No. 25-3259

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

John Ream,
Appellant,

v.

United States Department of the Treasury, *et al.*,
Appellees.

On Appeal from the United States District Court for the Southern District of Ohio, Civil Action No. 2:24-cv-00364-EAS-CMV

Supplemental Brief of John Ream

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Introduction

Defendants advance a stunningly broad conception of federal power. They argue that Congress can decide upon which activities individuals have the "privilege" to engage pursuant to its taxing power, and control the "how, where, and when" of any "economic" activity—expansively defined to include everything from home cooking to childcare swapping—pursuant to the Commerce Clause. *See* Gov't Br. 10, 24. Amici in this case explain why defendants' conception of federal authority strays from the original meaning and is unsupported by contemporary jurisprudence. Defendants cannot identify any precedent requiring this Court to hold that a prohibition of taxable activity is plainly adapted to tax collection or that it is necessary and proper to execute a nonexistent regulation of interstate commerce. Unsurprisingly, the only court to consider the constitutionality of the federal home-distilling prohibition has held it unconstitutional. *Hobby Distillers Ass'n v. Alcohol & Tobacco Tax & Trade Bureau*, 740 F. Supp. 3d 509 (N.D. Tex. 2024). Mr. Ream respectfully requests that this Court do the same.

Argument

Defendants are wrong that the federal home-distilling prohibition is a necessary and proper measure in support of Congress's exercise of either its taxing or Commerce Clause power. The Necessary and Proper Clause authorizes measures "which are appropriate, which are plainly adapted to [carrying into execution an enumerated power], [and] which are … consist[ent] with the letter and spirit of the constitution." *McCulloch v. Maryland*, 4 Wheat.

316, 421 (1819). A "necessary" law must be not only "'conducive to' the [enumerated power]," but also "'plainly adapted' to that end." *Jinks v. Richland Cnty., S.C.*, 538 U.S. 456, 462 (2003). To be plainly adapted requires a "tangible link" to an enumerated power, "not a mere conceivable rational relation, as in [*Williamson v.*] *Lee Optical*." *United States v. Comstock*, 560 U.S. 126, 152 (2010) (Kennedy, J., concurring). And just because a law is "necessary" does not make it "proper." *Printz v. United States*, 521 U.S. 898, 924 (1997). The prohibition fails both requirements.

I. The Prohibition Is Not Justified by Congress's Taxing Power

Defendants first contend that the prohibition is necessary and proper for carrying into execution the tax on distilled spirits.

1. Defendants do not dispute that prohibiting individuals from engaging in taxable activity is not "plainly adapted" to tax collection. Defendants instead characterize the prohibition as a regulatory measure indistinguishable from recordkeeping requirements facilitating tax collection because it "merely specifies where on a residential property an individual may place his still." Gov't Br. 10.

To be clear, the federal home-distilling prohibition categorically prohibits individuals from distilling "in any dwelling house, or in any shed, yard, or inclosure connected with such dwelling house." 26 U.S.C. § 5601(a)(6). Defendants maintain that the law does not prohibit distilling on residential plots so long as it does not occur in the home or appending yard or shed, such that a person who lives on a large rural estate could distill in a backwoods shed. Putting

aside the questionable nature of that interpretation, most people live not on sprawling estates but in apartments, townhouses, and single-family homes. Most people also cannot purchase commercial premises to engage in hobbies and other daily activities. The prohibition is not a mere regulation of *how* people may distill; it prevents nearly everyone from distilling at all. Defendants contend (at 13–14) that "[a]ny law governing distilling could, in theory, deter an individual from engaging in that activity." But the Framers "were practical statesmen, not metaphysical philosophers." *NFIB v. Sebelius*, 567 U.S. 519, 555 (2012). The distinction between a prohibition on home-based conduct and bookkeeping requirements "would not have been lost" upon them. *Id.*

Defendants' characterization of the prohibition only underscores that it is not "plainly adapted" to tax collection. Defendants cannot and do not attempt to explain how a law that (1) prohibits the vast majority of individuals from distilling but (2) allows individuals who possess large estates to distill only in remote outbuildings is conducive to tax collection. Their claim (at 5) that "[a] distiller can more easily … conceal a distilling operation … in a dwelling house" is absurd. A home is no more suited to concealing distilling activity than any other structure, including remote outbuildings or commercial premises. The most defendants contend (at 5) is that the "rampant evasion of the distilled spirits tax" in 1867 "includ[ed] [] home distillers." But the cited report twice contradicts the defendants' contention—making clear that homes did not pose a greater threat of concealment than commercial spaces, where evasion was pervasive. *See* H.R. Rep. No. 39-24, at 1–2, 159, 194 (1867).

