

NO. 25-788

In the
Supreme Court of the United States

REED DAY, ET AL.,

Petitioners,

v.

BEN HENRY, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL, ET AL.,

Respondents.

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

BRIEF OF 39 WINE CONSUMERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*¹

Premium wine consumers nationwide² desire to have access to wines produced beyond the borders of their own localities. *Amici* are among those consumers, but discriminatory state laws, like the Arizona law challenged here, stymie their attempts to acquire rare, collectible, or limited-production wines. Such laws are discriminatory because they prevent out-of-state retailers who can provide the desired products from selling and delivering wine directly to them. States like Arizona try to justify its discrimination on pretextual grounds rooted in an archaic regulatory model which technology has fossilized.

Amici advocate for allowing the premium wines they enjoy to flow through the stream of commerce in the most efficient way because modern technology addresses the interests of states in ensuring satisfaction of the Twenty-First Amendment's core principles. As wine enthusiasts, *amici* have an interest in ensuring a fair and level marketplace for fellow Arizona wine enthusiasts. They

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* states that no counsel for any party authored this brief in whole or in part or made any monetary contribution. Pursuant to Supreme Court Rule 37.2, written notice of intent to file was given to counsel for all parties more than 10 days in advance of this filing.

² The names of all *Amici* are listed in the Appendix.

have an interest in ensuring that protectionist laws which violate the Dormant Commerce Clause, like those challenged here, are struck down.

The Court should grant the Petitioners' Petition for Writ of Certiorari.

SUMMARY OF ARGUMENT

First, this case once again concerns the tension between the Constitution's Twenty-First Amendment and its Dormant Commerce Clause. The former provides states with broad authority to regulate the "transportation or importation" of alcoholic beverages. However, the Dormant Commerce Clause prohibits states from discriminating against interstate commercial interests in favor of intrastate ones when regulating. Such prohibition encompasses both direct discrimination and practical-effect discrimination. When a conflict arises, this Court's precedent holds the Dormant Commerce Clause generally prevails.

The retail sale of wine, like nearly all other consumer goods, has shifted towards online or remote sales since the beginning of the 21st Century. Arizona law has embraced this shift, but it imposes a requirement that wine retailers must have an in-state physical presence as a condition making remote sales to Arizona residents. Such requirement, however, flies in the face of both this Court's jurisprudence and the economic reality of today's commercial world. Online retail portals

have been a radical paradigm shift; providing consumers with almost unlimited retail choices. This was beyond comprehension in 1933 at the Twenty-First Amendment's ratification.

Technology has changed the economy—more specifically, altering the paradigm of how goods flow to consumers which existed for a significant period of the post-Prohibition era. Today's technology was unfathomable when Prohibition ended. That technology necessitated localized oversight which today's technology has obviated. What was impossible in 1933 is now possible, practical and efficient because technological advances have negated the necessity and justification for an in-state physical presence requirement.

Such requirements may have been justified when a wide gap existed between out-of-state retailers and in-state consumers. They became arbitrary once technology closed the gap and allowed out-of-state interests to serve in-state consumers in a way which effectively and efficiently promotes the Twenty-First Amendment's core principles. The ability of out-of-state interests to reach in-state consumers through internet and app-based portals has changed the paradigm such that requiring an in-state physical presence is both discriminatory in practical effect and arbitrary.

Second, Arizona's in-state physical presence requirement is a vestige of Arizona's post-Prohibition regulatory regime. Technology has made this

relic regime an historic anachronism which discriminates against interstate commerce by arbitrarily placing undue burdens upon out-of-state interests which makes it economically impractical to conduct business there. Such regime is a pretext for states to put their thumbs on the regulatory scale. This Court’s Dormant Commerce Clause jurisprudence forbids this kind of protectionism.

Third, Arizona curiously does not assert the ubiquitous Twenty-First Amendment defense: its in-state physical presence requirement promotes the Amendment’s “core principles”—protecting its citizens’ public health and welfare while aiding the raising of revenue.³ Arizona’s reliance, however, is pretextual because its own regulatory policies have actually made alcoholic beverages more readily available to its residents—far from promoting the core principle of temperance—all while widening the unconstitutional disparity between in-state and out-of-state interests.

