

No. 25-844

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IN THE  
**Supreme Court of the United States**

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CHICAGO WINE COMPANY, LLC, *et al.*,  
*Petitioners,*

v.

MIKE BRAUN, GOVERNOR OF INDIANA, *et al.*,  
*Respondents.*

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

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**BRIEF IN OPPOSITION**

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**QUESTION PRESENTED**

Whether, under the Commerce Clause and Twenty-First Amendment, Indiana may prohibit all retailers from shipping wine to consumers via common carrier and may require all retailers wishing to deliver wine to consumers using their own employees to have a physical retail location in Indiana.

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## INTRODUCTION

To promote legitimate health and safety interests, Indiana prohibits *all* retailers of alcoholic beverages from shipping them directly to Indiana consumers. Both in-state and out-of-state retailers with a physical retail location in Indiana and a wine dealer’s license may use their own employees to deliver wine to consumers’ homes and offices. No in-state or out-of-state retailer, however, may ship via common carrier.

In a per curiam opinion that produced no majority, a two-member panel of the Seventh Circuit upheld Indiana’s alcohol regulations against a Commerce Clause challenge. Judge Easterbrook rejected the challenge on the ground that Indiana “does not discriminate” against out-of-state commerce, explaining that the same shipping and delivery restrictions apply to both in-state and out-of-state retailers. Pet. App. 7a. Judge Scudder took a complementary path. He concluded there is no Commerce Clause violation because Indiana’s requirements promote “non-protectionist interests in promoting temperance, policing underage drinking,” and effectively enforcing alcohol regulations. Pet. App. 20a; *see* Pet. App. 21a–25a.

In seeking review of the judgment below, Chicago Wine Company and its fellow petitioners do not argue that the decision below presents an important issue warranting certiorari in its own right. That is because “[e]very court of appeals” to confront alcohol regulations like Indiana’s has upheld them. Pet. App. 25a (Scudder, J., concurring). Instead, petitioners urge this Court to hold their petition pending disposition of a separate petition in *Day v. Henry*, No. 25-788, which, as the petitioners there frame this issue, asks this Court to decide whether “discriminatory” alcohol

regulations can be upheld “solely” because they are an “essential feature” of a State’s three-tiered system. Pet. at 11, *Day v. Henry*, No. 25-788 (Dec. 30, 2025). The Court should deny this petition outright.

As is clear from the opinions below, this case does not implicate the question that petitioners in *Day* urge the Court to review. No court upheld Indiana’s alcohol regulations “solely”—or even partly—on the ground that they are an “essential feature” of the State’s three-tiered system. Rather, the lower-court judges in this case either held that Indiana’s regulations do not discriminate against out-of-state commerce or held that they advance legitimate state interests in promoting temperance, ensuring compliance with state alcohol laws, and preventing underage drinking. Indeed, the petitioners in *Day* identify this case as an example of a lower court applying the very standard they urge this Court to adopt. *Day* therefore can have no impact on the outcome of this case. Both the petition for a writ of certiorari and the request for a hold should be denied.

## STATEMENT OF THE CASE

### I. Indiana’s Three-Tiered System

Indiana, like many States, controls the distribution and consumption of alcohol through a comprehensive three-tier system that has been in place since the end of Prohibition. See *Ind. Alcohol & Tobacco Comm’n v. Spirited Sales, LLC*, 79 N.E.3d 371, 377 (Ind. 2017). Generally, under a three-tier system, producers (first tier), may sell only to wholesalers (second tier), who may sell only to retailers (third tier), who may sell only to eligible consumers. See *E.F. Transit, Inc. v. Cook*, 878 F.3d 606, 608 (7th Cir. 2018). With the limited exception of wine sold by farm wineries,

all wine sold to Indiana consumers must pass through this three-tier system. *See Bridenbaugh v. Freeman-Wilson*, 227 F.3d 848, 853 (7th Cir. 2000); Ind. Code §§ 7.1-5-11-1.5, 7.1-4-4-3, 7.1-3-15-3, 7.1-3-13-3. The system is designed to “protect the economic welfare, health, peace, and morals of [its] people,” “regulate and limit the manufacture, sale, possession, and use of alcohol and alcoholic beverages,” and “provide for the raising of revenue.” Ind. Code § 7.1-1-1-1(1)–(2), (4).

