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Interstate Shipment of Wine:
A History of Alcohol Legislation
and its Impact on the Wine Industry

Matthew A. Beckett

Editors:

Peter Griffin
Karina Kidd
Gareth Olds
J.J. Ooi
Alex Robinson
Karl Storchmann

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Matthew A. Beckett

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The ratification of the 21st Amendment and the associated confusion of its meaning have lead to a perplexing and elaborate system of regulating interstate commerce of alcoholic beverages. A system of laws intended to give local governments the power to police alcohol within their own borders without affecting the federal government's control over interstate commerce has now become a bureaucratic and expensive system of alcohol distribution. This system erects barriers to competition and market entry, limits consumer surplus, and threatens the economic viability of the wine industry as a whole. Until regulation of interstate commerce of alcohol is universalized under federal control, wine producers and consumers will suffer at the benefit of state governments and seemingly unnecessary wholesaler distributors.

Section 1: The History of Alcohol Regulation

Alcohol Jurisprudence in the Nineteenth Century

In order to understand the current system of alcohol distribution, it is important to look at its history and development. The dormant commerce clause of the constitution, which states that no state or territory may pass a law that “improperly burdens or discriminates against interstate commerce,” is an integral part of this history. During the nineteenth century, it was widely acknowledged that state and local governments could exercise their police powers to regulate alcoholic beverages within their borders including prohibiting the manufacture and sale of alcohol (Zywicki 2004). The states could not, however, exercise these police powers in a manner that discriminated against the producers of alcoholic beverages from other states. In the

case of *Walling v. Michigan*, the Supreme Court ruled that banning consumption and sale of out-of-state liquors violated the dormant commerce clause. Chief Justice Taney wrote,

“The single question, therefore, is whether the statute of 1875 is repugnant to the constitution of the United States. Taken by itself, and without having reference to the act of 1881, it is very difficult to find a plausible reason for holding that it is not repugnant to the constitution. It certainly does impose a tax or duty on persons who, not having their principal place of business within the state, engage in the business of selling, or of soliciting the sale of, certain described liquors, to be shipped into the state. If this is not a discriminating tax leveled against persons for selling goods brought into the state from other states or countries, it is difficult to conceive of a tax that would be discriminating” (Zywicki 2004 p. 9).

Thus, the states could monitor the local manufacture and sale of alcohol, but could not regulate alcoholic beverages produced out-of-state. This effectively destroyed the states’ ability to prohibit alcohol within their own borders. States that wished to ban alcoholic beverages in their territory were unable to do so because the dormant commerce clause undermined their police power. These laws led to the passage of the Wilson Act, a piece of legislation intended to aid the states in their quest to regulate both in-state and out-of-state liquors within their own borders.

The Wilson Act

Alcohol jurisprudence of the 19th century effectively discriminated in favor of out-of-state producers and undermined the police power of local authorities. Numerous Supreme Court rulings had created an anomaly in which the states were left powerless to become a “dry” state and prohibit alcohol consumption, manufacture, and sale within their boundaries. To correct this anomaly, Congress passed the Wilson Act in 1890. The Wilson Act “provides that intoxicating liquors or liquids transported into any State or remaining therein for use, consumption, sale, or storage shall, upon arrival, be subject to the laws of the state enacted in the exercise of its police

power to the same extent and in the same manner as though such liquids or liquors had been produced in such State” (Zywicki 2004 p. 10). The language of the Wilson Act effectively eliminated the privileged status of out-of-state sellers while still maintaining the long-term ban on state discrimination against interstate commerce (Zywicki 2004). Even the Supreme Court observed that, “[The Wilson Act] was not intended to confer upon any state the power to discriminate injuriously against the products of other states in articles whose manufacture and use are not forbidden, and which are, therefore, the subjects of legitimate commerce” (Zywicki 2004 p. 11). Essentially, the Wilson Act’s purpose was non-discrimination of goods. All alcoholic beverages (both those produced in-state and those produced out-of-state) would be subject to the same laws upon their entry into the state.

