Nos. 19-1075 & 19-1292

IN THE
United States Court of Appeals
for the Seventh Circuit

E.F. TRANSIT, INC.,
Plaintiff-Appellant,

v.

INDIANA ALCOHOL AND TOBACCO COMMISSION, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division,
No. 1:13-cv-1927-RLY-MJD,
The Honorable Richard L. Young, Judge.

BRIEF OF APPELLEES
INDIANA ALCOHOL AND TOBACCO
COMMISSION, ET AL.

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JURISDICTIONAL STATEMENT

The jurisdictional statement in the appellant's brief is complete and correct.

INTRODUCTION

Like all States, Indiana tightly regulates the production, importation, and distribution of alcohol within its borders. Because of the central role alcohol wholesalers play in the distribution chain, Indiana has determined that stability and control in the wholesaler tier are essential to the operation of the entire regulatory system. Toward that end, Indiana's prohibited-interest statutes forbid a beer wholesaler from holding any interest, direct or indirect, in a liquor wholesaler's permit. Segregating beer and liquor at the wholesaler tier prevents any one wholesaler from becoming too influential and too large effectively to regulate, thus protecting the independence of small retailers (who sell to consumers) and preserving the State's ability to control alcohol distribution.

E.F. Transit (or EFT) is a licensed motor carrier that desires to provide "logistics" and shipping services to Indiana liquor wholesalers. But as a matter of state law, EFT is also a beer wholesaler by virtue of its common ownership with Monarch Beverage, the State's largest beer wholesaler. EFT and Monarch are thus one and the same for purposes of Indiana's prohibited-interest statutes. *Indiana Alcohol & Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 379 (Ind. 2017). EFT accordingly cannot do anything that Monarch cannot do. As a beer wholesaler Monarch is prohibited from transporting liquor; accordingly, so is EFT.

EFT/Monarch sued the Indiana Alcohol and Tobacco Commission and its members (collectively, the Commission) asserting that EFT has a right to ship liquor under the Federal Aviation Administration Authorization Act of 1994 (FAAAA), 49 U.S.C. §§ 14501–14505, which preempts state laws restricting the services provided by motor carriers. The district court rejected EFT/Monarch's preemption claim because the prohibited-interest statutes fall within Indiana's core Twenty-first Amendment power to regulate the distribution of alcohol. The court accordingly applied a "strong presumption of validity" and balanced the State's strong interests in the integrity of its alcohol-distribution system against the relatively meager federal deregulatory interest applicable in these circumstances—*i.e.*, where the motor carrier is not just a motor carrier but also a beer wholesaler prohibited from having any interest or involvement in liquor wholesaling.

STATEMENT OF THE ISSUE

Whether, notwithstanding the Federal Aviation Administration Authorization Act of 1994 (FAAAA), the Twenty-first Amendment allows Indiana to prohibit a beer wholesaler who also happens to have a motor carrier license from transporting liquor.

STATEMENT OF THE CASE

I. Indiana's Prohibited-Interest Statutes

Since the end of Prohibition, Indiana has regulated the alcoholic-beverage industry through robust vertical and horizontal interest segregation of the supply chain. *Indiana Alcohol & Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 377 (Ind. 2017). Vertically, Indiana requires three segregated operational licensing tiers: producers (first tier) may sell only to wholesalers (second tier), who may sell only to retailers (third tier), who may sell only to eligible consumers. *Monarch Beverage Co. v. Cook*, 48 N.E.3d 325, 328 (Ind. Ct. App. 2015). With limited exceptions, no one holding a license in one tier may hold an interest in a license in any other tier. *See* Ind. Code §§ 7.1-5-9-2, 7.1-5-9-4, 7.1-5-9-6 to -10. Horizontally, Indiana segregates products in the production and wholesale tiers: In general, no producer or wholesaler may have an interest in a license for both liquor and beer. *See* Ind. Code §§ 7.1-3-3-19, 7.1-3-13-1, 7.1-5-9-3, 7.1-5-9-6.[1]

This three-tier system, which the United States Supreme Court has declared "unquestionably legitimate," *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quoting *North Dakota v. United States*, 495 U.S. 423, 432 (1990) (plurality opinion)), is the fundamental—but by no means only—way that Indiana controls the flow and taxation of alcohol by limiting market participation. The Indiana legislature has deemed this system critical to protecting "the economic welfare, health, peace, and morals" of the people of Indiana; to promoting temperance and avoiding bootlegging by regulating and limiting "the manufacture, sale, possession, and use of alcohol and alcoholic beverages"; and to raising revenue. Ind. Code § 7.1-1-1-1. The classifications and distinctions throughout the alcoholic-beverage laws and within the three-tier

[1] There is a minor exception to this rule for small-scale manufacturers; the holder of an artisan distiller's permit can also hold a small brewer's permit. Ind. Code § 7.1-3-27-5(a)(1)(B).

system "are real and are actually and substantially related to the accomplishment of the purposes" of Indiana's alcoholic-beverage laws. Ind. Code § 7.1-1-2-1.

The wholesaler tier is critical to the three-tier system and to regulation of the Indiana alcoholic-beverage industry generally. Situated between the production and retail tiers, this middle tier is the gatekeeper for virtually all alcohol importation and distribution within Indiana. It is the only tier that interacts directly with the other two tiers—licensed wholesalers buy directly from producers and sell directly to retailers. The wholesaler tier ensures that alcohol is properly imported into Indiana and is properly distributed within Indiana to licensed dealer and retailer outlets. Wholesalers are also responsible for collecting excise taxes. Ind. Code §§ 7.1-4-2-2, 7.1-4-3-2.

To distribute (*i.e.*, wholesale) alcohol in Indiana, one must acquire a permit issued specifically for that limited activity by the Commission on a product-by-product basis; that is, Indiana authorizes the distribution of alcohol by type (*i.e.*, beer, liquor, wine) and requires a separate permit to distribute each type. *See* Ind. Code §§ 7.1-3-3-1 (beer), 7.1-3-8-1 (liquor), 7.1-3-13-1 (wine).

No one may legally hold *or have any interest in* both a beer wholesaler's permit and a liquor wholesaler's permit (though both liquor and beer wholesalers may also wholesale wine). *See* Ind. Code §§ 7.1-3-3-19 (prohibiting the issuance of a beer wholesaler's permit to a person who holds a liquor wholesaler's permit), 7.1-3-13-1 (allowing the issuance of a wine wholesaler's permit to a person who holds either a beer wholesaler's permit *or* a liquor wholesaler's permit), 7.1-5-9-3 (declaring it unlawful for the holder of a beer wholesaler's permit to have an interest in a liquor wholesaler's permit), 7.1-5-9-6 (declaring it unlawful for the holder of a liquor wholesaler's permit to have an interest in a beer wholesaler's permit); *see also Spirited Sales*, 79 N.E.3d at 377–80. Nor may a liquor wholesaler sell, deliver, or transport liquor to a beer wholesaler. Ind. Code § 7.1-3-8-3.

Collectively, these laws are referred to as the "prohibited-interest statutes."

