No. 25-2937

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

TIMOTHY FREEHAN, *et al.*,	)	Appeal from the United States
	)	District Court for the Northern
Plaintiffs-Appellants,	)	District of Illinois, Eastern Division
	)	
v.	)	
	)	
CYNTHIA BERG, *et al.*,	)	
	)	
Defendants-Appellees,	)	No. 1:22-cv-04956
	)	
and	)	
	)	
WINE & SPIRITS DISTRIBUTORS	)	
OF ILLINOIS,	)	The Honorable
	)	JEREMY C. DANIEL,
Intervenor-Appellee.	)	Judge Presiding.

BRIEF OF APPELLEES

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

MICHAEL T. LAYDEN
CROKE FAIRCHILD
DUARTE & BERES
191 N. Wacker Dr., 31st Floor
Chicago, Illinois 60606
(312) 641-0881
mlayden@crokefairchild.com

Attorney for Intervenor-Appellee

R. SAM HORAN
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 793-0797 (office)
(312) 405-5354 (cell)
Richard.Horan@ilag.gov

Attorneys for Defendants-Appellees

(*full caption on following page*)

TIMOTHY FREEHAN; JOSEPH GRODY; and FULL PULL WINES, LLC, Plaintiffs-Appellants, v. CYNTHIA BERG, Commissioner and Chairman of the Illinois Liquor Control Commission; THOMAS GIBBONS, Commissioner of the Illinois Liquor Control Commission; PATRICIA PULIDO SANCHEZ, Commissioner of the Illinois Liquor Control Commission; MELODY SPANN COOPER, Commissioner of the Illinois Liquor Control Commission; JULIETA LaMALFA, Commissioner of the Illinois Liquor Control Commission; DONALD G. O'CONNELL, Commissioner of the Illinois Liquor Control Commission; and STEVEN POWELL, Commissioner of the Illinois Liquor Control Commission, Defendants-Appellees, and WINE & SPIRITS DISTRIBUTORS OF ILLINOIS, Intervenor-Appellee.	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No. 1:22-cv-04956 The Honorable JEREMY C. DANIEL, Judge Presiding.

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Address: 191 N. Wacker Dr., 31st Floor

Chicago, IL 60606

Phone Number: 312-614-8881 Fax Number: 312-465-4801

E-Mail Address: mlayden@crokefairchild.com

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other authorities

JURISDICTIONAL STATEMENT

The jurisdictional statement of Plaintiffs-Appellants Timothy Freehan; Joseph Grody; and Full Pull Wines, LLC ("Full Pull"; collectively, "plaintiffs") is not complete and correct. As required by 7th Cir. R. 28(b), Defendants-Appellees Cynthia Berg, Thomas Gibbons, Patricia Pulido Sanchez, Melody Spann Cooper, Julieta LaMalfa, Donald G. O'Connell, and Steven Powell and Intervenor-Appellee Wine & Spirits Distributors of Illinois (collectively, "defendants") provide this statement.

Plaintiffs, together with additional plaintiff Austin Marcum, filed an amended complaint, the operative one in this case, against defendants-appellees under 42 U.S.C. § 1983, alleging violations of the Commerce Clause of the United States Constitution. Doc. 12.[1] The district court allowed Intervenor-Appellee Wine & Spirits Distributors of Illinois to intervene as a defendant. July 5, 2022 Text Order. As discussed below, *infra* pp. 13-23, the district court lacked jurisdiction over plaintiffs' action because plaintiffs did not have Article III standing. *See Satanic Temple, Inc. v. Rokita*, 163 F.4th 1061, 1066-67 (7th Cir. 2026) (standing is jurisdictional). The district court otherwise would have had subject matter jurisdiction over plaintiffs' action under 28 U.S.C. § 1331 because it raised a federal question.

On May 1, 2023, the district court granted plaintiffs and Marcum's motion to dismiss Marcum's claims with prejudice under Fed. R. Civ. P. 41(a)(2). Doc. 53. On

[1] This brief cites entries on the district court's docket as "Doc. __," plaintiffs' opening brief as "AT Br. __," and the short appendix as "SA__."

September 25, 2025, the district court granted summary judgment under Fed. R. Civ. P. 56 to defendants on plaintiffs' claims, SA18, thereby disposing of all claims against all parties. A separate judgment was entered on the district court docket pursuant to Fed. R. Civ. P. 58 that same day. Doc. 151. No motion to alter or amend the judgment was filed.

Plaintiffs filed a notice of appeal on October 20, 2025. Doc. 152. The notice of appeal was timely under 28 U.S.C. § 2107(a) and Fed. R. App. P. 4(a)(1)(A) because it was filed within 30 days of the judgment's entry. This court has jurisdiction over plaintiffs' appeal from a final judgment under 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

1. Whether plaintiffs lack standing to challenge Illinois's prohibition on retailers' shipping wine directly to consumers from outside the State because unchallenged statutes independently bar their proposed conduct.

2. Whether, under the dormant Commerce Clause and the Twenty-first Amendment, Illinois may allow only retailers with a physical presence in the State to ship wine directly to consumers.

STATEMENT OF THE CASE

The Illinois Liquor Control Act

"Like most states," Illinois regulates the manufacture, distribution, and sale of alcohol through a three-tier system, codified in the Illinois Liquor Control Act of 1934 ("Act"), 235 ILCS 5/1-1 *et seq*., and administered by the Illinois Liquor Control Commission ("Commission"). *Lebamoff Enters., Inc. v. Rauner* ("*Lebamoff Ill.*"), 909 F.3d 847, 850 (7th Cir. 2018). "Licensed producers (tier 1) sell to licensed distributors (tier 2), who then sell to licensed retailers (tier 3), who in turn sell to consumers." *Id.*; *see* 235 ILCS 5/5-1.

Pursuant to this system, retailers must obtain their inventory, including wine, from licensed Illinois distributors (the "Illinois-distributor requirement"). The Act codifies this requirement in multiple overlapping ways. It explicitly provides that "[n]o retail licensee may purchase wine or spirits from, or possess wine or spirits purchased from, any person other than a distributor." 235 ILCS 5/6-17.5(a); *see also id.* § 10-1(b)(1) (retailer may not import alcohol into State except via distributor). It separately cuts retailers off from non-distributor sources of wine: in-state wine producers must generally sell to other producers or to distributors, *see id.* § 5-1(a), and imported alcohol "must be off-loaded . . . [and] stored at the licensed premises of the importing distributor before sale and delivery to [other] licensees," *id.* § 6-8; *accord id.* § 5-1(k), (m) (authorizing importers to sell to other importers and distributors and "no one else in [the] State"). And the Act specifies that its provisions must be construed "in a manner that conforms to [the] State['s] policy" of maintaining "a 3-tier regulatory system." *Id.* § 6-1.5.

The Act delineates a few narrow exceptions to this system. First, certain wineries may apply for licenses or exemptions allowing them to ship limited quantities of wine directly to retailers or consumers. *See id.* §§ 3-12(a)(17)(A), 5-1(r), 6-29(b). Second, the Commission may grant single-use "auction liquor license[s]" that permit recipients to sell wine and spirits at auction. *Id.* § 5-1(p).

A licensed retailer must maintain physical premises in the State, *id.* § 5-1(d), but — except for an individual operating a sole proprietorship — the licensee need not be an Illinois resident, *id.* § 6-2(a); *see infra* p. 30 & n.5. A retailer whose license permits sales for off-premise consumption may ship alcohol, including wine, directly to Illinois consumers, 235 ILCS 5/5-1(d), but no retailer may ship alcohol to consumers from any "point outside [the] State" (the "direct-shipping restriction"), *id.* § 6-29.1(b); *see also* 11 Ill. Admin. Code § 100.480 (consumers may not receive prohibited shipments). As plaintiffs acknowledge, the vast majority of States have matching prohibitions on interstate wine shipping. *E.g.*, AT Br. 11-12 (asserting that 14 States allow interstate shipping by retailers).

The Act enumerates a nonexhaustive list of policy reasons behind the direct-shipping restriction. *See, e.g.*, 235 ILCS 5/6-29.1; *see also, e.g.*, *id.* § 1-2 (Act intended to protect public "health, safety, and welfare" and promote temperance). For example, the General Assembly found that restricting direct wine shipments "best preserves the temperance" and "orderly distribution values of th[e] Act," *id.* § 6-29.1(a)(1), and limits various "social problems" associated with alcohol consumption, *id.* § 6-29.1(a)(2). Consistent with these findings, the Act broadly grants the

Commission the power to inspect retailers' premises, *id.* § 3-12(a)(5), to "ensure the health, safety, and welfare of the People of the State of Illinois," *id.* § 3-4.

The District Court Proceedings

Plaintiffs — two Illinois residents and a Washington wine retailer — filed this action in October 2021. Doc. 1. The operative amended complaint named the Commission's members as defendants and alleged that 235 ILCS 5/6-29.1(b) and 11 Ill. Admin. Code § 100.480, which codify the direct-shipping restriction, "discriminate[d] against interstate commerce in violation of the [dormant] Commerce Clause." Doc. 12 at 1-2.[2] The pleading did not reference the Illinois-distributor requirement or any of the provisions that codify it. *See id.* at 1-8. It requested that the court "declar[e] [235 ILCS 5/6-29.1(b) and 11 Ill. Admin. Code § 100.480] unconstitutional to the extent that they prohibit out-of-state wine retailers from selling, shipping and delivering wine directly to Illinois consumers," and enter "[a]n injunction prohibiting [the Commission's members] from enforcing this statute and regulation [and] requiring them to allow out-of-state wine retailers to sell, ship, and deliver directly to consumers in Illinois." Doc. 12 at 8.

Wine & Spirits Distributors of Illinois, a trade association of Illinois-licensed distributors, moved to intervene as a defendant. Doc. 17. The district court granted the motion. July 5, 2022 Text Order.

[2] An additional individual plaintiff, Austin Marcum, joined plaintiffs' amended complaint, Doc. 12, but later voluntarily dismissed his claims with prejudice, Docs. 52, 53.

After discovery, each side moved under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), to exclude some or all of the other's expert evidence. Docs. 65, 69, 75, 77. The district court denied plaintiffs' motion to exclude the evidence of defendants' expert, economist and alcohol researcher Dr. William Kerr. Doc. 105 at 2-3. It granted in whole or in part defendants' motions to exclude portions of plaintiffs' experts' reports, concluding that the purported experts either were not qualified to offer the relevant opinions, did not rely on sufficient facts or data, or impermissibly stated legal conclusions. *Id.* at 3-9; *see also id.* at 5 (denying separate motion to strike some expert testimony as improper rebuttal).

The parties cross-moved for summary judgment. Docs. 108, 112. Defendants argued both that plaintiffs lacked standing and that their claims failed on the merits. Doc. 113 at 12-30. With respect to standing, defendants reasoned that plaintiffs could not establish redressability, including because the Illinois-distributor requirement would prevent retailers without a physical presence in Illinois, like Full Pull, from shipping wine to Illinois consumers — and Illinois consumers from obtaining wines from such shipments — even if plaintiffs succeeded on the merits. *See id.* at 28-30.