Finally, states like Arizona premise their in-state physical presence requirement upon preserving a three-tier distribution system—another post-Prohibition historic anachronism. However, states have begun blurring the lines by foisting their three-tier alcohol distribution systems upon non-

³ The core principles underlying the Twenty-First Amendment are promoting temperance, ensuring orderly market conditions and raising revenue. *See North Dakota v. U.S.*, 495 U.S. 423, 432 (1990) (plurality opinion).

alcoholic products—along with in-state physical presence requirements for distribution and retail.

It is critical that the Court address the important constitutional issues here and clarify the constitutionality of in-state physical presence requirements in the face of modern technology.

ARGUMENT

This case requires the Court to again act as a traffic cop—directing traffic at the intersection of the Constitution’s Dormant Commerce Clause⁴ and its Twenty-First Amendment.⁵ The flow of traffic through this intersection has an ironic consequence—

“there are two ways, and two ways only, in which an ordinary private citizen, acting under her own steam and under color of no law, can violate the United States Constitution. One is to enslave somebody, a suitably hellish act. The other is to bring a bottle of beer, wine, or bourbon into a state in violation of its beverage control laws.”

Laurence H. Tribe, *How to Violate the Constitution Without Really Trying: Lessons from the Repeal of Prohibition to the Balanced Budget Amendment*, 12 CONST. COMMENT. 217 (1995).

⁴ U.S. CONST., ART. I, § 8, cl. 3.

⁵ U.S. CONST., AMEND. XXI.

The *Amici* concur that the Court should grant *certiorari* to determine whether the Ninth Circuit's divided opinion is consistent with salient prevailing jurisprudence. *Granholm v. Heald*, 540 U.S. 460 (2005) settled the tension between the Twenty-First Amendment and the Dormant Commerce Clause *vis-à-vis* in-state physical presence requirements. *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504 (2019) upheld *Granholm* and reiterated such fact. The Ninth Circuit's divided opinion is incongruent with the most recent precedent.

The fundamental purpose of *stare decisis* is to bring certainty and stability to the law. *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 457 (2008). Thus, lower courts must follow this Court's decisions. *Hutto v. Davis*, 460 U.S. 533, 535 (1983). The Ninth Circuit majority adopted a myopic view of the Dormant Commerce Clause's impact upon the Twenty-First Amendment; thus, demonstrating the constitutional significance of this case. Such majority opinion disregarded settled principles. This Court should put to rest once and for any question about the constitutionality of in-state physical presence requirements at the retail level.

I. ARIZONA'S REGULATORY REGIME IS INCONSISTENT WITH THIS COURT'S DORMANT COMMERCE CLAUSE JURISPRUDENCE

This Court's jurisprudence clearly premises that the Dormant Commerce Clause's non-discrimination principles constrain a state's Twenty-

First Amendment authority to regulate alcoholic beverages. Both *Granholm* and *Tenn. Wine* applied these coordinate principles to establish the rule that states may not compel out-of-state entities to establish an in-state physical presence as a condition of gaining market access otherwise available only to in-state entities. *Granholm* at 475; *Tenn. Wine* at 543.

A. DORMANT COMMERCE CLAUSE JURIS-PRUDENCE DOES NOT PERMIT THE CONDITIONING OF MARKET ACCESS UPON AN IN-STATE PHYSICAL PRESENCE

ARIZ. REV. STAT. ANN. § 4-203(J) permits licensed alcoholic beverage retailers to take remote orders from Arizona customers and deliver alcoholic beverages to them but requires that any such deliveries be loaded “at the premises of the retail licensee ***in this state*** and delivered in this state.” ARIZ. REV. STAT. ANN. § 4-203(J) (emphasis added).

The Twenty-First Amendment grants Arizona broad authority to choose the tone and tenor of its alcoholic beverage control policies. It certainly grants Arizona the authority to permit the remote sale and delivery of alcoholic beverages within its borders. Once it does, the Dormant Commerce Clause constrains Arizona’s authority to require an in-state physical presence as a condition of availing that accommodation.

