



Regulatory Strategies for an Innovative Marketplace

2018 Annual Conference – Waikoloa, Hawaii

PANEL UPDATE – WEEK 6

This week features a double header on Constitutional Challenges! The annual conference theme is “*Regulatory Strategies for an Innovative Marketplace,*” and the agenda will cover a number of diverse and timely topics confronting the industry and marketplace of alcohol today.

PANEL #12: WHEN DID NOAH BUILD HIS BOAT? REGULATORS PREPARED FOR “CHALLENGE” MANAGEMENT – A REVIEW OF 3 CASES CHALLENGING THIS INDUSTRY’S REGULATORY STRUCTURE.

The past year saw three (3) court successes in both federal and state court for regulators who successfully defended their states’ regulatory structures. These three (3) decisions add to the 2008 decision of Manuel v. Louisiana as tools every regulator should hold and know how to use.

Wednesday morning’s program will begin with Attorney Michael Newman, Professor Brannon Denning and NCSLA Past President Murphy Painter, panelists who “were there”, discussing and reviewing the procedural history and positions argued in three cases:

1. The 9th Circuit *en banc* decision in Retail Digital Network,
2. The Texas Decision on the so-called 1-share rule (Cadena v. Texas ABCC), and
3. Instructive precedent set in Manuel v. Louisiana.

These panelists will also discuss the collateral issues that accompany such lawsuits, strategies to manage these issues, and the impact on regulators. The next session will examine recent Constitutional challenges throughout the nation.

PANEL #13: CONSTITUTIONAL CHALLENGES TO STATE ALCOHOLIC BEVERAGE LAWS

“[A]lthough the Twenty-first Amendment does give [the state] power to regulate alcoholic beverages, ... ‘state regulations of the retailer and wholesaler tiers are not immune from [Constitutional] scrutiny’”

“[A] court needs to consider ‘whether the interests implicated by a state regulation are so closely related to the powers reserved by the Twenty-first Amendment that the regulation may prevail, notwithstanding that its requirements directly conflict with express federal policies...’”

Early United States Supreme Court opinions held that the Twenty-First Amendment provided states with exceptionally broad constitutional powers to regulate alcoholic beverages within their boundaries. Over time, the Court’s opinions have curtailed state Twenty-First Amendment by virtue of other Constitutional provisions. Weakening of state Twenty-First Amendment authority has resulted in an increasing number of Constitutional challenges to state alcoholic beverage laws in Federal courts. This session will discuss the three most common Constitutional challenges to state alcoholic beverage laws: (1) First Amendment Challenges; (2) Equal Protection Clause Challenges; and (3) Commerce Clause Challenges.

Join this panel of distinguished attorneys as they discuss current law, new arguments, and recent court cases across the nation relating to these Constitutional challenges. Moderator Carrie Bonnington,

Pillsbury's Wine, Beer & Spirits Law Team Leader, and panelists Matthew Botting, General Counsel, California Alcoholic Beverage Control, J. Neal Insley, Sr. VP/General Counsel, National Alcohol Beverage Control Association, and Ginna Winfree, Associate, Gullett Sanford Robinson & Martin PLLC, will deliberate and evaluate the legal issues presented by recent challenges to state alcoholic beverage laws.

Start making your plans NOW to come to Waikoloa, Hawaii from June 17-20, 2018 for this year's annual meeting of the NCSLA! Visit www.ncsla.org today for details and **register by April 30th to get the lowest rate.** *Not a current member of NCSLA?* Joining is easy - just complete the [online application form](#) on the NCSLA website. You won't want to miss a minute of these beneficial business sessions in addition to the valuable networking opportunities with colleagues and friends!

It has been an honor to serve as President of NCSLA this year. Please join me this June as we showcase an educational business program and make lasting memories. I hope to see you there!

A. Keith Burt
NCSLA President