OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: LLOYD BENTSEN, SECRETARY OF THE TREASURY,

Petitioner v. COORS BREWING COMPANY

CASE NO: No. 93-1631

PLACE: Washington, D.C.

DATE: Wednesday, November 30, 1994

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IN THE SUPREME COURT OF THE UNITED STATES

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LLOYD BENTSEN, SECRETARY OF :

THE TREASURY, :

Petitioner :

v. : No. 93-1631

COORS BREWING COMPANY :

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Washington, D.C.

Wednesday, November 30, 1994

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:03 a.m.

APPEARANCES:

EDWIN S. KNEEDLER, ESQ., Deputy Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Petitioner.

BRUCE J. ENNIS, JR, ESQ., Washington, D.C.; on behalf of the Respondent.

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P R O C E E D I N G S

(10:02 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument next in Number 93-1631, Lloyd Bentsen v. The Coors Brewing Company.

Mr. Kneedler.

ORAL ARGUMENT OF EDWIN S. KNEEDLER

ON BEHALF OF THE PETITIONER

MR. KNEEDLER: Mr. Chief Justice and may it please the Court:

The court of appeals in this case held unconstitutional a provision in section 5(e) of the Federal Alcohol Administration Act that has regulated the interstate sale of malt beverages for almost 60 years.

Specifically, paragraph (2) of section 5(e) prohibits statements of alcohol content on the labels of malt beverages unless such statements are required by State law.

That provision was enacted soon after adoption of the Twenty-First Amendment, and was designed to implement it, and it reflected a considered judgment by Congress, as stated in the House committee report, that malt beverages should not be sold on the basis of alcohol content.

This restriction serves the substantial

governmental interest of not facilitating or encouraging the purchase or consumption of malt beverages for the purpose of getting intoxicated.

QUESTION: Mr. Kneedler --

MR. KNEEDLER: Yes.

QUESTION: -- here is both an advertising ban and a labeling ban --

MR. KNEEDLER: Yes.

QUESTION: -- for malt beverages?

MR. KNEEDLER: Yes.

QUESTION: But as I understand it, the advertising ban applies only in States that have imposed similar restrictions.

MR. KNEEDLER: That's correct.

QUESTION: But the labeling ban applies unless States affirmatively require disclosure.

MR. KNEEDLER: That's correct. By virtue of the way the Bureau of Alcohol, Tobacco and Firearms has construed it, the parenthetical clause in section 5(e)(2) specifically addresses the interaction of State and Federal law.

QUESTION: Well, that leads to a very curious result, because in a majority of States, then, it seems to me that the statute would leave the brewers free to advertise alcohol content on malt beverages but not to

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place that information on the labels, and that just seems a very odd scheme to me.

MR. KNEEDLER: Well, I --

QUESTION: Am I correct?

MR. KNEEDLER: There can be that difference in those States, but first of all, I -- Congress could reasonably conclude that having the alcohol content on the bottle, on the very product that is the subject of the commercial transaction, would enable -- facilitate impulse buying at the point of sale, so at the very time the consumer is going to buy --

QUESTION: Well, I thought the defense was something about encouraging price wars, or something, and I would have thought that advertising it would be much more likely to result in the problem --

MR. KNEEDLER: Right.

QUESTION: -- that the Government is concerned about than would putting a truthful piece of information on a label.

MR. KNEEDLER: Well, thus far, although I think the materials suggest that we're beginning to see some movement into traditional advertising, that has not been a problem, and perhaps because advertising is often at a national level, particularly media advertising, so that advertising, if it's not lawful everywhere, for instance,

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in network TV, that it wouldn't be placed because it wouldn't be lawful in a number of States into which it would go.

And of course, if the States perceive a problem in this area, they may enact laws addressing that.

QUESTION: But it certainly weakens the Government's position with regard to the justification for the labeling ban.

MR. KNEEDLER: No, I think it -- first of all, the point you're raising I think would only go to the application, in any event, to the labeling ban in those States that allow advertising but don't require the labeling, and thus far in this case respondent has not challenged the application of the labeling requirement on a State-by-State basis in that manner, and again, the substantial governmental interest here includes the interest in accommodating State regulations, so the labeling restriction applies unless a State strikes a different balance.

Now, if in those States that have not prohibited advertising the Federal regulation on labeling were thought to be somewhat undermined, that would be a problem only in those States. But again, that has not been the burden of respondent's argument in this case.

Respondent's submission of its labels to ATF was

across the board and, in fact, at page 61 of the Joint Appendix respondent asks, specifically asks ATF to consider its submission as a package, as a program, including, in fact, both advertising and labeling restrictions. ATF denied it except in those States that allowed it in the manner that you've described, and then respondent brought this suit under the APA to challenge ATF's restriction across the board.

If it -- if -- an as-applied, or a State-by-State challenge of the sort you're describing, would be a different lawsuit.

QUESTION: Well, Mr. Kneedler, am I right in thinking that the advertising ban is not being challenged here?

MR. KNEEDLER: That is correct. The advertising ban was sustained by the district court, and respondent has not challenged that.

In fact, it's interesting, at page 35 of the appendix to the petition, where the district court's decision on remand is set forth, the district court specifically acknowledges in the first paragraph on page 35a, I agree after hearing the evidence that attempts to market alcohol content as a product attribute are not legitimate attempts. They are contrary to substantial governmental policy.

That is precisely the judgment that was set forth in the House report in 1935. The district court accepted that very judgment with respect to advertising, but then inconsistently, in our view, declined to accept and recognize the very same purpose as it applies in labeling. As this Court --

QUESTION: Of course, labeling isn't always for promotive purposes. Sometimes you have warning labels. What if they said, warning, you have 4 percent alcohol in this stuff, that's dangerous?

MR. KNEEDLER: That is one type of labeling, but that is not the sort of labeling that respondent is promoting here. It's signif --

QUESTION: Well, they say it is. They say they want to inform the consumer about how much alcohol is in the beer.

MR. KNEEDLER: Well, with all respect, it seems quite clear from the record in this case that respondent's very purpose in challenging the labeling restriction was --

QUESTION: Mr. Kneedler, are we to look at the purpose? This is a flat ban. It says, thou shall not put the content of alcohol on the label. Is the constitutionality dependent on the motive of the particular challenger, when all that's at issue is whether

there can be a flat ban?