The Dormant Commerce Clause is thus the guardrail which ensures that states provide a level playing field for both intrastate and interstate interests. That is the constitutional guardrail which exists at the Twenty-First Amendment's intersection with the Dormant Commerce Clause. This Court's jurisprudence verifies this fact in recognizing a singular national marketplace. *H.P. Hood & Sons v. Du Mond*, 336 U.S. 525 (1949). The Dormant Commerce Clause's purpose is to avoid discrimination which results in inefficiencies within that broad marketplace, *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). The gist of both *Granholm* and *Tenn. Wine* is that the Court views with suspicion those state statutes which require an in-state physical presence when the same operations already exist and operate more efficiently elsewhere.

This Court should accept review because the Ninth Circuit's divided ruling is incongruent with this Court's Dormant Commerce Clause jurisprudence. Arizona's embrace of technology—making alcoholic beverages more readily available to consumers—evidences a relaxed importance of the Twenty-First Amendment's core principles. This warrants a conversation about the continued constitutional viability of the three-tier regulatory model.

B. ARIZONA'S IN-STATE PHYSICAL PRESENCE REQUIREMENT IS AN HISTORICAL ANACHRONISM

That conversation has become necessary because in-state physical presence requirements, like that in ARIZ. REV. STAT. ANN. § 4-203(J), are vestiges of an historically anachronistic three-tier regulatory model. The efficiencies and technological innovations of the 21st Century have fossilized that model.

1. TECHNOLOGY: MAKING A NON-DISCRIMINATORY REGULATORY REGIME INTO ONE.

Technology has hastened the fossilization of many routines of life from the younger years of those involved in this case (aside from the Gen-Z law clerks).⁶ However, it is doubtful those who de-

⁶ In the not-too-distant past, we drove cross-country with the assistance of paper maps, perhaps obtained at a roadside gas station. Today, our cars and mobile phones have built-in turn-by-turn GPS systems with a friendly voice to guide us when driving. Today, you may be just as likely to stop to charge your car than to re-fuel it.

Technology has similarly changed the retail sale paradigm for alcoholic beverages. In past times, purchasing a bottle of premium wine meant physically traveling to retail stores in search of a desired product. Today, technology allows customers to order from an online portal or app and have the product efficiently delivered to them.

bated the Twenty-First Amendment as a compromise to end Prohibition had a window into today's world. It is thus doubtful those debates perceived the scope, benefits and efficiencies of today's technology when crafting the three-tier distribution system and its conjoined in-state physical presence requirement as the preferred post-Prohibition regulatory paradigm. Those debates could not have fathomed either the breadth and depth of today's consumer marketplace or how technology would radically change the regulation of the marketplace.

At the end of Prohibition, physical stores usually offered limited selections of goods. Imagine the reaction of a consumer from 1933 walking into a *Walmart*® Supercenter. Back then, consumers in much of America who wished to access an expanded selection of goods had to find a *Sears*® or *Montgomery Ward*® catalog, mail in an order and then wait for the post office to deliver it. Instantaneous consumer-driven concepts like *Amazon Prime*® or *Door Dash*® were well beyond the comprehension of people at the time.

Further, the technology at Prohibition's end would not have allowed states to regulate out-of-state retailers even if they could have engaged in remote sales to out-of-state consumers. The inability to do either meant that in-state physical presence requirements as part of a three-tier regulatory model could be justified as advancing the Twenty-First Amendment's core principles.

These core principles are woven into the Twenty-First Amendment: encouraging moderation, regulating the market, and generating revenue. *See North Dakota, supra.*, at 432 (plurality opinion). Before the digital age, Arizona's in-state physical presence requirement was non-discriminatory. Technology simply made it impractical, if not impossible, for out-of-state retailers to directly reach Arizona consumers. Today, however, Arizona's in-state physical presence requirement is now discriminatory because technology allows out-of-state interests to serve Arizona consumers in a way consistent with ensuring the state's ability to ensure its regulatory interests. This reality should frame the issues before the Court here.

