No. 18-96

In The
Supreme Court of the United States

TENNESSEE WINE AND
SPIRITS RETAILERS ASSOCIATION,

Petitioner,

v.

CLAYTON BYRD, et al.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Sixth Circuit**

BRIEF OF AMICUS CURIAE KHBC PARTNERS II, LTD. IN SUPPORT OF PETITIONER

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DISCLOSURE STATEMENT AND INTEREST OF AMICI CURIAE[1]

We know of no possible basis for recusal by any member of the court. KHBC Partners II, Ltd. is privately owned. KHBC, its owners and counsel have no personal or business connection to any justice of this Court.

The undersigned counsel authored this entire brief without notice to or consultation with any lawyer in this case, and after reading what he believes is every case ever decided by any court under the 21st Amendment. KHBC and counsel want this Court to reach a correct result for the right reasons.

SUMMARY OF THE ARGUMENT

Since Congress cannot regulate who gets a permit to sell alcohol locally, the judiciary should not utilize the dormant Commerce Clause to regulate who can get those permits. The 21st Amendment empowers only states to grant local permits implementing the three-tier system. States have exceptional, transcendent, and overwhelming power over their constitutionally exclusive zone of control to govern the local sale of

[1] Pursuant to Rule 37.6, Amicus affirms that no counsel for any party authored this brief in whole or in part and that no person or entity other than Amicus itself provided any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this amicus brief through waivers.

alcohol. Congress has no such power; therefore, the use of the dormant Commerce Clause to deprive states of their power to control permits for local retail alcohol sales is inappropriate. The judicial effort to protect non-existent Congressional power has created doctrinal disarray that should be resolved by holding that each state has the authority under the 21st Amendment to set standards for who may possess a permit to locally sell alcohol without impingement by the dormant Commerce Clause.

Shortly after prohibition banned the manufacture, distribution or sale of alcohol the people of this nation rose up. In less than a year, through Congress and state conventions, the people overwhelmingly passed the 21st Amendment. It vests exclusive power over the local sale and distribution of alcohol at the state level. In drafting the 21st Amendment, Congress explicitly declined concurrent power over local alcohol sales. Improper utilization of the dormant Commerce Clause takes that power over local alcohol sales away from states and misplaces it in the federal judiciary.

The essence of the dormant Commerce Clause is preservation of Congress' exclusive power to regulate commerce among the states and thus prevent the creation of protectionist barriers that would distort the free flow of goods across state lines. With respect to the constitutionally unique product of alcohol, Congress has spent 128 years ceding regulatory power to the states. This includes expressly declining concurrent power when the 21st Amendment was drafted. As recently as 2010, Congress wrote into law that alcohol is

a unique product and States have primary authority to regulate alcohol distribution and sale.

Some members of the federal judiciary erroneously decrease state authority to regulate the local sale of alcohol, preserving non-existent Congressional authority in the area. They use the dormant Commerce Clause to judicially dive into waters where Congress constitutionally cannot swim. This Court should hold that the dormant Commerce Clause does not apply to any states' exercise of their virtually complete control over how to structure the retail tier of the three-tier system.

When a state grants a permit to sell liquor locally the state does not impinge on a federal area, encroach extraterritorially on other states, or impact the interstate flow of any product. Congress' inaction in local permitting increases the sphere of state influence. Congress' constitutional inability to act with respect to local permitting should extend the expanded sphere of state influence beyond the reach of the dormant Commerce Clause. The principles of the dormant Commerce Clause enunciated by this Court when it last considered the 21st Amendment do not support applying the dormant Commerce Clause to state permits for local alcohol sales.

ARGUMENT

1. The 21st Amendment.

The 21st Amendment is incredibly unique. It is the only provision in the U.S. Constitution that:

a. Grants power to states;

b. Overturns a separate amendment;

c. Passed by state conventions, the people acting directly rather than by legislature;

d. Was passed by the U.S. Senate, House, and 37 states in less than 10 months (Appendix 1), and

e. Is limited to one consumer product.

