No. 26-93

# In the Supreme Court of the United States

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JOHN REAM,

*Petitioner*,

v.

UNITED STATES DEPARTMENT
OF THE TREASURY, ET AL.,

*Respondents*.

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*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

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**BRIEF OF *AMICI CURIAE* STATE OF OHIO AND 14 OTHER STATES IN SUPPORT OF PETITIONER**

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## INTRODUCTION AND *AMICI*'S INTEREST*

Ohio is one of the Nation's "liquor control States"—those that sharply limit the alcohol market by maintaining a state monopoly over alcohol distribution and sales. *See Granholm v. Heald*, 544 U.S. 460, 489 (2005) ("States may also assume direct control of liquor distribution through state-run outlets or funnel sales through the three-tier system."). Ohio works hard to maintain its "three-tier system" of liquor control. In fact, Ohio is currently petitioning this Court to review a decision that it believes improperly chips away at its strict control. *See Block v. Canepa*, 175 F.4th 642 (6th Cir. 2026), *petition for cert. pending sub nom. Wilson v. Miller*, Case No. 25-1366.

Ohio controls not only manufacturers, wholesalers, and retailers, but also individual consumers who wish to import or even make their own alcohol. In *Wilson,* Ohio defends laws that bar individuals from buying beer or wine directly from out-of-state shippers, and that limit how much alcohol an individual can drive across state lines into Ohio. *See id.* And while Ohio allows and regulates limited homebrewing of beer and home winemaking, Ohio Rev. Code §4301.201, Ohio has no similar law blessing home distilling. Instead, Ohio requires a license for *all* distillers, and need not give licenses to home hobbyists, *id.* §4301.58(B).

Petitioner John Ream is an Ohioan who seeks to distill whiskey in his home, but he has no Ohio license to do so, so if he were to distill tomorrow, he would be in violation of Ohio law and of a federal statute that also bars home distilling. *See* Pet. at 6–7; 26 U.S.C.

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* The amici States provided all parties with the notice required by Rule 37.2.

§5178(a)(1)(B). He seeks to enjoin that federal law as unconstitutional, as a step toward gaining the freedom to distill. Ohio law stands in the way of Ream's ultimate goal, as distilling at home without Ohio's permission is a crime. Ohio Rev. Code §4301.99(C).

Yet Ohio—a strict controller of distilling today and birthplace of the temperance movement long ago—stands shoulder to shoulder with Ream against the federal ban on home distilling. Ohio does so because it believes in federalism first—the American idea of dual sovereignty, which not only empowers States, but limits the federal government to its enumerated powers. Every unwarranted expansion of federal power comes at the expense of States, especially when, as here, the ancillary Necessary and Proper Clause does the dirty work. *See Gonzales v. Raich*, 545 U.S. 1, 65 (2005) (Thomas, J., dissenting) ("Congress may not use its incidental authority to subvert basic principles of federalism and dual sovereignty.").

The *amici* States joining Ohio likewise cherish their sovereignty. As detailed below (at 13–14), they exercise their power over alcohol in different ways, as befits the laboratories of democracy. The *amici* States might go different ways in whether to ban home distilling or how to regulate it, but all agree that it is the States' sovereign right to decide, not Congress's.

The decision below needs review for all the classic reasons: a sharp circuit split, an injunction (by the Fifth Circuit) blocking enforcement of a federal statute, and more. Further, the expansive view adopted below makes the Taxation Clause, along with the Necessary and Proper Clause, unlimited, rendering all other enumerated powers—including even the overly expanded Commerce Clause—"wholly superfluous."

*United States v. Lopez*, 514 U.S. 549, 588 (1995) (Thomas, J., concurring).

Distilled to its essence, a proper reading of both the letter and spirit of federalism requires federalism in spirits. The Court should grant the Petition.

## STATEMENT

As further detailed in the Petition, the facts and proceedings below are straightforward.

