No. 12-2502

In the United States Court of Appeals for the Eighth Circuit

SOUTHERN WINE AND SPIRITS OF AMERICA, INC., ET AL.,
APPELLANTS

v.

DIVISION OF ALCOHOL AND TOBACCO CONTROL,
MISSOURI DEPARTMENT OF PUBLIC SAFETY, ET AL.,
APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI (CIV. NO. 11-4175)
(THE HONORABLE NANETTE K. LAUGHREY, J.)

BRIEF OF AMICUS CURIAE MISSOURI WINE AND SPIRITS ASSOCIATION SUPPORTING APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Missouri Wine and Spirits Association has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION, STATUTES, AND REGULATION

INTEREST OF AMICUS CURIAE[1]

Missouri Wine and Spirits Association (MWSA) is an association of Missouri companies that are licensed by the Missouri Division of Alcohol and Tobacco Control to engage in the wholesale distribution of wine and liquor. MWSA's members constitute a majority of the Missouri wine and liquor wholesale market.

MWSA promotes its members' interests on the national and state level. As part of that effort, MWSA has participated as amicus curiae in litigation presenting issues affecting its members. This Court recently granted MWSA permission to file a brief and participate in oral argument as amicus curiae in a case concerning the interpretation of a Missouri law applicable to liquor wholesalers. *See Missouri Beverage Co.* v. *Shelton Bros., Inc.*, 669 F.3d 873 (8th Cir. 2012) (No. 11-2456). MWSA has a similar interest in the outcome of this case, which involves the constitutionality of licensing requirements governing the operations of MWSA's members. Pursuant to Federal Rule of Appellate Procedure 29(c)(4), all parties have consented to the filing of this brief.

[1] Pursuant to Federal Rule of Appellate Procedure 29(c)(5), MWSA affirms that no counsel for any party authored this brief in whole or in part and that no person other than MWSA, its members, or its counsel have made any monetary contributions intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

In this litigation, appellants challenge Missouri's constitutional right to determine for itself the best way to regulate the distribution of intoxicating liquors within its borders. Specifically, appellants contend that Missouri lacks the ability to require that the officers, directors, and a majority of the owners of a distributor of high-alcohol-content liquor be state residents. Appellants' challenge fails both because it is contrary to the recent pronouncements of the Supreme Court and because Missouri's residency requirements are supported by the experience of licensed Missouri wholesalers.

The district court in this case correctly concluded that the Supreme Court's decision in *Granholm* v. *Heald,* 544 U.S. 460 (2005), forecloses appellants' arguments. In that case, the Court unanimously expressed its approval of three-tier distribution systems such as Missouri's and concluded that the Twenty-first Amendment empowers a State to require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler. To the extent appellants contend that Missouri requires an excessive *amount* of in-state presence, that is a mere policy disagreement—not a constitutional defect.

The need for Missouri's residency requirements, moreover, is amply illustrated both by the experience of licensed wholesalers and by the history of appellant Southern Wine's own applications for a wholesaler license. Major

Brands, a member of MWSA, submitted evidence to the district court setting out the benefits of Missouri's residency requirements. And Southern Wine's own actions in the application process demonstrate why Missouri law appropriately looks beyond the corporate façade to determine who actually controls the distributor.

Like the district court and other courts of appeals that have considered similar challenges, this Court should reject appellants' invitation to disregard *Granholm* and to second-guess the considered judgment of the Missouri General Assembly. The judgment of the district court should be affirmed.

ARGUMENT

THE DISTRICT COURT CORRECTLY REJECTED APPELLANTS' CONSTITUTIONAL CLAIMS

A. Under The Supreme Court's Decision In *Granholm* v. *Heald*, Appellants' Constitutional Claims Are Foreclosed

The Court should be under no illusion as to what appellants are seeking in this litigation: appellants are directly challenging Missouri's constitutional right to structure and regulate its system for distributing intoxicating liquors within its borders as it sees fit. Specifically, appellants argue that the dormant Commerce Clause forbids States from discriminating against out-of-state wholesalers within a three-tier system of liquor distribution unless such discrimination satisfies some level of heightened scrutiny. As the district court in this case and other courts of appeals have recognized, however,

the Supreme Court rejected precisely that argument in *Granholm*. Perhaps in tacit recognition of *Granholm*, appellants concede that the Twenty-first Amendment entitles Missouri to discriminate to some extent against wholesalers that lack in-state presence, but argue that the dormant Commerce Clause imposes unspecified limits on the State's authority to define what it means to have an in-state presence. In the wake of *Granholm*, that argument is unavailing, and the district court correctly rejected it.

