

## **Statement of Representative George Radanovich (CA-19):**

Thank you Mr. Chairman, Ranking Member Coble and Members of the Subcommittee for allowing me to make remarks today. As you know, I am a co-founder of the Congressional Wine Caucus, and a member of the Energy and Commerce Committee, which has jurisdiction over interstate commerce. I have also been the owner of a California winery, both of which are the bases for my testimony today.

### **Introduction:**

I know when consumers visited my winery, they thought I had the ideal job and wondered why I ever went into public service. I was outside a lot, made a good product associated with fine living and good food, and my office had a great view. But the business of wine is far from the bucolic splendor of the vineyards. It is difficult to sell wine, perhaps more difficult than selling most other products or services in the United States, and much of that is due to the level and diversity of regulation and control of all aspects of the business.

### **The Regulatory Reality:**

Wine is a highly taxed and highly regulated business, with 50 sets of state laws as well as federal oversight from the Tax and Trade Bureau, the Federal Trade Commission, the EPA, among others. In such an environment, there are great costs involved not only in making wine, but also in getting wine to market. Tax rates differ; some states require licenses or permits; and still others will require that I pay a fee to register my labels. One state will require that I buy a license and hire a wholesaler to distribute my wine and that I designate a sales territory for that wholesaler, while a second state will prohibit me from doing that very thing and prohibit me from assigning exclusive sales territories. One state will make it impossible for me to fire my assigned wholesaler, even though the wholesaler has not performed as represented. In most of the states we tried to ship into, every bottle of our wine had to pass through a wholesaler, which adds to costs and delay.

For new wineries, as it was for me, it is always a shock to realize how difficult it is to acquire distribution in other states. Even for long-established wineries, there are a lot of human resources that are dedicated to complying with divergent state laws so that they can attempt to realize a profit. In many cases, compliance with certain state laws discouraged my winery from selling in some states. I'm sure that's common among many wineries. The cost to introduce a wine in a market can far outweigh the potential profits to be realized.

### **Federal Government Plays an Important Role in Alcohol Beverage Regulation:**

The US Department of Treasury's Tax and Trade Bureau's production regulations establish uniform baseline standards of identity and allow wineries from any state to know how their product is categorized on the federal level. TTB's permit system for wineries and distilleries, their antitrust-based trade practice laws, and their label approval

processes, all provide a uniform framework from which state laws build. Despite the current diversity in state control, I truly believe that the inconsistencies among state control systems would be much greater without this important federal framework.

### **Self-Distribution:**

People in the wine business hear a lot about three-tier distribution, but all know that a pure three-tier distribution system does not exist in the United States. Instead, over the years since prohibition was repealed, states have chosen to exercise their powers under the 21<sup>st</sup> Amendment to create hybrid distribution systems that use three-tier principles as a framework. In at least 39 states, for example, state laws allow in-state wineries to self-distribute. Self-distribution laws permit the in-state winery to act as its own distributor, allowing sales by the winery directly to retail on- and off-sale licensees. In California, the number of wineries could not proliferate without self-distribution. But self-distribution stops at the state line, and the privilege is only available for in-state wineries.

### **Direct-to-Consumer:**

What is also not three-tier is a winery's ability in some states to sell wine directly to a consumer either at their tasting room or over the internet. In my home state, I'm allowed to sell wine directly to a consumer. I can operate a winetasting room at my winery and at one other retail location where I can conduct educational winetastings and sell my wine directly to consumers. Without this manner of distribution, most small wineries would find it difficult to survive. Many wineries are surviving in today's economy solely on the strength of their direct-to-consumer wine clubs. I remember when some states would punish such sales as felonies. States like Kentucky would equate wine sales with serious crimes against the person.

Self-distribution and winery direct sales are not three-tier concepts. They are methods of distribution that would not be categorized as three-tier. In California as well as in some other states, these methods of distribution exist in addition to three-tier distribution methods, and wineries can choose to exercise any combination of methods in California to sell their wine. Even in the Granholm state of Michigan, laws have been changed to allow out-of-state wineries to sell wine direct to retailers.

### **The Plea of the Disintermediated:**

There is draft legislation floating around the House that is associated with this hearing today. It is believed to be promoted by the beer wholesalers, and they present this committee today with a very long, broad and quite frankly, outrageous wish list.

- They want Congress to grant the States an antitrust exemption.
- They want state laws to override federal and Constitutional mandates.

- They want Congress to overturn a long line of judicial decisions that have consistently recognized state rights to regulate alcoholic beverages as long as they don't discriminate.
- They want states to be relieved from having to prove that their own statutes and regulations are constitutional.

As a member of the Energy and Commerce Committee, I urge this committee to listen carefully and respectfully to today's testimony, especially to see if what is being proposed here is innovation or monopoly protection; whether the marketplace or the government is to decide winners and losers; and whether a free market economy or one that is controlled by promoting discriminatory legislation to state legislatures will determine how a legal product is marketed to legal consumers.

Listen carefully to hear whether certain market segments are intent on maintaining the status quo in the face of judicial decisions that threaten that status quo. Wholesalers are the market participants that have been the most successful in a three-tier distribution system. Their loud voices, and those of their allies, are not the voice for change and innovation. They are not sitting idly, but are here because they want to exhaust all the judicial, regulatory, and legislative means at their disposal to thwart the natural evolution of distribution change in the alcohol beverage industry that is measured by the Constitutional yardstick.

I ask you to be on the side of state rights, but state rights that are measured by the principles of our country's Constitution and antitrust laws. It is right that they have access to Congress to make their request, and it is right to allow them a forum to express their fears about the holdings in the current series of judicial decisions. They ask a lot, but what they ask for is not justified. What they fear is nothing less than the US Constitution and antitrust laws. There must be extraordinary reasons why States should get a free pass from the Constitution or antitrust laws, and I predict that you will not hear such reasons today.