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July 3, 2013

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MILK AND OTHER INTOXICATING CHOICES: OFFICIAL STATE SYMBOL ADOPTION

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I. INTRODUCTION

Every fall, I ask my first year *Introduction to Legal Research* students: “What is the official drink of the Commonwealth of Kentucky?” Every year, without fail, the most common answer to this question is “bourbon”. The second most common answer is “Ale-8-One”.¹ Both answers are obvious, reasonable, and culturally conscious. Both answers are also incorrect. Upon elimination of the usual suspects, most students are at a loss to venture another guess. When there is a rare third attempt the answer tends to be “water” – also incorrect. If not bourbon, soda, or a liquid essential to life as we know it, what, then, is the official drink of the Commonwealth of Kentucky? In a word: Milk.²

How does it come to be that Kentucky, the foremost bourbon producing state in the country (and the world for that matter), chooses milk as its official state drink? What does it mean when Ale-8-One, a beverage having historical ties and iconic status within the Commonwealth, is not granted such a distinguished honor? What motives are at play when milk, a beverage so pedestrian it happens to be the official state beverage of the vast majority³ of official-beverage-adopting states, is selected? Do the symbols states officially adopt matter?⁴ If official state symbols do matter, what factors for adoption should be considered and by whom?

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¹ Described as having a mild ginger flavor, Ale8One is a soft drink native to Kentucky. THE KENTUCKY ENCYCLOPEDIA 11 (John E. Kleber et al. eds., 1992).

² State drink. KY. REV. STAT. ANN. § 2.084 (West 2013) Milk is named and designated as the official state drink of Kentucky.

³ For a complete list of citations to official state beverages please see Appendix A: Official Beverages by State.

⁴ Historically the perception has often been no. “[I]t is precisely because many people think that such proposals don’t *really* matter that the selection of a particular flower, bird, snack, or bug is seen as a suitable activity for a cohort of children.” Kerry Dobransky & Gary Alan Fine, *The Native in the Garden: Floral Politics and Cultural Entrepreneurs*, 21 Sociology Forum 559, 569 (2006).

Although the practice of adopting official state symbols is widespread, little has been written on what legislators, when tasked with choosing a state symbol, should take into consideration. An examination of select official state symbols of the Commonwealth of Kentucky will contribute to an understanding of what official state symbols are, the purpose they serve, the qualities they should reflect, and how the value of symbols adopted may be improved through the application of standard best practices.

II. OFFICIAL STATE SYMBOLS

Defined

Official state symbols are representations of particular qualities or attributes of a state, as adopted through a democratic process, that connect people to place. This definition is derived from consideration of each term in the phrase. For purposes of this paper, the terms *official* and *state* have simple meanings. *Official* means “authorized or approved by a proper authority.”⁵ The mechanism by which most states adopt official symbols is through the passage of legislation.⁶ Any symbol adopted by a state through a proper authority, especially by legislative process, is deemed official.

State means a community of people politically united under a common government administered by a body of elected officials.⁷ Although this definition and some examples below include activities at an international and national level, the primary focus here is on any of the fifty United States. The state of Kentucky⁸ is used extensively for demonstrative purposes.

⁵ Black’s Law Dictionary 1119 (8th ed. 2004)

⁶ Although a majority of states adopt official state symbols through a legislative process, there are exceptions. For example, Nebraska permits its governor to designate official state items without legislative approval. *See* NEB. REV. STAT. § 90-119 (2012)

⁷ Willoughby, W.W. *The Rights and Duties of American Citizenship* 21 (1898)

⁸ Kentucky, like Virginia, Massachusetts, and Pennsylvania officially use the term Commonwealth.

The meaning of the term *symbol* is a bit more complicated.⁹ Many disciplines have developed descriptions for the term. A symbol has been described as “a person, object, image, word, or event that evokes a range of additional meaning beyond and usually more abstract than its literal significance;”¹⁰ “a word or image...impl[ying] something more than its obvious and immediate meaning;”¹¹ and “only the vehicles of communication; not [to] be mistaken for the final term, the tenor, of their reference.”¹² As a whole is greater than the sum of its parts,¹³ what makes a symbol a symbol is the attribution of meaning beyond a representative word or image.

A series of representations are made when we attach an external meaning to a word.¹⁴ For example, “the verbal symbol ‘cat’ is a group of black marks on a page representing an image or memory representing a sense experience representing an animal that says meow.”¹⁵ Such symbols “stand for and point to things outside the place where they occur...the word ‘cat’ is an element in a larger body of meaning [and] not primarily a symbol ‘of’ anything, for in this respect it does not represent, but connects.”¹⁶ Taking this observation further, “when effective, symbols can embody an emotional and thoughtless linkage to a place.”¹⁷ Due to their gestaltic nature, symbols are powerful, having the potential to create a viscerally innate connection between people and place. Although this symbol theory is derived from the literary criticism context, the same concept of symbol as connection beyond representation is applicable within a

⁹ Whether an official state ‘symbol’ or ‘emblem’ is adopted varies among jurisdictions. Here the term ‘symbol’ is used and considered synonymous with the term ‘emblem’.

¹⁰ JACK RICHARDSON, ILLUSTRATED DICTIONARY OF LITERATURE 165 (2007)

¹¹ CARL G. JUNG, MAN AND HIS SYMBOLS, 4 (1968). Jung goes on to explain that symbols have “a wider ‘unconscious’ aspect that is never precisely defined or fully explained...as the mind explores the symbol, it is led to ideas that lie beyond the range of human understanding, we constantly use symbolic terms to represent concepts that we cannot define or fully comprehend.”

¹² JOSEPH CAMPBELL, THE HERO WITH A THOUSAND FACES 236 (1973)

¹³ See ARISTOTLE, METAPHYSICS 1045a (Hugh Tredennick trans., 1989) “In all things which have a plurality of parts, and which are not a total aggregate but a whole of some sort distinct from the parts, there is some cause.”

¹⁴ NORTHROP FRYE, ANATOMY OF CRITICISM: FOUR ESSAYS, 73 (1967).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Dobransky & Fine, *supra* note 4, at 562. (noting the dualistic nature of symbols as “simultaneously trivial and significant. These emblems are potent but discretionary.”)

legal framework. Statutes are the literary device by which representatives communicate information about the symbol to the masses, not the symbol itself.

Official state symbols are commonly created through the same legislative processes as all legislation. Although most state symbols end up codified within a state's statutory scheme, there are a few exceptions. Some official state symbols fall short of codification and remain uncodified resolutions.¹⁸ Still other official state symbols are created by gubernatorial designation avoiding the legislative process altogether.¹⁹

Statutes come in a variety of flavors²⁰ and those codifying symbols are a particular sort. Applying to an entire community and relating to the public at large, official state symbols are public²¹ rather than private law. By definition many symbol statutes are special, as opposed to general²² or local,²³ as they often relate to particular persons or things of a class.²⁴ Finally, symbol statutes tend to be permanent rather than temporary in nature.²⁵

¹⁸ The designation of Conecuh Ridge Alabama Fine Whiskey as Alabama's official state spirit was not codified by the Alabama Code Commissioner and remains an un-codified resolution. ALA. CODE § 1-2-39 (2010) editor's notes. *See also* 2004 Ala. Acts 04-97.

¹⁹ Nebraska permits its governor to designate official state items without legislative approval. *See* NEB. REV. STAT. § 90-119 (2012)

²⁰ EARL T. CRAWFORD, *THE CONSTRUCTION OF STATUTES* 101 (1940). "Generically, all statutes may be classified as public or private, or general or specific, or local. Public statutes may be further classified with reference to duration into temporary or perpetual statutes; as to their effective date into prospective or retroactive statutes; as to the nature of their operation into directory or mandatory, remedial, declaratory, permissive, prohibitive, perceptive, and repealing statutes; and as to their form into affirmative or negative statutes."

²¹ *Id.* "A public act is a universal rule that regards the whole community, or relates to the public at large."

²² *Id.* at 103. "A general law is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class."

²³ *Id.* "A local act is one whose operation is confined to the property and persons of a limited portion of the state." Although most official state designations are special, there are statutes that appear to be special-local hybrids as they relate to a particular thing of a class and are confined to a geographical area. *See* KY. REV. STAT. ANN. § 2.270(2) (West 2010) (designating the Switzer Covered Bridge in Franklin County as the official covered bridge of Kentucky.)

²⁴ *Id.* at 101.

²⁵ *Id.* at 103. Permanent acts are "not limited to a particular term of time but ...continues in force until it is duly altered or repealed" whereas "a temporary act is one whose life or duration is fixed for a specified period of time at the moment of its enactment, and continues in force, unless sooner repealed, until the expiration of the time fixed for its duration."

As official state symbols are typically created through the same legislative process as other legislation, the same primary ingredients are required: time and money. Adopting state symbols through an expensive bureaucratic process creates a presumption that such symbols have value. Why else would legislators spend often limited resources adopting them? Attributing value to official state symbols due to the circumstances of their creation does not fully explain their purpose, however. Adopting symbols merely for the sake of having official state symbols is not self-justifying. After all, “the idea of a statute without an intelligible purpose is foreign to the idea of law...”²⁶ If official state symbols must have an intelligible purpose in order to exist, what purpose do they serve? What do official state symbols do?

Purpose

The simple answer is that “on their surface, symbols don’t ‘do’ anything. And in fact many symbols – at least for most of the time – do not receive public attention.”²⁷ However, just beneath the surface, official state symbols serve significant state interests by what they are designed and intended to do. The primary functions of official state symbols are to legitimize state power, promote state commerce, and create state allegiance.²⁸

The flower is a commonly adopted symbol serving these state interests. Consider the status of the Flanders poppy in Britain. Adopted by the British Legion as its official symbol, the Flanders poppy has proven valuable in legitimizing state power.²⁹ Symbols “can provide a material basis for reinforcing identification every day, especially at moments when neighbors come together. Communities may be imagined, but the reality of treasuring one’s lilac, camellia,

²⁶ HENRY M. HART, JR. & ALBERT M. SACKS, *THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW* 1156 (Tentative ed. 1958) (“An essential part of the context of every statute is its purpose.”)

²⁷ Dobransky & Fine, *supra* note 4, at 562.

²⁸ *Id.* at 559-560. “States are always interested in creating affiliation as essentialist and inherent, and symbols in their small and taken-for-granted way cement this allegiance.”

²⁹ For an excellent examination of the poppy’s transformation from symbol of forgetfulness to one of remembrance see Jennifer Iles, *In Remembrance: The Flanders Poppy*, 13 *Mortality* 201, 201 (2008)

and peony provides a real pleasure that suggests that the state springs from the very soil.”³⁰ The perceived legitimacy of the state is nurtured by associating the state with the natural order. If the same source of power responsible for the divine right of kings is credited with creation of the earth,³¹ the divinity and thus legitimacy of the state is not too far a leap.

Symbols help states accomplish the goal of promoting commerce. “Lawmakers hope that symbols will provide an advertisement for the state, its citizens, products, and industries.”³² The poppy has certainly achieved these goals and more. From its beginning in the 1920’s, the poppy has become “one of the most respected charity appeals in British history.”³³ Making up part of the income for the Royal British Legion³⁴ the poppy has grown in both popularity (with sales in the first year of £106,000³⁵ to nearly £36.7m³⁶ in 2011) and controversy.³⁷

The Flanders poppy has also facilitated citizen allegiance to the state. As “one of the most enduring and powerful symbols of remembrance of the war dead in Britain”³⁸ ... [the poppy is] a summarizing sacred symbol...able to synthesize a mass of complex ideas and feelings, and encourage an all-or-nothing emotional allegiance to the whole package.”³⁹ Apparently, “somebody” is the proper answer in turning the question “who wants flowers when you’re

³⁰ Dobransky & Fine, *supra* note 4, at 582.