On the merits, defendants asserted that the direct-shipping restriction was constitutional under the two-step framework set out in *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 539 (2019), for evaluating dormant Commerce Clause challenges to state alcohol regulations, which asks (1) whether the challenged law discriminates against interstate commerce; and (2) if so, whether the law "can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground." *See* Doc. 113 at 12-26. At the first step, defendants argued that the direct-shipping restriction evenhandedly regulated all retailers, and thus was nondiscriminatory. *Id.* at 18-19. At the second step, defendants explained that the restriction was justified by Illinois's legitimate interests in furthering public health and safety by monitoring product integrity and promoting orderly markets, temperance, and effective enforcement of the Act. *Id.* at 19-28. Defendants supported their motion with, among other materials, Dr. Kerr's expert report and declarations from the Commission's Licensing Administrator and a liquor control supervisor. Doc. 115-1 at 139-223; *see also* Doc. 122 at 4-6 (supplemental declaration from liquor control supervisor). Plaintiffs, in their motion, argued that the direct-shipping restriction was discriminatory and not adequately justified by any permissible state interests. Doc. 109 at 5-15; *see also id.* at 5-6 (identifying "laws being challenged" as those codifying direct-shipping restriction and "*not*" three-tier system (emphasis in original)). Each side opposed the other's motion. Docs. 120, 124.

While the motions were pending, this court decided *Chi. Wine Co. v. Braun*, 148 F.4th 530, 531 (7th Cir. 2025) (*per curiam*), *cert. denied*, No. 25-844, 2026 WL 1377162 (U.S. May 18, 2026), which upheld an Indiana law restricting wine-delivery privileges to retailers with a physical presence in the State. In supplemental briefing concerning that decision, defendants contended that it supported their arguments at both steps of the *Tenn. Wine* inquiry, Doc. 149 at 2-10, while plaintiffs asserted that it had "no impact," Doc. 148 at 1.

The district court granted defendants' motion for summary judgment and denied plaintiffs' motion. SA18. It concluded that plaintiffs' injuries were redressable because it could theoretically enjoin the Commission's members from enforcing the Illinois-distributor requirement as well as the direct-shipping restriction, *id.* at 10-11, though it noted that doing so would "damage" Illinois's three-tier system, *id.* at 18. On the merits, the district court held that the restriction was discriminatory, but that "defendants ha[d] put forth sufficient concrete evidence to support [the restriction] on [three] legitimate, non-protectionist ground[s]": "1) the central control provided by the three-tier[ ] system over alcohol pricing and sales"; "2) enabling that control by permitting efficient oversight of licensed alcohol sellers"; and "3) the public health and safety benefits obtained through Illinois'[s] ability to control the price of, and therefore the demand for, alcohol." *Id.* at 12, 16.

In reaching its conclusion, the district court relied on defendants' evidence showing that the direct-shipping restriction is essential to promoting public health and safety. *Id.* at 14-18. The court noted that the Commission completes nearly 12,000 inspections of retailers' premises per year, with roughly 1 in 20 finding violations of Illinois's alcohol-sourcing laws. *Id.* at 15. The Commission could not perform these inspections, or other investigative efforts, without retailers' having a presence in Illinois. *Id.*

The district court also relied on the opinions of defendants' expert, Dr. Kerr, who opined that Illinois imposes substantially higher excise taxes on alcohol than neighboring states and that economic research consistently finds that higher taxes reduce social ills like drunk driving, domestic violence, and alcohol-related mortality. *Id*. at 15-16. The court stated that plaintiffs' rebuttal to Dr. Kerr's opinions was based not on evidence but on "little more than attorney arguments rooted in in-brief calculations." *Id*. at 16. Given the imbalance of concrete evidence, the district court concluded that "the [S]tate compellingly argue[d] that a Court-imposed restructuring, as . . . plaintiffs request[ed], would seriously undermine the ability of state regulators to maintain this system." *Id*. at 17.

Plaintiffs appealed. Doc. 152.

SUMMARY OF ARGUMENT

This court should affirm the district court's judgment because plaintiffs lack standing and their claims fail at each step of the two-part *Tenn. Wine* inquiry.

As a threshold matter, plaintiffs lack standing to bring this action because their injuries are not redressable. Illinois's separate, unchallenged requirement that wine retailers obtain their inventory from licensed Illinois distributors would prevent Full Pull from doing business in Illinois, and Freehan and Grody from obtaining currently unavailable wines, even if they prevailed on the merits. Plaintiffs' responses — including their argument, adopted by the district court, that that court could enjoin this separate requirement without evaluating its constitutionality — misunderstand both the Act's requirements and redressability doctrine.

Plaintiffs' claims also fail on the merits, consistent with decisions from several circuits — including this one, in *Chi. Wine* — rejecting challenges to similar laws. *Tenn. Wine* requires a "different inquiry" from the normal dormant Commerce Clause analysis in challenges to state alcohol regulations, which implicate States' unique authority under the Twenty-first Amendment. 588 U.S. at 539. The direct-shipping restriction does not discriminate against interstate commerce at that inquiry's first step, both because it regulates all retailers evenhandedly and because, to the extent plaintiffs seek to exempt retailers outside Illinois from the Illinois-distributor requirement, those retailers are not similarly situated to their in-state counterparts. And it independently passes muster at *Tenn. Wine*'s second step because it serves at least three legitimate nonprotectionist state interests:

(1) ensuring compliance with Illinois's alcohol regulations; (2) protecting public health by maintaining product integrity; and (3) promoting temperance and thereby mitigating the social harms caused by alcohol.

ARGUMENT

I. This court reviews the grant of summary judgment *de novo*.

"This [c]ourt reviews the district court's grant of summary judgment *de novo*, viewing the facts in the light most favorable to . . . the non-moving party." *FKFJ, Inc. v. Village of Worth*, 11 F.4th 574, 584 (7th Cir. 2021). It may affirm "on any basis [it] find[s] in the record." *Moore v. W. Ill. Corr. Ctr.*, 89 F.4th 582, 595 (7th Cir. 2023). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

II. Plaintiffs lack standing because their injuries are not redressable by the requested relief.

"A plaintiff's standing to sue is one essential piece of a federal court's subject matter jurisdiction." *Satanic Temple*, 163 F.4th at 1066-67 (cleaned up). To establish standing, "a plaintiff [must] show that she has suffered an injury in fact that is fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Haaland v. Brackeen*, 599 U.S. 255, 291-92 (2023) (cleaned up); *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 430-31 (2021) (plaintiffs bear burden of proving standing). And at summary judgment, a plaintiff cannot rest on the allegations in its pleadings, but rather must "supply evidence of specific facts that, taken as true, show each element of standing." *Wadsworth v. Kross, Lieberman & Stone, Inc.*, 12 F.4th 665, 667 (7th Cir. 2021) (cleaned up).

Plaintiffs here assert two injuries purportedly traceable to the direct-shipping restriction: Full Pull "loses sales and the opportunity to compete for business in

Illinois," AT Br. 20, because it cannot "ship[ ] wine from its premises in Washington directly to consumers in Illinois," *id.* at 9, and Freehan and Grody are "prevented from obtaining the wine they want," which is not currently available in Illinois, *id.* at 20; *see id.* at 6-7. Those injuries do not give plaintiffs standing because their requested relief — a declaration that the direct-shipping restriction is unconstitutional and an injunction against its enforcement, Doc. 12 at 8 — would not redress either one. The Act's unchallenged Illinois-distributor requirement would still prevent Full Pull from shipping wine to Illinois consumers and Freehan and Grody from obtaining any new products. This court should therefore affirm the judgment on the alternative ground that plaintiffs lack standing.[3]

A. Plaintiffs' injuries are not redressable.

A plaintiff challenging a statutory or regulatory provision cannot establish redressability where a separate, unchallenged provision would continue to inflict the same injury. *See Harp Advert. Ill., Inc. v. Village of Chicago Ridge*, 9 F.3d 1290, 1291-92 (7th Cir. 1993); *see also McConnell v. FEC*, 540 U.S. 93, 229 (2003) (opinion of Rehnquist, C.J.) (no redressability in challenge to one statutory provision where another provision causing same injury "would remain unchanged"), *overruled in other part by Citizens United v. FEC*, 558 U.S. 310 (2010); *Orion Wine Imports, LLC v. Appelsmith*, 837 F. App'x 585, 586 (9th Cir. 2021) (no redressability in challenge to

[3] If the court affirms on this basis, it should modify the judgment to operate without prejudice as to plaintiffs. *See McHugh v. Ill. Dep't of Transp.*, 55 F.4th 529, 534 (7th Cir. 2022) (modifying judgment to operate without prejudice because district court lacked jurisdiction).

interstate wine-shipping restriction where separate, unchallenged statutes "would still prohibit [p]laintiffs' proposed transaction"). In *Harp*, for example, the plaintiff brought a First Amendment challenge to a collection of local ordinances that prohibited it from erecting a billboard. *See* 9 F.3d at 1291. But the proposed billboard also violated a separate, unchallenged ordinance limiting signs' sizes, and the plaintiff did not represent, either in the district court or on appeal, that it would "post a smaller sign in the event it could clear away the [challenged] regulatory obstacles." *Id.*; *accord id.* at 1292-93. Because the plaintiff "could not put up its sign even if it achieved total victory" in its lawsuit, "[i]t lack[ed] standing." *Id.* at 1291.

The same principle applies here. As discussed, *supra* p. 4, the Act contains multiple provisions requiring that licensed retailers obtain wine only from licensed Illinois distributors. *See* 235 ILCS 5/6-17.5(a) (retailers must purchase wine from distributors); *see also id.* § 10-1(b)(1) (retailer may not import alcohol into State except via distributor); *id.* § 5-1(a), (k), (m) (generally prohibiting sales from producers or importers to retailers); *id.* § 6-8 (wine imported into Illinois "must be off-loaded . . . [and] stored at the licensed premises of the importing distributor before sale and delivery to [other] licensees"); *id.* § 6-1.5 (Act to be construed consistent with "3-tier regulatory system"); *see also infra* pp. 18-19 (discussing exceptions). And there is no credible argument that Full Pull (or any other retailer from which Freehan and Grody might seek to purchase wine) is exempt from this requirement. As plaintiffs acknowledge, *see* AT Br. 39, Full Pull would need a license to sell alcohol in Illinois, *see* 235 ILCS 5/2-1 (prohibiting unlicensed sales), and it would be a retailer, *id.* § 1-3.17 (defining "[r]etailer" as "person who sells, or offers for sale, alcoholic liquor for use or consumption and not for resale").

