No.

In the Supreme Court of the United States

REED DAY AND ALBERT JACOBS, PETITIONERS

v.

BEN HENRY, DIRECTOR, ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a physical-presence requirement that discriminates between in-state and out-of-state alcohol retailers can be deemed constitutional under the Twenty-first Amendment solely as an essential feature of a State's three-tier system of alcohol distribution, without concrete evidence establishing that the requirement predominantly promotes a legitimate, nonprotectionist interest such as public health or safety.

PARTIES TO THE PROCEEDING

Petitioners are Reed Day and Albert Jacobs. Respondents are Ben Henry, Director, Arizona Department of Liquor Licenses and Control; Troy Campbell, Chair, Arizona State Liquor Board; Kris Mayes, Arizona Attorney General; and Wine and Spirits Wholesalers Association of Arizona.

RELATED PROCEEDINGS

United States District Court (D. Ariz.):

Day v. *Henry*, Civ. No. 21-1332 (Aug. 9, 2023)

United States Court of Appeals (9th Cir.):

Day v. *Henry*, No. 23-16148 (Sept. 5, 2025)

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Reed Day and Albert Jacobs respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-34a) is reported at 152 F.4th 961. An earlier opinion of the court of appeals (App., *infra*, 55a-79a) is reported at 129 F.4th 1197. The opinion of the district court (App., *infra*, 34a-54a) is reported at 686 F. Supp. 3d 887.

JURISDICTION

The judgment of the court of appeals was entered on September 5, 2025. A petition for rehearing was denied on October 1, 2025 (App., *infra*, 80a-81a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Commerce Clause of the United States Constitution provides:

> The Congress shall have Power * * * [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Section 2 of the Twenty-first Amendment to the United States Constitution provides:

> The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 4-203(J) of the Arizona Revised Statutes provides:

> [T]he holder of a retail license in this state * * * may take orders by telephone, mail, fax or catalog, through the internet or by other means for the sale and delivery of spirituous liquor off of the licensed premises to a person in this state[.] * * * The licensee may maintain a delivery service and may contract with one or more independent contractors, * * * or may contract with a common carrier for delivery of spirituous liquor if the spirituous liquor is loaded for delivery at the premises of the retail licensee in this state and delivered in this state.

STATEMENT

This case presents an important and recurring question at the intersection of the Commerce Clause and the Twenty-first Amendment. The Commerce Clause prohibits States from discriminating against interstate commerce by regulating residents more favorably than nonresidents. Section 2 of the subsequently enacted Twenty-first Amendment protects a State's power to regulate alcohol. This Court has recognized that the Twenty-first Amendment does not trump every constitutional provision predating its ratification. See, *e.g.*, *Tennessee Wine & Spirits Retailers Association* v. *Thomas*, 588 U.S. 504, 519-520 (2019). But States have long sought to justify protectionist features of their schemes for alcohol distribution by invoking the Twenty-first Amendment.

In the last two decades, this Court addressed those arguments in *Granholm* v. *Heald*, 544 U.S. 460 (2005), and *Tennessee Wine*, *supra*. Those decisions recognized that the Commerce Clause protects the crucial national value of free trade, and that state laws that discriminate against interstate commerce must be narrowly tailored to "advance[] a legitimate local purpose." *Granholm*, 544 U.S. at 489 (internal quotation marks and citation omitted); see *Tennessee Wine*, 588 U.S. at 515-516. "Where the predominant effect of a law is protectionism, not the protection of public health or safety," that law "is not shielded by § 2." *Tennessee Wine*, 588 U.S. at 539-540. In each of those cases, the Court ultimately held that a state alcohol regulation violated the Commerce Clause partly because the State had marshaled no "concrete evidence" that the regulation advanced a nonprotectionist interest, such as public health or safety. See *id.* at 540; *Granholm*, 544 U.S. at 490.

Like many other States, Arizona maintains a three-tier system to regulate the distribution of alcohol, issuing

different types of licenses to producers, wholesalers, and retailers of alcoholic beverages. Arizona law permits a retailer to ship alcohol directly to Arizona consumers, but it limits that privilege to retailers that have a physical presence in Arizona. Petitioners, Arizona consumers who seek to enjoy a broader selection of wines available in other States, brought suit in the United States District Court for the District of Arizona to challenge Arizona's physical-presence requirement.

A divided Ninth Circuit rejected petitioners' challenge because it determined that Arizona's physical-presence requirement is "essential" to Arizona's three-tier system. App., *infra*, 16a. The majority concluded that a law that serves as an "essential" feature of the three-tier system is properly upheld "without further determinations as to whether its predominant effect is to support public health and safety." *Id.* at 20a. In so doing, the majority adopted the rule of the Third, Fourth, and Eighth Circuits. The dissenting judge, by contrast, would have held that there is no essential-feature carveout to *Tennessee Wine*; instead, she would have held that Arizona was required to establish with "concrete evidence" that the particular regulation predominantly served legitimate interests rather than protectionism. *Id.* at 28a-31a. The dissenting judge would have followed the First, Sixth, and Seventh Circuits, which require concrete evidence that a State's physical-presence requirement predominantly advances a legitimate end such as public health and safety.

The Ninth Circuit adopted the wrong rule. This Court has repeatedly held that States may not rely on "mere speculation to support discrimination against out-of-state goods," including when the good in question is alcohol. *Granholm*, 544 U.S. at 492; see *Tennessee Wine*, 588 U.S. at 539. Focusing on whether a State's physical-presence requirement is "essential" to its three-tier system "reads

far too much" into the Court's general approval of the three-tier structure itself. *Tennessee Wine*, 588 U.S. at 535. By allowing a State to justify a physical-presence requirement simply by deeming it an essential feature of its three-tier system, the decision below permits States to adopt discriminatory regulations that predominantly serve economic protectionism.

This Court's intervention is badly needed. The question presented here has arisen repeatedly in the years since *Tennessee Wine*. The confusion has stymied the lower courts, resulting in one fractured decision after another and a well-developed circuit conflict. And the confusion generates meaningful consequences for the courts, the alcohol industry, and consumers. The Court's intervention is warranted because the majority rule, adopted by the decision below, permits the very kind of "economic Balkanization" that "plagued" the Nation under the Articles of Confederation and that the Court's decisions in *Granholm* and *Tennessee Wine* sought to prevent. *Tennessee Wine*, 588 U.S. at 517 (citation omitted). The petition for a writ of certiorari should be granted.

