No. _____

IN THE

Supreme Court of the United States

JUSTYNA JENSEN,

Petitioner,

v.

MARYLAND CANNABIS ADMINISTRATION
AND TABATHA ROBINSON,
IN HER OFFICIAL CAPACITY,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state statute discriminates against nonresidents in violation of the dormant Commerce Clause if it confers eligibility for a business license upon individuals who attended a university "in the state" where 40% or more of the students are eligible for Pell Grants but denies eligibility to individuals who attended universities in other states where 40% or more of the students are eligible for Pell Grants.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Justyna Jensen was the plaintiff-appellant below.

Respondents Maryland Cannabis Administration and Tabatha Robinson, in her official capacity as its Director, were the defendants-appellees below.[1]

[1] After the Fourth Circuit issued the order on appeal, Tabatha Robinson was substituted in this case for the prior Director of the Maryland Cannabis Administration, William Tilburg.

RELATED PROCEEDINGS

Jensen v. Maryland Cannabis Admin., No. 24–1216, U.S. Court of Appeals for the Fourth Circuit, reported at 151 F.4th 169 (4th Cir. 2025). Opinion entered on September 2, 2025 and amended on October 1, 2025.

Jensen v. Maryland Cannabis Admin., No. 24–0273–BAH, U.S. District Court for the District of Maryland, reported at 719 F. Supp. 3d 466 (D. Md. 2024). Order entered on February 27, 2024.

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National Center for Education Statistics, *College Navigator-University of Maryland Eastern Shore*, https://nces.ed.gov/collegenavigator/?q=university+of+maryland+eastern+shore&s=MD&id=163338 (last visited Dec. 16, 2025)..... 10

National Center for Education Statistics, *College Navigator-Washington Adventist University*, https://nces.ed.gov/collegenavigator/?s=MD&pg=5&id=162210 (last visited Dec. 16, 2025) 10

Press Release, *Morgan State Study Details University's Nearly $1-Billion Economic Impact Statewide, $574-Million on Baltimore City* (June 20, 2018), https://www.morgan.edu/news/morgan-state-study-details-universitys-nearly-1-billion-economic-impact-statewide-574-million-on-baltimore-city 21

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University of Baltimore, *From Past to Present*, https://www.ubalt.edu/about/index.cfm (last visited Nov. 6, 2025) 22

Ronald Weich, *The Bench, the Bar, and Baltimore Law*, 54 U. Balt. L.F. 112 (2024) 13

PETITION FOR WRIT OF CERTIORARI

Petitioner Justyna Jensen respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion is reported at 151 F.4th 169 and reproduced at App. 1a–17a. The District Court's opinion is reported at 719 F. Supp. 3d 466 and reproduced at App. 18a–52a.

JURISDICTION

The Fourth Circuit issued the opinion for which review is sought on September 2, 2025. Petitioner sought rehearing en banc, which the Fourth Circuit denied on September 30, 2025. The Fourth Circuit amended its opinion on October 1, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Commerce Clause of the United States Constitution provides that "Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. 1, § 8, cl.3.

2. Section 36–404(d)(3)(ii) of the Maryland Code Annotated, Alcoholic Beverages and Cannabis provides: "First round application submissions for all [cannabis] license types are limited to social equity applicants."

3. Section 36–101 of the Maryland Code Annotated, Alcoholic Beverages and Cannabis, which defines who qualifies as "social equity

applicants" for purposes of obtaining cannabis licenses, provides in relevant part:

> "Social equity applicant" means an applicant for a cannabis license or cannabis registration that:
>
> (1) has at least 65% ownership and control held by one or more individuals who:
>
> (i) have lived in a disproportionately impacted area for at least 5 of the 10 years immediately preceding the submission of the application;
>
> (ii) attended a public school in a disproportionately impacted area for at least 5 years; or
>
> (iii) for at least 2 years, attended a 4–year institution of higher education *in the State* where at least 40% of the individuals who attend the institution of higher education are eligible for a Pell Grant[.]

Md. Code Ann., Alc. Bev. & Cann. § 36–101(ff) (emphasis added); *see also* C.O.M.A.R. 14.17.01.01(B)(45).

INTRODUCTION

Imagine if a state limited the right to practice law in its courts to graduates of an in-state law school. What if a college town limited liquor licenses to businesses owned by individuals who attended the local university? Such transparent protectionism would not pass constitutional muster. The dormant Commerce Clause bars state laws that prescribe "differential treatment of in-state and out-of-state economic interests"—ones that "benefit the former and burden the latter." *Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 99 (1994). States cannot evade this proscription by creating classifications that allocate benefits based on predictable proxies for residency. The dormant Commerce Clause "forbids discrimination whether forthright or ingenious." *Best & Co. v. Maxwell*, 311 U.S. 455, 456 (1940) ("*Best*").

The decision below turns this well-settled tenet on its head. The Fourth Circuit upheld a classification in a Maryland licensing law that makes a person eligible for a license if the person attended one of six Maryland universities. The opinion embraces the fig leaf that the classification does not benefit Marylanders or burden out-of-state residents because "[a] non-Maryland resident could qualify under this criterion by attending one of the [qualifying Maryland] universities." *Jensen v. Maryland Cannabis Admin.*, 151 F.4th 169, 176 (4th Cir. 2025).

Importantly, while this case concerns licenses to participate in Maryland's cannabis market, the Fourth Circuit's holding is not limited to that field. It "[a]ssum[ed] . . . for the sake of argument" that the

dormant Commerce Clause "govern[s] the recreational marijuana market" in the same manner as it would any other industry. *Id.* Thus, left uncorrected, the opinion below will provide a blueprint for other states to give preferential treatment to individuals educated at in-state institutions in countless other licensing schemes. Indeed, it authorizes the hypothetical licensing restrictions on attorneys and bar owners presented above.