Yet plaintiffs did not challenge the Illinois-distributor requirement: their complaint referenced neither the requirement nor any of the statutes codifying it. *See California v. Texas*, 593 U.S. 659, 671 (2021) (assessing redressability based on "judicial relief requested" in complaint (cleaned up)). It requested only a declaration that 235 ILCS 5/6-29.1(b) and 11 Admin. Code § 100.480, which do not impose the Illinois-distributor requirement, are unconstitutional and an injunction against their enforcement. Doc. 12 at 8. And plaintiffs have never developed any argument that the separate Illinois-distributor requirement is unconstitutional. *See, e.g.*, Doc. 124 at 1 (responding to standing argument by denying requirement's existence); Doc. 109 at 5-6 (plaintiffs challenge direct-shipping restriction and "*not*" three-tier system (emphasis in original)); AT Br. 4-5 (same).

This unchallenged requirement renders plaintiffs' alleged injuries nonredressable. Start with Full Pull, which would remain unable "to compete for business in Illinois," AT Br. 20, even without the direct-shipping restriction. Not only does Full Pull not claim that it would comply with the Illinois-distributor requirement, *see, e.g.*, Doc. 124 at 1 (asserting that the requirement "amount[s] to a *de facto* ban [on Full Pull's doing business in Illinois] because out-of-state retailers get their wine from [non-Illinois] wholesalers"), but it *cannot* do so as a matter of Washington law, which requires Full Pull to acquire its wine from a Washington-licensed distributor or producer, *see* Wash. Rev. Code § 66.28.070; *see also id.*

§ 66.44.160 (prohibiting "keep[ing] or transport[ing]" wine purchased from unauthorized source). Its owner acknowledged as much, testifying at his deposition that it "would be violating Washington law[ ]" to "purchase . . . wine from an Illinois wholesaler" and that he would be unwilling to do so. Doc. 115-1 at 130; *see also* Doc. 126 at 2 (admitting that Full Pull "is unwilling to purchase its wine products from a licensed Illinois wholesaler"). Because Full Pull could not lawfully sell wine in Illinois "even if it achieved total victory" in this case, its injury is not redressable. *Harp*, 9 F.3d at 1291.

Relief from the direct-shipping restriction similarly would not redress Freehan and Grody's alleged injury, the inability to "obtain[ ] the wine they want" because it is not available in Illinois. AT Br. 20; *see id.* at 6-7. As plaintiffs' own experts explained, limits on what wines retailers sell in Illinois stem from the fact that those retailers "must obtain their wines from the same approved wholesalers and can sell only what those wholesalers carry." Doc. 110-31 at 5; *accord id.* at 4; Doc. 110-32 at 3. As long as the Illinois-distributor requirement remains in place, plaintiffs cannot show that it is "likely" that allowing retailers to ship to Illinois consumers from out of state would expand the menu of available wines. *Brackeen*, 599 U.S. at 292 (cleaned up). Thus, Freehan and Grody's injury, too, is nonredressable, and plaintiffs lack standing.

B. Plaintiffs' and the district court's contrary reasoning is unpersuasive.

Plaintiffs propose various solutions to their redressability problem, one of which the district court adopted. But none withstands scrutiny.

To begin, plaintiffs deny that Illinois generally requires wine to pass through a distributor. AT Br. 37 & n.15. As discussed, *supra* p. 4, however, the Act imposes exactly that requirement in multiple independent ways. And although it also carves out a few narrow exceptions, they do not help plaintiffs' cause.

First, the Act authorizes single-use "auction liquor license[s]" that allow licensees to sell wine at auction, either for consumption or resale, "anywhere in the State." 235 ILCS 5/5-1(p). Full Pull, however, did not assert that it plans to participate in these auctions or that it could do so consistent with Washington law. *See* Doc. 115-1 at 134 (Full Pull does not participate in auctions); Wash. Rev. Code § 66.28.070 (requiring Full Pull to acquire wine from Washington-licensed source); *Harp*, 9 F.3d at 1291-92 (no redressability where plaintiff did not argue that it would comply with unchallenged ordinance); *see also Hummel v. St. Joseph Cnty. Bd. of Comm'rs*, 817 F.3d 1010, 1021 (7th Cir. 2016) (unpreserved standing theory forfeited). And Illinois auctions would not enable retailers to ship Freehan and Grody wines currently unavailable in the State: plaintiffs offered no evidence that any retailers without a presence in Illinois would "likely" participate in auctions, *Brackeen*, 599 U.S. at 292 (cleaned up), and, regardless, the wines involved must already be "in the State" and are available to Freehan and Grody at the auctions themselves, 235 ILCS 5/5-1(p) (authorizing auction sales directly to consumers).

Second, certain licensed wineries that "annually produce[ ] less than 25,000 gallons of wine" may obtain "a self-distribution exemption" allowing them to sell a limited quantity of wine directly to retailers. 235 ILCS 5/3-12(a)(17)(A); *accord* 11 Ill.

Admin. Code § 100.420. Again, Full Pull has never claimed that it could acquire wine via this exception under Washington law. *See Harp*, 9 F.3d at 1291-92; *Hummel*, 817 F.3d at 1021. And even setting that obstacle aside, Full Pull has not suggested that it would use this exception to acquire wine if it could. On the contrary, Full Pull "specialize[s] in wines from Washington and the Pacific Northwest, many of which . . . are not generally available outside Washington." Doc. 110-4 at 2; *accord* Doc. 115-1 at 124. There is thus no reason to believe that Full Pull could or would rely on the exception to expand its inventory or sales. Nor does this exception offer Freehan and Grody a path to any novel vintages — any covered wineries can already sell their products in Illinois either through distributors (for in-state wineries) or directly to consumers (for out-of-state wineries). *See* 235 ILCS 5/3-12(a)(17)(A) (in-state winery must have producer license that authorizes sales to distributors, *see* 235 ILCS 5/5-1(a), and out-of-state winery must have winery shipper's license, which allows sales directly to Illinois consumers, *see id.* § 5-1(r)). And, in any event, plaintiffs identified no evidence showing that retailers without Illinois locations would "likely" enter the market to offer these wineries' products. *Brackeen*, 599 U.S. at 292 (cleaned up). Even with the exceptions plaintiffs identify, the Illinois-distributor requirement still defeats redressability.

Next, plaintiffs asserted below — and the district court agreed, SA11 — that, if the Illinois-distributor requirement posed an obstacle to redressability, the district court could "simply enjoin its application." Doc. 124 at 2. That approach flies in the face of the Supreme Court's instruction that, "[t]o determine whether an injury is redressable, a court [must] consider the relationship between the judicial relief *requested* and the injury suffered." *California*, 593 U.S. at 671 (cleaned up) (emphasis added); *accord Brackeen*, 599 U.S. at 292 (looking to "requested relief" (cleaned up)). And it would swallow *Harp* whole, since, by plaintiffs' logic, the district court in that case could have enjoined the unchallenged sign-size restriction, which was enforced by the same defendant as the challenged ordinances. *See* 9 F.3d at 1292 ("[T]he [defendant] village could block the sign simply by enforcing another, valid, ordinance already on the books."). That is not the law.

Plaintiffs and the district court's contrary reasoning rests on an overreading of Fed. R. Civ. P. 54(c). *See* SA11; Doc. 124 at 2; *see also* Fed. R. Civ. P. 54(c) ("Every [non-default] judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings."). That provision authorizes a district court to grant "the relief *proper to* [*a plaintiff's*] *claim*" — for example, damages based on an unlawful action that the plaintiff originally sought only to enjoin. *Chi. United Indus., Ltd. v. City of Chicago*, 445 F.3d 940, 948 (7th Cir. 2006) (emphasis added) (applying rule this way). It does not "entitle[ ]" plaintiffs to relief, Fed. R. Civ. P. 54(c), on a claim they did not bring against multiple statutory provisions with respect to which they have never developed any arguments.

Indeed, several features of the Illinois-distributor requirement render plaintiffs' argument that the district court could hold it unconstitutional without a separate challenge particularly striking. The Supreme Court has explicitly stated that a State may "'require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler.'" *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quoting *North Dakota v. United States*, 495 U.S. 423, 447 (1990) (Scalia, J., concurring in the judgment)). Other circuits have similarly recognized that in-state distributor requirements are "unquestionably legitimate and constitutional" as a "fundamental" part of a three-tier regulatory system. *E.g.*, *Jean-Paul Weg LLC v. Dir. of the N.J. Div. of Alcoholic Beverage Control*, 133 F.4th 227, 239 (3d Cir. 2025); *see also infra* pp. 23-24.

Further, this court and others have observed that in-state distributor requirements are distinct from restrictions on alcohol delivery or shipping. In a prior challenge to the direct-shipping restriction, this court noted that the Illinois-distributor requirement might prevent retailers from shipping wine to Illinois consumers from out of state even in the absence of the challenged law — though, on an undeveloped motion-to-dismiss record, "[i]t [was] too early . . . to say definitively that there [was] no possibility of effective relief." *Lebamoff Ill.*, 909 F.3d at 856. The First Circuit affirmed a district court's judgment upholding Rhode Island's in-state wholesaler requirement even while remanding for further analysis of a challenge to a statute restricting interstate shipping. *See Anvar v. Dwyer*, 82 F.4th 1, 9, 12 (1st Cir. 2023). And the Second Circuit noted, in upholding a collection of New York statutes "prohibit[ing] out-of-state wine retailers from selling and delivering wine directly" to consumers that even if the plaintiffs had prevailed, they would have had to take "absurd operational" measures to comply with New York's in-state distributor requirement. *Arnold's Wines, Inc. v. Boyle*, 571 F.3d 185, 187, 192 n.3 (2d Cir. 2009).

The court thus should reject plaintiffs' argument that a court could hold a commonplace, independent, unchallenged state law unconstitutional without argument or analysis.

Bridenbaugh v. Freeman-Wilson, 227 F.3d 848 (7th Cir. 2000), only underscores plaintiffs' redressability problem. *Contra* AT Br. 20. The plaintiffs there were "oenophiles" who challenged an Indiana statute that, like the direct-shipping restriction, prohibited retailers from shipping alcohol from outside the State to consumers, but did not challenge other statutes that prohibited consumers from receiving such shipments. *See* 227 F.3d at 849. This court explained that those separate statutes ordinarily would render the plaintiffs' injury — the inability to acquire wines "not carried by Indiana resellers" — nonredressable. *Id.* at 849-50. But it concluded that, in practice, "the [challenged statute] alone . . . effectively block[ed] [the plaintiffs'] purchases": the fact that the separate statutes regulated individual consumers, rather than retailers, rendered them "devilishly difficult to enforce," and "Indiana appear[ed] unwilling to enforce [them] even against consumers who proclaim[ed] and revel[ed] in their violations." *Id.* Because the separate statutes were "ineffective," the plaintiffs did not need to challenge them to have standing. *Id.* Here, in contrast, the Commission vigorously enforces the Illinois-distributor requirement. *See, e.g.*, Doc. 115-1 at 142-43 (Commission investigators conducted nearly 12,000 retailer inspections in fiscal year 2024, in part "to ensure that the alcohol [came] from a licensed Illinois wholesaler"). And the requirement applies to retailers, rather than consumers, "facilitating enforcement."

Bridenbaugh, 227 F.3d at 850. This unchallenged, "[ ]effective," *id.*, requirement renders plaintiffs' injuries nonredressable.