2. ARIZONA'S EMBRACE OF TECHNOLOGY HAS WEAKENED ITS INTERESTS IN REQUIRING LOCALIZED REGULATION

The state of technology between the end of Prohibition and the close of the 20th Century necessitated localized regulation of alcoholic beverages. There were no computers, high-speed internet, digital recordkeeping or remote mass data storage in 1933. These technologies did not merge until the 21st Century. That meant alcoholic beverage retailers had to keep paper records. Localized regulation was necessary because the records of alcoholic beverage retailers were neither readily capable of mass duplication nor portable.

Today, however, the paperwork needed by regulators is more likely to be a digital packet of information stored on a remote cloud server. Many states require or permit the electronic submission of the records necessary for regulatory oversight.⁷ Technology thus allows out-of-state retailers to provide any required records to Arizona regulators just as quickly and efficiently as Arizona-based retailers. Before the 21st Century, non-portable regulatory records were likely stored in a central repository in Phoenix or in each city or county. Today, it is likely that Arizona regulators store digital regulatory records on a cloud platform far from Arizona.

The technology which obviates the need for localized regulation also obviates the justification for in-state physical presence requirements. Thus, the same technology which allows a retailer in Laughlin, Nevada to remotely transmit records to Arizona officials also allows those officials to remotely regulate that retailer. Technology has made the business records needed for regulation highly transportable. Highspeed internet technology also allows Arizona regulators to conduct both

⁷ Arizona permits alcoholic beverage retailers to maintain electronic records. *See ARIZ. ADMIN. CODE. R19-1-501.* Arizona also maintains a technology-driven E-licensing system for license applications, renewals, fee payments, and other licensing functions. Arizona also embraces the use of electronic signatures on submissions. *ARIZ. REV. STAT. ANN. § 4-112.*

real-time and virtual compliance inspections by way of live streaming 4k digital video cameras.⁸

Arizona's requirement that out-of-state retailers who desire to sell alcoholic beverages to its residents must establish an in-state physical presence is an historic anachronism which can no longer be justified by the Twenty-First Amendment's core principles. It is undeniable that paradigm-shifting technologies have narrowed the gap between retailers and consumers—irrespective of the physical distance between them. *S. Dakota v. Wayfair, Inc.*, 585 U.S. 162 (2018).

Technology allows consumers to purchase any number and variety of goods without ever leaving their couch. Arizona has embraced gap-narrowing technologies in regulating its alcoholic beverage marketplace—allowing in-state wine retailers to directly sell and deliver to Arizona consumers. Its in-state physical presence requirement is an impermissible impediment to out-of-state retailers in the face of the technological advances which enable Arizona to effectively regulate them.

This Court has recognized the critical changes brought about by technology vis-à-vis the regulation of alcoholic beverages: “[i]n this age of split-

⁸ Emerging technologies like Artificial Intelligence also have the potential to aid state alcoholic beverage regulators as well as assisting consumers in selecting desired products.

second communications by means of computer networks . . . there is no shortage of less burdensome, yet still suitable, options.” *Tenn. Wine, supra.*, at 541, citing *Cooper v. McBeath*, 11 F. 3d 547, 554 (5th Cir. 1994). This Court should accept review to determine whether Arizona’s in-state physical presence requirement is consistent with *Granholm* and *Tenn. Wine*.

C. ARIZONA’S IN-STATE PRESENCE REQUIREMENT IMPERMISSIBLY DISCRIMINATES AGAINST OUT-OF-STATE WINE RETAILERS

The Dormant Commerce Clause requires that states provide a level marketplace between intra-state and interstate interests. The Dormant Commerce Clause thus constrains Arizona’s Twenty-First Amendment authority to grant a benefit to its in-state wine retailers which it does not offer on a non-discriminatory basis to out-of-state retailers. Arizona’s in-state physical presence requirement discriminates in practical effect because it imposes an unfair market burden upon out-of-state retailers. The fact the Twenty-First Amendment grants states authority to regulate alcohol sales in a particular manner does not exempt those regulations from Dormant Commerce Clause scrutiny. *Granholm*, 540 U.S. at 466.

No longer can a state impose an in-state physical presence requirement; shrug its shoulders; and point to the Twenty-First Amendment.

