No. 25-2967

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

TIMOTHY FREEHAN, ET AL.,
Plaintiffs-Appellants.

v.

CYNTHIA BERG, COMMISSIONER AND CHAIRMAN OF THE ILLINOIS LIQUOR CONTROL COMMISSION, ET. AL.,
Defendants-Appellants,

and

WINE & SPIRITS DISTRIBUTORS OF ILLINOIS,
Intervenor Defendant-Appellant.

On appeal from the United States District Court for the Northern District of Illinois, No. 1:22-cv-04956
(Hon. Jeremy C. Daniel, District Judge)

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

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None. Amicus is a 501(c)(3) foundation affiliated with the National Beer Wholesalers Association.

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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 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.

Among those laws are the Indiana laws upheld by a prior panel of this Court in *Chicago Wine Co. v. Braun*, 148 F.4th 530 (7th Cir. 2025), where the Center filed a substantially similar amicus brief supporting Indiana. The Center now submits this brief to defend the nearly identical Illinois laws that have been challenged in this case. Like Indiana

[1] No party's counsel authored this brief in whole or in part. No person, party or party's counsel contributed money intended to fund the preparation or submission of this brief. No person other than *amicus* contributed money that was intended to fund preparing or submitting this brief.

before it, Illinois now has shown that these laws promote alcohol-related health-and-safety and other 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 wholesaler-distributors to have physical presences within the State. The concerns that led these governments to adopt these systems after Prohibition help explain why these Illinois laws serve legitimate goals under the Twenty-first Amendment.

ARGUMENT

When the country chose to amend the Constitution in 1933 and gave 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 Illinois put in place in response to these developments. These laws require retailers that want to sell Illinoisans alcohol to be present in the State and to comply with Illinois's regulatory system—which includes laws mandating that those retailers do so only by purchasing alcohol from Illinois distributors. *See* 235 ILCS 5/6-17.5(a).

Illinois has persuasively explained why the evidence presented to the district court showed that these requirements serve public health-and-safety and other legitimate 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* Illinois Brief at pp. 37–54. 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 Illinois has made. If States and local governments lacked discretion to regulate alcohol and the industry that makes, distributes, and sells it as Illinois has done, the country could see a revival of the problems 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 Illinois's laws

Three historical developments explain why States like Illinois developed systems that require alcohol retailers to be present in the State:

(1) the rise of vertical integration in the industry 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 Twenty-first Amendment's adoption 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 p. 520 n.6 (quoting RICHARD MENDELSON, FROM DEMON TO DARLING: A LEGAL HISTORY OF WINE IN AMERICA, p. 11 (2009)). The century that followed "prompted waves of state regulation" to address the "myriad social problems" associated with alcohol. *Id.* at pp. 520–21.

Much of the blame fell on the vertically integrated institution known as the "tied-house" saloon. *See id.* at p. 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, p. 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 p. 521 n.7 (citing THOMAS R. PEGRAM, BATTLING DEMON RUM: THE STRUGGLE FOR A DRY AMERICA, 1800–1933, p. 95 (1998)).

An expert witness for Illinois, Dr. William Kerr of the Alcohol Research Group within the Public Health Institute, elaborated on these points in this case. 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." R.115-1 at p. 166, ¶ 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." *Id.* at ¶ 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 p. 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 stressed 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 p. 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 p. 6; *see also id.* at p. 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 p. 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 pp. 6–7. The divergence between the nationwide rule established by the Eighteenth Amendment and the specific values of communities had, in Fosdick and Scott's assessment, destroyed public respect for the rule of law. *Id.* at p. 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 p. 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 p. 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 p. xiii.

Those observations highlighted an important reality about the constitutional amendment the country then "anticipated." FOSDICK & SCOTT, *supra*, at p. 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 pp. 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 took the highly unusual step of making it a federal constitutional violation for anyone within a State's jurisdiction to break *that State's laws* regarding "[t]he transportation or importation" of alcohol "for delivery or use therein." U.S. CONST. amend. XXI, § 2.

