STATE IMPOSTS ON INTERSTATE WINE

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE AND FINANCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

SECOND SESSION

ON

H.R. 9029 (and identical bills)

BILLS TO PROHIBIT THE IMPOSITION BY THE STATES OF DISCRIMINATORY BURDENS UPON INTERSTATE COMMERCE IN WINE, AND FOR OTHER PURPOSES

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STATE IMPOSTS ON INTERSTATE WINE

MONDAY, OCTOBER 2, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

This morning the Subcommittee on Commerce and Finance has before it for hearing four identical bills, H.R. 9029, H.R. 9030, H.R. 10448, and H.R. 13826. These bills are sponsored by the entire California delegation in the House, of which I am honored to be a member, and a majority of the delegation from the great State of New York, a total of 50 members.

Under the legislation, Congress finds that the imposition by any State of taxes or other measures which discriminate against wine produced in any other State obstructs commerce.

Section 2 prohibits such discriminatory taxes and other measures. A person engaged in the transportation or importation of wine would, under section 4, have standing to file suit in Federal district court to enjoin the enforcement of such discriminatory taxes or other measures.

Section 3 of the legislation makes it clear that it does not affect the right of any State to engage in the purchase, sale, or distribution of wine, and that would also include exercising the judgment on the part of the State of the preferences of their customers.

It is my belief that the predicament that the wine producers of California, New York, and certain other States find themselves in, results from sloppy drafting of the 21st amendment to the Constitution, which repealed the 18th, or so-called prohibition amendment.

Section 2 of the 21st amendment 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. There is no question but that section 2 of the 21st amendment was intended to permit any State to prohibit the importation of intoxicating liquors, but only if it prohibited the manufacture and sale of such liquors within its borders.

Unfortunately, the courts have seen fit to apply the words rather than the intent of section 2. As a result, today seven States impose discriminatory taxes ranging from 15 cents to $1.50 per gallon on wine produced outside of the State. These taxes, absent section 2 of the 21st amendment, would clearly be unconstitutional.

With the enactment of the legislation before the subcommittee today, it is my expectation that the courts will see the error of their ways and these discriminatory impositions will be avoided.

Before recognizing the first witness, I would like to place in the record a statement from the director of agriculture of the California State Department of Agriculture. (See p. 67.)

(The texts of H.R. 9029, H.R. 9030, H.R. 10448, and H.R. 13826, with departmental reports thereon, follow:)

[H.R. 9029, 92d Cong., 1st sess., introduced by Mr. Sisk (for himself, Mr. Anderson of California, Mr. Bell, Mr. Burton, Mr. Don H. Clausen, Mr. Del Clausen, Mr. Corman, Mr. Danielson, Mr. Dellums, Mr. Edwards of California, Mr. Goldwater, Mr. Gubser, Mr. Hanna, Mr. Hawkins, Mr. Holifield, Mr. Hosmer, Mr. Johnson of California, Mr. Leggett, Mr. McCloskey, Mr. McFall, Mr. Mailliard, Mr. Mathias of California, Mr. Miller of California, Mr. Moss, and Mr. Pettis) on June 9, 1971;

H.R. 9030, 92d Cong., 1st sess., introduced by Mr. Sisk (for himself, Mr. Rees, Mr. Rousselot, Mr. Roybal, Mr. Schmitz, Mr. Smith of California, Mr. Talcott, Mr. Teague of California, Mr. Van Deerlin, Mr. Veysey, Mr. Waldie, Mr. Wiggins, Mr. Bob Wilson, and Mr. Charles H. Wilson) on June 9, 1971;

H.R. 10448, 92d Cong., 1st sess., introduced by Mr. Terry (for himself, Mr. Addabbo, Mr. Biaggi, Mr. Celler, Mrs. Chisholm, Mr. Dulski, Mr. Fish, Mr. Grover, Mr. Halpern, Mr. Hanley, Mr. Hastings, Mr. Kemp, Mr. King, Mr. Koch, Mr. Lent, Mr. McEwen, Mr. Pirnie, Mr. Rangel, Mr. Ryan, Mr. Wolff, and Mr. Wydler) on August 5, 1971, and

H.R. 13826, 92d Cong., 2d sess., introduced by Mr. Stratton on March 15, 1972,

are identical as follows:]

A BILL

To prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Congress finds that the imposition by one State of State taxes, regulations, prohibitions, and requirements which discriminate against wine produced in other States, and the imposition of unreasonable requirements as conditions for shipment into and sale or distribution of wine into a State, materially restrain, impair, and obstruct commerce among the several States.

Congress declares that, in the exercise of the power to regulate commerce among the several States granted to it by article I, section 8, clause 3 of the United States Constitution, its purpose and intent in enacting this Act is to eliminate the obstructions to the free flow of commerce in wine among the several States resulting from acts of the States which impose discriminatory and unreasonable burdens upon such commerce.

SEC. 2. (a) Wherever the law of any State permits the transportation or importation of wine into that State, such State may not impose with respect to any wine produced in another State, or from materials originating in another State, any tax, regulation, prohibition, or requirement which is not equally applicable with respect to wine of like kind (1) produced in, or from materials originating in, the State imposing such tax, regulation, prohibition, or requirement, or (2) produced in, or produced from products produced in, any other State.

(b) A State which permits the sale of wine within the State shall permit the transportation or importation of wine of like kind produced in other States, or from materials originating in other States, into said State for sale therein upon terms and conditions equally applicable to all wine of like kind sold in the State

(c) Wherever the law of any State permits the trans-

portation or importation of wine into that State, such State may not impose with respect to such wine any prohibition or requirement which unreasonably impairs the free flow of commerce in such wine among the several States.

SEC. 3. Nothing contained in this Act shall effect the right of a State, subject to the provisions of section 2 hereof, to engage in the purchase, sale, or distribution of wine.

SEC. 4. Whenever any person engaged in the transportation or importation into any State or the distribution within any State of any wine, or any product intended for use in the production of any wine has reason to believe that such State has violated any of the provisions of section 2 of this Act, such person may file in a district court of the United States of competent jurisdiction, a civil action to enjoin the enforcement thereof. Such court shall have jurisdiction to hear and determine such action, and to enter therein such preliminary and permanent orders, decrees, and judgments as it shall determine to be required to prevent any violation of section 2.

SEC. 5. As used in this Act—

(1) the term "State" means any State of the United States, any political subdivision of any such State, any department, agency, or instrumentality of one or more such States or political subdivisions, and the Commonwealth of Puerto Rico; and

(2) the term "person" means any individual and any corporation, partnership, association, or other business entity organized and existing under the law of the United States or of any State.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., December 20, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives.

DEAR MR. CHAIRMAN: Your letter of June 11, 1971, requested the views of this Department on H.R. 9029, a bill "To prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine, and for other purposes."

This bill provides that any State which permits the sale of wine within the State shall permit the transportation or importation of wine of like kind produced in other States, or from materials originating in other States, into said State for sale therein upon terms and conditions equally applicable to all wine of like kind sold in the State. It further provides that whenever the law of any State permits the transportation or importation of wine into that State, such State may not impose with respect to such wine any prohibition or requirement which unreasonably impairs the free flow of commerce in such wine among the several States.

The Department has no objection to the enactment of H.R. 9029, but defers to the Department of Justice as to its constitutionality. The Department has consistently opposed trade barriers among the States, especially in the flow of agricultural products. We believe that commerce between the States should be free and unencumbered; that farmers from all areas should have equal access to the marketplace.

The enactment of H.R. 9029 would have no measurable impact upon the environment.

Enactment of this proposed legislation will not involve any funds of this Department.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

DEPARTMENT OF COMMERCE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., January 3, 1972.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to H.R. 9029, a bill "To prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine, and for other purposes."

This bill would prohibit any State from imposing a tax, regulation, prohibition, or requirement that discriminates against importation or sale of wine produced in another State. The bill would also prohibit any State, which permits the transportation or importation of wine therein, from imposing any prohibition or requirement unreasonably impairing the free flow of commerce in wine among the several States. State actions could be challenged in Federal district courts.

The Department of Commerce favors the objective of H.R. 9029, but defers to the Department of Justice because of a constitutional issue raised by the bill.

Seven States impose discriminatory taxes on wines produced in other States. Wines (except for expensive European imports) are very price-competitive, so the tax differentials, which range from 15¢ to $1.50 per gallon, discourage or prevent out-of-state producers from entering the market in those seven States. This protects home state wineries but provides customers with fewer choices at higher prices.

The taxes in those seven States also discriminate against wines imported into the United States from foreign countries.

This discrimination may violate our bilateral treaties of friendship, commerce and navigation with other wine-producing nations. The language of H.R. 9029, as drafted, would only prohibit discrimination against wines produced in other States of the Union. We believe that the bill should be worded to prohibit discrimination against any out-of-state wines.

As to the constitutional question, Section 2 of the 21st Amendment may constitute a grant to the States of exclusive authority over alcoholic beverage control (and therefore an exception to the Interstate Commerce Clause of the Constitution).

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

KARL E. BAKKE,
Acting General Counsel.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., January 3, 1972.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 9029, to prohibit the imposition by the states of discriminatory burdens upon interstate commerce in wine, and for other purposes.

The Department takes no position on the merits of the bill and limits its comments to the legal issues involved. The Twenty-first Amendment to the Constitution repealed the Eighteenth (Prohibition) Amendment. It also forbids the transportation or importation of intoxicating liquors into any state for use in the state in violation of state law. In a series of interpretative decisions rendered shortly after ratification of the Amendment, the Supreme Court established the proposition that states are thus competent under the Twenty-first Amendment to adopt legislation discriminating against intoxicating liquors imported from other states in favor of those from within the state. The Court has said that such discrimination is not limited by the commerce clause. *E.g., State Bd.* v. *Young's Market Co.*, 299 U.S. 59 (1936).

The bill would have Congress make findings that the imposition by states of taxes which discriminate against out of state wine obstructs commerce. It would prohibit states which permit the sale of wine within the state from imposing discriminatory measures on wine from without the state. Persons engaged in the transportation or importation of wine would have standing to file suit in Federal district court to enjoin the enforcement of discriminatory state laws.

The purpose of the bill, which we understand is supported by the California-based Wine Institute, is presumably to set up a new test case in the courts as to the scope of the Twenty-first Amendment. The sponsors of the bill may feel that there is a better chance of getting the Supreme Court to reverse itself if Congress legislates in this area. We doubt however that the findings by Congress based on the commerce clause would be of any particular help in such a test case since this does not seem to be an area where the Constitution confers on Congress the right to define the scope of the Amendment by legislation.

We can not say, of course, that it is impossible to suppose that the Supreme Court might change its position on this matter. There is evidence that the

original purpose of the Amendment was to permit dry states to protect themselves from importation of liquor rather than to permit liquor producing states from erecting trade barriers against out-of-state products. Generally speaking, there has always been a strong policy in favor of interpreting the Constitution to prohibit such barriers.

Nevertheless, we feel it appropriate to inform the Committee that if the Congress were to enact H.R. 9029, it would be necessary for the Supreme Court to reverse a well established line of precedents in order for this legislation to be sustained.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., December 14, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Office of Management and Budget on H.R. 9029, a bill "To prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine, and for other purposes."

This bill would declare that the intent of Congress, in its exercise of the power to regulate interstate commerce, is to eliminate discriminatory and unreasonable burdens upon the free flow of commerce in wines among the States.

The Office of Management and Budget favors the objectives of H.R. 9029, in that we believe that commerce between the States should be free of discriminatory and unreasonable obstructions. We recommend that, in its deliberation on this bill, the Committee give careful consideration to the views expressed in the report of the Department of Justice.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF THE TREASURY,
Washington, D.C., December 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of June 11 for the views of this Department on H.R. 9029, "A BILL to prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine, and for other purposes."

H.R. 9029 is directed solely to State taxes and regulations relating to wine. It would not affect the laws relating to alcoholic beverages administered by this Department. We, therefore, have no comments to offer with respect to the proposed legislation.

The Office of Management and Budget has advised the Treasury Department that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely yours,

JOHN S. NOLAN,
Deputy Assistant Secretary.

Mr. Moss. It is now my pleasure to recognize a fellow Californian, the Honorable B. F. Sisk.

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SISK. Thank you very much, Mr. Chairman.

It is certainly a pleasure to be able to speak on behalf of the California delegation, and especially to appear before a fellow member of that delegation. Although some members of the delegation will be submitting their own statements, Mr. Chairman, they have all joined, as you have indicated, in H.R. 9029 and H.R. 9030. I might say the following members join in this brief statement which I will be making: Congressmen Harold T. Johnson, Alphonzo Bell, Charles Gubser, Don Edwards, Chet Holifield, Edward R. Roybal, Don H. Clausen, Charles M. Teague, James C. Corman, John J. McFall, Robert B. Mathias, Jerome R. Waldie, and George E. Danielson.

Mr. Chairman, in the early history of the United States, commerce was inhibited through the means of artificial barriers to trade set up by one State against products entering from another State. This is much the same situation that exists today in regard to the shipment of wines from State to State. California, of course, as the largest wine-producing State of the 50, is vitally concerned with this problem. The bills we have introduced would prohibit the imposition by the States of discriminatory burdens on interstate commerce in wine.

At the present time, some States impose arbitrary licensing, storage, and marketing regulations, as well as discriminatory taxes on wine imported from other States, while not placing the same regulations on wine produced within the State. This tax, in some instances, is as much as $2 per gallon on out-of-State wines, whereas, local wines are taxed at a rate of $1 a gallon.

The vehicle for these discriminatory taxes is section 2 of the 21st amendment, adopted in 1933, which prohibits the transportation or importation into any State of intoxicating liquors in violation of the law. States using it are misinterpreting it. The legislative history of this section clearly indicates it was only intended to protect those States wishing to remain dry after the repeal of prohibition. It is being used by States which permit the sale of wine.

The two bills reassert congressional intent that where States permit the sale of wine, all wines, whether produced within State borders or imported from another State, will be treated equally. Most other products in our economy move freely from State to State, and to continue the restriction against the movement of wine is discriminatory.

Thank you, Mr. Chairman. That concludes my statement.

Mr. Chairman, if I could just briefly mention this. Upon his appearance before your committee, Mr. Jefferson Peyser, who is representing the California Wine Institute, will be discussing some amendments. I simply wanted to mention particularly one amendment which he will be discussing in section 3. This is brought about by the fact that apparently a few of the control States have indicated some feeling that there might be some imposition upon them in which they would be expected to take wines without, let's say, having the discretion as to the types, and so on.

Now, in section 3, of course, it simply reads "Nothing contained in this act shall affect the right of a State subject to the provisions of

section 2 to engage in the purchase, sale, or distribution." They propose an amendment to make clear that they will have discretion in selection, and by striking the period at the end of that, and inserting "and the right to exercise discretion in the selection of wines to be purchased or to be sold."

As I said, he will be discussing some other amendments which the committee may, in its wisdom, of course, see a desire to adopt, or may not, as the case may be. But again, there has been every attempt here to meet any objections from the control States and make certain that all we seek here is open and fair treatment on a nondiscriminatory basis.

I thank you very much.

Mr. Moss. I thank you. I would like to say that the Chair intends to propose to the subcommittee the clarifying amendment, and to insure that the report accompanying the legislation will make very explicit the right of the State to exercise discretion reflecting customer preferences.

Are there any questions? Thank you, Mr. Sisk.

It is now my privilege to recognize, as a northern California Representative, the dean of the northern California delegation, the Honorable George P. Miller.

STATEMENT OF HON. GEORGE P. MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MILLER. Thank you, Mr. Chairman.

I join my fellow Californians in supporting this bill. I wanted to come down here and show by my presence that I am very much concerned with it. I could tell you nothing that Mr. Sisk has not told you. I subscribe to what he has said, and commend him to you.

While I am here, I may say that I am sure you remember, as a former member of the California assembly, the fine service given it by Mr. Jefferson Peyser, who will appear before you, and who was a member of that body.

Mr. Moss. Oh, I do, indeed.

Mr. MILLER. I think it was a bit before you were, because we were colleagues.

Mr. Moss. Thank you.

Our next witness is the Honorable John Terry, of New York. It is very pleasant to have you with us representing another great State producing some very fine wines.

STATEMENT OF HON. JOHN H. TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. TERRY. Thank you, Mr. Chairman and members of the committee.

I wish to extend my appreciation to the subcommittee for scheduling hearings on the proposal to establish regulations to permit consistent and equitable application of taxes on the sale of wine.

The history of this Nation's commerce has been one in which the Congress and the Supreme Court have moved as one to provide a free flow of goods between States. A fundamental principle of the United

States is to provide a basis for commercial competition on a national basis which treats all competitors fairly.

Section 2 of the 21st amendment today is being used by a number of States to restrict competition in the wine industry in a manner which is inconsistent with the standards of this Nation. The original intent of this section was to grant States the option of remaining so-called dry States once prohibition was repealed. The intention of the section was not to impose a discriminatory tax against the manufacture of alcoholic beverages. But that is the manner in which it is currently being utilized. The phrasing of the section is:

> 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.

The wording of that section is obviously related to the importation of alcoholic beverages into areas which prohibit any sale of alcohol.

The proposal before the subcommittee today would prohibit discriminatory State legislative barriers on the interstate shipment of wine by the various States.

Article I, section 8, clause 3 of the Constitution empowers Congress to regulate commerce between the States. We have the authority by legislative and judicial precedent to restrict the discriminatory taxes imposed by some States on the sale of wine.

The proposal before you today reasserts congressional intent by providing that where States permit the sale of wines, that such wines, whether produced within the State or imported from another State of the Union, will be treated equitably, equally, and in a manner consistent with the free flow of interstate commerce. Other commodities do move freely between the States. There is no reason why wine should be any different.

As an example of the discriminatory taxes, in a number of States a winery must register its brands or types with the State liquor authority. In one State, the registration is $3 per brand for out-of-State wines, and no imposition for wines produced within that State. In another instance, the permit is $20 per brand. This type of discriminatory taxation merely serves as a retardant for the growth of the wine industry.

As Members of the House, we are all acutely aware of the need for providing an expanding economy to provide a better basis for jobs. Passage of the proposal before you today would eliminate a discriminatory tax and provide a basis for expanding our economy on a national basis.

I would be delighted to answer any questions that you might have.

Mr. Moss. You might say we are attempting to reestablish our original common market.

Mr. TERRY. Yes, sir.

Mr. Moss. I thank you for your statement.

Are there any questions?

Mr. MCCOLLISTER. I have no questions. I merely want to pay tribute to our distinguished colleague from New York for his statement and interest and presence here.

Mr. TERRY. Thank you very much, Mr. McCollister.

Mr. Moss. Our next witness is another colleague from our great State of California, the Honorable Robert L. Leggett. You are welcome sir, to our proceedings.

STATEMENT OF HON. ROBERT L. LEGGETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LEGGETT. Thank you, Mr. Chairman. I'm here today to speak in favor of legislation which on its face concerns only the State of California, but actually affects the future of interstate trade throughout the country. It has been noted that the entire California delegation has cosponsored this legislation; nevertheless, the concerns of H.R. 9029 are far from parochial.

H.R. 9029 and H.R. 9030 seek to prohibit the imposition of discriminatory State legislative barriers on the interstate shipment of wine by the various States, some of which impose as much as $2 per gallon tax on out-of-State wine and tax locally produced wine only $1 per gallon. It is difficult for me to understand how or why these barriers arose in the first place. I was under the impression that most interstate trade barriers were abolished along with the Articles of Confederation in 1789. Apparently, however, many artificial barriers remain.

Why, Mr. Chairman, do we have State taxes on out-of-State wine? Competition from out-of-State wine is not a serious problem for most areas simply because suitable wine growing areas are scarce. Furthermore, out-of-State wine can't possibly displace a significant percentage of any local labor force because, due to the nature of the act, the wine industry employs very few people. In California, the largest wine-growing State in the Nation, only 4,000 people were employed in 1967 by the wine and brandy industry; 4,000 employees for a wine industry that ranks with the best in the world. In light of this figure, I fail to see how any area can rationalize the use of interstate taxes for the purpose of bolstering local employment.

Wine making is as much an art as it is a science and an industry. The production of quality wine requires a special climate, rare know-how, and a good deal of luck. If any area can combine those three elements then it need not resort to discriminatory laws in order to sell the product; it will sell itself.

In California we are fortunate to have an ideal wine production climate. We have the know-how, and very often the necessary luck. There is no doubt that we have a tremendous jump on other wine-producing areas. Nevertheless, the California wine industry will never be able to monopolize the U.S. wine market.

In the last few years this country has seen a tremendous increase in the per capita level of wine consumption. This level doesn't yet compare with the European nations, but the sudden surge of interest in wine is especially impressive. Most predictions that I have seen expect this new-found interest in wine by Americans to continue. In other words, there is plenty of room for new wine producers. The demand is there. It isn't necessary to resort to arbitrary licensing, storage, and tax regulations to insure the financial success of new wine enterprises. If local producers have the unique ability that it takes to produce quality wine, they need not fear out-of-State competition.

This country is based on the philosophy of free enterprise, the ability of one product to compete with another unencumbered by artificial barriers. This legislation only seeks a return to this philosophy by ex-

tending to the wine industry the same freedom that we uniformly accord to all other products.

Mr. Moss. Thank you, Mr. Leggett, for an interesting and instructive statement.

Mr. LEGGETT. It was my pleasure, Mr. Chairman.

Mr. Moss. Our next witness is a member of the full committee, Congressman James F. Hastings, from the State of New York. Welcome, sir, and proceed as you see fit.

STATEMENT OF HON. JAMES F. HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HASTINGS. Thank you, Mr. Chairman. As a cosponsor of this legislation, which prohibits the imposition by the States of discriminatory burdens upon interstate commerce in wine, I am concerned about the current State regulations which impose financial and administrative hardships on out-of-State wine producers.

The American wine producer seeking to do business in interstate commerce is faced with a perplexing maze of State laws, regulations, and interpretations through which he must thread in order to market his product. The Balkanized state of alcoholic beverage laws is the result of the historical process caused by enactment of the 18th amendment to the U.S. Constitution, which heralded the advent of prohibition, and the subsequent enactment of the 21st amendment which brought prohibition to a close.

In the Brandeis decisions, the shape of the present alcoholic beverage laws was outlined. In those decisions, the 21st amendment was interpreted as giving each State the right to enact or impose any restrictions that they saw fit. The equal-protection clause, the due-process clause, the privileges-and-immunities clause, and other Federal constitutional safeguards have been interpreted as not applying to the alcoholic beverage industry. This integration meant that the powers of the States in enacting laws relating to alcoholic beverages was virtually unlimited. Because of the Brandeis decisions, many unreasonable and many discriminatory State laws have been enacted which constitute trade barriers against wine.

A review of the State laws applying to wine reveals that in seven States a greater excise tax is imposed upon wine emanating from outside the taxing State. In these seven States, a wine produced elsewhere, including other States of the United States, is taxed at a higher rate than wine produced within the taxing State.

In a number of States, the license fee for a winery producing wine from agricultural products grown within the State is less than the fee for a winery producing wine from agricultural products grown outside the State.

Some States require an out-of-State shipper to obtain a license or permit before shipping wine into the State. In one State the shipper must obtain a certificate of compliance at no fee. In another State the out-of-State shipper soliciting wholesalers within the State, must, himself, obtain a State wholesalers license ranging in fee from $900 to $1,500 annually.

An out-of-State firm soliciting in and/or shipping wine to a certain State is required to obtain a nonresidents license. The annual fees for this license are based on annual billing, ranging from $250 for a firm

billing over $50,000 annually to $3,000 for a firm billing over $3 million annually. Out-of-State firms with billings of less than $50,000 annually must be represented by a "resident broker" whose place of business is located within the State and who pays an annual fee of $250 which entitles him to represent five firms.

An out-of-State shipper's permit in a substantial amount is good neither for the wine industry nor the consumer. California, and other States, have many small wineries who are precluded from doing business in many States requiring out-of-State shippers license. The reason is simple: Their volume of business in a given State would not justify a fee of, for example, $200. Thus, these small wineries lose a legitimate source of business and the consumer is given less product choice.

In order to ship into a number of States, a winery must register its brands or types with the State liquor authority. In one State the registration fee is $3 per brand. In another it is $20 per brand label.

In some States an out-of-State supplier must appoint a registered agent within the State. In some instances the representative must be a resident of the State. However, in one State an out-of-State winery is limited to only two representatives within the State.

A winery wishing to sell to private licensees in one State must submit a sample of each type of wine and pay a fee for each item to cover costs of analysis. The wine must meet the State's standards of identity, which differ in some respects from the Federal standards. So a wine may be legal in one State but illegal in another, despite the fact that the wine is sound and palatable.

The area of advertising creates additional serious problems. In one State advertising of wine is prohibited altogether.

In another State intrastate advertising for off-premise consumption is prohibited. However, on-salers may have limited advertising.

About one-half of the States prohibit a supplier from furnishing signs and special materials to retailers—something that is standard marketing procedure for other lawful products. In some States a supplier may furnish signs to on-sale premises but not to off-sale stores.

In a few States, a supplier can install outside signs, but not in most. In another State one can install point-of-purchase materials provided they may not be seen from the outside. In one State no ad may show the likeness of a woman.

In addition to the aforementioned discriminatory taxes against wine, the area of taxation affords other examples of burdensome lack of uniformity in State laws.

