

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Commission

No. No. 18-50299, United States Court of Appeals for the Fifth Circuit (December 9, 2019)

SUMMARY

The Fifth Circuit held that Texas's ban on public corporations holding package store liquor permits (Tex. Alco. Bev. Code § 22.16) does not violate the dormant Commerce Clause's discriminatory effect test or the Pike balancing test, because the facially neutral statute treats in-state and out-of-state public corporations equally and does not impermissibly burden interstate commerce. The court vacated the district court's finding of discriminatory purpose and remanded for reconsideration under the Arlington Heights factors, while affirming the district court's rejection of Walmart's Equal Protection challenge under rational basis review. The case addresses key topics including dormant Commerce Clause analysis, discriminatory purpose versus effect, the Twenty-first Amendment's interaction with nondiscriminatory alcohol regulations, and rational basis review for economic regulations.

CASE DETAILS

|                       |                                                                                                                                                                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Fifth Circuit                                                                                                                                                                                 |
| WRITING FOR THE COURT | James E. Graves, Jr.; W. Eugene Davis; Catharina Haynes                                                                                                                                                                              |
| JURISDICTION          | Federal                                                                                                                                                                                                                              |
| DECIDED               | December 9, 2019                                                                                                                                                                                                                     |
| DOCKET                | No. 18-50299                                                                                                                                                                                                                         |
| DISPOSITION           | other                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Appeal from the United States District Court for the Western District of Texas. On petition for rehearing. Substituted opinion withdrawing previous opinion at 935 F.3d 362.                                                         |
| STANDARD OF REVIEW    | De novo for constitutional questions; clear error for findings of fact. Discriminatory intent reviewed for clear error under <i>Abbott v. Perez</i> , 138 S. Ct. 2305 (2018).                                                        |
| PRECEDENTIAL VALUE    | Published                                                                                                                                                                                                                            |
| PARTIES               | Texas Alcoholic Beverage Commission; Kevin Lilly; Ida Clement Steen; Texas Package Stores Association, Inc. v. Wal-Mart Stores, Incorporated; Wal-Mart Stores Texas, L.L.C.; Sam's East, Incorporated; Quality Licensing Corporation |

## TOPICS

constitutional law

commerce clause

equal protection

fourteenth amendment

standard of review

## PRACTICE AREAS

Constitutional Law

Commerce Clause

Equal Protection

## QUESTIONS PRESENTED

1. Whether the public corporation ban violates the dormant Commerce Clause by having a discriminatory purpose or effect, or by imposing an excessive burden on interstate commerce under Pike balancing.
2. Whether the ban violates the Equal Protection Clause of the Fourteenth Amendment.

## HOLDINGS

1. The district court's finding of discriminatory purpose is infirm due to legal errors (misapplication of Arlington factors, failure to presume legislative good faith, overreliance on non-legislator statements). The case is remanded for reconsideration of this issue.
2. The ban does not have a discriminatory effect because it treats in-state and out-of-state public corporations identically, does not prohibit the flow of interstate goods, place additional costs, or distinguish based on domicile.
3. The ban does not violate the Pike test because Walmart failed to show that the burden on interstate commerce is clearly excessive compared to the local benefits. Judgment is rendered in favor of defendants on this claim.
4. The ban does not violate the Equal Protection Clause because it is rationally related to Texas's legitimate interest in reducing liquor availability and consumption.

## KEY QUOTATIONS

*“A statute violates the dormant Commerce Clause where it discriminates against interstate commerce either facially, by purpose, or by effect.”*

*“The burden of establishing that a challenged statute has a discriminatory purpose under the Commerce Clause falls on the party challenging the provision.”*

*“The district court committed clear error by failing to apply a presumption of good faith to the enactment of the public corporation ban.”*

*“Section 22.16 is a facially neutral statute that bans all public corporations from obtaining P permits irrespective of domicile.”*

*“A statute impermissibly discriminates only when it discriminates between similarly situated in-state and out-of-state interests.”*

*“The Commerce Clause protects the interstate market, not particular interstate firms from prohibitive or burdensome regulations.”*

## FACTUAL BACKGROUND

Texas regulates alcohol through a three-tier system. The public corporation ban (Tex. Alco. Bev. Code § 22.16) prohibits any entity owned or controlled by a public corporation from obtaining a package store permit (P permit). A public corporation is one with shares listed on a public exchange or with more than 35 owners. Walmart, the world's largest public company, sells liquor in 31 states and wants to open liquor stores in Texas but cannot due to the ban. The ban was enacted in 1995 after the Fifth Circuit struck down durational residency requirements in *Cooper v. McBeath* (Cooper I). Texas enforced durational residency requirements for P permits until 2007. The district court found that the ban had a discriminatory purpose and that its burden on interstate commerce was clearly excessive under Pike balancing; it also found no Equal Protection violation.

## PROCEDURAL HISTORY

Walmart sued the TABC and commissioners under 42 U.S.C. § 1983 challenging four Texas statutes governing package store permits. The district court held that the public corporation ban (Tex. Alco. Bev. Code § 22.16) violates the dormant Commerce Clause but not the Equal Protection Clause, and enjoined enforcement. TABC and TPSA appealed; Walmart cross-appealed. The panel originally issued an opinion on August 15, 2019 (935 F.3d 362), but granted rehearing, withdrew that opinion, and substituted this opinion.

## DISPOSITION

other

## REMAND INSTRUCTIONS

Remand to the district court for reconsideration of whether the public corporation ban was enacted with a discriminatory purpose under the dormant Commerce Clause, consistent with the guidance in this opinion. The district court's judgment in favor of Walmart on the challenges to §§ 22.04 and 22.05 is also to be considered on remand.

## CASES CITED

- *Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449 (2019)
- *Allstate Ins. Co. v. Abbott*, 495 F.3d 151 (5th Cir. 2007)
- *Exxon Corp. v. Maryland*, 437 U.S. 117 (1978)
- *Ford Motor Co. v. Texas Dep't of Transp.*, 264 F.3d 493 (5th Cir. 2001)
- *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252 (1977)
- *Abbott v. Perez*, 138 S. Ct. 2305 (2018)
- *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc)
- *Granholtz v. Heald*, 544 U.S. 460 (2005)
- *Cooper v. McBeath*, 11 F.3d 547 (5th Cir. 1994) (Cooper I)
- *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970)
- *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984)

## CITED IN

- Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Commission, Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Commission, 945 F.3d 206, 225 (5th Cir. 2019)

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