

Shaken and Stirred: Federal Court Declares Texas Alcohol Laws Unconstitutional

Alcohol, Restaurant, Retail, Hospitality, Retail / March 26, 2018

On Tuesday, United States District Judge Robert Pittman issued a fifty-page order that will likely have a profound impact on retailers that currently sell or are looking to sell alcoholic beverages in Texas. The lawsuit, brought in 2015 by Wal-Mart Stores, Inc., along with three of its subsidiaries, challenged the constitutionality of four Texas statutes which govern the issuance of package store permits. Under current state law, retailers must obtain a permit for each physical location where alcohol is sold.

The statutes challenged by Wal-Mart generally prohibit public corporations from obtaining certain categories of package store permits and further prohibit the number of permits certain private companies may obtain. Wal-Mart claimed that bills filed in the Texas legislature from 2009 to 2015 to repeal some or all of the challenged statutes were met with strong opposition by the Texas Package Store Association ("TPSA"). Wal-Mart argued that as a result of discriminatory arguments utilized in the TPSA's lobbying efforts – which suggested that out-of-state companies would attempt to displace Texas-based liquor stores if the repeal measures passed – each of those efforts were thwarted.

After considering all of the evidence, Judge Pittman concluded – citing the balancing test utilized by the United States Supreme Court in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) – that the "public corporation ban" statute (Tex. Alco. Bev. Code § 22.16) effectively imposes a burden on interstate commerce that is "clearly excessive" in relation to the putative local benefits. Judge Pittman determined that the statute's effect was unconstitutional, specifically violating the dormant Commerce Clause of the United States Constitution.

In reviewing the "consanguinity exception" statute (Tex. Alco. Bev. Code § 22.05) – which provides an exception to the limitation on the number of permits held by one company – Judge Pittman found that the statute imposed an arbitrary classification not rationally related to any legitimate state purpose in violation of the Equal Protection Clause of the United States Constitution. Based upon this ruling, Judge Pittman held that the unlawful discrimination should be remedied by stopping enforcement of both the "consanguinity exception" as well as the permit limitation to which the exception applies.

Based upon the constitutional violations found, Judge Pittman enjoined enforcement of three of the four statutes made the basis of Wal-Mart's lawsuit. However, the relief granted was stayed for a period of sixty days given the anticipated appeal of the decision to the Fifth Circuit, after which time the decision will almost certainly be further stayed pending the resolution of all appeals. The TPSA has already indicated its intent to appeal Judge Pittman's ruling.

Although current package store permit holders will be weathering a period of uncertainty for the immediate future, those retailers traditionally prevented from entering the Texas market that wish to sell alcohol in the state will undoubtedly be making preparations in anticipation of a ruling at the appellate level. Retailers currently in the Texas market or looking to enter should proceed with caution in ensuring continued compliance with Texas' complex and ever-evolving alcohol laws at the state, county, and local levels.

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