No. 26-3648
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TITAN LOGISTICS GROUP LLC, ET AL.,	:	
Plaintiffs-Appellees,	:	On Appeal from the United States District Court for the Northern District of Ohio
v.	:	
BETH TISCHLER, ET AL.,	:	District Court Case No. 3:26-cv-01300
Defendants,	:	
and	:	
STATE OF OHIO,	:	
Intervenor-Appellant.	:	

REPLY BRIEF OF APPELLANT STATE OF OHIO

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INTRODUCTION

Three years ago, the Supreme Court warned lower courts against overusing the dormant Commerce Clause. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 390 (2023). "[E]xtreme caution," the High Court instructed, "is warranted before a court deploys this implied authority." *Id.* (quotation omitted). The States joined the Union with their sovereignty intact. And they did not, through the Commerce Clause, surrender their traditional powers to enact "inspection laws, quarantine laws, and health laws of every description." *See id.* at 375 (quotation omitted, alterations accepted). Courts should thus exercise "extreme delicacy" when applying the dormant Commerce Clause; they should enjoin duly enacted state laws "only where the infraction is clear." *Id.* at 390 (quotation omitted).

The plaintiffs, a group of intoxicating-hemp businesses, ignore these warnings. They push an aggressive theory. They argue that, because of a unique convergence of state and federal law about hemp and marijuana, Ohio cannot license companies doing business in drugs with psychoactive effects. That theory saves no room for "extreme delicacy" or "extreme caution." *Contra id.* at 390 (quotation omitted). The plaintiffs' responsive arguments are unpersuasive. Their main complaint is that some incumbents (those doing business in traditional marijuana) already possess licenses. But those incumbents include out-of-state companies. And the plaintiffs are not similarly situated to incumbents, so any comparison falls flat. *Below* 22–23. Regardless, Ohio—in amending its marijuana laws to cover intoxicating hemp—created hundreds of new licensing opportunities, open to in-state and out-of-state companies alike. So, Ohio is not blocking new market entrants.

The plaintiffs' case falls well short on the merits, but the plaintiffs also seek exceptions to normal rules of equity and relief. They demand emergency relief despite their lack of diligence. And they say that injunctive relief should entirely free them from Ohio's licensing requirements. They identify no authority, however, indicating that a dormant-Commerce-Clause problem leads to such a broad remedy.

On a big-picture level, what is happening here is no mystery. The plaintiffs are disappointed with the policy choices of Ohio's elected representatives. They therefore seek to force their preferred policy through the judiciary. The District Court wrongly allowed that workaround; this Court should reverse.

SUPPLEMENTAL STATEMENT

To quickly review, as part of the 2018 Farm Bill, Congress changed the federal definition of marijuana to decriminalize hemp. Businesses then created synthesized hemp products that, while technically legal under federal law, produced the same intoxicating effects as marijuana. These products flooded bars, stores, and gas stations; and they were widely available to minors. Last year, Congress closed this loophole by narrowing the federal definition of hemp. That change is set to take effect in November. (The Senate recently passed a funding bill that, if ultimately enacted, would delay the new federal definition until December 11, 2026. *See* H.R. 6500 §2019.) Ohio, via Senate Bill 56, also tightened its definition of hemp. But Ohio's change took effect in March. Under Ohio's amended definition, intoxicating hemp is now treated as marijuana under Ohio law. Accordingly, those seeking to cultivate, process, or dispense intoxicating hemp in Ohio must obtain licenses. *See* Ohio Br.5–14 (giving further background and supporting cites).

This case involves a group of ten companies in the intoxicating-hemp business. Compl., R.1, PageID#18–20. Since this appeal began, other businesses have filed additional lawsuits in the Southern and Northern Districts of Ohio. The Southern District stayed proceedings to await this Court's ruling in this appeal. *See* Entry, R.4, PageID#76–77, *GL Distro, LLC v. Heck*, 3:26-cv-274 (S.D. Ohio). The Northern District, however, granted another group of plaintiffs (consisting of 11 businesses) a temporary restraining order mirroring the injunctive relief that the plaintiffs here received. Op., R.23, PageID#272–78, *Delta Beverages, Inc. v. Canepa*, 3:26-cv-1793 (N.D. Ohio).

A few words about terminology before moving on. As with its opening brief, Ohio uses the label "intoxicating hemp" to describe hemp products that have "the same psychoactive effects as marijuana," but stay below the federal delta-9 threshold by using "delta-8 THC and other intoxicating isomers." *See* Makoski Decl., R.56-1, PageID#1183. It is true, as the plaintiffs observe, that "intoxicating hemp" is not a term of art within Ohio statutory law. Plaintiffs' Br.6 n.5. The label is useful nonetheless. This case requires consideration of traditional hemp (which does not have significant psychoactive effects), intoxicating hemp (which does), and traditional marijuana (covered by Ohio's preexisting laws for medical and adult-use marijuana). The label helps keep those distinctions straight. And the label is accurate: as the plaintiffs begrudgingly admit, "some federally lawful hemp products may have intoxicating effects." *Id.*

Relatedly, when Ohio refers to its statutory scheme (or statutes) governing intoxicating hemp, it refers to the marijuana statutes located at Ohio Revised Code Chapter 3796, as applied to intoxicating hemp. The District Court enjoined any enforcement of Ohio law that involves or depends on Senate Bill 56's new definition of hemp. PI Op., R.76, PageID#1449. In effect, that means Ohio cannot apply the requirements within Chapter 3796 to the plaintiffs, their business partners, or the many other businesses that recently received injunctive relief from the Northern District.

