No. 25-3305

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEREK BLOCK, et al., *Plaintiffs-Appellants*, v. JAMES CANEPA, et al., *Defendants-Appellees*, WHOLESALE BEER & WINE ASSOCIATION OF OHIO, *Intervenor Defendant-Appellee*.	On Appeal from the United States District Court for the Southern District of Ohio District Court Case No. 2:20-cv-03686

BRIEF OF INTERVENOR DEFENDANT-APPELLEE
WHOLESALE BEER & WINE ASSOCIATION OF OHIO

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Sixth Circuit Rule 26.1, Intervenor Defendant-Appellee Wholesale Beer & Wine Association of Ohio makes the following disclosures:

1. Wholesale Beer & Wine Association of Ohio is not a subsidiary or affiliate of a publicly owned corporation.

2. No publicly owned corporation or its affiliate, by reason of insurance, a franchise agreement, or indemnity agreement, has a financial interest in the outcome of this matter.

s/ Marth Brewer Motley September 19, 2025
Martha Brewer Motley (0083788) Date

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not necessary. The issues have been extensively briefed both in the district court and in a prior appeal to this Court. The briefs and record adequately present the undisputed material facts and the pertinent legal arguments. The district court correctly applied clear and controlling precedent regarding the constitutionality of Ohio's alcohol direct shipment and personal transportation laws. This Court should readily affirm that well-reasoned ruling without oral argument.

If the Court determines that oral argument is necessary, the Wholesale Beer & Wine Association of Ohio is ready to participate.

JURISDICTIONAL STATEMENT

Appellants brought this action under 42 U.S.C. § 1983, alleging that certain Ohio alcohol delivery and distribution laws violate the dormant Commerce Clause, U.S. CONST. art. I, § 8, and exceed the State's authority pursuant to the Twenty-first Amendment, U.S. CONST. amend. XXI, § 2. The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction under 28 U.S.C. § 1291.

However, because Appellants cannot establish Article III standing to challenge the direct shipping laws, the Court lacks subject-matter jurisdiction, and this appeal should be dismissed as to that claim.

ISSUES PRESENTED FOR REVIEW

Appellants challenge the constitutionality of two provisions of Ohio's three-tier alcohol control system: (1) the restriction prohibiting out-of-state retailers from directly shipping wine to consumers in Ohio; and (2) the restriction limiting the number of cases of wine that consumers may buy out of the state and transport into Ohio. In this appeal, Appellants pose the following issue for review as to these two restrictions: "Is Ohio's purported justification for discriminating against out-of-state wine retailers supported by concrete evidence that the law actually advances a legitimate health or safety purpose and that non-discriminatory alternatives would be insufficient?"

The Wholesale Beer & Wine Association of Ohio submits that under the correct legal framework, Ohio's alcohol laws related to out-of-state wine importation and delivery are constitutional.

INTRODUCTION

Intervenor-Appellee Wholesale Beer & Wine Association of Ohio (the "WBWAO") respectfully urges the Court to affirm the district court's judgment. This is the second time that this case is on appeal. In the first appeal, this Court confirmed the "controlling" applicability of the Court's precedential decision in *Lebamoff Enters., Inc. v. Whitmer*, 956 F.3d 863 (6th Cir. 2020), and remanded the case with specific remand instructions for consideration of the record evidence. On remand, the district court engaged in the exact analysis that this Court asked of it. In doing so, the district court correctly determined that Ohio's direct shipment and personal transportation laws within its three-tier alcohol control system are constitutional. This Court should affirm that determination.

STATEMENT OF THE CASE

I. Alcohol is special under the United States Constitution.

Alcohol "is the only consumer product identified in the Constitution. Only its regulation by States is given explicit warrant." *Wine Country Gift Baskets.com v. Steen*, 612 F.3d 809, 813 (5th Cir. 2010).

Alcohol poses material risks to those who consume it and to the communities in which they live. Overindulgence of alcohol can readily lead to a litany of woeful misfortunes to oneself and to others. (*See generally* Stevenson & Jones Rep. ¶ 23, RE 114-1, PageID 5445–46.) These range from simple impairment of coordination

and judgment to increased propensity for family tension, depression, blackouts, violence, sexual misbehavior, fetal alcohol spectrum disorders, binge drinking, poisoning from polluted or counterfeit products, heart disease, chronic liver ailments, neurological impairments, and accidental injury and death. (*See id.*) As Alexander Hamilton noted in *The Federalist Papers*, writing about the ability of the proposed federal government to levy duties on imported "ardent spirits," "if it should tend to diminish the consumption of [them], such an effect would be equally favorable to the agriculture, to the economy, to the morals, and to the health of the society." *The Federalist* No. 12.

II. The Twenty-first Amendment allows each state to make its own policy choices as to alcohol regulation.

Excessive alcohol consumption and corresponding societal ills defined the pre-Prohibition era. Tied-house saloons, which sold alcohol produced by their owners, created a vicious cycle of alcohol abuse and poverty. (*See* Stevenson & Jones Rep. ¶¶ 27–33, RE 114-1, PageID 5447–49.) The economic efficiency of such vertical integration came with the major costs of addiction, crime, violence, family troubles, and preventable deaths. *See Crowley v. Christensen*, 137 U.S. 86, 91 (1890) (observing that, in the pre-Prohibition era, "statistics of every State show[ed] a greater amount of crime and misery attributable to the use of ardent spirits at these retail liquor saloons than to any other source").

In response, the Eighteenth Amendment banned the manufacture, sale, or transport of intoxicating liquors. U.S. Const. amend. XVIII, *repealed by* U.S. Const. amend. XXI. "This experiment solved some problems but generated others." *Lebamoff*, 956 F.3d at 868.

The failed Prohibition "experiment" concluded with ratification of the Twenty-first Amendment. Section 2 provides: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." This provision "delegates to each State the choice whether to permit sales of alcohol within its borders and, if so, on what terms and in what way." *Id.*; *see also Tennessee Wine & Spirits Retailers Assn. v. Thomas*, 588 U.S. 504, 533 (2019) (noting that Section 2 of the Twenty-first Amendment "grants States latitude with respect to the regulation of alcohol"); *North Dakota v. United States*, 495 U.S. 423, 431–33 (1990) ("within the area of its jurisdiction, the State has 'virtually complete control' of the importation and sale of liquor and structure of liquor control systems," as state liquor control measures adopted pursuant to the Twenty-first Amendment "are supported by a strong presumption of validity and should not be set aside lightly").

III. The main objective of the State of Ohio's liquor control system is to promote public health and safety.

Ohio, like most states, employs a three-tier system for alcohol control. (Stevenson & Jones Rep. ¶¶ 33–34, RE 114-1, PageID 5449.) Producers and suppliers (including breweries, wineries, and distilleries) comprise the first tier. They must obtain state licenses and may sell only to wholesalers licensed by the state. However, with the requisite licenses, breweries and wineries may also sell alcohol products to consumers for home use. *See* Ohio Rev. Code §§ 4303.232 (S-1 permit for beer); 4303.233 (S-2 permit for wine). Licensed wholesalers—the second tier—must also obtain a license and may sell only to licensed retailers, other licensed wholesalers, or, in limited circumstances, consumers for home use. (*Id.* ¶ 72, PageID 5465–66); *see also* Ohio Rev. Code §§ 4303.06 (B-1 permit for beer), 4303.07 (B-2 permit for wine), 4303.10 (B-5 permit for wine), 4303.09 (B-4 permit for mixed beverages). Retailers—who comprise the third tier—likewise must hold a state license and comply with various regulations and restrictions in order to sell to consumers. *See* Ohio Rev. Code §§ 4301.13, 4301.24, 4301.58; *see generally id.* at Ch. 4303.

Revised Code § 4301.011 expressly provides that it is "the intent of the general assembly to do all of the following" through the provisions of Title 43 ("Liquor") of the Ohio Revised Code:

> (A) Promote temperance by preventing consumption by underage persons and by discouraging abusive consumption;
>
> (B) Promote orderly markets by requiring transparent, accountable, and stable distribution of beer and intoxicating liquor and preventing unfair competition;
>
> (C) Facilitate the collection of taxes related to the sale and consumption of beer and intoxicating liquor.

Ohio Attorney General Yost notes that these interests "include, but are not limited to, the following:

- The ability to promote public health and safety through inspections of permit holders;
- The ability to promote public health and safety through regulating advertisements of in-state permit holders;
- The ability to promote public health and safety through the imposition of mandatory minimum pricing on the sale of wine;
- The State's interest in the fair and proper collection of tax revenue;
- The State's interest in preventing alcohol consumption by minors."

(*See* AG Responses to Discovery at 11, RE 114-3, PageID 5891.)

IV. Appellants seek to dismantle the Ohio liquor control system.

The remaining Appellants are Kenneth M. Miller (an Ohio resident and wine consumer) and House of Glunz (an Illinois wine retailer). (Compl. ¶¶ 4–6, RE 1, PageID 2–3.) Their Complaint alleges two dormant Commerce Clause violations. In Count I, Appellants contend that the ban on personal transportation of wine in

excess of 4.5 liters into the state, *see* Ohio Rev. Code § 4301.20, violates the dormant Commerce Clause. (*Id.* ¶¶ 28–32, PageID 7–8.) In Count II, they claim that Ohio Rev. Code §§ 4301.58(B), 4301.60, and 4303.25, as interpreted by the State of Ohio, violate the dormant Commerce Clause. (*Id.* ¶¶ 33–40, PageID 8–9.) Appellants seek a declaratory judgment that these statutes are unconstitutional, as well as an injunction prohibiting the Attorney General from enforcing these statutes and requiring the State of Ohio to allow House of Glunz and other out-of-state retailers to sell and ship wine directly to Ohio consumers. (*Id.* at Req. for Relief, PageID 9–10.)

The Attorney General and other State Defendants moved to dismiss for lack of subject matter jurisdiction on the ground of lack of standing. (*See* Mot. to Dismiss, RE 19.) The district court ultimately granted in part and denied in part the motion to dismiss, finding that Miller lacked standing to raise Count I (the personal transportation claim). (May 12, 2021 Op. & Order, RE 36.) The case then proceeded only as to Count II—the constitutionality of Ohio's ban on direct sale and shipment of wine to Ohio consumers by unlicensed out-of-state retailers. (*Id.*) Following significant discovery, the parties filed cross-motions for summary judgment and cross-motions to strike portions of the record. (Cross Mots. for Summ. J., RE 51, 52, 53.)

On September 12, 2022, following oral argument, the district court issued an opinion and order resolving all pending motions and granting summary judgment in favor of the state and WBWAO and against Appellants. (Sept. 12, 2022 Op. & Order at 2, RE 91, PageID 5179.) Appellants appealed this decision. (Notice of Appeal, RE 107.) In the first appeal, this Court remanded the case so that the district court may "consider the facts and evidence presented in this case and determine whether" the challenged provisions of Ohio's alcohol control system "(1) 'can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground,' and whether (2) their 'predominant effect' is 'the protection of public health or safety,' rather than 'protectionism.'" *Block v. Canepa*, 74 F.4th 400, 414 (6th Cir. 2023) (quoting *Tenn. Wine*, 588 U.S. at 539). The Court also reversed the dismissal of Appellants' personal transportation claim, which was likewise remanded for further proceedings. *Id.* at 410–11.

On remand, the parties again filed cross motions for summary judgment and supplemented the record in compliance with this Court's mandate. (Cross Mots. for Summ. J., RE 114, 116, 119.) On March 20, 2025, the district court followed the explicit remand instructions from this Court and granted summary judgment in favor of the state and WBWAO and against Appellants. (Mar. 20, 2025 Op. and Order, RE 133.) Appellants then filed the second appeal to this Court. (Notice of Appeal, RE 135.)

SUMMARY OF ARGUMENT

The comprehensive three-tier regulatory system enacted by the Ohio General Assembly aims to protect Ohioans from the dangers of alcohol in a manner that is consistent with the Constitution and the values and sentiments of the people of Ohio. The direct shipment and personal transportation laws challenged by Appellants in this case do just that. Under the legal framework established by the Supreme Court in *Tennessee Wine*, and applied by this Court in *Lebamoff* and the first appeal of this case, the direct shipment and personal transportation laws do not run afoul of the dormant Commerce Clause. The record evidence conclusively demonstrates that the predominant effect of the challenged alcohol control laws is public health and safety. This determination ends the inquiry into the constitutionality of the direct shipment and personal transportation laws. However, even if nondiscriminatory alternatives were relevant to the analysis, no such alternatives could be implemented here.

Moreover, Appellants lack Article III standing to pursue their challenge of the direct shipment laws because their stated objective is judicially unredressable. Appellants seek declaratory and injunctive relief prohibiting enforcement of those laws. But Appellants fail to cite any specific statute that is facially discriminatory and actually prohibits out-of-state retailers from obtaining the required licenses to sell wine directly to consumers. Nor is their direct shipping challenge sustainable on an as-applied basis. Plaintiffs seek to enjoin enforcement of four statutes that are

the essence of the entire Ohio liquor control system for all participants. Yet, such an injunction as to out-of-state retailers alone would not eliminate alleged discrimination. Rather, it would give out-of-state retailers a huge competitive advantage over in-state retailers who must continue to comply. On the other hand, any attempt to subject out-of-state retailers to the same oversight as in-state retailers necessarily would require the Court to engage in a legislative-like rewrite of the Ohio Revised Code, making momentous and costly policy choices that the Twenty-first Amendment reserves to the state. Accordingly, Appellants lack standing to assert their direct shipping claim.

ARGUMENT

I. Appellants seek to impose an incorrect and heightened standard that is contradictory to the United States Constitution and relevant precedent.

Appellants spend a significant portion of their opening brief attempting to skew the current legal framework for assessing state alcohol regulations' constitutionality. Although the Supreme Court expressed itself clearly in *Tennessee Wine*, Appellants have treated the applicable level of scrutiny as a moving target throughout this litigation. In doing so, they seek to impose a heightened standard on the state than has been established under the Constitution and applicable precedent.

