



Supreme Court Upholds Dormant Commerce Clause Challenge To Tennessee's Durational Residency Requirement For Liquor Retailers

Tennessee Wine & Spirits Retailers Association v. Thomas, No. 18-96

Decided June 26, 2019

Today, the Supreme Court struck down Tennessee's 2-year durational residency requirement for obtaining retail liquor licenses, holding that it discriminates against interstate commerce in violation of the dormant Commerce Clause.

Background:

Tennessee law imposes a two-year residency requirement for applicants seeking to obtain a one-year license to sell liquor in the state, and a ten-year residency requirement for licensees seeking to renew their retail liquor license. Two new applicants, Total Wine and the Ketchum family, sought to obtain retail liquor licenses in Tennessee. Though neither satisfied the durational residency requirements, Tennessee's Alcoholic Beverage Commission (the "Commission") recommended that the licenses be approved. Then, in response to a threatened lawsuit, the Commission sought a declaratory ruling from a federal district court on the constitutionality of the durational-residency requirements. The district court held that the durational residency requirements violated the dormant Commerce Clause, notwithstanding the 21st Amendment's express reservation of power to each state to regulate the importation and distribution of liquor into the state. A divided panel of the Sixth Circuit affirmed.

"The aim of the [21st Amendment] was not to give States a free hand to restrict the importation of alcohol for purely protectionist purposes."

Justice Alito,
writing for the majority

Gibson Dunn filed an *amicus* brief for the Wine and Spirits Wholesalers of America defending Tennessee's durational residency requirements.

Issue:

Does the 21st Amendment empower states, consistent with the dormant Commerce Clause, to regulate liquor sales by granting retail or wholesale licenses only to individuals or entities that have resided in-state for a specified time?

Court's Holding:

No. Tennessee's 2-year durational residency requirement for retail liquor store license applicants violates the dormant Commerce Clause and is not rescued by the 21st Amendment. The requirement discriminates against out-of-state applicants and is not justified by any legitimate state interest.

What It Means:

- The Court's decision reaffirms the line of cases, including *Bacchus Imports v. Dias* (1984) and *Granholm v. Heald* (2005), upholding certain dormant Commerce Clause challenges to state liquor laws. These decisions represent a retreat from the prevailing view in the years following the repeal of Prohibition and the adoption of the 21st Amendment that states have plenary power to regulate liquor within their borders.
- In striking down the durational residency requirement for retailers, the Court explained that Section 2 of the 21st Amendment was meant to constitutionalize the basic understanding of the extent of the states' power to regulate alcohol that prevailed under statutes passed by Congress before Prohibition. The Court concluded that this standard gives states leeway in adopting alcohol-related public health and safety measures, but does not allow them to adopt purely protectionist restrictions on commerce in alcoholic beverages.
- The Tennessee Wine and Spirits Retailers Association argued that the durational residency requirement ensures that retailers are amenable to direct process of state courts, gives the State an opportunity to determine an applicant's fitness to sell alcohol, and guards against undesirable non-residents moving into the State for the primary purpose of operating a liquor store. The Court concluded, however, that the requirement is ill-fitted to those goals, and the goals could be achieved through less protectionist measures.
- Importantly, the Court reaffirmed that the 21st Amendment allows states to require a so-called "three-tier system." The three-tier system generally separates (and separately regulates) the production, distribution, and retail levels. The Court emphasized that the three-tier system was not "[a]t issue in this case," and confirmed that "States 'remain] free to pursue' their legitimate interest in regulating the health and safety risks posed by the alcohol trade" via the three-tier system.

- The dissent agreed with the arguments made by Gibson Dunn’s amicus brief, explaining that the 21st Amendment “embodied a classically federal compromise” that “allowed the States to regulate alcohol ‘unfettered by the Commerce Clause.’” Justice Gorsuch, joined by Justice Thomas, maintained that under the terms of that compromise, “Tennessee’s law . . . would seem perfectly permissible.”
- The Court’s decision may make it more difficult for states to ensure that liquor retailers have sufficient ties to the communities they serve. The decision will likely result in additional dormant Commerce Clause challenges to other aspects of state liquor regulation.

As always, Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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