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WSWA APPLAUDS SIXTH CIRCUIT DECISION UPHOLDING STATES' RIGHT TO REGULATE ALCOHOL

6th Circuit Rules for Michigan in Wine Retailer Interstate Shipping Challenge and Demonstrates Support for Three-Tier System and 21st Amendment

WASHINGTON, D.C., 04/22/2020 – Wine & Spirits Wholesalers of America (WSWA) President and CEO Michelle Korsmo released the following statement regarding yesterday's Sixth Circuit ruling for Michigan in a wine retailer interstate shipping challenge brought forth in *Lebamoff Enterprises, Inc. v. Whitmer*:

"WSWA is very pleased with the thoughtful opinion written by Judge Sutton on a case that questioned whether Michigan's law allowing only in-state retailers to ship wine to in-state consumers violates the dormant Commerce Clause," said Korsmo. "Last year's Supreme Court decision in *Tennessee Wine & Spirits Retailers Association v. Thomas* called into question the power of states' rights under the 21st Amendment, but this decision demonstrates clearly that states remain empowered to impose regulations on the sale of alcohol to protect their citizens. We are pleased to see Judge Sutton's careful consideration of the *TWSRA* decision and past caselaw, all of which point to states' ability to operate a three-tier system within their state and enact certain shipping and delivery restrictions on alcohol."

The 6th Circuit agreed with the argument put forth by WSWA in its amicus brief filed in October 2019. WSWA argued that the Supreme Court in *TWSRA* set forth a "different test" for dormant Commerce Clause challenges to alcohol laws, and the 6th Circuit did in fact, apply this "'different' test[.]" Additionally, the court found that the Michigan law met the required legal standard.

"The decision provides a valuable roadmap to the *TWSRA* decision and reestablishes that the 21st Amendment grants each state "broad latitude" to regulate alcohol sales within their borders to ensure the safety and health of their citizens," concluded Korsmo. As the decision noted, states can "require retailers to be physically based in the state," and to regulate wholesalers "as a way to control the volume of alcohol sold in a State and the terms on which it is sold." This power extends to "[n]ew delivery options[, which] are simply new ways of allowing the heavily regulated third tier to do business."

Find a Judge Sutton's opinion [here](#).

Find a copy of WSWA's Amicus Brief [here](#).

About Wine & Spirits Wholesalers of America

WSWA is the national trade association representing the distribution tier of the wine and spirits industry, dedicated to advancing the interests and independence of distributors and brokers of wine and spirits. Founded in 1943, WSWA has more than 380 member companies in 50 states and the District of Columbia, and its members distribute more than 80 percent of all wine and spirits sold at wholesale in the United States.

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