

No.

In the Supreme Court of the United States

CHICAGO WINE COMPANY, LLC, ET AL., PETITIONERS

v.

MIKE BRAUN, GOVERNOR OF INDIANA, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a physical-presence requirement that forbids out-of-state retailers from shipping alcohol directly to in-state consumers unless they establish an in-state physical presence is constitutional under the Commerce Clause and the Twenty-first Amendment.

**PARTIES TO THE PROCEEDING
AND CORPORATE DISCLOSURE STATEMENT**

Petitioners are Chicago Wine Company, LLC; Dennis Neary; Cynthia Springer; Stan Springer; and Devin Warner. Petitioner Chicago Wine Company, LLC, has no parent corporation, and no public company holds 10% or more of its stock.

Respondents are Mike Braun, Governor of Indiana; Theodore Rokita, Attorney General of Indiana; Jessica Allen, Chairwoman of the Indiana Alcohol and Tobacco Commission; and Wine & Spirits Distributors of Indiana.

RELATED PROCEEDINGS

United States District Court (S.D. Ind.):

Chicago Wine Co. v. Holcomb, Civ. No. 19-2785 (Mar. 30, 2021)

United States Court of Appeals (7th Cir.):

Chicago Wine Co. v. Braun, No. 21-2068 (Aug. 5, 2025)

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Chicago Wine Company, LLC; Dennis Neary; Cynthia Springer; Stan Springer; and Devin Warner respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-36a) is reported at 148 F.4th 530. The opinion of the district court (App., *infra*, 37a-60a) is reported at 532 F. Supp. 3d 702.

JURISDICTION

The judgment of the court of appeals was entered on August 5, 2025. A petition for rehearing was denied on

August 29, 2025 (App., *infra*, 61a-62a). On November 20, 2025, Justice Barrett extended the time within which to file a petition for a writ of certiorari to and including January 12, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Commerce Clause of the United States Constitution provides:

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

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

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

Section 7.1-3-15-3(d) of the Indiana Code provides:

A wine delivery may only be performed by the permit holder or an employee who holds an employee permit.

STATEMENT

This case presents a question closely related to the important question pending before this Court in *Day v. Henry*, No. 25-788: whether the Commerce Clause and the Twenty-first Amendment permit a State to impose a physical-presence requirement that discriminates against out-of-state alcohol retailers.

Petitioners are an Illinois-based wine retailer that wishes to ship directly to Indiana consumers without maintaining physical premises in Indiana; the retailer's

owner; and Indiana consumers who wish to receive shipments from that retailer. As in *Day*, petitioners brought a Commerce Clause challenge to the state physical-presence requirement that prohibits those shipments. The Seventh Circuit upheld Indiana’s physical-presence requirement in an unusual two-judge decision based on two incompatible lines of reasoning. One judge determined that Indiana’s requirement did not discriminate between in-state and out-of-state commerce in the first place, while indicating that if it were discriminatory, it would be unconstitutional. The other judge determined that Indiana’s requirement was discriminatory but nonetheless permitted by the Twenty-first Amendment.

If this Court were to grant review in *Day*, which presents a related question about the circumstances under which the Commerce Clause and the Twenty-first Amendment permit a State to impose a physical-presence requirement that discriminates against out-of-state alcohol retailers, its decision in that case would provide substantial guidance for the proper resolution of this one. Accordingly, the petition should be held pending the disposition of *Day* and then disposed of as appropriate.

A. Background

1. a. The Commerce Clause provides that “[t]he Congress shall have Power * * * [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. Const. Art. I, § 8, cl. 3. “Although the Clause is framed as a positive grant of power to Congress, [this Court] ha[s] long held that this Clause also prohibits state laws that unduly restrict interstate commerce.” *Tennessee Wine & Spirits Retailers Association v. Thomas*, 588 U.S. 504, 514 (2019) (internal quotation marks and citation omitted). That principle—the “negative” or “dormant” “aspect of the

Commerce Clause”—“prevents the States from adopting protectionist measures and thus preserves a national market for goods and services.” *Ibid.* (internal quotation marks and citation omitted).

Section 2 of the Twenty-first Amendment prohibits the “transportation or importation into any State * * * for delivery or use therein of intoxicating liquors, in violation of the” State’s laws. U.S. Const. Amend. XXI, § 2. As this Court has explained, that provision authorizes States to “maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use.” *Granholm v. Heald*, 544 U.S. 460, 484 (2005).

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

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

Many States use a three-tier system of licensing as the basic framework of state alcohol regulation. That system

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

In *Tennessee Wine*, the Court considered a law that required an individual to reside in Tennessee for two years before seeking a license to operate a liquor store in the State. See 588 U.S. at 510. The Court reiterated that state alcohol regulation violates the dormant Commerce Clause when it is “aimed at giving a competitive advantage to in-state businesses.” *Id.* at 531. The Court explained that a State’s regulation of in-state alcohol distribution will survive constitutional scrutiny only if it “can be justified as a public health or safety measure or on some

other legitimate nonprotectionist ground.” *Id.* at 539. “[M]ere pretences” would not suffice, the Court emphasized, *id.* at 522-523 (internal quotation marks and citation omitted); States were not permitted “to impose protectionist measures clothed as police-power regulations,” *id.* at 528.

