

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ALEXIS BAILLY VINEYARD, INC.,)
a Minnesota Corporation, and)
THE NEXT CHAPTER WINERY, LLC)
a Minnesota Limited Liability Company,)

Plaintiffs,)

v.)

JOHN HARRINGTON, in his official)
capacity as Commissioner of the)
Minnesota Department of Public Safety,)

Defendant.)

CIVIL FILE NO. 0:17-CV-00913
(WMW/HB)

**PLAINTIFFS’ SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Plaintiffs, Alexis Bailly Vineyard, Inc. and The Next Chapter Winery, LLC (collectively “Farm Wineries”), initiated this action against Defendant Commissioner seeking a ruling that Minnesota’s Farm Winery Act, Minn. Stat. §§ 340A.101 subd. 11; -.315 subd. 4., is discriminatory and unconstitutional under the guarantees of the dormant Interstate Commerce Clause and the dormant Foreign Commerce Clause of the U.S. Constitution. In support of their motion for summary judgment, the Farm Wineries rely on their initial briefing with exhibits (ECF 21-24, 31), argument transcript (ECF 41), and the supplemental authority described below. Because the portion of the Farm Winery Act that requires the

Farm Wineries to produce products with a majority of in-state ingredients is patently discriminatory, the Farm Wineries respectfully request that this Court enter summary judgment in their favor.

PROCEDURAL HISTORY

On April 9, 2018, after the merits and standing had been fully briefed by the Parties, and after hearing argument on the merits and standing, this Court granted summary judgment in favor of the Commissioner. It ruled that the Farm Wineries lacked standing because their injuries were not fairly traceable to the Commissioner's administration of the Farm Winery Act. ECF 34. Because it concluded the Farm Wineries lacked standing, it did not address the merits. On July 29, 2019, the U.S. Court of Appeals for the Eighth Circuit reversed, declared that the Farm Wineries do have standing, and remanded for a determination of whether the Farm Winery Act is in fact in violation of the dormant Interstate Commerce Clause and dormant Foreign Commerce Clause. ECF 43.

The Farm Wineries now submit this Supplemental Brief in response to this Court's scheduling order dated September 4, 2019. ECF 46. As the order requires, it is "limited to a discussion of legal developments that have occurred since the previous memoranda were filed."

ARGUMENT

I. THE SUPREME COURT'S RECENT DECISION IN *TENNESSEE WINE* CONFIRMS THAT THE IN-STATE MANDATE IS UNCONSTITUTIONAL.

In reaching its decision in this case, the Eighth Circuit recognized that “Minnesota is free to offer or not offer the farm winery license, or to establish other license options for the production and sale of alcohol. What it cannot do—and what the Farm Wineries allege it has done—is condition a license on compliance with unconstitutional discrimination against out-of-state grape growers.” ECF. 43 at 7-8 (citing *Tenn. Wine and Spirits Retailers Ass’n v. Thomas*, ___ U.S. ___, 139 S. Ct. 2449, 2470 (2019) (“*Tennessee Wine*”).

The case the Eighth Circuit cited, *Tennessee Wine*, is very relevant to this case. It reaffirmed that a law treating in-state and out-of-state interests differently—as the In-State Mandate does—runs afoul of the dormant Interstate Commerce Clause. In doing so it reiterated that the Twenty-First Amendment does not insulate alcohol regulations from constitutional review. If there was ever any doubt on the merits of this case, *Tennessee Wine* puts that doubt to rest.

In *Tennessee Wine*, the U.S. Supreme Court was asked to decide the constitutionality of a two-year in-state residency requirement for obtaining a license to operate a liquor store. 139 S. Ct. at 2457. In ruling that the durational residency requirement was unconstitutional under the Commerce Clause, the

Court confirmed that “when 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.* at 2471 (quotation and emphasis omitted).