Under the Fourth Circuit's reasoning, an aspiring out-of-state lawyer or bar owner "could qualify . . . by attending" a designated in-state institution. *See id.* at 176. "Practically the whole gamut of economic enterprise is under the state's scrutiny by an intricate administrative system of licenses, certificates, permits, orders, awards, and what not." Felix Frankfurter, The Public and Its Government 29 (1930). It is not hyperbole to predict that state and local lawmakers will use Maryland's gambit or similar proxies for residency to favor their constituents over would-be competitors from other states.

The case at bar concerns a controversial topic—state experimentation with cannabis legalization. But fidelity to founding principles is most important when confronted with matters that excite public attention. Justice Holmes warned that cases involving contentious issues often confront jurists with an "immediate overwhelming interest which appeals to the feelings" and "distorts the judgment." *Northern Securities Co. v. United States*, 193 U.S. 197, 364 (1904) (Holmes, J., dissenting). Once stirred, such emotions exert "a kind of hydraulic pressure

which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend." *Id.* In such cases, it is incumbent upon courts "to interpret and apply" the law exactly as they would "if the same question arose" in a context that "excited no public attention." *Id.*

The Fourth Circuit ignored this axiom. Its opinion opens a Pandora's box that threatens to undermine nearly two centuries of this Court's anti-protectionism jurisprudence. This Court must erase this troubling new precedent from the books before other state and local governments follow Maryland's lead.

STATEMENT OF THE CASE

1. Maryland law prohibits individuals from applying for retail cannabis licenses or owning more than 35% of a licensed business unless the individual falls within one of three statutory classifications.

To apply for a license, an individual must have (1) lived in a "disproportionately impacted area"—i.e., "a geographic area identified by [Maryland's] Office of Social Equity that has had above 150% of [Maryland's] 10-year average for cannabis possession charges"[2]—for "at least 5 of the 10 years" immediately prior to submitting an application; (2) "attended a public school in a disproportionately impacted area for at least 5 years"; or (3) attended for at least two years "a 4-year institution of higher education *in the State* where at least 40% of the individuals who attend the institution of higher education are eligible

[2] Md. Code Ann., Alc. Bev. & Cann. § 36–101(r).

for a Pell Grant." Md. Code Ann., Alc. Bev. & Cann. § 36–101(ff) (emphasis added).

Six Maryland universities qualify under the third criterion above (the "in-state-institution classification"): five state universities and a small religious university.[3]

2. Petitioner brought this action seeking a declaration that the in-state-institution classification violates the dormant Commerce Clause by discriminating against nonresidents who attend out-of-state universities "where at least 40%" of students "are eligible for a Pell Grant." *Jensen*, 151 F.4th at 171.

Petitioner has never lived in Maryland. *Id.* at 173. She applied for a license on the grounds that she graduated from a 4-year institution—California State University, Long Beach—where more than 40% of the students are eligible for Pell Grants. *Id.* Maryland rejected her application because her *California* university is not in Maryland. *Id.*

Petitioner is not eligible to apply for a license under either of the other two classifications, as she never lived in or attended a public school in a disproportionately impacted area in Maryland (or elsewhere). *Id.* at 176–77. Indeed, she emigrated to the U.S. in her 20s.

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[3] The qualifying schools are Bowie State University, Coppin State University, Morgan State University, the University of Baltimore, the University of Maryland Eastern Shore, and Washington Adventist University. *Jensen*, 151 F.4th at 173.

Petitioner sought a preliminary injunction. *Id.* at 171. The District Court denied the preliminary injunction and the Fourth Circuit affirmed. *Id.*

3. The Fourth Circuit concluded that Maryland's in-state-institution classification does not discriminate against nonresidents because "[a] non-Maryland resident could qualify . . . by attending one of the [six qualifying Maryland] universities." *Id.* at 176.[4] This holding departs from this Court's controlling precedents and erodes core constitutional safeguards against economic protectionism.

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[4] Petitioner did not challenge the first two statutory classifications—which reward residency or public-school attendance in a disproportionately impacted area. But those classifications likewise violate the dormant Commerce Clause. The court below wrongly reasoned that Petitioner would have qualified to apply for a license if she had lived in or attended a public K-12 school in a disproportionately impacted area for the prescribed periods, even if that disproportionately impacted area was in California. *Jensen*, 151 F.4th at 176–77. The Fourth Circuit made this contention sua sponte in its opinion without notice to the parties. No party ever argued at any point during this litigation—either in a brief or at oral argument—that disproportionately impacted areas in other states qualify under Maryland's licensing scheme. Maryland defines a disproportionately impacted area as "a geographic area *identified by the [Maryland] Office of Social Equity* that has had above 150% of the State's 10-year average for cannabis possession charges." Md. Code Ann., Alc. Bev. & Cann. § 36–101(r) (emphasis added). The Maryland Office of Social Equity's website provides a map of the qualifying locations. They are *all* in Maryland. *See* Maryland Office of Social Equity, https://ose.maryland.gov/Pages/licensing-and-eligibilty.aspx (last visited Dec. 6, 2025); *see also* MCA020960-01_OfficeOfSocialEquity_Sep23_PressConferenceMaterials_Dispro_Impact_Areas.indd (last visited Dec. 6, 2025).

It provides an easy-to-copy blueprint for other states and municipalities to exploit and shield their residents from out-of-state economic competition. This tactic fails, as discussed below, because the dormant Commerce Clause "forbids discrimination, whether forthright or ingenious." *Best*, 311 U.S. at 455–56.

REASONS FOR GRANTING THE PETITION

The opinion below opens a Pandora's box by enabling states and municipalities to evade the dormant Commerce Clause, which is the Constitution's fundamental bulwark against protectionism and Balkanization of the states.

The Fourth Circuit's opinion ignores the well-established maxim that the Clause prohibits both "facially discriminatory" laws and those that discriminate in their "practical effect." *Comptroller of Treasury of Maryland v. Wynne*, 575 U.S. 542, 566–67 (2015).