Finally, the Sixth Circuit found standing in a challenge to a state statute similar to the direct-shipping restriction based on the possibility that a district court could bar *all* retailers from shipping wine directly to consumers, thereby eliminating any discrimination. *See Block v. Canepa*, 175 F.4th 642, 650 (6th Cir. 2026), *petition for cert. docketed*, No. 25-1366 (U.S. June 5, 2026). Plaintiffs not only forfeited that argument by failing to raise it in the district court, *see Hummel*, 817 F.3d at 1021; Doc. 124 at 1-3 (not making argument), but also affirmatively waived it by asserting in their opening brief that such an order "would not grant [them] relief," AT Br. 39.

III. Lack of standing aside, the direct-shipping restriction is constitutional.

Plaintiffs' claims also fail at each part of the two-step inquiry set forth in *Tenn. Wine*. The direct-shipping restriction does not discriminate against interstate commerce, but instead evenhandedly imposes the same burdens on, and offers the same benefits to, all retailers. Alternatively, as the district court correctly recognized, SA14-18, it is amply "justified" on multiple "legitimate nonprotectionist ground[s]," *Tenn. Wine*, 588 U.S. at 539. Unsurprisingly, then, an array of circuits have rejected challenges to similar laws. *See Chi. Wine*, 148 F.4th at 542-43 (Scudder, J., concurring) (citing *Jean-Paul Weg*, 133 F.4th at 236-37; *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214, 216-17 (4th Cir. 2022); *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171, 1182-84 (8th Cir. 2021); *Lebamoff Enters. Inc. v. Whitmer* ("*Lebamoff Mich.*"), 956 F.3d 863, 876 (6th Cir. 2020); *Arnold's Wines*, 571 F.3d at

190-91); *Day v. Henry*, 152 F.4th 961, 965-66 (9th Cir. 2025), *cert. denied*, No. 25-788, 2026 WL 1377175 (U.S. May 18, 2026).

Indeed, this court's recent decision in *Chi. Wine* upheld a similar Indiana requirement that retailers have a physical presence in the State to deliver wine to consumers. *See* 148 F.4th at 531-32; *see id.* at 533 (Easterbrook, J., concurring) (describing requirement). Plaintiffs dismiss *Chi. Wine* as "non-precedential" and "not helpful," AT Br. 22, because the two judges who participated in the decision followed "two different lines of reasoning," *Chi. Wine*, 148 F.4th at 532. Plaintiffs cite no authority for ignoring a published decision of this court, AT Br. 22, and defendants are aware of none, *see* 7th Cir. R. 32.1 ("Opinions, which may be signed or per curiam, . . . constitute the law of the circuit."). And under both Judge Easterbrook's and Judge Scudder's approaches, as well as under *Tenn. Wine* itself, the direct-shipping restriction is constitutional.

A. *Tenn. Wine* requires a "different inquiry" in dormant Commerce Clause challenges to state alcohol regulations.

"This case turns on the accordion-like interplay" of the Twenty-first Amendment and the dormant Commerce Clause. *Chi. Wine*, 148 F.4th at 535 (Scudder, J., concurring) (cleaned up). The former "grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." *Granholm*, 544 U.S. at 488 (cleaned up); *see* U.S. Const. amend. XXI, § 2 ("The transportation or importation into any State . . . for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."). The latter "prohibits state laws that unduly restrict interstate commerce." *Tenn. Wine*, 588 U.S. at 514. Two recent Supreme Court decisions, *Granholm* and *Tenn. Wine*, analyzed the relationship between the doctrines.

First, in *Granholm*, the Court considered dormant Commerce Clause challenges to Michigan and New York laws that "allow[ed] in-state wineries to sell wine directly to consumers in [those] State[s] but [either] prohibit[ed] out-of-state wineries from doing so" or allowed them to do so only on less favorable terms. 544 U.S. at 466. The Court began by assessing whether the laws discriminated against interstate commerce and held that they did, as they either gave out-of-state wineries no opportunity to ship to consumers or allowed them to do so only on lesser terms after going through "additional steps" not applicable to in-state businesses. *Id.* at 473-76; *see infra* p. 32 (contrasting laws with direct-shipping restriction). It then assessed whether the "statutes [were] saved by § 2 of the Twenty-first Amendment." 544 U.S. at 476. After examining the Amendment's history and relevant precedent, the Court concluded that, although "the three-tier system itself is unquestionably legitimate" and States may, for example, "require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler," Michigan's and New York's discriminatory exceptions to their three-tier systems were "not saved by the Twenty-first Amendment." *Id.* at 489 (cleaned up); *see id.* at 476-89. Finally, because the States had "provide[d] little concrete evidence" to justify the laws under the dormant Commerce Clause, the Court held the measures unconstitutional. *Id.* at 492-93.

The Court returned to this area in *Tenn. Wine*, which evaluated a "demanding durational-residency requirement[ ]" imposed by Tennessee on "applicants for an initial license" to operate a liquor store. 588 U.S. at 509-10. The trade association that had intervened to defend the law did not dispute that the requirement was discriminatory for purposes of the dormant Commerce Clause, but instead argued that it was permissible under the Twenty-first Amendment. *See id.* at 518. The Court held that, "because of [the Twenty-first Amendment]," challenges to state alcohol regulations require "a different inquiry" from ordinary dormant Commerce Clause cases. *Id.* at 539. The Court therefore "ask[ed] whether the challenged requirement [could] be justified as a public health or safety measure or on some other legitimate nonprotectionist ground." *Id.* Answering this question in the negative, the Court held Tennessee's residency requirement unconstitutional. *See id.* at 540-43. The State and the trade association had offered no "concrete evidence showing that the . . . requirement actually promote[d] public health or safety," and the association's argument that it did so was "implausible on its face." *Id.* at 540 (cleaned up). In particular, the Court contrasted the residency requirement with a physical-presence requirement, which enabled the State to "monitor [liquor] stores' operations through on-site inspections, audits, and the like." *Id.* at 541. Because the requirement was predominantly protectionist, it violated the dormant Commerce Clause. *See id.* at 543.

In sum, the Supreme Court has adopted a "different inquiry" for dormant Commerce Clause challenges to state alcohol regulations. *Id.* at 539. The inquiry proceeds in two steps. *Chi. Wine*, 148 F.4th at 537 (Scudder, J., concurring). A court must "first ask whether the challenged regulation discriminates against interstate commerce." *Id.* (citing *Tenn. Wine*, 588 U.S. at 539). If so, "the inquiry shifts to whether 'the challenged [law] can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground.'" *Id.* (quoting *Tenn. Wine*, 588 U.S. at 539).[4] This step requires "concrete evidence," not "mere speculation or unsupported assertions." *Tenn. Wine*, 588 U.S. at 539 (cleaned up). "If the answer to this second question is also yes, the regulation survives." *Chi. Wine*, 148 F.4th at 537 (Scudder, J., concurring). "But if the 'predominant effect of the law is protectionism, not the protection of public health or safety, it is not shielded by [the Twenty-first Amendment].'" *Id.* (cleaned up) (quoting *Tenn. Wine*, 588 U.S. at 539-40).

[4] *Tenn. Wine* did not address the appropriate second step, if any, if a law does not discriminate. In dormant Commerce Clause cases not involving alcohol, this court analyzes a state law that "regulates even-handedly and only incidentally burdens interstate commerce . . . under the balancing test set forth in *Pike v. Bruce Church, Inc.*," 397 U.S. 137 (1970), which asks whether the law "is animated by a legitimate public purpose and, if so, whether the burden [it] imposes on interstate commerce is excessive in relation to that interest." *Regan v. City of Hammond*, 934 F.3d 700, 703 (7th Cir. 2019). In *Chi. Wine*, Judge Scudder assumed without deciding that *Pike* balancing remains relevant in Twenty-first Amendment cases, 148 F.4th at 546 (Scudder, J., concurring), while Judge Easterbrook reasoned that "[n]ondiscriminatory state [alcohol] laws may be enforced" without any balancing, *id.* at 532 (Easterbrook, J., concurring). The court need not resolve the point here. Plaintiffs, who would bear "the burdens of production and persuasion" under *Pike*, *Baude v. Heath*, 538 F.3d 608, 613 (7th Cir. 2008), have never developed any argument that *Pike* applies or that they could prevail under it, *see, e.g.*, AT Br. 25 (no *Pike* argument). And, regardless, the direct-shipping restriction would survive *Pike* balancing for all the same reasons it passes muster under *Tenn. Wine*'s second step. *See infra* pp. 37-54.

Plaintiffs assert that defendants must also show that "nondiscriminatory alternatives would be insufficient." *E.g.*, AT Br. 3. In *Chi. Wine*, Judge Scudder rejected this argument, as has every court of appeals to have discussed it. *See Chi. Wine*, 148 F.4th at 543-44 (Scudder, J., concurring); *Day*, 152 F.4th at 975; *Jean-Paul Weg*, 133 F.4th at 238; *Anvar*, 82 F.4th at 11; *B-21 Wines*, 36 F.4th at 224-25; *see also Chi. Wine*, 148 F.4th at 532 (Easterbrook, J., concurring) (not reaching issue after concluding law was nondiscriminatory). "To insist upon the demonstration of no nondiscriminatory alternatives risks limiting a State's authority conferred by [the Twenty-first Amendment] and, by extension, puts alcoholic beverage regulations on the same plane as ordinary dormant Commerce Clause jurisprudence," which "is precisely what the [Supreme] Court has taken . . . care to avoid by supplying a 'different inquiry' for such cases." *Chi. Wine*, 148 F.4th at 544 (Scudder, J., concurring) (quoting *Tenn. Wine*, 588 U.S. at 539); *accord, e.g.*, *Day*, 152 F.4th at 975. "To be sure, [*Tenn.*] *Wine* [did] use language considering alternatives," but it did so only "in connection with the Court's analysis of whether the State presented sufficient evidence that the challenged regulation advance[d] its interests in public health and safety." *Chi. Wine*, 148 F.4th at 544 (Scudder, J., concurring). And *Granholm* referenced alternatives "only after it had already concluded" that the laws at issue "were not saved by the Twenty-first Amendment," citing a dormant Commerce Clause decision that did not implicate that Amendment or *Tenn. Wine*'s different inquiry. *B-21 Wines*, 36 F.4th at 225; *see Granholm*, 544 U.S. at 489.

Plaintiffs also suggest that *Lebamoff Ill.* requires consideration of alternatives, *see* AT Br. 21-22, but the language they cite (1) did not discuss alternatives; (2) was *dicta*, since the court explained that it could not assess Illinois's justifications for the direct-shipping restriction at the motion-to-dismiss stage, 909 F.3d at 856; and (3) in any event, preceded the Supreme Court's description of the appropriate standard in *Tenn. Wine*. At most, the availability of alternatives is a factor the court may consider, and "'the mere existence of possible alternatives does not . . . necessarily invalidate a challenged law.'" *Chi. Wine*, 148 F.4th at 543 (Scudder, J., concurring) (quoting *Anvar*, 82 F.4th at 11).

