

Galloping Across State Lines: Wagering, Wine and the U.S. Constitution

By Laura A. D'Angelo and Jennifer L. Howard

The equine industry is one of the largest agribusinesses in the United States contributing \$101.5 billion to the Gross Domestic Product and creating more than 1.4 million full-time jobs.¹ There are 9.2 million horses in the United States (including 1.29 million thoroughbreds) and 4.7 million industry participants.² Kentucky in particular is dependent upon the success of the thoroughbred racing and breeding industry.³ Kentucky stands more thoroughbred stallions than any other state. More than 21,000 thoroughbred mares were bred in Kentucky in 2006, with approximately 10,000 Kentucky bred foals registered each year.⁴ Commercial auction sales of thoroughbreds in the United States grossed \$1.1 billion dollars in 2005, with more than half of that, or \$650 million in sales derived from Kentucky alone.⁵

Total pari-mutuel wagering on thoroughbred racing in North America totaled \$14.78 billion in 2006, up 1.51% over 2005,⁶ and up approximately 7.9% over 1996.⁷ In 2006, wagering on racing in Kentucky returned \$13.76 million to the Commonwealth in tax revenue, \$5.6 million of which was returned to the General Fund.⁸

Historically, all wagering took place “within the racing enclosure” or “on-track.” In the late 1970’s, however, technology made it possible for one racetrack to broadcast live images of its races (the “Host Track”) to another racetrack or simulcast location. Host Tracks began simulcasting live races to other locations both in-state and out-of-state and Federal civil legislation, the Interstate Horseracing Act of 1978,⁹ was introduced to expressly authorize wagering on such transmissions. By 2005, approximately 88% of the wagering on North American racing migrated from on-track wagering to off-track wagering representing a fundamental shift in racing economics.¹⁰ These off-track wagers placed at another racetrack, an off-track betting (“OTB”)

parlor, or other account wagering outlet return substantially less to the Host track than the same wager placed on-track.¹¹

Account wagering (telephone and internet) is essential to the horseracing industry as it is the fastest growing segment of pari-mutuel wagering with more than \$2.5 billion wagered last year, representing more than 16% of the total United States pari-mutuel market.¹² Numerous companies entered the account wagering market in recent years including both private and publicly traded companies. The list of providers includes TVG, Magna Entertainment Corp. (XpressBet), Yobet.com, Autotote and AmericaTab.¹³ The legality of internet and telephone account wagering is a critical topic for the providers, industry and states, such as Kentucky, whose economies depend on the success of the horseracing industry.

This Article provides a summary of various Federal laws that impact internet and telephone account wagering. It discusses the current position of the Department of Justice (“DOJ”) that such interstate wagers via telephone and the internet are illegal under federal anti-gambling statutes. The Article provides a summary of various states’ laws regarding account wagering and the recent Supreme Court decision in *Granholm v. Heald*,¹⁴ applying *Granholm* to argue that states that permit in-state account-wagering providers to accept bets while prohibiting out-of-state providers from doing so violate the Dormant Commerce Clause of the United States Constitution.¹⁵

Federal Laws Impacting Account Wagering Providers

While several Federal statutes impact account wagering providers, the most important is the Interstate Horseracing Act of 1978 (“IHA”),¹⁶ a civil statute that authorizes interstate off-track wagering. An “interstate off-track wager” is “a legal wager placed or accepted in one State with respect to the outcome of a horse



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race taking place in another State and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State *via telephone or other electronic media* and accepted by an off-track betting system in another State, as well as the combination of any pari-mutuel wagering pools.”¹⁷ As amended in 2000, the IHA expressly authorizes interstate account wagering via the telephone and internet.¹⁸

Despite the IHA’s passage by Congress, the DOJ contends, both in congress-



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sional testimony and non-judicial proceedings, that telephone and internet wagering on horseracing violates federal anti-gambling statutes.¹⁹ Specifically, the DOJ argues that such activity is barred by the Wire Act of 1961, the Travel Act and the Illegal Gambling Practices Act,²⁰ prior enacted criminal statutes which the DOJ argues are not overridden by the IHA, a subsequently enacted civil statute. The Wire Act provides that “[w]hoever, being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.”²¹

The DOJ’s position is vulnerable for several reasons. First, in contradiction of its frequently stated position, the DOJ testified at trial in 2000, that the Wire Act did not apply to pari-mutuel wagering.²² Second, the legislative history accompanying the Wire Act suggests that the law was meant to prohibit book-making and sports betting, not to restrict state-licensed, state-regulated pari-mutuel wagering.²³ Third, federal case law indicates that the more recent and narrow statutes control, regardless of whether it is civil or criminal in nature.²⁴ The IHA is the more narrow and more recent statute. Thus, the DOJ’s position is not well-supported.

