

# The Burger Court Opinion Writing Database

## *Brown-Forman Distillers Corp. v. New York State Liquor Authority*

476 U.S. 573 (1986)

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





CHAMBERS OF  
THE CHIEF JUSTICE

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

April 30, 1986

84-2030 - Brown-Forman Distillers Corp. v.  
New York State Liquor Authority

Dear Thurgood:

I join.

Regards,

Justice Marshall

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HA-3

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

November 12, 1985

*- noted - 9/30/85*

No. 84-2030

Brown-Forman Distillers Corporation  
v. State of New York

Dear Joe,

Please mark your records to show  
that I will not participate in the above  
case.

Sincerely,



Joseph F. Spaniol, Jr.  
Clerk of the Court

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 3, 1986

No. 84-2030

Brown-Forman Distillers  
Corporation v. New York  
State Liquor Authority

Dear Thurgood,

Will you please note at the foot of  
your opinion in the above that I took no  
part in the consideration or decision of  
the case.

Sincerely,



Justice Marshall

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166 53 US

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 22, 1986

84-2030 - Brown-Forman Distillers Corporation  
v. New York State Liquor Authority

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Dear John,

Please join me.

Sincerely yours,



Justice Stevens

Copies to the Conference

MA 7 30 v

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

From: **Justice Marshall**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-2030

BROWN-FORMAN DISTILLERS CORPORATION, AP-  
 PELLANT *v.* NEW YORK STATE LIQUOR  
 AUTHORITY

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

[April —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

The State of New York requires every liquor distiller or producer that sells liquor to wholesalers within the State to sell at a price that is no higher than the lowest price the distiller charges wholesalers anywhere else in the United States. The issue in this case is whether that requirement violates the Commerce Clause of the Constitution.

### I

New York extensively regulates the sale and distribution of alcoholic beverages within its borders. The State's Alcoholic Beverage Control Law (ABC Law) prohibits the manufacture and sale of alcoholic beverages within the State without the appropriate licenses, ABC Law § 100(1) (1970), and regulates the terms of all sales, §§ 101-a to 101-bbb (1970 & Supp. 1986). Distillers and their agents may not sell to wholesalers in New York except in accordance with a price schedule filed with the State Liquor Authority. § 101-b(3)(a). The distiller or agent must file the price schedule before the 25th day of each month, and the prices therein become effective on the first day of the second following month. The schedule must contain a precise description of each item the distiller intends to sell, and a per-bottle and per-case price. All sales to any wholesaler in New York during the

Justice Brennan  
 Justice White  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

**STYLISTIC CHANGES THROUGHOUT**

PP. 7, 13

From: **Justice Marshall**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-2030

**BROWN-FORMAN DISTILLERS CORPORATION, APPELLANT v. NEW YORK STATE LIQUOR AUTHORITY**

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

[April —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

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Justice Brennan  
 Justice White  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Marshall**

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-2030

BROWN-FORMAN DISTILLERS CORPORATION,  
 APPELLANT *v.* NEW YORK STATE LIQUOR  
 AUTHORITY

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

[May —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

The State of New York requires every liquor distiller or producer that sells liquor to wholesalers within the State to sell at a price that is no higher than the lowest price the distiller charges wholesalers anywhere else in the United States. The issue in this case is whether that requirement violates the Commerce Clause of the Constitution.

### I

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 30, 1986

Re: No. 84-2030-Brown-Forman Distillers v. New  
York State Liquor Authority

MEMORANDUM TO THE CONFERENCE

Because it now appears that there will not be five votes to overrule Seagram & Sons, I am recirculating this opinion with former section III(c) deleted. Please note that the sections have been renumbered.

Sincerely,

*T.M.*  
T.M.

PP. 8, 9

Justice Brennan  
 Justice White  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Marshall**

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-2030

**BROWN-FORMAN DISTILLERS CORPORATION,  
 APPELLANT v. NEW YORK STATE LIQUOR  
 AUTHORITY**

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

[May —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

The State of New York requires every liquor distiller or producer that sells liquor to wholesalers within the State to sell at a price that is no higher than the lowest price the distiller charges wholesalers anywhere else in the United States. The issue in this case is whether that requirement violates the Commerce Clause of the Constitution.

