

Supreme Court, U. S.
FILED

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MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

October Term, 1972

No. 60 Original

Commonwealth of Pennsylvania,
Plaintiff,

v.

State of New York, et al.,
Defendants.

On Motion For Leave To File Complaint

Brief of Defendant State of Maine

In Opposition

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Jurisdiction

Plaintiff moves for leave to file a
complaint in this Court, "under the
Constitution of the United States"
(supposedly Article III, § 2 of the
Federal Constitution) and under 28 U.S.C.

§ 1251(a)(1).

Question Presented

Whether the Liquor Affirmation Polity of defendant States is constitutional?

Statement

Pennsylvania requests leave to file a Complaint seeking a declaratory judgment from this Court that the Liquor Affirmation Policy, adopted by the plural defendant States, interferes with interstate commerce. Specifically, Pennsylvania says it wishes to bargain with vendors of alcoholic liquor and beverages on terms more advantageous than the terms now available, but that the reference Policy^{1.} precludes it.

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1. In footnote #3, page 3 of its Motion, Pennsylvania gives support for its textual boast of being the largest purchaser of alcoholic liquor and beverages in the Country.

Argument

I.

The Proposed Complaint Sets Forth No Controversy Between Pennsylvania and Maine.

Article III of the Federal Constitution states among other things that this Court possesses jurisdiction over controversies between two or more States. Pennsylvania has no quarrel with Maine; at least none is alleged. At best, Pennsylvania has a quarrel with vendors of alcoholic liquor and beverages.

Too, the Complaint is ambiguous. It claims that the Liquor Affirmation Policy results in raising the price of alcoholic liquor and beverages in Pennsylvania. (Complaint, p. 7-8) At the same time, Pennsylvania asserts that the case involves discount sales.

At page 4 of Pennsylvania's Motion, it is asserted that the Liquor Affirmation

Policy, in States like New York for example, has the consequence of raising the "prevailing price structure." We are left to infer that discounts are part of the prevailing price structure in the country.

II.

This Case Has Already Been Decided By This Court.

Pennsylvania attempts to distinguish this case from Joseph E. Seagram & Sons v. Hostetter (1966), 384 U.S. 35, but fails. The mention of a "prevailing price structure", at page 4 of the Motion, coupled with a lack of attack against that price structure, makes the cited case applicable decisional law. The new wrinkle here is discount; something other than the "prevailing price structure."

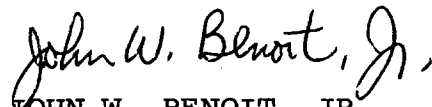
The Twenty-first Amendment, as construed in Joseph E. Seagram & Sons v.

Hostetter, supra, continues to declare that a State has broad power to regulate alcoholic liquor and beverage within its borders. California v. LaRue, 41 L.W. 4039.

Conclusion

For the reasons stated, the State of Maine moves that Pennsylvania's Motion for leave to file the Complaint be denied.

Respectfully submitted,



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Dated: February 7, 1973.

