

No. 22-285

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In the  
**Supreme Court of the United States**

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B-21 WINES, INC., *ET AL.*,  
*Petitioner,*

v.

HANK BAUER, CHAIR OF THE  
N.C. ALCOHOLIC BEVERAGE COMM'N,  
*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fourth Circuit

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**BRIEF OF INDIANAPOLIS GREEK-  
AMERICAN WINE CONSUMERS  
AS *AMICI CURIAE*  
IN SUPPORT OF PETITIONERS**

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## I. INTEREST OF *AMICI CURIAE*<sup>1</sup>

Like their counterparts in North Carolina, Indianapolis Greek-American wine consumers<sup>2</sup> desire access to wines produced far beyond the borders of their own particular localities. Many wine consumers desire international vintages and styles – specifically, wines from the countries of the consumers’ ancestral homeland – unlike other vintages and styles easily available at local retailers

Each of the *amici curiae* to this brief is a member of the Indiana Greek-American community and a consumer of Greek wine. Two of the *amici* are brothers whose relative, Markos Kafouros, is Chairman of Santo Wines made on the Island of Santorini (Thera) Greece. Because of

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<sup>1</sup>Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* states that no counsel for a party authored this brief in whole or in part or made a monetary contribution. The National Association of Wine Retailers, which represents and promotes the unique interests of wine sellers nationwide, provided a nominal monetary honorarium for the brief’s preparation. Pursuant to Supreme Court Rule 37.2, written consent to file was obtained from counsel for all parties more than 10 days in advance of the filing deadline.

<sup>2</sup>The names of all *Amici Curiae* are listed in the Appendix.

its award winning wines and wine tourism center, Santo Wines is one of the top wine-tourism destinations on Santorini, welcoming 600,000 visitors from all over the world. See <https://santowines.gr>. While Santo Wines are available for purchase by consumers online, they are not generally available for purchase from Indiana wine retailers, and the *amici* cannot lawfully purchase Santo Wines online due to an Indiana statute which is similar to the North Carolina law at issue here.

Another of the *amici* is a former President and long-time member of the Board of Directors of Greek Food Festival, Inc., an Indiana nonprofit charitable organization which holds the annual GreekFest and other events throughout central Indiana celebrating Greek culture, food and wine. Over the years, event organizers have been unable to obtain premium Greek wine brands such as Santo, Alpha Estate, Gerovassiliou, Sigalas, and others through local wine retailers, although these brands are available online. Annual proceeds from GreekFest financially support its host, the Holy Trinity Greek Orthodox Cathedral, which serves over 500 families in central Indiana. See <https://htcindy.org> and <https://indygreekfest.org>.

Three of the *amici* are owners or co-owners of central Indiana Greek restaurants – Mama Fofos Greek Kitchen, OPA! and Gyros Grill. Like

individual Indiana wine consumers, these Greek restaurants face difficulties in obtaining good quality Greek wines despite their availability online.

These Greek-American wine consumers, and tens of thousands like them, are stymied in their search to savor the wines that they, or their parents, grandparents, or family members drank (and, sometimes, produced) in Greece because of discriminatory laws that prevent out-of-state retailers from shipping wine into their states. State beverage codes, like North Carolina's, prohibit out-of-state retailers from shipping wine to consumers under pain of criminal law, while yet still allow in-state retailers to do the same. *Compare* N.C. GEN. STAT. § 18B-102.1, *with* N.C. GEN. STAT. § 18B-1001(4).

As a result, Greek Americans that do not live within one of a few select Greek-American hubs are statutorily barred from purchasing wine selections that are not produced or available in their state in favor of protectionist laws that run afoul of the dormant element of the Commerce Clause. Such unconstitutional dormant Commerce Clause violations should not be allowed to stand.

Accordingly, *amici curiae* respectfully request this Court grant Petitioners' Petition for Writ of Certiorari.