Indiana implements its three-tier system through various licensing requirements. To manufacture alcohol in Indiana, a business must obtain a permit from Indiana’s Alcohol and Tobacco Commission and the Tax and Trade Bureau of the U.S. Treasury Department. 27 C.F.R. §§ 1.20, 1.21, 1.22, 1.23; Ind. Code §§ 7.1-3-2-1, 7.1-3-7-1, 7.1-3-12-1, 7.1-3-12-7.5; D. Ct. Dkt. 63-1, ¶ 8(a), (c). Similarly, to manufacture and import alcohol for sale in Indiana from out of state, the manufacturer must register as a primary source with Indiana’s Alcohol and Tobacco Commission. D. Ct. Dkt. 63-1, ¶ 8(d). Licensed manufacturers and registered primary sources are generally authorized to sell alcohol only to licensed Indiana wholesalers. Ind. Code §§ 7.1-3-2-7, 7.1-3-7-3, 7.1-3-12-2.

Indiana wholesalers must be licensed as well. Ind. Code §§ 7.1-3-3-1, 7.1-3-8-1, 7.1-3-13-1. Wholesalers may purchase alcohol only from licensed manufacturers, registered primary sources, and other licensed wholesalers. Ind. Code §§ 7.1-3-3-5, 7.1-3-8-3, 7.1-3-13-3; D. Ct. Dkt. 63-2, ¶¶ 23–24. This requirement ensures that products have approved formulas and labeling. D. Ct. Dkt. 63-1, ¶ 8(c). It also ensures that wholesalers collect state excise taxes, *see* Ind. Code

§§ 7.1-4-2-2, 7.1-4-3-2, which are used by the State to offset the societal costs of alcohol consumption. D. Ct. Dkt. 63-1, ¶ 5; D. Ct. Dkt. 63-2, ¶¶ 48–49, 51, 58. Wholesalers may sell only to licensed Indiana retailers and certain wholesalers. Ind. Code §§ 7.1-3-3-5, 7.1-3-8-3, 7.1-3-13-3.

Indiana retailers, too, must be licensed by the Commission and approved by a county alcoholic beverage board. Ind. Code §§ 7.1-3-4-6, 7.1-3-9-9, 7.1-3-14-4, 7.1-3-19-3, 7.1-3-19-4, 7.1-3-19-11; D. Ct. Dkt. 63-1, ¶ 9(e). To promote temperance, Indiana limits the permit types and the number of retailer permits issued in a given locality. Ind. Code §§ 7.1-3-9-2, 7.1-3-22-1, 7.1-3-22-3, 7.1-3-22-5. Indiana also limits the amount of alcoholic beverages available for purchase and delivery to customers. Ind. Code §§ 7.1-3-4-6(c), 7.1-3-5-3(d), 7.1-5-10-20; D. Ct. Dkt. 63-1, ¶ 10(d).

In reviewing permit applications, the Commission and county board reviews the character and qualifications of retailers. Ind. Code §§ 7.1-3-4-2, 7.1-3-14-3; 905 Ind. Admin. Code 1-27-1. That review is critical because licensed retailers are responsible for maintaining compliance with state alcohol laws and ensuring employees are properly trained. Ind. Code §§ 7.1-3-1.5-4.3, 7.1-3-1.5-13. Certified trainers administer the training program for employees, which includes education on state alcohol laws, the effects of alcohol on the body, how to properly identify someone, and methods to identify and handle situations involving an underage or intoxicated individual. Ind. Code §§ 7.1-3-1.5-4.8, 7.1-3-1.5-5.5, 7.1-3-1.5-6.