The Wilson Act was effective in principle, but in practice it was widely ignored. A series of Supreme Court rulings undermined the effectiveness of the Wilson Act by barring dry states from prohibiting direct shipment of alcoholic beverages to consumers provided that the alcohol was still in its original packaging. These rulings still allowed the citizens of “dry” states to get their hands on alcoholic beverages and weakened the capacity of local governments to exercise their police powers. The inability of the Wilson Act to completely enable state governments to ban alcohol led to another act that was much more effective.

The Webb-Kenyon Act

At this point in history, states had essential plenary power to regulate the manufacture and consumption of alcohol pursuant to its police power, but could not discriminate against alcohol produced out-of-state and sold in its original packaging. The frustration of the states and

local communities at their inability to prohibit all forms of alcohol was becoming much more apparent. In 1913, the Webb-Kenyon Act was passed to address the frustrations and concerns of governments who desired unilateral bans on alcohol. The act's purpose was to strengthen the Wilson Act and prohibited "the shipment or transportation of alcohol into a State of intoxicating liquor that is intended by any person therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State" (Zywicki 2004 p. 12) as a matter of federal edict. Senator Kenyon stated that his act was intended to better enable the states to utilize their police powers by eliminating discrimination in favor of out-of-state producers (Zywicki 2004). The law was highly effective: Webb-Kenyon did not permit discrimination against interstate commerce, but did allow states to unilaterally eradicate the production and sale of liquor within their borders. "Dry" states could finally become dry.

The result of this act was a universally accepted and practiced balance of power between state and federal authorities. The federal government controlled interstate commerce, and the states utilized their police powers to regulate alcohol within their territory without violating the dormant commerce clause. Dry states could be dry, wet states remained wet, and everyone was happy. This is where the country stood at the enactment of nationwide prohibition brought on by the 18th Amendment.

The 18th Amendment – Its Goals and Failures

The 18th Amendment to the Constitution, also known as Prohibition, was ratified in 1919 and expressly banned the production and consumption of all alcoholic beverages not intended for religious purposes throughout the nation. Prohibition's goal was to promote temperance and

morality, but its enforcement was an enormous failure (Zywicki 2004). The problem that Prohibition faced was that it upset the balance of powers established in prior nineteenth century jurisprudence. The federal government was left in charge of enforcing the Amendment without the help of local and state authorities.

“In the era before the 18th Amendment, the state and federal governments had thus reached a general accommodation on the balance of authority between the state police power and national commerce power. The states had the authority to regulate purely local affairs such as rules governing the manufacture and consumption of alcohol, especially with respect to bars and saloons, where alcohol was sold and consumed on the premises. The federal government retained complete control over matters involving interstate commerce [...] The ratification of the 18th Amendment and the enactment of National Prohibition upset this balance” (Zywicki 2004 p. 16-17).

Due to the Supremacy Clause of the constitution and the language of the 18th Amendment, federal authorities were left with the entire burden of enforcing Prohibition.

The federal government’s encroachment into the realm of state police powers quickly became problematic. Federal authorities, unlike local officials, were unequipped to handle the divergence of views on alcohol from community to community, and federal efforts to enforce Prohibition where it was not wanted led to violence, corruption, bloodshed, and the eventual failure of the amendment (Zywicki 2004). Secretary of the Treasury Andrew Mellon saw these failures first hand and wrote, “The Treasury felt with respect to local law enforcement that too much responsibility had been placed upon the federal government. Even in those states which already had satisfactory state laws, and in which local machinery for enforcement had been provided, citizens and officials were looking to the federal forces for the performance of police duties which were purely local” (Zywicki 2004 p. 18).

Alcohol regulation and jurisprudence of the nineteenth century, the 18th Amendment, and its failures all led to the passage of the 21st Amendment. Nothing in the legislation or history of

alcohol regulation suggests that states needed complete control of interstate commerce powers of alcohol in order to effectively enforce local laws. The history and language of the 21st Amendment confirm this argument.

