

THE
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US Supreme Court to Review State Residency Requirements

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The “final word” may be in sight in a long-running dispute over state residency requirements imposed on applicants for retail alcohol beverage licenses as well as more fundamental questions about state powers under the 21st Amendment.

[As anticipated last July](#), a single sentence order of the US Supreme Court issued on September 27 granted a petition for a *writ of certiorari* filed by the Tennessee Wine and Spirits Retailers Association (Tennessee Retailers) requesting the high court to review lower court decisions that invalidated Tennessee’s two-year residency requirement for retail license applicants.

Earlier this year, the US Court of Appeals for the Sixth Circuit reviewed the Tennessee law at issue and held that, “a three-tier system can still function” without the two-year durational residency restriction imposed by Tennessee. The 6th Circuit quoted a 1984 Supreme Court decision: “The central purpose of the [Twenty-first Amendment] was not to empower States to favor local liquor industries by erecting barriers to competition.” The court went on to analyze the Tennessee restrictions and found that they violate the dormant commerce clause, a legal concept designed to prevent states from engaging in economic protectionism.

The Tennessee Retailers presented a strong argument for review by the US Supreme Court. Over the last decade, two federal appellate courts struck down state residency requirements for alcohol beverage licensees and three upheld restrictions, creating a “Circuit split” and uncertainty for regulators throughout the nation.

At the heart of the different appellate courts’ split is whether the non-discrimination principle of the “dormant” Commerce Clause, applied clearly to wine producers and products in the 2005 *Granholm v. Heald* decision, also apply to state laws regulating the wholesale- and retail-tiers of the industry. Some circuit courts of appeal, relying on *Granholm’s* statement that the three-tier system is “unquestionably legitimate,” have concluded that the non-discrimination rule only applies to producers and products. The 6th Circuit in *Byrd* rejected this notion and applied the non-discrimination rule to strike down a residency requirement for retail licensees.

The stakes reach far beyond residency; if Commerce Clause non-discrimination principles apply to state alcohol laws governing retailers, for example, than many state laws that prohibit out-of-state retailers from shipping alcohol to a state’s consumers may be vulnerable. Most states authorize in-state retailers to ship alcohol directly to a consumer’s home, so application of non-discrimination principles could force states to extend similar privileges to out-of-state retailers. A spirited debate is appropriate for such an important issue. Over the next several months, industry blogs and Twitter feeds will be filled with commentary and summaries of *amicus* briefs from attorneys general, industry associations, state and national business organizations, and others.

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