³¹ “The State of Monarchie is the supremest thing upon earth: For Kings are not onely Gods lieutenants upon earth, and sit upon Gods throne, but even by God himself they are called Gods.” James I, ‘A Speach to the Lords and Commons of the Parliament of White-Hall on Wednesday the XXI. of March. Anno 1609 [1610]’, in *The Works of the Most High and Mightie Prince, James By the grace of God Kinge of Great Brittain France and Ireland Defender of the Faith* (London 1616), p. 529

³² Dobransky & Fine, *supra* note 4, at 560.

³³ Iles, *supra* note 29, at 205.

³⁴ The Royal British Legion is a charity organization serving the Armed Forces of the United Kingdom.

³⁵ GRAHAM WOOTTON, *THE OFFICIAL HISTORY OF THE BRITISH LEGION* 40 (1956)

³⁶ The Royal British Legion, *The Poppy Appeal*, 2011 Annual Report 1, 2 (2011), <http://www.britishlegion.org.uk/media/2108844/annualreport2011.pdf>

³⁷ Ashling O’Connor, *England 1 Fifa 0: Team to Wear Poppies – Ban Called Off After Cameron and Prince William Protest*, *THE TIMES*, November 10, 2011, at 3.

³⁸ Iles, *supra* note 29, at 201.

³⁹ *Id.* at 206.

dead?”⁴⁰ It is quite clear the living do. Extending to the public the opportunity to select an official flower symbol further benefits the state by encouraging allegiance from historically disenfranchised members⁴¹ and those yet to be fully vested in the political process.⁴²

III. STATE SYMBOL QUALITIES

In the spring of 1918 the United States is fully engaged in war. As casualties mount and public sentiment grows, a call for the adoption of a national floral symbol is made.⁴³ The purpose is to crystallize national sentiments and demonstrate America’s aesthetic taste by adopting “an emblem of all that is noble, chivalric and good in the character of the nation.”⁴⁴ Where other countries had a national flower at the time, the United States did not. England had the rose, France the Fleur-de-lis, Scotland the thistle, and Japan the chrysanthemum.⁴⁵ Noting its many qualities, an attempt to make the wild columbine the national flower of the United States is made.⁴⁶

Although the wild columbine was ultimately not adopted as the national floral symbol,⁴⁷ the enumerated qualities that a symbol should possess in order to be eligible for the honor are still worth considering today as they were nearly 100 years ago. In deciding whether to adopt a new state symbol, legislators should determine whether the proposed symbol is: beneficial,

⁴⁰ J.D. SALINGER, *THE CATCHER IN THE RYE* 155 (1991)

⁴¹ Dobransky & Fine, *supra* note 4, at 564. “[S]electing a state flower was seen as a proper act for women and children; these symbols would bind citizens to a state in which they lacked political rights.”

⁴² Alan Rosenthal, *Symblomania*, *STATE LEGISLATURES*, January 2005, at 35. “Legislators are especially responsive to proposals put forth by kids, since they realize how difficult it is to get young people to participate in the political process. What better way to promote civic education, they feel, than to give children ‘hands-on experience’ of the legislative process.”

⁴³ Albert A. Hansen, *A National Floral Symbol*, 47 *Science* 365, 366 (1918) (arguing for the adoption of the wild columbine as the national floral symbol).

⁴⁴ *Id.* at 365-366.

⁴⁵ *Id.* at 365.

⁴⁶ *Id.* at 365-366.

⁴⁷ The flower commonly known as the rose was adopted as the national floral symbol of the United States in 1998. 36 U.S.C. § 303 (2010)

indigenous, accessible, and aesthetically pleasing.⁴⁸ Adding to this list an evaluation of exclusivity and historical cultural value,⁴⁹ a framework of qualities that legislators should strive to apply during their deliberative process is created. Although few proposed symbols will exhibit each and every quality, legislators should make their best effort to adopt symbols that reflect as many qualities as possible while being mindful that subjectivity is an underlying issue.⁵⁰

Beneficial

Not only should the adoption of problematic⁵¹ symbols be avoided, legislators should seek out symbols with potential economic benefit to the state. Initially this may appear to be an obvious notion as states are aware of how nationwide perception can directly impact their economy.⁵² The commercialization of both official and unofficial state symbols by the tourist industry is evident by “what is sold in tourist shops, vacation destinations, and airports.”⁵³ However, states do not regularly or systematically engage in an economic impact analysis of every official state symbol adopted.⁵⁴ Some legislators have lamented the loss of potential revenue for failing to fully leverage the opportunity symbol adoption could provide.⁵⁵ If state promotion is one goal of spending time, money, and other resources adopting official symbols,

⁴⁸ Hansen, *supra* note 43.

⁴⁹ Dobransky & Fine, *supra* note 4, at 566.

⁵⁰ *Id.* “Few flowers meet all of these criteria, and so those who propose – or oppose – a state flower draw upon potential themes. These become the resources that cultural entrepreneurs use to argue that their choices deserve to be institutionalized.”

⁵¹ Hansen, *supra* note 43. The national flower “should not be a troublesome weed in any sense of the word.”

⁵² “Mass perception affects how those across the country see Wisconsin, which, in turn, can have an effect on our economy.” Joseph Kapler, Jr., On Wisconsin Icons: When You Say “Wisconsin”, What Do You Say?, 85 The Wisconsin Magazine of History 18, 28 (2002)

⁵³ *Id.* at 29.

⁵⁴ If states performed this analysis it would appear in the legislative history of every state symbol. Although speculation or general discussion of the economic impact may take place an official report, issued by experts researching the potential economic benefit of a particular symbol, rarely exists.

⁵⁵ Howard Fischer, *Bill on Official State Gun Likened to ‘Advertisement’*, ARIZONA DAILY STAR, March 14, 2011, at A5. Noting the state was facing a \$1.1 billion deficit next budget year, Arizona state senator Adam Driggs thought the state should get the “equivalent of naming rights” for adopting a brand name symbol.

legislators should formally engage in a critical analysis of the potential economic impact any proposed symbol is likely to have.

Indigenous

Next, legislators should consider the indigenousness of a proposed symbol.⁵⁶ The weakest symbols tend to be those branded as non-indigenous. Although such symbols can become official,⁵⁷ making a case to adopt such symbols is more difficult because the community views them as invaders⁵⁸ or worse.⁵⁹ By contrast, symbols perceived⁶⁰ to be or confirmed as indigenous are easier to adopt because their origins are not suspect. The challenge here is determining what qualifies as indigenous. How far back does a symbol's history have to reach in order to be considered native?

Accessible

When it comes to state symbols, the issue of accessibility should be assessed.⁶¹ Accessibility permits all the citizenry an opportunity to participate, which in turn reinforces the interest of the state. Designation of a symbol having a rare or endangered status is potentially problematic. Increased attention to an already compromised symbol may hasten its ultimate demise.⁶² Additionally, if a symbol is not widely available, access is limited and de facto adoption in the community is less ensured. The later concern can be mitigated by adopting symbols that are economically beneficial and indigenous.

⁵⁶ Hansen, *supra* note 43. "The plant should be native and fairly common in all parts of the country."

⁵⁷ Dobransky & Fine, *supra* note 4, at 567. Where a proposed symbol is "supported by a powerful and well-connected industry, region, or group within the state, the forces supporting natural nativeness can be overcome."

⁵⁸ *Id.* at 575. Characterized as a Yankee invader in Alabama, the goldenrod was no longer a 'native' plant "but was itself an invader, penetrating and threatening the South as General Sherman had nearly a century earlier."

⁵⁹ *Id.* at 578. The *Zinnia elegans* was characterized as a foreigner, infiltrator, window box spy, and floral Mata Hari.

⁶⁰ *Id.* at 582. "If a plant has grown in a place in the course of the memory of those alive, it may be constituted as native. Botanical time and cultural time are not the same."

⁶¹ Hansen, *supra* note 43. "A national flower should be easy of cultivation in all regions of the United States."

⁶² *Id.* "When a plant becomes well known, there is created a tendency toward the extinction of that species because of the abnormal demand thus created."

Aesthetic

Symbols should also be aesthetically pleasing.⁶³ Economists and psychologists have demonstrated that attractive people earn more, get hired quicker, tend to hold positions higher up the corporate ladder, and bring in more money to their companies – all of which make them more valuable assets.⁶⁴ By adopting attractive symbols, states could benefit from the same advantages. The challenge here is identifying attractiveness, which is often subjective. Legislators should make a conscious effort to capture the aesthetic zeitgeist of their constituency by considering the tastes and sentiments of the community they represent.

Exclusive

States should strive for exclusivity in that the symbols are unique to the adopting state.⁶⁵ This is different from being indigenous. A symbol may be indigenous to multiple states, diluting its potential potency.⁶⁶ A symbol may be exclusive where claim to the symbol is limited to the citizenry of the state through an originator or monopolistic theory. Alternatively, the call for exclusivity may be satisfied where an otherwise common symbol has a superlative nature. A state claiming a biggest, smallest, tallest, shortest, or other notable status satisfies the exclusivity requirement.⁶⁷

Historic Cultural Value

⁶³ Hansen, *supra* note 43. It “should possess grace and beauty of both flower and leaf.”

⁶⁴ See DANIEL HAMERMESH, BEAUTY PAYS: WHY ATTRACTIVE PEOPLE ARE MORE SUCCESSFUL (2011)

⁶⁵ Dobransky & Fine, *supra* note 4, at 566.

⁶⁶ When considering submissions for the Wisconsin state quarter, “[d]esigns that featured only one state symbol such as the white-tailed deer, wood violet, or sugar maple tree were rejected because the council felt that the symbols on their own were not unique to Wisconsin and said little about the state.” Lawrence Barish, *Coining Wisconsin: The Work of the Wisconsin Commemorative Quarter Council*, 88 The Wisconsin Magazine of History, 16, 22 (2004).

⁶⁷ *Id.* at 24. “[t]he agriculture design, jointly submitted by the Cheesemaking Center Inc., and Rose Marty of Monticello, reflected Wisconsin’s status as America’s Dairyland with a design consisting of the head of a cow, a wheel of cheese, and an ear of corn.”

A proven pedigree is the final quality legislators should look for in a symbol.⁶⁸ Although a symbol may embody some or all of the qualities mentioned above, if it lacks a historical connection to the culture, acceptance by the community could be problematic because the symbol may be viewed as not being truly representative.⁶⁹ Those making a case for a symbol's adoption will “attempt to demonstrate that the symbol has a core and unshakeable connection to place or to cultural values” to avoid this problem.⁷⁰ How historic and culturally connected a symbol must be to qualify is difficult to determine.

IV. STATE SYMBOL CONSIDERATIONS

Over several decades, Kentucky's General Assembly has enacted legislation designating a variety of items as official symbols of the Commonwealth.⁷¹ Do these official state symbols accurately reflect the connection people share with the state? Or do the Commonwealth's official symbols continue to reflect confusion about the state's identity that has existed long before the Civil War?⁷² What best practices should be put in place to ensure symbols achieve state goals and reflect the qualities noted above? When evaluating proposed symbols, legislators should consider context, evaluate connotation, engage in consultation, assess categories, and be open to change.

Context

Of the over twenty statutes Kentucky has created to name and identify official symbols, some fit iconic imagery associated with the state better than others. The most obvious and

⁶⁸ Dobransky & Fine, *supra* note 4, at 566.

