No. 25-3259

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN REAM,

Plaintiff-Appellant,

v.

U.S. DEPARTMENT OF THE TREASURY, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Ohio

SUPPLEMENTAL BRIEF FOR DEFENDANTS-APPELLEES

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff John Ream challenges certain longstanding statutory provisions governing the distilled-spirits industry. The district court correctly applied Article III principles to dismiss plaintiff's case for lack of standing. This Court heard argument on December 10, 2025, after which the Court entered a supplemental briefing order directing the government to address the merits of plaintiff's constitutional claims. The government stands ready to present any additional argument should the Court find it useful.

INTRODUCTION AND BACKGROUND

For over 150 years, Congress has imposed an excise tax on distilled spirits and regulated the manner of their production. As part of that comprehensive scheme, Congress placed certain restrictions on where a distilled spirits plant may be located. The restrictions were enacted in response to widespread evasion of the distilled-spirits tax and state, in relevant part, that a distilled spirits plant may not be located "in any dwelling house," "in any shed, yard, or inclosure connected with any dwelling house," or "on board any vessel or boat." 26 U.S.C. § 5178(a)(1)(B). A person who "uses, or possesses with intent to use, any still . . . for the purpose of producing distilled spirits" in a prohibited location is subject to criminal penalties. *Id.* § 5601(a)(6).

Plaintiff contends that the above restrictions exceed Congress's enumerated powers. The district court dismissed for lack of standing and did not reach the merits. That decision is correct for the reasons previously explained. To the extent plaintiff seeks clarity about what he can or cannot do, he may, for example, submit a permit application—which is free and available online—with the Alcohol and Tobacco Tax and Trade Bureau (TTB or Bureau) and, if his application is denied, he can challenge that

denial in court. *See* 26 U.S.C. § 5171(c), (d); 27 U.S.C. § 204(h); 27 C.F.R. §§ 19.96 & 71.118; *see also* TTB, *Permits Online Help Center*, https://perma.cc/GD95-AP4U; *Miller v. City of Wickliffe*, 852 F.3d 497, 506 (6th Cir. 2017) (a permit application carries "no risk" of enforcement).

Plaintiff's constitutional arguments are, in any event, meritless. Congress has broad authority to enact laws pursuant to and in service of its taxing and commerce powers. The location restriction is necessary and proper to Congress's taxing authority because it facilitates federal efforts to inspect distilling operations and collect the appropriate tax. The law is also within Congress's commerce authority in light of the legislature's comprehensive scheme governing the production, distribution, and consumption of distilled spirits and the manner in which individuals may engage in this quintessentially economic activity.

ARGUMENT

THE STATUTORY PROVISIONS ARE A VALID EXERCISE OF CONGRESS'S ENUMERATED POWERS.

The Constitution grants Congress the power to "lay and collect Taxes" and to "regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cls. 1, 3. Under the Necessary and Proper Clause, Congress is further empowered to "make all Laws which shall be necessary and proper for carrying into Execution" an enumerated power. *Id.* cl. 18.

While the federal government is one of enumerated powers, a "'government[] entrusted with such' powers 'must also be entrusted with ample means for their execution.'" *United States v. Comstock*, 560 U.S. 126, 133–34 (2010) (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 408 (1819)). The Necessary and Proper Clause has thus long been read to give Congress "great latitude" to "enact provisions 'incidental to [an] [enumerated] power, and conducive to its beneficial exercise.'" *National Fed'n of Indep. Bus. v. Sebelius* (*NFIB*), 567 U.S. 519, 537, 559 (2012) (quoting *McCulloch*, 17 U.S. (4 Wheat.) at 418). A law is necessary and proper if it is "convenient" or "useful" for carrying an enumerated power into execution, and a court asks only whether the "means [chosen] . . . [are] rationally

related to the implementation" of an enumerated power. *Comstock*, 560 U.S. at 133–34. Because Congress may enact legislation pursuant to any of its enumerated powers, a court need only find that a law is within one of Congress's powers in order to uphold it. *Accord NFIB*, 567 U.S. at 575.