The 21st Amendment allocates all of the governmental power to create a system to regulate local alcohol sales to the states. Thus, any challenge to that legislation must begin with an analysis of the 21st Amendment. "Consideration of any state law regulating intoxicating beverages must begin with the Twenty-first Amendment. . . ." *Joseph E. Seagram & Sons v. Hostetter*, 384 U.S. 35, 43, 86 S. Ct. 1254, 1259 (1966).

The dormant Commerce Clause protects the free flow of commerce. The 18th and 21st Amendments expressly ban some commerce in alcohol or allow states to restrict commerce, hence the inherent tension. When prohibition passed it eliminated the application of the dormant Commerce Clause to the manufacture, sale, or transportation of alcohol. When prohibition

failed miserably and was repealed by the 21st Amendment, the dormant Commerce Clause was modified with respect to alcohol. Many states continued to ban the manufacture or sale of alcohol after the 21st Amendment passed in 1933: for example, Mississippi banned all distilled beverages until 1966, and 33 states have dry counties today. For any other product such a ban violates the dormant Commerce Clause. *Railroad Company v. Husen*, 95 U.S. 465 (1877) (cattle); *Baldwin v. G.A.F. Seeling, Inc.*, 294 U.S. 511, 55 S. Ct. 497 (1935) (milk). But a ban on the sale of alcohol is unquestionably constitutional. For decades courts have struggled to balance and harmonize the dormant Commerce Clause with the 21st Amendment. The tension and difficulties inherent in this area are properly resolved by reviewing all of the phenomenal powers granted to states against the rationale for the dormant Commerce Clause.

The lower courts in this case went exactly where courts were warned not to go in 1944: they embarked on the "impossible task of deciding, instead of leaving it for legislatures to decide, what constitutes a 'reasonable regulation' of liquor traffic." *Carter v. Virginia*, 321 U.S. 131, 142, 4 S. Ct. 464, 471 (1944, Frankfurter concurring).

2. <u>The uniqueness of alcohol regulation.</u>

A. State police powers.

All states have police powers. They had them before the constitution was written, after the constitution was adopted in 1789, and then the 10th Amendment preserved them in 1791.

State regulation of liquor traffic is "one of the oldest and most untrammeled of legislative powers." *Goesaert v. Cleary*, 335 U.S. 464, 465, 69 S. Ct. 198, 199 (1948). The state police power to regulate liquor precedes and is independent of the 21st Amendment's added powers. *Rice v. Rehner*, 463 U.S. 713, 723, 105 S. Ct. 3291, 3298 (1983). State police powers over liquor were "extremely broad even prior to the Twenty-first Amendment." *Wisconsin v. Constantineau*, 400 U.S. 433, 91 S. Ct. 507, 509 (1971).

B. Adding the 21st Amendment to state police powers creates unique and exceptional state powers.

The Constitution begins with its three most powerful words: "We the people . . . " Only one constitutional provision was created directly by the people: the 21st Amendment. The people of this country created it with phenomenal speed. Since 1933, a unique body of law limited exclusively to alcohol has necessarily developed. In the historically dangerous area of distilled beverages courts have been justifiably supportive of states' legislative discretion. The unique aspects of the 21st Amendment plus state police powers combine to

grant exceptional power to the states to regulate the local sale of alcoholic beverages. This exceptional power has been expressed by this Court through various legal principles or phrases.

1. States have broad regulatory power in liquor.

"Broad regulatory power" and "full authority," *U.S. v. Frankfort Distilleries*, 324 U.S. 293, 297-301, 65 S. Ct. 661, 664-65 (1945); "broad regulatory power," *Joseph E. Seagram & Sons v. Hostetter*, 384 U.S. 35, 41, 86 S. Ct. 1254, 1259 (1966); "broad regulatory authority," *U.S. v. State Tax Commission of Miss.*, 93 S. Ct. 2183, 2189 (1973); "broad power," *New York State Liquor Authority v. Bellanca,* 452 U.S. 714, 714, 101 S. Ct. 2599, 2600 (1981); and "broad regulatory powers," *City of Newport, Ky. v. Iacobucci*, 479 U.S. 92, 93, 107 S. Ct. 383, 385 (1986).

2. Broad regulatory power includes wide latitude.

Joseph E. Seagram & Sons, Inc. v. Hostetter, 384 U.S. 35, 41, 86 S. Ct. 1254, 1259 (1966); *California Retail Liquor Dealers Assoc. v. Midcal Aluminum*, 445 U.S. 97, 106, 100 S. Ct. 937, 944 (1980).