**1.** Petitioner-Plaintiff John Ream is an Ohio resident who wants to distill liquor in his home. He has experience in brewing beer and operates a brewpub near his home in Newark, Ohio.

Ream has researched the necessary equipment and processes for distilling and has taken the steps toward it that he can without running afoul of federal law. He has decided which still to buy, but he has not bought it, as possession is a federal crime.

**2.** Ream's path is blocked by federal statutory and regulatory provisions that bar any home distilling. Specifically, 26 U.S.C. §5601(a)(6) makes it a crime to "use[], or possess[] with intent to use, any still, boiler, or other utensil for the purpose of producing distilled spirits … in any dwelling house, or in any shed, yard, or inclosure connected with such dwelling house." In addition, federal regulation provides that a "person may not produce distilled spirits at home for personal use." 27 C.F.R. §19.51.

The home-distilling ban is part of a broader scheme that regulates who may operate a distillery. Any prospective distillery must apply to the Secretary of the Treasury for registration and have that application approved. 26 U.S.C. §5171. Registered distilleries, in turn, must post a bond for operation and pay taxes or post additional bonds to remove any spirits from the premises. *Id.* §5173(a)(1)–(2). But the statute bars "any dwelling house [or] any shed, yard, or inclosure connected with any dwelling house" from operating as a distillery. *Id.* §5178(a)(1)(B). So, home distillers cannot receive approved registrations.

The home-distilling prohibition was enacted in 1868 as part of a broader reform of the tax scheme, which had often been evaded. *See* Pet. at 5–6.

**3.** Ream sued the relevant federal officers in January 2024 in the U.S. District Court for the Southern District of Ohio. He alleged that the federal ban on home distilling exceeded Congress's enumerated powers. The federal government moved to dismiss, challenging Ream's standing and urging that Congress was empowered by both its power to tax and its power to regulate interstate commerce. Ream opposed dismissal and moved for summary judgment.

The district court dismissed for lack of standing, saying Ream had no "legally protected interest" at stake, and relying also on the fact that he had not purchased a still. Pet.App.43–49.

**4.** Ream appealed, asking the Sixth Circuit to reverse both the dismissal of his case and the denial of his motion for summary judgment. The federal government initially briefed a defense to only the standing argument. The panel ordered post-argument briefs on the merits, and in that supplemental briefing, the federal government relied on both Congress's taxing and commerce powers. R.37 (Order for Supplemental Briefing); Pet.App.74–75.

The panel majority held that Ream had standing, but it rejected Ream's claim on the merits. Pet.App.19. The majority acknowledged that the taxing power alone did not authorize the ban, *id.* at 11–12, but it said that the Necessary and Proper Clause justified the law in conjunction with the taxing power, *id.* at 15–16. That was so, it said, because home distillers could more easily evade the tax. *Id.* at 16. By forcing consumers to buy liquor on the taxed market rather than make their own, the ban ensured revenue collection, making the ban "proper." *Id.*

The majority added that nothing in the Constitution "expressly prohibited" such a ban. *Id.* (quotation omitted). The majority also acknowledged that this reasoning seemed to allow Congress to do anything, as it could simply tax an activity and then ban it. Specifically, the majority said that its view might seem to "expand Congress's power beyond its proper limits," but not to worry. *Id.* at 17. It said that alcohol was "*sui generis*" and its ruling was "factbound," so the concern over unchecked federal power was "misplaced." *Id.*

The panel majority declined to mention the Fifth Circuit's decision, eleven days earlier, reaching the opposite conclusion. *See McNutt v. U.S. Dep't of Just.*, 173 F.4th 204 (5th Cir. 2026). The Fifth Circuit held that the ban was outside Congress's enumerated powers. *Id.* at 221–22. It affirmed an injunction against the law's enforcement in favor of several individual plaintiffs and the Hobby Distillers Association, which has over 1,300 members nationwide. *Id.* at 210, 222.

