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SJC-13541

S&H INDEPENDENT PREMIUM BRANDS EAST, LLC, & another<sup>1</sup> vs.  
ALCOHOLIC BEVERAGES CONTROL COMMISSION & others.<sup>2</sup>

Suffolk. May 8, 2024. - August 13, 2024.

Present: Gaziano, Kafker, Wendlandt, Georges, & Wolohojian, JJ.

Alcoholic Liquors, Alcoholic Beverages Control Commission, Wholesaler, License, Certificate of compliance. License. Jurisdiction, Nonresident. Statute, Construction. Constitutional Law, Commerce clause. Practice, Civil, Judgment on the pleadings. Words, "Any licensed wholesaler."

Civil action commenced in the Superior Court Department on September 17, 2021.

The case was heard by Michael D. Ricciuti, J., on motions for judgment on the pleadings.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Benjamin M. Greene (William A. Kelley, Jr., & Adam L. Littman also present) for the plaintiffs.

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<sup>1</sup> S&H Independent Premium Brands West, LLC.

<sup>2</sup> Stiegl Getränke & Service GmbH & Co. KG and Win-It-Too, Inc., interveners.

Christine Fimognari, Assistant Attorney General, for Alcoholic Beverages Control Commission.

Dennis E. McKenna (Caroline O'Connell also present) for the interveners.

Deborah A. Skakel, of New York, & Michael J. Rossi, for Beer Distributors of Massachusetts, Inc., & others, amici curiae, submitted a brief.

Sean O'Leary, of Illinois, & James E. Kruzer, for Sand Bar Imports LTD, amicus curiae, submitted a brief.

WENDLANDT, J. In this case, the petitioners, two nondomiciliary companies, each of which imports and distributes alcohol throughout the United States, claim that an Austrian malt beverage producer violated the proscription against unfair trade practices under State law, G. L. c. 138, § 25E (§ 25E), by terminating its distribution contract with them. Where applicable, § 25E generally prohibits a supplier of brand name alcoholic beverages from suddenly refusing to sell its products to "any licensed wholesaler" with whom the supplier has a preexisting relationship. The provision aims to prevent a supplier from exploiting its economic power against the Commonwealth's wholesalers.

The Alcoholic Beverages Control Commission (commission), which the Legislature authorized to administer the Commonwealth's three-tiered distribution scheme for alcoholic beverages, dismissed the petition as seeking relief beyond its jurisdiction. Specifically, the commission determined that § 25E's protections for "any licensed wholesaler" extend only to

wholesalers to which the commission has granted a license under G. L. c. 138, § 18 (§ 18), permitting such licensees to sell alcohol to retailers in the Commonwealth. Because the petitioners do not hold § 18 licenses and instead hold certificates of compliance issued pursuant to G. L. c. 138, § 18B (§ 18B), which permits the petitioners to distribute alcohol in the Commonwealth to wholesalers but not to retailers, the commission reasoned that they are not "any licensed wholesaler" protected by § 25E. We agree. Further concluding that this construction of the reach of § 25E does not violate the dormant commerce clause of the United States Constitution, we affirm.<sup>3</sup>

1. Background. a. Facts. The petitioners S&H Independent Premium Brands East, LLC, and S&H Independent Premium Brands West, LLC (collectively, petitioners or S&H), are limited liability companies headquartered in Colorado and California, respectively. S&H import and distribute European alcoholic beverages in the United States. They hold certificates of compliance pursuant to § 18B that allow them to sell alcoholic beverages to licensed wholesalers in the Commonwealth. Significant to our analysis, they do not hold

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<sup>3</sup> We acknowledge the amicus briefs submitted by Sand Bar Imports LTD; and Beer Distributors of Massachusetts, Inc., Wine & Spirit Wholesalers of Massachusetts, Inc., and the National Beer Wholesalers Association.

§ 18 licenses, which, as discussed in detail infra, permit licensees to distribute alcohol in Massachusetts to retailers.

