



GENTNER DRUMMOND
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION
2026-13

Mr. Brandon Clabes
Executive Director
Alcoholic Beverage Laws Enforcement Commission
50 Northeast 23rd Street
Oklahoma City, OK 73105

September 8, 2026

Dear Executive Director Clabes:

This office has received your request for an Attorney General Opinion in which you ask the following question:

Does the requirement in title 37A, section 2-146(A)(1) (Supp.2025) that an applicant for a wine and spirits wholesaler, retail spirits, retail wine, or retail beer license be a citizen of the United States violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

I.
SUMMARY

The citizenship requirement violates the Equal Protection Clause and is unenforceable as applied to noncitizens who are lawfully present in the United States. By conditioning a wine and spirits wholesaler, retail spirits, retail wine, or retail beer license on United States citizenship, title 37A, section 2-146(A)(1) of the Oklahoma Statutes (Supp.2025) discriminates against lawfully present aliens on the basis of alienage. State classifications that disadvantage lawfully present aliens are inherently suspect and trigger strict judicial scrutiny. *Graham v. Richardson*, 403 U.S. 365, 371–72 (1971). To survive that scrutiny, the State would have to show that the citizenship requirement is narrowly tailored to serve a compelling state interest—an onerous standard. It cannot meet that standard.

The narrow “political-function” exception that sometimes allows a State to reserve a position to citizens does not extend to a private commercial licensee who sells alcohol. And the requirement is neither supported by a compelling interest nor narrowly drawn. The Act exempts beer distributors from the same citizenship requirement it imposes on other licensees. That exemption undercuts any claim that citizenship is essential to the interests the Act serves. The requirement is also overinclusive, because it disqualifies every lawfully present alien regardless of any individualized concern, and underinclusive, because of that same beer-distributor exception. The Twenty-first Amendment does not change this analysis; a State’s authority to regulate alcohol does

not relax the commands of the Equal Protection Clause, whether expressly or by implication. Finally, the companion requirement that an applicant be a qualified elector in this state is unenforceable as applied to lawfully present noncitizens for the same reasons. A qualified elector in Oklahoma must be a United States citizen. *See* OKLA. CONST. art. III, § 1. The elector requirement thus rests on the same citizenship classification.

This conclusion is confined to lawfully present noncitizens. Nothing in this opinion requires the Alcoholic Beverage Laws Enforcement Commission (“ABLE Commission”) to license a person who is unlawfully present, or a lawfully present noncitizen whom federal law does not authorize to engage in the licensed business. The State remains free to condition licensure on lawful presence rather than citizenship, as existing law already provides. *See* 8 U.S.C. § 1621; 56 O.S. § 71. And it may continue to enforce generally applicable requirements that do not turn on citizenship. *Cf.* 8 U.S.C. § 1324a (barring the employment of aliens not authorized to work in the United States).

II. BACKGROUND

The Oklahoma Alcoholic Beverage Control Act (the “Act”), 37A O.S.2021, §§ 1-101–6-128, governs the manufacture, distribution, and sale of alcoholic beverages in this state and charges the ABLE Commission with the Act’s administration and enforcement. *See* OKLA. CONST. art. XXVIII-A, § 1; 37A O.S.2021, § 1-104.

Section 2-146 of the Act sets out the grounds on which the ABLE Commission must refuse to issue or renew specified licenses. It provides, in relevant part:

The Alcoholic Beverage Laws Enforcement (ABLE) Commission shall refuse to issue a wine and spirits wholesaler, beer distributor, retail spirits, retail wine or retail beer license, either on an original application or a renewal application, if it has reasonable grounds to believe and finds any of the following to be true:

1. Except in the case of a beer distributor, that the applicant is not a citizen of the United States or is not a qualified elector in this state, or has not been a continuous resident of this state for the five (5) years next preceding the application for the license[.]

37A O.S.Supp.2025, § 2-146(A). The provision thus disqualifies an applicant on three independent grounds—lack of United States citizenship, lack of status as a qualified elector in Oklahoma, and lack of five years’ continuous residency—each subject to a single exception for beer distributors.¹

¹ The five-year durational-residency requirement raises separate concerns under the dormant Commerce Clause and is not addressed by this opinion. *See* 2019 OK AG 13 (advising that the residency requirement likely violates the Commerce Clause); *cf. Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504 (2019). Nor does this opinion address licensure requirements for medical marijuana businesses under the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. §§ 427.1–427.28. Those requirements, including the Oklahoma-residency conditions for marijuana business licensees, *see* 63 O.S. § 427.14, raise distinct questions. Among them is whether the dormant Commerce Clause applies at all to a market that remains illegal under federal law. Nothing in this opinion addresses those requirements or bears on their validity.

