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SEAS OF CHANGE: Riding A Wave of New Challenges Ahead

2025 Annual Conference
Maui, Hawaii

NCSLA
NATIONAL CONFERENCE OF STATE LIQUOR ADMINISTRATORS

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PANEL #9: THE 2025 LEGAL UPDATE

Riding the Wave of New Challenges Ahead:
New Legislation, Executive Actions, and Judicial Decisions from Federal and State Courts Across the United States Focusing on the Regulation of Alcohol in America

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DEDICATION: MORT SIEGEL

Mortimer Siegel passed away last month. That news alone is startling to anyone devoted to the alcohol beverage industry. Mort was an icon among attorneys, regulators, and industry members.

A "Dean" of the Alcohol Law Bar, Mort's legal career spanned more than 60 years, during which he quickly rose to prominence. He represented foreign and domestic manufacturers, distributors, importers, hotels, and restaurants. He was a force within the alcohol beverage industry, arguing his clients' cases before the U.S. Supreme Court, various lower courts, and federal and state and regulatory agencies. Amongst many landmark cases, Mort helped secure consumers' rights to purchase wine directly from suppliers via the internet.

He was brash, feisty, resolute, and determined. That determination sometimes ruffled feathers. But to those fortunate enough to have worked directly with him, he was the font of institutional knowledge – the guy who knew all there was to know about the laws, regulations, enforcement policies, and those *unofficial rules* for overseeing the alcohol industry.

A toast to Mort Siegel, whose intelligence, tenacity and professionalism set the bar for the rest of us!

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TODAY'S AGENDA

- **New Laws, Regulations, and Executive Orders**
- **Important Issues on the Horizon:** Escalating cyber threats and the risk of liability for exposure of licensees' personal, confidential, and/or proprietary information; the growing confluence AND potential prohibition of alcohol + cannabis
- **A Sampling of the 2025 Legal Update Case Summaries**
- **Putting it All in Context:** A Legal History Lesson on the 21st Amendment

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NEW LAWS AND REGULATIONS

FEDERAL LABELING

TTB Notice No. 238, Major Food Allergen Labeling for Wines, Distilled Spirits, and Malt Beverages.

Should alcohol beverage labels list **contained food allergens** the way food products do?

The U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) has put the question up for comment. Specifically, TTB has proposed requiring a labeling disclosure of all major food allergens used in the production of alcohol beverages subject to TBB's regulatory authority under the Federal Alcohol Administration Act.

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NEW LAWS AND REGULATIONS

FEDERAL LABELING

Under the proposed regulations, unless an exception applies, labels must Declare milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, soybeans, and sesame, as well as ingredients that contain protein derived from these foods, if used in the production of the alcohol beverage.
TTB proposes a compliance date of five (5) years from the date a final rule resulting from this proposal is published in the Federal Register.

Members of industry and the public can review the proposed rule and offer comments on it. All documents and comments on this proposed rule are posted on Regulations.gov within **Docket No. TTB-2025-0003. To comment electronically, use the Regulations.gov comment form for Notice No. 238**; alternatively, anyone wishing to comment can review that notice for instructions on submitting written comments by mail. TTB has extended the comment period for this proposal; comments are now due by **August 15, 2025**.

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NEW LAWS AND REGULATIONS

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FEDERAL LABELING

TTB Notice No. 237, Alcohol Facts Statements in the Labeling of Wines, Distilled Spirits, and Malt Beverages.

What about **nutritional information**?

TTB has proposed requiring disclosure of per-serving alcohol, calorie, and nutrient content information in an "**Alcohol Facts**" statement on all alcohol beverage labels subject to TTB's regulatory authority under the Federal Alcohol Administration Act (FAA Act).

These label disclosures would be similar to the "Nutrition Facts" disclosures that appear on many food labels.

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NEW LAWS AND REGULATIONS

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FEDERAL LABELING

Under its authorities under both the FAA Act and the Internal Revenue Code of 1986, TTB is also proposing mandatory alcohol content statements for certain types of malt beverages, beer, and wines that are not currently required to be labeled with an alcohol content statement.

In addition, TTB proposes a compliance date of five (5) years from the date that a final rule resulting from this proposal is published in the Federal Register.

All documents and comments on this proposed rule are posted on Regulations.gov within **Docket No. TTB-2025-0002. To comment electronically, Use the Regulations.gov comment form for Notice No. 237**; see that notice for instructions on submitting comments by mail. TTB has extended the comment period for this proposal; comments are now due by **August 15, 2025.**

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NEW LAWS AND REGULATIONS

TAX SIMPLIFICATION PILOT PROGRAM FOR BREWERS

TTB is expanding what had been a pilot program to make it simpler and easier for brewers to file operational reports and pay federal excise taxes.

On April 30, 2025, TTB issued Industry Circular 2025-01 detailing the alternate procedure for brewers to submit excise tax returns and operational reports under the Tax Simplification pilot program.

TTB's new beer forms are designed to simplify the information brewers submit to the agency by combining the minimum necessary elements from the current excise tax return (**TTB Form 5000.24**) and the Brewer's Report of Operations (**BROP, TTB Forms 5130.9 and 5130.26**).

TTB's improvements include new pilot forms that minimize the taxpayer burden by combining the excise tax return and the operational report(s) and reduce the information the federal agency collects on brewery operational activities.

These new forms will be available for domestic brewers who are approved to participate in TTB's ongoing pilot initiative.

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NEW LAWS AND REGULATIONS

TAX SIMPLIFICATION PILOT PROGRAM FOR BREWERS

Brewers who wish to take advantage of the new process can apply by:

(i) Completing a participant application form online.

(ii) Submitting a request on brewery letterhead must be signed by a person with authority on file with TTB to sign or act on behalf of the brewer.

According to TTB, if an online participation submission is successful, the brewer will automatically be transferred to a "Thank You" page and receive an email confirming the submission within approximately one hour.

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NEW LAWS AND REGULATIONS

AMERICAN SINGLE MALT WHISKEY EARNS ITS OWN STANDARD OF IDENTITY

TTB issued its final rule establishing a new "**American Single Malt Whiskey**" category, a move that is designed to help protect and promote this growing line of specially created distilled spirits. These "**Standards of Identity**" are coveted by distillers, much like "Champagne" is viewed by French wine makers and "Reggiano Parmesan" is seen by Italian cheese makers, to protect the unique nature of those products.

This final rule amends the TTB regulations that set forth the standards of identity for distilled spirits to include "American single malt whisky" as a type of whisky produced in the United States and meeting certain criteria. TTB proposed the new standard of identity in response to petitions and comments submitted by several distillers and the American Single Malt Whisky Commission. The document was published in the Federal Register on 12/18/2024.

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NEW LAWS AND REGULATIONS

AMERICAN SINGLE MALT WHISKEY EARNS ITS OWN STANDARD OF IDENTITY

Key provisions of the **American Single Malt Whiskey** Standard include:

1) fermented mash of 100% malted barley produced in the United States;
2) distillation proof of 160 or less, distilled at the same distillery in the United States;
3) stored in used, charred new, or uncharred new oak barrels, with a 700-liter maximum capacity and only stored in the United States;
4) no neutral spirits permitted; and
5) no allowable coloring, flavoring, or blending materials permitted, except for caramel coloring that is disclosed on the label.

The final rule also adopted a standard for the "Straight American Single Malt Whiskey," requiring that the liquor be aged for a minimum of two (2) years to earn the name.

Two key trade associations, the **American Single Malt Commission** (ASMWC) and the **Distilled Spirits Council of the United States** (DISCUS), were instrumental in designing the concept as well as lobbying the federal government for its adoption. They also worked through **DISCUS' Spirits United** to generate more than 1,000 letters from members of the alcohol beverage industry, as well as the public at large, to TTB Administrator Mary Ryan, urging immediate action to finalize the official standard for the American Single Malt Whiskey category. TTB's final rule became effective on **January 19, 2025.**

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NEW LAWS AND REGULATIONS

THE EXPANDING REACH OF SPIRITS-BASED RTDs

FEDERAL

On January 10, 2025, the Federal Register published a new final rule promulgated by the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) that expanded the standards of fill for wine and distilled spirits, particularly benefiting low-alcohol Ready-To-Drink (RTD) products.

This included new standards for distilled spirits in containers other than cans, meaning RTDs and canned cocktails can now be sold in glass or other packages.

Fifteen new standards were added for distilled spirits, including sizes like 187, 355, and 570 milliliters, as well as larger options like 3.75 liters.

The rule also harmonizes standards of fill for distilled spirits in cans and other containers. Previously, different size restrictions applied to canned spirits compared to bottled versions. The new rule removes this distinction, treating all packaging formats equally, which simplifies regulations for RTDs.

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NEW LAWS AND REGULATIONS

THE EXPANDING REACH OF SPIRITS-BASED RTDs

STATES

Several states have recently updated their laws regarding RTD beverages containing spirits, with some focusing on allowing these beverages to be sold in more locations, while others address taxation and distribution.

Florida, for instance, has made **cocktails-to-go** permanent, allowing restaurants and bars to sell them for carryout. The Sunshine State also allows low-alcohol RTDs (6% ABV or less) containing spirits to be sold wherever beer and wine sales are allowed. *See* **Florida Statutes §564.06(5)(b).**

Other states are also looking to expand the distribution options for pre-packaged, low-alcohol RTDs containing distilled spirits, considering them for similar distribution and tax treatment as malt and wine-based RTDs.

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NEW LAWS AND REGULATIONS

THE EXPANDING REACH OF SPIRIT-BASED RTDs

STATES

1. **Permitting and Distribution**:

Some states are clarifying how spirit-based RTDs are classified and regulated, which can impact where and how they can be sold.

- **Pennsylvania**, in July 2024, passed into law **SB 688**, which expanded access to RTD cocktails that contain distilled spirits, allowing them to be sold by holders of the newly created Ready-to-Drink Cocktail Permit. The new law defines "Ready-to-drink cocktails" as "beverage[s], composed in part of distilled liquor premixed and packaged in original containers by the manufacturer, containing not more than sixteen ounces. The statutory definition includes any beverage consisting of at least 0.5%, but not greater than 12.5% alcohol by volume (ABV). RTDs that rely on beer, malt, or wine for their alcohol fermentation are not deemed to be RTD cocktails.
- **Indiana**, in 2024, passed **HB 1025**, which now allows beer and wine wholesalers to also distribute low-alcohol RTDs that contain distilled spirits. The law adds a new section (Indiana Code 7.1-1-3-26.2) defining "mixed beverage" to include prepared cordials, cocktails, or highballs in containers up to 24 ounces, made from a distilled spirit base (like whiskey, gin, etc.) and other flavorings, with an alcohol content between 0.5% and 15% ABV.
- **Alabama**, this year, is considering new legislation, **SB 268**, which, if it becomes law, would legalize the sale of low-alcohol by volume content beverages made from liquor (*i.e.*, distilled spirits). That legislation is currently pending (but on May 6, was listed as "Indefinitely Postponed").

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NEW LAWS AND REGULATIONS

THE EXPANDING REACH OF SPIRIT-BASED RTDs

STATES

2. **Tax Treatment**:

Several states have adopted, or are considering, the adoption of tax policies seeking to level the playing field for spirit-based RTDs, in some cases, lowering taxes while encouraging sales of these beverages.

- **Nebraska**, in Summer 2021, passed **Legislative Bill 274**, expanding the scope of distribution for RTDs while also levying an excise tax of $0.95 per gallon.
- **Vermont**, in 2022, lawmakers passed legislation that created a new category within Vermont's Title 7 statute, the state's liquor laws, for "ready to drink spirits beverages." Instead of controlling their distribution through the Vermont Department of Liquor and Lottery and limiting their sale to approximately 80 state-contracted spirits stores, the new law allows spirits-based beverages that are (i) 12% ABV or less, and (ii) packaged in containers no greater than 24 fluid ounces, to be distributed by private-sector wholesalers and sold in the state's nearly 1,000 grocery stores, convenience stores and gas stations. It also lowered the state excise tax on spirits-based RTDs from $7.68 per gallon to $1.10 a gallon.
- **Ohio**, this year, the House of Representatives approved legislation that includes language to lower the tax rate on spirits-based RTDs with 10% or less ABV. The language was included in the state's operating budget bill, **HB 96**, which is now pending before the Ohio Senate for consideration.

