No. 25-788

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.,
Respondents.

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

BRIEF IN OPPOSITION FOR RESPONDENTS

KRISTIN K. MAYES
Attorney General of Arizona

DANIEL C. BARR
Chief Deputy Attorney General

JOSHUA D. BENDOR
Solicitor General
(Counsel of Record)

Counsel for State Respondents

ALEXANDER W. SAMUELS
Principal Deputy Solicitor General

NATHAN T. ARROWSMITH
LUCI D. DAVIS

OFFICE OF THE ARIZONA ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-3333
Joshua.Bendor@azag.gov

Additional counsel on inside cover

KEVIN E. O'MALLEY
HANNAH H. PORTER

2575 E. Camelback Rd. Suite 1100
Phoenix, AZ 85016-9225
(602) 530-8000
Kevin.Omalley@gknet.com

Counsel for Respondent Wine & Spirits Wholesalers Association of Arizona

QUESTION PRESENTED

The petition frames the issue as:

> 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.

CORPORATE DISCLOSURE STATEMENT

Respondent Wine and Spirits Wholesalers Association of Arizona states that it is a 501(c)(6) tax-exempt nonprofit organization; it is not a publicly held company and is not a parent, subsidiary, or other affiliate of a publicly held corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution, Statutes, and Regulations

Miscellaneous

INTRODUCTION

This Court has repeatedly declined to take up the issue that petitioners raise. Indeed, the petition marks the fourth time in the last five years that litigants have sought review of decisions upholding state licensing laws that require wine retailers to have a brick-and-mortar premises in the state of sale. *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 567 (2023); *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171 (8th Cir. 2021), *cert. denied*, 142 S. Ct. 335 (2021); *Lebamoff Enters. v. Whitmer*, 956 F.3d 863 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 1049 (2021).

The Court should again deny review here.

Like prior cases, this suit directly challenges, and otherwise necessarily implicates, integral parts of a state's three-tiered system for regulating wine. "Three-tiered system" refers to a tri-part funnel through which wine is sold within a state. At the top of the funnel are (1) suppliers (usually the producer wineries) who sell to (2) wholesalers, who sell to (3) retailers, who sell to consumers in the state. Participants in each tier can only purchase from and sell to the sources and recipients authorized by statute. In general, that means wholesalers must buy their wine from licensed suppliers, and retailers must buy from licensed wholesalers. To keep the funnel intact—so that the state can ensure regulatory compliance at and between each tier—wholesalers and retailers must have brick-and-mortar premises in the state of sale. Many states use this basic three-tiered model to regulate wine and other alcohol.

Here, petitioners want to buy wines not sold in Arizona because the suppliers of those wines have

chosen not to sell to Arizona-licensed wholesalers. So, petitioners seek to buy those wines from unlicensed retailers outside Arizona and have the wine imported into the state, directly to their homes, bypassing Arizona's regulatory framework. In short, petitioners want to split open Arizona's three-tiered system so they can buy wines not sold within that system. In their own telling, they seek "an exception to the three-tiered system" for unlicensed retailers to import wine into the state. SER-017.[1] Whether the Constitution requires that rule-swallowing "exception" is not an open question requiring review.

The Court has long approved of the three-tiered regulatory approach as an "unquestionably legitimate" exercise of states' unique power under § 2 of the Twenty-first Amendment. *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quoting *North Dakota v. United States*, 495 U.S. 423, 432 (1990) (Stevens, J., plurality)). That includes the power to "require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler." *Id.* (quoting *North Dakota*, 495 U.S. at 447 (Scalia, J., concurring)). Likewise, because alcohol retail stores "are physically located within the State," states can "monitor the stores' operations through on-site inspections, audits, and the like," including "demand[ing] that [retailers] demonstrate an adequate connection with and knowledge of the local community" to whom they are selling a dangerous product. *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 541–43 (2019). Those prior cases share the same premise:

[1] "ER" and "SER" refer to the Excerpts of Record (Dkt. 17) and Supplemental Excerpts of Record (Dkt. 24) on the Ninth Circuit's docket (No. 23-16148).

states can require retailers to be present in each state of sale and to sell only product purchased from licensed sources, namely, licensed wholesalers in each state. These regulatory cornerstones of the three-tiered system are heartland exercises of § 2 power over intra-state "transportation" and interstate "importation … of intoxicating liquors."

Precedent thus resolves this case as a matter of law: Arizona can enforce an even-handed physical-presence requirement for wine retailers as a necessary part of its three-tiered system and as an inextricable link to the wholesaler tier. The record evidence confirms the same: the physical-presence requirement serves Arizona's concrete interests in public health and safety and orderly regulation.

Affirming the district court along those lines, the Ninth Circuit reached the same result as most circuits. The petition cites three circuit decisions as evidence of a split, but two of those cases have since been voluntarily dismissed. And in the third, the district court on remand found the challenged laws constitutional based on similar evidence to what the district court relied on here. Despite some tension in the circuits' reasoning, no decision has struck down retailer-presence laws or changed the status quo under this Court's precedent. And given petitioners' concessions and failures of proof below, this case is a poor vehicle to revisit that dispositive precedent.

The petition should be denied.

STATEMENT

A. Constitutional Principles

This case involves the relationship between the Commerce Clause of the U.S. Constitution, art. I, § 8, cl. 3, and the Twenty-first Amendment.

1. The Commerce Clause prohibits state laws "that discriminate[] against or unduly burden[] interstate commerce," *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 287 (1997), and thus protects against regulations "designed to benefit in-state economic interests by burdening out-of-state competitors," *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023) (citation omitted).

2. The Twenty-first Amendment, § 2, prohibits "[t]he transportation or importation [of alcohol] into any State … for delivery or use therein" in violation of state law. By recognizing state power to regulate the *importation* of alcohol, the Constitution "gives the States regulatory authority that they would not otherwise enjoy" and lack over any other commodity. *Tenn. Wine*, 588 U.S. at 539. Indeed, states have "virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." *Granholm*, 544 U.S. at 488 (citation omitted).

Thus, as a constitutional matter, there is no national market for alcohol. Each state gets to define the scope and terms of the market within its borders, based on what "its citizens believe are appropriate." *Tenn. Wine*, 588 U.S. at 538.

3. To be sure, the "nondiscrimination principle" still applies to alcohol regulations. *Id.* at 533. States cannot enact "protectionist measures with no

demonstrable connection" to legitimate interests. *Id.* at 538. But unlike the Commerce Clause analysis in any other context, state alcohol regulations are struck down only "[w]here the predominant effect … is protectionism, not the protection of public health or safety" or to serve "some other legitimate nonprotectionist ground." *Id.* at 539–40.

