

# Business Has Standing to Challenge State Restriction by Alleging it Unconstitutionally Interferes with Commerce



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A big win for farmers and small businesses alike, this recent opinion from the Eighth Circuit recognizes the right to challenge a state law alleged to unconstitutionally impede the free market, even where the law hasn't yet been enforced.

The Eighth Circuit sided with small farm wineries in holding that they had standing to bring a lawsuit challenging the constitutionality of a state law restricting their business. The wineries wanted to expand their operations to create new products, work with new ingredients, and increase output. The state law restricting their desired growth had not yet been enforced against the wineries, and there was actually a loophole that the wineries could routinely use to forgo the state restriction. In fact, the loophole had been frequently used and had never been denied to any winery. But the farm wineries showed that they had experienced reduced borrowing power, operational efficiencies, and marketing opportunities because of the state restriction looming over their business. In issuing an opinion that captured the economic realities of today's marketplace, the court astutely observed that it is "economically imprudent" for the businesses to "base substantial business investments on the mere likelihood of receiving future exemptions from state law."

The Federal District Court initially hearing the case found that the farm wineries had failed to show standing to bring the case because their injury was not "fairly traceable" to the state restriction. However, the Eighth Circuit disagreed, holding that the farm wineries could proceed with their lawsuit because the state had the authority to enforce the law, even though it had not yet done so. This was enough to show injury, and to proceed with this challenge brought under the dormant Commerce Clause of the Constitution.

*Case Reference: Alexis Bailly Vineyard, Inc. v. Harrington, No. 18-1846, 2019 WL 3404201 (8th Cir. July 29, 2019).*