"[Facially] neutral terms can mask discrimination that is unlawful." *Nguyen v. I.N.S.*, 533 U.S. 53, 64 (2001). As the Sixth Circuit analogized in an opinion invalidating a statute under the "practical effect" test, "'[a] tax on wearing yarmulkes is a tax on Jews.'" *Foresight Coal Sales, LLC v. Chandler*, 60 F.4th 288, 297 (6th Cir. 2023) (citation omitted).

Statutes assigning preferences to attendees of in-state universities favor state residents over nonresidents because the majority of students "find it more desirable to attend college close to home."[5]

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[5] *See* Heather Antecol & Janet Kiholm Smith, *The Early Decision Option in College Admission and Its Impact on Student*

Maryland's in-state-institution classification magnifies that discrimination because institutions that enroll a high percentage of Pell Grant recipients are even more likely to disproportionally serve in-state residents. Pell Grants "subsidize higher education [for] low-income individuals." *Zelman v. Simmons-Harris*, 536 US. 639, 667 (2002) (O'Connor, J., concurring). Students who qualify for such relief are on average more likely to attend college in their home states—both to avoid the cost of moving far from home and because they qualify for in-state tuition at public universities in their home states.[6]

As discussed below at pp. 12–13, 21, this correlation is confirmed by uncontested evidence in the record showing that Maryland residents comprise a disproportionate percentage of the student bodies of the qualifying universities.

And, as explained below at pp. 21–22, most of the qualifying universities prominently tout the fact that

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Diversity, 55 J.L. & Econ. 217, 220–21 (2012) (opining "that while schools may attract students from all regions of the United States, and even internationally, on the margin, students of a given quality will find it more desirable to attend college close to home").

[6] *See* Aaron N. Taylor, *Making State Merit Scholarship Programs More Equitable and Less Vulnerable*, 37 U. Haw. L. Rev. 155, 174 (2015) (maximum Pell Grant awarded covers "about 63% of average in-state tuition and fees at four-year institutions" but much lower percentage of costs at other schools); *see also Vlandis v. Kline*, 412 U.S. 441, 456 (1973) (White, J., concurring) (state residents "pay substantially lower in-state tuition" to attend public universities); *Pratz v. Louisiana Polytechnic Inst.*, 316 F. Supp. 872, 883 (W.D. La. 1970) ("Many students are able to attend college only because they live at home.").

the overwhelming majority of their alumni remain in Maryland after graduation.

The in-state-institution classification further discriminates because nonresident students who attend the qualifying universities must pay substantially higher tuition than their Maryland-resident classmates. Five of the six institutions are state universities—where Maryland residency "entitles [students] to large and immediate savings in the form of tuition reductions." *Bergmann v. Bd. of Regents of Univ. Sys. of Maryland*, 167 Md. App. 237, 278–79 (2006). The one qualifying institution that is not a state university is a small religious school that only enrolls 695 students[7]—less than 3% of the students enrolled at the six universities.[8] Thus, to

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[7] National Center for Education Statistics, *College Navigator-Washington Adventist University*, https://nces.ed.gov/collegenavigator/?s=MD&pg=5&id=162210 (last visited Dec. 16, 2025).

[8] The other qualifying universities enroll 24,262 students. *See* National Center for Education Statistics, *College Navigator-Bowie State University*, https://nces.ed.gov/collegenavigator/?q=bowie+state+university&s=MD&id=162007 (last visited Dec. 16, 2025) (Bowie State enrolls 6,408 students); National Center for Education Statistics, *College Navigator-Coppin State University*, https://nces.ed.gov/collegenavigator/?q=coppin+state&s=MD&id=162283 (last visited Dec. 16, 2025) (Coppin State enrolls 2,101 students); National Center for Education Statistics, *College Navigator-Morgan State University*, https://nces.ed.gov/collegenavigator/?q=morgan+state&s=MD&id=163453 (last visited Dec. 16, 2025) (Morgan State enrolls 9,808 students); National Center for Education Statistics, *College Navigator-University of Baltimore*, https://nces.ed.gov/collegenavigator/?q=university+of+baltimore&s=MD&id=161873 (last visited Dec. 16, 2025) (University of

qualify under Maryland's in-state-institution classification, nonresidents not only must have attended a Maryland University, but also paid higher tuition than Maryland residents.[9] Laws discriminate in practical effect if they employ classifications requiring nonresidents to incur a significant

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Baltimore enrolls 3,101 students); National Center for Education Statistics, *College Navigator-University of Maryland Eastern Shore*, https://nces.ed.gov/collegenavigator/?q=university+of+maryland+eastern+shore&s=MD&id=163338 (last visited Dec. 16, 2025) (University of Maryland Eastern Shore enrolls 2,844 students).

[9] The in-state-institution classification discriminates even if some qualifying universities offer online classes. The fact that "the wall erected against [nonresidents]" by a discriminatory licensing scheme "has some holes" enabling nonresidents to qualify will not save it from invalidation under the dormant Commerce Clause. *Variscite NY Four, LLC v. NY Cannabis Control Bd.*, 152 F.4th 47, 64 (2d Cir. 2025). The Clause "does not tolerate discrimination in favor of a sliver of the in-state market." *Id.* Moreover, online classes were not available when most applicants—including Petitioner—attended college. Relatedly, the fact that some qualifying universities are located near Maryland's borders, enabling some students to commute from outside the State, is of no import. Residents of California and the forty-six other states who do not share a border with Maryland did not have this option. Additionally, requiring a student to attend college online to qualify for another state's licensing program forces the student to forgo the traditional in-person college experience in order to qualify for the license. Such out-of-state online students are burdened by the loss of the college experience in a way not required of in-state, in-person students. *Cf. Healy v. James*, 408 U.S. 169, 180 (1972) ("The college classroom with its surrounding environs is peculiarly the 'marketplace of ideas' . . . ."); *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring) ("It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation.").