Rockefeller therefore asked Fosdick and Scott to develop a "program of action" for individual States to regulate 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, p. 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 Illinois. Mark R. Daniels, Toward Liquor Control*: A Retrospective*, *in* SOCIAL & ECONOMIC CONTROL, *supra*, at p. 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 p. 549 (Gorsuch, J., dissenting) (calling *Toward Liquor Control* "a leading study"); *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214, 218 (4th Cir. 2022) (citing *Toward Liquor Control*); *Lebamoff Enters. v. Whitmer*, 956 F.3d 863, 869 (6th Cir. 2020) (same).

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 issues that would require different, 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" their particular "Community want[ed]." FOSDICK & SCOTT, *supra*, at p. 8. They suggested that States follow "the principle of 'local option,'" which puts "the determination of how the liquor problem shall be handled as close as possible to the individual and his home." *Id*.[2] 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

[2] Illinois has implemented this policy of hyper-localization by giving "every city, village or incorporated town" the power "to determine the number, kind and classification of licenses" for retailers and "the amount of the local licensee fees to be paid" within their borders. 235 ILCS 5/4-1.

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 p. 98.[3]

The understanding that each community would need to have its own system provides critical insight as to why the Illinois 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 that vertical integration played in causing excessive consumption before Prohibition, there was a consensus that, as President Roosevelt said in announcing the Twenty-first Amendment's adoption, "no State" should "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).

Illinois and many other States addressed this problem by not only separating suppliers from retailers, but "interposing a wholesaler level between the supplier and retailer"—a level now often referred to interchangeably as the distributor tier—and thus creating what has

[3] 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").

become widely known as the three-tier system. Evan T. Lawson, *The Future of the Three-Tiered System as a Control of Marketing Alcoholic Beverages*, *in* SOCIAL & ECONOMIC CONTROL, *supra*, at p. 33. Consensus developed around the notion that this three-tier system was "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.'" *Id.* 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 through its own, unique three-tier system. FOSDICK & SCOTT, *supra*, at p. 6.

The context of this case provides examples of how the States' individual choices regarding their three-tier systems played out. Illinois has drawn unusually bright lines between the tiers. Like many other States, Illinois requires wine retailers to generally purchase beverages for sale only from licensed distributors, rather than manufacturers. *See* Illinois Brief at p. 4 (citing 235 ILCS 5/6-17.5(a)). Illinois keeps the distributor tier independent, by providing that manufacturers cannot "be issued" distributor licenses. 235 ILCS 5/6-4(a). Illinois separates wine retailers from the other two tiers, in turn, by providing that a wine manufacturer or distributor generally may not "be issued a retailer's license." 235 ILCS 5/6-4(e). Even more expressly than other States, Illinois has emphasized that it has separated the tiers to head off "vertical integration" and the cheap alcohol that flowed from it. 235 ILCS 5/6-4.5 (addressing the three-tier system for beer); *see also* 235 ILCS 5/6-1.5 ("[I]t is the policy of this State that the primary purpose of this Act is to protect the health, safety, and welfare of this State through the sound and careful control and regulation of the manufacture, distribution, and sale of alcoholic liquor through a 3-tier regulatory system."). And to keep the tiers unusually distinct, Illinois has gone so far as to prohibit issuance of retailer's licenses not only to wine manufacturers or distributors themselves, but even to anyone who is a mere "officer," "shareholder," or "employee" of such a manufacturer or distributor. 235 ILCS 5/6-4(e).

Other States' three-tier laws vary in important ways, and a State like Illinois cannot be expected to allow alcohol to be sold within its borders that is subject to a different set of rules. In Washington State—where plaintiff Full Pull operates—retailers will have purchased their alcohol exclusively from Washington-licensed distributors, who will be subject to regulation exclusively under Washington law. *See* Illinois Brief at p. 16 (citing WASH. REV. CODE § 66.28.070); Doc. 115-1 at p. 169–70 (¶ 29) (Kerr Declaration). And Washington is less restrictive than Illinois is in its separation of the tiers. Washington affirmatively says "it shall be lawful" for manufacturers, distributors, and their affiliates "to have a direct or indirect financial interest in . . . a retailer," so long as this interest does not "result[] or is more likely than not to result in undue influence over the retailer" or an "adverse impact on public health and safety." WASH. REV. CODE § 66.28.290(1).

