The Twenty-First Amendment to the U.S. Constitution is famous because it repealed prohibition. The second section, which prohibits the transportation or importation of alcohol into a state in violation of state law, is less well-known. Despite this section's broad language and the Supreme Court's repeated affirmation that the states' three-tier system of regulating alcohol (manufacturers sell to wholesalers; wholesalers sell to retailers; retailers to consumers) is constitutional, the Supreme Court has limited states' ability to regulate the distribution of alcohol.

The question the Supreme Court will decide in Tennessee Wine & Spirits Retailers Association v. Byrd is whether Tennessee's law requiring alcohol retailers to live in the state for two years to receive a license violates the Constitution's dormant Commerce Clause. The dormant Commerce Clause prevents states from “discriminat[ing] against interstate commerce” or “favor[ing] in-state economic interests over out-of-state interests.”

According to Tennessee Wine & Spirits “at least twenty-one States impose some form of durational-residency requirement for liquor retailers or wholesalers. And many States impose other residency-based requirements on those entities.”

Tennessee Wine & Spirits argues that the dormant Commerce Clause doesn’t apply to durational-residency requirements because they “treat liquor produced out of state the same as its domestic equivalent.” Tennessee Wine & Spirits relies on Granholm v. Heald (2005), where the Supreme Court struck down a state law that permitted in-state wineries, but not out-of-state ones, to ship directly to in-state consumers. The Court reasoned that the Twenty-First Amendment did not “save” this law from violating the dormant Commerce Clause. According to Tennessee Wine & Spirits per Granholm the dormant Commerce Clause only applies to regulation of alcohol producers and products. In short, Tennessee’s durational-residency law doesn’t treat alcohol produced in-state or out-of-state differently.

The Sixth Circuit disagreed with Tennessee Wine & Spirits and concluded the dormant Commerce Clause applies to this statute and was violated. The statute’s legitimate purposes of protecting the health, safety, and welfare of Tennessee residents and having a higher level of oversight over liquor retailers could be accomplished through non-discriminatory alternatives, according to the court. Possibilities included requiring a retailer’s general manager to be a resident of the state and implementing technological improvements, such as creating an electronic database to monitor liquor retailers.

The Supreme Court likely took this case to resolve a circuit split over the scope of the Granholm decision. The Fifth and Sixth Circuits have held that durational-residency requirements violate the dormant Commerce Clause. The Eighth Circuit has held that they are a valid exercise of states’ Twenty-first Amendment authority. The Second and Fourth Circuits have upheld other kinds of residency-related restrictions on retailers and wholesalers post Granholm.

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