

Sun Sets On Coalition for Free Trade

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NEWS RELEASE

November 24, 2014, San Francisco, Calif. – The Coalition for Free Trade (CFT), established by vintners in 1995 as a non-profit organization seeking judicial relief from laws prohibiting direct-to-consumer shipments, has ended all activities after achieving significant victories for wineries and wine lovers alike.

“We can celebrate a rare occasion—an industry association opened its doors for business, raised money, got the job done, then turned the lights out,” said W. Reed Foster, president of Coalition for Free Trade, co-founder and emeritus chairman and CEO of Ravenswood Winery. “My heartfelt thanks goes out to the vintners, attorneys, associations and individuals too numerous to name here who provided CFT with the financial support and guidance that led to our success,” he added.

Coalition for Free Trade was started in 1995 by Bill MacIver and John Hinman and later led by other industry leaders including Patrick Campbell, Mr. Foster, Pete Downs, Tom Shelton, Fred Reno, Dennis Cakebread, Lesley Berglund and Manny Berk, among others. Its role solidified as the litigation arm of the industry’s “three pronged” strategy on legal, regulated DTC shipping: litigation (CFT), lobbying (Wine Institute, Family Winemakers of California and WineAmerica), and public relations (Free the Grapes!).

“While the percentage of U.S. wine sold directly to consumers is small, the industry’s strategy has helped to create a nearly \$2 billion direct-to-consumer sales channel. It would be difficult to overestimate the contributions of CFT; simply put, the sales channel and the jobs and economic activity it has created would not exist today,” said Dennis Cakebread, CFT board member and Vice President Marketing and Sales, Cakebread Cellars. “Personally, I need to thank all of our supporters and for all their financial contributions; without that help we would have failed,” he added.

When CFT started in the mid-1990s, only 11 “reciprocal” states allowed for interstate, winery-to-consumer shipments. Now, 41 states allow such shipments, and those states represent 89.4% of total U.S. population.

CFT Directs Campaign to Bring Issue to U.S. Supreme Court

Between the late 1990s and 2004, CFT helped coordinate and advise in lawsuits in seven states. Cases from Michigan and New York—which allowed intra-state shipments from its wineries to consumers, but denied that same privilege to out-of-state wineries—were considered by the U.S. Supreme Court in late 2004.

CFT’s legal team from Kirkland & Ellis directed the effort. The team included Tracy Genesen, CFT legal director, then partner with Kirkland & Ellis and now Lecturer at Stanford Law School; along with Kenneth W. Starr, counsel to CFT, former U.S. Solicitor General, and currently president and chancellor of Baylor University. Additionally, Kathleen Sullivan, then professor of law at Stanford University, represented the Michigan plaintiffs before the High Court.

On May 16, 2005, the Court ruled that the statutory schemes in New York and Michigan were in violation of the dormant Commerce Clause. The ruling was a turning point in several respects. It helped industry representatives work with legislators in affected states to reinforce the benefits and proven track record of the NCSL-adopted, model direct shipping bill, which the wine industry had adopted in 1997 and was working successfully in several states. Also, the ruling was one of the biggest wine news stories of the decade, helping agitate wine lovers who conveyed their support for legislative changes through the online communication channels set up by Free the Grapes.

Massachusetts: 1st Circuit Court of Appeals Rules Capacity Cap Unconstitutional

In July 2014, Governor Patrick signed the state’s budget bill which included provisions for winery-to-consumer shipments, effective January 2015.

His signature capped a nearly decade-long effort that began in September 2006 when CFT supported Family Winemakers of California in suing Massachusetts. Family Winemakers of California vs. Jenkins challenged the law that prohibited winery-to-consumer shipping if the winery had been represented by a Massachusetts wholesaler within the last six months, or if the winery produced more than 30,000 gallons of wine a year. All Massachusetts wineries could ship to consumers and sell to wholesalers.

In summary, the old statute's capacity cap provision effectively banned shipments from the largest wineries, and a consumer-based shipping quantity limit effectively banned shipments from smaller wineries which could, in theory, ship directly to consumers.

In 2008, CFT and Family Winemakers of California won the case. Tracy Genesen led the legal team to the first case of its kind to successfully defeat a gallonage cap restriction. The ruling was appealed – and defended by FWC and CFT – until it was upheld in January 2010 by the 1st Circuit U.S. Court of Appeals. The result is the opening of another state next January that ranks 7th for wine consumption in the U.S., leaving Pennsylvania as the only large state (#12) that continues an archaic ban on winery direct sales.

Between the founding of Coalition for Free Trade and today, the number of U.S. wineries increased from 1,820 to 8,806 (source: 1995 and 2012 figures from Wine Institute). Fortunately for those wineries, dramatic changes in winery direct shipping laws provide them with new options:

- The number of legal winery-direct shipping states has increased to 11 to 41 (42 starting next year); current legal states represent 89.4% of total U.S. population;
- The model direct shipping bill is in place in most states, providing a statutory framework for compliance; and
- Several states have removed felony provisions as well as overly cumbersome provisions; for example, Virginia and Georgia removed their vintner background check requirements.
- Today, legislative activities continue to streamline onerous regulations, to defend favorable statutes, and to remove capacity caps, wholesaler exclusions and on-site requirements.