Case 1.2

125 S.Ct. 1885, 161 L.Ed.2d 796, 73 USLW 4321, 05 Cal. Daily Op. Serv. 4068, 2005 Daily Journal D.A.R. 5561, 2005 Daily Supreme Court of the United States

Jennifer M. GRANHOLM, Governor of Michigan, et al., Petitioners,
v.
Eleanor HEALD et al.
Michigan Beer & Wine Wholesalers Association, Petitioner,
v.
Eleanor Heald et al.
Juanita Swedenburg, et al., Petitioners,
v.
Edward D. Kelly, Chairman, New York Division of Alcoholic Beverage Control, State Liquor Authority, et al.

Nos. 03-1116, 03-1120, 03-1274.

Argued Dec. 7, 2004.

Decided May 16, 2005.

Syllabus

The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See .

Michigan and New York regulate the sale and importation of wine through three-tier systems requiring separate licenses for producers, wholesalers, and retailers. These schemes allow in-state, but not out-of-state, wineries to make direct sales to consumers. This differential treatment explicitly discriminates against interstate commerce by limiting the emerging and significant direct-sale business. Influenced by an increasing number of small wineries and a decreasing number of wine wholesalers, direct sales have grown because small wineries may not produce enough wine or have sufficient consumer demand for their wine to make it economical for wholesalers to carry their products. In Nos. 03-1116 and 03-1120, Michigan residents, joined by an intervening out-of-state winery, sued Michigan officials, claiming that the State's laws violate the Commerce Clause. The State and an intervening in-state wholesalers association responded that the direct-shipment ban was a valid exercise of Michigan's power under the Twenty-first Amendment. The District Court sustained the scheme, but the Sixth Circuit reversed, rejecting the argument that the Twenty-first Amendment immunizes state liquor laws from Commerce Clause strictures and holding that there was no showing that the State could not meet its proffered policy objectives through nondiscriminatory means. In No. 03-1274, out-of-state wineries and their New York customers filed suit against state officials, seeking, *inter alia,* a declaration that the State's direct-shipment laws violate the Commerce Clause. State liquor wholesalers and retailers' representatives intervened in support of the State. The District Court granted the plaintiffs summary judgment, but the Second Circuit reversed, holding that New York's laws fell within the ambit of its powers under the Twenty-first Amendment. Here, respondents in the Michigan cases and petitioners in the New York case are referred to as the wineries, while the opposing parties are referred to as the States.

Held: Both States' laws discriminate against interstate commerce in violation of the Commerce Clause, and that discrimination is neither authorized nor permitted by the Twenty-first Amendment. Pp. 1895-1907.

(a) This Court has long held that, in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." Laws such as those at issue contradict the principles underlying this rule by depriving citizens of their right to have access to other States' markets on equal terms. The Michigan system's discriminatory character is obvious. It allows

in-state wineries to ship directly to consumers, subject only to a licensing requirement, but out-of-state wineries, even if licensed, must go through a wholesaler and retailer. The resulting price differential, plus the possible inability to secure a wholesaler for small shipments, can effectively bar small wineries from Michigan's market. New York's scheme also grants in-state wineries access to state consumers on preferential terms. It allows in-state wineries to ship directly to consumers, but requires an out-of-state winery to open a New York branch office and warehouse, which drives up its costs. Out-of-state wineries are also ineligible for a "farm winery" license, which provides the most direct means of shipping to New York consumers. Pp. 1895-1897.

(b) Section 2 of the Twenty-first Amendment does not allow States to regulate direct shipment of wine on terms that discriminate in favor of in-state producers. The States' position is inconsistent with this Court's precedents and the Amendment's history. Pp. 1897-1905.