A. Background

1. a. The Commerce Clause provides that "[t]he Congress shall have Power * * * [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8, cl. 3. "Although the Clause is framed as a positive grant of power to Congress [this Court] ha[s] long held that this Clause also prohibits state laws that unduly restrict interstate commerce." *Tennessee Wine*, 588 U.S. at 514. That principle—the "negative" or "dormant" "aspect of the Commerce Clause"—"prevents the States from adopting protectionist measures and thus preserves a national market

for goods and services." *Ibid.* (internal quotation marks and citation omitted).

Section 2 of the Twenty-first Amendment prohibits the "transportation or importation into any State * * * for delivery or use therein of intoxicating liquors, in violation of the" State's laws. U.S. Const. amend. XXI, § 2. As this Court has explained, that provision authorizes States to "maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use." *Granholm*, 544 U.S. at 484.

b. The Court's most recent decisions addressing the relationship between the Commerce Clause and the Twenty-first Amendment are *Granholm* v. *Heald*, 544 U.S. 460 (2005), and *Tennessee Wine & Spirits Retailers Association* v. *Thomas*, 588 U.S. 504 (2019).

In *Granholm*, the Court analyzed Michigan and New York laws permitting in-state wineries to sell and ship directly to consumers while prohibiting out-of-state wineries from doing so (or making direct sales economically impracticable). 544 U.S. at 465-466. The Court held that the laws "discriminated against interstate commerce in violation of the Commerce Clause," and that the discrimination was "neither authorized nor permitted by the Twenty-first Amendment." *Id.* at 466. Addressing the relationship between the Commerce Clause and Twenty-first Amendment, the Court explained that "the Twenty-first Amendment does not supersede other provisions of the Constitution and, in particular, does not displace the rule that States may not give a discriminatory preference to their own producers." *Id.* at 486.

Many States use a three-tier system of licensing as the basic framework of state alcohol regulation. That system first developed in response to an uptick in "tied-house" arrangements in the post-Civil War period, in which a producer of alcohol also ran the saloon hosting its purchase

and consumption—incentivizing irresponsible consumption and causing social problems. See *Tennessee Wine*, 588 U.S. at 521 & n.7. To combat those arrangements, States often adopted a "three-tier" system of licensing, which separates producers, wholesalers, and retailers. See *id.* at 535. The defendant States in *Granholm* had urged that invalidating their direct-shipment restrictions would "call into question the constitutionality of the three-tier system" that the Court had previously approved. 544 U.S. at 488-489. But the Court rejected that argument. It observed that the three-tier system separating producers, wholesalers, and retailers is "unquestionably legitimate." *Id.* at 489 (quoting *North Dakota* v. *United States*, 495 U.S. 423, 432 (1990) (plurality opinion)). And it proceeded to distinguish the state laws at issue in that case, which allowed only in-state wineries to ship directly to consumers, as "straightforward attempts to discriminate" against interstate commerce. *Ibid.* The Court reaffirmed that "state regulation of alcohol is limited by the nondiscrimination principle of the Commerce Clause," and it ultimately invalidated the discriminatory regulations. *Id.* at 487, 493.

In *Tennessee Wine*, the Court considered a law that required an individual to reside in Tennessee for two years before seeking a license to operate a liquor store in the State. See 588 U.S. at 510. The Court reiterated that state alcohol regulation violates the dormant Commerce Clause when it is "aimed at giving a competitive advantage to in-state businesses." *Id.* at 531. The Court explained that a State's regulation of in-state alcohol distribution will survive constitutional scrutiny only if it "can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground." *Id.* at 539. "[M]ere pretences" would not suffice, the Court emphasized, *id.* at 522-523 (internal quotation marks and citation

omitted); States were not permitted "to impose protectionist measures clothed as police-power regulations," *id.* at 528.

Applying those principles, the Court concluded that the Tennessee law could not be sustained. The Court first determined that Tennessee's "2-year residency requirement discriminate[d] on its face against nonresidents." 588 U.S. at 539. The Court next analyzed whether Tennessee's durational-residency requirement was justified on nonprotectionist grounds under the Twenty-first Amendment. The Court rejected an argument that "*Granholm*'s discussion of the three-tiered model" supported the States. *Id.* at 535. The Court explained that what was at issue was not "the basic three-tiered model of separating producers, wholesalers, and retailers," but rather a specific durational residency requirement that Tennessee had imposed on applicants for liquor store licenses. *Ibid.* That licensing requirement, the Court explained, was "not an essential feature of a three-tiered scheme." *Ibid.* Assessing the record, the Court identified no "concrete evidence" showing that the durational-residency requirement promoted legitimate state interests or that nondiscriminatory alternatives would be insufficient. *Id.* at 540 (quoting *Granholm*, 544 U.S. at 490). Accordingly, the Court held that Tennessee's durational-residency requirement "violate[d] the Commerce Clause and [was] not saved by the Twenty-first Amendment." *Id.* at 543.

B. Facts And Procedural History

1. Arizona, like many other States, regulates the importation and distribution of alcohol through a three-tier system. App., *infra*, 2a. A three-tier system "allocates the sale and distribution of alcohol among producers, wholesalers, and retailers." *Ibid.* Producers must sell alcohol to licensed wholesalers, which in turn must sell to

licensed retailers. Generally, only licensed retailers may sell alcohol to consumers (although certain wineries may sell directly to consumers as well). Of particular relevance here, licensed retailers can further obtain "off-sale privileges"—that is, the authority to take orders by telephone or online and to deliver directly to Arizona consumers. Ariz. Rev. Stat. Ann. § 4-203(J). But Arizona extends that privilege to only a subset of retailers: the relevant statute permits delivery only if the alcohol is "loaded for delivery at the premises of the retail licensee in this state and delivered in this state." *Ibid.* Out-of-state retailers thus cannot lawfully ship their wares to Arizona consumers without establishing a physical presence in the State. App., *infra*, 3a.

2. Petitioners are Arizona consumers who seek to order wine from out-of-state retailers that do not have storefronts in Arizona. App., *infra*, 4a. They would like access to the broader selection and more competitive prices of wines sold online that consumers in other States enjoy, with the convenience of delivery.

On July 30, 2021, petitioners sued various Arizona state officials, respondents here, under 42 U.S.C. 1983 in the United States District Court for the District of Arizona. App., *infra*, 4a. Petitioners alleged that Arizona's physical-presence requirement discriminated against out-of-state retailers in violation of the Commerce Clause and could not be justified under the Twenty-first Amendment. *Ibid.* The other respondent, Wine and Spirits Wholesalers Association of Arizona, intervened as a defendant. *Ibid.*

The district court granted summary judgment in favor of respondents. App., *infra*, 34a-35a. At the outset, the court took the view that it was "at least doubtful" that petitioners satisfied the redressability element of standing, both because it was "unclear which provisions" of Arizona

law petitioners were challenging and because, if the court ruled in favor of petitioners, the court "would likely" select a remedy that "level[ed] down" by "enjoin[ing] online sales and shipping by in-state retailers." *Id.* at 38a-43a. The court nonetheless "assum[ed]" that petitioners had standing and proceeded to the merits. *Id.* at 43a.