Back in the Sixth Circuit, Judge Mathis's separate opinion said that Ream had no standing, and it cited

*McNutt*'s contrary conclusion on that score. Pet.App.20–28 (Mathis, J., dissenting).

## SUMMARY OF ARGUMENT

The Court should review the decision below upholding the federal ban on home distilling, for several reasons. *First*, the conflict between the Fifth and Sixth Circuits is sharp and based on pure law. The question involves the constitutionality of a federal law and raises a purely legal issue with no factual variance among cases. Although the decision below started with the taxing power, it ultimately turned on the Necessary and Proper Clause, so it implicates Commerce Clause doctrine as well.

*Second*, the exercise of federal power erodes state sovereignty and does so beyond the home-distilling context. It implicates whether Congress faces any limits on its enumerated powers, or whether the Necessary and Proper Clause transforms the taxing power or the commerce power into a general police power.

*Finally*, the issue is ripe now, with this case an ideal vehicle. Further percolation is unneeded and even harmful. That is because the *McNutt* injunction grants relief to association members across the country, making the reality of confusing and inequitable enforcement worse than in a typical geographic split. Clarity from this Court is needed sooner rather than later.

## REASONS TO GRANT THE PETITION

This case has all the hallmarks of *certiorari* review, and no further percolation is needed or desirable.

## I. The Fifth and Sixth Circuits are sharply split on a purely legal issue of whether Congress has an enumerated power to enact the home-distilling ban.

**1.** The circuit split here is as stark as they come. In this case, the Sixth Circuit upheld the home-distilling ban as a valid exercise of Congress's taxing power as augmented by the Necessary and Proper Clause. Pet.App.12–17. In sharp contrast, the Fifth Circuit rejected that same reasoning. *McNutt,* 173 F.4th at 216–21.

The split was not just over outcome, as each side of the split reviewed the same doctrines and the same arguments. Indeed, the same plaintiffs' counsel brought both cases, and of course, the federal government was on the other side in both. These cases are identical twins, except for the outcome.

The Sixth Circuit's opinion rightly acknowledged that the Taxing Clause alone did not justify the law, and that the Necessary and Proper Clause did the heavy lifting. Noting that the issue "present[s] purely questions of law," Pet.App.11, it explained that the case "begin[s] and end[s] with the question whether the home-distilling ban is a necessary and proper means of collecting the federal excise tax on spirits." *Id.* The taxing power is "'limited to requiring an individual to pay money into the Federal Treasury, no more.'" *Id.* at 11–12 (quoting *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 574 (2012)). Thus, said the panel majority, "[t]he home-distilling ban exceeds that boundary: rather than require payment to the Federal Treasury, it proscribes conduct." *Id.* at 12. The "taxing power itself therefore cannot support the ban," so the court considered "whether the Necessary and Proper Clause does." *Id.*

The court then concluded that the ban is necessary and proper to raising revenue. It reasoned that it was necessary because "Congress had ample reason to conclude that, for every at-home distiller who pays the tax, many others would not." *Id.* at 15. Thus, a world without a ban would mean less revenue. "The ban thus shifts consumption from untaxed spirits to taxed spirits—thereby increasing revenue." *Id.* It was proper, said the court, because "[t]he ban's purpose is actually to collect revenue." *Id.* at 16.

The court characterized as a "more serious argument" the concern that its combination of the taxing power and the necessary-and-proper auxiliary "could expand Congress's power beyond its proper limits"—but the court then dismissed that concern as "misplaced." *Id.* at 16–17. It was misplaced, in the court's words, because any necessary-and-proper analysis is "factbound." *Id.* at 17. With respect to home distilling, the facts of the federal law's long history and the older history of tax evasion regarding alcohol made the analysis unique. *Id.* It summed up by saying the question of necessity and propriety involved an "empirical judgment," and "empirically, alcohol is *sui generis,* or very close to it." *Id.*

The Fifth Circuit reviewed all the same issues and reached opposite conclusions on the components and the outcome. *McNutt,* 173 F.4th at 216–21. It started with two common points with the Sixth Circuit: it also found standing for the plaintiffs there, *id.* at 212–14, and it held that the taxing power alone did not justify the home-distilling ban, *id.* at 214–16.

