No. 25-3305
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEREK BLOCK

Plaintiff

KENNETH M. MILLER, HOUSE OF GLUNZ, INC.

Plaintiffs-Appellants

v.

JAMES V. CANEPA, Superintendent of Liquor Control, Ohio Division of Liquor Control

Defendant

DAVE YOST, Attorney General of Ohio

Defendant-Appellee,

WHOLESALE BEER & WINE ASSOCIATION OF OHIO,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Ohio at Columbus
District Court Case No. 2:20-cv-03686

BRIEF FOR CENTER FOR ALCOHOL POLICY AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

The Center for Alcohol Policy is a 501(c)(3) foundation affiliated with the National Beer Wholesalers Association. The Center has no stock and therefore has no parent corporation or entity that owns more than ten percent of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

REGULATIONS

TREATISES AND ARTICLES

STATEMENT OF INTEREST[1]

The Center for Alcohol Policy is a 501(c)(3) organization whose purpose is to educate policymakers, regulators, and the public about alcohol, its uniqueness, and its regulation. By conducting sound research and implementing initiatives that will maintain the appropriate state and locally based regulation of alcohol, the Center promotes safe and responsible consumption of alcohol, fights underage drinking and drunk driving, and informs key entities and the public about the effects of alcohol consumption. Amicus was formed by the National Beer Wholesalers Association in 1999, under the name NBWA Education Foundation. In 2008 amicus was reorganized, rebranded, and recapitalized as the Center for Alcohol Policy.

In its efforts, the Center has relied on considerable research about the effectiveness of state laws designed to combat problems associated

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[1] All parties to this appeal have consented to this filing of this *amicus* brief. No party's counsel authored this brief in whole or in part, and no person, party or party's counsel contributed money intended to fund the preparation or submission of this brief.

with alcohol—research that has shown that state laws have played a crucial role, ever since the adoption of the Twenty-first Amendment, in controlling the problems that gave rise to both Prohibition and its repeal.

The Ohio laws challenged in this case are among those laws. The State and Intervenor Association have shown that these laws promote alcohol-related health-and-safety goals. Amicus submits this brief to elaborate on the historical context in which States and local governments developed their unique systems of regulation and implemented laws like the ones at issue here—and, in particular, their laws requiring alcohol retailers and wholesalers to have physical presences within the State. The concerns that led these governments to adopt these systems after Prohibition help explain why these Ohio laws serve legitimate goals under the Twenty-first Amendment.

ARGUMENT

When the country chose to amend the Constitution in 1933 and give individual States near-plenary authority to regulate alcohol and the industry that engages with it within their borders, it was reacting to forces that caused social harm on a national scale. In the pre-Prohibition era, alcohol manufacturers exerted pressure on retailers to sell their products at prices that encouraged overconsumption. Local communities suffered the consequences—poverty, crime, domestic strife, and more—while the manufacturers, often not present in these communities, watched their profits pile up. The American people's frustration with that system eventually led to the Eighteenth Amendment and Prohibition. With the Twenty-first Amendment, the people gave States and local governments the authority to create systems that promoted moderation, severed ties between manufacturers and retailers, and promoted the unique interests and values of their local communities.

The laws at issue here are part of the system Ohio put into place in response to these developments. These laws require retailers that want to sell Ohioans alcohol to be present in the State and to comply with

Ohio's regulatory system—which includes laws mandating that those retailers do so only by purchasing alcohol from Ohio wholesalers. *See* State Br. 6 (citing OHIO REV. CODE §4301.58(C)). These laws also restrict the importation of alcohol into the State by capping the amounts citizens may bring into Ohio within any 30-day period. *See id.* (citing OHIO REV. CODE §4301.20(L)).