The 21st Amendment and its Historic and Current Impacts on Interstate Commerce

The failures of Prohibition were so widespread and drastic that it quickly came to an end through the ratification of the 21st Amendment in 1933. Unfortunately, Congress was in such a haste to repeal Prohibition that the language of the 21st Amendment was scarcely debated, and has consequently led to the system of alcohol distribution that we see today.

The language of the 21st Amendment is crucial to understanding the current system of alcohol regulation and distribution. Section 1 of the Amendment simply repeals Prohibition. Section 2 provides that “the transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited”.

As noted earlier, the problem of Prohibition was that it tried to impose Prohibition on communities that did not want it and left the federal government in charge of its national enforcement. The 21st Amendment was intended to restore the constitutional balance of powers that was upset by the 18th Amendment by “removing the federal government from interfering in local affairs regarding alcohol and reinstating state police power authority over alcohol regulation” (Zywicki 2004 p. 18). Additionally, the language of the 21st Amendment constitutionalized the Wilson Act and the Webb-Kenyon Act: “The wording of Section 2... closely follows the Webb-Kenyon and Wilson Acts, expressing the framers’ clear intention of

constitutionalizing the Commerce Clause framework established under those statutes” (Zywicki 2004 p. 19). Senator Borah himself expressed his unease about leaving the Webb-Kenyon Act to the protection of the Supreme Court, and voted to constitutionalize it in order to protect the balance of powers that existed prior to the 18th Amendment’s ratification (Zywicki 2004). Senators Blaine and Wagner worked vigorously on the 21st Amendment, and agreed that its purpose was not to grant states control over interstate commerce of alcohol; rather, it was intended to constitutionalize the Wilson and Webb-Kenyon Acts, restore the pre-Prohibition balance of powers, and protect the states from being forced to accept out-of-state liquors when alcohol was banned by state law (Zywicki 2004).

While the intent of the 21st Amendment was made clear by its authors, the language of the document left much up to interpretation. Not long after the ratification of the amendment, the states began to enact laws and establish distribution requirements, fees, taxes, and other regulations regarding alcoholic beverages. The states believed that the intent of the 21st Amendment was to grant them complete control over the interstate commerce of alcohol. Many alcohol producers and legislators argued against this belief until the Supreme Court finally heard a case concerning the amendment in 1936. “In the case of *State Board of Equalization of California v. Young’s Market*, several wholesale importers filed suit against California for imposing a \$500 licensing fee on out-of-state beer importers claiming that the law violated the dormant commerce clause” (Beliveau 2008 p. 10). The Court ruled that the dormant commerce clause could not supersede the 21st Amendment because it came before the amendment, and that the 21st Amendment gave states total control over interstate commerce of alcohol (Beliveau 2008). The states rejoiced, and immediately heavily regulated alcohol jurisprudence sprung up state by state.

The Proposed Section 3

The debates in Congress over the proposed Section 3 of the 21st Amendment (which was never enacted) further show that the purpose of the amendment was not to grant states complete control over interstate commerce; rather, it was to restore the constitutional balance of powers that had been disrupted by the 18th Amendment. The proposed section decreed, “Congress shall have concurrent power to regulate or prohibit the sale of intoxicating liquors to be drunk on the premises where sold” (Zywicki 2004 p. 20). This provision would have given the federal government “concurrent” powers to regulate saloons and bars; however, due to the Supremacy Clause of the Constitution, federal law would prevail in the event of a conflict with state laws. Senator Wagner disputed Section 3, claiming, “The real cause of the failure of the eighteenth amendment was that it attempted to impose a single standard of conduct upon all people of the United States without regard to local sentiment and local habits. Section 3 of the pending joint resolution proposes to condemn the new amendment to a similar fate of failure and futility” (Zywicki 2004 p. 21). The proposed section was not passed because it essentially left the federal government in charge of policing alcohol in local communities – the very same reason why the 18th Amendment failed. It is important to note, however, that if Section 2 of the amendment was meant to give the states power over interstate commerce of alcohol and if the proposed Section 3 had passed, then the states would have regulated interstate commerce and the federal government would be in charge of all local issues involving alcohol (Zywicki 2004). This is the exact opposite of the balance of power outlined in the Constitution, and it is difficult to imagine that this kind of regime would have been the intent of the United States Congress.