I

New York extensively regulates the sale and distribution of alcoholic beverages within its borders. The State's Alcoholic Beverage Control Law (ABC Law) prohibits the manufacture and sale of alcoholic beverages within the State without the appropriate licenses, ABC Law § 100(1) (McKinney 1970), and regulates the terms of all sales, §§ 101-a to 101-bbb ((McKinney 1970 and Supp. 1986). Distillers and their agents may not sell to wholesalers in New York except in accordance with a price schedule filed with the State Liquor Authority. § 101-b(3)(a). The distiller or agent must file the price schedule before the 25th day of each month, and the prices therein become effective on the first day of the second following month. The schedule must contain a precise description of each item the distiller intends to sell, and a per-bottle and per-case price. All sales to any wholesaler in

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 7, 1986

Re: No. 84-2030, Brown-Forman Distillers  
v. New York State Liquor

Dear Thurgood:

Please join me. I think it is right that we specifically overrule Seagram's. Allowing it to remain on the books, I feel, will breed litigation. The result there and the result here, in my view, are irreconcilable despite the difference in the statutes. If you do not command a Court for Seagram's overruling, I shall write separately.

Sincerely,

*H.A.B.*

Justice Marshall

cc: The Conference

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

From: **Justice Blackmun**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-2030

**BROWN-FORMAN DISTILLERS CORPORATION,  
 APPELLANT v. NEW YORK STATE LIQUOR  
 AUTHORITY**

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

[May —, 1986]

**JUSTICE BLACKMUN, concurring.**

I join the Court's opinion (except for its footnote 6), but I would go further and overrule *Joseph E. Seagram & Sons, Inc. v. Hostetter*, 384 U. S. 35 (1966). *Seagram* is now a relic of the past. It was decided when affirmation statutes were comparatively new and long before the proliferation of overlapping and potentially conflicting affirmation statutes that has taken place in the last two decades. I see no principled distinction that can be drawn for constitutional analysis between New York's current prospective statute and the same State's retroactive statute upheld in *Seagram*, and I doubt very much whether any Member of this Court would be able to perceive one. Either type, despite one's best efforts at fine tuning, operates to affect out-of-state transactions and violates the Commerce Clause. Our failure to overrule *Seagram* now merely preserves uncertainty and will breed or necessitate further litigation. We should face reality and overrule *Seagram*.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 7, 1986

84-2030 Browman-Forman v. New York Liquor Authority

Dear Thurgood:

I share Sandra's view that it is unnecessary to overrule Seagrams to reverse the judgment of the Court of Appeals of New York.

Your opinion is well written, and I believe the opinion is written in a way that enables me to join all of it except Part III(C).

Accordingly, at least for now, that is my vote.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

82 466 - 64 11

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 17, 1986

84-2030 Brown-Forman v. New York State  
Liquor Authority

Dear Sandra:

Please join me in your opinion concurring in parts I, II, III-A, and III-B, and concurring in the judgment.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

84-2030-634

APR 22 1986



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 1, 1986

84-2030 Brown-Forman Distillers v. New York  
State Liquor Authority

Dear Thurgood:

In view of your changes, I now am happy to join  
your entire opinion.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

WA 63 55

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 22, 1986

Re: 84-2030 - Brown-Forman Distillers Corp.  
v. New York State Liquor Authority

Dear John:

Please join me in your dissent.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 29, 1986

Re: 84-2030 - Brown-Forman Distillers  
Corp. v. New York State Liquor Authority

Dear Thurgood:

After a period of some uncertainty, I have now formed the opinion that the statute is saved from facial invalidity by the provision that authorizes the liquor authority to permit price changes "for good cause shown." Without any contrary demonstration in the record, I am inclined to think that we have to assume that the liquor authority would accommodate a distiller's need to reduce prices because of a price change occurring in some other state.

In all events, I shall write out a brief dissent and I apologize for taking so long to sort the case out.