In 2004, the respondent Stiegl Getränke & Service GmbH & Co. KG (Stiegl), an Austrian producer of branded malt beverages, entered into an agreement with S&H's predecessor granting the latter the exclusive right to import and to distribute Stiegl's products in the United States. In 2012, S&H acquired these rights, and for several years thereafter, Stiegl products were distributed in the Commonwealth exclusively by S&H. In 2019, however, Stiegl unilaterally terminated its agreement with S&H without prior notice. Stiegl then entered into an agreement with the respondent Win-It-Too, Inc., doing business as Global Beer Network (Global); relevant to the issues on appeal, the agreement granted to Global the exclusive rights to distribute Stiegl's products, which rights previously had been held by S&H.

b. Prior proceedings. Pursuant to § 25E, S&H filed a petition with the commission, alleging that Stiegl violated the prohibition against unfair trade practices under § 25E when, without apparent cause or prior notice, Stiegl terminated S&H's rights to import and to distribute Stiegl products and entered into a new contract granting the rights previously held by S&H to Global; S&H sought protection from these practices from the commission. The commission dismissed the petition, concluding that it lacked jurisdiction over the dispute because the

protections afforded to "any licensed wholesaler" under § 25E extend to § 18 licensees, but not to § 18B certificate holders like S&H.

Pursuant to G. L. c. 30A, § 14, S&H filed a complaint for judicial review in the Superior Court, challenging the commission's construction of § 25E. Following the parties' cross motions for judgment on the pleadings, the judge denied S&H's motion and granted the commission's and Global's cross motions, thereby upholding the commission's decision. S&H timely appealed, and we transferred the matter to this court on our own motion.

2. Discussion. S&H maintain that the commission erred in its construction of § 25E, and that the commission's construction violates the dormant commerce clause of the United States Constitution. See G. L. c. 30A, § 14 (7) (court may set aside or modify agency decision if decision is "[i]n violation of constitutional provisions," or "[b]ased upon an error of law").

a. Standard of review. On appeal from a decision of an administrative agency, we review questions of statutory interpretation de novo. Town Fair Tire Ctrs., Inc. v. Commissioner of Revenue, 454 Mass. 601, 604 (2009). In reviewing an agency's construction of a statute that it is charged with enforcing, "we first determine whether the

Legislature has spoken with certainty on the topic in question by using conventional tools of statutory interpretation."

NextEra Energy Resources, LLC v. Department of Pub. Utils., 485 Mass. 595, 604 (2020).

As always, "we begin with the statute's plain language." Metcalf v. BSC Group, Inc., 492 Mass. 676, 681 (2023). This is because "[a] statute must be interpreted according to the intent of the Legislature," which we derive "from all [of the statute's] words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." Matter of the Estate of Mason, 493 Mass. 148, 151 (2023), quoting Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749 (2006).

We do not read statutory language in isolation; instead, we must "look to the statutory scheme as a whole" to adduce legislative intent (citation omitted). Plymouth Retirement Bd. v. Contributory Retirement Appeal Bd., 483 Mass. 600, 605 (2019). "Clear and unambiguous statutory language is 'conclusive as to legislative intent.'" HSBC Bank USA, N.A. v. Morris, 490 Mass. 322, 332 (2022), quoting Patel v. 7-Eleven, Inc., 489 Mass. 356, 362 (2022).

If, however, the statute is ambiguous, we will give "substantial deference" to the interpretation proffered by the administrative agency charged with its enforcement, so long as that interpretation is "reasonable." Commerce Ins. Co. v. Commissioner of Ins., 447 Mass. 478, 481 (2006). See Peterborough Oil Co. v. Department of Env'tl. Protection, 474 Mass. 443, 449 (2016) ("Where the agency's statutory interpretation is reasonable . . . the court should not supplant its judgment" [alterations and citation omitted]).

b. Statutory framework. As is clear from these canons of statutory construction, a review of the statutory framework of the Liquor Control Act (act), G. L. c. 138, informs our analysis of § 25E. The act "generally governs the distribution and sale of alcoholic beverages in the Commonwealth." Craft Beer Guild, LLC v. Alcoholic Beverages Control Comm'n, 481 Mass. 506, 514 (2019). It creates a "three-tiered" licensing system, id. at 509 n.4, which requires that alcoholic products from (1) authorized manufacturers and suppliers be sold initially to (2) wholesalers licensed by the commission who, in turn, sell to (3) retailers authorized by the commission to sell to consumers.<sup>4</sup>