4. That "different inquiry" is necessary because of the Twenty-first Amendment's text and history. *Id.* Because "the text grants the States authority over the 'importation' of alcohol into their borders," the mere fact that a state law regulates interstate commerce cannot make it inherently suspect. *Lebamoff*, 956 F.3d at 873 (Sutton, J.). After all, "[e]very statute limiting importation leaves intrastate commerce unaffected." *Id.* (citation omitted). If that were enough to constitute "discrimination that lies outside state power, then § 2 would be a dead letter." *Id.*

To the contrary, § 2 was modeled after a pre-prohibition federal act whose purpose was to "'fix[] [a] hole' in state regulatory authority that permitted out-of-state producers to evade state regulations by delivering directly to state residents." *Id.* (quoting *Tenn. Wine*, 588 U.S. at 526–27). In other words, the point of that act, and later § 2, was to give states the same power over alcohol imported from out-of-state sources as they had over domestic alcohol produced by in-state sources. *Tenn. Wine*, 588 U.S. at 526–27.

B. Arizona Law

Like dozens of other states, Arizona has a basic three-tiered system for regulating wine sales. In general, that means wine sold to consumers in Arizona must be funneled through three traceable, Arizona-licensed tiers: suppliers sell to wholesalers,

wholesalers sell to retailers, and retailers sell to the public. *See generally* Ariz. Rev. Stat. § 4-244(1)-(2).

1. Suppliers are the top tier of the funnel into Arizona. A supplier must be the primary source of supply. *Id.* § 4-243.01(A)(1). Nearly always, suppliers are the wineries that produced the wine. *See id.* § 4-243.01(E)(1). Suppliers must get an Arizona license but need not be physically present in the state.

2. Wholesalers are the middle of the funnel. Wholesalers must purchase wine from Arizona-licensed suppliers. *Id.* § 4-243.01(A)(2). Wholesalers must have a facility in Arizona where suppliers invoice and deliver the wine. *Id.* § 4-243.01(B). Then, the wine must "be unloaded and remain at the wholesaler's premises for at least twenty-four hours" before being distributed to retailer premises throughout the state. *Id.*

The wholesaler tier is critical to the three-tiered system. For instance, wholesalers are responsible for inspecting product for integrity and authenticity before it is widely available in the retail marketplace. SER-088; ER-254. They play an important role in helping to quickly identify and pull back recalled product. ER-255–256; SER-088–089. And, wholesalers have proven to be invaluable partners in investigations, with Arizona "routinely inspect[ing]" wholesaler records to investigate retailer compliance with liquor laws. ER-247–248. Additionally, wholesalers are responsible for collecting and paying most excise taxes, which they calculate during the 24-hour period. Ariz. Rev. Stat. § 42-3052. Wholesalers then file returns reporting the amount of liquor sold to retailers and taxes paid. *Id.* § 42-3354(D); ER-253–254. In sum, the wholesaler tier

centralizes and facilitates several health-and-safety, enforcement, and tax-related functions.

3. Retailers (e.g., grocery and liquor stores) are the last tier. In general, retailers can only sell wine that was purchased from licensed wholesalers in Arizona. Ariz. Rev. Stat. §§ 4-244(7), 4-243.01(A)(3).

To obtain a retail license to sell wine in Arizona, a corporation or limited liability company must have a physical location (a storefront or facility) in Arizona where it can receive product from licensed wholesalers. *Id.* §§ 4-201(A)-(D) (G), (I), 4-202(C). The company must be qualified to do business in Arizona and must hold the retail license through a resident agent. *Id.* § 4-202(A); Ariz. Admin. Code R19-1-201(A)(3), (6).

To be clear, the physical-presence requirement is not a residency requirement. The retail company does not itself need to become an Arizona resident, be owned by a resident, or be present in the state for any minimum period before seeking licensure.[2] It must simply have a physical location in the state and purchase wine from a licensed wholesaler in the state. That requirement is identical for in-state and out-of-state companies. Meaning, regardless of whether a

[2] If a natural person or general partnership is the licensee (a rare, if not almost unheard-of, business decision as a practical matter), it must be a resident. Ariz. Rev. Stat. § 4-202(A). For limited partnerships, only an individual general partner must be a resident. *Id.*; Ariz. Admin. Code R19-1-201(A)(3), (6). Because petitioners never challenged the residency requirement for individuals and partnerships, this brief's use of "company" and "retailer" refers only to corporations and LLCs and the requirements for those business forms.

company is organized under Arizona law or not, the requirements for retail licensure are identical.

4. Likewise, the privileges of retail licensure are identical for Arizona and non-Arizona companies. Once a company has a retail license, it can sell and deliver wine in two ways. The retailer can do traditional in-person transactions, selling the wine over the counter to consumers in a store. Additionally, the retailer can take phone or internet orders and deliver the wine to the consumer's home using a delivery service or common carrier. Ariz. Rev. Stat. § 4-203(J). This latter option is merely an alternative way for already-licensed retailers in Arizona to sell and deliver wine that has already flowed through Arizona's three-tiered system.

5. The petition (e.g., at 4, 8–9) misunderstands Arizona law in this regard. Citing § 4-203(J), the petition states (at 9) that the "privilege" to "deliver directly to Arizona consumers" is granted to "only a subset of retailers." No "subset" exists. Every Arizona-licensed retailer that can lawfully sell wine in Arizona has the option to sell and deliver using the alternatives allowed under § 4-203(J). True, "retailers … cannot lawfully ship their wares to Arizona consumers without establishing a physical presence in the State." Pet. at 9. But that is true for all retailers and has nothing to do with § 4-203(J)—it is just an inherent consequence of Arizona's three-tiered system. To illustrate, if an LLC formed under Arizona law (an "in-state" company) refused to establish an in-state brick-and-mortar premises, then Arizona would deny it a retail license, just like with a non-Arizona company. And if that Arizona LLC established a storefront and got an Arizona retail license, but then

tried to sell wine not purchased from an Arizona-licensed source, such transactions would be just as illegal as the cross-border importation that petitioners seek. Ariz. Rev. Stat. § 4-250.01.

So, to clarify, § 4-203(J) authorizes *intra*-state home delivery by licensed retailers in Arizona. Whether those retailers sell wine over the counter or deliver it to a consumer's home, it is the exact same wine that has lawfully flowed through Arizona's system. Section 4-203(J) "is simply another way for [licensed retailers] to sell wine to [Arizona] consumers." *B-21 Wines*, 36 F.4th at 228. It has nothing to do with what petitioners want: direct-to-consumer *importation* of a different category of wine—that has not been subject to Arizona's laws—from unlicensed retailers outside Arizona's borders.

