

NEWS RELEASE

June 26, 2019

Special Message from the American Beverages Licensees about the SCOTUS Decision on TWSRA v. Thomas

U.S. Supreme Court Invalidates State Durational Residency Requirements for Retail Liquor Licenses



JUNE 26, 2019 – BETHESDA, MD – The Supreme Court of the United States today affirmed by a 7-2 vote the 6th Circuit Court of Appeals’ ruling in *Tennessee Wine & Spirits Retailers Association v. Thomas*. The Court found that Tennessee’s durational-residency requirements for retail and wholesale alcohol licenses are not protected under the Twenty-first Amendment.

The majority opinion, written by Justice Samuel Alito, opens the door for future challenges to state alcohol laws, including possibly even basic residency requirements that differentiate between in-state and out-of-state interests. The Court’s decision also creates

uncertainty for retail beverage licensees who have long participated in the state regulatory systems that make up America’s alcohol marketplace.

“It is disappointing that the Court did not recognize the full weight of the Twenty-first amendment and the societal intent of the Tennessee residency laws when balanced against the Dormant Commerce Clause,” said ABL Executive Director John Bodnovich.

“While today’s decision is not what those who recognize the importance of a well-regulated and orderly alcohol marketplace were seeking, beverage licensees must now recommit themselves to working with state legislators and regulators to adapt state-based alcohol regulatory systems that promote public safety in a manner that fits with the Court’s interpretation of the relationship between the Twenty-first Amendment and Dormant Commerce Clause.”

Justice Alito’s majority opinion noted, “That provision [Section 2 of the Twenty-first Amendment] allows each State leeway to enact the measures that its citizens believe are appropriate to address the public health and safety effects of alcohol use and to serve other legitimate interests, but it does not license the States to adopt protectionist measures with no demonstrable connection to those interests.”

However, the majority opinion also acknowledged the limit of its ruling, observing that, “Because we agree with the dissent that, under [Section 2], States ‘remain free to pursue’ their legitimate interests in regulating the health and safety risks posed by the alcohol trade, each variation must be judged based on its own features.”

In acknowledging the legitimate role that States play in regulating alcohol, the Court confirmed “State law empowers the relevant authorities to limit both the number of retail licenses and the amount of

alcohol that may be sold to an individual”; “the State could also mandate more extensive training for managers and employees and could even demand that they demonstrate an adequate connection with and knowledge of the local community”; and “the State of course remains free to monitor the practices of retailers and to take action against those who violate the law.”

In a strong dissent, Justice Neil Gorsuch, joined by Justice Clarence Thomas, raised poignant questions about the implications of the ruling and the majority’s attempt to “‘rationalize’ the law and impose our own free-trade rules for all goods and services on interstate commerce.”

“What are lower courts supposed to make of this? How much public health and safety benefit must there be to overcome this Court’s worries about protectionism ‘predominat[ing]’?” asked Gorsuch. “Does reducing competition in the liquor market, raising prices, and thus reducing demand still count as a public health benefit, as many States have long supposed? And if residency requirements are problematic, what about simple physical presence laws?”

“In light of today’s ruling, and as we look to what the future may hold for the retail alcohol community, accountability, transparency and compliance will be of the utmost importance,” said Bodnovich. “ABL and its members remain committed to working with state and local regulators to promote responsibility and are resolved to be part of a beverage alcohol ecosystem that promotes a vibrant beer, wine and spirits marketplace that safely serves customers and communities.”