3. Broad regulatory power, with wide latitude within the constitutionally sanctioned zone of state control, creates special power in the states.

California Retail Liquor Dealers Assoc. v. Midcal Aluminum, 445 U.S. 97, 106, 100 S. Ct. 937, 944 (1980).

4. The 21st Amendment grants states virtually complete control over local alcohol sales.

"The Twenty-first Amendment grants the States virtually complete control over . . . how to structure the liquor distribution system."

> *California Retail Liquor Dealers Assoc. v. Midcal Aluminum*, 445 U.S. 97, 110, 100 S. Ct. 937, 946 (1980),
>
> quoted and reaffirmed in:
>
> *Capital Cities Cable v. Crisp*, 467 U.S. 691, 715, 104 S. Ct. 2694, 2709 (1984);
>
> *324 Liquor Corp. v. Duffy*, 479 U.S. 335, 345, 107 S. Ct. 720, 726 (1987);
>
> *North Dakota v. U.S.*, 495 U.S. 423, 431, 110 S. Ct. 1986, 1992 (1990); and
>
> *Granholm v. Heald*, 544 U.S. 460, 488, 125 S. Ct. 1885, 1905 (2005).

There may be no area of constitutional law in which states have greater legislative control. There is no other product over which states have explicit

constitutional authority. Congress has spent 128 years ceding legislative power over local liquor sales to states.

C. The three-tier system.

This Court noted that the three-tier system is constitutional in *North Dakota*, 495 U.S. at 432. Fifteen years later, in the most recent case this Court decided under the 21st Amendment, this Court re-affirmed that the three-tier system is "unquestionably legitimate." *Granholm*, 544 U.S. at 489 (quoting *North Dakota*).

D. Strong presumption of validity.

In light of the 21st Amendment's special protection of state liquor control policies, "they are supported by a strong presumption of validity and should not be set aside lightly." *North Dakota*, 495 U.S. at 433. Any reading of history concerning the sale of liquor instantly affirms the wisdom of this added deference and corresponding reticence to cast aside legislative prerogatives.

3. Congress wants the power over local alcohol sales vested in the states.

In the 1700s and 1800s a variety of states regulated the sale of alcoholic beverages. Before the Civil War this Court affirmed broad state authority over alcohol sales in *The License Cases*, 46 U.S. (5 How.) 504,

579 (1847). This Court decreased state authority to regulate the sale of alcohol in *Leisy v. Hardin*, 135 U.S. 100, 10 S. Ct. 681 (1890). Congress immediately reacted by reinvigorating state authority through passage within a few months of the Wilson Act, 27 U.S.C. § 121 (1890); summarized in *Craig v. Boren*, 429 U.S. 190, 205, 97 S. Ct. 451, 461 (1976). Congress eliminated a loophole in the Wilson Act with the later passage of the Webb-Kenyon Act, 27 U.S.C. § 122 (1913), which removed the protection of interstate commerce from all receipt and possession of liquor prohibited by state law. *Clark Distilling Co. v. Western Maryland R. Co.*, 242 U.S. 311, 325, 375 S. Ct. 180 (1917). The 21st Amendment language was designed in part to constitutionalize the language of the Wilson and Webb-Kenyon Acts. *Craig*, 429 U.S. at 206, 462; *Granholm v. Heald*, 544 U.S. 460, 483, 125 S. Ct. 1885, 1902 (2005).

Congress has repeatedly transformed power Congress might have over the distribution system for local alcohol sales into state power.

1. Wilson Act, 27 U.S.C. § 121 (1890);
2. Webb-Kenyon Act, 27 U.S.C. § 122 (1913);
3. Passage of the 21st Amendment (1933);
4. 18 U.S.C. § 1161 (1953), by which Congress authorized state regulation over Indian liquor transactions. *Rice v. Rehner*, 463 U.S. 713, 723, 103 S. Ct. 3291, 3299 (1983);
5. 27 U.S.C. § 122a (2000), the 21st Amendment Enforcement Act; and

6. 42 U.S.C. § 290bb-25b (2006) ("Alcohol is a unique product and should be regulated differently than other products by the States and Federal Government. States have primary authority to regulate alcohol distribution and sale, and the Federal Government should support and supplement these State efforts.").