Your request asks whether the citizenship requirement is constitutional. This opinion principally analyzes that requirement. The qualified-electors requirement in the same paragraph incorporates United States citizenship. This opinion therefore addresses that requirement as well. A duly enacted statute is presumed valid and “will be upheld unless it is clearly, palpably and plainly inconsistent with the Constitution.” *Liddell v. Heavner*, 2008 OK 6, ¶ 16, 180 P.3d 1191, 1200. For the reasons explained below, the citizenship requirement cannot be reconciled with the Equal Protection Clause of the U.S. Constitution as applied to lawfully present noncitizens.

III. DISCUSSION

A. The Citizenship Requirement Discriminates Against Lawfully Present Aliens and Is Subject to Strict Scrutiny.

You ask whether it is constitutional to condition liquor licensure on United States citizenship. It is not. As a threshold matter, the analysis concerns noncitizens who are lawfully present in the United States—lawful permanent residents and others lawfully admitted or present. Those are the persons the citizenship requirement excludes, and they are the persons the Equal Protection Clause protects against discrimination based on alienage. This opinion does not address persons unlawfully present, and nothing in it requires the State to license them. Nor does this opinion address—or require the ABE Commission to disregard—generally applicable conditions of licensure that do not turn on citizenship, including federal limits on a noncitizen’s authorization to work or to engage in the licensed business.² A person who is lawfully present but not authorized under federal law to conduct the licensed business gains no entitlement to a license from this opinion; the conclusion here is only that United States citizenship may not be required of an applicant who is otherwise eligible.

That conclusion follows from settled equal protection principles. The Fourteenth Amendment’s Equal Protection Clause provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1. For more than a century, the Supreme Court has extended this guarantee to lawfully present noncitizens. *See Graham v. Richardson*, 403 U.S. 365, 371 (1971) (“It has long been settled . . . that the term ‘person’ in this context encompasses lawfully admitted resident aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the State in which they reside.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Truax v. Raich*, 239 U.S. 33, 41 (1915); *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 420 (1948). Because the Act’s citizenship requirement discriminates against lawfully present aliens based on alienage, it must survive equal protection analysis to be enforceable.

Although legislation is ordinarily “presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest,” *City of Cleburne, Tex. v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985), strict judicial scrutiny applies when a law

² Lawful presence and authorization to work are distinct under federal law. A noncitizen may be lawfully present—for example, as a temporary visitor—yet not be authorized to work in or operate the licensed business. *See* 8 U.S.C. § 1324a (barring the employment of aliens not authorized to work in the United States); 8 C.F.R. § 274a.12 (identifying the classes of aliens authorized to work, by immigration status).

“classifies by race, alienage, or national origin” because “[t]hese factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy.” *City of Cleburne*, 473 U.S. at 440. And though States retain authority under the Twenty-first Amendment to regulate the sale of alcohol within their borders, they may not exercise that authority in violation of a person’s other federal constitutional rights. *37712, Inc. v. Ohio Dept. of Liquor Control*, 113 F.3d 614, 618 (6th Cir. 1997). The Twenty-first Amendment therefore does not lower the level of scrutiny applied here. See *Craig v. Boren*, 429 U.S. 190, 204–05 (1976) (holding that the Twenty-first Amendment did not insulate an Oklahoma alcohol law from equal protection scrutiny).

To survive strict scrutiny, a law must be narrowly tailored to achieve a compelling state interest. *City of Cleburne*, 473 U.S. at 440. This is an onerous burden. See *Burson v. Freeman*, 504 U.S. 191, 211 (1992) (plurality opinion) (“it is the rare case in which . . . a law survives strict scrutiny”). That burden rests on the State at both steps: it must identify a compelling interest in the discriminatory classification and, if it can, show that the law furthers that interest by the least restrictive means practically available. *Graham*, 403 U.S. at 372; see also *Sugarman v. Dougall*, 413 U.S. 634, 643 (1973) (“We recognize . . . the State’s broad power to define its political community. But in seeking to achieve this substantial purpose, with discrimination against aliens, the means the State employs must be precisely drawn in light of the acknowledged purpose.”).

