

**FOR IMMEDIATE RELEASE****December 9, 2011**

# **COURT URGED TO REJECT DISCRIMINATORY REGULATION OF INTERSTATE COMMERCE**

***(American Beverage Association v. Snyder)***  
**U.S. Court of Appeals for the Sixth Circuit**

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Sixth Circuit to reverse a lower court decision upholding a controversial Michigan law that, on its face, purports to regulate the permissible markings on beverage containers in all 50 states and discriminates against interstate beverage manufacturers.

In a brief filed in *American Beverage Association v. Snyder*, WLF argued that the Commerce Clause, by removing the power to regulate interstate commerce from the states and giving that power exclusively to Congress, precludes the Michigan legislature's attempt to "wall off" the state from the rest of the national marketplace for beverages.

"The Supreme Court has always imposed a more meaningful limit on state restrictions of interstate commerce than the district court recognized below," said WLF Senior Litigation Counsel Cory Andrews after filing WLF's brief. "By coupling a Michigan-only labeling requirement with a prohibition on selling Michigan-only-labeled beverages in the rest of the country, the law impermissibly 'walls off' the State of Michigan from the rest of the national market for beverages, in violation of the dormant Commerce Clause," Andrews said.

The case involves a challenge to a recent amendment to the Michigan Beverage Container Deposit Law, which requires interstate beverage manufacturers to produce, distribute, and sell covered beverages in containers that are uniquely branded for sale in Michigan, but criminalizes the distribution or sale of such Michigan-only containers in any other state lacking a "substantially similar" law. Many national beverage manufacturers object to the law, which forces interstate beverage manufacturers to incur great expense to completely overhaul their manufacturing, distribution, and sales operations but imposes no such financial burden on solely intrastate beverage manufacturers in Michigan.

When America's most popular beverage manufacturers mounted a legal challenge to the law, the U.S. district court for the Western District of Michigan upheld the law under the Commerce Clause. In its brief urging the appeals court to reverse the district

court's decision, WLF argued that, because the Commerce Clause operates to prevent the kind of economic Balkanization that results from even a single state's discrimination against interstate commerce, Michigan's de facto discrimination against out-of-state beverage manufacturers offends deeply rooted Commerce Clause principles.

As detailed in WLF's brief, Michigan's scheme affords Michigan-only beverage manufacturers a unique advantage in that they are wholly insulated from the kind of economically burdensome production process that Michigan imposes on interstate beverage manufactures. This differential treatment ensures that out-of-state beverage manufacturers must either create an entirely separate Michigan infrastructure for producing, warehousing, transporting, and distributing their goods, or else suffer severely reduced access to Michigan consumers. WLF cited Supreme Court precedents establishing that a state statute that directly regulates *or* discriminates against interstate commerce is virtually per se invalid.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free speech rights, both of individuals and of the business community.

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For further information, contact WLF Senior Litigation Counsel Cory Andrews, (202) 588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).