Proponents contend these efforts address tax disparities between spirits-based RTDs and malt or wine-based RTDs, arguing that they should be taxed similarly. **Opponents** contend these products promote a "gateway" to spirits consumption.

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NEW LAWS AND REGULATIONS

REGULATORY OVERHAUL: IOWA GETS A MAKEOVER

Iowa's alcohol beverage regulations have undergone significant revision and have been recodified as of May 2025.

The bland regs of old have been replaced with a more robust set, and the regs have been recodified as well.

Alcohol industry regulations are no longer found in Ch. 123; they are now codified in Agency 701 (Revenue Department), **Title XI, Chapters 1000-1099**.

The shiny new trade practice regulations are found in Chapters 1000 – 1003 only; Chapters 1004-1099 are reserved for future regulations.

Trade practice regulations can be found in Chapter 1003.

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NEW LAWS AND REGULATIONS

TECHNOLOGY: TEXAS MANDATES ELECTRONIC SCANNING FOR CONSUMER IDENTIFICATION VERIFICATION

SB 560, effective September 1, 2027, requires the Texas Alcoholic Beverage Commission permittees and licensees to "*visually inspect and access electronically readable information*" (*i.e.*, scan) a purchasing consumer's government-issued identification for the purpose of verifying the purchaser's age for any retail sale of alcohol beverages for off-premises consumption. However, several categories of permittees, licensees, and alcohol beverage sales are expressly exempted from the scanning requirement, including but not limited to:

- distiller's and rectifier's permit,
- winery permit,
- brewer's license,
- brewpub license,
- mixed beverage permit,
- food and beverage certificate operating a restaurant on the premises,
- a restaurant,
- a public entertainment facility property during a sporting event, concert, festival, or other similar temporary event at the facility, and retail sales of manufacturer-sealed alcohol beverages picked up at an outdoor area of a retailer's premises for purposes of off-premises consumption.

According to the fine lawyers at Texas law firm **Martin, Frost & Hill**, the exemption list effectively leaves wine and malt beverage off-premises permits, malt beverage retail dealers' off-premises licenses, wine-only package store permits, and package store permits—the off-premises sellers—subject to this law effective in 2027.

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NEW LAWS AND REGULATIONS

TECHNOLOGY: NEVADA MANDATES USE OF EFT

In May of 2025, Nevada lawmakers implemented a new requirement mandating the use of credit cards or Electronic Funds Transfer (EFT) technology to process all payments between alcohol beverage wholesalers and retailers. Nevada Revised Statutes Section 365.485 was revised to provide the following language:

Except as otherwise provided in paragraph (f) of subsection 3, unless a retail liquor store elects to pay by credit card pursuant to subsection 6, payment from a retail liquor store to a wholesale dealer for the delivery of beer, wine or distilled spirits must be made by electronic funds transfer. The wholesale dealer shall initiate the electronic funds transfer by initiating the withdrawal of funds from the bank account of the retail liquor store. The electronic funds transfer must be completed not later than the expiration of the 30th day after the date of delivery of the beer, wine or distilled spirits for which the electronic funds transfer constitutes payment. A wholesale dealer shall not pay or be required to pay, directly or indirectly, any fees incurred by the retail liquor store for an electronic funds transfer made pursuant to this section.

The "*rest of the story"* to this goes **back to 2014**, when innovative EFT technology company **Fintech** went to Carson City to educate lawmakers about the virtues of allowing alcohol industry members to use EFT; at the time, wholesalers were dead-set against it, fearing they'd have to pay otherwise avoidable EFT processing fees. Thanks to Fintech's V.P. of Regulatory Affairs **Wendy Turk** and a few others, Fintech managed to get a new administrative rule promulgated (Nev. Admin. Code § 369.055) stating that retailers ***MAY use EFT, but only if wholesalers agreed.***
But what a difference a decade makes, as this year's amendments actually were proposed and supported by the wholesalers!

EFT makes sense for safety and security, as well as record-keeping and auditing. But that logic was not always understood in Nevada.

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NEW LAWS AND REGULATIONS

BUDGET CONSTRAINTS AND SHRINKING RESOURCES FOR ALCOHOL REGULATORS

CASE IN POINT: The New Hampshire Liquor Commission is facing significant changes as the state legislature considers a proposal to eliminate the Liquor Commission's Enforcement Division. The proposed cuts, outlined in House Bill 2, would save approximately $3 million annually by cutting 19 full-time and 15 part-time positions.

- Fiscal responsibility is a legislative responsibility, but so is public safety. The Enforcement Division is currently responsible for regulating New Hampshire's alcohol industry and ensuring the safety and lawful behavior of over 6,000 licensees.
- *Opponents argue this new law could jeopardize the health and safety of communities, as the Enforcement Division plays a vital role in monitoring alcohol sales and preventing illegal activities. The potential loss of this division could also threaten the state's annual revenue of about $214 million from liquor sales. In addition to the Enforcement Division cuts, the bill proposes repealing the transfer of $10.7 million to New Hampshire's Alcohol Abuse and Prevention Fund, further straining resources dedicated to public health initiatives.*
- The current expectation is that the legislation will pass, with amendments. However, the last vote on the bill was close: 185 YEAS to 175 NAYS.

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NEW LAWS AND REGULATIONS

ANTI DRINK-SPIKING

California continues to lead the nation in efforts to address drink-spiking. Drink spiking includes, but is not limited to, adding a controlled substance or alcohol to a person's drink without their knowledge or consent.

Last year, California implemented **AB 1013**, a new law mandating that certain on-sale alcohol beverage license holders offer drug testing devices for sale or at no cost to patrons, which took effect beginning July 1, 2024. The new law required establishments with a Type 48 license from the California Department of Alcoholic Beverage Control (ABC) to have signage displayed in a prominent and conspicuous location, letting patrons know that drug testing kits are available to test for common date-rape drugs, often referred to as 'roofies.' Type 48 licenses are issued to bars, nightclubs, and certain other on-premises licensees. Last year, there were approximately 2,400 Type 48 licensees across California.

The required signage reads, "Don't get roofied! Drink-spiking drug test kits are available here. Ask a staff member for details." A sample sign is available on ABC's website and can be downloaded and printed by licensees.

AB 1013 made licensees responsible for procuring the drug testing kits, which can include test strips, stickers, straws, or other devices that can detect the presence of controlled substances in drinks. The ABC does not sell or provide kits, and does not recommend or endorse any specific company that does.

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NEW LAWS AND REGULATIONS

ANTI DRINK-SPIKING

This past legislative session, **the California Assembly** initiated additional responsibilities for on-premises retailers to help ameliorate the consequences of drink-spiking. **AB 2389** added **Section 25624.5 to the California Business and Professions Code**.

Starting January 1, 2025, Type 48 licensees are required to contact law enforcement or emergency medical services when notified by a customer that the customer or another customer believes they have been a victim of drink spiking. These actions require notification in any of the following situations:

- A positive test result from a drug testing device.
- Observation of someone tampering with a customer's drink.
- Verbal communication to staff that a customer has been drugged.
- Observation of symptoms associated with the effects of, or the controlled substances used for, drink spiking.

After contacting law enforcement or emergency medical services, the licensee or its staff must, to the best of their ability: (i) follow any instructions communicated by law enforcement or emergency medical services following notification, and (ii) monitor the customer until law enforcement or emergency medical services arrive at the premises to assess the customer. A violation of the new notification and responsibility law is not a crime. However, the potential regulatory consequences are serious and will warrant expanded training of licensees' staff and servers.

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NEW LAWS AND REGULATIONS

ANTI DRINK-SPIKING

Following in California's footsteps, the **Washington State** Legislature is considering a similar bill for its 2025-2026 legislative session.

Senate Bill 5330 would require some establishments selling alcohol for on-premises consumption, including bars and nightclubs, to have testing kits on hand so patrons can see if their drinks have been drugged.

Businesses covered by the proposal would also have to post a notice that test kits are available. Bars would sell the test strips, stickers, or straws to customers for a "reasonable amount based on the wholesale cost of the device."

Sponsors recently amended the bill due to concerns of overreach lodged by a hospitality trade group; the initial version included taverns, nightclubs, theaters, hotels, and more.

However, the legislation remains alive and under consideration, currently by the **Senate Labor and Commerce Committee**. If passed into law, this latest effort to combat drink-spiking would take effect on **January 1, 2026**.

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IMPORTANT ISSUES ON THE HORIZON

ESCALATING CYBER THREATS

The Cybersecurity and Infrastructure Security Agency (**CISA**), the Federal Bureau of Investigation (**FBI**), the National Security Agency (**NSA**), and their international partners The **Five Eyes** alliance has issued new advisories concerning the activities of the Chinese state-sponsored hacking group known as Volt Typhoon.

State and local alcohol regulators and food and beverage industry members are likely not deemed to be "critical infrastructure" targets; that status tends to fall on electrical power plants, municipal water and sewer systems, telecommunications facilities, and major transportation networks. ***However, regulatory agencies and members of the alcohol beverage industry rely on those critical infrastructure components to function***. A successful OT cyberattack could cut agency websites, block banking and finance connections, disrupt vital supply chains, and even physically shut down plant operations.

Equally concerning, government bodies, especially alcohol regulatory agencies, are repositories for huge quantities of personal information relating to the individuals who own, control or are related to licensees. Driver's licenses, Social Security Numbers, financial and confidential information contained in personal questionnaires submitted for licensure qualification – **massive quantities of these data are contained in the electronic files of alcohol regulatory agencies in every state across America. The consequences of a successful hack in any single agency could be catastrophic**.

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IMPORTANT ISSUES ON THE HORIZON

FEDERAL FUNDING CUTS MEAN STATE BEVERAGE REGULATORS MUST LOOK FOR ALTERNATIVE RESOURCES TO PROTECT AGAINST CYBER THREATS

In April of this year, the Trump Administration eliminated funding and terminated its relationship with the Center for Internet Security (CIS), which managed the **Multi-State Information Sharing and Analysis Center** (MS-ISAC).

Since 2004, MS-ISAC has supported the cybersecurity operations of state and local governments by providing technical assistance, guidance, and security warnings regarding various cyber threats.

As a result, MS-ISAC has lost funding for several state and local government services, including stakeholder engagement, cyber threat intelligence, and cyber incident response. A Trump Administration official explained that the MS-ISAC's work "no longer aligns with department priorities."

The MS-ISAC comprises 18,301 members — state and local government agencies and departments that rely on the Center for internet Security's services. These include network intrusion detection, a malicious domain blocking and reporting service, endpoint detection and response, a cybersecurity self-assessment program, and a 24/7 security operations center. It provides threat intelligence sharing, training, and education to thousands of state and local agencies.

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IMPORTANT ISSUES ON THE HORIZON

MORE CUTS TO CYBERSECURITY FUNDING COMING

The **Cybersecurity and Infrastructure Security Agency** (CISA) is a U.S. Federal agency within the Department of Homeland Security (DHS) responsible for cybersecurity and infrastructure protection. Its primary goal is to defend against cyber threats, enhance national and economic security, and ensure the availability and resilience of critical infrastructure.

CISA works closely with state, local, tribal, and territorial governments (SLTT) to detect and prevent cybersecurity risks where possible by sharing information, deploying detective and preventative technologies, publishing technical products and guidance, and providing incident response and "hunt" capabilities to minimize impacts of identified incidents and an evolving threat landscape.

Since its creation, CISA has also coordinated with outside professionals like MS-ISAC and utilized its internal assets and resources to work with state and local governments in a combined effort to protect citizens, communities, and the nation against cyberattacks. But that all might be changing.

The FY 2026 Budget proposal President Donald Trump unveiled on the evening of May 30, 2025, would make deep cuts to the CISA workforce, eliminating 1,083 positions and slashing its budget by $495 million to $2.4 billion. The cuts would include 218 roles in Mission Support, which handles agency-wide administrative responsibilities; 204 roles in the Cybersecurity Division; 327 roles in the Integrated Operations Division; and 127 roles in the Stakeholder Engagement Division.