1. Section 2 of the Twenty-first Amendment provides: "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." The Supreme Court has explained that, "[g]iven the special protection afforded to state liquor control policies by the Twenty-first Amendment, they are supported by a strong presumption of validity and should not be set aside lightly." *North Dakota* v. *United States*, 495 U.S. 423, 433 (1990).

In *Granholm*, all nine members of the Court agreed that the Twenty-first Amendment grants States virtually plenary authority to structure three-tier liquor distribution systems as they see fit—including the authority to do so in a way that facially discriminates against out-of-state wholesalers. *See Granholm*, 544 U.S. at 489; *id.* at 518 (Thomas, J. dissenting). Under a three-tier system of distribution, a producer (the first tier) sells its wine or

spirits to a licensed in-state wholesaler (the second tier), which ensures that all excise taxes have been paid and then delivers those products to a licensed in-state retailer (the third tier). J.A. 87-88. The specific question presented in *Granholm* involved the constitutionality of state laws that allowed in-state wine producers, but not out-of-state producers, to obtain licenses to sell their products directly to consumers. 544 U.S. at 465-466. Critically for present purposes, however, the States defending their laws argued that, if the Court held those laws unconstitutional, it would also cast doubt on the constitutionality of residency requirements applicable to licensed wholesalers and retailers—requirements that, by definition, discriminate against out-of-state interests. *Id.* at 488.

In holding that the Twenty-first Amendment does not authorize discrimination against out-of-state *products*, the Court squarely addressed, and assuaged, that concern. The majority stated that three-tier systems are "unquestionably legitimate" under the Twenty-first Amendment. 544 U.S. at 488-489 (quoting *North Dakota*, 495 U.S. at 432). The majority specifically distinguished between discrimination against out-of-state products, which the Twenty-first Amendment does not authorize, and decisions regarding "how to structure the liquor distribution system" in the State, over which "[t]he Twenty-first Amendment grants the States virtually complete control." *Granholm*, 544 U.S. at 488 (quoting *California Retail Liquor Dealers*

Ass'n v. *Midcal Aluminum, Inc.*, 445 U.S. 97, 110 (1980)). The majority concluded that "[s]tate policies are protected under the Twenty-first Amendment" as long as "they treat liquor produced out of state the same as its domestic equivalent." *Granholm*, 544 U.S. at 489. In so concluding, the majority emphasized that "[t]he Twenty-first Amendment . . . empowers [a State] to require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler." *Id.* (quoting *North Dakota*, 495 U.S. at 447 (Scalia, J., concurring in judgment)).

Unsurprisingly, the dissenting Justices agreed with the majority that the Twenty-first Amendment authorizes States to enact residency requirements as part of their three-tier distribution systems, even if those requirements necessarily discriminate against out-of-state interests. *Granholm*, 544 U.S. at 518 (opinion of Thomas, J.). After surveying the history of the Twenty-first Amendment and state regulations after its ratification, the dissent concluded that it is "understandable that the framers of the Twenty-first Amendment . . . would have wanted to free States to discriminate between in-state and out-of-state wholesalers and retailers." *Id.* at 524. When the majority and dissenting opinions in *Granholm* are considered together, therefore, it is clear that all nine members of the Court agreed that residency requirements of the type at issue here are authorized by the Twenty-first Amendment.

2. The Supreme Court's reasoning in *Granholm* defeats any argument that the Court's holding concerning discrimination against out-of-state products applies equally to discrimination within a State's three-tier distribution system. As explained above, the Court took care to clarify the implications of its holding in *Granholm* for the three-tier system and, in so doing, rejected precisely the approach that appellants advance here. As courts of appeals have correctly recognized in interpreting *Granholm*, the Court explicitly limited its holding to discrimination against out-of-state products, and permitted discrimination against out-of-state wholesalers and retailers to continue as part of the administration of three-tier systems. *See Arnold's Wines, Inc.* v. *Boyle*, 571 F.3d 185, 190-191 (2d Cir. 2009) (concluding that a challenge to discrimination against out-of-state retailers was "directly foreclosed by the *Granholm* Court's express affirmation of the legality of the three-tier system"); *Brooks* v. *Vassar*, 462 F.3d 341, 352 (4th Cir. 2006) (noting, in rejecting a challenge to the discriminatory regulation of alcohol retailers, that *Granholm* "repeatedly" distinguished between discrimination against out-of-state products and the residency requirements of three-tier systems).