"investment in advance" to obtain a license while allowing "local competitors" to do so at a discounted rate. *Best*, 311 U.S. at 456–57.

Precedents from this Court and other circuits confirm that no evidence is required to find discrimination where common sense reveals such obvious corollaries to residency. "Courts need no evidence to prove self-evident truths about the human condition—such as water is wet." *Hang on, Inc. v. City of Arlington*, 65 F.3d 1248, 1257 (5th Cir. 1995).

For example, in *Best*, this Court invalidated a North Carolina law that gave preference to "regular retail merchants"—i.e., those selling goods at permanent brick-and-mortar stores—over merchants who "rent[ed] temporary display rooms" to present their wares. 311 U.S. at 455–56. No evidence was required because common sense revealed that North Carolinians would reliably comprise a disproportionate share of "regular retail merchants" operating permanent brick-and-mortar stores in the state while the class of merchants who "rent[ed] temporary display rooms" would disproportionately consist of out-of-staters. *Id.*

Here, while Petitioner could have rested on common sense, she placed evidence into the record in the district and circuit courts confirming the obvious correlation between state residency and in-state university attendance. That evidence confirms that Maryland residents comprise a disproportionate portion of all six schools' student bodies: University of Baltimore (91%); Bowie State University (82%); Coppin State University (78%); University of Maryland Eastern Shore (71%); Washington

Adventist University (64%); Morgan State University (46%).[10] The Fourth Circuit panel discussed Petitioner's evidence during oral argument but ignored it altogether in its opinion.

Importantly, the Fourth Circuit's opinion is not limited to the cannabis industry. The court "[a]ssum[ed] . . . for the sake of argument" that the dormant Commerce Clause "govern[s] the recreational marijuana market" in the same manner that it would any other industry. *Jensen*, 151 F.4th at 176. Thus, the opinion provides a blueprint for states to bypass the dormant Commerce Clause's safeguards and give preferential treatment to residents seeking other professional licenses—including lawyers, engineers, and physicians.

Maryland has only two law schools—both of which are state institutions.[11] Maryland could restrict membership in its state bar to graduates of these in-state institutions. Under the Fourth Circuit's new controlling precedent, this restriction would not discriminate against non-residents because "[a] non-Maryland resident could qualify . . . by attending one of" Maryland's law schools. *See Jensen*, 151 F.4th at

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[10] *See* Joint Appendix, Fourth Circuit Dkt. No. 24-1216, ECF No. 19, at JA083-112 (filed May 1, 2024). The fact that Maryland residents only comprise 46% of Morgan State's student body does not support the State's position. Maryland residents are 1.8% of the US population. Thus, they are overrepresented by 25 times in Morgan State's student body.

[11] Maryland's two law schools are the University of Baltimore School of Law and the University of Maryland Frances King Carey School of Law. Ronald Weich, *The Bench, the Bar, and Baltimore Law*, 54 U. Balt. L.F. 112, 112 (2024).

176. This is anathema to this Court's dormant Commerce Clause jurisprudence.

Over the past two centuries, this Court has grappled with myriad laws that sought to stack the deck in favor of local interests. Some of these endeavors—to borrow a phrase from Justice Scalia—came "clad . . . in sheep's clothing," concealing their protectionist aims. *Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting). "But this wolf comes as a wolf." *Id.* Accordingly, this Court should grant the petition for a writ of certiorari and reverse.

I. THE FOURTH CIRCUIT'S OPINION IS IRRECONCILABLE WITH THIS COURT'S DORMANT COMMERCE CLAUSE PRECEDENTS.

The Fourth Circuit's ruling cannot be reconciled with this Court's precedents.

1. The dormant Commerce Clause bars state laws that discriminate against "nonresident economic actors." *Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 518 ("*Tennessee Wine*"). Discrimination "simply means differential treatment of in state and out-of-state economic interests that benefits the former and burdens the latter." *Oregon Waste Sys.*, 511 U.S. at 99. A state licensing law that creates a preference for its citizens "plainly favors [residents] over nonresidents." *Tennessee Wine*, 588 U.S. at 518. "Such laws are virtually *per se* invalid." *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 565 (1997).

2. The Fourth Circuit held that Maryland's "in-state-institution" classification does not discriminate against nonresidents because "[a] non-Maryland

resident could qualify under this criterion by attending one of the [Maryland] universities." *Jensen*, 151 F.4th at 176. This conclusion ignores the fact that the dormant Commerce Clause prohibits both "facially discriminatory" laws and those that discriminate in their "practical effect." *Comptroller of Treasury of Maryland*, 575 U.S. at 566–67.

"The principal focus of inquiry must be the practical operation of the statute." *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 37 (1980). Otherwise, the doctrine would operate only in "the rare instance where a state artlessly discloses an avowed purpose to discriminate." *Dean Milk Co. v. City of Madison, Wis.*, 340 U.S. 349, 354 (1951).

Courts must determine whether the statute, "whatever its name may be, will in its practical operation work discrimination against [nonresidents]." *Best*, 311 U.S. at 455–56. The dormant Commerce Clause "forbids discrimination, whether forthright or ingenious." *Id.*

3. A classic example of a law that discriminates in practical effect is one that requires nonresidents to incur a significant "investment in advance" to obtain a business license while allowing "local competitors" to do so at a discounted rate. *Id.* at 456–57. Here, by requiring nonresidents to attend a Maryland university and pay higher tuition to qualify for a license, the State has increased the burden on citizens of other states wishing to participate in its new market.