B. The direct-shipping restriction does not discriminate against interstate commerce.

Plaintiffs' claims stumble at the threshold because the direct-shipping restriction is not discriminatory. Rather, it evenhandedly regulates all retailers from any State. Further, to the extent plaintiffs seek to exempt some retailers from the Illinois-distributor requirement, those retailers are not similarly situated to their Illinois-licensed counterparts who are subject to the requirement. Neither the district court's contrary reasoning nor plaintiffs' counterarguments have merit.

To begin, the direct-shipping restriction is not discriminatory. State laws discriminate, for purposes of the dormant Commerce Clause, "if they mandate differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Granholm*, 544 U.S. at 472 (cleaned up). The direct-shipping restriction does not "mandate" any "differential treatment." *Id.* (cleaned up). Any retailer, Illinois resident or not, may apply for an off-premise retailer license "on evenhanded terms," *id.* at 493, including the requirement of establishing a physical retail location in Illinois, *see* 235 ILCS 5/5-1(d); Doc. 115-1 at 151 ("[B]usiness entities are not required to be residents of Illinois in order to obtain a license.").[5] And any retailer with an off-premise license may ship wine to Illinois consumers from that retail location, 235 ILCS 5/5-1(d), while no retailer may ship wine directly to consumers from outside the State, *id.* § 6-29.1(b). Every firm that seeks to ship wine to Illinois consumers thus faces the same regulatory "burdens" and has access to the same "benefits," *Granholm*, 544 U.S. at 472 (cleaned up), regardless of its home State.

This arrangement mirrors the one Judge Easterbrook upheld as nondiscriminatory in *Chi. Wine*. The plaintiff in that case argued that Indiana discriminated against interstate commerce by issuing the license necessary to deliver wine to consumers only to businesses with "premises in Indiana." 148 F.4th at 533 (Easterbrook, J., concurring). Judge Easterbrook explained that this "physical-presence requirement [was] nondiscriminatory" because "[i]t applie[d] equally to a

[5] There is one exception to this principle: the Act requires that a license applicant who seeks to operate a sole proprietorship be a resident of the locality "in which the premises covered by the license are located." 235 ILCS 5/6-2(a)(1). That requirement does not apply to corporations or limited liability companies, including Full Pull. *See id.* § 6-2(a)(10); *see also id.* § 6-2(a)(9) (requirement applies to partnership only if "required by local ordinance"). Plaintiffs have not argued that this requirement renders the direct-shipping restriction discriminatory or identified any basis on which they would have standing to challenge the direct-shipping restriction as applied to non-Illinois residents who operate sole-proprietorship wine retailers. And, in any event, if the court concludes that this residency requirement is discriminatory and not justified under *Tenn. Wine*, the proper remedy would be to sever it and leave the Act's other provisions intact. *See* 235 ILCS 5/11-1 (Act is severable).

citizen of Indiana." *Id.* Although the plaintiff "d[id] not *want* to open another retail location, which it deem[ed] needlessly expensive," and would have preferred "to deliver from the stores it already operate[d] in Illinois," it was "treated just the same as . . . a citizen of Indiana living in [that State] who want[ed] to deliver wine," who "would [also] be burdened by the need to open what seems an unnecessary retail store." *Id.* Because the challenged regime "impose[d] costs equally on in-state and out-of-state citizens and their businesses," it was "nondiscriminatory for the purpose of the Dormant Commerce Clause." *Id.* Like the *Chi. Wine* plaintiff, Full Pull does "not want to open another retail location, which it deems needlessly expensive." *Id.* (cleaned up); *see* Doc. 115-1 at 133. But because "a citizen of [Illinois] . . . who wants to [ship] wine would be [equally] burdened by the need to open . . . [a] retail store," the direct-shipping restriction "does not discriminate by either the source of the beverages or the state citizenship of the proprietor" and therefore "satisfies the Constitution." *Chi. Wine*, 148 F.4th at 533-34 (Easterbrook, J., concurring); *see* 235 ILCS 5/5-1(d) (any retailer with off-premise license may ship to Illinois consumers); *id.* § 6-2(a) (nonresident businesses not barred from licensure).

Plaintiffs' attempt to distinguish *Chi. Wine* is unavailing. Relying on *Lebamoff Ill.*, they assert that local delivery — at issue in *Chi. Wine* — differs from shipping because the former "'is logically tied to an in-state presence'" while the latter "'makes an in-state presence unnecessary.'" AT Br. 24 (quoting *Lebamoff Ill.*, 909 F.3d at 857). But that observation says nothing about whether requiring an in-state presence for shipping is *discriminatory*, and here it is not: Illinois requires all retailers, including Illinois retailers, to have premises in the State, even if some potential licensees consider it "unnecessary." *Chi. Wine*, 148 F.4th at 533 (Easterbrook, J., concurring) ("[A] citizen of Indiana living in Hammond who wants to deliver wine would be burdened by the need to open what seems an unnecessary retail store."); *see also infra* pp. 37-54 (justifying physical-presence requirement). Indeed, the language plaintiffs quote comes from *Lebamoff Ill.*'s discussion of *Tenn. Wine*'s second step, not its first, with the court merely noting that local delivery and shipping might implicate different interests. *See* 909 F.3d at 857. Judge Easterbrook's analysis in *Chi. Wine* squarely covers this case.

Contrasting the direct-shipping restriction with the Michigan and New York laws at issue in *Granholm* confirms its nondiscriminatory nature. The Michigan statute "complete[ly] ban[ned] . . . direct shipment" by even licensed out-of-state wineries while allowing it for licensed in-state wineries. 544 U.S. at 473-74. Here, in contrast, all retailers can acquire a license and ship wine to consumers on equal terms. *See* 235 ILCS 5/5-1(d); *id.* § 6-2(a). The New York law, meanwhile, gave out-of-state wineries access to only a lesser license that more tightly restricted sales and shipping than the one available to in-state wineries. *See* 544 U.S. at 474-76; *see also id.* at 475-76 (describing additional privileges available to in-state wineries even without direct-shipping license). Illinois's system, on the other hand, imposes an identical physical-presence requirement on all retailers, who all have access to identical licenses carrying identical shipping privileges. That evenhanded regulation does not implicate the dormant Commerce Clause.

That conclusion is consistent with several out-of-circuit decisions upholding state alcohol regulations. The Eighth Circuit held that a Missouri statute requiring, among other things, that retailers have "physical premises" in the State to ship wine to consumers "d[id] not discriminate" against interstate commerce because it "appl[ied] evenhandedly to all who qualif[ied] for [licensure]." *Sarasota Wine Mkt.*, 987 F.3d at 1176, 1184. And the Second Circuit similarly determined that New York's physical-presence requirement for retailers "evenhandedly regulate[d] the importation and distribution of liquor within the [S]tate." *Arnold's Wines*, 571 F.3d at 192. Those precedents confirm that the direct-shipping restriction is nondiscriminatory.

To the extent plaintiffs also seek relief from the Illinois-distributor requirement, *but see supra* pp. 13-23, their discrimination argument is even weaker. "[A]ny notion of discrimination [within the meaning of the dormant Commerce Clause] assumes a comparison of substantially similar entities," and courts thus must address "a threshold question whether [the relevant entities] are . . . similarly situated." *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 298-99 (1997) (cleaned up); *see, e.g.*, *id.* at 310 (no discrimination because entities served different markets). As the Fifth Circuit has recognized, an out-of-state retailer that seeks not to compete on equal terms but instead to obtain "dramatically greater rights than" in-state retailers possess is not similarly situated to those retailers. *Wine Country Gift Baskets.com v. Steen*, 612 F.3d 809, 820 (5th Cir. 2010). The *Steen* plaintiffs sought an order "allowing [them] to ship [wine] anywhere in Texas," even though retailers in the

State could make only local deliveries. *Id.* The court reasoned that, since the plaintiffs could not and would not compete with local retailers on a level playing field by limiting themselves to local delivery, they were not similarly situated, and thus Texas "ha[d] not discriminated." *Id.*; *cf. Tracy*, 519 U.S. at 310 (no discrimination where entities would not compete absent challenged law). In the same way, plaintiffs here seek "dramatically greater rights," *Steen*, 612 F.3d at 820, for retailers outside Illinois: the ability to ship wine to consumers without complying with the Illinois-distributor requirement. Those different regulatory regimes render the two groups dissimilarly situated, precluding any "logical argument of discrimination." *Id.*

The Sixth Circuit noted precisely this defect in plaintiffs' reasoning in rejecting a challenge by an Indiana retailer to Michigan's analogue of the direct-shipping restriction. *See Lebamoff Mich.*, 956 F.3d at 870-71. The court observed that retailers in Indiana and Michigan "operate[d] in distinct regulatory environments, the most notable distinction being that Michigan-based retailers [could] purchase only from Michigan wholesalers and [had to] operate within its three-tier system." *Id.* "Anyone who wishe[d] to join them [could] get a Michigan license and face the regulations that [came] with it," but the plaintiff sought instead to "seize[ ] the sweet and . . . pass on the bitter." *Id.* at 873. Plaintiffs seek to do the same here. Although the Sixth Circuit ultimately decided the case on other grounds, *see id.* at 871, its analysis further demonstrates that Illinois's system is nondiscriminatory.

Neither the district court's decision nor plaintiffs' counterarguments undermine this conclusion.

First, the district court wrongly considered itself "bound" to hold the direct-shipping restriction discriminatory under *Lebamoff Ill.* SA12. That decision held that the plaintiffs had stated a claim that the direct-shipping restriction was discriminatory because the State purportedly did not make the licenses necessary for direct shipping available to out-of-state retailers. *See* 909 F.3d at 852-53; *Chi. Wine*, 148 F.4th at 533 (Easterbrook, J., concurring). As Judge Easterbrook explained in *Chi. Wine*, however, "nothing in *Lebamoff* [*Ill.*] prevents a state from receiving a favorable decision" if it can "show that its system [is] nondiscriminatory" in practice. 148 F.4th at 533 (Easterbrook, J., concurring). Defendants have done so. As discussed, out-of-state retailers can acquire the necessary license on equal terms with Illinois businesses. *See* 235 ILCS 5/5-1(d); Doc. 115-1 at 151; *see also id.* at 133 (Full Pull's owner unaware of any legal barrier to obtaining Illinois premises). And once obtained, that license offers the same benefits to all holders. *See* 235 ILCS 5/5-1(d), 6-29.1(b). That showing of "nondiscriminatory enforcement," *Chi. Wine*, 148 F.4th at 533 (Easterbrook, J., concurring), did not figure in *Lebamoff Ill.*'s analysis, and confirms that the Act "subject[s] [all retailers] to the same [regulatory] regime," as *Lebamoff Ill.* held a nondiscriminatory law must do, 909 F.3d at 852-53. *Lebamoff Ill.* also did not — and could not — address the fact that retailers without a physical presence in Illinois would not be similarly situated to retailers in Illinois if not subject to the Illinois-distributor requirement, since, on the undeveloped motion-to-dismiss record, it remained possible that "some out-of-state retailers could . . . find a way to comply and compete on equal terms," including by complying with the Illinois-distributor requirement. *Id.* at 856; *see id.* at 852-53 (not addressing similarly situated issue). *Lebamoff Ill.* thus does not compel the conclusion that the direct-shipping restriction is discriminatory.