MR. KNEEDLER: No. It's relevant in this precise -- in this particular sense, and it's a sense that was recognized by this Court in both Posadas and in Central Hudson, and that is that a restriction such as this rests on the common sense judgment that a dampening of advertising or promotion will dampen the demand for the product, and in this case the restriction of the demand on the basis of this particular attribute, alcohol content, would dampen the demand to buy the product for the purpose of getting intoxicated on the basis of that attribute.

In Posadas and Central Hudson --

QUESTION: Is it common sense to allow that to be put on billboards but not on the label, and is it common sense not to allow the percentage to be shown, but to allow it to be called on the label and in advertising malt liquor, or I suppose supermalt liquor?

MR. KNEEDLER: With respect to malt liquor, in particular, last -- in the spring of 1993, ATF solicited public comments on precisely the use of malt liquor.

Historically malt liquor -- now, malt liquor is understood as a category of malt beverage that has a higher alcohol content, but historically malt liquor was a term that encompassed the entire category of malt beverages, and this is an understanding that goes way

back, so when those labels were first approved in the early sixties, ATF presumably concluded that malt liquor did not have a particular --

QUESTION: Had it changed its meaning by the early sixties? You don't think when it came out as malt liquor in the early sixties that wasn't known to --

MR. KNEEDLER: Apparently -- apparently ATF does not have an explanation in its records for why they were approved, but this is now being considered. But again, if malt liquor is thought to be a particular problem, then that's something that ATF can address under what respondent concedes to be its powers under the other labeling provisions, and ATF is considering precisely that.

QUESTION: Well, one step at a time is a fine thing when you're not in the First Amendment area, but it seems to me we demand a higher level of rationality when you're prohibiting the conveying of information, and I think it is, it seems to me, quite irrational to allow the notion that this beverage contains a higher than ordinary alcoholic content to be conveyed in all other ways but not by saying it has 4 percent alcohol.

MR. KNEEDLER: To reiterate, Justice Scalia, that rationale would apply only in those particular States where advertising was permitted and the labeling

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restriction applied. Much like Edge Broadcasting, this statute furthers the additional interest of accommodating --

QUESTION: Oh, I disagree. You can say malt liquor on the can.

MR. KNEEDLER: Oh, I'm sorry, but with respect to malt liquor, well, that -- that was not the basis of the district court, or court of appeals judgment in this case, and I think there is a question whether, I suppose a legislative judgment for ATF to make in the first instance whether malt liquor in fact conveys that sense.

QUESTION: Is it true that ATF itself is giving out the alcohol content? If someone calls and says, I'd like to know the alcohol content of Coors Beer, or some other beer, the ATF --

MR. KNEEDLER: Yes, one of the ATF witnesses at trial said that, but again, that I think furthers -- highlights that this is not a blanket prohibition on any public utterance or information about alcohol content.

QUESTION: But if the Government is giving out the information for the asking, what sense does it make to prohibit that information on the label so that the consumer will be saved a telephone call?

MR. KNEEDLER: Well, what it is, Justice Ginsburg, is the difference between making information

available for consumers who want to look to that information if they should want to compare on the basis of selecting on the basis of low alcohol content, for example, on the one hand, and on the other hand making, not allowing brewers and others to use precisely the alcohol content of the beverage for purposes of promoting it, and this --

QUESTION: It seems to me, Mr. Kneedler, that if you were to prevail in this case and one of us was assigned the majority opinion, we'd begin by saying, the Government has a legitimate interest in ensuring that consumers are not fully informed, and then after that the opinion would get rather difficult, it seems to me.

(Laughter.)

MR. KNEEDLER: Well, with all respect, Justice Kennedy, in 1935, when Congress looked at this precise question, and in fact before that in 1934, when the Federal Alcohol Control Administration looked at this question, there was virtually unanimous agreement among the brewing industry itself that competition on the basis of alcohol content specifically including the labeling was --

QUESTION: Well, there probably was unanimous agreement that all competition was undesirable, too, in that time.

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MR. KNEEDLER: Well, but -- but --

(Laughter.)

QUESTION: That was a pretty rigid industry in 1933.

MR. KNEEDLER: Well, but first of all in the --

QUESTION: One of the classic examples, the antitrust enforcement throughout this industry, at that period.

MR. KNEEDLER: Well, but the Twenty-First Amendment, which had just been adopted, recognizes that there can often be a very substantial governmental interest in not promoting competition on the basis of, in particular, alcohol --

QUESTION: On the basis of alcohol content for this rather limited product, but what about everything else, like wine, and whiskey, and other alcoholic beverages? Why doesn't the same interest work there?

MR. KNEEDLER: Well, the problem that Congress had before it in 1934 --

QUESTION: As the industry presented it.

MR. KNEEDLER: -- was one specifically related to malt beverage and the behavior of brewers in the malt beverage industry that in fact had promoted beer as an intoxicant rather than as a beverage or as a food type beverage.

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In Posadas, for example, the Court recognized that Puerto Rico had not prohibited advertising concerning all forms of gambling, but had focused on the particular form of gambling that had led to the particular social ill that was being addressed, in that case casino gambling, and this case, in our view, is exactly like Posadas and in fact --

QUESTION: But Mr. Kneedler, one thing we know about Posadas is fairly recent, so the legislature could have taken into account that commercial advertising is subject to a First Amendment check. Isn't it true that back in 1935 there was no notion that commercial advertising was within the First Amendment --

MR. KNEEDLER: I --

QUESTION: -- so that wasn't the attitude to this kind of legislation more or less anything goes?

MR. KNEEDLER: Well, I think the point you're making in fact cuts the other way.

This statute was passed in the immediate wake of the Twenty-First Amendment, which conferred on the States what this Court has recognized as an extra measure of power to regulate in the area of alcohol production and sale and, in fact, traditionally the alcohol industry has been subject to perhaps the most stringent regulations of any area for -- and principally to regulate access to the

product.

QUESTION: There was once a case in this Court of a statute that regulated the sale of, in fact, a malt beverage, and the law was defended -- this was the law that said boys couldn't buy 3.2 beer until they are 21, girls could at 18.

MR. KNEEDLER: Right.

QUESTION: The defense was, boys drive more, drink more, commit more alcohol-related offenses. All of that was true. That was shown to be true, and yet this Court held the law unconstitutional despite the Twenty-First Amendment, so I don't buy your argument that because we're in Twenty-First Amendment territory, therefore the constitutional checks on Government action are so diluted that we don't have to worry about them.