Appellees have persuasively explained why the evidence presented to the district court showed that these requirements serve legitimate public health-and-safety goals, such that they are justified under the dormant Commerce Clause and the Supreme Court's decision in *Tennessee Wine & Spirits Retailers Association v. Thomas*, 588 U.S. 504 (2019). *See* State Br. 23–41; Association Br. 13–31. The history that gave rise to these laws in the wake of Prohibition and the Twenty-first Amendment—which has been a crucial area of study for the Center for Alcohol Policy—bolsters the points Appellees have made. If States and local governments lacked discretion to regulate alcohol as Ohio has done, they would be vulnerable to the dangers that initially gave rise to Prohibition, which the framers of the Twenty-first Amendment sought to guard against when alcohol sales resumed in 1933.

I. The historical factors giving rise to the three-tier system justify Ohio's laws

Three historical developments provide context as to why governments like Ohio's developed systems that require retailers to be present within their town or city of licensure, and for wholesalers to be present in the State:

(1) the rise of vertical integration in the industry, and the tied-house saloon that accompanied it, before Prohibition and the Eighteenth Amendment's adoption in 1919;

(2) the collapse of nationwide Prohibition between the adoption of the Eighteenth Amendment in 1919 and the adoption of the Twenty-first Amendment in 1933, due to the country's failure to adopt local solutions to this inherently local problem; and

(3) the plan of regulatory action, for the post-Prohibition, pro-temperance era, that governments developed in conjunction with the Twenty-first Amendment's adoption in 1933 to prevent vertical integration and other problems associated with alcohol.

The following pages discuss these developments in turn.

A. Vertical integration in the alcohol industry was a substantial cause of the excessive consumption that gave rise to Prohibition in 1919

The three-tier systems States enacted with the adoption of the Twenty-first Amendment in 1933 arose from concerns about vertical integration in the industry—and the undesirable consumption habits it caused—during the pre-Prohibition era. Ever since the Founding of the United States, alcohol consumption has been a significant social problem. "Between 1780 and 1830, Americans consumed 'more alcohol, on an individual basis, than at any other time in the history of the nation,' with per capita consumption double that of the modern era." *Tenn. Wine*, 588 U.S. at 520 n.6 (quoting RICHARD MENDELSON, FROM DEMON TO DARLING: A LEGAL HISTORY OF WINE IN AMERICA 11 (2009)). The century that followed "prompted waves of state regulation" to address the "myriad social problems" associated with alcohol. *Id.* at 520–21.

Much of the blame fell on the institution known as the "tied-house" saloon. *See id.* at 521 n.7. These retail establishments were economically tied to alcohol manufacturers and sold "exclusively the product of [that] manufacturer." RAYMOND B. FOSDICK & ALBERT L. SCOTT, TOWARD LIQUOR CONTROL 29 (Ctr. for Alcohol Policy 2011) (1933). Manufacturers

pressured saloonkeepers to make big profits by selling more alcohol, at more locations, and at prices so low that it "encouraged irresponsible drinking." *Tenn. Wine*, 588 U.S. at 521 n.7 (citing THOMAS R. PEGRAM, BATTLING DEMON RUM: THE STRUGGLE FOR A DRY AMERICA, 1800–1933 95 (1998)).

An expert witness in this case elaborated on these points. He testified that "[p]rior to the temperance movements that gave rise to Prohibition, the alcohol industry was dominated by a limited number of powerful suppliers." Kerr Supp. Rep., R.116-1, PageID#6018 (¶13). "To expand sales and increase profits, suppliers of alcohol beverages began vertically integrating into the retail market to promote and sell their alcoholic beverage products to the exclusion of others." *Id.* The resulting "tied-house[ ]" system "proved to be extremely profitable for the suppliers, but triggered intense price wars that delivered an abundance of extremely cheap alcohol and encouraged a proliferation of excessive consumption." Kerr Supp. Rep., R.116-1, PageID#6019 (¶14) (internal quotation marks omitted).

