



Tennessee Wine Case:

*Different Scenarios and What
It Means for Wine Retailers*

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Durational Residency Requirement Scenarios

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- ▶ The Court upholds the Tennessee law in its entirety
- ▶ The Court strikes down the ten-year durational residency requirement but upholds the two-year durational residency requirement
- ▶ The Court strikes down the Tennessee law and narrowly decides the case based on the law in front of it and does not expound on the constitutionality of residency requirements
- ▶ The Court strikes down the Tennessee law but decides that it is not unconstitutional for a state to utilize a durational residency requirement if it meets certain tests (for example, reasonableness)

Durational Residency Requirement Scenarios

- ▶ The Court provides a bright line test for the durational residency requirements
- ▶ The Court strikes down the law and determines that durational residency requirements are unconstitutional
- ▶ The Court decides that residency is an integral part of the three-tier system

Commerce Clause/21st Amendment

Scenarios

Commerce Clause/21st Amendment Scenarios

- ▶ The Court determines that *Granholm* extends to retailers
- ▶ The Court holds that the state can make laws under the 21st Amendment that protect it from a dormant Commerce Clause challenge
- ▶ The Court provides a bright line test on when the 21st Amendment protects a state law from a Commerce Clause challenge

Commerce Clause/21st Amendment Scenarios

- ▶ The Court states that the Commerce Clause prevails unless the state can provide a justification for the law (i.e. public safety justification)
- ▶ The Court does not decide this issue and we are in a state of checkerboard justice.
- ▶ The Court going silent and delays the inevitable.

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- ▶ If the Court does not make a bold decision, the result is checkerboard justice.
- ▶ Depending on what judicial circuit a customer resides in, determines whether a retailer can ship wine to customers in that state
- ▶ Wine retailers could ship to customers in the 6th Circuit based on the *Byrd* decision
- ▶ The 7th Circuit may decide in time that wine retailers can ship based on the *Lebamoff* case
- ▶ Wine retailers based on *Arnold Wines* may not be able to ship to customers in the 2nd Circuit states
- ▶ Wine retailers could not probably ship to customers located in the 8th Circuit based on the *Southern Wine and Spirits* case

What this means for wine retailers that want to ship product to customers in other states

The Court rules that a residency requirement is Constitutional

- ▶ This would not be positive for wine retailers, as the states could utilize residency requirements to exclude non-residents from the marketplace
- ▶ However, this is not a death knell for wine retailers shipping into a state

What this means for wine retailers that want to ship product to customers in other states

How do we plan going forward

- ▶ The wholesalers will fight any change that allows shipping tooth and nail
- ▶ If the Supreme Court does not address the wine shipping issue or make a clear standard for residency, the fight will carry on for another day
- ▶ The wine retailer industry needs to get active in the political process to write laws with the best possible outcome

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