No. 22-285

In the Supreme Court of the United States

B-21 WINES, INC., *et al.*,
Petitioners,
v.

HANK BAUER, as Chair of the North Carolina Alcoholic Beverage Control Commission,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

JOSHUA H. STEIN
Attorney General

Ryan Y. Park
Solicitor General
Counsel of Record

Zachary W. Ezor
Solicitor General Fellow

N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
(919) 716-6400
rpark@ncdoj.gov

QUESTION PRESENTED

The Twenty-first Amendment authorizes States to regulate the sale and distribution of alcohol within their borders. The dormant Commerce Clause limits this authority in certain ways, but does not foreclose States from regulating alcohol to promote legitimate government interests, including to protect public health and safety. Like many States, North Carolina advances these interests by funneling all alcohol sold within its borders through a three-tier regulatory system.

Did the Court of Appeals correctly hold that States may prohibit out-of-state alcohol retailers from bypassing their three-tier systems?

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

STATEMENT 2

REASONS FOR DENYING THE PETITION 8

I. There Is No Circuit Split on the Question Presented 8

II. The Fourth Circuit Correctly Applied *Tennessee Wine* 13

CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

Cases

Anvar v. Dwyer,
No. 22-1843 (1st Cir.) 12

Chicago Wine Co. v. Holcomb
No. 21-2068 (7th Cir.) 10

Dep't of Revenue of Ky. v. Davis,
553 U.S. 328 (2008) 16

Granholm v. Heald
544 U.S. 460 (2005) 1, 3, 16

Lebamoff Enters., Inc. v. Rauner,
909 F.3d 847 (7th Cir. 2018) 9-10

Lebamoff Enters. Inc. v. Whitmer,
956 F.3d 863 (6th Cir. 2020) 2, 7-12, 17

North Dakota v. United States,
495 U.S 423 (1990) 1, 3, 15

Sarasota Wine Mkt., LLC v. Schmitt,
987 F.3d 1171 (8th Cir. 2021) 2, 8-12, 17

Tenn. Wine & Spirits Retailers Ass'n v. Thomas,
139 S.Ct. 2449 (2019) 1-3, 6-7, 10-11, 13-17

Constitutional Provision

U.S. Const. amend. XXI, § 2 ..... 1, 13, 15

Statutes and Regulations

N.C. Gen. Stat. § 18B-102.1(a) 1-2
N.C. Gen. Stat. § 18B-109 1-2
N.C. Gen. Stat. § 105-113.80 4
N.C. Gen. Stat. § 105-164.4 4
14B NCAC 15C .0604(a) 5
14B NCAC 15C .0704 4-5

INTRODUCTION

The Twenty-first Amendment authorizes States to regulate "[t]he transportation or importation . . . of intoxicating liquors" into their borders. U.S. Const. amend. XXI, §2. Just a few years ago, this Court explained that, given this unique grant of authority, challenges to state regulations under the dormant Commerce Clause are subject to a "different inquiry" when the regulated product is alcohol. *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S.Ct. 2449, 2474 (2019). *Tennessee Wine* confirmed that, although States may not use their Twenty-first Amendment authority as a pretext for economic protectionism, alcohol regulations are constitutional so long as they advance legitimate nonprotectionist state interests—such as promoting public health and safety. *Id.*

Like many States, North Carolina has long regulated alcohol through a "three-tier" system, in which producers, wholesalers, and retailers are licensed and regulated separately. This regulatory structure advances vital state interests. Most importantly, it helps prevent unbridled alcohol consumption and the resulting social ills.

This Court has repeatedly affirmed that three-tier systems like North Carolina's are "unquestionably legitimate." *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quoting *North Dakota v. United States*, 495 U.S. 423, 432 (1990) (plurality opinion)). But a three-tier system only works if those who sell alcohol are not able to circumvent it. Thus, to prevent retailers from bypassing its system, North Carolina generally

prohibits direct-to-consumer sales from outside the State. N.C. Gen. Stat. §§ 18B-102.1(a), -109.