⁶⁹ *Id.* at 561.

⁷⁰ *Id.*

⁷¹ One of the earliest official state symbols is the state bird, the Kentucky cardinal (*Cardinalis cardinalis*), adopted in 1942. KY. REV. STAT. ANN. § 2.080 (West 2013); 2010 witnessed the adoption of the honey bee as the state agricultural insect. KY. REV. STAT. ANN. § 2.081 (West 2013)

⁷² MARYJEAN WALL, HOW KENTUCKY BECAME SOUTHERN, 205 (2010). Wall notes “Kentucky had never been entirely of the South – or entirely of the North...It fell somewhere between the geographic, ideological, and economic characteristics that had differentiated North from South.” This appropriate characterization is further exemplified by Kentucky being the birthplace of both Abraham Lincoln and Jefferson Davis.

reasonable choices appear to simply be codifications of conspicuous symbols commonly associated with Kentucky. Thoroughbreds,⁷³ coal,⁷⁴ Bluegrass music,⁷⁵ *My Old Kentucky Home*,⁷⁶ *Blue Moon of Kentucky*,⁷⁷ Appalachian dulcimers,⁷⁸ cardinals,⁷⁹ Kentucky agates,⁸⁰ and tulip poplars⁸¹ are all designated as official symbols and reasonably associated with either Kentucky specifically or include Kentucky regionally.

Officially enacted, but less obvious (and perhaps less reasonable) Kentucky symbol choices include: fresh-water pearls,⁸² goldenrod,⁸³ blackberries,⁸⁴ brachiopods,⁸⁵ viceroy butterflies,⁸⁶ gray squirrels,⁸⁷ and honey bees.⁸⁸ Not exclusive to Kentucky or its geographic region, all of these symbols can be found in many parts of the United States. The adoption of common symbols results in a loss of opportunity to identify the uniqueness of the state and contribute to the cultivation of a marketable image.

Legislators should first consider whether a symbol makes sense within the context of the state. Suppose the Commonwealth wants to adopt a sports car as an official state symbol. What sports car should it adopt? How about the Ferrari? Beautiful, exclusive, and expensive the Ferrari

⁷³ State horse. KY. REV. STAT. ANN. § 2.087 (West 2013)

⁷⁴ State mineral. KY. REV. STAT. ANN. § 2.094 (West 2013)

⁷⁵ State music. KY. REV. STAT. ANN. § 2.102 (West 2013)

⁷⁶ State song. KY. REV. STAT. ANN. § 2.100(1) (West 2013)

⁷⁷ Bluegrass song. KY. REV. STAT. ANN. § 2.100(2) (West 2013)

⁷⁸ State musical instrument. KY. REV. STAT. ANN. § 2.103 (West 2013)

⁷⁹ State bird. KY. REV. STAT. ANN. § 2.080 (West 2010); see BENJAMIN F. SHEARER & BARBARA S. SHEARER, STATE NAMES, SEALS, FLAGS AND SYMBOLS: A HISTORICAL GUIDE, 149 (1987). “Beginning in 1926, when Kentucky officially named the handsome redbird or cardinal as its state bird, campaigns were launched nationwide until each state had selected at least one favorite bird as its avian symbol.”

⁸⁰ State rock. KY. REV. STAT. ANN. § 2.091 (West 2013)

⁸¹ State tree. KY. REV. STAT. ANN. § 2.095 (West 2013)

⁸² State gemstone. KY. REV. STAT. ANN. § 2.092 (West 2013)

⁸³ State flower. KY. REV. STAT. ANN. § 2.090 (West 2013)

⁸⁴ State fruit. KY. REV. STAT. ANN. § 2.089 (West 2013)

⁸⁵ State fossil. KY. REV. STAT. ANN. § 2.082 (West 2013)

⁸⁶ State butterfly. KY. REV. STAT. ANN. § 2.083 (West 2013)

⁸⁷ State wild animal game species. KY. REV. STAT. ANN. § 2.085 (West 2013)

⁸⁸ State insect. KY. REV. STAT. ANN. § 2.081 (West 2013)

was a popular choice in the 1980s.⁸⁹ The Ferrari even uses a horse for a symbol⁹⁰ and who doesn't think of horses when they think of Kentucky? In 2010, Kentucky did adopt a "state sports car" but it wasn't the Ferrari – it was the Corvette.⁹¹ It makes sense that, within the context of the Commonwealth, if any sports car was going to be adopted it was going to be an American icon built exclusively in Bowling Green, Kentucky.⁹²

Connotation

Prior to adoption, careful consideration should be given to whether a symbol has a positive, neutral, or negative connotation. Preference for positive attributes should be given over neutral. Negative attributes should be avoided. In 1997, Congress passed the State Commemorative Coin Program Act in order to honor and promote knowledge of the states, modernize coinage, raise revenue, and encourage the collecting of "memorable tokens of all the States for the face value of the coins."⁹³ The designs were not to be "frivolous or inappropriate."⁹⁴ The main issue for one state was whether the quarter design should "highlight an immediately recognizable and significant aspect of the state or...reflect a theme that, while not as well known, tells a story and educates the public about [the state's] traditions, culture, and history".⁹⁵ Kentucky adopted a state quarter design that ticked all the boxes. A Thoroughbred racehorse stands behind a four-board horse fence, with *Federal Hill*, a Bardstown home said to

⁸⁹ Private Investigator Thomas Magnum, Detective Sonny Crockett, and juvenile bon vivant Ferris Bueller all preferred Ferrari.

⁹⁰ Ferrari started using the cavallino rampante or "prancing horse" in the 1920's. ENCYCLOPEDIA OF CONSUMER BRANDS 144 (Janice Jorgensen ed., St. James Press 1994)

⁹¹ State sports car. KY. REV. STAT. ANN. § 2.106 (West 2010)

⁹² THE NATIONAL CORVETTE MUSEUM, http://www.corvettemuseum.org/plant_tours/index.shtml (last visited May 23, 2013).

⁹³ State Commemorative Coin Program Act, Pub. L. No. 105-124, 111 Stat. 2534.

⁹⁴ Barish, *supra* note 66, at 17. "Public Law 105-124 decreed that our nation's coins and currency must reflect dignified designs of which the citizens of the United States can be proud."

⁹⁵ *Id.* at 22.

have inspired the Stephen Foster song *My Old Kentucky Home*, in the background.⁹⁶ The design avoids being viewed as frivolous or inappropriate while being immediately recognizable and educates others about the state.

The unique opportunity presented by the state quarter design is due to the nature of currency. Currency circulates widely and is, by definition, valuable. Many who find advertisements attached to the doors of their homes or pinned beneath the windshield wiper on their car quickly dispatch the ephemera. However, the discovery of a single bill or coin is considered a fortuitous find by many and quickly pocketed. The state quarter serves as a low-cost, assured way for a state to promote itself through its symbols on a regular basis to millions of individuals, many of whom would have never thought of the state otherwise. If the goal is to incentivize people to pay attention to something, put it on something of value, put it on currency.

If agreeing on a positive symbol is unlikely, a neutral symbol should be considered. In Oregon, a newspaper solicited readers' suggestions for the new state quarter design. A leaping salmon, Crater Lake, Mount Hood, and a covered wagon were selected as finalists among themes that also included gambling, slugs, and explorers Lewis & Clark.⁹⁷ Ultimately, Oregon selected Crater Lake National Park – a reasonably neutral motif when compared to other suggestions with one reader having submitted an illustration of a solitary tree stump.⁹⁸

Negative attributes of a state should not be adopted as official symbols. Negative attributes are sometimes easy to identify. In the Commonwealth, high rates of diabetes, lung cancer, illiteracy, and poverty have been identified as “Kentucky uglies”.⁹⁹ Such attributes, even if true, are facially negative and should not be appropriated for official symbol purposes. At

⁹⁶ Driehaus, Bob, *Kentucky Quarter Debuts This Week*, KENTUCKY POST, October 15, 2011, at 2K.

⁹⁷ McCowan, Karen, *The Flip Side*, REGISTER-GUARD, Nov. 9, 2003, at 1L.

⁹⁸ *Id.*

⁹⁹ Alan Finder, *Getting a University to Aim Higher*, N.Y. Times, August 1, 2007 at B7.

other times making this determination can be a challenge as the nature of a symbol is often subjective depending largely on the perspective of the symbol advocate or opponent. This subjectivity is illustrated where some states, in searching further afield for symbols, are adopting official state weapons, garnering the praise of some and the ire of others.

Several states, including Kentucky,¹⁰⁰ have adopted an official weapon. Opinion was mixed when Utah made the decision to adopt the Browning M1911 as its official firearm.¹⁰¹ Those in favor of adoption suggest the symbol is an appropriate and fitting tribute to John M. Browning, the gun's iconic Utah inventor.¹⁰² Others noted the gun is an implement of freedom that has defended America for 100 years¹⁰³ and can be used for purposes other than killing people including self-defense, as a collector's item, or a paperweight.¹⁰⁴ One senator argued that having a state gun "might prompt students to go to the library and learn more about the weapon and the history of the Browning family."¹⁰⁵

Utahns opposed to adopting the weapon as an official state symbol noted semiautomatic pistols are the weapons of choice for those committing massacres¹⁰⁶ and it would be inappropriate for the state gun to appear in coloring books.¹⁰⁷ Others thought it insensitive to adopt a state gun considering the recent violence in Arizona.¹⁰⁸ Such sentiments, however, did

¹⁰⁰ HB 167 names and designates the Kentucky Long Rifle as the official gun of the Commonwealth of Kentucky. 2013 Ky. Acts 174

¹⁰¹ UTAH CODE ANN. § 63G-1-601(9) (West 2011)

¹⁰² Montero, David, *House OKs Bill Designating State Gun*, SALT LAKE TRIBUNE, January 26, 2011 at <http://archive.sltrib.com/article.php?id=13334456&itype=storyID>

¹⁰³ Davidson, Lee, *State Closer to Adopting Gun as Symbol*, SALT LAKE TRIBUNE, January 24, 2011, at <http://archive.sltrib.com/article.php?id=13204905&itype=storyID>

¹⁰⁴ Montero, David, *Official Utah Firearm a Step Closer*, SALT LAKE TRIBUNE, January 31, 2011 at <http://archive.sltrib.com/article.php?id=13246750&itype=storyID>

¹⁰⁵ Gehrke, Robert, *Utah Senate Approves Official State Firearm*, SALT LAKE TRIBUNE, February 10, 2011 at <http://archive.sltrib.com/article.php?id=13515303&itype=storyID>

¹⁰⁶ Davidson, *supra* note 103.

¹⁰⁷ Montero, *supra* note 102.

¹⁰⁸ *Id.* (referring to the death of six people in Tucson and the serious wounding of Congresswoman Gabby Giffords on January 8, 2011)

not sway Arizona which, on April 28, 2011, named the colt single action army revolver its official state firearm.¹⁰⁹

Regardless of whether or not a state should adopt a weapon as an official symbol, the debate over the Browning M1911 provides an opportunity to consider the types of questions legislators should be asking. What do politicians want their states to be known for?¹¹⁰ Who is the primary audience for learning about state designations?¹¹¹ To what degree is this symbol exclusive?¹¹² Is a balancing among selected state symbols called for?¹¹³ What type of message is being sent to those outside the state?¹¹⁴

Consultation

Experts, particularly those employed by the state, should be consulted when drafting legislation. Effective July 15, 1998 coal was named and designated as the official mineral of Kentucky.¹¹⁵ Nearly two years later to the day Kentucky agate became the official rock of Kentucky.¹¹⁶ Kentucky is one of the largest producers of coal in the United States¹¹⁷ and the Kentucky agate can be found in several counties throughout the state.¹¹⁸ Upon first impression, both coal and the Kentucky agate are reasonable choices for official state symbols.