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<sup>4</sup> A core purpose of the act was to avoid the reintroduction of pre-Prohibition practices of distilleries and breweries controlling distribution of alcohol within the Commonwealth. See Craft Beer Guild, LLC, 481 Mass. at 514, quoting Eng, Old Whine in a New Battle: Pragmatic Approaches to Balancing the Twenty-first Amendment, the Dormant Commerce Clause, and the

See Heublein, Inc. v. Capital Distrib. Co., 434 Mass. 698, 699 (2001). Each of these three types of entities in the distribution chain must be licensed by the commission, which is charged with the administration of the scheme. See G. L. c. 10, § 71 (commission tasked by Legislature with "general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages"); G. L. c. 138, §§ 15 (commission's authority to issue licenses to retailers), 18 (commission's authority to issue licenses to wholesalers to distribute to retailers), 19 (commission's authority to issue licenses to manufacturers and suppliers to distribute to licensed wholesalers).

Three sections of the act are pertinent to this case. The first, § 18, provides:

"The commission may issue to any individual . . . and to corporations . . . and to limited liability companies and limited liability partnerships . . . , licenses as wholesalers and importers . . . to sell for resale to other licensees under this chapter alcoholic beverages manufactured by any manufacturer licensed under the provisions of [§ 19] and to import alcoholic beverages into the commonwealth from holders of certificates issued under

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Direct Shipping of Wine, 30 Fordham Urb. L.J. 1849, 1863 (2003) (among act's purposes was to prevent return of "'Tied House' practices," whereby "large manufacturers and distillers [were] able to control the entire distribution process from production down to the neighborhood bar"). The three-tiered licensing scheme facilitates this purpose by fixing each entity's role in the distribution chain and enabling the commission to regulate these entities, preventing the collapse of the chain. See Craft Beer Guild, LLC, supra at 515.



[\$ 18B] whose licensed premises are located in other states and foreign countries for sale to such licensees . . . ."<sup>5</sup>

In sum, § 18 authorizes the commission "to license wholesalers to purchase beverages from in-State or out-of-State manufacturers or suppliers[, including from § 18B certificate holders,] for resale to other wholesalers and retailers."

Anheuser-Busch, Inc. v. Alcoholic Beverages Control Comm'n, 75 Mass. App. Ct. 203, 206 (2009).

Second, § 18B authorizes the commission to issue "certificate[s] of compliance" to wholesalers and importers that are licensed "outside the commonwealth." G. L. c. 138, § 18B. These annual certificates allow certificate holders to sell alcohol to § 18 licensed wholesalers in the Commonwealth. Id. Notably, § 18B provides that no entity "who holds a certificate under this section shall [also] hold or be granted a license" reserved for wholesalers under § 18. G. L. c. 138, § 18B. Thus, while both § 18B certificate holders and § 18 licensees may distribute alcohol to wholesalers in the Commonwealth, only § 18 licensees are authorized to distribute alcohol to retailers. In other words, § 18B certificate holders are treated like manufacturers or suppliers in the three-tiered

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<sup>5</sup> Following the United States Supreme Court's decision in Tennessee Wine & Spirits Retailers Ass'n v. Thomas, 588 U.S. 504 (2019), the commission no longer enforces the residency requirements of § 18. See G. L. c. 138, § 18. S&H do not challenge these residency provisions.

scheme. See G. L. c. 138, § 25F ("For the purposes of this paragraph, the word 'supplier' shall mean a licensee under said [§] 19 or 19B or a holder of a certificate of compliance under said [§] 18B" [emphases added]); Anheuser-Busch, Inc., 75 Mass. App. Ct. at 204 (defining § 18B certificate holder as "an out-of-State supplier . . . [that] has maintained proper certification under Massachusetts law to sell its products to duly licensed wholesalers in Massachusetts"); Heineken U.S.A., Inc. v. Alcoholic Beverages Control Comm'n, 62 Mass. App. Ct. 567, 568-569 (2004) ("Heineken is an out-of-state supplier authorized by [§ 18B] to sell alcoholic beverages to licensed Massachusetts wholesalers").