To ensure compliance with regulatory requirements, Indiana requires licensed retailers to make their premises available for inspection and search by

Indiana law enforcement. *See* Ind. Code § 7.1-3-1-6. Because law enforcement must be able to visit retail locations in person, Indiana only permits retail locations in the State. D. Ct. Dkt. 63-2, ¶¶ 37–40. The Indiana State Excise Police strive to make an annual “permit visit” to at least 75% of alcoholic beverage retailers. D. Ct. Dkt. 63-1, ¶ 9(c). In 2019, they conducted 13,103 permit visits. *Id.* ¶ 9(d). One of those inspections led to the discovery of a substantial inventory of alcohol exhibiting tampered or removed wholesaler shipment labels, which can be a sign of efforts to bootleg and evade payment of excise tax. D. Ct. Dkt. 63-3, ¶¶ 5–11. The Excise Police also seek to conduct underage-buy investigations at 100% of retail locations annually. D. Ct. Dkt. 63-1, ¶ 7(b).

Generally, Indiana prohibits anyone—including retailers—from shipping by common carrier wine and other alcoholic beverages directly to consumers. Ind. Code § 7.1-5-11-1.5(a). State law also makes it illegal to “transport, ship, barter, give away, exchange, furnish, or otherwise handle” alcoholic beverages in Indiana “for purpose of sale,” except as specifically authorized by state law. Ind. Code § 7.1-5-10-5(a). A retailer, however, may obtain a “wine dealer’s permit,” which licenses a retailer to “deliver wine” to a customer’s “residence” or “office,” but only if the delivery is “performed by the permit holder or an employee who holds an employee permit.” Ind. Code § 7.1-3-15-3(a), (d); D. Ct. Dkt 63-2, ¶ 26. To obtain a permit, employees undergo specific training on the effective recognition and authentication of age. D. Ct. Dkt. 63-1, ¶ 7(d); *see* Ind. Code § 7.1-3-1.5-6.

## II. Factual and Procedural Background

Petitioners are Chicago Wine Company, one of Chicago Wine’s co-owners (Devin Warner), and three Indiana residents (Stan Springer, Cynthia Springer, and Dennis Neary). Pet. App. 2a, 38a–39a. Chicago Wine is an Illinois retailer that sells and ships wine by common carrier to consumers in Illinois and other States. Pet. App. 38a–39a. It does not possess an Indiana alcoholic beverage retailer’s or wine dealer’s permit, but would like to sell and to ship wine to Indiana consumers. Pet. App. 37a–39a. As a practical matter, reaching most Indiana consumers would require Chicago Wine to deliver via common carrier. *See* Pet. App. 52a (“It is cost-prohibitive even for Chicago Wine to use its own vehicles to deliver to much of Indiana.”). The three Indiana residents wish to order wine directly from Chicago Wine. Pet. App. 39a–40a.

### A. Proceedings in district court

In 2019, petitioners brought this suit under 42 U.S.C. § 1983 to challenge Indiana’s regulations governing wine shipments and delivery. Pet. App. 38a, 41a–42a. Petitioners alleged that Indiana Code §§ 7.1-3-15-3(d) and 7.1-5-11-1.5(a) violate the Commerce Clause by preventing out-of-state companies without Indiana retail locations from shipping and delivering wine directly to Indiana consumers. D. Ct. Dkt. 41, at 1; Pet. App. 38a. After discovery, both sides moved for summary judgment. Pet. App. 38a.

The district court granted summary judgment to the State in relevant part. Pet. App. 59a. The court rejected the claim that the Commerce Clause compels Indiana to allow companies to ship wine by common carrier. Pet. App. 59a. It observed that the prohibition on shipping by common carrier “applies equally to in-

state and out-of-state sellers.” Pet. App. 58a. And even if the prohibition affects in-state and out-of-state retailers differently, it “can be justified as a public health or safety measure.” Pet. App. 59a (quoting *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 539 (2019)). Prohibiting the shipment of alcoholic beverages by common carrier “advances legitimate local interests by controlling the quantity of alcohol in the State to curtail public health concerns, protecting against unsafe or counterfeit products, and keeping alcohol out of the hands of minors.” Pet. App. 59a.