The Twenty-First Amendment, for example, authorizes states to limit alcohol sales to face-to-face transactions. That is not discriminatory because it evenly applies to both in-state and out-of-state retailers. The Twenty-First Amendment conversely authorizes states to permit online or remote sales of alcoholic beverages. This would not pose a discriminatory market barrier to out-of-state retailers who eschew online sales or simply do not wish to engage a broader marketplace. That same policy, however, poses a clear market impediment to out-of-state premium wine retailers who employ online and remote sales technologies and wish to reach Arizona customers.

Arizona's licensing regime forces out-of-state retailers to establish a brick-and-mortar presence in the state, secure an Arizona resident managing officer, and then sell from that location. This is an example of practical effect discrimination against out-of-state interests: the unrealistic and wholly inefficient requirement to establish an in-state physical presence although already having the infrastructure and mechanisms necessary to effect the sale and delivery of wine to Arizona consumers in a way which permits effective oversight and regulation. The Dormant Commerce Clause was intended to protect these kinds of efficiencies. Arizona's barrier cannot be squared with *Granholm* and *Tenn. Wine*.

Look at the question through the eyes of a wine retailer in Laughlin, Nevada. Arizona's in-state

physical presence requirement forecloses such retailer from delivering to customers in Bullhead City, Arizona, approximately 6 miles away, even if it has the physical and technological infrastructure necessary to do so in a safe, efficient and responsible manner. Arizona would have the Nevada retailer incur the economic redundancy of establishing a second physical presence although its existing physical location is only a few miles away.

Alternatively, look at the issue through the eyes of premium wine connoisseurs in the Scottsdale and Sedona areas who desire products not found in Arizona but sold by specialty retailers in another state. Technology allows an efficient and responsible means of remotely serving those customers through secure shipment and delivery protocols. Arizona law, however, is a hinderance to that 21st Century market efficiency.

Arizona's answer to out-of-state retailers is that they can freely obtain a retail license when establishing an in-state physical presence in Arizona. The Ninth Circuit's divided ruling allows Arizona to say "too bad" to out-of-state retailers while winking at in-state retailers while putting its thumb on the economic scale because it reads the Twenty-First Amendment to countenance such discrimination.

Tenn. Wine recognizes that not all state regulatory regimes enacted to promote public health, moral or safety are "to be accepted as a legitimate exertion of the police powers of the State." 588 U.S.

at 538. Arizona's in-state physical presence requirement fits that bill. Arizona can no longer justify discriminating against out-of-state retailers because the same technology which makes it possible for those retailers to remotely deliver wine to an Arizona consumer also nullifies any argument that allowing such transactions compromises the state's enforcement of the Twenty-First Amendment's core principles.

Arizona cannot claim the in-state physical presence requirement promotes temperance when it embraces its domestic retailers making remote sales. Arizona cannot claim that its policies are necessary to ensure an orderly regulation of the market because technology now allows it to do so remotely as if its agents were physically present. Finally, Arizona cannot claim that its policies enhance the ability to raise revenue. Requiring Arizona to offer market parity to out-of-state retailers would result in increased license and tax revenues.

America's premium wine consumers hope this Court will view the issues raised by the Petitioners and *Amici* through the prism of someone from 1933 who just experienced 2026 for the first time. That view would likely shock the senses given the exponential advances in technology. That advancement has weakened the rationality of continuing to enforce fossilized post-Prohibition policies.

II. THE MARKETPLACE EVOLUTION RESULTING FROM THE COVID-19 PANDEMIC HIGHLIGHTS THE DISCRIMINATORY AND ARBITRARY EFFECTS OF ARIZONA'S LICENSING REGIME

The COVID-19 pandemic radically changed how alcoholic beverage retailers interacted with consumers—in some ways unheard of prior to the pandemic. These changes not only have made alcoholic beverages more available to consumers than ever; they also amplified the discriminatory market disparity of Arizona's licensing regime.

Like most states, Arizona closed restaurants and bars to in-person consumption during the pandemic.⁹ However, it deemed alcoholic beverage package retail stores to be “essential businesses” and allowed them to operate subject to specific health protocols.¹⁰ Arizona also did the unthinkable—permitting retail by-the-drink businesses to sell alcoholic beverages to-go or by delivery.¹¹

This was a seismic economic shift because it showed the willingness of states to marry a pragmatically liberalized attitude regarding alcoholic

⁹ Arizona closed restaurants and bars by way of ARIZ. Executive Order 2020-09 (Mar. 19, 2020).