Recently, Congress stepped into this discussion again. In September 2006, Congress passed the Unlawful Internet Gambling Enforcement Act of 2006, a late addition to the politically popular Port Security Bill. The Bill was signed into effect by President George W. Bush on October 13, 2006. The Unlawful Internet Gambling Enforcement Act imposes restrictions on financial institutions and credit card companies with respect to processing payments to or from companies that accept wagers from United States citizens on illegal forms of internet wagering. Within one market day of the passage of the new Act, the value of the major sports betting and online poker

companies traded on the London Exchange fell \$6.5 billion.²⁵ The Unlawful Internet Gambling Enforcement Act does not legalize any internet gambling that was previously illegal, nor does it prohibit any form of internet wagering that was previously legal. Thus, horseracing maintained its status as authorized by the IHA as the only form of legal internet wagering in the United States.²⁶ Since the passage of the Unlawful Internet Gambling Enforcement Act, major foreign operators of online sports betting and online poker have withdrawn from the United States market.²⁷ Additionally, several public arrests of CEO’s of British and offshore companies have been made in the United States and subpoenas have issued to several Wall Street lending institutions. While some of the arrests were the result of previously pending Attorney General investigations, some appear to be the result of new found prosecutorial power under the Unlawful Internet Gambling Enforcement Act.²⁸

Overview of State Account Wagering Laws

The IHA provides that wagers must be legal in both the state where the wager is placed and the state where the wager is received.²⁹ State laws regulating account wagering can be roughly divided into four categories: (1) those that prohibit all pari-mutuel wagering, including account wagering; (2) those that specifically authorize account wagering with in-state and out-of-state providers; (3) those that permit pari-mutuel wagering but are silent with regard to account wagering; and (4) those that permit account wagering with in-state providers but prohibit account wagering with out-of-state providers.

Alaska, Georgia, Hawaii, Mississippi, North Carolina, South Carolina and Utah prohibit pari-mutuel wagering altogether; thus, in those states, it is generally acknowledged that an account wager may not be made from or in these states and that account wagering is illegal.³⁰ On the opposite end of the spectrum are the states, including Kentucky, that specifically authorize account wagering by in-state or out-of-state providers.³¹ California, Idaho, North Dakota and Ohio require that in-state and out-of-state providers be licensed by the state. The out-of-state

provider must coordinate with the state regulatory authority and must complete a rigorous application process providing detailed information on the provider and the method by which they validate the identity of their account holders. Some states which authorize account wagering, including Maryland, Massachusetts, Oregon, Virginia, Washington and Wyoming, do not require the provider to be licensed but require out-of-state providers to enter into an agreement with a local track or horsemen's group to address issues such as fees to the local market.

Several states are silent as to whether account wagering is permitted;³² however, under these states' statutory schemes or state constitution, gambling is illegal unless specifically authorized. Many of these states have taken the stance that since pari-mutuel wagering is authorized in these states and account wagering is not expressly permitted by statute, it is illegal. For example, Arizona's statutes provide that "[e]xcept as provided in this article and in title 13, chapter 33, all forms of wagering or betting on the results of a race . . . are illegal."³³ Arizona authorities have advised account wagering providers that were accepting bets from and establishing accounts for Arizona residents to cease such action immediately, stressing that Arizona statutes and rules do not authorize telephone wagering.³⁴ The Illinois Attorney General issued an opinion in November 2001, determining that Illinois tracks cannot legally accept off-site account wagers from in-state or out-of-state individuals, nor can in-state individuals place bets with off-site account wagering providers.³⁵ The Indiana Attorney General issued a similar opinion stating that since Indiana law criminalizes gambling not specifically permitted by law and online gambling is not specifically permitted, it is illegal.³⁶

Of particular interest to this Article are the states that fall into the remaining category. New York, Nevada, New Jersey, Pennsylvania and Connecticut³⁷ each permit account wagering provided the wager is placed with an in-state provider, while prohibiting participation by out-of-state providers.³⁸ Account wagering via the telephone is authorized in Connecticut but only through owner/operator Autotote

