

**1st Circuit US Court of Appeals: Capacity Caps Unconstitutional**  
*Family Winemakers of California, Coalition for Free Trade Toast Massachusetts Victory  
for Wineries, Consumers*

January 15, 2010 -- A 2006 Massachusetts statute banning winery-to-consumer shipments from wineries producing more than 30,000 gallons per year, and who retain Massachusetts wholesalers, was ruled unconstitutional yesterday by the US Circuit Court of Appeals for the First Circuit. Attorneys anticipate that the next step is for the state legislature to consider implementing the model direct shipping bill, language that is working successfully in the majority of U.S. states.

The announcement affirmed previous U.S. District Court rulings in November 2008 by Judge Rya Zobel, who later enjoined the state from enforcing Sections 2, 18 and 19(F) of MA General Law Chapter 138. The decision was then appealed to the 1<sup>st</sup> Circuit U.S. Court of Appeals.

"The capacity cap idea is now dead," said Jeremy Benson, executive director of Free the Grapes! "Capacity caps were a lightning rod for consumer anger. The idea has been introduced unsuccessfully for four consecutive years in Florida, was argued before the U.S. Circuit Court of Appeals for the 9<sup>th</sup> Circuit last September, angrily opposed by consumers in Ohio, and finally ruled unconstitutional in Massachusetts," he added.

The Massachusetts lawsuit was funded in large part by the Coalition for Free Trade with Family Winemakers of California as lead plaintiff -- it promises to significantly expand consumer choice in wine for Massachusetts wine lovers. Wineries affected by the ban account for 98% of all of the wine produced in the U.S. each year, according to the plaintiff's filing in *Family Winemakers v. Jenkins*. Massachusetts is the seventh largest wine consumption state in the U.S. (source: Adams Wine Handbook, 2007, figures from 2006 data).

Access the Court's ruling at <http://www.leagle.com/unsecure/page.htm?shortname=infco20100114093>

Access the Family Winemakers of California press release at [www.familywinemakers.org](http://www.familywinemakers.org)

### **Massachusetts 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.

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 successfully 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).

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