On the merits, the district court first held that Arizona's physical-presence requirement did not discriminate against interstate commerce in violation of the Commerce Clause because it "applie[d] evenhandedly to in-state and out-of-state retailers." App., *infra*, 48a. In the alternative, the court held that, even if the regulation were discriminatory, it passed muster as "an essential feature" of the three-tier system. *Id.* at 50a. The court reasoned that Arizona "asserted the same interest in preserving its three-tier system" that some courts of appeals had upheld as per se legitimate. *Id.* at 51a-52a. Accordingly, it took the view that the physical-presence requirement was inherently "supported by legitimate, nonprotectionist state interests." *Id.* at 50a. The court rested exclusively on the "essential feature" rationale and did not engage with arguments concerning the nexus between Arizona's physical-presence requirement and public health. *Id.* at 50a-54a.

3. A divided court of appeals affirmed.

a. In its initial opinion, the court of appeals unanimously agreed that petitioners had standing. App., *infra*, 59a-62a; *id.* at 72a (Forrest, J., concurring in part and dissenting in part). The court of appeals divided, however, on the merits. The majority upheld Arizona's physical-presence requirement on the ground that it was not facially discriminatory, reasoning that it "applie[d] to all retailers, not just those based in another state." *Id.* at 67a. Judge Forrest dissented in relevant part, explaining that Arizona's physical-presence requirement was "facially

discriminatory, in part because it tend[ed] to discourage domestic corporations from plying their trades in interstate commerce." *Id.* at 75a (internal quotation marks and citation omitted).

b. Petitioners sought rehearing. The court subsequently withdrew its initial opinion and replaced it with a new opinion, again affirming the district court. App., *infra*, 1a-33a.

As a preliminary matter, the court of appeals again unanimously agreed that petitioners had standing. App., *infra*, 6a-9a; *id.* at 24a (Forrest, J., concurring in part and dissenting in part). The court of appeals reasoned that the district court was "capable of granting at least some relief" to petitioners: for instance, by enjoining enforcement of the discriminatory system. *Id.* at 8a.

The court of appeals again divided, however, on the merits. The majority assumed without deciding that Arizona's physical-presence requirement discriminated against out-of-state residents. App., *infra*, 12a-15a. The majority then proceeded to evaluate whether the requirement was nevertheless justified under the Twenty-first Amendment. *Id.* at 16a-23a. With respect to that inquiry, the majority acknowledged that a "circuit split has developed" on the question, with some courts of appeals holding that a physical-presence requirement "may be upheld simply because [it] [is] an essential feature of a state's three-tier scheme," *id.* at 16a, and others holding that a physical-presence requirement may be upheld only if the State "demonstrate[s]" with "'concrete evidence'" that the challenged requirement "advance[s] goals like public health and safety," *id.* at 17a (citation omitted).

The majority adopted the former approach, holding that a discriminatory physical-presence requirement may be justified solely on the basis that it is "essential" to a State's three-tier regulatory system "without further

determinations as to whether its predominant effect is to support public health and safety." App., *infra*, 20a (internal quotation marks and citation omitted). The majority reasoned that, in *Granholm*, this Court had "reiterated that the 'three-tier system itself is "unquestionably legitimate."'" *Id.* at 18a (quoting *Granholm*, 544 U.S. at 489). And it agreed with those courts of appeals that had held that a physical-presence requirement is "an essential piece" of the three-tier system because allowing deliveries from out-of-state retailers would also allow sales of alcohol that had not passed through the State's wholesaler tier. *Id.* at 18a, 20a (citation omitted).

Based on its view that the physical-presence requirement was an essential feature of Arizona's system, the majority determined that it "may uphold it without further determinations as to whether its predominant effect [was] to support public health and safety." App., *infra*, 20a. The majority briefly surveyed the State's evidence that the physical-presence requirement "b[ore] on a state's ability to support public health and safety," but did not determine that those interests predominated over protectionism. *Id.* at 20a-21a. The majority also rejected petitioner's argument that Arizona was required to prove that "nondiscriminatory alternatives would be insufficient to further the state's interest in public health and safety." *Id.* at 21a-22a.

In closing, the majority observed that this Court has "steadily limited the outer reaches of the Twenty-first Amendment" by applying a "stricter framework" to discriminatory alcohol restrictions in order to give meaning to the dormant Commerce Clause's nondiscrimination principle. App., *infra*, 22a. But the majority took the view that, "until and unless" this Court "withdraws its wholesale support" for the "long-standing" three-tier model, it

was required to uphold Arizona's physical-presence requirement. *Id.* at 22a-23a.

c. Judge Forrest again dissented in relevant part. App., *infra*, 24a-33a. She explained that she would remand "because Arizona's law [was] discriminatory and because the district court failed to properly analyze whether Arizona ha[d] a legitimate nonprotectionist basis for its residency-based shipping restrictions." *Id.* at 24a.

Judge Forrest read *Tennessee Wine* to require a State to "bring 'concrete evidence'" that the protection of public health or safety rather than protectionism was the predominant effect of the state law. App., *infra*, 29a (quoting *Tennessee Wine*, 588 U.S. at 539-540). She observed that "[s]ome" courts of appeals had "sidestep[ped] imposing this evidentiary burden and h[e]ld that regulations essential to a state's three-tier system, including physical presence requirements, [were] per se legitimate." *Ibid.* And she criticized the majority for joining those courts, explaining that those decisions had overread language in this Court's cases calling the three-tier system itself "unquestionably legitimate." *Id.* at 29a-30a (citation omitted).

Indeed, Judge Forrest observed, *Tennessee Wine* itself had warned against overreading those favorable references about the three-tier system. App., *infra*, 29a-30a. "If *Tennessee Wine* meant to create a carveout to its usual rule that states must produce concrete evidence that discriminatory regulations serve legitimate interests," Judge Forrest reasoned, "it picked an exceedingly odd way to do so." *Id.* at 29a. While recognizing that a regulation's place in a three-tier system might have evidentiary value, Judge Forrest would instead have adopted the rule from other courts of appeals that "[t]he inquiry remains whether, based on 'concrete evidence' rather than 'speculation,' a regulation promotes public health,

safety, or another nonprotectionist goal in a way that a nondiscriminatory regulation could not." *Id.* at 30a-31a (quoting *Tennessee Wine*, 588 U.S. at 539-540, and citing *Anvar* v. *Dwyer*, 82 F.4th 1, 9-11 (1st Cir. 2023), and *Block* v. *Canepa*, 74 F.4th 400, 412-414 (6th Cir. 2023)).