The district court also upheld Indiana’s requirement that retailers may only deliver to consumers if they hold a wine dealer’s permit and use permitted employees. Again, the court observed that the requirement “treats in-state and out-of-state retailers identically.” Pet. App. 55a. The court noted that out-of-state retailers cannot obtain a permit without a physical storefront in Indiana, which can be inspected by the Indiana State Exercise Police. Pet. App. 50a–51a. But once again, Indiana had shown that the requirement to have a physical storefront served “non-protectionist” state interests in “keeping alcohol out of the hands of minors, controlling the quantity of alcohol in the State to curtail public health concerns, and protecting against unsafe or counterfeit products.” Pet. App. 30a, 57a.<sup>1</sup>

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<sup>1</sup> Petitioners also challenged a licensing requirement under which an applicant for a retailer’s permit had to be an Indiana resident for five years. Pet. App. 59a. While this case was being litigated, however, Indiana repealed the residency requirement. See Pub. L. No. 194-2021, § 49, 2021 Ind. Acts 2813, 2853.

## B. Proceedings on appeal

The United States Court of Appeals for the Seventh Circuit affirmed in a two-judge, per curiam opinion. Pet. App. 2a. (The third member of the panel at the time of argument passed away before a decision could be rendered. Pet. App. 1a.) Judge Easterbrook and Judge Scudder each wrote separately to explain why Indiana’s alcohol regulations are constitutional.

1. Judge Easterbrook assumed without deciding that, after *Tennessee Wine and Spirits Retailers Association v. Thomas*, 588 U.S. 504 (2019), and *Granholm v. Heald*, 544 U.S. 460 (2005), “all discrimination against out-of-state suppliers is forbidden.” Pet. App. 3a. Thus, for Judge Easterbrook, “[t]he essential question” is “whether Indiana discriminates.” Pet. App. 3a. He concluded Indiana does not, which meant that it may enforce the challenged regulations “without further ado.” Pet. App. 3a, 5a–6a.

As Judge Easterbrook observed, “Indiana does not permit *any* retailer to deliver via common carrier.” Pet. App. 4a. “Retailers licensed to sell alcoholic beverages may use their own staff to deliver their wares but not hand off their products to third parties.” Pet. App. 4a. True, Judge Easterbrook acknowledged, a retailer must be licensed to deliver alcohol to consumers within a particular area. Pet. App. 5a. But he ruled that requirement is not discriminatory: “Chicago Wine today is entitled to obtain a license if it meets the standards that apply to citizens of Indiana.” Pet. App. 4a.

To meet the licensing requirements that apply to Indiana citizens, Chicago Wine would need to maintain a “physical presence in Indiana.” Pet. App. 5a. That would involve opening a new retail storefront or

buying an existing Indiana retailer. Pet. App. 5a. But a “citizen of Indiana” would need to take the same actions, which means “the physical-presence requirement is nondiscriminatory.” *Id.* Judge Easterbrook deemed the mere fact that Chicago Wine “does not *want* to open another retail location” did not distinguish it from a “Hoosier with a store in Indianapolis or Lafayette who wants to make local deliveries” without opening a store. Pet. App. 5a–6a.

2. Judge Scudder agreed with Judge Easterbrook that Indiana’s prohibition on retailers shipping alcohol by common carrier is nondiscriminatory on its face. Pet. App. 31a. Because Chicago Wine argued that the prohibition’s “incidental” effects disadvantages out-of-state retailers, Judge Scudder still examined the prohibition under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Pet. App. 34a–35a. He, however, concluded that the “measure reflects a reasonable means by which Indiana can prevent the distribution of alcohol to minors—a legitimate state interest.” Pet. App. 34a. Common carriers’ employees do not undergo the same training or use the same face-to-face verification methods as retailers.’ Pet. App. 34a–35a.

As for Indiana’s physical-presence requirement, Judge Scudder wrote that it “discriminates in its practical effect on retailers, operating as a complete ban on self-deliveries of wine by out-of-state retailers.” Pet. App. 16a. He, however, ruled that the requirement was still constitutional because it “furthers the State’s legitimate, non-protectionist interests in promoting temperance, policing underage drinking, and ensuring its regulatory Commission can effectively enforce alcohol regulations.” Pet. App. 20a. Requiring retailers to have a physical storefront limits the

amount of alcohol for purchase and ensures Indiana law enforcement can “inspect and investigate retailers.” Pet. App. 21a–22a. If retailers could deliver alcohol directly to Indiana consumers from locations in other States, “Indiana regulators’ ability to conduct inspections” and combat “underage drinking” would be impaired. Pet. App. 23a–24a.

