

COMMONWEALTH OF PENNSYLVANIA

HOUSE OF REPRESENTATIVES

LIQUOR CONTROL COMMITTEE

\* \* \* \* \*

PUBLIC HEARING IN RE: HOUSE BILL 2165

\* \* \* \* \*

BEFORE: ROBERT DONATUCCI, Chairman  
Ronald Raymond, Dante Santoni, Paul Costa,  
John Payne, Tom Blackwell, Karen Beyer,  
Scott Petri, Marc Gergely, Ted Harhai,  
Joseph Brennan

Members

HEARING: Wednesday, July 30, 2008  
Commencing at 10:47 a.m.

LOCATION: Paradocx Vineyards  
1833 Flint Hill Road  
Landenberg, PA 19350

WITNESSES: John P. Lutz, John Landis, Sam Landis, Mark  
Wilcox, Karin Moore, Rick Fraser, Ray Hottenstein,  
James Goodman

Reporter: Susan Koons

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CHAIRMAN:

Good morning. I would call this meeting of the House Liquor Control Committee to order. My name is Bob Donatucci. I represent Philadelphia and Delaware County. I'm the Chairman of the House Liquor Committee. I'm joined by Republican Chairman of the House Liquor Committee, Representative Ron Raymond to my left. I would also like to welcome everyone to our second hearing on House Bill 2165, on the issue of direct shipment.

Before I start with an introduction, I would like to thank Paradocx Vineyards and the Pennsylvania Wine Association for hosting us today at this beautiful winery.

I also want to recognize to my right Representative Paul Costa as the prime sponsor. And we're running a little bit late, so I'm going to start. I'm going to turn it over to Representative Raymond. He wants to say a few words.

REPRESENTATIVE RAYMOND:

I just want to get moving. Very briefly, we will get to moving. It's just nice to be here in beautiful Chester County, I'm from Delaware County

1 myself. I'm close to Lancaster County. So I cover  
2 all three. It's good to be here. Thank you.

3 CHAIRMAN:

4 Representative Paul Costa, a very short  
5 opening comment.

6 REPRESENTATIVE COSTA:

7 Thank you, Mr. Chairman. I'd also like  
8 to thank Paradocx for opening up here today, although  
9 I was surprised we were still in Pennsylvania. I got  
10 nervous when we had to drive through Delaware to get  
11 here. But I want to thank the Chairman --- both  
12 Chairman Donatucci and Chairman Raymond for having  
13 this hearing. As he said, it's the second hearing on  
14 this issue.

15 I think it will help clear the air  
16 because the initial intent of my legislation was to  
17 try and help Pennsylvania businesses and Pennsylvania  
18 wineries. If we have to make some kind of legislation  
19 dealing with direct wine shipment, I wanted to make  
20 sure we did it right and we got input from the  
21 wineries, from the consumers and from the LCB. And  
22 this is part of the process to make this bill --- to  
23 do it right the first time, and I thank the Chairmen  
24 for allowing me to do this. So thank you.

25 CHAIRMAN:

1           Thank you. Before we call our first  
2 witness, I'm going to go to my left and have the  
3 representatives introduce themselves and the county  
4 they're from.

5           MR. PAYNE:

6           Representative John Payne, Dauphin  
7 County.

8           MR. SANTONI:

9           I'm Representative Dante Santoni. I'm  
10 from Berks County.

11          CHAIRMAN:

12          Thank you. On that note, I'd like to  
13 call the Pennsylvania State Police Bureau of Liquor  
14 Enforcement, Major John P. Lutz and Captain Patrick  
15 Gebhart. Good morning. Before you start, I want to  
16 introduce Representative Blackwell from Philadelphia  
17 County. Thank you. You may start any time you're  
18 ready.

19          MR. LUTZ:

20          Good morning, Chairman Donatucci,  
21 Chairman Raymond and distinguished members of this  
22 committee. My name is Major John Lutz and I serve as  
23 the Director of the State Police Bureau of Liquor  
24 Control Enforcement otherwise known as BLCE. With me  
25 today is Captain Patrick Gebhart, Director of the

1 Operations Division of the Bureau of Liquor Control  
2 Enforcement.

3 I would like to extend my thanks to the  
4 House of Representatives Liquor Control Committee for  
5 the opportunity to participate in this hearing today.

6 We are here today to discuss House Bill  
7 2165 and the issue of direct shipment of wine into the  
8 Commonwealth of Pennsylvania as it applies to the  
9 Bureau. As you know, in 2005 the U.S. Supreme Court  
10 ruled in the case of Granholm versus Heald that states  
11 could not treat out of state wineries differently than  
12 instate wineries. Later decisions in the cases of  
13 Cutner and the PA Wine Association rendered the  
14 prohibitions against direct shipment of wine into  
15 Pennsylvania unenforceable by the Pennsylvania State  
16 Police.

17 As a result, BLCE was relegated to a wait  
18 and see position pending legislation which would  
19 provide clarity to this issue. In the interim, the  
20 Board has implemented a process whereby out of state  
21 limited wineries may become licensed for direct  
22 shipment in the same manner in which instate wineries  
23 are licensed.

