IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SOUTHERN WINE & SPIRITS OF AMERICA, INC., SOUTHERN WINE & SPIRITS OF MISSOURI, INC., HARVEY R. CHAPLIN, WAYNE E. CHAPLIN, PAUL B. CHAPLIN and STEVEN R. BECKER,	)	
Plaintiffs,	)	
	)	Case No. 11-4175-CV-C-NKL
v.	)	
	)	ORAL ARGUMENT REQUESTED
DIVISION OF ALCOHOL AND TOBACCO CONTROL and LAFAYETTE E. LACY, SUPERVISOR OF ALCOHOL AND TOBACCO CONTROL,	)	
Defendants.	)	

BRIEF OF AMICUS CURIAE MAJOR BRANDS, INC.

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I. INTRODUCTION

The present case is a direct challenge to Missouri's authority to regulate the distribution of intoxicating liquors within its borders under the Twenty-First Amendment to the United States Constitution. As set forth below, the Missouri statutes being challenged (the "residency requirements") are protected by the Twenty-First Amendment, and Plaintiffs' Constitutional challenges must fail.

Section 2 of the Twenty-First Amendment states: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, *in violation of the laws thereof*, is hereby prohibited." (Emphasis added). Almost 80 years of State action and Supreme Court precedent confirm Missouri's authority, under this Constitutional Amendment, to regulate the distribution of intoxicating liquors within its borders through a "three-tier system" that requires that alcohol pass through licensed, in-state wholesalers.

Indeed, after ratification of the Twenty-First Amendment, Missouri and numerous other states created three-tier systems for the distribution of alcohol within their borders. *See Granholm v. Heald*, 544 U.S. 460, 466 (2005) (many states "regulate the sale and importation of alcoholic beverages, including wine, through a three-tier distribution system [by which separate] licenses are required for producers, wholesalers, and retailers"). In Missouri, the three tiers are: (1) the producer; (2) the in-state distributor or (and, in some instances, non-resident solicitors who serve a wholesale function but must sell to or through an in-state wholesaler); and (3) the in-state retailer.

Thus, as the Supreme Court noted in *Granholm*, beginning shortly after ratification of the Twenty-First Amendment and continuing to the present, States have adopted and enforced alcohol distribution systems that discriminate against non-resident entities and individuals at the

wholesale tier in a three-tier system. And, as noted in *Granholm*, the United States Supreme Court has continuously upheld States' rights under the Twenty-First Amendment to do so. *See Granholm*, 544 U.S. at 489 (re-affirming that "the three-tier system itself is '*unquestionably legitimate*'") (emphasis added).

Plaintiffs have failed to overcome the explicit language within the Twenty-First Amendment, the purposeful and highly relevant observations of both the majority and dissenting Justices in *Granholm*, and the presumption articulated by the Supreme Court that Missouri's residency requirements are valid under that Amendment. Indeed, Plaintiffs have all but ignored the Twenty-First Amendment and the carefully circumscribed holding in *Granholm* in their request for summary judgment. For these reasons, and as set forth fully below, summary judgment should be granted in favor of Defendants and against Plaintiffs on all claims.

II. ARGUMENT

"Given the special protection afforded to state liquor control policies by the Twenty-First Amendment, [Missouri's residency requirements] are supported by a *strong presumption* of validity and should not be set aside lightly." *North Dakota v. U.S.*, 495 U.S. 423, 433 (1990) (emphasis added). As set forth below, Plaintiffs cannot overcome this presumption because the United States Supreme Court, in clear and recent precedent, has held that State three-tier alcohol-distribution systems which discriminate against non-resident entities and individuals by establishing a wholesale tier comprised solely of in-state (i.e., resident) wholesalers to distribute alcoholic products within that State are nevertheless "unquestionably legitimate." The residency requirements attacked by Plaintiffs in this case represent Missouri's legislative judgment as to what is required for corporations, for which domicile and residency are mere legal fictions, to be truly present or, as the Supreme Court characterized it, "in-state" for purposes of determining which may be licensed as participants in the crucial "middle tier." This is the type of legislative

judgment, i.e., requiring that even a Missouri corporation may only be licensed if the individuals who control that corporation are "in-state," which the Supreme Court identified as being protected by the Twenty-First Amendment and thus "unquestionably legitimate." Accordingly, summary judgment should be entered in favor of Defendants on all claims.

