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March 19, 2025

Sent Via ECF

Susan E. Bindler, Clerk of Court
Court of Appeals for the Eighth Circuit Court
Thomas F. Eagleton Courthouse
111 South 10th Street
Room 24.329
St. Louis, MO 63102

Re: Notice of Supplemental Authority Per FRAP 28(j)
Ass'n for Accessible Medicines v. Keith Ellison, Atty. General
Case No. 24-1019

Dear Ms. Bindler:

Appellant submits this letter pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure. The letter describes subsequent developments in case law related to the parties' dormant Commerce Clause arguments.

On March 14, 2025, the Ninth Circuit Court of Appeals issued a decision written by Judge Bress in *Flynt v. Bonta*, No. 22-16376, 2025 WL 815194 (9th Cir. Mar. 14, 2025). The Court considered a dormant Commerce Clause challenge to a California law prohibiting gambling licenses to entities that hold any financial interest in a business or organization engaged in any form of gambling prohibited in California, even the activity takes place out-of-state. In reaching its decision, the Court extensively discussed the U.S. Supreme Court's decision in *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023) to reject appellants' argument that the California law violated the dormant Commerce Clause.

Specifically, the Court rejected the argument that California's law directly regulated out-of-state transactions by those with no connection to California because plaintiffs did have connections with the state: they obtained licenses to operate cardrooms in California. The Court therefore found that the law does not regulate transactions totally disconnected from the state. *Flynt*, 2025 WL 815194, at *8 (finding the laws "say nothing about the general ability of persons to invest in out-of-state casino businesses; they merely place limits on that ability in the case of persons who operate cardrooms within the state, to prevent assertedly deleterious in-state effects.")

The Court explained that plaintiffs' extraterritoriality argument "would ostensibly prevent states, in the name of the dormant Commerce Clause, from conditioning a state license on the licensee foregoing some other activity," significantly expanding the dormant Commerce Clause and significantly intruding on states' traditional police powers to regulate in-state activities. 2025 WL 815194, at *9.

The Court reiterated that *Ross* did not upset its precedent that state laws with "an upstream effect only as a practical matter on out-of-state transactions" do not violate the dormant Commerce Clause. 2025 WL 815194, at *10.

The Court's analysis, and its application of *Ross*, support the arguments advanced by Appellant in its Opening Brief, pp. 23–24, 26–34, and its Reply Brief, pp. 8–11, 13–15, 18–20, 22–26.

Sincerely,

/s/ Nick Pladson

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cc: William M. Jay, Esq. (via ECF)