Title 7.1 also regulates motor carriers that transport alcohol. *See* Ind. Code §§ 7.1-3-18-1 to -6. A motor carrier must obtain a carrier's permit "before he may haul, convey, transport, or import alcoholic beverages on a public highway of this state or crossing a boundary of it." Ind. Code § 7.1-3-18-3. The permit allows a carrier to transport all three types of alcoholic beverages. Ind. Code § 7.1-3-18-2; *see also* App. 37.

A person who is prohibited from doing a certain act or holding a certain interest directly cannot do that act or hold that interest indirectly. Ind. Code § 7.1-1-2-5; *Spirited Sales*, 79 N.E.3d at 377–80. The Commission is required to consider all practices, dealings, and relationships among owners of wholesalers and other legal entities that may be inimical to achieving the purposes of Title 7.1. Ind. Code § 7.1-2-3-22. This is so even if the related entities have separate corporate identities. *Spirited Sales*, 79 N.E.3d at 379.

II. EFT/Monarch and Its Proposed Agreements to Ship Liquor

EFT and Monarch Beverage are sister companies owned in nearly identical percentages by the same shareholders. R.167-2 at 8 (Terry Dep. 35–36). They have the same Board of Directors, and approximately 20 shared employees. *Id.* (Terry Dep. 36). Phillip Terry is the Executive Vice President and CEO of Monarch as well as the CEO of EFT. *Id.* at 2 (Terry Dep. 10–11).

Monarch is a beer wholesaler and has also distributed wine. R.167-2 at 2 (Terry Dep. 11). Monarch has been a beer wholesaler since it was formed in 1947, and it began wholesaling wine in 1976. *Id.*; *Monarch Beverage Co. v. Cook*, 48 N.E.3d 325, 329 (Ind. Ct. App. 2015). It distributes beer in 89 of Indiana's 92 counties, and in 70 of those counties it is the exclusive distributor of MillerCoors products. *Monarch Beverage Co.*, 48 N.E.3d at 329. Monarch had distributed wine manufactured by E&J Gallo to all 92 counties, and for nearly a decade it tried to force a change in Indiana law that would allow it to distribute Gallo's liquor as well.[2] *Id.*; R.167-2 at 3 (Terry Dep. 14); R.167-5 at 11; *see also* R.166 at 13 n.5 (noting potential prohibited-interest concerns from EFT's business that came to light during discovery).

[2] This case is part of a larger multifaceted campaign waged by Monarch to eliminate the prohibition on wholesaling both liquor and beer so that it can dominate the wholesale market. *See Monarch Beverage Co. v. Cook*, 861 F.3d 678, 681 (7th Cir. 2017) (rejecting equal protection challenge to prohibited-interest statutes); *Indiana Alcohol & Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 377–83 (Ind. 2017) (rejecting Monarch's attempt to acquire a liquor wholesaler's permit through EFT's wholly owned subsidiary, Spirited Sales); *Monarch Beverage Co. v. Cook*, 48 N.E.3d 325, 332 (Ind. Ct. App. 2015) (rejecting state equal privileges and immunities challenge to prohibited-interest statutes); *see also Monarch Beverage Co. v. Grubb*, 138 F. Supp. 3d 1002, 1006 (S.D. Ind. 2015) (discussing Monarch's lobbying efforts).

EFT is a motor carrier that provides "logistics services" to Monarch and other entities. R.167-2 at 2–3 (Terry Dep. 12–16). Monarch's owners created EFT in 1996, *id.* at 3 (Terry Dep. 16), to "separate the risk associated with a trucking operation from the remainder of the enterprise and to take advantage of favorable tax laws," *id.* at 6 (Terry Dep. 17). EFT has a carrier permit issued by the Commission. *Id.* at 9 (Terry Dep. 25); R.163-15.

EFT and Monarch are located in the same building, for which EFT holds a lease with Monarch as the guarantor. R.167-2 at 6, 7 (Terry Dep. 17–18, 21–22). Once beer or wine purchased by Monarch is in the warehouse, EFT is responsible for controlling and managing, as well as maintaining the integrity of, the product in bulk storage and sorting. *Id.* at 10 (Terry Dep. 30). EFT is also responsible for product intake, sorting, packing, and delivery, as well as invoice collection. *Id.* (Terry Dep. 31).

A. Proposed 2009 agreement with Indiana Wholesale

In 2008, EFT approached Indiana Wholesale Wine and Liquor, which holds a permit issued by the Commission to wholesale wine and liquor, regarding a potential services agreement. R.1 at 6 (¶31); R.167-2 at 4 (Terry Dep. 40). EFT and Indiana Wholesale executed a services contract on September 11, 2009, R.163-19, under which EFT would obtain wine and liquor products from manufacturers and suppliers and take the products to its warehouse for storage or sorting and delivery. R.167-2 at 11 (Terry Dep. 55). EFT would package Indiana Wholesale's liquor and wine products—which would be packaged with Monarch's beer and wine products going to the same retailer, *id.* at 12 (Terry Dep. 92–93)—deliver them to retailers and dealers, and collect invoices. *Id.* at 11 (Terry Dep. 55); R.163-19. To accomplish the goals of the 2009 contract, EFT and Indiana Wholesale also entered into a leasing agreement for warehouse space at EFT/Monarch's facility. R.163-18.

Because the contract contemplated that Indiana Wholesale would change the location of its warehouse, Indiana Wholesale had to apply to the Commission for a change to its permit. R.163-33; *see* Ind. Code §§ 7.1-3-8-2, 7.1-3-13-2.5. Sometime in spring 2010, an excise officer prepared a report concluding that the proposed agreement between EFT and Indiana Wholesale would result in a prohibited interest because EFT and Monarch operate as a single entity. R.163-37 at 8; R.167-4 at 6 (Swallow Dep. 64). The Commission conducted a hearing in April 2010 at which it expressed concern about prohibited interests but declined to issue a definitive decision immediately. R.163-41 at 8–12. In September 2010, before the Commission had rendered a formal decision, Indiana Wholesale withdrew its application to transfer its permit because it had renewed its lease at its current location. R.163-43.

B. Proposed 2012 agreement with Indiana Wholesale

In April 2012, EFT sought approval from the Commission for a new agreement with Indiana Wholesale. R.163-46. Under the proposed 2012 agreement, Indiana Wholesale would retain its own warehouse, but EFT would go to the warehouse and pick up pre-sorted products. R.167-2 at 14 (Terry Dep. 113–14). Before delivery to the retailer, EFT would place Indiana Wholesale's products on its warehouse floor temporarily, then load them on delivery trucks with Monarch's products. *Id.* at 15

(Terry Dep. 118). The proposed agreement provided that Commission approval was a condition precedent to effectiveness. R. 163-46 at 3.

An excise officer again conducted an investigation and delivered a report, which noted concerns about prohibited interests because of Monarch's beer wholesaler's permit and its relationship to EFT. R.163-20 at 12. In June 2012, the Commission sent EFT a letter expressing "some concerns about potential prohibited interests" but declining to "render legal advice to an alcoholic beverage permit holder." R.163-47. Five months later, Indiana Wholesale withdrew from the agreement because of "substantial controversy over whether the provision and use of delivery services under the Agreement is legally permissible." R.163-51.