State excise taxes on wines vary in rate as greatly as the systems of collection differ: From 1 cent per gallon on table wine in one State to $1.50 per gallon in another; from 2 cents per gallon on dessert wine to $2.50 per gallon. Seventeen States have a greater excise tax on champagne and sparkling wines than on table wines. Two States levy a different rate of tax on carbonated wines than on sparkling wines. In two States the tax rate on vermouth differs from the rate for other dessert wines.

In order to ship wine into a number of States, the out-of-State winery must secure identification seals from the local alcoholic beverage control board and affix them to the bottle immediately above the label before shipping into those States. These identification seals have no tax value as such.

Two States require the affixation of case seals. One State requires the affixation of special case certification labels before shipping a case of wine into the State.

In two States taxes are paid by affixing tax stamps to the case. However, in the majority of the States wine excise taxes are collected by means of a return system.

The above examples should furnish an indication of the numerous difficulties attendant upon the production, transportation, and sale of wine, a lawful product, in the various States. Therefore, the necessity of corrective Federal legislation should be apparent.

The sole purpose of H.R. 9029 is to prohibit one State from enacting legislation against wine producers in another State. May I, therefore, request that final committee action be taken on this bill and that it receive unanimous support by my colleagues when it is voted upon in the House.

Mr. Moss. Thank you, Mr. Hastings, for an illuminating presentation.

The next witness will be Mr. Jefferson Peyser, representing the Wine Institute, State of California.

STATEMENT OF JEFFERSON E. PEYSER, GENERAL COUNSEL, THE WINE INSTITUTE

Mr. PEYSER. Mr. Chairman and gentlemen of the committee: May I express my appreciation for the opportunity of being here.

Mr. Moss. Would you like to have your entire statement placed in the record in order that you might summarize, if you desire?

Mr. PEYSER. Yes.

Mr. Moss. Without objection, the entire statement will be included in the record.

Mr. PEYSER. The sole purpose of H.R. 9029 is to prohibit one State from enacting discriminatory legislation against wine produced in another State.

It should be made very clear, gentlemen of the committee, that this proposed legislation in no way affects the right of a State to regulate and control the manufacture, sale, or distribution of wine within its borders. It does not affect the right of a State to legislate in any way necessary pursuant to its police powers. It does not affect the right of a State to prohibit the sale of alcoholic beverages. It does not in any way affect the right of any State to levy excise or other taxes or license fees upon wine. It does propose an end to economic discrimination by prohibiting legislation within a State which discriminates against wines produced outside the State.

Let me call your attention to section 2(a), page 2, lines 9 and 10 of the bill. Here it is stated, "Whenever the law of any State permits the transportation or importation of wine into that State * * *" On line 19, paragraph (b), it provides, "A State which permits the sale of wine within the State * * *"

Clearly, therefore, the proposed legislation applies only when the State permits the importation and sale of wine within its borders.

There are 17 so-called monopoly States; that is, States which themselves are engaged in the sale and distribution of alcoholic beverages.

Section 3 provides that this right shall not be affected, but prohibits discriminatory legislation against wine produced out of State.

Some concern has been expressed by the control States that this bill would require them to purchase all brands of alcoholic beverages. This, of course, is not so, and I requested them to submit an amendment to clarify this point. They have not done so, and, therefore, I am respectfully requesting an amendment that will clarify the matter—on page 3, section 3 of the bill, line 7, after the word "wine" insert "and the right to exercise discretion in the selection of wine to be purchased or to be sold."

A review of State laws reveals that in seven States a greater excise tax is imposed upon wine emanating from outside the taxing State. For example, in one State, the tax on wine produced within the State is 5 cents per gallon, and the tax imposed on wine produced without the State is 75 cents per gallon.

In a number of States, an out-of-State firm soliciting in, and/or shipping wine into a State is required to obtain a nonresident license fee which, in the case of one State, ranges from $250 to $3,000 annually.

Many other forms of discrimination in connection with the sale of out-of-State wines are in effect.

This proposed legislation is within the power and scope of the Congress, and is constitutional. Even if one chooses to follow the Brandeis decisions and ignore totally the congressional debates on section 2 of the 21st amendment, the proposed legislation is constitutional. The Congress has the power to legislate in constitutional areas in which the Supreme Court has not spoken. At no time since the enactment of the 21st amendment has the Supreme Court considered the validity of discriminatory excise taxation of wine or other alcoholic beverages.

The Congress is constantly expanding traditional notions of constitutional doctrine by acting, under the Constitution, in areas in which the Supreme Court has not previously spoken. It is then up to the Supreme Court to decide whether such action, if challenged, is, in fact, constitutional.

Such legislative action is so common, one example will suffice. The Civil Rights Act of 1964 forbids racial discrimination in public accommodations that affect interstate commerce—theaters, hotels, and restaurants. Congress chose to base this act on its power over commerce, rather than on the due process or equal protection clauses of the 14th amendment, even though the commerce clause says nothing about civil rights.

The act was immediately challenged in the courts on the theory that Congress had exceeded its authority over commerce by striving to regulate purely local operations. The Court upheld the act in its landmark decision of *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 249 (1964). See also *Katzenbach* v. *McClung*, 379 U.S. 294 (1964).

The legislative history of the 21st amendment shows clearly that there is no evidence the Congress intended to permit States to Balkanize this country. The only purpose of section 2 was to perpetuate the protection given to dry States to remain dry by the Webb-Kenyon Act.

Senator Borah, after reviewing the "History of the Right of Dry

States To Remain Dry and Be Protected," spoke against a motion from the floor by Senator Robinson of Arkansas to strike out section 2. He said, and I quote:

> Mr. President, as I understand, this is the question of striking out section 2, which provides for the protection of the so-called dry States * * *.
>
> I look upon this provision of the amendment as vital. It does not seem to me that we can afford to strip the amendment of all that which protects the dry States. Indeed, if I understand the two platforms, this is a part of the pledge of the platform * * *.
>
> Mr. President, it has been said that the Webb-Kenyon Act is sufficient protection to the dry States. The Webb-Kenyon Act was sustained by the Supreme Court of the United States by a divided court * * *.
>
> Secondly, we are asking the dry States to rely upon the Congress of the United States to maintain indefinitely the Webb-Kenyon law.
>
> Mr. President, I want to go back a little in the discussion of the matter to the history of the fight of the dry States to remain dry and be protected . . . (76 Congressional Record 4170–4171.)

Senator Borah then discussed the *Clark Distilling* case and other Supreme Court cases under the Webb-Kenyon Act. After demonstrating that those cases did not, in fact, actually deter importation into dry States from wet, he concluded that:

> We must have some other method, some other provision of the Constitution than those which existed prior to the adoption of the 18th amendment, in order to protect those States wishing to remain dry after repeal.
>
> All this was sought to be remedied by the Webb-Kenyon Act. I am very glad the able Senator from Arkansas has seen fit to recognize the justice and fairness to the States of incorporating it permanently into the Constitution of the United States. (76 Congressional Record, 4172.)

Even if we wished to ignore the intent of the Congress as evidenced by the congressional debates on section 2 of the 21st amendment, this legislation is not unconstitutional per se because section 2 of the 21st amendment does not state anywhere that one State has the right to discriminate against the products of another State.

The history of the Supreme Court is studied with examples of frequently overdue but often dramatic reversals. *Erie R. Co.* v. *Tomkins*, 304 U.S. 64 (1938), per Mr. Justice Brandeis, by the way, reversed the 96-year-old precedent established by *Swift* v. *Tyson*, 16 Pet. 1 (1842); *Brown* v. *Board of Education*, 347 U.S. 403 (1954) specifically overruled *Cumming* v. *Board of Education*, 175 U.S. 528 (1899); and *Gong Lum* v. *Rice*, 275 U.S. —— (1927).

The number of such reversals is legion. A compilation of some is in the Brandeis dissent in *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393, n. 406–409 (1932).

As recently as February 24, 1971, in *Harris* v. *New York*, 39 L.W. 4281 (1971) the Supreme Court retracted from its landmark decision in *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

By reason of all the foregoing, it is respectfully submitted to this committee that the merits of this proposed legislation urge its passage. Wine is a legal commodity under the laws of the United States and of the various States. It is known that States may regulate it under their police power. There appears to be no reason why wine should be a subject of discrimination between the States. Such discrimination is not permitted in regard to shirts, shoes, clothes, food, or any other commodity. It is not permitted against any other food, and certainly should not be permitted against wine.

Nothing in this proposed legislation interferes with the State's right to regulate or even prohibit; it merely destroys the right of one State to discriminate against the product of another State.

We are well aware that certain exceptions have been taken to this proposed legislation. While we regard such exceptions as not well founded, I will hereby suggest that the committee consider amending the legislation as follows in order to obviate such objections.

Now, Mr. Chairman, if you wish me to read these amendments, I will.

Mr. Moss. The material is now in the record.

Mr. PEYSER. The only one I wish to reemphasize is the one with regard to section 3.

Now, section 3, as has been stated by Congressman Sisk, completely excludes control States from the purview of this legislation, other than that they must not discriminate against out-of-State wines. They did express some concern to me that they would have to buy everybody's wines and that they would have no discretion as to which wines they could purchase or sell.

So the amendment which we are proposing, and which we request that this honorable committee adopt, is to add, after the last word "wine" in section 3, strike the period and insert a comma ", and the right to exercise discretion in the selection of wines to be purchased or to be sold."

I believe that is all. Thank you very much.

(Mr. Peyser's prepared statement follows:)

STATEMENT OF JEFFERSON E. PEYSER, GENERAL COUNSEL, THE WINE INSTITUTE

Mr. Chairman and Gentlemen of the Committee, the sole purpose of H.R. 9029 is to prohibit one state from enacting discriminatory legislation against wine produced in another state.

This proposed legislation in no way affects the right of a state to regulate and control the manufacture, sale or distribution of wine within its borders. It does not affect the right of a state to legislate in any way necessary pursuant to its police powers. It does not affect the right of a state to prohibit the sale of alcoholic beverages. It does not in any way affect the right of any state to levy excise or other taxes or license fees upon wine. It does propose an end to economic discrimination by prohibiting legislation within a state which discriminates against wines produced outside the state.

Let me call your attention to Section 2(a) page 2, lines 9 and 10. Here it is stated, "Whenever the law of any state permits the transportation or importation of wine into that state * * *" On line 19, paragraph (b), it provides, "A state which permits the sale of wine within the state * * *"

Clearly therefore the proposed legislation applies only when the state permits the importation and sale of wine within its borders.

There are 17 so-called monopoly states, that is states which themselves are engaged in the sale and distribution of alcoholic beverages. Section 3 provides that this right shall not be affected but prohibits discriminatory legislation against wine produced out of state.

Some concern has been expressed by the Control States that this bill would require them to purchase *all* brands of alcoholic beverages. This, of course, is not so and I requested them to submit an amendment to clarify this point. They have not done so and therefore I am requesting an amendment that will clarify the matter.

A review of state laws reveals that in seven states a greater excise tax is imposed upon wine emanating from outside the taxing state. For example, in one state, the tax on wine produced within the state is 5 cents per gallon and the tax imposed on wine produced without the state is 75 cents per gallon.

In a number of states an out-of-state firm soliciting in, and/or shipping wine into a state is required to obtain a non-resident license fee which in the case of one state ranges from $250 to $3,000 annually.

Many other forms of discrimination in connection with the sale of out-of-state wines are in effect.

This proposed legislation is within the power and scope of the Congress and is constitutional. Even if one chooses to follow the Brandeis decisions and ignore totally the congressional debates on Section 2 of the 21st Amendment, the proposed legislation is constitutional. The Congress has power to legislate in constitutional areas in which the Supreme Court has not spoken. *At no time since the enactment of the 21st Amendment has the Supreme Court considered the validity of discriminatory excise taxation of wine or other alcoholic beverages.*

The Congress is constantly expanding traditional notions of constitutional doctrine by acting, under the Constitution, in areas in which the Supreme Court has not previously spoken. It is then up to the Supreme Court to decide whether such action, if challenged, is in fact Constitutional.

Such legislative action is so common, one example will suffice. The Civil Rights Act of 1964 forbids racial discrimination in public accommodations that affect interstate commerce (theatres, hotels, restaurants). Congress chose to base this act on its power over commerce rather than on the due process or equal protection clauses of the 14th Amendment even though the commerce clause says nothing about civil rights.

The act was immediately challenged in the courts on the theory that Congress had exceeded its authority over commerce by striving to regulate purely "local" operations. The Court upheld the act in its landmark decision of *Heart of Atlanta Motel, Inc.* v. *U.S.*, 379 U.S. 241 (1963) (See also, *Katzenbach* v. *McClung*, 379 U.S. 294 (1964)).

The legislative history of the 21st Amendment shows clearly that there is no evidence the Congress intended to permit states to Balkanize this country. The only purpose of Section 2 was to perpetuate the protection given to dry states to remain dry by the Webb-Kenyon Act.

Senator Borah, 76 Congressional Record, 4170, after reviewing the "history of the right of dry states to remain dry and be protected" spoke against a motion from the floor by Senator Robinson of Arkansas to strike out Section 2. He stated, and I quote

"Mr. President, as I understand, this is the question of striking out Section 2, which provides for the protection of the so-called dry states * * *.

"I look upon this provision of the amendment as vital. It does not seem to me that we can afford to strip the amendment of all that which protects the dry states. Indeed, if I understand the two platforms, that is a part of the pledge of the platforms * * *.

"Mr. President, it has been said that the Webb-Kenyon Act is sufficient protection to the dry states. The Webb-Kenyon Act was sustained by the Supreme Court of the United States by a divided court * * *.

"Secondly, we are asking the dry states to rely upon the Congress of the United States to maintain indefinitely the Webb-Kenyon law.

"Mr. President, I want to go back a little in the discussion of the matter to the history of the fight of the dry states to remain dry and be protected * * *." 76 Congressional Record, 4170–4171.

Senator Borah then discussed the Clark distilling case and other Supreme Court cases under the Webb-Kenyon Act. After demonstrating that those cases did not in fact actually deter importation into dry states from wet, he concluded that "We must have some other method, some other provision of the Constitution than those which existed prior to the adoption of the 18th Amendment, in order to protect those states wishing to remain dry after repeal." 76 Congressional Record, 4172.

"All this, he continued, was sought to be remedied by the Webb-Kenyon Act. I am very glad the able senator from Arkansas has seen fit to recognize the justice and fairness to the states of incorporating it permanently into the Constitution of the United States." 76 Congressional Record, 4172.

Even if we wished to ignore the intent of the Congress as evidenced by the Congressional debates on Section 2 of the 21st Amendment, this legislation is not unconstitutional *per se* because Section 2 of the 21st Amendment does not state anywhere that one state has the right to discriminate against the other.

The history of the Supreme Court is studded with examples of frequently overdue but often dramatic reversals. *Erie R. Co.* v. *Tomkins*, 304 U.S. 64 (1938) (Per Mr. Justice Brandeis, by the way) reversed the 96 year old precedent established by *Swift* v. *Tyson*, 16 PET 1 (1842); *Brown* v. *Board of Education*, 347 U.S. 483 (1954) specifically overruled *Cummings* v. *Board of Education*, 175 U.S. 528 (1899); and *Gong Lum* v. *Rice*, 275 U.S. —— (1927).

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As recently as February 24, 1971 in *Harris* v. *N.Y.*, 39 L. W., 4281 (1971) the Supreme Court retracted from its landmark decision in *Miranda* v. *Ariz.*, 384 U.S. 436 (1966).

By reason of all the foregoing, it is respectfully submitted to this committee that the merits of this proposed legislation urge its passage. Wine is a legal commodity under the laws of the United States and of the various states. It is known that states may regulate it under their police power. There appears to be no reason why wine should be a subject of discrimination between the states. Such discrimination is not permitted in regard to shirts, shoes, clothes, food or any other commodity. It is not permitted against any other food and certainly should not be permitted against wine.

Nothing in this proposed legislation interferes with the state's right to regulate or even prohibit, it merely destroys the right of one state to discriminate against the product of another state.

We are well aware that certain exceptions have been taken to this proposed legislation. While we regard such exceptions as not well-founded, I will hereby suggest that the Committee consider amending the legislation as follows in order to obviate such objections:

H.R. 9029—Section 1, line 5–6, page 1—By striking the words "in other States" and substituting "outside the State".

Section 2—line 11–12, page 2—By striking the words "in another" and substituting "outside the" (in the two places they occur).

Section 2—line 14, page 2—By striking the words "like kind" and substituting "the same class (as established in Section 5041(b) of the Internal Revenue Code for tax purposes)".

Section 2—line 17 and 18, page 2, strike line 17 and 18 and substitute the following "(2) produced outside the State, or produced from products produced outside the State."

Section 2—line 21, page 2—By striking the words "like kind" and substituting "the same class (as established in Section 5041(b) of the Internal Revenue Code for tax purposes)".

By striking the words "in other States" and substituting the words "outside the State."

Section 2—line 23–24, page 2—By striking the words "like kind" and substituting the words "the same class (as established in Section 5041(b) of the Internal Revenue Code for tax purposes)".

Section 3—line 5, page 3—By striking the word "effect" and substituting the word "affect".

Section 3—line 7, page 3—By adding after the word wine "and the right to exercise discretion in the selection of wines to be purchased or to be sold."

This last suggestion should particularly meet any objection opponents of this legislation may have.

Thank you gentlemen.

Mr. Moss. I assure you, the committee will give careful consideration to the suggested amendments.

Mr. Eckhardt, do you have any questions?

Mr. Eckhardt. What is this Brandeis decision that you refer to in your statement on page 2, sir?

"This proposed legislation is within the power and scope of the Congress and is constitutional. Even if one chooses to follow the Brandeis decisions and ignore the congressional debates on section 2 of the 21st amendment * * *." That is *State Board of Equalization of California* v. *Young's Market.*

Mr. Peyser. By this I mean that even if it is conceded for the purposes of this discussion that the Brandeis decisions, in interpreting section 2, reflected the intent of the Congress to give the States the right to enact discriminatory legislation against wine, the proposed legislation is still constitutional because the Supreme Court has never passed upon the constitutionality of legislation whereby one State imposes discriminatory taxes against wine produced in another

State. I should like to point out congressional debates on section 2 of the 21st amendment do not give the slightest indication that there ever was an intent to do other than to protect the integrity of a dry State.

The point I make is that even if we take the Brandeis decisions, the fact is that no court, starting with the *Board of Equalization* v. *Young's Market*, *Trainer* v. *Mahoney*, and all the cases, have never considered the matter of whether under the 21st amendment discriminatory tax legislation is constitutional. Therefore, so far as that phase of the situation is concerned, the Congress has authority to act because the Supreme Court has made no decision on that particular subject matter. That is what I refer to there.

Then I, of course, referred to the fact that even if the Supreme Court has acted, it has a right to reconsider its decisions.

Mr. ECKHARDT. Well, just looking over this decision of *State Board of Equalization of California et al.* v. *Young's Market Company*, it appears to me that what the decision is holding is that the 21st amendment permits a State to exact a license fee for the privilege of importing beer from other States, and that in so permitting, it does not permit the urging that such a fee is an unconstitutional burden on interstate commerce as a matter of constitutional law.

But it doesn't seem to me that that case says that we may not constitutionally legislate in the field to prohibit exacting such a license fee. It merely seems to me to say that the 21st amendment would permit a State to so act without burdening interstate commerce in the absence of a Federal law which prohibited a State from so acting.

Do any of these cases indicate to you that if Congress sees, in its wisdom, that such a tax is, in fact, a burden on interstate commerce, that the Congress may not, under the commerce clause, outlaw such a privilege tax or fee by Federal statute?

Mr. PEYSER. Well, Congressman, the case to which you refer, *Board of Equalization, State of California* v. *Young's Market*, was the first case on the subject matter in our own State. That refers only to license fees. It does not refer to taxes.

As I indicated, there is no case since the adoption of the 21st amendment where the Supreme Court has ever considered the subject matter of whether or not a discriminatory tax is constitutional or not under that act. So there is an area where the Congress does have a right to legislate in this field.

Mr. ECKHARDT. I would suggest to you that the way I read that case, the Congress may have an even broader right to legislate with respect to both the tax and the license fee. I may read the case wrong, and there may be other cases that are more restrictive.

Mr. PEYSER. May I say I am inclined to agree that the Congress has a right to act. But for the purpose of this discussion and this presentation of this legislation, we just take the position that as to discriminatory taxes—in other words, it has been contended and there will be a contention, I am certain, that this legislation is unconstitutional because the Supreme Court has decided in these various cases that under the 21st amendment a State has a right to legislate in any manner it wishes to with regard to alcoholic beverages, and the commerce clause and due process clause do not apply.

Our answer to that is that even if that is correct, it is only correct in the fields and to the extent that the Supreme Court has acted. The Supreme Court has never decided in the case of discriminatory taxation whether the State has a right.

Mr. ECKHARDT. I see your point. The only thing that I am asking is whether or not there are any cases that touch upon this point that do not merely say that it is not unconstitutional for a State to exact a license fee or a privilege as opposed to the proposition that the Federal Government may not act in the field.

There are no cases that hold that the Federal Government may not act in the field and prohibit a State from charging a license fee or privilege or tax, are there?

Mr. PEYSER. I don't believe so. I don't understand you.

Mr. Moss. I think I can restate Mr. Eckhardt's question. He is asking if you have any knowledge of any cases where the Court has ruled that the Congress is barred from denying to the States the right to impose a license fee on matters in interstate commerce. Is that correct?

Mr. ECKHARDT. Yes.

Mr. PEYSER. Do you mean irrespective of the 21st amendment?

Mr. Moss. With respect to any portion of the Constitution or amendments.

Mr. PEYSER. The cases are legion. The Supreme Court has—as I say, the cases are legion that the enactment of discriminatory legislation in any field other than alcoholic beverages is completely unconstitutional.

Mr. ECKHARDT. You still don't understand my point. Let me put it this way: There are certain areas where a State may constitutionally control matters which Congress may also control, as, for instance, the production of natural gas. Until Congress enters and occupies the field, it is perfectly constitutional in some areas for a State to control such matters.

Mr. PEYSER. Right.

Mr. ECKHARDT. But this does not mean that it is unconstitutional for the Federal Government to enter the field and deny the States the right to control.

The point I am making is that clearly the cases that you have cited, at least to this date, have held that the State may constitutionally enact a license fee or privilege with respect to imported beer, for instance. But as I see it, there is no case that says that the U.S. Congress may not take that same activity and tell the States, "You may not impose such a fee because we do not believe that this is good national policy."

It would seem to me that Congress may do that, although I may be incorrect on it. I would like to see other cases before coming to a conclusion.

Mr. Moss. Isn't that almost precisely what Congress is now in the process of doing in denying the right of States or municipalities to impose head taxes on passengers in air commerce?

Mr. ECKHARDT. Yes; I think that is an excellent analogy to the point I was making.

Mr. Moss. Are there any further questions?

I thank you very much for your appearance, Mr. Peyser.

Our next witness is Mr. Henry O. Sonneman, managing director of Meiers Wine Cellars and who is representing the Ohio Grape Growers Vintage Association.

Mr. Sonneman we welcome you. I would like to express the personal regrets of Representative Carney that he is delayed in arriving back from Ohio to be with us at the committee meeting today.

STATEMENT OF HENRY O. SONNEMAN, OHIO GRAPE GROWERS AND VINTAGE ASSOCIATION

Mr. SONNEMAN. Mr. Chairman and gentlemen of the committee, my name is Henry O. Sonneman, managing director of Meier's Wine Cellars and representative of the Ohio Grape Growers and Vintage Association, which is made up of farmers like myself who get together once in a while and do a little chit-chatting about the problems of our Ohio wine industry. It is a pleasure to be here, and I thank you for the opportunity to speak on their behalf.

We are fully in accord with the objectives of H.R. 9029 and H.R. 9030, which would prohibit any State from discriminating against any wines produced outside the State—imported or domestic—which come into the State, in favor of wines produced in the State. Legislation such as this has long been needed.

We believe strongly that our wine shipped into another State should enjoy the privilege of being merchandised and taxed in the same manner and amount as the local wine. However, this is not the situation in a number of States. More specifically, many States impose a greater license fee for a winery producing wine from agricultural products grown without the State than the fee assessed for a winery producing wine from agricultural products grown within the State. Seven States place a greater excise tax upon wine originating from outside the taxing State.

The State of Arkansas presents a stereotype example of discrimination in the distribution and taxation of out-of-State wine. Arkansas-produced table wine may be sold in restaurants, while this privilege is not accorded to Ohio, California, New York, or French table wine. Moreover, wines produced outside the State of Arkansas may be sold only through liquor stores while other retail outlets in addition to liquor stores may be licensed to sell wine produced in Arkansas for off-premise consumption.

Similarly, out-of-State wines "sold or offered for sale" in Arkansas are taxed at the rate of 75 cents per gallon, while wines produced in Arkansas are taxed at the rate of 5 cents per gallon.

We firmly believe that the United States is one trading area, and there is no reason why wines of America should be treated any differently by the several States than any other commodity. Our wine should be entitled to the same benefits as locally produced wine.

Thank you, gentlemen.

Mr. Moss. Thank you, Mr. Sonneman. Mr. McCollister?

Mr. MCCOLLISTER. No questions.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. No questions.

Mr. Moss. Mr. Guthrie.

Mr. GUTHRIE. No questions.

Mr. Moss. We thank you very much for your testimony.

Our next witness will be Mr. William G. Clark, general counsel, National Alcoholic Beverage Control Association.

Mr. Clark, would you care to have your statement placed in the record in its entirety and then summarize?

STATEMENT OF WILLIAM G. CLARK, GENERAL COUNSEL, NATIONAL ALCOHOLIC BEVERAGE CONTROL ASSOCIATION, INC.