Making matters worse, while the saloon was economically tied to the manufacturer, the manufacturer was not tied to local values. Commentators at the time observed that "[t]he manufacturer knew nothing and cared nothing about the community" in which its saloon operated. FOSDICK & SCOTT, *supra*, at 29. "He saw none of the abuses, and as a non-resident he was beyond local social influence." *Id.* "All he wanted was increased sales." *Id.* This "system had all the vices of absentee ownership." *Id.*

B. Nationwide Prohibition failed because it did not account for regulatory interests unique to each community

By 1919, the entire country had adopted nationwide Prohibition in response. The Eighteenth Amendment imposed an outright, national ban on the manufacture, sale, transportation, and importation of alcoholic beverages across the United States. *See* U.S. CONST. amend. XVIII, § 1. But the experiment did not last long, and the Eighteenth Amendment was repealed in 1933 by the Twenty-first Amendment. *See* U.S. CONST. amend. XXI, § 1.

A publication commissioned at that time by John D. Rockefeller Jr.—and, more recently, republished by the Center for Alcohol Policy—

provides context about why Prohibition failed and what the country envisioned as the regulatory plan moving forward. The book, *Toward Liquor Control*, is a 1933 publication by Raymond B. Fosdick and Albert L. Scott. *See* FOSDICK & SCOTT, *supra*. It underscored, more than anything else, that the problems American governments had faced in regulating alcohol had stemmed from a failure to account for different needs of different States—and that the Twenty-first Amendment not only would repeal nationwide Prohibition, but also would authorize States to develop their own unique regulatory systems to address those inherently local issues in the future.

The book's foreword stresses the complexity and magnitude of a problem that is difficult to conceive of today. In that foreword Rockefeller—businessman and philanthropist, and son of the Standard Oil founder—expressed his "earnest conviction that total abstinence is the wisest, best, and safest position for both the individual and society." JOHN D. ROCKEFELLER, JR., *Foreword* to TOWARD LIQUOR CONTROL, *supra*, at xiii. But "the regrettable failure of the Eighteenth Amendment" had persuaded him that "the majority of the people of this country are not yet ready for total abstinence, at least when it is attempted through legal

coercion." *Id.* He explained that "[i]n the attempt to bring about total abstinence through prohibition, an evil even greater than intemperance resulted—namely, a nation-wide disregard for law, with all the attendant abuses that followed in its train." *Id.* These rule-of-law concerns had moved Rockefeller from supporting prohibition to favoring "repeal of the Eighteenth Amendment." *Id.*

Building on Rockefeller's argument, Fosdick and Scott explained that the Eighteenth Amendment's "mistake"—and cause of the lawlessness that led to its repeal—had not been the policy choice it embodied of banning alcohol *per se*. The mistake had been the assumption that the country was "a single community in which a uniform policy of liquor control could be enforced." FOSDICK & SCOTT, *supra*, at 6; *see also id.* at 14. "When the citizens of the United States" adopted the Eighteenth Amendment, "they forgot that this nation is not a social unit with uniform ideas and habits." *Id.* at 6. "They overlooked the fact that in a country as large as this, racially diversified, heterogeneous in most aspects of its life and comprising a patchwork of urban and rural areas, no common rule of conduct in regard to a powerful human appetite could possibly be enforced." *Id.* at 6–7. The divergence between the nationwide rule established by

the Eighteenth Amendment and the specific values of particular communities had, in Fosdick and Scott's assessment, destroyed public respect for the rule of law. *Id.* at 5. That lack of respect for the rule of law was what made it imperative for Prohibition to end.