A. The Challenged Law Is a Necessary and Proper Exercise of Congress's Taxing Authority.

The government has long "assessed taxes upon every manufacturer of distilled spirits." *Di Santo v. United States*, 93 F.2d 948, 950 (6th Cir. 1937). The tax on distilled spirits is an excise tax that is collected by the Bureau based on the spirit's volume and "proof": the higher a given amount of a spirit's alcohol content, the higher the tax rate. *See* 26 U.S.C. §§ 5001(a)(1), 5002(a)(10)–(11). For distilled spirits, the tax attaches "as soon as [the spirit] is in existence," *id.* § 5001(b), and operates as "a first lien" on the distilled spirit until the tax is paid, *id.* § 5004(a)(1).[1]

Plaintiff does not challenge Congress's authority to tax distilled spirits. Nor does plaintiff contend that Congress may not adopt measures to effectuate the collection of that tax. Plaintiff argues, however, that the

[1] Beer and wine produced solely for personal use is generally exempt from the excise tax. 26 U.S.C. §§ 5042(a)(2), 5053(e).

location restriction is not a permissible means of advancing the legislature's concededly valid ends. Yet as the Supreme Court has long recognized, if "the end be legitimate," *McCulloch*, 17 U.S. (4 Wheat.) at 421, Congress's authority is at its apogee when it determines what means to deploy to achieve that end, *see Comstock*, 560 U.S. at 133–34; *United States v. Darby*, 312 U.S. 100, 121 (1941).

Regulating the location of distilled spirits plants promotes tax collection by facilitating the government's ability to inspect distilling operations and prevent efforts to elude federal taxes. A distiller can more easily conceal a spirit's strength (and thus avoid the proper tax rate), or conceal a distilling operation altogether, if a still is located in a dwelling-house or attached structure. Indeed, Congress enacted the challenged restrictions in response to rampant evasion of the distilled-spirits tax, including by home distillers, that affected up to "seven-eighths of the entire amount of spirits manufactured." H.R. Rep. No. 39–24, at 1, 21–22 (1867). Unsurprisingly, therefore, when Congress first enacted the location measure in 1868, it repeatedly linked the "location" of a still to tax collection. *See* Act of July 20, 1868, ch. 186, §§ 6, 9, 15 Stat. 125, 126–29; *see also id.* § 12, 15 Stat. at 130; Cong. Globe, 39th Cong., 1st Sess. 2839, 2841

(1866); *United States v. Ulrici*, 111 U.S. 38, 40 (1884) ("[i]t is clear" that the statutory provisions governing distilled spirits "were adopted" to "secure the payment of the tax imposed by law upon distilled spirits").

This concern is reflected in the structure of 26 U.S.C. § 5178. The location restriction in section 5178(a)(1)(B) ties regulation of the "premises" of a still to the need to avert "jeopard[y]" to "the revenue" by expressly cross-referencing section 5178(b), which in turn permits the Secretary to "authorize the carrying on of such other businesses . . . on premises of distilled spirits plants, as he finds will not jeopardize the revenue." 26 U.S.C. § 5178(b). The two subparagraphs that bookend the location restriction reinforce this conclusion by further tethering regulation of a still's "location" to "afford[ing] adequate security to the revenue." *Id.* § 5178(a)(1)(A) (linking the "location, construction, arrangement, and protection" of distilled spirits plants to "afford[ing] adequate security to the revenue"); *id.* § 5178(a)(1)(C) (same as to the "location, construction, arrangement, and method of operation" of distilled spirits plants).

The location restriction is just one part of the "elaborate system [that] has been set up by legislation and regulations thereunder to protect the revenue on distilled spirits." *United States v. Goldberg*, 225 F.2d 180, 187

(8th Cir. 1955). Congress has also, for example, required distilling systems to be constructed so "as to prevent the unauthorized removal of distilled spirits" before the tax is calculated, and the system must be secured "to facilitate inspection and afford adequate security to the revenue." 26 U.S.C. § 5178(a)(2)(B)–(C); *see id.* § 5178(a)(1)(A). Congress also authorized internal revenue officers to enter and examine a distilled spirits plant at any time, day or night, and take inventory as necessary. *Id.* § 5203(b).