6. Two discrete exceptions to the three-tiered system are available for wineries. First, small wineries (annual production of 20,000 gallons or less) can obtain a "farm winery license" that allows them to sell wine directly to Arizona consumers and retailers without going through a wholesaler. Ariz. Rev. Stat. § 4-205.04(C)(7), (9). Because these shipments come from a limited-production winery, the quantity they can ship is not capped. Second, wineries can apply for a one-year renewable and revocable license to ship twelve nine-liter cases directly to consumers for personal use. *Id.* § 4-203.04. These supplier-tier exceptions do not affect the analysis here. *See infra* II.C.2; *see also* App.21a, App.53a–54a.

C. Relevant Precedent

This Court has repeatedly approved of the basic three-tiered system just described.

1. *North Dakota v. United States*, 495 U.S. 423 (1990), is an instructive starting point, even though it did not involve a Commerce Clause claim.

North Dakota had a three-tiered system "to promote temperance and ensure orderly market conditions." *Id.* at 426, 428, 439 (Stevens, J., plurality). The federal government sold alcohol to military personnel on two bases in the state, but unlike other retailers, the government could purchase from wholesalers outside of North Dakota if those wholesalers complied with two regulations. *Id.* at 427, 439. First, to "protect the integrity of [its three-tiered] system," North Dakota "required out-of-state distillers who s[old] liquor directly to a federal enclave" to label "each individual item, indicating that the liquor is for domestic consumption only within the federal enclave." *Id.* at 426, 428. Second, "to monitor the importation of liquor," North Dakota "required all persons bringing liquor into the State to file monthly reports" of the imported volume. *Id.* at 428–29.

Federal law required the military to purchase alcohol at the most competitive price possible. *Id.* at 427. But because of the two labeling and reporting laws, several out-of-state suppliers refused to ship liquor to the federal bases or raised their prices. *Id.* at 429. Accordingly, the United States asserted Supremacy Clause and pre-emption claims against North Dakota, challenging "the application of the State's regulations to liquor destined for federal enclaves." *Id.* at 430. Ultimately, a plurality of the Court held that the laws fell "within the core of the State's power under the Twenty-first Amendment" and rejected the government's claims. *Id.* at 432, 434–44 (Stevens, J., plurality); *id.* at 444 (Scalia, J.,

concurring). Partially concurring and dissenting, four justices agreed the reporting requirement was constitutional but disagreed as to the labeling requirement. *Id.* at 448, 452, 471 (Brennan, J., concurring in part and dissenting in part).

Relevant here, the four-justice plurality found North Dakota's three-tiered system was "unquestionably legitimate" and the challenged laws "serv[d] valid state interests." *Id.* at 432–33. The laws were "necessary components" of the three-tiered system because there was a "substantial and real" "risk of diversion [of alcohol from federal enclaves] into the retail market" in the rest of the state. *Id.* Justice Scalia concurred, stating that § 2 "empowers North Dakota to require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler." *Id.* at 444, 447.

2. Next came *Granholm v. Heald*, 544 U.S. 460 (2005), which involved Commerce Clause challenges to discriminatory exceptions in Michigan's and New York's three-tiered systems that, by design, benefited in-state wineries and burdened out-of-state wineries. *Id.* at 474.

Michigan "allow[ed] in-state wineries to ship directly to consumers" if licensed, but "[o]ut-of-state wineries, whether licensed or not, face[d] a complete ban on direct shipment" to consumers. *Id.* at 470, 473–74. Similarly, under New York law, wineries that used New York grapes were eligible for a license to ship directly to in-state consumers and could also deliver other wineries' product if made from seventy-five percent New York grapes. *Id.* at 470. But out-of-state wineries had to establish "a branch factory, office or storeroom" in New York to direct ship, and

even so, they were still ineligible for the same license as in-state wineries; they could only get a more cumbersome license that required additional steps to do the same thing. *Id.* at 470, 475 (citation omitted).

The laws in *Granholm* were "straightforward attempts to discriminate in favor of local producers" because they did not "treat liquor produced out of state the same as its domestic equivalent." *Id.* at 489. They were "just an indirect way of subjecting out-of-state wineries, but not local ones, to the three-tier system." *Id.* at 474. Such discriminatory exceptions are impermissible because "[t]he aim of the Twenty-first Amendment was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use." *Id.* at 484–85. But states cannot use "nonuniform laws" to "discriminate against out-of-state goods." *Id.*

The Court also rejected concerns that its holding "call[ed] into question the constitutionality of the three-tier system." *Id.* at 488. *Granholm* reaffirmed that "[t]he Twenty-first Amendment grants the States virtually complete control over … how to structure the liquor distribution system." *Id.* (citation omitted). And the Court reiterated that states can "funnel sales through the three-tier system," noting that it had "previously recognized that the three-tier system itself is 'unquestionably legitimate.'" *Id.* at 489 (quoting *North Dakota*, 495 U.S. at 432 (Stevens, J., plurality)). The Court also adopted Justice Scalia's specific assertion that states can "require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler." *Id.*

3. Most recently, this Court decided *Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S.

504 (2019), which involved Tennessee's onerous durational-residency requirements, including that liquor retailers become Tennessee residents for two years before getting a license. *Id.* at 509, 539.

The Court first clarified the test for Commerce Clause challenges to alcohol regulations. The threshold question is whether the law discriminates against out-of-state companies or products. *Id.* at 539. If so, the second question is "whether the challenged requirement can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground." *Id.* The bottom-line inquiry is whether "the predominant effect of a law is protectionism [rather than] the protection of public health or safety" or furtherance of another legitimate interest. *Id.* at 539–40.

Applying that analysis, the Court found Tennessee's durational-residency requirement "discriminate[d] on its face against nonresidents." *Id.* at 539. The Court then considered whether the law was justified "on public health and safety grounds" but found the proffered explanations "implausible" because Tennessee could achieve the same goals with a non-discriminatory physical-presence requirement. *Id.* at 540–41. As the Court explained, because the retail "stores at issue [were] physically located within the State," Tennessee could "monitor [in-state retail] stores' operations through on-site inspections, audits, and the like" without requiring residency. *Id.* Moreover, "without discriminating against nonresidents," the "State could also mandate more extensive training for managers and employees and could even demand that they demonstrate an

adequate connection with and knowledge of the local community." *Id.* at 542–43.

