

NJ Ban On BYOB Advertisements Held To Be Unconstitutional

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In *GJJM Enterprises v. City of Atlantic City*, the United States District Court, District of New Jersey, on November 19, 2018, (Civ. Action 17-2492) held that the New Jersey's law preventing restaurants from advertising "bring your own beer" is unconstitutional.

Plaintiff GJJM owns a nightlife club in Atlantic City featuring non-alcoholic drinks and hosts convention groups and bachelor parties. GJJM permits its customers to bring and consume beer or wine (BYOB) at the club but does not permit mixed drinks or liquor. New Jersey Statute 2C:33-27 permits patrons to bring beer and wine to the club but under a provision of the statute a restaurant is not allowed to advertise either inside or outside the restaurant that patrons are permitted to BYOB. Individuals who advertise that customers can BYOB to their restaurant face prosecution for a disorderly person offense. In addition, a court can prohibit individuals who violate the advertising ban from permitting the consumption of BYOB at their restaurants. GJJM argued that the New Jersey BYOB statute violated the First Amendment and that they should be permitted to advertise that customers are permitted to BYOB to their club.

The Honorable Joseph Rodriguez, U.S.D.J. addressed the constitutionality of the BYOB Statute. Judge Rodriguez stated that there was no dispute that New Jersey has a legitimate interest in regulating alcoholic beverages to protect the health, safety and welfare of its people. However, the court noted that "content based laws, meaning those that target speech based on its communicative content, are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." The court determined that New Jersey's BYOB law is subject to a strict scrutiny standard. Under this rigorous standard, Judge Rodriguez held that the defendants presented no compelling government interest for banning BYOB advertising considering that liquor stores and restaurants with liquor licenses are permitted to advertise on site sales.

Judge Rodriguez concluded that the language in New Jersey's BYOB statute that bans advertising outside or inside the premises was unconstitutional.