MR. KNEEDLER: I -- our submission is not that the First Amendment is inapplicable in this context, and in the case you're speaking of, that was a situation where the State was operating in an area where class-based stereotypes were simply not -- were not permissible.

In this case, first of all in the First Amendment speech case, both before and after Craig v. Boren, this Court has recognized in California v. LaRue and subsequent cases that the First Amendment in connection with the sale of alcohol has to be accommodated

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or the State government may properly accommodate the First Amendment to the compelling governmental interest in regulating alcohol.

And in LaRue, in fact, the Court deferred to what it termed the reasonable judgment by the California legislature that nude dancing should not take place where alcohol is sold even though it was alleged that the conduct there should have been examined under the O'Brien test, and the Court said that the O'Brien test was unnecessary precisely because the State was operating in an area governed by the Twenty-First Amendment.

And we think that if that rationale applied in LaRue, it applies a fortiori here because what we were talking --

QUESTION: Even though you don't have a nude dancer.

(Laughter.)

MR. KNEEDLER: But what we do have is, we think, something even more compelling, and that is that this Court has recognized that commercial speech is subject to regulation precisely because it is closely related to commercial transactions.

QUESTION: Mr. Kneedler, what do we do if we have a case in which Congress has a legitimate and sustainable interest in restricting commercial speech when

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it passes a statute, but then because of the passage of time and changes in marketing and changes in consumer habits, that interest is quite evidently, let's assume, no longer legitimate, no longer compelling?

Is the statute then subject to attack, do you think, or can you defend it on the grounds that at the time it was enacted there was a legitimate interest?

MR. KNEEDLER: Oh, I think the statute carries with it a strong presumption that the circumstances that gave rise to it continue to obtain, and I do -- and I think it's important that what is being alleged here are changes in the market, or changes in consumer preferences, which are themselves subject to change and, in fact, one thing that respondent doesn't acknowledge is that the very consumer preferences that respondent is suggesting are happening -- a push toward low alcohol beer -- are undoubtedly influenced in large part by the very restrictions that respondent is challenging in this case.

QUESTION: So you cast it something in terms of a presumption and indicate that perhaps consumer tastes being fickle would change in the near future and this statute would again --

MR. KNEEDLER: Yes, but I also think that what -- where the governmental regulation is directed to market influences, that the fact that the market might

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change doesn't alter the fact that there is an inherent possibility that a certain type of advertising will promote the conduct, and so --

QUESTION: Mr. Kneedler, what evidence does the Government have, what hard evidence, that there will be a war of brewers fighting to put in more expensive alcohol into their beer when this -- what hard evidence is there?

MR. KNEEDLER: Well --

QUESTION: I have friends who consume hard whiskey, and they tell me that the alcoholic content of that has gone down over the years, to their great disappointment, from 90 --

(Laughter.)

QUESTION: From 90 to 86 to 80.

MR. KNEEDLER: Well, first of all, even if some segments of the market, on average, the alcohol content is going down, that doesn't mean that the governmental purpose here is not directly advanced as to those portions of the market where there would be promotion on the basis of high content.

QUESTION: If there's any evidence that there would be a price -- that there would be a, you know, an alcoholic content war.

MR. KNEEDLER: Well, there is -- there is --

QUESTION: What evidence is there such a thing

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would happen?

MR. KNEEDLER: Several things I would point to. First of all was the very substantial evidence in 1934 and 1935 when this was first adopted by the Federal Alcohol Control Administration and by Congress, and then today, with respect to the malt beverage -- excuse me, the malt liquor segment of the market, which is a market that I think there's general acknowledgement it's a higher alcohol content beer, or malt beverage, and it is promoted on the basis of its alcoholic content.

And also, again, with respect to Coors, the record contains cards that were handed out by Coors, and in fact Coors entered into a settlement with ATF, or at least handed out by a distributor, identifying the alcohol content of Coors beverages as compared to other beers within various price ranges.

QUESTION: Mr. Kneedler, supposing that the market is consumed of a variety of consumers, some of whom want to get drunk as fast as they can, and they're the people you're concerned about, and others of whom would like to be careful and moderate in their drinking and be able to drive without violating the statutes and so forth. They have an interest in knowing how much alcohol is in the beer, not for that purpose but for a good, legitimate purpose of safety, and health, and all the rest.

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Do we weigh their interest in the balance, or is it sufficient to sustain the statute to say, well, maybe the 15, 20 percent of the people are hard drinkers and want to get drunk, and we're going to focus on them and ignore the others? Is that a sufficient justification for sustaining the statute?

MR. KNEEDLER: For the most part, yes. I mean, the Court made this point in Central Hudson, for example, in -- where the Court said it was up to the agency to balance the judgment as to whether the off-peak and on-peak electric demand would go up or down depending on what sort of advertising would take place, and we think a similar point is true here.

What there is, there may be competing interest with respect to whether disclosure of the content would actually further -- would, on balance, be preferable, or whether not allowing promotion of the product on the basis of the precise attribute that the Twenty-First Amendment addresses, whether prohibiting that is, on balance, the preferable approach.

QUESTION: Is there any other example in all of food and drug labeling law where knowledge is prohibited, knowledge of the content of what one is ingesting is prohibited on the label?

MR. KNEEDLER: Well, I suppose in this sense,

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that if the Food & Drug Administration prescribes a certain list of ingredients that shall be on there and nothing else --

QUESTION: Is there a law? Here we're dealing with a statute passed by Congress. Has Congress said in any -- for any other food or drug, there shalt not tell the public what's in this commodity?

MR. KNEEDLER: Not that I'm aware of, but again, going back to Justice Stevens' point, it really is a question of striking a balance, and what this statute does, for example, is to allow the States in the exercise of their Twenty-First Amendment power to strike a different balance and perhaps conclude that the interest in disclosure outweighs the concerns about promoting the product for the purposes of getting intoxicated, and in -- on page 16a of --

QUESTION: But supposing the market is equally divided between the two kinds of people I described, does the First Amendment require us to give preference to one interest rather than the other?

MR. KNEEDLER: I don't believe so. I think as long as --

QUESTION: The First Amendment is neutral on whether there should be disclosure and public knowledge of important information.

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MR. KNEEDLER: I think as long as the legislature could reasonably conclude --

QUESTION: That half the people would benefit from a paternalistic denial of information --

MR. KNEEDLER: Well, half the people might benefit, but the risks associated with the other half getting the information might be far worse.