In the wake of *Granholm*, appellants wisely do not dispute that Missouri may constitutionally "require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler." *Granholm*, 544 U.S. at 489

(quoting *North Dakota*, 495 U.S. at 447 (Scalia, J., concurring in judgment)). Their challenge to Missouri's residency requirements for liquor wholesalers therefore reduces to the argument that the Twenty-first Amendment authorizes the State to discriminate against out-of-state wholesalers to some extent, but does not authorize the State to define what makes a wholesaler "out-of-state" in the manner that Missouri did here. In essence, appellants contend that a State is constitutionally prohibited from requiring more than a *de minimis* level of in-state presence. Although appellants are vague about the outer bounds of a State's power under their interpretation of the Twenty-first Amendment, appellants imply that a State has the ability only to require incorporation in the State, *see* Br. 32, 35, and perhaps also an in-state warehouse or managing officer, *see* Br. 31, 32, 42.

As the district court correctly concluded, *Granholm* precludes that cramped understanding of Missouri's authority to structure its system for the distribution of intoxicating liquors within the State. *See* J.A. 94. As noted above, the *Granholm* Court explained that, far from limiting States' options, "[t]he Twenty-first Amendment grants the States virtually complete control over . . . how to structure the liquor distribution system." *Granholm*, 544 U.S. at 488 (quoting *Midcal*, 445 U.S. at 110). Missouri's constitutionally conferred authority to discriminate against out-of-state wholesalers within its three-tier system does not stop at requiring a nominal in-

state presence. Rather, it is within Missouri's power to ensure that its wholesalers' in-state presence is substantial and genuine—and thereby to guarantee that the people actually in charge of a liquor wholesaling company will be accountable. *See* J.A. 94.

Indeed, there can be no doubt that the *Granholm* Court was well aware of residency requirements such as Missouri's when it expressed its approval of discrimination against out-of-state wholesalers. The dissenting opinion specifically catalogued state licensing schemes that discriminated by "requiring in-state residency or physical presence as a condition of obtaining licenses." 544 U.S. at 518 & n.6 (opinion of Thomas, J.). As explained at greater length in appellees' brief, many of those schemes, like Missouri's, required that shareholders, officers, or directors of a licensee corporation be state residents. *See* Br. 33-34. In short, appellants can point to nothing in *Granholm* that supports their arbitrary and manufactured restriction on the permissible scope of in-state presence requirements.

Accordingly, as the district court concluded, the very argument appellants make in this case has been considered, and rejected, by the Supreme Court. Under *Granholm*, States' judgments regarding the inclusion and scope of residency requirements at the wholesale level of their three-tier systems are protected by the Twenty-first Amendment.[2] This Court should

[2] In addition to their dormant Commerce Clause claim, appellants renew their claim under the Equal Protection Clause. *See* Br. 40-45. Appellants

likewise reject appellants' argument and affirm the district court's judgment in appellees' favor.

B. Missouri's Residency Requirements Are Rationally Related To Legitimate State Interests

Although *Granholm* settles the State's authority to enact the residency requirements at issue here, the facts on the ground illustrate why Missouri's decision to look beyond the corporate façade and demand true in-state presence of its liquor wholesalers was an eminently reasonable one. The experience of Missouri wholesalers demonstrates that Missouri's residency requirements are rationally related to the State's legitimate interest in ensuring that individuals behind the distribution of liquor in Missouri are accessible, accountable, and actively engaged in the enforcement of the State's regulations and public policies concerning the distribution of liquor. And Southern Wine's own actions in applying for a wholesaler license demonstrate the wisdom of Missouri's decision to require a meaningful in-state presence as a condition of issuing a license to distribute liquor within the State's borders.