C. The Twenty-first Amendment's Framers envisioned that communities would develop their own unique regulatory systems, reflecting unique local values, to prevent the problems alcohol can cause

While the Eighteenth Amendment's repeal eliminated the rule-of-law problem and Prohibition's failure to account for community-specific interests, *Toward Liquor Control* also explained that the Twenty-first Amendment's aim was emphatically not to end alcohol regulation altogether. Rockefeller, for his part, explained that "with repeal," the problems the country faced were "far from solved." ROCKEFELLER, *supra*, at xiii. If abstinence could not be achieved through Prohibition, the "next best thing" would be "temperance." *Id.* Without it, he emphasized, "the old evils against which prohibition was invoked" could "easily return." *Id.* The only way to achieve a stable equilibrium between those social ills and the lawlessness Prohibition had brought would be what Fosdick and Scott called a "fresh trail," *see* FOSDICK & SCOTT, *supra*, at 11, which

Rockefeller described as "carefully laid plans of control" by individual States and even individual communities within them to regulate the alcohol industry and the products they produce, *see* ROCKEFELLER, *supra*, at xiii.

Those observations highlighted an important reality about the constitutional amendment the country then "anticipated." FOSDICK & SCOTT, *supra*, at xvii. The Twenty-first Amendment did not wave the white flag on the goals the Eighteenth Amendment had sought to achieve. It instead effectuated a balance between the need to limit alcohol's deleterious effects and the need to acknowledge the limits of law enforcement. As Fosdick and Scott would put it, the Twenty-first Amendment reflected American sentiment "that there is some definite solution for the liquor problem—some method other than bone-dry prohibition—that will allow a sane and moderate use of alcohol to those who desire it, and at the same time minimize the evils of excess." *Id.* at 10–11. But to ensure that the solution would have a rule-of-law legitimacy that nationwide Prohibition had lacked, the Amendment provided that the solution would be catered to the interests and desires of the citizens in each individual community. So immediately after its first section repealing Prohibition, the new

amendment's second section made it a constitutional violation for someone to break any given State's laws regarding "[t]he transportation or importation" of alcohol into that State "for delivery or use therein." U.S. CONST. amend. XXI, § 2.

Rockefeller therefore asked Fosdick and Scott to develop a "program of action" based on a "study of the practice and experience of other countries" as well as "experience in this country" regulating alcohol. ROCKEFELLER, *supra*, at xiv. That study was embodied in *Toward Liquor Control*, which "became the most important proposal for post-Repeal regulation" because it "articulated commonly accepted ideas and packaged them in a form that demanded respect in a post-Progressive world." Stephen Diamond, *The Repeal Program*, *in* SOCIAL & ECONOMIC CONTROL OF ALCOHOL 100 (Carole L. Jurkiewicz & Murphy J. Painter eds., CRC Press 2008). "Many of Fosdick and Scott's recommendations for prohibition's repeal have been enacted by state and local governments," including in Ohio. Mark R. Daniels, Toward Liquor Control*: A Retrospective*, *in* SOCIAL & ECONOMIC CONTROL, *supra*, at 230. Courts thus have cited the book as an authoritative guide to, as Justice O'Connor once wrote, "[c]ontemporaneous[]" views of the Twenty-first Amendment's meaning. *324*

Liquor Corp. v. Duffy, 479 U.S. 335, 357 (1987) (O'Connor, J., dissenting); *accord Tenn. Wine*, 588 U.S. at 549 (Gorsuch, J., dissenting) (calling *Toward Liquor Control* "a leading study").

The most crucial teaching of *Toward Liquor Control* for the purposes of this case was that alcohol and the industry that sells it were local problems that would require local solutions. Whereas Prohibition had failed because it failed to account for the diversity of viewpoints across the nation, Fosdick and Scott envisioned a post-Prohibition world in which each community would tailor its regulatory system to the unique interests of its own citizens. Accordingly, Fosdick and Scott recommended that States pass alcohol laws that reflect "[w]hat" a particular "Community want[s]." FOSDICK & SCOTT, *supra*, at 8. They suggested that States follow "the principle of 'local option,'"—a system Ohio eventually enacted laws to authorize, *see* OHIO. REV. CODE §4301.35—which puts "the determination of how the liquor problem shall be handled as close as possible to the individual and his home." FOSDICK & SCOTT, *supra*, at 8. Doing so would "place[] behind all the local officials who administer the system the same public opinion that determines the system." *Id*. They emphasized that if "the new system is not rooted in what the people of each state

sincerely desire at this moment, it makes no difference how logical and complete it may appear as a statute—it cannot succeed." *Id.* at 98.[2]