This Court has recognized in the past the dangers associated with alcohol consumption, and it's precisely the people most prone to use alcohol -- young people, for example, unsafe driving on the highway, who would be attracted to the alcohol because of its higher content.

QUESTION: Mr. Kneedler, what test or standard do you suggest that we apply in testing this ban on commercial speech? Ordinarily, we would apply the Central Hudson test, but it seems you are urging us not even to employ that standard.

MR. KNEEDLER: We think the statute satisfies the Central Hudson test for the reasons I've explained. It directly advances the goal of not promoting alcohol consumption for the purpose of getting intoxicated, and it's tailored to that end by focusing on that attribute, but we do think it's significant that this regulation takes place in the context of what this Court recognized

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in Posadas as socially harmful activities.

Although Posadas involved gambling, it also specifically identified alcohol consumption as another socially harmful activity, and like gambling, it can have adverse consequences on third parties. It's not simply the individual himself or herself who might want the information, but it may have --

QUESTION: The Government can look over the vast range of activities that are lawful, that are not wicked enough to be made unlawful, and say, well, some of them are questionable enough that we don't want the people to have information about them.

I mean, that has great possibility. What about automobiles? I guess car manufacturers can be prohibited from advertising how fast a car can go.

MR. KNEEDLER: No, we think that --

QUESTION: Perhaps even how many horsepower the engine has.

MR. KNEEDLER: We think the --

QUESTION: People tend to drive too fast.

MR. KNEEDLER: We think the activities identified in Posadas are ones in which there is a tradition in history of -- of considerable social ill, of governmental concern, and a history of stringent regulation.

QUESTION: That's not so with driving automobiles?

MR. KNEEDLER: It may --

QUESTION: It's hard to think of what's more heavily regulated than that.

MR. KNEEDLER: But the -- I suppose one could identify the categories associated with morality or vice, but in this case it's not even necessary to identify what the category might be in the abstract on the basis of Posadas. Here, in --

QUESTION: But even in Posadas, with gambling, that was advertising that was justified, not refusal of labeling. That wouldn't justify a statute that said that the black jack table can't post the actual odds of winning or losing, or something like that, would it?

MR. KNEEDLER: But in this Court's decision in Kordel it recognized that labeling is a form of advertising, but what I --

QUESTION: You think anything that you can prohibit in terms of advertising you can also prohibit in labeling. That's your solution?

MR. KNEEDLER: At least with respect to alcohol, and we think in this case there's no need to consider what the parameters of the Posadas category might be, because the Twenty-First Amendment embodies in the Constitution

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itself the compelling governmental interest in regulating that category of commercial activity.

QUESTION: But the Twenty-First Amendment, Mr. Kneedler, conferred authority on the States, not on the Federal Government.

MR. KNEEDLER: Yes, but this statute among other things advances the State interest because States -- a number of States, in fact almost every State, either by operation of this statute or their own statutes, have a restriction on labeling.

But my point is that the Twenty-First Amendment, while conferring authority directly on the States, does recognize in the Constitution itself the important governmental interest in regulating alcohol.

QUESTION: Do you think that if we rule in favor of Coors that the State statutes would necessarily be invalid too, State antilabeling?

MR. KNEEDLER: It would at least call them into question, and it doesn't seem to us that the governmental interest in this should necessarily depend upon a State-by-State examination of the interest.

QUESTION: Well, then it would seem to me to follow from that that the State statutes would be invalid as well.

MR. KNEEDLER: Well, I think the States should

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not be precluded from demonstrating what their interests are and what information has been -- has been gathered, and on what basis they acted.

QUESTION: What interests would the States have that you have not been able to identify and adduce in your brief?

MR. KNEEDLER: Well, if the Court were to conclude, contrary to our submission, that there had to be broader factual findings, we wouldn't think that the States should be foreclosed from doing that.

But again, the Twenty-First Amendment we think empowers the States to nip in the bud the potential for promotion of alcohol on the basis of alcohol content. They should not have to wait for the damaging effects.

If I could reserve the balance of my time.

QUESTION: Very well, Mr. Kneedler.

Mr. Ennis.

ORAL ARGUMENT OF BRUCE J. ENNIS, JR.

ON BEHALF OF THE RESPONDENT

MR. ENNIS: Mr. Chief Justice, and may it please the Court:

The labeling prohibition bans factual information that is concededly truthful, accurate, and not misleading. The Government's assertion that Congress wanted to ban even accurate information in order to deter

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strength wars finds no support in the text of the act, in the committee reports, the Senate report or the House report, in the floor debates, or in the congressional testimony. Congress' articulated and only concern was the prevention of false or misleading speech.

In any event, two courts have found that there is no evidence that accurate disclosure of alcohol content on beer labels would result in strength wars. To the contrary. They found that the vast majority of consumers would use that information to choose moderate or low strength beers.

QUESTION: Well, Mr. Ennis, how do we treat that here? Is it an appropriate function for, say, a district court to say that, well, we know that Congress thought there were going to be strength wars but we don't think there will be, therefore the statute that Congress passed is invalid?

MR. ENNIS: Well, Chief Justice Rehnquist, even if it were clear that Congress thought there would be strength wars, and I'll return to that in a moment, because there's no reason to think Congress did, it's still the requirement under the Central Hudson test for the Court to determine, based on the evidence, whether the means chosen by Congress would actually advance, directly and materially, that goal.

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In this case, applying the central Hudson test, both district courts found there was no evidence that, even if that was the congressional goal, this labeling ban would further it.

QUESTION: And no deference is given to the congressional determination that it was?

MR. ENNIS: Your Honor, there could be some degree of deference to congressional findings that there would be strength wars, but in this case there were no congressional findings whatsoever, and if you look at the legislative history of the act, and even the legislative history of the precursor FACA regulations, you will find no reason to believe that Congress was the least bit concerned with strength wars.

QUESTION: I'm sorry, you think a statute survives judicial attack if Congress makes findings which it would not survive if Congress didn't, so we're telling Congress to legislate in a certain fashion?

MR. ENNIS: No, no, not at all, Justice Scalia.

QUESTION: Don't we assume that the necessary findings sustain any congressional statute? Isn't that the assumption?

