The State and Local Legal Center (SLLC) amicus brief in Tennessee Wine & Spirits Retailers Association v. Byrd argues that Tennessee’s law requiring alcohol retailers to live in the state for two years to receive a license is constitutional.

According to Tennessee Wine & Spirits “[a]t 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.”

Beyond repealing prohibition, the Twenty-First Amendment prohibits the transportation or importation of alcohol into a state in violation of state law. Despite this amendment’s broad language the Supreme Court has held that some state laws restricting the distribution of alcohol violate 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.”

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 SLLC amicus brief argues “courts should review State regulation of alcohol with a heavy thumb on the scale in favor of upholding the regulation, striking it down only if there could be no rational basis on which the regulation serves a legitimate interest in regulating alcohol and instead could have no purpose other than discrimination against out-of-state economic interests. Under that standard, the Tennessee two-year residency requirement easily passes muster.” Additionally the brief points out “[a]ffording that kind of deference to State regulation of alcohol makes sense because States and local governments bear the brunt and cost of problems associated with alcohol sales and use.”

Richard A. Simpson, Tara L. Ward, and Emily S. Hart of Wiley Rein wrote the SLLC brief which the following organizations joined: National Conference of State Legislatures, the National Association
of Counties [6], the National League of Cities [7], the United States Conference of Mayors [8], the International City/County Management Association [9], and the International Municipal Lawyers Association [10].

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