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concede that, under the Equal Protection Clause, Missouri's residency requirements are subject only to rational-basis review. *See* Br. 40. In light of the *Granholm* Court's reasoning about the validity of residency requirements like Missouri's under the Twenty-first Amendment and the deference owed to the Missouri General Assembly under the rational-basis standard, this Court should reject appellants' equal-protection claim.

1. The Experience Of MWSA's Members Has Demonstrated The Benefits Of Missouri's Residency Requirements

Missouri's residency requirements for liquor wholesalers must be considered in the context of the vital role that wholesalers—the middle tier—play in a State's three-tier liquor-distribution system. As Justice Thomas explained in his dissenting opinion in *Granholm*, "the requirement that liquor pass through a licensed in-state wholesaler is a core component of the three-tier system." 544 U.S. at 518. "The structure of the usual three-tier system is commonly described as an hourglass, with wholesalers at the constriction point." *Family Winemakers of Cal.* v. *Jenkins*, 592 F.3d 1, 5 (1st Cir. 2010); *see* Br. of Appellants 31. Wholesalers acquire wine and spirits from various suppliers around the globe; take ownership and possession of those products in Missouri; and deliver them to thousands of retailers for sale to, and consumption by, Missouri consumers. J.A. 87-88. Given the central role of wholesalers in the distribution process, it is unsurprising that the wholesale tier is subject to extensive oversight and control by the applicable regulator, the Division of Alcohol and Tobacco Control. *See* Decl. of Barry O'Neil, D. Ct. Dkt. 17-2, at 5 (¶ 16). For example, wholesalers must ensure that Missouri excise taxes have been paid on the alcohol they distribute; their products are subject to inspection regarding alcohol content, volume, and contaminants or other health and safety concerns; and their interactions with retailers are heavily regulated to ensure that only licensed retailers receive

alcohol and that all retailers pay the same price for the same products. *Id.* at 5 (¶¶ 16-19).

Above and beyond the requirements imposed by law, moreover, personal interest and accountability play an important role in encouraging liquor distributors to achieve the statutory objectives of "promot[ing] responsible consumption, combat[ing] illegal underage drinking, and achiev[ing] other important state policy goals such as maintaining an orderly marketplace." Mo. Rev. Stat. § 311.015. As appellees explain in their brief, there are benefits to requiring that the individuals behind corporations engaged in the importation and distribution of higher-alcohol-content liquor within Missouri's borders have a direct and personal interest in the State's communities. *See* Br. 49-55.

To begin with the obvious, Missouri's residency requirements ensure that the individuals controlling corporate wholesalers are citizens of the State. As Justice Thomas recognized in *Granholm*, "[p]resence ensures accountability." 544 U.S. at 523-524 (dissenting opinion) (internal quotation marks omitted). And presence specifically creates incentives for those individuals to be concerned with the public health and safety issues accompanying the distribution of liquor. In effect, Missouri's residency requirements ensure that individuals behind corporate wholesalers are distributing liquor in their own backyards—where they live, drive the streets, vote, and pay tax-

es. Individuals whose children drive the same streets as potential drunk drivers have powerful incentives not only to ensure that alcohol is distributed in a responsible manner, but to support efforts to promote moderate consumption and to address the social ills of excessive consumption (such as alcoholism and homelessness). Out-of-state owners do not possess those incentives to nearly the same extent, because, by virtue of their physical absence from the community, they are largely immune from personal reputational damage and the health and safety consequences of overconsumption.

The experience of one MWSA member, Major Brands, well illustrates the benefits of Missouri's residency requirements. The record below contains declarations from two Major Brands executives—Barry O'Neil, its president, and Patrick Quinn, its chief operating officer—setting out the benefits of the residency requirements. Those declarations provide concrete support for the argument that Missouri's residency requirements ensure that individuals distributing liquor in Missouri are accessible, accountable, and actively engaged in the enforcement of the State's regulations and public policies concerning the distribution of liquor.