Given the history of alcohol regulation and enforcement in the United States prior to the ratification of the 21st Amendment, it is quite obvious that the states were never meant to be given complete plenary power over interstate commerce of alcohol. Immediately following the amendment's ratification, states rushed to adopt their own systems of regulation, distribution, and economic protectionism. Important Supreme Court cases such as *State Board of Equalization of California v. Young's Market* have upheld both the legitimacy of these laws, and an interpretation of the 21st Amendment that was never meant to exist. The result of this interpretation is a confusing, expensive, and arbitrary distribution system that is threatening the economic stability of the wine industry. Section 2 discusses the distribution system that has sprung up as a result of the 21st Amendment and its impact on wineries everywhere.

Section 2: The Current System and its Impact on the Wine Industry

The Three Tier System

Almost immediately after the ratification of the 21st Amendment, most states rushed to adopt a three tier distribution system under which direct shipment of wine from a winery to a household or retailer is strictly prohibited. Under this system, “alcoholic beverage producers (tier one) must be licensed by the state and can only sell to state-licensed wholesalers (tier two), who collect excise taxes from the producer and provide the states with information about the supplier and the alcohol they purchase. Wholesalers in turn sell to retailers (tier three)” (Beliveau 2008 p. 9). These many stages of contact, transportation, and taxation have a significant effect on the price of wines and consumer choice. This three tier system is hurting the

wine industry by limiting the ability of small wineries to get their product to the market and make profit.

How the Three Tier System Affects the Wine Industry

The three tier system is almost always associated with tied house restrictions, which prohibit the owners of one tier from investing in another tier, preventing vertical integration of the industry. These restrictions were passed in order to prevent a vertically integrated producer from keeping competitors' products from the market and interfering with the retail price of those goods. The unfortunate downside of these laws is that "the associated requirements also serve to impose barriers to entry for new producers such as the small local wineries that were beginning to emerge" (Beliveau 2008 p. 9). Wineries cannot set up their own distribution system due to these laws, and are completely reliant on wholesalers who are extremely selective in the wines that they choose to sell to their retailers. Wineries are able to sell their wines on site, but this system only builds a small clientele. Tied house restrictions prohibit a winery from self-distributing wines, and in the process impose barriers to entry and significantly limit a small winery's market share and profitability.

Additionally, the three tier system explicitly bans the direct shipment of wines to consumers. Currently, it is a felony to directly ship wines to Florida, Georgia, Indiana, Kentucky, Maryland, Tennessee, and Utah (Wines & Vines 2007). The rest of the states have adopted similar laws with lesser punishments. The downside of this ban is that wholesalers cannot represent every wine (as the wine market is vast), and direct shipment bans are detrimental to consumers who find that they cannot purchase their favorite wines because these

wines are not stocked by local retailers. Thus, consumer choice is significantly limited by the three tier system. As well, direct shipment of wines would provide small wineries with another inroad for their product to get to market. The ban of direct shipment leaves wineries throughout the U.S. completely reliant on wholesalers who don't necessarily do the best job and may not have the wineries' best interests at heart.

Another economic folly of the three tier system is the impact that franchise laws have on the producer-wholesaler relationship. Franchise laws reinforce the tied house restrictions and serve as even larger hurdles for small wineries. These laws govern the relationship between wholesalers and producers and impose significant restrictions on small wineries. In most states, franchise laws make it impossible to unilaterally terminate relations with a wholesaler, regardless of that wholesaler's performance (Beliveau 2008). Additionally, wholesalers may pass their distribution rights on to successors if they are going out of business or wish to downsize their number of producers. This creates a system in which a winery is stuck with a distributor once a contract begins. With this knowledge, distributors are more likely to put their own economic interests ahead of the wineries'. Wineries that get stuck with a distributor who underperforms as a result of these franchise laws find their very survival threatened as they have no other means of getting their product to the market and cannot expand their clientele (Beliveau 2008).

