

No. 25-1366

In the Supreme Court of the United States

D. ANDREW WILSON, ATTORNEY GENERAL OF OHIO,
Petitioner,

v.

KENNETH M. MILLER; HOUSE OF GLUNZ, INC.,
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

REPLY IN SUPPORT OF CERTIORARI

D. ANDREW WILSON
Ohio Attorney General

MATHURA J. SRIDHARAN*
Ohio Solicitor General
**Counsel of Record*

SAMUEL C. PETERSON
Senior Deputy Solicitor General
30 E. Broad St., 17th Floor
Columbus, Ohio 43215
614.466.8980
Mathura.Sridharan@OhioAGO.gov

Counsel for Petitioner
D. Andrew Wilson,
Attorney General of Ohio

QUESTION PRESENTED

The Twenty-first Amendment grants to the States the power to regulate the “transportation or importation” of alcohol into the States. U.S. Const. amend. XXI, §2. Employing that authority, Ohio operates a three-tier system for the sale and distribution of wine. Wine suppliers must sell to licensed wholesalers with a physical presence in Ohio; wine wholesalers must sell to licensed retailers that maintain a physical presence in Ohio; and only those licensed retailers may sell wine to consumers in Ohio. Wine sold in Ohio must, generally, pass through all three tiers. Doing so reduces alcohol consumption and serves the State’s health and safety goals by facilitating inspection of in-state retail premises and products meant for consumption in Ohio as well as ensuring adherence to other Ohio liquor laws. This system is “unquestionably legitimate.” *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quotation omitted).

To seal off leaks from the three-tier funnel, Ohio law imposes two restrictions: (1) retailers located outside Ohio may not directly ship wine to consumers in Ohio and (2) individuals may not personally transport more than six bottles of wine, per thirty-day period, into the State.

The Question Presented is: under §2 of the Twenty-first Amendment, may a State restrict out-of-state retailers from directly shipping alcohol to in-state consumers and may it cap the amount of alcohol that individuals may personally transport into the State?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
REPLY.....	1
I. The parties agree that the Court should resolve an extraordinarily important question that has sharply divided the nation’s courts.	2
A. The decision below created a seven-to- one circuit split.....	3
B. This case raises an important constitutional question concerning Ohio’s sovereignty and provides the best vehicle to resolve it.....	6
II. Just like Ohio’s direct-ship restriction, Ohio’s individual-transportation limit is an essential feature of Ohio’s three-tier system that advances the same health- and-safety goals.....	7
III. Respondents’ defense of the Sixth Circuit’s decision misses the mark.	9
CONCLUSION.....	11

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Anvar v. Dwyer</i> , 82 F.4th 1 (1st Cir. 2023)	4
<i>Arnold’s Wines, Inc. v. Boyle</i> , 571 F.3d 185 (2d Cir. 2009).....	3, 4
<i>B-21 Wines, Inc. v. Bauer</i> , 143 S. Ct. 567 (2023)	6
<i>B-21 Wines, Inc. v. Bauer</i> , 36 F.4th 214 (4th Cir. 2022).....	3, 4
<i>Chicago Wine Co. v. Braun</i> , 148 F.4th 530 (7th Cir. 2025).....	3, 5
<i>Chicago Wine Co. v. Braun</i> , No. 25-844, __ S. Ct. __, 2026 WL 1377162 (U.S. May 18, 2026)	6
<i>Day v. Henry</i> , 152 F.4th 961 (9th Cir. 2025).....	4, 5, 9
<i>Day v. Henry</i> , No. 25-788, __ S. Ct. __, 2026 WL 1377175 (U.S. May 18, 2026)	6
<i>Granholm v. Heald</i> , 544 U.S. 460 (2005)	2, 7
<i>Jean-Paul Weg LLC v. Dir. of N.J. Div. of Alcoholic Beverage Control</i> , 133 F.4th 227 (3d Cir. 2025)	3, 4, 5