Third, § 25E provides certain protections against unfair trade practices. Specifically, it is designed to "redress economic imbalances in the relationship of wholesalers and their suppliers," arising from the wholesaler's dependence on suppliers to provide a reliable stream of product and the suppliers generally superior bargaining power. Pastene Wine & Spirits Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 612, 618-619 (1988). See Martignetti Grocery Co. v. Alcoholic Beverages Control Comm'n, 96 Mass. App. Ct. 729, 732-733 (2019) ("The purpose of § 25E is to strike a balance between the competing interests of suppliers, who generally enjoy superior bargaining power, and wholesalers").

Section 25E provides, in relevant part, that it is "an unfair trade practice" for any manufacturer, importer, or wholesaler "to refuse to sell, except for good cause shown, any item having a brand name to any licensed wholesaler to whom such manufacturer, . . . importer or wholesaler has made regular sales of such brand item during" the previous six months (emphasis added). G. L. c. 138, § 25E. Section 25E grants the commission jurisdiction over controversies between licensed wholesalers and suppliers regarding alleged unfair trade practices. Id.

c. Scope of § 25E. The present dispute between S&H, on the one hand, and the commission and the respondents, on the other, centers on whether the term "any licensed wholesaler," as used in § 25E, includes holders of a certificate of compliance under § 18B. Emphasizing the word "any," S&H asserts that "any licensed wholesaler" includes § 18B certificate holders because such an entity has "a license granted, outside the commonwealth . . . [that] authorizes the exportation or sale of alcoholic beverages to licensees in this commonwealth." G. L. c. 138, § 18B. We disagree.

To begin, the act uses the phrase "certificate of compliance" holder to refer to § 18B certificate holders and the phrase "licensed wholesaler" when it refers to wholesalers licensed by the commission under § 18. In particular, § 18 sets

forth certain obligations of holders of a license under § 18, using the same phrase, "licensed wholesaler," used in § 25E. See G. L. c. 138, § 18 ("Every licensed wholesaler and importer of alcoholic beverages shall keep such records in such detail . . . and the commission shall . . . have access to all . . . records and other documents of every licensed wholesaler and importer relating to the business which he is licensed hereunder to conduct" [emphases added]); G. L. c. 138, § 25E (unfair trade practice for any seller "or wholesaler of any alcoholic beverages, to refuse to sell . . . to any licensed wholesaler to whom such [seller] or wholesaler has" preexisting merchant relationship [emphasis added]).

Where the "Legislature uses the same words in several sections which concern the same subject matter, the words must be presumed to have been used with the same meaning in each section."<sup>6</sup> Worcester Regional Retirement Bd. v. Public Employee

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<sup>6</sup> Contrary to S&H's position, the fact that the Legislature also used the phrase "holders of licenses under [§ 18]," G. L. c. 138, § 18A, or similar phrasing in other sections of the act, see G. L. c. 138, §§ 23, 28, 76, as opposed to "licensed wholesalers," to refer to § 18 licensees does not diminish the significance of the use of the same phrase "licensed wholesaler" in both §§ 18 and 25E. See Worcester Regional Retirement Bd. v. Public Employee Retirement Admin. Comm'n, 489 Mass. 94, 102 (2022) (consistent use of term throughout several sections of statutory scheme "must be presumed to reflect a uniform meaning"). S&H cites to no provision of the act, and we are aware of none, in which § 18B certificate holders are referenced as "licensed wholesalers."

Retirement Admin. Comm'n, 489 Mass. 94, 102 (2022), quoting Meyer v. Veolia Energy N. Am., 482 Mass. 208, 214-215 (2019). Accordingly, we presume the Legislature intended the phrase "licensed wholesaler" in § 25E to have the same meaning as the phrase "licensed wholesaler" in § 18 -- namely, those entities to whom the commission has granted a § 18 license.