The Court also confirmed that its holding did not threaten "the basic three-tiered model" because Tennessee's durational-residency law was "not an essential feature of a three-tiered scheme." *Id.* at 535. Citing a multistate amicus brief discussing various state laws, the Court distinguished between durational-residency requirements and mere physical-presence requirements, noting that many states no longer require residency for retailers at all but only brick-and-mortar presence. *Id.* As that multistate amicus brief explained, physical-presence laws simply require the retailer business to establish an in-state location (a store) and "ties the license to the premises where the alcohol is sold." Br. for Illinois et al., at 24–25, 27, 2018 WL 6168781 (Nov. 20, 2018). That is much different than a residency requirement, where the retailer company or its owners must literally become residents in the state of sale. *See id.*

D. Procedural History

1. Petitioners are wine collectors in Arizona. App.36a. Petitioners concede that two non-Arizona (i.e., out-of-state) companies "Total Wine and BevMo dominate the local Arizona retail market" and "carry a vast number of wines." ER-054–056. But those retail giants "carry very few of the wines that [petitioners are] typically interested in purchasing." *Id.* To access such products, petitioners want to buy wine online from retailers outside of Arizona and operating outside of Arizona's three-tiered system, and so they brought this case. App.4a.

2. The parties cross-moved for summary judgment. Respondents' motions included affidavits from an

Arizona Department of Liquor Licenses and Control investigator (ER-241) and the president of Wine and Spirits Wholesalers Association of Arizona (SER-086).

At oral argument on the motions, petitioners' counsel had several colloquies with the district court in which petitioners acknowledged that Arizona law treats in-state and out-of-state companies identically in requiring physical presence, and confirmed their theory is that "the physical presence requirement is so onerous that it amounts to an unconstitutional imposition on commerce." SER-037–038. Petitioners also confirmed that what they seek is a so-called "exception" from the three-tiered system for unlicensed retailers outside of Arizona to be able to import wine "into the state." SER-017.

The district court granted summary judgment for respondents. At the outset, the court struggled with petitioners' standing because the statutes they challenged and relief they sought had repeatedly shifted between their complaint, summary judgment papers, and at argument. App.36a–43a. But "even assuming [petitioners had] standing," their claims failed on the merits. App.43a.

At step one of the *Tennessee Wine* analysis, the district court found that petitioners failed to show discrimination because "Arizona's physical premises requirement applies evenhandedly to in-state and out-of-state retailers" and "there is no discriminatory advantage or exception offered to Arizona corporations." App.48a, App.50a. Just like a non-Arizona company, the court explained, "if an in-state company does not have physical retail premises in the state, it may not obtain a license to sell or ship wine to consumers in the state." App.48a–49a.

Alternatively, even assuming discrimination, the court held that Arizona satisfied its step-two burden under *Tennessee Wine*. App.50a. The court agreed with various cases finding that "requiring physical premises in state is a fundamental aspect of the three-tier system and serves the state's legitimate interests in maintaining that system" as a matter of law. App.50a–51a. But the court also discussed Arizona's concrete reasons for requiring physical presence and maintaining its own three-tiered system, including regulating the quality and quantity of alcohol sold, protecting minors, and revenue. App.50a–52a. The court summarized some of the evidence that respondents had submitted in support of the physical-presence requirement, including that the state "routinely inspects the records of Arizona licensed wholesalers to determine if a retailer is in compliance with liquor laws and is purchasing from an appropriate source." App.50a–51a; *see* ER-241–256.

In fact, petitioners conceded "that unlicensed and unregulated alcohol sales could pose a threat to public health and safety." App.51a. Petitioners simply argued that Arizona is required to address those legitimate concerns with a different policy approach because other states have chosen to create licensing exceptions for direct importation by retailers. App.51a–52a. The court disagreed that Arizona had to refute all possible policy alternatives as part of its burden. App.52a. But to the extent step two required that showing, the court found Arizona had "demonstrate[d] that no nondiscriminatory alternative is available to maintain its ability to inspect wholesalers, inspect retail premises and books, and ensure alcohol is funneled through a three-tier system." App.52a.

These statements, and others in the district court's order, referred to respondents' evidence regarding the reasons for the physical-presence requirement and how it serves Arizona's many interests in the three-tiered system. *See* ER-241–256; SER-086–090.

3. The Ninth Circuit affirmed over a partial dissent. In its amended opinion, the panel majority found it unnecessary to decide the step-one discrimination question because "even if Arizona's physical-premise requirement is discriminatory, it can nonetheless be upheld at step two." App.15a.

As a matter of law, the Ninth Circuit agreed that "the physical-premise requirement is … an essential piece of the 'unquestionably legitimate' three-tier system." App.18a. Recognizing the nexus between retail physical presence and the wholesaler-purchase requirement, the court noted that "allowing direct shipment from retailers without in-state premises functionally eliminates Arizona's control over the wholesaler tier." App.20a. Because striking down the physical-presence requirement would "cut so many holes in the state's 'unquestionably legitimate' three-tier system that the system would functionally cease to exist," the majority found that precedent required it to uphold Arizona's law. App.20a.

Next, the majority "acknowledge[d] that the physical-presence requirement does bear on a state's ability to support public health and safety." App.20a. The court then cited examples from respondents' evidence, including that "Arizona conducted thousands of on-site inspections of licensees' establishments between 2016 and 2021," had been "running covert underage buyer programs," and "inspects the records of wholesalers to determine

whether a retailer is complying with Arizona liquor laws." App.20a–21a; *see* ER-245.

Noting that *Tennessee Wine* itself "acknowledged the importance of in-state physical premises for such reasons," the court concluded that "[w]ithout a physical-premise requirement, the three-tier scheme falls apart, and so do some of the benefits that come with it." App.21a.

REASONS TO DENY THE PETITION

The petition (I) incorrectly frames the dispute; (II) raises issues that precedent already resolves; (III) presents a poor vehicle; and (IV) identifies no circuit split requiring review.

I. The petition incorrectly frames the dispute.

The petition says (e.g., at 15, 24, 27) that the Ninth Circuit's "essential feature" holding displaced the evidentiary showing required for discriminatory laws under step two of *Tennessee Wine*. And, the petition says (at 33), that this Court can review that asserted issue by skipping step one and taking as true that Arizona law is discriminatory. In three primary ways, that obscures the core dispute here and, in turn, why review is unnecessary.

A. To start, the Ninth Circuit did not flout the step-two analysis or create a novel carve-out. The panel majority simply recognized that it was not writing on a blank slate and that this Court's decisions required upholding Arizona's retailer-physical-presence requirement as a matter of law. *E.g.*, App.15a. That is why the majority assumed arguendo that petitioners had met their burden at step one (discrimination). Because, even if they had, precedent directed the same result.

Put differently, the majority reasoned that it need not decide whether in *its* view the retailer-physical-presence requirement is discriminatory because that requirement is part and parcel of the basic system that *this* Court has already approved. App.12a, App.15a–20a. The majority thus adopted the logic of most circuits: If the three-tiered system itself is constitutional, then its essential parts—which plainly include retailer in-state presence—are necessarily constitutional too.