MR. ENNIS: No, Justice Scalia, it's not. As this Court pointed out in the Sable case, it was precisely the absence of any congressional findings of fact that

resulted in the striking down of that law under the First Amendment.

The only point I'm trying to make is that in terms of deference --

QUESTION: This would be valid if there were findings of fact --

MR. ENNIS: No.

QUESTION: -- but since Congress did not make findings of fact it's invalid?

MR. ENNIS: No. If Congress had made findings of fact, then there would be an argument that the courts should show some deference to those congressional findings of fact. It should never --

QUESTION: But otherwise a statute could be valid, could be invalid, we don't assume that the findings were there?

MR. ENNIS: You simply apply the Central Hudson test. There's no congressional finding to which the Court should defer.

QUESTION: That's not my understanding. I think every piece of legislation comes to us with a presumption of validity, with a presumption that the -- it's not a conclusive presumption, but certainly we take it that going in, Congress did its job.

MR. ENNIS: That's why statutes are subjected to

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judicial review under the Central Hudson test, and on applying the Central Hudson test, the Court found there was no evidence -- no evidence that in fact accurate disclosure of alcohol content on beer labels would result in strength wars.

And to return to your question, Chief Justice Rehnquist, those concurrent findings of fact by two lower courts should be binding here. The Government is inappropriately attempting to reargue the very same evidence it argued in the lower courts.

QUESTION: That's the sort of finding just as if two lower courts had made a finding in a diversity accident case that the stop light was green rather than red?

MR. ENNIS: Your Honor, essentially the answer to that question is yes. I realize this is a First Amendment case, but the Court's special rule for de novo review of lower court findings of fact in First Amendment cases has always been applied in cases where the lower court findings of fact were against the First Amendment --

QUESTION: Is this truly a finding of fact when you're challenging what is thought to be a legislative premise?

MR. ENNIS: It is truly a finding of fact, Your Honor. There were witnesses and testimony and studies and

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hearings on the empirical question of whether disclosure of alcohol content would result in strength wars, and the evidence --

QUESTION: As of 1934?

MR. ENNIS: As of the present time, Your Honor.

QUESTION: Well, how could that contradict a congressional determination as of 1934?

MR. ENNIS: There was no congressional determination in 1934.

QUESTION: Well, how could it contradict a congressional presumption?

MR. ENNIS: There was no congressional presumption in 1934. The point --

QUESTION: What if -- just to isolate this particular issue, what if there had been? What if -- let's say, assuming for the sake of argument, that it was clear that Congress thought there would be strength wars in 1934, could a finding by a district court in 1992 that in 1992 there was no danger of a strength war, could that upset a congressional determination in 1934?

MR. ENNIS: Yes, absolutely, Your Honor, it could. That's not this case, and we don't need to show that in this case, because in this case there were no such findings in 1934.

If you'll look at the congressional hearings and

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the FACA hearings, you'll find that the sole and exclusive concern was that beer -- unlike wine and spirits, beer should not be sold on the basis of alcohol content because at that time technologically it was impossible to determine accurately the alcohol content of beer, so a statement that this beer contains 3 percent, 4 percent, 5 percent, was inherently likely to be false and misleading. That was not true with respect to wine and spirits.

Structurally, the fact that the same law prohibits disclosure of alcohol content of beer but permits and, in fact, requires alcohol content of wine and spirits, cannot be explained if strength wars was the objective, but can be explained if preventing misleading speech was the objective.

QUESTION: So Mr. Ennis, you are conceding that in 1934, '35, there was a legitimate documented purpose for this statute. That is, one could not accurately gauge the percentage of alcohol in malt beverages?

MR. ENNIS: That's correct, Justice Ginsburg, we do concede that, but the Government conceded in this case that the information at issue in this case is accurate.

Technology has changed. It is now as possible for producers of beer to determine the alcohol content of the products precisely, as it is for producers of wines

and spirits, and therefore the Government has conceded that this ban cannot be defended on the traditional ground for defending restrictions on commercial speech, namely that the speech would be false or misleading.

QUESTION: Mr. Ennis, surely there are different classes of consumers of liquor, wine, and beer. I mean, one doesn't find high school students hanging around the street corner drinking rose wine, and if that's the class of consumer one is worried about, it makes sense to have a different rule for beer than one might have for hard liquor or wine. I don't know that that's irrational.

MR. ENNIS: Well, Your Honor, first of all, hopefully the high school students wouldn't be drinking anything. That should be prohibited under the general law.

QUESTION: But that happens, and that is the kind of thing that the law may well be concerned with.

MR. ENNIS: There was actually evidence in this case, Your Honor, and the agency itself agrees, that there is a substantial market overlap in the markets for beer, wine, and spirits.

That is why, when the agency, after the court decisions below, issued regulations requiring or permitting the statement of alcohol content on beer labels, it required that it be stated as a percentage of

volume precisely so that consumers could compare like with like, could compare with wine and spirits.

If I could turn for a moment to the House report, which Mr. Kneedler began by discussing, that passage from the House report to which he referred is, in my opinion, taken entirely out of context. The House report does say --

QUESTION: Are you reading from somewhere that we can look at?

MR. ENNIS: Yes. I'm reading from the actual House report itself, which is page 143 of the House report.

QUESTION: Is that somewhere in the briefs, or --

QUESTION: No, Your Honor, I'm afraid it is not, except that isolated passage.

The House report states, quote, malt beverages -- malt beverages should not be sold on the basis of alcohol content because "attempts to sell beer and other malt beverages on the basis of alcoholic content are attempts to take advantage of the ignorance of the consumer."

Now, if you will look at the -- that House report was under the chairmanship of Representative Cullen. When Representative Cullen introduced this bill

on the floor of the House, at the Congressional Record for 1935, page 11715, he explained precisely what that meant. He said, quote, that the bill was designed "to prevent the unfair trade activities of those in the industry who chisel and take advantage of the ignorance of the consumer by dishonest labeling and advertising." He went on to say that the provisions of the act were designed --

QUESTION: Well, he may not have meant that. I mean, that sounds good. That's how I would market the bill, too.

MR. ENNIS: He surely meant that, Your Honor, because --

QUESTION: Was it -- do we know how many people were there when he said that? I mean, maybe nobody heard him.

(Laughter.)

MR. ENNIS: We don't even need to know how many people were there when he said that, Your Honor, because the House report itself, and the Senate report itself, say that the purpose of the bill is to prevent fraud and deception.