The problem arises in the title designation. Technically, coal is a rock not a mineral and Kentucky agate is a mineral not a rock.¹¹⁹ In the preamble to the Act, the state noted that the

¹⁰⁹ Ariz. Rev. Stat. Ann. § 41-860.02 (2011) (West)

¹¹⁰ Davidson, *supra* note 103. (noting this is not what the State of Utah wants to be known for)

¹¹¹ Montero, *supra* note 102. (noting children are the primary audience for learning about state designations)

¹¹² Gehrke, *supra* note 105 (noting state can claim a connection to the guns inventor and designer that no other state can claim)

¹¹³ *Id.* (noting weapons or guns especially are so demonized by certain elements of society that adoption as an official state symbol adds a balance)

¹¹⁴ *Id.* (noting an official state weapon is not the right message to send to states)

¹¹⁵ State mineral. KY. REV. STAT. ANN. § 2.091 (West 2010)

¹¹⁶ State rock. KY. REV. STAT. ANN. § 2.091 (West 2010) Effective July 14, 2000

¹¹⁷ U.S. ENERGY INFORMATION ADMINISTRATION, ANNUAL COAL REPORT 2011 2, Table 1 (2012) <http://www.eia.gov/coal/annual/pdf/table1.pdf>

¹¹⁸ WARREN H. ANDERSON, ROCKS AND MINERALS OF KENTUCKY, 37 (1994)

¹¹⁹ Andy Mead, *Mislabeled Mineral*, LEXINGTON HERALD-LEADER, January 2, 2000, at B11.

“designation of a state rock will promote interest in geology, the hobby of mineral collecting, and the lapidary arts.”¹²⁰ One geologist suggested the state should call a rock a rock and a mineral a mineral if it wants to promote an interest in geology.¹²¹ This initial and subsequent mistake could have been avoided had the General Assembly consulted the Kentucky Geological Survey prior to the adoption of this legislation.¹²²

Just as the “history of what the law has been is necessary to the knowledge of what the law is”¹²³ the history of a potential state symbol is critical to determining the appropriateness of official adoption. Failure to be fully informed about a symbol results in inaccurate language. In order to avoid folly, expert advice and guidance should be sought prior to the advancement of proposals for new state symbols. Even though experts may not always agree,¹²⁴ their advice should be solicited in order to avoid blatant mistakes. When experts offer advice *sua sponte*,¹²⁵ it should be thoughtfully considered. Legislators should make every effort to be precise in meaning, whether such precision comes by resolution or the correction of statutory language.

Category

Recently, Kentucky adopted the honey bee as the official state agricultural insect.¹²⁶ Of the states with honey bee colonies in 2010 only one, Vermont, had fewer colonies than

¹²⁰ 2010 Ky. Acts. 372

¹²¹ Mead, *supra* note 119.

¹²² Kentucky Agate, UNIVERSITY OF KENTUCKY, <http://www.uky.edu/KGS/rocksmn/kentuckyagate.htm> (last modified December 19, 2005).

¹²³ OLIVER WENDELL HOLMES, JR. THE COMMON LAW, 37 (1881)

¹²⁴ Dobransky & Fine, *supra* note 4, at 571. When selecting the New Hampshire state flower, the conference committee became deadlocked and “called upon two local botanists – Professor Arthur Houston Chivers of Dartmouth and Professor Ormond Butler of New Hampshire College – to consider the matter, and agreed to abide by their decision. Unfortunately, Chivers and Butler could not agree.”

¹²⁵ Members of the Department of Geology at Arizona State wrote an article recommending petrified wood be adopted as Arizona’s official fossil. In 1988 the Arizona legislature followed their advice. Robert S. Dietz et al., *Petrified Wood (Araucarioxylon Arizonicum): Proposed as Arizona’s State Fossil*, 22 Journal of the Arizona-Nevada Academy of Science 109 (1987); See also ARIZ. REV. STAT. ANN. § 41-853 (2012) (West)

¹²⁶ State insect. KY. REV. STAT. ANN. § 2.081 (West 2010 & Supp. 2011)

Kentucky.¹²⁷ Why would Kentucky adopt the honey bee? The adoption of the honey bee relates, at least in part, to a finding by the General Assembly that the reclamation of coal mine sites can benefit from pollinator habitat sites.¹²⁸ Consecutive sections of the same bill designate the honey bee as the official state agricultural insect and find pollinators beneficial to mine site reclamation.¹²⁹ This perceptive link to mining earned the honey bee a top spot in the Commonwealth.

States miss opportunities to promote the superlative nature of common symbols. The honey bee, although common throughout the United States, has the potential to become an apt and powerful symbol where a state is the largest producer of honey in the country. From 2000 to 2010¹³⁰ California and North Dakota have vied for the spot of top honey producer with North Dakota leading since 2007.¹³¹ However, neither California¹³² nor North Dakota¹³³ have adopted the honey bee as an official state symbol. California adopted the dogface butterfly (*Zerene eurydice*) several decades ago as its official state insect.¹³⁴ North Dakota adopted the convergent ladybug (*Hippodamia convergens*) as its official state insect in 2011¹³⁵ after the lobbying efforts

¹²⁷ U.S. DEPT. OF AGRICULTURE, NATIONAL AGRICULTURE STATISTICS SERVICE, AGRICULTURE STATISTICS BOARD, HONEY 3, (2011) <http://usda01.library.cornell.edu/usda/nass/Hone//2010s/2011/Hone-02-25-2011.pdf> (Where Kentucky, Virginia, and West Virginia had five honey producing colonies each, Vermont had four.)

¹²⁸ Protection and location of pollinator habitats on coal mine reclamation sites. KY. REV. STAT. ANN. § 350.097 (West 2010) “These sites are an important conservation resource which will encourage and protect the habitat for pollinators like honeybees, bumble bees, and other bee species.”

¹²⁹ HB 175 An Act relating to bees. 2010 Ky. Acts 51

¹³⁰ U.S. DEPT. OF AGRICULTURE, NATIONAL AGRICULTURE STATISTICS SERVICE, AGRICULTURE STATISTICS BOARD, HONEY 3, (2000-2010) <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1191>

¹³¹ U.S. DEPT. OF AGRICULTURE, NATIONAL AGRICULTURE STATISTICS SERVICE, AGRICULTURE STATISTICS BOARD, HONEY 3, (2007-2010) <http://usda01.library.cornell.edu/usda/nass/Hone//2000s/2008/Hone-02-29-2008.pdf>

¹³² CAL. GOV'T CODE § 424.5 (West 1995) The California dog-face butterfly (*Zerene eurydice*) is the official state insect. California adopted this insect in 1972.

¹³³ N.D. CENT. CODE § 54-02-19 (West 2011) The convergent lady beetle, *hippodamia convergens*, commonly known as a ladybug, is the official insect of the state of North Dakota.

¹³⁴ 1972 Cal. Stat. 903

¹³⁵ 2011 N.D. Laws 4

of an elementary school second grade class proved persuasive.¹³⁶ Unlike the dogface butterfly which is at least endemic to California,¹³⁷ the convergent ladybug is found throughout the United States.¹³⁸ Although the ladybug lobbyists in North Dakota noted a myriad of ways in which the insect benefits farmers,¹³⁹ adopting the honey bee as the official state insect would have highlighted North Dakota's dominance in honey production.

Qualification of a symbol by placement in a category creates opportunity for states to adopt more symbols. By qualifying the honey bee as an *agricultural* insect and adopting the viceroy (an insect that falls into the butterfly category),¹⁴⁰ Kentucky has made room for the adoption of even more insects.¹⁴¹ Although California and North Dakota already have state insects, California could place the dogface into the "official state butterfly" category and North Dakota could place the lady bug into the "official state beetle" category. Each could also adopt the honey bee under the agricultural or some other qualification. In doing this, states more precisely describe the symbols adopted, open the field to even more possibilities, and seize an opportunity to capitalize on a symbol that represents the state at a market level.

Change

State adoption of official symbols, including songs, occurs throughout the United States and such adoptions have the potential to powerfully connect a people to a place. In Lexington, Kentucky, just before the velvet curtain is drawn away for a Summer Classics movie, the

¹³⁶ Dobransky & Fine, *supra* note 4, at 567 (2006) "[C]hoosing a state flower has been seen as an appropriate act for women and children, impetus often has come from these groups. In 13 states, decisions were based entirely or in part on the votes of schoolchildren."

¹³⁷ JIM P. BROCK & KENN KAUFMAN, KAUFMAN FIELD GUIDE TO BUTTERFLIES OF NORTH AMERICA, 68 (2003).

¹³⁸ RICHARD E. WHITE, A FIELD GUIDE TO THE BEETLES OF NORTH AMERICA, 235 (1983).

¹³⁹ Tamara McNeiley, *Ladybugs Are Good for N.D.*, BISMARCK TRIBUNE, February 23, 2011 at http://bismarcktribune.com/news/opinion/mailbag/article_48d36a48-3ed9-11e0-8b99-001cc4c002e0.html

¹⁴⁰ State butterfly. KY. REV. STAT. ANN. § 2.083 (West 2013)

¹⁴¹ Perhaps the lightning bug or cicada could vie for the honor of official insect. Or the woolly worm to which an annual festival is devoted in Beattyville, Kentucky. WELCOME TO BEATTYVILLE, LEE COUNTY, <http://www.beattyville.org/tourism/feastivals-and-events/> (last visited May 24, 2013).

audience members at the Kentucky Theatre rise, remove their hats, and sing *My Old Kentucky Home*.¹⁴² The Kentucky General Assembly noted that *My Old Kentucky Home* has “immortalized Kentucky throughout the civilized world, and is known and sung in every State and Nation.”¹⁴³ Whether you have lived an entire lifetime in Kentucky or are just visiting, it is difficult to stand in a crowd singing this song and not feel a present connection to the Commonwealth’s past – real or imagined. The same song opening movies at the Kentucky Theatre and heard at the Kentucky Derby is also the official state song of the Commonwealth.¹⁴⁴ Few songs are as near and dear to the hearts of Kentuckians as *My Old Kentucky Home*.

However, no amount of tradition,¹⁴⁵ affection, or deference to artistic intent was enough to prevent a substantive change to the song. In 1986, the General Assembly recognized “the style and verbiage used by Foster while penning ‘My Old Kentucky Home’ was contemporary of the era which included the tragic division of Americans in the Civil War.”¹⁴⁶ The original words, as Stephen Foster wrote them, were: *‘Tis summer, the darkies are gay*. No longer considered acceptable, resolutions from both the House and Senate replaced the word “darkies” with “people”.¹⁴⁷ Changing a symbol in an effort to conform to contemporary standards of propriety is not a call for the implementation of revisionist history. Symbols that reflect moments from our

¹⁴²GREGORY A. WALLER, MAIN STREET AMUSEMENTS 212-214 (1995). Following an overture from the Wurlitzer organ, the audience first sung *My Old Kentucky Home* at the Kentucky Theatre’s grand opening in 1922; The Kentucky Theatre’s “Mighty Wurlitzer Theatre Pipe Organ” is the official theatre pipe organ of the Commonwealth of Kentucky. State theatre pipe organ. KY. REV. STAT. ANN. § 2.104 (West 2013)

¹⁴³ 1928 Ky. Acts. 851

¹⁴⁴ State song. KY. REV. STAT. ANN. § 2.100(1) (West 2013)

¹⁴⁵ KAREN CERULO, IDENTITY DESIGNS: THE SIGHTS AND SOUNDS OF A NATION 165 (1995) “The conditions of change are narrow and highly restrictive. In lieu of the right provisions, national symbols, like the nicknames and mementos of our personal histories, cling to that which they signify – their bonds not easily severed, their meaning not easily forgotten.”