Changes in the distribution and wine industries are also creating a number of problems for wineries. The number of wineries is expanding at a rapid rate, fueling the growth of the industry. At the same time, a number of anti-trust laws have forced wholesalers to compete on the basis of cost (Beliveau 2008). This has driven a number of less efficient wholesalers out of business, causing the number of distributors to fall significantly. The reduction in the number of distributors coupled with a growing wine industry means that wineries have fewer outlets to get

their product to the market, and they must compete to get recognition by wholesalers (Reikhof and Sykuta 2005). When retailer concentration is taken into account, the future of the wine industry looks even bleaker: retailers are beginning to limit the number of wines that they offer, and consequently, “competition for shelf space at the retail level places pressure on both the retailer and the distributor to offer recognized brands with established consumer bases, increasing the difficulty small wineries may have in acquiring a distributor” (Beliveau 2008 p. 16). This shrinking number of outlets to the market severely impacts a small winery’s ability to make profit.

Finally, constant changes in regulation on a state-by-state basis are hurting the wine industry. The interpretation of the 21st Amendment has given each state the right to regulate interstate commerce of alcoholic beverages, and establish their own system of laws, distribution, and regulation. No state has the same laws, and these laws are constantly changing and impacting the market. These changes have a significant impact on investor confidence. Investors, unsure about the security of their money in a constantly changing market, are less likely to invest in the wine industry (Nelson and Green 2006) because “changing regulations decrease investor confidence, harming the industry’s already small power to secure financial support. The small winery is the primary driver of recent industry growth and the effect of state alcohol distribution regulations holds the power to destroy their economic viability” (Beliveau 2008 p. 18). The three tier system is hurting small wineries’ ability to procure financing and is consequently severely limiting the expansion and growth of the industry.

The establishment of a three tier system was clearly in the interests of the states. Small wineries wishing to get their product to market are severely hampered by numerous restrictions and doubts created by the three tier system. Direct shipment of wines is banned, but appears to

offer small wineries a means to create market share and profitability; however, wholesalers fight direct shipment to the bitter end. Section 3 analyses the advantages and disadvantages of direct shipment and possible solutions for the problems created by the current system of alcohol distribution and regulation.

Section 3: The Pros and Cons of Direct Shipment

Arguments against Direct Shipment and for the Three Tier System – The Case of the Wholesalers

While the primary defendants in cases involving direct shipment of wines have been the states, those parties who stand to incur losses stemming from direct shipping have also thrown their support behind those who would maintain the longstanding ban. The wholesalers argue that the ban on direct shipment is necessary to enforce state laws including the drinking age, promote temperance, curb alcohol consumption, and collect taxes and fees among other things. Wholesalers have lobbied furiously to maintain this ban.

The very first argument that wholesalers make when debating the issue of direct shipment is that the three tier distribution system is necessary to collect excise taxes and licensing fees from producers and retailers (Beliveau 2008). This argument carries significant weight with the states, which do not wish to lower their revenue. Wholesalers claim that these fees, taxes, and points of contact not only provide the states with necessary funding, but also give them access to a plethora of information about alcohol necessary to prevent bootlegging.

Wholesalers also argue that direct shipment makes it nearly impossible for states to enforce minimum drinking age laws (Wiseman and Ellig 2005). Direct shipment, they claim, inhibits the states' ability to enforce the minimum drinking age because minors can simply order wine over the Internet and gain access to it without verifying their age. This, they maintain, is drastically detrimental to society and strengthens the necessity of using the three tier system.

Distributors assert that the promotion of temperance is central to their campaign against direct shipment. They argue that allowing consumers additional means of purchasing alcohol will ultimately lead to an increase in consumption and therefore immorality. Furthermore, wholesalers and public health groups admit that the three tier system does, in fact, raise the price of wine. However, they argue that a higher price of wine is necessary to curb alcohol consumption (Beliveau 2008). While consumers are slightly worse off, wholesalers maintain that society benefits exponentially from a higher cost of "immorality".

