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Wine wholesalers might stop up out-of-state wine sales direct to customers

By **Brandon Arnold**
Special to The Times



WINE aficionados celebrated the fifth anniversary in May of a landmark Supreme Court ruling that helped to open up direct-to-consumer wine shipping for many Americans. But if a special-interest group gets its way, these liberties will soon be in jeopardy.

The instrument is the Comprehensive Alcohol Regulatory Effectiveness Act, an innocuous-sounding bill with a positively heartwarming acronym, the CARE Act. Really, who could oppose such warm and fuzzy legislation?

In reality, the CARE Act would shut down and probably reverse the growing trend of legalizing direct wine shipping. Even worse, it would essentially eviscerate an important part of the Constitution as it pertains to alcohol.

The history of this story is long and complicated and stems from the post-Prohibition era when state governments created so-called "three-tier" systems for alcohol distribution after the passage of the 21st Amendment, which repealed Prohibition. Such a system mandates a "middleman" for alcohol transactions by requiring producers of alcohol to first sell their products to wholesalers, who can, in turn, sell to retailers, like bars, restaurants and liquor stores. The original purpose of the three-tier system was to get the Mob out of the alcohol business.

Obviously, things have changed quite a bit in the nearly 80 years since the repeal of Prohibition. And slowly but surely our nation has begun to modernize alcohol laws to reflect today's culture.

For instance, more and more states have passed laws allowing producers to skip over the middlemen — the wholesalers — and sell limited quantities of alcohol (usually just wine) directly to consumers. This trend was accelerated in 2005 when proponents of direct-to-consumer wine shipment — a group that includes most everyone except wholesalers and anti-alcohol zealots — scored a significant victory in the *Granholm v. Heald* case.

This U.S. Supreme Court ruling cited the Constitution's Commerce Clause in striking down discriminatory state laws that favor in-state winemakers at the expense of out-of-state winemakers. This meant that if states like Michigan and New York wanted to allow in-state wineries to ship directly to residents, they had to open up the state and allow out-of-state wineries to do the same. Since the ruling, 10 states have modified their laws to allow some form of out-of-state direct wine shipping.

Now the wholesalers are striking back with the CARE Act, which would effectively overturn the *Granholm* case. The bill would block lawsuits that challenge unfair state laws, regardless of their constitutional merit. Several such lawsuits are currently working their way through the judicial system, but would likely be tossed aside if the CARE Act passes.

What's worse, some states would likely take the bait and, in a misguided attempt to help protect in-state wineries, erect barriers that prevent out-of-state wineries from shipping to their residents. These blatantly unconstitutional laws would be virtually immune to any legal challenge.

Wholesalers are pushing this bill in the name of "states' rights" and claiming that by undermining the Commerce Clause, the CARE Act would empower states to better control their alcohol laws. While shifting power out of Washington, D.C., and to state governments is generally preferable, the Commerce Clause serves an essential role in the devolution of power. Its purpose is to prevent states from passing protectionist measures that unfairly disadvantage out-of-state entities. In short, the Commerce Clause makes the United States a large, prosperous free-trade zone.

Shuttering that is not only an affront to the Constitution, but a disservice to consumers, who in the absence of direct-shipping laws would lose access to many wines and would be permitted to drink only what wholesalers allow them to.

That's because in truth, the CARE Act cares little about the Constitution, states' rights and consumers. It cares about only one thing: lining the pockets of alcohol wholesalers.

Brandon Arnold is Cato Institute's director of government affairs.

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