Mr. CLARK. Yes, sir; Mr. Chairman.

Mr. MOSS. Without, objection, that will be the rule.

Mr. CLARK. For the record, my name is William G. Clark, attorney, with offices in Montgomery County, Md. I have the pleasure of presenting to you this morning the position of my client, the National Alcoholic Beverage Control Association, Inc.

For the record, the National Alcoholic Beverage Control Association, or the NABCA as it is commonly known, is a trade organization representing the 18 States which have elected to engage in the alcoholic beverage business within their respective jurisdictions.

Contrary to the suggestion of a prior witness, there are 18 such States, and not 17. Those 18 States are listed in my written statement. They contain approximately 62 million citizens of this country. They gross approximately $2½ billion a year as a result of their operation of the liquor or alcoholic beverage business within their respective jurisdictions.

The National Alcoholic Beverage Control Association, representing the interests of its members, wishes to go on record in opposition to this legislation. While we are not opposed to what is sought to be obtained, we do not feel that this legislation will, in effect, obtain the relief that is sought; that is, the elimination of discrimination between wines produced in one State as opposed to wines produced or purchased in another State.

We feel that the language of this proposed legislation is too loosely drawn, and too vague and too general to accomplish that purpose without, in effect, destroying the wine business of approximately one-third of the States of this country.

Now, our statement gives you the reasons for that in detail. Because of the time constraints here, I am just going to summarize some of our comments.

For instance, in section 1 we are concerned with a predisposition to conclude that there are violations which will violate the law and which will conclude that corrective legislation is needed. We question the use of words such as "unreasonable."

Also, the use of statements such as "obstructions," "various acts of the State." We don't feel that the testimony introduced so far clearly identifies what may be "unreasonable," what may be "obstructions," what may be "various acts of the State." So our concern on this point is that what we would be leading to would be unnecessary court challenges of the intent and purpose of the legislation as a result of the generalities in the use of such phrases.

What we are more concerned with—and we do not believe that the amendment suggested by Mr. Peyser corrects our feelings—is that the broad-brush approach of this proposed legislation would have the effect of taking the various control States, the States which have elected under the 21st amendment to operate their own alcoholic beverage system and are commonly referred to as "control States," out of the wine business altogether.

The reason for that is that the procedures which are followed by the control States in the selection of wines which they sell and want

to provide to their citizens would come under the restrictions of the language of section 2 (a), (b), and (c) of this legislation. Our records indicate that there are a minimum of 43,000 different wine items available in this country. I believe that we are very conservative in that figure, and that there may be as many as 80,000 different wine items available in this country.

If this legislation is literally interpreted, as we interpret it, and as our 18 States interpret it, and as the attorneys general of those States interpret it, and if it is passed as it is now written, it is very, very possible that the 18 States, or all of those States which sell wine as a part of their own operation, would be required to either list no wine or all wines available in this country.

Consider the impact of requiring a State to list as many as 43,000 different wine items. The net practical effect of that would be to tell the State, or for the State to decide, that it would have to get out of the wine business altogether, because, No. 1, it would not have the resources to purchase anywhere that many wines; and No. 2, it would not have the resources to store and to provide those wines on a continuing basis to its citizens.

Now, the control States have been in operation for many years, and they have followed realistic, modern marketing techniques in the selection of products that they provide for their citizens. They are like any other business. They have to carry an inventory. They have a limited budget and they, therefore, have to determine what their citizens want.

In applying modern marketing techniques, they ultimately select the various items that their citizens tell them they want simply by virtue of determining what consumer demand is, and they purchase those items. Those items, therefore, are "listed" for sale in the States.

Now, here is the distinction: A license-State operator merely selects the items that he feels should sell, or that his customers want to buy. If he is an operator in one of the 32 open or license States that has no reference in its laws to wine, then he is not covered by this legislation. He can do whatever he wants to do. But a control State is a retailer and they have rules and regulations long existing in their procedures which will require them to provide or to comply with this proposed legislation, as we see it.

If they accept one wine for sale through their listing procedures, and this is one of the so-called requirements that is listed in here——

Mr. Moss. I wonder if you might be kind enough to point out to us the language you construe as imposing a requirement that all brands and types of wines, wherever originated, must be listed.

Mr. Clark. Yes, sir. Section 2(b) particularly concerns us where it reads, "A State which permits the sale of wine within the State shall permit the transportation or importation of wine of like kind." That could be any red or white wine "produced in other States or for materials originating from other States into said State for sale therein upon terms and conditions equally applicable to all wine of like kind sold in the State.'

Now, a condition of sale in the State of Pennsylvania, the State of Michigan, or the State of Ohio, or any of the 18 monopoly States is a listing. Before a wine can be sold in any one of those States, it must be accepted for listing in that State.

Mr. Moss. That doesn't means it has to be stocked.

Mr. CLARK. As a practical matter, any wine which is listed in the State is stocked.

Mr. Moss. Do you now stock all items listed?

Mr. CLARK. The States stock——

Mr. Moss. I have been in State stores where it was necessary to make special orders because they did not stock, and they would only procure upon a special order.

Mr. CLARK. You are correct, Mr. Chairman. The States do not list everything.

Mr. Moss. Listing is not synonymous with stocking.

Mr. CLARK. No, sir, it is not; no more so then in any private liquor store in the District of Columbia or anywhere else. The States list those items which they have reason to believe will sell. If they do not sell, ultimately they are disposed of. However, most States have a provision for special ordering. If you have a preference for a particular wine and it is not carried, then you may ask them to obtain this wine.

As a practical matter, this same thing happens in a private store. They simply cannot carry all the brands of whisky sold.

Mr. Moss. That is correct. At the point where you concluded your statement, I intended to address myself to some of these matters.

Mr. CLARK. You asked me about our concern of the particular language in this legislation. Those words are in section 2(b), "upon terms and conditions equally applicable." We don't think there is any question that a court would construe a listing as a condition of sale.

Now, section 2(c) concerns us also. It reads:

> Wherever the law of any State permits the transportation or importation of wine into that State, such State may not impose, with respect to such wine, any prohibition or requirement which unreasonably impairs the free flow of commerce in such wine among the several States.

Here, again, we believe the word "requirement" could easily be construed to mean listing. In order for a wine to be sold in a State, it has to be listed. Therefore, if you require a listing of one wine, under this legislation you must list all wines.

These are the things that we are concerned about. While we are not opposed to the intent of this——

Mr. Moss. In other words, you predicate your entire opposition to a fear that you would be required to either list or stock all wines produced anywhere?

Mr. CLARK. In essence, that is the basis of the opposition.

Mr. Moss. You are not opposed to the provisions of the bill which would prohibit the imposition of a tax or a fee at a higher level for wines brought into the State from other States than wines produced within the State?

Mr. CLARK. That is correct.

Mr. Moss. All right. Then we have your opposition only to the question of insuring that there would not be an onerous burden imposed upon the control States relative to the out-of-State wines.

Mr. CLARK. Yes, sir; basically that is our opposition.

Mr. Moss. Let me assure you that I anticipate not the slightest difficulty. This committee, over many, many years, has demonstrated great competence in drafting legislation to do precisely what it has in mind, and the things you mentioned we clearly do not have in mind.

It is not contemplated in the legislation that we would require that everything be listed, whether or not there was a market for it. I think that the staff of the committee and the committee members themselves have the ability to clear up any ambiguities which have a reasonable basis for causing worry or concern on the part of control States.

Mr. CLARK. We are confident that that is the case. We understand, and, of course, appreciate that when legislation is initially drafted, that many of the concerns that develop during testimony are not readily apparent and, therefore, there will be changes.

Mr. Moss. I think almost any of the items mentioned could be clarified in a report. However, we will specifically study amendatory language, if you want to suggest it to the committee, and we will hold the record open at this point, without objection, to receive any suggestions you have for amending the language of the legislation. Also, I think in our report we can make clear what we intend.

Mr. CLARK. Fine. We would like to have an opportunity to submit into the record our suggested amendments.

Mr. Moss. We would ask that you do that as promptly as possible.

Mr. CLARK. Yes, sir. We will.

(The following letter with attachment was received for the record:)

NATIONAL ALCOHOLIC BEVERAGE CONTROL ASSOCIATION, INC.,
Washington, D.C., October 4, 1972.

Hon. JOHN E. MOSS
Chairman, Subcommittee on Commerce and Finance, Committee on Interstate, and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with your suggestion, I am pleased to submit herewith proposed amendments to H.R. 9029, H.R. 9030, H.R. 10448 and H.R. 13826, which Bills were the subject of a consolidated public hearing before your Committee on October 2, 1972. Please note that while the amendments are submitted on behalf of the National Alcoholic Beverage Control Association, Inc., the individual Member States of the Association reserve the right to submit their own comments respectively.

As was stated at the hearing, because of the overwhelming share of the domestic wine market already held by producers in California and New York, the Association can see no significant benefits to be gained from the proposed legislation. In point of fact, the amount of wine involved in any alleged discrimination is infinitesimal compared to the total annual domestic output. Under the circumstances, we respectfully suggest that the curing of any such discriminatory practices should be left to the Courts in the jurisdictions where they may occur.

A matter of further concern to the members of the NABCA is the possibility of a lack of understanding about the impact the Bills, as presently drawn, would have on the wine business of the Control States. Many alcoholic beverage officials and legal officers have reviewed the proposed legislation and they have all come up with the same conclusion—the Control States would have no choice but to get out of the wine business altogether. While this may not be the intent of the authors of the Bills, it is, nevertheless, what would happen. In order to resolve any questions of interpretation, perhaps the proposed legislation should be submitted to the Department of Justice for its own independent analysis.

It is respectfully requested that this letter, including attachments, be included in the record of the public hearing on H.R. 9029.

Yours truly,

WILLIAM G. CLARK,
General Counsel.

[H.R. 9029, 92d Cong., first sess.]

A BILL To prohibit the imposition by the States of discriminatory tax burdens upon interstate commerce in wine, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Congress finds that the imposition by one State of State taxes, [regulations, prohibitions, and requirements] which *substantially* discriminate

against wine produced in other States, [and the imposition of unreasonable requirements as conditions for shipment into and sale or distribution of wine into a State,] materially restrain, impair, and obstruct commerce among the several States.

Congress declares that, in the exercise of the power to regulate commerce among the several States granted to it by article I, section 8, clause 3 of the United States Constitution, its purpose and intent in enacting this Act is to eliminate [the] *material* obstructions to the free flow of commerce in wine among the several States resulting from acts of the States which impose discriminatory [and unreasonable] *tax* burdens upon such commerce.

SEC. 2. (a) Wherever the law of any State permits the transportation or importation of wine into that State, such State may not impose with respect to any wine produced in another State, [or from materials originating in another State,] any tax, [regulation, prohibition or requirement] which is not equally applicable with respect to wine of like kind [(1)] produced in [or from materials originating in] the State imposing such tax. [regulation, prohibition, or requirement, or (2) produced in, or produced from products produced in, any other State.]

[(b) A State which permits the sale of wine within the State shall permit the transportation or importation of wine of like kind produced in other States, or from materials originating in other States, into said State for sale therein upon terms and conditions equally applicable to all wine of like kind sold in the State.]

[(c) Wherever the law of any State permits the transportation or importation of wine into that State, such State may not impose with respect to such wine any prohibition or requirement which unreasonably impairs the free flow of commerce in such wine among the several States.]

SEC. 3. Nothing contained in this Act shall effect the right of a State, subject to the provisions of section 2 hereof, to engage in the *selection,* purchase, sale, or distribution of *any alcoholic beverage product including* wine.

SEC. 4. Whenever any person engaged in the transportation or importation into any State or the distribution within any State of any wine, [or any product intended for use in the production of any wine] has reason to believe that such State has violated any of the provisions of section 2 of this Act, such person may file in a district court of the United States of competent jurisdiction, a civil action to enjoin the enforcement thereof. Such court shall have jurisdiction to hear and determine such action, and to enter therein such preliminary and permanent orders, decrees, and judgments as it shall determine to be required to prevent any violation of section 2.

SEC. 5. As used in this Act—

(1) the term "State" means any State of the United States, any political subdivision of any such State, any department, agency, or instrumentality of one or more such States or political subdivisions, and the Commonwealth of Puerto Rico; and

(2) the term "person" means any individual and any corporation, partnership, association, or other business entity organized and existing under the law of the United States or of any State.

Mr. CLARK. I simply want to conclude that we appreciate your concern. We appreciate that what is sought is a fairness doctrine, an equally fair treatment between States.

The State of California, along with the State of New York, produces and sells approximately 80 percent or more of the domestic wine sold in this country. Our monopoly States buy approximately 90 percent of their domestic wines from your States. We do not discriminate. We do not intend to. But we are faced with a drastic loss of income and revenue if we have to get out of the wine business.

Mr. MOSS. We have no intention of putting you out of the wine business.

Mr. CLARK. Very good. Well, then, we appreciate the opportunity to testify and we will follow up and submit suggested amendments.

(Mr. Clark's prepared statement follows:)

STATEMENT OF WILLIAM G. CLARK, GENERAL COUNSEL, NATIONAL ALCOHOLIC BEVERAGE CONTROL ASSOCIATION, INC.

Mr. Chairman, on behalf of the National Alcoholic Beverage Control Association, I am pleased to have the opportunity to appear before this Committee to explain why we are vigorously opposed to the passage of H.R. 9029, H.R. 9030, H.R. 10448 and H.R. 13826.

As you may already know, the Association is the national trade organization of the 18 States in which the alcoholic beverage business is conducted as a governmental rather than as a private operation.

Those States, incidentally, are Alabama, Idaho, Iowa, Maine, Michigan, Mississippi, Montana, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming. A contemporary alcoholic beverage operation also is conducted by Montgomery County, Maryland. Their aggregate sales in 1971—last year—exceeded $2,340 million and, on the average, their net revenue accounts for approximately 7.7 percent of the total revenue collected annually from all sources.

We are opposed to the enactment of the suggested legislation for several reasons. First, the alleged "obstructions to the free flow of commerce" are not sufficiently identified. By reference to certain "acts of the states" in Section 1, it is apparent that what is intended is the invalidation of some alcoholic beverage laws or laws presently existing in one or more of the several States. However, there is nothing in the proposed legislation which tells what these "acts" are.

We are certain that the esteemed members of this Committee will agree that such vagueness is clearly not acceptable in matters involving the great potential impact that the proposed legislation has on the rights granted to the States of this Union by the Twenty-First Amendment to the Constitution.

A significantly greater concern shared by the Control States—the familiar designation of a State which conducts the alcoholic beverage business itself—is the drastic effect the passage of the proposed legislation would have on their wine business. Should the legislation become law, each of those States which includes wine in its operation—and most of them do—could be required to purchase, stock and offer for sale an estimated 43,000 different wines.

No retail store in the entire Country—government or private—has the facilities to accommodate such an inventory.

Furthermore, no Control State could in all conscience use public funds, the only capital at its disposal, to make such an investment. The only alternative would be for the States to abandon their wine business altogether—and what tremendous financial repercussions that would have!

Obviously, therefore, those officials who operate the alcoholic beverage business for the Control States must watch their spending. And since the stocking of merchandise is their major spending category, it is readily understandable that they cannot afford to acquire brands unless it can reasonably be assumed that such brands are desired by the local consuming public and, accordingly, that they will be resold within a reasonable period of time.

Yet this legislation would require those States which are in the wine wholesaling and/or retailing business to stock every wine offered to them or, alternatively, to cease stocking wine at all.

INDUSTRY AND PUBLIC UNDERSTAND

Control State procedures are fully understood by the alcoholic beverage industry and by the consuming public they serve. In essence, the States stock the items which enjoy the widest popularity and even include a moderate range of slow-moving items to accommodate people with special preferences. In some of the larger States, such as Pennsylvania, as many as 628 different wine items may be listed. Most of the States also accept what are known as "Special Orders", meaning orders for brands or types not normally carried. A customer who desires a particular wine not carried on State store shelves can place such a special order.

Periodically, the States review their inventories and invite industry representatives to present arguments why non-selling items should not be removed from the sales lists and to offer new items for consideration. In a way, such deliberations are not unlike this very hearing in which your Committee is endeavoring to ascertain all of the facts incident to the proposal under consideration. The final decision is not reached until all the evidence has been weighed.

Control State wine listings—items approved for stocking and sale are called "listings" in this type of operation—invariably include *all* of the brands which move quickly, meaning the type which the customers prefer, and most if not all of the others in which some public interest has ben manifest. The only exclusions are those which, so far as the State has ben able to ascertain, enjoy such little popularity that their nonlisting would impose no appreciable inconvenience on the public.

In short, Control State inventories parallel those in private stores. The merchandise that is carried is the merchandise people want; in this instance, the various brands, in the various container sizes, of the various types of distilled spirits and wines which are preferred by the customers as evidenced by their rate of turnover.

BILL WOULD NEGATE STATES' AUTHORITY

The authority of a State to regulate the alcoholic beverage business within its own territory does not extend to dictating what brands or types of beverages its citizens must consume, if they consume at all, and this has never either been attempted or contemplated by a single Control State.

On the other hand, this bill could have the effect of permitting the wine industry to dictate the wine-purchasing policy of every Control State which engages in the wine business. Any winery could offer such State any brand of wine, however obscure or little known, and cite it for Federal law violation if it declined to make a purchase.

Note how different the situation is in a Control State as distinct from the 32 other States in which the alcoholic beverage business is in private hands. Any of the latter—the industry refers to them as "License" or "Open" States—could comply both with the letter and the spirit of this bill merely by refraining from treating any one wine in a manner other than the way it treats wines in general, or by not dealing with wines at all, apart from such wine taxation as may be levied.

Similarly, a liquor store in any License State may stock as much or as little wine of any brand or type as it wishes without, presumably, violating the provisions of this bill.

But a Control State, by declining to list a wine—any wine of the 47,000 different ones said to be on the market—would, in effect, be in violation because listing is a condition precedent to general public sale.

And this bill forbids applying a condition to any one wine if that condition is not applied to all!

Let me emphasize this point. Today, our States list the wines they have reason to believe the public wants. They decline to list the others. But under this legislation they could not decline to list the others. But under this legislation they could not decline to list any wine unless they simultaneously declined to list all other wines. Otherwise, they would be guilty of discrimination, whereas a privately-owned store which did precisely the same thing would not.

This is what I mean when I say this bill would negate the authority of the several Control States to serve their citizens as those citizens desire to be served. I seriously doubt that this is the intent of Congress. Unfortunately, the fact remains that this would be the end result.

WINE SALES IN THE CONTROL STATES

As previously noted, not all of the Control States sell wines, and I should add that several have turned the wine business over entirely to private hands while others deal only in certain types, usually based on alcoholic content. Hence, the following figures represent only partial sales:

Last year, total wine sales as reported by the majority of the Control States amounted to 8,691,353 cases (12 bottles each) and all save 672,112 cases were manufactured in the United States.

In other words, more than 92 percent of the wines sold by the Control States were produced in this country—principally in California and secondarily in New York—and this should illustrate more effectively than any words of mine how ill-founded are the contentions that these States discriminate against the products of any other State.

A similar pattern prevailed in the first half of this year (1972) when more than 9 out of every 10 of the 4,270,053 cases of wine sold by the reporting Control States were American-produced.

Collectively, I would say the Control States are the very best customers of the California and New York wine interests which are pushing for the passage of this bill.

CONCLUSION

In summary, the situation is this: The Control States—18 of the nation's 50—with a population of approximately 62 million, are in the wine business (as part of their alcoholic beverage business) as a public service. Coincidentally, they are reliant to a substantial extent on the revenue derived from that business.

Any restrictive Congressional legislation such as the bill now under consideration by your committee would impede the Control States in the rendering of that public service and simultaneously threaten curtailment of the ensuing public revenue.

The impediment referred to would be very real. The Control States cannot afford to invest public funds in wines whose ultimate resale is open to serious question. Yet they would be compelled to do so under the terms of this proposed legislation and, faced with such an ultimatum, most if not all probably would have to divest themselves of their wine business completely.

Divestiture, of course, would be both very disruptive and extremely costly. The public would be deprived of the State's service to the extent that wine wholesaling and/or retailing is involved and the State's Treasury would be deprived of essential revenue. Neither prospect can be viewed with equanimity.

For these reasons, the Committee is respectfully urged to disapprove this proposed legislation.

Mr. Moss. We do thank you for testifying. Mr. McCollister?

Mr. McCollister. I think your testimony has been helpful. I am glad you expressed the concern you have, and I am sure we will be able to remedy it, because that is not the intent of this legislation.

Mr. Moss. Mr. Eckhardt?

Mr. Eckhardt. It seems to me as I read this bill, it is intended to provide that wine may not be discriminated against with respect to its listing or stocking or in any other way merely by reason that it comes across State lines from another State. I cannot see anything in this language that would prohibit you from saying, "This wine is available, but it will not sell; nobody wants it." I mean, whether that is a wine from California or New York, or from one of the States which operates its own liquor stores, it would seem to me that if the wine wouldn't sell and that is the only reason it is not carried, it would not be in violation of this act. Do you read the act differently from that?

Mr. Clark. No, I don't read the act any differently, but I do interpret it differently simply because I think I am more familiar with the way the control States operate.

The State law requires a listing. We interpret a listing as a condition or requirement which would be covered by this legislation. Every wine is available in most States by special order.

Mr. Eckhardt. Let me pose a question. Suppose the State said, "We will list any wine in which the manufacturer requests a listing and gives some showing of a demand within the general area or within the area of surrounding States." Do you think that would be in violation of this act?

Mr. Clark. I think, as a practical matter, the State law would create the violation because in most of our States a listing is a precondition to sale and is tantamount to stocking. It is made available for the customer in the various stores.

Mr. Moss. When you use the term "tantamount to stocking," you don't really mean that, because in the listing you have not invested anything in an inventory, but the moment you stock, you have an

investment. Now, you do not stock all items listed, so the two are different.

Mr. CLARK. I have two witnesses who follow me who can explain the operations in their States.

Mr. Moss. But I can only say that I know that you can go across the river, in the State of Virginia, and special order items not stocked.

Mr. CLARK. And also not listed.

Mr. Moss. Yes; also not listed, as you say, in some States. But I also know that you can go into other States, the State of Washington, if I recall correctly, and special order items. In fact, I think they indicate certain items are only available on special order.

So when you say it is tantamount to stocking, that is not quite the case. One requires an investment in inventory; the other does not.

Mr. CLARK. That is right, sir. It is a matter of definition, I think.

Mr. ECKHARDT. But you don't conceive of this bill as requiring the State to anticipate every brand of wine and every category of wine within the brand and put it on a list, even if nobody is asking to sell it in that State, do you?

Mr. CLARK. We conceive of that possibility under the present language of this bill. There is no question about it.

Mr. ECKHARDT. Well, all I can say is that if this bill says that, the law is, as Dickens' character said, "The law is an ass," because I cannot imagine this bill being construed to require a State to anticipate every existing wine throughout the Nation and list it.

I can understand that this law may provide that if a seller is desirous of merchandising his wine and follows the forms required by the State to have his wine listed, that when you refuse to list it you could show a discrimination. But even if you can assume that the State is theoretically violating the act by not determining every conceivable wine available in the United States, it seems to me that this is an entirely theoretical fear, because I cannot understand how you would be in any trouble if you didn't have a plaintiff in the lawsuit.

Mr. CLARK. We can't afford to operate or exist under what may happen in theory. We have read this bill many times. Many of our attorneys general of our various States have read it many times. It is vague. It is general. And we come to the same conclusion under our own State laws in the respective States.

It is very, very possible that the States operating the way they do would be in violation of one or the other provisions of this legislation if they did not list and/or stock every single wine offered to them.

Mr. ECKHARDT. Let me raise this question: Suppose they don't list and stock every available wine and nobody complains. Who is injured, and how do you have a lawsuit arise out of such a circumstance?

Mr. CLARK. We don't believe for one minute, Mr. Congressman, that no one is going to complain.

Mr. ECKHARDT. Well, suppose someone does complain and says, "You have not listed my wine, and I want it listed because I don't want an impediment to the sale of that wine in commerce." Suppose that is done. Do you want us to write a law that does not require you to list it under those circumstances?

Mr. CLARK. We don't think we would be required by the Supreme Court of the United States to list a wine, but we don't want to go

through the necessity of defending a lawsuit or multitudinous lawsuits.

Mr. ECKHARDT. I agree with you that, if the Jones Co. comes in and it produces wine in California and it desires to sell that wine in, say, Maine, and the State of Maine says, "Look, you have to get a listing first." And the Jones Co. says, "All right, what do we have to do to get the listing?" and Maine says, "We don't have a process by which you can list that wine unless you can show an existing market in the State of Maine and there is no process by which you can merchandise your wine until it is listed." Well, I would think the Jones Co. should have an action under this act, because it is prohibited to sell in Maine under those circumstances.

Mr. CLARK. Why not extend that to provide for the protection of the shoe manufacturers or the brick manufacturers or the person who sells flower seeds?

Mr. ECKHARDT. If you passed a law in Maine that you could not sell bricks that came from outside of Maine unless you had a listing, I assume that would be a burden on interstate commerce and would be stricken down.

Mr. CLARK. It all depends on whether it is a sufficient burden on interstate commerce to be unconstitutional. That question is now before the Supreme Court.

Mr. ECKHARDT. We are trying to put wine on the same basis as other commodities.

Mr. CLARK. If you do it on the basis of this legislation, you will put 16 States out of the wine business.