III. Procedural History

EFT filed a complaint for declaratory and injunctive relief against the Commission in December 2013. R.1. The complaint alleged that the Commission's interpretation of the prohibited-interest statutes conflicts with and is preempted by the FAAAA. R.1 at 1 (¶1), 12 (¶58). In June 2015, EFT filed a second case, naming as defendants individual Commission members in their official capacities to avoid the Commission's sovereign immunity defense. R.140. The district court consolidated the two cases. R.147.

In September 2016, the district court granted summary judgment to the Commission on sovereign immunity grounds and to the commissioners on ripeness grounds. R.181. EFT appealed (No. 16-3641).

Meanwhile, EFT's wholly owned subsidiary, Spirited Sales, LLC, an aspiring liquor wholesaler, brought suit in state court to force the Commission to issue it a liquor wholesaler's permit. *Indiana Alcohol & Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 374–75 (Ind. 2017). The Commission defended its refusal to issue the permit on the ground that Spirited Sales had an interest in a beer wholesaler's permit owing to the shared ownership among Monarch, EFT, and Spirited Sales, and so it was barred under the prohibited-interest statutes from acquiring an interest in a liquor wholesaler's permit. *Id.* at 376. In July 2017, while EFT's first appeal before this Court was under advisement, the Indiana Supreme Court issued a decision affirming the Commission's denial of Spirited Sales' application for a liquor wholesaler's permit. *Id.* at 379–83. The "ties between EFT and Monarch," said the court, "were so extensive that EFT could reasonably be deemed to hold an interest in a beer wholesaler's permit," and consequently "Spirited's permit was barred by virtue of EFT's interest in a beer wholesaler's permit." *Id.* at 379.

In January 2018, this Court reversed the district court's grant of summary judgment and remanded for consideration of EFT/Monarch's preemption claim on the merits. *E.F. Transit, Inc. v. Cook*, 878 F.3d 606, 609–10 (7th Cir. 2018). The Court held that the *Spirited Sales* decision put to rest any concerns about justiciability because the Indiana Supreme Court had "construed the prohibited-interest statutes to forbid E.F. Transit from entering into an agreement like the one it negotiated with Indiana Wholesale (or any similar company)." *Id.* at 610.

On December 12, 2018, after supplemental briefing, the district court again granted summary judgment to the Commission and entered final judgment. App. 1–13. The court first determined that the proposed agreement between EFT and Indiana Wholesale would violate the prohibited-interest statutes by virtue of EFT's interest in Monarch's beer wholesaler's permit. App. 6.

Turning to the preemption claim, the court, relying on *Lebamoff Enterprises, Inc. v. Huskey*, 666 F.3d 455 (7th Cir. 2012), first determined that the prohibited-interest statutes implicate the State's core power under the Twenty-first Amendment and thus carry a "strong presumption of validity." App. 7–8. The court then concluded that Indiana's Twenty-first Amendment interests outweighed the federal interests served by the FAAAA. App. 8–11. In doing so, the court rejected EFT/Monarch's argument that the Commission bore the burden of substantiating its interests with concrete evidence. App. 8–9 & n.2. Instead, the prohibited-interest statutes, which "are central to the three-tier system in Indiana," App. 10, reasonably served the State's legitimate interests in "limit[ing] the influence and economic power of alcoholic beverage permittees," App. 10, in avoiding limits on the Commission's ability to regulate wholesalers, App. 10–11, and in promoting temperance, App. 11. The court recognized that striking down the prohibited-interest statutes would destroy Indiana's intricate three-tier system for regulating alcoholic beverages within the State. App. 10–11. The court accordingly concluded "that the state's interests protected by the Twenty-first Amendment, and carried out through reasonable means, outweigh the federal interest advanced by EFT." App. 11.

On December 20, 2018, EFT filed a motion to alter or amend the judgment, arguing that *Lebamoff Enterprises, Inc. v. Rauner*, 909 F.3d 847 (7th Cir. 2018), requires the Commission to provide specific, concrete evidence that the State's goals are being met and that state laws that constitute "mere economic protectionism" are not entitled to deference under the Twenty-first Amendment. R.222. The Commission responded that *Rauner* involved a claim brought by an out-of-state business against an Illinois law under the dormant Commerce Clause doctrine, which entails a substantially different analysis than preemption of state laws enacted under the Twenty-first Amendment. R.224.

On February 7, 2019, the district court denied EFT/Monarch's motion. App. 14–18. The court reasoned that dormant Commerce Clause and preemption analyses differ, and that "in a preemption analysis where a state's core power under the Twenty-first Amendment is at issue, the state regulation is entitled to a strong presumption of validity," which is fundamentally inconsistent with requiring the State to justify its actions with specific evidence. App. 16. The court also concluded that the Commission had supplied specific evidence to satisfy any evidentiary burden. App. 16–17. Lastly, the court rejected EFT/Monarch's argument that the prohibited-interest statutes constitute "mere economic protectionism," for EFT/Monarch had never raised a dormant Commerce Clause doctrine challenge and had never argued that it was an out-of-state business subjected to discriminatory treatment. App. 17–18 & n.2.

SUMMARY OF THE ARGUMENT

Indiana's prohibited-interest statutes do not directly regulate motor carriers but prevent EFT/Monarch from shipping liquor by virtue of its status as a beer wholesaler. The FAAAA provides that "a State … may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier … with respect to the transportation of property." 49 U.S.C. § 14501(c). This statute preempts state laws "having a connection with, or reference to," carrier "rates, routes, or services." *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364, 370–71 (2008) (citation omitted). Yet ordinary preemption principles do not apply here because the prohibited-interest statutes regulate the alcoholic-beverage industry and represent an exercise of the State's core power under the Twenty-first Amendment to structure and regulate its distribution system.

This Court held in *Lebamoff Enterprises, Inc. v. Huskey*, 666 F.3d 455, 458–59 (7th Cir. 2012), that the FAAAA does not preempt state laws that directly regulate the distribution of alcohol through the three-tier system, even if state law incidentally restricts the services a motor carrier may provide. *Huskey* rejected a preemption challenge to an Indiana law that barred retailers from shipping wine directly to consumers via motor carrier, which in turn barred motor carriers from offering a direct-shipping service. The Court held that the law carried a "strong presumption of validity" because it fell within the core of the State's Twenty-first Amendment power to regulate the distribution of alcohol and that the challengers could not overcome that presumption because the law rationally furthered the State's legitimate interest in preventing underage drinking. In a concurring opinion, Judge Hamilton gave another reason that the FAAAA did not preempt the state law, namely, that Congress had not expressed a clear intent to preempt state alcoholic-beverage laws specifically, and so the preemption claim failed without the need for interest balancing. *Id.* at 463–66 (Hamilton, J., concurring in judgment).

Huskey controls here. The prohibited-interest statutes do not directly regulate motor carriers. Instead, they directly regulate the structure of the distribution chain for alcoholic beverages by requiring horizontal segregation of interests in beer and liquor at the wholesale level. EFT/Monarch is a motor carrier but it is principally a beer wholesaler, and for that reason it can have no interest or involvement in the liquor trade. Similar to the law in *Huskey*, the prohibited-interest statutes lie at the core of Indiana's Twenty-first Amendment power to regulate the importation and transportation of alcohol and have only an incidental effect on a very limited subset of motor carriers, namely those who are beer (or liquor) wholesalers.