And the reason for that was there was unrebutted testimony -- everyone agreed that in 1935 you could not accurately determine the content of malt beverages, but you could of wine and spirits. That is structurally why

Congress prohibited disclosure of alcohol content for beer but required it for wine and spirits.

QUESTION: When, between 1934 and the present, did it become possible to measure the alcoholic content of beer, because I remember in the service, all you could buy in PX's was something called 3.2 beer, so apparently by 1943 they at least thought they had learned to measure the content of beer.

MR. ENNIS: Well, that's a good question, Chief Justice Rehnquist. I don't know the answer, and it's not in the record when that became possible, but it is undisputed that it is possible, and that this ban cannot be defended on the ground of preventing false and misleading speech.

QUESTION: I take it the Government could defend its statute on the grounds that even though there was no legitimate purpose at the time of its enactment, a legitimate purpose has arisen since.

MR. ENNIS: Well, that's correct, Justice Kennedy, and the Government has attempted to do that by asserting in the lower courts the strength wars interest, and now asserting in this Court the Twenty-First Amendment interest, and let me turn to those.

As I've noted, empirically the lower courts found there's no evidence that the labeling ban would

further the strength war interest.

QUESTION: But you concede that at least as an interest on the first prong, or, I guess, the second prong, Central Hudson, that's a perfectly legitimate interest for the Government to have, so your attack here goes simply to whether it furthers, and whether it fits?

MR. ENNIS: Your Honor, I do not dispute for purposes of this case that the Government could have a legitimate interest in deterring strength wars if that means deterring people from continually increasing the alcoholic content of their benefits. I do not dispute --

QUESTION: But the way you pose your -- put your answer, I assume you are implicitly claiming that the Government doesn't really entertain that interest.

MR. ENNIS: I think it clearly doesn't really entertain that interest, because if it did --

QUESTION: Well, why don't we take the Government's statement, the statement of the Government's lawyer, as representing the Government's position on its interest and then see whether in fact there is a furtherance and there is a fit?

MR. ENNIS: Well, the reason we don't, Your Honor, is that structurally, if that were the Government's interest, why would Congress not have prevented disclosure of alcohol content on wines and spirits, which are much

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higher content?

Second, if that were the Government's interest --

QUESTION: Well, maybe the Government doesn't have a good argument in support of its interest in the sense that it should have had an interest in doing more than it did.

MR. ENNIS: Oh, I understand your question now, Justice Souter. Let me be clear, then.

I do not dispute that the Government, namely the executive branch, is today asserting a strength war interest. I take that as given. What I do dispute is that Congress in 1935 had a strength war interest in mind.

QUESTION: Oh, agreed, but your answer to Justice Kennedy, I thought, was that in fact the Government interest could change over time, and I thought it was implicit in what you said that the Government doesn't have to reenact the statute for the purpose of manifesting a new interest that could legitimately be considered under Central Hudson.

MR. ENNIS: I agree with that --

QUESTION: Okay.

MR. ENNIS: -- Justice Souter. In this case, that interest, the strength war interest, was subjected to a trial, and empirically was found that the evidence, the

labeling ban, did not further the Government's interest. In fact, overall, the overall effect of the labeling ban is actually to disserve the Government's asserted interest in strength wars.

QUESTION: Isn't that a strange determination for judges to make? I mean, it seems to me that it's Congress and the other political branch that judges what means are most appropriate to certain ends. Do you really think a Federal district judge can sit in judgment on whether, Nationwide, this particular interest is furthered or not?

MR. ENNIS: Your Honor, I think that's what district judges are required to do under the Central Hudson test, and appropriately so, because we're talking about a ban on speech which is concededly truthful, accurate, not misleading, and important to consumers.

Let me turn, though, to the question -- to the point your question suggests. Even assuming that this law did marginally advance the Government's strength war interest, it is certainly not reasonably tailored, under the fourth prong of the Central Hudson test.

In fact, it is completely unnecessary. The Government could directly and more effectively achieve both its strength war interests and its Twenty-First Amendment interest simply by limiting the alcohol content

of beer except in States that permit a higher limit.

The Government has actually conceded in this case that its strength war objective could be fully satisfied by a Federal alcohol content limit. It lamely argues, however, that such a Federal limit would be inconsistent with its Twenty-First Amendment interest. That is plainly not so.

Simply by providing the same kind of State override for a Federal alcohol limit that the law already provides for the labeling ban, the Government could directly and more effectively achieve both of its asserted interests, so even if the law marginally advanced the Government's interest, it surely fails the reasonably tailored prong.

QUESTION: Can I go back for a second? I need some help on this point, which may be just a technical point, but it is one I need some help on.

Suppose that -- I think, divide the States into two categories, States that have an advertising ban, and States that don't. All right, as to the second group of States, I don't know what interest this fulfills, this labeling ban, so I guess I agree with you on that one.

But as to the first, what about their argument that this helps -- this helps the States enforce their Twenty-First Amendment right to get rid of all these trade

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wars and so forth, and suppose I thought that. Then what should we do?

And suppose I'd also thought that they've got the interpretation of the statute wrong, that that word require doesn't mean that you distinguish between (e) and (f), but rather the second part of (f) sweeps both, and it was just a little overkill, that word require.

Suppose I thought all those things. I'm not saying I do, but suppose I did, then what would you do?

MR. ENNIS: Well, Justice Breyer, you've asked two questions. Let me try to answer them.

QUESTION: Probably about four.

MR. ENNIS: First, the Government has described the first question you asked basically as its border-crossing argument. The argument is that by banning labeling or advertising in States, that will facilitate the interests of those 11 States who choose a State law to limit the alcohol content of beverages. That totally ignores the fact that in two-thirds of the country, State law permits advertising.

QUESTION: All right, so that I'm thinking of those 11. Now, suppose you interpreted the statute to mean that what they had in mind was the advertising and labeling bans are supposed to exist only where there are State advertising and labeling bans. Why wouldn't I

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interpret the statute that way?

MR. ENNIS: Your Honor --

QUESTION: Because there certainly is strong language supporting that. And then if you do interpret the statute that way, then why wouldn't it be constitutional as an effort to simply prevent what at that time they thought would have been shipping from out-of-State a label that would have violated the State law? That's what I think of that argument as being.

MR. ENNIS: Justice Breyer, we have not challenged the interpretation of the statute.