Enterprises, Inc.³⁹ Nevada permits account wagering only for in-state licensees and in-state account holders,⁴⁰ while New Jersey permits account wagering only with the sole authorized provider.⁴¹ Pennsylvania permits both telephone and internet wagering by Pennsylvania residents with licensed Pennsylvania racetracks.⁴² Although telephone wagering was previously permitted on-site, the New York legislature recently passed laws authorizing wagering through the internet and other electronic media by licensed providers.⁴³ On December 28, 2006, the New York Racing and Wagering Board adopted temporary regulations to authorize such wagering. Both the temporary regulations and proposed permanent regulations provide that only in-state providers will be licensed by the New York Racing and Wagering Board.⁴⁴

Granholm Argument

In *Granholm v. Heald*, the U.S. Supreme Court held that limitations on direct sales by out-of-state wineries into Michigan and New York violated the Commerce Clause. The statutes challenged in *Granholm* prohibited the direct shipment of wine to in-state consumers by out-of-state providers. Michigan law provided that in-state wineries could obtain a license allowing them to ship directly to consumers but out-of-state wineries could not ship directly. Instead, out-of-state wineries had to "pass through" an in-state wholesaler. The Court called the discriminatory character of the Michigan "obvious" and held that the statute violated the Commerce Clause.

The New York statute differed from the Michigan statute in that it did not absolutely ban out-of-state wineries from shipping directly to consumers, but instead required out-of-state wineries to establish a distribution operation in New York to gain privilege to ship directly. Further, the out-of-state wineries that established the requisite branch office and warehouse in New York were still ineligible for a "farm winery" license, which license provided the most direct means of shipping to New York citizens. The New York statute granted "in-state wineries access to the State's consumers on preferential terms" which the Court found

equally discriminatory, and the Court ruled that the New York statute violated the Commerce Clause. Similar to the discriminatory laws regarding direct shipment of wine, the laws in New York, Nevada, New Jersey, Pennsylvania and Connecticut that permit only in-state account wagering providers to accept telephone and internet account wagers violate the Commerce Clause.⁴⁵ In *Granholm*, despite the broad power granted to states to regulate alcoholic beverages under § 2 of the Twenty-First Amendment, the Court found that states do not have the power to ban the shipment of wine by out-of-state producers while permitting shipment by in-state producers.

The Commerce Clause provides that Congress has the power "[t]o regulate Commerce . . . among the several States." The Supreme Court has long recognized a "Dormant Commerce Clause" that limits States' powers to "erect barriers against interstate trade." "[T]he framers of the Constitution, by the Commerce Clause, gave the federal government the power to regulate interstate commerce as a means of avoiding trade wars among the states. . . . Implicitly, the Commerce Clause creates a national free market and restricts states from impeding the free flow of goods from one state to another."⁴⁶ "Time and again [the Supreme Court] has held that, in all but the narrowest of 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.'"⁴⁷ According to the Court, "States should not be compelled to negotiate with each other regarding favored or disfavored status for their own citizens."⁴⁸

It is not difficult to determine that the account wagering laws of New York, Nevada, New Jersey, Pennsylvania and Connecticut discriminate against out-of-state account wagering providers in favor of in-state providers. In each state, in-state providers are able to open accounts for bettors while out-of-state providers may not. As in *Granholm*, the in-state account wagering providers have the privilege of participating in the economic market of the state while out-of-state providers do not. Such protection of in-state providers amounts to state enforced

economic protectionism, which is the harm that the Commerce Clause was meant to prevent.⁴⁹ Allowing discrimination against out-of-state providers “invite[s] a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause.”⁵⁰ While Federal laws grant the States broad power to regulate gambling, the states may not enact statutes that discriminate in favor of in-state providers. The discriminatory account wagering statutes similarly violate the United States Constitution and are contrary to the holding in *Granholm*.