This Court addressed an analogous situation in *Best*. There, a New York merchant challenged a North Carolina law. *Id.* at 454–55. North Carolina

taxed "regular retail merchants" who operated a permanent brick-and-mortar store in the State $1 per year for the privilege of doing business there. *Id.* at 456. In contrast, North Carolina imposed a tax of $250 per year on merchants who "rented a display room" to present their goods to customers and take orders. *Id.* at 455.

North Carolina argued its law did not discriminate against out-of-state businesses because the $250 tax applied to any display room "whether 'rented or occupied' by a resident of North Carolina or a non-resident."[12]

This Court disagreed. Common sense revealed that North Carolina residents "will normally be regular retail merchants." *Best*, 311 U.S. at 456. Thus, the statute discriminated in practical effect. Requiring "[a] $250 investment in advance" from nonresidents, while enabling "local competitors" to obtain the same privilege for $1 "operate[s] only to discourage and hinder" nonresidents from participating in the state's market. *Id.* at 456–57.

The Court's opinion in *Chalker v. Brimingham & N.W. Ry. Co.*, 249 U.S. 522 (1919) is similarly instructive. *Chalker* involved a challenge to a Tennessee law under the Privileges and Immunities Clause. *Id.* at 526. The Privileges and Immunities Clause is less frequently invoked than the dormant Commerce Clause because it imposes a less stringent standard of scrutiny and thus "may not guard against certain discrimination scrutinized under the dormant

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[12] Brief of N.C. Rev. Comm'r, *Best & Co. Inc. v. Maxwell* (Nov. 4, 1940) (No. 61), 1940 WL 46952, at *20.

Commerce Clause." *Tennessee Wine*, 588 U.S. at 516. But both provisions employ the same definition of discrimination. Under both clauses, a state law that "d[oes] not on its face draw any distinction based on citizenship or residence" may be invalided where "the practical effect of the provision [is] discriminatory." *Hillside Dairy Inc. v. Lyons*, 539 U.S. 59, 67 (2003).

Chalker addressed a tax Tennessee imposed on an Alabama proprietor "with his chief office" in Alabama who was doing business in Tennessee. *Chalker*, 249 U.S. at 525. Tennessee imposed a $100 tax on any business "with its chief office outside th[e] state" for the privilege of conducting business in the state. *Id.* at 525–26. But the State assessed only a $25 tax on a business "having its chief office in th[e] state." *Id.*

Echoing the Fourth Circuit's reasoning in this case, the Tennessee Supreme Court concluded the statute imposed "no discrimination at all" because "[a]ny foreign . . . firm," could qualify for the reduced tax by "having its . . . chief office in this state." *Id.* at 526.

This Court disagreed. Common sense revealed that "the chief office of an individual is commonly in the state of which he is a citizen." *Id.* at 527. Thus, logically Tennessee citizens "will ordinarily have their chief offices therein, while citizens of other states . . . will not." *Id.* "Practically, therefore, the statute . . . produce[d] discrimination against citizens of other states by imposing higher charges." *Id.*

Maryland's in-state-institution classification employs a gambit similar to those in *Best* and *Chalker*. Nonresidents can attend the "qualifying universities"—but at significantly higher cost than

Marylanders. All but one of these institutions are state universities—where Maryland residency "entitles [residents] to large and immediate savings in the form of tuition reductions." *Bergmann*, 167 Md. App. at 278–79.

As noted above at pp. 8–9, in-state residents are even more likely to be overrepresented at colleges with a high percentage of Pell Grant recipients than at other public colleges. Pell Grants "subsidize higher education [for] low-income individuals." *Zelman*, 536 US. at 667 (O'Connor, J., concurring). Such students are unlikely to move far away for college because they can obtain "large . . . tuition reductions" by attending public universities in their home states. *See Bergmann*, 167 Md. App. at 278–79.[13] Thus, by singling out in-state institutions that cater to Pell Grant recipients and excluding analogous out-of-state schools, Maryland enables a particularly pernicious form of discrimination.[14]

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[13] State universities can "charge higher tuition for out-of-state students" under the dormant Commerce Clause's "market participant exception." *B-21 Wines v. Baer*, 36 F.4th 214, 231 n.1 (4th Cir. 2022) (Wilkinson, J., dissenting). This does not shield Maryland's licensing program because the State is not acting as a market participant when granting business licenses. Moreover, an otherwise lawful regulation still must be stricken when it is "conjoin[ed]" with another to prefer "in-state interests." *West Lynn*, 512 U.S. at 186–87 (1994) (otherwise lawful tax violated dormant Commerce Clause because State "conjoin[ed]" it with discriminatory "subsidy").

[14] The in-state-institution classification's discriminatory effect is compounded by the fact that Maryland did not adopt it until May 3, 2023. Thus, prospective out-of-state applicants did not have time to attend a qualifying Maryland university for the required two years before the November 7, 2023 deadline for applicants

4. Maryland's in-state-institution classification further discriminates in practical effect because nonresidents who attend the qualifying universities are likely to become Maryland residents. The "savings in the form of tuition reductions" give out-of-state students "a sharp incentive" to become "permanent residents." *Bergmann*, 167 Md. App. at 278–79. For most, the cost of becoming a Maryland resident "will be dwarfed by the tuition savings." *Id.*

Even those students who do not initially obtain residency status in order to enjoy reduced tuition are likely to ultimately become Marylanders after they graduate. Most college alumni "stick around" in the region where they graduated and "two-thirds work in the same state."[15] This is particularly true of the

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to verify that they satisfied one of the three required statutory classifications. Therefore, even if out-of-state prospective applicants were willing to flock to the Maryland universities to become eligible for licenses, they could not satisfy the two-year minimum attendance requirement. In other words, Maryland closed the pool of individuals eligible for the in-state-institution classification roughly 1.5 years before the application deadline, when the student bodies overwhelmingly comprised Maryland residents. *See* https://legiscan.com/MD/bill/HB556/2023#:~:text=Main%20menu,May%203%202023%20%2D%20100%25%20progression.