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IMPORTANT ISSUES ON THE HORIZON

MORE CUTS TO CYBERSECURITY FUNDING COMING

As reported in the Department of Homeland Security's "Cybersecurity and Infrastructure Security Agency Budget Overview, the $495 million cut would withhold $216 million, or 18% of current funding, from CISA's Cybersecurity Division, which leads efforts to protect government networks and help defend critical infrastructure. The plan cuts $46.2 million, or 20%, from the Integrated Operations Division, which coordinates CISA's distribution of support and services to companies and local governments (including state regulatory agencies) nationwide.

Two other divisions of CISA would face much bigger cuts: the Stakeholder Engagement Division, which leads CISA's partnerships with critical infrastructure organizations, would lose $62.2 million, 62% of its current funding, while the National Risk Management Center, which analyzes and predicts threats to infrastructure, would lose $97.4 million, a 73% reduction.

If Congress approves these budget cuts, they will materially constrict CISA's mission and negatively impact the agency's ability to coordinate with SLTT governments and their respective agencies, including the alcohol regulatory agencies, which are repositories for massive quantities of licensee personal information.

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IMPORTANT ISSUES ON THE HORIZON

WHY SHOULD ALCOHOL BEVERAGE REGULATORY AGENCIES BE WORRIED?

The Department of Homeland Security's Office of Intelligence and Analysis recently issued its 2025 Homeland Threat Assessment, providing insights from across the Department and other homeland security Stakeholders are to identify the most direct, pressing threats to the United States during the government's next fiscal year. As part of its assessment, the Department warned:

"Financially motivated cyber criminals and state-affiliated actors will continue to employ ransomware and other schemes to disrupt targeted U.S. critical infrastructure entities and impose significant financial costs on their victims. Financially motivated cyber criminals, like other malicious cyber threat actors, consistently evolve and adapt to take advantage of software vulnerabilities, poor network security configurations, and social engineering tactics to gain system access. Ransomware actors likely will continue opportunistically targeting victims they believe will provide the largest payouts."

In 2024, cyberattacks targeting government agencies and critical infrastructure saw a significant rise. Incidents included malware attacks, espionage, and ransomware, impacting various sectors and raising concerns about national security and protecting Americans' personal information and data. As in previous years, hackers have stolen vast quantities of personal data, often selling it to other malicious actors or using it to extort victims.

2024 also saw cybercriminals become more creative with their attack methods. Phishing, social engineering, and malware attacks have all gotten more advanced. Attackers use a mix of tactics, including AI, to exploit vulnerabilities. They're targeting employees and systems that are not adequately protected.

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IMPORTANT ISSUES ON THE HORIZON

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THE POTENTIAL LEGAL CONSEQUENCES OF A REGULATORY AGENCY'S DATA BREACH

The FBI reported that government entities were the third most-targeted sector in 2023, and the 2024 data are expected to show further increases. Government organizations are lucrative targets for threat actors for several reasons:

- They often rely on legacy systems and outdated software;
- They lack the resources and internal expertise to improve their security posture;
- There are a vast number of government entities of various sizes to target; and
- Government organizations are digitizing and connecting, allowing supply chain attacks to take hold.

Cyber-attacks and data thefts, enabled by weak security, cover-ups, or avoidable mistakes, have cost American organizations nearly $4.4 billion and counting. Beyond the direct economic impacts, hacking and data theft that result in the disclosure of individuals' personal information can ruin lives.

Recent lawsuits suggest that data breaches or non-compliance with security and privacy laws, caused by an organization's failure to protect personal and confidential information reasonably, can also produce huge damage awards.

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IMPORTANT ISSUES ON THE HORIZON

NCSLA NATIONAL CONFERENCE OF STATE LIQUOR ADMINISTRATORS

THE POTENTIAL LEGAL CONSEQUENCES OF A REGULATORY AGENCY'S DATA BREACH

CASE IN POINT: State employees whose **personal data was breached in a 2021 ransomware attack** on The computer network of the **Rhode Island Public Transit Authority** (RIPTA) could be eligible for up to $7,500 in compensation, under a proposed settlement agreement recently filed in Providence Superior Court.

The American Civil Liberties Union (ACLU) of Rhode Island announced the settlement to end its lawsuit against RIPTA and UnitedHealthcare New England over claims that they **failed to encrypt and secure personal information for potentially as many as 19,608 current and former state employees**.

The class-action lawsuit, filed in 2022, claims UnitedHealthcare and RIPTA violated state law requiring timely notification of the breach. A third party illegally obtained files containing Social Security numbers and insurance claim information from the bus agency's server.

Under the proposed settlement, RIPTA and UnitedHealthcare would establish **a $350,000 settlement fund**, with the possibility of an additional $25,000 if claims exceed that amount. State employees whose data was exposed can request up to $1,000 for out-of-pocket expenses made because of the breach, $15 per hour (for up to four hours) for any time lost dealing with the fallout of the 2021 hack, and up to $7,500 for any "extraordinary losses" such as identity theft or fraud. Those affected by the data breach would also be eligible for **five years of free credit monitoring**. The ACLU estimates **the value of the credit monitoring for all affected state employees would exceed $16.4 million.**

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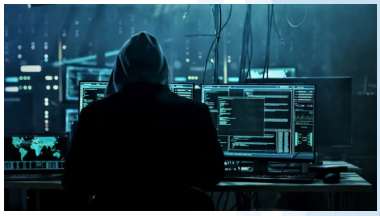
IMPORTANT ISSUES ON THE HORIZON

WHY ALCOHOL BEVERAGE REGULATORY AGENCIES NEED TO EXPAND PROTECTIVE RESOURCES NOW



State and local administrative agencies responsible for regulating the food and beverage industries are attractive targets for cyber thieves. Alcohol regulatory agencies are especially at risk, as license applicants must make extensive disclosures proving their licensee qualification. Categories of personal, confidential information include personal contact information, Social Security numbers, driver's license data, criminal history reports, financial data disclosures, and a host of other highly sensitive information.

In most jurisdictions, agencies are mandated by broadly written statutes to take "appropriate measures" to safeguard that data. However, the regulations do not specify the required measures to meet that responsibility.

This is where the plaintiffs' Bar typically begins its work. And while this may read like a jab against plaintiffs' lawyers, the reality is that any organization breaching its obligation to receive and maintain private, highly personal information in confidence deserves to face the consequences. In today's world, exposure of someone's personal information to a cybercriminal can lead to greater crimes that can ruin that individual's life and the lives of their family.

Is that a cognizable claim a court would adjudicate as a genuine "case or controversy?" **Recent court precedents suggest "Yes."** Published judicial decisions have recognized claims for damages resulting from a data breach are cognizable as a "case or controversy" under Article III of the U.S. Constitution, thus providing the plaintiffs withstanding to sue in federal court. For example, in the case of **In re U.S. Office of Personnel Management Data Security Breach Litigation**, a federal appellate court determined in a data breach case against a government agency that the plaintiffs' claim of a "constitutional right to informational privacy" that was violated "the moment that [cyberattackers stole] their inherently personal information" from the government's deficiently secured databases met the requirements to establish standing:

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IMPORTANT ISSUES ON THE HORIZON

THE POTENTIAL LEGAL CONSEQUENCES OF A REGULATORY AGENCY'S DATA BREACH

> [T]here is no question that the OPM hackers, too, now have all the information needed to steal the Arnold plaintiffs' identities. Arnold plaintiffs have alleged that the hackers stole Social Security numbers, birth dates, fingerprints, and addresses, among other sensitive personal information. It hardly takes a criminal mastermind to imagine how such information could be used to commit identity theft. Indeed, several Arnold plaintiffs claim that they have experienced various types of identity theft, including the unauthorized opening of new credit cards and other financial accounts and the filing of fraudulent tax returns. Moreover, unlike existing credit card numbers, which, if compromised, can be changed to prevent future fraud, Social Security numbers and addresses cannot readily be swapped out for new ones. And, of course, our birth dates and fingerprints are with us forever. Viewing the allegations in the light most favorable to Arnold plaintiffs, as we must, we conclude that not only do the incidents of identity theft that have already occurred illustrate the nefarious uses to which the stolen information may be put, but they also support the inference that Arnold plaintiffs face a substantial—as opposed to a merely speculative or theoretical—risk of future identity theft. . . .
> . . . .Given the nature of the information stolen and the fact that several named Arnold plaintiffs have already experienced some form of identity theft since the breaches, it is at least plausible that Arnold plaintiffs run a substantial risk of falling victim to other such incidents. *See* *Hutton v. National Bd. of Examiners in Optometry, Inc.*, 892 F.3d 613, 621–622 (4th Cir. 2018) (finding a substantial risk of identity theft where the plaintiffs alleged not only that hackers had stolen their information, but also that it was subsequently "used fraudulently"). Because the Arnold plaintiffs adequately allege a substantial risk of future identity theft, any expenses they have reasonably incurred to mitigate that risk likewise qualify as injury. *See* *id.* At 622 ("[T]he [Supreme] Court has recognized standing to sue based on costs incurred to mitigate or avoid harm when a substantial risk of harm exists.") (citing *Clapper* [v. Amnesty Int' l USA, 568 U.S. 398] at 414 n.5,). . . . .

In re U.S. Office of Personnel Management Data Security Breach Litigation, 928 F.3d 42, 64-68 (D.C. Cir. June 21, 2019); see also, In re Fortra File Transfer Software Data Security Breach Litigation, 2024 WL 4547212 (S.D. Fla. September 18, 2024) (For purposes of Article III standing, concrete intangible harms may include reputational harms, disclosure of private information, and intrusion on seclusion), citing TransUnion LLC v. Ramirez, 594 U.S. 413, 424, (2021).

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IMPORTANT ISSUES ON THE HORIZON

SOVEREIGN IMMUNITY IS NOT AN ABSOLUTE SHIELD

That same case can be read to stand for the principle that individuals' data breach allegations can sustain a cognizable claim for the tort of negligence.

Where the plaintiff alleged that cyber attackers gained the individual's personal information because of the failure of the organization to safeguard that personal data properly by failing to configure software and implement policies that complied with standard information security practices, the federal appellate court found those allegations sufficient to plead that the organization, not the software developer, breached its duty to protect individuals' information, as required for a negligence claim against the provider under state law. See, *e.g.*, Cravens v. Garda CL Southeast, Inc., 2024 WL 5058304 (S.D. Fla. December 9, 2024) ("It is well-established that under federal law, 'entities which collect sensitive, private data from consumers and store such data on their networks must protect the information.' " citing In re Fortra File Transfer Software Data Sec. Breach Litig., 2024 WL 4547212 at *8 (S.D. Fla. September 18, 2024) (quoting In re Mednax, 603 F. Supp. 3d at 1222, and citing Farmer v. Humana, Inc., 582 F. Supp. 3d 1176, 1186 (M.D. Fla. 2022) (finding plaintiff's allegations that defendants "failed to implement industry protocols and exercise reasonable care in protecting and safeguarding the [personal information of plaintiff]" and "failed to heed industry warnings and alerts to provide adequate safeguards to protect the [individuals' personal information]" sufficient to plead that defendants breached their duty).

Current case law suggests that the doctrine of sovereign immunity, whether enshrined in a state's constitution or statute, or a concept of judicial creation, generally can shield a regulatory agency from civil liability for most claims related to a data breach. However, the changing world of cyber risk is prompting changes in the traditional scope of sovereign immunity related to data breaches. For example, **in states such as Minnesota and New Mexico**, a recent trend involves plaintiffs attempting to creatively expand a government's cyber liability by arguing that personal identifiable information (PII) is a property right, which would allow an aggrieved victim to capitalize on the waiver of sovereign immunity involving individuals' property rights.

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IMPORTANT ISSUES ON THE HORIZON

A LAST WORD OF ADVICE: DON'T DELAY

THE BOTTOM LINE: As the federal government recedes further from its cybersecurity leadership, states have no choice but to fill the void and implement robust protective measures. Efforts must focus not only on protecting critical infrastructure but also encompass protection for regulatory authorities like alcohol beverage agencies, which are repositories for vast amounts of individuals' private information.

