

**ENERGY AND COMMERCE**

COMMERCE, TRADE AND CONSUMER  
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OVERSIGHT AND INVESTIGATIONS



**U.S. House of Representatives**

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

Thank you Mr. Chairman, Ranking Member Smith and Members of the Committee 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:***

In March, when we last had a hearing about alcoholic beverages, I started by saying that 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 Business of State Regulation***

I spoke about how 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 virtually 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 added to costs and delay even though the wholesaler was doing little, if anything, to help build my brand.

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. That is common among thousands of wineries. The cost to introduce a wine in a market can far outweigh the potential profits to be realized.

### ***Three Tier Distribution vs 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 21st 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 37 states and the District of Columbia 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 wine-tasting room at my winery and at one other retail location where I can conduct educational wine-tastings 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 Michigan residents, just like Michigan wineries are able to do so in their home state.

### ***H.R. 5034, Commerce Clause, and Deregulation***

I speak from experience when I say that operating a winery in this country is difficult and complex. The wine industry is an industry of disparate laws and confusing regulations. Which is why I am fascinated with the premise of HR 5034, that States rights are being greatly impaired by the dormant Commerce Clause, that States should be able to regulate alcohol products, even if it means that they can openly discriminate; that States are on the verge of regulatory collapse without Congressional intervention.

In my eight terms in Congress, I do not recall another time when an industry group has come seeking complete immunity from nothing less than the US Constitution, when the continued application of one of the fundamental provisions of the Constitution, the Commerce Clause, has been associated with underage drinking, statewide loss of regulatory control, and market chaos; where facial and nonfacial discrimination is somehow needed by States to regulate effectively.

I am anxious to hear from today's speakers. I want to hear why the dormant Commerce Clause is being portrayed as the dark precursor to all of these things, and that the only way to prevent such deregulation is to surgically remove that portion of the Constitution from applying to the industry. I look forward to hearing how this assault on the Constitution will better serve the industry, the States, the Nation, and consumers.

HR 5034 is being promoted by the beer, wine and spirits wholesalers. They present this Committee with a simple request. They want Congress to expressly give States the ability to regulate without limits of national fairness and market equity. They say that without this express permission from Congress, that States will be unable to regulate effectively. I am curious to know from the panel of speakers when the Commerce Clause became something so feared or despised; how giving states the ability to openly and deliberately ignore its principles will help the nation and its citizens; how one of this nation's core constitutional rights – the right to a national market free of special privileges or protections to in-state interests, is not appreciated and viewed instead as an obstacle to effective State regulation; how the elimination of dormant Commerce Clause principles will lead to a more orderly marketplace.

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 hired allies, are not the voice for innovation and expanding consumer choice. They 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. When we allow states to discriminate, we lose the cohesiveness and energy of a nation of laws. We legitimize trade barriers that openly defy those concepts that the Commerce Clause holds dear. We become 50 nations instead of one, and "e pluribus unum" no longer applies.

It is right that wholesalers have access to Congress to make their request, and it is right to allow them a forum to express their concerns. They ask a lot, and what they ask for is not justified.