QUESTION: I know. No one has. That's why -- we're supposed to uphold statutes as constitutional if they can be so upheld, reasonably --

MR. ENNIS: We -- we --

QUESTION: -- and that's why I'm uncertain, as a technical matter, what one is supposed to do in this case --

MR. ENNIS: We --

QUESTION: -- if -- with that kind of an argument. That's why I'm asking you.

MR. ENNIS: We do agree, however, with Your Honor, and we said in our brief, that in our view the proper interpretation of the statute is that both the labeling ban and the advertising ban only apply in States

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that themselves independently prohibit labeling or prohibit advertising. We think that's the proper construction of the statute, though we haven't challenged the contrary construction.

But even if we're talking about a law that parallels State law, it would still be unconstitutional.

QUESTION: Why?

MR. ENNIS: Because if the State wanted to prohibit accurate, truthful information on beer labels for the same strength war objective, then on the record in this case, because it would not advance that objective whatsoever, that would violate the First Amendment.

QUESTION: Or they have much more power, I take it, a State, under the Twenty-First Amendment, or some more power than if that Twenty-First Amendment weren't there, and suppose that we thought, or I thought, suppose I thought that it just squeaks within that, therefore a State can ban this, then what happens?

MR. ENNIS: Well first, Justice Breyer, as Chief Justice Rehnquist noted in one of his questions, this is a Federal law, and the Twenty-First Amendment gives no affirmative power whatsoever.

QUESTION: But does it not give power? That's my question, really. Might it not, or does it or does it not give power to the Federal Government to reinforce the

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State ban by passing a law federally necessary --

MR. ENNIS: Let me turn --

QUESTION: -- to make that State ban effective?

MR. ENNIS: Let me turn to that. First of all, it's not necessary, but even if it were, then the question would be, could a State for these same reasons ban labeling on beer, and the answer is no, because the First Amendment would prohibit it.

The Twenty-First Amendment, as this Court ruled in Crisp, is primarily a limitation on the Federal Government's power under the Commerce Clause. In Crisp, this Court said the Twenty-First Amendment does not authorize the States to ignore their obligations under the other provisions of the Constitution.

In Craig v. Boren, this Court ruled that the intermediate scrutiny test under the Fourteenth Amendment, which is virtually indistinguishable from the commercial speech test under Central Hudson, was not lowered or lessened even in a State case because of the presence of the Fourteenth -- of the Twenty-First Amendment.

It would be astonishing if this Court were to rule that for some reason the standard of review under the Fourteenth Amendment is not lowered because of the Twenty-First, but the standard of review under the First Amendment is.

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In fact, turning to the First Amendment, in Larkin v. Grendel's Den, this Court has already held that the Twenty-First Amendment does not lower the standard of review under the Establishment Clause of the First Amendment --

QUESTION: Well --

MR. ENNIS: -- and there's no reason why it should lower the standard of review under the Free Speech Clause of the same First Amendment.

QUESTION: Well, Mr. Ennis, perhaps conceding that, could a State simply ban liquor advertising?

MR. ENNIS: Well, Chief Justice Rehnquist, that raises a much more difficult and quite different question.

I know, as Your Honor wrote in Posadas, that it has often been thought there is a common sense link, without the need for evidence, between promotional advertising that is designed to increase demand, and a likelihood that it will increase demand, but it's a vastly different situation here. We're not talking about promotional advertising, we're talking about --

QUESTION: But I think you should respond to hypothetical questions, even though they're not necessarily involved in your case.

MR. ENNIS: I'm happy to do that. I'm happy to do that, Your Honor. It's a complicated answer.

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First of all, it depends on whether you're dealing with a mature market or not. There's a great deal of empirical evidence that in a mature market, such as the beer market, the only purpose, the only effect of advertising is not to increase overall demand but to shift brand loyalties.

But putting that aside for the moment, we're talking here about a particular product trait, alcohol strength. There is no common sense reason to believe that advertising a particular product trait will increase consumer demand for the underlying product. That depends on whether consumers want that trend or not.

QUESTION: Well, my question was not what you're answering. Maybe I should repeat my question.

MR. ENNIS: I'm sorry.

QUESTION: My question was, could a State ban liquor advertising, ban all advertising for alcoholic beverages?

MR. ENNIS: I don't know the answer to that question, Your Honor. I do know that there are decisions of this Court saying that States cannot categorically ban other kinds of advertising, price advertising of drugs in Virginia State Board, price advertising of legal services in Bates.

It would depend on whether application of the

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Twenty-First Amendment authorized a State to ban a law that was in fact designed to increase demand. That's not this law at all.

Whether consumers would buy beer that's higher strength or lower strength is an empirical question. That empirical question was subjected to a trial, and the trial courts found that the vast majority of consumers would prefer low strength, just like, if you subjected it to a trial, probably most consumers today would prefer lower sugar content in children's cereals than higher sugar content. Higher is not necessarily preferred.

QUESTION: If a State wanted to encourage drinking wine instead of, say, distilled spirits, could it say, we have a flat advertising ban on distilled spirits, but we'll allow you, indeed encourage you, to advertise wine so as to get the consumers to shift their preferences?

MR. ENNIS: Your Honor, that's a question that I haven't, frankly, thought about, and I don't know the answer to. I do know, however, that the way that question would be answered would be by applying the Central Hudson test and deciding whether the Government had a substantial interest in shifting consumer demand in that way, substantial and legitimate interest, and whether the law would advance it. That's not the interest that's at issue

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in this case.

In fact, Justice Scalia made the point about malt liquor in one of your questions. It is true that this law already permits consumers to identify the highest strength products, because it permits the use on the label and in advertising of the term, malt liquor.

Now, Mr. Kneedler said that it's only some years ago that malt liquor came to be known as the highest strength malt beverage, but if you'll look at the 1935 hearings before the FACA regulations, you will see over and over again there that at that time ale was thought to be, and known to be, the highest strength beer product.

And there was questioning and testimony about that, and the chairman and every witness said, it is okay with us to allow you to use the word ale, as long as it's truthfully ale, even though that means that consumers will know which are the highest strength products. That is completely inconsistent with any concern that accurate disclosure of factual information will result in strength wars.

QUESTION: What is ale? What's the difference between ale and beer?

MR. ENNIS: Well, to the best of my knowledge, Justice Scalia, ale is a malt beverage, but it is produced quite differently from beer. Beer is what's called a

bottom fermentation process, and ale is a top fermentation process.