The National Security Agency released the Cybersecurity Advisory, "**Stop Malicious Cyber Activity Against Connected Operational Technology**," detailing how to evaluate risks to systems and improve the security of connections between OT and enterprise networks. Information technology (IT) exploitation can serve as a pivot point for OT exploitation, so carefully evaluating the risk of connectivity between IT and OT systems is necessary to ensure unique cybersecurity requirements are met. See NSA's guidance.

For regulators and members of the alcohol beverage industry, it is vital to invest in a dedicated internal cybersecurity staff.

This is the dangerous world we live in now. Recognizing the threat environment, developing and maintaining comprehensive incident response plans, regularly reviewing and updating them, and promptly reporting any incidents to the relevant authorizing agencies can enhance resilience against threats like Volt Typhoon and contribute to the broader effort to protect the alcohol industry, the personal information of agencies' constituents, and America's national security.

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IMPORTANT ISSUES ON THE HORIZON

THE GROWING CONFLUENCE BETWEEN ALCOHOL AND CANNABIS

A great deal of media coverage focuses on the alcohol industry's concerns that cannabis products are becoming significant competitive challenges as more states across America relax prohibitions against the recreational use of marijuana. From a regulatory vantage, the more important development may be the growing number of incidents involving cannabis. Companies are seeking not to replace alcohol businesses but to join with them.

In a move signaling the continuing confluence between alcohol and cannabis, **Tilray Brands, Inc**., a global cannabis-lifestyle and consumer packaged goods company, acquired eight beer and beverage brands from **Anheuser-Busch** in late 2023. Less than one year later, on September 3, 2024, Tilray announced its successful acquisition of three craft breweries -- Hop Valley Brewing Company, Terrapin Beer Co., and Revolver Brewing-- from Molson Coors Beverage Company. The resulting sales volume of the acquired brands elevated Tilray to the 5th largest craft beer business in the United States. Tilray's beverage portfolio at the end of 2024 included craft beer, spirits, and non-alcohol beverage brands such as SweetWater Brewing Company, Montauk Brewing Company, Alpine Beer Company, Green Flash Brewing Company, Shock Top, Breckenridge Brewery, Breckenridge Distillery, Blue Point Brewing Company, 10 Barrel Brewing Company, Redhook Brewing Company, Widmer Brothers Brewing, Square Mile Cider Company, HiBall Energy, Happy Flower CBD, along with Canada's top recreational cannabis and THC beverage brands, Mollo and XMG.

Not everyone is on board with this evolution. Some states have launched enforcement actions to curtail the distribution of hemp-derived products, including beverages. This is bolstered by the U.S. Food and Drug Administration's continuing inability to promulgate advice for the safe use of cannabis-related ingredients in foods and drinks.

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IMPORTANT ISSUES ON THE HORIZON

TENNESSEE OPENS THE DOOR TO REGULATION OF HEMP-DERIVED THC PRODUCTS

Three years after allowing the retail sale of cannabis for the first time, Tennessee lawmakers moved to limit the sales of certain types of hemp-derived products beginning in 2026. The Tennessee Legislature this year passed, and on May 21, 2025, Governor Bill Lee signed House Bill 1376.

- The new law bans products containing THCA and synthetic cannabinoids while also outlawing direct-to-consumer sales.
- The law transfers regulatory oversight of hemp-derived cannabinoid (HDC) products from the state Department of Agriculture (TDOA) to the Tennessee Alcoholic Beverage Commission (ABC). It also introduces comprehensive regulations for HDC manufacturers and wholesalers.
- The law also prohibits sales of HDC products in convenience stores and grocery stores, limiting them to retailers that restrict entry to those 21 and older or are licensed by the Tennessee ABC.
- Moreover, HDC products must be consumed on the licensed site where they are sold.

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IMPORTANT ISSUES ON THE HORIZON

TENNESSEE OPENS THE DOOR TO REGULATION OF HEMP-DERIVED THC PRODUCTS

The TABC has now released initial guidance on the new HDC law. Beginning January 1, 2026, the TABC will take regulatory oversight of the hemp-derived cannabinoid product industry from the TDOA. Until then, TDOA will retain regulatory enforcement over the manufacture and retail sale of HDC products.

Under existing Tennessee law, HDC manufacturing must be conducted by a TDOA licensed supplier, and retail products must contain a label that includes (i) an ingredient list, (ii) batch number, (iii) mandatory warning statements, and (iv) a QR code linking to a valid Certificate of Analysis (COA).

Required laboratory safety testing must be performed by a third-party accredited laboratory registered with TDOA. HDC product safety tests must verify compliance with maximum allowable thresholds for THC content, heavy metals, residual solvents, pesticides, and other potential contaminants. Retail sales may only be conducted by TDOA licensed retailers and only to individuals aged 21 and over. Failure to adhere to current law could result in civil and criminal penalties. Individuals who sell or distribute HDCs without a license in Tennessee are subject to a class A misdemeanor.

Also beginning January 1, 2026, all consumer protection standards, including licensing, testing, labeling, and age restrictions, will remain under TABC's jurisdiction. The TABC has promulgated rules that align with the regulatory framework developed by the Department of Agriculture, preserving continuity in compliance and safety standards for HDC products. Those new rules are summarized as follows:

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IMPORTANT ISSUES ON THE HORIZON

TENNESSEE OPENS THE DOOR TO REGULATION OF HEMP-DERIVED THC PRODUCTS

Significant HDC regulatory changes beginning January 1, 2026, include:

- Separate licensing will be required for suppliers, wholesalers, and retailers of HDC products. Retail sales of HDCs will be limited to the following categories:
- (i) TABC-licensed retail package stores; (ii) TABC on-premises consumption license holders; (iii) businesses that are otherwise licensed as hemp suppliers, wholesalers, and retailers at the exact physical location where manufacturing occurs; and (iv) businesses that prohibit entry of persons under 21 years of age.
- Businesses with an unexpired license issued by TDOA may not continue to sell HDCPs after December 31, 2025, unless they fall within one of these four criteria.
- Anyone serving a sentence for a felony drug offense or those who apply within ten (10) years from the date of conviction may not be eligible for an HDC license.
- TABC-licensed suppliers must ensure all products comply with the total THC threshold of 0.3% on a dry weight basis. HDC products are prohibited if they contain THC-A in a concentration exceeding 0.3% on a dry weight basis or contain any amount of THC-P. Additionally, HDC products will be banned if they do not meet statutory labeling requirements, which include an ingredient list, batch number, mandatory warning statements, and a QR code linking to a valid Certificate of Analysis (COA).
- HDC products, including HDC topicals, with a THC concentration of .1% or more but less than .3% total THC, are legal **but require a TABC license**. However, not all products derived from the cannabis plant will be regulated by the TABC. HDC products containing less than .1% THC do not require a TABC license, and products with a concentration of more than .3% total THC are illegal.

The TABC will begin processing new HDC applications in December 2025, but no newly issued license will be valid until after January 1, 2026. All new TABC HDC applications will be charged a one-time $500 application fee and a yearly license fee of $1000 (retailer), $2500 (supplier), and $5000 (wholesaler). Each HDC licensee will receive an inspection at issuance and each year upon renewal.

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IMPORTANT ISSUES ON THE HORIZON

CALIFORNIA CONTINUES TO BAN MOST HEMP-DERIVED THC PRODUCTS

In 2024, California Governor Gavin Newsom successfully pushed for passage of a six-month emergency ban on Hemp-derived consumer products, including hemp beverages, that contain any level of THC.

In March of this year, the California Emergency Ban was renewed. Currently, the Ban mandates that retailers must remove hemp products with any detectable THC, including CBD products, from store shelves and implement sale restrictions for consumers under 21 years of age.

On Friday the 13th, the California Dept of Public Health (CDPH) proposed a permanent ban on hemp-derived THC-based products. By administrative rulemaking requirements, the state has initiated a 45-day comment period for the industry and the public to provide input on the proposed permanent ban. If the permanent Ban is adopted, the CDPH has estimated that cannabis-related state sales tax revenues would have been approximately $192 million over the ensuing five years.

Opponents of the Ban argue that regulation, rather than a ban, would be a better way to address concerns about hemp products. They suggest age restrictions, potency caps, and stricter labeling and packaging requirements.

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IMPORTANT ISSUES ON THE HORIZON

WILL TEXAS BAN MOST HEMP-DERIVED THC PRODUCTS?

The Texas Legislature this year passed, and Governor Greg Abbott is pondering whether to sign Senate Bill 3. S.B. 3, with few exceptions, bans the sale of all consumable hemp products that contain THC. **The only consumable hemp products that remain legal under the bill are products that only contain cannabidiol (CBD) or cannabigerol (CBG).** While both CBD and CBG are non-psychoactive cannabinoids found in the cannabis plant, they differ in several ways, including their origin, abundance, and interactions with the body's endocannabinoid system. CBG is often referred to as the "mother cannabinoid" because it serves as a precursor to other cannabinoids like CBD and THC. It's found in smaller amounts in mature cannabis plants compared to CBD.

Texas laws classify hemp-derived CBD and CBG as generally not considered controlled substances or adulterants. Consumable hemp products containing hemp-derived CBD or CBG, and intended for ingestion, are considered foods, not controlled substances or adulterated products, to the extent permitted by federal law.

Any product that remains legal under S.B. 3 must comply with a strict regulatory framework, including labeling and packaging requirements, THC content certification obligations, and retailer registration.

If it becomes law, S.B. 3 will also prohibit the sale of consumable hemp products to minors under 21, ban marketing consumable hemp products to minors, and require all legal consumable hemp products to be properly labeled and placed in tamper-evident, child-resistant, and resealable packaging. These new safety features will help ensure children are not accidentally exposed to any consumable hemp products.

Furthermore, S.B. 3 would create new criminal offenses to prevent selling illegal products in this state (a third-degree felony to sell; a misdemeanor to possess).

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IMPORTANT ISSUES ON THE HORIZON

WILL THE FEDERAL GOVERNMENT BAN ALL HEMP-DERIVED THC PRODUCTS?

A Republican-backed budget bill that includes a ban on hemp-derived THC and THCA flower advanced out of a House subcommittee on Thursday by a 9-7 party-line vote. See the $25.523 billion spending bill.

- Under current law, hemp products are allowed as long as they don't contain more than 0.3% THC by dry weight. However, the new budget bill would redefine hemp to prohibit any product containing "quantifiable" levels of THC or tetrahydrocannabinolic acid (commonly known as THCA Flower), a precursor to THC.
- If adopted in its current form, the **Agriculture, Rural Development, Food and Drug Administration, and Related Agencies**
- **Appropriations Bill** for 2026 also would ban cannabinoids that have effects "similar to THC" or are marketed as such, with exemptions for FDA-approved medications such as Epidiolex.
- Hemp's federal legalization would apply to products such as grains, oil, nuts, fiber, and some edible leaves, but not cannabinoid products such as hemp beverages or other consumables.
- The **House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies** said in a statement: "[The bill] *supports the Trump Administration and mandate of the American people by … closing the hemp loophole that has resulted in the proliferation of unregulated intoxicating hemp products, including Delta-8 and hemp flower, being sold online and in gas stations across the country.*"
- The **Wine and Spirits Wholesalers of America**, which described the bill as "overly broad" and "troublesome," said in an email to supporters: "*In the absence of a robust federal regulatory system, states have been filling the void by passing comprehensive legislation to regulate intoxicating hemp and protect public health and safety within their borders. … Adoption of the current language contained in this bill would undermine those state actions and do nothing to eliminate bad actors who irresponsibly market potentially harmful products.*"

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THE CASES

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THE CASES: THE FEDERAL ALCOHOL ADMINISTRATION ACT

Ream v. U.S. Dept. of the Treasury, 2025 WL 872978 (U.S. Dist. Ct. S.D. Ohio) (March 20, 2025)

An engineer who experimented with home brewing and wished to expand his hobby to include distilling small quantities of whiskey sued the United States Department of the Treasury, Secretary of the Treasury of Alcohol, Tobacco, Tax, and Trade Bureau (TTB), and TTB Administrator, Mary Ryan.

The plaintiff sought a declaratory judgment that federal statutes prohibiting home distilling were facially unconstitutional, and unconstitutional as applied to those who sought to distill small quantities of alcohol for personal consumption.