In this lawsuit, Petitioners challenge this restriction, arguing that the dormant Commerce Clause requires North Carolina to allow out-of-state retailers to ship alcohol directly to in-state consumers. But as the Fourth Circuit correctly held below, granting such relief would fundamentally undermine the State's three-tier system. For that reason, every court of appeals that has considered a similar challenge since *Tennessee Wine* has rejected it. Pet.App.28a-29a; *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171, 1175, 1184 (8th Cir. 2021), *cert. denied*, 142 S.Ct. 335 (2021); *Lebamoff Enters. Inc. v. Whitmer*, 956 F.3d 863, 872 (6th Cir. 2020), *cert denied*, 141 S.Ct. 1049 (2021).

Because the courts of appeals are in harmony, and because the decision below correctly applied this Court's precedents, the petition should be denied.

STATEMENT

This case concerns North Carolina's ability to effectively regulate alcohol within its borders.

For over a century, many States have required alcohol to pass through a three-tier regulatory system. *Tennessee Wine*, 139 S.Ct. at 2457, 2463 n.7. In such a system, alcohol producers, wholesalers, and retailers must remain separate, and alcohol must flow through each tier before reaching consumers. *See id.* at 2457. By barring vertical integration, this regulatory structure prevents the "tied house" system that drove

excessive drinking in the runup to Prohibition. *Id.* at 2463 n.7. "Under the tied-house system, an alcohol producer . . . would set up saloonkeepers, providing them with premises and equipment, and the saloonkeepers, in exchange, agreed to sell only that producer's products and to meet set sales requirements." *Id.* "To meet those requirements, saloonkeepers often encouraged irresponsible drinking. The three-tiered distribution model was adopted by States at least in large part to preclude this system." *Id.*

The three-tier system has other benefits as well. It enables the State to better control pricing through targeted taxation. J.A.289-92. And by ensuring all alcohol passes through only a few in-state wholesalers, it allows the State to effectively regulate alcohol within its borders. *North Dakota*, 495 U.S at 432-33.

A State's choice to "funnel sales through the three-tier system" is "unquestionably legitimate." *Granholm*, 544 U.S. at 489 (quoting *North Dakota*, 495 U.S at 432). At issue in this case is whether the Twenty-first Amendment allows North Carolina to prevent out-of-state retailers from bypassing that unquestionably legitimate system.

Petitioners are a Florida-based wine retailer, its owner, and three North Carolina residents who enjoy wine. Petitioners allege that North Carolina violates the dormant Commerce Clause—and exceeds its authority under the Twenty-first Amendment—by prohibiting out-of-state retailers from shipping wine

directly to North Carolina consumers while allowing in-state retailers to do so. *See* Pet.3.

Following discovery, the parties filed cross-motions for summary judgment. The summary-judgment record shows that North Carolina has carefully structured its three-tier system to prevent the worst excesses associated with overconsumption of alcohol.

For example, taxation is "one of the most effective policies for reducing alcohol-related harm," including drunk driving and domestic violence. J.A.289-92 (Expert Report of William C. Kerr, Ph.D.). The causal mechanism is clear: taxes increase prices, and increasing prices reduces consumption. *See* J.A.290 (estimating that a 10% price increase would result in a 5% decrease in alcohol consumption).

North Carolina imposes two discrete taxes on alcohol sold within its borders—an excise tax on wholesalers and a sales tax on retailers. N.C. Gen. Stat. §§ 105-113.80, -164.4; J.A.360-62, 365. But the State cannot tax alcohol as effectively if it is sold and shipped from outside the State. Excise taxes may not be collected on out-of-state transactions. J.A.286, 361-62. And although out-of-state retailers are supposed to collect and remit North Carolina sales tax, they often do not. J.A.365-66. Thus, the three-tier system is integral to North Carolina's ability to influence alcohol prices via taxation, and to thereby promote moderate alcohol consumption.

Other features of North Carolina's three-tier system also work to limit overconsumption. For

example, the State bars wholesalers from offering volume discounts to retailers. 14B NCAC 15C .0704. This effectively stops retailers from purchasing and selling large quantities of alcohol at reduced prices. J.A.287, 292. Likewise, the State bars retailers from buying alcohol on credit, a practice that can encourage below-cost pricing. 14B NCAC 15C .0604(a). But North Carolina cannot easily enforce these and other regulations on retailers and wholesalers located in other States.

Finally, the three-tier system also helps to combat alcohol consumption by minors. In North Carolina, in-state retailers typically deliver online orders themselves, rather than use a common carrier. J.A.325, 335. This preference is guided by a desire to ensure strict compliance with the State's ban on sales of alcohol to minors. J.A.317, 325-26. In contrast, out-of-state retailers are more likely to use common carriers, who are supposed to conduct age verification, but often do not. J.A.326.