Significantly, defendants do not dispute that the prohibition "imposes current burdens and must be justified by current needs." *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 536 (2013) (quotation marks and citation omitted). Defendants cannot answer why home distilling today would undermine tax collection. Defendants cite (at 11) only one sentence from a 2023 TTB report stating that "[t]he diversion of [alcohol, tobacco, firearms, and ammunition] into domestic commerce without the payment of taxes threatens Federal revenues," which does not even mention home distilling. Further, anyone who attempts to conceal a still can already be prosecuted for possession of an unregistered still. *See* 26 U.S.C. §§ 5179, 5601(a)(1).

Citing other provisions that actually facilitate tax collection, like the registration requirement, defendants argue that the prohibition is part of an "elaborate system … to protect the revenue on distilled spirits." Gov't Br. at 6 (quoting *United States v. Goldberg*, 225 F.2d 180, 187–88 (8th Cir. 1955) (upholding labeling regulation as "reasonably related to the protection of the revenue")). But laws cannot become constitutional through osmosis. The federal home-distilling prohibition does not bear "a reasonable relationship to the collection of revenue" simply because adjacent provisions do. *Stilinovic v. United States*, 336 F.2d 862, 864–65 (8th Cir. 1964) (upholding prohibition on refilling tax-stamped bottles because inspectors needed to check "whether the bottle contains the whiskey upon which the tax was paid"); *see also Di Santo v. United States*, 93 F.2d 948, 949 (6th Cir. 1937) (upholding reporting requirement for substances used in distilling).

2. The prohibition likewise is not proper. Defendants suggest (at 15) that it does not "offend federalism principles any more than any of the other distilling provisions." But unlike mundane record-keeping requirements, the prohibition proscribes Mr. Ream's personal conduct by criminalizing an entire class of activity, in contravention of the principle that Congress cannot exercise "direct control" over "commerce and trade" or "the business of citizens transacted within a state" except as is "strictly incidental" to carrying into execution its taxing power. *License Tax Cases*, 72 U.S. 462, 470–71 (1867).

Defendants' argument (at 10) that the prohibition merely "removes [Mr. Ream's] choice to distill in a particular location and therefore his choice to pay the tax for the privilege of doing so" betrays its fundamental unconstitutionality. The taxing power does not give Congress any authority to decide upon which activities individuals have the "privilege" to engage. *Cf. NFIB*, 567 U.S. at 574 (Congress 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"); *License Tax Cases*, 72 U.S. at 471 ("Congress cannot authorize a trade or business within a State in order to tax it.").

Defendants' argument "would work a substantial expansion of federal authority." *NFIB*, 567 U.S. at 560. Mr. Ream's opening brief (at 47–48) explained why defendants' theory would permit Congress to regulate any activity under the guise of taxing it, including justifying prohibitions of practically any home-based activity, federal grants of monopoly, and occupational qualifications on any profession. Defendants contend (at 16) that

"[t]hese scenarios provide no basis for invalidating the location restriction at issue here." But they underscore "[t]he flaw in [defendants'] analysis," which "is that it provides no limiting principle." *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 73 (1982) (plurality).

II. The Prohibition Is Not Justified by Congress's Commerce Clause Power

Defendants next contend that the prohibition is necessary and proper for carrying into execution Congress's authority to "regulate Commerce … among the several States." U.S. Const. art. I, § 8, cl. 3.

1. The prohibition is not necessary to support Congress's exercise of its Commerce Clause authority. Defendants do not dispute that the prohibition does not regulate interstate commerce, *see United States v. Rife*, 33 F.4th 838, 842 (6th Cir. 2022) ("commerce" means "trade and transportation thereof, as opposed to … manufacturing and agriculture"), so the question is whether the prohibition is necessary to support a regulation of interstate commerce, *see Gonzales v. Raich*, 545 U.S. 1, 22 (2005) (explaining that the third category of Commerce Clause authority stems from the Necessary and Proper Clause). Defendants rely on *Raich*, which held that Congress may "regulate purely intrastate activity … if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity." 545 U.S. at 18; *see also United States v. Rose*, 522 F.3d 710, 717 (6th Cir. 2008) (same); *United States v. Bowers*, 594 F.3d 522, 529 (6th Cir. 2010) (same).

Defendants argued below that it was not their "burden" under *Raich* to identify any regulation of interstate commerce supported by the prohibition. Mem., ECF 27 at Page ID 222. But the Necessary and Proper Clause authorizes only measures that are "necessary and proper for *carrying into Execution* [Congress's enumerated] Powers." Art. I, § 8, cl. 18 (emphasis added). Defendants now appear to concede (at 22) that "[w]hat mattered" in *Raich* was that Congress could "conclude that failing to regulate the intrastate activity would undermine Congress's interstate efforts." Reversing course, defendants now maintain the prohibition "facilitates the ability to ensure compliance with a host of other requirements," while identifying only "the requirement that distilled-spirits bottles generally contain a label with certain mandatory information." Gov't Br. 20 (citing 27 U.S.C. § 205(e)).