ARGUMENT

This Court should reverse for three reasons. *First*, under the doctrine of laches, the plaintiffs' delay in bringing this lawsuit makes their demand for "emergency" relief unreasonable. *Second*, such relief was also unjustified under the normal injunction factors. *Third*, the District Court's preliminary injunction is far broader than the supposed problem. The plaintiffs' contrary arguments lack merit.

I. The plaintiffs delayed too long to seek emergency relief.

A. Reversal is justified without even considering the merits. The doctrine of laches bars relief to a party that unreasonably delays in a manner that prejudices an opponent. *See Chirco v. Crosswinds Cmtys., Inc.*, 474 F.3d 227, 231 (6th Cir. 2007). The elements of laches—delay and prejudice—are present here. After Ohio enacted Senate Bill 56, the plaintiffs delayed for over five months before initiating this litigation. Ohio Br.29. The plaintiffs' delay has prejudiced Ohio in at least two ways. First, the plaintiffs' delay tightened Ohio's timeframe for preparing a defense involving a complicated constitutional issue. *See Mintz v. Chiumento*, 724 F. Supp. 3d 40, 50 (N.D.N.Y. 2024). Second, while the plaintiffs delayed, Ohio committed significant resources to implementing Senate Bill 56. *See* Makoski Decl., R.56-1, PageID#1183–84.

B. The plaintiffs' responses miss the mark. Initially, the plaintiffs question whether laches even applies to this case's scenario. *See* Plaintiffs' Br.21, 43. Binding precedent, however, says it does. *See, e.g.*, *Keyes v. Eureka Consol. Mining Co.*, 158 U.S. 150, 153 (1895); *Am. C.L. Union of Ohio, Inc. v. Taft*, 385 F.3d 641, 647 (6th Cir. 2004). Preliminary injunctions are never awarded as of right. *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (*per curiam*). Parties seeking preliminary relief must instead "generally show reasonable diligence." *Id.* at 159.

The plaintiffs make little attempt to explain their months-long delay in seeking emergency relief. They suggest that they waited to file their lawsuit because they were exploring "political remedies." Plaintiffs' Br.43. But even assuming that justified modest delay, it did not justify delaying over five months—at least for anyone that wanted its case to be handled as an emergency. As the plaintiffs cannot dispute, others acted much quicker. Plaintiffs' Br.42.

The plaintiffs also imply that taking over five months to pursue relief does not count as "'delay'" in the first place. Plaintiffs' Br.44–45. They are again incorrect. Their argument overlooks this case's preliminary posture. The plaintiffs wanted preliminary relief during the pendency of this case. Laches applies with particular force to such requests. *See Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985); *GTE Corp. v. Williams*, 731 F.2d 676, 678–79 (10th Cir. 1984); *cf. Crookston v.*

Johnson, 841 F.3d 396, 399 (6th Cir. 2016). The plaintiffs nonetheless argue that they (rather than the defendants) could take their time digesting the law, with no need to "rush into litigation." Plaintiffs' Br.42, 44. That gets things backwards. Parties demanding emergency relief bear the burden of moving quickly. *See Benisek*, 585 U.S. at 159. They cannot shift that burden to others.

The plaintiffs' arguments about prejudice also leave much to be desired. They say that because "the State proposed a briefing schedule below," there must be no prejudice. Plaintiffs' Br.45. That logic is puzzling. If the plaintiffs had brought this lawsuit in the months before Senate Bill 56 went into effect, litigation could have certainly moved at a more reasonable pace. The fact that the State was forced into proposing a faster schedule does not change that. A jarring tension is noticeable in the plaintiffs' arguments. When it comes to laches, the plaintiffs argue that defendants suffered no prejudice from how quickly things unfolded below. Plaintiffs' Br.45. But simultaneously, the plaintiffs seize on imprecise statements during rushed litigation—which they treat as concessions—to try and avoid the text of Ohio statutes. *E.g.*, Plaintiffs' Br.3 & n.1, 10, 17. The plaintiffs cannot have it both ways.

The plaintiffs also fail to rebut the prejudice Ohio has suffered due to wasted implementation efforts. *See* Ohio Br.30–31. The commitment of government resources qualifies as a form of prejudice under laches. *Kay v. Austin*, 621 F.2d 809, 813 (6th

Cir. 1980). And here, it is uncontested that, while the plaintiffs delayed their lawsuit, Ohio expended resources preparing for and implementing Senate Bill 56. *See* Makoski Decl., R.56-1, PageID#1183–84. The takeaway is that if the plaintiffs had acted quicker, and obtained the same injunction sooner, Ohio would have saved resources. In response, the plaintiffs talk past the problem. They say that the injunction does not technically apply to state regulators. Plaintiffs' Br.45. But there is little-to-no value in implementing state laws nullified by broad injunctive relief.

