



The *grassroots* ADVOCATE

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UNITED STATES SUPREME COURT REJECTS CHALLENGE TO FACE TO FACE TRANSACTIONS

Despite the fact that it has been four years since the United States Supreme Court issued its decision in Granholm v Heald, the constitutionality of many state based liquor regulations is still being litigated across the country. While the Granholm case made it clear that states cannot facially treat out-of-state wine suppliers differently than in-state wine suppliers, it left many questions unanswered.

Some of those questions revolve around state regulations that appear to treat in-state and out-of-state suppliers the same but arguably treat them differently when the law is applied. When a statute is challenged based on the theory that its application discriminates against out-of-state entities, courts must balance the disparate impact that the out-of-state entity experiences against the benefits of the law. If the benefit outweighs the disparate impact, the law is deemed valid.

In fact, the United States Supreme Court just rejected a case that claimed an Indiana statute discriminated against out-of-state suppliers in its application. The case, Baude v Heath, was out of the State of Indiana. The Supreme Court's decision to reject the plaintiff's appeal allowed the Seventh Circuit Court of Appeals decision which upheld the statute to stand.

In response to the Granholm lawsuit, Indiana passed a statute allowing both in state and out-of-state wineries to ship wine to consumers in Indiana. However, in order to receive a wine shipment the consumer must first visit the winery and engage in a face to face transaction with the winery. A face to face transaction requires a consumer to purchase wine at the winery and have their identity and age verified at the winery. Once this is accomplished, the winery may accept internet or phone orders from the customer and ship the product directly to the customer.

Plaintiffs argued that such a system made it easier for

in-state and more difficult for out-of-state wineries to ship product to Indiana consumers. In addition, plaintiffs claimed that the requirement of an initial age and identification check would not achieve Indiana's goal of preventing minor access to alcohol. In other words, the plaintiffs argued that the application of the law discriminated against out-of-state entities and did not provide a strong enough benefit to Indiana to allow the statute to be constitutional.

Indiana justified the law by arguing that an initial face to face transaction applied evenly to both in-state and out-of-state entities and was necessary in order to prevent minor access to alcohol. In essence, Indiana reasoned that by requiring a winery to establish the age and identity of an individual prior to shipping product to the individual it would reduce the likelihood of minors ordering alcohol from the winery over the internet.

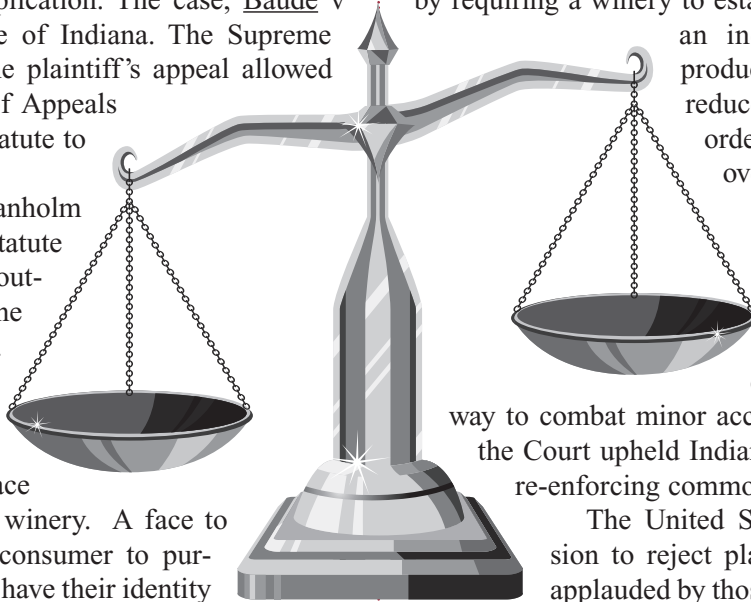
In weighing the arguments, the Seventh Circuit Court wisely declined to accept plaintiff's position that age and identification checks are not an effective way to combat minor access to alcohol. In so doing, the Court upheld Indiana's face to face requirement re-enforcing common sense state regulations.

The United States Supreme Court's decision to reject plaintiffs request for appeal is applauded by those in the industry who believe that state regulation is the most effective tool in preventing minor access to alcoholic beverages.

The Baude v Heath decision sends an important message to both state regulators and those wishing to scale back or overturn state regulations: Facially neutral state laws, even those that arguable have some disparate treatment of out-of-state entities, will be upheld as valid exercises of state regulatory power when a state benefit outweighs any real or perceived disparate treatment of out-of-state entities.



Judge Sotomayor



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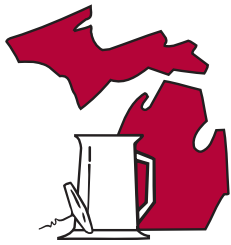
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Even more important, this ruling is yet another example of courts throughout the country limiting the holding of the *Granholm v Heald* case to its facts and reaffirming state regulatory power over alcoholic beverages. This is a trend that supporters of state based alcohol regulations hope will continue in light of the appointment of a new United States Supreme Court Justice.

Those involved in the alcohol beverage industry are watching the recent appointment and upcoming nomination hearings with increased interest as Judge Sonia

Sotomayor has experience hearing alcohol regulation cases. Those familiar with the *Granholm* case will recall that it involved both Michigan's and New York's bans on direct shipments from out-of-state suppliers. Judge Sotomayor sat on the Second Circuit Court of Appeals when the New York case was heard and voted to uphold the New York statute. While it is impossible to tell how a judge may rule in the future, Judge Sotomayor's vote to uphold New York's statute is comforting.

Here We Go Again: Groups pressure to raise beer tax

It's déjà-vu as groups from around the country put pressure on Congress and state legislatures to raise taxes on beer. The notion of increasing the excise tax on beer and wine continues to circulate as lawmakers continue to wrestle with the budgets. The argument is that the beer tax hasn't been touched in a number of years. However, Michigan already has the highest taxes in the Midwest. In fact, excise taxes are the most expensive ingredient in beer. More than 40 percent of the cost of each beer is due to taxes in one form or another.

Because Michigan's excise taxes are already the

highest in the region, Michigan businesses are at a disadvantage with other neighboring states. We lose businesses, jobs and even revenue to Ohio, Indiana and Wisconsin. Raising the tax will only provide incentive for individuals to purchase beer and wine in neighboring states.

At a time when many industries are struggling, Michigan's beer industry stands out as a rare positive story that is contributing to the state's economy by providing stable jobs and significant contributions to Michigan's communities.

Budweiser Clydesdales Show Support for Michigan Distributors

On Wednesday, June 17, the world famous Budweiser Clydesdales stood front and center at the Capitol with Michigan's beer distributors to spotlight the good-paying jobs and economic contributions of Michigan's beer industry. As part of the Capitol tour, the Clydesdales visited with Lansing's M & M Distributors to bring attention to the dangers of raising the beer tax.

"The Clydesdales are a great reminder that Michigan has some of the hardest working people around and that we can overcome this tough economy" says Doug Barr, M & M Distributors, Inc. The Clydesdales' appearance in Lansing is one of 300 made annually by the five traveling teams of horses.

The Clydesdales are pictured here in front of Michigan Beer & Wine Wholesalers Association headquarters.