<i>Lebamoff Enters., Inc. v. Rauner</i> , 909 F.3d 847 (7th Cir. 2018)	4
<i>Lebamoff Enters. Inc. v. Whitmer</i> , 956 F.3d 863 (6th Cir. 2020)	2
<i>Sarasota Wine Mkt., LLC v. Schmitt</i> , 142 S. Ct. 335 (2021)	6
<i>Sarasota Wine Mkt., LLC v. Schmitt</i> , 987 F.3d 1171 (8th Cir. 2021)	3, 4
<i>Tenn. Wine & Spirits Retailers Ass’n v.</i> <i>Thomas</i> , 588 U.S. 504 (2019)	2, 5, 7, 10
<i>United States v. Arthrex, Inc.</i> , 594 U.S. 1 (2021)	8
<i>Wine Country Gift Baskets.com v. Steen</i> , 562 U.S. 1270 (2011)	6
<i>Wine Country Gift Baskets.com v. Steen</i> , 612 F.3d 809 (5th Cir. 2010)	3, 4

REPLY

The parties are in radical agreement on the most important question at this stage of this case—that the Court should grant *certiorari*. That radical agreement extends to the reasons this case calls out for the Court’s review: It involves an entrenched circuit split. *See* Pet.21–28; Resp.Br.13–18. It involves an important and recurring question with great constitutional weight. Pet.28–29; Resp.Br. 23–24. And this case provides an ideal vehicle to address that question. Pet.29–30; Resp.Br.25–26.

The parties at this stage disagree only on the scope of the question the Court should take up. Respondents contend that Ohio’s Question Presented can be severed into two discrete questions—one about Ohio’s direct-ship restriction and the other about Ohio’s individual-transportation limit—and urge the Court to answer only the first. Resp.Br.(I), 3, 26–29. But measures that prevent end runs around a three-tier system—as the direct-ship restriction and the individual-transportation limit do—are essential to that system because it would collapse without them. So both speak directly to the circuit split that all parties call on the court to answer: the *per se* validity of essential features of a three-tier system. *See* Pet.21–25, Resp.Br.13–17. Punting questions about the individual-transportation limit to another day will not provide the fulsome “guidance” on “the appropriate analysis” that Respondents seek from this Court. Resp.Br.25.

Unsurprisingly, the parties radically disagree on the merits, though it is premature to discuss them. Nevertheless, Respondents largely internalize the lower court’s mistakes. They question the legitimacy

of Ohio’s “unquestionably legitimate” three-tier system, *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quotation omitted), by dismissing as non-essential a critical anti-circumvention measure, the direct-ship restriction, Resp.Br.20–21. And they rebalance *Tennessee Wine*’s public-health-and-safety balancing test, thus elevating the States’ evidentiary burden beyond what this Court’s precedents require. Resp.Br.21–23; *see also Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 539 (2019).

I. The parties agree that the Court should resolve an extraordinarily important question that has sharply divided the nation’s courts.

Respondents agree that this case is a poster child for this Court’s review. *See* Resp.Br.11–12. They are not alone.¹ *See Brief of amicus curiae of National Association of Wine Retailers in support of certiorari and affirmance*, 1–2. But even as they agree that a multi-circuit split exists and that the Court should review the decision below, Respondents fail to appreciate the full scope or significance of the State’s Question Presented. This case raises serious constitutional questions about state sovereignty, including the State’s reserved authority under the Twenty-first Amendment to regulate alcohol distribution and whether Ohio,

¹ Indeed, only Respondents’ *amicus*, the Michigan Beer and Wine Wholesalers Association, pushes back on *certiorari* in this case. But the Association’s quest is little more than a self-interested attempt to preserve its win in *Lebamoff*, where it had intervened in defense of Michigan’s direct-ship restriction. *See Lebamoff Enters. Inc. v. Whitmer*, 956 F.3d 863, 868–69 (6th Cir. 2020). Even Respondents acknowledge a circuit split that the Association will not. *Compare* Resp.Br.13–18 *with* MB&WWA Br.7–11.

alone among its sister States, should be denied this power.

A. The decision below created a seven-to-one circuit split.

Respondents’ description of the circuit disagreement minimizes the extent to which the decision below is an outlier. This case does not just involve a four-to-three (accepting Respondents’ miscounting) split over whether direct-ship restrictions are valid *per se* as essential features of a three-tier system. *Contra* Resp.Br.13–17. The decision below departs from *seven* other circuits. And in doing so, it creates three different splits—on outcome, on the *per se* validity of essential features of three-tier systems, and on the public-health-and-safety justification for direct-ship restrictions. Starting from the split on the broadest point (outcome) to the split on the narrowest point (whether direct-ship restrictions can be justified for public-health-and-safety reasons) the decision below stands apart.

