

26-204 DEPT. OF JUSTICE V. SCOTT McNUTT

DECISION BELOW: 173 F.4th 204

LOWER COURT CASE NUMBER: 24-10760

QUESTION PRESENTED:

Since the Founding era, Congress has imposed an excise tax on the production of distilled spirits. After documenting the extensive evasion of the government's efforts to collect the tax, Congress enacted a comprehensive scheme requiring distillation stills to be licensed and subject to inspection. One aspect of the scheme prohibited stills from being located in various places, including within residential properties—a restriction that has now been in effect for 160 years. In the decision below, the Fifth Circuit held that the location restrictions exceed Congress's enumerated powers, in direct conflict with a decision of the Sixth Circuit upholding the restriction on home distilling. The question presented is as follows:

Whether the prohibition on the production of distilled spirits in particular locations, including "in any dwelling house" or "in any shed, yard, or inclosure connected with any dwelling house," 26 U.S.C. 5178(a)(1)(B), is necessary and proper for carrying into execution Congress's enumerated power to lay and collect taxes.

CERT. GRANTED 10/19/2026