(1) This Court invalidated many state liquor regulations before the Eighteenth Amendment's ratification, finding either that the Commerce Clause prevented States from discriminating against imported liquor, or that States could not pass facially neutral laws that placed an impermissible burden on interstate commerce, While States could ban domestic liquor production, such laws were ineffective because they could not regulate imported liquor in its original package, To resolve this matter, Congress passed the Wilson Act, which empowered the States to regulate imported liquor on the same terms as domestic liquor. After this Court narrowly construed the Act to permit regulation of the resale of imported liquor, not its direct shipment to consumers, Congress passed the Webb-Kenyon Act to close the direct-shipment loophole, see The States argue that the Webb-Kenyon Act went further, removing any barrier to discriminatory state liquor regulations, but that reading conflicts with description of the Webb-Kenyon Act's purpose, which was simply to extend the Wilson Act. Nor does the statute's text compel a different response. At the very least, it expresses no clear congressional intent to depart from the principle disfavoring discrimination against out-of-state goods. Last, and most importantly, the Webb-Kenyon Act did not purport to repeal the Wilson Act, which expressly precludes state discrimination. The Wilson Act reaffirmed, and the Webb-Kenyon Act did not displace, the Court's Commerce Clause cases striking down state laws that discriminated against out-of-state liquor. States were required to regulate domestic and imported liquor on equal terms. Pp. 1897-1902.

(2) A brief respite from these legal battles brought on by the Eighteenth Amendment's ratification ended with the Twenty-first Amendment. The States contend that § 2 of the Twenty-first Amendment transfers to States the authority to discriminate against out-of-state goods, but the pre-Amendment history recited here provides strong support for the view that § 2 only restored to the States the powers they had under the Wilson and Webb-Kenyon Acts. The Twenty-first Amendment's aim was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use. It did not give States the authority to pass nonuniform laws in order to discriminate against out-of-state goods, a privilege they never enjoyed. Cases decided soon after the Twenty-first Amendment's ratification did not take account of the underlying history and were inconsistent with this view, *e.g.,* but the Court's reluctance to consider this history did not reflect a consensus that such evidence was irrelevant or that prior history was unsupportive of the principle that the Amendment did not authorize discrimination against out-of-state liquor. More recent cases confirm that the Twenty-first Amendment does not supersede other provisions of the Constitution and, in particular, does not displace the rule that States may not give a discriminatory preference to their own producers. Pp. 1902-1903.

(3) This Court has held, in the modern § 2 cases, (1) that state laws violating other provisions of the Constitution are not saved by the Twenty-first Amendment, *e.g.,* that § 2 does not abrogate Congress' Commerce Clause powers with regard to liquor, *e.g.,* as most relevant here, that state regulation of alcohol is limited by the Commerce Clause's nondiscrimination principle, *e.g.,* which dealt with a Hawaii excise tax exempting some in-state alcoholic beverages, provides a particularly telling example of this last proposition, and this Court declines the States' suggestion to overrule or limit that case. The decision to invalidate the instant direct-shipment laws also does not call into question their three-tier systems' constitutionality, see State policies are protected under the Twenty-first Amendment when they treat liquor produced out of state the same as its domestic equivalent. In contrast, the instant cases involve straightforward attempts to discriminate in favor of local producers. Pp. 1903-1905.

(c) Concluding that the States' direct-shipment laws are not authorized by the Twenty-first Amendment does not end the inquiry, for this Court must still consider whether either State's regime "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives," The States provide little evidence for their claim that purchasing wine over the Internet by minors is a problem. The 26 States now permitting direct shipments report no such problem, and the States can minimize any risk with less restrictive steps, such as requiring an adult signature on delivery. The States' tax evasion justification is also insufficient. Increased direct shipment, whether in or out of state, brings the potential for tax evasion. However, this argument is a diversion with regard to Michigan, which does not rely on in-state wholesalers to collect taxes on out-of-state wines. New York's tax collection objectives can be achieved without discriminating against interstate commerce, *e.g.,* by requiring a permit as a condition of direct shipping, which is what it does for in-state wineries. Both States also benefit from federal laws that supply incentives for wineries to comply with state regulations. Other rationales--facilitating orderly market conditions, protecting public health and safety, and ensuring regulatory accountability--can also be achieved through the alternative of an evenhanded licensing requirement. Pp. 1905-

1907.
Nos. 03-1116 and 03-1120, affirmed; No. 03-1274, reversed and remanded.