As an initial matter, Appellants mischaracterize the base assumptions at play in their challenge of Ohio's alcohol control regulations. Contrary to Appellants'

unsupported arguments otherwise, there is no presumption that the direct shipment and personal transportation laws are unconstitutional. Instead, Appellants face a heavy burden of overcoming the strong presumption that Ohio's three-tier regulatory structure is constitutional. *See North Dakota*, 495 U.S. at 431–33; *see also Rucker v. City of Kettering*, 84 F. Supp. 2d 917, 929–30 (S.D. Ohio 2000) ("Legislative enactments [and the Ohio Admin. Code] carry a strong presumption of constitutionality. . . . Rebutting the presumption is seldom easy, and it is far from easy here." (quoting *Aronson v. City of Akron*, 116 F.3d 804, 809 (6th Cir. 1997)). Indeed, "given the special protection afforded to state liquor control policies by the Twenty-first Amendment, they are supported by a strong presumption of validity and should not be set aside lightly." *North Dakota*, 495 U.S. at 433.

With this base presumption of constitutionality in mind, challenges to alcohol regulations turn on the "accordion-like interplay" between the Twenty-first Amendment and the dormant Commerce Clause. *See Lebamoff*, 956 F.3d at 869. Given the explicit mention of alcohol in the Constitution, the Commerce Clause does not apply to regulation of alcohol with the same force as it applies to regulation of other commodities. *See Tenn. Wine*, 588 U.S. at 539. Accordingly, the Supreme Court established a "different" test under which state laws adopted pursuant to the Twenty-first Amendment will be sustained if they can be "justified as a public health and safety measure or on some other legitimate nonprotectionist ground." *Id.* The

Court specified that this means that "[w]here the predominant effect of a law is protectionism, not the protection of public health or safety, it is not shielded by § 2 [of the Twenty-first Amendment]." *Id.*

This Court has confirmed and applied this standard in the two prior cases that followed *Tennessee Wine.* Appellants' attempt to distract the Court from these decisions by citing to five cases that were decided before the Supreme Court clarified the legal framework in *Tennessee Wine*. (*See* Appellants' Br. at 27 (citing *Heald v. Engler*, 342 F.3d 517 (6th Cir. 2003); *Jelovsek v. Bredesen*, 545 F.3d 431 (6th Cir. 2008); *Cherry Hill Vineyards v. Lilly*, 553 F.3d 423 (6th Cir. 2008); *Am. Beverage Ass'n v. Snyder*, 735 F.3d 362 (6th Cir. 2013); *Byrd v. Tenn. Wine & Spirits Retailers Assoc.*, 883 F.3d 608 (6th Cir. 2018)).) To the extent that those decisions outline a standard different from that delineated in *Tennessee Wine*, the cases are no longer good law. *See Fletcher v. Honeywell Internatl., Inc.*, 892 F.3d 217, 226 (6th Cir. 2018) (finding that cases cited by the plaintiffs were of "limited usefulness" as they "were decided before the Supreme Court's decision" in a case that clarified the pertinent legal framework). Rather, the law in this Circuit is the *Tennessee Wine* framework as correctly applied by this Court in *Lebamoff* and the first appeal in this case.

In *Lebamoff*, the Court reiterated the "different" test set forth in *Tennessee Wine* and applied it to Michigan's similar direct shipment alcohol control laws.

Lebamoff, 956 F.3d at 869. In so doing, the Court analyzed the record evidence—which was less extensive and "concrete" than the evidence submitted by the state and WBWAO in this case—and held that Michigan's direct shipment laws are constitutional: "If Michigan may have a three-tier system that requires all alcohol sales to run through its in-state wholesalers, and if it may require retailers to locate within the State, may it limit the delivery options created by the new law to in-state retailers? The answer is yes." *Id.* at 870.

In the first appeal in this case, the Court again confirmed the proper test for challenges to state alcohol control regulations in conformity with *Tennessee Wine* and *Lebamoff*. Indeed, despite Appellants' continued attempts to distract from *Lebamoff*, this Court expressly confirmed that it remains good law and is "controlling" in this case. *Block*, 74 F.4th at 413. Specifically, "[a] discriminatory state liquor law will survive a dormant Commerce Clause challenge if (1) it 'can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground,' and (2) its 'predominant effect' is 'the protection of public health or safety,' rather than 'protectionism.'" *Id.* (quoting *Tenn. Wine*, 588 U.S. at 539). This is precisely the legal framework that the district court applied to the renewed cross motions for summary judgment on remand. (*See* Mar. 20, 2025 Op. & Order at 13–15, RE 133, PageID 6817–19.)

This standard not only comports with Supreme Court precedent, but it also aligns with the other Circuits who have considered challenges to other states' similar alcohol control regulations. Importantly, courts have consistently held that these similar alcohol control regulations related to the direct shipment or personal transportation of wine pass constitutional muster. *See, e.g.*, *Arnold's Wines, Inc. v. Boyle*, 571 F.3d 185, 187, 191 (2d Cir. 2009) (New York); *Jean-Paul Weg., LLC v. Graziano*, No. 19-14716, 2023 U.S. Dist. LEXIS 147044, at *43 (D.N.J. Aug. 22, 2023), *aff'd by* No. 23-2922, 2025 U.S. App. LEXIS 7864 (3d Cir. Apr. 2, 2025) (New Jersey); *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214, 229 (4th Cir. 2022) (North Carolina); *Wine Country Gift Baskets.com*, 612 F.3d at 812 (Texas); *Bridenbaugh v. Freeman-Wilson*, 227 F.3d 848, 853–54 (7th Cir. 2000) (Indiana); *Chicago Wine Co. v. Braun*, No. 21-2068, 2025 U.S. App. LEXIS 19664, at *2 (7th Cir. Aug. 5, 2025) (same); *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171, 1175 (8th Cir. 2021) (Missouri); *Day v. Henry*, No. 23-16148, 2025 U.S. App. LEXIS 23001, at *29 (9th Cir. Sep. 5, 2025) (Arizona).

II. Ohio's direct shipment and personal transportation laws are constitutional.

Under the correct legal framework, as the district court applied here, Ohio's three-tier alcohol control system, including its restrictions on the importation and delivery of wine into the state, is constitutional. (*See* Mar. 20, 2025 Op. & Order at

16–23, RE 133, PageID 6820–27.) The Court therefore should affirm the district court's grant of summary judgment in favor of the state and WBWAO.

A. The predominant effect of the direct shipping and personal transportation laws is the protection of public health and safety.

The district court correctly held that the undisputed record evidence establishes that the predominant effect of the statutes at issue is the promotion of public health and safety, not protectionism. (*See id.*) The direct shipping and personal transportation restrictions advance the public health and safety objectives set forth in Ohio Rev. Code § 4301.011 and by the state in the following ways.

1. Inspections and audits are crucial to public health and safety.

One of the chief ways in which Ohio's liquor control system promotes public health and safety is by facilitating the effective inspection of permit applicants and permit holders to monitor their ongoing compliance with Ohio law. (*See id.* at 18–19, PageID 6822–23.) As to retail applicants and permittees, the Ohio Division of Liquor Control physically inspects the premises of applicants and licensed retailers for compliance with rules and regulations that protect consumer safety. (Stevenson & Jones Rep. ¶¶ 59–63, RE 114-1, PageID 5456–63.) For example, the Division conducts a series of physical inspections concerning the initial license application—a preliminary inspection, one or more status inspections, and a final inspection—in addition to license renewal inspections, inspections initiated by a complaint, routine field inspections, and other site visits. (*Id.* ¶ 60, PageID 5456-57.)

Inspectors monitor compliance with the requirement that the licensed premises be clean, dry, and secure, and that all alcohol beverages be stored and maintained in an environment that protects the integrity and potability of the product. (*Id.* ¶ 62d, PageID 5458–59.) This protects the health and safety of Ohio consumers by verifying that alcohol products are safe for human consumption. (*Id.*) On-site inspections also monitor compliance with Ohio's cash law, minimum mark-ups, ban on tied-houses, and trade practice rules, all of which deter abuses in the sale of alcohol that overstimulate consumer demand. (*Id.* ¶¶ 62e-g, 62i, PageID 5459–61.)

This extensive hands-on effort includes monitoring and enforcement of compliance with Ohio's sanitation and record keeping requirements to check that alcohol sales are properly tracked, which thwarts counterfeit products and "bootlegged" alcohol products. As Messrs. Stevenson and Jones note, "[l]icensed businesses at each level of the three-tier system are required to maintain and make available for inspection and review all books and records of the previous three years of operation." (*Id.* ¶ 62b, PageID 5458.)

In fiscal year 2019, the Division's Compliance Agents conducted 12,784 inspection or investigation assignments, including 5,370 retail license renewal inspections. (*Id.* ¶ 51, PageID 5453–54.) Manufacturers and wholesale distributors were subject to 116 license renewal inspections, and an additional 51 investigations were conducted in response to specific industry complaints. (*Id.*) The Division also

issued a total of 661 correction notices and 88 administrative citations for violations of Ohio liquor laws. (*Id.*) Likewise, Ohio Investigative Unit ("OIU") agents opened 2,309 investigation cases, which resulted in 804 administrative citations and 2,012 arrests. (*Id.* ¶ 52, PageID 5454.) Underage consumption offenses comprised 278 of the citations and 1,217 of the arrests. (*Id.*) These numbers further include 930 compliance checks, in which 126 businesses were found to be non-compliant. (*Id.*) The OIU also performed 160 trace-back investigations, which determine whether alcohol beverages were illegally sold or provided to an underage or already-intoxicated person who becomes involved in an alcohol-related incident. (*Id.*) Independent investigations by local law enforcement agencies in fiscal year 2019 prompted 146 administrative citations from OIU, 67 of which related to underage consumption offenses. (*Id.* ¶ 53, PageID 5454.) The OIU also assisted with 166 joint investigations. (*Id.*)

In fiscal year 2023, the Division performed 8,451 inspections and investigations. (Supp. Stevenson & Jones Rep. ¶ 11, RE 114-2, PageID 5571.) These included 2,316 license renewal inspections of retail permit holders, as well as 86 license renewal inspections of manufacturers. (*Id.*) These inspections and investigations resulted in 332 correction notices and 20 citations. (*Id.* ¶ 12, PageID 5571.) OIU enforcement agents also opened 3,407 investigation cases, which resulted in 1,117 administrative citations and 2,485 arrests. (*Id.* ¶ 19, PageID 5572.)

443 of these citations and 1,169 of the arrests related to offenses involving underage alcohol consumption. (*Id.*) OIU investigators also conducted 2,403 compliance check investigations, in which 477 locations were found to be non-compliant. (*Id.*) The OIU also carried out 108 trace-back investigations in fiscal year 2023. (*Id.*)

If retailers around the nation were given a judicial license to ship alcohol beverages directly to Ohio consumers, a corresponding inspection effort would require either an exponential increase in state regulatory expenditures (assuming that Ohio and other states were willing to give Ohio agents such extraterritorial jurisdiction) or abandonment of any inspection aspirations beyond Ohio's borders (while retailers in Ohio would remain subject to the strict inspection protocol), to the prejudice of all Ohioans.

The wholesaler tier provides another layer of inspection and auditing for alcohol products. (Stevenson & Jones Rep. ¶¶ 64–81, RE 114-1, PageID 5463–69.) Unless the Court engages in a legislative-like redefinition of the wholesalers' role, Appellants' requested relief would allow out-of-state retailers to bypass Ohio's requirement that nearly all alcohol pass through the wholesaler tier. The wholesaler level operates as a clearinghouse for state inspection and auditing of alcohol that enters Ohio's borders, which allows the state to efficiently monitor compliance with its regulations and restrictions. (*Id.* ¶ 75, PageID 5466–67.) Such inspections seek to ensure that alcohol beverages sold to consumers are safe for consumption. (*Id.*

¶ 62d, PageID 5458–59.) For example, Ohio regulators can endeavor to ensure that almost all alcohol that comes into the state is recognized and recorded through inspecting and auditing Ohio's 134 licensed wholesalers, as opposed to the thousands of retailers and producers. (*Id.* ¶¶ 64–66, 75, 77, PageID 5463–64, 5466-67; Supp. Stevenson & Jones Rep. ¶ 15, RE 114-2, PageID 5571.)

As the evidence shows, Ohio's inspections have proved to be worthwhile and practical. (Stevenson & Jones Rep. ¶ 62a, RE 114-1, PageID 5457–58.) As a practical matter, Revised Code §§ 4301.10(A)(1), 4301.10(A)(6), and 4303.292(A) require licensed wholesalers and retailers to maintain a physical presence in Ohio. Under Ohio Administrative Code 4301:1-1-22(B), alcohol must be physically received at a wholesaler's place of business and placed into inventory before it is distributed. Together, these mandates help create the start of a product trail in Ohio and provide ready access for product inspections and auditing. (*Id.*) Unlicensed direct retail sales would completely defeat this objective.

2. The laws promote temperance.

As the Sixth Circuit recognized, "[e]xcessive alcohol consumption [comes] with costs for individuals and the public—addiction, crime, violence, and family troubles among them." *Lebamoff*, 956 F.3d at 867; *see also* Stevenson & Jones Rep. ¶ 34, RE 114-1, PageID 5449 ("Time has proven that the commerce of alcohol beverages is not comparable to the sale of ordinary commodities such as corn, toys

or many other internationally and domestically traded products. The commerce of alcohol necessitates greater oversight and control."); *Deaths from Excessive Alcohol Use in the United States*, CENTER FOR DISEASE CONTROL (Feb. 23, 2024), https://www.cdc.gov/alcohol/ features/excessive-alcohol-deaths.html ("Excessive alcohol abuse was responsible for 178,000 deaths in the United States each year during 2020-21, or 488 deaths per day."). Accordingly, a recognized, legitimate aim of the Twenty-first Amendment is the promotion of temperance. *See North Dakota*, 495 U.S. at 432 (noting that "the core of the State's power under the Twenty-first Amendment" includes "promoting temperance"). The district court properly found that direct shipping and personal transportation limits advance this goal in several ways. (*See* Mar. 20, 2025 Op. & Order at 19, RE 133, PageID 6823.)