It is difficult to see how the prohibition (enacted in 1868) is "plainly adapted" to facilitating compliance with section 205(e)'s labeling requirement (enacted in 1935). Defendants contend that "distinguishing between locally produced spirits and those manufactured elsewhere" poses "enforcement difficulties." Gov't Br. 22 (quoting *Raich*, 545 U.S. at 22). But they do not offer any explanation of why that would be. Unlike in *Raich*, Mr. Ream does not claim exemption from generally-applicable regulations like the labeling requirement, so there is no need to distinguish between home-distilled and other spirits in executing the law. Notably, the labeling requirement applies equally to wine and beer, both of which may be produced at home. Home cooking and baking likewise have not imperiled enforcement of the labeling requirements in

the Food, Drug, and Cosmetic Act. *See* 21 U.S.C. §§ 341 *et seq.* "To uphold the Government's contentions here, [one] would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power." *United States v. Lopez*, 514 U.S. 549, 567 (1995).

Defendants argue (at 19) vaguely that the prohibition is "a piece of Congress's broader framework governing the production of distilled spirits," implying that this "carefully reticulated scheme" would be undercut absent the prohibition. But apart from section 205(e), defendants do not identify any provision the prohibition ostensibly supports. This sort of handwaving does not suffice to show that "the regulatory scheme could be undercut unless the intrastate activity were regulated." *Lopez*, 514 U.S. at 561 (distinguishing *Wickard v. Filburn*, 317 U.S. 111 (1942)). And if it did, that would give Congress "license to regulate an individual from cradle to grave." *NFIB*, 567 U.S. at 557. There are, after all, few fields untouched by reticulated legislative schemes.

Citing *Wickard*, defendants argue (at 22) that home distilling would have an "obvious effect" on "price and market conditions" for distilled spirits. Unlike in *Wickard*, defendants offer no support for that assertion, nor do they identify any federal policy regarding the "price and market conditions" for distilled spirits that would be undercut by home distilling. *Contra Raich*, 545 U.S. at 18–20 ("[T]he Agricultural Adjustment Act was designed to control the volume of wheat moving in interstate and foreign commerce in order to … control the market price," and "the *Wickard* record made it clear that the aggregate

production of wheat for use on farms had a significant impact on market prices" (quotation marks omitted)). *Wickard* stands for the proposition that Congress may "regulate purely intrastate activity that is not itself 'commercial,' in that it is not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity." *Raich*, 545 U.S. at 18. *Wickard* by no means holds that Congress may regulate purely intrastate noncommercial activity even if it is not necessary to support a regulation of interstate commerce.

Perhaps recognizing that the prohibition does not fit comfortably within *Raich* and *Wickard*, defendants boldly assert (at 24) that Congress can regulate "the manner in which individuals engage" in any "quintessentially economic" activity, "including the how, where, and when." *See also* Gov't Br. 20. Undersigned counsel is unaware of any authority supporting defendants' contention that Congress can regulate writ large all local activity that might be characterized as "quintessentially economic," regardless of whether it is necessary to support a regulation of interstate commerce.

2. As before, the prohibition is not proper. It is not consistent with the spirit of the Constitution and its reservation of powers to the states and the people, for Congress to regulate mundane noncommercial activities carried out at home.

Raich does not compel a contrary holding. *Raich* addressed a blanket prohibition on the production of marijuana that applied to commercial manufacturers and home-growers alike. Here, interstate commerce in distilled

spirits is not prohibited, and the production of distilled spirits is lawful outside the home. Defendants' theory that activities carried on at home are inherently more suspect and warrant less liberty than activities carried on elsewhere subverts the Framing-era principle that "every man's home is his castle." *Ker v. State of Cal.*, 374 U.S. 23, 47 (1963) (quotation marks omitted). *Raich* already departs from the original understanding of the Commerce Clause, and this Court is not obligated to and should not extend it even further. *See Rife*, 33 F.4th at 843 (refusing to extend the substantial-effects test to the Foreign Commerce Clause because of its "departure from the original meaning").

Congress's constitutional authority "must be read carefully to avoid creating a general federal authority akin to the police power." *NFIB*, 567 U.S. at 536. Yet that is what defendants' theory would create with Congress "dictating" precisely "how, where, and when" any "economic" activity occurs—with "economic" defined to include anything from gardening and crafting to childcare or education. Gov't Br. 24. Because Congress's enumerated powers must be "interpreted as having judicially enforceable outer limits," *Lopez*, 514 U.S. at 566, defendants' theory cannot stand.

Conclusion

The Court should reverse the judgment below.

Dated: January 14, 2026

Respectfully submitted,

/s/ Andrew M. Grossman

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Certificate of Compliance

I certify that this brief complies with the type-volume limit of the Court's December 11, 2025 Order because it contains 2,500 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Sixth Cir. R. 32(b)(1), and the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6).

Dated: January 14, 2026

/s/ Andrew M. Grossman
Andrew M. Grossman

Certificate of Service

I certify that on January 14, 2026, I caused the foregoing brief to be filed with the Court electronically using the CM/ECF system, which will send a notification to all counsel of record.

Dated: January 14, 2026

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