The plaintiffs also rely on inapt comparisons. They argue that laches would not bar a criminal defendant from raising a constitutional defense. Plaintiffs' Br.44. But the posture of this litigation is different. Relying on a constitutional defense during an initiated prosecution would be the rough equivalent of seeking permanent relief. And Ohio is not arguing here that laches should forever block permanent relief. (Mootness, not laches, may end up doing so when federal law changes in November.) Ohio is instead arguing that the plaintiffs' delay should block *preliminary* relief. The plaintiffs also pose confusing hypotheticals in which States (apparently) surprise businesses with new regulatory regimes. *See id.* The equitable balance there would plainly be different than here: the plaintiffs here had *months* to act before Senate Bill 56 became effective.

At bottom, laches in this case boils down to commonsense. The plaintiffs cannot delay for months but then expect everyone else (courts and defendants alike) to rush.

II. Both the merits and the equities weigh against a preliminary injunction.

Reversal remains justified even assuming further analysis is necessary. When reviewing preliminary injunctions, this Court considers the likelihood of success on the merits, the balance of harms, and the public interest. *EOG Res., Inc. v. Lucky Land Mgmt., LLC*, 134 F.4th 868, 874 (6th Cir. 2025). None of these considerations support a preliminary injunction.

The plaintiffs' main claim arises under the dormant Commerce Clause. That claim never gets off the ground. Because Congress blessed state regulation of hemp, any dormant-Commerce-Clause concern disappears. Even assuming otherwise, Ohio's statutes are non-discriminatory. They thus survive traditional review under the dormant Commerce Clause. The plaintiffs' secondary claim—an underdeveloped state-law claim that has already failed before the Ohio Supreme Court—also does not carry the day. Finally, the remaining equities likewise weigh against relief.

A. Congress actively struck the regulatory balance for hemp, so no dormant-Commerce-Clause analysis is needed.

1. The Commerce Clause grants Congress the power to "regulate Commerce … among the several States." U.S. Const. art. I, §8, cl. 3. That language is a positive grant of authority to Congress, but the Supreme Court has said that a "dormant" aspect of the Commerce Clause limits state action. *See Truesdell v. Friedlander*, 80 F.4th 762, 768 (6th Cir. 2023). Not all state laws, however, require scrutiny under the dormant Commerce Clause. "Commerce-Clause power belongs to Congress, not the courts." *Fednav, Ltd. v. Chester*, 547 F.3d 607, 624 (6th Cir. 2008). Consequently, the dormant Commerce Clause applies only "when Congress has not acted or purported to act." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 154 (1982).

Within the 2018 Farm Bill, Congress established the balance between federal and state hemp regulation. That legislation included a narrow preemption clause, which blocks only regulation of hemp transportation "through" the States. Pub. L. No. 115-334, §10114(b); *see also N. Va. Hemp & Agric., LLC v. Virginia*, 125 F.4th 472, 494–95 & n.18 (4th Cir. 2025). At the same time, the Farm Bill codified a broad saving clause that expressly allows the States to regulate hemp production more stringently than federal law. 7 U.S.C. §1639p(a)(3)(A). By this combination, Congress left the States free to actively regulate hemp. Thus, because "Congress has struck the balance it deems appropriate," no dormant-Commerce-Clause analysis is needed. *See Merrion*, 455 U.S. at 154.

2. The plaintiffs fail to justify a dormant-Commerce-Clause analysis.

The parties agree that, for the dormant Commerce Clause to fall away, Congress must clearly indicate that it is blessing state regulation. *See* Plaintiffs' Br.26; Ohio

Br.34–35. But there is no "talismanic" phrasing by which this occurs. *L.P. Acquisition Co. v. Tyson*, 772 F.2d 201, 206 (6th Cir. 1985) (*per curiam*) (quotation omitted). Congress does not, for example, have to "expressly state that it is authorizing a state to engage in activity that would otherwise violate the Dormant Commerce Clause." *Am. Trucking Ass'ns v. New York State Thruway Auth.*, 886 F.3d 238, 245 (2d Cir. 2018). Rather, there are many ways by which Congress clearly indicates that it is blessing active state regulation. *See, e.g.*, *Northeast Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 174–75 (1985); *White v. Mass. Council of Constr. Emplrs*, 460 U.S. 204, 213 (1983); *Merrion*, 455 U.S. at 155; *Fednav*, 547 F.3d at 620–21, 624. Most relevant here, Congress sometimes authorizes state action by addressing the extent to which federal law preempts or preserves state law. *See, e.g.*, *Hillside Dairy, Inc. v. Lyons*, 539 U.S. 59, 66 (2003); *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, 429–33 (1946); *Tyson*, 772 F.2d at 205–06; *Yakima Valley Mem. Hosp. v. Wash. State Dep't of Health*, 654 F.3d 919, 934 (9th Cir. 2011).