First, Ohio's licensing and permitting system thwarts vertical integration, which is the economic practice responsible for widespread alcohol abuse in the pre-Prohibition era. Ohio law prevents modern-day "tied-houses" by prohibiting any person or entity from holding a permit in more than one tier. *See, e.g.*, Ohio Rev. Code § 4301.24; Ohio Admin. Code 4301:1-1-24(C) (prohibiting retail permit holders from holding any financial interest in a wholesale distributor); Stevenson & Jones Rep. ¶ 62f, RE 114-1, PageID 5459–60. These requirements plainly foster public health and safety. *See Crowley*, 137 U.S. at 91 (describing societal problems caused by tied-house saloons).

Second, Ohio's retail price control regulations also help to limit alcohol consumption. (Stevenson & Jones Rep. ¶¶ 62e, 62g, 90–98, RE 114-1, PageID 5459, 5460, 5471–75.) Ohio's cash law prohibits wholesale distributors from accepting for sale or purchase of alcohol products anything other than payment upon receipt, as opposed to forms of delayed or non-monetary payment such as credit or consignment. (*Id.* ¶ 62e, PageID 5459.) "These requirements promote temperance by lessening the possibility of favorable financial arrangements or related forms of commercial inducement by an industry member" that encourage aggressive sales practices or reckless stimulation of alcohol purchasing and consumption. (*Id.*)

In addition, Ohio imposes statewide minimum prices that level the playing field for all retailers. (*Id.* ¶ 62g, PageID 5460.) Beer and wine products sold for carryout in sealed containers "are required to be sold at a minimum mark-up price." (*Id.*) Such mandatory price mark-ups "prevent aggressive sales practices that improperly stimulate purchase and consumption" of alcohol products, as studies show that an increase in the price of alcohol beverages reduces alcohol consumption and its harmful consequences. (*Id.* ¶¶ 62g, 90, PageID 5460, 5471.) Maintenance of the wholesaler tier—sustained by the direct shipping and personal transportation limits—prevents retailers from undercutting local prices, which would cause increased consumption of alcohol. (*See id.* ¶¶ 93–95, PageID 5473–74 (documenting empirical evidence indicating that "[i]ncreasing the price of alcohol

beverages is one of the most effective interventions to reduce the harmful use of alcohol"); Kerr Rep., ¶¶ 22, 57–60, RE 114-4, PageID 5902, 5909–10 (same).)

Appellants' requested relief would allow out-of-state retailers and individuals to circumvent these price control measures, which would harm public health and safety by "allow[ing] out-of-state retailers to undercut Ohio price regulation" and "undermine the Ohio three-tier system of alcohol beverage distribution." (Stevenson & Jones Rep. ¶ 6a, RE 114-1, PageID 5439.)

Third, Ohio's geographic restrictions on retailers' and wholesalers' in-state operations also contribute to the promotion of temperance. Ohio law restricts the number of retailers in a given area of the state. (*Id.* ¶ 83, PageID 5470.) This retail quota system restricts the number of retail outlets in each taxing district according to the population of the area, which in turn serves to limit access to alcohol and alcohol consumption. (*Id.* ¶ 86, PageID 5470–71.) In addition, the limitation "instill[s] in the owner of the [licensed] business a responsibility to adhere to the laws and rules to protect his or her investment in the business." (*Id.*) Retailers also must comply with restrictions on hours of sale, which "further promote[s] temperance and orderly markets." (*Id.* ¶ 89, PageID 5471.) Moreover, wholesalers have the exclusive right to sell individual brands of alcohol products in assigned territories within the state. (*Id.* ¶ 80, PageID 5468–69.) This arrangement limits competition between wholesaler distributors. (*Id.*) As a result, wholesalers are not

forced to lower certain brands' prices to survive in the marketplace, which in turn promotes temperance among Ohio consumers. (*Id.*)

Fourth, Ohio's imposition of excise taxes on alcohol products promotes temperance. Ohio's excise taxes operate almost exclusively at the producer and wholesaler levels. (*Id.* ¶ 104, PageID 5477–78.) During fiscal year 2019, the Ohio Department of Taxation collected $57.5 million in alcohol beverage taxes. (*Id.* ¶ 106, PageID 5478.) Approximately $56.2 million of this amount was deposited into Ohio's General Fund and approximately $1.3 million was deposited into the Ohio Grape Industries Fund. (*Id.*) During fiscal year 2022, the Department collected $59.7 million in alcohol beverage taxes, including a $3.1 million draw on the alcohol beverage holding fund. (Supp. Stevenson & Jones Rep. ¶ 18, RE 114-2, PageID 5572.) Approximately $61.7 million was deposited into the General Revenue Fund and approximately $1.2 million into the Grape Industries Fund. (*Id.*) Excise taxes play a vital role in the funding of state operations and development products. (Stevenson & Jones Rep. ¶ 109, RE 114-1, PageID 5479.)

Fifth, Ohio's permitting regulations actively protect consumer health and safety by providing funding for addiction prevention, treatment, and recovery programs, as well as various educational programs concerning the safe sale and consumption of alcohol. (*Id.* ¶¶ 54–58, 99–102, PageID 5454–56, 5475–77.) Described in more detail below, these classes have included training for alcohol

servers as well as classes for junior high and high-school aged students about the dangers of underage alcohol consumption. (*Id.* ¶¶ 54–56, PageID 5454–55.)

A substantial portion of permit fees is paid to the Ohio Department of Mental Health and Addiction Services, the state agency dedicated to providing an effective, valuable mental health and addiction prevention, treatment, and recovery system for all Ohioans. (*Id.* ¶ 57, PageID 5455–56.) In 2019, the amount of $7,891,622.22 in permit fees was distributed to the Ohio Department of Mental Health and Addiction Services. (*Id.* ¶ 101, PageID 5477.) In fiscal year 2023, the sum of $6,610,453.24 was distributed to the Ohio Department of Mental Health and Addiction Services, with $2,804,220.06 more projected to be distributed. (Supp. Stevenson & Jones Rep. ¶ 10, RE 114-2, PageID 5570.)

Moreover, permitting fees also fund, in part, educational programs for alcohol servers covering various topics like false identification and employment of minors and underage citizens. (Stevenson & Jones Rep. ¶¶ 54–55, RE 114-1, PageID 5454-55.) For example, in fiscal year 2019, the OIU conducted 221 Alcohol Server Training classes at retail businesses. (*Id.* ¶ 55, PageID 5455.) In the same period, the Ohio Division of Liquor Control conducted 90 Alcohol Server Training classes at state liquor agency stores and 24 additional industry sessions for various industry groups and associations. (*Id.*) The Division has also sponsored the Alcohol Server Knowledge program, a free presentation for Ohio liquor permit holders and

employees. (*Id.*) OIU agents also conducted 487 "Sober Truth" classes in fiscal year 2019 with participation by 13,744 junior and high-school age students. (*Id.* ¶ 56, PageID 5455.) The "Sober Truth" program is a free presentation that stresses the consequences of underage drinking. (*Id.*) The financial support generated for such programs has directly protected the public health and safety of Ohio's citizens. (*See id.* ¶¶ 54–56, PageID 5454–55.)

3. The laws maintain a safe and orderly market.

Appellants incorrectly claim that maintenance of orderly markets is not a recognized legitimate state interest. But the Supreme Court recognized that "ensuring orderly market conditions" is "within the core of the State's power under the Twenty-first Amendment." *North Dakota*, 495 U.S. at 432. As the district court correctly found, Ohio's direct shipping and personal transportation restrictions advance this legitimate goal in numerous ways. (*See* Mar. 20, 2025 Op. & Order at 18, RE 133, PageID 6822.)

First, Ohio's cash law, described above, promotes orderly markets "by lessening the possibility of favorable financial arrangements or related forms of commercial inducement by an industry member that are intended to promote aggressive sales practices, recklessly stimulate purchase and consumption, or induce the wholesale distributor or the retailer to purchase certain alcohol beverages of a supplier to the exclusion of other products of a competitor." (Stevenson & Jones

Rep. ¶ 62e, RE 114-1, PageID 5459.) Not only does Ohio's cash law promote temperance; it also prompts retailers and wholesalers to operate in a manner that protects Ohio's consumers.

Second, Ohio's minimum price mark-up further promotes an orderly market for alcohol. This price control mechanism provides a stable playing field for Ohio's consumers. (*Id.* ¶ 62g, PageID 5460.) Moreover, it eliminates discriminatory sales practices that threaten wholesale distributors' and retail permit holders' survival; preserves orderly competition and fair prices over the long term; and promotes adequate consumer choice. (*See id.*); Ohio Admin. Code 4301:1-1-03(C).

Third, the direct shipping and personal transportation limits fortify the wholesaler level, which in turn facilitates several positive outcomes in the Ohio market for alcohol. The middle-tier, comprised of Ohio's wholesalers, represents "an indispensable buffer between manufacturers and retailers," which "prevent[s] harmful practices, such as price manipulation, exclusive sales, ownership interest, credit on purchases and financial loans, while delivering consumer choice, variety, and safety." (Stevenson & Jones Rep. ¶¶ 41, 64–81, RE 114-1, PageID 5451, 5463-69.) Wholesalers are allowed to sell only to retailers that hold a permit issued by the Division of Liquor Control, or to another licensed wholesale distributor or to a consumer for home use. (*Id.* ¶ 72, PageID 5465–66.) The wholesaler is required to visually certify the existence and validity of the permit for all new accounts before

making an initial sale to a retailer. (*Id.*) In addition, wholesalers handle exclusive regions within the state, which promotes a fair and orderly marketplace, sharply regulates price competition at this middle tier, and assists regulators in determining that the wholesalers' products are safely maintained, sold, and distributed. (*Id.* ¶ 80, PageID 5468–69.)

4. The laws facilitate efficient tax collection.

As the district court properly determined, the challenged laws allow Ohio to facilitate the efficient collection of taxes. (*See* Mar. 20, 2025 Op. & Order at 19, RE 133, PageID 6823.) Over 1,800 licensed suppliers ship wine into Ohio for sale in thousands of on-premises and carry-out retail stores. (Supp. Stevenson & Jones Rep. ¶ 13, RE 114-2, PageID 5571.) The most efficient and cost-effective method of collecting these taxes is through the Ohio wholesalers who comprise the middle tier. (Stevenson & Jones Rep. ¶ 77, RE 114-1, PageID 5467.) The Ohio Department of Taxation requires wine suppliers to send copies of their invoices to Ohio wholesaler distributors, which the Department then compares to records of excise taxes paid by wholesale distributors. (*Id.*) In practice, "wholesale distributors also make it easier for the government to collect taxes and enforce laws that pertain to the sale of alcohol beverages." (*Id.* ¶ 76, PageID 5467.) As opposed to "dealing with thousands of individual retail stores, the government can simply tax wholesale distributors,

allowing an efficient way of auditing tax collections. This in turn makes the sale and taxation of alcohol beverages more transparent." (*Id.*)

5. The laws reduce underage consumption of alcohol.

Ohio's direct shipping and personal transportation restrictions further benefit public health and safety by reducing underage drinking in the state—a harm that the district court correctly held is a legitimate interest of the state to prevent. (*See* Mar. 20, 2025 Op. & Order at 18, RE 133, PageID 6822.) Underage drinking creates the risk of significant negative social consequences. (*See id.* ¶¶ 21–24, PageID 5445–46.) Thanks to the regulation and preservation of the three-tier system, Ohio regulators are empowered to take substantial enforcement action to curb underage drinking. The three-tier system and required record keeping provide the mechanism to "track-and-trace" alcohol sales in the state. (*Id.* ¶ 62c, PageID 5458.) This aids law enforcement officers at the Division of Liquor Control, Ohio Investigative Unit, and other agencies in tracing alcohol involving criminal activity such as underage consumption. (*See id.*) This benefit of Ohio's regulatory framework would be severely weakened if large unregulated quantities of alcohol from out-of-state retailers and individuals were allowed to enter the state without flowing through the three tiers.

In addition, the three-tier system empowers Ohio to punish retailers who sell alcohol beverages to minors by severing the retailer's supply of alcohol products.

(*See* Kerr Rep. ¶ 35, RE 114-4, PageID 5905.) Retailers must purchase alcohol products from wholesalers licensed by the state. Ohio can discipline any wholesaler who sells to an Ohio retailer whose license has been suspended or revoked for selling to minors. (*Id.*) The potential sanction of cutting off a retailer's product supply motivates Ohio retailers to take extra measures to prevent the sale of their products to underage individuals. (*See id.*)

6. The laws maintain the undisputably legitimate three tiers in Ohio's alcohol control system.

The challenged statutes also preserve Ohio's three-tier system. Ohio's three-tier system adopted pursuant to the Twenty-first Amendment is "unquestionably legitimate." *North Dakota*, 495 U.S. at 432; *Granholm*, 544 U.S. at 489. Because of the constitutional legitimacy of the three-tier system, "[a] State's 'decision to adhere to a three-tier distribution system is immune from direct challenge on Commerce Clause grounds.'" *Lebamoff*, 956 F.3d at 869–70 (quoting *Jelovsek v. Bredesen*, 545 F.3d 431, 436 (6th Cir. 2008)). Thus, the Sixth Circuit has confirmed that states have a constitutionally permissible interest in maintaining a three-tier system. *See Lebamoff*, 956 F.3d at 874 (dismissing constitutional challenge to Michigan's direct shipping laws, in part, because "there [was] no other way [Michigan] could preserve the regulatory control provided by the three-tier system").

The district court correctly held that the direct shipping and personal transportation regulations are crucial components of Ohio's broader three-tier structure. (*See* Mar. 20, 2025 Op. & Order at 16–17, RE 133, PageID 6820–21.) The integrity of Ohio's three-tier system depends on Ohio's ability to regulate each tier. Ohio would lose its ability to regulate the third tier—retailers—if out-of-state retailers were allowed to sell and deliver alcohol directly to consumers. Indeed, as the district court recognized, "[a]llowing out-of-state retailers to deliver wine directly to Ohio's consumers would effectively eliminate the role of Ohio's wholesalers and 'create a sizeable hole in the three-tier system.'" (*Id.* (quoting *Lebamoff*, 956 F.3d at 872).) The same is true for Ohio's personal transportation limits. (*Id.* at 17, PageID 6821.) Without the personal transportation limit, individuals would be free to flood Ohio with unlimited amounts of alcohol that bypass Ohio's three tiers. This, in turn, would render the state's three-tier system ineffectual.