The understanding that each community would need to have its own system provides critical insight as to why the Ohio laws at issue here are, to paraphrase what the Supreme Court has said of three-tier systems generally, "'unquestionably legitimate.'" *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quoting *North Dakota v. United States*, 495 U.S. 423, 432 (1990)). Given the role vertical integration played in causing excessive consumption, there was a consensus that, as President Roosevelt said in announcing the Twenty-first Amendment's adoption, "no State" should

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[2] One result of the primacy the Twenty-first Amendment afforded States is that federal alcohol regulation has been spare. The principal federal law on alcohol regulation passed upon the lifting of prohibition, the Federal Alcohol Administration Act, did not comprehensively regulate every tier of the alcohol industry, and different types of alcohol have been the subject of different degrees of federal regulation. *See* 27 U.S.C. §201 *et. seq.* For example, the FAAA does not require alcohol retailers to obtain federal permits. Congress has continued to defer to state alcohol regulation in the years since. *See, e.g.*, 42 U.S.C. §290bb-25b(7) (providing that "States have primary authority to regulate alcohol distribution and sale, and the Federal Government should support and supplement these State efforts").

"authorize the return of the saloon either in its old form or in some modern guise." *Presidential Proclamation 2065—Repeal of the Eighteenth Amendment* (Dec. 5, 1933).

Fosdick and Scott's study analyzed two primary models for consideration in the event a community elected to authorize alcohol sales. One was a control model, in which the government would take charge of all sales within the State. The other was the model under which the government instead regulates alcohol through the issuance of licenses to private businesses. FOSDICK & SCOTT, *supra*, at 24–40. Ohio is a hybrid of both. Ohio is a hybrid of both. The sale of spirits over 21% alcohol content must be sold through Ohio's control system. *See* OHIO REV. CODE §§ 4301.01(A)(10), 4301.19. But Ohio is also a licensing State for other forms of alcohol, as this case shows.

Ohio and the many other States that adopted some form of the licensing model elaborated upon Fosdick and Scott's general recommendation by not only separating suppliers from retailers, but also "interposing a wholesaler level between the supplier and retailer, as the best method of correcting past abuses, establishing an orderly system of distribution and control of alcoholic beverages and preventing the evil of the 'tied

house.'" Evan T. Lawson, *The Future of the Three-Tiered System as a Control of Marketing Alcoholic Beverages*, *in* SOCIAL & ECONOMIC CONTROL, *supra*, at 33. But consistent with Fosdick and Scott's view that "this nation is not a social unit with uniform ideas and habits," each State was free to adopt its own, unique means of preventing the cheap flow and excessive consumption of alcohol that the tied-house system brought on. FOSDICK & SCOTT, *supra*, at 6.

The context of this case provides examples of how the States' individual choices played out. Ohio requires retailers to generally purchase beverages for sale with under 21% alcohol only from licensed wholesalers, rather than manufacturers. *See* State Br. 5 (citing OHIO REV. CODE §§4303.03(B)(1), 4303.35; OHIO ADMIN. CODE 4301:1-1-46(B), (F)). Ohio separates retailers from the other two tiers by generally providing that manufacturers and wholesalers cannot "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 a retailer. OHIO REV. CODE §4301.24(C)(1). Likewise, Ohio keeps the wholesale tier independent by providing that manufacturers and retailers cannot "have any financial interest, directly

or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise, in" wholesalers. OHIO REV. CODE §4301.24(B). Those laws are thus designed to head off the vertical integration—and the cheap alcohol that flowed from it—that marked the tied-house era.