Outcome. At the top of the funnel, the decision below departs from seven other circuits on outcome. All seven have upheld direct-ship restrictions across the country, five of them after *Tennessee Wine. Arnold’s Wines, Inc. v. Boyle*, 571 F.3d 185, 192 (2d Cir. 2009); *Jean-Paul Weg LLC v. Dir. of N.J. Div. of Alcoholic Beverage Control*, 133 F.4th 227, 231 (3d Cir. 2025); *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214, 229 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 567 (2023); *Wine Country Gift Baskets.com v. Steen*, 612 F.3d 809, 821 (5th Cir. 2010), *cert. denied*, 562 U.S. 1270 (2011); *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171, 1183–84 (8th Cir. 2021), *cert. denied*, 142 S. Ct. 335 (2021); *Chicago Wine Co. v. Braun*, 148 F.4th 530,

531–32 (7th Cir. 2025) (*per curiam*), *cert. denied*, __ S. Ct. __, 2026 WL 1377162 (May 18, 2026); *Day v. Henry*, 152 F.4th 961, 972 (9th Cir. 2025), *cert. denied*, __ S. Ct. __, 2026 WL 1377175 (May 18, 2026). The decision below is the only one to go the other way.

Per-se Validity. Moving further down the funnel, the decision below departs from *six* other circuits on reasoning. The Second, Third, Fourth, Fifth, Eighth, and Ninth Circuits have held that direct-ship restrictions are valid *per se* as an essential feature of a State’s three-tier system. *See Arnold’s Wines, Inc.*, 571 F.3d at 191–92; *Jean-Paul Weg LLC*, 133 F.4th at 239; *B-21 Wines, Inc.*, 36 F.4th at 228; *Wine Country Gift Baskets.com*, 612 F.3d at 819–20; *Sarasota Wine Mkt., LLC*, 987 F.3d at 1184; *Day*, 152 F.4th at 970.

Respondents’ (mis)counting starts at this level. They dock two circuits—the Second and the Fifth—from Ohio’s roster because those circuits upheld direct-ship restrictions before this Court’s *Tennessee Wine* decision. True, but both employed reasoning similar to the five that came after—because such restrictions are “benign” and “incident[al],” and thus essential, to “an acceptable three-tier system.” *Wine Country Gift Baskets.com*, 612 F.3d at 820; *see Arnold’s Wines, Inc.*, 571 F.3d at 190–91. And they draft two cases to their roster—*Anvar v. Dwyer*, 82 F.4th 1, 11 (1st Cir. 2023) and *Lebamoff Enters., Inc. v. Rauner*, 909 F.3d 847, 857 (7th Cir. 2018). But both were voluntarily dismissed on remand, one (*Anvar*) for a potential jurisdictional flaw. Pet.23–24.

Last, they try to recruit Judge Easterbrook, operating on a two-judge panel that *upheld* Indiana’s direct-ship restriction, to their side. The selection is a bust. Judge Easterbrook concluded in his concurrence

that Indiana’s direct-ship restriction does not discriminate between in- and out-of-state retailers because *all* retailers must maintain physical premises in Indiana to deliver alcohol to customers in the State. *Chicago Wine Co.*, 148 F.4th at 533–34. So he would have upheld the law as valid *per se* without undertaking the type of public-health-and-safety analysis his co-panelist, Judge Scudder, performed. His skepticism about a different circuit’s decision (the Fourth’s) upholding a law despite finding it discriminatory does not make him a member of Respondents’ team. *Id.* at 534.