A. Judgment should be entered in favor of Defendants because Missouri's residency requirements are protected by the Twenty-First Amendment.

1. Under the Twenty-First Amendment, Missouri has "virtually complete control over . . . how to structure [its] liquor distribution system," and its residency requirements are protected because they treat liquor produced out of state the same as its domestic equivalent.

In *Granholm v. Heald*, 544 U.S. 460 (2005), both the majority and the dissenting Justices undertook a painstakingly thorough analysis of Section 2 of the Twenty-First Amendment and its interaction with ordinary "dormant commerce clause" principles. Though the Justices disagreed upon the constitutionality of state regulations which discriminate against non-resident *producers* of alcohol, all nine Justices agreed that discrimination at the *wholesale* "tier" was lawful before Prohibition and is now further protected by the Twenty-First Amendment. Thus, under *Granholm*, Plaintiffs' claims here must fail. *See* 544 U.S. at 488-89 (Justice Kennedy, writing for the Court); see also 544 U.S. at 518 (Thomas, J. dissenting).

In *Granholm*, the five-Justice majority held that New York's and Michigan's laws allowing in-state wineries to sell wine directly to consumers while prohibiting out-of-state wineries from selling wine directly to consumers were invalid because the Twenty-First Amendment does not allow States "to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers." 544 U.S. at 493. The *Granholm* court carefully narrowed its decision, however, holding that States have the power under the Twenty-First Amendment to enact policies that discriminate against non-

resident entities and individuals, including at the wholesale and retail tiers in a three-tier system, as long as "they treat liquor produced out of state the same as its domestic equivalent":

> *The Twenty-First Amendment grants the state virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.* A state which chooses to ban the sale and consumption of alcohol altogether could bar its importation; and, as our history shows, it would have to do so to make its law effective. States may also assume direct control of liquor distribution through state-run outlets or funnel sales through the three-tier system. *We have previously recognized that the three-tier system itself is unquestionably legitimate. State policies are protected under the Twenty-First Amendment when they treat liquor produced out of state the same as its domestic equivalent.* The instant cases, in contrast, involve straightforward attempts to discriminate in favor of local producers.

Id. at 488-89 (emphasis added) (internal citations omitted).

The *Granholm* court made these findings after an exhaustive analysis of Section 2 of the Twenty-First Amendment and the determination that its analysis "provides strong support for the view that § 2 restored to the States the powers they had under the Wilson and Webb-Kenyon Acts." 544 U.S. at 476-84.

Later courts have confirmed that this language from the *Granholm* court majority opinion conclusively establishes that discrimination against non-residents at the wholesale and retail tiers is protected by the Twenty-First Amendment. The Fourth Circuit, in *Brooks v. Vassar*, 462 F.3d 341, 352-54 (4th Cir. 2006), stated that any argument "that compares the status of any other in-state entity under the three-tier system with its out-of-state counterpart is nothing different than an argument challenging the three-tier system itself [and] . . . is foreclosed by the Twenty-First Amendment and the Supreme Court's decision in *Granholm*, which upheld the three-tier system as 'unquestionably legitimate.'"

The Second Circuit, in *Arnold's Wines, Inc. v. Boyle*, 571 F.3d 185 (2d Cir. 2009), in reviewing an argument that a law allowing in-state retailers to sell liquor to consumers but barring out-of-state retailers to directly sell to consumers violated the Commerce Clause, stated:

> *Granholm* validates even-handed state policies regulating the importation and distribution of alcoholic beverages under the Twenty-First amendment. It is only where states create discriminatory exceptions to the three-tier system, allowing in-state, but not out-of-state, liquor to bypass the three regulatory tiers, that their laws are subject to invalidation based on the *Commerce Clause*.

Id. at 190. Accordingly, under *Granholm*, because New York's laws treated in-state and out-of-state liquor the same, they were found to be protected by the Twenty-First Amendment. *Id.* at 192.

Plaintiffs have not and cannot refute this analysis of the Twenty-First Amendment and *Granholm*, which sets forth the standard under which this Court should view Missouri's residency requirements. Plaintiffs' single citation to *Granholm* in their summary judgment papers misstates *Granholm's* holding, and the pre-*Granholm* cases relied upon by Plaintiffs are inapposite in light of *Granholm*.[1] Plaintiffs simply cannot avoid that *Granholm* requires judgment in favor of Defendants in this case.