¹⁴⁶ Senate Resolution 114, JOURNAL OF THE SENATE 1966 (March 21, 1986)

¹⁴⁷ The Legislative Research Commission notes the modern version of “My Old Kentucky Home” was adopted during the 1986 Regular Session of the General Assembly by the House of Representatives in House Resolution 159 and the Senate in Senate Resolution 114 substituting the word “people” for the word “darkies.” KY. REV. STAT. ANN. § 2.100 (West 2010)

collective past where reasonably considered benign should be left intact.¹⁴⁸ Where a symbol conveys “connotations of racial discrimination that are not acceptable in our present day”¹⁴⁹ legislators should be open to the idea of changing symbols that trample on the sensibilities of the citizenry.

Being open to the idea of change is not easy and can often be quite difficult.¹⁵⁰ Those involved with an ever-changing official flag of the State of Georgia know this all too well. With three different versions of its flag since 1956 alone,¹⁵¹ it is likely there have been more versions of the Georgia state flag than that of any other state.¹⁵² “The contentious flag issue led to the defeat of one governor [Barnes] (in 2001), embroiling both him and his successor in bitter political controversies marked by legislative armtwisting [sic] and backroom deal-making.”¹⁵³ Although actual change can come with high cost, if legislators want official symbols to fulfill state purposes they must not shy away from new ideas and changing perspectives.

V. OFFICIAL STATE DRINK OF KENTUCKY: DOES IT DO A BODY (POLITIC) GOOD?

Perhaps most peculiar of all Kentucky state symbols is the official state drink. Many unfamiliar with Kentucky’s official state symbols may be surprised or even perplexed to

¹⁴⁸ Jack Brammer, *Lawyers duel over wording in state oath*, LEXINGTON HERALD-LEADER, November 18, 2009, at A5. (Periodically members of the Kentucky General Assembly will make an attempt to remove the “dueling” language from the Oath of Office. For now the language remains, reminding us of Kentucky’s past without causing any great harm.)

¹⁴⁹ House Resolution 159, Journal of the House of Representatives 2411 (March 19, 1986)

¹⁵⁰ Dobransky & Fine, *supra* note 4, at 570. “Legislators who lack personal or professional stakes in such issues may find that replacing a state symbol is more trouble than it is worth.”

¹⁵¹ John Walker Davis, *An Air of Defiance: Georgia’s State Flag Change of 1956*, 82 Georgia Historical Quarterly 305, 306 (1998) “More than two hundred articles and letters to editors have appeared in the Atlanta Journal and the Constitution discussing Georgia’s present [1998] flag and the motivations of legislator’s in 1956 for adding the Confederate emblem.”

¹⁵² Michael Reksulak et al., *Flags of Our Fathers: Voting on Confederate Symbols in the State of Georgia*, 131 Public Choice 83, 85 (2007). “The history of Georgia’s state flag is virtually unparalleled by any other U.S. state in terms of the number and array of different designs.”

¹⁵³ *Id.* at 84.

discover milk is the official state drink.¹⁵⁴ However, Kentucky is not alone in its official drink preference. Of the twenty-eight states adopting an official beverage, twenty-one¹⁵⁵ (seventy-five percent) have selected milk.¹⁵⁶ Having defined what official state symbols are, determined the purpose they serve, noted the qualities they should exhibit, and the considerations made when evaluating a symbol's adoptability, should milk continue to be the official state drink of the Commonwealth?

A Brief Legislative History of Milk as Official Drink in Kentucky

How did milk become the official drink of Kentucky? Often "individuals or groups, operating out of their own interests and relying upon a set of material concerns, social connections, or cultural capital draw on accepted rhetorical themes to make the case for a symbol."¹⁵⁷ Effective June 20, 2005 milk was named and designated as the official state drink of Kentucky.¹⁵⁸ Sponsored by a dairy farmer senator,¹⁵⁹ the Bill passed the Senate with 37 yeas, 0 nays, and no abstentions.¹⁶⁰ The Bill then passed the House with 88 yeas and 5 nays.¹⁶¹ The entire process transpired over the span of 34 days from the introduction¹⁶² of Senate Bill 93 to being signed by the Governor.¹⁶³ Much like the florist specializing in zinnia seeds pushing for

¹⁵⁴ State drink. KY. REV. STAT. ANN. § 2.081 (West 2010) Milk is named and designated the official state drink of Kentucky.

¹⁵⁵ Coffee milk, a beverage made by combining milk with coffee syrup, is included as a milk-based beverage and is the official state drink of Rhode Island. Nebraska and South Carolina are included as both states have more than one official beverage including milk.

¹⁵⁶ Appendix A, *supra* note 3.

¹⁵⁷ Dobransky & Fine, *supra* note 4, at 561. "If the symbol is not seen as divisive (e.g., dividing regions of the state), and if no group opposes the adoption of the proposed symbol, then the process of selection will be smooth."

¹⁵⁸ State drink. KY. REV. STAT. ANN. § 2.084 (West 2010)

¹⁵⁹ Amanda York, Editorial, *Capitol Agog Over Milk*, KENTUCKY POST, February 19, 2005, at A10.

¹⁶⁰ 2005 Journal of the Senate – Regular Session 5229 (In 2005 the Kentucky Senate was comprised of 38 members. Dana Seum Stephenson of the 37th District is the only senator not to vote on SB 93 on February 22, 2005 making passage nearly unanimous.)

¹⁶¹ 2005 Journal of the House of Representatives – Regular Session 6187

¹⁶² 2005 Journal of the Senate – Regular Session 1011 (SB 93 introduced February 2, 2005)

¹⁶³ 2005 Ky. Acts 99 (Approved March 8, 2005)

the zinnia,¹⁶⁴ or the peony grower pulling for the peony,¹⁶⁵ it is no surprise to see the dairy farmer leading the charge to officially recognize milk.

The preamble to the Act noted many benefits of milk production to the Commonwealth, including: milk production and the manufacture of dairy products are major contributors to the economic well-being of Kentucky agriculture; there were 1614 dairy farms in Kentucky in 2002-2003, with a milk production value of \$213 million; the 2005 Dietary Advisory Committee increased the recommendation for dairy foods from 2-3 servings in the 2000 Guidelines, to 3 servings of lowfat and fat-free dairy foods every day; milk is an invaluable source of calcium, B vitamins, protein, and other nutrients such as phosphorous, magnesium, potassium, riboflavin, and vitamins A and D; milk and milk products promote and maintain strong bones and good health.¹⁶⁶ The language of the milk statute (a single sentence consisting of twelve words) is also relatively short.¹⁶⁷ Its pithiness combined with a public perception of milk's virtues and innocuous nature may further help to explain its passage with little opposition.

Any choice has the potential to be controversial. Although milk faced little opposition in the Kentucky General Assembly, nationally the idea of milk as healthy food has met with opposition. A variety of organizations, including the Physicians' Committee for Responsible Medicine and People for the Ethical Treatment of Animals, are dedicated to shaping a different public view of dairy products. These groups disagree with the position that milk promotes a healthy lifestyle.¹⁶⁸ Many are familiar with the "got milk?" campaign on billboards across the United States. Billboards have also been used to depict milk in a less flattering light. From "the

¹⁶⁴ Dobransky & Fine, *supra* note 4, at 576. "In 1931... the zinnia was selected as the state flower [of Indiana], suggested by another popular legislator, apparently a florist who sold zinnia seeds."

¹⁶⁵ *Id.* at 579. In 1957 Indiana changed the state flower with the help of Representative Baker who "was the largest peony grower in the state and owned three large nurseries near Fort Wayne."

¹⁶⁶ 2005 Ky. Acts. 98

¹⁶⁷ KY. REV. STAT. ANN. § 2.084 (West 2010) Milk is named and designated as the official state drink of Kentucky.

¹⁶⁸ *Bill targets illegal sales of narcotics over internet*, LEXINGTON HERALD-LEADER, February 17, 2005, at C2 (noting milk bill sponsor believes measure will help promote healthier lifestyles).

Grim Reaper with a wedge of cheese on its head with the words ‘Cheese can sack your health’” near Wisconsin’s Lambeau Field¹⁶⁹ to linking milk consumption to autism in children,¹⁷⁰ Ben & Jerry’s co-founder Ben Cohen’s heart surgery¹⁷¹ and Baskin-Robbins co-founder Burt Baskin’s death¹⁷² are often referenced in the “is milk good or bad” debate.¹⁷³

Assuming the above noted virtues of milk outweigh the criticisms, should this have been enough to elevate milk to official state drink status? How does it measure up to bourbon, an obvious contender? The following is a case study for bourbon as official state beverage applying the adoptive qualities and considerations described above. Although it is rare for a symbol to exhibit all the qualities, a strong showing is acceptable and should be preferred.

Adoptive Qualities of Bourbon

Economically beneficial. Bourbon production and the manufacture of bourbon products are major contributors to the economic well-being of Kentucky. A January 2012 report, produced for the Kentucky Distillers’ Association, found the bourbon industry was comprised of 19 major distilleries, employing around 3,100 people, and had an annual payroll of about \$246 million.¹⁷⁴ For fiscal year 2010, the estimated annual Kentucky tax on the production and consumption of distilled spirits was \$126 million.¹⁷⁵ What bourbon may lack in nutritional value is made up for by the estimated dollars¹⁷⁶ spent by over 23,000 Kentucky Bourbon Trail (KBT) passport

¹⁶⁹ Chris Rickert, *The Great Death by Cheese Brouhaha*, WISCONSIN STATE JOURNAL, September 29, 2011, at A3.

¹⁷⁰ Lara Salahi, *PETA Campaign Angers Autism Groups*, ABC NEWS, October 1, 2008 at <http://abcnews.go.com/Health/MindMoodNews/story?id=5923337&page=1#.UL-6EuS5NVI>

¹⁷¹ Brian Ettkin, *Let them Eat... Chocolate*, THE TIMES UNION, September 2, 2008, at E1 (noting Cohen’s age at time of surgery as 49).

¹⁷² *Id.* (noting Baskin died of a heart attack at 59)

¹⁷³ JOHN ROBBINS, DIET FOR A NEW AMERICA, 110 (1998) In his book *Diet for a New America* John Robbins, heir apparent and abdicator of the Baskin-Robbins empire, argues the costs of milk are too high.

¹⁷⁴ PAUL COOMES, PH.D. & BARRY KORNSTEIN, ECONOMIC AND FISCAL IMPACTS OF THE DISTILLING INDUSTRY IN KENTUCKY 13 (JANUARY 2012) (This amount excludes fringe benefits.)

¹⁷⁵ *Id.* at 24.

¹⁷⁶ *Id.* at 41. Although data is limited, the estimated economic impact per 1,000 passport holders is about \$585,000.

holders.¹⁷⁷ Participants who complete the KBT by having their passport stamped at each of the seven distillers along the trail receive a KBT t-shirt.¹⁷⁸ All are strong reasons for Governor Beshear to note the bourbon industry gives him “a sales tool that is second to none” in his efforts to create jobs for Kentucky.¹⁷⁹ Recognizing bourbon as the official drink of Kentucky would give the Governor an even sharper marketing tool.