On this record, the district court granted summary judgment to the State. Although the court believed that the challenged statutes discriminate against out-of-state commerce, it nonetheless held that the statutes are authorized by the Twenty-first Amendment. Pet.App.63a-67a.

At the outset, the district court recognized that the ordinary dormant Commerce Clause analysis "changes . . . when the article of commerce being regulated is alcohol." Pet.App.60a. Under this "different inquiry," an alcohol regulation is

constitutional if it "can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground." Pet.App.61a (quoting *Tennessee Wine*, 139 S.Ct. at 2474).

The district court next observed that North Carolina's three-tier system is "inherently tied to public health and safety measures the Twenty-first Amendment was passed to promote." Pet.App.62a. And it recognized that North Carolina's ban on out-of-state shipping is an "essential feature" of that three-tiered system. Pet.App.63a-67a. Allowing out-of-state retailers to ship directly to North Carolina consumers would enable them to "circumvent" the three-tier system entirely. Pet.App.65a. Thus, the court observed, Petitioners' challenge presents "a choice between virtually eliminating North Carolina's three-tier system, which the Supreme Court and multiple Courts of Appeals have determined is unquestionably legitimate, and maintaining the status quo." Pet.App.66a. Faced with this choice, the court upheld North Carolina's ban on out-of-state retail shipping. Pet.App.66a-67a.

The Fourth Circuit affirmed. As the Fourth Circuit explained, state laws that discriminate against interstate commerce are ordinarily held to a standard "akin to strict scrutiny." Pet.App.19a. Under that standard, regulations of interstate commerce are generally invalid unless they serve a legitimate local purpose that could not be served as well by nondiscriminatory alternatives. Pet.App.19a. But like the district court, the court of appeals understood that, because States have unique constitutional

authority under the Twenty-first Amendment, courts "engage in a different inquiry" when the law in question regulates alcohol. Pet.App.13a. Under that "different" test, courts first inquire into whether a law discriminates against interstate commerce. If so, they must then assess whether the regulation can be justified on "legitimate nonprotectionist grounds" and is therefore authorized by the Twenty-first Amendment. Pet.App.13a.

Applying this two-part test, the Fourth Circuit held that North Carolina's ban on direct shipping by out-of-state alcohol retailers was constitutional. In reaching this conclusion, the court of appeals noted that the Twenty-first Amendment affords a state "leeway in choosing the alcohol-related public health and safety measures that its citizens find desirable." Pet.App.22a. (quoting *Tennessee Wine*, 139 S.Ct. at 2457). And having chosen to regulate alcohol via a "familiar three-tier system," North Carolina has a strong interest in preserving the integrity of that system. Pet.App.22a-23a (internal quotation omitted). But allowing out-of-state retailers to ship directly to North Carolina consumers would leave that system with "a sizeable hole." Pet.App.26a (quoting *Whitmer*, 956 F.3d at 872). After all, "the direct shipping of alcoholic beverages to North Carolina consumers by out-of-state retailers would completely exempt those out-of-state retailers from the three-tier" system. Pet.App.26a. For that reason, the State's ban on out-of-state shipping is "an essential aspect of North Carolina's three-tier system" and therefore a valid

exercise of its Twenty-first Amendment authority. Pet.App.27a-28a.

Judge Wilkinson dissented. The dissent agreed that the Twenty-first Amendment grants States "considerable power" to regulate alcohol, including via three-tier systems. Pet.App.29a. However, the dissent disagreed with the majority's view that North Carolina's ban on out-of-state shipping was an "essential" feature of its system that could justify differential treatment. Pet.App.40a.

Petitioners sought rehearing en banc. The Fourth Circuit denied their petition without calling for a vote.

REASONS FOR DENYING THE PETITION

I. There Is No Circuit Split on the Question Presented.

Petitioners have not identified a circuit split. In the short time since this Court decided *Tennessee Wine*, three courts of appeals have considered challenges to state laws barring out-of-state alcohol shipments. And all three have held that States may enact such laws to preserve their three-tier systems. Pet.App.29a; *Sarasota Wine*, 987 F.3d at 1175, 1184; *Whitmer*, 956 F.3d at 872.