Return then to the Farm Bill. As Ohio argued in its opening brief, accounting for the Supreme Court's analysis in *Hillside Dairy*, the Farm Bill's saving clause clearly authorizes the States to engage in regulation of hemp production, regardless of the dormant Commerce Clause. The plaintiffs seemingly concede this. *See* Plaintiffs' Br.28. And that is no small concession. The Farm Bill uses "production" broadly to capture regulations about the cultivation and testing of hemp. 7 U.S.C. §1639p(a)(1)–(2). Many aspects of Ohio's statutory scheme—in treating intoxicating hemp as marijuana—involve the cultivation and testing of intoxicating hemp. *E.g.*, Ohio Rev. Code §§3796.05(A), 3796.09, 3796.18, 3796.29. Thus, at least those aspects of Ohio's scheme do not require dormant-Commerce-Clause review. (At one point, the plaintiffs imply that, to benefit from the Farm Bill's saving clause, Ohio needed to submit a plan for federal approval. *See* Plaintiffs' Br.27. That is wrong. The saving clause includes no such requirement; it provides that the federal scheme does "[n]othing" to "limit[]" the States' ability to regulate hemp production more stringently. §1639p(a)(3)(A).)

The plaintiffs' analysis is also unsatisfying with respect to hemp's distribution and sale. The Farm Bill—in opening the door for a legal hemp market—included a preemption clause that blocks only a narrow sliver of state regulation (transportation of hemp "through" States). *See* Plaintiffs' Br.5–6. The implication is apparent: Congress consciously decided to otherwise leave the States free to decide whether, and to what extent, to legalize hemp. *See Bio Gen LLC v. Sanders*, 142 F.4th 591, 603 (8th Cir. 2025). Ohio wholly agrees with the plaintiffs that Congress does not hide elephants in mouseholes. *See* Plaintiffs' Br.26–27. But the plaintiffs lose sight of what the "elephant" is in this scenario. The States have long exercised their historic police powers to actively regulate cannabis. *See Gonzales v. Raich*, 545 U.S. 1, 11 n.14 (2005). And Congress would not have obscurely removed the States' traditional powers. *See Bond v. United States*, 572 U.S. 844, 857–58 (2014). Rather, accounting for the historical backdrop, Congress would have undoubtedly understood—in drawing the Farm Bill's preemptive lines—that the States would exercise whatever power was left to them.

A final argument from the plaintiffs warrants only brief attention. The plaintiffs stress that no court has yet concluded that the Farm Bill displaces dormant-Commerce-Clause review. Plaintiffs' Br.26. The plaintiffs, however, fail to identify any court reaching the opposite conclusion. Thus, the point is at best neutral.

All told, Congress actively struck a balance as to how much state regulation of hemp it would allow. That makes a dormant-Commerce-Clause analysis misplaced. *See Fednav*, 547 F.3d at 624.

B. Ohio's statutory scheme governing intoxicating hemp survives traditional review under the dormant Commerce Clause.

Even if a traditional dormant-Commerce-Clause analysis were necessary, Ohio's statutory scheme would survive review. Such review generally turns on whether state laws discriminate "against out-of-state economic interests to benefit local economic interests." *See Truesdell*, 80 F.4th at 768. Laws that discriminate receive strict scrutiny. *Id.* Laws that do not discriminate receive considerable deference under the Supreme Court's "*Pike* balancing" test. *Id.* at 768, 773 (discussing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

Here, Ohio's statutes governing intoxicating hemp do not discriminate. Ohio's amended definition of hemp focuses on a product's total THC content, not a product's geography. *See* Ohio Rev. Code §928.01(C). And Ohio's marijuana statutes, which now apply to intoxicating hemp, do not treat in-state and out-of-state companies differently. *See* Ohio Rev. Code Chapter 3796. Nor do these statutes force out-of-state companies to have an unnatural in-state presence to obtain licenses. *See id.* Accounting for all this, Ohio's statutes pose no dormant-Commerce-Clause problem, either on their face or in practical effect.

In arguing otherwise, the plaintiffs waffle between two highly flawed theories. *First*, despite a dearth of textual support, the plaintiffs argue that Ohio's statutory scheme does require companies to have an in-state presence to obtain licenses. *E.g.*, Plaintiffs' Br.10. *Second*, the plaintiffs complain that incumbents—in-state and out-of-state companies involved in Ohio's preexisting marijuana systems—already possess licenses. *E.g.*, Plaintiffs' Br.2. Neither theory withstands scrutiny.

1. Ohio's intoxicating-hemp statutes do not require an in-state presence for licensing.

a. The District Court granted relief on a faulty premise. It found a dormant-Commerce-Clause problem because it thought that Ohio's statutes were forcing companies to conduct their business activities within Ohio. *See* PI Op., R.76, PageID#1445–46. That reasoning starts on decent footing: dormant-Commerce-Clause discrimination can occur if state laws unnaturally force companies to conduct their business activities in-state. *See Dean Milk Co. v. Madison*, 340 U.S. 349, 350–51, 356 (1951). But the District Court identified no Ohio statute that forces intoxicating-hemp companies to have an in-state presence to obtain licenses.