The U.S. District Court rejected the plaintiff's claims, ruling that:
(i) The engineer did not possess an interest in home distilling whiskey arguably protected by the dormant Commerce Clause and, thus, did not sustain the requisite imminent "injury in fact" for Article III standing;
(ii) The engineer did not show serious intent to distill whiskey at home and, thus, did not sustain the requisite imminent "injury in fact" for Article III standing; and
(iii) The engineer did not establish "a credible threat of prosecution" resulting from his intent to distill whiskey at home and therefore did not possess the requisite imminent injury in fact for Article III standing.

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THE CASES: THE FOURTH AMENDMENT

Wheelock v. Nitzschke, 760 F.Supp.3d 835 (U.S. Dist. Ct. N.D. Iowa) (December 17, 2024)

- While on uniform patrol, the defendant, Officer Nitzschke, overheard radio traffic from Woodbury County and the Sioux City Police Department stating that a reckless, possibly impaired driver was traveling just south of his location.
- The vehicle stopped, and a female driver exited the car and began walking in the southbound lane. Officer Nitzschke arrived on the scene and was told to search the area for a red Chevy Suburban with a certain Iowa license plate. This vehicle had purportedly picked up the female from the interstate and left the scene.
- Nitzschke learned that the abandoned vehicle and the red Suburban returned to a specific address. Nitzschke drove to that address and observed a red Chevy Suburban with the matching plate in the attached garage.
- The plaintiff, Douglas Wheelock, walked through the open garage and met Officer Nitzschke and another officer in the driveway. When asked where he had been and who he had picked up, Wheelock responded, "I have been here." Wheelock acknowledged that the hood of his Suburban was warm.
- The parties dispute whether Wheelock admitted to picking up his wife but agree that he told officers she was asleep in response to their question about the female he had picked up. He also stated he had been running errands. Id. Wheelock confirmed his wife, Marilyn Wheelock, was in the house. She was positively identified as the driver of the vehicle that had been abandoned and the registered owner of that vehicle.
- Nitzschke stated, "*We're going to have to go talk to Marilyn, ok*?" Wheelock began walking to the garage and said he would bring her to the front door. Nitzschke and Luesebrink followed.
- Nitzschke then asked Wheelock if he would mind if one of them went in with him, to which Wheelock said, "Yes." Nitzschke clarified, "You do mind?" and Wheelock confirmed he did.
- Despite refusing entry and demanding that the officers get a warrant, the situation escalated until they entered the house and pressured Wheelock to exit it. When Wheelock continued to object, he was arrested for "interference with official acts" and failing to cooperate with an investigation.

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THE CASES: THE FOURTH AMENDMENT

Wheelock v. Nitzschke, 760 F.Supp.3d 835 (U.S. Dist. Ct. N.D. Iowa) (December 17, 2024)

Wheelock filed a lawsuit against Officer Nitzschke, the county, and others, alleging under 42 U.S.C. § 1983 that officers violated his Fourth Amendment rights, asserting claims under state law for false arrest, abuse of process, and *respondent superior* liability. Parties cross-moved for summary judgment.

The federal trial court held that:

(1) **Consent exception** to warrant requirement did not apply;

(2) The exigency **of needing emergency assistance to the injured occupant or protecting** the occupant from imminent injury did not justify officers' warrantless entry into the residence;

(3) **Officer safety** exception to warrant requirement did not justify officers' warrantless entry into residence;

(4) **Officers were not entitled to qualified immunity** from a § 1983 claim for unlawful entry; and

(5) The officer **was subject to liability for false arrest** under Iowa law.

The published decision provides explanations and citations for each of these findings.

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THE CASES: CLASS CERTIFICATION FOR TORT CLAIMS

Andrews v. Sazerac Company, Inc., 2025 WL 19312 (U.S. Dist. Ct. S.D. N.Y.) (January 2, 2025)

The plaintiffs are two consumers who filed this lawsuit seeking class action status against Sazerac, the company behind *Southern Comfort* whiskey. The plaintiffs alleged that Sazerac deceived consumers by selling a " mini " malt beverage that looks like Southern Comfort whiskey but contains only "whiskey flavor."

The plaintiffs move to certify a class of "[a]ll persons who purchased the Southern Comfort Malt Products in the State of New York at any time during the period February 8, 2020, to the date of judgment."

Federal Rule of Civil Procedure 23 governs class actions. "To maintain a class action, plaintiffs must demonstrate that '(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.'

The plaintiff bears the burden of proving these requirements, which are known as "predominance" and "superiority," by a preponderance of the evidence.

The opinion provides lengthy explanations and citations for each element required to establish the certification of a class:

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THE CASES: CLASS CERTIFICATION FOR TORT CLAIMS

Andrews v. Sazerac Company, Inc., 2025 WL 19312 (U.S. Dist. Ct. S.D. N.Y.) (January 2, 2025)

The opinion provides excellent explanations and citations for each of the following elements required to establish the certification of a class:

I. Standing
II. Numerosity
III. Commonality
IV. Typicality and Adequacy
V. Preponderance (The predominance requirement is satisfied if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof)

A. Materially Misleading (To predominate, the alleged tortious behavior in this case had to be materially misleading to the class members).
B. Causation, Injury, and Damages (evidence must show these elements are class-wide).

Based on the evidence, the federal trial court approved certification of the class for this litigation.

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Dwinell, LLC v. McCullough, 2024 WL 4403884 (U.S. Dist. Ct. C.D. Cal. (August 26, 2024)

plaintiffs Dwinell, LLC and **Buckel Family Wine, LLC** are winegrowers who operate in Washington and Colorado. They want to sell their wines directly to California retailers, jumping over the wholesale tier required under California's three-tier system. They sued in federal court, alleging that **California's Alcohol and Beverage Control Act** discriminates against out-of-state wineries by permitting only in-state wineries to sell their wine directly to retailers and requiring that their out-of-state products enter the state through a licensed importer.

First, they challenge an exception that allows wineries with an in-state presence to bypass part of the three-tier structure and sell directly to retailers. The ABC Act provides that producers may sell directly to retailers if they obtain winegrower licenses. **Cal. Bus. & Prof. Code § 23358(a)(1).** The plaintiffs met all the requirements for a winegrower license under the ABC Act except that they do not have in-state premises.

Second, the plaintiffs challenged the state's interpretation and enforcement of the requirement that all out-of-state alcohol be brought into the state by common carriers and be consigned to a licensed importer. **Cal. Bus. & Prof. Code § 23661(a).** This challenge was combined with the plaintiffs' challenge to an ABC Act provision barring retailers from obtaining an importer's license. **Id. § 23375.6**. Because retailers cannot obtain an importer license, the plaintiffs argued they could not sell directly to retailers, even if they had winegrower licenses—their wine would still have to enter the state through an importer.

The plaintiffs allege that implementing and enforcing these provisions of the ABC Act discriminates against interstate commerce in violation of the Commerce Clause. The defendants moved to dismiss the lawsuit.

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Dwinell, LLC v. McCullough, 2024 WL 4403884 (U.S. Dist. Ct. C.D. Cal. (August 26, 2024)

The U.S. District Court denied California's dismissal request, ruling that:

- The traditional two-step Commerce Clause analysis involves: (i) Is there direct or facial discrimination? and (ii) If not, is there indirect or latent discrimination?
- Additional considerations are required in challenges involving the sale and distribution of alcohol because they implicate the states' power to regulate alcohol under § 2 of the 21st Amendment. In such cases, if the challenged provisions discriminate against interstate commerce, the court must further consider whether the challenged requirement can be justified as a public health or safety measure or on some other legitimate non-protectionist ground.
- § 2 of the 21st Amendment must be "viewed as one part of a unified constitutional scheme." Thus, courts examine whether state alcohol laws that burden interstate commerce serve a State's legitimate § two interests, which do not include protectionism.
- In this case, the plaintiffs plausibly alleged that California's regulatory scheme discriminates against interstate commerce. Although the provision governing the issuance of a winegrower license does not discriminate against out-of-state wineries, California authorities did not dispute that only wineries with an in-state presence are eligible for the license. That requirement treats in-state and out-of-state wineries differently.
- In contrast, the Court found that the defendants failed to provide evidence on how, much less why, out-of-state wineries are different from in-state wineries for regulatory purposes. "***Indeed, it is undisputed that California permits out-of-state wineries to sell directly to consumers and bypass the three-tier system altogether, raising a question about whether the challenged provisions are essential to the regulatory scheme***."

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Buckle Family Wine, LLC v Mosiman, 752 F.Supp.3d 1094 (U.S. Dist. Ct. S. D. Iowa) (September 30, 2024)

A Colorado-based winery sued the directors of Iowa's Department of Revenue and its Alcoholic Beverages Division, alleging that the state's prohibition against out-of-state wineries selling direct to in-state retailers, while extending that privilege to in-state wineries, was an unconstitutional burden on interstate commerce.

After both parties sought summary judgment, the Federal District Court ruled in favor of the plaintiff winery, holding:

1) **Economic protectionism cannot justify discrimination**: A state may require alcohol retailers to be in-state, and it may also determine how such retailers can distribute alcohol to consumers without violating the dormant Commerce Clause. Still, a state may not engage in protectionism and justify its discriminatory laws under the 21st Amendment.

2) **The two-step framework** for determining whether a state's laws regarding alcohol violate the dormant Commerce Clause and 21st Amendment, starts by asking whether the challenged law discriminates against interstate commerce, and not whether the law involves an essential feature of the three-tier system; if law does discriminate against interstate commerce, then the state must show the law is reasonably necessary for its purported nondiscriminatory interests with concrete evidence and demonstrate that nondiscriminatory alternatives would be insufficient. . . . .

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GRAYROBINSON

THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Buckle Family Wine, LLC v Mosiman, 752 F.Supp.3d 1094 (U.S. Dist. Ct. S. D. Iowa) (September 30, 2024)

3) **Discrimination on its face**: Iowa laws allowing in-state wineries to receive class permits to sell directly to Iowa retailers, but preventing out-of-state wineries from doing so unless they had a premises within the state, facially discriminated against interstate commerce in violation of the dormant Commerce Clause; Iowa's laws subjected out-of-state wine manufacturers to additional overhead and consequently increased the cost of out-of-state wines to Iowa consumers by making them establish a brick-and-motor distribution within state.

4) **Justification can overcome discrimination**: Even if a state's alcohol laws discriminate against interstate commerce in violation of the dormant Commerce Clause, a state may justify its regulatory regime under the 21st Amendment by providing concrete evidence that the law is reasonably necessary to support public health or safety measures or on some other legitimate non-protectionist ground.

5) **State Lacked Concrete Evidence justifying the discrimination**: In this case, the Court determined that Iowa failed to establish that its discriminatory treatment of out-of-state wineries promoted effective law enforcement or the health and safety of Iowa's citizens, or that non-discriminatory alternatives were unavailable to achieve the government's stated objectives. Technology permitted enforcement from a distance. Moreover, Iowa law currently allows out-of-state wineries to ship directly to consumers, and Iowa was seemingly able to enforce those laws and monitor permittees; no evidence was presented demonstrating why allowing out-of-state wineries to sell directly to Iowa retailers would have been more harmful than allowing them to sell directly to consumers, as was permitted under Iowa law.

6) **Distinguishing the Tiers**: Taking a page from Granholm v. Heald, the Court determined that while a state may require all alcohol *wholesalers* to be in-state without violating the dormant Commerce Clause and the 21st Amendment, it may not deviate from the basic structure of the three-tier system for alcohol production and distribution and discriminate against out-of-state *manufacturers* through that deviation.

GRAYROBINSON

THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Furlong v. Brown, 2024 WL 1140686 (U.S. Dist. Ct. D. Md. (March 15, 2024)

This case involves a challenge to the constitutionality of a Maryland law that prohibits out-of-state alcohol manufacturers from shipping alcohol directly to consumers. Md. Code Ann., Alcoholic Beverages § 2-219(c).