B. Rather than a straightforward application of precedent, the petition seems to understand the decision below as creating a get-out-of-jail-free card for discriminatory alcohol regulations. That's not right, nor is it respondents' position. Respondents agree (Pet. at 26) that laws found to be discriminatory under step one must satisfy step two of *Tennessee Wine*. That rule has never been contested—particularly because Arizona met its evidentiary burden. Indeed, the petition is flat wrong (at 10) that "[t]he [district] 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." Both courts below reviewed respondents' evidence and found it supported Arizona's legitimate interests at step two. App.50a–52a; App.20a–21a.

Instead, the central legal dispute is whether, under this Court's precedents, an even-handed physical-presence requirement—which is inextricably linked to the wholesaler-purchase requirement and otherwise essential to the three-tiered system—is susceptible to challenge as discriminatory in the first place. If petitioners are right, then precedent is doing

no work in this area: Every single state that has a basic three-tiered system can be dragged into court and forced to spend limited public resources to defend anew the essential parts of a constitutional whole. That proposition is as illogical as it is inefficient. The alternative is that precedent means what it says and forecloses challenges to the few essential features that are necessary to the three-tiered system's operation.

C. For these reasons, the question presented improperly assumes the premise that Arizona law is discriminatory. That is petitioners' burden, which they never met and cannot meet under this Court's precedents. And if challengers to an alcohol regulation fail to show cognizable discrimination at step one, then the Commerce Clause is not implicated and the claim fails—no step two. States are not required to defend their non-discriminatory policy choices, particularly in the context of their § 2 power, and particularly when those choices have already been deemed constitutional.

II. Precedent already resolves this dispute.

Petitioners question whether a state can require wine retailers to be present in the state of sale and, in consequence, prohibit the importation of wine from unlicensed retailers outside the state. That attack necessarily implicates the wholesaler-purchase requirement and the three-tiered system itself. The Court has already resolved these issues.

A. The Court has approved of physical-presence requirements for retailers.

Tennessee Wine necessarily approved of a state's power to require retailers to have physical premises in the state of sale. As the Court explained there,

because "the [retail] stores at issue [were] physically located within the State," Tennessee could "monitor the stores' operations through on-site inspections, audits, and the like" without requiring residency. 588 U.S. at 541. In other words, Tennessee's durational-residency requirement was not an essential feature "needed to enable the State to maintain oversight over liquor store operators" precisely because physical presence was a non-discriminatory alternative to achieve the same interests. *Id.* at 535, 541.

The Court also explained that, "without discriminating against nonresidents," states can "limit both the number of retail licenses and the amount of alcohol that may be sold to an individual," "mandate more extensive training for managers and employees" at retail stores, and "even demand that [retailers] demonstrate an adequate connection with and knowledge of the local community," as well as more generally "monitor the practices of retailers and … take action against those who violate the law." *Id.* at 542–43.

The Court's approval of such laws makes no sense if it is unconstitutional for a state to require retailers to have an in-state premises in the first place. *See* App.21a. The alternatives the Court identified are logically impossible unless a retailer has an in-state location, with operations the state can monitor, a premises the state can inspect, and employees whom the state can regulate.

Indeed, the Court was quite clear about the difference between durational-residency and mere presence requirements when identifying the latter as a non-discriminatory alternative to the former. The Court cited a multistate amicus brief that addressed

this distinction. *Tenn. Wine*, 588 U.S. at 535. And multiple circuits have observed this very point from *Tennessee Wine* in upholding physical-presence requirements. *E.g.*, *B-21 Wines*, 36 F.4th at 228; *Sarasota Wine*, 987 F.3d at 1175, 1183.

B. The Court has approved of wholesaler-purchase requirements.

Petitioners say (at 4) that they challenge only "Arizona's physical-presence requirement" for retailers. But that hides a mountain in a molehill and ignores the inherent consequences of their theory for the wholesaler tier.

1. The constitutionality of the wholesaler-purchase requirement cannot reasonably be disputed. Echoing what at least five justices agreed on in *North Dakota*, *Granholm* confirmed that "States may … funnel sales through the three-tier system." 544 U.S. at 489. Even more clearly, *Granholm* specifically adopted Justice Scalia's assertion that states can "require that all liquor sold for use in [a] State be purchased from a licensed in-state wholesaler." *Id.*

2. Those principles foreclose petitioners' claim because there is no way for them to get court-mandated access to "a broader selection of wines available in other States" (Pet. at 4) unless Arizona's wholesaler-purchase requirement is unconstitutional too. The wine petitioners seek is necessarily not coming from an Arizona-licensed supplier, to an Arizona-licensed wholesaler, and then to an Arizona-licensed retailer. The whole point of their case is to buy wines that—because of the independent choices of market participants—are not sold within Arizona's three-tiered system. *E.g.*, Pet. at 4, 9; *see also* Nat'l

Ass'n of Wine Retailers Br. at 9; Manhattan Inst. Br. at 4.

Petitioners have never been able to explain how striking down the physical-premises requirement for retailers would not also obliterate the wholesaler-purchase requirement and rest of Arizona's three-tiered system. App.19a n.5 ("As other circuits have recognized—and as Plaintiffs do not meaningfully refute—there are myriad practical and legal issues that would crop up if Arizona tried to regulate out-of-state wholesalers or if out-of-state retailers had to comply with Arizona's wholesaler purchase requirement."). Nor can they. The practical effect of what they seek is clear: "Opening up the State to direct deliveries from out-of-state retailers necessarily means opening it up to alcohol that passes through out-of-state wholesalers or for that matter no wholesaler at all. That effectively eliminates the role of [a state's] wholesalers." *Lebamoff*, 956 F.3d at 872.

3. Thus, petitioners (like the dissent below) are incorrect when they say (at 30) that the physical-presence requirement can be eliminated but Arizona can still "requir[e] out-of-state retailers to … comply with the same conditions as in-state retailers." That is a practical and legal impossibility because retailer presence in the state of sale is part of an integrated whole. Retailers selling in Arizona must get their wine from either "a wholesaler licensed in this state," Ariz. Rev. Stat. § 4-244(7), or a small Arizona-licensed farm winery, *id.* § 4-243.01(A)(3). So, the only way for any wine retailer to comply with Arizona law is to purchase product from an Arizona-licensed source (nearly always, Arizona-licensed wholesalers) and to have an in-state premises where it receives that

product and can be subject to regulation and enforcement. A retailer cannot comply with those laws when it is located in another state and—as is the whole point of petitioners' suit—selling wine not purchased from an Arizona-licensed wholesaler or supplier.

