



ATTORNEY GENERAL OF MISSOURI

ERIC SCHMITT

April 30, 2020

Michael E. Gans
Clerk of the Court
Thomas F. Eagleton Courthouse
111 South 10th Street
Room 24.329
St. Louis, MO 63102

Re: *Sarasota Wine Market, LLC d/b/a Magnum Wine and Tastings, et al. v. Schmitt, et al.*, Case No. 19-1948 – Citation of Supplemental Authority

Dear Mr. Gans:

Appellees Attorney General Eric S. Schmitt, *et al.*, submit this letter pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure to provide supplemental authority regarding this appeal. On April 21, 2020, the Sixth Circuit issued its opinion in *Lebamoff Enterprises, Inc., v. Whitmer*, Case Nos. 18-2199/2200 (Slip opinion enclosed). In *Lebamoff*, the Sixth Circuit decided whether Michigan “may permit liquor retailers to offer at-home deliveries within Michigan while denying the same option to an Indiana retailer who does not have a Michigan retail license.” *Id.* at 1. The Sixth Circuit held that “[t]he answer is yes.” *Id.* at 7.

In *Lebamoff*, the Sixth Circuit noted that previous decisions “suggest there is nothing unusual about the three-tier system, about prohibiting direct deliveries from out of state to avoid it, or about allowing in-state retailers to deliver within the state.” *Id.* at 9. The Sixth Circuit observed that several courts have permitted States to prohibit out-of-state direct deliveries as a valid exercise of their authority under the Twenty-First Amendment. *See id.*, slip op. at 9-10 (citing *Bridenbaugh v. Freeman-Wilson*, 227 F.3d 848, 853 (7th Cir. 2000); *Arnold’s Wines, Inc. v. Boyle*, 571 F.3d 185 (2d Cir. 2009); and *Wine Country Gift Baskets.com v. Steen*, 612 F.3d 809 (5th Cir. 2010)).

The Sixth Circuit held that Michigan’s three-tier system does not violate the dormant Commerce Clause because the system does not have the practical effect of controlling commerce outside of its borders. *Lebamoff*, slip op. at 10. The Sixth Circuit

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also held that there was no violation of the Privileges and Immunities Clause because the sale of retail liquor is not a privilege protected by that Clause. *Id.* at 14-15.

Very truly yours,

ERIC S.SCHMITT
Attorney General

/s/ D. John Sauer _____

D. John Sauer
Solicitor General

Enclosure

cc: Counsel for Appellants (via electronic filing)