The Fifth Circuit, though, found that the law was neither "necessary" nor "proper" to assist the taxing power. A ban was not necessary for taxation, said the court, because home distillers could be legalized and then taxed. *Id.* at 217–21. The ban "is a pure prohibition of conduct that might otherwise have generated taxable products." *Id.* at 219. It also noted this Court's long-ago rejection of a federal "attempt to ban one product in order to further taxation of another product." *Id.* at 219–20 (citing *United States v. Dewitt*, 76 U.S. (9 Wall.) 41 (1869)).

The Fifth Circuit likewise found that the ban was not "proper" to a tax purpose. Among other things, it took "away Plaintiffs' choice to pay the tax by engaging in otherwise legal, albeit licensed and regulated, activity." *Id.* at 221 (quotation omitted).

Finally, the Fifth Circuit agreed with Plaintiffs, contrary to the Sixth Circuit, that the federal government's view had no limiting principle. "Under the government's logic, Congress may criminalize nearly any at-home conduct only because it has the possibility of concealing taxable activity." *Id.* That recognition—that *any* at-home conduct is at risk of federal control—sharply contrasts with the Sixth Circuit's view that alcohol is "*sui generis*," rendering its decision "fact-bound." A recent case has already proven the Fifth, not the Sixth, correct. Just two weeks ago, a federal district court in Texas extended *McNutt*'s holding on the scope of the taxing power to nullify certain firearms restrictions. *Silencer Shop Found. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 6:25-CV-056-H, 2026 WL 2255460, *15–18 (N.D. Tex. Aug. 5, 2026). Thus, even if alcohol is *sui generis* in a sense, a circuit split over the tax-plus-necessary-and-proper power is about that power, not about drinking alone.

All this means that the crisp conflict here warrants review.

**2.** That is not all. This Court's review should extend to the related question of potential—but absent—Commerce Clause power as an alternative. To be sure, neither circuit reached the Commerce Clause issue: the Sixth had no need to, as it upheld the ban under the tax-plus-necessary-and-proper combination; while in the Fifth, the federal government did not argue it (but it did in the Sixth here).

The Commerce Clause issue is nevertheless ripe for review for several reasons. *First*, the real issue here is not the taxing power alone, but the alleged elasticity of the Necessary and Proper Clause to reach activity that the taxing power alone cannot reach. That issue—the auxiliary use of the Necessary and Proper Clause—is what likewise animates the Commerce Clause issue here, as it often does in commerce-power cases. *See Gonzales v. Raich,* 545 U.S. 1 (2005). Indeed, one of the Court's most important precedents about the Necessary and Proper Clause involved both the taxing and commerce powers. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536–37 (2012) (*NFIB*). The Court's split in *NFIB* on how two substantive powers played out there—tax "yes," commerce "no"—shows how the issues overlap and are best resolved together.

*Second*, both the taxing and commerce powers carry the same threat—creating an unlimited federal police power—with an extra level of danger for the taxing power. The Commerce Clause power, left unchecked, is not just an unlimited power but renders other enumerated powers "wholly superfluous."

*United States v. Lopez*, 514 U.S. 549, 588 (1995) (Thomas, J., concurring).

The taxing power adds a layer of danger. If the combination of tax first and claim universal regulatory power after is fair game, then even the Commerce Clause is superfluous because the taxing power could justify anything. That could mean that even modest attempts at restoring limits on the commerce power will be nullified. Congress could simply tax the activity of taking a gun near a school, or tax domestic violence, and then reach activity that might fall short under the Commerce Clause. *See Lopez,* 514 U.S. at 549 (guns); *United States v. Morrison,* 529 U.S. 598, 610 (2000) (violence against women).