It is no doubt true that other States have made some of the same choices in configuring their own three-tier laws. But state laws vary in important ways, and a State like Ohio cannot be expected to allow alcohol to be sold within its borders that is subject to a different set of rules. In Illinois—where House of Glunz operates—retailers will have purchased their alcohol exclusively from *Illinois*-licensed wholesalers, who will be subject to regulation exclusively under *Illinois* law. *See Lebamoff Enterprises, Inc. v. Rauner*, 909 F.3d 847, 850 (7th Cir. 2018); 235 ILL. COMP. STAT. ANN. 5/6-2 & 5/6-29.1(b). The Twenty-first Amendment gives States freedom to head off vertical integration within their borders in different ways—and to create their own, uniquely tailored three-tier systems that best meet the needs of their own citizens. That is reason, by itself, to justify state laws requiring alcohol sold to consumers in that particular State to go through that State's own three-tier system.

Ohio has other laws that promote temperance in ways that account for the unique decisions of Ohio policymakers, and those mechanisms could not be easily enforced against out-of-state entities. The State and Association have documented these choices well—including tax provisions and the prohibition of "alternative-pricing models like volume discounts and sales on credit." State Br. 37 (citing OHIO REV. CODE §§4301.43; 5739.02(A)(1), (B)(2); 5739.01(CCC)(1); 4301.24(D); OHIO ADMIN. CODE §4301:1-1-43(A)(2), (G)). Of particular significance are the Ohio prohibitions on sales below costs, which furthers their temperance and orderly market concerns. *See* OHIO ADMIN. CODE §4301:1-1-43(A)(1). The minimum-markup laws, which mandate not only that "retailers sell to customers at 50% above their cost," but also that "wholesalers sell to retailers at 33 and 1/3% above their costs," also further these goals. State Br. 36 (citing OHIO ADMIN. CODE §4301:1-1-03(C)(2); OHIO REV. CODE §4301.13).

These provisions reflect Ohio's unique judgment about what laws are necessary and workable in the States' various communities—and, in particular, its judgment that temperance can best be achieved by maintaining prices and precluding the influx of cheap alcohol that gave rise to

Prohibition in the first place. There is no guarantee that any given out-of-state retailers will be subject to similar pricing restrictions. The evidentiary record in this case thus establishes that there is "too much room," just as there was in Michigan, "for out-of-state retailers" who are not subject to these laws "to undercut local prices and to escape the State's interests in limiting consumption." *Lebamoff Enterprises Inc. v. Whitmer*, 956 F.3d 863, 872 (6th Cir. 2020).[3]

That might be less of a problem if it were feasible for Ohio to impose its pricing restrictions on out-of-state retailers and wholesalers. But it is not. Part of the concern is constitutional: there would be serious doubts about the legality of any attempt by Ohio to regulate the price at which

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[3] Plaintiffs' assertions that Ohio should be forced to adopt certain measures because "[o]ther states do" flies in the face of the latitude the Twenty-first Amendment gives States to adopt diverse regulatory systems. Plaintiffs' Br. 45. Moreover, while Plaintiffs suggest that the National Conference of State Legislatures has endorsed a permit system for interstate shipping, that organization has stated that it "does not have an official position supporting or opposing any model legislation regulating alcohol sales" and that it "recognizes the right of any state or territory to regulate alcohol according to local norms and standards pursuant to the 21st Amendment." *See NCSL Statement on Alcohol Sales Legislation*, March 11, 2024 https://www.ncsl.org/press-room/details/ncsl-statement-on-alcohol-sales-legislation (last visited Sept. 24, 2025).

an out-of-state retailer purchased alcohol from an out-of-state wholesaler—particularly at a time when it was not clear that the alcohol would ever be sold in Ohio. *Compare id.* at 872 (suggesting that the dormant Commerce Clause would be implicated by such extraterritorial regulation), *with Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 n.1 (2023) (limiting the dormant Commerce Clause extraterritoriality principle but suggesting that the "Constitution's horizontal separation of powers" may preclude a State from enforcing laws "that *directly* regulate[ ] out-of-state transactions by those with *no* connection to the State"). But the larger problem is practical one. Even if Ohio had the constitutional power to impose its pricing requirements on every out-of-state wholesaler and retailer in the country, the evidentiary record in this case documents the reality that doing so would be infeasible, as matter of resources, cost, and jurisdiction. *See* State Br. 39–40 (citing record evidence); Association Br. 44–45 (same).

