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## Opinion: Beware of whining wholesalers

By Brandon Arnold  
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If a special interest group in Washington, D.C., gets its way, the California wine industry could soon take a serious economic hit. Lobbyists working for alcohol wholesalers are aggressively pushing 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 truth, the CARE Act would shut down and probably reverse the growing trend of legalizing direct-to-consumer wine shipping. This would be devastating for California's wine industry, which generates \$121.8 billion for the U.S. economy. California's small boutique wineries stand to lose the most because — lacking sufficient access to retail channels — they sell a majority of their inventory directly to consumers.

The history of this story is long and complicated, but in short, it all 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created so-called three-tier systems for alcohol distribution after the passage of the 21st Amendment, which repealed Prohibition.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, such as 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. 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 ruling by the U.S. Supreme Court 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 — including those in California — 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. Such laws

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are contrary to the spirit and the purpose of the commerce clause, which effectively turns the United States into a large, prosperous free-trade zone. And these blatantly unconstitutional laws would be virtually immune to any legal challenge.

But they would stand between California's wineries and millions of potential customers who could lose access to their favorite zinfandels and pinot noirs from the Golden State. In the absence of direct shipping laws, consumers 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.

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