Public Health and Safety. Even further down the funnel, the Third and Ninth Circuits considered whether direct-ship restrictions “can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground.” *Tenn. Wine*, 588 U.S. at 539. Splitting yet again from the decision below, both concluded that such restrictions can be justified for that reason. *Jean-Paul Weg*, 133 F.4th at 237; *Day*, 152 F.4th at 974. Direct-ship restrictions, they reasoned, allow for easy on-site inspections of records, retailers’ physical premises, and products for sale. *Day*, 152 F.4th at 974; *Jean-Paul Weg*, 133 F.4th at 237. Thus, such restrictions “bear on a state’s ability to support public health and safety.” *Day*, 152 F.4th at 974–75. A Seventh Circuit judge (the second judge on the just-discussed two-judge panel that upheld Indiana’s direct-ship restriction) agreed. *Chicago Wine*, 148 F.4th at 542 (Op. of Scudder, J.). Although Respondents undercount the circuit-court decisions with which the Sixth Circuit’s decision in this case conflicts, they nevertheless correctly recognize that the conflict between the type of evidence that the Sixth Circuit demanded and the type of evidence that

the Third and Ninth Circuits found sufficient “reinforces the need for this Court’s review.” Resp.Br.18.

B. This case raises an important constitutional question concerning Ohio’s sovereignty and provides the best vehicle to resolve it.

Apart from the glowing circuit split (on three levels), this case presents an exceptionally important question worthy of review on its own: whether Ohio may exercise its sovereign power, expressly reserved to the State under the Twenty-first Amendment, to regulate the sale and distribution of alcohol in its borders. The answer strikes at the heart of the State’s sovereignty for three reasons. *First*, the decision below prevents the State from enforcing its duly enacted alcohol-distribution laws. *Second*, the Constitution expressly grants States the authority to regulate alcohol distribution under the Twenty-first Amendment. And *third*, the decision below uniquely harms Ohio by denying it what about three dozen other States permissibly do today. That puts Ohio at a disadvantage against its neighbors. Respondents do not disagree.

And Respondents agree, correctly, that this case presents the best vehicle for review. *See* Resp.Br.25–26. The issues have percolated among the circuits, and this case, the last in a long line of them, is the first to separate from the pack. *See id.* at 26; *see also* *Day v. Henry*, No. 25-788, __ S. Ct. __, 2026 WL 1377175, *1 (U.S. May 18, 2026) (cert. denied); *Chicago Wine Co. v. Braun*, No. 25-844, __ S. Ct. __, 2026 WL 1377162, *1 (U.S. May 18, 2026) (same); *B-21 Wines, Inc. v. Bauer*, 143 S. Ct. 567 (2023) (same); *Sarasota Wine Mkt., LLC v. Schmitt*, 142 S. Ct. 335 (2021) (same); *Wine Country Gift Baskets.com v. Steen*, 562

U.S. 1270 (2011) (same). And, as all agree, it comes to this court on a fully developed summary-judgment record. Resp.Br.25.

II. Just like Ohio’s direct-ship restriction, Ohio’s individual-transportation limit is an essential feature of Ohio’s three-tier system that advances the same health-and-safety goals.

This Court has long characterized “three-tier systems” as “unquestionably legitimate.” *Granholm*, 544 U.S. at 489 (quotation omitted). Consistently so. Even in striking down Tennessee’s durational-residency law, the Court noted that law did not fit the “basic three-tiered model of separating producers, wholesalers, and retailers,” of which *Granholm* had “spoke[n] approvingly,” so it could not be justified as “an essential feature of a three-tiered scheme.” *Tenn. Wine*, 588 U.S. at 535. And it noted that States would have “variation” in the ways they enacted such three-tier schemes. *Id.*

The individual-transportation limit is one such variation. In addition to Ohio’s direct-ship restriction, which ensures that wine flows from one tier to the next in a three-tier system, Ohio’s individual-transportation limit also acts to “seal off leaks” from the three-tier funnel. Pet.i. The direct-ship restriction prevents *retailers* from short-cutting the three-tier system by allowing only licensed retailers with in-state presence to sell wine to Ohioans, thereby ensuring that wine passes through all three tiers. See Pet.11. The individual-transportation cap prevents *individuals* similarly from end-running the three-tier system. See Pet.14. As the district court correctly noted, allowing Ohio consumers to bring wine “in bulk

across state lines” would “create a sizeable hole in [Ohio’s] three-tier system.” Pet.App.55a, 56a (quotation omitted). So, though this case implicates two different anti-circumvention laws that Ohio employs to structure its three-tier system, both raise the same question central to this case: whether features essential to a State’s three-tier system (here, to prevent diversions in the three-tier flow) are valid *per se* or promote the State’s public-health-and-safety goals.

