

## Supreme Court to Rule on Constitutionality of Direct Shipment Laws

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Hatch & Parent's Wine Practice Group continues to monitor the constitutionality of laws regulating the direct shipment of wine to other states as the issue has made its way to the Supreme Court.

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On December 7, 2004, the United States Supreme Court heard oral arguments in a trilogy of cases challenging New York and Michigan direct shipment laws. The laws at issue prohibit the direct interstate shipment of wine to consumers. Currently, about half of the states similarly restrict the direct shipment of wine.

The direct shipment law controversy sets in opposition two constitutional provisions: the 21st Amendment, which repealed Prohibition in 1933 and empowers states to regulate the sale of alcohol within their borders, and the Commerce Clause, which limits state discrimination against interstate commerce.

The controversy over direct shipment laws has staked consumers and wineries against states and wine distributors and retailers. Wine consumers and wineries argue that such laws discriminate against out-of-state vintners by requiring that their wine be sold through distributors and retailers. Wine distributors, retailers and state governments, on the other hand, argue that the shipment of alcoholic beverages, unlike other commodities, merits such government regulation.

The Supreme Court agreed to hear the cases after two U.S. Courts of Appeal reached different conclusions on the constitutionality of the laws. While Michigan struck down a direct shipment law, New York upheld a similar law, based on the state's interests in controlling the delivery of alcohol within its borders.

The Supreme Court limited its review to answering the following question: "Does a State's regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of Sec. 2 of the 21st Amendment?" A flurry of briefs were filed in support of both sides.

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As noted in Hatch & Parent's April 2004 Case Alert, for those of you who are directly shipping around the country, until the Supreme Court issues its ruling in these cases, which likely will not occur until July 2005, it is important to stay current on various requirements and restrictions imposed by each of the other 49 states.

We would be pleased to send you additional information about the case. Please feel free to contact Jill Martin at (805) 882-1447 or [JMartin@HatchParent.com](mailto:JMartin@HatchParent.com).