In upholding Congress's authority to prescribe restrictions with respect to packaging taxable tobacco, the Supreme Court applied similar principles, declaring: "[I]n the rules and regulations for the manufacture and handling of goods which are subjected to an internal revenue tax, Congress may prescribe any rule or regulation which is not in itself unreasonable; that it is a perfectly reasonable requirement that every package of such goods should contain nothing but the article which is taxed." *Felsenheld v. United States*, 186 U.S. 126, 132 (1902). The Court observed that "[i]n the internal revenue legislation[,] Congress has not simply prescribed that certain articles shall pay a tax, but has provided a series of rules and regulations for the manufacture and sale of such articles," including "such . . . matters as in its best judgment were necessary

or advisable for the purposes of effectually securing the payment of the tax imposed." *Id.* at 131. Because it was "perfectly reasonable" to require that tobacco packages "contain nothing but the article which is taxed," the statute was within Congress's authority. *Id.* at 132.

In the rare cases in which distilled-spirits provisions have been challenged, courts (including this Court) have rejected a cramped understanding of Congress's taxing power. In *Di Santo*, this Court upheld a statute requiring persons disposing of substances "used in the manufacture of distilled spirits" to report that disposition pursuant to regulations set by the Commissioner of Internal Revenue. 93 F.2d at 949–50 (quoting Act of June 18, 1934, ch. 611, 48 Stat. 1020, 1020 (codified at 26 U.S.C. § 1162a (1934))). This Court rejected the defendant's non-delegation challenge and, in so ruling, recognized that the government has long taxed the manufacture of distilled spirits and that "[t]he power 'to make all Laws which shall be necessary and proper' for the collection of such taxes is specifically granted." *Id.* at 950 (quoting U.S. Const. art. I, § 8, cl. 18). As this Court explained, "[t]he authority vested in the Commissioner to make rules and regulations was for the definite purpose of enabling him to determine whether all taxes upon distilled spirits had been paid" and "to

aid him in the execution of a law which had been long upon the statute books," and "[t]he necessity and propriety of empowering the Commissioner" in this way "was a matter for Congress to determine." *Id.*

Similarly, in *Stilinovic v. United States*, the Eighth Circuit held that Congress had "acted within its constitutional power to facilitate the collection of revenue" in enacting a statute that prohibited a seller of distilled spirits from "plac[ing] in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle." 336 F.2d 862, 863–65 (8th Cir. 1964) (quoting 26 U.S.C. § 5301(c)(1)). The Court explained that it is "in most cases impossible, once the container has been refilled or the original contents thereof altered . . . to establish whether the tax on the contents of such containers has been lawfully determined." *Id.* at 865 (quoting S. Rep. No. 85-2090, at 171 (1958)). Thus, by preventing the "reuse of liquor bottles" or "alteration of the original contents of liquor bottles," the law aided tax collection because it helped ensure that the "contents of [the] liquor bottle" were taxed at the appropriate rate and as "manifested by the tax stamp." *Id.* at 864–65; *see also Goldberg*, 225 F.2d at 188 (upholding a similar regulation as "reasonably related to the protection of the revenue").

Plaintiff argues primarily that the location restriction is not a proper exercise of the taxing power because it "prevents" plaintiff from distilling spirits and thus paying the tax on it. Opening Br. 40. Not so. As explained in the government's earlier brief, the challenged provision is not a categorical "ban" on residential distilling, but merely specifies where on a residential property an individual may place his still. Gov't Br. 16–17; *see* Gov't Br. 17 (detailing instance where government has approved residential distilling).