B. The Political-Function Exception Does Not Apply.

The narrow “political-function” exception can remove an alienage classification from strict scrutiny—but it does not apply here. That exception permits a State to reserve only to citizens those positions that “go to the heart of representative government.” *Sugarman*, 413 U.S. at 647. It applies only where the officeholder “would necessarily exercise broad discretionary power over the formulation or execution of public policies importantly affecting the citizen population—power of the sort that a self-governing community could properly entrust only to full-fledged members of that community.” *Bernal v. Fainter*, 467 U.S. 216, 224 (1984). The U.S. Supreme Court has confined the exception to a relatively limited class of governmental functions and has declined to extend it to occupational licensure; in *Bernal*, for example, the Court held that a citizenship requirement for notaries public failed strict scrutiny and violated equal protection. *Id.* at 227–28.

Measured against that standard, a private licensee who sells wine, spirits, or beer at wholesale or retail neither formulates nor executes public policy and exercises no governmental authority over others; such a licensee falls well outside the exception. This office reached an analogous conclusion in 2004 OK AG 16, advising that Oklahoma’s citizenship requirement for polygraph examiners was unconstitutional because such examiners “do not occupy important nonelective executive, legislative, or judicial positions whereby they participate directly in the formulation, execution, or review of broad public policy.” *Id.* ¶ 9. Strict scrutiny therefore governs.³

³ This opinion addresses only the citizenship-based requirements of 37A O.S.Supp.2025, § 2-146(A)(1). Whether a citizenship requirement attached to any other license, office, or position would satisfy the political-function exception or survive strict scrutiny depends on the nature of that position and must be evaluated on its own terms. Cf. 2004 OK AG 16, ¶¶ 8–9.

C. The Citizenship Requirement Cannot Survive Strict Scrutiny.

The State cannot satisfy the first step of strict scrutiny because no compelling interest supports conditioning an alcohol license on citizenship. The requirement may serve the State’s interest in regulating the alcohol trade to protect public health and safety. That interest is legitimate. But it does not rescue this classification under strict scrutiny review. The Supreme Court has instructed that a State’s alcohol-regulatory measures are not immune from constitutional scrutiny and that “each variation must be judged based on its own features.” *Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 535 (2019). Judged on its own features, the requirement fails. The interests that justify regulating the alcohol trade do not require licensees to be United States citizens. Those interests include ensuring that licensees are fit to hold a license, that alcohol is not sold to minors, that licensees remain accountable and subject to the ABLE Commission’s enforcement authority, and that applicable taxes are collected and fraud and diversion are deterred. A lawfully present noncitizen is as fully subject as a citizen to the Act’s licensing qualifications and fitness review and to the ABLE Commission’s enforcement and revocation authority.

In fact, the Act confirms this point. It exempts beer distributors from the citizenship requirement altogether. 37A O.S.Supp.2025, § 2-146(A)(1). Had the Legislature believed citizenship necessary to protect the public in the alcohol trade, it would not have excused one of the most common licensure categories from that very requirement. That underinclusiveness is itself strong evidence that the classification serves no interest of the highest order. *See Republican Party of Minnesota v. White*, 536 U.S. 765, 780 (2002) (explaining that a law’s underinclusiveness undermines the government’s asserted interest under strict scrutiny); *cf. Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993). The State thus cannot show a compelling interest, and the inquiry could end here. *Graham*, 403 U.S. at 372.

Even if the State could identify a compelling interest, the requirement is not narrowly tailored to that interest. A categorical citizenship bar is not the least restrictive means of advancing any interest the State might assert; it disqualifies every lawfully present alien regardless of any individualized concern and ignores less restrictive measures. The obvious—and far less restrictive—alternative is to screen for lawful presence rather than citizenship, a line both Congress and the Oklahoma Legislature have already drawn. Federal law treats a state commercial license as a “State or local public benefit” for which *unlawfully* present aliens are ineligible. 8 U.S.C. § 1621(a), (c)(1)(A). Oklahoma, in turn, directs its agencies to verify lawful presence for such benefits through an affidavit confirmed by the federal Systematic Alien Verification for Entitlements (SAVE) program, treating lawful presence—not citizenship—as the operative qualification. 56 O.S. § 71(A), (D).⁴ A lawful-presence requirement serves the legitimate interest

