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SUPREME COURT, U. S.  
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# Supreme Court of the United States

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October Term, 1972

No. **60** Original

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COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

vs.

STATE OF NEW YORK, STATE OF KANSAS, COMMONWEALTH OF MASSACHUSETTS, STATE OF NEW MEXICO, STATE OF SOUTH CAROLINA, STATE OF GEORGIA, STATE OF NEW JERSEY, STATE OF OKLAHOMA, STATE OF ALABAMA, STATE OF IDAHO, STATE OF IOWA, STATE OF MAINE, STATE OF MICHIGAN, STATE OF MISSISSIPPI, STATE OF MONTANA, STATE OF NEW HAMPSHIRE, STATE OF NORTH CAROLINA, STATE OF OHIO, STATE OF OREGON, STATE OF UTAH, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF WASHINGTON, STATE OF WEST VIRGINIA, and STATE OF WYOMING,

Defendants

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## MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

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## TABLE OF CONTENTS

	PAGE
Motion for Leave To File Complaint .....	1
Statement in Support of Motion .....	2
Complaint .....	6
Certificate of Service .....	10

## TABLE OF CITATIONS

### CASES:

Joseph E. Segram & Sons v. Hostetter, 384 U.S. 35 (1966) .....	2
United States v. Frankfort Distilleries, 324 U.S. 293 (1945) .....	2

### STATUTE:

28 U.S.C. §1251(a) (1) .....	1
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SUPREME COURT OF THE UNITED STATES

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October Term, 1972

No.                      Original

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COMMONWEALTH OF PENNSYLVANIA

*Plaintiff*

vs.

STATE OF NEW YORK ET AL.,

*Defendants*

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MOTION FOR LEAVE TO FILE COMPLAINT

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Invoking the original and exclusive jurisdiction of this Court under the Constitution of the United States and under 28 U.S.C. §1251(a)(1), the Commonwealth of Pennsylvania by its Attorney General, J. Shane Creamer, respectfully requests leave to file the complaint submitted herewith.

J. SHANE CREAMER

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*Attorneys for the Plaintiff,  
Commonwealth of Pennsylvania*

*Of Counsel:*

ALEXANDER J. JAFFURS

*Assistant Attorney General*

STATEMENT IN SUPPORT OF MOTION

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The Commonwealth of Pennsylvania, by its complaint, puts in issue before this Court the constitutionality of statutes, regulations and practices of defendant states which result in the extraterritorial interference with Pennsylvania's freedom to bargain for discounts including quantity and prompt-payment discounts in its purchase of alcoholic liquor and beverages.

The Twenty-first Amendment to the Constitution provides:

“The transportation or importation into any state territory or possession of the United States *for delivery or use therein* of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.” (Emphasis added.)

Admittedly, “that Amendment bestowed upon the state's broad regulatory power over the liquor traffic *within their territories*.<sup>1</sup> The issues raised by this present action, however, involve the substantial interference with interstate commerce and “*the extraterritorial effects*”<sup>2</sup> of a market insulation device known as the Liquor Affirmation Policy.

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<sup>1</sup> *Joseph E. Seagram & Sons v. Hostetter*, 384 U.S. 35, 42 (1966); *United States v. Frankfort Distilleries*, 324 U.S. 293, 299 (1945) (emphasis added).

<sup>2</sup> *Joseph E. Seagram & Sons v. Hostetter*, 384 U.S. 35, 43 (1966) (emphasis added).

Under the Liquor Affirmation Policy, as effectuated by the various statutes, regulations and practices of the defendant states, a vendor is precluded from selling alcoholic liquor or beverages within the defendant states unless that vendor affirms, warrants and represents that the price per unit of alcoholic beverages is no higher than the lowest price at which said unit is sold elsewhere in the United States. The consequence of this policy extends beyond the borders of the defendant states into Pennsylvania and controls the price Pennsylvania and ultimately the Pennsylvania consumer must pay for alcoholic liquor and beverages.

The adoption of this Liquor Affirmation Policy by the several states has interfered with Pennsylvania's ability to bargain for discounts including quantity and prompt-pay discounts. As the sole wholesaler and retailer of alcoholic liquor and beverages within its borders, Pennsylvania is the largest purchaser of such products in the United States.<sup>3</sup> As such, the vendors of alcoholic liquor and beverages save money in dealing with Pennsylvania because of volume sales. Pennsylvania could bargain for and receive price discounts and share these vendor savings by passing on such discounts to the Pennsylvania consumers absent a restrictive Liquor Affirmation Policy.<sup>4</sup> The

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<sup>3</sup> In the last fiscal year Pennsylvania sold more than 10 million cases of liquor involving nearly a half billion dollars in receipts. For example, during the same time, Pennsylvania paid 67 million dollars for liquor to one vendor and its subsidiaries.

<sup>4</sup> Pennsylvania, in this action, does not seek the total abolition of the Liquor Affirmation Policy but only seeks to have the extraterritorial perimeter of that policy defined in accordance with plaintiff's *right* to bargain for and receive discounts including quantity and prompt pay discounts.

difficulty arises when states, like New York for example, which does not have a single or a controlled number of wholesalers' demands by statute, an affirmation that its wholesalers and retailers be given the "lowest price" in the Nation. The consequence of such recent demand of states like New York is to raise the prevailing price structure, not to lower it.

For example, if a vendor were willing to give Pennsylvania a 5% discount because it purchased 100,000 cases of alcoholic liquor, it could not because other states would, in the application of their Affirmation Policy, demand that 5% discount even though only one case of the same brand of alcoholic liquor was purchased. Consequently, Pennsylvania does not receive such discounts and as a result, the Pennsylvania consumer is subsidizing the price of liquor in other states.

