

No. 18-96

In the Supreme Court of the United States

TENNESSEE WINE AND SPIRITS RETAILERS ASSOCIATION,
Petitioner,

v.

ZACHARY W. BLAIR, INTERIM DIRECTOR OF THE TENNESSEE ALCOHOLIC BEVERAGE
COMMISSION, AFFLUERE INVESTMENTS, INC., AND TENNESSEE FINE WINES AND SPIRITS,
LLC,
Respondents.

**On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit**

**MOTION FOR DIVIDED ARGUMENT
AND FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT**

Pursuant to Supreme Court Rules 28.4 and 28.7, the State of Illinois, on behalf of 34 States and the District of Columbia (collectively, the amici States), respectfully requests that the Court grant divided argument in order to allow the amici States ten minutes of argument time in support of petitioner. This case deals with the States' core sovereign interests, reaffirmed by the text of the Twenty-first Amendment, to regulate "the delivery or use" of alcohol within their borders. The amici States are uniquely situated to articulate these interests, explain the local concerns and conditions that necessitate regulation of retail liquor sales, and discuss the practical realities that States face in enforcing their regulations. Petitioner Tennessee Wine

and Spirits Retailers Association has consented to yield ten minutes of its time to the amici States, and respondents have indicated that they neither consent to nor oppose the motion. In view of the fact that the State of Tennessee, whose laws are being challenged, has adopted petitioner's brief by letter filing but has not sought argument time, the Court should grant the motion to get the benefit of a state perspective on the important questions of sovereign authority at issue here.

* * *

This case began as a declaratory judgment action filed in state court by Tennessee on behalf of the then-executive director of its Alcoholic Beverage Commission, Clayton Byrd. Pet. App. 4a. After the case was removed, the federal district court aligned Tennessee with the plaintiffs (respondents here) because Tennessee had asserted in its complaint that its durational residency requirement might be unconstitutional. *Id.* n. 1. Although Tennessee later argued in defense of its residency requirement, *ibid.*, and has adopted by letter filing the merits argument presented in petitioner's brief, it remains formally aligned with the respondents and has not filed a brief or sought argument time in this Court.

The amici States include nine of the 10 most populous States and collectively represent more than 70% of the Nation's population. They are geographically, culturally, and ideologically diverse, yet united in their common interest in regulating the manufacture, distribution, and sale of alcohol within their borders. The amici States have pursued this interest in a variety of ways, including residency requirements of various lengths, direct state control of liquor retailers, in-state

presence requirements, dual state and municipal licensing, and corporate-form requirements. A decision by this Court concerning Tennessee’s durational residency requirement will inevitably have repercussions for this broader suite of policy solutions. The amici States are uniquely well positioned to articulate the state interests and Twenty-first Amendment prerogatives that underlie regulation of retail liquor sales in the manner chosen by Tennessee and to explain the enforcement challenges States face and the local harms that arise when liquor retailers are not residents of the communities they serve.

In previous cases involving sovereign state authority under the Twenty-first Amendment, the Court has invariably heard from the affected State at oral argument. *See, e.g., Granholm v. Heald*, Nos. 03-1116 & 03-1120 (Michigan); *Swedenburg v. Kelly*, No. 03-1274 (New York); *North Dakota v. United States*, No. 88-926 (North Dakota); *Bacchus Imports, Ltd. v. Dias*, No. 82-1565 (Hawaii). And in cases in which private entities or local governments have defended state laws, the Court has frequently granted argument time to States as amici so that the state perspective would be represented at oral argument. *See, e.g., United Haulers Ass’n v. OneidaHerkimer Solid Waste Mgmt. Auth.*, No. 05-1345 (New York); *Aetna Health, Inc. v. Davila*, Nos. 02-1845 & 03-83 (Texas); *Atwater v. City of Lago Vista*, No. 99-1408 (Texas).

More generally, the Court has frequently granted argument time to States as amici curiae where core issues of state sovereignty are at issue or where States can add a valuable perspective not fully articulated by the parties. *See, e.g., Gamble v.*

United States, No. 17-646 (2018) (Texas); *Sturgeon v. Frost*, No. 17-949 (2018) (Alaska); *ONEOK, Inc. v. Learjet, Inc.*, No. 13-271 (Kansas); *Leegin Creative Leather Prods. Inc. v. PSKS, Inc.*, No. 06-480 (New York); *Halbert v. Michigan*, No. 03-10198 (Louisiana); *Clingman v. Beaver*, No. 04-37 (South Dakota); *Jackson v. Birmingham Bd. of Educ.*, No. 02-1672 (Alabama); *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, No. 02-1609 (Ohio). The same is true here.

Because counsel for petitioners has agreed to cede argument time to the Office of the Illinois Attorney General on behalf of the amici States, no enlargement of time will be required if the Court grants this motion. The amici States can offer the Court a valuable perspective that is distinct from that of petitioner on the central issue of the state interests that justify laws such as Tennessee’s—as evidenced by respondents’ many citations to the amici States’ brief. *See, e.g.*, *Tenn. Fine Wines & Spirits Br.* at 4, 46, 48. The Court’s resolution of this case would therefore benefit from the amici States’ participation at oral argument. *See Sup. Ct. R. 28.4.* The amici States accordingly request that their request for divided argument and for ten minutes of argument time be granted.

Respectfully submitted,

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