No. 25-3305
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEREK BLOCK, Plaintiff, KENNETH M. MILLER, ET AL., Plaintiffs-Appellants, v. JAMES CANEPA, Defendant, DAVE YOST, Defendant-Appellee, WHOLESALE BEER & WINE ASSOCIATION OF OHIO, Intervenor-Defendant-Appellee.	:	On Appeal from the United States District Court for the Southern District of Ohio District Court Case No. 2:20-cv-03686

MOTION TO STAY THE MANDATE

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Ohio Attorney General Dave Yost intends to file a petition for a writ of *certiorari* in this case. The deadline for that anticipated petition is August 4, 2026. This case presents a substantial question of federal law, and good cause exists to stay the mandate while Ohio seeks further review. Thus, under Federal Rule of Appellate Procedure 41(d), Ohio moves this Court to stay its mandate pending the resolution of Ohio's anticipated petition. This motion automatically stays the mandate until the Court resolves the motion. *See* Fed. R. App. P. 41(b), (d)(1).

I. This case presents a substantial question of federal law.

To win a stay of the mandate, the movant "must show that" a petition for a writ of *certiorari* "would present a substantial question." Fed. R. App. P. 41(d)(1). In determining whether a case presents a substantial question, courts ask whether there is "a reasonable probability that four Justices will vote to grant certiorari and a reasonable possibility that five Justices will vote to reverse the judgment of this court." *Books v. City of Elkhart*, 239 F.3d 826, 828 (7th Cir. 2001) (Ripple, J., in chambers).

A. This case presents a question likely to garner four votes for review: May a State ban direct alcohol shipments from out-of-state retailers even though it permits such shipments by in-state retailers? That question is exceptionally important. It "pits the twenty-first amendment, which appears in the Constitution,

against the 'dormant commerce clause,' which does not." *Bridenbaugh v. Freeman-Wilson*, 227 F.3d 848, 849 (7th Cir. 2000).

In connection with the repeal of Prohibition, the States were given explicit constitutional authority to control the transportation, importation, and sale of alcohol within their boundaries. Section 2 of the Twenty-First Amendment states that the "transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." U.S. Const. amend. XXI, §2.

The Commerce Clause, by comparison, says only that Congress has the power "[t]o regulate Commerce … among the several States." U.S. Const. art. I, § 8, cl. 3. It makes no mention of the States' authority to regulate commercial activity within their own borders. Courts have interpreted the Clause, however, as implicitly prohibiting States from adopting "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *New Energy Co. v. Limbach*, 486 U.S. 269, 273–74 (1988). This doctrine has come to be known as the "dormant Commerce Clause." *Dep't of Revenue v. Davis*, 553 U.S. 328, 337–38 (2008).

Whether Ohio must defend its choices about how to wield the authority that the Twenty-First Amendment explicitly gives against a challenge based on the

dormant Commerce Clause doctrine is an important question of federal constitutional law. Ohio law permits certain in-state retailers to ship wine to consumers in Ohio but prohibits out-of-state retailers from doing the same. Ohio Rev. Code §§ 4301.01(A)(2), 4303.12, 4303.27. Despite the fact that the Supreme Court has held that a three-tiered system of alcohol distribution that interposes a middleman between manufacturers and distributors of alcohol is "unquestionably legitimate," *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quotations omitted), the Court in this case held that Ohio's physical-presence requirement is not a "basic nor essential component[] of [a] three-tier system[]." Panel Op.14. Whether the Court is correct, and whether Ohio constitutionally exercised its Twenty-First Amendment authority when it imposed a physical-presence requirement identical to one imposed by numerous other States, is a substantial question of federal constitutional law.

There are at least two reasons why the Supreme Court is likely to be interested in answering that question.

First, the Court's decision has created a lopsided circuit split. Seven other circuits have held that States may enforce physical-presence requirements like the one at issue here. The Second and Eighth Circuits have held that *as a matter of law* direct-ship restrictions like Ohio's are constitutional. *Arnold's Wines, Inc. v. Boyle*,

571 F.3d 185, 192 (2d Cir. 2009); *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171, 1183–84 (8th Cir. 2021), *cert. denied*, 142 S. Ct. 335 (2021). And the Third, Fourth, Fifth, Seventh, and Ninth Circuits have rejected challenges to direct-ship restrictions following summary judgment. These circuits have held that—unlike Ohio—New Jersey, North Carolina, Texas, Indiana, and Arizona may all enforce their own direct-ship restrictions. *Jean-Paul Weg LLC v. Dir. of N.J. Div. of Alcoholic Beverage Control*, 133 F.4th 227, 231 (3d Cir. 2025); *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214, 228 (4th Cir. 2022); *Wine Country Gift Baskets.com v. Steen*, 612 F.3d 809, 821 (5th Cir. 2010); *Chicago Wine Co. v. Braun*, 148 F.4th 530, 531–32 (7th Cir. 2025) (*per curiam*); *Day v. Henry*, 152 F.4th 961 (9th Cir. 2025), petition for a writ of *certiorari* pending in *Day v. Reed*, No. 25-788.