[15] Johnathan G. Conzelmann, et al., *New Data Show How Far Graduates Move from Their College, and Why It Matters, Policy Brief*, W.E. Upjohn Institute for Employment Research (Dec. 2023), https://research.upjohn.org/cgi/viewcontent.cgi?article=1063&context=up_policybriefs.

colleges at issue here. "Alumni of regional public colleges are more likely to stay and work close by."[16]

Laws discriminate in practical effect if they will cause in-state economic interests to enjoy "a larger share" and nonresidents "a smaller share" of the relevant market. *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 195 (1994). This test does not turn on the percentage of residents who receive preferential treatment or the "volume of sales" that are impacted. *Bacchus Imports, Ltd. v. Davis*, 468 U.S. 263, 269 (1984). The dormant Commerce Clause prohibits "even the smallest scale of discrimination." *Camps Newfound/Owatonna*, 520 U.S. at 595. The foregoing facts demonstrate that Maryland's in-state institution classification will predictably "cause local [license applicants]" to enjoy "a larger share" and nonresident applicants "a smaller share" of the awarded licenses.

5. The Fourth Circuit disregarded the foregoing logic, asserting that Petitioner's arguments impermissibly rely on "speculations about the demographics of the qualifying institutions" and "assumptions" concerning whether "non-resident students" at the qualifying schools "are more likely to become Maryland residents." *Jensen*, 151 F.4th at 176. But acknowledging that Maryland's in-state-institution classification is a proxy for in-state residency is no more speculative than *Best*'s recognition that North Carolina's resident-merchants "will normally be regular retail merchants" (311 U.S. at 456) or *Chalker*'s acknowledgment that Tennessee

[16] *Id.* at 4.

business owners "will ordinarily have their chief offices therein, while citizens of other states . . . will not" (249 U.S. at 527). This Court did not require evidentiary findings to confirm these common-sense notions.

6. In any event, Petitioner did not rely on speculation. She entered evidence into the record in both the district and circuit courts concerning the qualifying institution's student demographics. This evidence—which Respondents did not object to or dispute—confirms that Maryland residents comprise a disproportionate share of the student bodies of all six schools:

- University of Baltimore (91%);
- Bowie State University (82%);
- Coppin State University (78%);
- University of Maryland Eastern Shore (71%);
- Washington Adventist University (64%); and
- Morgan State University (46%).[17]

Additionally, most of these schools prominently boast the fact that an overwhelming majority of their alumni remain in Maryland after college. Bowie State's website proclaims that it is a "Point[] of Pride" that "80% of [its] graduates remain[] in Maryland."[18]

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[17] Joint Appendix, Fourth Circuit Dkt. No. 24-1216, ECF No. 19, at JA083-112 (filed May 1, 2024).

[18] Bowie State University, *Points of Pride*, https://www.bowiestate.edu/about/at-a-glance/points-of-

Coppin State touts that "[o]ver 70 percent of [its] students remain in Maryland after graduation."[19] Morgan State celebrates the fact that "70 percent" of its alumni "live in Maryland."[20] And the University of Baltimore lauds the fact that more than 74 percent of its alumni "liv[e] in Maryland."[21] These facts confirm the common sense deduction discussed above: Maryland's in-state-institution classification will endow Maryland-resident applicants with "a larger share" and nonresident applicants with "a smaller share" of the awarded licenses. *See West Lynn*, 512 U.S. at 195.

7. The constitutional deficiencies in Maryland's scheme are compounded because the circumstances indicate its discriminatory effect is by design. "[N]o State may use its laws to discriminate purposefully against out-of-state economic interests." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 364 (2023). Maryland failed to proffer any nondiscriminatory basis for its in-state-institution classification. In the

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pride.php?utm_source=chatgpt.com (last visited Oct. 21, 2025).

[19] Coppin State University, *2022 State of the University Address* (Feb. 10, 2022), https://www.coppin.edu/sites/default/files/pdf-library/2022-04/2022_State_of_the_University_Address.pdf, at 7.

[20] Press Release, *Morgan State Study Details University's Nearly $1-Billion Economic Impact Statewide, $574-Million on Baltimore City* (June 20, 2018), https://www.morgan.edu/news/morgan-state-study-details-universitys-nearly-1-billion-economic-impact-statewide-574-million-on-baltimore-city.

[21] University of Baltimore, *From Past to Present*, https://www.ubalt.edu/about/index.cfm (last visited Nov. 6, 2025) (46,601 of 62,601 living alumni "liv[e] in Maryland).

proceedings below, Maryland stated the classification's purpose is "creating economic opportunities for people who attended schools that serve a significant population of students who are eligible for government benefits."[22] But Maryland never explained why this opportunity is limited to students who attended *Maryland* colleges. Universities in other states where 40% or more of students receive Pell Grants—including Petitioner's alma mater California State University, Long Beach—also "serve a significant population of students who are eligible for government benefits."

Maryland's inability to identify a single nondiscriminatory purpose speaks volumes. A statute's discriminatory features are particularly evident when no "[non-protectionist] objectives are credibly advanced" in its defense. *Chemical Waste Mgmt., Inc. v. Hunt*, 504 U.S. 334, 343 n.5 (1992).

8. Finally—further seeking to sidestep the obvious correlation between attendance at the qualifying universities and Maryland residency—the court below suggested that the classification's discriminatory impact is mitigated by the fact that *some* California residents may qualify under the statute's two alternative classifications. It posited that Petitioner "would have been eligible" to apply for a license "notwithstanding [her] California residency" if she had "lived in" or "attended a public school" in a

[22] Brief of Appellees, *Jensen v. Maryland Cannabis Admin.* (June 13, 2024) (No. 24–1216), 2024 WL 3052567, at *4.