¹⁰ Arizona deemed that retail package stores were “essential businesses.” ARIZ. Executive Order 20-12 (Mar. 23, 2020).

¹¹ ARIZ. Executive Order 20-09.

beverage regulation to technological advances.^{12/13} Arizona embraced such liberalization out of necessity to protect its in-state licensees during the pandemic, and then permanently codified some of the liberalized elements.¹⁴ Alcoholic beverages are now more easily accessible to Arizona's adult residents than ever before.

States allowing remote by-the-drink alcohol sales was an unheard-of concept before the pandemic. Not surprisingly, liberalizing remote alcohol sales resulted in a consumption spike as states made access to products more readily convenient.¹⁵ States like Arizona, however, cannot promote liberalized policies which make alcoholic beverages more readily available for consumption while claiming a need to promote temperance by effectively prohibiting out-of-state retailers from accessing the expanded marketplace. In-state physi-

¹² BBC News, *Coronavirus: How the pandemic is relaxing US drinking laws*. (May 15, 2020).

¹³ Fortune, *How the On-Demand Liquor Delivery Business Changed Overnight During the Coronavirus Pandemic*. (April 11, 2020).

¹⁴ H.B. 2773, 55th Leg., 1st Reg. Sess. (Ariz. 2021), eff. Oct. 1, 2021.

¹⁵ Ayyala-Somayajula, D., et al., *Trends in Alcohol Use After the COVID-19 Pandemic: A National Cross-Sectional Study*, ANNALS OF INTERNAL MEDICINE 178:1 (Nov. 12, 2024).

cal presence requirements are, as discussed *supra*, a vestigial post-Prohibition policy which allows states to justify discrimination.

The Twenty-First Amendment's assurance of state control and regulation was a key element of the compromise which ended Prohibition. The 1933 book *Toward Liquor Control* was instrumental in conceiving the three-tier system of distribution as a primary aspect of post-Prohibition state regulatory regimes.¹⁶ The Amendment certainly authorized states to implement and enforce a three-tier system. The Dormant Commerce Clause, however, generally does not permit enforcement of elements of the three-tier system in a way which discriminates against interstate commerce.

Arizona cannot have it both ways: it cannot embrace recent technologies which make access to alcoholic beverages easier for Arizonans while placing discriminatory hurdles upon out-of-state interests who wish to serve that expanded market. Arizona let the genie is out of the proverbial bottle in allowing remote alcohol sales. It can no longer hide behind the Twenty-First Amendment's core principles as a pretext for discrimination when its liberalized policies *vis-à-vis* in-state wine retailers have eroded the significance of those core princi-

¹⁶ Fosdick, R., *et al.*, *Toward Liquor Control*, Harper & Bros. (1933).

ples by perpetuating increased alcohol consumption.

III. THE THREE-TIER SYSTEM HAS MORPHED BEYOND ALCOHOLIC BEVERAGES

Finally, review is warranted for the Court to address the continued presumption that the three-tier system is constitutional in light of states morphing that regulatory model far beyond anything ever contemplated by the Twenty-First Amendment. Allowing states to justify discriminatory alcohol regulations on the grounds that they believe it is essential to the three-tier system has emboldened states to adopt discriminatory regulations in domains well beyond the Twenty-First Amendment's reach.

No longer are state regulators singularly tasked with regulating alcoholic beverages within their three-tier systems. States have begun subjecting products which do not contain a drop of alcohol to regulation by alcoholic beverage control agencies under their three-tier systems. For example, several states have recently placed the regulation of cannabis-infused beverages in the hands of alcoholic beverage control regulators and then shoehorned them into their three-tier distribution model. These beverages are alcohol-free and contain tetrahydrocannabinol (THC) derived from

hemp or marijuana.¹⁷ These products, often marketed as alternatives to alcoholic beverages, and although alcohol-free, are nevertheless being subjected to regulation like alcohol, including being subjected to an existing three-tier regime. States have also begun regulating nicotine vaping products, which are also alcohol-free, through the same alcoholic beverage control agencies and the same three-tier alcohol regime they enforce.¹⁸