The circuit conflict is not just a conflict over outcome but over reasoning as well. The Court held that Ohio's physical-presence requirement does not "substantially promote[] public health and safety." Panel Op.20. Other circuits disagree. The Fourth Circuit, for example, affirmed a grant of summary judgment upholding North Carolina's direct-ship restriction on the basis that the restriction *was* a valid public-health restriction. Holding otherwise, the Fourth Circuit held, "would open the North Carolina wine market to less regulated wine, undermining

the State's three-tier system and the established public interest of safe alcohol consumption that it promotes." *B-21 Wines*, 36 F.4th at 228.

Second, the Supreme Court has already demonstrated an interest in the question presented here. Only a few years ago, it addressed the relationship between the Twenty-First Amendment and the dormant Commerce Clause doctrine when it held that a Tennessee law that imposed "durational-residency requirements on all individuals and businesses seeking to obtain or renew a license to operate a liquor store" was unconstitutional. *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 509 (2019). It is likely that the Supreme Court will be interested in revisiting that relationship here, particularly considering that this Court extended *Tennessee Wine* into a context that implicates the similar laws of dozens of States. *See* Panel Op.14 (citing *Tennessee Wine* for the principle that "direct-ship restrictions are hardly instrumental to the existence of three-tier schemes").

B. The circuit split and the Supreme Court's existing precedent also show a reasonable possibility that five Justices would reverse. Five Justices might follow the logic of the circuits that have upheld other States' similar laws. Five Justices might also vote to reverse based on the Court's own precedents, which have consistently "recognized that the three-tier system" for alcohol distribution "is unquestionably legitimate," *Granholm*, 544 U.S. at 489 (quotations omitted). Ohio's

direct-ship restriction is a key part of its three-tier distribution system. That precedent—five Justices may conclude—easily survives *Tennessee Wine*, which did not involve a direct-ship restriction like the one at issue here. *Tennessee Wine* instead involved stringent residency requirements that were "not an essential feature of a three-tiered scheme." *Tennessee Wine*, 588 U.S. at 535. Five Justices could well agree with the many decisions that regard direct-ship restrictions as integral to that unquestionably legitimate distribution model. *See, e.g.*, *Sarasota Wine*, 987 F.3d at 1183; *Arnold's Wines*, 571 F.3d at 192; *Wine Country*, 612 F.3d at 821; *B-21 Wines,* 36 F.4th at 229. Agreeing with that view would eliminate the need for the district court to consider on remand what type of remedy would "adhere[] most closely to the intent of the Ohio legislature" in imposing Ohio's direct-ship restriction "without violating the Constitution." Panel Op.26.

II. There is good cause for a stay.

In addition to showing that a petition for *certiorari* would raise substantial questions, the party moving for a stay of the mandate must demonstrate "that there is good cause for a stay." Fed. R. App. P. 41(d)(1). Courts consider various factors when assessing good cause, including whether the moving party will suffer harm absent a stay, *Davenport v. Maclaren*, No. 17-2267, 2020 U.S. App. LEXIS 35140, *3 (6th Cir. Nov. 5, 2020), and whether the non-moving party will suffer prejudice

from a stay, *United States v. Pleau*, 680 F.3d 1, 22–23 (1st Cir. 2012) (Torruella, J., dissenting).

Here there is good cause for a stay. Ohio will suffer irreparable harm absent a stay. Despite the Court's conclusion to the contrary, *see* Panel Op.14, Ohio's direct-ship restriction is an essential element of the three-tiered alcohol distribution system that the Ohio General Assembly has created. As the district court concluded, "[a]llowing out-of-state retailers to deliver wine directly to Ohio's consumers would effectively eliminate the role of Ohio's wholesalers and 'create a sizeable hole in the three-tier system." *See Block v. Canepa*, 771 F.Supp.3d 1010, 1021 (S.D. Ohio 2025) (quoting *Lebamoff Enter. Inc. v. Whitmer*, 956 F.3d 863, 872 (6th Cir.2020)). Ohio has an interest in protecting its legislative choices and in maintaining a system that the Supreme Court has described as "unquestionably legitimate." *Granholm*, 544 U.S. at 489.