To the extent that the State's core-power alcohol regulations must undergo interest balancing in every case, the balance decidedly favors the prohibited-interest statutes in this case. State laws regulating the distribution of alcohol fall within the core of the Twenty-first Amendment and are thus entitled to a strong presumption of validity, which places a heavy thumb on the scale in the State's favor when the Court engages in the interest balancing. If the state law reasonably furthers a legitimate objective, the presumption carries the day. *Huskey*, 666 F.3d at 458–59.

On this point, the Commission was not required to prove that the State's exercise of its core power is somehow necessary or effective. Requiring the Commission to provide concrete evidence would flip the strong presumption of validity into a presumption of invalidity. The cases on which EFT/Monarch relies for a contrary rule involve either preemption of noncore state laws or challenges under dormant Commerce Clause doctrine. Neither line of cases affords a presumption of validity to state law, let alone a "strong presumption," and in fact discriminatory laws under the dormant Commerce Clause doctrine are presumptively invalid. EFT/Monarch's rule is unsupported by doctrine and the text and purpose of the Twenty-first Amendment.

In any case, the Commission substantiated the objectives served by the prohibited-interest statutes through Chairman Cook's testimony and the well-documented lessons of history. Segregating beer and liquor interests at the wholesale level fosters competition among diverse wholesalers, prevents wholesalers from becoming too powerful and too influential, prevents the appearance of monopolistic business practices, and promotes temperance by requiring separate wholesalers for beer and liquor products. The purpose of horizontal market segregation thus tracks the purpose of vertical market segregation: preventing market dominance, aggressive promotion, and cheap booze, all of which characterized pre-Prohibition tied houses.

These interests coupled with the strong presumption of validity easily outweigh the mild federal deregulatory interest served by the FAAAA and arguably affected by the prohibited-interest statutes. Again, the prohibited-interest statutes do not directly restrict motor carriers from providing any services. Rather, they limit the available services only of those motor carriers who are also beer wholesalers or liquor wholesalers. The federal deregulatory objective is barely implicated, and Congress did not express a clear statement that it intended to preempt state laws regulating the transportation of alcoholic beverages—indeed, the Webb-Kenyon Act provides to the contrary. The narrow disqualification imposed by the prohibited-interest statutes does not thwart Congress's deregulatory objective, which pales in comparison to the federal interests in the few cases where the Court has found federal law to preempt state regulations of alcohol. *324 Liquor Corp. v. Duffy*, 479 U.S. 335, 346–52 (1987); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 713–16 (1984); *California Retails Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 110–14 (1980). And all of those cases involved *noncore* powers.

The district court correctly granted summary judgment to the Commission. Neither this Court nor the Supreme Court has ever invalidated a state law exercising a core Twenty-first Amendment power on preemption grounds, and the Supreme Court has never even subjected such a law to interest balancing. The prohibited-interest statutes are a reasonable exercise of the State's core power to regulate the distribution of alcohol, and so at the very least the strong presumption of validity carries the day.

ARGUMENT

This Court reviews de novo the district court's grant of summary judgment, viewing the facts and reasonable inferences in favor of the nonmovant. *Monarch Beverage Co. v. Cook*, 861 F.3d 678, 681 (7th Cir. 2017). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

I. EFT/Monarch's Theory of Preemption Is Foreclosed By *Huskey* and Would Negate All Alcohol Industry Segregation, Including Three-Tier System Restrictions, as Applied to Motor Carriers

Notwithstanding the FAAAA, there can hardly be any question but that States may preclude motor carriers from shipping liquor, beer, and wine except on terms that States permit. Indeed, barriers that preclude direct shipment from producers to consumers—or even retailers—form the heart of the three-tier system, which the Supreme Court has declared "unquestionably legitimate." *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quoting *North Dakota v. United States*, 495 U.S. 423, 432 (1990) (plurality opinion)); *see also North Dakota*, 495 U.S. at 432 (holding that regulations concerning the structure of a State's liquor-distribution system "fall within the core of the State's power under the Twenty-first Amendment)); *id.* at 447 (Scalia, J., concurring in judgment) ("The Twenty-first Amendment … empowers North Dakota to require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler.").

Even more on point, this Court has already held that the FAAAA does not preempt an Indiana law preventing motor carriers from delivering alcohol from package liquor stores to residences. *Lebamoff Enterprises, Inc. v. Huskey*, 666 F.3d 455, 458–59 (7th Cir. 2012).

EFT/Monarch's theory of preemption simply cannot be reconciled with *Huskey*. According to EFT/Monarch, the FAAAA gives it a federal right to provide any services it desires by virtue of EFT's status as a motor carrier, irrespective of its duel status as a beer wholesaler. Yet *Huskey* held that the FAAAA does not preempt state limits concerning the transportation and distribution of alcohol directly to consumers, even though those limits regulate the permissible services motor carriers may provide. Enforceability of the prohibited-interest statutes—which like the limits in *Huskey* incidentally restrict the services that a motor carrier with an interest in a beer wholesaler's permit may provide—follows from that holding. And Judge Hamilton's concurrence in *Huskey* provides an added reason why both vertical and horizontal market restrictions are not preempted by FAAAA: Congress has never issued a clear statement to the contrary.

A. The answer to the preemption question here follows from *Huskey*

In *Huskey*, the Court held that Indiana's law prohibiting liquor stores from using motor carriers to ship wine to consumers was not preempted by the FAAAA despite the obvious limit on motor-carrier services. *Id.* at 458–59. The majority started with a strong presumption against preemption because the Indiana law regulated the manner in which alcohol could be sold, a power which lies at the core of the Twenty-first Amendment. *Id.* at 458.

Turning to the state interests, the majority reasoned that motor carrier drivers, unlike liquor store employees, do not receive training on Indiana's alcohol laws and in age verification, so allowing them "to deliver wine could … undermine the state's efforts to prevent underage drinking, the state having decided not unreasonably that requiring face-to-face age verification by someone who has passed a state-certified training course should reduce the prevalence of that drinking." *Id.* at 459. Because the Indiana law fell within the State's core Twenty-first Amendment powers and furthered legitimate state interests, the majority concluded that "the strong presumption carr[ied] the day." *Id.* at 458. In other words, the deregulatory interest served by the FAAAA could not overcome the interests served by the state law.

The prohibited-interest statutes are indistinguishable from the direct-shipment restrictions with respect to FAAAA preemption, for they do not directly regulate motor carriers but instead directly regulate wholesalers (and producers). *See* Ind. Code §§ 7.1-3-3-19, 7.1-3-8-3, 7.1-5-9-3; *Indiana Alcohol & Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 377–80 (Ind. 2017). The only reason the FAAAA is even implicated here is that EFT/Monarch is both a beer wholesaler and a motor carrier, and so its motor carrier services are incidentally limited by the prohibited-interest restraints on its beer wholesaler's permit. Indeed, an ordinary motor carrier who obtains a permit from the Commission may transport beer, wine, and liquor.

