GOVERNOR OF MISSOURI

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JEREMIAH W. (JAY) NIXON
GOVERNOR

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July 1, 2016

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Conference Committee Substitute for House Committee Substitute for Senate Bill No. 994 entitled:

AN ACT

To repeal sections 262.823, 311.060, 311.091, and 311.205, RSMo, and to enact in lieu thereof five new sections relating to alcohol.

I disapprove of Conference Committee Substitute for House Committee Substitute for Senate Bill No. 994 (Senate Bill No. 994). My reasons for disapproval are as follows:

Senate Bill No. 994 would provide authority for the Missouri Wine and Grape Board to hire attorneys to oversee legal services that promote the board's marketing goals, and is specifically intended to authorize the board to hire legal counsel to defend the interests of Missouri wine manufacturers in lawsuits that are brought against those companies in another state. Authorizing legal services that are intended to ensure that lawsuits against Missouri businesses are unsuccessful is ultimately an expenditure of public funds for a private purpose, which would violate the Missouri Constitution regardless of the substance or merit of the lawsuit. Mo. Const. Art. III, Section 38(a). While promoting the Missouri wine industry is a worthy and legal endeavor, using state tax dollars to pay attorneys to defend the interests of private litigants is not.

The Missouri Wine and Grape Board is a public entity with the primary goal to promote the Missouri grape and wine industry through technical and marketing support. Funding for the board is derived from an excise tax on wine, and revenues are deposited in the state treasury to be used for the functions specifically authorized by law. Section 311.554, RSMo. However, the Missouri Constitution is the ultimate authority on how public funds may be spent and specifically forbids the grant of public money to any private person, association or corporation. Mo. Const. Art. III, Section 38(a). And, the grant need not be given directly to a private person or corporation to violate the constitution. If the primary object of a public expenditure is to serve a public purpose, the expenditure is legal, even though it would also incidentally involve an expense, which, standing alone, would not be lawful. However, if the primary object is not to serve a public purpose, but to promote some private end, the expense is illegal, even though it

may incidentally serve some public purpose. *State ex rel. City of Jefferson v. Smith,* 348 Mo. 554, 154 S.W.2d 101, 102 (Mo. banc 1941).

There is little doubt that House Bill No. 994's intended goal would result in the use of public funds for a private purpose. Indeed, an attorney would be hired and the intended expenditure would be triggered only when a Missouri company is subjected to litigation in another state. And, the outcome of that litigation will directly impact only the private company named as a defendant. Though the Missouri wine industry may ultimately benefit from a successful campaign to dismiss out-of-state claims against individual wine companies, that does not save an otherwise ill-conceived measure to allow state funds for an unconstitutional purpose. Whether it involves a promotion-worthy Missouri industry or not, I cannot support a bill that is intended to authorize a public entity to expend state revenue to support private litigants.

In accordance with the above stated reasons for disapproval, I am returning Conference Committee Substitute for House Committee Substitute for Senate Bill No. 994 without my approval.

Respectfully submitted,

Jeremiah W. (Jay) Nixon
Governor