

No. 06-633

In The
Supreme Court of the United States

PHILIP MORRIS USA, INC., et al.,

Petitioners,

v.

THE STATE OF MINNESOTA, COUNCIL
OF INDEPENDENT TOBACCO
MANUFACTURERS OF AMERICA, et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The Minnesota Supreme Court**

**CONDITIONAL CROSS-PETITION FOR A WRIT OF
CERTIORARI OF COUNCIL OF INDEPENDENT
TOBACCO MANUFACTURERS OF AMERICA**

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QUESTIONS PRESENTED

Petitioners argue the imposition of the Minnesota Health Impact Fee ("HIF") on Petitioners' cigarettes violates the Contracts Clause based on their Settlement Agreement with Minnesota – a Settlement Agreement in which Petitioners waived their First Amendment rights. Petitioners seek selective enforcement of the HIF, namely, enjoining enforcement of the HIF against their cigarettes while allowing enforcement of the HIF on cigarettes made by others. Respondent Cross-Petitioner Council of Independent Tobacco Manufacturers of America ("CITMA"), an association of tobacco manufacturers who are not parties to the Settlement Agreement and have not waived any of their First Amendment rights, argued selective enforcement of the HIF would violate the First Amendment and Equal Protection Clause. The trial court enjoined the HIF as a violation of the Settlement Agreement and ruled selective enforcement of the HIF was unconstitutional. The Minnesota Supreme Court reversed, holding the HIF did not violate the Settlement Agreement; therefore, it did not reach the issue of selective enforcement. The questions presented are:

1. Would selective enforcement of the HIF violate the First Amendment by taxing products made by parties who have refused to surrender their First Amendment rights and exempting products made by manufacturers who have surrendered their First Amendment rights?

QUESTIONS PRESENTED – Continued

2. Would selective enforcement of the HIF violate the Equal Protection Clause by discriminating based on a party's refusal to surrender its First Amendment rights and by drawing fundamentally unfair, arbitrary and capricious distinctions without any legitimate and rational legislative purpose?