For similar reasons, the location restriction does not run afoul of the Supreme Court's warning that a tax must "leave[] an individual with a lawful choice to do or not do a certain act, so long as he is willing to pay a tax levied on that choice." Opening Br. 43 (quoting *NFIB*, 567 U.S. at 574). Plaintiff does not contend that the tax itself removes his choice to distill spirits—on the contrary, he plans to pay the tax if he distills spirits in the future. Compl., RE1, PageID#6. Plaintiff instead argues that the location restriction removes his choice to distill in a particular location and therefore his choice to pay the tax for the privilege of doing so. Even assuming plaintiff has articulated a sufficiently concrete intent to distill in a prohibited location, *contra* Gov't Br. 16–23, the mere fact that plaintiff

insists that *he* would pay all applicable taxes does not render unreasonable Congress's determination that most people would not—and indeed, the historical record shows that Congress enacted the restriction against the backdrop of rampant tax evasion. H.R. Rep. No. 39–24, at 1, 21–22 (discussing "the most stupendous" fraud being committed against federal efforts to collect the distilled-spirits tax); *see United States v. Bowers*, 594 F.3d 522, 529 (6th Cir. 2010) (upholding federal law against enumerated-powers challenge based on what Congress "could have believed" and not what plaintiff claimed he would do).

That the location restriction makes it easier for the government to inspect distilling operations and collect the appropriate tax is just as true today as it was at the time of the law's enactment. Nothing has fundamentally changed about the practical difficulties involved in inspecting distilling operations located inside a dwelling-house or other prohibited location. Moreover, the "diversion" of distilled spirits "into domestic commerce without the payment of taxes" continues to be a problem that "threatens Federal revenues" and "undermines fair competition." TTB, *Annual Report* (2023), at 3, https://perma.cc/2LL4-YSPU.

Plaintiff's reliance on *United States v. Dewitt*, 76 U.S. 41 (1869), does not support his position. In *Dewitt*, the Court struck down a prohibition on the sale of "oil made from petroleum for illuminating purposes." *Id.* at 42. The Court rejected the argument that the prohibition was "in aid and support of the internal revenue tax imposed on other illuminating oils" because, critically, there was no tax on the prohibited oils and so the prohibition's relation to taxation was "too remote." *Id.* at 44. The Court distinguished, however, the oil-based prohibition in that case from the laws "regulating the business of distilling liquor," which were "restricted to the very articles which are the subject of taxation" and thus "plainly adapted to secure the collection of the tax imposed." *Id.* Far from helping plaintiff, *Dewitt* only emphasizes the close connection between the location restriction and distilled-spirits tax here. The same is true for *Morris v. United States*, 161 F. 672, 679–80 (8th Cir. 1908), which underscores the point that Congress can lawfully regulate certain ancillary activities surrounding a taxed product—there, the labeling and packing of oleomargarine—in order to effectuate federal efforts to collect taxes on that product.

Plaintiff also cites *United States v. Thompson*, 361 F.3d 918 (6th Cir. 2004), but that case does not help him. There, this Court *rejected* the

defendant's enumerated-powers challenge to a federal law barring the possession of unregistered firearms because, among other things, the defendant had never applied to register the firearms in the first place. *Id.* at 916, 921–22. As this Court explained, if the defendant "wishes to complain that the scheme is utterly devoid of a taxing purpose because it was impossible for him to register his weapons, then he must demonstrate that it was truly, and not merely hypothetically, impossible to obtain the registration." *Id.* at 922. *Thompson* thus only underscores the point that plaintiff's challenge to the location restriction is premature. Like in *Thompson*, plaintiff here has similarly failed to explain "why he should be permitted to hypothesize what the Secretary would do with his application [to distill], then premise his claim that the statute has no rational connection to taxation on that speculation." *Id.*; *see* Gov't Br. 30. Moreover, unlike the law at issue in *Thompson*, the location restriction does not bar distilling full stop but merely requires that such activities be located in places that minimize tax evasion.