In contrast, the Legislature did not use the phrase "licensed wholesaler" to refer to § 18B certificate holders. Instead, it used the phrase "holder[s] of a certificate issued under [§] 18B" (emphasis added). See, e.g., G. L. c. 138, § 19D. The Legislature's choice of words is significant. See Ginther v. Commissioner of Ins., 427 Mass. 319, 324 (1998) ("Where the Legislature used different language in different paragraphs of the same statute, it intended different meanings").

Furthermore, § 18B permits the commission to issue a "certificate of compliance" to qualified entities, not a "license." This word choice further supports the conclusion that the phrase "any licensed wholesaler" as used in § 25E does not include § 18B "certificate" holders. Indeed, § 18B precludes the commission from issuing a § 18 license to a certificate holder, confirming that the Legislature did not intend the phrase "any licensed wholesaler" to include certificate holders. G. L. c. 138, § 18B ("No person who holds

a certificate under this section shall hold or be granted a license under [§ 18]").<sup>7</sup>

Significantly, S&H's proposed construction fails to read the words of the statute in light of the statutory framework, which places the responsibility for the administration of the distribution of alcoholic beverages in the hands of the commission. Allowing § 25E's protections to depend on out-of-State licensing activities uncontrolled by the commission, as advocated by S&H, would thwart the central role played by the commission in the Commonwealth's statutory scheme. By contrast, the commission's construction preserves the commission's critical role by interpreting "any licensed wholesaler" to refer to wholesalers to whom the commission has granted a "license" under the act's only provision authorizing the commission to do so -- namely, § 18. See generally G. L. c. 138.

The commission's construction also adheres closely to the purpose of § 25E to protect the Commonwealth's licensed

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<sup>7</sup> Other than the provision prohibiting a certificate holder from holding a license, G. L. c. 138 does not refer to § 18 licensed wholesalers and § 18B certificate holders in the same sentence or clause, further supporting the construction of the phrase "any licensed wholesaler" as referring to § 18 licensees. Contrast G. L. c. 138, §§ 23 (providing that certain retailers may only sell alcoholic beverages "purchased from a licensee under [§ 18, 19, 19C, or 19F] or from a holder of a special permit to sell issued under [§ 22A]"), 76 (authorizing commission to license "hold[ers] [of] a license under [§ 18 or 19]" to sell nonbeverage alcohol).

wholesalers from the sudden termination of their supply of alcoholic beverages by suppliers, a group that includes § 18B certificate holders. See Pastene Wine & Spirits Co., 401 Mass. at 618-619 (describing act's twin purposes to dissuade vertical integration in liquor distribution industry and to redress economic imbalance between wholesalers and suppliers); Martignetti Grocery Co., 96 Mass. App. Ct. at 732-733 (balancing unequal bargaining positions of suppliers and wholesalers one purpose of § 25E). S&H's proposed construction, which would extend § 25E's protections to suppliers in the three-tiered scheme, like § 18B certificate holders, would not further the purpose of protecting wholesalers in the Commonwealth.<sup>8</sup> See Plymouth Retirement Bd., 483 Mass. at 605 (courts must take holistic view of statutory scheme to produce internal consistency within statute).<sup>9</sup>

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<sup>8</sup> The petitioners' reliance on M. H. Gordon & Son v. Alcoholic Beverages Control Comm'n, 371 Mass. 584, 587, 593 (1976), a case that did not concern § 25E, is misplaced.

<sup>9</sup> In a 1974 amendment, the Legislature amended § 25, adding that "[a] holder of a certificate of compliance under the provisions of [§ 18B] shall not be construed to be a licensee . . . under the provisions of this section" [emphasis added]). St. 1974, c. 279, § 2, amending G. L. c. 138, § 25. Section 25 concerns limitations on "licensees" lending or borrowing activities. S&H contends that the amendment evinces the Legislature's intent to limit the prohibition on considering a holder of a § 18B certificate a "licensee" to apply only to § 25. We need not reach the merits of S&H's argument; where, as here, the language of §§ 18, 18B, and 25E is clear and unambiguous, we need not draw from the legislative history (let