If a state has no other reasonable, nondiscriminatory means to advance a legitimate local interest, then the statute may be valid even though it is discriminatory. The “burden is on the State to show that ‘the *discrimination* is demonstrably justified,’”⁵¹ This burden is difficult to meet as the “clearest showing” is required to justify the discriminatory state regulation.⁵² Here, the states might argue goals such as controlling the number of wagering providers, ensuring that their citizens are wagering with a legitimate provider, ensuring that the state gets its share of the wagers placed or the prevention of wagering by minors or addictive gamblers. While these goals may be legitimate, excluding out-of-state providers is not the only means by which to achieve them, nor is there any concrete evidence that the states cannot effectively police the out-of-state providers. For example, there is no evidence that minors are more likely to wager with out-of-state providers than they are with in-state providers.⁵³ Thus, the five states listed above cannot satisfy the exacting standard and the statutes fail under the Commerce Clause.

Conclusion

As the percentage of wagers placed on horseracing through the telephone and the internet grow and horseracing’s future relies increasingly on off-track revenue, an examination of the legality of the discriminatory laws of New York, New Jersey, Nevada, Pennsylvania and Connecticut is essential. Full participation in these economic markets is critical to the survival of account wagering providers and is fundamental to American principles of competition and free markets. Commerce

Clause jurisprudence provides that the laws of the states that forbid out-of-state providers while permitting in-state providers cannot stand. Each of these state statutes discriminate against out-of-state providers in favor of in-state providers and there is no legitimate reason for such statutes that cannot be fulfilled with a non-discriminatory alternative. Despite gambling being an industry over which the states have great authority to regulate, as in *Granholm*, the states must use an even hand in effecting regulations on who may provide account wagering.

ENDNOTES

1. The Jockey Club, 2006 Fact Book 16 (2006) *citing* Deloitte Consulting LLP’s current economic impact analysis of the horse industry commissioned by the American Horse Council in 2004, a copy of which is available at <http://www.horsecouncil.org>.
2. *Id.* Industry participants include owners and non-owning direct service providers such as veterinarians, farriers and the like. Taxes generated by the horse industry at the Federal, state and local level are in excess of \$588 million, \$1 billion and \$275 million, respectively.
3. The estimated economic impact of the horse industry in Kentucky is \$4 billion. The horse industry is Kentucky’s largest single agricultural cash crop and represents over 320,000 horses and 80,000-100,000 jobs, including breeders, farm workers, trainers, and racetrack employees, with another 14,600 tourism related jobs attributable to the equine industry. The Kentucky Derby contributes an estimated \$217 million to the Kentucky economy annually and the estimated value of Kentucky horse exports each year is \$127 million. Kentucky Equine Education Project, Kentucky Equine Economy *at* <http://www.equinealliance.com/economy.php>.
4. E-mail from John Cooney, Communications Supervisor, The Jockey

Club (Feb. 9, 2007) (on file with author).

5. The Jockey Club, Online Fact Book, Auction Sales in North America, *at* <http://www.jockeyclub.com/fact-book.asp?section=13>.
6. Press Release, National Thoroughbred Racing Association, Inc., (Jan. 16, 2007) (on file with author) *available at* <http://www.ntra.com/content.aspx?type=pr&id=22765&style=red>.
7. Total pari-mutuel handle was \$11.627 billion in 1996. *See* The Jockey Club, Online Fact Book, Pari-mutuel Handle *at* <http://www.jockeyclub.com/fact-book.asp?section=8>.
8. E-mail from Perry Nutt, Legislative Research Commission Staff Economist (Feb. 20, 2007) (on file with author).
9. Interstate Horseracing Act, 15 U.S.C. 3001 *et seq.*
10. The Jockey Club, 2006 Fact Book 16 (2006).
11. On-track wagers return the “takeout” to the track which averages 17-20%, while off-track locations pay a simulcast fee which averages 3-5%.
12. NTRA Wagering Systems Task Force, Declining Purses and Track Commissions in Thoroughbred Racing: Causes and Solutions (Sept. 2004) *available at* <http://www.bloodhorse.com/pdf/NTRATaskReport-Sep04.pdf>.
13. This Article seeks only to discuss issues facing account wagering providers that are under contract with the host track to receive the racetrack simulcast and to wager thereon. This Article will not address those operators without the required contractual consent.
14. *Granholm v. Heald*, 544 U.S. 460 (2005).
15. *See* Kilpatrick & Lockhart Nicholson Graham Law Firm, *Internet Gaming: The Role of the Dormant Commerce Clause*, CASINO LAWYER, Winter 2006, at 18; Bennett Liebman, *Account Wagering in New York and the Dormant Commerce Clause*, 6 N.Y. ST. B.A. GOV., LAW & POLICY