⁴ Reliance on this federal framework does not lower the standard of review. Some courts apply rational-basis review where Congress has affirmatively authorized a State to treat classes of aliens differently. *See Soskin v. Reinertson*, 353 F.3d 1242, 1254–55 (10th Cir. 2004) (applying rational basis to Colorado’s elimination of optional Medicaid coverage for certain lawfully present aliens, as the Personal Responsibility and Work Opportunity Reconciliation Act authorized, *see* 8 U.S.C. § 1612(b)); *cf. Mathews v. Diaz*, 426 U.S. 67 (1976). That principle has no application here. The citizenship requirement implements no federal rule; it conflicts with the lawful-presence line Congress drew in 8 U.S.C. § 1621, and no federal statute authorizes a State to exclude lawfully present aliens from a commercial license. *Soskin* further rested on a classification among aliens—qualified versus nonqualified aliens within an “aliens-only” benefits program—not a bar on aliens as compared to citizens, the kind of classification *Graham* subjects to strict scrutiny. *See Soskin*, 353 F.3d at 1255–56. *Soskin* also concerned welfare benefits, not the right to

of ensuring licensees are accountable without excluding the category of aliens the Equal Protection Clause protects. It is also consistent with the Oklahoma Legislature’s own “substantial and compelling interest in ensuring that the rights, privileges, and immunities of its citizens, authorized residents, and lawfully present visitors be protected at all costs.” House Bill 4156, 2024 Okla. Sess. Laws ch. 224, § 1(A) (legislative findings accompanying the creation of the offense of impermissible occupation, codified at 21 O.S.Supp.2024, § 1795).

The requirement is also both overinclusive and underinclusive. It is overinclusive because it categorically excludes lawfully present aliens whom federal and Oklahoma law alike treat as eligible, sweeping far beyond any concern with unlawful presence. It is underinclusive because, as noted, the Act exempts beer distributors. 37A O.S.Supp.2025, § 2-146(A)(1). If a citizenship classification were truly necessary to serve a compelling interest, it would apply to all liquor-license categories; there is no coherent reason citizenship would be required of a retail wine applicant but not of a beer distributor. The beer-distributor exception thus defeats the requirement at both steps of the analysis.

Nor can the State find refuge in the tolerance for imperfect line-drawing that applies at lower tiers of equal protection review. In *West Virginia v. B.P.J. ex rel. Jackson*, 609 U.S. ___, 146 S. Ct. 2356 (2026), the Supreme Court upheld state laws limiting women’s and girls’ school sports teams to biological females. The Court applied intermediate scrutiny to the laws’ sex-based classification. It reiterated that “[p]erfection in making the necessary classifications is neither possible nor necessary” under that standard. *Id.* at 2376 (quoting *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (1976) (per curiam)). But the Court took care to distinguish strict scrutiny, which “requires a much tighter relationship between the State’s classification and the State’s asserted interests.” *Id.* at 2378. Alienage, unlike sex, triggers that more exacting review. *Graham*, 403 U.S. at 372. The tolerance for overinclusive and underinclusive line-drawing that sustained the classifications in *B.P.J.* therefore has no purchase here.

Courts that have considered citizenship conditions on licensure have uniformly reached the same conclusion—most directly in the alcohol context. In *Kalra v. Minnesota*, a federal district court struck down both a Minnesota statute permitting issuance of 3.2 beer (nonintoxicating malt liquor) licenses only to United States citizens and a companion Minneapolis ordinance limiting beer licenses to qualified voters of the state, holding that the city and the State could show neither that the laws served a constitutionally permissible purpose nor that the discriminatory classifications were necessary to accomplish one. 580 F. Supp. 971, 973 (D. Minn. 1983). More broadly, the Supreme Court has repeatedly struck down state laws excluding lawfully present aliens from trades and professions. *See, e.g., Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero*, 426 U.S. 572, 605–06 (1976) (private practice of civil engineering); *In re Griffiths*, 413 U.S. 717 (1973) (admission to the state bar); *Sugarman*, 413 U.S. at 647 (“a flat ban on the employment of aliens in positions that have little, if any[,] relation to a State’s legitimate interest, cannot withstand scrutiny under the Fourteenth Amendment”). Lower courts have invalidated citizenship requirements across a range of licensed occupations. *See, e.g., Dandamudi v. Tisch*, 686 F.3d 66, 79 (2d Cir. 2012) (pharmacists); *Szeto v. Louisiana State Bd. of Dentistry*, 508 F. Supp. 268 (E.D. La. 1981) (dentists); *Arias v. Examining Bd. of Refrigeration and Air*

pursue a livelihood, to which strict scrutiny applies regardless of any claim of federal authorization. *See Dandamudi v. Tisch*, 686 F.3d 66, 72–79 (2d Cir. 2012); *Bernal v. Fainter*, 467 U.S. 216, 219–22 (1984).

Conditioning Technicians, 353 F. Supp. 857 (D.P.R. 1972) (air-conditioning technicians); *Kulkarni v. Nyquist*, 446 F. Supp. 1269 (N.D.N.Y. 1977) (physical therapists). Oklahoma's citizenship requirement is materially indistinguishable and fails for many of the same reasons.