Respectfully,



Justice Marshall

Copies to the Conference

APR 30 1986



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

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES /

From: **Justice Stevens**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-2030

**BROWN-FORMAN DISTILLERS CORPORATION,  
APPELLANT v. NEW YORK STATE LIQUOR  
AUTHORITY**

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

[May —, 1986]

JUSTICE STEVENS, with whom JUSTICE WHITE and JUSTICE REHNQUIST join, dissenting.

Speculation about hypothetical cases illuminates the discussion in a classroom, but it is evidence and historical fact that provide the most illumination in a courtroom. Foregoing the support of a record developed at trial, appellant Brown-Forman Distillers Corporation (Brown-Forman) contends that New York's Alcoholic Beverage Control (ABC) Law § 100 *et seq.* (McKinney 1970 and Supp. 1986) is an unconstitutional burden on interstate commerce "on its face." Over 20 years ago this Court unanimously refused to invalidate the predecessor of New York's present statute on precisely the same ground. As Justice Stewart then explained:

"The mere fact that § 9 is geared to appellants' pricing policies in other States is not sufficient to invalidate the statute. As part of its regulatory scheme for the sale of liquor, New York may constitutionally insist that liquor prices to domestic wholesalers and retailers be as low as prices offered elsewhere in the country. The serious discriminatory effects of § 9 alleged by appellants on their business outside New York are largely matters of conjecture. It is by no means clear, for instance, that § 9 must inevitably produce higher prices in other States, as claimed by appellants, rather than the lower prices

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 3, 1986

No. 84-2030 Brown-Forman Distillers Corp. v.  
New York State Liquor Authority

Dear Thurgood,

While I agree that the New York liquor pricing scheme at issue here violates the Commerce Clause, I am not persuaded that Seagram's must be overruled. If no one else writes separately to concur only in the judgment, I will do so in due course.

Sincerely,



Justice Marshall

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Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens

From: Justice O'Connor

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-2030

BROWN-FORMAN DISTILLERS CORPORATION, APPELLANT  
 v. NEW YORK STATE LIQUOR AUTHORITY

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

[April —, 1986]

JUSTICE O'CONNOR, concurring in parts I, II, III-A, and III-B, and concurring in the judgment.

In my view the Court has correctly explained why the prospective price-affirmation statute at issue in this case violates the Commerce Clause. I do not, however, believe that *Joseph E. Seagram & Sons, Inc. v. Hostetter*, 384 U. S. 35 (1966), must be overruled to reach this result.

Earlier this year, the Court discussed the

“important doctrine of *stare decisis*, the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion. That doctrine permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact. While *stare decisis* is not an inexorable command, the careful observer will discern that any detours from the straight path of *stare decisis* in our past have occurred for articulable reasons, and only when the Court has felt obliged ‘to bring its opinions into agreement with experience and with facts newly ascertained.’ *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 412 (1932) (Brandeis, J., dissenting).” *Vasquez v. Hillery*, 474 U. S. — (1986) (slip op. 11).

✓ 20m P. 1  
WGB out

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-2030

**BROWN-FORMAN DISTILLERS CORPORATION, APPELLANT v. NEW YORK STATE LIQUOR AUTHORITY**

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

[April —, 1986]

JUSTICE O'CONNOR, joined by JUSTICE POWELL, concurring in parts I, II, III-A, and III-B, and concurring in the judgment.

In my view the Court has correctly explained why the prospective price-affirmation statute at issue in this case violates the Commerce Clause. I do not, however, believe that *Joseph E. Seagram & Sons, Inc. v. Hostetter*, 384 U. S. 35 (1966), must be overruled to reach this result.

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CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

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

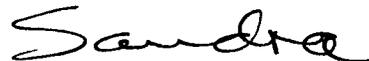
April 30, 1986

No. 84-2030 Brown-Forman Distillers v. New York  
State Liquor Authority

Dear Thurgood,

Please join me in the 3rd Draft of your  
opinion. I hereby withdraw my separate writing.

Sincerely,



Justice Marshall

Copies to the Conference