Mr. ECKHARDT. Perhaps we should, if that is what you want to do about it. I think they ought to compete with other States if they are to stay in the wine business. That is what we talk about as free enterprise.

Mr. CLARK. The States of California and New York already sell more than 80 percent of the wine produced in this country. We don't think this legislation is going to produce the effects that are sought by it.

Mr. Moss. Let me interrupt you. While they may sell it, in some States they sell it under conditions which are far from equal as they compete with the wines produced within those States. That is the problem this committee is attempting to reach. After all, what percentage of wine in the Nation is produced in the States of California and New York? Is there a disproportionate share of the market going to those States, or isn't it a reasonable share in relation to the total production?

Mr. CLARK. We feel that the States of California and New York do an outstanding service to this country in the production of wine and we think the record will show that the 18 monopoly States recognize that by their overwhelming purchase of wine from those States. We do feel that this legislation, as drafted, if passed, which you have assured me would not be passed with the intent that we question, would be akin to taking a case of dynamite to get a prairie dog out of his hole. We agree with the intent.

Mr. Moss. The chairman is most anxious to give the broadest latitude for a witness to characterize legislation in any manner he wants, but this committee is not noted for imprecision in its drafting. After all, it deals with matters in interstate commerce all of the time. We

have heard very dire predictions over the years from States because of our actions in certain areas, but I never recall an instance where those predictions have proven at all accurate. We will make the same good faith effort here as we have made in the past.

Mr. CLARK. We are confident of that.

Mr. Moss. Any further questions?

We do thank you, and we look forward to receiving as promptly as possible the proposed amendments you desire to have the committee consider.

Mr. CLARK. Thank you.

Mr. Moss. At this point I would like to recognize a distinguished Member of the House, the Honorable John Paul Hammerschmidt from the State of Arkansas, who I believe has a constituent he would like to present to the committee at this time.

STATEMENT OF HON. JOHN PAUL HAMMERSCHMIDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. HAMMERSCHMIDT. Mr. Chairman, distinguished members of the committee, I appreciate very much the opportunity to appear before your subcommittee this morning to introduce one of your witnesses. He is a knowledgeable vintner, a man of the soil who works with and understands the wine industry from the cuttings to the end product. He is one of the "little men" in our rapidly expanding domestic wine industry. I know his company. I know his family. I know of three generations of their struggle to establish and maintain a viable winery.

They now have such a family enterprise in which, actually, our entire State takes pride. His company is one of nine such small wineries in Arkansas. They feel that this legislation would seriously jeopardize their future. Naturally, I have great concern about its effect on them, as does all our Arkansas delegation.

I strongly concur with the testimony to be given before this subcommittee by Mr. Alcuin C. Wiederkehr, vice president and chairman of the board of Wiederkehr Wine Cellars, Inc., of Altus, Ark.

In his statement of opposition to H.R. 9029 and the related bills currently under consideration by the subcommittee, Mr. Wiederkehr has indicated the devastating effect which their enactment would have on the infant wine industry of Arkansas and the employment of many people living in one of our Nation's lowest income areas. He has also indicated the great disparity in production costs between the wine produced in Arkansas and that produced in the largest wine-producing State, California.

It is my sincere hope that the subcommittee will give full consideration to the points raised in Mr. Wiederkehr's testimony.

At this point I would also respectfully request that the hearing record include the following expressions of opposition to this legislation as submitted by the Arkansas State Chamber of Commerce, the Arkansas Junior Chamber of Commerce, and the Arkansas State Horticultural Society.

(The expressions of opposition, consisting of three telegrams, follow:)

LITTLE ROCK, ARK., *October 4, 1972.*

Hon. JOHN PAUL HAMMERSCHMIDT,
U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

We understand that proposals contained in House bills 9029, 9030, 10448, and 13826 would not be favorable to Arkansas industry.

I urge you to oppose these bills.

BOB LAMB,
Executive Vice President,
Arkansas State Chamber of Commerce.

LITTLE ROCK, ARK., *October 4, 1972.*

JOHN PAUL HAMMERSCHMIDT,
House of Representatives,
Washington, D.C.

This is to inform all Arkansas Congressmen and U.S. Senators that the Arkansas Jaycees have passed a resolution and stand opposed to legislation proposed in House bills Nos. 9029, 9030, 10448, 13826, pertaining to native wine industry.

DAVID HALE, *President, Arkansas Jaycees.*

FAYETTEVILLE, ARK., *October 4, 1972.*

Hon. JOHN PAUL HAMMERSCHMIDT,
House of Representatives,
Washington, D.C.

The Arkansas State Horticultural Society is opposed to legislation proposed in House bills 9029, 9030, 10448, and 13826.

ROY ROMSEY,
Arkansas State Horticultural Society.

Mr. HAMMERSCHMIDT. Mr. Chairman, I have been requested by my distinguished colleagues, Congressmen Wilbur Mills and William Alexander to ask permission to submit their statements for the record.

Mr. Moss. Without objection, the record will be held at this point to receive their statements.

(The following letter was received for the record:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 17, 1972.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce, Rayburn Building, Washington, D.C.

DEAR JOHN: This is written with reference to the hearings you held on October 2 relating to the state tax treatment of wines shipped in interstate commerce.

Unfortunately, on the day your hearings were held the work of the Committee on Ways and Means and Conferences with Members of the Senate Finance Committee prohibited my appearing personally with my colleague, the Honorable John Paul Hammerschmidt, and his constituent, Mr. Al Wiederkehr. However, had my schedule permitted I would have been before your Subcommittee to express my public support for the position taken by Mr. Wiederkehr and I would like to take this opportunity to do so and ask that my statement in support of his testimony be made a part of your record.

With kindest personal regards, I am

Sincerely yours,

WILBUR D. MILLS.

(The prepared statement of Hon. Bill Alexander follows:)

STATEMENT OF HON. BILL ALEXANDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. Chairman and members of the committee, thank you for allowing me the opportunity today to express my opposition to H.R. 9029. In his testimony, Mr. Wiederkehr has stated the case of the Arkansas wine industry quite well. So, I will only briefly summarize my reasons for opposing this legislation which would prohibit States, such as my own, from protecting her small, native industries by enactment of protective taxes.

Even before I came to Congress 4 years ago, I was deeply concerned with the problems of our Nation's smaller communities. Too often they cannot offer their citizens the jobs to keep them at home with the result that small towns lose their people, especially their youth, to large metropolitan areas. These people are usually without training or skills and end up contributing to the problems of an already overcrowded city, where many do not want to be in the first place. But, unfortunately, there was nothing to hold them at home.

The wine and grape-growing industries which are centered in the beautiful Ozarks in northwest Arkansas have given many people the opportunity to stay in the communities they enjoy and at the same time earn a living to support a family of their own.

Arkansas, in an effort to encourage her people to help themselves, has under the authority of the 21st amendment passed legislation that offers tax protection for its wine manufacturers. The same statute aids the small grape growers by restricting the wine manufacturers to the purchase and use of Arkansas fruit and vegetables, if available. Although I am not familiar with the circumstances that brought about enactment of laws of this type in other States, I imagine their reasons and conditions were similar.

I might add here that the wine and grape industries in Arkansas are not just a business, but are rapidly becoming as much a colorful part of the State's culture as are its folk festivals. Every year people pour into Tontitown, a small Italian-American community in Washington County, for the annual grape festival. Visitors join in the dancing and festivities along with the residents and have an opportunity to sample real Italian cuisine as well as the grapes of which the area is so proud.

And, Mr. Wiederkehr's own winery in the town of Altus holds a Swiss wine and grape festival of their own where one can see descendants dressed in the bright costumes of Switzerland and Germany perform their folk dances.

If Arkansas is forced to lift her tax protection, I am afraid that our wine industry, along with the many grape growers and their colorful traditions will disappear from Arkansas. Our small wineries will not be able to compete with the larger industries of other States, such as California, which buy their fruits at much lower prices. If the wineries go out of business, there will be no one at all to buy the fruits of this area, since it would be impractical for manufacturers in California to transport the more expensive Arkansas grapes across country. Or, if the wineries do stay in business, it may only be

by buying cheaper fruits. If Arkansas grape growers cannot exist selling at lowered prices, then the manufacturers will have to go out of State for their grapes. This they would be allowed to do if the tax protection is lifted.

Mr. Chairman, before closing I would strongly urge the commmittee to give careful consideration to the constitutionality of this bill. I personally have doubts about this. And, if this law is passed, even if it later proved unconstitutional, by the time a case makes its way through our overburdened judicial system, it may be too late for the small wineries and fruitgrowers.

Thank you again, Mr. Chairman and members of the committee, for allowing me to present my views.

Mr. Moss. Mr. Hammerschmidt, it is my understanding that your constituent had short notice and he may desire to make a summary statement and to later include a more comprehensive statement. If that is the desire, the record will be held open to receive it.

Mr. HAMMERSCHMIDT. I appreciate your consideration.

At this time I present Mr. Al Wiederkehr, vice president of the Wiederkehr Wine Cellars, accompanied by his counsel, Mr. Jeta Taylor.

Mr. Moss. Thank you.

The record is held to receive a more comprehensive statement, and you may summarize at this point.

STATEMENT OF ALCUIN C. WIEDERKEHR, VICE PRESIDENT, WIEDERKEHR WINE CELLARS, INC., ALTUS, ARK.; ACCOMPANIED BY JETA TAYLOR, COUNSEL

Mr. WIEDERKEHR. We received very short notice and I did not have time to prepare anything to give at this time. You will have to excuse me. This is my first time in a predicament like this.

Mr. Moss. Please relax. There is no reason to be nervous. As I say, if you want merely to register a position at this point and then cover it through a comprehensive statement, you may do so.

Mr. WIEDERKEHR. Well, we are just a small winery in Arkansas in the well-known Ozark region, which is quite mountainous. It is not a very well known area for wealthy people. There is a lot of poverty there.

We have found that grapes will grow in these mountains. The California industry that began their program a number of years ago to overturn Washington State's native wine protection laws, they promised to buy all the grapes of the Washington State grape growers. Well, I don't know what would happen to our industry if they overturn our laws. Who would buy our grapes? They are in the Central United States.

I think that this committee should consider that. The University of Arkansas has done a great amount of research in the last 8 or 9 years at the substation at Clarksville, Ark. They have found that many of the new French hybrids will grow in Arkansas. We have a region there that would be considered a microclimate. We are 6 to 8 weeks earlier in production than Michigan or New York, for example.

My grandfather came there in 1880 and started this business. We are in the same place. We weathered prohibition by selling milk and cheese because we were Swiss. We were very frugal and we are in the

same place now but the problem we have, of course, is being very small and trying to compete with the very large, big wineries of California. We worked very hard to help develop the grape research at Clarksville.

We have found this potential and we think we have a good future in the grape and wine business. I had a scholarship to go to France and study wine and grape production, and I learned quite a bit about wine and grapes there. When I studied there I also had an opportunity to study in Germany. All these grapes grow very well there—at Altus, Ark.

I studied in California, also. I understand and know the California wine industry very well. I have a lot of good friends there who were classmates and who are now winemakers. They understand our problem.

The main reason I am here today is to see why we couldn't, in some way, if it does come to the point of passage of this bill, at least include an amendment of some sort to relieve, in a graduated way, the pressure of this sudden effect of the law. If it was passed and applied to us immediately it would bankrupt us all because most of our wine, 90 percent, is sold in Arkansas and the growers we have are increasing. We have some 65 growers in the Springdale-Tontitown area. Welch Grape has a plant there. But all they are processing now is Concord grapes. They will not buy the wine grapes. But we believe that since we have found that those mountains can be used to grow grapes, and it is a poverty area—one comparable to Appalachia—we feel this Ozark area should be given some sort of relief.

I would like to read some comments made in a case where California sued the State of Washington on a similar type of protection where it is actually a State industry, but the revenues the State industry earned, the profits they make as a State monopoly, actually are revenues in the State of Washington and would apply very much to our case.

As you may recall, some 10 years ago an action was filed against the State of Washington by the State of California invoking the original jurisdiction of the U.S. Supreme Court to test the constitutional validity of the policy of this State with respect to the marketing of domestic versus foreign sale of domestic wines through any licensed retail outlet, while nondomestic wines may only be initially sold through a State liquor store.

This law has been overturned after a lot of pressure from the California wine people which openly lobbied in the State legislature. They had threatened to outlaw Washington State beer, to cause the beermakers to quit supporting the grape growers. They had threatened to boycott the apple industry to keep the apple board from supporting them. They have succeeded in overturning their law. They bankrupted all but one or two wineries. They are close to California and their grapes can be trucked down the coastline very easily to California which has a very great need at this time for the Concord grapes because of the type wines they are making.

Various provisions of the U.S. Constitution were referred to and relied upon by California in support of its contention that the Washington wine policy was unconstitutional, including the commerce clause of article I, paragraph 8, the equal protection and due process clause of amendment 14, and the privileges and immunity clause of

article IV, paragraph 2. However, upon researching the matter, we found a constitutional basis, in prior U.S. Supreme Court decisions, for rejection of the California argument based upon any or all of these constitutional provisions.

The basis for our response was the following language of paragraph 2, of the 21st amendment to the U.S. Constitution:

> 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.

In support of our position, we then cited several cases in which the U.S. Supreme Court had held that because of this language of the 21st amendment, the commerce clause has no application to State laws and regulations dealing with intoxicating liquors imported from another State. See *State Board of Equalization* v. *Young's Market Co.* (299 U.S. 59); *Indianapolis Brewing Co.* v. *Liquor Control Commission* (305 U.S. 391); and *Joseph S. Finch & Co.* v. *McKittrick* (305 U.S. 395).

In addition, we noted that based upon this same reasoning, the U.S. Supreme Court had held that the equal protection clause of the 14th amendment has no application to State laws dealing with imported liquor. See *William Mahoney* v. *Joseph Triner Corp.* (304 U.S. 401); and *State Board of Equalization* v. *Young's Market Co.*, supra.

Rather than attempting to summarize any further our brief with respect to these cases, we have prepared, and are attaching hereto, a Xerox copy of the portion of the brief which is pertinent.

Particularly notable are the two cases found in volume 305 of the United States Reports. In *Indianapolis Brewing Company* v. *Liquor Commission* (305 U.S. 391), the U.S. Supreme Court was involved with a Michigan statute which absolutely prohibited the sale of beer manufactured in Indiana, based solely upon the fact that Indiana had previously passed a law discriminating against Michigan beer. Even though this Michigan act was obviously a retaliatory measure, the Court upheld it. We quote the pertinent and illuminating portion of the Court's decision as follows:

> The plaintiff contends that although the Twenty-first Amendment declares: "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," the Michigan law should be held void as violating the commerce clause and the due process and equal protection clauses of the Fourteenth Amendment. It characterizes the law as "retaliatory"; argues, among other things, that the amendments may not be interpreted as permitting retaliation; and insists that such interpretation would defeat its purpose, as thereby Michigan would be allowed to punish Indiana for doing what, under the rule applied in *State Board of Equalization* v. *Young's Market Co.* 299 U.S. 59, 63, 81 L. ed. 38, 41, 57 S. Ct. 77, is permitted. Whether the Michigan law should not more properly be described as a protective measure, we have no occasion to consider. For whatever its character, the law is valid. Since the Twenty-first amendment, as held in the *Young's Market Co.* case the right of a State to prohibit or regulate the importation of intoxicating liquor is not limited by the commerce clause; and, as held by that case and *Mahoney* v. *Joseph Triner Corp.*, 304 U.S. 401, 82 L. ed. 1424, 58 S. Ct. 952, discrimination between domestic and imported intoxicating liquors, or between imported intoxicating liquors, is not prohibited by the equal protection clause. The further claim that the law violates the due process clause is also unfounded. The substantive power of the State to prevent the sale of intoxicating liquor is undoubted. *Mugler* v. *Kansas*, 123 U.S. 623, 31 L. ed. 205, 8 S. Ct. 273."

In *Finch & Co.* v. *McKittrick*, supra, the Court was concerned with a Missouri statute which absolutely prohibited transportation, impor-

tation, possession, purchase, and sale of alcoholic liquor manufactured in a "State in which discrimination exists." However, again, the Court upheld the validity of the State law—even though it was obviously motivated by a desire to retaliate against the discriminatory actions of other States with respect to the importation of nondomestic alcoholic beverages. In upholding the validity of the Missouri statute, the Court said:

> The claim of unconstitutionality is rested, in this Court, substantially on the contention that the statute violates the commerce clause. It is urged that the Missouri law does not relate to protection of the health, safety, and morality or the promotion of their social welfare, but is merely an economic weapon of retaliation; and that, hence, the Twenty-first amendment should not be interpreted as a granting power to enact it. Since the amendment, the right of a State to prohibit or regulate the importation of intoxicating liquor is not limited by the commerce clause. As was said in *State Board of Equalization* v. *Young's Market Co.* 299 U.S. 59, 62, 81 L. ed. 38, 40, 57 S. Ct. 77, "The words used are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes." To limit the power of the States as urged "would involve not a construction of the amendment, but a rewriting of it." See also *Mahoney* v. *Joseph Triner Corp.* 304 U.S. 401, 82 L. ed. 1424, 58 S. Ct. 952; *Indianapolis Brewing Co.* v. *Liquor Control Commission*, 305 U.S. 391, ante, 243, 59 S. Ct. 254.

To get the rest of this in the record. I would like to go back to the summary. For a general summarization of these, I will try to get this in the record on this report. In the U.S. Supreme Court they denied California's case on the grounds of it being constitutional. We do contend that the law as it is now in Arkansas is constitutional and has not been proven otherwise. We do want you to understand that we know that you are not the judiciary branch but we do look for justice. We do want justice for the growers down there. There is no relief if this company goes out.

In exchange for our tax protection, we are required to buy only Arkansas-grown fruits and vegetables. If this is changed, our company could survive because we would be released from buying the grapes in Arkansas only. The people who will really suffer will be the grassroots people and there are over 2,000 acres in our district now, over half of which are not even in production of young vineyards, that people borrowed a lot of money for. It would curtail and bankrupt this operation at this time.

We have a feeling that this is exactly what is desired by the large wineries in California. I think they want to put a stop to the potential of these young areas that are trying to get started; they have stated so in our own legislature.

Now, I know that the Agriculture Department subsidizes a lot of farmers. We are not asking for a subsidy. We are growing our own grapes and producing them there for sale in the State of Arkansas. It is an indirect subsidy to the grower because we are paying nearly three times as much per ton of grapes as the California marketing reports show they are paying.

We can cite these cases in our report, these immediate marketing reports from California comparing to our prices. What we are saying is that we think that consideration should be given to the area. I don't think that you should just destroy the industry because the big States are not losing that much. They have the majority of the business in our State already under the present circumstances.

We are trying to change our industry to higher priced quality wines so that we would not have to compete in price. But you cannot change

vineyards overnight. We are trying this and it would help the industry to survive. If it does pass it would bankrupt our industry.

I would like to make a correction to Mr. Sonneman's statement earlier. He is a very good friend of mine and has visited our cellars and vineyards. Henry doesn't know but the Native Wine Act that permits sale of native wine in Arkansas also permits all other wines. It is not restricted to native Arkansas wines only.

(Mr. Wiederkehr's prepared statement with attachments follows:)

STATEMENT OF ALCUIN C. WIEDERKEHR, VICE-PRESIDENT AND CHAIRMAN OF THE BOARD, WIEDERKEHR WINE CELLARS, INC., ALTUS, ARK.

My name is Alcuin C. Wiederkehr. I am the Vice-President and Chairman of the Board of Wiederkehr Wine Cellars, Inc. of Altus, Franklin County, Arkansas.

I appear before you today in opposition to H.R. 9029, H.R. 9030, H.R. 10448, and H.R. 13826.

The manufacture of wine in the State of Arkansas is an infant industry. The Arkansas General Assembly, in its wisdom, has seen fit to give the native wine manufactures in Arkansas a break which amounts to an indirect subsidy to the grape growers of Arkansas.

In exchange for this tax protection in this same statute Arkansas Wine Manufacturers are restricted to the use of Arkansas fruit and vegetables in the production of their wine, if available.

Franklin County, Arkansas is located in the foot hills of the Ozark Mountains and is considered one of the poverty stricken parts of the nation. Through the University of Arkansas's research it has been discovered that the hill land in this area is ideal for the production of high quality grapes, berries and fruits.

A large number in acres of vineyards are being set out each year in all the counties of Northwestern Arkansas. This is a great contributing factor in reduction of unemployment in this area.

After the repeal of prohibition there was passed Amendment 21 to the U.S. Constitution. This amendment gives to the various States enormous powers to regulate the alcoholic industries within the State. Under the decisions of the U.S. Supreme Court it was held that the States in passing legislation that gives a tax benefit to the local wine manufacturers is not placing a burden on Interstate and Foreign Commerce. That being true it is our position that Congress has no power to pass any legislation that would interfere with the various States passing legislation that would protect the wine industries in their State against foreign competition that originated from without the States.

With the use of cheap Mexican labor the California low priced wine industry is able to produce and deliver to their wineries packing house culls and raisins for less than $50.00 per ton and, indeed, some as low as $25.00 per ton. See San Francisco Weekly Wine Report, Vol. LIV, No. 47 hereto attached and marked as Exhibit A, and also San Francisco Weekly Wine Report Vol. LVI No. 48 hereto attached and marked as Exhibit B. The last time Arkansas Wineries paid $50.00 per ton was the year of prohibition repeal in 1934. Indeed, Arkansas Wineries paid as much as $50.00 per ton in harvest costs alone on some varieties the past few years not to mention all the other overhead.

Arkansas prices for grapes ranged from a low of $140.00 per ton to a high of $750.00 per ton. Arkansas wine grapes that are used to produce popular priced wines that compete with the cheaper large volume White Ports and Sherries and Pop Wines from California cost between $140.00 and $180.00 per ton. On the other hand California paid an average of $52.75 per ton (in 1971) for raisins, which have 2½ times the concentration of a whole grape, and table grapes and culls. See Grapes for Crushing by California Crop and Livestock Reporting Service released March 6, 1972 hereto attached and marked Exhibit C.

In 1971 the California Wine Industry crushed-processed for wine—1,204,000 tons of raisins and packinghouse culls, 287,000 tons of table grapes and packing house culls for a grand total of 1,491,000 tons of raisins, packinghouse culls and table grapes. This means that over 67% of the grapes crushed for wine in California in 1971 were not wine grapes. (See Exhibit C.)

Only 183,640 tons of white wine grapes were crushed in 1971, and only 538,360 tons of black wine grapes. (See Exhibit C.) This means that only 8.2% of the total grapes crushed were actually white wine grapes and 24.3% of the total grapes crushed were actually black wine grapes.

Therefore, only 722,000 tons of actual wine grapes were used in the total crush of 2,213,000 tons for 1971. (See Exhibit C.)

TABLE 1.—CALIFORNIA GRAPES CRUSHED FOR 1971

	Tons	Percent
Wine grapes	722,000	32.5
Packinghouse culls, table grapes, and raisins	1,491,000	67.5
1971 total of all grapes crushed	2,213,000	100.0

The 1971 California Grape prices cited as well as 1972 prices are unusually high because of frost damage in 1971 and 1972. Expert sources predict that in a normal year in the future that prices will again drop lower than those cited for 1971 because of an increase in supply.

With this overwhelming supply of packinghouse culls, raisins and table grape vineyard strippings one can readily see why the large majority of wine produced in California is cheap bulk wine, and actually how small the amount of premium varietal wine produced in California is compared to their total production.

Due to the above described situation the General Assembly of the State of Arkansas has seen fit to enact legislation to protect its infant wine industry, that we think is constitutional as provided for in the 21st Amendment of the U.S. Constitution as construed by the United States Supreme Court and the decisions thereof cited in my oral testimony before the committee on Monday, October 2, 1972.

In closing, gentlemen, I would like to say that we know that the Wine Institute, that seeks passage of these bills, represents the Wine Giants of California mainly, because they are the ones who make the largest contribution on a per case sold basis. These Giants of California and New York evidently want all the domestic wine business instead of being satisfied with over 90% of it.

We know you're not the Judicial branch of the U.S. Government, but we know that as good Congressmen you will want to render justice to all U.S. Citizens in your report.

A great many fine people and whole communities will suffer great losses and bankruptcies if any of these bills are enacted. If members of your committee could only see these communities that were settled by Italian, Austrian, Swiss, and German immigrants, and understand their plight, you would show mercy.

I'm the third generation since my grandfather and grandmother settled in Altus, Arkansas in 1880 from Switzerland. We still have the same land and we're growing new varieties that look good for the future. We have just finished our Swiss Style grape and wine festival where there was much merriment and dancing of the old Alpine dances and singing in German of all the old grape and wine songs; but now the news of these bills hangs over these communities like a funeral pall and there are fewer smiles because of this new burden thrust upon us. The Pastor of our parish, (Father Lawrence Miller O.S.B.) is saying extra prayers and Masses with our Catholic Parish, asking God's help in this new crisis. Pastors of other denominations are doing the same. Even the construction of a new school would be halted in one community because it is dependent upon the contributions of its grape and wine growing parishioners.

On behalf of myself representing Wiederkehr Wine Cellars, of Altus, Arkansas and my attorney Mr. Jeta Taylor of Ozark, Arkansas I want to thank Chairman Moss and members of this Committee for their kindness and courtesies that we have received from their hands today at this hearing.