- After Maryland changed its alcohol laws to allow in-state brewers to sell and deliver beer directly to Maryland residents, a Maryland resident and two breweries located in Washington State brought this suit against Maryland Attorney General Anthony G. Brown, members of the Maryland Alcohol, Tobacco, and Cannabis Commission, and the Executive Director of the Commission Jeffrey A. Kelly under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202. The plaintiffs argued that the new privileges for in-state breweries violated the Commerce Clause, U.S. Const. art. I, § 8, cl. 3. by discriminating against out-of-state beer producers engaged in interstate commerce.
- In response, the defendants sought to dismiss the case, arguing that the Act is permitted by Section Two of the 21st Amendment to the U.S. Constitution under the test announced by the United States Court of Appeals for the Fourth Circuit in B-21 Wines, Inc. v. Bauer, 36 F.4th 214 (4th Cir. 2022), cert. Denied, 143 S. Ct. 567 (2023).
- Ruling for the plaintiffs and denying the defendants' dismissal request, the federal trial court concluded that, rather than protecting the three-tier system, in this case, the in-state privileges undermined the three-tier system by allowing Maryland brewers to bypass wholesalers and retailers altogether. This led the federal court to conclude that:

"Supreme Court and Fourth Circuit caselaw is consistent: if a state's three-tier system is posited as a legitimate nonprotectionist ground for discriminating against out-of-state commerce, the law must not undermine the system. In this case, Maryland's Direct Shipping Act subverts the three-tier system by allowing in-state, but not out-of-state, manufacturers to bypass the three-tier system and ship directly to consumers. . . . This case, therefore, cannot be dismissed."

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Furlong v. Brown, 2024 WL 1140686 (U.S. Dist. Ct. D. Md. (March 15, 2024)

LEGISLATIVE UPDATE

Following the federal court's decision, the Maryland General Assembly passed, and the Governor approved, Chapter Bill 918 (SB 1041) of the Acts of 2024, which repealed the earlier restriction on direct-to-consumer sales and shipping.

The new law established direct-to-consumer alcohol beverage delivery permits, authorizing the direct delivery of beer, wine, or liquor to a Maryland consumer. It also created the requirements an individual or entity must meet to qualify for a direct-to-consumer alcohol beverage delivery permit and established a maximum amount that a recipient of an alcohol beverage delivery may receive.

GRAYROBINSON

THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Block v. Canepa 2025 WL 872962 (U.S. Dist. Ct. S.D. Ohio) (March 20, 2025)

In a challenge to Ohio's prohibition against the direct shipment of wine by an out-of-state retailer to an in-state purchasing consumer, the Federal District Court on remand from the U.S. Court of Appeals for the Sixth Circuit granted summary judgment to the Ohio Attorney General after determining:

(i) **The challenged laws can be justified on legitimate non-protectionist grounds as public health and safety measures** because allowing out-of-state retailers to deliver wine directly to Ohio's consumers would eliminate the role of Ohio's wholesalers and "create a sizeable hole in the three-tier system." That system allows the state to oversee the movement and sale of wine throughout the state, allows for a certain level of price control through mandatory mark-ups, while promoting the efficient collection of excise taxes, and reducing the risk of increased consumption, heavy drinking, and the consequences associated with alcohol use and abuse.

(ii) **The challenged laws' predominant effect is not protectionism**. Evidence on the operation and effectiveness of the state's liquor control enforcement agencies demonstrated the importance of on-site inspections, including the thousands of on-site inspections Ohio alcohol regulators conduct each year to renew permits and investigate complaints.

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Shady Knoll Orchards & Distillery LLC v. Vollendroff, 2025 WL 1139497 (U.S. Dist. Ct. E.D. Wash) (April 17, 2025)

The plaintiff is a New York distiller that engages in online sales and distributes its distilled products directly to consumers across the United States. However, Shady Knoll cannot sell its products directly to consumers in Washington State because it has no physical presence in Washington.

Washington allows an in-state licensed distillery to act as both a retailer and distributor and permits the shipment of its products directly to consumers. **RCW §§ 66.24.640, 66.20.410(1).** The result is that only distilleries with a physical presence in Washington may obtain a license to sell their products to Washington consumers directly.

In granting summary judgment for the defendants, the federal trial court ruled:

(i) The Proper Standard of Review: First, when a plaintiff challenges the constitutionality of state liquor regulations under the Commerce Clause, the court must address whether the challenged statutory scheme is nondiscriminatory. If it is not, the inquiry ends there, and laws are deemed constitutional. However, if the laws are discriminatory, the court then asks whether the challenged requirement can be justified as a public health or safety measure or on some other legitimate non-protectionist ground. If so, the scheme is constitutional despite its discriminatory nature.

- In assessing the first step of the inquiry, a court looks to whether the statutory scheme regulates evenhandedly with only 'incidental' effects on interstate commerce or discriminates against interstate commerce.
- A statutory scheme may be discriminatory if it discriminates against out-of-state interests on its face, purpose, or practical effect.

GRAYROBINSON

THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Shady Knoll Orchards & Distillery LLC v. Vollendroff, 2025 WL 1139497 (U.S. Dist. Ct. E.D. Wash) (April 17, 2025)

(ii) Washington's physical presence requirement is not discriminatory: The court concluded that "*Washington's regulations requiring a physical presence in Washington apply evenhandedly to in-state and out-of-state retailers.*"

(iii) Distilleries looking to sell directly to consumers function as retailers and must comply with retailer requirements. The plaintiffs attempted to argue that their case concerned producers (much like *Granholm v. Heald*), not retailers. However, the federal trial court reasoned that distillers licensed to sell their products directly to consumers are acting and regulated as retailers under Washington law. **RCW §§ 66.24.640, 66.24.140(2)(a).** This applies to all distilleries, whether in-state or out-of-state. Thus, Shady Knoll must comply with Washington's laws regulating retailers to obtain a license to sell its products directly to Washington consumers, and liquor retailers are required to have a physical presence in Washington readily available for inspection by state regulators. These on-premise inspections include liquor compliance checks, financial records related to the business, alcohol samples, and unlawful alcohol seizures.

(iv) No discrimination means no unconstitutional burden on interstate commerce. The court ruled that the plaintiffs had not demonstrated that Washington law creates an exception to Washington's regulatory scheme for in-state distilleries that out-of-state distilleries must otherwise be subjected to. Washington's licensing requirements for distilleries functioning as retailers apply evenhandedly to in-state and out-of-state actors.

The Court found that the plaintiffs did not meet their burden of showing that Washington's licensing laws discriminate against out-of-state distilleries. Consequently, the Court ended its inquiry at Step One of the analysis.

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Day v. Henry, 129 F.4th 1197 (U.S. Ct. of App. For the Ninth Cir.) (March 4, 2025)

Consumers who were Arizona residents desired to ship wine directly to themselves from retailers who do not maintain in-state premises in Arizona. They filed a lawsuit under 42 U.S.C. § 1983 against the Director of Arizona Department of Liquor Licenses and Control, the Chair of the Arizona State Liquor Board, and the Arizona Attorney General in their official capacities, seeking declaratory and injunctive relief from Arizona's statutory ban on shipment of wine directly to in-state consumers by retailers without an in-state presence. The plaintiffs argued that the in-state presence requirement violated the dormant Commerce Clause doctrine.

Both parties demanded summary judgment in their favor. The United States District Court for the District of Arizona granted the defendants' motions and denied the consumers' motion. The consumers appealed.

On appeal, the U.S. Court of Appeals for the Ninth Circuit held that:

i. The consumers' alleged injury was sufficiently redressable to support Article III standing, but
ii. The statutory requirement for retailers to maintain a physical premise in Arizona, managed by an Arizona resident, to ship wine directly to Arizonan consumers **did not discriminate** between in-state and out-of-state retailers.

GRAYROBINSON

THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Day v. Henry, 129 F.4th 1197 (U.S. Ct. of App. For the Ninth Cir.) (March 4, 2025)

The federal appellate court observed that there are three ways that a statutory scheme regulating alcohol beverages can discriminate against out-of-state interests: (i) facially, (ii) purposefully, or (iii) in practical effect.

The first step in analyzing any law under the dormant Commerce Clause doctrine is "to determine whether it 'regulates evenhandedly with only 'incidental' effects on interstate commerce or discriminates against interstate commerce.' "

Discrimination means "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. This differential treatment must be between persons or entities who are similarly situated.

The party challenging the scheme bears the burden of showing discrimination.

The appellate court concluded that the plaintiffs have not met their burden of showing that Arizona's liquor laws are discriminatory because they apply even-handedly to all wine retailers, no matter whether that retailer is headquartered, incorporated, or otherwise based in another state.

The court also found that setting up a physical storefront in Arizona is not a *per se* burden on out-of-state companies and is not a *per se* benefit to in-state companies because a retailer's ability to comply with the physical premise requirement is based in large part on a company's resources and business model, not its citizenship or residency.

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Day v. Henry, 129 F.4th 1197 (U.S. Ct. of App. For the Ninth Cir.) (March 4, 2025)

The appellate court concluded its decision by stating:

Finally, as several other courts have observed, if the laws at issue here were found to be discriminatory, then all laws relying on the authority of § 2 would likely be discriminatory. The effect of the presence requirement is to "mandate[ ] that both in-state and out-of-state liquor pass through the same three-tier system before ultimate delivery to the consumer." To find this kind of basic importation restriction discriminatory would therefore render § 2 "a dead letter." The Supreme Court has not yet struck such a blow to § 2, and neither do we.

(Citations omitted).

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Jean-Paul Weg, LLC v. Director of the New Jersey Div. of Alc. Bev. Control, 133 F.4th 227 (U.S. Ct. of App. For the Third Cir.) (September 17, 2024)

A New York wine retailer and its owner filed a 42 U.S.C. § 1983 lawsuit against New Jersey officials to challenge the constitutionality of New Jersey regulations that permitted the direct shipping of wine to New Jersey customers only by wine retailers that had a physical presence in New Jersey and purchased their product from New Jersey licensed wholesalers.

The plaintiff claimed those regulations violated the Dormant Commerce Clause. The United States District Court for the District of New Jersey entered summary judgment for New Jersey officials. The plaintiffs appealed.

The U.S. Court of Appeals for the Third Circuit held:

(1) New Jersey's physical-presence regulations were discriminatory in effect against existing out-of-state wine retailers;

(2) The wholesaler-purchase regulations **were discriminatory** in effect against existing out-of-state wine retailers;

(3) HOWEVER, the wholesaler-purchase regulations were justified as a public-health and safety measure. . .

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Jean-Paul Weg, LLC v. Director of the New Jersey Div. of Alc. Bev. Control, 133 F.4th 227 (U.S. Ct. of App. For the Third Cir.) (September 17, 2024)

(4) New Jersey's physical-presence regulations were justified as a public-health and safety measure;

(5) The wholesaler-purchase regulations constituted an essential feature of New Jersey's legitimate "three-tier" system of producers, wholesalers, and retailers of alcohol; and

(6) The physical-presence regulations also constituted an essential feature of New Jersey's legitimate "three-tier" system of producers, wholesalers, and alcohol retailers.

Quoting Tennessee Wine & Spirits Retailers Ass'n v. Thomas, 588 U.S. 504, 139 (2019), the Third Circuit declared that Section 2 of the 21st Amendment ***"allows each State leeway to enact the measures that its citizens believe are appropriate to address the public health and safety effects of alcohol use and to serve other legitimate interests, but it does not license the States to adopt protectionist measures with no demonstrable connection to those interests***."

GRAYROBINSON

THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Jean-Paul Weg, LLC v. Director of the New Jersey Div. of Alc. Bev. Control, 133 F.4th 227 (U.S. Ct. of App. For the Third Cir.) (September 17, 2024)

"This Circuit last addressed the interplay between the dormant Commerce Clause and the 21st Amendment in Freeman v. Corzine, 629 F.3d 146 (3d Cir. 2010)—a case decided nearly a decade before Tennessee Wine, and therefore without the benefit of the further clarity provided by the Court therein. In Freeman, this Court relied on Granholm and employed a form of "heightened scrutiny" that upholds discriminatory alcohol regulations only if they "serve[ ] local purposes that would not be as well served by non-discriminatory legislation," . . .