The *Granholm* dissent, written by Justice Thomas and joined by Chief Justice Rehnquist and Justices Stevens and O'Connor, agreed with the majority that the Twenty-First Amendment gives States the power to pass regulations that discriminate against non-resident individuals and entities at the wholesale and retail levels in a three-tier system. *Granholm*, 544 U.S. at 500 (stating that the majority "concedes that the Webb-Kenyon Act allows States to pass laws

[1] In *Southern Wine & Spirits of Texas, Inc. v. Steen*, 486 F. Supp. 2d 626 (W.D. Tex. 2007), the only post-*Granholm* Twenty-First Amendment case cited by Plaintiffs, the court's analysis errantly relied upon, among other things, Plaintiffs' primary pre-*Granholm* authority, *Cooper v. McBeath*, 11 F.3d 547 (5th Cir. 1994), and the defendants incorrect concession that the *Cooper* analysis applied to that case.

discriminating against out-of-state wholesalers"). The dissent believed the Twenty-First Amendment also protects the States' powers to discriminate at the producer level, however, and took exception to the distinction the majority drew between discrimination at the wholesale level and discrimination at the producer level: "The Court's distinction between discrimination against manufacturers and discrimination against wholesalers is equally unjustified. There is no warrant in the Act's text for treating regulated entities differently depending on their place in the distribution chain." *Id.* at 500-501.

Regardless of their disagreement, it is beyond question that the majority and the dissent understood that the majority's language above interpreted the Twenty-First Amendment as protecting State regulations that discriminate against non-residents at the wholesale and retail levels. As further example, the dissent later analyzed state practice contemporaneous with the ratification of the Twenty-First Amendment and argued that the "state practice refutes the Court's assertion that the Twenty-First Amendment allowed states to discriminate against out-of-state wholesalers and retailers, but not against out-of-state products." *Id.* at 520. Those contemporaneous "liquor regulation schemes discriminated against out-of-state economic interests, just as Michigan's and New York's direct-shipment laws do." *Id.* at 517.

> *Even today, the requirement that liquor pass through a licensed in-state wholesaler is a core component of the three-tier system.* As the Court concedes, each of these schemes is within the ambit of the *Twenty-first Amendment*, even though each discriminates against out-of-state interests.

Id. at 518 (emphasis added).

Accordingly, *Granholm* stands for the proposition that States' three-tier liquor distribution systems, and the statutes promulgated to implement those systems and that discriminate against non-residents at the wholesale and retail levels within those systems, are

protected by the Twenty-First Amendment "when they treat liquor produced out of state the same as its domestic equivalent." *See Granholm*, 544 U.S. at 489.

In this case, as both the majority and dissenting Justices acknowledged in *Granholm*, Missouri's three-tier system, including its requirements defining the necessary characteristics of a corporate "in-state wholesaler" (i.e., the residency requirements), is "unquestionably legitimate." *See Granholm*, 544 U.S. at 488-89. Missouri has "virtually complete control over . . . how to structure [its] liquor distribution system," and it chose to require that wholesaler corporations must have a true in-state presence through its officers, directors, and shareholders. *See Id.*; *see also* §§ 311.060.2(3), 311.060.3, & 311.060.4 R.S.Mo. "[Missouri's residency requirements] are protected under the Twenty-First Amendment [because] they treat liquor produced out of state the same as its domestic equivalent," and judgment should be granted against Plaintiffs and in favor of Defendants. *See Granholm*, 544 U.S. at 488-89.

2. *Judgment should be entered against Plaintiffs and in favor of Defendants because Missouri's residency requirements are protected by the Twenty-First Amendment and Plaintiffs cannot overcome the strong presumption in favor of their validity.*

The Court's analysis need go no further, and Judgment should be entered based upon the foregoing alone. Nevertheless, it bears noting that Missouri's residency requirements are rationally related to the concerns a State has with controlling the distribution, sale, and consumption of intoxicating liquors within its borders. As an initial matter, Missouri's General Assembly has found that the residency requirements are among "[t]he provisions of [Missouri's Liquor Control Law] [that] establish vital state regulation of the sale and distribution of alcohol beverages in order to promote responsible consumption, combat illegal underage drinking, and achieve other important state policy goals such as maintaining an orderly marketplace composed

of state-licensed alcohol producers, importers, distributors, and retailers." § 311.015 R.S.Mo. This Court need not and should not replace the judgment of the General Assembly with its own.