Judge Forrest also "disagree[d] with the majority" that Arizona's physical-presence requirement was properly viewed as "an essential feature of its three-tier system." App., *infra*, 31a. Instead, she agreed with Judge Wilkinson's views that "[p]rohibiting wine shipments to consumers from out-of-state retailers is no more essential to a three-tiered model than residency requirements" and that a State is free to require out-of-state retailers to "obtain a state shipping license and comply with the same conditions as in-state retailers." *Id.* at 31a-32a (citing *B-21 Wines, Inc.* v. *Bauer*, 36 F.4th 214, 235 (4th Cir. 2022) (dissenting opinion), cert. denied, 143 S. Ct. 567 (2023)). At a minimum, Judge Forrest explained, Arizona could disallow shipments from both in-state and out-of-state retailers to retain the three-tier system without the challenged discrimination. *Id.* at 32a.

Judge Forrest declined to address the majority's "dicta" on whether Arizona's physical-presence requirement served public health and safety and whether the availability of alternatives should be given limited weight. App., *infra*, 33a. That question, Judge Forrest explained, was unnecessary to the majority's holding and was in her view premature because the district court "bypassed the requisite evidentiary weighing and relied on the residency-based shipping regulations' perceived centrality to Arizona's three-tier system." *Ibid.* Instead, Judge Forrest would have "remand[ed]" the case, allowing the district court to determine whether "concrete evidence supports Arizona's contentions" that limiting direct shipment privileges "advances the state's legitimate health and

safety goals, and that nondiscriminatory regulations would be an inadequate substitute." *Ibid.*

REASONS FOR GRANTING THE PETITION

This case presents an important question about the intersection of the Commerce Clause and the Twenty-first Amendment. As the decision below acknowledges, the courts of appeals are deeply divided on the question whether a discriminatory alcohol regulation that a State deems an essential feature of its three-tier system is per se constitutional under the Twenty-first Amendment, regardless of whether the State can demonstrate that the regulation predominantly serves public health and safety rather than protectionism. Seven courts of appeals have considered the question, splitting 4-3 in favor of the essential-feature rule, often in divided decisions. That rule, also adopted by the decision below, cannot be squared with this Court's precedents, which instruct courts to assess "concrete evidence" that discriminatory alcohol regulations serve legitimate interests rather than economic protectionism, and which specifically warn against overreading the Court's favorable references to the basic three-tier system itself. *Tennessee Wine & Spirits Retailers Association* v. *Thomas*, 588 U.S. 504, 534-535 (2019); *Granholm* v. *Heald*, 544 U.S. 460, 490 (2005). Further guidance from the Court is badly needed. The petition for a writ of certiorari should be granted.

A. The Decision Below Deepens An Entrenched Conflict Among The Courts Of Appeals

As the decision below acknowledges, a "circuit split has developed" as to whether discriminatory alcohol restrictions will pass constitutional muster simply because they are deemed "essential features" of the three-tier system. App., *infra*, 16a-17a. The First and Sixth Circuits have held that the Twenty-first Amendment will save

discriminatory restrictions only if the State can provide concrete evidence that the law furthers a legitimate, non-protectionist interest. See App., *infra*, 17a. The Seventh Circuit also appears to follow that approach, which has been endorsed by Judge Wilkinson in the Fourth Circuit and by Judge Forrest in the decision below. By contrast, four courts of appeals, including the majority in the decision below, take the opposite approach, "h[o]ld[ing] that physical-premise requirements may be upheld simply because they are an essential feature of a state's three-tier scheme." *Id.* at 16a. The Court should grant review to resolve that conflict.

1. The essential-feature rule of the decision below squarely conflicts with the holdings of the First and Sixth Circuits and the apparent approach of the Seventh Circuit. Each of those courts requires concrete evidence about the predominant effect of a discriminatory alcohol regulation.

a. In *Anvar* v. *Dwyer*, 82 F.4th 1 (2023), the First Circuit considered a Rhode Island requirement that retailers maintain a physical presence in the State in order to ship alcohol directly to Rhode Island consumers. See *id.* at 5-6, 9. After determining that the requirement was discriminatory, the court rejected the notion that the requirement was lawful merely by virtue of being "integral to Rhode Island's three-tier system of alcohol regulation." *Id.* at 9-10. Instead, the First Circuit reasoned that this Court "has cautioned that the Twenty-first Amendment does not necessarily 'sanction[] every discriminatory feature that a State may incorporate into its three-tiered scheme.'" *Id.* at 10 (quoting *Tennessee Wine*, 588 U.S. at 535) (alteration in original). Accordingly, the First Circuit explained, a discriminatory state law cannot obtain a "judicial seal of approval" based solely "on the virtues of three-tier systems generally" or some "theoretical benefit

to public health and safety associated with the challenged regulation." *Ibid.* The First Circuit remanded for the district court to consider whether the State had "'concrete evidence'" proving that its physical-presence requirement "further[ed] the legitimate aims of the Twenty-first Amendment." *Id.* at 11-12 (quoting *Tennessee Wine*, 588 U.S. at 540).

b. The Sixth Circuit also rejected the essential-feature rule. See App., *infra*, 17a (recognizing that the Sixth Circuit's approach is "largely similar to that of the First Circuit").

In *Block* v. *Canepa*, 74 F.4th 400 (2023), the Sixth Circuit considered a Commerce Clause challenge to Ohio laws requiring a retailer's physical presence for direct-to-consumer shipping. See *id.* at 404. The court explained that the State was required to come forward with "evidence" that the requirement promoted a legitimate, nonprotectionist interest. See *id.* at 413-414. It specifically rejected the State's reading of an earlier Sixth Circuit decision as suggesting that "direct ship restrictions" that are part of a State's three-tier system are "always constitutional," instead holding that the constitutional inquiry turns on the specific evidence a State puts forward in each particular case. *Id.* at 413. The Sixth Circuit reversed the district court's grant of summary judgment in favor of the State and remanded for the court to consider the evidence and determine whether Ohio's physical-presence requirement predominantly promoted "public health" or "protectionism." *Id.* at 414.[*]

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[*] In an earlier Sixth Circuit decision, *Lebamoff Enterprises Inc.* v. *Whitmer*, 956 F.3d 863 (2020), cert. denied, 141 S. Ct. 1049 (2021), the lead opinion had observed that a State that has a three-tier system may "limit the delivery options created by the new law to in-state retailers," *id.* at 870 (opinion of Sutton, J.). But in *Block*, the Sixth Circuit explained that it "did *not* hold [in *Whitmer*] that direct ship

c. The Seventh Circuit also appears to reject the essential-feature rule.