Your plaintiff will show that the effect of the Liquor Affirmation Policy on its face and as applied by the defendants is to raise prices and to interfere with commerce. This Court specifically reserved the question presented by your plaintiff, when in evaluating New York's Affirmation Statute it said:

"The serious discriminatory effects of §9 [New York's Affirmation Statute] alleged by appellants on their business outside of New York is largely a matter of conjecture. It is by no means clear, for instance, that §9 must inevitably produce higher prices in other states, as claimed by appellants, rather than lower prices sought for New York. *It will be time enough to assess the alleged extraterritorial effects of §9 when a case arises, that clearly presents them.*

Joseph E. Seagram & Sons v. Hostetter, 384 U.S. 35, 43 (1966).” (Emphasis added.)

**This is that case.**

It is respectfully submitted that the motion for leave to file the complaint be granted.

Respectfully submitted,

J. SHANE CREAMER

*Attorney General*

LAWRENCE SILVER

*Deputy Attorney General*

Department of Justice

Commonwealth of Pennsylvania

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*Of Counsel:*

ALEXANDER J. JAFFURS

*Assistant Attorney General*

## SUPREME COURT OF THE UNITED STATES

---

**October Term, 1972****No.            Original**

---

Commonwealth of Pennsylvania,

*Plaintiff*

vs.

State of New York, State of Kansas, Commonwealth of Massachusetts, State of New Mexico, State of South Carolina, State of Georgia, State of New Jersey, State of Oklahoma, State of Alabama, State of Idaho, State of Iowa, State of Maine, State of Michigan, State of Mississippi, State of Montana, State of New Hampshire, State of North Carolina, State of Ohio, State of Oregon, State of Utah, State of Vermont, Commonwealth of Virginia, State of Washington, State of West Virginia and State of Wyoming,

*Defendants*

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**COMPLAINT**

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The Commonwealth of Pennsylvania, by its Attorney General, J. Shane Creamer, files this complaint upon the following cause of action:

1. The original and exclusive jurisdiction of this Court is invoked pursuant to the Constitution of the United States and pursuant to 28 U.S.C. §1251 (a) (1).



2. The Commonwealth of Pennsylvania, plaintiff, is a state of the United States and is the sole wholesaler and retailer of alcoholic liquor and beverages within its borders and as such is the largest purchaser of alcoholic liquor and beverages in the United States, and except for the grievances herein stated, the plaintiff could bargain for and receive discounts, including quantity and prompt-pay discounts on its purchases of alcoholic liquor and beverages.

3. Defendants, State of New York, State of Kansas, Commonwealth of Massachusetts, State of New Mexico, State of South Carolina, State of Georgia, State of New Jersey, State of Oklahoma, State of Alabama, State of Idaho, State of Iowa, State of Maine, State of Michigan, State of Mississippi, State of Montana, State of New Hampshire, State of North Carolina, State of Ohio, State of Oregon, State of Utah, State of Vermont, Commonwealth of Virginia, State of Washington, State of West Virginia and State of Wyoming are states of the United States.

4. Pursuant to what is commonly called the Liquor Affirmation Policy, defendants by statute, regulation, and practice prohibit the sale of alcoholic liquor and beverages within their respective states unless the vendor affirms, warrants and represents that the price of each unit of alcoholic liquor or beverage is no higher than the lowest price at which said unit is sold elsewhere in the United States.

5. The Liquor Affirmation Policy implemented pursuant to those statutes, regulations and practices of the defendant states, violates the Constitution of the United States and more particularly the Commerce Clause and

statutes enacted pursuant thereto, in that those statutes, regulations and practices have an extraterritorial effect so as to raise the price of alcoholic liquor and beverages in Pennsylvania and to preclude Pennsylvania from bargaining with vendors of alcoholic liquor and beverages for discounts including quantity and prompt-pay discounts.

6. Pennsylvania has no plain, speedy or adequate remedy at law and has no remedy whatsoever in any other Court.

Wherefore, plaintiff, the Commonwealth of Pennsylvania requests that:

1. This Court preliminarily and thereafter permanently enjoin and restrain the defendants from enforcing and applying those statutes and regulations and continuing in such practices as to preclude Pennsylvania from bargaining for discounts, including quantity and prompt-pay discounts in its purchase of alcoholic liquor and beverages.

2. That this Court issue a declaratory judgment declaring that those statutes, regulations and practices of the defendant states are violative of the Constitution and laws of the United States and are void and of no effect, or in the alternative, that this Court issue a declaratory judgment declaring that those statutes, regulations and practices do not preclude Pennsylvania from bargaining for discounts including quantity and prompt-pay discounts in its purchase of alcoholic liquor and beverages.

3. That this Court issue such orders necessary to effectuate its declaratory judgments.

4. That this Court award the Commonwealth of Pennsylvania its costs herein expended and grant such

other relief as this Court may deem necessary, or proper, or just.

Respectfully submitted,  
s/J. Shane Creamer  
J. SHANE CREAMER  
*Attorney General*  
LAWRENCE SILVER  
*Deputy Attorney General*  
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Commonwealth of Pennsylvania*

*Of Counsel:*

ALEXANDER J. JAFFURS  
*Assistant Attorney General*

*Commonwealth of Pennsylvania*  
*County of Dauphin, ss:*

CERTIFICATE OF SERVICE

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I, Lawrence Silver, Deputy Attorney General for the Commonwealth of Pennsylvania, and a member of the Bar of this Court, hereby certify that copies of the Motion for Leave to File Complaint, Statement in Support of Motion for Leave to File Complaint, and Complaint were sent by first class, postage prepaid, and in the case of those 500 miles from Harrisburg, Pennsylvania, air mail, postage prepaid, upon the following:

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Attorney General of the State of Wyoming  
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s/Lawrence Silver  
Lawrence Silver