Ohio also has an interest in not being forced to defend a direct-ship restriction that is identical to ones that exist in other States. Courts have held that, on some occasions, the burden of litigating a case can be a "legitimate form of harm"—particularly when the party seeking a stay is a sovereign entity, or when the non-moving party will not be harmed by a stay. *See Tovar v. Hosp. Housekeeping Sys., Inc.*, No. CV 09-03487, 2009 WL 10672526, at *5 (C.D. Cal. Nov. 2, 2009);

Philipp v. Fed. Republic Of Germany, 436 F. Supp. 3d 61, 68 (D.D.C. 2020); *but see Kurd v. Republic of Turkey*, 630 F. Supp. 3d 164, 169 (D.D.C. 2022). Ohio will be harmed if it is barred from enforcing a restriction that is identical to one that its neighbors in Michigan and Indiana (among others) are currently free to enforce. *Cf. Coyle v. Smith*, 221 U.S. 559, 567 (1911) (The States are "equal in power, dignity[,] and authority.").

The plaintiffs, by comparison, will not be prejudiced by a brief stay of the Court's mandate. Ohio's direct-ship restriction has been in place for decades and, as discussed above, identical restrictions have been upheld in other states. Because a brief stay of the mandate will merely maintain that status quo, it will not disadvantage the plaintiffs in any meaningful way.

Maintaining the status quo will in fact benefit both parties. The Court has provided some guidance about how to remedy the injury imposed by Ohio's transportation restriction, but has left it to the district court to "determine the appropriate remedies for the constitutional injuries inflicted" by Ohio's direct-ship restriction. Panel Op.25–26. Identifying an appropriate remedy is a "complicated" question, *see id.* at 25, that will likely involve the investment of considerable time and resources by the parties and the district court. Delaying remand proceedings while the Supreme Court considers Ohio's forthcoming petition for a writ of *certio-*

rari will allow all involved to avoid the expenditure of potentially unnecessary effort.

Finally, the public interest favors a stay. The Court has previously recognized that direct-ship restrictions "inherently protect public health" and that three-tier distribution systems have "baked-in public health justifications" like "temperance." *Lebamoff*, 956 F.3d at 879 (McKeague, J., concurring). And it has noted that enjoining such restrictions would "create a sizeable hole in the three-tier system" by allowing "out-of-state retailers to undercut local prices" and undermine a State's "interests in limiting consumption." *Id.* at 872 (majority op.). True, the Court made those statements in a case challenging Michigan's direct-ship restriction, but its reasoning applies with equal force here. And although the Court concluded otherwise, *see* Panel Op.16, Ohio *does* maintain a three-tier system with respect to wine. Any differences between the structure of the Ohio and Michigan laws are not meaningful and there is no meaningful difference between the public interests they serve—or the potential public harm that would flow from a decision enjoining or invalidating that restriction.

III. This Court has already recognized that a stay of the mandate is warranted in these circumstances.

If much of the foregoing sounds familiar, that is likely because it is. Ohio sought and received a stay of the mandate after the Court issued its prior decision

in this case. *See* Sept. 27, 2023 Order, Doc.55-1, *Block v. Canepa*, No. 22-3852. Ohio ultimately decided not to file a petition for a writ of *certiorari* at that time and informed the Court of its decision. *See* Letter, Doc. 56, *Block v. Canepa*, No. 22-3852. The Court lifted the mandate stay shortly thereafter and allowed the case to proceed in the district court. Mandate, Doc. 57, *Block v. Canepa*, No. 22-3852.

Events since then have only reinforced the reasons why a stay of the mandate is appropriate. The circuit split that existed in 2023 has deepened considerably. It expanded by three when, in 2025, the Third, Seventh, and Ninth Circuits joined the Second, Fourth, Fifth, and Eighth Circuits in upholding a physical-presence requirement like the one at issue here. The posture of this case has also changed. The Court previously held that the district court erred by granting Ohio's motion for summary judgment and remanded the case to the district court for further factual development. That development is now complete. A fully developed factual record increases the likelihood that four Justices will wish to review this case and that five may vote to reverse. If a shallower split and less developed record warranted a stay of the mandate in 2023, then the deeper split and more developed record that now exist certainly warrant one as well.

CONCLUSION

The Court should stay the mandate pending the filing of a petition for a writ of *certiorari* in the Supreme Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, that this motion complies with the type-volume requirements and contains 2,281 words. *See* Fed. R. App. P. 27(d)(2)(A).

I further certify that this brief complies with the typeface requirements of Federal Rule 32(a)(5) and the type-style requirements of Federal Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Equity font.

/s/ Mathura J. Sridharan
MATHURA J. SRIDHARAN

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2026, this motion was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Mathura J. Sridharan
MATHURA J. SRIDHARAN