

PRESS RELEASE

Wiley Rein Files Supreme Court *Amicus* Brief for States and Local Governments in 21st Amendment Challenge to Dormant Commerce Clause Restrictions on Durational-Residency Requirements for Retail Liquor Licenses

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Washington, DC—Wiley Rein LLP filed an *amicus* brief with the Supreme Court of the United States in *Tennessee Wine and Spirits Retailers Association v. Clayton Byrd* on behalf of the National Conference of State Legislatures, National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association, and International Municipal Lawyers Association.

The November 20 brief supports the Tennessee Wine and Spirits Retailers Association's (TWSRA) challenge to the Sixth Circuit's decision striking down as unconstitutional Tennessee's two-year durational residency requirement for retail liquor licenses. The TWSRA represents more than 600 small business owners across Tennessee.

The brief was written by Richard A. Simpson, a partner in Wiley Rein's Appellate, Litigation, and Insurance practices; Tara L. Ward, of counsel in the [Government Contracts Practice](#); and Emily S. Hart, an associate in the [Insurance Practice](#), along with co-counsel Lisa E. Soronen, Executive Director of the State and Local Legal Center.

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Pursuant to the broad power afforded to States to regulate alcohol under the 21st Amendment, Tennessee passed a statute limiting first-time retail liquor licenses to persons who had been residents of Tennessee for at least two years. Corporate applicants could obtain a license only if their officers, directors, or stockholders had been residents of Tennessee for at least two years.

Tennessee Fine Wines and Spirits, LLC, a retailer whose owners reside in another state, brought a suit challenging the statute. The U.S. Court of Appeals for the Sixth Circuit ruled in the company's favor, upholding a district court decision that had struck down the statute. In doing so, the Sixth Circuit applied traditional dormant Commerce Clause scrutiny, holding that the statute violated the dormant Commerce Clause because Tennessee's durational-residency law treats out-of-state economic interests less favorably than in-state economic interests, and Tennessee could have pursued its interests in promoting public welfare through less discriminatory means.

Wiley Rein's brief proposes, in light of the text and history of the 21st Amendment, that the Court should adopt an exceedingly deferential standard for dormant Commerce Clause review of state alcohol regulation. In particular, a State regulation of alcohol should be upheld if there is any possible rational basis for the regulation based on a legitimate State interest in controlling the sale and use of alcohol within the State. The dormant Commerce Clause should be held to invalidate a State regulation of alcohol only if there is no rational basis for the regulation other than discrimination against out-of-state economic interests, according to the brief. By adopting this kind of rational basis test, the Court would honor the special power and discretion afforded to State regulation of alcohol under the 21st Amendment – while at the same time preserving the core purpose of the dormant Commerce Clause by prohibiting State regulations that could have no purpose other than blatant discrimination against out-of-state economic interests. Under that standard, the Tennessee two-year residency requirement easily passes muster.

The brief argues that affording deference to State regulation of alcohol honors the intent of the 21st Amendment. It also makes sense because States and local governments bear the brunt and cost of problems associated with alcohol sales and use, and the impact of those problems varies widely from State to State, as do local conditions and views. The brief notes that States and municipalities need regulatory flexibility to address these critical issues at a local level.

The brief also asserts that the practical implications of the Court's decision extend beyond alcohol regulation. States and local governments face difficult questions regarding the level and nature of regulation necessary to curb opioid and marijuana abuse, for example, and should be given deference as they struggle with these local problems. A decision invalidating the Tennessee statute, notwithstanding the special power accorded the States by the 21st Amendment, would call into serious question States' ability to deal creatively with other serious, localized issues not afforded special attention under the Constitution.

To read the brief, please click [here](#).