In *Lebamoff Enterprises, Inc.* v. *Rauner*, 909 F.3d 847 (2018), decided while *Tennessee Wine* was pending, the Seventh Circuit declined to endorse the essential-feature rule. See *id.* at 856. In that case, the court addressed an Illinois law requiring a retailer to maintain a physical presence in Illinois in order to ship alcohol to its residents. See *id.* at 849-850. On that basis, the Seventh Circuit held that the plaintiffs had stated a dormant Commerce Clause claim, such that the law could be sustained on remand only if Illinois could show its "differential treatment" of in-state and out-of-state retailers was "'demonstrably justified by a valid factor unrelated to economic protectionism.'" *Id.* at 853, 856 (quoting *Healy* v. *Beer Institute, Inc.*, 491 U.S. 324, 340-341 (1989)). In adopting that standard, the Seventh Circuit observed "serious problems with reading *Granholm*" as shielding discriminatory alcohol restrictions from scrutiny simply because they implicated aspects of the three-tier system that were "'inherent' or 'integral' to its existence." *Id.* at 855 (citation omitted). Instead, the State's evidence justifying the restriction would be "crucial to evaluate the constitutionality of the statute." *Id.* at 856.

Following this Court's decision in *Tennessee Wine*, the Seventh Circuit again confronted the issue in *Chicago Wine Co.* v. *Braun*, 148 F.4th 530 (2025). As in *Rauner*,

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restrictions are always constitutional." 74 F.4th at 413. Instead, the Sixth Circuit's holding in *Whitmer* was set out in the two-judge concurring opinion, which "had the support of a majority of the panel" and "emphasized" that it "upheld Michigan's statute because 'the plaintiffs ha[d] not sufficiently refuted'" the State's evidence that Michigan's restriction "'serves the public health.'" *Id.* at 413 (brackets in original) (quoting *Whitmer*, 956 F.3d at 877 (McKeague, J., concurring)).

the court in *Braun* addressed a Commerce Clause challenge to a physical-presence requirement, this time Indiana's. See *id.* at 531. The court affirmed in a two-judge per curiam opinion after Judge Kanne, a member of the panel at the time of argument, passed away. See *id.* at 530 n.*. The remaining two judges each issued an opinion, affirming on "two different lines of reasoning." *Id.* at 532.

Judge Easterbrook wrote one opinion, concluding that Indiana's physical-presence requirement did not discriminate against out-of-state citizens or products because the requirements applied "equally" to in-state and out-of-state retailers. See 148 F.4th at 533 (concurring opinion). Judge Easterbrook acknowledged contrary authority from the Fourth Circuit on that question. *Id.* at 534 (citing *B-21 Wines, Inc.* v. *Bauer*, 36 F.4th 214 (4th Cir. 2022), cert. denied, 143 S. Ct. 567 (2023)). But he explained that he was "skeptical" of the Fourth Circuit's decision because it upheld the challenged physical-presence provision despite finding it was discriminatory. *Ibid.* That could not be correct, Judge Easterbrook reasoned, because "a trans-border delivery rule that discriminates against interstate commerce is forbidden" after *Tennessee Wine*. *Ibid.* As to the question presented in this case, then, it is evident that Judge Easterbrook would reject the view that a discriminatory regulation is justified solely because it is an essential feature of a State's three-tier system. See *ibid.*

Judge Scudder wrote a separate opinion, determining (contrary to Judge Easterbrook) that Indiana's physical-presence requirement was discriminatory. See 148 F.4th at 538-539. Having so determined, Judge Scudder proceeded to consider whether Section 2 of the Twenty-first Amendment justified Indiana's requirement. See *id.* at 539. Judge Scudder observed that other circuits had upheld residency requirements simply because they were an

"'essential feature of a three-tiered scheme.'" *Id.* at 540 (concurring opinion) (quoting *Tennessee Wine*, 588 U.S. at 535, and citing *B-21 Wines*, 36 F.4th at 227-229, and *Sarasota Wine Market, LLC* v. *Schmitt*, 987 F.3d 1171, 1183-1184 (8th Cir.), cert. denied, 142 S. Ct. 335 (2021)). In Judge Scudder's view, however, those decisions could not be reconciled with *Tennessee Wine* because they "read[] far too much into *Granholm*'s discussion of the three-tiered model." *Ibid.* (quoting *Tennessee Wine*, 588 U.S. at 535). Instead, Judge Scudder reasoned, it was "necessary * * * to look at the specific regulation at issue and the State's evidentiary showing to support it." *Id.* at 539.

After considering that evidence, Judge Scudder concluded that Indiana's physical-presence requirement was constitutional because, in his view, Indiana had offered sufficient evidence that the requirement's main effect was maintaining public health and safety. See 148 F.4th at 544-545.

Putting the pieces together, the state of play in the Seventh Circuit appears to be as follows: *Rauner* strongly suggested that the essential-feature rule is invalid. And in *Chicago Wine*, one judge (Judge Scudder) would have so held, while another judge (Judge Easterbrook) did not reach the question because he concluded that the physical-presence requirement at issue was not discriminatory. But Judge Easterbrook indicated that if the requirement were discriminatory, it would likely be unjustified. Accordingly, Judge Easterbrook also rejected the essential-feature rule and appeared to go further. See 148 F.4th at 534. There is little doubt, therefore, that future litigants cannot prevail in the Seventh Circuit on the theory adopted by the decision below: namely, that a discriminatory alcohol regulation can be justified solely as an essential feature of a State's three-tier system.

2. In sharp contrast to the approach followed by the First, Sixth, and Seventh Circuits, four courts of appeals—the Third, Fourth, Eighth, and now Ninth Circuits—have held that a discriminatory alcohol regulation can be upheld simply on the ground that it is an "essential feature" of a State's three-tier system.