The District Court instead identified a single regulation: Ohio Admin. Code 3796:6-3-01(C). PI Op., R.76, PageID#1445. That regulation is stale. Ohio has not yet finalized the regulations that will accompany Senate Bill 56's updated approach. *See* Makoski Decl., R.56-1, PageID#1183–84. And to the extent the plaintiffs are really challenging how state regulators might implement Senate Bill 56 (rather than Senate Bill 56 itself) such a challenge is not yet ripe for review. Ohio's upcoming regulations will, among other things, cover the process for awarding new licenses. *Id.* *But* state regulators have *already* proposed rescinding the regulation that the District Court found problematic. Ohio Br.13–14. So there is no reason to anticipate a regulatory in-state-presence requirement within Ohio's updated system. Regardless, if this soon-to-be-defunct regulation is a problem, then only *it* should be enjoined—the regulation does not render Ohio's entire statutory scheme unconstitutional.

The plaintiffs' analysis suffers from the same flaws as the District Court's. They ask this Court to infer discrimination from "four steps." Plaintiffs' Br.10. But, at the fourth step, the plaintiffs wrongly suggest that Ohio's new licensing regime requires companies to have an in-state presence. *Id.* That requirement is nowhere in Senate Bill 56 or the corresponding statutes.

Arguing otherwise, the plaintiffs identify three statutory provisions. *See* Plaintiffs' Br.14. But none commands an in-state presence. The first provision requires applicants to identify the location of their operations, but it does not say the location has to be in Ohio. Ohio Rev. Code §3796.09(A). The second provision identifies the number of "licensed dispensaries" that are permitted to operate in Ohio at any one time, but it does not set forth eligibility requirements for licenses. Ohio Rev. Code §3796.05(B)(1). And the third provision simply requires regulators to consider the "population of the state" in deciding how many cultivators Ohio needs. Ohio Rev. Code §3796.05(A)(1). In short, nothing in the text of these provisions mandates in-state presence for licensing. And even if the provisions could be read differently, the Court should employ the reading that avoids a constitutional problem. *See First Choice Chiropractic, LLC v. Dewine*, 969 F.3d 675, 681 (6th Cir. 2020).

In a somewhat confusing argument, the plaintiffs also suggest that the Court should infer a physical-presence requirement because otherwise Ohio would lack authority over their activities. *See* Plaintiffs' Br.14–15. The argument makes a mess of jurisdictional law. So long as some element of the plaintiffs' conduct travels into Ohio, state jurisdiction exists. *See State v. Headley*, 6 Ohio St. 3d 475, 477 (1983).

b. The plaintiffs also ask for victory on a technicality. They say that Ohio conceded a physical-presence requirement below. *E.g.*, Plaintiffs' Br.3 & n.1, 10, 17. But the plaintiffs tell a selective story. During rushed proceedings below, Ohio made a few imprecise statements accepting the premise that Ohio law required marijuana companies to have a physical presence in Ohio. *E.g.*, TRO Opp., R.10, PageID#810. Those statements were accurate as to Ohio's *former* marijuana regulations (covering only federally illegal marijuana), *see* Ohio Br.12–13, but they do not carry over to Ohio's statutory scheme after Senate Bill 56. Regardless, Ohio argued below that its present laws were non-discriminatory. *E.g.*, TRO Opp., R.10, PageID#822–24. And Ohio expressly argued that its new definition of hemp turned on a product's "total THC content, not where it was produced, sourced, or sold." *Id.* at PageID#824. During stay proceedings, moreover, Ohio stressed that "the only portion of the marijuana regulatory scheme that differentiates between in-state and out-of-state products" was a single regulation (not Ohio's entire statutory scheme). Mot., R.79, PageID#1457. Viewing the full record below, Ohio did more than enough to alert the District Court that its statutes impose no physical-presence requirement.

The plaintiffs do not overtly argue that Ohio waived or forfeited any of its argument on this appeal. But to the extent they are hinting as much, they are wrong. Parties forfeit claims, not in-the-weeds arguments "in support" of claims. *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995). Even if Ohio has refined a "strain of the argument" on appeal, that does not amount to forfeiture. *See Mills v. Barnard*, 869 F.3d 473, 483 (6th Cir. 2017). The plaintiffs, moreover, do not come to the table with clean hands. As discussed above, they delayed for months in bringing this lawsuit. Even setting laches aside, that delay should, at bare minimum, foreclose any reliance on purported concessions below.

c. Because the plaintiffs misunderstand Ohio's licensing requirements, they rely on inapposite authority. For example, Ohio's statutory scheme here is materially different from the statutory scheme in *Loki Brands, LLC v. Platkin*, No. 24-9389, 2024 WL 4457485 (D.N.J. Oct. 10, 2024). The district court in that case addressed a statutory scheme that "on its face" imposed "disparate treatment between hemp cultivated in New Jersey and hemp derived from outside of New Jersey." *Id.* at *10. Ohio's scheme does no such thing.

This case is also unlike *Granholm v. Heald*, 544 U.S. 460 (2005). There, the Supreme Court faced state laws that allowed "in-state wineries to sell wine directly to consumers" while effectively prohibiting "out-of-state wineries from doing so." *Id.*

at 465. Here, by contrast, Ohio's statutory scheme does not place different conditions on in-state and out-of-state intoxicating-hemp businesses.