## II. SUMMARY OF ARGUMENT

While states have latitude to regulate the sale and consumption of alcohol, the dormant Commerce Clause prohibits discrimination by any state in favor of intrastate commerce over interstate commerce. The Twenty-first Amendment provides the several states with the ability to regulate the “transportation or importation” of alcohol, but not in such a manner that the regulation serves as an effective bar to interstate commerce.

Like numerous other areas of commerce, wine has shifted toward e-retail. The in-state retailer requirement contained in the North Carolina statutes at issue is an anachronism and facially discriminates against out-of-state retailers. Online retail portals provide nearly unlimited consumer choices and access to goods that were unfathomable when the Twenty-first Amendment was adopted. Under the statutes at issue, out-of-state retailers are explicitly barred from North Carolina marketplaces. This is impermissible under the Court’s Commerce Clause jurisprudence. *See Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 204 L. Ed. 2d 801 (2019); *Granholm v. Heald*, 544 U.S. 460, 125 S. Ct. 1885, 161 L. Ed. 2d 796 (2005).

Consistent with this Court’s jurisprudence, wine consumers, like these Greek Americans in



Indianapolis, should be able to access wine as they would any other commodity that is protected by the dormant Commerce Clause's prohibition against discrimination. Otherwise, state laws discriminating against out-of-state retailers can and will harm consumers. Such a result cannot be countenanced by this Court.

### III. ARGUMENT

#### **A. Certiorari is needed to apply this Court's prior decisions that liquor laws which are discriminatory on their face, such as North Carolina's violate the Commerce Clause**

As this Court has held, the authority granted to states by the Twenty-first Amendment<sup>3</sup> to regulate the sale of alcohol remains "limited by the nondiscrimination principle of the [dormant] Commerce Clause."<sup>4</sup> *Granholm*, 544 U.S. at 487; *see also Tenn. Wine*, 139 S. Ct. at 2470. The Court emphasized that this power "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." *Granholm*, 544 U.S. at 493. "If a State chooses to allow direct shipment of wine, it must

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<sup>3</sup>U.S. Const. amend. XXI, § 2.

<sup>4</sup>U.S. Const. art. I, § 8, cl. 3.

do so on evenhanded terms.” *Id.*

Like their in-state counterparts, out-of-state retailers are perfectly capable of selling and delivering wine directly to consumers. Nevertheless, North Carolina only allows the former to do so. By “depriv[ing] citizens of their right to have access to the markets of other States on equal terms[,]” North Carolina’s law enacts the discriminatory principles the “Commerce Clause w[as] designed to avoid.” *Granholm*, 544 U.S. at 473.

The challenged statutes’ origination began in 1935 when North Carolina appointed a commission to study alcoholic beverage control. At that time, substantially all retail commerce occurred in face-to-face dealings or, in nominal quantities, from catalog mail purchases. The policies underlying such anachronistic, post-Prohibition era laws are inconsistent with today’s marketplace and the availability of wine via internet and e-retail portals. E-retail portals serve as the new norm, and interstate commerce is ever-increasing across these pervasive outlets. In 2020, direct-to-consumer (“DTC”) sales represented about 10% of the total wine industry sales in the United States and about 65% of the average

winery's total revenue in 2021.<sup>5</sup> Due to increasing DTC sales in response to the COVID crisis and the continued expansion of e-commerce, DTC sales have continued to strengthen with 2021 sales exceeding every monthly benchmark from 2020. Overall, e-commerce sales of wine in 2021 were 146% higher than pre-pandemic numbers, evidencing a shift in consumers' purchase of wine, and that e-commerce is a crucial part of wine sales. More than ever before, consumers and marketplaces are brought closer, even when they remain continents apart. Using a multitude of technological platforms, consumers can purchase and have delivered any number and variety of commodities without needing to physically enter a retail store. States like North Carolina, however, still apply a regulatory model designed in the 1930s despite the commercial and technological realities of the 21st century.