In *Lebamoff Enterprises v. Whitmer*, the Sixth Circuit considered a Michigan law that allowed licensed, in-state retailers to deliver wine directly to consumers, but barred unlicensed, out-of-state retailers from doing the same. 956 F.3d at 867. In a decision authored by Judge Sutton, the court upheld the law against a dormant Commerce Clause

challenge. The court concluded that "Michigan could not maintain a three-tier system, and the [Twenty-first Amendment] public-health interests the system promotes, without barring direct deliveries from outside its borders." *Id.* at 870.

The Eighth Circuit reached the same result in *Sarasota Wine Market, LLC v. Schmitt*. 987 F.3d at 1185. Like Michigan, Missouri law allows only licensed, in-state retailers to ship alcohol directly to consumers. *Id.* at 1176. And like the Sixth Circuit, the Eighth Circuit upheld that law as "an essential feature" of the State's three-tier system. *Id.*

There is no meaningful difference between these decisions and the Fourth Circuit's opinion below—all of which faithfully applied *Tennessee Wine* to uphold materially identical laws. In each case, the court of appeals concluded that allowing direct shipping by out-of-state retailers "would open the [State's] wine market to less regulated wine, undermining the State's three-tier system and the established public interest of safe alcohol consumption that it promotes." Pet.App.26a; *see Sarasota Wine*, 987 F.3d at 1183-84; *Whitmer*, 956 F.3d at 872-73.

Petitioners are wrong that these decisions conflict with the Seventh Circuit's opinion in *Lebamoff Enterprises, Inc. v. Rauner*, 909 F.3d 847 (7th Cir. 2018). *See* Pet.8-11. *Rauner* predated *Tennessee Wine*. It therefore did not apply this Court's most recent pronouncement on the interplay between the dormant Commerce Clause and the Twenty-first Amendment. And as it happens, the Seventh Circuit now has the

opportunity to apply *Tennessee Wine* to this very question: It is set to rule on a materially identical challenge to the one here. *See Chicago Wine Co. v. Holcomb*, No. 21-2068 (7th Cir.) (argued Dec. 10, 2021) (assessing whether Indiana may prohibit out-of-state wine retailers from shipping wine directly to Indiana consumers).[1]

Similarly unpersuasive is Petitioners' reliance on a concurring opinion in the Sixth Circuit's *Whitmer* decision. Petitioners themselves agree that the *lead* opinion in *Whitmer* is on all fours with the decision below. Pet.9.

Nor is there any disagreement among the circuits (or the parties here) that the State has the burden to show that a "challenged requirement can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground." *Tennessee Wine*,

---

[1] Petitioners cite a passage from *Rauner* showing that it was once uncertain whether the dormant Commerce Clause's antidiscrimination principle applies only to *producers* of alcohol, as opposed to retailers and wholesalers. *See Rauner*, 909 F.3d at 853-54. That question was squarely resolved in *Tennessee Wine*, and therefore does not warrant this Court's review a second time. *See* 139 S.Ct. at 2470-72. In any event, *Rauner* did not conclude that any alcohol regulations were unconstitutional. Rather, it simply held that a challenge to a statute that "frankly admits to some protectionist intent" could proceed to discovery. *Rauner*, 909 F.3d at 857. On remand, the plaintiff voluntarily dismissed its claims, thereby leaving any Twenty-first Amendment questions for another day. That day has now arrived with the pending appeal in the Seventh Circuit in *Chicago Wine*.

139 S.Ct. at 2474; *see* Pet.App.9a; *Sarasota Wine*, 987 F.3d at 1180; *Whitmer*, 956 F.3d at 869.

It is true that the courts of appeals appear to have applied slightly different standards for determining when a State must satisfy its burden with "concrete evidence." *See* Pet.8-9. For example, the Eighth Circuit has upheld an "essential" feature of a three-tier system without conducting a "rigorous," fact-based inquiry. *See Sarasota Wine*, 987 F.3d at 1184. In this case, the Fourth Circuit recognized that "concrete evidence" is sometimes required, but that a court's role is "more limited" when an essential component of a three-tier system is at stake. Pet.App.24a n.8. Similarly, the lead opinion in *Whitmer* upheld a shipping ban because "Michigan could not maintain a three-tier system, and the public-health interests the system promotes, without barring direct deliveries from outside its borders." 956 F.3d at 873 (Sutton, J.). In contrast, the other two members of the Sixth Circuit panel in *Whitmer* voted to uphold the ban only because the State "presented enough evidence, which the plaintiffs ha[d] not sufficiently refuted, to show its . . . [ban] serves the public health." 956 F.3d at 877-78 (McKeague, J., concurring).