Ind. Code § 7.1-3-18-2. Like the direct-shipment restriction in *Huskey*, the prohibited-interest statutes have only an incidental effect on motor carriers and the federal deregulatory objectives behind the FAAAA. Those federal interests are even less implicated in this case, because the restriction here limits the services that can be provided only by motor carriers who are also beer (or liquor) wholesalers.

Furthermore, the prohibited-interest statutes are equally at the heart of Indiana's system for segregating various aspects of the alcohol-distribution market in Indiana. The Indiana legislature has reasonably determined based on the history leading up to Prohibition that the best way of maintaining control over the alcohol market and preventing overconsumption and its attendant social ills is through segmentation of the alcohol-distribution chain. *See, e.g.*, Raymond D. Fosdick & Albert L. Scott, *Toward Liquor Control* 19–20, 41–60 (Center for Alcohol Policy, 2011 ed.) (1933). Allowing wholesalers to distribute and ship liquor, beer, and wine together could result in larger and more powerful wholesalers who can wield undue influence on the other tiers or who can serve as instruments through which producers can exert pressure on retailers and consumers. *See, e.g.*, *California Beer Wholesalers Ass'n v. Alcoholic Beverage Control Appeals Bd.*, 487 P.2d 745, 747–49 (Cal. 1971). By requiring horizontal segregation of beer and liquor interests at the wholesale level, the prohibited-interest statutes further Indiana's objectives in avoiding those problems.

The statutes as applied here forbid EFT/Monarch from transporting liquor owing to its status as a beer wholesaler. They are an exercise of Indiana's core power under the Twenty-first Amendment to regulate the transportation of alcohol and "the … manner under which liquor may be imported and sold." *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 716 (1984). The statutes are thus presumptively valid, and just as in *Huskey*, the deregulatory objective behind the FAAAA does not defeat that presumption.

B. Judge Hamilton's *Huskey* concurrence is correct: In light of the Twenty-first Amendment, absent a clear statement from Congress, a federal statute cannot be understood to preempt state alcoholic-beverage regulations, regardless of interest balancing

In his concurrence in *Huskey*, Judge Hamilton gave an alternative—and correct—reason for concluding that the FAAAA does not preempt state alcoholic-beverage regulations, such as the three-tier system and the prohibited-interest laws, that happen to affect the activities of motor carriers. In Judge Hamilton's view, a state law representing an exercise of core Twenty-first Amendment power prevails over a conflicting federal law irrespective of the relative strengths of the state and federal interests. Accordingly, absent a clear congressional statement of intent to preempt state alcoholic-beverage laws, when a core power is involved, there is no need or justification for a balancing of state and federal interests. *See North Dakota*, 495 U.S. at 439–40; *Ziffrin, Inc. v. Reeves*, 308 U.S. 132, 140–41 (1939).

The majority in *Huskey* adopted a balancing test originating in cases involving *noncore* powers, *see Capital Cities Cable*, 467 U.S. at 716; *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 110 (1980), and modified it for use in cases involving *core* powers by adding a "strong presumption of validity" that places "a thumb on the scale" in favor of the state interests. 666 F.3d at 458. Judge

Hamilton, however, declined to engage in interest balancing absent a clear statement in the FAAAA of congressional intent to preempt state alcoholic-beverage laws. *Id.* at 463–66 (Hamilton, J., concurring in judgment).

Judge Hamilton stressed that the Supreme Court has never subjected a state law at the core of the Twenty-first Amendment to interest balancing, let alone invalidated one on preemption grounds. *Id.* at 465. He also said that utilizing a balancing test tends "to erode the states' powers protected by the Twenty-first Amendment." *Id.* at 463; *see also id.* at 466 ("That sort of balancing of benefits and burdens can be an imposition in and of itself on the broad regulatory power granted to states within the relatively narrow core of the Twenty-first Amendment.").

That conclusion follows from Section 2 of the Twenty-first Amendment, which states 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." By its terms this language "has the unique effect of elevating the covered state laws and regulations to the status of federal constitutional law." *Huskey*, 666 F.3d at 463 (Hamilton, J., concurring in judgment). In constitutionalizing the primacy of state law over the distribution and sale of alcohol within the State's borders, the Twenty-first Amendment has *already* struck a balance in favor of state law.

To be sure, the Twenty-first Amendment did not repeal the Commerce Clause with respect to alcoholic beverages, *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 331–32 (1964), so Congress retains some power to preempt state laws furthering States' Twenty-first Amendment interests. But owing to the critical state interests embodied by the Twenty-first Amendment, the Supreme Court has held that a state exercise of core power is entitled to "a strong presumption of validity and should not be set aside lightly." *North Dakota*, 495 U.S. at 433 (citing *Capital Cities Cable*, 467 U.S. at 714). Because of that presumption, Congress must clearly express an intent to preempt state alcoholic-beverage laws specifically. *See North Dakota*, 495 U.S. at 439–40. The clear-statement rule also ensures that courts are not drawn into disputes over the contours of the Twenty-first Amendment vis-à-vis the Commerce Clause unless Congress forces the issue. *Cf. Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346–48 (1936) (Brandeis, J., concurring).

These ideas are embodied by *Ziffrin, Inc.*, which rejected a preemption challenge to a Kentucky law barring transportation of liquor from distilleries in Kentucky to unlicensed consignees in another State because the Federal Motor Carrier Act of 1935 contained "nothing … which undertakes to destroy state power to protect her people against the evils of intoxicants or to sanction the receipt and conveyance of articles declared contraband." 308 U.S. at 140–41. These principles also animate *North Dakota*, where a plurality of the Court held that North Dakota's alcohol labeling and reporting requirements were not preempted by federal law because the state regulations fell "within the core of the State's power under the Twenty-first Amendment," and because "Congress has not here spoken with sufficient clarity to preempt North Dakota's attempt to protect its liquor distribution system." 495 U.S. at 440; *see also id.* at 447 (Scalia, J., concurring in judgment).

In contrast, the Court has deemed state alcohol laws preempted only where they fall outside core Twenty-first Amendment powers. In *Hostetter*, the Court held that New York could not prohibit federally supervised passage of liquor through its territory for delivery to consumers in foreign countries because shipping "*through* a state is not transportation or importation into the state within the meaning of the Amendment." 377 U.S. at 332–33 (quoting *Carter v. Virginia*, 321 U.S. 131, 137 (1944)). In *Midcal Aluminum*, the Court held that the Sherman Act preempted a California price-maintenance scheme that allowed wine producers to stifle price competition by setting the prices charged by wholesalers because it constituted "other [non-core] liquor regulations" subject to interest balancing. 445 U.S. at 110–14. And in *Capital Cities Cable*, the Court declared an Oklahoma law banning the advertisement of alcoholic beverages preempted by federal cable-television regulations because that law "engages only indirectly the central power reserved by § 2 of the Twenty-first Amendment—that of exercising 'control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.'" 467 U.S. at 715 (quoting *Midcal Aluminum*, 445 U.S. at 110). In that situation (cases involving no such central power), "the balance between state and federal power tips decisively in favor of the federal law, and enforcement of the state statute is barred by the Supremacy Clause." *Id.* at 716.

