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BY ELECTRONIC FILING

Mr. Michael E. Gans
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
Room 24.329
111 South 10th Street
St. Louis, MO 63102

Re: LSP Transmission Holdings, LLC v. Lange, et al., No. 18-2559

Dear Clerk of Court:

In arguing that the Supreme Court's decision in *Tennessee Wine* requires striking down Minnesota's regulation of critical electrical infrastructure, Plaintiffs ignore three dispositive differences between that case and this one.

First, the law in *Tennessee Wine* facially discriminated against out-of-state residents, whereas Minnesota's statute is neutral. Tennessee's law restricted liquor licenses to individuals who had been Tennessee residents for two years and to corporations whose officers, directors, and stockholders *all* met that residency requirement. Slip Op. at 3. Minnesota, in contrast, has no residency requirement for owning electric transmission lines, Minn. Stat. § 216B.02, and indeed many out-of-state companies own them.

Second, Tennessee allowed new entrants to the liquor market but discriminated against out-of-staters. Minnesota, in contrast, precludes new market entrants for electric transmission and applies the limitation equally to in- and out-of-state entities. Limiting competition is not the same as discriminating against interstate interests, particularly in an area of natural monopoly. With electricity, the States "learned from chastening experience" that "competition would simply give over to monopoly in due course," *requiring* the States to regulate providers to protect consumers. *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 290 (1997).

Because of this powerful public interest, regulated incumbents are not “considered ‘similarly situated’” with would-be new entrants “for purposes of a claim of facial discrimination under the Commerce Clause.” *Id.* at 310.

Third, Tennessee’s liquor law had no plausible connection to public health and safety, whereas Minnesota’s regulation “serves important interests in health and safety in fairly obvious ways.” *Id.* at 306. New electric transmission lines must connect safely to the existing grid; liquor stores stand alone. Existing liquor store owners cannot be compelled to build new stores, but existing transmission owners *can* be compelled to build new lines needed to serve the public. Minn. Stat. § 216B.246, subd. 3(b). To ensure that the existing regulated owners are financially sound enough to carry their burdens to provide safe, reliable electricity, Minnesota may give them desirable projects as well as undesirable ones.

Intervenors-Appellees respectfully request the Court to affirm Minnesota’s authority to regulate utilities in the public interest.

Sincerely yours,

/s/ Aaron D. Van Oort

Aaron D. Van Oort

cc: Counsel of record by ECF