- J. 27 (Fall 2004); Linda J. Shoray *et al.*, *Do State Bans on Internet Gaming Violate the Dormant Commerce Clause?* 10 GAMING L. REV. 240 (June 2006).
16. Interstate Horseracing Act, 15 U.S.C. §§ 3001-3007.
 17. *Id.* at § 3001 (emphasis added).
 18. *Id.*
 19. The DOJ maintained this position in Congressional testimony over the past ten years related to proposed bills to ban internet gaming as well as in numerous pleadings recently submitted to the World Trade Organization. For a detailed discussion of the WTO actions *see* Alexander M. Waldrop, World Trade Organization Appellate Decision dated April 7, 2005 Does Horse Racing Have Anything To Fear? in 2006 National Equine Law Conference materials, J(a)-1 (2006).
 20. Wire Act, 18 U.S.C. § 1084; The Travel Act, 18 U.S.C. § 1952; The Illegal Gambling Practices Act, 18 U.S.C. § 1955.
 21. Wire Act, 18 U.S.C. § 1084.
 22. *United States v. Cohen*, 98 Crim. 434 (S.D.N.Y.).
 23. Wire Act legislative history, H.R. Rep. 87-967, reprinted in 1961 U.S.C.C.A.N. 2631.
 24. *See* Robert Penchina, *What Does DOJ Have Against the Interstate Horseracing Act?* 10 GAMING L. REV. 446, 449 (Nov. 2006).
 25. Eric Pfanner, *Online-Gambling Shares Plunge on Passage of U.S. Crackdown Law*, N.Y. TIMES, Oct. 3, 2006, at C25.
 26. *See* Frank Angst, *NTRA hopes handle increases continue in 2007*, *Thoroughbred Times* (Jan. 27, 2007) at 10 where Keith Chamblin, NTRA Senior Vice President stated that “[t]here is no question that horseracing has been given an opportunity as the only legal form of wagering over the Internet in the United States. . . . We are already seeing the closure of some of these illegal offshore sites that were handling millions of dollars from American customers and sure were taking away some of our players.”
 27. Blood-Horse Staff, *Offshore Gambling Site Stops Taking U.S. Bets*, (Jan. 12, 2007), *Bloodhorse.com* at <http://www.bloodhorse.com/articleindex/article.asp?id=37046>. Note that sports betting is legal in Great Britain
 28. *See* FBI Arrests Former NETELLER Executives, *Card Player Online* (Jan. 16, 2007) at <http://freerepublic.com/focus/f-news/1768476/posts>. *See also* Andre Ross Sorkin & Stephanie Saul, *Gambling Subpoenas on Wall St.*, N.Y. TIMES, Jan. 22, 2007, at <http://www.nytimes.com/2007/01/22/business/22gaming.html?ex=1327122000&en=952d890ac5e0a300&ei=5088&partner=rssnyt&emc=rss>.
 29. Interstate Horseracing Act, 15 U.S.C. § 3002.
 30. There is an argument that residents of these states, which prohibit pari-mutuel wagering, altogether may legally participate in account wagering because the wager takes place in the multi-jurisdictional hub which receives the wager instead of the state from which the person places the call or computer instructions.
 31. These states include California, Idaho, Kentucky, Louisiana, Maryland, Massachusetts, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington and Wyoming.
 32. These states include Arizona, Florida, Illinois, Indiana, Michigan, New Mexico, Oklahoma, and Texas. While the Florida Attorney General has not opined on account wagering specifically, in connection with a determination whether the State of Florida may prohibit gambling on cruise ships, the Florida Attorney General issued an opinion that Florida residents are prohibited from gambling on the Internet and using a telephone to place bets outside of Florida. Fla. Op. Att’y Gen. 95-70 (Oct. 18, 1995) 1995 WL 698073. Nebraska’s statutes are silent with regard to account wagering, however, the state Supreme Court has ruled that account wagering is not permitted. West Virginia is considering a bill that would prohibit account wagering. *See* Tom LaMarra, *Bills: Vote on Table Games, Ban on Account Bets*, *BloodHorse.com* (Feb. 2, 2006) at <http://www.bloodhorse.com/articleindex/article.asp?id=37333>. In 2000, Tennessee considered a ban on all internet gambling to include pari-mutuel wagering online. *See* *Thoroughbred Times*, Tennessee legislature ponders ban on Internet gambling, *ThoroughbredTimes.com* (Feb. 24, 2000) at <http://www.thoroughbredtimes.com/national-news/2000/February/24/Tennessee-legislature-ponders-ban-on-Internet-gambling.aspx>.
 33. ARIZ. REV. STAT. § 5-112(K).
 34. Letter from Jim Higginbottom, Director of Arizona Department of Racing, dated October 27, 1999.
 35. Ill. Op. Att’y Gen. 01-010 (Nov. 2, 2001) 2001 WL 1397507. The Illinois statutes also provide that it is “unlawful gambling” to knowingly establish, maintain or operate an internet site that permits a person to play a game of chance or skill or to make a wager upon the result of any game or contest by means of the internet. While “pari-mutuel wagering as authorized by the law of the state” is excepted, no law of the state expressly authorizes account wagering. *See* 720 ILL COMP. STAT. 5/28(b)(3).
 36. Ind. Op. Att’y Gen. 98-8 (July 8, 1998) 1998 WL 391837.
 37. Based on the language of the Maryland regulations alone, Maryland also falls into the category of the states that discriminate against out-of-state providers in favor of in-state providers. MD. REGS. CODE tit. 9 § 10.04.24A(3), B(1). The Maryland Attorney General, however, issued an opinion that authorizes out-of-state providers to accept wagers from Maryland residents. MD. REGS. CODE tit. 9 § 10.04.24A(3), B(1); Md. Op. Att’y Gen. 01-0152001 WL 721091 (June 18, 2001) (requiring Yobet to follow Maryland law when opening Maryland accounts).

