

No. 25-844

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*

REPLY BRIEF FOR THE PETITIONERS

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This case presents a question about the constitutionality of a state law that requires an in-state physical presence as a prerequisite to shipping alcohol directly to in-state consumers. The petition in *Day v. Henry*, No. 25-788 (filed Dec. 30, 2025), also presents a question about the constitutionality of an in-state physical-presence requirement for the direct-to-consumer shipment of alcohol. See Pet. at i, *Day, supra*.

Petitioners in this case have not asked the Court to grant plenary review, but simply to hold the petition so that the Court can grant, vacate, and remand in the event that this Court grants review in *Day* and issues an opinion that has implications for this case. Respondents resist that modest request on the ground that “[t]his case does

not raise the same question as *Day*.” Br. in Opp. 11. In other words, respondents object that the closely related questions in the two cases are not dead ringers. That, however, is not the standard: this Court routinely GVRs based on a newly issued decision even if the decision under review did not rely on the precise rule rejected in the Court’s new decision, as long as the new decision meaningfully clarifies the law in the relevant area. See, e.g., *Garland v. Range*, 144 S. Ct. 2706 (2024); *Klein v. Oregon Bureau of Labor & Industries*, 143 S. Ct. 2686 (2023); *Kerr v. Planned Parenthood South Atlantic*, 143 S. Ct. 2633 (2023); *Duncan v. Bonta*, 142 S. Ct. 2895 (2022); *Hernandez v. Mesa*, 582 U.S. 548, 553-555 (2017) (per curiam); *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 566 U.S. 902 (2012).

Instead, this Court’s traditional standard for a GVR is whether there exists a “reasonable probability” that “intervening developments” could impact the outcome of the decision below. *Wellons v. Hall*, 558 U.S. 220, 225 (2010) (per curiam) (citation omitted); see *Flowers v. Mississippi*, 136 S. Ct. 2157, 2157 (2016) (Alito, J., dissenting) (noting that “[t]his Court often ‘GVRs’ a case * * * when we believe that the lower court should give further thought to its decision in light of an opinion of this Court that (1) came after the decision under review and (2) changed or clarified the governing legal principles in a way that could possibly alter the decision of the lower court”). There is plainly such a reasonable probability here.

A merits decision by this Court in *Day* is particularly likely to cause the Seventh Circuit to “give further thought to its decision” in light of “change[s] or clarif[ica]tions” to “the governing legal principles,” *Flowers*, 136 S. Ct. at 2157 (Alito, J., dissenting), because the decision below was a product of a splintered one-to-one ruling. A

decision by this Court in *Day* addressing the essential-feature test might well have reasoning that would lead Judge Easterbrook to reconsider his view that a state law conditioning certain privileges on an in-state physical presence is not discriminatory, particularly given the *Day* respondents' discussion of that issue in their brief in opposition. See Br. in Opp. at 19-20, *Day, supra*. The *Day* opinion is also likely to contain reasoning that would affect the views of Judge Scudder, who believed that Indiana's requirement was discriminatory but nonetheless permitted by the Twenty-first Amendment, and who read this Court's cases to suggest that consideration of nondiscriminatory alternatives has no "material role to play after *Tennessee Wine*." Pet. App. 28a. Finally, the opinion would be significant to the analysis of the third panel member, who would presumably be newly assigned on remand. Cf. 7th Cir. Operating Procedures 6(a). If any doubt remains that this case presents overlapping issues with those in *Day*, the fact that both Judge Easterbrook and Judge Scudder cited *Day* in their concurring opinions (Pet. App. 6a, 19a, 36a), and that Judge Forrest cited the decision below in her dissent from the Ninth Circuit's decision in *Day*, should lay it to rest. See 152 F.4th 961, 979 & n.1 (9th Cir. 2025).

In any event, even if respondents were correct that the Court could issue a decision in *Day* that somehow has no bearing on the case at hand, respondents will be free to press that argument in a supplemental brief, arguing that a GVR is unnecessary or inappropriate. See, e.g., Resp. Supp. Br. at 1, 7, *Garland, supra* (No. 23-374). There can be no serious doubt that, in the event of a grant in *Day*, holding this petition is appropriate at a minimum to see what the Court's decision ultimately resolves.

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The petition for a writ of certiorari should be held pending this Court's disposition of the petition in *Day, supra*, and then resolved as appropriate in light of the Court's action in that case.

Respectfully submitted.

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