In sum, to buy the wines they want from retailers in other states, petitioners need this Court to say that the Constitution prohibits Arizona from applying its generally applicable laws to wine imported into its jurisdiction—i.e., the majority of wine sold in Arizona. That rule eliminates the role and all benefits from the wholesaler tier. And it significantly undermines Arizona's power to identify and regulate participants in the supplier tier. Nothing about petitioners' requested rule presents an open question under precedent. *Jean-Paul Weg LLC v. New Jersey*, 133 F.4th 227, 239 (3d. Cir. 2025) ("Perhaps the most foundational element of a three-tier system is a state's ability to prohibit the sale of alcohol that has not passed through its three-tier system.").

C. The petition's novel definition of the three-tiered system ignores precedent.

Resisting this conclusion, petitioners and amici have three general responses. None has merit.

1. Petitioners say (at 27–29) that this Court's repeated approvals of the three-tiered system refer only to the separation of the three tiers but little more. According to petitioners, states can insist on separation between tiers generally, but those tiers transcend any individual state and spread out horizontally across the nation; the tiers cannot be contained and differently regulated within each state.

Petitioners' revisionist characterization fails to account for the Court's approvals of state-specific wholesaler-purchase requirements and state power over retailers and their premises. *Tenn. Wine*, 588 U.S. at 535, 541–43; *Granholm*, 544 U.S. at 447, 489.

Additionally, petitioners' theory conflates one of the motivations behind the three-tiered system (stopping the tied-house problem) with how the system has always been understood. Every time this Court has approved of the three-tiered system, it has been in a case where the state had *its own* tri-part funnel through which alcohol sales flowed along a traceable chain of suppliers, wholesalers in *that* state, and retailers in *that* state. *Granholm*, 544 U.S. at 466–67, 468–69, 489; *North Dakota*, 495 U.S. at 428, 432 (Stevens, J., plurality); *id.* at 447 (Scalia, J., concurring); *Tenn. Wine*, 588 U.S. at 510–11.

Other references to three-tiered systems reveal the same basic structure and understanding. *Healy v. Beer Inst.*, 491 U.S. 324, 326 n.2 (1989); *Heublein, Inc. v. S.C. Tax Comm'n*, 409 U.S. 275, 277–78, 282–83 (1972); *cf. Tenn. Wine*, 588 U.S. at 549 (Gorsuch, J., dissenting) (noting that "at least 18 States adopted residency requirements for retailers within the first 15 years after [Twenty-first Amendment's] ratification").

Another fundamental problem with petitioners' theory is that it eliminates each state's § 2 power to set its own terms for alcohol distribution within its own borders. Instead, petitioners propose shifting to one national market for alcohol, where a wholesaler is a wholesaler is a wholesaler, and a retailer in one state is just the same as a retailer in another. SER-101 ("Arizona could easily require that the wine

shipped from out-of-state retailers must come from wholesalers through a comparable three-tier system of the shipping state."). That would mean Arizona cannot insist that alcohol sold to its residents flow from Arizona-licensed suppliers to Arizona-licensed wholesalers and Arizona-licensed retailers subject to Arizona-specific policy determinations. And Arizona would be powerless to stop thousands of retailers around the country from importing wine directly into the state, with that wine subject to different health-and-safety and price laws than what applies to Arizona-licensed wholesalers and retailers. *Compare e.g.*, Ariz. Rev. Stat. § 4-243(A)(7) (prohibiting wholesalers from extending credit to retailers), *with e.g.*, Fla. Stat. § 561.42(2) (allowing such credits).

Petitioners' proposed shift would depart from decades of precedent, neuter § 2's text, and resurrect the very problems that § 2 addressed. *See Tenn. Wine*, 588 U.S. at 525–28; *Granholm*, 544 U.S. at 481, 484.

2. For amici's part, they suggest that because of the discrete direct-shipment licenses available to wineries, Arizona has abandoned its three-tiered system and cannot object to unlicensed retailer importation. Not so. A limited exception at the supplier tier does not abandon the three-tiered system. The circuits have repeatedly rejected this argument. App.21a; *B-21 Wines*, 36 F.4th at 226; *Jean-Paul Weg*, 133 F.4th at 239.

In all events, amici are wrong to compare what petitioners want—unlicensed retailer importation from outside the state's borders—with the limited direct-shipment exceptions available for Arizona-licensed wineries. As the district court acknowledged, wineries and retailers are differently situated in

meaningful ways that allow the state to shift or accommodate risks in one scenario but not the other. App.53a–54a.

For instance, when wineries sell directly to consumers under a direct-shipment license, they are selling their own product under their label, creating self-evident business incentives to ensure product integrity and proper transportation. And there is no real chance of a consumer receiving a counterfeit product directly from the winery. Moreover, the federal government regulates wineries and can revoke their federal permits for violating state law. 27 U.S.C. § 204; *Granholm*, 544 U.S. at 492. Thus, in addition to more oversight, wineries are doubly incentivized to comply with age verification requirements and other state laws, meaning state licensing power over wineries has real teeth.

Importantly too, because wineries are a known and licensed source and are familiar with their own production, they are a state's first and last stop to investigate any potential issues (e.g., tainted product, glass shards). When the shipping winery is itself the source of supply, a state's ability to trace faulty product back from a consumer to the original source remains fully intact, even without the wholesaler tier.

None of that holds true with direct-to-consumer importation by retailers. Retailers have no specific production knowledge about, or reputational investment in, the wines they sell from various sources. And unlike winery direct-shipment, direct-importation by thousands of retailers nationwide is not coming from the original source of supply or passing through any identifiable, Arizona-licensed participants. So, if an issue arose with product from

an unlicensed retailer outside Arizona, the state would have no readily available way to trace the product's origin. Nor is there federal enforcement to address these concerns and other extraterritoriality issues. *See* ATF Ruling 2000-1, *Direct Shipment Sales of Alcohol Beverages*, https://www.ttb.gov/laws-regulations-and-public-guidance/rulings/2000-1 (updated May 2024) (explaining that ATF's "authority does not extend to situations where an out-of-State retailer is making the shipment into the State of the consumer").

Thus, the apples-to-oranges comparison between licensed direct-shipment by wineries and unlicensed direct-to-consumer importation by retailers outside Arizona is a practical and constitutional mismatch. *Gen. Motors*, 519 U.S. at 287, 298–99 (the "threshold question" under the Commerce Clause is "whether the [in-state and out-of-state] companies are indeed similarly situated for constitutional purposes").