"disproportionately impacted area" for the prescribed periods. *Jensen*, 151 F.4th at 176–77.[23]

In other words, even if the in-state-institution classification favors Marylanders over nonresidents, including additional classifications that purportedly do not discriminate will *dilute* the overall discriminatory effect of the licensing scheme. But dilution provides no cover for Maryland. The dormant Commerce Clause "does not tolerate discrimination in favor of a sliver of the in-state market." *Variscite NY Four, LLC v. NY Cannabis Control Bd.*, 152 F.4th 47, 64 (2d Cir. 2025) ("*Variscite*").

This Court explicitly rejected the dilution theory in *Bacchus Imports*. There, the Court invalidated a Hawai'i law that afforded preferential treatment to makers of "okolehao and pineapple wine"—products produced predominantly in Hawai'i. 468 U.S. at 269. Hawai'i argued that its law did not discriminate against nonresidents because the class benefiting from it "constituted well under one percent" of the State's liquor market. *Id.* But the fact that the law benefitted only a "small" number of Hawaiians did not save it. *Id.* Courts do not need to determine "how unequal" a law is "before concluding that it unconstitutionally discriminates." *Id.* The dormant Commerce Clause invalidates "even the smallest scale of discrimination." *Camps Newfound/Owatonna*, 520 U.S. at 595.

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[23] As explained at length in footnote 4, the Fourth Circuit was just plain wrong in asserting that an applicant could qualify under classification (1) or (2) based on living in or attending school in a disproportionately impacted area in any state other than Maryland.

Thus, even if *some* Californians could qualify for licenses under the Fourth Circuit's misinterpretation of Maryland's first and second statutory classifications, the in-state-institution classification cannot evade the dormant Commerce Clause's nearly per se rule of invalidity.

II. THE FOURTH CIRCUIT'S OPINION CONFLICTS WITH OTHER CIRCUITS' PRECEDENTS.

The Fourth Circuit's opinion conflicts with controlling precedents in other Circuits that invalidated state laws employing comparable proxies for state residency.

1. The Second Circuit addressed a similar protectionist licensing law in *Variscite*. The challenged law prioritized applicants who were convicted of cannabis crimes "*under New York law*," or who had "a close relative who was so convicted." 152 F.4th at 53–54 (emphasis in original). The plaintiffs had cannabis convictions under California (not New York) law and were denied priority in the license application program. *Id.* at 55.

The State argued its classification "does not discriminate" against nonresidents because it does not require New York residency—"only that an owner or their relative have a marihuana conviction under New York law."[24] Many nonresidents have been convicted in New York "while previously living in the State, attending college there, commuting,"

[24] Memorandum of Law in Opposition to Motion for Preliminary Injunction, *Variscite NY Four, LLC v. New York State Cannabis Control Bd.* (Jan. 16, 2024) (No. 1:23–CV–01599), 2024 WL 863284.

vacationing, or "passing through one of New York's international airports or other transit facilities where people and bags are subjected to drug searches."[25]

The Second Circuit rejected this argument. To be convicted of a crime in a state requires presence in the state. *Variscite*, 152 F.4th at 63. And New York residents "will reliably have been present in New York." *Id.* Common sense showed that this classification was "a proxy and correlative for applicants who were New York residents in March 2021." *Id.* Thus, "[t]he criteria themselves demonstrate that the law's discriminatory impact on interstate commerce . . . ." *Id.* at 64. Likewise, because of the strong correlation between Maryland residency and attendance at the qualifying schools, Marylanders will likewise reliably comprise a disproportionate share of individuals who satisfy the in-state-institution classification.

2. The Fourth Circuit's opinion also conflicts with the Eleventh Circuit's decision in *Cachi v. Islamorada*, 542 F.3d 839 (11th Cir. 2008). That case involved a Florida village's ordinance that barred "[f]ormula restaurants"—meaning "[a]n eating place that is one of a chain or group of three (3) or more existing establishments." *Id.* at 841. The plaintiff, "an owner and operator of an independent retail store" in the village," executed "a Letter of Intent to sell his property to a corporation planning to convert the property into a Starbucks." *Id.* He sued to enjoin the ordinance under the dormant Commerce Clause because the buyer's obligation "was expressly

[25] *Id.*

conditioned on its obtaining proper permits from the Village to operate the store as a Starbucks."[26]

The village argued the ordinance did not discriminate against nonresidents either facially or in practical effect because a chain with three or more stores "that is incorporated and has its headquarters in Florida" would likewise be barred from operating a store in the village.[27]

The Eleventh Circuit agreed the ordinance did "not facially discriminate" against nonresidents because it "targets restaurants regardless of their state of citizenship or the locations of their other stores." *Cachi*, 542 F.3d at 842 (citation omitted). But it nonetheless found the ordinance discriminated against nonresidents.

The court reasoned that while "the ordinance also prohibits formula restaurants that originate from within the state of Florida" it "is not evenhanded in effect." *Id.* at 842–43. Common sense shows that it "disproportionately targets" nonresident chains because it "serves as an explicit barrier to the presence of national chain restaurants, thus preventing the entry of such businesses into competition with independent local restaurants." *Id.* at 843. For this reason, the ordinance had "the practical effect of discriminating against interstate commerce." *Id.* Here, the in-state-institution

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[26] Initial Brief of Appellant/Cross Appellee, *Cachia v. Islamorada* (Jan. 22, 2008) (No. 06–16606), 2008 WL 1767161, at *6.

[27] *Id.* at *24.

classification is likewise not evenhanded in effect because it favors Maryland residents.

3. The Fourth Circuit's opinion also clashes with the First Circuit's opinion in *Family Winemakers of California v. Jenkins*, 592 F.3d 1 (1st Cir. 2010). *Jenkins* addressed a Massachusetts law that conferred special rights to "small wineries" and denied them to "large wineries." *Id.* at 4. The law defined "small wineries" as those producing less than 30,000 gallons of wine annually and "large wineries" as those producing more. *Id.* Massachusetts argued that the statute did not discriminate because it treated all "small" and "large" wineries the same and "most 'small' wineries are located out-of-state." *Id.* at 10.