2. Because the plaintiffs are not similarly situated to traditional-marijuana companies, the presence of incumbent license holders does not signal discrimination.

a. Given their claim's textual weaknesses, the plaintiffs shift to a more convoluted theory. It goes like this. Because of Ohio's preexisting systems for traditional marijuana, some companies already possess licenses. And, because there was no legal interstate market for traditional marijuana, Ohio's preexisting systems required companies to perform marijuana activities within Ohio. *See* Ohio Br.10–11. Ergo, the argument continues, there will be a temporary period under Ohio's new system—while regulators implement the application process for new licenses—where existing license holders all have an in-state presence. *See* Plaintiffs' Br.14. The plaintiffs do not cite any record evidence that any current license holders (those involved with traditional marijuana) are even involved in the market for hemp-derived products. Nevertheless, in the plaintiffs' view, this "unique" convergence of circumstances equals discrimination under the dormant Commerce Clause. *See id.*

This theory is wrong. Start with a key distinction between incumbency favoritism and discrimination. A state law "does not discriminate against interstate commerce simply because it favors incumbents over new entrants." *Truesdell*, 80 F.4th at 772.

That remains so even if many incumbents are headquartered within the relevant State. *See LSP Transmission Holdings, LLC v. Sieben*, 954 F.3d 1018, 1030 (8th Cir. 2020). It thus becomes "risky" to use incumbency as a proxy for discrimination. *See Colon Health Ctrs. of Am., LLC v. Hazel*, 813 F.3d 145, 154 (4th Cir. 2016). Relatedly, dormant-Commerce-Clause analysis distinguishes between laws that have "a disparate impact on out-of-state businesses" and laws that have "discriminatory effects on interstate commerce." *Truesdell*, 80 F.4th at 771. Indeed, even a law that has "a 100% disparate impact on out-of-state companies" will not discriminate if it provides no "competitive advantage to in-state entities." *Id.* (quotation omitted).

Separating incumbency favoritism from discrimination involves a "sensitive, case-by-case analysis." *See Colon*, 813 F.3d at 152. To facilitate that analysis, this Court and others have asked whether a State has historically awarded certificates or licenses to out-of-state applicants at similar rates to their in-state counterparts. *See Truesdell*, 80 F.4th at 772; *Colon*, 813 F.3d at 153–54. The Fourth Circuit in *Colon*—an analysis this Court positively cited in *Truesdell*—further explained that the "fulcrum of this inquiry" is determining whether state requirements operate as a "barrier to market entry by non-domestic entities." 813 F.3d at 153 (quotation omitted).

A final point about comparisons proves critical here. As with other discrimination inquiries, discrimination under the dormant Commerce Clause requires comparison between "similarly situated entities." *Lenscrafters, Inc. v. Robinson*, 403 F.3d 798, 804 (6th Cir. 2005). This Court's decision in *Lenscrafters* is illustrative. There, the Court encountered a Tennessee statute prohibiting optical stores from leasing spaces to optometrists. *Id.* at 800. The law did not treat in-state and out-of-state optical stores differently. *Id.* at 804. But it did give an advantage to in-state optometrists, who could also sell glasses. *See id.* Such an advantage, this Court concluded, did not amount to discrimination against interstate commerce. *Id.* The reason was that optometrists and optical stores were not similarly situated. *Id.* Rather, optometrists had "unique responsibilities and obligations" that optical stores did not share. *Id.* The better comparison was between in-state and out-of-state optometrists. *Id.* at 805. And Tennessee law gave "out-of-state optometrists … the same ability to obtain a license" and enter the State's market. *Id.*

b. In this case, Ohio's preexisting scheme for marijuana is *not* a sign of discrimination under the dormant Commerce Clause. Some companies, it is true, already possess marijuana licenses. In theory, those companies could thus begin conducting intoxicating-hemp activities (again, the plaintiffs point to no evidence that any have). But, under Ohio's preexisting scheme, state regulators awarded *more* dispensary licenses to out-of-state companies than in-state ones. *See* Makoski Decl., R.56-1, PageID#1182; *compare Truesdell*, 80 F.4th at 772; *Colon*, 813 F.3d at 153–54. And, with the expansion of Ohio's system to intoxicating hemp, Senate Bill 56 took significant steps to allow for new market entrants. For example, Senate Bill 56 created roughly two hundred new dispensary licenses. *See* Ohio Rev. Code §3796.05(B)(1); Makoski Decl., R.56-1, PageID#1182–83. These licenses will be available to out-of-state and in-state companies. Ohio statutory scheme, it follows, does not erect any "special barrier to market entry by non-domestic entities." *See Colon*, 813 F.3d at 153 (quotation omitted).

Additionally, the plaintiffs are not similarly situated to incumbent marijuana license holders. Those companies obtained licenses for a different product (traditional marijuana), with different implications under federal law. So it is hardly surprising that Ohio's preexisting system imposed "unique responsibilities and obligations" on those companies. *See Lenscrafters*, 403 F.3d at 804. Any comparison between traditional-marijuana companies and intoxicating-hemp companies is therefore *not* a proper measure for dormant-Commerce-Clause discrimination.

