



National Beer Wholesalers Association

July 6, 2009

Mr. Kenneth W. Starr
Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017-5800

Ms. Tracy K. Genesen
Kirkland & Ellis LLP
555 California Street
San Francisco, CA 94104

Sent Via Electronic and Regular Mail

RE: Representations regarding the passage of a “Model Permit Bill” by the National Conference of State Legislatures

Dear Mr. Starr and Ms. Genesen:

It has come to our attention that your firm has indicated to the First and Fifth Circuit Courts of Appeals that the National Conference of State Legislatures (NCSL) passed a “Model Permit Bill” on wine direct shipping. Unfortunately, this representation has been repeated in court opinions. I write to advise you that this representation is incorrect, urge you to refrain from repeating it in the future, and seek to correct where appropriate.

Specifically, in the Fifth Circuit case, you have indicated that the NCSL had “fashioned” a model permit billⁱ and “embraced” and “adopted” this bill.ⁱⁱ Similarly, in the First Circuit case, you suggested that the Model Bill (drafted by California wine interests) was “adopted by the NCSL in 1997” and serves as a less restrictive alternative to Massachusetts laws on direct shipping of alcohol.ⁱⁱⁱ

As you can see from the attached clarification of the Executive Director of the NCSL, the NCSL recently corrected your erroneous characterization of this bill. First of all, the bill you reference was a California wine industry drafted direct shipment bill, not a NCSL drafted model bill. More importantly, this “bill” was **not** “adopted,” “embraced,” or “fashioned” by the NCSL as you have indicated. Rather a defunct task force of the NCSL adopted the wine industry’s bill, but it died there and was not reviewed by the NCSL Executive Committee or the membership of NCSL. As you know, nothing can become an official NCSL action under NCSL Bylaws without an act of the Executive Committee or a 3/4 majority of the states and territories present and voting. The “model bill” never made it that far.

The NCSL has in fact taken a specific related alcohol policy position since the wine industry bill in 1997. In 2006, the NCSL adopted a policy statement on internet commerce with general support for its growth. This position, however, adopted by the full membership of NCSL specifically notes “nothing in this policy statement is to be construed as limiting or affecting the right of any state to regulate alcohol according to its local norms and standards pursuant to the 21st Amendment.” You can read more about this truer NCSL position at www.ncsl.org/Default.aspx?TabID=773&tabs=855,21,633#InternetEC.

As a person interested in the 21st Amendment, I am concerned by your representations that the NCSL, an organization dedicated to *advancing* state rights, would somehow have their good name associated with endorsing a position that would *undercut* the rights of its member states to regulate alcohol under the 21st Amendment.

As you know, it is imperative for advocates on all sides to present accurate records to the judiciary so it may make an informed decision. Any further reliance on the Supreme Court’s misunderstanding that the Model Direct Shipping Bill was “developed” by NCSL is improper.^{iv} As the courts consider the important issues related to the 21st Amendment, it is important that they not be misled into thinking that an organization of the states has in any way suggested weakening or changing state alcoholic beverage law or endorsing judicial efforts to rewrite state alcohol laws.

I appreciate your notifying the courts of this mistake. Thank you for your cooperation.

Sincerely,

Paul Pisano
VP and Counsel
National Beer Wholesalers Association

Enclosures (3)
CC: Office of the Massachusetts Attorney General
Office of the Texas Solicitor General
William Pound, NCSL

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- ⁱ Oral argument, *Siesta Village v. Perry*, Minute 6,
<http://www.ca5.uscourts.gov/OralArgumentRecordings.aspx?prid=17625>
- ⁱⁱ Wine Country Plaintiff's Reply Brief in Support of Summary Judgment, page 4
- ⁱⁱⁱ Response Brief of Appellees, *Family Winemakers v. Jenkins*, pp 55-56
- ^{iv} *Granholt v. Heald*, 544 U.S. 460, 491 (2005)