However, any modest deviation among the courts of appeals on this issue is not implicated here. Below, as in *Whitmer*, the State developed an extensive evidentiary record amply demonstrating that the challenged laws advance public health and safety. *See supra* pp.3-5.

Finally, even assuming that the question presented here might someday warrant this Court's review, further percolation is appropriate. As Petitioners note, there are at least six other pending challenges to "laws banning interstate wine shipping by retailers." Pet.10. Just a few weeks ago, for example, a similar challenge was appealed to the First Circuit. *Anvar v. Dwyer*, No. 22-1843 (1st Cir.) (appeal docketed Nov. 7, 2022) (considering the constitutionality of Rhode Island's ban on delivery by out-of-state alcohol retailers). Allowing these cases to percolate will generate additional reasoned decisions to aid this Court's potential review. And notably, this Court has declined to prematurely review this same percolating issue at least twice in recent years. *See Sarasota Wine Mkt., LLC v. Schmitt*, 142 S.Ct. 335 (2021) (denying cert.); *Lebamoff Enters. Inc. v. Whitmer*, 141 S.Ct. 1049 (2021) (same). It should do the same here.

In sum, since *Tennessee Wine*, three circuits have passed on the constitutionality of state laws that bar out-of-state retailers from delivering wine to in-state consumers. All three courts have reached the same conclusion: such restrictions are authorized by the Twenty-first Amendment because they are "essential" to the States' traditional three-tier systems and the legitimate health and safety interests furthered by such systems. *See* Pet.App.29a; *Sarasota Wine*, 987 F.3d at 1184; *Whitmer*, 956 F.3d at 872. Given this uniformity, this Court's review is not warranted at this time.

II. The Fourth Circuit Correctly Applied *Tennessee Wine*.

This Court should also deny the petition because the Fourth Circuit's decision was correct under this Court's precedents.

The Twenty-first Amendment expressly bars "[t]he transportation or importation" of alcohol "for delivery" in a manner inconsistent with state law. U.S. Const. amend. XXI, § 2. The Amendment's purpose was to "give each State the authority to address alcohol-related public health and safety issues" on its own terms. *Tennessee Wine*, 139 S.Ct. at 2474.

At the same time, the Twenty-first Amendment is part of a "unified constitutional scheme." *Id.* at 2462-63. The dormant Commerce Clause thus forbids States from enacting alcohol laws for purely protectionist purposes. *Id.* at 2469. But States still retain considerable "leeway" when regulating alcohol, as the Amendment "gives [them] regulatory authority that they would not otherwise enjoy." *Id.* at 2474.

In *Tennessee Wine*, this Court considered a challenge to Tennessee's extended durational-residency requirements for liquor retailers. Tennessee required new license applicants to have lived in the State for two years, and renewal applicants for ten years. *Id.* at 2456-57. This Court held that these onerous requirements were unconstitutional because they strongly favored Tennessee residents over outsiders and bore little connection to any legitimate public health or safety interest. *Id.* at 2474-76.

As noted above, in reaching this conclusion, the Court set forth a two-part test for evaluating dormant Commerce Clause challenges to state alcohol laws. The threshold question is whether a challenged provision "discriminates" against out-of-state economic interests, such that the Commerce Clause is implicated at all. *Id.* at 2469-70. If not, the analysis ends there. But if a law is discriminatory, a court must then "ask whether the challenged requirement can [nonetheless] be justified as a public health or safety measure or on some other legitimate nonprotectionist ground." *Id.* at 2474.

The Fourth Circuit correctly applied this two-part test. It first concluded that North Carolina's out-of-state shipping ban discriminates against interstate commerce. Pet.App.13a-16a. It then turned to "the second and most difficult step of the *Tennessee Wine* framework"—carefully evaluating whether the ban can nonetheless be justified on "legitimate nonprotectionist ground[s]." Pet.App.16a. The court concluded that "North Carolina's interest in preserving its three-tier system is itself a legitimate nonprotectionist ground that constitutes a sufficient justification" for the challenged provisions. Pet.App.23a.