QUESTION: Ah, that explains it.

(Laughter.)

MR. ENNIS: Well, I guess it's something -- I guess -- I'm not sure, but I think it's something like milk in the old days before it was homogenized. The cream on the top of the milk would be the equivalent of the ale, and the rest of the milk would be the equivalent of the beer.

QUESTION: Which is malt liquor, top or bottom?

MR. ENNIS: Pardon?

QUESTION: Is malt liquor top or bottom?

MR. ENNIS: Well, malt liquor is the highest strength --

QUESTION: I know it's the highest strength, but --

MR. ENNIS: -- malt beverage.

QUESTION: Is that the only difference between it and -- ale and beer, that it's got more alcohol in it?

MR. ENNIS: No. There is another difference, Your Honor, which is the reason why most consumers don't -- only 3 percent, historically, of consumers choose malt liquor.

The other difference is, as you increase the

alcohol strength, you necessarily increase the bitterness, the harshness, the roughness of the taste, and therefore malt liquor has a much rougher, harsher taste than lower alcohol products, which is precisely why most producers are targeting the mid-market and lower.

Coors, for example, two-thirds of Coors' sales are of its light beer product, which is 4.1 percent alcohol. That's what they asked permission to do, to say that our light beer is 4.1 percent alcohol.

Clearly, Coors was not trying to attract the high strength market there, because 4.1 percent is at the low end, the bottom end of the mainstream range of beers in this country, and why would Coors, which gets two-thirds of its revenue from selling a light beer, want to abandon that market, increase the beer strength, lose those customers, and compete for 3 percent of the market?

QUESTION: Well, light beer doesn't mean -- has nothing to do with alcoholic content.

MR. ENNIS: It does have a great deal to do with alcohol content, Chief Justice Rehnquist. It's not one-to-one, but there is a one-to-one correlation between calories and alcohol, and light beer is supposed to be lower in calories, as it is, and in order to do that, it's necessary to make it lower in alcohol content as well.

QUESTION: So your typical light beer will have

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less alcohol content?

MR. ENNIS: Your typical light beer will have less alcohol content. There is a range of alcohol contents in light beers, however, and that's what Coors wanted consumers to know. They wanted --

QUESTION: But is it a fact that in the Tenth Circuit argument Coors disclosed that its reason for this litigation was to dispel the notion that Coors is a weak beer?

MR. ENNIS: Your Honor --

QUESTION: Was that part of the argument?

MR. ENNIS: I was not there, but that's apparently what the transcript reflects, Your Honor. Coors did want to dispel misleading impressions about the strength of its products, but what it wanted to disclose was the accurate, honest information about the strength of its products, and that information would have shown that its products were not the high strength products.

The Coors light beer is 4.1 percent -- that's what it wanted to say -- which is at the low end. The other product it wanted permission to label was its regular beer, which is 4.6 percent, which is the very mid-point of the range in this country. It's not a high strength product at all. Coors was obviously not trying to market its product to attract the high strength --

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QUESTION: 4.1 is the low end of beers, but not the low end of lights, I gather.

MR. ENNIS: I think it's probably about in the middle of lights, Your Honor.

QUESTION: But we can't know any of this by looking at the label.

(Laughter.)

MR. ENNIS: You can't. You can't. You cannot. If you happen to be in one of the two-thirds of the States of this country that permit advertising, you can learn that from the advertising, including advertising right in the beer store next to the label, but this Federal law bans that information from the label itself.

It obviously cannot directly and materially advance the Federal Government's interests because of that fact, and even if it did, as I pointed out earlier, there is a simple, more effective way to control the strength war problem the Government currently asserts simply by limiting the alcohol content except in States that permit a higher limit.

The Government has conceded that that would achieve -- fully achieve its strength wars interest. There's no reason to ban truthful, accurate, and important information in these circumstances.

Thank you very much.

QUESTION: Thank you, Mr. Ennis.

Mr. Kneedler, you have 2 minutes remaining.

REBUTTAL ARGUMENT OF EDWIN S. KNEEDLER

ON BEHALF OF THE PETITIONER

MR. KNEEDLER: Thank you, Mr. Chief Justice.

First of all, in response to questions by Justice O'Connor and Justice Scalia, I call the Court's attention to pages 65 and 336 of the Joint Appendix, which include the wallet cards that Coors distributed listing -- comparing its alcohol content to those of others, in which it was listing itself as highest, or close to the highest, and also the advertisement that it asked ATF --

QUESTION: The highest light?

MR. KNEEDLER: Well, the advertisement it asked ATF to include lists both lights, on page 65 lists both light beers and full-bodied beers, and it lists itself as one of the highest content light beers, and also within the mid-to-high range of the regular beer.

So the point is, Coors was holding itself out as having at least an average, if not above-average alcohol content within each segment of the market, which is precisely what this is --

QUESTION: The purpose served -- the purpose served by this labeling reg in those 33 States that allow you to advertise is?

MR. KNEEDLER: The purpose is to prohibit -- it's a balance of the interest in labeling.

At the point of sale, there are two interests, and the labeling, to be able to compare alcohol content at the point of sale by picking up two bottles can lead to impulse buying in the same way that this Court recognized in the lawyer advertising case there can be impulse decisions on hiring an attorney by virtue of the face-to-face contact.

The second point that I wanted to make with respect to the purpose of the --

QUESTION: In this evidence of wars, was there anything about substitution of consumers who are looking for higher alcohol content to wine, to something with -- or to the bitterer beverage, the malt liquor?

MR. KNEEDLER: It was a discussion primarily within the malt beverage industry, because that's where the abuse was, and it was identified as an abuse, and I call the Court's attention to the House report on page 16-A.

QUESTION: Couldn't this regulation make it worse? I mean, if you go to New Orleans at Mardi Gras time you see a lot of cheap wine around, perhaps as many as those bottles of beer.

MR. KNEEDLER: Justice Ginsburg, no. The

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statute has been construed by ATF to allow disclosure of low alcohol content beer, so it's tailored to limiting the concern about marketing on the basis of high alcohol content and intoxication.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Kneedler.

The case is submitted.

(Whereupon, at 11:02 a.m., the case in the above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

LLOYD BENTSEN, SECRETARY OF THE TREASURY, Petitioner v. COORS BREWING COMPANY

CASE NO.:93-1631

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Ann Mari Federico

(REPORTER)