To be sure, Appellants' requested relief would undo all the public health and safety benefits of Ohio's three-tier system. There are over 640,000 wine retailers in the United States. (Stevenson & Jones Rep. ¶ 87, RE 114-1, PageID 5471.) There are countless more individuals in the state and elsewhere who may wish to transport large quantities of alcohol into Ohio. Allowing them to inundate Ohio's market with alcohol that bypasses Ohio's three-tier system would undermine Ohio's regulatory

efforts to combat the negative effects of alcohol consumption and severely limit Ohio's ability to protect the health and welfare of its citizens. (*Id.* ¶¶ 6, 88, PageID 5438–39, 5471.) Based on the extensive regulatory experience and enforcement backgrounds of Messrs. Stevenson and Jones, removing Ohio's direct shipping restrictions would "(i) materially impede enforcement of Ohio liquor laws regarding safety of alcohol products and sales to under-age consumers; (ii) allow out-of-state retailers to undercut Ohio price regulation; (iii) undermine the Ohio three-tier system of alcohol beverage distribution; and (iv) provide an incentive for tax avoidance." (*Id.* ¶ 6a, PageID 5439.) Removing Ohio's personal transportation restriction would result in similar adverse effects on the State of Ohio's alcohol regulation efforts and ability to promote the public health and safety of its residents.

Appellants' arguments that Ohio no longer has a three-tier system are also unavailing. Ohio—like many states—has carved out certain exceptions to the mandate that all wine must pass through all three tiers, including allowing certain wineries to sell and deliver wine directly to consumers. Ohio Rev. Code §§ 4303.232(A)(1), 4303.233(B)(2). These rare exceptions are well-justified policy decisions. For example, wineries are required to obtain a federal permit and comply with various federal and state laws. This federal permitting and regulatory system provides an added layer of accountability not present with retailers. *See* Federal Alcohol Administration Act of 1933, 27 U.S.C. § 201, *et seq.*; Bureau of Alcohol,

Tobacco and Firearms ("ATF"), ATF Ruling 2000-1; (Stevenson & Jones Rep. at ¶¶ 110-13, 120, RE 114-1, PageID 5479–81, 5486). The Ohio General Assembly enacted this carefully calibrated exception for wineries, which must comply with federal requirements, without prejudice to the essential health and safety objectives of the Ohio liquor control laws and the integrity of the three-tier system.

B. As this Court recognized, *Lebamoff* is "controlling."

The decision in *Lebamoff* upholding Michigan's nearly identical direct shipment law within a substantially similar three-tier regulatory system is "controlling" in this case.[1] *See Block*, 74 F.4th at 413. In *Lebamoff*, this Court upheld Michigan's regulatory structure that bans out-of-state retailer sale and shipment of wine directly to Michigan consumers—regulations strikingly similar to Ohio's regulations—on dormant Commerce Clause grounds. 956 F.3d at 867. Similar to Ohio's regulatory system, Michigan law requires retailers to obtain a permit, a prerequisite of which is that the retailer maintain a physical presence in the state, and to purchase nearly all inventory from the State's wholesaler tier. *Id.* at 868, 870. Michigan's three-tier system includes many of the same gatekeeping functions and safeguards as Ohio's, including cash laws, limited volume discounts,

[1] Notably, Kentucky's similar direct shipment regulations have also been upheld as constitutional. *See Tannins of Indianapolis, LLC v. Cameron*, No. 3:19-cv-504, 2021 U.S. Dist. LEXIS 246548, at *2 (W.D. Ky. Dec. 28, 2021).

prohibiting a single entity from having a financial interest in multiple tiers or retailers, routine and random inspections, track-and-trace requirements, recordkeeping requirements, retailer layout requirements, and collection of taxes largely at the wholesale tier. *Id.* at 870. (Ohio takes its regulatory system a step further than Michigan and many other states by requiring a minimum price markup. Ohio Admin. Code 4301:1-1-03(C).) And like the Ohio system, licensed in-state retailers could sell and deliver wine directly to Michigan residents while unregulated out-of-state retailers could not. *Lebamoff,* 956 F.3d at 867.

In upholding Michigan's direct shipment regulations, the Court first debunked the notion that in-state retailers (who operate within the three-tier system) and out-of-state retailers (who do not) are situated in a sufficiently similar position to invoke the dormant Commerce Clause. *Id.* at 870–71. The Court then held that, even if those entities were similarly situated, "Michigan's law promotes plenty of legitimate state interests" that cannot be characterized as state protectionism. *Id.* at 871. As such, this Court concluded that, because the Twenty-first Amendment permits states "to treat in-state retailers (who operate within the three-tier system) differently from out-of-state retailers (who do not)," Michigan's law allowing in-state retailers to sell and deliver wine directly to Michigan consumers, while withholding the same privilege from out-of-state retailers, was not unconstitutional. *Id.* at 867.

The same is true here. As this Court explained, "[o]pening up the State to direct deliveries from out-of-state retailers necessarily means opening it up to alcohol that passes through out-of-state wholesalers or for that matter no wholesaler at all." *Id.* at 872 (citing *Arnold's Wines*, 571 F.3d at 185 n.3). And "[w]holesalers play a key role in three-tier systems. Typically few in number and often state-owned, they are the in-state path through which all alcohol passes before reaching consumers. That allows States, if they wish, to control the amount of alcohol sold through price controls, taxation, and other regulations." *Id.* at 868. If successful, Glunz and Miller's challenge would "effectively eliminate[] the role of [Ohio's] wholesalers . . . [and] create a sizeable hole in the three-tier system." *Id.* To allow out-of-state retailers to bypass Ohio's wholesaler tier "leaves too much room for out-of-state retailers to undercut local prices and to escape the State's interests in limiting consumption." *Id.* at 872.

Moreover, just as there was ample reason for Michigan's concern that Indiana retailers like the plaintiff in *Lebamoff* would undercut its entire regulatory scheme, so too is there reason to believe that retailers from Illinois (or any other state), like House of Glunz here, could do the same in Ohio. *See id.* at 872–73. Although Ohio and Illinois both have three-tier systems, they regulate them differently. (*See* Stevenson & Jones Rep. ¶¶ 115–16, RE 114-1, PageID 5481–85.)

For example, Illinois permits retailers and wholesalers to purchase wine products on credit, which weakens the independence of the three tiers and the anti-"tied-house" laws. *Compare* 235 Ill. Comp. Stat. 5/6-5 (retailer); 235 Ill. Comp. Stat. 5/6-6 (distributor) *with* Ohio Rev. Code § 4301.24(D); Ohio Admin. Code 4301:1-1-43(H)(2). Illinois permits wholesalers to sell to retailers below cost, with volume discounts, and no minimum prices. *Compare* Ill. Admin. Code tit. 11 § 100.500 *with* Ohio Admin. Code 4301:1-1-43(A)(2); Ohio Admin. Code 4301:1-1-03(C).

Also unlike Ohio, Illinois does not place any control on the number of importers that may supply a specific brand of wine. Ohio Rev. Code §§ 1333.82(G), 1333.84(B); Ohio Admin. Code 4301:1-1-43(D)(4). "Allowing Illinois retailers to ship alcohol beverages directly to Ohio consumers would remove the barrier to lower prices and thus encourage increased consumption, leading to potentially devastating health and safety results." (Stevenson & Jones Rep. ¶¶ 116b–g, RE 114-1, PageID 5482–83.)

This Court delineated further concerns: "Once out-of-state delivery opens, the least regulated (and thus the cheapest) alcohol will win." *Lebamoff*, 956 F.3d at 872. As such, without delivery restrictions like those imposed by Ohio, "there is a 'substantial' risk that out-of-state alcohol will get 'diver[ted] into the retail market[,] . . . disrupti[ng] the [alcohol] distribution system' and increasing alcohol

consumption." *Id.* (quoting *North Dakota*, 495 U.S. at 433). This result would leave no recourse for the state, as it has no authority or power to place controls on the prices set by out-of-state wholesalers and producers. *See id.* at 873; *see also Healy v. Beer Inst.*, 491 U.S. 324, 336–38 (1989).

As this Court explained, allowing in-state retailers to deliver directly to in-state consumers is "nothing new," and "[a]nyone who wishes to join them can get [an Ohio] license and face the regulations that come with it." *Id.* Ohio in no way forbids House of Glunz to follow the required procedures and requirements to obtain a license. Rather, it is Glunz that refuses to take those steps and be subject to Ohio's regulatory system, instead opting to attempt to enjoy the ability to sell and deliver wine to Ohioans without the corresponding restrictions that in-state retailers face.

In summary, Ohio's similar direct shipment laws here are constitutional under the same rationale that justified Michigan's direct shipment regulations in *Lebamoff*.

C. Appellants have not submitted any admissible evidence to refute the predominant public health and safety effect of the direct shipping and personal transportation laws.

Appellants stake their claims on the contention that Ohio's direct shipment and personal transportation laws limit their ability to obtain certain rare novelty wines, participate in wine clubs and send wine as gifts. Despite having multiple attempts to bring forth actual evidence, none of their "evidence" raises any genuine issue of material fact as to whether promotion of public health and safety is the

predominant effect of the Ohio liquor control laws. Appellants' supporting materials, which relate to pricing, selection, and consumer convenience, remain wholly irrelevant to the constitutionality of the Ohio laws. *See Block*, 74 F.4th at 412–14).

The "facts" that Appellants rely upon in their briefing either lack any support in admissible evidence or are demonstrably false and therefore cannot support a reversal of summary judgment against them. *See Wiley v. United States*, 20 F.3d 222, 226 (6th Cir. 1994) ("only admissible evidence may be considered" on a summary judgment motion). Specifically, Appellants continue to assert that Ohio's direct shipment and personal transportation laws do not promote public health and safety, because of (a) an alleged absence of incidents of various harms related to direct shipment by out-of-state retailers; and (b) data that purports to show no correlation between such harms and direct shipment. However, they continue to rely on evidence that is irrelevant, flawed, and inadmissible and therefore cannot support their arguments.

1. The informal correspondence proves nothing.

Appellants highlight a previously-provided list of thirteen states that purportedly allow direct shipment by out-of-state retailers.[2] (*See* Table of State Laws, RE 52-17.) Rather than document the regulatory structure and alcohol-related epidemiology of each such state, they simply assert that direct-to-consumer shipping has not caused public health or safety problems in any of those states. (Appellants' Br. at 10.)

The support for this presumptuous claim comes from six documents that purport to be letters or emails from state regulators. (RE 52-19.) But those statements are not made under oath, are not authenticated, and are not admissible evidence. *Steele v. Jennings*, No. 2:04-CV-189, 2005 U.S. Dist. LEXIS 18703, at *8 (S.D. Ohio Aug. 31, 2005) ("The failure to authenticate a document properly precludes its consideration on a motion for summary judgment."); Fed. R. Civ. P. 56(c)(2).

Even if the Court were to overlook these evidentiary deficiencies, the communications would provide no support for the notion that Ohio's direct shipment and personal transportation laws do not promote public health and safety. Offhand

[2] Appellants claim that fourteen states allow consumers to receive wine shipments from out-of-state retailers. Yet their Exhibit lists only thirteen. (Table of State Laws, RE 52-17.)

and unsworn comments of six regulators, nearly four years ago, from states that have distinct regulatory systems, civic cultures, and health conditions from Ohio's have little value. Moreover, their counsel's broad and vague inquiries that prompted these purported responses asked about "any difficulty, trouble, or problems" with direct shipment and were not tailored to elicit any useful information for this case.

The equally vague and brief responses provide little insight. Regulators from only two states—Connecticut and Nebraska—provided more than a single line response. And neither response vouched for direct shipment. The Connecticut official noted that the state's law was new and that its first permit to an out-of-state retailer had been issued only five months earlier. (RE 52-19.) The Nebraska official stated that "occasionally the licensees do not report shipments to us," apparently in violation of the law. (*Id.*) Appellants tellingly provided no correspondence from regulators in the other states.

2. The unauthenticated charts have no probative value.

Appellants ask the Court to compare their purported list of direct shipment states to data on wine consumption, "problematic behavior," access to alcohol by minors, alcohol-influenced sexual behavior by minors, and incidents of unsafe or contaminated wine. Their "evidence" consists of raw numbers from governmental and public interest organizations regarding each type of harm, plus a "summary," apparently created by counsel, to present the data in charts that purportedly connect

that data to direct shipment.[3] (RE 52-20–52-27.) The charts then rank states from highest incidence of alleged harm to lowest, marking which states allow direct shipment by out-of-state retailers. (*Id.*)

The charts remain nothing more than lists unaccompanied by any expert analysis. They do not calculate a coefficient of correlation (the statistical measurement of the association between relative movements of two variables), much less control for obviously relevant factors, such as population demographics. "If a plaintiff offers a statistical comparison without expert testimony as to methodology or relevance to plaintiff's claim, a judge may be justified in excluding the evidence." *Luh v. J. M. Huber Corp.*, 211 F. App'x 143, 149 (4th Cir. 2006) (quoting *Carter v. Ball*, 33 F.3d 450, 457 (4th Cir. 1994)).

If anything, many of the alleged harms appear to correlate directly with the direct shipment of wine. For example, in the chart for per capita wine consumption by state, six of the top ten states, including the two highest, are direct shipment states—that is, over half of all direct shipment states in the top ten for consumption. (RE 52-20.) In the chart for alcohol-impaired traffic fatality rates, nine of the thirteen states that allow direct shipment by out-of-state retailers rank at or above the national average rate. (RE 52-21.)

[3] Counsel's charts may not even be accurate. Appellants failed to indicate that Connecticut—one of the states on their own list—is a direct shipment state.