a. In *Jean-Paul Weg LLC* v. *Director of New Jersey Division of Alcoholic Beverage Control*, 133 F.4th 227 (2025), the Third Circuit reviewed a New Jersey law requiring retailers to maintain a physical presence in the State in order to ship alcohol to New Jersey residents. See *id.* at 230-231. The court determined that the law disadvantaged out-of-state-retailers. See *id.* at 235-236. It then considered whether New Jersey could nevertheless justify that discrimination by invoking the Twenty-first Amendment. See *id.* at 236. Although New Jersey put forward evidence justifying the regulations on health and safety grounds, the Third Circuit expressly held that the restrictions could be "independently justified as essential features of [New Jersey's] three-tier system." *Id.* at 239. The Third Circuit acknowledged *Tennessee Wine*'s admonition that "Section 2 does not 'sanction[] every discriminatory feature that a State may incorporate into its three-tiered scheme,'" but it concluded that the admonition did not extend to "'essential features' of the three-tier system." *Ibid.* (quoting *Tennessee Wine*, 588 U.S. at 535) (alteration in original). In the Third Circuit's view, the New Jersey law qualified as essential because it was "fundamental to the state's ability to ensure alcohol passes through each tier of its system." *Ibid.*

b. A divided Fourth Circuit adopted a similar approach in *B-21 Wines*, *supra*. There, the court evaluated a North Carolina requirement that retailers maintain a physical presence in the State in order to ship alcohol to North Carolina consumers. See 36 F.4th at 217-218. Like

the Third Circuit, the Fourth Circuit determined that the requirement discriminated against out-of-state retailers and proceeded to consider the State's justification. *Id.* at 223. The Fourth Circuit concluded that the requirement was justified under the Twenty-first Amendment as "an essential aspect of [the State's] three-tier system," reasoning that the requirement was necessary to avoid "[e]liminating" the State's wholesaler tier. *Id.* at 228-229. The court expressly declined to consider the conflicting evidence about whether North Carolina's restriction actually promoted health and safety, concluding that such evidentiary weighing exceeded a court's "role" when "an essential feature of a State's three-tier system is challenged." *Id.* at 227 n.8.

Judge Wilkinson dissented. In his view, the majority's approach constituted a "startl[ing]" departure from this Court's precedents in *Granholm* and *Tennessee Wine*, which struck down "state laws that were, in all relevant respects, indistinguishable from the one at issue here." 36 F.4th at 233. Judge Wilkinson reasoned that, under those precedents, a State could justify a discriminatory regulation under the Twenty-first Amendment only with "'concrete evidence' that the law 'actually promote[d] public health or safety.'" *Id.* at 238 (quoting *Granholm*, 544 U.S. at 490).

c. Likewise, in *Sarasota Wine Market*, *supra*, the Eighth Circuit embraced the essential-feature rule. There, the court considered a challenge to a Missouri law requiring retailers to maintain a physical presence in the State in order to ship alcohol to Missouri residents. See 987 F.3d at 1176-1177. The Eighth Circuit concluded that the law was not discriminatory but that, even if it were, it would be justified. See *id.* at 1184. The Eighth Circuit reasoned that it was not the court's role "invasive[ly]" to scrutinize "an essential feature of [Missouri's] three-

tiered scheme." *Ibid.* And like the Third and Fourth Circuits, the Eighth Circuit characterized the physical-presence requirement as a "core provision[] of Missouri's three-tiered scheme" because the law ensured that alcohol would pass through the wholesaler tier. *Id.* at 1183. The Eighth Circuit acknowledged that "passages in the *Tennessee Wine* opinion * * * may forecast a future decision" that laws such as Missouri's should be "subject to an evidentiary weighing" concerning their "public health and safety benefit." *Ibid.* But it took the view that, until this Court held that "essential elements of the three-tiered system are not protected from dormant Commerce Clause challenge," it was not required to conduct that inquiry. *Id.* at 1185; see *id.* at 1183-1184.

d. Those decisions are in line with the decision below. In this case, a divided Ninth Circuit expressly joined the courts of appeals that have held that discriminatory physical-presence requirements can be justified under the Twenty-first Amendment "simply [if] they are an essential feature of a state's three-tier scheme." App., *infra*, 16a. Applying that approach, the majority below rested on its conclusion that Arizona's physical-presence requirement was "essential" to preserving the three-tier system. Accordingly, the majority determined that it was proper to uphold the restriction "without further determinations as to whether its predominant effect is to support public health and safety." *Id.* at 20a.

Judge Forrest, in dissent, expressed the view that the majority had unduly "grabb[ed] at language in *Granholm* and *Tennessee Wine* calling [the three-tier system] 'unquestionably legitimate,'" while ignoring *Tennessee Wine*'s admonition not to overread that language and to evaluate the State's "concrete evidence" justifying any discrimination. App., *infra*, 29a-30a. Judge Forrest would have remanded for the district court to determine

whether Arizona could justify its discrimination with "concrete evidence." *Id.* at 33a.

* * * * *

The divided decision below exacerbates a substantial and entrenched circuit conflict. The decisions of the courts of appeals—including multiple separate opinions—have fully developed the arguments on both sides of the conflict. Given the depth of the conflict, there is no reasonable likelihood that further percolation would resolve it or aid this Court's review. The Court's intervention is warranted.

B. The Decision Below Is Incorrect

The court of appeals held that Arizona's physical-presence requirement was "an essential piece of the unquestionably legitimate three-tier system," and that, as a result, the court could "uphold it without further determinations as to whether its predominant effect is to support public health and safety." App., *infra*, 18a, 20a (internal quotation marks and citation omitted). That holding was erroneous. As this Court made clear in *Tennessee Wine*, a State seeking to justify a discriminatory alcohol regulation must present "concrete evidence" that the regulation promoted "public health or safety" or "some other legitimate nonprotectionist" interest. 588 U.S. at 539, 543.

1. a. This Court has made clear that a court can rely on the Twenty-first Amendment to "uph[o]ld state regulations that discriminate against interstate commerce only after finding, based on concrete record evidence, that a State's nondiscriminatory alternatives will prove unworkable" to further the State's nonprotectionist interests. *Granholm*, 544 U.S. at 493. The Court first invoked that "exacting standard" in *Granholm*, where it considered the validity of two state laws that allowed in-state

wineries with a physical presence in the regulating State to sell wine directly to consumers, while prohibiting wineries that lacked an in-state physical presence from engaging in such sales. *Ibid.*; see *id.* at 466-467. The Court described "the three-tier system itself" as "unquestionably legitimate." *Id.* at 489 (citation omitted). But the Court "ha[d] no difficulty" determining that those restrictions were discriminatory. *Id.* at 476. And it placed the "burden * * * on the State[s] to show" that their discriminatory regimes were "demonstrably justified." *Id.* at 492 (internal quotation marks and citation omitted). Specifically, the Court demanded that the States produce "concrete record evidence" that the laws "advance[d] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Id.* at 489, 493 (internal quotation marks and citation omitted). Because the States had offered only "unsupported assertions" to justify the restrictions, this Court concluded that the States had not met that burden. *Id.* at 490, 492.

In *Tennessee Wine*, the Court reaffirmed and refined *Granholm*'s approach to evaluating challenges to alcohol laws that burden interstate commerce. In considering whether Tennessee's discriminatory residency requirement could be "saved" by the Twenty-first Amendment, the Court reiterated that the State was required to justify its discrimination with "concrete evidence" that it promoted "public health or safety" or "some other legitimate nonprotectionist" interest. *Tennessee Wine*, 588 U.S. at 539, 543. "Where the predominant effect of a law is protectionism, not the protection of public health or safety," the Court explained, the law "is not shielded by [Section] 2." *Id.* at 539-540.