The most important Congressional expression of relinquishment of power over local alcohol sales came in the drafting of the 21st Amendment. One draft gave Congress much more power than they wanted. This provision was proposed and then deleted during Congressional debate:

> "Congress shall have concurrent power to regulate or prohibit the sale of intoxicating liquors to be drunk on the premises where sold."

Cong. Rec. Vol. 76, Part 4, pp. 4138-39 (Feb. 15, 1933). As passed by Congress and the 38 states that ratified it, the 21st Amendment does *not* grant Congress concurrent power to regulate the retail sale of intoxicating liquors.

Congress having deprived itself of concurrent power over local alcohol sales, and 38 states having agreed, there is no intellectual justification for re-writing the 21st Amendment through the backdoor by applying the dormant Commerce Clause to "preserve" non-existent Congressional power over local alcohol sales. Since it is constitutionally impossible for Congress to regulate who may possess a permit to sell tequila at the corner store it is improper for courts to utilize the dormant Commerce Clause to strike down state rules on who may possess that permit.

4. <u>The rationale for the dormant Commerce Clause.</u>

When the Articles of Confederation were adopted in 1781 the Congress had no power to regulate commerce. This failure was one of the leading causes of the creation of the constitution. As Alexander Hamilton noted, lack of federal power over commerce created "occasions of dissatisfaction between the States" and made negotiation of trade treaties with foreign nations difficult or impossible. Federalist Papers #22. To protect the flow of commerce Congress was given the exclusive power to regulate commerce among the several states. The theory of the dormant Commerce Clause first arose in 1851 to preserve Congressional power to exclusively regulate interstate commerce. *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299 (1851). The first use of the dormant Commerce Clause to negate a state law was after the Civil War. *In re: State Freight Tax*, 82 U.S. (15 Wall.) 232 (1873); *Reading Railroad Co. v. Pennsylvania*, 82 U.S. (15 Wall.) 232, 271-83 (1873).

The central rationale for the dormant Commerce Clause is to prohibit "state or municipal laws whose object is local economic protectionism, laws that would excite those jealousies and retaliatory measures the Constitution was designed to prevent." *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 390, 114 S. Ct. 1677 (1994). Courts strike down "local laws that impose commercial barriers or discriminate against an article of commerce." *C & A*, 511 U.S. at 390.

When courts improperly utilize the dormant Commerce Clause they usually lose sight of *commerce*. The Commerce Clause relates to commerce among the States, foreign nations, and Indian tribes. The dormant Commerce Clause thus also relates to commerce. The dormant Commerce Clause preserves Congressional power over commerce. It protects a national market, not who participates in the national market.

> "The fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce . . . the Commerce Clause protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations."

Exxon Corp. v. Maryland, 437 U.S. 117, 126-27, 98 S. Ct. 2207 (1978).

Dormant Commerce Clause jurisprudence springs from the implication that states cannot conflict with Congressional power and impede the flow of interstate goods. It would be impossible for Congress to enact a regulation governing the local sale of alcoholic beverages within a state as the 21st Amendment vests all of that power within each state. Regulating who may possess a permit to locally sell liquor does not impede the flow of one bottle of distilled beverages from the other 49 states, and Congress cannot license local package stores. Thus the dormant Commerce Clause should not be improperly used to preserve Congressional power to do what Congress cannot do with respect to awarding or denying permits for local retail alcohol sales.

