HUDSON COOK

Dormant Commerce Clause Challenge to Nevada In-State Office Requirement

September 30th, 2026 | and Clayton C. Swears

It would not surprise those involved in the financial services industry to hear there can be tension between compliance requirements and the increasingly tech-focused process in which products are offered. What can come as a surprise, however, is that the compliance requirements can include something as prohibitive as an in-state office requirement.

In the past, it was not unusual for state licensing schemes, particularly in the lending space, to require functioning in-state offices. Those requirements were generally framed as being necessary for regulators to more closely monitor license holders. Those requirements, however, have been eliminated in most states. However, they do still exist in some states.

For example, it was only in the fall of 2025 that the state finally allowed a limited exemption to its in-state office requirement for consumer lenders. Prior to that, the state would issue a lending license to an out-of-state location only if the company also had a staffed, fully functioning in-state office. The state now allows a consumer lender that operates exclusively through the Internet to obtain a license without also maintaining an in-state location.

However, a recent trial court decision raises some interesting question about such requirements. This case was in the context of real estate licensing. Nevada's real estate licensing law imposes several in-state office requirements on brokers. Among other things, a broker must maintain an office in Nevada, transact licensed business from that office, and maintain records there for inspection.

A real estate broker based in New Jersey sued Nevada, arguing that the requirement violated the dormant Commerce Clause. The dormant Commerce Clause generally prohibits states from discriminating against or unduly burdening interstate commerce. The broker claimed the Nevada law unduly burdened out-of-state brokers, imposing costs that in-state brokers could avoid by licensing a home office.

The state's argument, in turn, did not seem particularly persuasive. The Nevada regulator argued there was minimal burden on out-of-state brokers because such brokers could just get a vacation home in the state to operate from. And, in any case, the regulator did not really require business to be conducted from the office, enforcing the requirement with only a light touch. For example, the regulator allowed shared office arrangements.

The court partially agreed with the broker, finding the requirement that a broker transact business from an in-state office was an impermissible residency or local-processing requirement in violation

of the dormant Commerce Clause. The court was not persuaded by the state's promise to enforce the requirement practically, noting that an unconditional statute is not saved merely because the state promises to "use it responsibly."

The court, however, ruled in favor of Nevada on the issue of requiring an in-state office for record keeping purposes. The court noted that some discrimination against out-of-state parties may be allowed if a state's law is narrowly tailored to address a legitimate purpose. The broker alleged that he paid $1,500 annually to maintain an office in the state for record-keeping and mailing purposes. The court found that was not so burdensome as to be a per se violation. The court found the state's reasons for the office to be "dubious," but that the cost burden was minimal.

It will be interesting to see whether this case catches on. For example, as noted above, Nevada now allows a consumer lender to operate from an out-of-state office without maintaining a Nevada office, but only if the lender conducts its consumer lending activities exclusively through the Internet. An out-of-state lender that conducts any lending business in person from its out-of-state office does not qualify for that exception and generally must maintain a licensed Nevada office. One wonders whether conditioning access to an out-of-state license on how a lender conducts its business outside Nevada could face a similar dormant Commerce Clause challenge. Moreover, while rare, Nevada is not the only state with an in-state office requirement.

Eisenberg v. Sanchez, No. 2:24-CV-02377-JAD-MDC, 2026 WL 2620239, at *1 (D. Nev. Sept. 3, 2026)