

GRANTED

No. 03-1116 and No. 03-1120

Supreme Court, U.S.
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In The
Supreme Court of the United States

JENNIFER M. GRANHOLM, ET AL.,

Petitioners,

v.

ELEANOR HEALD, ET AL.,

Respondents.

MICHIGAN BEER & WINE
WHOLESALE ASSOCIATION,

Petitioner,

v.

ELEANOR HEALD, ET AL.,

Respondents.

On Writ Of Certiorari To The United States
Court Of Appeals For The Sixth Circuit

BRIEF OF MICHIGAN ASSOCIATION OF SECONDARY
SCHOOL PRINCIPALS, COMMITTEE FOR A
CONSTRUCTIVE TOMORROW, AMERICAN TRAUMA
SOCIETY, KIDS FIRST COALITION, TRAFFIC SAFETY
ASSOCIATION OF MACOMB COUNTY, TRAFFIC SAFETY
ASSOCIATION OF MICHIGAN, INC., NEIGHBORHOOD
ACTIVISTS INTER-LINKED EMPOWERMENT
MOVEMENT, AMERICAN VALUES, CONCERNED
WOMEN FOR AMERICA, EAGLE FORUM, SIXTY PLUS,
AND NATIONAL ASSOCIATION OF EVANGELISTS,
AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

In its Order of May 24, 2004, this Court granted certiorari to consider the following question:

Does a State's regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so, violate the dormant Commerce Clause in light of Sec. 2 of the Twenty-first Amendment?

PARTIES TO THE PROCEEDING

The Governor, the Attorney General, and the Chairperson of the Liquor Control Commission of the State of Michigan ("Michigan" or "State") were defendants-appellees below and are petitioners in No. 03-1116. The Michigan Beer & Wine Wholesalers Association ("MB&WVA"), a trade association of Michigan beer and wine wholesalers, was an intervening defendant-appellee below and is a petitioner in No. 03-1120.

Respondents in both No. 03-1116 and No. 03-1120 were plaintiffs-appellants below and are individuals Eleanor Heald; Ray Heald; John Arundel; Karen Brown; Richard Brown; Bonnie McMin; Gregory Stein; Michelle Morlan; William Horwath; Margaret Christina; Robert Christina; Trisha Hopkins; Jim Hopkins; and winery Domaine Alfred, Inc.

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

1

The *Amici Curiae* believe this case to be of tremendous importance to the welfare of persons under the age of 21 ("minors"), because the relief requested by Respondents would greatly increase the access by minors to alcohol, which already is at crisis level, and would render state alcohol regulation unenforceable. The attendant increase in consumption of alcohol by minors would result in a corresponding increase in deaths, injuries, and other alcohol related problems to minors, their families and their victims.

The Michigan Association of Secondary School Principals is committed to the improvement of secondary education (5th through 12th grades) in the State of Michigan, and has worked with the Governor's office, the Michigan Legislature, and the Michigan Department of Education to improve education, identify obstacles, and resolve problems affecting students in middle and high schools.

The Committee for a Constructive Tomorrow is a national non-profit corporation with 40,000 supporters and is charged with promoting socially responsible consumer public policies.

The American Trauma Society is a national non-profit association with 2,000 members created to save lives through improved trauma care and injury prevention.

¹ Pursuant to Sup. Ct. R. 37.6, *Amici* affirm that none of the *Amici* have a financial or commercial relationship with any of the parties to this case. This brief has been prepared solely by counsel for the *Amici*. No monetary contributions to the preparation and submission of this brief have been made by any person or entity other than the *Amici*, their members, or their counsel.

The Traffic Safety Association of Macomb County, Michigan, seeks to address significant issues related to highway safety, to reduce deaths, injuries, and property losses due to traffic collisions.

The Traffic Safety Association of Michigan, Inc. is a state-wide, non-profit corporation dedicated to providing traffic safety education and information for Michigan motorists and citizens.

The Neighborhood Activists Inter-Linked Empowerment Movement is a statewide Arizona non-profit organization, with 30,000 supporters dedicated to providing the public with tools to protect their neighborhoods and resolve neighborhood issues.

The Kids First Coalition is a grassroots organization of parents, grandparents, and future parents dedicated to advancing pro-child and pro-family policies and educating the country on the needs of children.

American Values is a non-profit national organization that works to educate public policy makers on issues affecting the welfare of families, which include protecting children from ready access to alcohol.

The Concerned Women for America is a national non-profit, non-partisan organization charged with promoting public policies to benefit women and families.

Eagle Forum is a national women's organization that promotes pro-family public policies.

Sixty Plus is a non-partisan national seniors' group that advocates on issues affecting the health and welfare of seniors.

National Association of Evangelicals is a non-profit association of evangelical Christian denominations, churches, organizations, institutions, and individuals that includes more than 45,000 local churches from 51 different denominations.

These diverse organizations have come together as *Amici* to oppose the efforts of Respondents to invalidate state statutes regulating the direct shipping of alcohol, which would cause a major increase in the number of alcohol-related traffic fatalities, injuries, assaults, and other crimes, especially among our youths.

SUMMARY OF ARGUMENT

Section 2 of the Twenty-first Amendment to the United States Constitution grants the states sweeping authority to regulate alcohol trafficking in recognition of states' historical police powers, the need for state-based alcohol regulation to address local issues and concerns, and the need for an effective means of enforcement of such regulations.

Fundamental alcohol regulation requires control over what types of alcoholic products will be sold; who will be permitted to sell and to buy alcohol; and how to ensure accountability for such sales. Michigan and most other states do not permit sales from out-of-state sources to be delivered directly to in-state purchasers because no feasible and practical enforcement mechanism can provide fundamental control over such sales.