Indigenous. The status of bourbon as indigenous spirit of the United States is widely recognized. The term ‘bourbon’ is federally regulated in that it “shall not be used to describe any whiskey or whiskey-based distilled spirits not produced in the United States”.¹⁸⁰ Several agreements, including the North American Free Trade Agreement,¹⁸¹ United States-European Union Agreement on Nomenclature of Distilled Spirits,¹⁸² and the United States-Australia Free Trade Agreement¹⁸³ recognize bourbon whiskey as a distinct product of the United States. Although the individual responsible for producing the first bourbon is open for debate,¹⁸⁴ historians place its origin firmly within the United States in what is now Kentucky.¹⁸⁵

¹⁷⁷ *Id.* at 39. Between August 2007 and November 2011 there were 22,770.

¹⁷⁸ Kentucky Bourbon Trail, *Frequently Asked Questions*, available at: <http://kybourbontrail.com/frequently-asked-questions/>

¹⁷⁹ Cheryl Truman, *Artisans distilleries join Kentucky Bourbon Trail*, LEXINGTON HERALD-LEADER, October 13, 2012, at D9

¹⁸⁰ 27 C.F.R. § 5.22(l)(1) (2012)

¹⁸¹ NAFTA Chapter 3 Annex 313 (1) – Distinctive Products (“Canada and Mexico shall recognize Bourbon Whiskey...as [a] distinctive product[s] of the United States. Accordingly, Canada and Mexico shall not permit the sale of any product as Bourbon Whiskey...unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey...”)

¹⁸² EEC Council Regulation No1576/89 & EEC Council Regulation No1267/94

¹⁸³ United States-Australia Free Trade Agreement – Side Letters – Chapter 2 – Distinctive Products (“...Australia shall not permit the sale of any product as Bourbon Whiskey...unless it has been manufactured in the United States according to the laws of the United States governing the manufacture of Bourbon Whiskey...and complies with all applicable U.S. regulations for the consumption, sale, or export as Bourbon Whiskey..”) www.ustr.gov/sites/default/files/uploads/agreements/fta/australia/asset_upload_file778_3889.pdf

¹⁸⁴ GERALD CARSON, *THE SOCIAL HISTORY OF BOURBON*, 39 (2010) (“The position of modern investigators is, regrettably, that no one knows for certain who made the first bourbon whiskey.”)

¹⁸⁵ *Id.* at 38.

Accessible. With approximately 4.7 million barrels aging in 2010 alone,¹⁸⁶ bourbon is abundant in Kentucky and accessible to those of legal drinking age. Providing even greater access to the bourbon industry, approximately 400,000 people visited the KBT in 2010¹⁸⁷ which attracts more and more visitors every year.¹⁸⁸ The Trail has grown recently with the addition of the Craft tour which features the efforts of smaller, artisan distillers.¹⁸⁹ If the tour just begins to whet the taste for bourbon, several drinking establishments throughout the Commonwealth serve bourbon in abundance. Recognized as one of the best bourbon bars in the world,¹⁹⁰ the Horse & Barrel in Lexington offers patrons an opportunity to join the Bluegrass Bourbon Club. Upon completion of their education, which entails the imbibing of fifty-plus bourbons (not all in one sitting), members names are immortalized on a plaque.¹⁹¹ The annual Kentucky Bourbon Festival in Bardstown is recognized as the official bourbon festival in Kentucky.¹⁹² Not of legal drinking age but still interested? The Bourbon Chase, a 200-mile run along the KBT, is held annually.¹⁹³ Additionally, a myriad of bourbon based products such as chocolate, sauces, and smoked sea salt are widely available.

Aesthetically pleasing. Anyone experiencing the unique landscape of Kentucky firsthand, even if their heart has been hardened by the world, would agree that “heaven must be a Kentucky kind of place”.¹⁹⁴ If Daniel Boone were to visit today he may very well find the bourbon

¹⁸⁶ Coomes, *supra* note 174, at 7.

¹⁸⁷ Briefs, LEXINGTON HERALD-LEADER, February 11, 2011, at B8

¹⁸⁸ Janet Patton, Bourbon Trail sees 15% jump in visitors, LEXINGTON HERALD-LEADER, January 29, 2013, at C5 (noting over a half-million people visited the Kentucky Bourbon Trail in 2012)

¹⁸⁹ Truman, *supra* note 179.

¹⁹⁰ Dominic Roskrow, *Great whisky bars of the world*, 53 WHISKY MAGAZINE 15
<http://www.whiskymag.com/magazine/issue53/12005988.html>

¹⁹¹ The Bourbon Review, *Horse and Barrel*, available at: <http://www.gobourbon.com/bourbon-country/11-bar-profiles/23-horse-and-barrel>

¹⁹² State bourbon festival. KY. REV. STAT. ANN. § 2.400 (West 2010)

¹⁹³ Weekender, *The 200-mile race is sold out, but everyone's welcome at after-party*, LEXINGTON HERALD-LEADER, September 28, 2012, at T5

¹⁹⁴ Often attributed to Daniel Boone, noted explorer and settler of what is now Kentucky, this sentiment may be apocryphal.

distilleries that dot the countryside to be beautiful indeed. Of particular interest would be those recognized on the official list of the Nation's historic places worthy of preservation. Of the twelve Kentucky distilleries listed on the National Register of Historic Places,¹⁹⁵ Labrot & Graham's Old Oscar Pepper Distillery in Woodford County is notable for its restored historic buildings. Home to Woodford Reserve, this distillery features several restored buildings, uses traditional copper-pot stills, and is among some of the oldest operating distilleries in Kentucky.¹⁹⁶

Those interested in exploring the ways in which bourbon is appealing by way of the applied aesthetics field note receptivity, quality in manufacturing, taste profile, and the association of ideas with the psychology of taste as enhancing the consumer experience.¹⁹⁷

"Deeply important in our making a selection and then experiencing the whiskey is the story that our minds will associate with that particular label, the story of how it was made, the story of where it was made, the story of what happened in the past when drinking it and with whom we drank it."¹⁹⁸ The environments, accoutrements, and stories associated with bourbon have the potential to produce a pleasing aesthetic that is carried in the mind everywhere.

Exclusive. Although Kentucky does not produce every ounce of bourbon in the world, it comes close. Approximately ninety-five percent of global bourbon production comes from the Commonwealth.¹⁹⁹ The General Assembly, in recognizing the importance of the bourbon industry to the Commonwealth, passed legislation to ensure certain standards are met for

¹⁹⁵ Listed sites include: Bernheim Distillery Bottling Plant, Boone County Distillery Superintendent's House and Guest House, Burk's Distillery, Labrot & Graham's Distillery, McCrackin Distillery and Mill, Old Prentice Distillery, James E. Pepper Distillery, T.W. Samuels Distillery Historic District, Jacob Spears Distillery, George T. Stagg Distillery, Van Meter Distillery, and Whites Mill Distillery Company. National Register of Historic Places, <http://nrhp.focus.nps.gov/natreghome.do>

¹⁹⁶ BRAD ASHER, ON THE ROAD HISTORIES: KENTUCKY 89 (2007)

¹⁹⁷ MARK H. WAYMACK, WHISKEY & PHILOSOPHY: A SMALL BATCH OF SPIRITED IDEAS, 124 (2009)

¹⁹⁸ *Id.* at 135. (crediting David Hume's philosophy of the association of ideas as giving "a far more insightful and plausible account of what goes on when we select and drink a whiskey.")

¹⁹⁹ Coomes, *supra* note 174, at 1.

products labeled *Kentucky*.²⁰⁰ Label disclosure of original distilling location has been required where bourbon whiskey is distilled in one state and then redistilled in Kentucky.²⁰¹ The superlative claim relating to production volume, coupled with regional geographic-indication protections, satisfy the exclusivity requirement for most intents and purposes.

Culturally and historically valuable. To people outside the Commonwealth, bourbon is synonymous with Kentucky. To many citizens of Kentucky, bourbon is a way of life. A visitor declaring Jack Daniels as their favorite Kentucky bourbon is committing a fatal social blunder. Although all bourbon is whiskey, not all whiskey is bourbon. Jack Daniels is the later. It is also made in Tennessee. Bourbon is also a key ingredient in a mint julep,²⁰² the quintessential Kentucky libation. With thoroughbred racing being the primary draw for tourists and locals alike, approximately 120,000 mint juleps are sold during Kentucky Derby weekend.²⁰³ Bourbon is an essential ingredient in Kentucky culture.

Historically, bourbon has been valued by some of Kentucky's most venerable figures. During the 1950's, Old Crow solicited any and all historical records linking their product to famous people.²⁰⁴ Many popular stories associate bourbon with Henry Clay who was among

²⁰⁰ Whiskey to be aged; exception if not labeled as Kentucky whiskey. KY. REV. STAT. ANN. § 244.370 (West 2010); Business authorized by blender's license. KY. REV. STAT. ANN. § 243.140 (West 2010)

²⁰¹ Rev. Rul. 54-416, 1954-2 C.B. 470 ('Sour Mach Bourbon Whisky' may not be produced by a distiller in Illinois and transferred to a distiller in Kentucky for redistillation without substantial change and, after storage and bottling, be labeled as 'Kentucky Bourbon Whisky' without indication of Illinois origin and with redistiller's name and address stated on the label as the name and address of the distiller.)

²⁰² "The essential mint julep is made with bourbon and mint syrup poured over ice and garnished with a sprig of fresh mint." JOE NICKELL, THE KENTUCKY MINT JULEP, 3 (2003)

²⁰³ Amy Wilson, *The Mint Julep – The Official Drink of the Kentucky Derby*, LEXINGTON HERALD-LEADER, May 8, 2011, at AA13.

²⁰⁴ *Old Crow Almanac*, LIFE, April 9, 1956, at 161. "Snoopers, Peepers, Paul Pry's and Sam Spy's win \$250. Old Crow will pay you \$250 for every accepted, authentic historical fact relating Old Crow to famous men of the past. Look in newspapers, books, old letters and personal diaries. Write: Old Crow Historical Bureau, 149 Madison Ave., New York 16, N.Y."; *Old Crow Almanac*, LIFE, April 21, 1958, at 61. "Money on your mind? History in your attic? Put them all together they can spell \$250.00 for you. Look through old trunks, attics, newspapers, family papers, diaries for documented information relating James Crow's whiskey to famous 19th Century Americans. Acceptable material will be paid for by the undersigned with 250 lawful and legal U.S. dollars. Old Crow Historical Bureau 149 Madison Avenue, New York, N.Y."

several individuals identified through this advertising campaign effort. Tales attribute the measure of his success to the size of his bar bill,²⁰⁵ shipping barrels of bourbon to his Senate office in Washington, DC,²⁰⁶ and recording his recipe for the mint julep in his diary.²⁰⁷ The verifiability of such anecdotes varies considerably. However, Henry Clay did write a letter to his son discussing, among other things,²⁰⁸ his instructions to have a barrel of old bourbon be delivered to a Dr. H.S. Levert of Mobile.²⁰⁹ The status of bourbon as the native spirit of the United States and its deep roots, both cultural and historical, in Kentucky make it the reasonable choice for the official state beverage.