Key to the Fourth Circuit's analysis was this Court's repeated guidance that the Twenty-first Amendment authorizes States to create and maintain three-tier systems for regulating alcohol. Pet.App.24a. At the same time, the Fourth Circuit recognized that the Constitution does not sanction every regulation tethered to a three-tier system. Pet.App.24a. Instead,

"each variation must be judged based on its own features." *Tennessee Wine*, 139 S.Ct. at 2472. If a regulation's "predominant effect" is protectionism, the Twenty-first Amendment does not save it, even if it forms a part of a State's three-tier system. *Id.* at 2474.

In contrast to the durational-residency requirement at issue in *Tennessee Wine*, North Carolina's ban on out-of-state retailers making direct shipments to in-state consumers is an "essential" feature of its three-tier system. Pet.App.24a-26a (citing *Tennessee Wine*, 139 S.Ct. at 2471; *North Dakota*, 495 U.S. at 432 (plurality opinion)). As the Fourth Circuit recognized, such a restriction is "integral" to the State's three-tier system because it "directly relates to North Carolina's ability to separate producers, wholesalers, and retailers." Pet.App.26a. Allowing out-of-state retailers to ship directly to North Carolina consumers would "completely exempt" those retailers from the three-tier system, and thus undermine the practice of "safe alcohol consumption that it promotes." Pet.App.26a. Under *Tennessee Wine*, therefore, North Carolina's ban is an appropriate exercise of the State's Twenty-first Amendment authority to regulate "[t]he transportation or importation . . . of intoxicating liquors" into its borders. U.S. Const. amend. XXI, § 2.

Petitioners' arguments to the contrary are unconvincing. Petitioners claim that alcohol regulations should be upheld only if a state can "present concrete evidence that the law advances a legitimate state interest that could not be served by reasonable nondiscriminatory alternatives." Pet.5.

But that proposed test mirrors the one that applies for *ordinary* commercial products. *See Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 338 (2008) (holding that the Commerce Clause requires discriminatory state laws to be supported by a "legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives"). As the Fourth Circuit rightly observed, applying "the same stringent test" to alcohol laws would "undermine" the Constitution's explicit grant of authority to States to regulate the importation and delivery of alcohol within their borders. Pet.App.25a. To avoid that result, this Court's precedents make clear that States retain uniquely broad authority to regulate alcohol to further legitimate state interests. Pet.App.12a-13a (quoting *Granholm*, 544 U.S. at 487-88).

Petitioners also fault the Fourth Circuit for declining to examine whether the challenged laws "actually promote[ ] public health or safety." *See* Pet.12. Petitioners are right that, ordinarily, States should come forward with "concrete evidence" to support their interests in regulating alcohol. *See Tennessee Wine*, 139 S.Ct. at 2474. And here, the State compiled substantial record evidence showing that the out-of-state shipping ban materially advances public health and safety. *See supra* pp.3-5.

But as this Court made clear in *Tennessee Wine*, the purpose of requiring such evidence is to ensure that States cannot camouflage protectionist aims. *Tennessee Wine*, 139 S.Ct. at 2474 (noting that "mere speculation" and "unsupported assertions" are insufficient to show that a law's "predominant effect"

is not protectionism). When an "essential feature" of a three-tier system is challenged, it is therefore appropriate for a court's review to be "more limited." Pet.App.24a n.8; *see Sarasota Wine*, 987 F.3d at 1184. Three-tier systems have long been a bedrock feature of many States' alcohol-regulation schemes. *Tennessee Wine*, 139 S.Ct. at 2463 n.7; *Whitmer*, 956 F.3d at 867-68. And as the Fourth Circuit recognized, allowing out-of-state retailers to make direct sales to in-state consumers would jeopardize States' three-tier systems. Pet.App.26a-27a; *see Whitmer*, 956 F.3d at 872. Thus, the Fourth Circuit correctly held that States are authorized by the Twenty-first Amendment to bar direct alcohol shipments from out-of-state retailers, to preserve the integrity of their three-tier systems.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JOSHUA H. STEIN
Attorney General

Ryan Y. Park
Solicitor General
Counsel of Record

Zachary W. Ezor
Solicitor General Fellow

NORTH CAROLINA

DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
(919) 716-6400
rpark@ncdoj.gov

December 2, 2022