Moreover, the Court reaffirmed that the Twenty-First Amendment does not insulate alcohol regulations from Commerce Clause review just because the state otherwise utilizes the three-tier alcohol system. Referencing the prior case of *Granholm v. Heald*, 544 U.S. 460 (2005), it stated “[a]lthough *Granholm* spoke approvingly of that basic model [the three-tier system], it did not suggest that [the Twenty-First Amendment] sanctions every discriminatory feature that a State may incorporate into its three-tiered scheme.” *Tennessee Wine*, 139 S. Ct. at 2471 (citing *Granholm*, 544 U.S. at 488–89). Just the opposite. State alcohol laws, like all laws, are subject to constitutional limits. *Id.* at 2462–63, 2469. And, the Twenty-First Amendment “is not a license to impose all manner of protectionist restrictions on commerce in alcoholic beverages.” *Id.* at 2457. Thus, *Tennessee Wine* confirms that it is unconstitutional to pass laws, like the In-State Mandate, that protect in-state interests at the expense of out-of-state interests.

This goes directly to a point the Commissioner made when last before this Court. While arguing that the Farm Winery Act is an exception to the three-tier system, and therefore should be given some degree of deference, the

Commissioner cited the very same language from *Granholm* that approved of the three-tier system's validity. See ECF 29 at 2. But, *Tennessee Wine* makes absolutely clear that the three-tier system is no shield from discrimination against out-of-state interests. Whether the In-State Mandate is wrapped-up in a three-tier system or a one-tier system, it is a facially discriminatory law that does not overcome strict scrutiny and therefore violates the dormant Interstate Commerce Clause and dormant Foreign Commerce Clause.

CONCLUSION

This case presents a straightforward question of law with a straightforward answer. Because the In-State Mandate is discriminatory and because the Commissioner has failed to overcome strict scrutiny (ECF 41 at 18:20-19:18 (Commissioner's counsel conceding Defendant has not offered evidence to survive strict scrutiny)), the Farm Wineries respectfully request that this Court declare that the In-State Mandate is unconstitutional under the dormant Interstate Commerce Clause and the dormant Foreign Commerce Clause and enjoin the Commissioner from enforcing it.

Dated: September 27, 2019

Respectfully submitted,

/s/ Anthony B. Sanders

Anthony B. Sanders (MN Bar No. 0387307)

Jaimie N. Cavanaugh (MN Bar No.

0399960)*

Lee U. McGrath (MN Bar No. 0341502)

INSTITUTE FOR JUSTICE

520 Nicollet Mall, Suite 550

Minneapolis, MN 55402

Tel: (612) 435-3451

Fax: (612) 435-5875

Email: asanders@ij.org, jcavanaugh@ij.org,

lmcgrath@ij.org

* Petition for admission pending

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ALEXIS BAILLY VINEYARD, INC.,)
a Minnesota Corporation, and)
THE NEXT CHAPTER WINERY, LLC)
a Minnesota Limited Liability Company,)

Plaintiffs,)

v.)

JOHN HARRINGTON, in his official)
capacity as Commissioner of the)
Minnesota Department of Public Safety,)

Defendant.)

CIVIL FILE NO. 0:17-CV-00913
(WMW/HB)

CERTIFICATE OF COMPLIANCE

I, Anthony B. Sanders, certify that Plaintiffs’ Supplemental Brief in Support of their Motion for Summary Judgment complies with the applicable provisions of Local Rule 7.1(h) and (f). I further certify that the total length of Plaintiffs’ Renewed Motion for Summary Judgment and this Brief in Support do not exceed 10 pages in accordance with this Court’s Order dated September 4, 2019 (ECF. No. 46).

Dated: September 27, 2019

Respectfully submitted,

/s/ Anthony B. Sanders
Anthony B. Sanders (MN Bar No. 0387307)
Jaimie N. Cavanaugh (MN Bar No.
0399960)*
Lee U. McGrath (MN Bar No. 0341502)
INSTITUTE FOR JUSTICE
520 Nicollet Mall, Suite 550
Minneapolis, MN 55402
Tel: (612) 435-3451
Fax: (612) 435-5875
Email: asanders@ij.org, jcavanaugh@ij.org,
lmcgrath@ij.org

* Petition for admission pending