Finally, wholesalers assert that bans on direct shipment do not inhibit competition or consumer choice in the slightest. They argue that "their statutes discriminate against interstate commerce only as it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives" (Beliveau 2008 p. 21). The purpose of a wholesaler is not to inhibit competition or inflate shelf prices; rather, it is to serve the local interests of the community. Wholesalers claim no impact on wine competition.

Despite these points, not much weight is given to the arguments of wholesalers. A Riekhof and Sykuta study has found that "private economic interests, more so than public welfare concerns, seem to have driven most of the changes in direct shipment bans" (Wiseman and Ellig 2004 p. 3). History backs this up: in the state of Florida, wholesalers lobbied the state legislature, fearing that they were losing their grip on the wine market, and now Florida is one of

seven felony states. With private economic interests driving the ban on direct shipment, producers and retailers contend that it is time to bring this perplexing and convoluted system of alcohol regulation to an end.

Arguments for Direct Shipment and against the Three Tier System– The Case of the Small Wineries

Small wineries feel the effects of direct shipment bans more than anyone else. With the current three tier system of alcohol distribution in place, wineries are pushing for the legalization of direct shipment of their wines to consumers in order to generate more market share, and in some cases, stay afloat. They argue that direct shipment is necessary to combat the restrictions of the three tier system, that minimum age verification is guaranteed with direct shipment, that the rest of the world despises the three tier system, and that direct shipping will significantly help a struggling industry.

Small wineries assert that direct shipment is needed for many of the reasons discussed in Section 2. Tied house restrictions inhibit a wineries ability to get their wines to market by prohibiting self-distribution. Wholesalers limit consumer choice by not offering every wine, leaving consumers out of luck and small wineries completely reliant on wholesalers to generate profit. Franchise laws make it impossible to terminate a poorly performing wholesaler, which severely hurts the wineries stuck with these distributors. And finally, constant changes in the market decrease investor confidence and limits funding to the wineries. All of these things significantly hamper a wineries ability to make profit: “The current regulatory patchwork leaves consumers at a loss and small wineries in a bind. Without access to both direct shipping and

self-distribution, some wineries may not be able to expand their sales enough to achieve long term profitability, much less the output levels that would otherwise be attainable” (Beliveau 2008 p. 26). The three tier system threatens small wineries’ very survival, and producers argue that direct shipment must be allowed in order to protect the very economic viability of the industry.

Producers further contend that the current system is unnecessary to meet local moral concerns, but significantly increases the price of wines. This claim is backed up by two Federal Trade Commission (FTC) studies. In 2003, the FTC found that “restrictions imposed by traditional three tier systems and direct shipping bans were not necessary for the alcoholic beverage industry to meet the core concerns of the states but increased consumer prices and decreased selection” (Beliveau 2008 p. 24). Additionally, a 2005 FTC report concluded that “the alcoholic beverage industry has the most expensive distribution system of any packaged-goods industry by far with margins more than twice those in the food business. The report estimates that the three tier distribution system forces an eighteen to twenty-five percent mark-up on wine” (Beliveau 2008 p. 25-26). Small wineries use these studies as support for the elimination of this expensive system, which would bring consumer prices down and enable small wineries to achieve long-term profitability. Not only will it benefit consumers and producers, but local moral concerns can still be addressed without using this three tier system of regulation.

Additionally, producers argue that in a world of globalization, the three tier system is detrimental to international trade. The American alcoholic beverage industry is considered to be one of the most heavily regulated in the entire world. Beliveau notes,

“International trading partners protest that restrictions that are not directly related to important social purposes (such as tax collection, temperance, and restricting sales to minors) should not be tolerated. From their perspective, many aspects of our three tier system unacceptably hamper efficient distribution and unnecessarily inflate shelf prices. They see our cumbersome distribution system as anti-competitive and unfairly favoring local interests, thus decreasing their market access in violation of free-trade treaties” (Beliveau 2008 p. 25).