EXHIBIT A

[Fresh Fruit and Vegetable—Federal-State Market News, vol. LIV, No. 47]

CALIFORNIA DEPARTMENT OF AGRICULTURE, BUREAU OF MARKET NEWS, NOVEMBER 20, 1968

BULK WINE INFORMATION BULLETIN NO. 47

(WEEK ENDING NOVEMBER 16, 1968)

The prices shown below are those at which sales to the bottling works were made during the period specified and were on the basis of standard quality naked California wines before taxes and California marketing assessments in tank carlots, except that sales of the table wines represent transactions in less than tank carlots.

Demand was fairly good for bulk California wines. The market was firm.

Dessert wines.—Assorted dessert wines were 57½–60¢. Mostly 60¢, few 55¢ per gallon.

Asking prices early in the week beginning November 18 were 60¢ per gallon.

Table wines.—Red table wines were 45–47½¢ per gallon, white table wines 45–50¢, and sweet table wines 52½¢.

Asking prices early in the week beginning November 18 were 45¢ per gallon, few higher and lower for red and white table wines and 50–55¢ for sweet table wines.

Listed below is a tabulation of prices at which sales were made during the period indicated.

	Week ending Nov. 16	Week ending Nov. 9	Week ending Nov. 2	Week ending Nov. 18, 1967
Assorted dessert wines	57½ to 60¢, mostly 60¢, few 55¢.	Mostly 60¢, few 55¢ to 57½¢.	55 to 60¢, mostly 60¢.	Mostly 55¢, few 60¢, occasional 62½¢.
Red table wines [1]	45 to 47½¢	45¢	40 to 45¢	40 to 45¢.
White table wines [1]	45 to 50¢	Occasional 50¢	43 to 45¢	Occasional 40¢.
Sweet table wines	52½¢	52½¢	52½¢	No sales reported.

[1] Principally blends of San Joaquin Valley wines.

The prices shown above are for standard wines and do not include wines of better than average quality, special types, varietals, vintage wines, sacramental wines, etc., which are sold at higher prices.

WEATHER OUTLOOK FOR CENTRAL CALIFORNIA (NOVEMBER 12–NOVEMBER 25, 1968)

No rain likely, but slight chance of rain around the Northern part over the weekend. Temperatures expected to average near normal inland and 2–5 degrees above normal along the coast.

The California Crop and Livestock Reporting Service in its Weekly Weather and Crop Bulletin for the week ending November 15, 1968, commented in part as follows.

Weather.—Temperatures averaged slightly above normal south of the Tehachapis, and slightly below normal elsewhere. It was warm at the beginning of the week, but much cooler at the end of the period. Near or below freezing minimums occurred at low elevations on the 14th. Light to moderate rainfall which was reported on several days in the northern and central areas, reached the south coast by the weekend. Wet snow fell in the Sierras above 3,000 feet in the north, and 6,000 feet in the south.

Fruit.—Cleanup, pruning and other post harvest cultural practices continue as the major activities in vineyards throughout the State.

WINERY PRICE TO GROWERS REPORT NO. 24 (NOVEMBER 14–NOVEMBER 20, 1968)

NOTE.—Unless otherwise stated, the prices shown below are on the basis of per ton delivered winery within the district quoted.

Central and Southern San Joaquin Valley.—Prices for vineyard strippings and packing house culls of Emperors and other table varieties were generally about unchanged during the period at mostly $1.60 per ton per degree Balling. Some were $28.50 per ton without a minimum sugar requirement and a very few were $30.00.

Weather was favorable for harvesting and quality has held up quite well, although sugar content was mostly a little lower than earlier deliveries. Two wineries completed crushing during the period. Eleven wineries were still receiving grapes at the beginning of the current period.

Other Districts.—All wineries completed crushing for the season.

Picking and hauling are not figured in above prices (Farmers cost). Run about 17 to 18 Balling.

WEEKLY GRAPE CRUSH REPORT NO. 18—WEEKLY TONNAGE OF GRAPES CRUSHED AT CERTAIN CALIFORNIA WINERIES

[Fresh ton basis]

	LODI					MODESTO					OTHER CENTRAL VALLEY				
	Raisin type [1]		Table type	Wine type	Total	Raisin type [1]		Table type	Wine type	Total	Raisin type [1]		Table type	Wine type	Total
	Thompson	Muscat				Thompson	Muscat				Thompson	Muscat			
1968 season:															
July 13 [2]													260	----------	260
July 20											180	16	335	----------	531
July 27											821	9	431	----------	1,261
August 3											973	----------	703	----------	1,676
August 10											1,926	----------	1,261	581	3,768
August 17											7,388	----------	1,258	4,892	13,538
August 24			2	309	311		23	147	1,876	2,046	29,812	397	1,632	12,798	44,639
August 31	335	----------	42	99	476	921	----------	----------	5,918	6,839	47,100	30	1,063	12,929	61,122
September 7	1,426	----------	298	459	2,183	5,775	----------	195	8,000	13,970	60,127	8	1,422	12,852	74,409
September 14	3,436	----------	4,951	4,321	12,708	14,193	----------	318	14,461	28,972	99,466	438	1,416	14,253	115,573
September 21	4,101	----------	9,705	10,633	24,439	9,639	----------	154	23,786	33,579	117,229	1,042	2,011	17,961	138,243
September 28	1,284	----------	12,615	13,102	27,001	7,331	----------	2,759	23,815	33,905	100,438	4,500	4,228	22,937	132,103
October 5	266	----------	13,942	12,695	26,903	3,829	----------	6,730	23,045	33,604	70,636	8,158	10,125	31,517	120,436
October 12	7	----------	14,111	10,773	24,891	1,090	----------	7,818	24,020	32,928	39,037	7,633	12,816	35,867	95,353
October 19	18	----------	10,247	8,860	19,125	87	----------	6,157	17,207	23,451	14,937	4,339	11,943	27,046	58,265
October 26	76	----------	4,014	2,490	6,580	93	----------	2,585	13,467	16,145	9,706	3,623	16,727	19,757	49,813
Nov. 2	94	----------	46	492	632	24	----------	329	4,751	5,104	1,843	2,197	13,910	7,044	24,994
Nov. 9									913	913	1,036	282	19,375	1,871	22,564
Nov. 16											204	94	12,925	711	13,934
Total	11,043	----------	69,973	64,233	145,249	42,982	23	27,192	161,259	231,456	602,859	32,766	113,841	223,016	972,482
1967 season:															
Through Nov. 18	6,495	533	106,811	66,370	180,209	40,971	2,058	39,652	131,106	213,787	478,238	70,490	87,251	211,880	847,859
Final	6,495	533	106,811	66,370	180,209	40,971	2,058	39,652	131,106	213,787	479,001	71,153	119,772	213,609	883,535
1966 season:															
Through Nov. 19	16,399	139	133,067	79,332	228,937	34,444	274	1,869	139,950	176,537	567,913	39,456	114,139	216,605	938,113
Final	16,399	139	133,067	79,332	228,937	34,444	274	1,869	139,950	176,537	568,246	39,462	160,347	216,628	984,683

WEEKLY GRAPE CRUSH REPORT NO. 18—WEEKLY TONNAGE OF GRAPES CRUSHED AT CERTAIN CALIFORNIA WINERIES—Continued

	NORTH COAST					SOUTHERN CALIFORNIA					ALL DISTRICTS				
	Raisin type [1]		Table type	Wine type	Total	Raisin type [1]		Table type	Wine type	Total	Raisin type [1]		Table type	Wine type	Total
	Thompson	Muscat				Thompson	Muscat				Thompson	Muscat			
1968 season:															
July 13 [2]						645		645		1,290	645		905		1,550
July 20											180	16	335		531
July 27	16				16						837	9	431		1,277
August 3	114				114						1,087		703		1,790
Aug. 10	140		330		470						2,066		1,261	911	4,238
Aug. 17	237			795	1,032						7,625		1,258	5,687	14,570
Aug. 24	87		1,228		1,315						29,899	420	1,781	16,211	48,311
Aug. 31	243		1,094		1,337				1,757	1,757	48,599	30	1,105	21,797	71,531
Sept. 7	1,091		1,717		2,808				3,100	3,100	68,419	8	1,915	26,128	96,470
Sept. 14	2,809		6,092		8,901				2,494	2,494	119,904	438	6,685	41,621	168,648
Sept. 21	2,348	18	16,350		18,716				3,358	3,358	133,317	1,060	11,870	72,088	218,335
Sept. 28	2,286	94	23,920		26,300		2		3,747	3,747	111,339	4,596	19,602	87,521	223,058
Oct. 5	903	31	27,649		28,583		10		4,866	4,686	75,634	8,199	30,797	99,592	214,222
Oct. 12	385		18,150		18,535			3	3,731	3,731	40,519	7,633	34,748	92,541	175,441
Oct. 19	722		12,205		12,927				2,444	2,444	15,764	4,339	28,347	67,762	116,212
Oct. 26	431		5,577		6,008				575	575	10,306	3,623	23,326	41,866	79,121
Nov. 2	387		1,666		2,053				89	89	2,348	2,197	14,285	14,042	32,872
Nov. 9			629		629						1,036	282	19,375	3,413	24,106
Nov. 16			248		248						204	94	12,925	959	14,182
Total	12,199	143	117,650		129,992	645	12	648	25,981	27,286	669,728	32,944	211,654	592,139	1,506,465
1967 season:															
Through Nov. 18	8,824	628	33	121,528	131,013	1,065	26	1,114	36,567	38,772	535,593	73,735	234,861	567,451	1,411,640
Final	8,824	628	33	122,753	132,238	1,065	26	1,114	36,567	38,772	536,356	74,398	267,382	570,405	1,448,541
1966 season:															
Through Nov. 19	11,571	334	1,110	117,753	130,768	1,286	115	1,250	57,684	60,335	631,613	40,318	251,435	611,324	1,534,690
Final	11,571	334	2,488	117,765	132,158	1,286	115	1,250	57,990	60,641	631,946	40,324	299,021	661,665	1,582,956

[1] Other raisin type tonnage (mostly sultanas) included in Thompson figures.

[2] Includes tonnage crushed in previous weeks, also packing house culls from Southern California (desert area).

EXHIBIT B

[Fresh Fruit and Vegetable—Federal State Market News, Vol. LVI, No. 48]

CALIFORNIA DEPARTMENT OF AGRICULTURE,
BUREAU OF MARKET NEWS,
DECEMBER 2, 1970.

BULK WINE INFORMATION BULLETIN NO. 48 (WEEK ENDING NOVEMBER 28, 1970)

The prices shown below are those at which sales to the bottling trade were made during the period specified and were on the basis of standard quality naked California wines before taxes and California marketing assessments in tank carlots, except that sales of table wines usually represent transactions in less than tank carlots.

There was a fairly good volume of trading in bulk California wines. The market was firm.

Dessert wines.—Sherry was 75c, occasional 70c per gallon; white port 75c, occasional 80c; red port 80–85c, and muscatel 80c.

Asking prices early in the week beginning November 30 were 75–80c, mostly 80c for white port and sherry, 80–85c for muscatel and mostly 90c for red port.

Table wines.—Red table wines were 70–72½c, mostly 70c per gallon; white table 65c; sweet red table 75c and sweet white 70c.

Asking prices early in the week beginning November 30 were 65–75c, occasional higher, for red table wines, mostly 65c for white table wines, and 75c for sweet red and 70c for sweet white table wines.

Listed below is a tabulation of prices at which sales were made during the period indicated.

	Week ending Nov. 28	Week ending Nov. 21	Week ending Nov. 14	Week ending Nov. 29 1969
Assorted dessert wines	Sherry 75¢, occasional 70¢; white port 75¢, occasional 80¢; red port 80 to 85¢; muscatel 80¢.	White port and sherry 75 to 80¢; muscatel few 85¢; red port few 90¢; occasional 85¢.	White port and sherry 75 to 80¢. muscatel few 80 to 85¢; red port few 90¢.	65 to 70¢.
Red table wines	70 to 72½¢ mostly 70¢.	75¢	Mostly 65¢, occasional 75¢.	45 to 55¢, mostly 50¢.
White table wines	65¢	65¢	Occasional 60¢	Occasional 50¢.
Sweet table wines	Red 75¢; white 70¢	No sales reported	White occasional 70¢; red no sales reported.	No sales reported.

The prices shown above are for standard wines and do not include wines of better than average quality, special types, varietals, vintage wines, sacramental wines, etc., which are sold at higher prices.

WEATHER OUTLOOK FOR CENTRAL CALIFORNIA (DECEMBER 3–DECEMBER 7, 1970)

Partly cloudy Thursday with showers in the extreme north and in the mountains. Little temperature change. Fair Friday, Saturday and Sunday except for possibility of low clouds night and morning hours. Temperature high in the 50s to low 60s lower elevations. Lows in the 30s to low 40s.

The California Crop and Livestock Reporting Service in its weekly Weather and Crop Bulletin for the week ending November 29, 1970 commented in part as follows:

Weather.—Rain on most days in the north and over the rest of the State after Wednesday, except for the desert. Strong winds and heavy precipitation over the weekend with snow above 2,000 feet in the north and 5,000 feet in the south. Amounts through Friday were 4 to 6 inches in the Sierra Nevada and on the north coast, 1 to 2 inches in the Sacramento Valley and the foothills, and over ½ inch on the remainder of the coast. Average temperatures were 2 to 6 degrees above normal except on the south coast. Cold in the Colorado River Valley and the low desert on the 25th, where Needles had 32 degrees and Thermal 25.

Fruits.—Harvest of grapes is virtually complete except for minor vineyard stripping for winery crush. Some movement to wineries from cold storage continues.

WINERY PRICE TO GROWER REPORT NO. 23 (NOVEMBER 27–DECEMBER 2, 1970)

NOTE.—Unless otherwise stated, the prices shown below are on the basis of per ton delivered winery within the area quoted.

Central and Southern San Joaquin Valley.—The first moderate to heavy rains of the season, ranging from about two to three inches, occurred during the period and slowed harvesting of the very small remaining tonnage. Prices for vineyard strippings, mostly of the late table varieties, were unchanged at $50.00. An occasional winery offered a lower price but no purchases were reported.

Other Districts.—Several wineries have not yet established final grape prices for the season. However, both growers and wineries are anxious to settle prices and may reach an agreement sometime within the next two weeks.

WEEKLY GRAPE CRUSH REPORT NO. 14—WEEKLY TONNAGE OF GRAPES CRUSHED AT CERTAIN CALIFORNIA WINERIES

[Fresh ton basis]

	LODI-MODESTO [2]					OTHER CENTRAL VALLEY [3]					ALL CENTRAL VALLEY				
	Raisin type [1]					Raisin type [1]					Raisin type [1]				
	Thompson	Muscat	Table type	Wine type	Total	Thompson	Muscat	Table type	Wine type	Total	Thompson	Muscat	Table type	Wine type	Total
1970 season:															
July 18 [4]						58		336		394	58		336		394
July 25						135		975		1,110	135		975		1,110
August 1						444		495		939	444		495		939
August 8						3,645	3	421	354	4,423	3,645	3	421	354	4,423
August 15						8,194	9	898	49	9,150	8,194	9	898	49	9,150
August 22	1,649	3	570	2,222		24,625		1,666	6,545	32,836	26,274	3	1,666	7,115	35,058
August 29	4,774		116	4,945	9,835	71,417	330	1,434	15,191	88,372	76,191	330	1,550	20,136	98,207
September 5	10,133		67	8,295	18,495	112,570	1,126	1,427	13,868	128,991	122,703	1,126	1,494	22,163	147,486
September 12	13,235		407	16,256	29,898	119,294	537	1,258	15,064	136,153	132,529	537	1,665	31,320	166,051
September 19	15,817		6,410	36,662	58,889	143,406	3,637	2,028	18,175	167,246	159,223	3,637	8,438	54,837	226,135
September 26	10,314		11,460	35,103	56,877	122,565	4,866	2,466	29,643	159,540	132,879	4,866	13,926	64,746	216,117
October 3	2,894		13,928	39,224	56,046	91,197	5,621	3,681	34,007	134,506	94,091	5,621	17,609	73,231	190,552
October 10	465		12,957	27,787	41,209	40,961	6,863	12,357	38,859	99,040	41,426	6,863	25,314	66,646	140,249
October 17	83	45	6,805	13,629	20,562	7,467	3,973	21,118	22,683	55,241	7,550	4,018	27,923	36,312	75,803
October 24	8		849	1,049	1,906	1,629	1,988	13,471	6,248	23,336	1,637	1,988	14,320	7,297	25,242
October 31			17	26	43	1,202	29	11,066	1,518	13,815	1,202	29	11,083	1,544	13,858
November 7			3	1	4	159	9	9,459	730	10,357	159	9	9,462	731	10,361
November 14						76	4	8,637	528	9,245	76	4	8,637	528	9,245
November 21						36		5,930	614	6,580	36		5,930	614	6,580
November 28								2,579	474	3,053			2,579	474	3,053
Total	59,372	48	53,019	183,547	295,986	749,080	28,995	101,702	204,550	1,084,327	808,452	29,043	154,721	388,097	1,380,313
1969 season:															
Through November 29	57,336	226	201,192	240,167	498,921	722,991	513,385	159,346	277,812	1,211,534	780,327	51,611	360,538	517,979	1,710,455
Final	57,570	226	202,824	240,175	500,795	723,279	51,385	226,380	278,132	1,279,176	780,849	51,611	429,204	518,307	1,779,971
1968 season:															
Through November 30	54,025	23	97,165	225,892	377,105	602,879	32,774	137,372	224,088	997,113	656,904	32,797	234,537	419,980	1,374,218
Final	54,025	23	97,165	225,892	377,105	602,879	32,784	153,084	224,334	1,013,081	656,904	32,807	250,249	450,226	1,390,186

WEEKLY GRAPE CRUSH REPORT NO. 14—WEEKLY TONNAGE OF GRAPES CRUSHED AT CERTAIN CALIFORNIA WINERIES—Continued

	Raisin type [1]					Raisin type [1]					Raisin type [1]				
	Thompson	Muscat	Table type	Wine type	Total	Thompson	Muscat	Table type	Wine type	Total	Thompson	Muscat	Table type	Wine type	Total
	COASTAL [5]					SOUTHERN CALIFORNIA [6]					ALL DISTRICTS				
1970 season:															
July 18 [4]											58		336		394
July 25											135		975		1,110
August 1	37				37						481		495		976
August 8	185				185						3,830	3	421	354	4,608
August 15	296			1,023	1,319						8,490	9	898	1,072	10,469
August 22	232			2,289	2,521						26,506	3	1,666	9,404	37,579
August 29	365			3,986	4,351						76,556	330	1,550	24,122	102,558
September 5	917			2,352	3,269				504	504	123,620	1,126	1,494	25,019	151,259
September 12	1,287			4,102	5,389	200			1,711	1,911	134,016	537	1,665	37,133	173,351
September 19	2,353	57	54	11,515	13,979	150			2,646	2,796	161,726	3,694	8,492	68,998	242,910
September 26	2,188	180		17,265	19,633	100			2,620	2,720	135,167	5,046	13,926	84,631	238,770
October 3	1,527	38		18,749	20,314	150			2,269	2,419	95,768	5,659	17,609	94,249	213,285
October 10	1,906	36		15,857	17,799	100	60		1,428	1,588	43,432	6,959	25,314	83,931	159,636
October 17	705	14		9,017	9,736				779	779	8,255	4,032	27,923	46,108	86,318
Oct. 24	307			4,206	4,513						1,944	1,988	14,320	11,503	29,755
Oct. 31	150			2,128	2,278						1,352	29	11,083	3,672	16,136
Nov. 7				845	845						159	9	9,462	1,576	11,206
Nov. 14				97	97						76	4	8,637	625	9,342
Nov. 21				371	371						36		5,930	985	6,951
Nov. 28													2,579	474	3,052
Total	12,455	325	54	93,792	106,626	700	60		11,957	12,717	821,607	29,428	154,775	493,846	1,499,656
1969 season:															
Through Nov. 29	11,963	324		146,705	158,992	7	4	18	45,992	46,021	792,297	51,939	360,556	710,676	1,915,468
Final	11,963	324		146,705	158,992	7	4	18	45,992	46,021	792,819	51,959	429,222	711,004	1,984,984
1968 season:															
Through Nov. 30	13,090	143		118,951	132,184	773	12	520	25,981	27,286	670,767	32,952	235,057	594,912	1,533,688
Final	13,090	143		118,951	132,184	773	12	520	25,981	27,286	670,767	32,962	250,769	595,158	1,549,656

[1] Sultanas and Zante Currants included in Thompson figures.
[2] Includes the San Joaquin Valley north of Merced and Sacramento and Amador Counties.
[3] Includes the San Joaquin Valley south of Merced and north of the Techachapi Mountains.
[4] Includes tonnage crushed in previous weeks.
[5] Includes Alameda, Contra Costa, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, Solano, and Sonoma Counties.
[6] Includes San Bernardino, San Diego, and Riverside Counties.

* * *

EXHIBIT C

[California Crop and Livestock Reporting Service]

GRAPES FOR CRUSHING

RECORD CRUSH, CONTINUED HIGH PRICES

A late season, a record tonnage crushed, and a continuing rise in the price of coastal wine grapes characterized the 1971 grape crush season. Total crush was 2,213,000 tons, surpassing the record 1965 crush of 2,055,500 tons. Even with the large crush, the average price per ton for all varieties rose from $73.80 in 1970 to $83.80 this year. Coastal wine varieties showed the most dramatic price rise over last year, from an average for all varieties combined of $272.40 to $368.20 per ton.

Grapes in the coastal region got off to a slow start due to a cool, late spring. Bloom was two or three weeks later than normal and this lateness continued through the season. Consequently harvest was delayed until October and some varieties were not finished until early November. Spring frost damage this year was minimal with only a minor loss of crop in Sonoma County. Some early fall frosts hit the south coast counties in late October.

In the Lodi-Modesto region cool spring weather also slowed development of the crop. Harvest was late with many varieties low in sugar. Hot weather during bloom also caused excessive berry shatter in Stanislaus County.

The growing season in the other San Joaquin Valley region (south of the Merced river) was likewise a problem to vineyardists. Besides the late spring, harvest of table grapes was halted abruptly by the freeze of October 29 with a large quantity of Emperors left on the vine. Temperatures as low as 25 degrees damaged both foliage and berries, effectively stopping harvest for fresh market use. Hot weather in late summer delayed maturity of most varieties. Low sugar content was common in both raisin and wine variety grapes.

The southern California district fared quite well this season making a good recovery from the disastrous 1970 season. Yields were good and production was nearly triple the 1970 season.

In all areas there continues to be a rapid expansion of grape acreage with wine varieties dominating the new plantings.

Information in this report is supplied by vintners who grow or purchase grapes for crushing. All wineries report by variety and region where the grapes were grown, the tonnage crushed, the equivalent sugar weight, the tonnage purchased, and the average delivery price per ton. These reports are tabulated and summarized to produce the data shown in the following tables. In some instances prices have been omitted to avoid disclosure of individual operations, but are included in the State averages.

NOTICE—CONTENT OF TABLES

Prices.—Prices reflect actual purchases and do not include grower returns for tonnage pooled by cooperatives nor returns for grapes grown by wineries and used for their own production. The averages represent prices paid at delivery points in areas where grown and include usual hauling allowances. Packinghouse cull prices are not included.

Tonnage crushed.—Reported figures reflect the quantity crushed by variety and region where the grapes were grown. Packinghouse culls are included in the "all raisin" and "all table" totals.

Sugar content.—The sugar percentages shown are based on reports from cooperatives and independently owned wineries. Sugar percentages are omitted by variety or area if the data was insufficient to give a representative figure, but they are included in the State average. Sugar content for packinghouse calls are not included in the averages.

TABLE 1.—GRAPES FOR CRUSHING, TONS CRUSHED IN CALIFORNIA DURING THE 1971 SEASON BY VARIETY AND BY AREA WHERE GROWN, WITH COMPARISONS

[Amounts in tons]

Type and variety	Coastal region	Lodi-Modesto region	Other San Joaquin Valley	Southern California	1971 State total	1970 State total
Raisin grapes:						
Thompson seedless		59,600	1,080,000		1,139,600	803,100
Sultanas			4,740		4,740	4,570
Muscats	80	60	44,970	100	45,210	29,630
Black Corinth (Zantes)			6,710		6,710	[1]
All raisins	80	59,660	[2] 1,144,160	100	[2] 1,204,000	[2] 851,000
Table grapes:						
Emperor			45,160		45,160	24,960
Tokay		158,270	1,230		159,500	51,770
White Malaga		260	24,350	10	24,620	23,680
Other table		1,120	52,840		53,960	53,080
All table		159,650	[2] 127,340	10	[2] 287,000	[2] 160,000
Wine grapes (black):						
Alicante Bouschet	640	720	5,490	540	7,390	4,270
Barbera	240	9,770	2,450		12,460	7,930
Cabernet Sauvignon	9,820	190		10	10,020	4,560
Carignane	21,540	74,870	77,940	560	174,910	128,560
Early Burgundy	2,210				2,210	[3]
Gamay (Napa)	4,710	390			5,100	2,280
Gamay Beaujolais	2,630				2,630	790
Grenache	1,460	53,170	48,390	3,930	106,950	70,580
Mataro	270	180	530	1,360	2,340	890
Merlot	370				370	130
Mission	80	14,250	11,340	12,480	38,150	28,730
Petite Syrah	10,260	1,550	990	30	12,830	6,840
Pinot Noir	5,510	130		10	5,650	2,810
Royalty		1,430	13,290		14,720	11,240
Rubired		2,160	16,470	100	18,730	16,720
Ruby Cabernet	730	9,010	5,040	380	15,160	11,740
Salvador	50	1,290	6,940	120	8,400	6,280
Tinta Madeira	90	1,530	500		2,120	[3]
Valdepenas	10	14,300	2,600		16,910	12,330
Zinfandel	19,700	40,140	710	1,890	62,440	27,570
Other black	5,260	2,890	9,810	1,910	18,870	19,280
All black	84,580	227,970	202,490	23,320	538,360	363,530
Wine grapes (white):						
Burger	2,240	5,850	5,920	2,290	16,300	11,830
Chardonnay	2,620		80	10	2,710	1,420
Chenin Blanc	5,360	11,350	2,280	80	19,070	10,080
Emerald Riesling	1,390	230	2,890	40	4,550	3,540
Flora	1,020				1,020	580
French Columbard	15,640	24,180	18,970		58,790	39,270
Gewürztraminer	550				550	290
Gray Riesling	2,650	650			3,300	2,040
Muscat Blanc	320	80	1,990		2,390	1,730
Palomino	2,870	11,330	19,920	5,180	39,300	35,360
Pinot Blanc	1,290				1,290	570
Sauvignon Blanc	1,760	310			2,070	1,330
Sauvignon Vert	4,060	320	480		4,860	3,000
Sémillon	2,220	250	1,080		3,550	2,730
Sylvaner	1,910	710			2,620	1,720
White Riesling	2,050		10	20	2,080	1,260
Other white	2,870	1,440	14,340	540	19,190	14,720
All white	50,820	56,700	67,960	8,160	183,640	131,470
All wine	135,400	284,670	270,450	31,480	722,000	495,000
All varieties	135,480	503,980	1,541,050	31,590	2,213,000	1,506,000

[1] Included in all raisins for 1970.
[2] Includes packinghouse culls not allocated to the individual varieties.
[3] Reported as other black in 1970.

