

REGULATING THE RETAILERS: DOES TEXAS’S THREE-TIER
SYSTEM FOR REGULATING THE SALE OF ALCOHOLIC
BEVERAGES VIOLATE THE
DORMANT COMMERCE CLAUSE?
SIESTA VILLAGE MARKET L.L.C. V. STEEN, 595 F.3D 249
(5TH CIR. JAN. 26, 2010)

Highlight

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The Texas Alcoholic Beverage Code dictates the rules for producing, distributing, and selling alcoholic beverages within the State of Texas.¹ Under the Code, Texas employs a three-tier structure for regulating alcohol sales.² The three tiers include alcoholic beverage producers at the top, wholesale distributors in the middle, and alcohol retailers at the bottom.³ The producers sell their products to the wholesalers, and the wholesalers then turn and distribute these products to state-licensed retailers.⁴ Consumers can then purchase alcoholic beverages from these licensed retailers located within the state.⁵

In 2006, out-of-state wine retailers and in-state wine consumers sued the Texas Alcoholic Beverage Commission (TABC) in U.S. District Court, challenging specific Texas Alcoholic Beverage Code provisions affecting this three-tier system.⁶ The plaintiffs sought to challenge certain provisions as invalid under the Dormant Commerce Clause.⁷ The specific provisions challenged included a “personal import exception” that limited the quantity of alcoholic beverages an individual could bring into the state for personal use, and a provision that prohibited out-of-state alcohol retailers from shipping and delivering alcoholic beverages to Texas customers, while allowing in-

¹ *Siesta Village Market LLC v. Steen*, 595 F.3d 249, 251 (5th Cir. Jan. 26, 2010).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 250.

⁷ *Id.*

state retailers to ship and deliver such beverages to customers located in their counties.⁸

The district court granted summary judgment for the plaintiffs and invalidated twenty-three TABC provisions, including the two specific provisions at the heart of this appeal, as contrary to the Commerce Clause.⁹ The State of Texas appealed the invalidation of these provisions, arguing that Texas' laws are not only authorized under the Twenty-First Amendment to the U.S. Constitution, but that the laws should be upheld because they promote legitimate state and public interests.¹⁰

The main issue the Fifth Circuit addressed was whether the Texas Code provisions applying different shipping and delivering rules for out-of-state retailers and in-state retailers is unconstitutional under the Commerce Clause.¹¹ The bulk of the Fifth Circuit's discussion in this case included an overview of the Supreme Court's opinion in *Granholm v. Heald*, one year prior to this appeal; an overview of three additional court opinions on the specific issue at the center of this appeal, including the Fourth Circuit, the Second Circuit, and the Eastern District of Michigan; and a critical analysis of the lower court's interpretation and application of the relevant law.¹² The Fifth Circuit's ruling was a result of its own interpretation of the Commerce Clause, the relevant Texas Alcoholic Beverage Code provisions, and the relevant prior case law on this issue, including the *Granholm* case.¹³

The State of Texas argued that the *Granholm* decision was distinguishable because it invalidated two state laws that were clearly discriminatory in their treatment of in-state producers as compared to out-of-state producers.¹⁴ Thus, the State argued that the Supreme Court holding was controlling as applied to producers, not retailers, as are the parties in this case.¹⁵ On the other hand, the plaintiff-retailers argued that the *Granholm* decision applied generally to state liquor laws that treated out-of-state interests differently than in-state interests.¹⁶

The Fifth Circuit agreed with the State that the discrimination against out-of-state producers that was the center of the *Granholm* case was not the issue before it, but noted that the Supreme Court in

⁸ *Id.* at 251.

⁹ *Id.* at 252.

¹⁰ *Id.* at 253.

¹¹ *Id.* at 253-54.

¹² *See id.* at 253-58.

¹³ *See id.* at 258-61.

¹⁴ *See id.* at 253, 258.

¹⁵ *Id.* at 258.

