Not Improving with Age: Three Years after Court Ruling, Legislative Inaction Stymies Wine Direct Shipping

January 11, 2013 – Massachusetts wine lovers still cannot purchase wines directly from out-of-state wineries, even though the legislature has had three years to act on an appellate court ruling directing the legislature to correct its unconstitutional ban on wine shipments.

On January 14, 2010, Judge Rya Zobel of the federal district court ruled unconstitutional a 2006 Massachusetts law banning winery-to-consumer shipments from wineries producing more than 30,000 gallons per year and who retain Massachusetts wholesalers. The U.S. 1st Circuit Court of Appeals upheld her ruling.

The legislature was expected to conform to the ruling by passing a model bill similar to those working successfully in the majority of U.S. states. Massachusetts is the largest state for wine consumption that continues to ban direct shipping; the list also includes Utah, Kentucky, Alabama, and seven others.

"Let's hope the New Year uncorks renewed interest in expanding choice for wine lovers," said Jeremy Benson, executive director of Free the Grapes!, a national movement to promote legal, regulated direct shipping. "Other states have seen through the protectionist arguments and the red herrings presented by special interests. Legal, regulated direct shipping adds to tax coffers without hurting local businesses."

For example, last month's report by the Comptroller of Maryland compared annual figures before and after its direct shipment program began July 1, 2011. To paraphrase its findings:

- The new law did not hurt sales from wine wholesaler middlemen to wine retailers. Wholesaler sales to state retailers *rose* by 3.6% in the year following implementation of the shipment law.
- The new law raised approximately $7 in tax revenue for every $1 the state incurred in costs for both recurring and one-time, non-recurring implementation costs. (Maryland collected $693,624 from winery license fees, carrier permits, excise taxes, special alcohol and sales taxes, and projected total costs at $100,000.)
- Consumer choice in wine expanded. The report measured consumer access to the 45 domestic wines included in Wine Spectator magazine's 2011 "Top 100" list (55 wines were foreign). "Permitted shippers added 13 domestic wines to the total of the 'Top 100' wines available to Maryland consumers."

Free the Grapes! is calling on all Massachusetts wine lovers to let their voices be heard by writing a letter to their state representatives using the group's website, at www.freethegrapes.org.

Background

In 2005 Massachusetts House Bill 4498 was introduced and passed both the House and Senate. The bill was condemned for seeking to place conditions on out-of-state wineries that did not exist for Massachusetts' wineries. No in-state wineries produced more than the 30,000 gallons, and they could sell directly to Massachusetts consumers *as well as* through state wholesalers. Out-of-state wineries over the 30,000 gallon cap would not have this option – they would have to either sell directly to consumers or through a Massachusetts wholesaler, if a wholesaler chose to represent them. Wineries that retained a Massachusetts wholesaler and produced more than 30,000 gallons were prohibited from direct-to-consumer shipping.

Then Governor Mitt Romney vetoed HB 4498 in November 2005 – commenting on its "anti-consumer effect, as well as its dubious constitutionality" – but the veto was overridden. In January 2006, Governor Romney introduced, but failed to pass, a separate bill similar to legislation working in many other states, commenting that "It's time we end the monopoly that wholesalers have over wine sales…"

Instead of passing the Governor's new bill, the wholesaler-supported bill, HB 4498, became law in 2006. On September 18, 2006, *Family Winemakers of California v. Jenkins* was filed, stating that current

Massachusetts law violated the nondiscrimination principle of the Commerce Clause, which prohibits "laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses." (U.S. Supreme Court, *Granholm v. Heald*, May 2005).

Introduced in 2011, House Bill 1029 would have corrected the archaic ban and conformed to Judge Zobel's ruling, but it languished in committee throughout 2012. A new bill is expected to be introduced in 2013.

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