*Finally*, the Commerce Clause issue can easily be reviewed here because it, too, is a purely legal issue. No factual development is required to reach it; addressing it would fully resolve the home-distilling issue; and it would also offer guidance on how the clauses work together.

## II. The issue threatens state sovereignty by erasing any limits on federal power.

As shown above, the decision below threatens to eliminate any limits on federal power, creating a general federal police power. The Court has repeatedly said that no such general power exists. *See Lopez,* 514 U.S. at 566 (noting that the Constitution "withhold[s] from Congress a plenary police power that would authorize enactment of every type of legislation"); *Morrison,* 529 U.S. at 618 (describing how "the Founders denied the National Government and reposed in the States" the "police power"). But it is hard to see what limits remain if Congress can tax and ban any activity. That unlimited expansion of federal power erodes federalism and state sovereignty.

Congress already has in place multiple excise taxes on both goods and activities. Taxes on goods include those on gasoline, diesel, and kerosene, 26 U.S.C. §4081; on coal, 26 U.S.C. §4121; on tobacco, 26 U.S.C. §5701; and on vaccines, 26 U.S.C. §4131. Federal excise taxes on activities include those on communications services, 26 U.S.C. §4251; passenger air travel, 26 U.S.C. §4261; sports betting and lotteries, 26 U.S.C. §4401; and indoor tanning services, 26 U.S.C. §5000B. The federal government formerly taxed admissions to events such as theaters, concerts, and sporting events. Cabaret Tax, ch. 736, §4321, 68A Stat. 497, 497 (1954) (repealed). Thus, any of those activities could possibly be regulated, even banned, by combining the taxing power with the necessary-and-proper add-on, without even a nod to interstate commerce.

And perhaps those expansions could cover home or backyard activity, too, under the theory that doing it yourself at home inherently affects the taxed market. Consider the tax on indoor tanning services. 26 U.S.C. §5000B. If people sunbathe in their backyards, they might not go to commercial tanning beds, thus reducing that source of revenue. So the government could ban sunning oneself. Absurd? Perhaps. But is backyard tanning doctrinally different from the reasoning here regarding a backyard still, or *Raich*'s reach to backyard plants? Not really. Of course, none of those consequences flow if the Sixth Circuit is right that alcohol is unique. But the Fifth Circuit said it was not unique, and a subsequent court applied the decision outside the context of alcohol. All this confirms why the issue needs review.

Every such expansion of federal power intrudes upon the sovereigns who truly have a police power—the States. "Congress may not use its incidental authority to subvert basic principles of federalism and dual sovereignty." *Raich*, 545 U.S. at 65 (Thomas, J., dissenting). Congress's takeover of a field takes away the States' power to decide for ourselves whether to ban or allow home distilling or any other activity reached by similar doctrinal legerdemain.

This erosion of state sovereignty over alcohol is worsened by other doctrinal developments that squeeze the States from all sides. When prohibition ended, the Twenty-First Amendment promised the States that they could control liquor. But that express promise has been eaten away by expansion of the so-called "dormant Commerce Clause" doctrine, which is why Ohio is separately before the Court in *Wilson v. Miller,* No. 25-1396. The combination of losing power over liquor from that judge-made end, while Congress threatens an infinitely elastic "enumerated" power from the other end, threatens to leave the States with little to nothing of its sovereignty over spirits.

States are perfectly willing and able to address home distilling on their own, as they do other aspects of liquor control. Currently, a few States permit home distilling, despite the federal ban. They adopt their own regulations on issues like sale, quantity, and transportation. *See* Mass. Gen. Laws ch. 138, §3 (permitting home distilling for personal use, but not sale); Me. Stat. tit. 28-A, §1358(2)–(3) (banning sale and transport of home-distilled liquor and limiting production quantities); Mo. Rev. Stat. §311.055(1) (banning sale and limiting production quantities); N.H. Rev. Stat. Ann. §175:5-b(I)–(II) (limiting home distilling to "liquor produced from beer or wine," banning sale, and limiting production quantities); W. Va. Code §60-6-10(b) (banning sale and limiting production quantities).

