



State must try again to help area vintners distribute their wine

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As viewed by the Supreme Court, the decision that removes some Virginia wines from the shelves of ABC stores is a matter of fair trade as dictated by the Constitution. And, as such, it's a matter that can be resolved by the General Assembly - if it will.

Small wineries around Virginia are receiving notification from the state Department of Alcoholic Beverage Control to stop self-distribution of their products to state stores and to other retailers, including restaurants.

And why is that?

The state notice to vintners to cease deliveries of their corked products goes back to a 2005 Supreme Court ruling that Virginia's winery laws (and those of dozens of other states) unconstitutionally favored Virginia winemakers over their competitors in other states. The General Assembly had created laws that allowed small Virginia vintners to self-distribute their wines to retailers and restaurants. But the laws were not extended to out-of-state winemakers.

State laws that benefit state winemakers at the expense of out-of-state producers create a playing field that's not level. It's unfair trade.

Justice Anthony M. Kenney, writing for the court majority in May 2005, put it this way: "State policies are protected under the 21st Amendment (the one that repealed Prohibition) when they treat liquor produced out of state the same as its domestic equivalent." The current cases, he wrote, in contrast, "involve straightforward attempts to discriminate in favor of local producers. The discrimination is contrary to the Commerce Clause and is not saved by the 21st Amendment."

The court ruling obviously hurts Virginia's growing wine industry. It's in their best interests, along with the state's best interests (from the taxes collected) to get the product to consumers.

So how can Virginia's small winemakers get their products back on the shelves of the state's ABC stores and to restaurants and other retailers?

A bill submitted to the General Assembly last winter sought to correct the problem. The measure offered by Del. Christopher Saxman, R-Staunton, would have leveled the playing field by allowing small out-of-state wineries to deliver their products to Virginia retailers and restaurants. The wineries would have to be licensed as such in the state in which they are located and, among other things, they would have to agree to collect sales taxes on their products and send them to Richmond.

From all appearances, the bill would have corrected the problem the Supreme Court had with the state's exclusive treatment of its wineries and would have paved the way for the state's small vintners to continue marketing their products. But it was assigned to the House General Laws Committee where it was tabled until next year.

That's too bad.

Had the bill been approved, Virginia's small winemakers could continue distributing the distilled fruits of their labors to state ABC stores and other retailers rather than having to let those stores exhaust their supplies without replenishing them.

Those winemakers can compete favorably with their counterparts from surrounding states. So bring on the competition. The Assembly can do that by taking up Saxman's bill early next year and leveling the playing field for all small wine producers with access to Virginia markets.

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