Indeed, the residency requirements do promote the General Assembly's goals. They play an essential role in Missouri's three-tier system by requiring that corporate wholesalers have a true in-state presence and not just a paper presence with a registered agent and a Missouri post office box. As stated by Justice Thomas in his *Granholm* dissent:

> States require liquor to be shipped through in-state wholesalers because it is easier to regulate in-state wholesalers and retailers. *State officials can better enforce their regulations by inspecting the premises and attaching the property of in-state entities; "[p]resence ensures accountability."* It is therefore understandable that the framers of the *Twenty-first Amendment* and the Webb-Kenyon Act would have wanted to free States to discriminate between in-state and out-of-state wholesalers and retailers, especially in the absence of the modern technological improvements and federal enforcement mechanisms that the Court argues now make regulating liquor easier.

Granholm, 544 U.S. at 523-24 (emphasis added).

Major Brands can attest that "presence ensures accountability," and Major Brands' experience as a licensed Missouri wholesaler that meets the residency requirements establishes the value of Missouri's residency requirements to Missouri's three-tier system. Indeed, as set forth in the Declarations of Major Brands' President Barry O'Neil ("O'Neil Decl.") and Chief Operating Officer Patrick Quinn ("Quinn Decl."), Major Brands' experience shows the residency requirements ensure a high level of accountability and investment in Missouri communities. (*See* Declaration of Quinn, ¶¶ 11-23; Declaration of O'Neil, ¶¶ 9-27, attached as Exhibits A & B, respectively, to Major Brands' Motion to Intervene, Docket No. 17).

Major Brands' employees' and owners' presence in Missouri's communities have caused them to take leading roles in preventing underage alcohol use and to help curb the toll of alcohol abuse on families, employers and society as a whole within Missouri, as well as to undertake

numerous charitable activities. (*See* O'Neil Decl. ¶¶ 9-13, 26-27). In addition, Major Brands plays an active role in ensuring adherence to Missouri's regulatory system by, among other things, monitoring retailers' compliance with state and local licensure laws, ensuring the renewal licenses are procured in a timely manner; and watching for new, unlicensed products, as well for so-called grey-market products which may have been shipped to, taxed, and intended for sale in some state other than Missouri but illegally brought into this State for sale. (*See* O'Neil Decl. ¶ 24). Of course, complying with the residency requirements also allows the cash-strapped Division easier access to the owners, officers, and directors of Major Brands; something that cannot be said by the individual Plaintiffs who are Florida residents. (*See* O'Neil Decl. ¶ 25).

Major Brands is a part of Missouri's vital middle tier consisting of Missouri wholesalers which acquires wine and spirits from various suppliers, takes ownership and possession of them in Missouri, and delivers them to Missouri retailers for sale to Missouri consumers. This pivotal wholesale layer is subject to extensive oversight and control by the Division. Wholesalers must ensure that Missouri excise taxes have been paid on each gallon of wine or spirits, wholesalers must make these products available for inspection as to alcohol content, volume, and contaminants or other health and safety concerns, and wholesalers' interactions with retailers are heavily regulated to ensure that all retailers pay the same price for the same products. (*See* O'Neil Decl. ¶ 19).

The wholesale tier is a vital part of Missouri's three-tier system, and the residency requirements at the wholesale level play an important role within that system. *See Granholm*, 544 U.S. at 466 (Thomas, J. dissenting) ("Even today, the requirement that liquor pass through a licensed in-state wholesaler is a core component of the three-tier system."). For this reason, and

as set forth above, this Court should reject Plaintiffs' Constitutional attacks on the residency requirements.