D. The Qualified-Elector Requirement Is Unenforceable for the Same Reasons.

Your request is framed in terms of the citizenship requirement. But section 2-146(A)(1) separately disqualifies an applicant who “is not a qualified elector in this state.” That requirement warrants the same conclusion because it rests on the same classification. Under the Oklahoma Constitution, only “citizens of the United States” may be qualified electors. OKLA. CONST. art. III, § 1. United States citizenship is thus a necessary condition of qualified-electtor status. As applied to a noncitizen, the qualified-elector requirement operates as a citizenship requirement with additional conditions of age and residence. No lawfully present noncitizen can satisfy it, however fit the applicant or complete the application. The requirement therefore discriminates on the basis of alienage as applied to lawfully present noncitizens. It is subject to strict scrutiny for the reasons explained in Part III.A. It fails that scrutiny for the reasons explained in Part III.C.

Indeed, the conclusion follows a fortiori. Whatever connection might be hypothesized between citizenship and the alcohol trade, elector status has none. An applicant's eligibility to vote bears no relationship to fitness to sell alcohol, accountability to the ABE Commission, or any other interest the Act advances. *Kalra* is again instructive. The ordinance invalidated there conditioned beer licenses on status as a qualified voter of the state. That is substantively the same condition at issue here. The ordinance fell alongside the citizenship statute because neither classification was shown to be necessary to any constitutionally permissible purpose. 580 F. Supp. at 973.

This conclusion, like the conclusion on the citizenship requirement, is confined to lawfully present noncitizens. Nothing in this opinion addresses the qualified-elector requirement's application to United States citizens. The distinct constitutional concerns raised by the provision's durational-residency component are noted above. *See supra* note 1.

E. The ABE Commission May Enforce a Lawful-Presence Requirement Instead.

Recognizing that the citizenship and qualified-elector requirements are unconstitutional as applied to lawfully present noncitizens does not leave the ABE Commission without recourse. Nor does that conclusion require the ABE Commission to license an alien unlawfully present in the United States. The State retains a compelling interest in confirming that its licensees are lawfully present, and the means of doing so already exist. Because a wine and spirits wholesaler, retail spirits, retail wine, or retail beer license is a “commercial license” within the meaning of 8 U.S.C. § 1621(c)(1)(A), 56 O.S. § 71 independently directs the ABE Commission to verify each applicant's lawful presence through an affidavit and SAVE process. *See* 56 O.S. § 71(A), (D). While the ABE Commission may not enforce the Act's citizenship and qualified-elector requirements against lawfully present noncitizens, it must continue to verify that any applicant is lawfully present in the United States—an approach that cures the constitutional defect and preserves the State's authority to deny licenses to applicants who are not lawfully present.

It is, therefore, the official Opinion of the Attorney General that:

- 1. The requirement in 37A O.S.Supp.2025, § 2-146(A)(1) that an applicant for a wine and spirits wholesaler, retail spirits, retail wine, or retail beer license be a citizen of the United States violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, U.S. CONST. amend. XIV, § 1, as applied to noncitizens who are lawfully present in the United States, and is unenforceable to that extent.**
- 2. The requirement in 37A O.S.Supp.2025, § 2-146(A)(1) that such an applicant be a qualified elector in this state likewise violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as applied to noncitizens who are lawfully present in the United States, and is unenforceable to that extent. United States citizenship is a necessary qualification of a qualified elector. OKLA. CONST. art. III, § 1.**
- 3. Nothing in this opinion requires the issuance of a license to a person who is unlawfully present in the United States, or to a lawfully present noncitizen whom federal law does not authorize to engage in the licensed business; the State may permissibly condition licensure on lawful presence rather than United States citizenship and on other requirements that do not turn on citizenship.**

Because this opinion concerns the constitutionality of a state statute, it is advisory only. The Attorney General is an executive officer and is not empowered to declare a statute unconstitutional; that authority belongs to the courts. *See State ex rel. York v. Turpen*, 1984 OK 26, ¶¶ 10–12, 681 P.2d 763, 766–67. Accordingly, although this office concludes that the citizenship and qualified-electior requirements of section 2-146(A)(1) violate the Equal Protection Clause and are unenforceable as applied to lawfully present noncitizens, this opinion “should be considered advisory only, and thus not binding until finally so determined by an action in [a] [d]istrict [c]ourt of this state.” *Turpen*, 1984 OK 26, ¶ 12, 681 P.2d at 767.



GENTNER DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA



GARRY M. GASKINS, II
SOLICITOR GENERAL