Nor does it follow that a provision with the side effect of limiting the number of people who are likely to engage in the taxable activity means that the provision lacks a sufficient nexus to the tax itself. Any law

governing distilling could, in theory, deter an individual from engaging in that activity and thereby paying the resulting tax. *See NFIB*, 567 U.S. at 567. Congress has also, for example, required distillers to obtain a distilling permit from the Bureau, 27 U.S.C. §§ 203–204; *see also* 26 U.S.C. § 5171(d), and to register both their still and distilled spirits plant with the government, 26 U.S.C. §§ 5171(c), 5179. These provisions were first enacted at the same time as the restrictions directly at issue here. *See* Act of July 20, 1868, ch. 186, §§ 5, 14, 15 Stat. at 126, 130. Plaintiff does not, however, dispute the validity of these provisions, even though they could also be framed as deterring someone from distilling spirits and thereby paying the resulting tax. That only underscores the faulty logic of plaintiff's position and the fact that Congress's choice here merely reflects a permissible effort to regulate the manner in which individuals who *choose* to undertake a taxable activity go about doing so.

Plaintiff then hypothesizes various alternative paths that Congress could have taken. For example, he suggests that Congress might also have prevented distilling in a "hidden backwoods shanty," and contends that the location restriction is unnecessary because the act of obtaining a permit already publicizes the existence of the distilling operation. Opening Br. 44.

But Congress chose to impose a suite of requirements on distillers rather than relying on self-identification and self-reporting, and the mere fact that Congress could have (but did not) sweep more broadly is not a basis for invalidation. In reviewing the choices Congress made, a court is not to substitute its own policy judgment for that of Congress. The Constitution leaves the "choice of means" primarily to Congress, and "[i]f it can be seen that the means adopted are really calculated to attain the end," then "the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship between the means adopted and the end to be attained, are matters for congressional determination alone." *Comstock*, 560 U.S. at 135. Congress's decision to limit activities linked to the widespread evasion of the distilled-spirits tax is plainly related to promoting effective and accurate tax collection—and under governing precedent, that is all that is required to reject plaintiff's argument.

Nor is there any basis to conclude that the location restriction offends any principles of federalism, as plaintiff appears to suggest. *See* Opening Br. 47 (discussing state police powers). The federal government has long played an active role in the taxation and regulation of distilling operations, and the location restriction is merely one piece of that longstanding history.

Nor does plaintiff explain why the location restriction would offend federalism principles any more than any of the other distilling provisions—which plaintiff concedes are valid and with which he would comply.

Plaintiff's fears regarding the implications of upholding the location restriction do not advance his case. Plaintiff expresses concern, for example, that the government could justify any ban on in-home activity by taxing that activity and then banning it on the basis that an individual might conceal the activity and evade the tax. Opening Br. 47–48. These scenarios provide no basis for invalidating the location restriction at issue here, nor does it follow from the government's position that such maneuvers would be permissible. Congress has not paired its distilled-spirits tax with a ban on distilling spirits nor attempted to use a hypothetical future tax as pretext for banning a given activity. Instead, Congress has simply imposed a distilled-spirits tax and, over time, developed various requirements to ensure that, when spirits are distilled, the tax is paid.

B. The Challenged Law Is Valid Under the Commerce and Necessary and Proper Clauses.

It is well-established that Congress has "broad" authority under the Commerce Clause. *NFIB*, 567 U.S. at 549. Under that authority, Congress may regulate the "channels of interstate commerce," the "instrumentalities of interstate commerce, and persons or things in interstate commerce," and "activities that substantially affect interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 16–17 (2005). When Congress acts in this third category, it has the power to "regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." *Id.* at 17. And "[w]hen Congress decides that the 'total incidence' of a practice poses a threat to a national market, it may regulate the entire class." *Id.* Moreover, as discussed above, Congress acts under its necessary-and-proper authority when a law is "convenient" for carrying the enumerated power into execution. *Comstock*, 560 U.S. at 133–34.

In reviewing such a determination, a court's task is "modest." *Raich*, 545 U.S. at 22. A court "need not determine whether [the regulated] activities, taken in the aggregate, substantially affect interstate commerce in

fact, but only whether a 'rational basis' exists for so concluding," and Congress is also not required to make "particularized findings." *Id.* at 21.