The three tier system inhibits free trade and unfairly bolsters the state markets. Not only is this unfair to the rest of the world, but it also prevents international wine sellers from gaining access to our markets, further impeding consumer choice. Rather than accept this dilapidated system, the U.S. should adopt a more equitable system of distribution, allowing the direct shipment of wines.

Finally, producers claim that wholesalers’ age verification argument is completely ill-founded. Wholesalers claim that Internet sales of wine provide minors with more outlets to get alcohol, but this is not the case. The direct shipment system requires that a person over the age of 21 sign for delivery of the wine. It is therefore unlikely to assume that a teenager looking to get drunk would order wine over the Internet, wait several days for its arrival, and have someone over the age of 21 willing and able to sign for the delivery of the package. Additionally, a credit card is needed for Internet wine sales, which is currently unavailable to many teenagers.

Zywicki (2004) claims that instead of utilizing this system, teenagers have resorted to other means of acquiring alcoholic beverages such as going to the local 7-Eleven in the hopes that the clerk is underpaid, overworked, and therefore less likely to check ID (2004). The extent to which Internet sales of wine have presented problems with age verification has been minimal.

The FTC has held hearings on the topic, and liquor enforcement officials in the few states that do allow direct shipping have reported “few, if any, problems with direct shipping leading to increased underage access” (Zywicki 2004 p. 1). Furthermore, the FTC has found that “states

that permit direct shipping testified that to the extent that they get complaints about supposed shipments to underage drinkers, those complaints have almost uniformly come from competitors and wholesalers—they almost never receive any complaints from parents saying that their kids bought wine off the Internet” (Zywicki 2004 p. 2). Clearly, direct shipment of wines does not prevent a state from enforcing their minimum drinking age laws. Because of its obvious benefits to small wineries and consumers alike, direct shipment should therefore be allowed.

The arguments of the small wineries make perfect sense from an economic standpoint. The additional benefit from relaxing the three tier system and adopting direct shipping appears to be much greater than the economic cost to wholesalers. Unfortunately, every case challenging the system of regulation and distribution in the courts since the ratification of the 21st Amendment has upheld that the three tier system is completely constitutional, and its use is up to the discretion of the states. The most recent case, *Granholm v. Heald* in 2005, “reaffirmed that under the 21st Amendment a state may implement a three tier system or any other comprehensive system of alcohol regulation as long as the system does not treat in-state and out-of-state alcohol differently” (Beliveau 2008 p. 16). The court also upheld the right of the states to unilaterally ban direct shipment of wine. With this precedence set, it is difficult to envision a future in which the three tier distribution system is completely eradicated and direct shipment is universally allowed. Until this happens, however, the U.S. wine industry could see its very core begin to crumble.

Possible Solutions

This paper has analyzed the history and development of wine regulation, as well as its impact on the wine industry. The wine industry is clearly hurting as a result of an unpredictable and convoluted system of alcohol regulation. So what are possible solutions to remedy these problems? An obvious solution is to place control of regulation back into the hands of the federal government. This would create uniformity in the system and eliminate many of the economic barriers that small wineries face as a result of the current system. States object to federal control, however, for they fear loss of control within their borders. This can be avoided with uniform consistency of regulation through collaboration and compromise of the states, which “could yield the benefits of uniform regulation without unduly restricting states’ rights in this area” (Beliveau 2008 p. 26). It is unlikely to assume that all 50 states will reach a universal agreement about alcohol regulation, however, and so the federal government is much better equipped to handle the interstate commerce and regulation of alcohol. Additionally, direct shipment of wines must be legalized. It will take some time and lobbying, but should the wine industry manage to achieve this landmark, wineries everywhere would see their market share and profitability increase dramatically and consumers will benefit through increased choice of wines. At this time, small, localized wineries lack the political power to accomplish this milestone, but with help from interest groups such as Free the Grapes and other allies, direct shipment can be universally legalized, helping struggling wineries nationwide become more profitable.

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