3. Nonetheless, amici assert that all states are constitutionally required to create a new license for direct-retailer importation, claiming that a license alone is a panacea for such concerns. But a retail license is a paper tiger when a state cannot legally or practically enforce its laws against a retailer in another state.

True, some states have found that any benefits of such a license outweigh the costs. But the lowest-common-denominator state's risk tolerance, resource levels, and community preferences do not set the constitutional standard for the nation. Arizona, California, and Utah may each weigh sensitive policy tradeoffs regarding alcohol quite differently. "[T]he Twenty-first Amendment leaves these considerations

to the people of [each state], not to federal judges." *Lebamoff*, 956 F.3d at 875.

III. This case is a poor vehicle.

This case is a messy vehicle in four primary ways.

A. First, petitioners conceded below that the three-tiered system is constitutional. SER-017; SER-100–101; SER-046. And they never preserved any argument that precedent should be overturned, which would be necessary to succeed on their theories now.

B. Second, petitioners disclaimed any challenge to Arizona's wholesaler-purchase requirement. SER-068. For all the reasons explained, that concession presents redressability problems for their claim that retailer presence is the only obstacle to relief.

Petitioners' prior statements underscore this problem. Consider their allegations about a since-dismissed plaintiff, Florida retailer Thewinetobuy.com. The complaint correctly states that "[e]ven if [Thewinetobuy.com] established a second physical store in Arizona," it would still be legally prohibited from "ship[ping] its wine from its Florida store to its Arizona store" because of Arizona's wholesaler-purchase requirement. ER-051. Similarly, petitioners' counsel referred below to "three [other] very large retailers" that carry wines of interest, but explained that those retailers "have no interest in developing a physical presence in Arizona or buying their wines from a wholesaler in [Arizona]." SER-037. Rather, those retailers "each buy their wines from their wholesalers in their own states." *Id.*

Those admissions perfectly illustrate the role that the wholesaler-purchase requirement plays in determining which wines are available within each

state's system. Accordingly, one of two things must be true here. Either petitioners' attack on the retailer-physical-presence requirement is insufficient to establish Article III redressability because the unchallenged wholesaler-purchase requirement still prohibits their desired transactions. Or, petitioners now implicitly attack Arizona's wholesaler-purchase requirement, necessarily implicating dozens of other states' laws, without having ever squarely raised and developed that challenge. Both are fatal.

C. Third, the petition seems to suggest (at 27) that all it seeks is a remand for the district court to do the step-two inquiry under *Tennessee Wine*. But recall that the district court already reviewed the evidence and found Arizona met its burden. App.50a–52a. Although the district court order did not include specific pin cites, the record materials that the court discussed were from respondents' evidence. The Ninth Circuit then echoed that conclusion, also citing examples from respondents' evidence. App.20a–21a.

D. Finally, petitioners have never met their threshold burden to show discrimination. They conceded below that retail licensure in Arizona is available on equal terms to in-state and out-of-state companies, dooming any facial discrimination claim. SER-037–038.

They also failed to show that the physical-presence requirement is so burdensome on non-Arizona companies as to be discriminatory in effect. They presented no evidence about the law's alleged burdens or that any such burdens fall disparately on non-Arizona companies as compared to Arizona companies. To the contrary, petitioners' own declarations acknowledged that it is non-Arizona

companies from out of state—not local Arizona companies—that "dominate the local Arizona retail market." ER-054–057; *see* SER-015. That acknowledgment is inconsistent with any possible showing that the physical-premises requirement is protectionist (much less predominantly so) and advantages Arizona retailers over non-Arizona companies.

That acknowledgment also underscores how the availability of certain wines in any state is largely due to the independent business decisions of third parties. Some suppliers choose to make their wine widely available, and some do not. Some out-of-state retailers have chosen to set up shop in Arizona, and some not. In fact, exclusivity is the whole point for certain "[s]mall specialty wine retailers [that] differentiate themselves by offering niche, imported, and limited production wines … that are often unavailable through large national chains." Wine Retailers Br. at 9.

Based on their resources and preferred business models, it may be easier for large out-of-state firms (e.g., Total Wine) to comply with Arizona's physical-presence requirement than the smaller out-of-state firms that petitioners want to buy from. But such market realities have no constitutional significance. That state laws might "shift business from one set of out-of-state [retailers] to another" group of out-of-state retailers does not evidence discrimination. *Cf. Nat'l Pork Producers*, 598 U.S. at 378. Particularly when Arizona firms face the same market realities and costs.

At bottom, all petitioners have shown is that some wines are unavailable in Arizona. That is not

cognizable discrimination in the Twenty-first Amendment context. Petitioners have no constitutional right to access all alcohol for sale anywhere in the world. *Granholm*, 544 U.S. at 488–89 (states can "choose[] to ban the sale and consumption of alcohol altogether"); *Lebamoff*, 956 F.3d at 875 ("[S]ome reduction in consumer choice … flows ineluctably from a three-tier system."). Petitioners are only entitled to a market in which Arizona treats in-state and out-of-state entities and products identically. Arizona does so.

IV. Any circuit tension does not require review.

The petition describes (at 24) a "substantial and entrenched circuit conflict" requiring immediate attention. Things are not so dire. Although the circuits have sometimes reasoned differently, no case has struck down any state's system. Practically, the status quo remains.

A. Nearly every circuit to decide a similar case has interpreted this Court's decisions as approving of retailer-presence and wholesaler-purchase laws.

1. The Eighth Circuit rejected a challenge to Missouri's retailer-physical-presence and wholesaler-purchase requirements as "foreclosed by Supreme Court … precedents" because they were even-handed and "an essential feature of [the state's] three-tiered scheme." *Sarasota Wine*, 987 F.3d at 1175, 1184, *cert. denied*, 142 S. Ct. 335 (2021).

2. The Fourth Circuit reached the same conclusion, albeit by a slightly different path. *B-21 Wines*, 36 F.4th at 229, *cert. denied*, 143 S. Ct. 567 (2023). Plaintiffs there challenged North Carolina's laws "prohibit[ing] out-of-state retailers … from shipping

wine directly to consumers" in the state. *Id.* at 216–17, 219–20. Although the court found that bar discriminatory "to some extent against interstate commerce," *id.* at 223, 227, it later acknowledged that direct importation by out-of-state retailers and intra-state delivery privileges for licensed retailers were not "identical" comparisons, *id.* at 228–29. Ultimately, the court found "North Carolina's interest in preserving its three-tier system is itself a legitimate nonprotectionist ground." *Id.* at 227. The direct-importation bar was "an integral part" of the system because "the direct shipping of [wine] … by out-of-state retailers would completely exempt those out-of-state retailers from the three-tier requirement" and "open the North Carolina wine market to less regulated wine," in turn "[e]liminating the role of North Carolina's wholesalers." *Id.* at 228.