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

B. Facts And Procedural History

1. Indiana, like many other States, regulates the importation and distribution of alcohol through a three-tier

system. App., *infra*, 8a-9a. A three-tier system separates the sale and distribution of alcohol among producers, wholesalers, and retailers. Producers may generally sell alcohol only to licensed wholesalers, which in turn must sell to licensed retailers. Generally, only licensed retailers may sell alcohol to consumers (although certain wineries may sell directly to consumers as well). Of particular relevance here, Indiana allows retailers to deliver alcohol to a customer's residence only if they have a permit. See Ind. Code § 7.1-3-15-3(d) (2025); see also Ind. Code § 7.1-5-11-1.5(a) (2024) (prohibiting retailers that lack a permit from shipping alcohol directly to consumers). While the text of the Indiana law does not limit permits to in-state retailers, the State has conceded that, in practice, it issues those permits only to retailers that have a physical presence in Indiana. App., *infra*, 9a-10a.

2. Petitioner Chicago Wine Company, LLC, is a retailer of fine wines licensed in Illinois that ships to customers in Illinois and other States. It is owned and operated by petitioner Devin Warner. Chicago Wine seeks to ship wine to customers in Indiana, but Indiana law prohibits it from doing so. App., *infra*, 38a-39a. The remaining individual petitioners are Indiana consumers who wish to order wine from Chicago Wine to their Indiana addresses, but cannot do so under Indiana law. *Id.* at 39a-40a.

On July 8, 2019, petitioners sued various Indiana officials, respondents here, under 42 U.S.C. 1983, in the United States District Court for the Southern District of Indiana. App., *infra*, 38a. Petitioners alleged that Indiana's physical-presence requirement discriminated against out-of-state retailers in violation of the Commerce Clause and could not be saved by the Twenty-first Amendment. *Id.* at 41a.

The district court granted summary judgment in favor of respondents on the physical-presence requirement.

App., *infra*, 59a. The court reasoned that Indiana law “treats in-state and out-of-state wine retailers identically” by requiring them both to have in-state presences to ship to consumers. *Id.* at 55a. And it concluded that, regardless, the State could justify the restriction on nonprotectionist grounds as a legitimate health and safety measure. *Id.* at 57a.

3. The court of appeals affirmed in a per curiam opinion after Judge Kanne, a member of the panel at the time of argument, died. App., *infra*, 1a-2a. The two remaining judges on the panel agreed that the regulations were constitutional, but based “on two different lines of reasoning.” *Id.* at 2a.

a. Judge Easterbrook wrote one opinion, concluding that Indiana’s physical-presence requirement did not discriminate against out-of-state citizens or products because the requirements applied “equally” to in-state and out-of-state retailers. App., *infra*, 5a-6a. Judge Easterbrook acknowledged contrary authority from the Fourth Circuit on that question. *Id.* at 7a (citing *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214 (4th Cir. 2022), cert. denied, 143 S. Ct. 567 (2023)). But he expressed “skeptici[s]m” about the Fourth Circuit’s decision because it upheld the challenged physical-presence provision despite finding it was discriminatory. *Ibid.* That could not be correct, Judge Easterbrook reasoned, because “a trans-border delivery rule that discriminates against interstate commerce is forbidden” after *Tennessee Wine*. *Ibid.*

b. Judge Scudder wrote a separate opinion, determining (contrary to Judge Easterbrook) that Indiana’s physical-presence requirement *was* discriminatory. App., *infra*, 14a-16a. Having so determined, Judge Scudder proceeded to consider whether Section 2 of the Twenty-first Amendment justified Indiana’s law. *Id.* at 18a. Judge Scudder observed that other circuits had upheld

physical-presence requirements simply because they were an “essential feature of a three-tiered scheme.” *Id.* at 20a (citing *B-21 Wines*, 36 F.4th at 227-229, and *Sarasota Wine Market, LLC v. Schmitt*, 987 F.3d 1171, 1183-1184 (8th Cir.), cert. denied, 142 S. Ct. 335 (2021)). In Judge Scudder’s view, however, those decisions could not be reconciled with *Tennessee Wine* because they “read[] far too much into *Granholm*’s discussion of the three-tiered model.” *Ibid.* (quoting *Tennessee Wine*, 588 U.S. at 535). Judge Scudder instead reasoned that it was “necessary * * * to look at the specific regulation at issue and the State’s evidentiary showing to support it.” *Id.* at 19a.

After considering that evidence, Judge Scudder ultimately concluded that Indiana’s law was constitutional because, in his view, Indiana had offered sufficient evidence that its regulation’s main effect was maintaining public health and safety. App., *infra*, 21a-26a.

4. The court of appeals denied a petition for rehearing. App., *infra*, 61a-62a.

ARGUMENT

This petition presents a question closely related to the question in *Day v. Henry*, No. 25-788: whether a State may require an out-of-state alcohol retailer to have an in-state physical presence in order to ship directly to consumers within that State. Both opinions below recognized that the constitutionality of physical-presence requirements has divided the circuits. And both opinions invoked *Day* in upholding Indiana’s physical-presence requirement. App., *infra*, 6a, 19a.

As the petition in *Day* explains, review is warranted in that case to resolve an acknowledged circuit conflict on an important question about the intersection of the Commerce Clause and the Twenty-first Amendment. See Pet. at 15-34, *Day v. Henry*, No. 25-788 (filed Dec. 30, 2025). If

this Court grants review in *Day*, its decision would provide substantial guidance as to how courts should evaluate the constitutionality of physical-presence requirements. This petition should thus be held pending the disposition of the petition in *Day* and then disposed of as appropriate.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's disposition of the petition in *Day* v. *Henry*, No. 25-788, and then disposed of accordingly.

Respectfully submitted.

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JANUARY 2026