3. Appellants cannot dispute the evidence related to online sales to minors.

Appellants simply ignored the evidence submitted by the state and WBWAO as to the online unauthorized sale of alcohol to minors. For example, in 2020, the State of California conducted a sting operation that resulted in 214 citations to delivery drivers for delivering alcohol without checking the recipient's identification. (Supp. Stevenson & Jones Rep. at ¶ 29, App. G, RE 114-2, PageID 5575, 5846–49.) Indeed, the California Department of Alcoholic Beverage Control—serving a state that allows direct shipment by out-of-state retailers—reported at the start of the COVID-19 pandemic that the state "conducted enforcement actions throughout the state and found significant violations of the law." *See* Cal. Dep't of Alcoholic Beverage Control, *Delivery of Alcoholic Beverages*, https://www.abc.ca.gov/delivery-of-alcoholic-beverages/. The report noted that the "[m]ost concerning" was "that minors are routinely able to purchase alcohol through delivery." *Id.* Based on these findings, the Department issued a warning to its licensees. *Id.*

In 2012, researchers at the University of North Carolina at Chapel Hill found that "[a]ge verification procedures used by Internet alcohol vendors do not adequately prevent online sales to minors," as 45% of the analyzed orders to online

vendors placed by minors were successfully fulfilled. (Supp. Stevenson & Jones Rep. at ¶ 29, App. G, RE 114-2, PageID 5575, 5850–70.)

In January 2024, regulators from the State of Vermont studied direct-to-consumer shipping by out-of-state retailers by organizing and executing controlled purchases from such retailers. The Vermont regulators found that two deliveries were given to a minor without the common carrier asking for identification, and identification was asked of the recipient only 20% of the time. The regulators concluded that direct-to-consumer shipping in Vermont "is significantly underregulated and would take a significant investment to properly regulate and ensure public safety." (*Id.* ¶¶ 20–24, App. G, RE 114-2, PageID 5573–74, 5756–65.)

4. Appellants failed to submit evidence that there would be no tax evasion.

Appellants argue that direct shipment states have not experienced any significant tax evasion or revenue loss. Yet, the FTC report on which Appellants continue to rely for this purported proposition primarily discusses direct shipment by *wineries*. (RE 52-24.) To be sure, the report indicates that, where wineries decline to comply with state taxation requirements, states can report problems to the Alcohol and Tobacco Tax and Trade Bureau—a federal protection not available in the *retailer* realm—or to other states. (*Id.*) This suggestion underscores the key

issue with direct shipment by out-of-state *retailers*—the state would lose the ability and authority to regulate wine within its borders. Even if thirteen states have made the policy choice to take that risk, that does not constitutionally compel Ohio or the overwhelming majority of other states to fall in line with them.

Ohio's alcohol taxation system is designed such that the excise tax on wine is paid exclusively by the producers and wholesalers. (Stevenson & Jones Rep. at ¶ 104, RE 114-1, PageID 5477–78.) Out-of-state retailers could completely evade the tax, because they would not operate within the three-tier system. That would significantly limit the taxes that Ohio could collect on alcohol—funds that, in part, have supported alcohol abuse education and rehabilitation measures. (*Id.* ¶¶ 6b, 103–109, RE 114-1, PageID 5439, 5477–79.)

5. Appellants cannot discredit the risk of contaminated and otherwise unsafe wine.

Appellants further argue that "Ohio officials know of no incident in which tainted or unsafe wine was delivered to a consumer by a licensed seller." (Appellants' Br. at 13.) They cite this statement as proof that direct shipment will not lead to importation of contaminated or otherwise unsafe or tainted wine. On the contrary, if the state has not received reports of in-state retailers delivering contaminated or tainted or otherwise unsafe wine, that would be evidence that Ohio's regulatory system works. (*See* Supp. Stevenson & Jones Rep. at ¶¶ 20–29,

RE 114-2, PageID 5573–75 (noting concerns about negative public health and safety consequences of direct-to-consumer shipping in other jurisdictions).) In any event, Ohio ***has*** received reports of illegal sales of unsafe, contaminated, and tainted wine that has not passed through the three tiers—precisely what Appellants ask this Court to allow. (*See* AG's Mot. for Summ. J. at 26–28, RE 116, PageID 5998–6000; RE 52-34, PageID 4030.)

D. There are no workable "nondiscriminatory" alternatives.

Under the correct legal framework, as outlined in *Tennessee Wine* and confirmed and applied by this Court in *Lebamoff* and *Block*, there is no requirement that the state must prove that there are no workable nondiscriminatory alternatives. To be clear, *Granholm*'s discussion of nondiscriminatory alternatives ensued from the Supreme Court's determination that the challenged laws were not authorized pursuant to the Twenty-first Amendment, and relied upon dormant Commerce Clause precedent unrelated to alcohol regulation. *See B-21 Wines*, 36 F.4th at 224–25. Here, as outlined above, Ohio's direct shipping and personal transportation laws *are* authorized by the Twenty-first Amendment because they have the predominant effect of promoting public health and safety. As such, the district court correctly held that the inquiry ends there and nondiscriminatory alternatives are not relevant. (*See* Mar. 20, 2025 Op. & Order at 15, RE 133, PageID 6819.)

But even if the lack of a nondiscriminatory alternative was a requisite showing, such a showing has been met here. Appellants argue that an alternative could be a permit system that regulates interstate wine sales. Yet, they offer only conclusory statements about the feasibility of such a hypothetical "permit system" and provide virtually no details about how it could work. Contrary to Appellants' contentions, it is self-evident that the state cannot feasibly regulate an interstate market of many thousands of retailers. For one, out-of-state retailers operate outside of Ohio's jurisdiction. To even attempt such regulation, Ohio would have to expand its enforcement efforts exponentially, which would strain and overwhelm the limited regulatory, staffing, and fiscal resources available—all to the detriment of Ohio's taxpayers. (*See* Stevenson & Jones Rep. at ¶¶ 51–58, 62, RE 114-1, PageID 5453–56, 5457–63.)

Appellants argue that Ohio could just use the threat of license revocation to keep out-of-state retailers in line, claiming that "[m]any states, including Illinois . . . revoke the license of a retailer [that] has violated the laws of the sister state." (Appellants' Br. at 47 (citing ILL. COMP. STAT. 5/6-2(12).) However, that statute prohibits *issuance* of a permit for an applicant who has violated federal or other states' laws. It does not state that Illinois may revoke retailers' licenses once issued. And even if Ohio had the power to revoke licenses as Appellants claim, it still must

be able to inspect, audit, and oversee those retailers to find violations in the first place—authority that Ohio does not have and does not have the means to effectuate.

Further, Appellants' proposed permitting system would significantly deplete Ohio's fisc, as any permitting scheme for out-of-state *retailers* would be unable to capture excise tax revenue on Ohio *wholesalers*. The excise tax yields over $15.6 million a year on wine. (*Id.* ¶ 107, PageID 5478.) Wine shipped by retailers in other states originates with wholesalers in those states, and therefore would result in excise tax payments to those states, not Ohio.

The fact that Ohio has chosen to allow a limited number of *wineries* to obtain permits and ship wine directly to Ohio consumers does not alter this analysis. Appellants continue to suggest that Ohio's permitting system for out-of-state wineries is proof that Ohio could do the same for out-of-state retailers. That remains a false comparison. Wineries (which are producers) and retailers (which are not) are highly dissimilar sectors of the alcohol economy and operate in distinct regulatory environments. That includes federal regulatory oversight of wineries, but not retailers. Further, there are far more retailers than wineries in the United States[4] and, whether they are in-state or out-of-state, wineries bypass the three-tier system

[4] There are over 640,000 wine retailers in the United States, and only about 5,000 wineries. Stevenson & Jones Rep. at ¶ 87; U.S. Bureau of Labor Statistics, https://www.bls.gov/spotlight/2021/industry-on-tap-wineries/home.htm (last accessed Apr. 14, 2024).

altogether when they deliver to consumers directly. Thus, a nondiscriminatory permit system was a viable option for protecting consumers.

In-state and unlicensed out-of-state *retailers* are not on the same footing with each other. The alcohol that in-state retailers directly deliver to consumers may only be purchased from in-state wholesalers, which are subject to additional laws and serve a necessary gatekeeping function. Alcohol that unlicensed out-of-state retailers would directly deliver to Ohioans would not be subject to such standards. The State of Ohio therefore has incorporated additional controls into the three-tier system, through which in-state retailers are required to pass, that a global permitting system would not be able to address.

III. Appellants lack standing to challenge Ohio's direct shipment laws.

Beyond the merits hurdles that Appellants have failed to meet, Appellants' challenge fails at the threshold jurisdictional level as well. Specifically, Appellants lack Article III standing to challenge Ohio's direct shipment laws—Count II of the Complaint. To have standing, a plaintiff must allege "(1) a concrete and particularized injury (2) fairly traceable to the defendant's unlawful conduct that is (3) likely to be redressed by the requested relief." *Glennborough Homeowners Ass'n v. United States Postal Serv.*, 21 F.4th 410, 414 (6th Cir. 2021) (citing *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021)). The party invoking

federal jurisdiction has the burden to establish each element. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014).

Here, Appellants cannot meet the third prong of standing—redressability—for two reasons. First, Appellants have not identified any specific statutes that, if struck down, would grant the weighty relief they seek. Second, no Article III court can grant this relief without engaging in complicated policy decisions best left to the Ohio General Assembly.

A. Appellants cannot identify any specific laws to challenge that, if struck down, would afford relief.

Appellants cannot cite any specific statute that bars out-of-state wine retailers from selling to Ohio consumers. Because none exist. Rather, in effect, Appellants seek to dismantle the entire three-tier system. But Appellants cannot meet redressability if they challenge only part of a regulatory scheme and other uncontested laws would still prevent relief. *See Nuclear Info. & Res. Serv. v. Nuclear Regul. Comm'n*, 457 F.3d 941, 955 (9th Cir. 2006).

Indeed, the statutory basis of Appellants' claims has been a moving target throughout this litigation. In their Complaint, Appellants alleged solely that Ohio Rev. Code §§ 4301.58(B), 4301.60, and 4303.25, as interpreted by the state, preclude shipment of alcohol by out-of-state retailers to Ohio consumers. (*See* Compl. ¶¶ 33–

40, RE. 1, PageID 8–9.) Nothing on the face of those statutes or their corresponding regulations, however, differentiates between in-state and out-of-state retailers.

Appellants later sought to fill that void by instead attributing a ban on out-of-state direct shipping to three other statutes. In their initial summary judgment briefing, Appellants cited: Ohio Rev. Code §§ 4301.01(A)(2), 4303.12, and 4303.27. (*See* Pls.' 2022 Mot. Summ. J. at 2, RE 52, PageID 1249.) But those statutes likewise make no distinction between in-state and out-of-state retailers. *See generally* Ohio Rev. Code §§ 4301.01, 4303.12, 4303.27.

In their briefing in the first appeal in this Court, Appellants proffered a fourth statute—Ohio Rev. Code § 4303.03—which similarly makes no such distinction. *See generally* Ohio Rev. Code § 4303.03. They also invoked the previously-cited Ohio Rev. Code § 4302.27—which allows retailers with a permit to "carry on the business specified at the place . . . described [in the permit]"—as "unclear," but asserted that the state's answer to Appellants' Interrogatory No. 13 indicated that "Ohio interprets it as requiring physical presence." (*See* Excerpt of 2022 Appellants' Br. at 4 n.1, RE 114-6, PageID 5932.)

That assertion has no basis because that is not what the state said:

> 13. In ¶¶ 14, 15, and 37 of your Answer, you denied the allegation that no permit exists which could be issued to out-of-state retailers that would allow them to ship wine from their out-of-state location directly to consumers in Ohio. Describe all licenses or permits which could be issued by state or local authorities in Ohio that would allow out-of-state

> retailers to ship bottled wine from premises outside Ohio directly to consumers in Ohio.
>
> **ANSWER: Prior to September 30, 2021, out-of-state retailers were eligible to receive an S-permit from the Ohio Division of Liquor Control, provided certain conditions were met by the out-of-state retailer. However, effective September 30, 2021, the S Permit is no longer in effect. The General Assembly instead created an S-1 permit and an S-2 permit, which are available only to manufacturers. Any brand owners or importers that held an S permit prior to September 30, 2021 will be converted to an S-1 permit, but no new brand owners or importers will be eligible. See Am. Sub. House Bill 100 (Ohio 134th General Assembly).**

(*See* AG's Responses to Discovery at 10–11, RE 114-3, PageID 5885–86.)

In fact, this Court specifically alluded to the lack of any facial distinction between in-state and out-of-state retailers in Ohio law. Regarding C-2 permits, which allow retailers to ship directly to Ohio consumers, the Court in the first appeal wrote that "neither the parties nor the district court have addressed whether [the Ohio Division of] Liquor Control is statutorily prohibited from issuing C-2 permits to out-of-state retailers, or whether it simply refuses to do so. The statute that authorizes the granting of C-2 permits is silent on the matter." *Block*, 74 F.4th at 405 (citing Ohio Rev. Code § 4303.12).

The bottom line is that Appellants have failed to identify any Ohio statute that discriminates between in-state and out-of-state retailers. Appellants accordingly lack standing to bring a facial challenge because they have not identified any statutory discrimination. Neither Revised Code § 4301.58(B) (prohibiting the

unauthorized sale of alcohol products), Revised Code § 4301.60 (prohibiting the unpermitted transportation of alcohol products into Ohio), nor Revised Code § 4303.25 (prohibiting sale of alcohol products in Ohio by any person who has not complied with Chapters 4301 and 4303) draws any actual distinction between in-state and out-of-state retailers. Moreover, the statute that authorizes C-2 permits for retailers (Revised Code § 4303.12) does not distinguish between in-state and out-of-state retailers either. *See Block*, 74 F.4th at 405.

As such, because the statutes do not discriminate between in-state and out-of-state retailers in the first place, these provisions have not caused Appellants their alleged injury-in-fact. By the same logic, declaring the challenged statutes unconstitutional and enjoining their enforcement would not redress any discrimination between in-state and out-of-state retailers, or Appellants' claimed injuries. Rather, Appellants' requested relief would serve only to destroy Ohio's three-tier system of alcohol regulation, as opposed to redressing any purported injury caused by impermissible discrimination. Appellants therefore lack standing to challenge Ohio's direct shipment laws.

