



TO: ABL Board of Directors & Affiliates
FROM: ABL Staff
RE: Tennessee Wine and Spirits Retailers v. Byrd
DATE: October 23, 2018

“Dormant” Commerce Clause & 21st Amendment

The “dormant” Commerce Clause is a legal doctrine inferred by courts from the Commerce Clause in Article I of the U.S. Constitution. It is applied to prohibit state legislation that discriminates against interstate or international commerce. The 21st Amendment 1) repealed Prohibition; and 2) gives states control over alcohol beverage laws. This puts the “dormant” Commerce Clause in conflict with the 21st Amendment, as the 21st Amendment limits the power of the “dormant” Commerce Clause on a State’s regulatory power over the delivery and use of beverage alcohol within its borders. This natural tension has been the cause of a handful of legal cases wherein courts have attempted to balance the competing interests of the laws.

Granholm v. Heald

In *Granholm v. Heald* (2005), the U.S. Supreme Court ruled that states can’t discriminate between in-state wineries and out-of-state wineries when it comes to who can ship directly to customers. States either must allow all wineries to ship, or none to ship. Since the ruling, most states have used the legislative process to permit limited and regulated winery-direct shipping. In its opinion, the Court also found the “three-tier system” to be “unquestionably legitimate” and did not address states’ rights to set laws that legally differentiate between in-state and out-of-state entities at the wholesale and retail tiers. Nonetheless, this ruling established some precedent in 21st Amendment / “dormant” Commerce Clause debate.

Circuit Court Cases

Following the *Granholm* decision, a handful of legal challenges to the constitutionality of state alcohol laws made their way from Federal District Courts to Federal Circuit Courts of Appeal and caused a “Circuit split”. In two instances, federal appeals courts struck down residency requirements for beverage alcohol licenses, whereas three cases saw restrictions upheld. The crux of this split is whether the non-discrimination principle applied to winemakers and wine products applies to wholesalers and retailers, or solely to wine producers. Most notably, the 2nd Circuit in *Arnold’s Wines v. Boyle* (2009) and the 8th Circuit in *Southern Wine and Spirits v. Missouri ABC* (2013) are at odds with the 5th Circuit in *Siesta Village v. Steen* (2010) and the 6th Circuit in *Tennessee Wine and Spirits Retailers Association v. Byrd* (2018). Industry legal observers have noted it is likely the Supreme Court would eventually take up this issue to resolve the split and to provide clear guidance to the federal judiciary. This has now happened with the Supreme Court granting writ of certiorari in *TWSRA v. Byrd*.

TWSRA v. Byrd

On February 21, 2018, in a split 2-1 decision, the U.S. Court of Appeals for the 6th Circuit published its opinion in *Byrd v. Tennessee Wine and Spirits Retailers Association*, affirming a Middle District of Tennessee decision finding that residency requirements for alcohol beverage retail licensees are unconstitutional under the “dormant” Commerce Clause.

Tennessee law requires an applicant for a retail license to have been a resident of Tennessee for at least the two-year period immediately preceding the submission of the license application. For corporate license applicants, the two-year requirement applies to any officer, director or stockholder of the corporation. To renew such a license the law requires Tennessee residency for at least ten consecutive years. Two prospective retail applicants – including Total Wine – that did not meet the two-year residency requirement, sought licenses. Instead of following state law, the Tennessee ABC and Tennessee Attorney General, filed a lawsuit asking the courts to decide whether the residency requirement is constitutional.