3. The court of appeals denied rehearing, with no active judge requesting a vote. Pet. App. 61a–62a.

### ARGUMENT

Petitioners ask for their petition to be held pending the Court’s disposition of the petition in *Day v. Henry*, No. 25-788. But petitioners in *Day* framed the question presented in that case much differently than the issue here. Petitioners, moreover, do not make any argument that this case independently warrants review. Certiorari should be denied.

#### I. This Case Should Not Be Held for *Day*

In *Day v. Henry*, the Ninth Circuit upheld an Arizona law that prohibited out-of-state retailers from directly shipping alcohol to consumers in Arizona unless they establish a physical presence in the state. 152 F.4th 961, 976 (9th Cir. 2025). The Ninth Circuit upheld the law primarily because it was an “essential piece” of Arizona’s three-tier system under this Court’s precedents, and therefore the Ninth Circuit did not decide whether the law was discriminatory. *Id.* at 972–74.

Against this backdrop, the *Day* petitioners ask this Court to decide “[w]hether a physical-presence requirement that *discriminates* between in-state and out-of-state alcohol regulations can be deemed constitutional *solely* as an essential feature of a State’s

three-tier system of alcohol distribution, without concrete evidence establishing that the requirement predominately promotes a legitimate, nonprotectionist interest, such as health or safety.” Pet. at i, *Day v. Henry*, No. 25-788 (Dec. 30, 2025) (emphasis added). They do not ask this Court to decide what types of regulations are discriminatory, or whether physical-presence requirements in fact promote legitimate state interests. Rather, the *Day* petitioners ask this Court to clarify that lower courts must do more than ask whether a discriminatory regulation is “essential” to the three-tier system. *Id.* at 4–5, 30.

Whatever the merits of the petition in *Day*, there is no reason to hold the petition here. This case does not raise the same question as *Day* or implicate the alleged circuit split for two independent reasons:

First, as both the district court and Judge Easterbrook ruled, Indiana does not discriminate against out-of-state commerce by prohibiting *all* retailers from shipping alcohol directly to consumers. Pet. App. 4a, 58a–59a. That prohibition “applies equally to in-state and out-of-state sellers.” Pet. App. 58a. Likewise, Indiana does not discriminate against out-of-state commerce by requiring all retailers licensed to deliver wine to maintain a physical storefront in Indiana that Indiana law enforcement can inspect. Pet. App. 6a, 57a. That requirement, too, applies to both Indiana citizens and citizens of other States. *Id.* Chicago Wine is treated no differently than an Indiana citizen who wishes to deliver to local consumers. Thus, this case does not raise the question as to what standard applies to “discriminatory” alcohol laws.

Second, as both the district court and Judge Scudder ruled, Indiana’s evidence establishes that its prohibition serves legitimate public health and safety interests. No judge in this case sustained Indiana’s challenged statutes “solely” on the ground that they are an “essential feature” of the State’s three-tiered system. Pet. at i, *Day, supra* (No. 25-788). The district court upheld Indiana’s laws as “valid under the Twenty-first Amendment” because they advance legitimate state interests “by controlling the quantity of alcohol in the State to curtail public health concerns, protecting against unsafe or counterfeit products, and keeping alcohol out of the hands of minors.” Pet. App. 59a. And Judge Scudder, after looking “at the specific regulation at issue and the State’s evidentiary showing to support it”—concluded that Indiana “came forward with evidence to demonstrate it furthers Indiana’s legitimate interests in health and safety.” Pet. App. 19a, 24a.

Indeed, the *Day* petitioners themselves argue that the Seventh Circuit “appears to reject” the argument that an alcohol regulation can be sustained on the ground that it is an essential feature—the very rule they urge in that case. Pet. at 18, *Day, supra* (No. 25-788). According to the petitioners in *Day, Lebamoff Enterprises, Inc. v. Rauner*, 909 F.3d 847 (7th Cir. 2018), expressed “serious” reservations with the view that the Twenty-First Amendment shields “discriminatory alcohol restrictions from scrutiny simply because they implicate[] aspects of the three-tier system that were ‘inherent’ or ‘integral’ to its existence.” Pet. at 18, *Day, supra* (No. 25-788) (quoting *Lebamoff*, 909 F.3d at 855). And in this case, both Judges Easterbrook and Scudder shied away from “the view that a discriminatory feature is justified solely because it is

an essential feature of a State’s three-tier system.” *Id.* at 19–20.