The dormant Commerce Clause “prohibits economic protectionism – that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269,

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<sup>5</sup>Rob McMillan, Silicon Valley Bank Wine Div., *State of the US Wine Industry 2022*, <https://www.svb.com/globalassets/trendsandinsights/reports/wine/svb-state-of-the-wine-industry-report-2022.pdf> (last viewed Dec. 2, 2022).

273, 108 S. Ct. 1803, 100 L. Ed. 2d 302 (1988). If a state wishes to regulate alcohol sales in a particular manner under the Twenty-first Amendment, it must pass scrutiny under the Commerce Clause. *Granholm*, 544 U.S. at 466. § 2 of the Twenty-first Amendment authorizes evenhanded, nondiscriminatory laws; it does “not ...give States a free hand to restrict the importation of alcohol for purely protectionist purposes.” *Tenn. Wine*, 139 S. Ct. at 2469.

North Carolina’s legal framework discriminates against out-of-state retailers on its face. The law distinguishes between what in-state and out-of-state retailers may do: a licensed in-state retailer may ship wine directly to North Carolina consumers, N.C. GEN. STAT. §§ 18B-900(a)(2), 18B-1001(4), yet it is a felony offense for an “out-of-state retail[er]” to do the same. *Id.* at § 18B-102.1.

For the many retailers who are already selling wine online, North Carolina’s prohibition serves only to force those retailers to establish a presence in-state and sell from that location if they wish to participate in the marketplace. Such laws lead to duplicative market inefficiencies and harm both retailers and consumers.

To determine whether a discriminatory regime passes muster under the Commerce Clause, courts are instructed to both consider “concrete evidence”

established on the record, and then only allow discriminatory requirements for which there is no sufficient nondiscriminatory alternative. *Tenn. Wine*, 139 S. Ct. at 2474; *Granholm*, 544 U.S. at 490-93. The focus is on the particular “provision at issue” – that is, North Carolina has the burden of justifying its discriminatory regime. *Tenn. Wine*, 139 S. Ct. at 2474.

It is unclear as to how the majority for the Fourth Circuit below concluded that North Carolina’s prohibition is either adequately connected to the advancement of public health or that no nondiscriminatory alternative would adequately protect that interest; it did not point to concrete evidence in the district court record when it asserted that direct shipping of alcoholic beverages to North Carolina consumers by out-of-state retailers would completely exempt out-of-state retailers from the state’s three-tier requirement, which would purportedly open the North Carolina wine market to less regulated wine. *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214, 237 (4th Cir. 2022) (Wilkinson, J., dissenting). Without supporting evidence, North Carolina’s ability to regulate in-state retailers is insufficient to meet the “exacting standard” required to allow a discriminatory practice to stand under Commerce Clause jurisprudence. *Granholm*, 544 U.S. at 492-93.

At a minimum, the record must contain concrete evidence that a discriminatory law prohibiting out-of-state retailers from shipping wine to consumers benefits the public health and that no nondiscriminatory alternative would serve a similar purpose. North Carolina is required to demonstrate that no reasonable means would allow it to effectively regulate out-of-state retail establishments and meet the scrutiny that this Court has consistently required. North Carolina has failed to do so, and the power to regulate alcohol sales under the Twenty-first Amendment cannot be used to sanction economic protectionism. *See B-21 Wines*, 36 F.4th at 232 (“Were this any other commodity, North Carolina’s facially discriminatory scheme would instantly be ruled invalid.”) (Wilkinson, J., dissenting). Accordingly, this Court should grant Petitioners’ Petition for Writ of Certiorari and apply the Court’s Commerce Clause jurisprudence to reject this unjustified discriminatory regime.

**B. State laws prohibiting buying wine from out-of-state retailers harm consumers as demonstrated by the lack of quantity and quality offerings in Greek wines facing *Amici Curiae***

The more than 4,000-year lineage of Greece’s grape vines and wine production is renowned. In the last twenty years, Greece’s 300 indigenous

grapes, heralding from an array of distinctive terroirs, have found a growing audience on the global stage, showcasing traditional and modern styles for discerning palates.