First, Major Brands' experience demonstrates that the residency requirements ensure a high level of accountability and concern for the health and safety of Missouri's citizens. *See* Decl. of Barry O'Neil, D. Ct. Dkt. 17-2, at 3-8 (¶¶ 9-27); Decl. of Patrick Quinn, D. Ct. Dkt. 17-1, at 3-7 (¶¶ 11-23). As

residents of Missouri communities, Major Brands' owners and employees have taken leading roles in preventing underage alcohol use and curbing the toll of alcohol abuse and have undertaken numerous charitable activities. *See* O'Neil Decl. 7-8 (¶¶ 26-27); Quinn Decl. 3-4 (¶¶ 12-13).[3]

Major Brands also plays an active role in enforcing Missouri's regulations concerning the distribution of liquor. For example, Major Brands keeps tabs on retailers' compliance with state and local licensing laws and monitors the market for unlicensed and "gray-market" products (*i.e.*, products that were shipped to another State but are illegally brought into Missouri for sale). *See* O'Neill Decl. 6-7 (¶ 24). Because Major Brands is in compliance with the residency requirements, moreover, it is easier for the cash-strapped Division of Alcohol and Tobacco Control to oversee its operations than it would be to oversee the operations of an out-of-state corporation such as Southern Wine that has not complied with the requirements. *See id.* at 7 (¶ 25).

Missouri's residency requirements reflect the Missouri General Assembly's considered judgment regarding how best to structure its liquor distribution system. As the experience of MWSA's members demonstrates,

[3] For example, Major Brands sponsored the establishment of Scooter Guy, a St. Louis-based program that promotes responsible drinking not only by offering patrons rides home, but by ensuring that patrons' cars are returned to their homes as well. *See* O'Neil Decl. 7 (¶ 26).

those requirements are rationally related to legitimate state interests and are therefore constitutional under *Granholm*.[4]

2. Southern Wine's Own Actions In Applying For A License Underscore The Need For Meaningful Residency Requirements

For a prime example of why Missouri looks beyond mere incorporation and imposes meaningful residency requirements as a condition for obtaining a wholesaler license, one need look no further than to Southern Wine's own actions in the application process that gave rise to this litigation. The history of Southern Wine's repeated applications—as reflected in records obtained by request from the Division of Alcohol and Tobacco Control[5]—vividly illustrates why Missouri's residency requirements are rational and justified.

The Division's regulations set forth the following requirements for the managing officer of a corporation that wishes to obtain a wholesaler license:

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[4] Although appellants complain about the General Assembly's decision to include a grandfather clause in the residency requirements, it was perfectly rational for the General Assembly to choose not to disturb the reliance interests of existing license-holders when it enacted the statute in 1947. The mere fact that a statute contains a grandfather clause does not somehow render it an irrational means of achieving the State's legitimate purpose. *See Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 467-468 (1981); *City of New Orleans* v. *Dukes*, 427 U.S. 297, 304-305 (1976).

[5] For the Court's convenience, excerpts of the relevant documents are reproduced in an addendum to this brief. Personal information has been redacted from those documents; upon request, MWSA will file unredacted versions of those documents under seal.

> Corporations licensed under the provisions of sections 311.060 and 312.040 . . . must have a managing officer. In order to qualify, the managing officer must be a person in the corporation's employ, either as officer or an employee who is vested with the general control and superintendence of a whole, or a particular part of, the corporation's business at a particular place.

Mo. Code Regs. Ann. tit. 11, § 70-2.030(7). In addition, the applicable statutes provide that no "officer[] or agent[]" of a wholesaler may "directly or indirectly[] have any financial interest in the retail business for sale of intoxicating liquors." Mo. Rev. Stat. § 311.070(1).

In its initial application for a wholesaler license, Southern Wine listed Lorene Samson as "managing officer" for Southern Missouri. *See* Addendum, *infra*, 5a. Ms. Samson was listed as having an e-mail address with the domain name brydonlaw.com. *See id.* Notably, Ms. Samson is listed on LinkedIn as a paralegal at Brydon, Swearengen & England—the Missouri law firm that helped file the application and is representing Southern Wine in this litigation. *See* http://www.linkedin.com/pub/lorene-samson/14/263/b9a (last visited Dec. 5, 2012).