Ignoring all that, Respondents advocate for splitting the question presented into one about the direct-ship restriction—which they urge the Court to take up—and one about the individual-transportation limit—which they seek to avoid. But their two paragraphs worth of support for this question-splitting approach, *see* Resp.Br.26–27, show their “heart is plainly not in it,” *United States v. Arthrex, Inc.*, 594 U.S. 1, 17 (2021). To the extent all parties call on this Court to resolve a circuit split on the *per se* validity of essential features of a three-tier system, *see* Pet.21–25, Resp.Br.13–17, the corollary question—whether Ohio’s individual-transportation limit is one such feature—is certainly on the table. The Court has no reason to limit its answer to one of the laws that Ohio asserts is essential to its three-tier system but not the other. Addressing the constitutionality of both laws is the superior approach because doing so will better define the constitutional standard that the Court ultimately adopts.

Respondents quickly pivot from reasons to bifurcate the Question Presented to attacking the individual-transportation limit on its merits. Resp.Br.27–28. As the discussion next shows, that is wrong; at any rate, discussing the merits at this stage is premature. But most critically, in doing so, Respondents take

upon themselves to answer the question they claim the Court should skip: whether the individual-transportation limit counts as an essential feature of Ohio's three-tier system. *See* Resp.Br.27.

III. Respondents' defense of the Sixth Circuit's decision misses the mark.

Respondents spill much ink defending the decision below. Resp.Br.18–23. In doing so, they largely double down on that court's errors. Though a full defense of Ohio's three-tier system can, and should, wait until the merits review that even Respondents agree is warranted, Respondents make two key missteps worth responding to here.

First, Respondents adopt the decision below's erroneous conclusion that Ohio's anti-circumvention laws are not essential to Ohio's three-tier scheme and so cannot be justified as valid *per se*. Resp.Br.21. As noted above, and in Ohio's Petition, both prevent circumvention of the three-tier flow, so they are essential to channeling wine from producers to wholesalers to retailers. *Above* 7–9. *Six* circuits (four after *Tennessee Wine*) have held that such essential features, without which “the system would functionally cease to exist,” are presumptively valid without further consideration of public-health-and-safety evidence. *Day*, 152 F.4th at 974; *above* 4–5. All six upheld direct-ship restrictions as one such essential feature.

Second, in their public-health-and-safety analysis of the laws at issue, Respondents walk a careful line around the lower court's glaring burden-flipping error. Resp.Br.21–23. As Ohio flagged before, the decision below misapplied *Tennessee Wine* by asking Ohio to prove that the “predominant effect” of its laws is “the protection of public health or safety” rather than

“protectionism.” Pet. 27–28. But the correct inquiry is whether “the predominant effect of a law is protectionism, not the protection of public health or safety.” *Tenn. Wine*, 588 U.S. at 539–40. By flipping the analysis, the court below placed a burden on Ohio unsupported by both *Tennessee Wine* and the Twenty-first Amendment. Perhaps realizing the gravity of the error, Respondents express confusion about “how those showings would be different.” See Resp.Br.23.

The difference, though, is significant. See Pet.App.55a (district court discussing the difference between Respondents’ framing and Ohio’s). Under the formulation of the relevant test in the decision below, alcohol-sales restrictions are permissible *only* if their predominant focus is health and safety. But there are many laws that, while they may not be *predominantly* focused on health and safety, are also not predominantly focused on protectionism. So, when considered in isolation, laws that advance the overall objectives of a three-tier system might have a less-than-predominant impact on health and safety. But that does not mean that the predominant purpose of such laws is protectionism. See Pet.27. The Court should reject the myopic focus on the component parts of a three-tier system that Respondents urge and should consider in full the various problems such a system is designed to tackle—including protecting the public’s health and safety.

CONCLUSION

The Court should grant the petition for *certiorari* on Ohio's full Question Presented and reverse.

Respectfully submitted,

D. ANDREW WILSON
Ohio Attorney General

MATHURA J. SRIDHARAN*
Ohio Solicitor General

**Counsel of Record*

SAMUEL C. PETERSON
Senior Deputy Solicitor General
30 E. Broad St., 17th Floor
Columbus, Ohio 43215
614.466.8980
Mathura.Sridharan@OhioAGO.gov

*Counsel for Petitioner
D. Andrew Wilson,
Attorney General of Ohio*

SEPTEMBER 2026