The Twenty-First Amendment permits states to employ a three-tier distribution system for regulating alcoholic beverages. Trying to jam alcohol-free vaping and cannabis products into a fossilized three-tier regulatory model shoves a square peg into a round hole. Arbitrarily subjecting alcohol-free products to a regulatory model suited singularly for alcoholic beverages also evidences a dilution of the justification for that model. The result: a distributor within the three-tier system may have alcoholic beverages and non-alcoholic products warehoused together and subjected to the same regulatory regime.

¹⁷ Alabama, Kentucky and Tennessee regulate hemp-derived products either through their alcoholic beverage commissions or under a similar regulatory model. *See* ALA. CODE § 28-12-1; KY. REV. STAT. ANN. § 243.401; TENN. CODE § 57-7-101, *et seq.*

¹⁸ Alabama, Kentucky and Virginia regulate vaping products through their alcoholic beverage commissions. *See* ALA. CODE § 28-11-2; KY. REV. STAT. ANN. § 438.337; VA. CODE § 18.2-371.2.

It is inconceivable this Court would countenance a regulatory regime which conditions marketplace access upon retailers of non-alcohol products establishing an in-state physical presence given its bedrock Dormant Commerce Clause jurisprudence. *See e.g. Minnesota v. Barber*, 136 U.S. 313 (1890) (in-state meat inspection requirement); *Johnson v. Haydel*, 278 U.S. 16 (1928) (in-state processing requirement for oysters); *Pike, supra.* (in-state packaging requirement for cantaloupes); and *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82 (1984) (in-state processing requirement for timber).

The willingness of states like Arizona to morph its Twenty-First Amendment authority to subject alcohol-free products to its three-tier system shows that such regulatory model is not a specialized response to alcohol. That regulatory model should therefore no longer enjoy the constitutional protection it has historically enjoyed.

This Court held in *Granholm, supra.* at 489, that the three-tier system was presumed constitutional. *Tenn. Wine, supra.* at 535, limited such presumption in finding the Twenty-First Amendment does not “sanction[] every discriminatory feature that a State may incorporate into its three-tiered scheme.” The Court should accept review to consider the withdrawal of the presumption of constitutionality and instead subject the three-tier system to its standard constitutional scrutiny which will allow a consideration of equal protection implications.

CONCLUSION

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

Respectfully submitted,
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APPENDIX
NAMES OF INDIVIDUAL *AMICI*

Alba Winery, Milford NJ
Julie Arger, Reno NV
Terris Ayres, Flora IN
Jerry Bainbridge, Sarasota FL
Peter Bernstein, Wanaque NJ
Kathryn Brown, Bloomington IN
Marshall Burack, Boca Raton FL
David Carlson, Franklin IN
Richard Foard, New Freedom PA
Timothy Freehan, Chicago IL
Myra Gassman, Charlotte NC
Larry Gralla, Reno NV
Joseph Gwin, Indianapolis IN
Itamar Cohen, Indianapolis IN
Sandy Galacio, Wayne NJ
Barbara Goldman, Washington DC
Jim Kuhr, Des Moines IA
Albert Jacobs, Phoenix AZ
Gerald Lande, Indianapolis IN
Justin Leigh, Goldendale WA

Dennis Neary, Indianapolis IN
Gretchen Nelson, Los Angeles CA
Wendy Newby, Sarasota FL
Faten Munger, Greenwood IN
Jeff Pflugner, Sarasota FL
John Philo, Detroit MI
Maureen Redish, Dallas TX
Steve Pahl, Indianapolis IN
Brandon Rickey, Indianapolis IN
Neil Roberson, Piney Flats TN
Rudolph Rouhana, Indianapolis IN
Tom Sharko, Milford NJ
Steve St. Clair, South Bend IN
Jack Schulz, Detroit MI
Julie Sandler, Indianapolis IN
Cynthia Springer, Indianapolis IN
Chase Wilson, Indianapolis IN
Nelson Genshaft, Columbus OH
Fred Pfenninger, Indianapolis IN