Those realities, of their own accord, provide legitimate justifications for Ohio's laws requiring retailers and wholesalers to have physical presences within the borders of the State. Alcohol sold by retailers from other States generally is not—and often by law cannot be—alcohol that

was purchased from Ohio wholesalers, through the Ohio three-tier system. It is instead alcohol that the out-of-state retailers purchased from other sources—whether from wholesalers in their own States, or from other sources as those other States' laws may allow. Because the Twenty-first Amendment was premised on the notion that "this nation is not a social unit with uniform ideas and habits," the Constitution does not require Ohio to assume that those systems and their governments protect the same interests, with the same degree of force, as its own three-tier system. FOSDICK & SCOTT, *supra*, at 6. That is a legitimate reason, under the Twenty-first Amendment, for Ohio to decline to allow out-of-state retailers to sell alcohol within its borders.[4]

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[4] That Ohio is a control state as to spirits containing more than 21% alcohol further exacerbates the problems. *See supra* at 16. House of Glunz is a wine *and* spirits retailer, and visitors can choose between wine and spirits products from their website. *See* House of Glunz, *Calumet Farm 100th Anniversary Ceramic Farm Decanter Kentucky Straight Bourbon Whiskey 86 Proof,* https://www.thehouseofglunz.com/products/calumet-farm-100th-anniversary-ceramic-farm-decanter-kentucky-straight-bourbon-whiskey-86-proof.html (last visited Sept. 24, 2025). If Ohio were forced to allow House of Glunz to ship wine into Ohio, it is difficult to see how Ohio would be able to prevent House of Glunz from adding bottles containing spirits with more than 21% alcohol to its shipments.

II. The role in-state wholesalers have come to play in promoting health and safety independently justifies Ohio's laws

While Fosdick and Scott originally proposed separating the distribution tiers to prevent vertical integration, they also recognized that "[o]ur legal prescriptions and formulas must be living conceptions, capable of growing as we grow." FOSDICK & SCOTT, *supra*, at 98. Correspondingly, alcohol regulation has developed, in the time since the Twenty-first Amendment's adoption, into an effective tool for promoting health and public safety in ways that go above and beyond the vertical-integration concern.

This product-safety function of the three-tier system is rightly emphasized by the State and the Association in their submissions to this Court. *See* State Br. 33–35 (citing record evidence); Association Br. 14–18 (same). Just as their briefs are right to say that requiring retailers to have an in-state presence promotes health and public safety—for a number of reasons relating to the need for regulators to be able to physically enter a retailer's premises—they also are right to suggest that requiring retailers to purchase alcohol from in-state wholesalers promotes those goals. Amicus would add a few words to explain why, in its experience,

States have been particularly successful in using in-state wholesalers to achieve those health and public-safety goals.

In the years since Fosdick and Scott first proposed plans for state and local control of alcohol distribution, it has become apparent that focusing certain regulatory efforts on the wholesale tier leads to efficient enforcement. That is so because, as one court has explained, the three-tier system, by requiring alcohol to be funneled through in-state distributors, operates like an "hourglass." *Family Winemakers of Cal. v. Jenkins*, 592 F.3d 1, 5 (1st Cir. 2010). On one end is a relatively large number of manufacturers who are situated across the globe. On the other end are numerous retailers. In between—at what the First Circuit has called the "constriction point"—have been a relatively small number of wholesalers in each State. *Id.*