5. <u>U.S. Supreme Court analysis and standards.</u>

A. Improper state legislation or regulations nullified.

Since 1933 this Court has struck down a variety of state alcohol legislation or regulations. But all fit into these three categories:

1. They conflicted with a federal law or impinged on a federal area.

National parks.	*Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 58 S. Ct. 1009 (1938)
International travel.	*Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 342, 84 S. Ct. 1293 (1964)
Export-import clause.	*Dept. of Revenue v. James B. Beam Distiller Co.*, 377 U.S. 341, 84 S. Ct. 1247 (1964)
Military bases.	*U.S. v. State Tax Commission of Mississippi*, 412 U.S. 363, 419 U.S. 1104, 93 S. Ct. 2183 (1973) and 95 S. Ct. 1872 (1975)
Sherman antitrust.	*California Retail Liquor Dealers Assoc. v. Midcal Aluminum, Inc.*, 445 U.S. 97, 100 S. Ct. 937 (1980)
	324 Liquor Corp. v. Duffy, 479 U.S. 335, 107 S. Ct. 720 (1987)
Cable television signal retransmission.	*Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 104 S. Ct. 2694 (1984)

2. They extended state regulation into other states.

Brown-Forman Distillers Corp. v. New York State Liquor Authority, 476 U.S. 573, 106 S. Ct. 2080 (1986).

Healy v. The Beer Institute, 491 U.S. 324, 109 S. Ct. 2491 (1989).

3. They were economic protectionism designed to disfavor out-of-state products.

- Tax exemption for locally produced wine.

  Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 104 S. Ct. 3049 (1984)

- Ban on out-of-state winery direct shipments to consumers, while in-state wineries could direct ship to consumers.

  Granholm v. Heald, 544 U.S. 460, 125 S. Ct. 1885 (2005).

None of those improper actions are in issue here.

B. Lack of Congressional action eliminates or minimizes application of the dormant Commerce Clause.

Congress' ability to regulate interstate commerce has never deprived states of all ability to regulate commerce, especially at the local level. This is especially true when Congress declines to act and leaves regulation to the states. *Cooley v. Board of Wardens*, 53 U.S.

299, 320 (1851). In a case dealing with mudguard fenders, this Court referred to a state having "exceptional scope for the exercise of its regulatory power" and emphasized that "Congress not acting" results in sustaining state regulations "even though they materially interfere with interstate commerce." *Bibb v. Navajo Freight Lines, Inc*., 359 U.S. 520, 524, 79 S. Ct. 962, 965 (1959). In local alcohol sales states have more than exceptional scope for the exercise of their regulatory power: their regulatory powers reach to their constitutional zenith and apex. Their police powers, the only constitutional grant of powers to states, and the elimination of concurrent Congressional power over local alcohol sales combine to create virtually complete control: full authority through exceptional and broad regulatory powers with the widest possible latitude.

The principle of *Cooley* has been applied to alcohol after the 21st Amendment. This Court clearly enunciated the rule:

> "While the commerce clause has been interpreted as reserving to Congress the power to regulate interstate commerce in matters of national importance, that has never been deemed to exclude the states from regulating matters primarily of local concern with respect to which Congress has not exercised its power, even though the regulation has some effect on interstate commerce."

Duckworth v. Arkansas, 314 U.S. 390, 394, 62 S. Ct. 311, 313 (1941); *see also Carter v. Virginia*, 321 U.S. 131, 135, 64 S. Ct. 464, 467 (1944). Applying this principle

to state legislation governing the transportation for sale of alcohol without a permit this Court concluded:

> "Where the power to regulate commerce for local protection exists, the states may adopt effective measures to accomplish the permitted end. The Arkansas statute does not conflict with any act of Congress. It does not forbid or preclude the transportation, or interfere with the free flow of commerce, among the states beyond what is reasonably necessary to protect the local public interest in preventing unlawful distribution or use of liquor within the state. It does not violate the commerce clause." *Duckworth*, 314 U.S. at 396.

Four years later (between the German and Japanese surrenders) this Court summarized this area of law:

> "Ever since *Willson v. Black-Bird Creek Marsh Co.* and *Cooley v. Board of Wardens* it has been recognized that in the absence of conflicting legislation by Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it. Thus, the states may regulate matters which, because of their number and diversity, may never be adequately dealt with by Congress. When the regulation of matters of local concern is local in character and effect, and its impact on the national commerce does not seriously interfere with its operation, and the consequent incentive to deal with them nationally is slight,

> such regulation has been generally held within state authority."

Southern Pacific Co. v. State of Arizona, 325 U.S. 761, 766-67, 65 S. Ct. 1515 (1945) (internal citations omitted). The effect of the 21st Amendment is that Congress may never deal with (nevertheless adequately deal with) who gets permits to locally sell alcohol in each state. Therefore, each states' determination of who gets a permit should be insulated from dormant Commerce Clause scrutiny.