The district court also endorsed Judge Scudder's view, in his *Chi. Wine* concurrence, that retailer physical-presence requirements are discriminatory. SA12. But Judge Easterbrook's analysis is more persuasive on this point. Judge Scudder relied on both *Lebamoff Ill.* and *Granholm*, *see* 148 F.4th at 538-39 (Scudder, J., concurring), but, as discussed, *supra* pp. 32, 35-36, neither supports a finding of discrimination here. He also cited the Supreme Court's admonition in *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994), that "a state law is 'no less discriminatory' because in-state businesses 'are also covered by it,'" *Chi. Wine*, 148 F.4th at 538-39 (Scudder, J., concurring) (cleaned up) (quoting *C&A Carbone*, 511 U.S. at 391), but Illinois's evenhanded requirements look nothing like the law challenged in that case, which "allow[ed] only [a single] favored operator to process waste" in a particular area, 511 U.S. at 391.

For their part, plaintiffs primarily duplicate the district court's error in relying on *Lebamoff Ill.* They also assert that a law discriminates if it denies citizens "'their right to have access to the markets of other States on equal terms.'" AT Br. 23-24 (quoting *Granholm*, 544 U.S. at 473). Setting aside that *Granholm* identified such denial as a *symptom* of a discriminatory law, not the *test* for one, the direct-shipping restriction works no such harm — retailers from any State can compete "on equal terms." *Granholm*, 544 U.S. at 473.

Last, although some recent out-of-circuit decisions have held that state statutes regulating alcohol sales and shipping were discriminatory, each is distinguishable, unpersuasive on this point, or both. In *B-21 Wines*, the statutory scheme required that retailers be "owned or managed by a North Carolina resident," and the State "concede[d] that [it] target[ed] out-of-state retailers for discriminatory treatment." 36 F.4th at 217, 223; *see also Block*, 175 F.4th at 655 (State conceded that statute discriminated). The First Circuit provided no meaningful analysis in support of its conclusion in *Anvar* that a Rhode Island statute discriminated against interstate commerce. *See* 82 F.4th at 9. And the Third Circuit held in *Jean-Paul Weg* that *Granholm* "compelled" the conclusion that a physical-presence requirement for retailers is discriminatory, 133 F.4th at 236, but that conclusion misunderstands *Granholm*, where, as discussed, *supra* pp. 25, 32, out-of-state wineries had to take "additional steps" not applicable to in-state wineries and even then could not acquire the same licenses, 544 U.S. at 473-76. The direct-shipping restriction is nondiscriminatory, and plaintiffs' claims therefore fail.

C. Defendants have justified the direct-shipping restriction on legitimate nonprotectionist grounds.

The direct-shipping restriction is also constitutional for the independent reason that, as the district court explained, SA14-18, defendants have "justified" it on "legitimate nonprotectionist ground[s]," including "public health [and] safety," *Tenn. Wine*, 588 U.S. at 539. Specifically, the restriction, together with the Illinois-distributor requirement, serves the State's interests in (1) ensuring compliance with state alcohol regulations; (2) protecting public health by maintaining product integrity; and (3) promoting temperance and thereby mitigating the social harms caused by alcohol. *See Chi. Wine*, 148 F.4th at 540-41 (Scudder, J., concurring) (statute justified by similar interests); SA14-18 (similar); *Jean-Paul Weg*, 133 F.4th at 237-38 (similar).[6] Moreover, to whatever extent the existence of reasonable nondiscriminatory alternatives remains relevant after *Tenn. Wine*, *see supra* pp. 28-29, no such alternatives exist.

1. Ensuring compliance with state alcohol regulations

To start, requiring that retailers be physically present in Illinois and acquire their products from Illinois distributors "furthers the State's [legitimate] interest in enforcing its health and safety regulations against businesses that sell alcohol to consumers." *Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring). *Tenn. Wine* recognized that a State's ability to "monitor [liquor] stores' operations through on-site inspections, audits, and the like" and to "revoke [the] license[s]" of noncompliant licensees "provides strong incentives not to sell alcohol in a way that threatens public health or safety." 588 U.S. at 541-42 (cleaned up). Judge Scudder relied on this principle to uphold the Indiana law at issue in *Chi. Wine*, reasoning that the State had shown the importance of a retailer's physical presence to both effective

[6] As explained, *supra* pp. 13-23, the direct-shipping restriction and the Illinois-distributor requirement are distinct aspects of Illinois's regulatory regime, and plaintiffs have challenged only the former. But because plaintiffs have made clear that they now seek a remedy allowing retailers to comply with neither restriction, defendants address them together here.

inspections and meaningful sanctions. *See* 148 F.4th at 541 (Scudder, J., concurring). Defendants made the same showing on a strikingly similar record here.

First, like Indiana, the Commission relies on thousands of physical inspections of retailer premises each year to deter and detect noncompliance. *See* 235 ILCS 5/3-12(a)(5) (Commission may "inspect" licensed retailer's premises); Doc. 115-1 at 142 (nearly 12,000 inspections in fiscal year 2024, with a "realistic goal" of "inspect[ing] every retailer once a year"); *Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring) (noting importance of on-site retailer inspections). A Commission liquor control supervisor explained that, during those visits, inspectors compare the retailer's physical inventory against its purchase and sale records to ensure that it has not acquired merchandise from an unlawful source. Doc. 115-1 at 142, 144-45 ("[I]f a retailer has a large volume of Jack Daniels in stock, but no recent purchases of Jack Daniels in its records, then we know it likely came from an unlicensed source."). Inspectors also check the retailer's facilities for "sanitation issues and contaminated alcohol." *Id.* at 142. And they usually do so without warning, *id.* at 143, whereas demands for records without a physical visit give "retailer[s] an opportunity to correct any illegalities" before responding, *id.* at 145. These surprise physical inspections are effective, periodically uncovering violations of Illinois law. *Id.* at 143 (estimating, for example, that 1 in 20 inspections uncovers alcohol purchased from unlawful source); *cf. Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring) (discussing violations found during inspections).

As the liquor control supervisor further explained, jurisdictional and practical problems prevent similar inspections of out-of-state retailers. Doc. 115-1 at 144; *see Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring) (crediting similar evidence); *Jean-Paul Weg*, 133 F.4th at 237-38 (same). The Act gives the Commission authority to inspect "premises in this State," 235 ILCS 5/3-12(a)(5); it thus "lack[s] the jurisdiction" to inspect premises elsewhere, Doc. 115-1 at 144. Nor would it be feasible for the agency's 16 inspectors to "drive from state-to-state to inspect retailer premises." *Id.*; *see also id.* at 145 (out-of-state inspections "impossible from a budget and manpower standpoint"). Moreover, "[t]he Commission [relies] on complaints" from the public in prioritizing inspections, but "businesses or citizens [outside the State] would not think to report [problems] to [Illinois authorities]." *Id.* at 144. Effective inspections thus require in-state presence.

Second, Illinois "lacks [effective sanctions] to use against out-of-state retailers who violate State law." *Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring). The Commission "may suspend or revoke" a retailer's license for violations of the Act. 235 ILCS 5/3-12(a)(1). Such an order prevents the retailer from selling to Illinois consumers, Doc. 115-1 at 145, 171-72; *see* 235 ILCS 5/2-1, and from acquiring new inventory from Illinois distributors, *see* Doc. 115-1 at 145-46, 171-72; 235 ILCS 5/5-1(b); *see also Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring) (Indiana relies on same tools). Those consequences would be devastating for an Illinois-based retailer — "strand[ing] [it] with [unsellable] inventory," and cutting it off from new stock. Doc. 115-1 at 145-46; *accord id.* at 171-72. But they are much less effective against out-of-state retailers, who, as defendants' expert explained, can continue to buy alcohol from out-of-state distributors and sell it to out-of-state customers. Doc. 115-1 at 171-72; *see Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring) (crediting similar analysis by same expert); *see also* Doc. 115-1 at 145-46 (same observation from liquor control supervisor). Illinois thus cannot effectively deter and sanction noncompliance by retailers not present in the State.

Plaintiffs seek to undercut Illinois's interest in ensuring compliance with its laws in several ways. First, they assert that *Granholm* categorically held that interests in "'facilitating orderly market conditions [and] ensuring regulatory accountability . . . can also be achieved through the alternative of an evenhanded licensing requirement.'" AT Br. 35 (alteration and omission in original) (quoting *Granholm*, 544 U.S. at 492). Plaintiffs take this language badly out of context. After addressing several of the defendant States' arguments in detail, the Court stated: "Michigan and New York offer a handful of other rationales, such as facilitating orderly market conditions, *protecting public health and safety*, and ensuring regulatory accountability. These objectives can also be achieved through the alternative of an evenhanded licensing requirement." 544 U.S. at 492 (emphasis added). *Granholm* plainly did not hold, as plaintiffs assert, that the listed interests are categorically insufficient or always achievable in alternative ways, and, in fact, *Tenn. Wine* said precisely the opposite with respect to "public health [and] safety," 588 U.S. at 539 ("[W]e ask whether the challenged requirement can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground."). Rather, *Granholm* merely dismissed the States' remaining arguments as unworthy of detailed discussion, presumably because the factual record in that case did not support them. *See* 544 U.S. at 492. As Judge Scudder recognized in *Chi. Wine*, enforcing state alcohol regulations is a legitimate interest under *Tenn. Wine*. 148 F.4th at 541 (Scudder, J., concurring)

Next, plaintiffs argue that Illinois law limits defendants to relying on interests in preventing underage drinking and facilitating tax collection, which, they assert, are the only ones identified in 235 ILCS 5/6-29.1(b). AT Br. 28, 35. That argument fails several times over. First, plaintiffs forfeited it by not raising it in the district court. *See Hummel*, 817 F.3d at 1021; Doc. 124 at 11-16. Second, the principle plaintiffs cite — that a court may not "depart from the language of [an unambiguous] statute," *People v. Seymore*, 2025 IL 131564, ¶ 38 — is a canon for interpreting a law's substantive requirements, not identifying the interests that motivated it, and plaintiffs cite no case applying it in that way. Third, in any event, a statute "must be read as a whole," *Thomas v. Khoury*, 2021 IL 126074, ¶ 11, and the Act repeatedly announces the General Assembly's aims of ensuring effective enforcement, protecting public health, and promoting temperance — including in the same section plaintiffs cite, *see* 235 ILCS 5/6-29.1(a)(1) (noting Act's "temperance, revenue, and orderly distribution values"); *id.* § 6-29.1(a)(2) (listing "social problems associated with . . . alcohol[ ]"); *id.* § 6-29.1(a)(5) ("paramount purpose" of "continu[ing] to carefully limit direct shipment sales of wine"); *see also, e.g.*, *id.* § 1-2 (Act intended to protect public "health, safety, and welfare"; promote temperance; and "careful[ly] control" alcohol production and distribution).