To be sure, in *U.S. Airways, Inc. v. O'Donnell*, 627 F.3d 1318, 1330 (10th Cir. 2010), the court used a balancing test to analyze FAA preemption of Twenty-first

Amendment core powers notwithstanding the absence of a clear statement by Congress. But as Judge Hamilton explained, the Tenth Circuit "read too much into *Capital Cities Cable*," which involved "and supports balancing only for state alcoholic beverages *outside* the state's core powers," and the court also "did not apply the 'strong presumption' and 'clear statement' rule from *North Dakota*." *Huskey*, 666 F.3d at 465 (Hamilton, J., concurring in judgment).

***

By applying a "strong presumption of validity," the *Huskey* majority's approach took a step in the right direction. But Judge Hamilton's analysis is more consistent with the language of the Twenty-first Amendment, the compromise that led to its ratification, and the Supreme Court's precedents. The Twenty-first Amendment was intended to allow States the flexibility to experiment with various mechanisms of alcoholic-beverage regulation on the belief that local control is superior to national control owing to our heterogeneous country. That purpose is thwarted and experimentation is stifled if every state effort to regulate at the core of the Twenty-first Amendment is subject to judicial balancing because of the myriad congressional statutes with preemptive force. Although the Constitution may not deprive Congress of the power to regulate alcohol under the Commerce Clause, the Twenty-first Amendment demands that Congress clearly and unmistakably express a specific intent to preempt state alcoholic-beverage laws before a federal statute displaces a State's exercise of its core power.

II. The State Interests in Controlling the Wholesaler Tier Served by the Presumptively Valid Prohibited-Interest Statutes Outweigh the Federal Interest in Trucking Deregulation

This Court's precedent is on point: The FAAAA does not preempt state laws that directly regulate the distribution of alcohol through the three-tier system, even if state law incidentally restricts the services a particular motor carrier may provide, full stop. *Lebamoff Enterprises, Inc. v. Huskey*, 666 F.3d 455, 458–59 (7th Cir. 2012). Because the prohibited-interest statutes restrict EFT/Monarch from shipping liquor by virtue of its status as a beer wholesaler, the FAAAA does not preempt the statutes by virtue of the derivative restriction on EFT/Monarch's motor-carrier business. Yet even if the Twenty-first Amendment allows (and *Huskey* requires) courts to balance state and federal interests in every case in which a State's exercise of its core power and a federal policy meet, the balance of interests here tips decidedly in favor of the State's control of its alcohol-distribution system.

A. The Commission is not required to produce specific, concrete evidence of effectiveness

A State is not required to justify its exercise of a core power with concrete evidence in order to defeat a preemption claim. *See North Dakota v. United States*, 495 U.S. 423, 433 (1990) (plurality opinion); *Huskey*, 666 F.3d at 458–59. EFT/Monarch's argument to the contrary ignores fundamental doctrinal differences between core and noncore powers and between preemption and dormant Commerce Clause doctrine. EFT/Monarch's rule would flip the "strong presumption of validity," *North Dakota*, 495 U.S. at 433; *Huskey*, 666 F.3d at 458, on its head.

1. The Twenty-first Amendment does not condition a State's exercise of its core power on either permission from the federal government or upon a showing that its regulations are actually addressing a concrete problem. The compromise struck by the Twenty-first Amendment was intended to allow States the freedom to regulate in a manner that best suits the values and conditions of the particular State and to allow them to experiment. *See, e.g.*, Raymond D. Fosdick & Albert L. Scott, *Toward Liquor Control* 6–8, 13–18 (Center for Alcohol Policy, 2011 ed.) (1933).

EFT/Monarch's rule would gut Section 2 of the Twenty-first Amendment of any real meaning. States are supposed to have "'virtually complete control over' … the structure of the liquor distribution system." *North Dakota*, 495 U.S. at 431 (quoting *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 110 (1980)). But requiring States to justify the chosen structure of their alcohol-distribution systems to federal courts is irreconcilable with any notion of "virtually complete control." Nor is such a standard compatible with States' "*broad power* under § 2 of the Twenty-first Amendment to regulate the importation and use of intoxicating liquor within their borders." *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 712 (1984) (emphasis added) (citation omitted).

EFT/Monarch primarily relies on two types of cases—cases involving antitrust challenges to state price-maintenance laws governing the pricing of alcoholic beverages, *e.g.*, *324 Liquor Corp. v. Duffy*, 479 U.S. 335, 346–52 (1987); *Midcal Aluminum*, 445 U.S. at 107–14; *TFWS, Inc. v. Schaefer*, 242 F.3d 198, 213 (4th Cir. 2001), and cases involving challenges under dormant Commerce Clause doctrine to state alcoholic-beverage laws that discriminate against out-of-state commerce, *e.g.*, *Granholm v. Heald*, 544 U.S. 460, 484–93 (2005); *Lebamoff Enterprises, Inc. v. Rauner*, 909 F.3d 847, 852–57 (7th Cir. 2018); *Dickerson v. Bailey*, 336 F.3d 388, 395–407 (5th Cir. 2003). Neither line of cases supports EFT/Monarch's rule.

The first line involves preemption of States' *noncore* powers rather than core powers. *Midcal Aluminum* utilized balancing only after distinguishing between core powers (*e.g.*, "how to structure the liquor distribution system"), over which States have "virtually complete control," and "other liquor regulations" (*i.e.*, noncore powers), which "may be subject to the federal commerce power" if the federal interest outweighs the state interest in a "concrete case." 445 U.S. at 110. *Capital Cities Cable* reiterated the core/noncore distinction in striking down Oklahoma's advertising ban, which, like the price-maintenance laws in *Midcal Aluminum*, did not implicate "the State's central power under the Twenty-first Amendment of regulating the times, places, and manner under which liquor may be imported." 467 U.S. at 716; *see also id.* at 713 (discussing *Midcal Aluminum* as an example of a case where "a conflicting exercise of federal authority may prevail" because "a State has *not* attempted directly to regulate the sale or use of liquor within its borders—the core § 2 power" (emphasis added)). And *Huskey* held that, owing to the "strong presumption of validity," preemption claims involving core-power laws are analyzed differently than preemption claims involving noncore-power laws. 666 F.3d at 458; *id.* at 463–

65 (Hamilton, J., concurring in judgment); *see also North Dakota*, 495 U.S. at 431–33, 439–40.

The second line involves the dormant Commerce Clause doctrine as it relates to state laws discriminating against interstate alcohol, not preemption. *See Dickerson*, 336 F.3d at 405 (rebuking defendants for relying on preemption cases to defend dormant Commerce Clause doctrine challenge). Yet the Supreme Court has held that the Twenty-first Amendment offers no protection for state laws favoring in-state producers over out-of-state producers. *Granholm*, 544 U.S. at 486–87. No thumbs are added to the scale and there are no presumptions of validity, even when the discriminatory state law is an exercise of core power concerning distribution. *See id.* at 487–89; *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 276 (1984) ("State laws that constitute mere economic protectionism are … not entitled to the same deference as laws enacted to combat the perceived evils of an unrestricted traffic in liquor."). So just like other discriminatory laws, laws discriminating against out-of-state alcohol producers in favor of in-state producers are *presumptively invalid* and may be salvaged only if the State proves by "concrete record evidence[] that a State's nondiscriminatory alternatives will prove unworkable." *Granholm*, 544 U.S. at 493 (citation omitted); *see also id.* at 476, 489.