B. The Court cannot grant the relief Appellants ultimately seek.

Appellants further lack standing to challenge Revised Code §§ 4301.58(B), 4301.60, and 4303.25 or any of the other statutes that they have subsequently invoked. "The law of Article III standing, which is built on separation-of-powers

principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). "The third prong of an Article III standing analysis considers whether it is likely that the plaintiff's injury will be redressed by a favorable decision." *Binno v. ABA*, 826 F.3d 338, 344 (6th Cir. 2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). A plaintiff lacks standing when it seeks a remedy beyond what a court can grant. *See, e.g.*, *Juliana v. United States*, 947 F.3d 1159, 1170 (9th Cir. 2020) (finding that plaintiffs lacked standing because the requested declaratory and injunctive relief would require the court to "order, design, supervise, or implement the plaintiffs' requested remedial plan," which was "beyond the power of an Article III court").

"The Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts." *Lujan*, 504 U.S. at 559–60. Therefore, Article III courts should ensure that their remedies are narrow and enjoin only unconstitutional sections of statutes in an effort to avoid judicial rewriting of legislative work. *See Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984) (plurality opinion) (noting that "[a] ruling of unconstitutionality frustrates the intent of elected representatives of the people"); *see also Lebamoff*, 956 F.3d at 876 (noting that, when selecting a remedy, "[t]he imperative is not to rewrite a statute and give it an

effect altogether different from that sought by the measure viewed as a whole" (internal quotations omitted) (quoting *Murphy v. NCAA*, 584 U.S. 453, 482 (2018)).

The Supreme Court of the United States has provided three general principles for remedies when "confronting a statute's constitutional flaw": (1) "the Court tries not to nullify more of a legislature's work than is necessary"; (2) "the Court restrains itself from rewriting state law to conform it to constitutional requirements"; and (3) "the touchstone for any decision about remedy is legislative intent." *Ayotte v. Planned Parenthood*, 546 U.S. 320, 321 (2006) (internal quotation marks omitted).

Here, because there are not any specific statutes that could be struck down to redress Appellants' purported injury, they effectively ask the Court to order, design, and implement a makeshift exception for out-of-state wine retailers onto the Ohio Revised Code. (*See* Compl. at Req. for Relief, RE 1, PageID 9–10.) Put simply, Appellants ask the Court to engage in impermissible legislative drafting. This is "beyond the power of an Article III court." *See Juliana*, 947 F.3d at 1170. The Court should decline Appellants' invitation to "inva[de] the legislative domain" prescribed by the Twenty-first Amendment by carving out the exception that they seek. *Ayotte*, 546 U.S. at 330.

Moreover, the practical effects of Appellants' requested relief would be expansive. Crafting an order that accounts for these effects while maintaining the General Assembly's intent would necessitate the kind of judicial policymaking

condemned by *Ayotte*. For example, if out-of-state wine retailers were allowed to sell and deliver alcohol to Ohio consumers, and the Court wished to apply to them the same precautions that the State of Ohio uses for in-state retailers, the Court would need to force Ohio regulators to increase their enforcement efforts exponentially to ensure that out-of-state wine retailers' products complied with Ohio's rules and regulations. This, in turn, would strain and overwhelm Ohio's limited regulatory, staffing, and fiscal resources, all of which would materially impact Ohio taxpayers. (*See* Stevenson & Jones Rep. ¶¶ 51–58, 62, RE 114-1, PageID 5453–56, 5457–63.)

Additionally, because of the impracticality of applying to out-of-state retailers the same precautions with which in-state retailers must comply, Appellants' requested exemption for out-of-state retailers would function to "grant out-of-state retailers dramatically greater rights than [in-state] ones" and provide them a substantial competitive advantage in Ohio, which could increase alcohol consumption by Ohio consumers. *See Wine Country Gift Baskets.com*, 612 F.3d at 820 (analyzing practical effects of request to enjoin Texas's ban on direct-to-consumer shipping). And as outlined above, the unregulated sale and shipment of out-of-state retail wine would seriously jeopardize, if not destroy, the three-tier system that serves as the basis for Ohio's entire regulatory structure.

Although the Ninth Circuit recently found that plaintiffs had standing to challenge Arizona's direct shipment regulations, *see Day*, 2025 U.S. App. LEXIS

23001, at *12, this Court's precedent forecloses the remedy that the Ninth Circuit said could be implemented to allow the plaintiffs to meet the redressability prong of Article III standing. The Ninth Circuit acknowledged that it may be a jurisdictional issue that the plaintiffs in that case continually changed their asks of the court both as to what statutes were allegedly problematic and as to what relief they ultimately wanted. *Id.* at *11. The court also acknowledged that the plaintiffs' ultimate request—for "the court to direct the legislature to 'fix' the unconstitutional laws generally"—may not be relief that the court could grant. *Id.* Despite these issues, the Ninth Circuit determined that redressability could be met because the court could grant other relief not asked for by the plaintiffs. *Id.* at *11-12. Namely, the court held that it could "level up" enforcement by enjoining the statutes as applied to all retailers and wholesalers both in and out of the state. *Id.* at *12.

This Court, however, has made clear that such a "leveling up" of benefits is not an available remedy when the legislature, as the General Assembly has done so here, has made its intent of maintaining the three-tier system clear. *See Lebamoff*, 956 F.3d at 876. Notably, despite determining that the plaintiffs had standing, the Ninth Circuit upheld the constitutionality of Arizona's direct shipment laws on the merits. *See Day*, 2025 U.S. App. LEXIS 23001, at *21–29.

In light of the complicated and weighty policy implications of Appellants' requested relief, preparing an order in their favor that remains faithful to the General

Assembly's stated goals would require the Court to engage in complex public policy decision-making reserved for state legislators under the Twenty-first Amendment. *See North Dakota*, 495 U.S. at 431–33; *Skyworks, Ltd. v. CDC*, 542 F. Supp. 3d 719, 735 (N.D. Ohio 2021) ("[T]he principle of standing at the heart of Article III and its discussion in *Lujan*, among other cases, serves as a reminder that the judicial power remains fundamentally limited, with few, circumscribed exceptions, to cases and controversies between particular litigants."). A judicial overhaul of Ohio statutes and policy as part of an effort to "order, design, supervise, or implement the plaintiffs' requested" relief is well beyond Article III's purview. *See Juliana*, 947 F.3d at 1171. Yet, that is exactly what Appellants ask the Court to do. Appellants therefore lack standing to challenge the direct shipment laws.

IV. If Appellants were to prevail, the Court should remand the case for the district court to address the proper remedy.

If this Court were to determine that the district court erred, Appellants would not be entitled to judgment as a matter of law for the reasons outlined above. Rather, the case should be remanded for trial, including the presentation of evidence as to the appropriate remedy, in order to allow the district court to make a remedy determination in the first instance. Here, the parties—including the state and WBWAO—have materially different views as to the appropriate remedy. As such, a remedy hearing would be necessary.

CONCLUSION

For the foregoing reasons, the Court should affirm the constitutionality of the direct shipment and personal transportation laws.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and 6 Cir. R. 32(a), the undersigned certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 12,981 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6 Cir. R. 32(b)(1).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, 14 point.

s/ Martha Brewer Motley September 19, 2025
Martha Brewer Motley (0083788) Date

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served electronically through this Court's electronic service system upon all parties and/or counsel of record on this the 19th day of September 2025. Notice of this filing is sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

s/ Martha Brewer Motley September 19, 2025
Martha Brewer Motley (0083788) Date

ADDENDUM:

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PORTIONS OF RELEVANT OHIO STATUTES AND REGULATIONS

Ohio Rev. Code § 4301.011:

The general assembly hereby finds that the Twenty-first Amendment to the United States Constitution confers upon the state of Ohio sole and exclusive authority to regulate the sale and distribution of beer and intoxicating liquor in this state. That authority, so conferred, has rested with the state of Ohio since the ratification of the Twenty-first Amendment to the United States Constitution.

The general assembly also finds that its authority to so regulate is exercised through Title XLIII of the Revised Code and other relevant provisions of the Revised Code. Title XLIII of the Revised Code and the other relevant provisions of the Revised Code reflect the intent of the general assembly to do all of the following:

(A) Promote temperance by preventing consumption by underage persons and by discouraging abusive consumption;

(B) Promote orderly markets by requiring transparent, accountable, and stable distribution of beer and intoxicating liquor and preventing unfair competition;

(C) Facilitate the collection of taxes related to the sale and consumption of beer and intoxicating liquor.

Ohio Rev. Code § 4301.13:

(A) The liquor control commission may adopt, promulgate, repeal, rescind, and amend rules to regulate the manner of dealing in and distributing and selling bottled wine within the state. The commission may require out-of-state producers, shippers, bottlers, and holders of federal importers' permits shipping bottled wine into Ohio and holders of A-2, A-2f, B-5, B-3, and B-2 permits issued by the division of liquor control, engaged in distributing and selling bottled wine in Ohio, to file with the division a schedule of prices in which minimum prices are set forth for the sale of bottled wine at wholesale or retail, or both, in Ohio. Any amendments, additions, alterations, or revisions to the schedule of prices as originally filed with the division shall be filed in the same manner as the original schedule of prices required to be filed with the division.

(B)(1) The commission may determine and fix the minimum mark-ups at wholesale or retail, or both, for bottled wine, and fix the minimum prices at which the various

classes of bottled wine shall be distributed and sold in Ohio either at wholesale or retail, or both. With regard to the minimum prices at which various classes of bottled wine are sold in the state at retail, the commission shall allow a retail permit holder to offer to a personal consumer a ten per cent discount off the per-bottle retail sale price on each bottle included in a case of that wine that is offered for sale.

(2) As used in division (B)(1) of this section, "case" means not less than six and not more than twelve bottles of wine, which need not be of the same brand, variety, or volume.

Ohio Rev. Code § 4301.20(L):

. . . Any resident of this state or any member of the armed forces of the United States, who has attained the age of twenty-one years, from bringing into this state, for personal use and not for resale, not more than one liter of spirituous liquor, four and one-half liters of wine, or two hundred eighty-eight ounces of beer in any thirty-day period, and the same is free of any tax consent fee when the resident or member of the armed forces physically possesses and accompanies the spirituous liquor, wine, or beer on returning from a foreign country, another state, or an insular possession of the United States . . .

Ohio Rev. Code § 4301.24(B)–(D):

. . .

(B) No manufacturer shall have any financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion in the business of any wholesale distributor. No retail permit holder shall have any interest, directly or indirectly, in the operation of, or any ownership in, the business of any wholesale distributor or manufacturer.

(C)(1) No manufacturer shall, except as authorized by section 4303.021 of the Revised Code, have any financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion of the business of any retail dealer. No wholesale distributor or employee of a wholesale distributor shall have any financial interest, directly or indirectly, by stock ownership, interlocking directors in a corporation, or

otherwise, in the establishment, maintenance, or promotion of the business of any retail dealer. No manufacturer or wholesale distributor or any stockholder of a manufacturer or wholesale distributor shall acquire, by ownership in fee, leasehold, mortgage, or otherwise, directly or indirectly, any interest in the premises on which the business of any other person engaged in the business of trafficking in beer or intoxicating liquor is conducted.

> (2) All contracts, covenants, conditions, and limitations whereby any person engaged or proposing to engage in the sale of beer or intoxicating liquors promises to confine the person's sales of a particular kind or quality of beer or intoxicating liquor to one or more products, or the products of a specified manufacturer or wholesale distributor, or to give preference to those products, shall to the extent of that promise be void. The making of a promise in any such form shall be cause for the revocation or suspension of any permit issued to any party.

(D) No manufacturer shall sell or offer to sell to any wholesale distributor or retail permit holder, no wholesale distributor shall sell or offer to sell to any retail permit holder, and no wholesale distributor or retail permit holder shall purchase or receive from any manufacturer or wholesale distributor, any beer, brewed beverages, or wine manufactured in the United States except for cash. No right of action shall exist to collect any claims for credit extended contrary to this section.

This section does not prohibit a licensee from crediting to a purchaser the actual prices charged for packages or containers returned by the original purchaser as a credit on any sale or from refunding to any purchaser the amount paid by that purchaser for containers or as a deposit on containers when title is retained by the vendor, if those containers or packages have been returned to the manufacturer or distributor. This section does not prohibit a manufacturer from extending usual and customary credit for beer, brewed beverages, or wine manufactured in the United States and sold to customers who live or maintain places of business outside this state when the beverages so sold are actually transported and delivered to points outside this state.

No wholesale or retail permit shall be issued to an applicant unless the applicant has paid in full all accounts for beer or wine, manufactured in the United States, outstanding as of September 6, 1939. No beer or wine manufactured in the United States shall be imported into the state unless the beer or wine has been paid for in cash, and no supplier registration for any such beer or wine manufactured in the United States shall be issued by the division of liquor control until the A-2, A-2f, B-

1, or B-5 permit holder establishes to the satisfaction of the division that the beer or wine has been paid for in cash.

. . .

Ohio Rev. Code § 4301.58:

(A) As used in this section:

> (1) "Charitable organization" is an organization described under section 501(c)(3) of the Internal Revenue Code and exempt from federal income taxation under section 501(a) of the Internal Revenue Code.
>
> (2) "Fundraiser" means a raffle, silent auction, or event where a door prize is awarded.
>
> (3) "Political organization" means a political organization defined under section 527 of the Internal Revenue Code.
>
> (4) "Raffle" means a raffle conducted in accordance with Chapter 2915. of the Revised Code.
>
> (5) "Silent auction" means a method of submitting bids in writing by one or more persons and, after a review of all the bids received, personal property is awarded to the highest and most responsive bidder.

(B) No person, personally or by the person's clerk, agent, or employee, who is not the holder of an A permit issued by the division of liquor control, in force at the time, and authorizing the manufacture of beer or intoxicating liquor, or who is not an agent or employee of the division authorized to manufacture such beer or intoxicating liquor, shall manufacture any beer or intoxicating liquor for sale, or shall manufacture spirituous liquor.