Nor, to the extent the existence of reasonable alternatives is relevant, *see supra* pp. 28-29, did plaintiffs identify any. They offered no evidence, for example, that Illinois inspectors could feasibly fly to Washington each year to inspect Full Pull, and, as discussed, *supra* p. 39, document requests or "reports" are not an adequate substitute, *contra* AT Br. 15. In the district court, plaintiffs asserted that the State could rely on inspections performed by other States, which they contended are all "similar." Doc. 124 at 19. But their evidence for that assertion was a chart of the number of "compliance checks" across States related to underage drinking between 2011 and 2017; the chart does not explain what a "compliance check" is or who conducted them, let alone comprehensively show that all States inspect wine retailers' premises in the same way and with the same frequency as does the Commission. Doc. 125-1 at 2. Even assuming the existence of reasonable nondiscriminatory alternatives is relevant, none are available here.

Last, plaintiffs mischaracterize defendants' argument as claiming a need to be able to "put [retailers] completely out of business" through license sanctions, and then contend that this interest is "irrelevant" because Illinois has awarded retail licenses to large chains like Walmart that could survive the loss of a license. AT Br. 37. Setting aside the fact that most retailers are not Walmart, the Commission does not necessarily need to put a licensee completely out of business to effectively deter and sanction noncompliance: "[t]he threat of being stranded with [unsellable] inventory" and unable to acquire new merchandise will rationally deter Illinois-based licensees from violating the Act even if they can continue to operate in other respects, but will not have the same effect on retailers outside Illinois. Doc. 115-1 at 145-46, 172; *see Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring). Illinois's legitimate interest in enforcing its alcohol regulations therefore justifies the direct-shipping restriction. *See Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring).

2. Maintaining product integrity

The direct-shipping restriction and Illinois-distributor requirement also safeguard "public health," *Tenn. Wine*, 588 U.S. at 539, by ensuring product integrity, *see Jean-Paul Weg*, 133 F.4th at 237 (upholding New Jersey law based on similar interest). They do so in two ways. First, wholesalers' and retailers' physical presence in the State enables the Commission to detect and investigate defective products. Second, funneling wine through Illinois distributors as part of the State's three-tier system facilitates effective tracing and recall of any such products.

Because wholesalers and retailers are physically present in Illinois, the Commission can inspect and investigate their premises and products to ensure integrity. As discussed, the Commission conducts thousands of retailer inspections each year, during which staff "ensure that alcohol is kept in a sanitary manner, is not tainted, and . . . is properly labeled." Doc. 115-1 at 143. It also conducts wholesaler inspections to verify that products are "packaged correctly" and that the facility practices "proper . . . sanitation." *Id.* at 140. In addition, the Commission investigates reports of adulterated or tainted products. *See* Doc. 122 at 4-5. One investigation, for example, "involved a retailer refilling bottles with a product . . . different than the original" — an allegation the Commission confirmed via chemical testing. *Id.*; *see id.* at 5 (describing other investigations). The Commission could not conduct these investigations without access to retailers' premises to examine and test their inventory. *See id.* at 4-5; *see also* Doc. 126 at 14-15 (plaintiffs admit that Commission could not inspect for "integrity, contamination and labeling issues" offsite).

As defendants' expert explained, Illinois's three-tier system "also allows prompt reaction to tainted, tampered with or dangerous products." Doc. 115-1 at 172; *accord id.* at 141, 146 (Commission official). If the Commission learns of such a product, it "can easily and quickly trace [it] back to the source — an Illinois distributor" — and "demand[ ] an inspection or recall." *Id.* at 172; *accord id.* at 141, 146; *see Jean-Paul Weg*, 133 F.4th at 237 (upholding New Jersey law on similar reasoning). The Commission could not do so with a retailer that did not acquire its products from an Illinois distributor: even if it could "locate the source of the defective products, [it] would face jurisdictional and administrative difficulties" in seeking information and remedial action from an out-of-state distributor. Doc. 115-1 at 173. *Contra* AT Br. 36-37 (asserting that distributor tier has no logical role in ensuring product quality).

Plaintiffs' primary response is that, because Illinois allows certain licensed wineries to sell limited quantities of wine to retailers and consumers, this concern is illogical. In *Chi. Wine*, Judge Scudder joined the strong majority of courts of appeals in rejecting a similar argument. *See* 148 F.4th at 544 (Scudder, J., concurring); *Day*, 152 F.4th at 975; *Jean-Paul Weg*, 133 F.4th at 239; *B-21 Wines*, 36 F.4th at 226. Those courts have explained, and the record here demonstrates, that there are significant differences between retailers and wineries. Wineries, unlike retailers, must "register [their] products with the State," enabling product tracking and tracing. Doc. 115-1 at 156; *see* 235 ILCS 5/5-1(r), 6-9. As *Granholm* noted, wineries must also hold federal licenses, providing an extra layer of oversight. *See* 544 U.S. at 492; *accord Chi. Wine*, 148 F.4th at 544 (Scudder, J., concurring) (wineries are subject to "national standards for health and safety that do not exist at the retail level"). And retailers far outnumber wineries, *Day*, 152 F.4th at 975 (11,000 wineries versus 400,000 retailers nationally), and can sell unlimited quantities of wine, while wineries' direct sales are limited by statute, *see* 235 ILCS 5/3-12(a)(17)(A), 5-1(r), 6-29(b); *Chi. Wine*, 148 F.4th at 544 (Scudder, J., concurring) ("Indiana's exception for wineries is a narrow exception to the State's three-tier system at the producer level, . . . [not] the retail level, where the vast majority of alcohol sales to Indiana consumers occur."). All these factors vindicate the General Assembly's explicit finding that allowing limited sales by wineries to retailers would not "impair[ ] the integrity of the 3-tier system." 235 ILCS 5/3-12(a)(17)(H).

The only court of appeals decision to agree with plaintiffs' argument, the Sixth Circuit's opinion in *Block*, *see* 175 F.4th at 657-58, is both unpersuasive and distinguishable. It applied a more demanding standard of scrutiny than *Tenn. Wine*'s different inquiry — for example, it recited the principle, drawn from dormant

Commerce Clause cases *not* involving alcohol, that discriminatory state laws violate the Commerce Clause "[i]n all but the narrowest circumstances," *id.* at 658 (quoting *Granholm*, 544 U.S. at 472 (citing *Or. Waste Sys., Inc. v. Dep't of Env't Quality*, 511 U.S. 93, 99 (1994))). Further, in any event, Ohio's regulatory system differs from Illinois's: it allows *unlimited* direct sales by wineries — as well as other out-of-state entities — to retailers. *Id.* at 646, 657. Illinois's more "limited [winery] exception does not swallow the whole." *Day*, 152 F.4th at 975.

Plaintiffs also object that defendants did not present any evidence specifically involving interstate shipping of tainted wine. AT Br. 36. But "the government has an interest in preventing emergencies and threats to public safety, not merely responding to them after they transpire." *Knowlton v. City of Wauwatosa*, 119 F.4th 507, 516 (7th Cir. 2024) (applying principle in First Amendment context). Defendants documented instances in which the Commission found defective or tainted products at the retail level. *See supra* pp. 44-45; Doc. 122 at 4-5. That evidence shows that the legislature's "public safety concerns" related to tainted alcohol "were well founded," were not "merely conjectural," and justify Illinois's regulatory system. *Knowlton*, 119 F.4th at 516 (cleaned up).

3. Promoting temperance and mitigating the social costs of alcohol use

Finally, defendants' evidence established that the direct-shipping restriction and Illinois-distributor requirement promote temperance, and thus mitigate the social harms caused by alcohol, by controlling wine prices. *See Tenn. Wine*, 588 U.S. at 542 (legitimate interest in "responsible . . . consumption practices"); *Chi. Wine*, 148 F.4th at 540 (Scudder, J., concurring) (legitimate interest in promoting temperance). They again do so in two ways — ensuring payment of Illinois's alcohol excise tax and limiting the supply of alcohol.

First, Illinois relies on excise taxes, generally paid by distributors, to discourage — and offset the social costs of — alcohol consumption. *See* Doc. 115-1 at 174-79; 235 ILCS 5/8-2. Defendants' expert, Dr. Kerr, explained that the State's excise tax rate is "substantially higher than [those of] neighboring states" — roughly three times those of Indiana and Missouri and more than five times Wisconsin's, for example. Doc. 115-1 at 174. Distributors and retailers pass those costs on to consumers — and, because both distributors and retailers often set their prices by multiplying their costs, including the tax amount, by a fixed percentage, the additional cost to the consumer can be "greater than the amount of the tax." *Id.* Out-of-state retailers, however, would not pay Illinois's excise tax; their costs, and thus their prices, would depend on the tax rate charged in the State where they acquire their inventory. *Id.* at 174-75. Since that rate will often be substantially lower, "excise tax differences would enable out-of-state retailers to sell . . . wine . . . at lower prices in Illinois than licensed Illinois retailers, possibly even after shipping costs are taken into consideration." *Id.* at 175. And, as "numerous systematic reviews" have shown, those lower prices would increase alcohol consumption. *Id.* at 176-77 (citing, for example, a review of "1,003 separate estimates from 122 different studies").

Second, Dr. Kerr opined that, as a matter of basic economics, "[a]llowing out-of-state retailers to ship alcohol directly to Illinois consumers would increase the supply of alcohol in Illinois" and thereby "cause prices of alcohol products to drop" and consumption to rise. *Id.* at 176; *see Chi. Wine*, 148 F.4th at 540 (Scudder, J., concurring) (legitimate state interest in promoting temperance by limiting alcohol supply). A 2003 Federal Trade Commission ("FTC") report on which plaintiffs rely agreed, finding that direct wine shipping "encourages price competition," including "between online and offline sources," and that direct-shipping bans correspondingly "[r]aise [p]rices." Doc. 110-12 at 22-23. The pool of potential new retailers is substantial — "[t]here are 11,000 off-premise licensees in Illinois, but nearly 400,000 in the United States." Doc. 115-1 at 171. And while plaintiffs assert that "no more than a few hundred" would likely seek to ship wine into Illinois if they prevailed, AT Br. 7, they base that prediction on the number of sellers registered on a single online wine marketplace, Doc. 110-31 at 8, and a handful of five-year-old email exchanges with officials from mostly small States, Doc. 110-14 (August 2021 emails with Connecticut, Nebraska, New Hampshire, and Virginia officials); *id.* at 5 (Virginia reported over 2,000 out-of-state licensees, including retailers and wineries). Neither source renders Illinois's concern that numerous retailers would seek to enter its larger marketplace, lower prices, and increase consumption "mere speculation." *Tenn. Wine*, 588 U.S. at 539 (cleaned up).

Although promoting temperance is a legitimate interest in itself, *see Chi. Wine*, 148 F.4th at 540 (Scudder, J., concurring), defendants' evidence also linked increased alcohol prices — and correspondingly reduced alcohol consumption — to a number of concrete societal consequences. Dr. Kerr discussed a robust literature finding that increases in alcohol prices reduce crime, domestic violence, fatal alcohol-related traffic crashes, and risky sexual behaviors. Doc. 115-1 at 177-79. Research has shown, for example, that a 2009 increase in Illinois's excise tax — primarily to the rates for wine and spirits — "reduced fatal alcohol-related traffic crashes by 26%," with a larger decrease for individuals under 30, and decreased sexually transmitted disease incidence. *Id.* at 178-79.