Adoptive Considerations

Context. Does the designation of milk as official state drink make sense within the context of Kentucky? Milk is not the first thing that comes to mind when people think of Kentucky because milk does not fit within the context of what many envision when it comes to the Commonwealth. Unlike bourbon distilleries, dairy farms are located throughout the United States. In 2008, when Kentucky adopted milk, the state was not even close to being a top milk producer in the United States with only 90,000 milk cows.²¹⁰ That same year twenty-two other states had more milk cows.²¹¹

²⁰⁵ Duane Bolin, *Kentucky Profiles: Compromising Secret*, KENTUCKY MONTHLY, Nov. 2011 at 12. (noting Mr. Clay's compromisers were always agreeable when they were well lubricated)

²⁰⁶ James Crow, *Whisky Maker, The Man Who Reduced Distilling to a Science in Kentucky in the Thirties*, THE SUN, September 5, 1897, at 6 (noting that "[f]or many years there was treasured in Versailles as a relic an old letter from Henry Clay to his friend [James] Crow ordering a barrel of his wonderful elixir to take to Washington with him to lubricate the wheels of Government.")

²⁰⁷ Nickell, *supra* note 202, at 31. (The author, citing a newspaper article and personal correspondence with a director at the Kentucky Derby Museum, claims the recipe is "historically authoritative, from the diary of the Great Compromiser himself, Henry Clay.")

²⁰⁸ Letter dated October 14th, 1845 from Henry Clay to his son. Available at University of Kentucky archives. (The letter discusses how Henry Clay is going to take care of various debts incurred by his son.)

²⁰⁹ Letter dated October 14th, 1845 from Henry Clay to his son. Available at University of Kentucky archives.

²¹⁰ U.S. DEPT. OF AGRICULTURE, NATIONAL AGRICULTURE STATISTICS SERVICE, AGRICULTURE STATISTICS BOARD, MILK PRODUCTION, DISPOSITION, AND INCOME 7, (May 2009)

²¹¹ *Id.*

If milk as official state drink does not make sense in Kentucky, where does it make sense? Wisconsin. Wisconsin adopted milk as their official state beverage²¹² with good reason. In 2008 Wisconsin had 1.25 million²¹³ milk cows. “Wisconsin is known as ‘America’s Dairyland,’ and...license plates have been telling everyone that since 1940. [The] official symbols bolster the idea: milk is the official beverage, and six breeds of purebred dairy cows constitute the official state domesticated animal.”²¹⁴ Dairy themes were the most popular submission²¹⁵ when it came to designing the Wisconsin state quarter which ultimately featured an ear of corn in addition to a cow and block of cheese.²¹⁶ “Mass perception affects how those across the country see Wisconsin, which, in turn, can have an effect on [Wisconsin’s] economy.”²¹⁷ When milk is adopted as the official state drink of Kentucky it may represent something, it may connect to something, but that something is not a representation or connection to the Commonwealth. Milk as official state drink makes better sense within the context of Wisconsin, not Kentucky.

Connotation. Whether a product, either milk or bourbon, has a positive, negative, or neutral connotation is difficult to determine objectively. Milk is positive to dairy farmers and those who enjoy dairy products. It may be negative to those who associate cow milk with poor health²¹⁸ or are involved in the promotion of a competing industry.²¹⁹ To many, milk may be

²¹² WIS. STAT. ANN. § 1.10 (West 2011)

²¹³ U.S. DEPT. OF AGRICULTURE, NATIONAL AGRICULTURE STATISTICS SERVICE, AGRICULTURE STATISTICS BOARD, MILK PRODUCTION, DISPOSITION, AND INCOME 3, (May 2009)

²¹⁴ Kapler, *supra* note 52, at 21.

²¹⁵ Barish, *supra* note 66, at 20. (Of the over 9600 design submissions for the Wisconsin state quarter, the category with the most submissions, over two thousand or 22 percent of all entries, was ‘dairy’, which included designs featuring milk, cheese, or cows.)

²¹⁶ Kapler, *supra* note 52, at 21. “Wisconsin produces 15 percent of the nation’s milk...and 30 percent of the cheese.”

²¹⁷ *Id.* at 28.

²¹⁸ Leigh Hornbeck, *Dairy Dilemma*, TIMES UNION, April 10, 2013, at F1. (noting recent study found women who eat high-fat dairy products after they are diagnosed with breast cancer are at a higher risk for death)

neutral. The same may apply to bourbon. Bourbon is positive to those associated with its production, marketing, distribution, and sale. Negative associations with bourbon may be attributed to juvenile misadventure or collateral problems such as drunk driving, alcoholism, and health-related concerns – attendant issues with the irresponsible use of any intoxicating beverage, not just bourbon.

Consultation. Experts from the dairy or spirits industry would likely champion the official adoption and recognition of their respective products. However, in light of the adoptive qualities of milk and bourbon along with the context and connotation considerations noted above, what would experts in marketing select to promote the state? Charged with marketing the Commonwealth to increase tourism, the Kentucky Tourism, Arts & Heritage Cabinet divided the state into nine regions and named each according to its attributes. Only the terms bourbon, horses, and bluegrass were named attributes in more than one region.²²⁰ No regional name noted milk or any dairy product as an attribute. These regional designations, developed by experts to promote the state, serve as an indicator of bourbon's value to the Commonwealth.

Category. Would a categorical approach be a reasonable way to resolve this issue? Instead of having one official state beverage, why not have several qualified drinks within the beverage category? Legislatures have used the categorical approach in the past²²¹ and Kentucky could theoretically have an official state drink, spirit, and soda. As there is precedent for

²¹⁹ Andrew A. Newman, *Got Milk? For Sports Drink Maker, Nestle Says No*, N.Y. TIMES, July 27, 2009, at B3. (Nestle USA filed a petition with the United States Patent and Trademark Office to revoke Muscle Milk's trademark claiming product is deceptively misdescriptive because Muscle Milk does not actually contain milk.)

²²⁰ Kentucky Tourism, Arts & Heritage Cabinet, *Economic Impact of Kentucky's Travel and Tourism Industry – 2011 and 2012*, <http://www.kentuckytourism.com/userfiles/Industry/research/economic-impact-12/2012%20Economic%20Impact.pdf> (Noting the nine regions are: Western Waterlands; Bluegrass, Blues & Barbecue; Caves, Lakes & Corvettes; Bourbon, Horses & History; KY's Southern Shoreline; Northern Kentucky River Region; Bluegrass, Horses, Bourbon & Boone Region; Kentucky Appalachians; and Daniel Boone Country.)

²²¹ Rosenthal, *supra* note 42, at 36. "When brought to a vote, however, legislatures are adept at compromising interests. That is no doubt why Tennessee had two official fish, a commercial fish and a game fish, three official insects and two state rocks."

adoption of a spirit as an official symbol, Kentucky would not be alone if it were to adopt bourbon. Alabama adopted Conecuh Ridge Alabama Fine Whiskey as the official spirit of Alabama.²²² Since there are a multitude of bourbon producers marketing their product under an even greater number of labels,²²³ adoption of bourbon generally, rather than endorsing a specific brand, would best serve the industry as a whole.

For teetotalers, a reasonable alternative to bourbon as the official drink of Kentucky exists: Ale-8-One. Bottled in Winchester, Kentucky since 1926,²²⁴ “A-Late-One” claims to be the only soft drink invented in Kentucky still in existence.²²⁵ The soft drink as official beverage also has precedent. In 2005 the state of Maine adopted *Moxie* as the official state soft drink.²²⁶

In 2013, the Kentucky General Assembly considered a bill that would designate Ale-8-One as “the official Kentucky original soft drink.”²²⁷ Intervention by a major soda corporation with significant lobbying resources resulted in the passage of an amended version of the bill.²²⁸ The issue had to do with the terms “the” and “official”. The corporation contacted the bill’s sponsor noting it had started bottling soda in Kentucky before Ale-8-One.²²⁹ Ultimately, “the” was changed to “an”, the term “official” was deleted,²³⁰ and Ale-8-One was designated as “an original Kentucky soft drink”.²³¹ This result is peculiar in that, as originally drafted the term “the” reasonably qualifies the entire sentence generally or the term “official” specifically, not the

²²² 2004 Ala. Acts 130

²²³ MICHAEL R. VEACH, KENTUCKY BOURBON WHISKEY: AN AMERICAN HERITAGE 98-99 (2013) (Heaven Hill, which has built a substantial portfolio through in-house development and outside acquisition of a variety of bourbon labels, even sells bulk whiskey to high-end organizations interested in their own private label.)

²²⁴ THE KENTUCKY ENCYCLOPEDIA 11 (John E. Kleber et al. eds., 1992).

²²⁵ *History*, Ale8One, <http://ale8one.com/history> (last visited Oct. 18, 2011).

²²⁶ ME. REV. STAT. tit. 1, § 224 (2011)

²²⁷ Original language of bill as filed by Rep. Donna Mayfield proposed “AN ACT designating Ale-8-One as the official Kentucky original soft drink”. HB 205 (BR 925), Reg. Sess. (Ky. 2013)

²²⁸ Telephone Interview with DeAnne Elmore, Marketing and Public Relations Director, Ale-8-One (July 2, 2013).

²²⁹ Telephone Interview with Rep. Donna Mayfield, House District 73 (Ky.) (July 3, 2013).

²³⁰ *Id.* Rep. Mayfield noted had the term “official” been retained, a variety of soda producers would likely have objected.

²³¹ 2013 Ky. Acts 460

term “original”. The term “Kentucky” qualifies the term “original”. Although the corporation had a valid claim of bottling in Kentucky prior to Ale-8-One, it could not claim its current product line was original to Kentucky, nor did it have a basis to claim it was official.²³² Ale-8-One may have been able to obtain official status had the bill language tracked that of milk: *Ale-8-One is named and designated as the official state soda of Kentucky.*

Qualifying symbols provides a state with an opportunity to honor a variety of unique qualities. The potential downside with this approach is having so many symbols that the individual identity the state is trying to establish and market is lost in an attempt to satisfy a plethora of special interests. Concerned about the proliferation of state symbols, Texas lawmakers set out to change the manner in which official symbols are adopted. Citing steep competition between towns for official designations and an ever growing list of state symbols, the legislation calls for proposed symbols “to be filed as bill instead of resolutions, which would require additional scrutiny from lawmakers, including committee hearings.”²³³

Ultimately, the language adopted by the Texas legislature addresses both state symbols and place designations. Proposed state symbols must specify an item’s historical or cultural significance to the state and may not be a commercial product, an individual, an event, or a place.²³⁴ Proposed place designations may not be assigned to more than one event or location, must include relevant historical or cultural information, and be supported by a local chamber of commerce or elected governmental body.²³⁵ Except for re-designation by the legislature, a sunset provision ensures place designations expire on the designations 10th anniversary.²³⁶

²³² Only symbols adopted through the Commonwealth of Kentucky’s legislative process are deemed official.

²³³ David Tarrant, *Let’s play a game. Call it Texas survivor*. DALLAS MORNING NEWS, March 14, 2001, at 1C.

²³⁴ Tex. Gov’t. Code Ann. § 391.002 (West 2013)

²³⁵ Tex. Gov’t. Code Ann. § 391.003 (West 2013)

²³⁶ Tex. Gov’t. Code Ann. § 391.003(2)(e) (West 2013)

Change. Are Kentuckians open to change when it comes to their official state drink? At times Kentuckians have been open to change when it comes to state symbols²³⁷ and at other times not so much.²³⁸ Some citizens of the Commonwealth have called for a change to Kentucky's official state slogan – currently “Unbridled Spirit” – to “Kentucky Kicks Ass” suggesting the “time is right for a more democratic (little “d”, not big “D” or big “R”) slogan, something that bubbles up, trips off the lips, [and] sings to the subversive soul.”²³⁹ Essentially what milk does not do (and what bourbon would do) as the official state drink.