The sounder comparison is between *unlicensed* in-state and out-of-state companies that wish to now enter Ohio's intoxicating-hemp market. Those companies all have "the same ability to obtain a license" and enter the market, regardless of in-state presence. *See id.* at 805. Tellingly, the plaintiffs in this case include *both* in-state and out-of-state companies. *See* Compl., R.1, PageID#18–20. That is a good sign that in-state companies face the same hurdles to entering the market.

c. The plaintiffs' contrary arguments are unconvincing. They cannot deny the fact that most incumbent dispensary-license holders are out-of-state companies. *See* Makoski Decl., R.56-1, PageID#1182. So, they imply that incumbent out-of-state license holders should all be treated like in-state ones because they have been conducting business in Ohio. *See* Plaintiffs' Br.2, 14. Both the First Circuit and Eighth Circuits have rejected comparable arguments. *See Becky's Broncos, LLC v. Town of Nantucket*, 138 F.4th 73, 78–79 (1st Cir. 2025) (rejecting dormant-Commerce-Clause argument premised on treating an out-of-state company "as a local one"); *LSP Transmission Holdings*, 954 F.3d at 1028 (disagreeing that incumbents with business operations in Minnesota should be "considered in-state entities"). This Court should follow suit. Its caselaw already teaches that historic treatment of out-of-state companies *is* relevant to separating incumbency favoritism from discrimination. *See Truesdell*, 80 F.4th at 772.

The plaintiffs mostly ignore that Ohio, in expanding its regulatory system to intoxicating hemp, created hundreds of new licensing opportunities. That does not matter, in their view, because those newly created licenses have not yet been awarded. *See* Plaintiffs' Br.14, 38. But the plaintiffs point to no dormant-Commerce-

Clause authority suggesting that a State is required to *instantly* implement a new licensing scheme to avoid discrimination through the lens of incumbency. The better way to gauge discrimination, when facing incumbency scenarios, is by considering the conditions for new market entrants. *See Colon*, 813 F.3d at 153.

Recall again that distinguishing between incumbency favoritism and discrimination requires a "sensitive, case-by-case analysis." *See id.* at 152 (quotation omitted). Under the circumstances here, which everyone agrees are "unique," Plaintiffs' Br.14, any temporary advantage that current license holders gain given Ohio's preexisting marijuana systems amounts to, at most, incumbency favoritism, not unlawful discrimination.

3. Ohio's statutory scheme easily survives *Pike* balancing.

a. Ohio's statutory scheme also survives *Pike* balancing—which asks whether a non-discriminatory law's burdens on interstate commerce clearly exceed its local benefits. *Truesdell*, 80 F.4th at 768. Here, the benefits of Ohio's statutory scheme easily outweigh its burdens.

To briefly recap, Ohio's statutory scheme counteracts the health and safety risks intoxicating-hemp products pose. Among other things, Ohio statutes require business involved with intoxicating hemp to undergo criminal and financial background checks. *See* Ohio Rev. Code §§3796.09(C), 3796.10(C). Additionally, Ohio's product-testing requirements protect consumers from contaminated products. *See* Makoski Decl., R.56-1, PageID#1182. And other aspects of Ohio's scheme protect children from the dangers of intoxicating hemp. *See* Ohio Rev. Code §§3796.03(B)(12), 3796.06(D)(1); *cf. also* Hays Decl., R.56-2, PageID#1185–86. These benefits far outweigh the burdens associated with having to receive licenses to do business involving an intoxicating drug with psychoactive effects.

b. The plaintiffs hardly engage with *Pike* balancing. Instead, they spill much ink over whether the test remains good law. *See* Plaintiffs' Br. at 30–32. It does. This Court has recognized, after *Pork Products*, that *Pike* balancing remains part of dormant-Commerce-Clause analysis. *See Truesdell*, 80 F.4th at 768–69. But even if *Pike* balancing is on life support, that does not help the plaintiffs' cause. While *Pike* balancing is a relatively easy test for state laws to satisfy, its removal would just make it easier for state laws to survive dormant-Commerce-Clause review, as it would reduce the number of hurdles state laws must satisfy. *See id.*

C. The plaintiffs' state-law claim is not an alternative basis for relief.

In passing, the plaintiffs allude to an alternative argument concerning a line-item veto the Governor exercised on Senate Bill 56. Specifically, the Governor vetoed an exception that would have temporarily exempted intoxicating-hemp beverages from being treated as marijuana. Ohio Br.12. Within their complaint in this case, the plaintiffs allege that the veto was invalid under Ohio law. But, within their briefing on this appeal, they affirmatively waived this claim as an alternative basis for preliminary relief. Plaintiffs' Br.46 ("[W]e will not press [this argument] here ....").

Even if not waived, this claim is unlikely to succeed. Most importantly, the Supreme Court of Ohio already denied mandamus relief on this claim. *Fifty West Brewing Co. LLC v. Canepa*, 181 Ohio St. 3d 1408 (2026). Any prediction from this Court, on a matter of state law, should obviously defer to that Court. In any event, the claim fails upon closer inspection. The Ohio Constitution grants the Governor the power to "disapprove any item or items" in an appropriations bill. Ohio Const. art. II, §16. An item means any provision that is "separate and distinct from other provisions in the same bill, insofar as the subject, purpose, or amount of the appropriation is concerned." *State ex rel. Brown v. Ferguson*, 32 Ohio St. 2d 245, 252 (1972).

