

No.

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IN THE SUPREME COURT OF THE UNITED STATES

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TENNESSEE WINE AND SPIRITS RETAILERS ASSOCIATION,

Petitioner,

v.

CLAYTON BYRD, *in his official capacity as Executive Director of the Tennessee Alcoholic Beverage Commission*; TENNESSEE FINE WINES AND SPIRITS, LLC, *dba Total Wine Spirits Beer & More*; AFFLUERE INVESTMENTS, INC., *dba Kimbrough Fine Wine & Spirits*,

Respondents.

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***APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT***

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court, Tennessee Wine and Spirits Retailers Association (the “Association”) respectfully requests a 60-day extension of the time in which to file a petition for a writ of certiorari in this Court, to and including July 21, 2018. The Sixth Circuit entered judgment on February 21, 2018. This Court has jurisdiction to review the Sixth Circuit’s decision pursuant to 28 U.S.C. § 1254(1). The Association’s time to file a

petition for a writ of certiorari expires on May 22, 2016. This application is being filed more than 10 days before that date. A copy of the Sixth Circuit’s opinion in this case is attached as Exhibit 1.

This case presents an important and recurring question concerning the authority of a State under Section 2 of the Twenty-first Amendment to impose residency requirements on liquor retailers. In *Granholm v. Heald*, 544 U.S. 460 (2005), this Court determined that State liquor regulations that discriminated against out-of-state *products* were impermissible under the dormant Commerce Clause. However, the Court reiterated that “the three-tier system itself is ‘unquestionably legitimate.’” *Id.*, at 489 (quoting *North Dakota v. United States*, 495 U.S. 423, 432 (1990)). The Court emphasized that States still retain “virtually complete control” under the Twenty-first Amendment over “how to structure the liquor distribution system.” *Id.*, at 488. In the years since *Granholm*, the courts of appeals have divided over whether a residency requirement implemented as a component of a State’s three-tier system is authorized under the Twenty-first Amendment as “an exception to the normal operation of the Commerce Clause.” *Capital Cities Cable, Inc., v. Crisp*, 467 U.S. 691, 712 (1984). The Second, Fourth, and Eighth Circuits have concluded that *Granholm* distinguished between State regulation of out-of-state products and producers that is prohibited by the dormant Commerce Clause and State regulation of in-state distribution of liquor, including those who engage in wholesale and retail liquor sales, that is permitted by the

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Twenty-first Amendment. *S. Wine & Spirits v. Div. of Alcohol & Tobacco Control*, 731 F.3d 799 (8th Cir. 2013); *Arnold's Wines, Inc. v. Boyle*, 571 F.3d 185 (2d Cir. 2009); *Brooks v. Vassar*, 462 F.3d 341 (4th Cir. 2006). On the other hand, the Sixth Circuit majority in this case joined the Fifth Circuit in concluding that where a State imposes a residency requirement as a part of the State's liquor distribution system, normal Commerce Clause analysis applies. *Cooper v. Tex. Alcoholic Beverage Comm'n*, 820 F.3d 730 (5th Cir. 2016). The Sixth Circuit's majority opinion thus not only exacerbates the conflict among the courts of appeals, but also conflicts with this Court's decisions in *Granholm* and *North Dakota*.

Undersigned counsel initially associated other counsel in the District of Columbia to undertake the lead role in preparing a petition for a writ of certiorari. However, in early April that other counsel learned of a conflict arising out of the work of lawyers in another office of his firm that would prevent him from serving on the case. Meanwhile, on March 29, 2018, undersigned counsel suffered a heart attack. For health reasons, undersigned counsel has been forced to reschedule a number of professional commitments and temporarily reduce his workload. Undersigned counsel must undergo one additional related surgical procedure in the coming days. Although a complete recovery is expected, undersigned counsel's physical limitations in the interim will make it extremely difficult to complete work on the petition, without the previously expected assistance of other counsel, in the time that remains until the original deadline.

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Wherefore petitioner respectfully requests that an order be entered extending its time to file a petition for a writ of certiorari for sixty (60) days from the current deadline of May 22, 2018, to and including July 21, 2016.

Respectfully submitted,

/s/ Richard L. Colbert

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April 24, 2018

**Exhibit 1**

*Byrd, et al.*

v.

*Tenn. Wine & Spirits Retailers Ass'n,*

883 F.3d 608 (6th Cir. 2018)

No.

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Respondents.

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**CERTIFICATE OF SERVICE**

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I, Richard L. Colbert, a member of the Bar of this Court, certify that on this 24th day of April, 2018, I caused to be served by first-class mail, postage prepaid, the enclosed Application for an Extension of Time to File a Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit in the above proceeding on:

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I further certify that all parties required to be served have been served.

/s/ Richard L. Colbert  
Richard L. Colbert

Dated: April 24, 2018.

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