

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**ANHEUSER-BUSCH, INC., WHOLESALER
EQUITY DEVELOPMENT
CORPORATION, CITY-BEVERAGE –
ILLINOIS, L.L.C., CITY BEVERAGE
L.L.C., CITY BEVERAGE – MARKHAM
L.L.C., CHICAGO DISTRIBUTING L.L.C.,
SD OF ILLINOIS, Inc., and DOUBLE
EAGLE DISTRIBUTING COMPANY**

Plaintiffs,

v.

**STEPHEN B. SCHNORF, JOHN M.
AGUILAR, DANIEL J. DOWNES, SAM
ESTEBAN, MICHAEL F. MCMAHON,
MARTIN MULCAHEY, DONALD
O’CONNELL, Commissioners, of the Illinois
Liquor Control Commission, in their official
capacities; and RICHARD R. HAYMAKER,
Chief Legal Counsel of the Illinois Liquor
Control Commission, in his official capacity**

Defendants.

Case No. 10 CV 01601

Hon. Robert M. Dow, Jr.

Hon. Michael T. Mason

**MOTION OF THE ASSOCIATED BEER DISTRIBUTORS OF ILLINOIS FOR LEAVE
TO FILE *INSTANTER* ITS *AMICUS CURIAE* BRIEF**

The Associated Beer Distributors of Illinois (“ABDI”), a not-for-profit business trade association representing members who are in the business of distributing beer in the State of Illinois, submits this Motion for Leave to File *Instanter* Its Amicus Curiae Brief (“Motion for Leave” or “Motion”) in this matter. As of the date of this Motion, no Defendant in this action opposes ABDI’s filing, and the State of Illinois and the Wine & Spirits Distributors Association consent to ABDI’s filing. Plaintiff Anheuser-Busch, Inc. (“Plaintiff”) has indicated that it will

object to ABDI's Motion for Leave. Accordingly, for the reasons set forth below, ABDI respectfully requests that this Court grant its Motion for Leave and allow ABDI's *amicus* brief, which is attached hereto as Exhibit A.

I. ABDI's Interest

As discussed more fully in its *amicus* brief, ABDI serves as the state membership organization of the beer wholesaling industry in Illinois representing over 60 licensed Illinois beer distributors. This case implicates the essential interests of ABDI and its members because Plaintiffs have challenged and seek to dismantle Illinois' three-tier regulatory system. If Plaintiffs are successful, the business of ABDI's members, which have operated successfully and independently under the existing system, will be significantly and adversely impacted.

II. Argument

District courts have long considered *amicus* briefs when deciding disputed matters pending before it. See, e.g., United States v. Bd. of Educ. of the City of Chicago, No. 80 C 5124, 1993 WL 408356, at *3-4 (N.D. Ill. Oct. 12, 1993) (allowing third party voluntary membership organizations to file *amicus* briefs where the outcome of the litigation could have a substantial impact on the organization's members). Whether a party will be permitted to file an *amicus* brief is a matter left to the discretion of the court. Nat'l Org. for Women, Inc. v. Scheidler, 223 F.3d 615, 616 (7th Cir. 2000). There are no specific prerequisites for appearing as *amicus* in the district court and courts may grant leave to appear *amicus curiae* if it believes that such appearance may be useful to the court. Bd. of Educ. of the City of Chicago, 1993 WL 408356, at *3-4.

When deciding whether or not to consider an *amicus* brief, the court considers whether the brief will assist the court by presenting ideas, arguments, theories, insights, facts or data that may not be found in the parties' briefs. Voices for Choices v. Illinois Bell Tel. Co., 339 F.3d

542, 545 (7th Cir. 2003); The Chamberlain Group, Inc. v. Interlogix, Inc., No. 01 C 6157, 2004 WL 1197258, at *1 (N.D. Ill. May 28, 2004) (allowing third party to file amicus brief where amicus offered legal authorities and analysis not presented in the parties' briefs). An amicus brief should be permitted in "a case in which a party is inadequately represented; or in which the would-be amicus has a direct interest in another case that may be materially affected by a decision in this case; or in which the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide." Interlogix, Inc., 2004 WL 1197258, at *1; see also Scheidler, 223 F.3d at 617; Ryan v. Commodity Futures Trading Comm., 125 F.3d 1062, 1063 (7th Cir. 1997).

ABDI's Motion for Leave should be granted as ABDI's amicus brief offers ideas, arguments, facts, data, theories and insights, as well as a unique perspective and specific information that are not presented by, or which expand upon the submissions of, the other parties. Specifically, ABDI's amicus brief will:

1. Present a unique historical policy perspective on liquor regulation and the three-tier system;
2. Present relevant historical information on policies and regulations under the three-tier system in Illinois;
3. Present a different analysis of Granholm v. Heald, 544 U.S. 125 (2005) than presented by the parties; and
4. Present an alternative view of potential remedies in the event of a finding of facial discrimination under 235 ILCS 5/5.

ABDI's amicus brief raises facts and unique legal arguments not addressed by the submissions of the parties to this action and the resolution of this dispute may have a considerable effect on ABDI and its members. Consideration of ABDI's amicus brief is therefore appropriate. Interlogix, 2004 WL 1197258, at *1 (allowing third party with an interest in the litigation to file amicus brief that presented relevant legal authority not identified or

analyzed by the other parties); Bd. of Educ. of the City of Chicago, 1993 WL 408356, at *3-4 (permitting third party organizations whose membership could be affected by the litigation to file amicus briefs).

III. Conclusion

For these reasons, ABDI respectfully requests that this Court grant its Motion for Leave and allow the proposed *amicus* brief attached hereto.

Respectfully Submitted,

Dated: May 14, 2010

/s/Herman G. Bodewes

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CERTIFICATE OF SERVICE

I certify that the foregoing **Motion of the Associated Beer Distributors of Illinois for Leave to File *Instante* Its *Amicus Curiae* Brief** was electronically filed with the Clerk of the Court using the CM/ECF system this 14th day of May, 2010, to all parties of record.

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