

A state statute provides that only corporations whose owners have been residents of the state for at least two years may obtain a retail license to sell liquor in the state. The stated purpose of the statute is to promote responsible alcohol sales and consumption through the local control of retail liquor stores.

A corporation's application for a liquor store license was denied because its owners had been state residents for less than two years. The corporation has sued to challenge the statute.

Is the state statute constitutional?

- A. No, because Congress has exclusive authority over interstate commerce.
- B. No, because it unduly burdens interstate commerce.
- C. Yes, because the issuance of licenses is a traditional government function.
- D. Yes, because the Twenty-first Amendment grants states authority to regulate alcohol.

Explanation:

Unconstitutional state alcohol regulations

Constitutional provision	Example
Dormant commerce clause	Permitting only in-state businesses to ship alcohol to in-state consumers
Free speech clause	Banning advertisements featuring price of alcohol
Establishment clause	Granting churches power to veto liquor license applications for businesses within 500-foot radius of church
Equal protection clause	Permitting alcohol sales to females at age 18 but not to males until age 21

The Twenty-first Amendment grants **states broad authority to regulate** the use of **alcohol within their own borders**.^{*} However, this authority is **restricted by** other constitutional provisions, including **the dormant commerce clause (Choice D)**. The **dormant commerce clause prohibits states** from **discriminating against** or unduly burdening **interstate commerce**. A discriminatory state statute favors in-state over out-of-state interests. Such a statute is subject to strict scrutiny and is **unconstitutional unless** the state proves that:

- the statute furthers a **legitimate, noneconomic state interest** (eg, public health or safety) *and*
- **no reasonable alternative** exists to further that interest.

Here, the state statute discriminates against interstate commerce by granting licenses to sell liquor only to corporations whose owners have been state residents for at least two years. Even if the statute furthers the state's legitimate, noneconomic interest in promoting responsible alcohol consumption, reasonable alternatives exist. For example, the state could limit the amount of alcohol that may be sold to individuals at one time. Therefore, the statute unduly burdens interstate commerce and is unconstitutional.

^{*}The Twenty-first Amendment also repealed the Eighteenth Amendment's prohibition on the manufacture, transportation, and sale of alcohol in the United States.

(Choice A) Congress *does* have exclusive authority over interstate commerce. But if Congress has not enacted legislation in a particular area of interstate commerce, then the states are free to regulate that area so long as it does not discriminate against or unduly burden interstate commerce or regulate extraterritorial (ie, wholly out-of-state) activity.

(Choice C) The "traditional government function" exception allows states to favor government (not private) entities when those entities are performing a traditional

government function (eg, waste disposal). Here, issuing licenses may be a traditional government function. But since the state is favoring in-state residents (as opposed to government entities), this exception does not apply.

Educational objective:

The Twenty-first Amendment grants states broad authority to regulate alcohol within their borders. When doing so, states cannot violate the dormant commerce clause by discriminating against interstate commerce unless (1) the state statute furthers a legitimate, noneconomic state interest and (2) no reasonable alternative exists to do so.

References

- U.S. Const. amend. XXI (state's power to regulate alcohol).
- Tenn. Wine & Spirits Retailers Ass'n v. Thomas, 139 S. Ct. 2449, 2476 (2019) (holding that a state statute requiring liquor store operators to be state residents for at least two years violates the dormant commerce clause).
- 15A Am. Jur. 2d § 109 (2020) (explaining that the dormant commerce clause applies to state alcohol regulations).