(C) No person, personally or by the person's clerk, agent, or employee, who is not the holder of an A, B, C, D, E, F, G, I, or S permit issued by the division, in force at the time, and authorizing the sale of beer, intoxicating liquor, or alcohol, or who is not an agent or employee of the division or the tax commissioner authorized to sell such beer, intoxicating liquor, or alcohol, shall sell, keep, or possess beer, intoxicating liquor, or alcohol for sale to any persons other than those authorized by

Chapters 4301. and 4303. of the Revised Code to purchase any beer or intoxicating liquor, or sell any alcohol at retail.

(D) No person, personally or by the person's clerk, agent, or employee, who is the holder of a permit issued by the division, shall sell, keep, or possess for sale any intoxicating liquor not purchased from the division or from the holder of a permit issued by the division authorizing the sale of such intoxicating liquor unless the same has been purchased with the special consent of the division. The division shall revoke the permit of any person convicted of a violation of division (C) of this section.

(E) Division (C) of this section does not apply to either of the following:

(1) The sale or possession for sale of any low-alcohol beverage;

(2) Beer and intoxicating liquor that is given away if all of the following apply:

(a) The beer or intoxicating liquor is given away by a charitable or political organization to a participant in a fundraiser.

(b) Any beer, wine, or mixed beverages given away via the fundraiser is purchased from a person issued a permit under Chapter 4303. of the Revised Code.

(c) Any spirituous liquor given away via the fundraiser is purchased from an agency store located in this state.

(d) Regarding any spirituous liquor donated to the charitable or political organization for purposes of the fundraiser, the donor is not an agency store located in this state and submits to the charitable or political organization receipts showing that the donor purchased the spirituous liquor from an agency store located in this state.

(e) The charitable or political organization submits purchase receipts for the spirituous liquor given away via a fundraiser to the division of liquor control as proof that the spirituous liquor was purchased from an agency store located in this state. The charitable or political organization shall submit the receipts in accordance with procedures that the division shall establish.

Ohio Rev. Code § 4301.60:

No person, who is not the holder of an H permit, shall transport beer, intoxicating liquor, or alcohol in this state. This section does not apply to the transportation and delivery of beer, alcohol, or intoxicating liquor purchased or to be purchased from the holder of a permit issued by the division of liquor control, in force at the time, and authorizing the sale and delivery of the beer, alcohol, or intoxicating liquor so transported, or to the transportation and delivery of beer, intoxicating liquor, or alcohol purchased from the division or the tax commissioner, or purchased by the holder of an A or B permit outside this state and transported within this state by them in their own trucks for the purpose of sale under their permits.

Ohio Rev. Code § 4303.07:

Permit B-2 may be issued to a wholesale distributor of wine to purchase from holders of A-2, A-2f, and B-5 permits and distribute or sell that product, in the original container in which it was placed by the B-5 permit holder or manufacturer at the place where manufactured, to retail permit holders and for home use. The fee for this permit is five hundred dollars for each distributing plant or warehouse.

Ohio Rev. Code § 4303.071:

(A)(1) The division of liquor control may issue a B-2a permit to a person that manufactures wine. If the person resides outside this state, the person shall comply with the requirements governing the issuance of licenses or permits that authorize the sale of intoxicating liquor by the appropriate authority of the state in which the person resides and by the alcohol and tobacco tax and trade bureau in the United States department of the treasury.

(2) The fee for the B-2a permit is twenty-five dollars.

(3) The holder of a B-2a permit may sell wine to a retail permit holder. However, a B-2a permit holder that is a wine manufacturer may sell to a retail permit holder only wine that the B-2a permit holder has manufactured and for which a territory designation has not been filed in this state.

(4) The holder of a B-2a permit shall renew the permit in accordance with section 4303.271 of the Revised Code, except that renewal shall not be subject

to the notice and hearing requirements established in division (B) of that section.

(B) The holder of a B-2a permit shall collect and pay the taxes relating to the delivery of wine to a retailer that are levied under sections 4301.421 and 4301.432 and Chapters 5739. and 5741. of the Revised Code.

(C) The holder of a B-2a permit shall comply with this chapter, Chapter 4301. of the Revised Code, and any rules adopted by the liquor control commission under section 4301.03 of the Revised Code.

Ohio Rev. Code § 4303.09:

Permit B-4 may be issued to a wholesale distributor to purchase from the holders of A-4 permits and to import, distribute, and sell prepared and bottled highballs, cocktails, cordials, and other mixed beverages containing not less than four per cent of alcohol by volume and not more than twenty-one per cent of alcohol by volume to retail permit holders, and for home use, under rules adopted by the division of liquor control. The formula and samples of all of those beverages to be handled by the permit holder shall be submitted to the division for its analysis and approval before those beverages may be sold and distributed in this state. All labels and advertising matter used by the holders of this permit shall be approved by the division before they may be used in this state. The fee for this permit is five hundred dollars for each distributing plant or warehouse.

Ohio Rev. Code § 4303.10:

Permit B-5 may be issued to a wholesale distributor of wine to purchase wine from the holders of A-2 and A-2f permits, to purchase and import wine in bond or otherwise, in bulk or in containers of any size, and to bottle wine for distribution and sale to holders of wholesale or retail permits and for home use in sealed containers. No wine shall be bottled by a B-5 permit holder in containers supplied by any person who intends the wine for home use. The fee for this permit is one thousand five hundred sixty-three dollars.

Ohio Rev. Code § 4303.12:

Permit C-2 may be issued to the owner or operator of a retail store to sell wine in sealed containers only and not for consumption on the premises where sold in original containers. The holder of this permit may also sell and distribute in original packages and not for consumption on the premises where sold or for resale, prepared and bottled highballs, cocktails, cordials, and other mixed beverages manufactured and distributed by holders of A-4 and B-4 permits, and containing not less than four per cent of alcohol by volume, and not more than twenty-one per cent of alcohol by volume. The fee for this permit is three hundred seventy-six dollars for each location.

Ohio Rev. Code § 4303.232:

(A)(1) The division of liquor control may issue an S-1 permit to a person that manufactures beer or less than two hundred fifty thousand gallons of wine per year. If the person resides outside this state, the person shall comply with the requirements governing the issuance of licenses or permits that authorize the sale of beer or intoxicating liquor by the appropriate authority of the state in which the person resides and by the alcohol and tobacco tax and trade bureau of the United States department of the treasury.

(2) The fee for the S-1 permit is twenty-five dollars.

(3) An S-1 permit holder may sell beer or wine to a personal consumer by receiving and filling orders that the personal consumer submits to the permit holder. The permit holder shall sell only beer or wine that the permit holder has manufactured to a personal consumer.

(4) An S-1 permit holder shall renew the permit in accordance with section 4303.271 of the Revised Code, except that the renewal shall not be subject to the notice and hearing requirements established in division (B) of that section.

(5) The division may refuse to renew an S-1 permit for any of the reasons specified in section 4303.292 of the Revised Code or if the holder of the permit fails to do any of the following:

(a) Collect and pay all applicable taxes specified in division (B) of this section;

(b) Pay the permit fee;

(c) Comply with this section or any rules adopted by the liquor control commission under section 4301.03 of the Revised Code.

(B)(1) An S-1 permit holder who sells wine shall collect and pay the taxes relating to the delivery of wine to a personal consumer that are levied under sections 4301.421, 4301.43, and 4301.432 and Chapters 5739. and 5741. of the Revised Code.

(2) An S-1 permit holder who sells beer shall collect and pay the taxes relating to the delivery of beer to a personal consumer that are levied under sections 4301.42 and 4301.421 and Chapters 4305., 4307., 5739., and 5741. of the Revised Code.

(C)(1) An S-1 permit holder shall send a shipment of beer or wine that has been paid for by a personal consumer to that personal consumer via an H permit holder. Prior to sending a shipment of beer or wine to a personal consumer, an S-1 permit holder, or an employee of the permit holder, shall make a bona fide effort to ensure that the personal consumer is at least twenty-one years of age. The shipment of beer or wine shall be shipped in a package that clearly states that it contains alcohol. No person shall fail to comply with division (C)(1) of this section.

(2) Upon delivering a shipment of beer or wine to a personal consumer, an H permit holder, or an employee of the permit holder, shall verify that the personal consumer is at least twenty-one years of age by checking the personal consumer's driver's or commercial driver's license or identification card issued under sections 4507.50 to 4507.52 of the Revised Code.

(3) An S-1 permit holder shall keep a record of each shipment of beer or wine that the permit holder sends to a personal consumer. The records shall be used for all of the following:

(a) To provide a copy of each beer or wine shipment invoice to the tax commissioner in a manner prescribed by the commissioner. The invoice shall include the name of each personal consumer that purchased beer or wine from the S-1 permit holder in accordance with this section and any other information required by the tax commissioner.

(b) To provide annually in electronic format by electronic means a report to the division. The report shall include the name and address of each personal consumer that purchased beer or wine from the S-1 permit holder in accordance with this section, the quantity of beer or wine purchased by each personal consumer, and any other information requested by the division. The division shall prescribe and provide an electronic form for the report and shall determine the specific electronic means that the S-1 permit holder must use to submit the report.

(c) To notify a personal consumer of any health or welfare recalls of the beer or wine that has been purchased by the personal consumer.

(D) As used in this section, "personal consumer" means an individual who is at least twenty-one years of age, is a resident of this state, does not hold a permit issued under this chapter, and intends to use beer or wine purchased in accordance with this section for personal consumption only and not for resale or other commercial purposes.

(E) An S-1 permit holder shall comply with this chapter, Chapter 4301. of the Revised Code, and any rules adopted by the liquor control commission under section 4301.03 of the Revised Code.

Ohio Rev. Code § 4303.233:

(A) As used in this section, "personal consumer" means an individual who is at least twenty-one years of age, is a resident of this state, does not hold a permit issued under this chapter, and intends to use wine purchased in accordance with this section for personal consumption only and not for resale or other commercial purposes.

(B)(1) The division of liquor control may issue an S-2 permit to a person that manufactures two hundred fifty thousand gallons or more of wine per year. If the person resides outside this state, the person shall comply with the requirements governing the issuance of licenses or permits that authorize the sale of beer or intoxicating liquor by the appropriate authority of the state in which the person resides and by the alcohol and tobacco tax and trade bureau of the United States department of the treasury.

(2) An S-2 permit holder may sell wine to a personal consumer by receiving and filling orders that the personal consumer submits to the permit holder.

The permit holder shall sell only wine that the permit holder has manufactured to a personal consumer. An S-2 permit holder may use a fulfillment warehouse registered under section 4303.234 of the Revised Code to send a shipment of wine to a personal consumer. A fulfillment warehouse is an agent of an S-2 permit holder and an S-2 permit holder is liable for violations of this chapter and Chapter 4301. of the Revised Code that are committed by the fulfillment warehouse regarding wine shipped on behalf of the S-2 permit holder.

(C) An S-2 permit holder shall collect and pay the taxes relating to the delivery of wine to a personal consumer that are levied under sections 4301.421, 4301.43, and 4301.432 and Chapters 5739. and 5741. of the Revised Code.

(D)(1) An S-2 permit holder shall send a shipment of wine that has been paid for by a personal consumer to that personal consumer via an H permit holder. Prior to sending a shipment of wine to a personal consumer, the S-2 permit holder, or an employee of the permit holder, shall make a bona fide effort to ensure that the personal consumer is at least twenty-one years of age. The shipment of wine shall be shipped in a package that clearly states that it contains alcohol. No person shall fail to comply with division (D)(1) of this section.

(2) Upon delivering a shipment of wine to a personal consumer, an H permit holder, or an employee of the permit holder, shall verify that the personal consumer is at least twenty-one years of age by checking the personal consumer's driver's or commercial driver's license or identification card issued under sections 4507.50 to 4507.52 of the Revised Code.

(3) An S-2 permit holder shall keep a record of each shipment of wine that the permit holder sends to a personal consumer. The records shall be used for all of the following:

(a) To provide a copy of each wine shipment invoice to the tax commissioner in a manner prescribed by the commissioner. The invoice shall include the name of each personal consumer that purchased wine from the S-2 permit holder in accordance with this section and any other information required by the tax commissioner.

(b) To provide annually in electronic format by electronic means a report to the division. The report shall include the name and address of each personal consumer that purchased wine from the S-2 permit holder in accordance with this section, the quantity of wine purchased by each

personal consumer, and any other information requested by the division. If the S-2 permit holder uses a fulfillment warehouse registered under section 4303.234 of the Revised Code to send a shipment of wine on behalf of the S-2 permit holder, the S-2 permit holder need not include the personal consumer information for that shipment in the report. The division shall prescribe and provide an electronic form for the report and shall determine the specific electronic means that the S-2 permit holder must use to submit the report.

(c) To notify a personal consumer of any health or welfare recalls of the wine that has been purchased by the personal consumer.

(E) An S-2 permit holder shall comply with this chapter, Chapter 4301. of the Revised Code, and any rules adopted by the liquor control commission under section 4301.03 of the Revised Code.

(F)(1) An S-2 permit holder shall renew the permit in accordance with section 4303.271 of the Revised Code, except that the renewal shall not be subject to the notice and hearing requirements established in division (B) of that section.

(2) The division may refuse to renew an S-2 permit for any of the reasons specified in section 4303.292 of the Revised Code or if the permit holder fails to do any of the following:

(a) Collect and pay all applicable taxes specified in division (C) of this section;

(b) Pay the permit fee;

(c) Comply with this section or any rules adopted by the liquor control commission under section 4301.03 of the Revised Code.

(G) The initial fee for the S-2 permit is two hundred fifty dollars. The renewal fee for the S-2 permit is one hundred dollars.

Ohio Rev. Code § 4303.235:

All B-2a, S-1, and S-2 permit holders and fulfillment warehouses, as defined in section 4303.234 of the Revised Code, are subject to the following:

(A) Audit by the division of liquor control or the department of taxation;

(B) Jurisdiction of the liquor control commission, the division of liquor control, the department of taxation, the department of public safety, and the courts of this state; and

(C) The statutes and rules of this state.

Ohio Rev. Code § 4303.236:

(A) No family household shall purchase more than twenty-four cases of twelve bottles of seven hundred fifty milliliters of wine in one year.