Tennessee had urged a different approach, arguing that the Twenty-first Amendment "immunize[d]" the residency requirement from further scrutiny because that

requirement formed a "core component" of the state's three-tier system. See Pet. Br. at 19-21, *Tennessee Wine*, *supra* (No. 18-96) (Nov. 13, 2018) (internal quotation marks and citation omitted). In Tennessee's view, that rule followed from *Granholm*'s description of the three-tier system as "unquestionably legitimate." 544 U.S. at 489.

Yet the Court rejected that argument, concluding that it had no "sound basis" and "read[] far too much into *Granholm*'s discussion of the three-tiered model." *Tennessee Wine*, 588 U.S. at 533, 535. *Granholm* may have "spoke[n] approvingly of the basic model," the Court observed, but it did not "sanction[] every discriminatory feature that a State may incorporate into its three-tiered scheme." *Id.* at 535. For that reason, the Court underscored that each discriminatory alcohol restriction must be "judged based on its own features" and the State's evidence justifying the discrimination. *Ibid.* If the "record is devoid of any 'concrete evidence' showing that [the discriminatory requirement] actually promote[s] public health or safety" and that "nondiscriminatory alternatives would be insufficient to further those interest," the Court continued, the discriminatory law cannot be "saved by the Twenty-first Amendment." *Id.* at 540, 543 (citation omitted).

This Court's precedents therefore make clear that a court can uphold a discriminatory alcohol regulation only based on concrete evidence that it promotes public health and safety, and not based upon a mere assertion about the regulation's relationship to the State's three-tier system.

b. Holding the State to its evidentiary burden comports with common sense and the first principles underlying both the Commerce Clause and Section 2 of the Twenty-first Amendment. As this Court has recognized, "[Section] 2 was adopted to give each State the authority

to address alcohol-related public health and safety issues," not to "adopt protectionist measures with no demonstrable connection to those interests." *Tennessee Wine*, 588 U.S. at 538-539; see *Bridenbaugh* v. *Freeman-Wilson*, 227 F.3d 848, 853 (7th Cir. 2000) (Easterbrook, J.) (describing this Court's instruction that "the greater power to forbid imports does not imply a lesser power to allow imports on discriminatory terms") (citing *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority*, 476 U.S. 573, 579 (1986)). In order to police that line, a court must be able to determine the purpose and "predominant effect" of a State's discriminatory restriction.

The three-tier system is "unquestionably legitimate" because it satisfies that test. See *Granholm*, 544 U.S. at 489. As this Court and lower courts have recognized, "the crux of the three-tiered system is to prevent vertical integration in alcohol distribution systems by strictly 'separating producers, wholesalers, and retailers.'" *B-21 Wines*, 36 F.4th at 234 (Wilkinson, J., dissenting) (quoting *Tennessee Wine*, 588 U.S. at 535); see *Sarasota Wine Market*, 987 F.3d at 1176. But allowing a State to fence off a restriction from scrutiny simply by labeling it essential or integral to the State's system—without considering whether the particular regulation's public-health benefits predominate over protectionism—would lose sight of the fundamental inquiry and uphold discriminatory laws that are "not shielded by [Section] 2." *Tennessee Wine*, 588 U.S. at 539-540.

2. The court of appeals nonetheless concluded that a discriminatory physical-presence requirement can be justified solely by the State's assertion that it is integral to its three-tier system. That is erroneous in two respects: it disregards the teaching of this Court's precedents, and

it mischaracterizes the role of the physical-presence requirement in a three-tier system such as Arizona's.

a. In adopting the essential-feature rule, the court of appeals largely relied on this Court's observation in *Granholm* that the three-tier system is "unquestionably legitimate." App., *infra*, 18a-19a (quoting *Granholm*, 544 U.S. at 489). Like the other courts on the essential-feature side of the conflict, the court of appeals reasoned that, if the three-tier system itself is legitimate, then an integral component of that system must be too.

That reasoning steps into the precise trap that the Court identified in *Tennessee Wine*. Far from giving substantive weight to the three-tier system, *Tennessee Wine* expressly admonished lower courts not to overread *Granholm*'s discussion of it. See 588 U.S. at 535. Indeed, the Court considered a substantially similar argument in *Tennessee Wine* itself, where Tennessee argued that the Twenty-first Amendment "immunize[d]" the residency requirement at issue from further scrutiny because that requirement formed a "core component" of the state's three-tier system. See Pet. Br. at 19-21, *Tennessee Wine*, *supra*. The Court rejected that argument, criticizing the State for "read[ing] far too much into *Granholm*'s discussion of the three-tiered model." *Tennessee Wine*, 588 U.S. at 535. "Although *Granholm* spoke approvingly of that basic [three-tier] model," the Court explained, *Granholm* "did not suggest that [Section] 2 sanctions every discriminatory feature that a State may incorporate into its three-tiered scheme." *Ibid.* As Judge Forrest put it in her dissenting opinion below, "[i]f *Tennessee Wine* meant to create a carveout to its usual rule that states must produce concrete evidence that discriminatory regulations serve legitimate interests, it picked an exceedingly odd way to do so." App., *infra*, 29a.

The Ninth Circuit nevertheless interpreted *Tennessee Wine* as doubling down on the legitimacy of the three-tier system. In its view, the decision struck down Tennessee's residency requirement only because it concluded the requirement was not "'essential' to the functioning of that system." App., *infra*, 18a (quoting *Tennessee Wine*, 544 U.S. at 489). In fact, however, *Tennessee Wine* drew a distinction between challenges to "the basic three-tiered model of separating producers, wholesalers, and retailers" (which the Court had previously found that the Twenty-first Amendment upholds) and challenges to a specific regulation that a State "has chosen to impose" within that system. 544 U.S. at 535. It explained that the latter type of regulation was "not an essential feature of a three-tiered scheme." *Ibid.* Here, petitioners do not challenge Arizona's basic three-tier system, but rather a specific discriminatory requirement that Arizona has chosen to impose within that system. *Tennessee Wine* instructs that the latter kind of law does not get a free pass from constitutional scrutiny.

b. The decision below makes a further error by treating the physical-presence requirement for direct shipments as "essential" to the State's three-tier system. App., *infra*, 18a-20a.