EFT/Monarch misapplies these cases here and is incorrect when it says that the Supreme Court and five circuits require the States to come forward with concrete evidence of effectiveness to defeat preemption claims related to an exercise of core powers. The Supreme Court has never invalidated a core-power state law on preemption grounds; nor has the Court even subjected a core-power state law to interest balancing, let alone the rigorous evidentiary showing suggested by EFT/Monarch. *Huskey*, 666 F.3d at 465 (Hamilton, J., concurring in judgment). The core-power cases requiring concrete evidence of effectiveness and necessity all involved challenges to laws that, unlike the prohibited-interest statutes, protected domestic business by discriminating against out-of-state alcohol and were therefore subject to heightened scrutiny. *See, e.g.*, *Granholm*, 544 U.S. at 487–93; *Rauner*, 909 F.3d at 852–57. But heightened scrutiny is fundamentally incompatible with a "strong presumption of validity," and where such a presumption applies, the State need not justify its laws with concrete evidence. *See, e.g.*, *North Dakota*, 495 U.S. at 431–33, 439–40; *id.* at 447 (Scalia, J., concurring in judgment); *Huskey*, 666 F.3d at 458–59; *see also Baude v. Heath*, 538 F.3d 608, 613 (7th Cir. 2008).

2. In contrast to the noncore preemption cases, neither *North Dakota* nor *Huskey* required the State to provide evidence that its laws were effective to prevent diversion or to prevent underage drinking to defeat preemption. *North Dakota*, 495 U.S. at 439–41; *Huskey*, 666 F.3d at 458–59. Indeed, in *Huskey* it was sufficient that "[a]llowing motor carriers to deliver wine *could* … undermine the state's efforts to prevent underage drinking, the state having deciding *not unreasonably* that requiring face-to-face age verification by someone who has passed a state-certified training course should reduce the prevalence of that drinking." 666 F.3d at 459 (emphases added).

The only authority purporting to require a State to justify an exercise of core power with concrete evidence to defeat a preemption challenge is *U.S. Airways, Inc. v. O'Donnell*, 627 F.3d 1318, 1324–31 (10th Cir. 2010). But that decision assumes without analysis, and in contravention of the Supreme Court's precedents, that the rules governing preemption of noncore exercises of power apply with equal force to preemption of core exercises of power. *See id.* at 1330–31 (adopting the framework employed in *TFWS, Inc.*, 242 F.3d at 213—which, like *Midcal Aluminum*, involved an antitrust challenge to pricing regulations—for the district court to apply when balancing the state interests in limiting who can sell alcohol on airplanes against the federal interest in uniform aviation safety rules). Unlike this Court, the Tenth Circuit did not apply a "strong presumption of validity," as required by *North Dakota*, 495 U.S. at 433, and ignored the distinction between preemption of core and noncore powers established in *Midcal Aluminum* and *Capital Cities Cable*. *Huskey*, 666 F.3d at 465 (Hamilton, J., concurring in judgment).

The district court correctly rejected EFT/Monarch's argument that the Twenty-first Amendment requires States to justify the exercise of their core powers with concrete evidence of effectiveness. Such a rule would reverse the strong presumption of validity into a presumption of invalidity.

B. The Commission substantiated the State's interest in controlling the sale, possession, and transportation of alcohol through Indiana's prohibited-interest statutes

Even if a State must substantiate the need to exercise a core power, the district court correctly concluded that the Commission did so with respect to restricting beer wholesalers from shipping liquor.

1. One of the driving forces behind Prohibition was the tied house, one feature of which was unitary control over production and distribution of both beer and liquor. *See* Fosdick & Scott, *supra*, at 29. The profit motives of larger alcohol interests, such as producers and wholesalers, resulted in domination "of local markets through vertical and horizontal integration … and the excessive sales of alcoholic beverages produced by the overly aggressive marketing techniques" of those businesses. *California Beer Wholesalers Ass'n v. Alcoholic Beverage Control Appeals Bd.*, 487 P.2d 745, 748 (Cal. 1971); *see also* Fosdick & Scott, *supra*, at 29. Another problem was the ease with which beer and liquor were sold together. Fosdick & Scott, *supra*, at 19–20. As the end of Prohibition neared, "distilled liquors [were] seen to be in a class by themselves" due to their higher potency (and profit margins), which was to serve as "the basis of a radical difference in treatment under the law." *Id.* at 20.

Heeding these lessons, in 1935 Indiana established its three-tier system and the barrier between beer and liquor at the wholesale level. Liquor Control Act of 1935, § 41(o)–(p), 1935 Ind. Acts 1056, 1191. The wholesale restrictions were "an effort to keep wholesalers from becoming too large and powerful." Marc Carmichael & Harold Feightner, *A History of Alcohol and Politics in Indiana* 28 (2012). Indiana continues to adhere to the three-tier system and the segregation of beer and liquor interests at the production and wholesale levels—the higher levels of the supply chain that are more remote from the locality in which the alcohol is sold to the consumer. *See* Ind. Code §§ 7.1-5-9-3, 7.1-5-9-6.

2. The three-tier system exists to prevent the return of the tied house. R.167-6 at 3 (Cook Dep. 43); Fosdick & Scott, *supra*, at 29. The rationale for vertical segregation is to prevent entities higher up in the distribution chain from having too much power and influence over retailers who sell to consumers. R.167-6 at 3 (Cook Dep. 43). The three-tier system is thus "designed to encourage competition and competitive markets rather than to have large scale monopolistic type of organizations." *Id.* at 5 (Cook Dep. 56).

Horizontal and vertical segregation serve many of the same interests because they are inextricably related. R.167-6 at 2 (Cook Dep. 69–70). Segregating beer and liquor interests at the wholesale level prevents one or a small handful of massive wholesalers from dominating the distribution chain. *Id.* at 12, 12, 14 (Cook Dep. 65, 82–83, 87–88). Encouraging competition among wholesalers prevents a single entity from getting so large that it may exert undue influence on regulators and market participants. *Id.* at 6–7 (Cook Dep. 60–61). For instance, a large wholesaler dissatisfied with a regulation might threaten thousands of jobs or even cut off shipments during the Indy 500 to get its way. *See id.* at 7 (Cook Dep. 63). Or, a large wholesaler of both beer and liquor might force a retailer to promote one product at the risk of not receiving proper delivery of other products. *Id.* at 10, 12 (Cook Dep. 66–68, 128).

Of course, the potential for these coercive influences exists even if they are not enshrined in a contract. *Id.* at 8 (Cook Dep. 121–22). The prohibited-interest statutes exist "so that those business models are either defeated or discouraged so that you don't have those concerns." *Id.* at 8, 12 (Cook Dep. 68, 122–23). Allowing EFT/Monarch to ship liquor would damage if not entirely obliterate the wall created by the prohibited-interest statutes to prevent such abuses.