(B)(1) Except as provided in sections 4303.185 and 4303.27 of the Revised Code, no person shall knowingly send or transport a shipment of wine to a personal consumer, as defined in section 4303.233 of the Revised Code, without an S-1 or S-2 permit or registering as a fulfillment warehouse under section 4303.234 of the Revised Code. This division does not apply to an H permit holder.

> (2) Except as provided in sections 4303.185 and 4303.27 of the Revised Code, no person shall knowingly send or transport a shipment of beer to a personal consumer, as defined in section 4303.232 of the Revised Code, without an S-1 permit. This division does not apply to an H permit holder.

(C) A person that is not a beer or wine manufacturer, including the holder of any retail permit in this state or outside of this state, shall not obtain or attempt to obtain a B-2a, S-1, or S-2 permit.

Ohio Rev. Code § 4303.25:

No person personally or by the person's clerk, agent, or employee shall manufacture, manufacture for sale, offer, keep, or possess for sale, furnish or sell, or solicit the purchase or sale of any beer or intoxicating liquor in this state, or transport, import, or cause to be transported or imported any beer, intoxicating liquor, or alcohol in or into this state for delivery, use, or sale, unless the person has fully complied with this chapter and Chapter 4301. of the Revised Code or is the holder of a permit issued by the division of liquor control and in force at the time.

The superintendent of liquor control may adopt rules requiring a person acting as an agent, solicitor, trade marketing professional, or salesperson for a manufacturer, supplier, broker, trade marketing company, or wholesale distributor, who solicits permit holders authorized to deal in beer and intoxicating liquor, to be registered with the division and may cite the registrant to the liquor control commission for a violation of this chapter, Chapter 4301. of the Revised Code, or the rules adopted by the commission or superintendent.

A trade marketing professional may be registered for more than one trade marketing company.

No manufacturer, supplier, wholesale distributor, broker, or retailer of beer or intoxicating liquor, or other person shall employ, retain, or otherwise utilize any person in this state to act as an employee, agent, solicitor, or salesperson, or act in any other representative capacity to sell, solicit, take orders, or receive offers to purchase or expressions of interest to purchase beer or intoxicating liquor from any person, at any location other than a liquor permit premises, except as specifically authorized by Chapter 4301. or 4303. of the Revised Code or rules adopted thereunder. No function, event, or party shall take place at any location other than a liquor permit premises where any person acts in any manner to sell, solicit, take orders, or receive offers to purchase or expressions of intent to purchase beer or intoxicating liquor to or from any person, except as specifically authorized by Chapter 4301. or 4303. of the Revised Code or rules adopted thereunder.

As used in this section, "trade marketing company" and "trade marketing professional" have the same meanings as in section 4301.171 of the Revised Code.

Ohio Rev. Code § 4303.292(A):

(A) The division of liquor control may refuse to issue, transfer the ownership of, or renew, and shall refuse to transfer the location of, any retail permit issued under this chapter if it finds either of the following:

> (1) That the applicant, or any partner, member, officer, director, or manager of the applicant, or, if the applicant is a corporation or limited liability company, any shareholder owning five per cent or more of the applicant's capital stock in the corporation or any member owning five per cent or more of either the voting interests or membership interests in the limited liability company:

(a) Has been convicted at any time of a crime that relates to fitness to operate a liquor establishment;

(b) Has operated liquor permit businesses in a manner that demonstrates a disregard for the laws, regulations, or local ordinances of this state or any other state;

(c) Has misrepresented a material fact in applying to the division for a permit; or

(d) Is in the habit of using alcoholic beverages or dangerous drugs to excess, or is addicted to the use of narcotics.

(2) That the place for which the permit is sought:

(a) Does not conform to the building, safety, or health requirements of the governing body of the county or municipal corporation in which the place is located. As used in division (A)(2)(a) of this section, "building, safety, or health requirements" does not include local zoning ordinances. The validity of local zoning regulations shall not be affected by this section.

(b) Is so constructed or arranged that law enforcement officers and duly authorized agents of the division are prevented from reasonable access to rooms within which beer or intoxicating liquor is to be sold or consumed;

(c) Is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace, or good order would result from the issuance, renewal, transfer of location, or transfer of ownership of the permit and operation under it by the applicant; or

(d) Has been declared a nuisance pursuant to Chapter 3767. of the Revised Code since the time of the most recent issuance, renewal, or transfer of ownership or location of the liquor permit.

. . .

Ohio Admin. Code 4301:1-1-03(C):

. . . (C) Minimum price: This paragraph reflects the policy and intent of the commission to maintain effective control over the sale and distribution of wine, an alcoholic beverage, and to prevent abuses caused by the disorderly and unregulated sale of wine. Mandatory price markups: prevent aggressive sales practices that improperly stimulate purchase and consumption, thereby endangering the state's efforts to promote responsible, and discourage intemperate, consumption of alcoholic beverages; eliminate discriminatory sales practices that threaten the survival of wholesale distributors and retail permit holders; preserve orderly competition; ensure fair prices over the long term; assure adequate consumer choice; and promote compliance with Ohio law and rule.

(1) This rule shall apply to all sales of wine, not for consumption on the premises where sold and in sealed containers, by manufacturers, suppliers, importers, bottlers, wholesale distributors, and retail permit holders.

(2) Pricing:

(a) Manufacturers, suppliers, and importers shall sell to wholesale distributors at the "wholesale invoice cost."

(b) Wholesale distributors shall sell to retail permit holders at no less than the "minimum retail invoice cost," which shall be computed by adding a markup of not less than thirty-three and one-third per cent to the "wholesale invoice cost," including freight and taxes.

(c) Retail permit holders and A-1-A permit holders shall sell to consumers at no less than the "minimum retail selling price," which shall be computed by adding a markup of not less than fifty per cent to the "minimum retail invoice cost."

(d) A-2, B-2, and B-5 permit holders, selling to retail permit holders or A-1-A permit holders, must sell at no less than the "minimum retail invoice cost."

(e) A-2, B-2, and B-5 permit holders selling to consumers must sell at no less than the "minimum retail selling price."

(f) B-5 permit holders must sell to B-2 and B-5 permit holders at no less than the "wholesale invoice cost."

(3) No bottled wine of any kind or description, whether bearing a brand name or private label, shall be imported into or bottled in Ohio and sold or distributed in this state by retail permit holders unless registered for sale in Ohio and a price schedule is in effect. The price schedule shall be in writing and shall contain with respect to each item or brand listed (item or brand means each different type of wine, each different brand, and each different container size) the exact brand or trade name, size or capacity of the container or bottle, kind, and type of wine, the number of bottles or containers contained in each case, and the container and case price to all wholesale and retail permit holders.

(a) The price listed in the price schedule shall be individual for each item or brand and not in any combination with any other item or brand.

(b) A price schedule shall be created and maintained by each manufacturer, supplier, importer, bottler, and wholesale distributor of bottled wine in this state. The price schedule shall be created quarterly on or before the tenth day of December, the tenth day of March, the tenth day of June, and the tenth day of September of each calendar year. The price schedule, as provided herein, shall be effective on the first day of the calendar month following the date of creation.

(c) In the event that a person required to create and maintain a price schedule, as provided herein, determines to make no change in any items or prices listed in the last schedule, and no change in the price of any listed item as required by this rule, then such prices listed in the schedule previously created and in effect shall remain in effect for each quarterly period thereafter until a revised schedule is created for a subsequent quarterly period.

(d) All price schedules shall be subject to inspection by the division and shall not be considered confidential.

(e) Every manufacturer, supplier, importer, bottler, and wholesale distributor that sells, imports, or distributes bottled wine in Ohio shall create and maintain a price schedule, which shall contain:

(i) The name of every brand of wine to be sold in this state;

(ii) The kind and type of wine, size of container, and the alcoholic content thereof;

(iii) The wholesale invoice cost, minimum retail invoice cost, or minimum retail selling price of the wine, as applicable to that person, and as allowed that person under Ohio law and rule;

(iv) Prices for all such wine for single bottles or containers and in case lot quantities. The minimum retail selling price for single bottles or containers shall be fifty per cent over the minimum retail invoice cost.

(4) Every manufacturer, supplier, importer, bottler, or wholesale distributor shall furnish to each A-1-A, B-2, or B-5 permit holder who purchases any brand of wine for resale to retail permit holders, a copy of its price schedule for the current period for which such price schedule is effective.

(5) No manufacturer, supplier, importer, bottler, or wholesale distributor shall sell or distribute in Ohio, for resale by retail permit holders, wine at a price less than the minimum retail invoice cost for the size of container, type, or kind of wine.

(6) No retail permit holder shall buy wine from a manufacturer, supplier, importer, bottler, or wholesale distributor at a price less than the listed minimum retail invoice cost set forth in the seller's price schedule for the size of container, type, or kind of wine.

(7) No retail permit holder shall sell wine at a price less than the listed minimum retail selling price set forth in that person's price schedule for such wine.

(8) The following sales and purchases at prices below the minimum price prescribed by this rule shall not be deemed a violation of this rule:

(a) Sales of wine made by the owner thereof for the purpose of going out of business or in liquidating the business.

(b) Close-out sales: discontinuance of the sale of an item or brand of wine that has been in the inventory of a B-2, B-5, C-2, D-2 or D-5 permit holder for a period of at least six months from date of the last invoice for the purchase of such item or brand of wine. The permit holder must keep a price schedule and complete documentation of each close-out sale available for inspection upon demand by the division for a minimum of twelve months following the close-out sale. The permit

holder may not repurchase the same product, item, or brand of wine for a period of one year from the date of the close-out sale.

(9) Differential pricing practices: manner and frequency of price changes for wine.

(a) Manufacturers, suppliers, importers, bottlers, and wholesale distributors who sell wine to wholesale distributors must give thirty days written notice of any price change to all wholesale distributors to whom they sell their products before initiating the price change. Within five days of receiving said notice, not including Saturday or Sunday, the wholesale distributor must give notice of any resulting price change to its retail accounts.

(b) No manufacturer, supplier, importer, bottler, or wholesale distributor of wine may fix the price to be charged for any package by any other permit holder.

(c) No manufacturer, supplier, importer, bottler, or wholesale distributor of wine may differentiate the price of wine sold to wholesale distributors except when such price differentials are based on reasonable business grounds. A differential price may not be based on a wholesale distributor's refusal to participate in a price promotion. No manufacturer, supplier, importer, bottler, or wholesale distributor of wine may require a wholesale distributor, and no wholesale distributor of wine may require a retail permit holder, to participate in any price promotion.

(10) The commission may suspend or revoke the license or authorization to operate of any manufacturer, supplier, importer, bottler, wholesale distributor, or retail permit holder in Ohio who advertises, offers for sale, ships, sells, or buys bottled wine at a price less than that prescribed by this rule or stipulated in a price schedule, or who violates any provision of this rule.

Ohio Admin. Code 4301:1-1-12:

(A) Examinations and inspections. No class A, B, C, or D permit, except on a renewal, shall be issued by the division until the division has conducted a complete

examination, including inspection of the premises, and the division finds that the applicant and the location meet all of the requirements imposed by law and rules.

(B) In determining whether to grant, refuse, or renew a permit, the division shall consider environmental factors affecting the maintenance of public decency, sobriety, and good order, including the number and location of permit premises in the immediate area. If the division finds that no substantial prejudice to public decency, sobriety, and good order will result, it may issue the permit. For purposes of this rule, however, the division shall presume, in the absence of affirmative evidence to the contrary, that the renewal of a permit or transfer of a permit to a successor in interest at the same location will not prejudice the maintenance of public decency, sobriety, and good order.

Ohio Admin. Code 4301:1-1-22:

(A) No alcoholic beverages shall be imported into the state of Ohio for resale except upon the written consent of the division. Application for such consent shall be upon forms provided by the division. Consent must be granted by the division prior to said importation. The division shall not grant consent to any party if consent has already been granted to any other party, and is currently in effect. The division shall not grant consent to any supplier to import alcoholic beverages in any calendar year unless the supplier files an affidavit with the division stating that said supplier will comply with all laws of the state of Ohio and rules of the commission concerning alcoholic beverages. Violation of any of the laws or rules may be cause for suspension or revocation of the authorization to import by the commission.

(B) All alcoholic beverages imported into this state for purposes of re-sale to retail permit holders must be consigned and delivered to the warehouse of a wholesale distributor.

Ohio Admin. Code 4301:1-1-24(C):

This rule is promulgated pursuant to the provisions of section 4301.13 of the Revised Code to regulate and stabilize the sale and distribution of beer, wine, and mixed beverages in Ohio.

. . .

(C) No retail permit holder shall have any financial interest, directly or indirectly by stock ownership or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion of a B-1, B-2, B-3, B-4, or B-5 permit holder.

. . .

Ohio Admin. Code 4301:1-1-43(A)(2), (D)(4), (H)(2):

(A)

. . .

(2) No retail or wholesale permit holder shall accept any premiums, gifts, discounts based on quantity of sales or any other reason, cash discount sales, rebates, or kickbacks, either in money, merchandise, or thing of value, from any manufacturer or wholesale distributor of alcoholic beverages. No manufacturer or wholesale distributor of alcoholic beverages shall offer or give to any retail or wholesale permit holder any premiums, gifts, discounts based on quantity of sales or any other reason, cash discount sales, rebates, or kickbacks, either in money, merchandise, or thing of value.

. . .

(D)

. . .

(2) When alcoholic beverages are imported from without the state of Ohio, the wholesale distributor receiving said alcoholic beverages, including B-2 permit holders receiving alcoholic beverages from B-5 permit holders, must have authorization from the manufacturer of the product or from the supplier that the manufacturer has authorized to import such product in Ohio.

. . .

(H)

. . .

(2) No wholesale distributor shall sell or offer to sell to any retail permit holder, and no retail permit holder shall purchase or receive from any wholesale distributor, any alcoholic beverage except for cash upon receipt of such alcoholic beverage.

. . .

Ohio Admin. Code 4301:1-1-46(C):

. . .

(C) No deliveries of beer, or wine and mixed beverages to retail permit holders shall be made by anyone who is not a bona fide employee of the B-1, B-2, B-4, B-5, A-1, A-2, or A-4 permit holder making the sale, except such deliveries may be made as provided by section 4301.60 of the Revised Code.

. . .