A state-licensed track may contract with one or more entities to conduct telephone account wagering on its behalf. MD. REGS. CODE tit. 9 § 10.04.24V.

38. The obvious implications of such discriminatory treatment between in-state and out-of-state providers is reviewed below.
39. CONN. AGENCIES REGS. § 12-574-F60 Telephone Betting. *See also* website of “Scientific Games” at <http://www.autotote.com/sgcorp/wagering.asp>.
40. NEV. REV. STAT. § § 464.010-020.
41. N.J. COMMISSION RULE 13-74-1.10. The operator of the New Jersey Sports and Exposition Authority (owned by the State) in partnership with PennWood Racing which operates www.4njbets.com.
42. 4 PA. CONS. STAT. § 325.218(b). Telephone wagering is specifically permitted by this statute and the Pennsylvania Racing Commission has approved the practice of wagering via the internet.
43. N.Y. RAC. PARI-MUT. WAG. & BREED. tit. 9 Subtitle T, Subchapter C § § 5300.1-5300.23 (effective Jan. 1, 2007).
44. N.Y. COMP. CODES R. & REGS. Chapter II, Subchapter B § § 5200.1-5209.11.
45. To come within the ambit of the Commerce Clause, horseracing and/or wagering must be part of interstate commerce. Any argument to the contrary would be without merit. *See* The New York Racing Ass’n, Inc. v. N’tl Labor Relations Bd., 708 F.2d 746 (2d Cir. 1983) (holding that horseracing affects interstate commerce).
46. Thomas E. Rutledge & Micah C. Daniels, *Who’s Selling the Next Round: Wines, State Lines, the Twenty-First Amendment and the Dormant Commerce Clause*, 33 N. KY. L. J. 1 (2006).
47. Granholm v. Heald, 544 U.S. 460, 461 (2006).
48. *Id.* at 472.
49. “The Commerce Clause was designed ‘to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation.’” Rutledge & Daniels, *supra* note 46 at 52 quoting Hughes v. Oklahoma, 441 U.S. 322, 325 (1979). *See also* H.P. Hood & Sons, Inc. v. DuMond, 336 U.S. 525, 554 (1948).
50. *See* Granholm, 544 U.S. at 473 quoting Dean Milk Co. v. Madison, 340 U.S. 349, 356 (1951).
51. Chemical Waste Management v. Hunt, 504 U.S. 334, 344, (1992).
52. C & A Carbone, Inc. v. Town of Clarkson, New York, 511 U.S. 383 at 393 (1994).
53. In the context of alcoholic beverages, the Supreme Court has held that discriminatory treatment between the products of in-state and out-of-state producers is not justified when seeking to address the problems of underage drinking. Granholm, 544 U.S. at 490.