Most States, however, prohibit home distilling, either explicitly or by carving out home-manufacture exceptions for only beer and wine. *See, e.g.*, Ala. Code §28-4B-1(d) (prohibiting home distilling); Iowa Code §§123.122(2), 123.171(2) (carving out exceptions for home manufacture of beer and wine but not liquor); N.Y. Alco. Bev. Cont. Law §§61, 153 (requiring licensing for all distillers without option for home distillers to obtain them).

The state of States' home-distilling laws is distorted, however, by the presence of the federal ban. If that were eliminated, States might vary their laws to meet their own needs and preferences.

That likely variance is shown by the experience with homemade beer and wine. After the federal government lifted a similar prohibition in the late 1970s, the States responded by choosing their own paths at their own paces. Some States continued to ban it for years to come. John Moorhead, *Homebrewing is Legal, but the Fight Continues*, Am. Homebrewers Ass'n (Oct. 14, 2021), https://perma.cc/QWH7-YVYW ("Alabama and Mississippi legalize[d] homebrewing [in 2013], officially making homebrew legal in all 50 states."). Others adopted limits on quantity, controls on transportation, and bans on sale. *See, e.g.*, Ala. Code §28-4B-1(a)–(f) (imposing restrictions on the quantity, transport, age minimums, and sale of home-manufactured beer and wine); Iowa Code §§123.122(2), 123.171(2) (banning sale and commercial exchange of home-manufactured beer and wine); Mo. Rev. Stat. §311.055(1)–(2) (imposing restrictions on the quantity and sale of home-manufactured alcohol and on transport except for beer).

Perhaps the States will allow more home distilling, as they did with homebrewing and home winemaking. Or perhaps they will keep strict bans in place. The more important point is that States have the choice to do so, not the federal government.

The Court should thus review this case to protect state sovereignty. Even if it upholds this ban, it can and should explain whether alcohol is unique, or whether the States should brace themselves to lose further sovereignty battles to anything Congress chooses to tax.

## III. The issue is ripe for review now, and further percolation is both unneeded and harmful.

Unlike a good whiskey, this split will not age well. As noted above (at 9), the uncertainty between the Fifth and Sixth Circuits has already spilled beyond alcohol to trigger a question about firearm restrictions.

The split here has another wrinkle, magnifying the usual problem of different legal standards governing in different regional circuits. Here, the *McNutt* injunction was granted in favor of the Hobby Distillers Association, a group with over 1,300 members across the nation. That means that federal enforcement is enjoined as to those members not only in the Fifth Circuit, but in every State in which a member resides. The *McNutt* injunction reaches not only the nation outside the Fifth and Sixth Circuit, but reaches into the Sixth Circuit itself. That is so because injunctions apply to the parties before a court, not to geography. *See Trump v. CASA, Inc.*, 606 U.S. 831, 841–46 (2025).

So other Ohioans—perhaps even Ream's neighbors—might be protected from federal enforcement of the home-distilling ban, while he is left dry.

Nor is that differential treatment eliminated by the presence, noted above, of parallel bans in most States. *First*, as a practical matter of enforcement resources and priorities, being relieved of one sovereign's oversight can make a big difference, even if another sovereign is in the background. Witness the national explosion in open marijuana sales in States that legalize it, despite the federal prohibition. *Second*, state prohibitions, when enforced, are not identical to the federal one in severity. Ohio law, for example, makes unlicensed home distilling a misdemeanor. Ohio Rev. Code §4301.99(C). Federal law makes it a felony, making an offender eligible for long prison time, fines, and forfeiture of a home. 26 U.S.C. §5601(a)(6).

All those factors make further percolation destined to be marked by confusion and inequity. On the other side of the ledger, further percolation offers no serious value. The issue is purely legal, so seeing it played out on different facts benefits no one.

Thus, the Court should grant review, and it should grant it now.

## CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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