As a result, there is no reason to hold this case pending disposition of *Day*. In *Day*, the question presented presumes the law at issue is “discriminatory,” Pet. at i, *Day, supra* (No. 25-788); see *id.* at 18, but Indiana’s is not, Pet. App. 5a, 55a. Resolving the alleged circuit split over what standard applies to allegedly discriminatory laws would not affect the disposition of this case. And even if one assumes that the incidental effects of Indiana’s laws bear more heavily on some out-of-state retailers, a wealth of evidence shows that those laws serve legitimate health and safety interests. Pet. App. 18a–35a. Because the courts have concluded that Indiana’s alcohol regulations are constitutional under the more stringent standard that the petitioners in *Day* ask this Court to adopt, holding the petition in this case would serve no purpose. Regardless of the standard adopted, Indiana’s alcohol regulations would stand.

## **II. The Petition Identifies No Independent Basis for Granting Review**

Apart from the unexplained—and incorrect—assertion that a decision from this Court in *Day* could provide “substantial guidance” for this case, Pet. 3, 9–10, the petitioners here identify no basis for disturbing the judgment below. Their petition assumes that Indiana’s alcohol regulations discriminate against “out-of-state retailers” and implies that those regulations may not serve legitimate state interests. Pet. i, 3. But petitioners do not develop any argument that Indiana’s regulations are in fact discriminatory or fail to serve legitimate interests—much less refute the pages of analysis from the courts below explaining

how Indiana’s regulations promote temperance, protect against unsafe products, and curb underage drinking. *See* Pet. App. 18a–36a, 56a–57a, 59a.

Nor do petitioners contend that the Seventh Circuit’s decision to uphold Indiana’s alcohol regulations conflicts with the decision of this or any other court. As Judges Easterbrook and Scudder observed, the courts of appeals have unanimously held that States can prohibit retailers without a physical storefront from shipping alcoholic beverages directly to consumers. *See* Pet. App. 6a–7a, 35a–36a; *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171, 1176, 1182–84 (8th Cir. 2021) (rejecting a challenge to a state law allowing only “licensed Missouri in-state retailers to ship wine and other alcoholic beverages directly”); *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214, 216–17 (4th Cir. 2022) (upholding state law that “prohibits out-of-state retailers—but not in-state retailers—from shipping wine directly to consumers”); *Jean-Paul Weg LLC v. Dir. of N.J. Div. of Alcoholic Beverage Control*, 133 F.4th 227, 230–31 (3d Cir. 2025) (upholding a New Jersey scheme only permitting “the direct shipping of wine to New Jersey customers by wine retailers that have a physical presence in the New Jersey” and “purchase their product from New Jersey licensed wholesalers”); *Day*, 152 F.4th at 966 (upholding a law under which “retailers who do not maintain premises in Arizona cannot ship directly to consumers within the state, but licensed retailers with in-state premises may”). And this is an easier case than some. As Judge Scudder observed, Indiana forbids *all* retailers from shipping directly to consumers via common carrier, not just out-of-state retailers. Pet. App. 36a.

Finally, the petition does not raise any independent arguments regarding this case's importance. And in *Day*, nearly all the arguments for certiorari are specific to the threshold question of what standard governs challenges to alcohol regulations. Pet. 31–32, *Day*. Neither the petition in this case nor in *Day* explains why this Court should weigh into deciding factually driven questions about whether the practical effects of Indiana's regulations are discriminatory, or whether Indiana amassed enough evidence that its laws further valid public-health and law-enforcement interests. Whether Indiana can forbid all retailers from shipping alcohol directly to consumers via common carrier is not a question that warrants this Court's review.

#### CONCLUSION

The petition for a writ of certiorari should be denied, regardless of the outcome in *Day*.

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