d. Dormant commerce clause. S&H's claim that their construction of § 25E is compelled by the commerce clause of the United States Constitution, which provides that Congress shall have power to "regulate Commerce . . . among the several States," fares no better. Art. I, § 8, cl. 3, of the United States Constitution.<sup>10</sup> The clause includes an unenumerated "negative command," known as the dormant commerce clause, which "denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce" (citation omitted). Murphy v. Massachusetts Turnpike Auth., 462 Mass. 701, 711-712 (2012). Contrary to S&H's assertion, principles of constitutional avoidance do not require that § 25E's protections extend to § 18B certificate holders. See Pielech v. Massasoit Greyhound, Inc., 423 Mass. 534, 538-539 (1996), cert. denied, 520 U.S. 1131 (1997) (statutes must be

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alone the history of a different section) to guide our construction. See AIDS Support Group of Cape Cod, Inc. v. Barnstable, 477 Mass. 296, 301 (2017) ("Where the language of the statute is plain and unambiguous, . . . legislative history is not ordinarily a proper source of construction" [quotation and citation omitted]).

<sup>10</sup> Given our conclusion, we need not reach the commission's claim that S&H waived the constitutional avoidance argument because S&H raised the issue for the first time before the commission at a hearing, and not in briefing before the commission. Cf. 801 Code Mass. Regs. § 1.02(7)(c) (2020) (under "Informal/Fair Hearing Rules" for administrative proceedings, request for rulings or relief may be made "in writing at any time or orally during a hearing" [emphasis added]).



interpreted to "avoid an unconstitutional result" if "reasonable principles of interpretation" so permit [citations omitted]).

The reason is simple: § 18B certificate holders are not similarly situated to § 18 licensed wholesalers. See DIRECTV, LLC v. Department of Revenue, 470 Mass. 647, 653, cert. denied, 577 U.S. 954 (2015), quoting General Motors Corp. v. Tracy, 519 U.S. 278, 298 (1997) ("discrimination" for purposes of dormant commerce clause "implicitly assumes 'a comparison of substantially similar entities'"). Rather, § 18B certificate holders are suppliers under the statutory scheme, see Anheuser-Busch, Inc., 75 Mass. App. Ct. at 204; Heineken U.S.A., Inc., 62 Mass. App. Ct. at 568-569, and, consequently, there are "substantive reasons" to treat them differently from § 18 wholesalers, DIRECTV, LLC, supra at 657 n.14. See, e.g., Lebamoff Enters. Inc. v. Whitmer, 956 F.3d 863, 868 (6th Cir. 2020), cert. denied, 141 S. Ct. 1049 (2021) ("Wholesalers play a key role in three-tier systems," as "they are the in-state path through which all alcohol passes before reaching consumers"). Because § 18B certificate holders and § 18 licensed wholesalers serve different roles in the three-tiered regulatory framework, disparate treatment between the two sets of entities is permissible. See DIRECTV, LLC, supra at 661-662 (higher excise tax rate permissible for out-of-State interests, who "do not

bear the additional regulatory burdens imposed" on in-State interests).<sup>11</sup>

3. Conclusion. For the foregoing reasons, we conclude that the commission's decision was consistent with the plain language of the applicable statute and did not violate the dormant commerce clause. Accordingly, we affirm the Superior Court order granting the commission's and Global's motions for judgment on the pleadings.

Judgment affirmed.

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<sup>11</sup> As discussed, see note 5, supra, the United States Supreme Court concluded that while § 2 of the Twenty-first Amendment to the United States Constitution grants States the power to "maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use," Granholm v. Heald, 544 U.S. 460, 484 (2005), it does not "allow[] the States to violate the 'nondiscrimination principle'" of the dormant commerce clause, Tennessee Wine & Spirits Retailers Ass'n, 588 U.S. at 533. The commission has represented that, in response to the Supreme Court's decision in Tennessee Wine & Spirits Retailers Ass'n, it no longer enforces the residency requirement for the issuance of wholesaler licenses under § 18, and the petitioners do not challenge the residency provisions of § 18.