In assessing the breadth of Congress's commerce authority, the Supreme Court has distinguished between laws with an "apparent commercial character," *United States v. Morrison*, 529 U.S. 598, 611 & n.4 (2000)—such as regulations addressing the intrastate farming of wheat, *see Wickard v. Filburn*, 317 U.S. 111, 127–29 (1942), and the intrastate manufacture and possession of marijuana for personal use, *see Raich*, 545 U.S. at 15—and laws that have "nothing to do with 'commerce' or any sort of economic enterprise," such as prohibitions on possessing firearms in school zones and on gender-motivated violence, *see United States v. Lopez*, 514 U.S. 549, 561 (1995); *Morrison*, 529 U.S. at 613. The Court has also drawn a distinction between regulations of commercial activity and regulations that would address inactivity by requiring individuals to engage in commercial transactions in which they would prefer not to engage. *See NFIB*, 567 U.S. at 553 (opinion of Roberts, C.J.); *id.* at 652 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting).

The production of distilled spirits is a "quintessentially economic" activity that falls within Congress's commerce power and is convenient to

the exercise thereof. *Raich*, 545 U.S. at 25. Plaintiff does not dispute that there is an "established" and "lucrative, interstate market" for distilled spirits. *Id.* at 26. Distilled spirits are a multibillion-dollar industry, generating over $6 billion in excise tax revenue in fiscal year 2024. *See* TTB, *Statistical Release, Tax Collections Fiscal Year 2024* (Oct. 28, 2024), https://perma.cc/6YEN-S6FF. Congress regulates the distilled-spirits industry through a carefully reticulated scheme that imposes extensive requirements on individuals who seek to operate a distilled spirits plant. Under the Internal Revenue Code and Federal Alcohol Administration Act, would-be distillers must meet strict registration, permitting, and background-check requirements, *see* 26 U.S.C. §§ 5171, 5271; 27 U.S.C. §§ 203, 204; abide by various labeling and advertising specifications to ensure fair competition, 27 U.S.C. § 205; and adhere to provisions restricting bulk sales and disposals, *id.* § 206. Indeed, the Federal Alcohol Administration Act expressly links the regulation of distilled spirits to the need to "regulate interstate and foreign commerce in distilled spirits" and to "protect the revenue . . . with respect to distilled spirits." *Id.* § 203.

The location restriction is a piece of Congress's broader framework governing the production of distilled spirits and the manner in which

individuals engage in this quintessentially economic activity. Congress's choice to limit the placement of distilled spirits plants in, for example, a "dwelling house" or on "any vessel" or "boat," 26 U.S.C. § 5178(a)(1)(B), reflects the "great latitude" afforded to Congress to dictate the terms in which individuals participate in the national market for this particular type of commodity, *NFIB*, 567 U.S. at 537. Congress can just as validly dictate *how* such activity takes place (for example, only after passing a background check and submitting a permit application, 27 U.S.C. §§ 203, 204), as it can prescribe where and when such activity may occur. Moreover, for the same reasons that the location restriction facilitates the government's ability to collect taxes, it also facilitates the ability to ensure compliance with a host of other requirements governing the distilled-spirits industry—including, for example, the requirement that distilled-spirits bottles generally contain a label with certain mandatory information. *Id.* § 205(e); 27 C.F.R. § 5.63. All of these requirements are pursuant to, and in service of, Congress's broader regulation of the distilled-spirits industry and interest in ensuring that such products are not manufactured without paying the appropriate tax.

Plaintiff does not challenge Congress's authority to regulate distilled spirits in interstate commerce, nor does he challenge Congress's authority to regulate distilled spirits generally. Plaintiff's contention, instead, rests on the mistaken belief that Congress has not provided for the interstate regulation of distilled spirits, *see* Opening Br. 35–36, but as noted above, Congress has done precisely that. Plaintiff's argument rests further on his assertion that he would distill spirits only for personal consumption and not for commercial sale. That argument again rests on the misconception that the location restriction is a categorical ban on "home distilling." As previously discussed, the restriction does not sweep that broadly, and to the extent plaintiff seeks clarity as to what he may do, he need only submit a (free) permit application to the Bureau. *See* Gov't Br. 16, 20–21.