All 50 states prohibit sales of alcohol to minors. If the states cannot control direct shipping, the states cannot protect against illegal sales to minors.

Pointing to a single element of a complex regulatory system that superficially appears to grant in-state wineries a "preference" of local delivery not granted to out-of-state wineries, Respondents seek to eliminate statutes prohibiting direct shipping.

In doing so, Respondents ignore the critical differences between in-state and out-of-state wineries. The state imposes a heavy burden of licensing, regulation, and enforcement on in-state wineries, and can impose serious penalties for non-compliance, including license revocation. The same level of regulation and enforcement cannot realistically be imposed on out-of-state wineries.

Moreover, the claim of disparate treatment of in-state and out-of-state wineries is a ruse. Respondents do not ask for the in-state "preference" to be struck down; their sole purpose is to eliminate state regulation of shipments of alcohol from out-of-state.

Also of concern are the ramifications of the Court's decision beyond the confines of the case. Although the certified question mentions only wineries, striking the prohibition against direct shipping would permit direct shipping from not only the 3,000 United States wineries, but also the thousands of other wineries worldwide. Moreover, producers of beer and spirits also would be able to ship their products, as would hundreds of thousands of out-of-state retailers.

It is this threat of deregulation, the concomitant expansion of alcohol access by underage persons, and the catastrophic consequences of this increased access that join the diverse *Amici* in this brief.

ARGUMENT

THE IMPORTATION AND SALE OF ALCOHOLIC BEVERAGES MUST BE CLOSELY REGULATED BY THE STATES TO PROTECT AGAINST UNFERRED ACCESS TO ALCOHOL BY MINORS.

A. Alcohol Trafficking Historically Has Been Heavily Regulated By The States.

Because of its potential for abuse, the importance of an enforceable system of alcohol regulation has long been recognized. Trafficking in alcohol has been the subject of two Constitutional amendments,² as well as federal legislation clarifying the nearly absolute authority of the states over alcohol trafficking.³ No other consumer product has received the same level of attention. As the Seventh Circuit noted in *Bridenbaugh v. Freeman-Wilson*, 227 F.3d 848 (7th Cir. 2000), *cert. denied, sub nom., Bridenbaugh v. Carter*, 532 U.S. 1002 (2001), a state may "control alcohol in ways that it cannot control cheese."

B. Preventing Underage Alcohol Access And Consumption Is The Public Policy Of All 50 States, And Is Fully Supported By The United States Government.

Particular concerns about the consequences of youth drinking resulted in the enactment of the National Minimum

² U.S. Const. amend. XVIII prohibited all manufacture and sale of alcohol; the Twenty-first Amendment repealed the Eighteenth Amendment, but in doing so, through § 2, expressly placed authority to control alcohol with the states. A proposed § 3 to the Twenty-first Amendment would have provided dual jurisdiction over alcohol regulation with the federal government, but was defeated.

³ Wilson Act, 27 U.S.C. § 121; Webb-Kenyon Act, 27 U.S.C. § 122.

Drinking Age Act⁴ in 1984, which threatened the loss of certain federal funding, prompted all of the states that had not yet done so, to set a minimum age of 21 for drinking alcohol. This Act has been credited with saving more than 20,000 young lives in the 20 years since enactment.⁵

In spite of these gains, underage access to alcohol and the related loss of lives, injuries, and other societal costs resulting from underage drinking remain a serious problem. On July 21, 2004, the STOP Underage Drinking Act⁶ was introduced in the House of Representatives.

Among the Congressional Findings of the Act are:

- (1) Drinking alcohol under the age of 21 is illegal in each of the 50 States and the District of Columbia. Enforcement of current laws and regulations in States and communities, such as *minimum age drinking laws*, zero tolerance laws, and *laws and regulations which restrict availability of alcohol*, must supplement other efforts to reduce underage drinking.
- (2) Data collected annually by the Department of Health and Human Services shows that alcohol is the most heavily used drug by children in the United States, and that —

(A) more youths consume alcoholic beverages than use tobacco products or illegal drugs;

⁴ 23 U.S.C. § 158.

⁵ Mothers Against Drunk Driving, <http://www.madd.org/aboutus/0,1056,1986,00.html> (last visited July 24, 2004).

⁶ H.R. 4888, 108th Cong. (2004).

(B) by the end of the eighth grade, 45.6 percent of children have engaged in alcohol use, and by the end of high school, 76.6 percent have done so; and

(C) the annual societal cost of underage drinking is estimated at \$53 to \$58 billion.

(3) Data collected by the Department of Health and Human Services and the Department of Transportation indicate that alcohol use by youth has many negative consequences, such as immediate risk from acute impairment; traffic fatalities; violence; suicide; and unprotected sex.

(4) Research confirms that the harm caused by underage drinking lasts beyond the underage years. Compared to persons who wait until age 21 or older to start drinking, those who start to drink before age 14 are, as adults, four times more likely to become alcohol dependent; seven times more likely to be in a motor vehicle crash because of drinking; and more likely to suffer mental and physical damage from alcohol abuse.

(5) Alcohol abuse creates long-term risk developmentally and is associated with negative physical impacts on the brain.

(6) Research indicates that *adults greatly underestimate the extent of alcohol use by youths*, its negative consequences, and its use by their own children. The IOM report concluded that underage drinking cannot be successfully addressed by focusing on youth alone. Ultimately, adults are responsible for young people obtaining alcohol by selling, providing, or otherwise making it available to them.

* * *