Today, with the benefit of Tennessee Wine's additional guidance, we hold that Tennessee Wine compels us to apply a different standard. Tennessee Wine clarified that it is not a standard dormant Commerce Clause inquiry that controls when a state's alcohol regulations are challenged, but instead a "different inquiry" that asks of discriminatory regulations "whether the challenged requirement can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground."

Based on that standard, the Third Circuit acknowledged the discrimination, but found that the record demonstrated with "concrete evidence" the efficacy of New Jersey's wholesaler purchase requirement in facilitating product quality control and of New Jersey's physical presence requirement in facilitating investigations that protect consumers from fraudulent and prohibited sales of alcohol beverage products. Moreover, the appellate court found the record evidence not to be "mere speculation" or "unsupported assertions" that New Jersey's challenged requirements were justified as a public health or safety measure.

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THE CASES: THE 21ST AMENDMENT AND THE DORMANT COMMERCE CLAUSE DOCTRINE

Jean-Paul Weg, LLC v. Director of the New Jersey Div. of Alc. Bev. Control, 133 F.4th 227 (U.S. Ct. of App. For the Third Cir.) (September 17, 2024)

Finally, the Third Circuit ruled that New Jersey's challenged regulations are independently justified as essential features of its three-tier system. The Supreme Court has repeatedly reiterated since Granholm "that the three-tier system itself is 'unquestionably legitimate.' Though the Tennessee Wine Court notes that Section 2 does not "sanction[ ] every discriminatory feature that a State may incorporate into its three-tiered scheme," it suggests that "essential features" of the three-tier system pass constitutional muster.

According to the Third Circuit, this logic is sound: if the system itself is constitutional, then the core features that define the system are also constitutional.

"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. As several other circuits have recently held, permitting out-of-state retailers to sell alcohol from outside of a state's three-tier system creates a regulatory hole large enough to shake the foundations of the three-tier model. . . . 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 challenged regulations are essential features of the three-tier system itself. As essential features, these regulations are unquestionably legitimate and constitutional."

GRAYROBINSON

WHERE DO WE STAND ON THE 21ST AMENDMENT?

SO, WHERE DO THINGS STAND TODAY?

Did the direct ship restriction in Ohio's liquor control laws promote protectionism and/or public health?
Block v. Canepa

PRO 21st Amendment	PRO Dormant Commerce Clause
Day v. Henry (U.S. Ct. of App. for the 9th Cir.)	Dwinell, LLC v. McCullough (Federal District Court for California)
Jean-Paul Weg., LLC v. Dir. of the New Jersey ABC (U.S. Ct. of App. for 3rd Cir.)	Furlong v. Brown (Federal District Court for Maryland)
Shady Knooll Orchards & Distillery, LLC v. Vollendroff (Federal District Court for Washington State)	Buckle Family Wine, LLC v Mosiman (Federal District Court for Iowa)
Block v. Canepa (Federal District Court for Ohio)	

Is a physical presence requirement for retailers selling direct to in-state consumers an unconstitutional restriction on out-of-state retailers?
Shady Knoll Orchards & Distillery LLC v. Vollendroff

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HOW DO WE KNOW WHICH WAY THE LAW IS HEADED?

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A LEGAL HISTORY LESSON ON THE 21ST AMENDMENT

INSIDE THE 2024 *Legal Update* is a condensed history of the 21st Amendment told through major decisions of the U.S. Supreme Court.

- From the repeal of Prohibition and the Court's 1938 decision in Mahoney v. Joseph Triner Corp. (holding that the Equal Protection Clause does not impact a reasonable state liquor law) . . . .
- To the 2019 decision in Tennessee Wine & Spirits Retailers Association v. Thomas (requiring "**concrete proof**" under an intermediate level of judicial scrutiny that a state liquor law challenged under the Dormant Commerce Clause doctrine adequately achieves a legitimate state interest).

GRAYROBINSON

THE QUESTIONS "YOU WILL NEVER FIND THE CORRECT, ABSOLUTE, AND FINAL ANSWER"

To paraphrase my good friend Prof. Charles W. Kingsfield

Is there a correct, absolute, and final answer regarding the tension between the 21st Amendment and the Dormant Commerce Clause doctrine?

Let's hear from a few people who are extraordinarily qualified to help us answer this question . . .

GRAYROBINSON

JUSTICE LOUIS BRANDEIS (1938)

- The 21st Amendment was ratified in December 1933, the first change to the U.S. Constitution made directly by the people via state Ratification Conventions.
- Almost immediately, the Supreme Court was called upon to construe the law and did so based on the plain meaning of its language.
- **Justice Louis Brandeis** authored several of these opinions that protect a large sphere of state regulatory authority concerning alcohol. *See, e.g.,*

- State Board of Equalization v. Young's Market Co., 299 U.S. 59 (**1936**) (California law imposing a fee of $500 per year for the privilege of importing beer, and $750 per year for the privilege of manufacturing beer, was not prohibited by the Equal Protection clause of the Fourteenth Amendment because a classification recognized by the 21st Amendment cannot be deemed forbidden by the Fourteenth);
- Mahoney v. Joseph Triner Corp., 304 U.S. 401 (**1938**) (holding that "the Equal Protection Clause is not applicable to imported intoxicating liquor").
- Joseph S. Finch and Co. v. McKittrick, 305 U.S. 395 (**1939**) (holding that the Commerce Clause does not limit states' rights to regulate the importation of intoxicating liquors); and
- Indianapolis Brewing Co. v. Liquor Control Comm'n, 305 U.S. 391 (**1939**) (same).

GRAYROBINSON

JUSTICE LOUIS BRANDEIS (1938)

State Bd. Of Equalization of Cal. V. Young's Market, 299 U.S. 59, 62 (1936)

The amendment, which "prohibited" the "transportation or importation" of intoxicating liquors into any state "in violation of the laws thereof," abrogated the right to import free, so far as concerns intoxicating liquors. The words used are apt to confer upon the state the power to forbid all importations which do not comply with the conditions which it prescribes. The plaintiffs ask us to limit this broad command. They request us to construe the amendment as saying, in effect: the state may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders. Still, if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that would involve not a construction of the amendment, but a rewriting of it.

GRAYROBINSON

JUSTICE POTTER STEWART (1964)

Fast forward almost 30 years. 1964 Associate Justice Potter Stewart wrote for a 7-2 Supreme Court majority.

- The case was **Hostetter v. Idlewild**, 377 U.S. 324 (1964). It involved a lawsuit by a New York liquor company to enjoin the New York State Liquor Authority from interfering with the corporation's business of selling tax-free bottled wines and liquors to departing international airline travelers at New York airports for delivery to travelers upon their arrival at their foreign destinations. The U.S. District Court for the Southern District of New York, sitting as a three-judge court and recognized as among the nation's finest jurists, granted the injunction, and the NYSLA appealed.
- **Justice Stewart** delivered the majority opinion affirming the lower court's decision, holding that the Commerce Clause of the Federal Constitution prohibited the NYSLA from terminating the tax-free sales. New York asserted that sales were illegal because the plaintiff's business was unlicensed and unlicensable under New York's ABC Law. Still, the Court rejected that argument because there was no record evidence of any diversion of the wines and liquors to users within New York that would bring state regulation into play.
- The historical significance of this case is less about the facts than Justice Stewart's use of "hyperbolic" language to declare any conclusion *that the 21st Amendment has somehow operated to 'repeal' the Commerce Clause, wherever regulation of intoxicating liquors is concerned, would be* ***an absurd oversimplification****. If the Commerce Clause had been pro tanto 'repealed,' then Congress would have no regulatory power over interstate or foreign commerce in intoxicating liquor. Such a conclusion would be* ***patently bizarre*** *and is* ***demonstrably incorrect***."

Point of Irony: As you will see, a scant eight years later, Justice Stewart will author a concurring opinion in the case of California v. LaRue, that" ***states have the authority to regulate where and under what conditions alcohol is sold. The exercise of that authority does not violate the constitutional rights of the proprietors and employees of alcohol-serving establishments***."

GRAYROBINSON

JUSTICE POTTER STEWART (1964)

Both the 21st Amendment and the Commerce Clause are parts of the same Constitution. Like other provisions of the Constitution, each must be considered in the light of the other. The 21st Amendment and the Commerce Clause are both parts of the same Constitution. Like other provisions of the Constitution, each must be considered in the light of the other, and in the context of the issues and interests at stake in any ***concrete case****.*

To draw a conclusion from this Court's prior line of decisions that the 21st Amendment has somehow operated to "repeal" the Commerce Clause wherever regulation of intoxicating liquors is concerned would be an absurd oversimplification. If the Commerce Clause had been pro tanto repealed, then Congress would be left with no regulatory power over interstate or foreign commerce in intoxicating liquor. Such a conclusion would be "patently bizarre" and is demonstrably incorrect. In Jameson & Co. v. Morgenthau, the Federal Alcohol Administration Act was attacked upon the ground that the 21st Amendment to the Federal Constitution gives to the States complete and exclusive control over commerce in intoxicating liquors, unlimited by the Commerce Clause, and hence that Congress has no longer authority to control the importation of these commodities into the United States. This Court's response to that theory was blunt: 'We see no substance in this contention." Hostetter v. Idlewild, 377 U.S. 324, 333-34 (1964).

GRAYROBINSON

JUSTICE WILLIAM H. REHNQUIST (1972)

- In 1972, newly appointed **Associate Justice William Rehnquist** wrote for a 6-3 Supreme Court majority.
- The case was **California v. LaRue**, 409 U.S. 109 (1972). It involved a lawsuit seeking declaratory and injunctive relief against the regulations promulgated by the California Department of Alcoholic Beverage Control prohibiting the performance of sexual acts on premises licensed to sell alcoholic beverages. Liquor license holders challenged the regulations as an unconstitutional infringement on their First Amendment rights to free expression, as carried onto the states through the Fourteenth Amendment.
- The Federal District Court held that the regulations unconstitutionally limited freedom of expression.
- **Justice Rehnquist** delivered the opinion of the 6-3 majority. The Court held that states have the right to regulate expression that consists of "conduct or action," especially in the absence of a particular message. **However, because the California regulations did not prohibit all such behavior and performances, only those in specific locations that hold liquor licenses, the regulations did not violate the First and Fourteenth Amendments**.
- In his concurring opinion, **Justice Potter Stewart** wrote that states have the authority to regulate where and under what conditions alcohol is sold. The exercise of that authority does not violate the constitutional rights of the proprietors and employees of alcohol-serving establishments.

GRAYROBINSON

JUSTICE WILLIAM H. REHNQUIST (1972)

California v. LaRue, 409 U.S. 109, 118 (1972)

The substance of the regulations struck down prohibits licensed bars or nightclubs from displaying, either in the form of movies or live entertainment, "performances" that partake more of gross sexuality than of communication. While we agree that at least some of the performances to which these regulations address themselves are within the limits of the constitutional protection of freedom of expression, the critical fact is that California has not forbidden these performances across the board. It has merely proscribed such performances in establishments that it licenses to sell liquor by the drink. . .

"*The Department's conclusion, embodied in these regulations, that certain sexual performances and the dispensation of liquor by the drink ought not to occur at premises that have licenses was not an irrational one. Given the added presumption in favor of the validity of the state regulation in this area that the 21st Amendment requires, we cannot hold that the regulations violate the Federal Constitution.*"

GRAYROBINSON

JUSTICE WILLIAM BRENNAN (1976)

Craig v. Boren, 429 U.S. 190, 207-08 (1976)

- In 1976, **Justice William Brennan** would write for a Supreme Court decision joined by four concurring opinions and two dissents overturning the jurisprudence of the previous forty years.
- The case was Craig v. Boren, 429 U.S. 190 (1976), and the case involved a lawsuit seeking declaratory and injunctive relief against Oklahoma statutes prohibiting the sale of 3.2% beer to males under the age of 21 and females under the age of 18.
- The Court ruled that gender-based classifications for alcohol regulation must serve important governmental objectives and be substantially related to achieving those objectives to survive Equal Protection scrutiny.
- In the case before it, the Court determined that statistical evidence as to incidence of drunken driving among males and females between the ages of 18 and 21 was insufficient to support the gender-based discrimination arising from the statutes in question, **and that the 21st Amendment did not save the invidious gender-based discrimination from invalidation as a denial of equal protection**.