Concentrating regulatory efforts on the relatively small wholesale tier makes for smart enforcement. With very limited exceptions, the alcohol consumed in a State must pass through those wholesalers on its way from manufacturers to retailers. So States can effectively regulate all the "sand" in this "hourglass" by focusing on that narrower middle part. States thus typically require wholesalers to have in-state premises

and limit their number, as the evidentiary record about Ohio shows. *See, e.g.*, Stevenson & Jones Rep., R.114-1, PageID#5467 (¶77); Association Br. 18 (citing OHIO REV. CODE §§4301.10(A)(1), 4301.10(A)(6), and 4303.292(A)). States regulate this tier extensively, as the State and Association have both explained. *See* State Br. 33–34 (citing record evidence); Association Br. 17–18 (same). The hourglass structure also provides critical tax-collection advantages, as Ohio focuses its excise-tax efforts on manufacturers and wholesalers rather than retailers. *See* OHIO REV. CODE §4301.43(B); Stevenson & Jones Rep., R.114-1, PageID#5477–78 (¶104). Taxes in this context are as much about public health as they are about revenue. As Fosdick and Scott explained, taxation plays a critical role in "limiting consumption" by keeping prices at a level that encourages moderation. *See* FOSDICK & SCOTT, *supra*, at 82.

These advantages would disappear if the appellants in this case succeeded in their challenge to these Ohio laws. The State and Association have shown that, as a practical matter, it would be impossible for Ohio to directly regulate all the out-of-state retailers who might attempt to ship alcohol into the State. *See* State Br. 39–41 (citing record evidence);

Association Br. 44–45 (same). That problem would be compounded because those retailers would be shipping alcohol that came from out-of-state wholesalers—and thus would not have been subject to the various health-and-public-safety regulations on the wholesale tier that Ohio believes to be essential. Ohio's interest in ensuring that the alcohol retailers sell within its borders be subjected to *those* health-and-safety regulations, and thus ultimately comes from wholesalers that were subject to those regulations, stands as an independent health-and-safety justification for Ohio's choice to prohibit shipments of alcohol to its citizens from retailers who are not present in the State.

The "predominant effect" of Ohio's laws—and of numerous other States' laws that are catered to the needs and desires of those States' citizens related to alcohol—is thus not economic "protectionism." *Tenn. Wine*, 588 U.S. at 539. It is instead the same fundamental goal that Fosdick and Scott sought to promote—the "protection" of the "public health and safety" of each individual State's citizens, through a uniquely drawn system of regulation that is designed to have legitimacy in the unique community in which it operates. *Id.* at 540. These laws fall within

the heartland of state alcohol regulations that the Twenty-first Amendment renders constitutional.

CONCLUSION

This Court should affirm the District Court's judgment.

Respectfully submitted,

s/ John C. Neiman, Jr.

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CERTIFICATE OF COMPLIANCE

This brief complies with the applicable type-volume limitation under Rules 29(a)(5) and 32(a)(7) of the Federal Rules of Appellate Procedure. According to the word count in Microsoft Word 2010, the relevant parts of this brief contain 5,100 words.

This brief complies with the applicable type-style requirements limitation under Rule 32 of the Federal Rules of Appellate Procedure. I prepared this brief in a proportionally spaced Century Schoolbook font sized 14 point or, for headings, with a larger point size.

s/ John C. Neiman, Jr.
OF COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2025, this brief was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ John C. Neiman, Jr.
OF COUNSEL

ADDENDUM

Designation of District Court Documents

Amicus curiae the Center for Alcohol Policy, per Sixth Circuit Rules 28(a), 28(b), and 30(g), hereby designates the following relevant district court documents:

Description of Entry	Record Entry No.	Page ID# range
Complaint	1	7-10
Association's Motion for Summary Judgment	114	5386-5423
Stevenson and Jones Report	114-1	5424-5561
State's Motion for Summary Judgment	116	5964-6010
Kerr Supplemental Report	116-1	6011-6117
Plaintiffs' Motion for Summary Judgment	119	6544-6581
Opinion and Order	133	6805-6827
Judgment	134	6829-6829
Notice of Appeal	135	6830-6830