More than a dozen states have monopolies on the sale of distilled beverages. For alcohol those state monopolies are constitutional. The same 21st Amendment that lets Virginia control the retail sale of bourbon within the Commonwealth also allows other states to control permits to conduct local retail sales of alcohol. Since there can never be federal policy on who gets a permit to run the corner liquor store, the method by which each state grants those permits cannot conflict with federal policy, cannot impede Congressional power, does not affect the flow of commerce among the states, and therefore does not violate the dormant Commerce Clause.

C. Other principles in dormant Commerce Clause analysis.

This Court has noted that the commerce clause and 21st Amendment are in one constitution and must be harmonized, with the 21st Amendment creating an exception to the normal operation of the commerce

clause. *Craig*, 429 U.S. at 461; *California Retail Liquor Dealers Ass'n v. Midcal Aluminum*, 445 U.S. 97, 108, 100 S. Ct. 937, 945 (1980). In *Granholm*, this Court emphasized these goals, purposes, and rules that underlie that harmony:

- No differential treatment of out-of-state economic interests p.472
- No burdens on out-of-state producers p.472
- States cannot be compelled to negotiate p.472
- Minimize or eliminate state rivalries p.472
- Avoid the proliferation of trade zones pp.472-73
- Cannot deprive citizens of access to markets p.473
- States cannot require an out-of-state firm to become a resident p.475
- No discrimination against imported liquor p.476
- No impermissible burdens on interstate commerce p.477
- In-state and out-of-state liquor must be treated on the same terms p.481
- Non-discrimination against out-of-state goods p.483

Analysis of these principles and application of them to the decision by each state on how to award permits for the local retail sale of alcohol should result in a decision that the dormant Commerce Clause does not apply to a states' implementation of the three-tier system with respect to who receives a permit.

D. Cases supporting residency requirements.

This Court has never intensely analyzed, focused on, or squarely ruled on the precise issue involved here, but it has supplied some glancing blows in the past. Shortly after passage of the Wilson Act, but well before the 21st Amendment, this Court viewed a hypothetical residency requirement for a liquor license as appropriate. *Vance v. W.A. Vanderbrook Co.*, 170 U.S. 438, 451, 18 S. Ct. 674 (1898). Three years after the passage of the 21st Amendment all parties in a case conceded the constitutional validity of a two-year durational residency requirement and this Court enforced that requirement to determine standing. *Premier-Pabst Sales Co. v. Grosscup*, 298 U.S. 226, 228, 56 S. Ct. 754 (1936). In a tax case three decades later, this Court made reference to South Carolina's law requiring a "resident representative" as an "appropriate element in the State's system of regulating the sale of liquor." *Heublein, Inc. v. South Carolina Tax Commission*, 409 U.S. 275, 277, 283-84, 93 S. Ct. 483 (1963).

E. "Core §2 power" analysis.

Over the past few decades this Court has created and applied a "core §2 power" analytical approach to the 21st Amendment. The essence of the analysis is that the dormant Commerce Clause imposes no limit on state power when the state is exercising its core §2 power to directly regulate the sale of liquor within the state in a manner that does not discriminate against out-of-state alcoholic products. Nothing more directly regulates the local sale of liquor than deciding who can obtain a permit or license to sell the liquor. Nothing is further from the reach of the dormant Commerce Clause than the determination of who can own the corner liquor store. That determination is the implementation of a core §2 power the people of this nation granted exclusively to the states. That core §2 power should stay with the states: it does not belong in the federal judiciary.

CONCLUSION

Judicial efforts to apply the dormant Commerce Clause to preserve Congressional power to regulate aspects of the three-tier system beyond Congress' power to regulate are intellectually erroneous. They extend the power of the judiciary into a legislative area in which Congress has no authority to legislate, while simultaneously depriving states of powers historically exercised by states since the 1700s and then expressly granted to the states by Congress and the American

people in 1933. This Court should hold that any state legislation or regulation governing the permitting or licensing of the retail tier for local alcohol sale within a state is impervious to attack from the dormant Commerce Clause.

Respectfully submitted,

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