Illinois has other laws that promote temperance in ways that account for the unique decisions of Illinois policymakers, and those mechanisms could not be easily enforced against out-of-state entities. These choices include a general prohibition on any retailer's acceptance or receipt of credit "directly or indirectly" from manufacturers or retailers—a prohibition that helps ensure that prices remain sufficiently high to stem excessive consumption. 235 ILCS 5/6-5. These choices also include Illinois' imposition of an unusually high excise tax on Illinois wholesalers. *Compare* 235 ILCS 5/8-1 (imposing total excise tax on distributors of $1.39 per gallon), *with* WASH. REV. CODE § 66.24.210(1)–(4) (imposing total excise tax of $0.2292 per liter, which amounts to approximately $0.8676 per gallon).

These provisions reflect Illinois's unique judgment about what laws are necessary and workable in the State's various communities—and, in particular, its judgment that temperance can best be achieved through strict separation of the tiers and maintenance of prices that preclude the influx of cheap alcohol.[4] Because 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—there is no guarantee that any given out-of-state retailers will be subject to similar restrictions. Because each State has the

[4] As Illinois observes, its allowance of limited sales by wineries to consumers and retailers does not undermine its legitimate goals in warding off vertical integration and maintaining prices that stem excessive consumption. *See* Illinois Brief at pp. 45–47. Wineries may sell a maximum of 12 cases per year per individual, for their "personal use and not for resale." 235 ILCS 5/5-1(r) & 5/6-29(b) (. Wineries can self-distribute to retailers, moreover, a maximum of 5,000 gallons per year, and only if those wineries are so small they "produce[] less than 25,000 gallons of wine" each year. 235 ILCS 5/3-12(a)(17)(A). These limited statutory exceptions would account for only a small part of Illinoisans' consumption and the market for wine in the State. NIH reports suggest that Illinoisans currently consume more than 40 million gallons of wine each year. *See* Megan E. Slater and Hillel R. Alpert, *Surveillance Report #122: Apparent Per Capita Alcohol Consumption: National, State, and Regional Trends, 1977–2023*, at p. 13, Tbl. 2 (National Institute on Alcohol Abuse and Alcoholism 2025), *available at* https://www.niaaa.nih.gov/sites/default/files/surveillance-report122.Per-Capita-Consumption.pdf.

right to have its own system, each State also must have the right to impose its own system on the alcohol sold to its citizens. That is reason, by itself, to justify state laws requiring alcohol sold to consumers in that State to go through that State's own three-tier system—and, thus, through retailers and distributors that are physically present within that State.[5]

There would be less of a need for retailers and distributors to be physically present in a State if it were feasible for the State to impose its restrictions on out-of-state retailers and distributors. But it is not. Part of the concern is constitutional: there would be serious doubts about the legality of any attempt by Illinois to regulate the price at which an out-of-state retailer purchased alcohol from an out-of-state distributor—particularly at a time when it was not clear that the alcohol would ever be sold in Illinois. *Compare Lebamoff Enterprises Inc. v. Whitmer*, 956 F.3d 863, 872 (6th Cir. 2020) (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

[5] Plaintiffs' assertions that Illinois should be forced to "allow interstate sales" because "[o]ther states" do flies in the face of the latitude the Twenty-first Amendment gives States to adopt diverse regulatory systems. Plaintiffs' Brief at p. 27. Moreover, while Plaintiffs suggest that the National Conference of State Legislatures has endorsed a permit system for interstate shipping, *see id.*, 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* National Conference of State Legislatures, *NCSL Statement on Alcohol Sales Legislation*, March 11, 2024, *available at* https://www.ncsl.org/press-room/details/ncsl-statement-on-alcohol-sales-legislation (last visited June 18, 2026).