The district court correctly rejected plaintiffs' leading response — that *Granholm* requires Illinois to allow retailers to ship interstate while paying excise taxes in the same way as wineries with direct-shipping privileges. AT Br. 34; SA17. *Granholm* held that New York's interest in ensuring tax compliance did not justify discriminating against out-of-state wineries for two reasons. First, the State "offer[ed] no reason to believe" that the same permitting system it used for in-state wineries would not work equally well for out-of-state wineries. 544 U.S. at 491. Second, federal law required wineries to comply with state regulations as a condition of their federal licenses, giving the State extra "protect[ion]." *Id.* at 492. Those reasons do not apply here. As discussed, *supra* pp. 45-46, retailers are different from wineries in important respects: they are more numerous, not limited in sales volume, and not subject to the federal licensing requirement that *Granholm* emphasized. Further, plaintiffs' proposed alternative would still drive down alcohol prices by increasing the number of sales in the State, undercutting Illinois's interest in promoting temperance. Finally, the district court properly declined to require the State "to stand up a whole external taxation . . . arm" of the Commission not comparable to any of its current activities. SA17.

Plaintiffs' other arguments also miss the mark. Several are based on bad statistics or irrelevant evidence. For example, plaintiffs cite data purportedly showing that States that allow interstate wine shipping do not have higher rates of various social ills. AT Br. 11-12; *see also id.* at 12 (similar argument about underage drinking over time); *id.* at 14 (similar argument about excise taxes by State). "But a statistical study that fails to correct for salient explanatory variables . . . has no value as causal explanation," *People Who Care v. Rockford Bd. of Educ.*, 111 F.3d 528, 537 (7th Cir. 1997), and plaintiffs' superficial review of the data does not account for cultural and demographic factors that vary across States, *see, e.g.*, Doc. 122 at 8-41 (studies examining factors that affect alcohol consumption); Doc. 132 at 5-6 (plaintiffs admit "[v]arious demographic variables affect wine consumption").

Similarly, based on the 2003 FTC report and messages exchanged in 2020 with officials from a small number of States that allow interstate wine shipping, plaintiffs contend that States that allow direct wine shipments "report no problems" with underage drinking or other social issues. AT Br. 12, 30 (citing Docs. 110-12, 110-15). This court has refused to credit precisely this form of "subjective, unquantified" evidence — including the very same statement from the FTC report. *Baude*, 538 F.3d at 614 ("That subjective, unquantified reaction (perhaps it shows that the officials haven't searched for problems, or that no adverse stories have appeared in local newspapers) is not enough to override a state legislature's assessment."). And plaintiffs repeatedly invoke a Maryland Comptroller report about the effects of "interstate wine shipping," AT Br. 16, 32, 34, but the report dealt with shipping not by retailers but by wineries, *see* Doc. 110-16 at 2; Act of May 10, 2011, ch. 205, 2011 Md. Laws 926, 930-31 — something Illinois already allows.

Plaintiffs also argue that changes in alcohol prices merely cause consumers to substitute one type of alcohol for another or to travel to other States to make their purchases, not to reduce overall consumption. AT Br. 14-15 (citing Doc. 110-32 at 6). The former claim rests on a single study that merely could not "rule[ ] out" the possibility of no net change in alcohol consumption in response to a tax increase, but also found that overall consumption may have declined. Doc. 122 at 71; *see* Doc. 110-32 at 6 (citing Markus Gehrsitz *et al.*, *The Effect of Changes in Alcohol Tax Differentials on Alcohol Consumption*, 204 J. Pub. Econ. 104520 (2021)). That single at-best-ambiguous study cannot create a genuine issue of material fact in light of the robust evidence discussed by Dr. Kerr. And the idea that Illinoisans routinely respond to shifts in alcohol prices by changing the State in which they make their purchases is inconsistent not only with common sense but also with studies showing the concrete effects of Illinois's 2009 increase to its excise tax rates, including a 26% "reduc[tion] [in] fatal alcohol-related traffic crashes." Doc. 115-1 at 177-79.

Nor are plaintiffs correct that Dr. Kerr's evidence was impermissible speculation because he did not cite "studies on the impact of direct wine shipping on alcohol consumption." AT Br. 14. As the district court explained in denying plaintiffs' *Daubert* motion — a ruling that plaintiffs do not contest, *see id.* at 19-38 — Dr. Kerr relied on "widely understood economic principle[s]"; "support[ed] his assertions with citations to published articles, data, and studies"; and "use[d] his training and experience to connect those materials to his opinions." Doc. 105 at 2. Contrary to plaintiffs' apparent view, *Tenn. Wine*'s requirement of concrete evidence does not mean a State cannot rely on expert testimony. *See, e.g.*, *Chi. Wine*, 148 F.4th at 541 (Scudder, J., concurring) (relying on Dr. Kerr's expert testimony).

Plaintiffs' argument that "consumer[s] motivated by low prices" can already buy wine for less than $5 at the grocery store, AT Br. 11, is no more persuasive. Dr. Kerr explained that decreases in alcohol prices increase consumption not just in "high-risk populations," such as heavy drinkers motivated by low prices, but also in the "general population." Doc. 115-1 at 176. And plaintiffs themselves contend that many consumers find shipping "more convenient than in-person shopping." AT Br. 10. Dr. Kerr's report shows that direct wine shipping would, at minimum, lower prices and thus increase consumption for this group. *See* Doc. 115-1 at 174-76; *see also id.* at 175 (heavy drinkers and underage drinkers especially likely to rely on delivery).

Finally, plaintiffs assert that the FTC (in 2003) and the National Conference of State Legislatures (in 1997) endorsed forms of direct shipping. AT Br. 15 (citing Doc. 110-12 at 3, 40; Doc. 117). The FTC did so in an effort to *lower* prices, Doc. 110-12 at 3 — the opposite of Illinois's goal. And, regardless, the policy positions those entities took over 20 years ago do not limit the State's "virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." *Granholm*, 544 U.S. at 488; *accord Tenn. Wine*, 588 U.S. at 510 ("[The Twenty-first Amendment] gives each State leeway in choosing the alcohol-related public health and safety measures that its citizens find desirable."). The district court correctly concluded that defendants have "justified" the direct-shipping restriction on "legitimate nonprotectionist ground[s]." *Tenn. Wine*, 588 U.S. at 539.

D. If the court reverses, it should remand for the district court to determine the appropriate remedy.

Defendants agree with plaintiffs that, if this court holds the direct-shipping restriction unconstitutional, it should remand for the district court to determine the appropriate remedy in the first instance. AT Br. 38; *cf., e.g.*, *CFPB v. Townstone Fin., Inc.*, 107 F.4th 768, 777 (7th Cir. 2024) ("[A] federal appellate court [generally] does not consider an issue not passed upon below." (cleaned up)).

If this court does reach the issue, however, the proper remedy would be to sever the portions of 235 ILCS 5/5-1(d) that allow licensed retailers to ship wine to Illinois consumers, rather than to require the State to extend shipping privileges universally. "Severability is of course a matter of state law," *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996) (*per curiam*), and "the touchstone for any decision about remedy is legislative intent," *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 330 (2006). Here, the General Assembly has explicitly stated its intent "to protect the health, safety, and welfare of this State . . . through a 3-tier regulatory system." 235 ILCS 5/6-1.5; *see also id.* § 6-29.1(a)(5) (noting "paramount purpose" of "continu[ing] to carefully limit direct shipment sales of wine produced by makers of wine"); *id.* § 11-1 (Act is severable). Expanding the availability of direct shipping — and, particularly, doing so without subjecting all retailers to the Illinois-distributor requirement — would flout that aim by "cut[ting] so many holes in [Illinois's] 'unquestionably legitimate' three-tier system that the system would functionally cease to exist." *Day*, 152 F.4th at 974 (quoting *Granholm*, 544 U.S. at 489). Adhering to "legislative intent," *Ayotte*, 546 U.S. at 330, thus requires remedying any constitutional defect by abrogating, rather than expanding, direct-shipping privileges, *see Lebamoff Mich.*, 956 F.3d at 876-77 (similar under Michigan law).

Plaintiffs' arguments do not alter this conclusion. First, *Califano v. Westcott*, 443 U.S. 76, 89 (1979), noted that the Supreme Court has "suggested that extension, rather than nullification, is the proper course" in many "cases involving equal protection challenges to underinclusive federal benefits statutes"; that conclusion about congressional intent says nothing about the proper remedy in a dormant Commerce Clause challenge to an Illinois alcohol regulation, *contra* AT Br. 39; *cf. Leavitt*, 518 U.S. at 139 (looking to state law). Second, any decision remedying a constitutional violation by abrogating, rather than expanding, a privilege will "take away [that] privilege[ ]" from unrepresented third parties without materially benefiting the plaintiff. *Cf.* AT Br. 39. That does not make such decisions "improper[ ]" or mean that they do not "vindicate" the relevant constitutional principles. *Contra id.*; *see, e.g.*, *Sessions v. Morales-Santana*, 582 U.S. 47, 74-76 (2017) (abrogating benefit). The proper remedy would be to sever the portions of 235 ILCS 5/5-1(d) that allow direct shipping.

CONCLUSION

For these reasons, defendants request that this court affirm the district court's judgment, modified, if this court concludes that plaintiffs lack standing, to operate without prejudice as to Freehan, Grody, and Full Pull.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

/s/ Michael T. Layden
MICHAEL T. LAYDEN
CROKE FAIRCHILD
DUARTE & BERES
191 N. Wacker Dr., 31st Floor
Chicago, Illinois 60606
(312) 641-0881
mlayden@crokefairchild.com

Attorney for Intervenor-Appellee

/s/ R. Sam Horan
R. SAM HORAN
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 793-0797 (office)
(312) 405-5354 (cell)
Richard.Horan@ilag.gov

Attorneys for Defendants-Appellees

June 15, 2026

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

I hereby certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32 and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word for Microsoft 365 MSO, in 12-point Century Schoolbook BT font, and complies with Federal Rule of Appellate Procedure 32(a)(7)(B) and Circuit Rule 32(c) because it contains 13,992 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

/s/ R. Sam Horan
R. SAM HORAN
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 793-0797 (office)
(312) 405-5354 (cell)
Richard.Horan@ilag.gov

June 15, 2026

CERTIFICATE OF FILING AND SERVICE

I certify that on June 15, 2026, I electronically filed the foregoing Brief of Appellees with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

I further certify that the other participants in this appeal, named below, are CM/ECF users and will be served via the CM/ECF system.

James A. Tanford
tanford@iu.edu

/s/ R. Sam Horan
R. SAM HORAN
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 793-0797 (office)
(312) 405-5354 (cell)
Richard.Horan@ilag.gov