"***It is true that California v. LaRue, 409 U.S. 109 (1972), relied upon the 21st Amendment to "strengthen" the State's authority to regulate live entertainment at establishments licensed to dispense liquor, at least when the performances "partake more of gross sexuality than of communication," Nevertheless, the Court has never recognized sufficient "strength" in the Amendment to defeat an otherwise established claim of invidious discrimination in violation of the Equal Protection Clause.***"

GRAYROBINSON

JUSTICE LEWIS POWELL (1980)

- In 1980, Justice Lewis Powell authored the Supreme Court's opinion in California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97 (1980) ruling that California's wine-pricing system, requiring all wine producers and wholesalers to file fair trade contracts or price schedules with the state, constituted resale price maintenance in violation of the Sherman Act because the law allowed the wine producer to prevent price competition by dictating the prices charged by wholesalers.
- According to the Court, the state's involvement in the system was insufficient to establish antitrust immunity under the "state-action doctrine" established in Parker v. Brown, 317 U.S. 341. While the system satisfies the first requirement for such immunity (*i.e.,* that the challenged restraint be "one clearly articulated and affirmatively expressed as state policy"), it did not meet the other requirement that the policy be "actively supervised" by the state itself.
- Under the system, the State authorized price setting and enforced the prices established by private parties; it did not establish prices, review the reasonableness of price schedules, regulate the terms of fair-trade contracts, monitor market conditions, or engage in any "pointed reexamination" of the program.
- The decision clarified that "*the 21st Amendment provides no shelter for the violation of the Sherman Act caused by the State's wine-pricing system*."

GRAYROBINSON

JUSTICE LEWIS POWELL (1980)

California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 113-14 (1980)

We have no basis for disagreeing with the California courts' view that the asserted state interests are less substantial than the national policy in favor of competition. The evaluation of the resale price maintenance system for wine is reasonable and supported by the evidence cited by the State Supreme Court in Rice.

Nothing in the record suggests that the wine pricing system helps sustain small retail establishments. Neither the petitioner nor the State Attorney General in his amicus brief has demonstrated that the program inhibits the consumption of alcohol by Californians.

We need not consider whether the legitimate state interests in temperance and the protection of small retailers could prevail against the undoubted federal interest in a competitive economy. The unsubstantiated state concerns put forward in this case are not of the same stature as the goals of the Sherman Act.

We conclude that the 21st Amendment provides no shelter for the violation of the Sherman Act caused by the State's wine pricing program.

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JUSTICE ANTHONY KENNEDY (2005)

- Thirty years after Craig v. Boren, Justice Anthony Kennedy would write for a divided 5-4 Supreme Court the now lodestar decision that many judges, regulators, and industry members look to as authority for how to balancwrote for a divided 5-4 Supreme Court the now-lodestar decision that many judges, regulators, and industry members look to as authority on balancinge the 21st Amendment and the Commerce Clause.
- Granholm v. Heald, 544 U.S. 480 (2005), is deemed the starting point for almost every analysis of this issue, even referenced and relied upon by the Supreme Court's most recent pronouncement, Tennessee Wine and Spirits Retailers Ass'n v. Thomas.
- YES, the three-tier system of alcohol regulation is itself "unquestionably legitimate."
- BUT, while acknowledging that states have broad power to regulate liquor under § 2 of the 21st Amendment, the Granholm majority went on to rule that such power "does not allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers. If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms."

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GRAYROBINSON

JUSTICE ANTHONY KENNEDY (2005)

"The 21st Amendment aimed to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use. The Amendment did not give States the authority to pass nonuniform laws to discriminate against out-of-state goods, a privilege they had not enjoyed earlier. ..."

The Bacchus case provided a particularly telling example of this proposition. At issue was an excise tax enacted by Hawaii that exempted certain alcoholic beverages produced in that State. The Court rejected the argument that the 21st Amendment authorized Hawaii's discrimination against out-of-state liquor. That precedent forecloses any contention that Section 2 of the 21st Amendment immunizes discriminatory direct-shipment laws from Commerce Clause scrutiny.

As for the Granholm case, without concrete evidence that direct shipping of wine is likely to increase alcohol consumption by minors, the Court is left with the States' unsupported assertions. This is not enough under our precedents, which require the "clearest showing" to justify discriminatory state regulation."

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GRAYROBINSON

AND THEN THERE'S TENNESSEE WINE & SPIRITS (2019)

Everybody knows that Tennessee Wine & Spirits Retailers Association v. Thomas, 588 U.S. 504 (2019), stands for the proposition that States need to produce **"concrete evidence" of a legitimate public purpose** to substantiate alcohol regulations that discriminate against interstate commerce. The Court struck down a Tennessee residence requirement for alcohol licensure that was arguably absurd due to confusing and sometimes contradictory requirements.

BUT, not everyone has focused on the DISSENTING OPINION, authored by Justice Neil Gorsuch and joined by Justice Clarence Thomas. Especially given (1) Justice Thomas's cogent dissent in Granholm v. Heald, and (ii) the growing conservatism of the Supreme Court these days, some attention to these dissenting comments warrants special attention.

GRAYROBINSON

TENNESSEE WINE & SPIRITS (2019)

Tennessee Wine & Spirits Retailers Association v. Thomas, 588 U.S. 504, 554 (2019)

"Over time, the people have adopted two separate constitutional Amendments to adjust and then readjust alcohol's role in our society. But through it all, one thing has always held: States may impose residency requirements on those who seek to sell alcohol within their borders to ensure that retailers comply with local laws and norms. States have enacted residency requirements for at least 150 years, and the Tennessee law at issue before us has stood since 1939. Today, and for the first time, the Court claims to have discovered a duty and power to strike down laws like these as unconstitutional.

Start with the text of the Constitution.

After the Nation's failed experiment with Prohibition, the people assembled in conventions in each State to adopt the 21st Amendment. In § 1, they repealed the Eighteenth Amendment's nationwide prohibition on the sale of alcohol. But in § 2, they provided that "[t]he transportation or importation into any State ... for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." The Amendment thus embodied a classically federal compromise: Nationwide prohibition ended, but States gained broad discretion to calibrate alcohol regulations to local preferences. And under the terms of this compromise, Tennessee's law imposing a two-year residency requirement on those who seek to sell liquor within its jurisdiction would seem perfectly permissible."

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GRAYROBINSON

LISTEN TO THE DISSENTERS

Judges may be sorely tempted to "rationalize" the law and impose free-trade rules for all goods and services in interstate commerce. Indeed, that temptation seems nearly irresistible for this Court regarding alcohol. And as Justice Cardozo once observed, "an intellectual passion … for symmetry of form and substance" is "an ideal which can never fail to exert some measure of attraction upon the professional experts who make up the lawyer class." B. Cardozo, The Nature of the Judicial Process 34 (1921). But real life is not always so tidy and satisfactory, and neither are the democratic compromises we are bound to respect as judges. Like it or not, those who adopted the 21st Amendment believed that reasonable people can disagree about the costs and benefits of free trade in alcohol. They gave us clear instructions that the free-trade rules this Court has devised for "cabbages and candlesticks" should not be applied to alcohol. Carter v. Virginia, 321 U.S. 131, 139, 64 S.Ct. 464, 88 L.Ed. 605 (1944) (Frankfurter, J., concurring). ***Under the terms of the compromise they hammered out, alcohol regulation wasn't left to the imagination of a committee of nine sitting in Washington, D. C., but to the judgment of the people and their local elected representatives. State governments were supposed to serve as "laborator[ies]" of democracy****, New State Ice Co. v. Liebmann, 285 U.S. 262, 311, 52 S.Ct. 371, 76 L.Ed. 747 (1932) (Brandeis, J., dissenting),* ***with "broad power to regulate liquor under § 2,"*** *Granholm, 544 U.S. at 493, 125 S.Ct. 1885. If the people wish to alter this arrangement, that is their sovereign right. But until then, I would enforce the 21st Amendment as they wrote and initially understood it.*

GRAYROBINSON

LISTEN TO THE DISSENTERS

WHAT I BELIEVE THESE DISSENTERS WANT IS A RETURN TO A FUNDAMENTAL PRINCIPLE FIRST ENUNCIATED BACK IN 1932, WHEN JUSTICE LOUIS BRANDEIS WROTE AN AMAZING "BRANDEIS BRIEF" DISSENT IN A CASE DEFENDING THE STATES' RIGHT TO EXPERIMENT WITH REGULATION, EVEN TO THE POINT OF PUTTING CONDITIONS ON PURE, UNFETTERED FREE MARKET CAPITALISM:

[T]he advances in the exact sciences and the achievements in invention remind us that the seemingly impossible sometimes happens. Many men now living were in the habit of using the age-old expression: "It is as impossible as flying." The discoveries in physical science and the triumphs in invention attest to the value of trial and error. These advances have been made to a considerable extent due to experimentation. In those fields, experimentation has, for two centuries, been not only free but encouraged. Some people assert that our present plight is due, in part, to the limitations set by courts upon experimentation in the fields of social and economic science, and to the discouragement to which proposals for betterment there have been subjected otherwise. There must be power in the States and the nation to remold, through experimentation, our economic practices and institutions to meet changing social and financial needs. ***To stay experimental in social and economic matters is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country.*** *New State Ice Co. v. Liebmann, 285 U.S. 262, 311, 52 S.Ct. 371, 76 L.Ed. 747 (1932) (Brandeis, J., dissenting).*

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WHY THE UNCERTAINTY MATTERS: NEW YORK OUT-OF-STATE DIRECT SHIPPING

The New York Legislature passed legislation, S.2852/AB 3132, that allows the interstate shipping of **cider and spirits** into the state, subject to restrictions. In August 2024, New York Governor Kathy Hochul signed the law.

- This new law limits direct interstate shipping to distillers producing below 75,000 gallons.
- Under the terms of the legislation, an out-of-state distiller can ship up to thirty-six cases of liquor to a NY resident.
- The distiller must get licensed by the New York State Liquor Authority, which has created rules for a direct shipper's license, specifically for out-of-state entities. These rules permit out-of-state producers to ship distilled spirits, cider, and mead directly to New York residents.
- Further, the distiller must obtain a New York Certificate of Authority and register as a distributor according to "sections four hundred twenty-one and four hundred twenty-two of the tax law."
- Additionally, the distiller must follow reporting, recording, and packaging requirements.

BUT NOTE: The license is granted only to producers in states that allow New York manufacturers to ship to their residents.

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WHY THE UNCERTAINTY MATTERS: NEW YORK OUT-OF-STATE DIRECT SHIPPING

In Granholm v. Heald, the Supreme Court declared that laws that require reciprocity as a condition for shipping into a market run contrary to the dormant Commerce Clause doctrine:

"***The rule prohibiting state discrimination against interstate commerce also follows from the principle that States should not be compelled to negotiate with each other regarding favored or disfavored status for their citizens. States do not need, and may not attempt, to deal with other States regarding their mutual economic interests***. *Cf. U.S. Const., Art. I, § 10, cl. 3.*

Rivalries among the States are thus kept to a minimum, and a proliferation of trade zones is prevented. *See C & A Carbone, Inc. v. Clarkstown, 511 U.S. 383, 390, (1994) (citing The Federalist No. 22, pp. 143–145 (C. Rossiter ed. 1961) (A. Hamilton); "Madison, Vices of the Political System of the United States", in 2 Writings of James Madison 362–363 (G. Hunt ed.1901)).*

Laws of the type at issue in the instant cases contradict these principles. They deprive citizens of their right to access other States' markets on equal terms. The perceived necessity for reciprocal sale privileges risks generating trade rivalries and animosities, as well as alliances and exclusivity, which the Constitution and, in particular, the Commerce Clause were designed to avoid."

Under this new law for both cider and spirits, as a condition for obtaining a NYSLA license for interstate shipping, the out-of-state manufacturer must be licensed in a state that allows New York craft distillers and cider manufacturers to ship. If New York manufacturers don't enjoy this reciprocal right, the distiller from that state is shut out of the New York shipping market. So, Kentucky craft distillers can access the New York shipping market, while Idaho cannot.

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IS THERE A FINAL, AUTHORITATIVE CONSTRUCTION OF THE 21ST AMENDMENT?

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