¹⁶ *Id.*

Granholm did cite a previous decision of its own that the Fifth Circuit found relevant in guiding it to its decision in this Texas case.¹⁷ In the Supreme Court's 1986 North Dakota case, the Court held North Dakota's three-tier system, similar to the system employed in Texas, constitutional.¹⁸ The Fifth Circuit found that *Granholm* was suggesting that the Twenty-First Amendment and the Supreme Court authorized Texas' liquor laws and three-tier system.¹⁹

With the Supreme Court precedent in consideration, the Fifth Circuit turned to whether, within the three-tier system that the Court found constitutional, Texas was allowing its in-state retailers to do something substantially different from a traditional three-tier system.²⁰ In the wake of *Granholm*, the Fifth Circuit found that Texas may authorize its in-state retailers to conduct sales that out-of-state retailers are prohibited from conducting, and was not required to limit such sales to over-the counter sales, but could also make local deliveries.²¹ This system does not result in unconstitutional discrimination.²² Out-of-state retailers are not similarly situated to the in-state retailers who hold alcohol permits under Texas law, and therefore, the Commerce Clause, although it still applies, applies differently to these retailers than it does to alcoholic beverage producers.²³ This is because the producers' products often travel in commerce from out-of-state, unlike the wholesalers and retailers who are often required under the three-tier system to be located within the state.²⁴ States have wide discretion in regulating alcoholic beverage sales and the Fifth Circuit chose not to limit this discretion.²⁵ Allowing in-state retailers to make local deliveries is an incidental consequence of the constitutional three-tier system and supported by the Supreme Court's decision in *Granholm*.²⁶

The bulk of the Fifth Circuit's opinion focuses on the Code provisions that apply different rules for out-of-state retailers and in-state retailers when shipping and delivering alcoholic beverages to customers.²⁷ The opinion briefly addresses its analysis on the validity of the provisions concerning individual importing of out-of-state alcohol

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 259.

²¹ *Id.* at 260.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 259-60.

²⁵ *Id.* at 260.

²⁶ *Id.*

²⁷ *See id.*

purchased for personal use in the last two paragraphs before the conclusion.²⁸ The Fifth Circuit found nothing unconstitutional about the exception limiting the quantity of alcoholic beverages that an individual may import into the state.²⁹ The court found that this exception is limited in scope and does not substantially affect out-of-state retail sales to Texas consumers.³⁰

The Fifth Circuit's holding in this case was consistent with recent Supreme Court precedent, as well as other circuit courts which had addressed this issue.³¹ Although the issue in *Granholm* was not decided in regard to out-of-state alcohol retailers, the trend seems to be that courts are applying *Granholm's* general principles to the three-tier system that the Supreme Court has held constitutional. State liquor laws that discriminate among out-of-state producers and in-state producers will not be upheld under the Dormant Commerce Clause, but those laws that regulate in-state sales of alcoholic beverages to in-state consumers are continually granted deference and discretion by the courts. The Commerce Clause does not apply to retail sales within state borders in the same manner as it applies to alcoholic beverage producers.³²

Practitioners should be aware that this area of law has seen recent challenges in the courts and has not stopped at the lower court level. And while the courts have yet to invalidate the liquor laws as they apply to retailers, the Supreme Court has already invalidated state laws that discriminate against out-of-state producers. Practitioners should always be aware of the changes in the law in the area in which they practice. Advising clients includes keeping up with the changes in the law and the issues that are being brought before the courts.

The Fifth Circuit's ruling on the constitutionality of these provisions had the potential to impact Texas's system of alcoholic beverage sales, as well as ease and access of the system to alcoholic beverage consumers. But for now, the Fifth Circuit has upheld the retailers' role in Texas's three-tier system and will continue to give the State of Texas broad discretion in regulating alcoholic beverage sales.

²⁸ *See id.* at 260-61.

²⁹ *Id.* at 261.

³⁰ *Id.*

³¹ *See id.* at 253-57. The Fourth and Second Circuit both decided cases in the four years preceding this Fifth Circuit case that found other state laws concerning out-of-state retailers constitutional. *Id.* at 256.

³² *See id.* at 260.