

"Labeling" the Government Shutdown as a First Amendment Violation?

BY ROBERT G. YOUNG • JANUARY 24, 2019

The no-end-in-sight government shutdown has thrown a wrench into the operations of brewers across the country. One brewer, DC-based Atlas Brew Works, is trying to do something about it. On January 15, Atlas filed a lawsuit against the federal government, arguing that the shutdown of the Alcohol and Tobacco Tax and Trade Bureau (TTB) amounts to a violation of its free speech rights.

Atlas has a seasonal beer (an apricot IPA) that it wants to distribute to its interstate network. However, the TTB has not issued its Certificate of Label Approval (COLA) for the beer, and it will not be doing do any time soon, as it is closed during the shutdown. Under the Federal Alcohol Administration Act, Atlas cannot ship its un-COLA'd beer without subjecting itself to criminal penalties.

Atlas asserts that the failure to obtain a COLA — directly caused by the government's failure to fund TTB operations — should not bar it from shipping its seasonal beer. In its Complaint, Atlas describes the COLA requirement as an "impossible condition" to fulfill in light of the government shutdown, and it claims that the specter of criminal penalties for shipping non-COLA'd beer under such circumstances is tantamount to a restraint on its right to free speech (beer labels are recognized as a protected form of free speech).

Notably, Atlas is not challenging the COLA system as a whole; it simply is asking the Court to suspend the COLA requirement until such time as the TTB is reopened (and, thus, it becomes possible to obtain COLAs once again).

The Court held a hearing on Atlas's request for emergency relief from the COLA requirement on January 22, and a ruling is expected in the near future.

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