Plaintiffs' factual arguments to the contrary fail. Plaintiffs pretend as though the Twenty-First Amendment does not exist, and Plaintiffs fail to give due consideration to the differences between the separate and distinct tiers within the three-tier system and the alcohol products being distributed. Plaintiffs' arguments that the residency requirements cannot be justified because other licensees do not have the same requirements fail because, in passing the Liquor Control Laws, the Missouri General Assembly would have viewed the unique circumstances of each tier of the three-tier system, each of which plays a different role in that system, to determine how best to promote its sound policy goals.[2] Likewise, Plaintiffs' arguments comparing wholesalers of one alcohol product (beer wholesalers) to another (wholesalers of liquor containing alcohol in excess of five percent by weight) fail because the General Assembly would have weighed the unique qualities of the types of liquor being distributed within Missouri. In other words, wholesalers are not identical to retailers or manufacturers, and beer is not identical to liquor with greater alcohol content, and Missouri is not required under the Twenty-First Amendment or elsewhere to treat them as if they were.

Indeed, the different requirements for each licensee are rational in light of the differences in the licensee and the products being distributed. For example, the residency requirements are directed to wholesalers distributing "intoxicating liquor containing alcohol in excess of five percent by weight." § 311.060.2(3) R.S.Mo. Stricter requirements on entities and individuals seeking to distribute liquor containing a higher alcohol content is rational. Plaintiffs' complaint

[2] Plaintiffs' argument relating to "other Missouri professions and industries" has no place here because no Constitutional Amendment exists expressly protecting Missouri's regulation of those professions and industries.

that beer wholesalers do not have similar requirements ignores this basic fact and fails to overcome the presumption that the residency requirements are valid.

Likewise, Plaintiffs' comparison of the requirements of wholesalers to the requirements of manufacturers and retailers fails to account for the differences among the three tiers. For example, as recognized in *Granholm*, preventing a product from being available in a State at all (i.e., targeting manufacturers) is much different from regulating how the product is distributed once it is within the State (i.e., targeting wholesalers). With regard to retailers, as pointed out by Defendants, the actual retail location within Missouri is where the sale occurs. As such, the managing officer of that location (who is required to be a resident of Missouri), and the employees at that location, face the community on a daily basis and, therefore, already are the subject of greater community oversight. The wholesale tier, on the other hand, does not have that consistent community interaction, and the General Assembly was justified in ensuring such interaction among those who control corporations seeking to become wholesalers of higher content alcohol products.

Contrary to Plaintiffs' claims, the General Assembly, in promulgating the residency requirements, was addressing legitimate concerns targeted at the unique position of wholesalers distributing higher content liquors within Missouri. Plaintiffs' factual arguments fail to overcome the presumption that the residency requirements are valid, and summary judgment should be granted in favor of Defendants.

B. Judgment should be entered in favor of Defendants because Plaintiff's Privileges and Immunities Clause and Equal Protection Clause challenges to Missouri's residency requirements fail.

As set forth above, based upon *Granholm*, all of Plaintiffs' constitutional claims fail and judgment should be entered in favor of Defendants on all of Plaintiffs' claims. Nevertheless,

Judgment should be granted in favor of Defendants on Plaintiffs' Equal Protection Clause and Privileges and Immunities Clause claims for the additional following reasons.

1. Equal Protection Clause

As an initial matter, it is not clear that the Equal Protection Clause applies to regulations protected by the Twenty-First Amendment which do not work invidious discrimination. *See Craig v. Boren*, 97 S. Ct. 451, 462 (1976). Even if it does, however, Plaintiffs' claims fail.

In this case, Plaintiffs cannot establish that they are members of a suspect class or that obtaining a Missouri liquor wholesale license is not a fundamental right. Accordingly, the standard of review for an Equal Protection Clause claim would be the rational basis test, under which courts will uphold a law if it is rationally related to a legitimate end. *Schutz v. Thorne*, 415 F.3d 1128, 1136 (10th Cir. 2005). Under such review, "those attacking the rationality of the legislative classification have the burden 'to negative every conceivable basis which might support it.'" *Id.* (citations omitted).

In addition, this Court must take the Twenty-First Amendment into consideration, along with the presumption that the regulations are valid. *See California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 100 S. Ct. 937, 945 (1980) ("[the First Amendment and Twenty-First Amendment] must be considered in the light of the other, and in the context of the issues and interests at stake in any concrete case"); *see also North Dakota*, 495 U.S. at 433 (1990).

Missouri's residency requirements are rationally related to a legitimate end. Indeed, numerous reasons exist for the Court to find as much, including the fact that "presence ensures accountability." *See Granholm*, 544 U.S. at 523-24 (Thomas, J. dissenting). Plaintiffs cannot overcome the presumption in favor of Missouri's residency requirements and cannot "negative every conceivable basis which might support [the residency requirements]," and judgment should be entered in favor of Defendants on Plaintiffs' Equal Protection Clause claims.