The First Circuit disagreed. It found that the statute "confer[red] a clear competitive advantage to 'small' wineries, which include all Massachusetts wineries, and create[d] a comparative disadvantage for 'large' wineries, none of which are in Massachusetts." *Id.* at 11. Moreover, the fact that the law "benefit[ted] . . . some out-of-state 'small' wineries" did not cure its discriminatory effects. *Id.* at 13. Courts have "rejected the notion that a favored ground must be entirely in-state" for a law to violate the dormant Commerce Clause. *Id.*

If the First Circuit employed the Fourth Circuit's reasoning, the statute could not discriminate against nonresidents because *any* winery could qualify for the statutory benefits by simply producing less than 30,000 gallons of wine annually. *Id.* at 10. But the dormant Commerce Clause prevents courts from taking leave of their common sense.

III. THE FOURTH CIRCUIT MADE GRAVE ERRORS AND ESTABLISHED A NEW AND DANGEROUS PRECEDENT THAT MERITS THE COURT'S ATTENTION.

The Fourth Circuit's opinion is wrong as a matter of constitutional text, history, and policy, and it is incompatible with this Court's precedents.

1. The dormant Commerce Clause's objective is to quell "the central problem that gave rise to the Constitution itself." *Equal Emp't Opportunity Comm'n v. Wyoming*, 460 U.S. 226, 244, (1983) (Stevens, J., concurring). Under the Articles of Confederation, States—beholden only to their own constituencies—routinely sought to exclude nonresidents from their local economies. James Madison condemned such "Trespasses of the States on the rights of each other."[28] Such regulations spurred "mutual jealousies and aggressions" triggering an ever-escalating series "rivalries and reprisals." *Baldwin v. G. A. F. Seelig, Inc.*, 294 U.S. 511, 521–22 (1935). Quelling such Balkanism "was the immediate cause that led to the forming of a [constitutional] convention." *Camps Newfound/Owatonna*, 520 U.S. at 571.

The ratification of the Constitution and this Court's development of the dormant Commerce Clause doctrine restrained such protectionist schemes. "The central rationale" of this Court's dormant Commerce Clause jurisprudence "is to

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[28] James Madison, Vices of the Political System of the United States *in* James Madison: Writings 69, 70 (Jack N. Rakove ed., 1999).

prohibit state or municipal laws whose object is local economic protectionism." *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 390 (1994). Such laws "excite those jealousies and retaliatory measures the Constitution was designed to prevent." *Id.*

This Court has repeatedly reaffirmed that "no State may use its laws to discriminate purposefully against out-of-state economic interests." *Nat'l Pork Producers Council*, 598 U.S. at 364. "Such laws are virtually *per se* invalid." *Camps Newfound/Owatonna*, 520 U.S. at 565. A state licensing scheme that gives priority to residents of the regulating state over would-be competitors from other states violates this maxim because it "plainly favors [residents] over nonresidents." *Tennessee Wine*, 588 U.S. at 518.

This rule is "deeply rooted in our case law," and if it were disregarded "we would be left with a constitutional scheme that those who framed and ratified the Constitution would surely find surprising." *Id.* at 515. As Justice Cardozo recognized, laws that inhibit participation by nonresidents in a state's economic market "invite a speedy end of our national solidarity." *Baldwin*, 294 U.S. at 523.

2. The Fourth Circuit's opinion is a dangerous step backwards that opens a gaping hole in the dormant Commerce Clause's safety net. It provides a blueprint for states and municipalities to give preferential treatment to students and alumni of local universities in their licensing schemes. Myriad professionals—including "every lawyer, doctor, dentist, optometrist, architect, engineer, or teacher"

must be "licensed or certified" by the state in which they practice. *Campbell v. PricewaterhouseCoopers, LLP*, 642 F.3d 820, 829 (9th Cir. 2011).

Many communities are economically dependent upon a large local university. Such municipalities could enact ordinances favoring the institution's graduates over those of out-of-state schools in myriad fields. Left uncorrected, Maryland's law foreshadows a new era in which communities reserve licenses to participate in local economic ventures to their residents and exclude out-of-state competitors.

For example, the dormant Commerce Clause bars licensing laws imposing residency requirements on businesses or individuals seeking to sell alcoholic beverages. Such restrictions "plainly favor[] [residents] over nonresidents." *Tennessee Wine*, 588 U.S. at 518. But under the Fourth Circuit's holding, the city council of a college town can sidestep this restriction by enacting a law limiting liquor licenses to businesses owned by individuals who attended the local college.[29] Under the Fourth Circuit's logic, such a scheme passes constitutional muster because nonresidents "could qualify . . . by attending the [local college]." *See Jensen*, 151 F.4th at 176.

That is not the Constitution the Framers adopted in 1787. The Constitution "was framed upon the

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[29] It is immaterial that a municipal regulation conditioning the issuance of liquor licenses on attendance at a specific local university would also discriminate against in-state residents who attended other universities in the state. The dormant Commerce Clause bars laws that favor certain state residents over others if the law also burdens nonresidents. *Dean Milk*, 340 U.S. at 354, 354 n.4.

theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin*, 294 U.S. at 523.

The Fourth Circuit's too-clever-by-half reasoning likely represents an attempt to avoid addressing the elephant in the room: Does the dormant Commerce Clause apply to state cannabis licensing programs? But the path the court took to avoid that question opens a glaring loophole in the Constitution's safety net against protectionism that applies far beyond the cannabis industry. This Court must strike this new precedent from the books before state and local regulators expand it into other fields.[30]

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

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[30] On remand, the Fourth Circuit can address the question not presented by this petition—whether the dormant Commerce Clause applies to state cannabis licensing programs.