As we have just explained, this Court has already rejected the suggestion that a regulation that a State adopts as part of a three-tier system beyond the basic separation of producers, wholesalers, and retailers is "essential" to that system. See pp. 25-26. And the physical-presence requirement for delivery to Arizona consumers is no more tied to the basic structure of the three-tier system than the durational residency requirement at issue in *Tennessee Wine*. See 544 U.S. at 535. As Judge Wilkinson explained in a case involving a similar physical-presence requirement: "Prohibiting wine shipments to consumers

from out-of-state retailers is no more essential to a three-tiered model than residency requirements. * * * Nothing stops [the State] from requiring out-of-state retailers to obtain a state shipping license and comply with the same conditions as in-state retailers." *B-21 Wines*, 36 F.4th at 235 (dissenting opinion); see App., *infra*, 31a-32a (Forrest, J., concurring in part and dissenting in part). Indeed, many States that use three-tier systems to preserve vertical separation do so with licensing requirements that ensure the tiers remain separately owned, without a physical-presence requirement. See *B-21 Wines*, 36 F.4th at 235 (Wilkinson, J., dissenting) (collecting examples). There is thus "nothing inherent in the three-tier system * * * that necessarily demands an in-state-presence requirement for retailers." *Anvar*, 82 F.4th at 10; see *Tennessee Wine*, 588 U.S. at 535 (observing that many States with three-tier systems "do not impose durational-residency requirements—or indeed any residency requirements—on individual or corporate liquor store owners").

As the decision below illustrates, the essential-feature test replaces the inquiry required by this Court's precedents with deference to a State's assertion that a particular discriminatory assertion is an essential feature of its system. The Court already rejected a similar argument in *Tennessee Wine*, and it should not allow lower courts to evade the applicable test simply by changing the phrase "core component" to "essential feature."

* * * * *

The decision below cannot be reconciled with this Court's precedents, and its approach enables States to do precisely what the Court has held the Twenty-first Amendment does not authorize: to afford preferential treatment to in-state economic interests.

C. The Question Presented Is Important And Recurring And Warrants The Court's Review In This Case

The question presented in this case is a recurring one of substantial legal and practical importance, and this case is an ideal vehicle to consider it.

1. The question of how to evaluate the constitutionality of discriminatory regulations governing the distribution of alcohol is a recurring and important one involving the interplay of two constitutional provisions. The stakes of striking the right balance are high. As the Court explained in its most recent foray into this area of law, "removing state trade barriers was a principal reason for the adoption of the Constitution." *Tennessee Wine*, 588 U.S. at 515; see *B-21 Wines*, 36 F.4th at 230 (Wilkinson, J., dissenting).

Reflecting the importance of the question presented to an important national industry, the question has arisen in nearly ten different appellate cases in just the last five years. Seven courts of appeals have weighed in since this Court's decision in *Tennessee Wine* alone, issuing well-reasoned opinions on both sides. And there are no signs of a consensus developing. To the contrary, deep disagreements about the interplay of the constitutional provisions and the meaning of this Court's precedents have resulted in multiple splintered decisions. The Sixth Circuit issued a two-judge concurrence adopting different reasoning from the lead opinion in that case (which the Sixth Circuit has subsequently adopted as the circuit rule, see p. 17 & n.*, *supra*); the Seventh Circuit issued a per curiam decision where the judges on a two-member panel splintered on the correct reasoning, see pp. 19-20, *supra*; and in this case itself, the question of the validity of Arizona's physical-presence requirements resulted in a divided set of opinions, only to be replaced by another divided set of opinions after a petition for rehearing.

Nor is this question going anywhere. The Seventh Circuit's decision will soon present similar issues for the Court's consideration, see *Chicago Wine Co.* v. *Braun*, No. 25A593 (Nov. 17, 2025); the Sixth Circuit will again face the question in a case it had previously remanded, see *Block* v. *Canepa*, No. 25-3305 (6th Cir.); and a district court in the Second Circuit has completed a bench trial in a case raising similar issues, see *Alba Vineyard & Winery* v. *New York State Liquor Authority*, Civ. No. 23-8108 (S.D.N.Y.). Given the frequency with which the question has already arisen, further percolation would not add anything of value to the discussion.

Setting aside the volume of litigation fueled by the question presented and the ensuing burden on the federal judiciary, the underlying confusion leaves States without clear instructions on how they may and may not regulate alcohol. Approximately 35 States prohibit out-of-state retailers from shipping wine directly to in-state consumers. See Alexander Fallone, Note, *Wine Unwelcome: The Constitutional Contours of Wine Regulation*, 19 Brook. J. Corp. Fin. & Com. L. 429, 430 (2025). Without further clarity from the Court, those States cannot make informed decisions about what types of regulations are permissible, and neither can States that may wish to enact similar restrictions.

Consumers also suffer. As this Court recognized in *Granholm*, "state laws that prohibit or severely restrict direct shipments * * * represent the single largest regulatory barrier to expanded e-commerce in wine." 544 U.S. at 468 (internal quotation marks and citation omitted). Since that decision, e-commerce has only grown, making the burdens of discriminatory alcohol regulations that much more pronounced. Wine enthusiasts across the country, petitioners included, seek access to the same broad, competitive online market for wines that residents

of other States can enjoy. Restrictions such as Arizona's "deprive citizens of their right to have access to the markets of other States on equal terms," *id.* at 473, and prevent those consumers from enjoying the bounty of living in a large country with diverse topographies and climates. In other words, the status quo is perpetuating the precise "economic Balkanization" that concerned the Framers and that this Court has sought to prevent. *Tennessee Wine*, 588 U.S. at 517 (citation omitted).

2. This case is an ideal vehicle to address the question presented. That question is a pure question of law. And although the question has been litigated in many cases, this case is an unusually clean vehicle to consider it. In particular, the majority below expressly declined to decide whether Arizona's physical-presence requirement was discriminatory under the first step of *Tennessee Wine*. See App., *infra*, 15a. Therefore, the Court would not need to resolve any threshold question about other aspects of the *Tennessee Wine* test before addressing the question presented. Cf. *id.* at 16a (noting that the essential-feature test implicates a "cleaner" circuit conflict than the question whether a particular regulation is discriminatory).

In other respects, too, the question presented is particularly well teed up in this case. Both the court of appeals and the district court passed upon the question, see pp. 10, 12-13, *supra*, and it was the specific subject of the disagreement between the majority and the dissenting opinions below, which recognized that they were taking opposite sides in the circuit conflict, see pp. 11-13, *supra*. Moreover, the disagreement had practical significance in this case: Judge Forrest, who would have reached the opposite answer to the question, would have remanded to the district court for the evidentiary analysis that it had

declined to perform under the test blessed by the majority. See App., *infra*, 33a.

This case thus provides an ideal opportunity to resolve a question with which courts across the Nation are grappling. The Court should grant certiorari, resolve the conflict, and reiterate the proper standard for analyzing alcohol regulations that discriminate against interstate commerce in violation of the Commerce Clause.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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