The Division denied Southern Wine's initial application. Although it did so in part because Southern Wine and its owners did not meet the residency requirements, it also cited two other reasons: first, that Ms. Samson was not qualified to serve as managing officer of a liquor wholesaler because she was also the managing officer "for numerous retail liquor licensed businesses and [had] a financial interest in licensed retail businesses," and se-

cond, that the application "did not make full, true and complete answers" regarding Ms. Samson's interests in retail liquor businesses "as required by [regulation] and as attested to in the application." Addendum, *infra*, 2a-3a. In fact, Ms. Samson already serves as the managing officer *for more than 200 licensed retailers*—raising serious questions about whether she could have meaningfully performed her duties as Southern Wine's managing officer. *See* Missouri Alcohol License E-mail Addresses, https://data.mo.gov/Regulatory/Missouri-Alcohol-License-Email-Addresses/3tbi-hsi9 (search for Ms. Samson's e-mail address) (last visited Dec. 5, 2012). In essence, the Division determined that Southern Wine had failed to provide truthful answers about its proposed managing officer's interests in liquor retailers. Addendum, *infra*, 3a.

After the Division rejected Southern Wine's initial application, Southern Wine submitted a revised application with a new proposed managing officer, Karen Borgmeyer. *See id.* at 11a. Ms. Borgmeyer also appears to have been an employee of Brydon, Swearengen & England; she was also listed as having an e-mail address with the domain name brydonlaw.com. *See id.* On the application, Southern Wine stated that Ms. Borgmeyer had no ownership or membership interest in the company. *See id.*

Before the Division could formally act on the revised application, Southern Wine submitted a second revised application with yet another pro-

posed managing officer, Kylene Richardson. *See id.* at 13a-14a. That application was accompanied by a cover letter from Johnny Richardson, an attorney with Brydon, Swearengen & England, in which Mr. Richardson stated that Ms. Richardson has "no affiliation whatsoever with any other licensee or our firm." *Id.* at 12a. Based on the age and address information contained on the application, however, it appears that Ms. Richardson is actually the daughter of (or otherwise related to) Mr. Richardson. *See id.*

Ms. Richardson is listed on LinkedIn as a development officer for the College of Veterinary Medicine at the University of Missouri. *See* http://www.linkedin.com/pub/kylene-richardson/14/b97/b59 (last visited Dec. 5, 2012). There is no indication on the application that Ms. Richardson was actually in the employ of Southern Wine. Even if she were not related to Southern Wine's attorney, therefore, Ms. Richardson does not appear to be qualified to serve as the managing officer of a liquor wholesaler in Missouri. *Cf.* Mo. Code Regs. Ann. tit. 11, § 70-2.030(7) (providing that "the managing officer must be a person in the corporation's employ, either as officer or an employee who is vested with the general control and superintendence of a whole, or a particular part of, the corporation's business at a particular place").

Southern Wine's actions in the application process amply illustrate why Missouri looks behind the corporate façade before issuing a wholesaler li-

cense. Southern Wine's conduct flouted the letter and spirit of the applicable laws and regulations and gave short shrift to Missouri's interest in ensuring a *bona fide* degree of in-state presence. Having sought to evade Missouri's various requirements, Southern Wine now resorts to a desperate effort to invalidate them. Because Missouri's residency requirements are rationally related to a legitimate state interest, they are unquestionably constitutional. Like the Supreme Court, this Court should affirm the principle that States have virtually plenary authority to structure three-tier systems as they see fit, and on that basis reject appellants' constitutional claims.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

S/ RICHARD B. WALSH, JR.

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DECEMBER 7, 2012

CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS

I, Richard B. Walsh, Jr., counsel for amicus curiae Missouri Wine and Spirits Association and a member of the Bar of this Court, certify, pursuant to Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(C), that the attached Brief of Amicus Curiae Missouri Wine and Spirits Association Supporting Appellees and Affirmance is proportionately spaced, has a typeface of 14 points or more, and contains 4,124 words.

S/ Richard B. Walsh, Jr.
RICHARD B. WALSH, JR.

DECEMBER 7, 2012

CERTIFICATE OF SERVICE

I, Richard B. Walsh, Jr., counsel for amicus curiae Missouri Wine and Spirits Association and a member of the Bar of this Court, certify that, on December 7, 2012, copies of the attached Brief of Amicus Curiae Missouri Wine and Spirits Association Supporting Appellees and Affirmance and related addendum were filed electronically through the appellate CM/ECF system with the Clerk of the Court. I further certify that all parties required to be served have been served.

S/ Richard B. Walsh, Jr.
RICHARD B. WALSH, JR.

DECEMBER 7, 2012