3. The Third Circuit agreed. *Jean-Paul Weg*, 133 F.4th at 230–31. There, plaintiffs challenged New Jersey's retailer-physical-presence and wholesaler-purchase requirements. *Id.* at 230. Although finding the laws discriminatory in effect on that record, the court held they were "justified both on public health and safety grounds and as an essential feature of New Jersey's three-tier system." *Id.* at 236–37. New Jersey's evidence supported its asserted interests, but the laws also were "independently justified as essential features." *Id.* at 237–39. "Because New Jersey's wholesaler purchase requirement is fundamental to the state's ability to ensure alcohol passes through each tier of its system, and because New Jersey's physical presence requirement is key to enforcing its system by keeping retailers within its investigators' jurisdiction," both laws were "essential

features" and therefore "unquestionably legitimate and constitutional." *Id.* at 239.

4. Even before *Tennessee Wine*, the Fifth and Second Circuits had interpreted this Court's cases similarly. *Wine Country Gift Baskets.com v. Steen*, 612 F.3d 809, 820 (5th Cir. 2010) ("When analyzing whether a State's alcoholic beverage regulation discriminates under the dormant Commerce Clause, a beginning premise is that wholesalers and retailers may be required to be within the State."), *cert. denied*, 131 S. Ct. 1602 (2011); *Cooper v. Tex. Alcoholic Beverage Comm'n*, 820 F.3d 730, 743 (5th Cir. 2016) (same); *see also Arnold's Wines, Inc. v. Boyle*, 571 F.3d 185, 185–87, 192 (2d. Cir. 2009) (similar).

B. The petition identifies (at 15–16) decisions from the First, Sixth, and Seventh Circuits as creating a review-worthy split. The reality is less interesting.

1. The First Circuit found Rhode Island's retailer-presence requirement facially discriminatory with little analysis. *Anvar v. Dwyer*, 82 F.4th 1, 9–10 (1st Cir. 2023). The court seemingly misunderstood how the three-tiered system works, asserting that "nothing inherent in the three-tier system … necessarily demands an in-state-presence requirement for retailers." *Id.* at 10–11. That unexplained assertion was particularly confusing given that plaintiffs did "not appeal [and therefore the court affirmed] the district court's determination that Rhode Island's [wholesaler-purchase requirement] is valid." *Id.* at 9. In all events, the First Circuit "t[ook] no view" on whether "the in-state-presence requirement [was] unconstitutional" and remanded for further proceedings. *Id.* at 12.

On remand, however, the district court issued an order to show cause why it should not dismiss for lack of Article III standing, citing "redressability issues" due to plaintiffs' failure to appeal on the wholesaler-purchase requirement. No. 1:19-cv-00523-JJM-LDA, Doc. 148 at 2, 5–6 (D.R.I. Nov. 13, 2024). In response, plaintiffs filed a stipulated notice of dismissal with prejudice. *Id.*, Doc. 149 (D.R.I. Nov. 22, 2024).

2. In the Sixth Circuit, a panel recently departed from circuit precedent, creating an intra-circuit split for that court, not this Court, to address.

For years, Judge Sutton's opinion in *Lebamoff*, was the oft-cited decision that other circuits relied on. 956 F.3d 863, *cert. denied*, 141 S. Ct. 1049 (2021). There, the Sixth Circuit held that states can "require retailers to be physically based in the State" and found "nothing unusual about the three-tier system [or] about prohibiting direct deliveries from out of state to avoid it." *Id.* at 870, 872.

Then came *Block v. Canepa*, 74 F.4th 400 (6th Cir. 2023). Although acknowledging that *Lebamoff* had "upheld a Michigan law that [was] nearly identical" to the Ohio law at issue, the *Block* panel departed from *Lebamoff* as fact-specific and remanded for the district court to analyze Ohio's supporting evidence. *Id.* at 407, 413–14; *see* App.17a n.4. On remand, the district court again upheld the challenged laws on summary judgment, relying on evidence similar to the record here. 771 F. Supp. 3d 1010, 1024 (S.D. Ohio 2025).

3. Practically, the status quo remains in the Seventh Circuit, too. Early on, that court upheld a law that made "unlawful all direct shipments from out of state to Indiana consumers" because "§ 2 enables a state to do to importation of liquor—including direct

deliveries to consumers in original packages—what it chooses to do to internal sales of liquor." *Bridenbaugh v. Freeman-Wilson*, 227 F.3d 848, 849, 853 (7th Cir. 2000), *cert. denied*, 121 S. Ct. 1672 (2001).

Then in *Lebamoff Enterprises v. Rauner*, 909 F.3d 847 (7th Cir. 2018)—notably, before *Tennessee Wine*—the Seventh Circuit reversed a district court's dismissal, finding that plaintiffs stated a claim based on "Illinois's refusal to license retailers without an in-state presence." *Id.* at 858. The court raised several questions about the three-tiered system, but found it "too early in th[e] case to provide definitive answers." *Id.* at 855–57. And those questions will never be answered in that case: on remand, plaintiffs voluntarily dismissed. No. 1:16-cv-08607, Doc. 166 (N.D. Ill. Aug. 26, 2021).

Recently, a two-judge panel issued "two different lines of reasoning" in upholding Indiana's retailer-physical-presence requirement. *Chi. Wine Co. v. Braun*, 148 F.4th 530, 531–32 (7th Cir. 2025). Despite the split reasoning, that affirmance did not change the status quo for Indiana or nationwide. Perhaps that is why petitioners in that case (No. 25-844) styled their petition only as a follow-on to this one.

***

One way or another, courts continue to hold that retailer-physical-presence and wholesaler-purchase laws are constitutional parts of a constitutional whole—rightly so given this Court's cases. Nothing new or different here requires review.

CONCLUSION

The petition should be denied.

April 2026 Respectfully submitted,

KRISTIN K. MAYES
Attorney General
of Arizona

DANIEL C. BARR
Chief Deputy
Attorney General

JOSHUA D. BENDOR
Solicitor General
(Counsel of Record)

ALEXANDER W. SAMUELS
Principal Deputy
Solicitor General

NATHAN T. ARROWSMITH
LUCI D. DAVIS

OFFICE OF THE ARIZONA
ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-3333
Joshua.Bendor@azag.gov

Counsel for State Respondents

KEVIN E. O'MALLEY
HANNAH H. PORTER

2575 E. Camelback Rd. Suite 1100
Phoenix, AZ 85016-9225
(602) 530-8000
kevin.omalley@gknet.com

Counsel for Respondent Wine & Spirits Wholesalers Association of Arizona