



No. 101, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

VS.

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, STATE OF WYOMING, STATE OF ARIZONA,
STATE OF CALIFORNIA, STATE OF CONNECTICUT, STATE OF
DELAWARE, STATE OF FLORIDA, STATE OF GEORGIA, STATE OF
HAWAII, STATE OF KANSAS, STATE OF LOUISIANA, STATE OF
MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF
MINNESOTA, STATE OF NEBRASKA, STATE OF NEW JERSEY, STATE OF
NEW MEXICO, STATE OF NEW YORK, STATE OF OKLAHOMA, STATE OF
RHODE ISLAND, STATE OF SOUTH CAROLINA, AND STATE OF
TENNESSEE,

Defendants

PLAINTIFF'S REPLY BRIEF

Respectfully submitted,

GARY DIVITO
Chief Counsel, Pennsylvania
Liquor Control Board
Counsel of Record

LeROY S ZIMMERMAN
Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

Of Counsel:

Steven R. Fisher
Korn, Kline & Kutner
Twenty-First Floor
1845 Walnut Street
Philadelphia, PA 19103
(215) 751-0500

ALLEN C. WARSHAW
Chief Deputy Attorney General
Chief, Litigation Section

ANDREW S. GORDON
Senior Deputy Attorney General

TABLE OF CONTENTS

	<u>Page:</u>
ARGUMENT	1
CONCLUSION	9

TABLE OF CITATIONS

<u>Case:</u>	<u>Page:</u>
<u>Edelman v. Jordan</u> , 415 U.S. 651 (1974)	5

Constitution:

U.S. Constitution.....	2
Commerce Clause.....	2
Twenty-first Amendment...	2

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

No. 101, Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

VS.

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,
STATE OF WYOMING, STATE OF ARIZONA,
STATE OF CALIFORNIA, STATE OF
CONNECTICUT, STATE OF DELAWARE, STATE OF
FLORIDA, STATE OF GEORGIA, STATE OF
HAWAII, STATE OF KANSAS, STATE OF
LOUISIANA, STATE OF MARYLAND,
COMMONWEALTH OF MASSACHUSETTS, STATE OF
MINNESOTA, STATE OF NEBRASKA, STATE OF
NEW JERSEY, STATE OF NEW MEXICO, STATE
OF NEW YORK, STATE OF OKLAHOMA, STATE OF
RHODE ISLAND, STATE OF SOUTH CAROLINA,
AND STATE OF TENNESSEE,
Defendants

PLAINTIFF'S REPLY BRIEF

ARGUMENT

In its complaint, the Commonwealth of Pennsylvania alleges that each of the thirty-seven defendant states has

a statute, regulation or practice of requiring suppliers of distilled spirits to affirm that the prices charged to the state are the lowest prices at which the suppliers sell their products anywhere in the United States. Pennsylvania also alleges, and is prepared to prove, that the inevitable result of each of those statutes, regulations and practices is to establish a single national price for distilled spirits. Thus, for the reasons stated in Pennsylvania's original brief, those statutes, regulations and practices clearly violate the Commerce Clause to the United States Constitution. Certainly, at the very least, this case raises substantial and important questions concerning the relationship between the Commerce Clause and the Twenty-first Amendment -- a question which should be resolved by this Court.

In addition, this case is appropriate for the exercise of this Court's original jurisdiction. Specifically, Pennsylvania, as a state exercising its sovereign governmental powers, is suffering and will continue to suffer substantial financial harm due to the actions of other states. As was demonstrated in Pennsylvania's initial brief, it is harm which cannot be avoided through a lawsuit brought in any other forum. Under these circumstances, this Court should exercise its discretion to resolve this dispute.

As noted, these matters are addressed fully in Pennsylvania's original brief in support of its motion. However, a short response is required to several points made by the various defendants.

1. The actions of defendants have caused direct harm to Pennsylvania

in its sovereign capacity. If permitted to do so, Pennsylvania is prepared to demonstrate that the market for its distilled beverages is such that in a free market a large purchaser, such as Pennsylvania,¹ can obtain substantial price discounts. Obviously, if retail prices remained unchanged, the discounts would enable Pennsylvania to realize increased profits, and, therefore, increased revenues. On the other hand, Pennsylvania is prepared to prove that the demand for liquor is sufficiently related to price that, if retail prices were lowered, purchases of liquor from the state as a retailer would increase enough to result in increased revenues

¹Pennsylvania is one of the top five purchasers of nearly every type of distilled spirits.

from those sales.²

Certainly, matters affecting a state's fisc are directly related to its sovereignty. See Edelman v. Jordan, 415 U.S. 651 (1974). Thus, the inability to bargain for price discounts directly harms the Commonwealth in its sovereign capacity.

Moreover, and as importantly, price affirmation directly interferes with Pennsylvania's undisputed power, as a sovereign under the Twenty-first Amendment, to regulate the sale of distilled spirits in Pennsylvania. Specifically, by setting nationwide prices for distilled spirits, the challenged affirma-

²For similar reasons, an increase in price would result in decreased consumption and decreased revenues. Thus, there is no basis for defendants' argument that Pennsylvania's harm is self-caused by its own failure to raise prices.

tion laws and practices strip Pennsylvania of its power to regulate prices within its own borders.

2. Pennsylvania's claim is not multifarious and there is no adequate, alternative forum in which Pennsylvania can seek relief. Pennsylvania believes that each of the statutes, regulations and practices at issue in this case have a similar effect, both independently and taken together: the establishment of a single national price for distilled spirits. While there are thirty-seven different statutes, regulations or practices at issue in this case, each of those can easily be put in one of three classifications, depending upon whether they impose retrospective, prospective or contemporaneous price limitations. The proof of Pennsylvania's claim will involve relatively simple economic analysis of the market for distilled spirits

and the effect which the three types of challenged laws and practices have upon the behavior of the suppliers in that market.³ Thus, the trial of this matter should not be complex or prolonged despite the differences among some of the challenged laws and practices.

On the other hand, the defendant States apparently contend that each of their laws and practices are different and have different economic impact. Thus, it is unlikely that any given state would feel bound by a decision that another state's statute, regulation or practice was unconstitutional. Since the existence of any one statute, regulation or practice enforcing price affirmation

³prior to filing the instant action, the Commonwealth commissioned such an analysis and is, therefore, fully prepared to demonstrate that the challenged laws and practices at issue have the prohibited impact.

has the affect of establishing a nation-wide price, Pennsylvania would be required to bring thirty-seven different lawsuits to obtain the relief sought in this case. This is not an adequate alternative to a decision by this Court in this case.

CONCLUSION

The Court should assume original jurisdiction over this matter.

Respectfully submitted,

GARY DiVITO
Chief Counsel, Pennsylvania
Liquor Control Board
Counsel of Record

LeRoy S. Zimmerman
Attorney General

ALLEN C. WARSHAW
Chief Deputy Attorney General
Chief, Litigation Section

ANDREW S. GORDON
Senior Deputy Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

Of Counsel:
Steven R. Fisher
Korn, Kline & Kutner
Twenty-First Floor
1845 Walnut Street
Philadelphia, PA 19103
(215) 751-0500

