costly and would collect margins that would cut into the Alba's profits. Wholesalers also could not market Alba's wines to retailers as effectively and vigorously as Alba itself could.

12. Smaller wineries face particularly acute challenges because wholesalers have been consolidating at a breakneck pace. As the Wine Industry Network reports: "The landscape has shifted dramatically: in 1995, there were about 3,000 distributors, but by 2017, there were less than half, about 1,200, and the number has continued to drop. With fewer distributors, it seems

inevitable that the biggest brands—the easy-to-move household names—will thrive, as smaller brands suffer.” See Kathleen Willcox, *Wineries’ Success in the Face of Mass Consolidations*, Wine Industry Network (Jan. 27, 2022), <https://wineindustryadvisor.com/2022/01/27/wine-distribution-solutions> (noting that the top two wine distributors account for more than half of all wine sales). Meininger’s International likewise reports: “As distributors get bigger, they require brands with bigger volumes to service their markets. This will reduce opportunities for small-to-medium-sized wine producers.” See Liza B. Zimmerman, *U.S. Consolidation Means Fewer Opportunities for Wineries*, Meininger’s International (Feb. 3, 2023), <https://www.meiningers-international.com/wine/analysis/us-consolidation-means-fewer-opportunities-wineries>.

13. New York’s wine regime affords no means for Alba, an out-of-state winery, to gain the ability to bypass the wholesaler tier and sell its wines directly to New York retailers.

14. In contrast, New York’s wine regime grants in-state wineries the ability to bypass the wholesaler tier and sell wines directly to New York retailers. See N.Y. Alco. Bev. Cont. Law § 76(d); see also Winery Quick Reference, New York State Liquor Authority Website (“Q.: Can I distribute my own products to licensed retailers? / A.: All manufacturing licenses come with the right to self-distribution.”), <https://sla.ny.gov/winery-quick-reference-1>.

15. Due to this regulatory structure, in-state wineries are afforded privileges that are denied to out-of-state wineries. And those privileges are economically valuable: they benefit in-state wineries by broadening the manner in which they can do business.

16. If Alba applied for a New York winery license, its application would be denied, as Alba has no New York branch factory, office or storeroom. Applying for a New York winery license would not only be futile, but it would cause Alba to waste \$400 in filing fees. See Winery Fees, New York State Liquor Authority Website, <https://www.businessexpress.ny.gov/app/portal/>

description/Winery Special Winery Class DW License Fees 301.

17. Alba specifically wants to do business with Grapes, which is a wine store in White Plains, New York. And Grapes specifically wants to do business with Alba.

18. Since its founding in 1997, Grapes has proudly sought to connect its clientele with wines of all styles from all over the world. In harmony with that egalitarian mission, Grapes desires to expand its menu of offerings to encompass Alba's distinctive and award-winning wines.

19. Grape's New York State retail license, however, prohibits it from purchasing wines from out-of-state wineries such as Alba. *See* N.Y. Alco. Bev. Cont. Law § 102(3-b); *see also* Existing Retailers, New York State Liquor Authority Website ("As a licensed retailer, you may only purchase alcoholic beverages from wholesalers and manufacturers who are licensed in this state. ... You cannot purchase alcoholic beverages from any entity located outside of this state."), <https://sla.ny.gov/existing-retailers>.

20. In fact, Alba and Grapes have communicated and have expressed their mutual interest in doing interstate business together. But they both understand that New York's Alcoholic Beverage Control Law stands in their way—at least until the New York legislature elects to, or is compelled to, amend the relevant rules.

21. No New York governmental authority has advanced a public-health or safety rationale for allowing only in-state wineries to bypass wholesalers and sell directly to retailers. The only plausible basis for this regulatory structure is state protectionism.

22. Granting out-of-state wineries access to the direct-to-retail exception would not materially affect New York's default three-tiered system—just as *Granholm's* granting out-of-state wineries access to the direct-to-consumer exception left the system intact. New York's discriminatory treatment of out-of-state wineries is not essential to preserving the three tiers.



**CAUSE OF ACTION: COMMERCE CLAUSE VIOLATION**

23. Plaintiffs incorporate all the prior paragraphs as if fully set forth here.
24. The Commerce Clause, as set forth in Article I, Section 8 of the U.S. Constitution, expressly grants Congress the power “[t]o regulate commerce with foreign Nations, among the several States, and with the Indian Tribes.” The dormant Commerce Clause is inherent in the power granted to Congress under the Commerce Clause and prohibits States from enacting legislation that discriminates against or impermissibly burdens interstate commerce.
25. Under Section 76(d) of the New York Alcoholic Beverage Control Law, in-state wineries may sell their wines directly to in-state retailers.
26. Under Section 102(3-b) of the New York Alcoholic Beverage Control Law, in-state retailers may not purchase wines from out-of-state wineries.
27. The New York Alcoholic Beverage Control Law contains no provision permitting out-of-state wineries to sell their wines directly to in-state retailers.
28. Alba, an out-of-state winery, and Grapes, an in-state retailer, want to do business together. The New York Alcoholic Beverage Control Law prevents them from doing business together by denying them access to the direct-to-retail exception. Denying them access to the direct-to-retail exception harms them because they lose business opportunities.
29. By allowing in-state wineries to sell directly to retailers, while prohibiting out-of-state wineries such as Alba from doing the same, the New York Alcoholic Beverage Control Law facially and clearly discriminates against, and impermissibly burdens, interstate commerce.
30. By allowing in-state wineries to sell directly to retailers, while prohibiting out-of-state wineries such as Alba from doing the same, the New York Alcoholic Beverage Control Law effectuates economic protectionism that cannot plausibly be justified as a public-health or safety measure or on any other non-protectionist ground.

31. The predominant effect of the New York Alcoholic Beverage Control Law's granting in-state wineries access to the direct-to-retail exception, while denying out-of-state wineries such as Alba access to the same, is to promote protectionism, not legitimate state interests.

32. Because the New York Alcoholic Beverage Control Law's discrimination cannot be justified as a public-health or safety measure or on any other non-protectionist ground, the Twenty-first Amendment is not implicated.

33. Sections of the Alcoholic Beverage Control Law, including Sections 76(d) and 102(3-b), should be declared unconstitutional and their enforcement should be enjoined because they threaten Plaintiffs with irreparable injury for which there is no adequate remedy at law.

#### **PRAYER FOR RELIEF**

Plaintiffs seek the following relief from the Court:

1. A declaratory judgment, under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, that sections of the New York Alcoholic Beverage Control Law, including Sections 76(d) and 102(3-b), are unconstitutional on their face, or alternatively as applied to Plaintiffs, to the extent they permit in-state wineries to sell directly to in-state retailers, while prohibiting out-of-state wineries from doing the same, thereby violating the Dormant Commerce Clause, Article I, § 8 of the U.S. Constitution.

2. An injunction, under 42 U.S.C. § 1983 and 28 U.S.C. § 2202, enjoining Defendants from enforcing sections of the New York Alcoholic Beverage Control Law, including Sections 76(d) and 102(3-b), to the extent they prohibit Plaintiffs from accessing the direct-to-retail exception, and requiring Defendants to grant Plaintiffs access to the same.

3. An award of attorneys' fees and costs of suit under 42 U.S.C. § 1988, or any other applicable law; and

4. Such other and further relief as the Court may deem just and proper.

Dated: September 13, 2023  
New York, New York

Respectfully submitted,

**KASOWITZ BENSON TORRES LLP**

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