The Governor's beverage carveout qualifies as an item under that test. The rest of Senate Bill 56 contained provisions and appropriations for the regulatory scheme for all other intoxicating-hemp products. The beverage carveout, being a carveout, ran parallel to those provisions. And removing the carveout does not affect the "subject, purpose, or amount of the appropriation" of the other provisions.

The plaintiffs suggest that the beverage carveout was not an item because it was not an appropriation. Plaintiffs' Br.45–46. The Ohio Constitution's text forecloses this argument. Any item in a bill making an appropriation may be vetoed. Ohio Const. art. II, §16. The Governor was well within his power to veto the carveout.

D. The remaining injunction factors also favor Ohio.

The parties largely agree that the balance of harms and public interests follow the merits here. Improperly enjoining state law always creates irreparable harm to the State and its citizens. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers); *Thompson v. DeWine*, 976 F.3d 610, 619 (6th Cir. 2020) (*per curiam*). Whereas a State can hardly complain when unconstitutional conduct is enjoined. *See* Plaintiffs' Br.42. Ohio's statutory scheme is constitutional, so this dichotomy supports Ohio here.

To the extent further balancing of the practical harms is necessary, that balance strongly favors Ohio. Ohio's statutory scheme protects Ohioans, including children, from the dangers of intoxicating hemp. *See, e.g.*, Hays Decl., R.56-2, PageID#1185–86. Those protections far outweigh any temporary economic hardship to the plaintiffs without an injunction. The plaintiffs do not directly deny this, but they downplay the risk of physical dangers here. They claim, for instance, that they follow "strict safety protocols" and have never experienced any "poisonings." Plaintiffs' Br.9. But they cite no evidence to support their allegedly clean record. Regardless, the States are not required to simply trust businesses dealing in psychoactive drugs.

The plaintiffs cannot escape that their products pose inherent dangers, especially to children, *see* Ohio Br.11–12; dangers that Ohio is entitled to protect the public from.

III. The plaintiffs do not justify the scope of relief the District Court issued.

Even setting other problems aside, this Court should at least reverse and remand for a far more limited injunction. When federal courts "confront[] a constitutional flaw in a statute," they should "try to limit the solution to the problem." *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 508 (2010) (quotation omitted). That did not happen here. The only problem the District Court identified was the supposed requirement of in-state presence for licensing. But the court did not target that purported problem in crafting relief. It instead enjoined *any* enforcement of Ohio law (to the plaintiffs or those doing business with them) deriving from Senate Bill 56's re-definition of hemp. PI Op., R.76, PageID#1449.

The plaintiffs have no cogent explanation for why a dormant-Commerce-Clause problem allows them to evade all licensing requirements. Many such requirements, like financial-background and criminal-history checks, *see, e.g.*, Ohio Rev. Code §3796.10(C), do not pose any conceivable problem under even the most aggressive constitutional approach. Indeed, this Court has held that a dormant-Commerce-Clause problem does *not* erase all licensing requirements. *See Byrd v. Tenn. Wine & Spirits Retailers Ass'n*, 883 F.3d 608, 627–28 (6th Cir. 2018). Here, if the problem is some lurking in-state presence requirement within Ohio's statutes or regulations, the solution is to excise that requirement, not eliminate the remainder. The plaintiffs' incumbency theory also does not justify the breadth of relief that the District Court awarded. In *Tennessee Wine*, for example, incumbent license holders (in-state residents) no doubt possessed a temporary advantage over those seeking licenses (non-residents). Even so, this Court did not excuse the non-resident plaintiffs from licensing altogether. *See id.*

To avoid a head-on discussion of Ohio's relief arguments, the plaintiffs quibble with phrasing. The plaintiffs say, for example, that "there is no such thing as 'intoxicating-hemp' licenses" under Ohio law. Plaintiffs' Br.38. That is wrong, at least in any sense that matters here. As discussed above (at 2–3), under Senate Bill 56, intoxicating hemp is treated as marijuana under Ohio law. To facilitate that change, Senate Bill 56 created new licensing opportunities for new market entrants. *See* Ohio Rev. Code §3796.05(B)(1); Makoski Decl., R.56-1, PageID#1182–83.

Hair splitting aside, Ohio's point regarding relief stands: nothing about the dormant Commerce Clause allows the plaintiffs to completely evade licensing. *See Tenn. Wine*, 883 F.3d at 627–28. The plaintiffs are thus wrong to suggest any entitlement to immunity from Ohio's licensing processes. *See* Plaintiffs' Br.40. In sum, the District Court's relief proves far too much.

CONCLUSION

The Court should reverse the District Court's preliminary injunction.

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, this brief complies with the type-volume requirements for a reply brief and contains 6,487 words. *See* Fed. R. App. P. 32(a)(7)(B)(ii).

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 August 18, 2026, this brief 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
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