TABLE 2.—GRAPES FOR CRUSHING, AVERAGE GROWER RETURNS IN CALIFORNIA PER TON, DELIVERED BASIS BY TYPE, VARIETY AND DISTRICT, 1971 CROP, WITH COMPARISONS

[Amounts in dollars]

Type and variety	Coastal region	Lodi-Modesto region	Other San Joaquin Valley	Southern California	1971 State average	1970 State average
Raisin grapes:						
Thompson seedless		54.00	53.50		53.60	54.20
Sultanas			53.80		53.80	54.20
Muscats			69.90	80.00	70.00	69.50
Black Corinth (Zantes)			(1)		(1)	(2)
All raisins		54.00	54.00	80.00	54.00	54.60
Table grapes:						
Emperor		(3)	28.30		28.30	50.10
Tokay		59.90	(3)		59.80	68.20
White Malaga		56.60	59.00	(3)	59.00	56.10
Other table		62.70	41.90		42.30	48.20
All table		60.00	40.70	(3)	51.50	55.90
Wine grapes (black):						
Alicante Bouschet	287.50	67.20	76.10	91.00	88.60	79.90
Barbera	350.60	131.50	118.30		136.70	125.60
Cabernet Sauvignon	619.50	311.80			607.20	499.50
Carignane	345.90	104.40	86.60	87.70	114.90	100.40
Early Burgundy	341.10				341.10	(4)
Gamay (Napa)	355.70	(3)			352.70	268.50
Gamay Beaujolais	624.30				624.30	492.50
Grenache	319.10	104.30	86.60	90.00	96.10	90.40
Mataro	297.40	166.20	(3)	90.80	103.30	96.00
Merlot	662.40				662.40	518.00
Mission	259.20	77.00	75.10	78.00	77.00	72.40
Petite Syrah	342.80	164.50	99.70	(3)	288.40	207.10
Pinot Noir	638.40	(3)			611.80	496.80
Royalty		147.20	146.20		146.30	99.90
Rubired		166.40	132.20	141.40	136.10	100.00
Ruby Cabernet	350.80	158.40	113.20	(3)	148.11	122.10
Salvador	(3)	154.90	130.70	(3)	138.80	100.10
Tinta Madeira		127.70	98.30		121.40	(4)
Valdepenas		103.40	85.00		100.20	97.50
Zinfandel	345.20	139.50	(3)	123.70	192.20	166.90
Other black	337.60	111.30	81.60	97.60	119.70	98.70
All black	402.40	115.30	93.30	87.00	135.80	110.80
Wine grapes (white):						
Burger	246.80	79.70	(3)	76.30	96.50	80.60
Chardonnay	632.50		(3)		603.40	510.20
Chenin Blanc	324.20	149.50	117.50		183.70	165.30
Emerald Riesling		133.20	(3)		106.70	(5)
Flora	323.10				323.10	224.80
French Colombard	256.30	129.30	108.10		143.40	132.80
Gewürztraminer	419.90				419.90	336.20
Gray Riesling	313.20	158.00			250.40	235.40
Muscat Blanc	303.10		132.40		156.40	84.30
Palomino	238.40	71.40	70.00	75.00	80.24	69.00
Pinot Blanc	338.40				338.40	272.80
Sauvignon Blanc	316.90	(3)			224.50	229.80
Sauvignon Vert	244.40	(3)			220.70	153.40
Sémillon	315.40	(3)	(3)		249.00	165.40
Sylvaner	286.70	(3)			199.10	195.60
White Riesling	627.00		(3)	(3)	618.00	426.40
Other white	257.60	114.00	60.40	84.90	81.10	80.10
All white	300.70	117.30	86.75	76.40	134.00	116.80
All wine	368.20	115.80	91.80	84.20	135.50	112.30
All varieties	368.20	94.00	60.90	84.20	83.80	73.80

1 Included in all raisin average, but not shown to avoid disclosure of individual operations.
2 Price not reported in 1970.
3 Included in state average, but not shown to avoid disclosure of individual operations.
4 Reported as other black in 1970.
5 Included in other whites to avoid disclosure of individual operations.

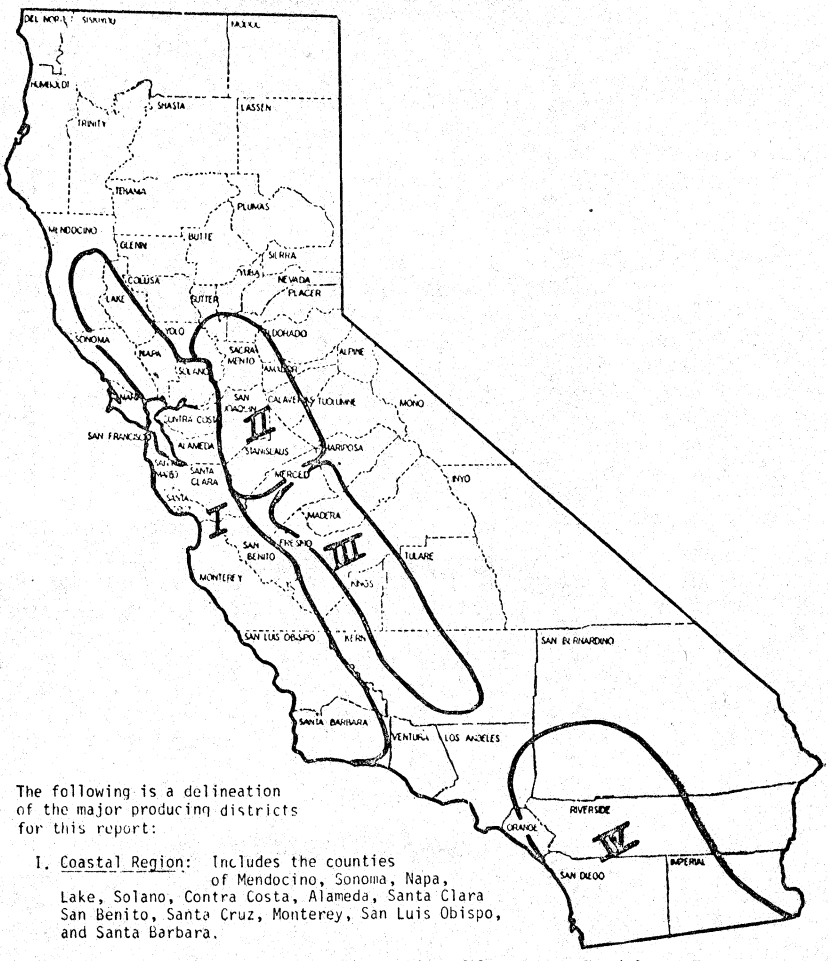
TABLE 3.—GRAPES FOR CRUSHING, AVERAGE SUGAR CONTENT OF GRAPES DELIVERED TO CALIFORNIA WINERIES DURING 1971, BY AREA WHERE GROWN, WITH COMPARISONS

[In percent]

Type and variety	Coastal region	Lodi-Modesto region	San Joaquin Valley	Southern California	1971 State average	1970 State average
Raisin grapes:						
Thompson seedless		20.6	20.2		20.2	21.2
Sultanas			20.0		20.0	20.3
Muscats			21.9		21.9	23.7
Black Corinth (Zantes)			21.4		21.4	(1)
All raisins		20.6	20.3		20.3	21.3
Table grapes:						
Emperor		18.5	19.7		19.7	17.7
Tokay		18.9	17.9		18.9	20.8
White Malaga		21.1	21.0		21.0	20.1
Other table		19.0	19.3		19.3	19.1
All table		18.9	19.8		19.3	19.5
Wine grapes (black):						
Alicante Bouschet	20.6	20.5	21.3	20.7	21.1	23.8
Barbera	20.7	23.2	23.3		23.2	24.3
Cabernet Sauvignon	21.4				21.4	22.8
Carignane	20.3	20.5	21.8	22.0	21.2	22.5
Early Burgundy	20.8				20.8	(2)
Gamay (Napa)	19.9	19.2			19.8	22.2
Gamay Beaujolais	22.2				22.2	23.5
Grenache	21.9	21.5	22.8	22.8	22.2	23.8
Mataro	20.6	21.0	22.7	23.4	22.8	23.7
Merlot	21.9				21.9	23.3
Mission	20.0	22.6	23.5	22.2	22.9	23.5
Petite Syrah	21.0	20.3	22.6		21.1	23.0
Pinot Noir	22.2				22.2	22.8
Royalty		19.0	21.2		21.0	21.7
Rubired		21.0	22.3	22.1	22.1	23.1
Ruby Cabernet	21.1	21.6	23.0	21.1	22.1	22.8
Salvador	22.7	21.3	20.6		20.7	21.7
Tinta Madeira		23.0	22.0		22.7	(2)
Valdepenas	22.2	21.5	21.1		21.4	22.8
Zinfandel	21.3	20.9	21.1	20.2	21.0	23.8
Other black	20.2	20.7	22.4	22.6	21.8	22.7
All black	20.9	21.2	22.1	22.1	21.6	23.0
Wine grapes (white):						
Burger	18.1	17.1	16.7	18.7	17.2	17.0
Chardonnay	21.9				21.9	21.9
Chenin Blanc	20.4	19.7	19.4		19.8	20.6
Emerald Riesling	19.5	20.3	19.6		19.7	19.7
Flora	21.1				21.1	23.0
French Colombard	19.3	20.5	20.7		20.3	21.6
Gewürztraminer	20.8				20.8	22.6
Gray Riesling	20.7	21.4			21.0	21.7
Muscat Blanc	21.7		17.6		18.4	20.3
Palomino	20.0	18.7	18.4	20.5	18.8	19.1
Pinot Blanc	22.3				22.3	22.5
Sauvignon Blanc	21.0	21.9			21.4	22.8
Sauvignon Vert	19.9		18.1		19.6	20.1
Sémillon	20.4	20.6	18.4		19.5	20.4
Sylvaner	21.1	18.8			19.5	20.1
White Riesling	20.3				20.3	22.0
Other white	19.5	20.6	19.0	24.6	19.2	19.4
All white	19.8	19.7	19.0	20.1	19.4	19.9
All wine	20.5	20.9	21.4	21.6	21.1	22.2
All varieties	20.5	20.3	20.4	21.6	20.4	21.4

1 Included in all raisins, 1970.
2 Reported as other black in 1970.

DEFINITION OF REGIONS



The following is a delineation of the major producing districts for this report:

I. Coastal Region: Includes the counties of Mendocino, Sonoma, Napa, Lake, Solano, Contra Costa, Alameda, Santa Clara San Benito, Santa Cruz, Monterey, San Luis Obispo, and Santa Barbara.

II. Lodi-Modesto Region: Includes the counties of Sacramento, Stanislaus, San Joaquin, Merced north of the Merced River and the small acreage in the foothill counties of Placer, El Dorado, and Amador.

III. Other San Joaquin Valley Region: Includes the remainder of the San Joaquin Valley south of the Merced river and north of the Tehachapi mountains.

IV. Southern California Region: Includes the remainder of the State south of the Tehachapi mountains.

Mr. Moss. I thank you for your statement. We will look forward to the additional material you want to supply. I would not want the record, however, to reflect that in my State of California the only persons producing wine or raising grapes are large corporate activities. There are small wineries producing wines of outstanding quality and there are many, many small vineyard owners. I think the question before this committee goes back to the basic concept of the Federal system. I suggested somewhat facetiously to the first witness that we were perhaps endeavoring to return to a common market. But I think the basic policy is whether or not the Congress would

tolerate the Balkanization of this country, the imposition of restrictive taxes or tariffs in order to favor industry in one State, protect it from competition from without its boundaries, but from within the United States.

I think that kind of a format would quickly destroy the economy of this country. The amazing success of this Nation in its industrial and economic growth, I think, has been the result of a lack of the kind of protectionism which you now appear to advocate we permit to continue. It is interesting to note that over in the old world, over in Europe today, through the use of principles long and deeply ingrained in this Nation—a freer flow of trade—that they are having an economic renaissance. I would not like us to have a decline at the moment of their renaissance. But certainly your views will be given the utmost consideration by the committee.

Mr. McCollister?

Mr. MCCOLLISTER. How long would it take, what period of time do you contemplate as a phasing-in process?

Mr. WIEDERKEHR. Well, we are discussing this with some professors in the university who did an economic impact study on it. The plan is working and of course the adjacent State of Oklahoma is starting a program where they are giving 10 acres to homestead families to plant grapes. They have a like plan in mind to give their native industry tax protection. It is a way to get the people out on the land and try to make some of that blackjack timberland in Oklahoma work.

I don't know how long it would take. I know we have made great progress now. For example, I didn't pass the law, I was born into a situation that I learned about after I got in school. The whole thing is built on a false foundation. It is a little economy all in itself. To pull the props out now would collapse the whole thing. Our forefathers passed this law in 1935. I think that the present generation is working as quickly as we can to get out of the lower priced wine business. This is the volume business that I don't think we can ever compete in because I don't think we can produce it as cheaply as they can in California.

But we have all these new vineyards of premium varieties that we know have potential. For example, the famous Rhine wines which are cherished in California. I think the potential is there. Certain varieties cannot be grown in Michigan or Ohio because of the cold weather.

Mr. MCCOLLISTER. Do you have any idea how long it would take?

Mr. WIEDERKEHR. No. It is a difficult thing. Perhaps 4 or 5 years would help it. If it came within the next 2 or 3 years unless we could, one way or another, bring in New York or Michigan types of grapes that would be cheaper. If they are not, we could go to California and buy grapes, but they have a law that says grapes cannot be shipped out of California for anything but juice. If this law changed, wouldn't that overturn the California law and allow us to get the cheaper product?

Mr. MCCOLLISTER. Doesn't the bill say that there can be no prohibition on materials originating in another State as well?

Mr. WIEDERKEHR. That would probably overturn the California law that prohibits us from buying grapes from California. It would be cheaper. As a matter of fact, we have had market bulletins where we have had calls from Farm Bureau agents who promised they could

deliver grapes to Arkansas cheaper than half the price per ton than we can buy from our neighbors. We buy about 75 percent of the grapes for our winery now. We are tied in with our contract growers. The contractors look at this future and it says if this law is passed we will be buying these other grapes. If the vehicle is destroyed for moving these grapes there is no place to market them. They are not table grapes. Welch couldn't take them. Gerber Baby Foods has come into the industry. Since Gerber did move into Fort Smith 6 years ago it has stimulated the fruit industry in Arkansas.

Mr. McCollister. You say in your testimony you are paying three times as much for grapes as what they are selling for in California.

Mr. Wiederkehr. I would say it is the market average.

Mr. McCollister. If you were able to buy grapes at the same price that the California wineries are able to, would you be able to compete?

Mr. Wiederkehr. I think we could. We would have to press the juice there and refrigerate it. Here is a price bulletin from 1970. It is obsolete now because these last 2 years they have had bad frost damages and prices are a little higher, but they anticipate in a couple of years that with no frosts the price of grapes will go back down again. Right now, and this is December 2, 1970, it says prices for vineyard strippings were unchanged at $50 a ton. Occasionally a winery offered a higher price, but no purchases were reported.

Mr. McCollister. Is that in California?

Mr. Wiederkehr. Yes.

Mr. Moss. He is talking about the table grape.

Mr. Wiederkehr. No, I am talking about wine grapes.

Mr. Moss. You said table varieties.

Mr. Wiederkehr. But it shows here they process more table varieties for wine.

Mr. Moss. I will instruct the staff to hold the record at this point to get the prices on a varietal basis per ton in Arkansas and California.

Mr. Wiederkehr. The varietals in California, according to the university survey, are in a very minority amount of grapes produced. At one time they estimated that 72 percent of the grapes planted in California were Thompson seedless variety, and half of those went to the wine industry.

Mr. Moss. Which type of wine are you competing with?

Mr. Wiedekehr. In 1960 we were competing with the lowest priced wine that comes out of there.

Mr. Moss. The lowest priced wines are not necessarily Californian. They are frequently imports.

Mr. Wiederkehr. These were the dessert types. Italian Swiss and Gallo were the two largest competitors. This is what our industry was built on after 1935.

Mr. Moss. What is the present type of wine you compete with from California?

Mr. Wiederkehr. All types. We are working on a premium program, too.

Mr. Moss. What is the bulk of the wine produced in the State of Arkansas?

Mr. Wiederkehr. I would say 80 percent of it would be what we considered popular price wine.

Mr. Moss. White, red, rosé?

Mr. Wiederkehr. They have all types, and I don't know the exact percentage of each type. It is rosé, white, red, and champagne.

Mr. Moss. I will instruct the staff to get for the committee the detail on Arkansas production, kind of grapes used in that production and the price for 1971. We will ask the same information be produced for New York and for California, and the record will be held at this point to receive that information so that the committee has before it precise figures upon which to base any evaluation of the recommendations you have made.

(The following information was supplied for the record)

MEMORANDUM—OCTOBER 5, 1972

To: Honorable John E. Moss, Chairman, Subcommittee on Commerce and Finance.

From: Robert F. Guthrie, Professional Staff Member.

Subject: Production and price of grapes used for wine in Arkansas, California, and New York.

In accordance with your direction the following information is provided for the hearing record on H.R. 9029, H.R. 9030, H.R. 10448, and H.R. 13826.

It appears, however, that this data is of limited usefulness since, as shown on Table I, there are no common points of reference between the varieties shown for New York and California, while Arkansas does not make detailed information on its grape production available.

The data shown in Table II had been compiled by the Department of Agriculture for its own reporting service, while the data shown in Table I was furnished in response to our specific request. You will note a slight discrepancy in the figures, due I imagine to the fact that they were compiled at different times for different purposes.

TABLE 1.—PRICES AND PRODUCTION FOR VARIETAL GRAPES IN ARKANSAS, CALIFORNIA, AND NEW YORK, 1971

State and variety	Price per ton	Production (in tons)
ARKANSAS [1]		
Not available		
CALIFORNIA		
Black:		
Alicante Bouschet	$88.60	7,390
Barbera	136.70	12,460
Cabernet Sauvignon	607.20	10,020
Carignane	114.90	174,910
Early Burgundy	341.10	2,210
Gamay (Napa)	351.60	5,100
Gamay (Beaujolais)	634.20	2,630
Grenache	96.10	106,950
Mataro	103.30	2,340
Merlot	662.40	370
Mission	77.00	38,150
Petite Syrah	288.40	12,830
Pinot noir	610.80	5,650
Royalty	146.30	14,720
Rubired	136.10	18,730
Ruby Cabernet	148.11	15,160
Salvador	138.80	8,400
Pinta Madeira	121.40	2,120
Valdepenas	100.20	16,910
Zinfandel	192.20	62,440
Other blacks (composite)	119.70	18,870
Total blacks (composite)	135.80	538,360
White:		
Burger	96.50	16,300
Chardonnay	603.40	2,710
Chenin blanc	183.70	19,070
Emerald Riesling	106.70	4,550
Flora	$323.10	1,020
French Colombard	143.40	58,790
Gewürztraminer	419.90	550
Gray Riesling	250.40	3,300
Muscat blanc	156.40	2,390
Palomino	80.20	39,300
Pinot blanc	338.40	1,290
Sauvignon blanc	224.50	2,070
Sauvignon vert	220.70	4,860
Sémillon	249.00	3,550
Sylvaner	199.10	2,620
White Riesling	618.00	2,080
Other whites	81.10	19,190
Total whites (composite)	134.00	183,640
All California wine grapes	135.50	722,000
NEW YORK [2]		
Concord	(3)	31,782
Niagara	178.00	8,660
Catawba	244.00	9,737
Delaware	255.00	(3)
Elvira	172.00	(3)
Ives	370.00	2,158
Missouri Riesling	(3)	114
Duchess	(3)	445
Isabella	(3)	353
French hybrids	239.00	(3)
Miscellaneous	(3)	17,448

[1] These figures not made available for the State of Arkansas.
[2] Includes purchases by New York wineries of out-of-State grapes.
[3] Not available.

Source: Figures above obtained from Statistical Reporting Service, U.S. Department of Agriculture, based on figures given them by California Crop and Livestock Reporting Service, and New York Crop Reporting Service.

TABLE 2.—PRICES AND PRODUCTION FOR VARIETAL GRAPES IN ARKANSAS, CALIFORNIA, AND NEW YORK, 1971 (FOR ALL USES)

State and usage	Price per ton	Production (in tons)
Arkansas (for all uses)	$150.00	9,200
New York (for all uses)	152.00	200,000
California:		
For all uses	86.30	3,534,000
For wine only	139.00	769,000

Note: Figures above obtained from Statistical Reporting Service, U.S. Department of Agriculture.

Mr. WIEDERKEHR. Now prices have gone high in Napa Valley to——

Mr. Moss. We will have that for the record. When the committee acts on a matter of that type, it tends to develop information from the most reliable and comprehensive sources.

Mr. WIEDERKEHR. We will state for the record Federal, State, and marketing news from San Francisco.

Mr. Moss. You may talk with Mr. Guthrie of the staff later, also, but Mr. Guthrie will be under instruction to compile this information for the record.

Any further questions? If not, we appreciate your appearance.

Mr. WIEDERKEHR. Mr. Taylor had some remarks that he would like to make, also.

Mr. Moss. If it would be brief, because we have a number of witnesses.

Mr. TAYLOR. I want to say we sincerely appreciate the courtesy that you have shown him to give him this time. I realize what I am going to say is in direct opposition to the way the chairman of this committee probably feels. Frankly, I think it is just kind of a case where the big fish are eating up little fish in this country.

Honestly, I feel that, under this 21st amendment, the State of Arkansas and some six or seven of these other States have the legal right to do what they have done when they put a higher price on foreign wine that comes into those States than they do on the local wine. I realize that is the bone of contention now before this committee.

Mr. Moss. I think the bone of contention is not that at all. I think it is whether a pattern of permitting industries to develop in each of the 50 States, under a protective tax pattern, would be in the interest of the economy of the United States.

I doubt very much that Arkansas would advocate, in areas where it is in sharp competition with other States, that the other States be permitted to impose taxes discriminatory against the products of Arkansas and to protect the market only for the producers within the other State or States.

I think it would be a most unwise pattern. I think clearly it was contemplated by the framers of the Constitution that we not make the mistakes which had caused so much trouble in the Old World for so very, very many years.

Mr. TAYLOR. I realize my point of view is in direct opposition to the chairman's.

Mr. Moss. I would hope that you would examine your point of view as the chairman has stated the proposition.

Mr. TAYLOR. Under this 21st amendment, we think the State of Arkansas has a right to just exactly what it is doing.

Mr. Moss. That is noted for the record.

Mr. TAYLOR. Now, honestly, I am an old busted cattleman. This spring when the President announced that he was going to try to drive the price of beef down by importing foreign beef, I thought I was ruined. I bought a few hundred of steers lately, and I find the market just goes up and up.

Just recently I spent 3 weeks in Europe behind the Iron Curtain, and I didn't see but 1,000 head of cattle over there in eight or nine of those countries. If the truth is known, I would not be surprised if Mr. Wiederkehr and his association could not survive if the protection they have now under the law as it is written was repealed, but we think we have a good thing down there, and we want to keep it, just to be frank with you.

Mr. Moss. I would hope that you would have the confidence in your product to look to compete on merit and not just because of protection.

Mr. TAYLOR. We think we can compete on the merits. This is, compared to the California industry, ours is an infant industry, and we have to have time to get our feet on the ground and develop our product to where we can be competitive with California.

If the committee should see fit to report this bill out favorably, we sincerely plead with you to give us a reasonable time in which to get our house in order.

Mr. Moss. The committee will give full consideration to your suggestion.

Mr. WIEDERKEHR. I think the present generation, I know my brother-in-law is about my age, we understand the problem, and we wish they had started on an equal basis because this is like sitting on a powder keg. You never know when it is going to be overturned. But to save our company we probably could do so, but what about all these grape growers?