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 Illinois had the constitutional power to impose its requirements on every out-of-state distributor and retailer in the country, the evidentiary record in this case shows that doing so would be infeasible, as matter of resources, cost, and jurisdiction. *See* Illinois Brief at pp. 40 & 45 (citing Doc. 115-1 at pp. 144-45 & 173); *cf. Chicago Wine*, 148 F. 4th at p. 541 (Scudder, J., concurring in the judgment) ("Even if the regulators had jurisdiction to conduct inspections, audits, or sting operations on out-of-state wine retailers' premises, sending law enforcement to these locations around the country would not be feasible."); National Beer Wholesalers Association, *Industry Fast Facts: Retailer Data* (2025), *available at* https://nbwa.org/resources/fast-facts/#RetailerData (documenting that 620,404 U.S. retail establishments sold beer in 2023) (last visited June 21, 2026).

Those realities, of their own accord, provide legitimate justifications for Illinois'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 Illinois distributors, through the Illinois three-tier system. It is instead alcohol that the out-of-state retailers purchased from other sources—whether from distributors 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 Illinois 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 p. 6. That is a legitimate reason, under the Twenty-first Amendment, for Illinois to decline to allow out-of-state retailers to sell alcohol within its borders.

II. The role of in-state distributors in promoting health and safety independently justifies Illinois'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 p. 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 in its submissions to this Court. *See* Illinois Brief at pp. 44-47 (citing record evidence). Just as Illinois is 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—Illinois also is right to suggest that requiring retailers to purchase alcohol from in-state *distributors* promotes those goals. Amicus would add a few words to explain why, in its experience, States have been particularly successful in using in-state wholesaler-distributors 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 the First Circuit 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 wholesaler-distributors 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 distributors 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 wholesaler-distributors to have in-state premises and limit their number, as the evidentiary record about Illinois suggests. *See, e.g.*, Doc. 115-1 at pp. 55–56 (Illinois interrogatory responses 12, 13, and 16); *id.* at pp. 140-41, ¶¶ 8-12 (Williams Declaration). States regulate this tier extensively. *See, e.g., id.*; 11 IL ADMIN CODE § 100.130; Illinois Brief at p. 44 (citing record evidence). The hourglass structure also provides critical tax-collection advantages, as Illinois focuses its excise-tax efforts on distributors rather than retailers. *See* 235 ILCS 5/8-2; Doc. 115-1 at p. 173 (¶¶ 45-46)

(Kerr Declaration). Taxes in this context are as much about public health as they are about revenue. As Fosdick and Scott explained and expert testimony in this case confirmed, taxation plays a critical role in "limiting consumption" by keeping prices at a level that encourages moderation. FOSDICK & SCOTT, *supra*, at p. 82; *accord* Doc. 115-1 at p. 175 (¶¶ 56-57) (Kerr Declaration).

These advantages would disappear if the appellants in this case succeeded in their challenge to these Illinois laws. The State has shown that, as a practical matter, it would be impossible for Illinois to directly regulate all the out-of-state retailers who might attempt to ship alcohol into the State. *See* Illinois Brief at p. 40 (citing record evidence). 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 distributor tier that Illinois believes to be essential. Illinois's interest in ensuring that the alcohol that 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 Illinois's choice to prohibit shipments of alcohol to its citizens from retailers who are not present in the State.

The "predominant effect" of Illinois'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 p. 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 p. 540. These laws fall within the heartland of state alcohol regulations the Twenty-first Amendment renders constitutional.

CONCLUSION

This Court should affirm the District Court's judgment.

Respectfully submitted,

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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, the relevant parts of this brief contain 6,199 words.

This brief complies with the applicable type-style requirements limitation under the Seventh Circuit Rules. I prepared this brief in a proportionally spaced Palatino Linotype font sized 13 point for text, a larger point size for headings, and sized 11 point for footnotes.

s/ John C. Neiman, Jr.

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