In any event, plaintiff's assertion that he would distill spirits only for personal use does not alter the constitutional analysis. In *Raich*, the Supreme Court upheld Congress's authority to criminalize the possession, obtaining, or manufacturing of marijuana as applied to individuals using marijuana solely for personal (and, in that case, medicinal) purposes. 545 U.S. at 6–7, 9; *see id.* at 37, 40 (Scalia, J., concurring in judgment) ("Congress may regulate even noneconomic local activity," such as the possession of

marijuana, "if that regulation is a necessary part of a more general regulation of interstate commerce"). The Court explained that it was "of no moment" that the governing framework "ensnare[d] some purely intrastate activity" or that the commodity in question had not been "produced for sale." *Id.* at 18, 22 (majority op.). Nor, the Court explained, was a person's purportedly "trivial" "impact on the market" a sufficient reason for "removing him from the scope of federal regulation." *Id.* at 20 (quoting *Wickard*, 317 U.S. at 127); *see Bowers*, 594 F.3d at 529 (a person's individual effect on interstate commerce is "irrelevant"). What mattered was that there was a "rational basis" to conclude that failing to regulate the intrastate activity would undermine Congress's interstate efforts, particularly in the context of a broader scheme to regulate the "production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market." *Raich*, 545 U.S. at 22, 26. That logic applies here: the wholly intrastate production of distilled spirits has an obvious effect on national "price and market conditions" for distilled spirits and presents the same "enforcement difficulties" in distinguishing between locally produced spirits and those manufactured elsewhere. *Id.* at 19, 22; *see Wickard*, 317 U.S. at 129; *Bowers*, 594 F.3d at 529.

Plaintiff's reliance on *Morrison*, 529 U.S. 598, and *Lopez*, 514 U.S. 549, only underscores the point that Congress's regulation of the distilled-spirits industry is a regulation of "economic activity," for which the failure to address intrastate activity would undercut the regulatory scheme writ large. *Raich*, 545 U.S. at 23–25. Indeed, the *Raich* Court explained that the "central" part of the Supreme Court's decisions striking down the laws in *Lopez* and *Morrison* was the "noneconomic" nature of the conduct at issue. *Id.* at 25 (quoting *Morrison*, 529 U.S. at 610). In *Lopez*, the Supreme Court held that a federal law prohibiting gun possession in a school zone exceeded Congress's commerce authority because the law had "nothing to do with 'commerce' or any sort of economic enterprise." 514 U.S. at 561; *see Raich*, 545 U.S. at 23. Similarly, the Supreme Court in *Morrison* struck down a law creating a civil remedy for victims of gender-motivated crime because, much "like the statute in *Lopez*, it did not regulate economic activity." *Raich*, 545 U.S. at 25; *see Morrison*, 529 U.S. at 610.

Those features of *Morrison* and *Lopez* are not at issue here. As discussed, the distilled-spirits law plainly regulates economic activity and the manner in which these "fungible commodit[ies]" are produced. *Raich*, 545 U.S. at 18; *see id.* at 37, 40 (Scalia, J., concurring in judgment)

("manufactur[ing]" is an "economic activity" whose regulation "may be essential to a comprehensive regulation of interstate commerce"). Indeed, this Court has rejected commerce-clause challenges where there existed a rational link between the underlying statute and economic activity. *See, e.g.*, *United States v. Rose*, 522 F.3d 710, 717–18 (6th Cir. 2008) (upholding law criminalizing certain firearm sales given the "established interstate market" for guns); *Bowers*, 594 F.3d at 529 (same for possession of child pornography); *United States v. McHenry*, 97 F.3d 125, 127–29 (6th Cir. 1996) (carjacking). To the extent plaintiff relies on *NFIB*, plaintiff fails to grapple with the fact that the distilled-spirits law does not *compel* participation by anyone who is otherwise unwilling to enter this particular market, unlike the individual-mandate requirement at issue in *NFIB*. 567 U.S. at 549–50; *see id.* at 551–52 (the commerce clause applies to "activity," including "economic activity" (quoting *Lopez*, 514 U.S. at 560)). Instead, the distilled-spirits law applies only to those who have *chosen* to enter a particular—and highly regulated—industry. And, as explained, Congress can validly articulate the manner in which individuals engage in this multibillion-dollar industry, including the how, where, and when they can so operate, as plaintiff at times appears to concede. *See* Opening Br. 38–39.