Mr. Moss. I am not going to write the bill here at this moment. The committee is going to consider the views expressed on this public record. I don't know whether it would put grape growers out of business. I have very serious doubts that would be the case. With the increasing consumption of wines in the United States, I think there might well be an opportunity for your State to compete on the merit of its product and not merely because it enjoys a protective tariff.

That theory of protectionism is one long disavowed by both parties in this country. I think it is a disavowal based on good, sound economic judgment.

Mr. WIEDERKEHR. As I mentioned earlier, I did not make it clear, in 1960——

Mr. Moss. The Chair wants to give you every courtesy, but we have agreed that all of this material is now going to be developed and placed in this record, and we have given you the fullest opportunity to revise your remarks and to include any material you want.

At this point, we are edging toward just argument, and there is no point in argument before the committee.

Mr. WIEDERKEHR. May I make one final statement?

Mr. Moss. Yes.

Mr. WIEDERKEHR. This generation is working toward the premiums about 20 percent——

Mr. Moss. I don't want to be lacking in courtesy toward you, but we can go on for a great deal of time here repeating the same substantive points that have been placed quite clearly in the record. I have the responsibility to hear the rest of the witnesses. I do thank you for your appearance, I assure you. Thank you very much.

The next witness will be Mr. Jerome T. Baylin, director of the Department of Liquor Control for the State of Maryland. Would you like to have your statement placed in the record? And you may be permitted to summarize.

STATEMENT OF JEROME I. BAYLIN, DIRECTOR, DEPARTMENT OF LIQUOR CONTROL, MONTGOMERY COUNTY, MD.

Mr. BAYLIN. My statement is rather brief.

Mr. Moss. Would you prefer to read the statement?

Mr. BAYLIN. Yes, sir.

Mr. Moss. Then it will be in the record as you read it. You may proceed.

Mr. BAYLIN. Mr. Chairman, honored members of the committee, I thank you for allowing us to appear before the committee.

My name is Jerome I. Baylin, director of the Department of Liquor Control for Montgomery County, Md.

I am aware that bills H.R. 9029 and H.R. 9030, apply basically to States, but I feel impelled to urge that it not be approved because it could destroy wine businesses operated by State and local governments, and Montgomery County conducts just such an operation. We have, in fact, been in the business of wholesaling and retailing wines and distilled spirits, pursuant to an act of the Maryland General Assembly, for the past 38 years.

So far this year wine sales by the Montgomery County Department of Liquor Control have exceeded 160,000 cases—I would place them as of today at roughly 2 million bottles— and they are an extremely important factor in our overall alcoholic beverage sales picture. Last year, 1971, those sales totaled more than $33.5 million and it is no exaggeration to say that their maintenance is absolutely vital to a county whose annual budget is in the neighborhood of $300 million.

Consequently, we have as much at stake in this proposal as any of the several States. Montgomery County, in fact, has a larger population than four of the States in the Union and it is not far behind half a dozen others. It is also a rapidly growing county—a fact well known to the numerous Members of the U.S. House of Representatives and the U.S. Senate who make their homes there while Congress is in session—and it thus is confronted with fiscal problems even more acute than are generally encountered in most other sections of the country.

REVENUE FROM WINES URGENTLY NEEDED

It logically follows that the government of Montgomery County must husband all of its resources and preserve all of its revenue sources. One of these is the Department of Liquor Control which could face the total loss of its wine business should this bill as written be enacted into law. Such a loss would be little short of a fiscal disaster at a time

when Montgomery County, with its $3.5 billion assessable tax base, is already hard put to cope with the magnitudinous expense of financing the expansion of its school system, its police department and the other facilities and services its burgeoning population demand of their local government.

Yet the threat of that financial loss is very real. It is written into this bill, some of whose provisions proscribe any action by any State which may tend to deny to any wine a right or privilege granted to another.

In effect, this bill says that if a State permits the sale of any wine at all it must permit the sale of all wines, whether they be produced in the United States or in a foreign country. And as a unit of the State of Maryland, Montgomery County could automatically be bound to comply with that mandate should Congress approve the measure.

Here we get to the crux of the situation. Montgomery County, through its Department of Liquor Control, is the only wine wholesaler within its own territory. Therefore, it would be required by Federal law to buy whatever wine is offered to it from any source for the simple reason that failure to buy any of them—even a single one—would be tantamount to discrimination, and thus, illegal.

This is because the county is a governmental unit and cannot favor one wine over another—as it now seemingly does by stocking only those wines its customers want and declining to stock those for which there is little or no public demand—and whether a licensed retailer exercised discrimination by purchasing from the Department only those wines he knew he could sell would be immaterial. The county would be a violator but the private retailer would not.

THE ALTERNATIVE IS TO GET OUT OF THE WINE BUSINESS

I say quite frankly that Montgomery County could not afford such an undertaking. The Department's funds, all publicly generated and belonging to the county's citizens, can only be expended for the normal conduct of a sound business. Only those wines whose early resale can reasonably be anticipated can be purchased and stocked. Similarly, storage and store facilities can be constructed or leased only to the extent reasonably deemed necessary to accommodate current inventories plus space for normal business expansion as determined by past performances.

Obviously, therefore, the county cannot countenance a business practice which would involve the mandatory purchase of any and all wines proffered by worldwide suppliers. Yet to decline any such offer would be illegal. Hence, Montgomery County would have no choice but to divest itself of its long-established wine business.

Note, please, how different our situation is from that prevailing where all the wine business in a given State is in private hands. So long as the State does not impose any law, rule, or regulation that prohibits or impedes the sale of one wine while exempting others, it has met the requirements of this bill. It matters not that private wine dealers within the State may themselves decline to buy one wine while they willingly purchase another.

Note, too, that Montgomery County has no law, rule, or regulation which favors one wine over another. Only its purchasing policies—the universal practice of purchasing and stocking what the customer wants and no more—are at variance with the provisions of this bill.

But that variance could be sufficient to stamp the county as the violator of a Federal statute, and I honestly doubt that such was the intent of the framers of this measure. I likewise doubt that Members of Congress have ever entertained the thought of destroying a local government's business in an area specifically approved by the Constitution of the United States. Therefore, I most urgently recommend that the committee disapprove the bill.

Mr. Moss. Let me assure you again that the statement that we do not propose to destroy is one agreed to totally. I don't know the source of the construction placed upon this language. I can only say that if I were employing counsel who read this bill on its face that advised me as you folks appear to have been advised, I would undoubtedly dismiss the counsel as incompetent.

However, out of an abundance of caution, I can assure you that the committee will go to great lengths to make clear what we intend to be clear in the language of the two bills. We are not attempting to say that any public group engaged in a program of retailing or wholesaling would be faced with such a ridiculous burden as to require them to stock all wines offered for sale in the United States. That was not the intent. It is not required.

The language when it is reported will make it abundantly clear that it is not required.

Mr. BAYLIN. Fine; I have confidence in you, sir.

Mr. Moss. That is the only objection you have to the legislation?

Mr. BAYLIN. Yes, sir. I can fully understand the intent about the discriminatory tax aspect of it. I fully understand it and its significance.

Mr. Moss. Thank you very much.

Do you have any question?

Mr. BAYLIN. With your permission, I would like to submit a letter signed by our elected county executive, James Gleason, for the record.

Mr. Moss. Without objection, the record will be held to receive the letter.

(The letter referred to follows:)

OFFICE OF THE COUNTY EXECUTIVE,
Montgomery County, Md., September 28, 1972.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Rayburn Office Building, Washington, D.C.

GENTLEMEN: I am taking this opportunity, as County Executive of Montgomery County, Maryland, to voice my opposition to H.R. #9029/9030, as they are presently written.

Montgomery County, pursuant to an act of the Maryland General Assembly, has been in the business of wholesaling and retailing wines and spirits for the past thirty-eight years. The benefits derived from these sales are turned over to the General Fund of the county to be used to finance other aspects of county programs and services to the public. Thus, the benefits derived from our system of distribution accrue to all the citizens of the county, not just a favored or privileged few.

These Bills, H.R. #9029/9030, are a financial threat to a very integral part of our county revenue system. In effect, the Bills say that if a State permits the sale of any wine at all, it must permit the sale of all wines whether they be American or foreign. This is the crux of the problem. It would be a physical

impossibility to stock and inventory all of the wines produced here and abroad. In addition, it would not even be good business practice. Montgomery County, by mandate and vote of its citizens, is the *only* wine wholesaler within its own territory. We would be, therefore, compelled by this proposed law to carry brands of wine that have no public demand whatsoever, while our 330 private licensees within the county could pick and choose as they saw fit, unbound by any such proposed law. Under our present system, these same licensees have the privilege to order through our Department of Liquor Control, regardless of source or origin, any wine or spirit they may wish to purchase for resale.

Obviously, therefore, the county cannot condone a business practice which would involve mandatory purchase of any and all wines proffered by worldwide suppliers. Yet, to decline any such offer would be illegal. Hence, Montgomery County would have no choice but to divest itself of its long established wine business.

Note too, that Montgomery County has no law, rule or regulation which favors one wine over another. Only its purchasing policies—the universally accepted good business practice of purchasing and stocking what the customer wants and no more—are at a variance with the provisions of this Bill.

I seriously doubt that members of Congress have ever entertained the thought of destroying a local government's business in an area specifically approved by the Constitution of the United States. Therefore, I most urgently recommend that the committee disapprove the Bill.

Sincerely,

JAMES P. GLEASON,
County Executive.

Mr. Moss. Now we have Mr. Archer L. Yeatts, board member, Department of Alcoholic Beverage Control Board of the State of Virginia. We are very pleased to welcome you to the committee. Would you care to have your entire statement placed in the record at this point, or would your prefer to read the statement?

STATEMENT OF ARCHER L. YEATTS, JR., MEMBER, ALCOHOLIC BEVERAGE CONTROL BOARD, STATE OF VIRGINIA

Mr. YEATTS. I would prefer to read the statement and then make some comments on various phases, if I may.

Mr. Chairman, members of the subcommittee: I am Archer L. Yeatts, of the Virginia Alcoholic Beverage Control Board located at Richmond, Va. I am speaking in behalf of the three-member board and appreciate the opportunity you have afforded us to appear today.

We wish to take this opportunity to state our opposition to H.R. 9029, H.R. 9030, H.R. 10448, and H.R. 13826.

The ostensible purpose of these bills is to prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine.

However, careful analysis of these bills will reveal that the real purpose behind them is not to prevent the States from discriminating against legitimate articles of commerce. The real purpose is to promote the wine industry and to encourage the sale of wine. We suspect the bills would be used as an entering wedge to ultimately remove all restraints that stand in the way of exploiting and saturating the market for wine. We believe that a foreseeable result, if legislation such as this is enacted and withstands attacks on constitutional grounds is that control of the traffic in all intoxicating liquors will be shifted by degrees away from the States and vested in the Federal Government.

The problems posed in controlling the traffic in alcoholic beverages are not easy. Neither the open saloon nor prohibition has worked. Our country has had an unhappy experience with each method. After much

time, effort, expense, and soul-searching debate, the 21st amendment to the Constitution of the United States was adopted. This amendment, in effect, has recognized that while there may be universal problems in controlling intoxicating beverages, there are also local problems that are more readily susceptible of solution by persons closer to and more familiar with the problems. It has long been true that the elected official most responsive to and representative of his constituents is the official on the first political level, which is the local level.

The local option elections by a county, city, or town is a prominent feature of Virginia's approach to the control question, as it is in many States. Whatever else may be said, since the passage of the 21st amendment, control by the States has proven to be an immeasurably better approach than prohibition or the unrestrained excesses of the days of the open saloon.

When the Virginia Alcoholic Beverage Control Act was passed, the legislative committee that fathered it stressed that temperance was an important aspect. The promotion of alcoholic products by means of advertising, to cite one example, is strictly controlled. There are, of course, other restraints, and the nature of the restraints may differ from State to State. The very fact that the laws of each State differ is, in itself, a restraint of sorts. To our way of thinking, restraint and moderation in approaching the problem of control is the way of wisdom. It is a way that is commended by the experience of the country under other methods. The time has not yet come, in our opinion, to whittle away at the 21st amendment to the Constitution.

The assistant attorney general of Virginia assigned as counsel to the Virginia Alcoholic Beverage Control Board has made a brief analysis of the legal aspects of this problem. I file a copy of this analysis with this statement and commend it for your consideration.

Mr. Moss. Without objection, the statement constituting the legal analysis by the assistant attorney general of the State of Virginia will be placed in the record at this point.

(The analysis referred to follows:)

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD,
September 9, 1971.

To: Mr. Archer L. Yeatts, Jr., Member of the Board.
From: William P. Bagwell, Jr., Assistant Attorney General.
Subject: Bills (H.R. 9029, 9030 and 10448) pending in Congress, each of which is entitled "A Bill to prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine, and for other purposes."

You have furnished me with copies of the above mentioned bills and requested my comment thereon.

I had occasion in December, 1969, to examine a similar bill then pending in Congress, and furnished the then chairman of this Board with my views as to why legislation of this type should be opposed. My opinion has not since changed, and while I have made some revision of the memorandum submitted in 1969, the following is largely a reiteration of the view then expressed.

Historically, the dangers to the community inherent in the liquor traffic are well known, and it has long been thought that the states are in a better position than the federal government to accommodate conflicting views and to solve the often difficult and sometimes local problems. The basic principles are well developed and understood in the law and have withstood Constitutional attacks over the years. The pending bill, by use of the interstate commerce clause of the Constitution, is aimed at taking away from the states some of the control now exercised by them. If successful, it could serve as an entering wedge for vesting more and more control in the federal government. These bills, then, because they espouse the principle of federal control in an area previously reserved

to the states, should be opposed by those who are convinced that state control offers the approach best suited to a difficult problem.

The following is intended to sketch a brief view of some of the judicial landmarks:

1. PRIVILEGES AND IMMUNITIES

The right to traffic in intoxicating liquors is not regarded as one of the privileges and immunities of a citizen of the United States, or of a particular state. No man has an inherent right to sell liquor. Thus, in *Crowley* v. *Christensen*, 137 U.S. 86 (1890), a case which an applicant for a liquor license attacked a San Francisco ordinance as denying him equal protection of the law, the Court said:

"The police power of the state is fully competent to regulate the business—to mitigate its evils, or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority . . . It is a matter of legislative will only." (137 U.S. at 91–92).

2. THE POLICE POWER

Section 2 of the Twenty-first Amendment to the Constitution of the United States is as follows:

"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."

The principle that a state may decline to consider certain things to be legitimate articles of commerce and may enact laws, in the exercise of the police power, that eliminate property rights in such articles is both ancient and essential in any civilized society. Until now, liquor has been considered to be such an article. Thus, the states have been permitted to declare liquor to be contraband *per se* or to permit a limited traffic under strict regulation, the liquor becoming contraband when removed from permitted channels. There are no property rights in that which is contraband *per se*, and such property rights as may be permitted when the traffic conforms to legal channels are forfeited when removed therefrom. These principles were clearly stated by the Supreme Court of the United States in *Ziffrin* v. *Reeves*, 308 U.S. 132 (1939). In that case, the Court upheld Kentucky legislation that declared liquor to be contraband when removed from strictly regulated channels. There the Court said:

"The Twenty-first Amendment sanctions the right of a State to legislate concerning intoxicating liquors brought from without, unfettered by the Commerce Clause. Without doubt, a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained, or the use to which they are to be put. Further, she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them.

* * * * * * *

"The statute declares whiskey removed from permitted channels, contraband subject to immediate seizure. This is within the police power of the state; and property so circumstanced cannot be regarded as a proper article of commerce." (308 U.S. at 138–139)

3. DUE PROCESS, EQUAL PROTECTION, AND INTERSTATE COMMERCE ASPECTS

The following cases give some indication of powers presently exercised by the States, without offending the Due Process and Equal Protection Clauses. And while some may have thought the Commerce Clause to have been deprived of all vitality as a limitation upon State legislative power, one of the cases mentioned repudiates this notion, though the extent of this limitation is not clearly defined.

In *State Board of Equalization of California* v. *Young's Market Company*, 299 U.S. 59 (1936), the Court, in an opinion by Mr. Justice Brandeis, sustained a statute imposing a license fee for the privilege of importing beer from other states as against the argument that the statute violated the Commerce and Equal Protection Clauses.

In *Mahoney* v. *Johnson Triner Corporation*, 304 U.S. 401 (1938), the Court sustained a Minnesota statute imposing additional processing conditions on liquor

coming from other states, a statute which the Court noted "* * * clearly discriminates in favor of liquor processed within the state against liquor completely processed elsewhere." (304 U.S. at 403) In this case, the Triner Corporation had on hand at the time of the passage of the Minnesota statute liquors they had been lawfully selling under a Minnesota license, but which they could not now lawfully sell since the passage of the statute requiring further processing. The Court said this was immaterial since independently of the Twenty-first Amendment, the State had the power to terminate the license (304 U.S. at 404).

Michigan statutes prohibiting dealers in beer from selling beer manufactured in other states, if such other states discriminated against beer manufactured in Michigan, were sustained in *Indianapolis Brewing Company* v. *Liquor Control Commission*, 305 U.S. 391 (1939) as against Commerce, Due Process, and Equal Protection arguments.

The Supreme Court of the United States has several times stated that one effect of the repeal of the Eighteenth Amendment by the Twenty-First Amendment is that the right of the States to prohibit or regulate the importation of liquor is totally unconfined by traditional Commerce Clause limitations. However, the Commerce Clause is not totally dead as far as liquor traffic is concerned. In *Hostetter* v. *Idlewild Liquor Corporation*, 377 U.S. 324 (1964), liquor was received in a warehouse under customs bond in New York and sold to international travelers for delivery at foreign destinations. New York took the position that this business was unlicenseable under its laws and was, therefore, illegal. The Court indicated that the New York statute was not aimed at preventing the delivery or use of intoxicating liquors in New York, and therefore, the Twenty-first Amendment did not apply. The Court then proceeded to hold the New York statute invalid as being in violation of the Commerce Clause.

The dissenting opinion of Mr. Justice Black in this case is particularly interesting in that he traces the legislative history of the Twenty-first Amendment, and expresses his opinion that the effect of this Amendment was to return "absolute control" of the liquor traffic to the states (377 U.S. at 338).

In *Joseph E. Seagram and Sons, Inc.* v. *Hostetter*, 384 U.S. 35 (1966), reh. den. 384 U.S. 967, the Court upheld the validity of New York's "price warranty" law, which required distillers to warrant that the price charged the State is no higher than the price charged in other states.

The Court stated that it is not the provision of courts to draw on their own views as to the morality, legitimacy and usefulness of a particular business in order to decide whether a statute bears too heavily upon that business, and by so doing violates due process. The Court also said that it had returned to the original constitutional proposition that Courts do not substitute their social and economic beliefs for the judgment of legislative bodies who are elected to pass laws.

4. LOCAL OPTION LAWS

In Virginia, and in other states, there are "wet" and "dry" counties, cities and towns, the residents being entitled in a referendum to establish for themselves a status as "wet" or "dry."

The customs and mores of people change with the passage of time—and contemporaneously may differ in rural and urban areas of a given State. Local option laws until now have been deemed an acceptable means of meeting and satisfying these varying needs.

Recently, in the case of *McDonald* v. *Brewer*, 295 F. Supp. 1135 (1968), the local option laws of Alabama were attacked as being unconstitutional. Plaintiff McDonald complained that after he lawfully purchased whiskey from a State liquor store in a "wet" county, he was threatened with criminal prosecution if he possessed it in a "dry" county for his own use. The Court there said:

"As far back as 1904, the Supreme Court declared that the power of a state to pass a local option law 'is not an open question.' *Lloyd* v. *Dollison*, 1904, 194 U.S. 445, 448, 449, 24 S. Ct. 703, 48 L. Ed. 1062. See also *Rippey* v. *Texas*, 1904 193 U.S. 504, 24 S. Ct. 516, 48 L. Ed. 767. Nothing that has occurred since has impaired the soundness of that statement. The Supreme Court, albeit in different settings, has repeatedly recognized that, 'The Equal Protection Clause relates to equality between persons as such rather than between areas.' *Salsburg* v. *Maryland*, 1954, 346 U.S. 545, 551, 74 S. Ct. 280, 283, 98 L. Ed. 281; *Griffin* v. *County School Board of Prince Edward County*, 1964, 377 U.S. 218, 230, 84 S. Ct. 1226, 12 L. Ed. 2d. 256. The Twenty-first Amendment to the United States Constitution has recognized the police power of the states over intoxicating

liquors. We find no sound basis for the plaintiffs' constitutional arguments. We hold that it is not violative of the Fourteenth Amendment to the United States Constitution for the State of Alabama to prohibit persons who buy legal taxpaid whiskey in the State's 'wet' counties from possessing such whiskey for their own personal use or otherwise in the State's 'dry' counties." (295 F. Supp. at 1139–1140).

In conclusion, it seems clear that if any of the pending bills is passed, and withstands subsequent constitutional attack in the courts, a departure will have been made from traditional concepts relative to control of the liquor traffic. Increasing federal control and consequent enfeebling of state authority in the field would likely follow.

WILLIAM P. BAGWELL, Jr.,
Assistant Attorney General.

Mr. YEATTS. Mr. Chairman, I might point out, this statement would have somewhat been altered had I known what would transpire here this morning. But I would point out to you, sir, on page 2, line 13 of this proposed bill, if it had been the intent of the designers or the writers of this legislation to limit it to tax, which we in Virgina do not oppose the elimination of, any discriminatory tax, then I don't think we would be here this morning.

But when you read the rest of that line, it includes, regulation, prohibition, or requirement, which is not equally applicable with respect to wine of like kind.

This, Mr. Chairman, is our concern. We have a requirement in Virginia that before a wine is sold, it is listed. As you may know, you mentioned the Virginia system earlier, we have a dual system in Virginia where we have the bulk of our wine sold through distributors to retailers, all of whom are licensed by us. We charge a tax, yes, sir; we discriminate in the amount of 5 cents wherein we charge fifteen cents, not necessarily for wine produced in our State, but wine produced by Virginia-grown products, and 20 cents per gallon for that wine produced outside Virginia.

One of my first efforts when I went on this control board was to eliminate this discrimination, but the apple and peach producers of our State came in in such large numbers and raised so much objection, we left it like it was.

But, regardless of who sells the wine, we do, as a control board, approve the items. Now, we would hope that we will be able to retain the authority to say which brands and which items will be sold in Virginia. I don't think we can be accused of discriminating between out-of-State and in-State.

Mr. Moss. Your judgment is based upon the demands for the products?

Mr. YEATTS. The demands for the products, the type of label that it has. We try to ride herd on our advertising program. We turn down a lot of labels because we don't think they are good for our people, like "Mule Kick," and any label that suggests the alcoholic content or the power of—you know what I mean.

Mr. Moss. Let me make very clear, as one of the authors, that the statement that there is a hidden or subtle purpose to this bill is not true.

It is not the intent of this chairman nor of my colleagues from California to deal with other than discrimination. Discrimination is not entirely based on tax. It is indicated in some States that a wine produced within the State carries a greater right of sale or greater op-

portunity of sale in restaurants. I realize this is not the case in Virginia.

Mr. YEATTS. We don't agree with that, sir.

Mr. Moss. But you see we have forms of discrimination which become very subtle. So we do intend, and the reason for the phrasing you cited is to have it deal with that kind of discrimination.

Of course, I don't know of any of our wines that are labeled in a manner to try to get some idea of any high alcoholic content because good wine doesn't have a high alcoholic content.

Mr. YEATTS. That is true.

Mr. Moss. We have not tried to undertake the promotion of wines on that basis.

Mr. YEATTS. We are further concerned, Mr. Chairman, over the apparent comparison of wine moving in interstate commerce with shoes, clothing, or any other product. We feel that alcoholic beverages should not move in interstate commerce as does everything else. As long as we have the 21st amendment, or whether we don't have the 21st amendment, we feel that alcoholic beverages and especially wine, which has an alcoholic content of between 9 and 20 percent, we doubt if that should ever freely move in interstate commerce as does corn flakes, shoes, or what-have-you.

Mr. Moss. Or tobacco.

Mr. YEATTS. Or tobacco.

Mr. Moss. I would point out that there is a rather strong cry or demand in this Nation to restrict tobacco because of its alleged injurious effects. I imagine that were a comparable type of discrimination to be directed against tobacco, that we might hear some strong protests from the great State of Virginia.

Mr. YEATTS. You sort of hit a sore spot, Mr. Chairman.

Mr. Moss. I do want to thank you.

The committee is going to have to adjourn at this point. We have a quorum call underway on the floor. We will just about have time to make it. We thank you for your appearance.

I ask all witnesses to promptly supply any additional material requested. We will hold the record, without objection, for 5 days to receive additional material.

The committee will now stand adjourned.

(The following statements, letters and attachments, and telegrams were received for the record:)

STATEMENT OF THE CALIFORNIA DEPARTMENT OF AGRICULTURE IN SUPPORT OF H.R. 9029 AND H.R. 9030

The California Department of Agriculture wishes to take this opportunity to express to your committee its wholehearted support of H.R. 9029 (Mr. Sisk), a bill "To prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine, and for other purposes."

In 1971 California had 500,000 acres of vineyards of which 444,000 were of bearing age. 3,510,000 tons of grapes were produced having an estimated farm value of $294,000,000. These grapes were produced by about 9,000 commercial growers operating about 16,000 separate vineyard properties. At the peak of the harvest season about 75,000 workers were employed in the vineyards, including operator and family labor.

In terms of farm value, grapes retained their number 1 ranking among all California crops and their number 3 ranking among all California agricultural commodities, being outranked only by cattle and dairy products.