2. Privileges and Immunities Clause

As with Plaintiffs' Equal Protection Clause claims, even if it is proper for the Court to analyze Plaintiffs' Privileges and Immunities Clause claims in light *Granholm*, Defendants are entitled to judgment as a matter of law on these claims. Specifically, as stated by the Eighth Circuit, SWSA and Southern Missouri, as corporations, are not protected by this Clause, and the injuries to the individual Plaintiffs (if any) flow solely and directly from the alleged injury to these corporate Plaintiffs and, therefore, cannot be asserted under this Clause. *See Chance Mgmt. v. South Dakota*, 97 F.3d 1107, 1115-16 (8th Cir. 1996).

First, the corporate Plaintiffs have no claim here because the Clause does not protect corporations. Second, the individual Plaintiffs' lack standing because their alleged injuries are solely the result of their positions as officers and directors of Southern Missouri.[3] The Eighth Circuit addressed a very similar challenge in *Chance Mgmt.*, and determined that the individual plaintiff did not have standing to bring his claim under the Privileges and Immunities Clause.

In addition, even if Plaintiffs had standing, given the Twenty-First Amendment, and the *Granholm* court's findings, these claims fail because Missouri's residency requirements do not discriminate with regard to a privilege or immunity protected by the Clause and, even if it did, sufficient justification exists for the discrimination as set forth above. *See Minnesota v. Hoeven*, 456 F.3d 826, 834 (8th Cir. 2006) ("Whether differential treatment of out-of-state residents violates this Clause involves a two-part inquiry: (1) whether the state's law discriminates against out-of-state residents with regard to a privilege or immunity protected by the Clause, and (2) if so, whether sufficient justification exists for the discrimination").

[3] The individual Plaintiffs are shareholders of SWSA, not Southern Missouri, and any claims as shareholders are much weaker than any claims as officers or directors, which fail in the first instance.

Accordingly, judgment should be entered in favor of Defendants on Plaintiffs' Privileges and Immunities Clause claims.

C. Plaintiffs' claims should be dismissed, and Plaintiffs should be required to pursue the administrative proceeding they began.

The Court should dismiss Plaintiffs' Complaint on prudential grounds. Though Plaintiffs' Complaint fails to mention it, Southern Missouri invoked the state law administrative/judicial review process before bringing this action. *See* Missouri Administrative Hearing Commission Case No. 11-1650 LC (August 16, 2011). Plaintiffs stayed that action, however, so they could enlist this Court's aid in resolving their constitutional challenges even though such challenges may be addressed during the judicial review of the Commission's decision. Because Plaintiffs originally invoked the state law review process, this Court should decline the "advisory" role assigned to it by Plaintiffs' forum-hopping process.

Issuing a declaratory judgment is always discretionary, and Plaintiffs have the burden of convincing the Court of the "wisdom of . . . doing so." *Renne v. Geary,* 111 S. Ct. 2331, 2336 (1991). A court should be particularly hesitant before allowing the "declaratory judgment procedure . . . [to] be used to preempt and prejudge issues that are committed for initial decision to an administrative body[.]" *Pub.Serv. Comm'n of Utah v. Wycoff Co., Inc.*, 73 S. Ct. 236, 241 (1952).

Here, Plaintiffs admit that Southern Missouri may still be properly denied a license regardless of how this Court rules. *See* Complaint at p. 11 (Prayer at ¶ b) (after its advisory opinion on constitutionality, the Court should order the Division to "*complete the process of [Southern Missouri's] Application*" to see if it is otherwise entitled to a license) (emphasis added). Because this license still may be denied for numerous reasons unrelated to residency (e.g., Southern Missouri was denied a wholesale license when the Division's investigation

revealed it had given untruthful and incomplete answers on its application), this Court should exercise its discretion and dismiss the Complaint with instructions to Southern Missouri to finish the state review process it initiated.

III. CONCLUSION

Based upon the foregoing, no genuine issue of material fact exists, and Defendants are entitled to judgment as a matter of law on Plaintiffs' claims because, among other reasons set forth herein, the statutes being challenged are authorized by and protected by the Twenty-First Amendment to the United States Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2012, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon counsel of record.

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