Similar to North Carolina, an Indiana statute renders it unlawful for an out-of-state retailer to ship wine to Indiana consumers. *See* IND. CODE § 7.1-5-11-1.5(a). As a result, like their counterparts in North Carolina, Greek Americans living in Indianapolis face substantial and unnecessary burdens to even securing a bottle of Greek wine, let alone a particular vintage. Foreign wine, unlike its domestic partner, cannot be ordered directly from the winery. Rather, consumers access foreign wine only through retailers.

The Indianapolis Greek community pales in size when compared with the historical immigration destinations of New York City, Chicago, Boston, and Tarpon Springs. Scarce shelf space forces local retailers to limit accordingly. As a result, the variety of Greek wines offered in the Hoosier capital is minimal, and the quality of the vintages, when available, fluctuates tremendously. Wine producers Gerovassiliou and Sigalas – the former having a Malagousia rated a Top 100 Wine of 2018 by Wine Spectator and the latter’s Assyrtiko winning a Gold at the Sommeliers Choice Awards in 2021 (91 Points) – are nowhere to be found.

At the time of this writing, two of Indianapolis's largest wine retailers, Total Wine & More and Kahns's Fine Wines & Spirits, together stock fifteen offerings from only five Greek wineries – Boutari, Hermes, GWC, Kotrotsos, and Dionysos. This pales in comparison with the nearly 100 wines from over twenty wineries ready for shipping at the online shop of Petitioner, B-21 Wines, Inc. Greek wine consumers in Indianapolis, however, like those in North Carolina, cannot lawfully access these expanded selections due to the discriminatory and protectionist laws prohibiting wine purchases from out-of-state retailers.

This dilemma is expressed within the record. An affidavit of a North Carolina orthopaedic surgeon recounts his desire to serve international friends and colleagues wines from their home countries, including Greece; however, due to the scant selection in the Durham market, he is unable to do so. Buckel Aff. at 2, *B-21 Wines, et al. v. Guy*, 3:20-cv-99 (W.D. N.C. 2021), ECF. No. 27-12. At the same time, he shares that Binny's Beverage Depot in Chicago sells as many as 119 Greek wines (Appendix B) and ships them directly to consumers. Unfortunately for the affiant, North Carolina's laws prevent out-of-state retailers from doing so.



At its heart, this case underscores the harms dealt to consumers by economic protectionism that privileges only in-state entities and prohibits interstate competition. Lack of meaningful access and variety in the availability and selection of Greek wine is the harm the Commerce Clause was created to prevent. Such harm should be addressed and prevented by this Court.

#### IV. CONCLUSION

For the foregoing reasons, this Court should grant the Petitioners' Petition for a Writ of Certiorari in this matter.

Respectfully submitted,

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**APPENDIX**

**A. NAMES OF INDIVIDUAL *AMICI***

George Stergiopoulos- Indianapolis, IN  
Owner of Georgio's and Mama Fofos Greek Kitchen

Dean Antonopoulos- Fishers, IN  
Former President and Board of Director for Greek Food Festival, Inc.

Gregory Cafouros-Indianapolis, IN

Carl Cafouros-Indianapolis, IN

Dimitri Andriopoulos-Indianapolis, IN  
Co-Owner Gyros Grill

Sydni Andriopoulos- Indianapolis, IN

Peter Petropoulos-Anderson, IN

George Andriopoulos- Indianapolis, IN

Alexander Basil Avtgis-Indianapolis, IN

William Alexander Avtgis- Plainfield, IN

Constantine Maniakis-Indianapolis, IN  
First Chanter of Holy Trinity Greek Orthodox Cathedral

Sam Petropoulos- New Castle, IN

Konstantinos Dages-Avon, IN  
Owner of OPA! Restaurant

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**B. Photo of Greek wines available at Binny's Beverage Depot**