Wineries utilized 2.2 million tons of grapes (62.7% of the crop) having a farm value of about $178,000,000.

California wineries shipped about 225,000,000 gallons of wine having an estimated F.O.B. winery value, exclusive of excise taxes, of about $450,000,000. The industry shipments of beverage brandy, grape concentrate and wine spirits were sufficient to bring F.O.B. value of its shipments to well over $500 million.

Approximately 84.9% of all wine produced in the United States in 1971 was produced in California. California produced about 73.9% of all wine consumed in the United States during 1971.

The Department believes that agricultural products and commodities should not be subjected to interstate trade barriers. We join the United States Department of Commerce in believing that commerce between the states should be free and unencumbered, and that farmers from all areas of the country should have equal access to the marketplace.

But this equal access is denied to California and other American wine producers, who face a perplexing maze of state laws, regulations and interpretations which frequently have little in common other than their lack of uniformity. In seven states, for example, a greater excise tax is imposed upon wine emanating from outside the taxing state. In these seven states, a wine produced elsewhere, including other states of the United States, is taxed at a higher rate than wine produced within the taxing state.

In a number of states, the license fee for a winery producing wine from agricultural products grown within the state is less than the fee for a winery producing wine from agricultural products grown outside the state.

Some states require an out-of-state shipper to obtain a license or permit before shipping wine into the state. In one state the shipper must obtain a Certificate of Compliance at no fee. In another state the out-of-state shipper soliciting wholesalers within the state, must, himself, obtain a state wholesaler's license ranging in fee from $900 to $1,500 annually.

An out-of-state firm soliciting in and/or shipping wine to a certain state is required to obtain a non-resident's license. The annual fees for this license are based on annual billing, ranging from $250 for a firm billing over $50,000 annually to $3,000 for a firm billing over $3,000,000 annually. Out-of-state firms with billings of less than $50,000 annually must be represented by a "resident broker" whose place of business is located within the state and who pays an annual fee of $250 which entitles him to represent five firms.

An out-of-state shipper's permit in a substantial amount is good neither for the wine industry nor the consumer.

California, and other states, have many small wineries which are precluded from doing business in many states requiring an out-of-state shipper's license. The reason is simple: Their volume of business in a given state would not justify a fee of, for example, $200. Thus, these small wineries lose a legitimate source of business and the consumer is given less product choice.

In order to ship into a number of states, a winery must register its brands or types with the State Liquor Authority. In one state the registration fee is $3 per brand. In another it is $20 per brand label.

The above examples, and there are many more, furnish an indication of the numerous difficulties attendant upon the production, transportation and sale of wine, a lawful product, in the various states.

Further, other factors favorable to your approval of the measure merit your consideration:

1. We understand that the supporters of HR 9029 have expressed a willingness to accept amendments to meet the objections of the National Alcoholic Beverage Control Association, Inc. which would permit control states to operate in a reasonable fashion. We believe this is both reasonable and necessary.

2. There has been no Federal Court decision which upholds the imposition by a state of a discriminatory tax against the products of another state.

3. California produces a wide array of farm products. We are, as I have previously said, the largest producer of domestic wines. We would, therefore, have a great self-interest in protecting the producers of our crops including wine. We do not, however, differentiate, either by law or regulation, between the produce of our state and those of other states, nor do we discriminate against the producers of other states for economic or other purposes.

This Department strongly supports the passage of HR 9029–9030 in order to place wine produced in one state on a more nearly equal commercial footing with wine produced elsewhere within the United States.

Dated October 5, 1972.

STATEMENT OF DAVID E. KERR, EXECUTIVE DIRECTOR, PENNSYLVANIA LIQUOR CONTROL BOARD

Mr. Chairman: I have been directed by the Pennsylvania Liquor Control Board, as its Executive Director, to make this statement setting forth the position of the Pennsylvania Liquor Control Board regarding legislation under consideration by your committee, H.R. 9029, H.R. 9030, H.R. 10448 and H.R. 13826—To prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine. The Board I represent is unalterably opposed to the enactment of this legislation.

The Pennsylvania Liquor Control Board is a creature of the Legislature of the Commonwealth of Pennsylvania and its form of operation is mandated by the Pennsylvania Liquor Code. This Code requires that the Board operate stores, known as State Stores, for the purpose of controlling the sale of liquor. By definition of the Code the term liquor includes wine. The State Stores, as a result, are the means whereby the products of the wine marketer are made available to the consumers in the Commonwealth.

The passage of the Liquor Code followed the ratification of the twenty-first Amendment to the United States Constitution in December 1933. The first State Stores began operation on January 2, 1934. Since that time the Board's operation has been responsive to the public demand and has handled its relations with the wine industry in a fair and equitable manner. On innumerable occasions the operation of this Board has been commended by the members of the alcoholic beverage industry and held out as an exemplary model for other States.

During the thirty-eight years and nine months of this Board's operation, we can find no record of a charge made by the wine industry such as is made in Section I of the legislation you are considering. Certainly, because of our long history of fair dealing with the wine industry, we cannot understand the blanket indictment in the proposed legislation.

Should the wine industry, through its trade associations on whose behalf this legislation was introduced, believe that any one or more of the several States are discriminating against it, then it is singularly strange that during these many long years it has never petitioned the Federal judiciary system to remove this barrier to interstate commerce. We believe this should be done as a first step before asking for relief by legislation.

After examining the proposed legislation we believe it to be so loosely drawn that by interpretation, if we did not make available to the citizenry of this Commonwealth all brands, in all sizes, and in all types of containers and packages, every kind of wine produced in the United States, we could be accused of impeding interstate commerce. To accede to this type of interpretation would have a disastrous effect, especially when one considers that the Bureau of Alcohol, Tobacco and Firearms of the Internal Revenue Service, United States Department of Treasury, has in their files, label approvals for approximately 80,000 wine items. No wine business in the open or license States, which operates without controlled sales through States Stores, would have this problem.

Should the above interpretation hold, then certainly the Pennsylvania Liquor Control Board could no longer control the sales of wine as per the laws of the Commonwealth and the will of its people as expressed by its elected representatives.

The economic shock to the Commonwealth would be tremendous should this Board have to change its system of control by relinquishing the sale of wine products through its State Stores. The revenue produced for the benefit of citizens of Pennsylvania by our sale of wine amounted to over thirty-four million dollars in fiscal 1971. This revenue would have to be replaced by some form of taxation. Generally speaking, we now provide wine products at the lowest price level in the country. In fact our wine prices are now lower than the prices of many items in California for wine that is produced in California. This would not hold with a changed marketing system.

In addition, other shock waves would of necessity follow. We would have to close several State Warehouses and many State Stores. There would be wasteful expense until service contracts and property leases expired and were renegotiated. Hundreds of State employes would be forced into unemployment. All of this being the result of the excess capacity that would remain. The dollars and cents total of a calamity of this size cannot be calculated at this time. We cannot believe that the Congress will want this economic upheaval to occur.

It is an established fact that the social problems attendant with alcoholic products, including but not restricted to alcohol abuse and alcoholism, are of a lower level in a state with a system such as in Pennsylvania than in the alternative systems in operation in license or open states. To create a situation whereby there would be a greater and easier accessibility and proliferation of product, at a time when alcohol abuse and alcoholism is attracting greater attention than ever before, does not seem to be in the public interest and certainly more tax dollars would be required to combat this public health problem.

In conclusion, we believe that this legislation in the guise of benefitting interstate commerce should not be considered favorably by this committee for the reasons stated, and because of any changes that may be required that are contrary to the wishes of the people who have chosen to have wine products marketed under a Control State system such as we have in Pennsylvania.

STATEMENT OF STATE OF UTAH LIQUOR CONTROL COMMISSION

The following statement is made for presentation to the Subcommittee on Commerce and Finance at a public hearing at 10:00 A.M. Monday Morning, October 2nd, 1972 in the matter of: H.R. 9020 (Sisk, Calif., et al.), H.R. 9030 (Sisk, Calif., et al.), H.R. 10448 (Terry, N.Y., et al.), and H.R. 13826 (Stratton, N.Y.)—To prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine.

Utah is a controlled state and prohibits, by state law, the importation or sale of intoxicating liquors (including wines), except as the state through its Liquor Control Commission may import into the state in accordance with the provisions of the Utah Liquor Control Act, such liquors including wines as are deemed necessary to supply the demands of its citizens.

The Twenty First Amendment to the Constitution of the United States prohibits importation into the state of Utah, for delivery or use therein, any intoxicating liquors in violation of Utah State Laws. Section 32–1–6 and 7 Utah Code Annotated 1953 vests in the Liquor Control Commission the power to purchase, import and sell intoxicating liquors and Section 32–7–1 and 2 prohibit any person, except the said Commission, to import or sell any intoxicating liquors in Utah.

The provisions of the above captioned legislation would deprive the State of Utah of the power of selecting and importing into the State wines for sale and the net effect thereof would be to require the importation into Utah of the wines of suppliers of every state or in the alternative to refrain from the importation of wine from any state. Utah laws limit its importation of intoxicating beverages to permit the turn over of liquor stocked in its Warehouse every forty-five days to accommodate the limited storage space. A requirement to import wine from the suppliers of every state would impose on the state a heavy financial burden the purchase and importation of wines not required by citizens of the state and to provide additional storage until such wines can be sold or otherwise disposed of.

The above captioned Legislation would in our judgment destroy the effectiveness of the Twenty First Amendment by putting the State of Utah out of the alcoholic beverage business and therefore the Utah Liquor Control Commission wishes to express its opposition thereto.

WASHINGTON STATE LIQUOR CONTROL BOARD,
Olympia, Wash., September 28, 1972.

Mr. W. E. WILLIAMSON,
Clerk, House Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. WILLIAMSON: The Washington State Liquor Control Board wishes to file the following statement in opposition to H.R. 9029 which is to be considered at a public hearing, Monday, October 2, 1972.

The bill provides more disadvantages than advantages to the people of our state.

Our state laws and regulations are non-discriminatory inasmuch as they provide equal treatment to both in-state and out-of-state wines and wineries.

The bill does not preclude the possibility of discrimination in the form of trade barriers being invoked against wines or wineries of a foreign country.

Washington is a "control" state in which the state and private retailers sell wine at retail in a competitive relationship that helps keep prices down. Pursuant

to its liquor laws, the state purchases wine directly from suppliers and wineries for resale through its state-operated retail stores. We are concerned that a legal interpretation of H.R. 9029 might remove the state's option to purchase and sell wines on a selective basis, according to consumer demand, without removing the same option from competing private operators.

In other words, in order for the state to continue to sell wines, the state might be required to list for sale all wines submitted by every supplier or winery in the nation, regardless of customer acceptance, to comply with the literal provisions of the bill, while permitting competing private retailers to continue to purchase and sell wine on a selective basis in accordance with customer demands. This would be discriminatory against state operated retail stores, and would favor privately operated retail stores.

For these reasons we oppose H.R. 9029, and urge its defeat.

Sincerely,

JACK C. HOOD,
Chairman.

STATEMENT OF JOHN F. O'CONNELL, PRESIDENT, NATIONAL ASSOCIATION OF ALCOHOLIC BEVERAGE IMPORTERS, INC.

My name is John F. O'Connell and I am President of the National Association of Alcoholic Beverage Importers, Inc. with offices at 1025 Vermont Avenue, N.W., Washington, D.C. 20005. This organization is a national trade association representing 110 importers of alcoholic beverages through whose operations approximately 80 per cent of U.S. imports of spirits, wines and beers are handled. It was organized shortly after Repeal of National Prohibition, and was incorporated under the laws of the State of New York.

My name was on the list of witnesses prepared for the hearing on H.R. 9030 by your Sub-Committee on Monday, October 2, 1972, but it was stricken from that list at my request for the following reasons:

We favored the purpose of the bill as stated therein but felt that its language was at least ambiguous in respect of its possible encroachment upon the rights and powers of the several states to prohibit, regulate, and control the traffic in alcoholic beverages under the 21st Amendment to the Constitution of the United States. The lateness of the hearing date in the 92nd Congress deterred us from proposing amendments to the Bill as drafted, which we felt it needed, because of fear that the lack of time for consideration thereof might interfere with your Sub-Committee's action thereon, a responsibility that we were reluctant to assume.

In view of your explanation during the course of the hearing of the precise purposes of the members of your Sub-Committee, Mr. Chairman, of the agreement with the bill's amendment expressed by the representative of its sponsor, and of the narrowing of the objections filed by the National Alcoholic Beverage Control Association, Inc., whose counsel agreed to furnish your Sub-Committee with language for amendments to the bill which would protect member states of that Association from every impairment of the enjoyment and exercise of their rights and obligations under the 21st Amendment, we have decided to go on record now in support of H.R. 9030.

A sound and forceful statement against barriers to interstate trade which have misused the 21st Amendment solely and strictly to protect home industry and home agriculture from out-of-state competition was expressed by the Joint Committee of the States to Study Alcoholic Beverage Laws, hereinafter referred to as the Joint Committee, back in 1952.

The Joint Committee was composed of six members, three of whom represented the National Conference of State Liquor Administrator (NCSLA), representing 29 states and the City of Baltimore, Maryland, in each of which jurisdictions control was (and is) administered through a system of licensing private enterprises, and the National Alcoholic Beverage Control Association (NABCA), members of which then included 16 states which themselves were (and still are) participating in the alcoholic beverage business as a phase of their control programs.

In its report titled "Trade Barriers Affecting Interstate Commerce in Alcoholic Beverages", the Joint Committee analyzed the nature of the trade barrier problem, cited examples of "unjustifiable trade barriers", and reached a set of "conclusions", a verbatim copy of which is attached hereto and made a part hereof.[1]

[1] For the information of the Sub-Committee's Staff, printed copies of the said report were filed with the Library of Congress in 1952.

This report of the Joint Committee before final approval and printing was submitted for the consideration of NCSLA and NABCA at the respective national conventions of these two associations, at each of which its contents were unanimously approved and a commitment made authorizing the printing and publishing of the report by the Joint Committee.

It may be worthy of note that, at that time the chairman of the New York State Liquor Authority, I had the honor to serve as a member of the Joint Committee which conducted the study on trade barriers and made the report.

There is an old adage likening consistency to a jewel. However apt that description may be, I am happy to tell you that my thinking on trade barriers as state alcoholic beverage control commissioner back in 1952 is identical with my thinking as president of the association of alcoholic beverage importers on this 5th day of October, 1972.

Therefore, in view of all the facts and circumstances listed above, and based specifically upon the "conclusions" of the 1952 Joint Committee report, the National Association of Alcoholic Beverage Importers, Inc. supports and advocates enactment of H.R. 9030 with appropriate amendments.

CONCLUSIONS

1. Primary responsibility for the control of the alcoholic beverage industries is vested in the individual states and such control by them should be commensurate with its stated objectives and have a close relationship thereto.

Comment.—It has long been apparent to experts in ABC matters that the public interest requires measures of control that are far reaching and at times severely restrictive. It has, however, never been shown or honestly contended that barriers to interstate commerce which serve only to discriminate against the citizens or products of another state for the sole purpose of protecting home industry or agriculture have a close relationship to control or that they can be justified logically or legally as control measures.

2. Control measures properly conceived as such and properly executed are justifiable even though they restrict inter-state commerce.

Comment.—The states are entitled under the 21st amendment to freedom of choice in selecting measures that will support the philosophy of control and sustain its operations and to freedom of action in their execution. Only thus can they adequately fulfill their obligations to protect the safety, health, welfare, peace and morals of their citizens. This freedom, however, is not absolute but is conditioned upon proper orientation towards the accomplishment of control purposes and towards them only. The essence of justification is the proper conception and proper execution of such measures.

3. Laws, rules and regulations which purport to be control measures but which were conceived and are executed as trade barriers are to be condemned where they serve no proper purpose of control whether they be discriminatory, anti-discriminatory or retaliatory.

Comment.—Trade barriers inspire antagonism among the states where cooperation is essential. They penalize, perplex and tend to discourage the participation of high principled businessmen and business organizations in the alcoholic beverage industry thus adversely affecting the execution of control programs. They increase consumer costs and restrict services without improving quality, are generally destructive of sound, business intercourse among the states, and their effects may even extend to other fields. Moreover, trade barriers beget trade barriers, and unless stopped at their source move in a vicious circle threatening ultimately to so sectionalize our country as to impair our national economy or to lead to legislative enactments or judicial determinations which will qualify, limit or impair the bona fide efforts of the states to effect proper control.

4. The erection and maintenance of artificial barriers to trade and commerce among the states in the form of ABC statutory, regulatory or policy impediments which are not properly related to control are unjustifiable and such barriers should be eliminated.

Comment.—Trade barriers which unjustifiably restrict interstate commerce are contrary to sound public policy. Impediments on free trade between state and state tend to a breakdown in national unity. We cite as illustrative of our

own thinking the thesis of E. H. Gault and E. S. Walover of the Department of Business Administration of the University of Michigan that: "Free trade cannot mean a completely unregulated trade. It means a commerce in which every state admits to its markets without discrimination, any safe and sound goods of another state that are in the state in accordance with all Federal and State laws aimed at keeping commerce healthy, honest, and safe; and excludes only those goods which are not in these categories." The classification of a trade barrier as "justifiable" or "unjustifiable" depends upon a determination of the questions:

(a) Does it serve a proper purpose of control and is it exercised in a proper manner?

(b) Is there readily available some other measure, admittedly not a trade barrier, which would be equally potent and efficacious in accomplishing the objective sought? Proper alcoholic beverage control is the key to justification and the standard by which it should be tested.

5. In the field of alcoholic beverage control, legislative assemblies and ABC agencies should assiduously seek out and adopt only those measures which will sustain control without improperly burdening the flow of commerce between one state and another.

Comment.—The exercise of state's rights under the 21st amendment should be accomplished with prudence and perspicacity tempered by good judgment. Where alternative control measures are available with one burdening interstate commerce and the other friendly thereto neither ABC officials nor legislators are justified in lightly choosing to impose the former but they may rightfully do so only after being convinced by careful study and mature reflection that it is properly related to alcoholic beverage control and will better serve the interests thereof. Obviously, both legislators and ABC officials should possess the right of discretion within reason but in its exercise they should not adopt measures which will burden interstate commerce without having tried earnestly to form proper judgments thereon. The element of discrimination is to be avoided as a matter of principle even in those circumstances where its immediate effects are inconsequential in terms of money and inconvenience.

6. Reciprocity as a principle of interstate relationship in the matter of assessing ABC license fees is unsound and will lead to problems that defy satisfactory solution.

Comment.—Reciprocity aims at securing mutual, co-extensive advantages to two or more states and under reciprocal agreements, therefore, each state undertakes to accord to the citizens of another state, at the same cost, privileges practically equivalent to those accorded to its citizens by the government of that other state. In its operation, reciprocity postulates comparable privileges and breaks down in the absence thereof. The differences between the privileges fixed by the term of ABC licenses which vary so greatly between state and state, (particularly between open-license and monopoly states) are such that it is frequently impossible to find comparables. Under those circumstances, the necessity of comparing incomparables makes satisfactory solution almost impossible and negotiation often unrealistic and futile. It is much sounder practise to leave to each state the decision to evaluate the privileges of operating in its own market and of fixing a commensurate fee which must be paid alike by in-state and out-of-state persons whom it licenses to sell alcoholic beverages in that market under identical conditions.

7. It is encumbent upon officials of state government of those states wherein unjustifiable trade barriers exist under the pretext of ABC measures to institute or support affirmative action to eliminate them.

Comment.—Since those barriers are unjustifiable, they should not exist, but since they do exist affirmative action to eliminate them is needed. To the extent that they exist in the form of rules, regulations or policies of ABC Boards, it is urged that those Boards move to eliminate them either by:

1. Rescinding them on their own initiative unilaterally, or

2. Undertaking through negotiation or arbitration with other similarly situated ABC agencies of other states to abolish them by joint action.

To the extent that those barriers are statutory, it is urged that each ABC agency either bring the over-all problem and its particular application to the

attention of its own legislative Commission on Interstate Cooperation and recommend full consideration of the problem by that Commission; or recommend to its own Legislature specific corrective measures.

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, D.C., October 12, 1972.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed is a copy of a telegram I have received from Joseph T. Shea, Administrator, Montana Liquor Control Board, Helena, Montana, expressing concern about provisions contained in H.R. 9029 and related bills.

Mr. Shea feels that this will have a very detrimental effect on income in the State of Montana. I would appreciate your including the text of his telegram in the record of your hearing which was conducted on Monday, October 2.

Thank you for your consideration, and with best personal wishes, I am

Sincerely yours,

MIKE MANSFIELD.

HELENA, MONT., *September 26, 1972.*

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

I am writing to you in regard to a public hearing scheduled for Monday, October 2, 1972, on the "Peyser bill." This hearing is before the House Subcommittee on Commerce and Finance. The passage of this type of legislation would be a disaster to the State of Montana. First of all, it would put us out of the wine business, because we do not have the money and/or facilities to stock the amount of wines this bill would require us to handle. As you know we certainly do not have the market or the people for this type of operation. If we are forced out of the wine business, it will mean a loss of two million in revenue to the State. It is my opinion that this effort to put the control States out of the wine business, is just the beginning of a plan to take us out of the liquor business entirely. There are several States like Montana with a very small tax base because of the lack of industry in the States and the loss of revenue from the liquor business would certainly place an additional tax burden on the people of our State. I would appreciate anything you can do to prevent the passage of this type of legislation. The following House bills deal with this legislation—H.R. 9029, H.R. 9030, H.R. 10448, and H.R. 13826.

Respectfully yours,

JOSEPH T. SHEA,
Administrator, Montana Liquor Control Board.

STATE OF NEW HAMPSHIRE,
STATE LIQUOR COMMISSION,
Concord, N.H., September 28, 1972.

Re Subcommittee on Commerce and Finance Public Hearings on Monday, October 2, 1972, Rayburn Building on H.R. 9029 (Sisk, Calif., et al.) H.R. 9030 (Sisk, Calif., et al.) H.R. 10448 (Terry, N.Y., et al.), H.R. 13826 (Stratton, N.Y.).

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The New Hampshire Liquor Commission wishes to be recorded as in opposition to H.R. 9029 (Sisk, California and others), H.R. 9030 (Sisk, California and others), H.R. 10448 (Terry, New York and others) and H.R. 13826 (Stratton, New York), all purported to prohibit the imposition by the states of discriminatory burdens upon interstate commerce in wine.

While not indicated in the bill, the target of this legislation is the so-called control state, of which New Hampshire is one. The election of this State's legislature to operate the alcoholic beverage industry under the provisions of the 21st amendment is subject to challenge by these bills.

We hold that the New Hampshire Liquor Commission is providing the vehicle necessary to merchandise the wine products originating in the United States, both in the premium wine classification and in the commercial wine classification. The growth in New Hampshire in the sale of wine has far out-stripped the advances made in so-called open states. We feel that the citizens of New Hampshire have not been deprived of any wines that have been produced in the United States.

In addition to providing the customers of our liquor Commission the opportunity of selecting a wide variety of wines in our self-service stores, we also provide a service of special order in which the customer may purchase any wine that he desires through the Commission. This service is provided not only in the wine areas, but in the spirit products, both domestic and imported.

The passage of any of these bills would result in a proliferation of labels that are only limited by the imagination of the various vintners and bottlers of the products derived from the grape. This would only result in chaos as far as customer orientation is concerned. In addition, the financial investment required to handle the great number of innovative and imitation products would diminish the revenues currently being produced for this State's general fund. Additional investments in warehousing, materials, handling equipment and the inventory itself would place a drain of at least $5 million dollars in the first year of operation, and a repetitive cost of $2 million dollars per year without a like return for additional efforts.

We feel that the consumer is in the best position to demand the products, and where we have provided the vehicle to meet this demand, there is no need to circumvent the provisions of existing laws to promote the desires of a single industry.

Very truly yours,

COSTAS S. TENTAS,
Chairman.

[Telegrams]

MONTGOMERY, ALA., *September 27, 1972.*

W. E. WILLIAMSON,
Clerk, Subcommittee on Commerce and Finance, Rayburn House Office Building, Washington, D.C.:

The Alabama ABC Board wishes to express its strongest opposition to H.R. 9029. This bill would create a situation impossible to administer by the Alcoholic Beverage Control Board of Alabama.

FRANK V. POTTS,
Chairman, Alabama Alcoholic Beverage Control Board.

HELENA, MONT., *September 27, 1972.*

W. E. WILLIAMSON,
Rayburn Building, Commerce and Finance Committee,
Washington, D.C.

This is in regard to the hearings of the Subcommittee on Commerce and Finance at 10:00 a.m. on Monday, October 2, 1972, in room 2123, Rayburn Building on H.R. 9029, H.R. 10448 and H.R. 13826. The passage of this type of legislation would be a disaster to the State of Montana, first of all it would put us out of the wine business because we do not have the money or facilities to stock the amount of wines this bill would require us to handle. As you know we certainly do not have the market or the people for this type of operation. If we are forced out of the wine business, it will mean a loss of two million in revenue to the State. It is my opinion that this effort to put the control States out of the wine business is just the beginning of a plan to take us out of the liquor business entirely.

There are several States like Montana with a very small tax because of the lack of industry in the States, and the loss of revenue from the liquor business would certainly place an additional tax burden on the people of our States.

Cordially yours

MONTANA LIQUOR CONTROL BOARD,
JOSEPH T. SHEA, *Administrator.*

(Whereupon, at 12:22 p.m., the subcommittee adjourned.)

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