

# The Burger Court Opinion Writing Database

## *Bacchus Imports, Ltd. v. Dias*

468 U.S. 263 (1984)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



To: The Chief Justice  
Justice Brennan  
Justice Marshall  
✓ Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

71B

From: Justice White

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

BACCHUS IMPORTS, LTD., ET AL. v. GEORGE  
FREITAS, DIRECTOR OF TAXATION OF  
THE STATE OF HAWAII

ON APPEAL FROM THE SUPREME COURT OF HAWAII

No. 82-1565. Decided June —, 1983

JUSTICE WHITE, dissenting from the dismissal for want of a substantial federal question.

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This appeal challenges the constitutionality of the Hawaii Liquor Tax, Haw. Rev. Stat. Ch. 244, which imposes a 20% ad valorem tax on the first sale at wholesale of alcoholic beverages. The Hawaii legislature has periodically approved exemptions from the tax for various locally produced liquors to foster local industry. For the tax years involved here, Hawaii exempted two of the four types of locally-produced liquor. Transactions involving okolehao, a brandy distilled from a local plant and produced only in Hawaii, or "any fruit wine manufactured in the State from products grown in the State," were exempt. Also produced in Hawaii and subject to the tax were sake and fruit liquors. Because the exemptions favor locally-produced products, appellants, several wholesale liquor corporations doing business in Hawaii, submit that the tax violates the Equal Protection, Import-Export and Commerce Clauses of the Constitution. The Hawaii Tax Appeal Court, and subsequently, the Hawaii Supreme Court, rejected all three claims.

The pivotal issue is whether the state tax discriminates against interstate commerce by favoring those liquors which are produced in Hawaii. The Hawaii Supreme Court observed that neither okolehao or pineapple wine, the one fruit wine produced in Hawaii, is produced outside the state, and assumed that "these products pose no competitive threat to other liquors produced elsewhere and consumed in Hawaii."

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 9, 1983

Re: No. 82-1565-Bacchus Imports v. Freitas

Dear Byron:

Please join me.

Sincerely,

  
T.M.

Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 9, 1983

Re: No. 82-1565 - Bacchus Imports, Ltd. v. George  
Freitas, Director of Taxation of the State of Hawaii

Dear Byron:

Please join me in your opinion dissenting from the dismissal for want of a substantial federal question.

Sincerely,



Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 1, 1983

Re: 82-1565 - Bacchus Imports v. Freitas  
(Conf. 6/2/83, p. 11)

Dear Byron:

After taking another look at this case I have decided to adhere to my vote to dismiss for these reasons:

1) The exemption on rum did not go into effect until 1981 and the tax years at issue in the case are those from December 1977 to May 1979. That explains why the Hawaiian Supreme Court made no comment on the rum exemption.

2) The court's opinion makes it clear that okolehao is produced only in Hawaii and that the Hawaiian "fruit wine" that is referred to in the statute is actually just "pineapple wine." In footnotes 20 and 21 (Juris. Statement A-39), the court makes it quite clear that neither of these products is produced anywhere except in Hawaii and it made what is tantamount to a finding that those products posed no competitive threat to any liquor produced elsewhere.

In sum, I have come to the conclusion that it would be awfully difficult to establish that this particular exemption in 1977 and 1979 imposed any kind of a burden on interstate commerce.

Respectfully,

Justice White

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

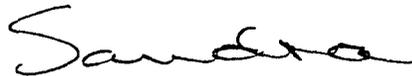
June 9, 1983

Re: No. 82-1565 Bacchus Imports v. Freitas

Dear Byron,

Please join me in your opinion dissenting from  
the dismissal for want of a substantial federal question.

Sincerely,



Justice White

Copies to the Conference