

*SOUTH DAKOTA v DOLE, SECRETARY OF
TRANSPORTATION 483 U.S. 203, No. 86-260*

Argued
April 28, 1987
Decided
June 3, 1987

In June 1984, Congress passed an amendment to the Surface Transportation Act directing the Secretary of Transportation, Elizabeth H. Dole, to withhold a percentage of federal highway funds from states "in which the purchase or public possession ... of any alcoholic beverage by a person who is less than twenty-one years of age is lawful." South Dakota permitted anyone age nineteen or over to buy beer containing up to 3.2 percent alcohol.

Unless it raised its legal age for all alcoholic beverages before October 1, 1986, the state faced the loss of \$12 million in federal highway money over a two-year period. The state sued in the United States District Court stating that the statute violated both the Tenth and the Twenty-First Amendments.

South Dakota argued that under the Tenth Amendment the national government possessed only those powers delegated to it by the Constitution; the states retained sovereignty over all areas not granted to the national government. South Dakota further argued that the provision limiting highway funds violated the Twenty-First Amendment, which they believed gave states the right to regulate the importation and sale of liquor. Under the Spending Clause of the Constitution (Article I, Section 8, Clause 1), Congress could "... pay the debts and provide for the common defence and general welfare of the United States." The Necessary and Proper (Elastic) Clause of the Constitution gave Congress the right to make laws to carry out its delegated powers, thus giving Congress the right to attach conditions to the receipt of federal funds.

South Dakota also contended that its law permitting nineteen-to-twenty-one year-olds to drink 3.2 beer was intended to promote temperance in alcohol consumption. Controlled drinking, they argued, promoted responsible drinking more than prohibition, which forced young people to drink in cars or in remote areas. South Dakota was supported by eight other states, associations of beer brewers, and organizations representing mayors and state legislatures.

Secretary Dole argued that Congress could attach conditions to grants of federal funds without violating the Tenth Amendment. She saw the law as an incentive to the states to do something to reduce drunk driving. The states were not required to raise the drinking age but could simply refuse the federal funds involved.

Dole also argued that there was no conflict between the statute and the Twenty-First Amendment because South Dakota could still choose to let those under the age of twenty-one drink alcoholic beverages; the federal government was only recommending a minimum drinking age, not mandating it. Secretary Dole was supported by representatives from a variety of insurance companies, Mothers Against Drunk Driving, and the National Council on Alcoholism, all contending that the measure would reduce drunk driving by teenagers, save lives, and protect property. The District Court rejected the State's claims,

and the Court of Appeals for the Eighth Circuit affirmed. The case was then granted certiorari in the United States Supreme Court.

ISSUE: Does Congress, under the Tenth Amendment, have the right to impose conditions to states in receiving federal funds? Does the Twenty-First Amendment prohibit Congress from regulating the sale of liquor? Does Congress, under the Spending Clause (Article I, Section 8, Clause 1) have the power to set conditions for states to receive federal funds?

SOUTH DAKOTA v. DOLE
(1987) Decision

Chief Justice Rehnquist delivered the seven-to-two opinion of the Court, in which Associate Justices White, Marshall, Blackmun, Powell, Stevens, and Scalia joined. Rehnquist first answered the argument that the statute violated the Twenty-First Amendment, by stating:

... [W]e need not decide in this case whether that [the Twenty-First] Amendment would prohibit an attempt by Congress to legislate directly a national minimum drinking age. Here, Congress has acted indirectly under its spending power to encourage uniformity in the States' drinking ages. ... [W]e find this legislative effort within constitutional bounds even if Congress may not regulate drinking ages directly.

Rehnquist then addressed the question raised regarding the Spending Clause of the Constitution:

The Constitution empowers Congress to "lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common defence and general Welfare of the United States " Incident to this power, Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power "to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives. "

The Chief Justice listed several restrictions to the Spending Power of Congress. First, the Spending Power must be for the "general welfare." To this, Rehnquist acquiesced to Congress. Second, Congress must make it very clear to the states their choices in the matter. Next, previous Supreme Court cases have suggested that conditions on federal funds must be related "to the federal interest in particular national projects or programs." Finally, "... other constitutional provisions may provide an independent bar to the conditional grant of federal funds." South Dakota did not question the first three provisions. However, the last restriction was questioned by the state. Rehnquist answered, "But our cases show that this `independent constitutional bar' limitation on the spending power is not of the kind petitioner suggests."

Next, the Court moved to the Tenth Amendment question. The Chief Justice wrote, "We have also held that a perceived Tenth Amendment limitation on congressional regulation of state affairs did not concomitantly limit the range of conditions legitimately placed on federal grants."

... [W]e think that the language *in* our earlier *opinions* stands for the unexceptionable proposition that the power may not be used to induce the States to engage in activities that would themselves be unconstitutional. Thus, for example, a grant of federal funds conditioned on invidiously discriminatory state action or the infliction of cruel and unusual punishment would be an illegitimate exercise of the *Congress' broad spending power*. *But no such claim can be or is made here. Were South Dakota to succumb to the blandishments offered by Congress and raise its drinking age to 21, the State's action in so doing would not violate the constitutional rights of anyone.*

Finally, Rehnquist compared the potential loss to the state to the good that might come from the statute:

[A]ll South Dakota would lose if she adheres to her chosen course as to a suitable minimum drinking age is 5% of the funds otherwise obtainable under specified highway grant programs....

Here Congress has offered relatively mild encouragement to the States to enact higher minimum drinking ages than they would otherwise choose. But the enactment of such laws remains the prerogative of the States not merely in theory but in fact. Even if Congress might lack the power to impose a national minimum drinking age directly, we conclude that encouragement to state action found in [the statute] is a valid use of the spending power.

Justices Brennan and O'Connor dissented. O'Connor wrote:

My disagreement with the Court is relatively narrow on the spending power issue; it is a disagreement about the application of a principle rather than a disagreement on the principle itself...

[T]he Court's application of the requirement that the condition imposed be reasonably related to the purpose for which the funds are expended is cursory and unconvincing. We have repeatedly said that Congress may condition grants under the spending power only in ways reasonably related to the purpose of the federal program...., In my view, establishment of a minimum drinking age of 21 is not sufficiently related to interstate highway construction to justify so conditioning funds appropriated for that purpose.