

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.

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

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

LOUIS A. MURRAY
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*1285 Avenue of the Americas
New York, NY 10019*

JAMES A. TANFORD
ROBERT D. EPSTEIN
EPSTEIN SEIF

PORTER & BEUTEL, LLP
*50 South Meridian Street,
Suite 505
Indianapolis, IN 46204*

KANNON K. SHANMUGAM
Counsel of Record

MASHA G. HANSFORD
DAVIS POLK & WARDWELL LLP
*1050 17th Street, N.W.
Washington, DC 20036
(202) 962-7000*

kshanmugam@davispolk.com

ABIGAIL FRISCH VICE
KRISTA A. STAPLEFORD
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*2001 K Street, N.W.
Washington, DC 20006*

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Under Rule 15.8 of this Court, petitioners file this supplemental brief to bring to the Court’s attention a relevant decision of the Sixth Circuit, which was issued after petitioners’ reply brief was filed. On May 6, the Sixth Circuit issued its decision in *Block v. Canepa*, No. 25-3305, striking down an Ohio physical-presence requirement for shipping wine directly to consumers. That decision destroys the central premise of respondents’ argument against certiorari—that no court has yet “struck down any state’s system.” Br. in Opp. 32, 34-35. And it eliminates any doubt that certiorari should be granted in this case.

In *Block*, the Sixth Circuit resolved the appeal from the district court’s decision on remand from *Block v.*

Canepa, 74 F.4th 400 (6th Cir. 2023). The Sixth Circuit first held that the plaintiffs, a wine consumer and a wine retailer, had standing to challenge Ohio’s physical-presence requirement. See slip op. 6-11. The court then rejected the district court’s reliance on an essential-feature approach; held that the normal *Tennessee Wine* framework applies; further held that Ohio did not provide sufficient evidence of a public health and safety purpose; and concluded that Ohio’s physical-presence requirement was unconstitutional. See *id.* at 12-26.

The Sixth Circuit’s decision confirms that a well-developed conflict exists on the question presented and that the conflict is outcome-dispositive. To begin with, *Block* resolves any doubt that the binding rule in the Sixth Circuit conflicts with the decision below. In their brief in opposition, respondents suggested that there was an “intra-circuit split” that left the Sixth Circuit rule unclear. Br. in Opp. 35. But in *Block*, the Sixth Circuit held that “[t]he district court erred in applying th[e] ‘essential feature’ framework” to uphold a physical-presence requirement for direct shipments by wine retailers. Slip op. 14. In so holding, the Sixth Circuit emphasized that laws preventing out-of-state wine retailers from shipping wine directly to Ohio consumers are “neither basic nor essential components of three-tier systems” because “[m]any states with three-tier systems allow both in- and out-of-state wine retailers to ship wine directly to their residents.” *Ibid.* (citing *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214, 235 (4th Cir. 2022) (Wilkinson, J., dissenting)). The court added that the fact that Ohio has “carved out extensive wine-specific exceptions to the three-tier system” further undermined the State’s essential-feature argument. *Id.* at 15. That ruling confirms beyond doubt that “the binding rule in the Sixth Circuit going forward” is that a phys-

ical-presence requirement for direct-to-consumer shipping cannot be justified as supposedly essential to a State's three-tier scheme. Reply Br. 5.

In addition, *Block* illustrates the practical significance of the circuit conflict. Having rejected the essential-feature approach, the Sixth Circuit proceeded to analyze the in-state physical-presence requirement for direct shipment to consumers under the “normal framework for analyzing the constitutionality of state alcohol laws,” considering the restriction “on its own terms.” Slip op. 16. After considering the evidence supporting the State's public health and safety rationales (which, as respondents previously observed, was “similar” to the evidence in “the record here,” Br. in Opp. 35), the court determined that those rationales “are questionable and unsupported by convincing evidence.” Slip op. 23. The court “thus h[e]ld the [direct shipment restriction] unconstitutional.” *Ibid.* It also held unconstitutional a separate restriction on the number of bottles of wine an individual can transport into Ohio. See *id.* at 25. Accordingly, it remanded the case for consideration of the appropriate remedies for the constitutional injuries inflicted by those provisions of state law.

In light of the Sixth Circuit's decision in *Block*, respondents' primary argument against certiorari no longer holds up. *Block* confirms that the circuit conflict as to the essential-feature approach has both legal and practical significance. It is now clear that the petition for a writ of certiorari should be granted.

Respectfully submitted.

LOUIS A. MURRAY
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*1285 Avenue of the Americas
New York, NY 10019*

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ROBERT D. EPSTEIN
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PORTER & BEUTEL, LLP
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WHARTON & GARRISON LLP
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Washington, DC 20006*

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