Indiana's prohibited-interest statutes are effective: witness the absence of the problems they aim to curb. Through vigilant enforcement of its vertical and horizontal market segregation, Indiana has avoided market domination by wholesalers that demand intemperate sales tactics by retailers, and other similar problems that led to Prohibition. The State has struck a balance by adopting a licensing system in which private industry is involved in the alcohol trade, as limited by rules requiring separate treatment of liquor and beer. *See* Fosdick & Scott, *supra*, at 19–22, 36–40, 50–51.

Nor is Indiana alone in maintaining a barrier between beer and liquor at the wholesale level. Shortly after Prohibition ended, roughly 17 States followed the recommendation of the influential Rockefeller Report, *see* Fosdick & Scott, *supra*, at 27–28, 41–60, and monopolized the distribution and sale of liquor, while permitting private companies to wholesale beer. *See* Phillip J. Cook, *Paying the Tab: The Economics of Alcohol Policy* 28 (2007). Many States still maintain wholesale and retail monopolies over liquor but not beer. *See, e.g.*, Iowa Code Ann. § 123.22; Mich. Comp. Laws §§ 436.1206(6), 436.1305, 436.1403; Mont. Code Ann. §§ 16-3-101(2)(a)(ii), 16-

3-230; Vt. Stat. Ann. tit. 7, § 63(a)–(b); W. Va. Code Ann. §§ 60-3-1, 11-16-9; Wyo. Stat. Ann. §§ 12-2-301(a), 12-2-201(a). Indiana thus has not been alone in prohibiting private wholesalers from wholesaling both beer and liquor, and the Indiana legislature's satisfaction with the results—not hypothetically possible alternate regulatory structures—is what matters.

C. The balance of interests favors Indiana's prohibited-interest restrictions

1. The State's interest in the integrity of its alcoholic-beverages distribution system is paramount under the Twenty-first Amendment, and the prohibited-interest statutes are a crucial component of that system. *North Dakota*, 495 U.S. at 431–33; *id.* at 447 (Scalia, J., concurring in judgment). Segregating liquor and beer wholesaler markets encourages competition among diverse wholesalers, controls the size of organizations to prevent undue influence on both the system and on regulators, discourages monopolistic business models, and promotes temperance. R.167-6 at 2–4 (Cook Dep. 43, 45, 69). The Supreme Court has already held that a comprehensive system for the distribution of liquor aimed at similar purposes—"promoting temperance, ensuring orderly market conditions, and raising revenue"—is "unquestionably legitimate." *North Dakota*, 495 U.S. at 432; *accord Granholm*, 544 U.S. at 489.

To allow wholesalers to bring both beer and liquor under the same ownership interest at the wholesale level would substantially vitiate, if not defeat entirely, the anti-tied house objective served by the barrier between beer and liquor producers. R.167-6 at 8–9 (Cook Dep. 117–21). The only difference would be that the driving force of the tied house would be the wholesaler, rather than a unitary producer. *See* Fosdick & Scott, *supra*, at 29, 36–40, 51.

Segmenting the wholesaling interests in liquor and beer also promotes temperance, for the manner of distribution of alcohol influences its availability and pricing at the retail level. R.167-6 at 4 (Cook Dep. 48). As this Court held two years ago, prohibiting integration of beer and liquor interests at the wholesale level "is likely to impose higher distribution costs than if beer and liquor wholesaling were combined," which "keeps liquor prices higher." *Monarch Beverage Co. v. Cook*, 861 F.3d 678, 684 (7th Cir. 2017); *see also, e.g.*, Frank J. Chaloupka et al., Nat'l Inst. Alcohol Abuse & Alcholism, *The Effects of Price on Alcohol Consumption and Alcohol-Related Problems* (Aug. 2002), https://pubs.niaaa.nih.gov/publications/arh26-1/22-34.htm (concluding that research linking price and consumption "clearly supports the view that increases in the monetary prices of alcoholic beverages … significantly reduce alcohol consumption"). Avoiding cheap liquor from flooding the market was one of the primary aims after Prohibition ended, given its increased potency. Fosdick & Scott, *supra*, at 19–20.

2. The federal interest in deregulating motor carriers does not outweigh Indiana's interest in maintaining the integrity of its alcohol-distribution system, the core power conferred by the Twenty-first Amendment.

The federal deregulatory interest is barely implicated by the prohibited-interest statutes, which permit nearly all motor carriers to ship both liquor and beer, *except* for those having an interest in a beer (or liquor) wholesaler's permit. *See* Ind.

Code § 7.1-3-18-2. The narrowness of the Indiana disqualification defeats any plausible suggestion that the prohibited-interest statutes thwart Congress's objectives in deregulating the motor carrier industry, which was to allow market forces to promote efficiency, innovation, services, and price competition. *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364, 371 (2008). Prohibiting a single motor carrier from providing a particular service by virtue of its co-status as a beer wholesaler does not frustrate those objectives for the motor carrier industry.

The meager federal interest served by the FAAAA in this narrow situation stands in sharp contrast to the substantial federal interests in *Midcal Aluminum*, *324 Liquor Corp.*, and *Capital Cities Cable*. Again, each of those cases involved *noncore* state laws, and so none bore a "strong presumption" of validity. *324 Liquor Corp.*, 479 U.S. at 349–52 (state price maintenance vs. Sherman Act); *Midcal Aluminum*, 445 U.S. at 106–14 (same); *Capital Cities Cable*, 467 U.S. at 713–16 (state advertising restriction vs. federal promotion of cable television).

Here, the federal interest served by applying the FAAAA in this narrow circumstance pales in comparison to Indiana's deep-seated, core interests in product segregation. In fact, the FAAAA—which says nothing specifically about the transportation of alcoholic beverages—is not Congress's only word on transportation of alcoholic beverages in interstate commerce. The Webb-Kenyon Act parallels the Twenty-first Amendment and specifically prohibits the transportation of liquor into a State in violation of the State's laws. 27 U.S.C. § 122. Congress thus has expressed a specific policy of barring the shipment of alcohol into a State in violation of that

State's laws. In view of the Webb-Kenyon Act, the federal interest in deregulation is de minimis under the circumstances of this case, if it exists at all.

***

Indiana's broad regulatory power under the Twenty-first Amendment and its strong interest in regulating the transportation of alcoholic beverages within its borders far outweigh the federal interest in deregulating the motor carrier industry generally. The FAAAA does not preempt the prohibited-interest statutes as applied to bar EFT/Monarch from shipping liquor. The district court correctly granted summary judgment to the Commission.

CONCLUSION

For the foregoing reasons, the district court's judgment should be affirmed.

Respectfully submitted,

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FED. R. APP. P. 32(g) WORD COUNT CERTIFICATE

1. Pursuant to Fed. R. App. P. 32(g), the undersigned counsel for the appellees certifies that this brief complies with the type-volume limitations of Circuit Rule 32(c) because the brief contains 9,626 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook typeface, font size 12 for the text and font size 11 for the footnotes. *See* Cir. R. 32(b).

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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