Symbols “work best when...they serve as the metaphorical reflections of the properties of the population they reflect.”²⁴⁰ In 2005, when milk became the official drink in Kentucky, it was suggested “the measure would also help promote healthier lifestyles.”²⁴¹ In a 2012 ranking of overall health among the fifty states, Kentucky ranked near the bottom at 44.²⁴² A report that same year noted “Kentucky is predicted to jump from a 30 percent adult obesity rate in 2011 to 60.1 percent in 2030.”²⁴³ Symbols should reflect what a state has accomplished, not what a state hopes to accomplish sometime in the future.

Failing to celebrate and promote that which makes Kentucky unique, particularly by adopting highly pedestrian symbols such as milk, squanders a myriad of opportunities to

²³⁷ The Legislative Research Commission notes the modern version of “My Old Kentucky Home” was adopted during the 1986 Regular Session of the General Assembly by the House of Representatives in House Resolution 159 and the Senate in Senate Resolution 114 substituting the word “people” for the word “darkies.” KY. REV. STAT. ANN. § 2.100 (West 2010)

²³⁸ Rep. Darryl T. Owens’ 2010 Regular Session proposal to remove dueling language from the Commonwealth’s oath of office failed to make it out of the Appropriations & Revenue committee. HB 36, Reg. Sess. (Ky. 2010)

²³⁹ Janet Patton, *Image maker kicking booty for Kentucky – group insists ‘unbridled spirit’ not edgy enough*, LEXINGTON HERALD-LEADER, December 20, 2012, at C5.

²⁴⁰ Dobransky & Fine, *supra* note 4, at 578.

²⁴¹ *Bill targets illegal sales of narcotics over internet*, LEXINGTON HERALD-LEADER, February 17, 2005, at C2 (noting milk bill sponsor believes measure will help promote healthier lifestyles).

²⁴² UNITED HEALTH FOUNDATION, AMERICA’S HEALTH RANKINGS, A CALL TO ACTION FOR INDIVIDUALS AND THEIR COMMUNITIES 14, (2012) <http://cdnfiles.americashealthrankings.org/SiteFiles/Reports/Americas-Health-Rankings-2012.pdf>

²⁴³ Cheryl Truman, *A fatter future for our kids? – New obesity predictions should disturb us all*, LEXINGTON HERALD-LEADER, September 25, 2012, at B1. (noting findings of 2012 Issue Report F as in Fat: How Obesity Threatens America’s Future <http://healthyamericans.org/assets/files/TFAH2012FasInFatFnlRv.pdf>)

capitalize on that which makes the Commonwealth special. This failure causes the de facto adoption of the proposed state slogan in that “Kentucky kicks ass. Often, unfortunately, its own.”²⁴⁴ Kentucky’s failure to be united in embracing and honoring its uniqueness will contribute to its falling behind.²⁴⁵

VI. CONCLUSION

States reasonably aspiring to legitimize power, promote commerce, and create allegiance through the adoption of official state symbols should use the following considerations to inform the decision making process.

Official state symbols should go beyond merely representing an idea, as symbols fundamentally do, by making connections between people and places. In order to reach full potential, state symbols should bind resident’s perceptions to the state and be readily associated with the state by non-residents. This is particularly important where populations trend toward diversity as they do in the United States.²⁴⁶ Prior to the adoption of a proposed state symbol, legislators should consider whether the symbol merely represents a place, or goes further by connecting people to the state. Only symbols that do the later should be adopted.

Adoption of ordinary symbols is potentially harmful to states on several levels. A state failing to embrace and honor its character through the adoption of symbols reflecting unique and positive qualities squanders opportunity to capitalize on individuality. At best this loss manifests

²⁴⁴ Tom Eblen, *Knowing their ads from hole in ground – idea with flair meets blank stares*, LEXINGTON HERALD-LEADER, January 6, 2013, at C1.

²⁴⁵ State seal. KY. REV. STAT. ANN. § 2.020 (West 2010) The seal of the Commonwealth shall have upon it the device, two (2) friends embracing each other, with the words “Commonwealth of Kentucky” over their heads and around them the words, “United We Stand, Divided We Fall.” See BENJAMIN F. SHEARER & BARBARA S. SHEARER, STATE NAMES, SEALS, FLAGS AND SYMBOLS: A HISTORICAL GUIDE, 21 (1987). “A motto might be considered a terse statement, sometimes humorous, sometimes serious, that describes a certain spirit of the bearer. State mottoes, whether in English, Latin, French, or Spanish, or a native American Language, express simply the character and beliefs of the citizenry.”

²⁴⁶ Dobransky & Fine, *supra* note 4, at 581. “[I]dentification with one’s landscape is a source of unifying ties in diverse societies. Native rootedness can serve as a metaphor for the expertise of collective identification.”

itself as casting a state in a mediocre light. At worst this failure creates a space for a state's shortcomings to become its identity. States should resist the temptation to adopt symbols that fail to reflect a state's qualities and should avoid holding on to official symbols that fail to reflect a state's positive attributes.

If the law is always “approaching, and never reaching, consistency...forever adopting new principles from life at one end, and...always retains old ones from history at the other, which have not yet been absorbed or sloughed off”²⁴⁷ it is imperative states remain vigilant in vetting the appropriateness of symbols prior to adoption and continue monitoring their viability afterwards. Prior to adoption, states should consider whether a proposed symbol reflects the following qualities: indigenouness, aesthetic appeal, uniqueness, availability, potential economic impact, and cultural-historical value.

Finally, states should consider the following questions: Does this symbol make sense in this context? What connotations are associated with this symbol? Have experts on the subject matter been consulted? Have the opinions of experts been given serious consideration and sensible deference? Is the symbol too general? If so, should the symbol be qualified in some manner? For official state symbols currently in use, a process of reevaluation in light of the above considerations should occur by replacing symbols where a more qualified candidate can be identified. Ultimately, a state should strive towards harmonization amongst its official symbols. Adoption of state symbol statutes that are *in pari materia* should result in the creation of an indelible state identity in the minds of citizens and non-citizens alike.

²⁴⁷ Holmes, *supra* note 123, at 36.

APPENDIX A: OFFICIAL BEVERAGES BY STATE*

STATE	BEVERAGE	CITATION
Alabama**	Conecuh Ridge Whiskey	H.J. Res. 100, Reg. Sess. (Al. 2004); 2004 Ala. Acts 103
Alaska	none	ALASKA STAT. ANN. tit. 44 ch. 9 (West 2012)
Arizona	none	ARIZ. REV. STAT. tit. 41 ch. 4.1 art. 5 (2012) (West)
Arkansas	Milk	ARK. CODE ANN. 1-4-112 (West 2012)
California	none	CAL. GOV'T CODE tit. 1 div. 2 (West 2012)
Colorado	none	COLO. REV. STAT. ANN. tit. 24 ch. 80 pt. 9 (West 2012)
Connecticut	none	CONN. GEN. STAT. ANN. tit. 3 ch. 33 (West 2012)
Delaware	Milk	DEL. CODE ANN. tit. 29 § 312 (West 2012)
Florida	Orange juice	FLA. STAT. ANN. § 15.032 (West 2012)
Georgia	none	GA. CODE ANN. tit. 50 ch. 3 (West 2012)
Hawaii	none	HAW. REV. STAT. div. 1 tit. 1 ch. 5 (West 2012)
Idaho	none	IDAHO CODE ANN. tit. 67 ch. 45 (West 2012)
Illinois	none	5 ILL. COMP. STAT. ANN. 460 (West 2012)
Indiana**	Water	S. Res. 0020, 115th Leg., 1 st Reg. Sess. (In. 2007); IND. CODE ANN. tit. 1 art. 2 (West 2012)
Iowa**	none	IOWA OFF. REG. (Redbook)
Kansas	none	KAN. STAT. ANN. ch. 73 (West 2012)
Kentucky	Milk	KY. REV. STAT. ANN. § 2.084 (West 2012)
Louisiana	Milk	LA. REV. STAT. ANN. § 49:170 (West 2012)
Maine	Moxie	ME. REV. STAT. tit. 1 § 224 (2012)
Maryland	Milk	MD. CODE ANN., STATE GOV'T § 13-315 (West 2012)
Massachusetts	Cranberry juice	MASS. GEN. LAWS ANN. ch. 2, § 10 (West 2012)
Michigan	none	MICH. COMP. LAWS ANN. ch. 2 (West 2012)
Minnesota	Milk	MINN. STAT. ANN. § 1.1495 (West 2012)
Mississippi	Milk	MISS. CODE ANN. § 3-3-29 (West 2012)
Missouri	none	MO. ANN. STAT. tit. 2 ch. 10 (West 2012)
Montana	none	MONT. CODE ANN. tit. 1 ch. 1 pt. 5 (2012)
Nebraska**	Kool-Aid, Milk	Gubernatorial Designation of Kool-Aid (May 21, 1998) Gubernatorial Designation of Milk (Sept. 10, 1998) NEB. REV. STAT. ch. 90 art. 1 (2012)
Nevada	none	NEV. REV. STAT. ANN. tit. 19 ch. 235
New Hampshire	Apple cider	N.H. REV. STAT. ANN. § 3:26 (2012)
New Jersey	none	N.J. STAT. ANN. tit. 52 sub. 1 ch. 9a
New Mexico	none	N.M. STAT. ANN. ch. 12 art. 3 (West 2012)
New York	Milk	N.Y. NY STATE LAW § 82 (McKinney 2012)
N. Carolina	Milk	N.C. GEN. STAT. ANN. § 145-10.1 (West 2012)
N. Dakota	Milk	N.D. CENT. CODE ANN. § 54-02-12 (West 2012)
Ohio	Tomato juice	OHIO REV. CODE ANN. § 5.08 (West 2012)

Oklahoma	Milk	OKLA. STAT. ANN. tit. 25, § 98.7 (West 2012)
Oregon**	Milk	S.J. Res. 8, 69th Leg., Reg. Sess. (Or. 1997)
Pennsylvania	Milk	71 PA. CONS. STAT. ANN. § 1010.1 (West 2012)
Rhode Island	Coffee milk	R.I. GEN. LAWS ANN. § 42-4-15 (West 2012)
S. Carolina	Milk, S. Carolina-grown tea	S.C. CODE ANN. § 1-1-690 (2012), S.C. CODE ANN. § 1-1-692 (2012)
S. Dakota	Milk	S.D. CODIFIED LAWS § 1-6-16 (2012)
Tennessee	Milk	TENN. CODE ANN. § 4-1-331 (West 2012)
Texas	none	TEX. GOV'T CODE ANN. tit. 11 ch. 3101 (West 2012)
Utah	none	UTAH CODE ANN. tit. 63G ch. 1 pt. 6 (West 2012)
Vermont	Milk	VT. STAT. ANN. tit. 1, § 503 (West 2012)
Virginia	Milk	VA. CODE ANN. § 1-510 (West 2012)
Washington	none	WASH. REV. CODE ANN. tit. 1 ch. 1.20 (West 2012)
W. Virginia**	none	W. Va. Acts
Wisconsin	Milk	WIS. STAT. ANN. § 1.10 (West 2012)
Wyoming	none	WYO. STAT. ANN. tit. 8 ch. 3 (West 2012)

* Most official state symbols are codified within a state's statutory scheme. Where a state does not designate an official beverage within its statutory scheme, the presumption has been made that no official state beverage exists. Where 'none' is listed, a citation to where a state's official symbols appear is included.

**Denotes official state symbol adoption other than, or in addition to, incorporation into a statutory scheme, e.g., resolution, proclamation, etc.