CONCLUSION

The district court's judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of the Court's December 11, 2025, Order because it contains 4,997 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Book Antiqua 14-point font, a proportionally spaced typeface.

s/ Caroline Tan
Caroline W. Tan

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Caroline Tan
Caroline W. Tan

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Pursuant to Sixth Circuit Rule 28(b)(1)(A)(i), the government designates the following district court documents as relevant:

Record Entry	**Description**	**Page ID # Range**
RE 1	Complaint	1-9
RE 13	Government's Motion to Dismiss and Brief in Support	66–93
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26 U.S.C. § 5178

§ 5178. Premises of distilled spirits plants

(a) Location, construction, and arrangement

(1) General

(A) The premises of a distilled spirits plant shall be as described in the application required by section 5171(c). The Secretary shall prescribe such regulations relating to the location, construction, arrangement, and protection of distilled spirits plants as he deems necessary to facilitate inspection and afford adequate security to the revenue.

(B) No distilled spirits plant for the production of distilled spirits shall be located in any dwelling house, in any shed, yard, or inclosure connected with any dwelling house, or on board any vessel or boat, or on premises where beer or wine is made or produced, or liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under subsection (b)).

(C) Notwithstanding any other provision of this chapter relating to distilled spirits plants the Secretary may approve the location, construction, arrangement, and method of operation of any establishment which was qualified to operate on the date preceding the effective date of this section if he deems that such location, construction, arrangement, and method of operation will afford adequate security to the revenue.

(2) Production operations

(A) Any person establishing a distilled spirits plant may, as described in his application for registration, produce distilled spirits from any source or substance.

(B) The distilling system shall be continuous and shall be so designed and constructed and so connected as to prevent the unauthorized removal of distilled spirits before their production gauge.

(C) The Secretary is authorized to order and require—

(i) such identification of, changes of, and additions to, distilling apparatus, connecting pipes, pumps, tanks, and any machinery connected with or used in or on the premises, and

(ii) such fastenings, locks, and seals to be part of any of the stills, tubs, pipes, tanks, and other equipment, as he may deem necessary to facilitate inspection and afford adequate security to the revenue.

. . .

(b) Use of premises for other businesses

The Secretary may authorize the carrying on of such other businesses (not specifically prohibited by section 5601(a)(6)) on premises of distilled spirits plants, as he finds will not jeopardize the revenue. Such other businesses shall not be carried on until an application to carry on such business has been made to and approved by the Secretary.

26 U.S.C. § 5601

§ 5601. Criminal penalties

(a) Offenses

Any person who—

. . .

(6) Distilling on prohibited premises

uses, or possesses with intent to use, any still, boiler, or other utensil for the purpose of producing distilled spirits, or aids or assists therein, or causes or procures the same to be done, in any dwelling house, or in any shed, yard, or inclosure connected with such dwelling house (except as authorized under section 5178(a)(1)(C)), or on board any vessel or boat, or on any premises where beer or wine is made or produced, or where liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under section 5178(b));

. . .

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

27 U.S.C. § 203

§ 203. Unlawful businesses without permit; application to State agency

In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this subchapter by the Secretary of the Treasury—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

(b) It shall be unlawful, except pursuant to a basic permit issued under this subchapter by the Secretary of the Treasury—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

(c) It shall be unlawful, except pursuant to a basic permit issued under this subchapter by the Secretary of the Treasury—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or

indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect July 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this subchapter.