24 It is important to note that any  
25 enforcement program aimed at direct shipment brings

1 with it its own unique issues. Due to the nature in  
2 which most direct shipment orders take place, via  
3 telephone or more likely over the internet, they are  
4 difficult, if not impossible, to detect. This is  
5 further complicated by the fact that some supplies  
6 have resorted to mislabeling the shipping container to  
7 reflect other products such as nonalcoholic food  
8 products. Accordingly, we would recommend that any  
9 direct shipment legislation include a statutory  
10 requirement that the shipping container be clearly  
11 labeled with the actual contents.

12           Due to the manner in which the direct  
13 shipping process occurs, it would be impossible at  
14 this juncture to estimate the amount of wine being  
15 direct shipped into the State of Pennsylvania.

16           In 2007, the Bureau handled 17,224  
17 incidents as compared to 16,718 in 2006, a three  
18 percent increase. These incidents ranged from routine  
19 inspections of licensed establishments, minor patrol  
20 at concerts and other large venue events, to  
21 investigations of nuisance bars.

22           Given the current number of  
23 responsibilities assigned to the Bureau, the  
24 limitations posed by our existing staffing levels and  
25 the potential for direct shipment to become resource

1 intensive, the Bureau believes the emphasis for  
2 enforcement should continue to be complaint driven and  
3 focused on quality of life violations occurring  
4 throughout the state. Quality of life violations are  
5 those which take a toll on society by causing harm to  
6 our citizens and include the service of alcoholic  
7 beverages to minors, service to visibly intoxicated  
8 persons, noise and disorderly operations and  
9 ultimately nuisance bar violations which often have a  
10 significant negative impact on their communities.

11 In conclusion, on behalf of Commissioner  
12 Jeffrey B. Miller and the Bureau of Liquor Control  
13 Enforcement, thank you for this opportunity to testify  
14 before you today. We will now address any questions  
15 you may have.

16 CHAIRMAN:

17 Thank you, Major. Any questions?  
18 Representative ---.

19 REPRESENTATIVE RAYMOND:

20 One brief comment. My understanding in  
21 having worked with you folks for a long time, you do a  
22 great job under the circumstances, what we ask you do,  
23 and with the fuzziness of the law so to speak. And as  
24 you're aware --- I'm pretty sure you're aware, we've  
25 been working to try to come up with a configuration



1 that works better with what you're trying to do and  
2 make changes necessarily for you to be able do a  
3 better job. I agree we've put a lot on your plate. I  
4 don't know how you're going to do it. It's very  
5 difficult, very hard to even determine what is shipped  
6 in and not shipped in. Almost impossible. We're aware  
7 of that. You're doing a great job under current  
8 circumstances and abilities. We appreciate what you  
9 do for us. Thank you.

10 MR. LUTZ:

11 Thank you very much, Representative.

12 CHAIRMAN:

13 Thank you, Chairman Raymond. Any other  
14 questions? Major, Captain, thank you.

15 MR. LUTZ:

16 Thank you, sir.

17 CHAIRMAN:

18 Is James Goodman here yet? Okay. Sam  
19 and John Landis. Vynecrest Vineyards. Good morning.  
20 Whenever you're ready, we're ready.

21 MR. JOHN LANDIS:

22 Good morning. My name is John Landis.  
23 I'm here with my son, Sam. My wife Jan, Sam and I are  
24 owners of Vynecrest Winery and Vineyards. It's a  
25 family owned and operated vineyard located west of

1 Allentown in Lehigh County. I would not be here today  
2 if it were not for the foresight of the Pennsylvania  
3 legislators in creating the Limited Winery Act of  
4 1968. That Act created a whole new agricultural  
5 tourism industry which today is as strong as it ever  
6 has been.

7                   Sam and I would like to thank Chairman  
8 Donatucci and the House Liquor Committee for giving us  
9 an opportunity to present our testimony today on House  
10 Bill 2165 on behalf of the winery and the Pennsylvania  
11 Wine Association, which we are one of 92 members ---  
12 91 members.

13                   This proposed legislation is the first  
14 legislation since 1969 which is designed to restrict  
15 the growth of our industry. My wife and I started our  
16 vineyard in 1974 and opened Vynecrest Winery in 1989.  
17 In 1989, we had five acres of land and made 800  
18 gallons of wine. Today we own 75 acres, 17 acres of  
19 which are planted in vineyards and we produce 12,000  
20 gallons a year. Our success has been predicated on  
21 the fact that we have reinvested heavily in our  
22 business over the last 30 years, taking pride in the  
23 fact that we are producing 100 percent homegrown  
24 Pennsylvania product. Furthermore, our success has  
25 had a trickle-down effect on other Pennsylvania

1 businesses that have been the benefactor of our  
2 sustained growth. Table 1 provides a partial list of  
3 the Pennsylvania companies with whom Vynecrest does  
4 business. This manufacturing multiplier factor is  
5 clearly in effect. I think you have that table, and  
6 it lists all the people we deal with in Pennsylvania.

7           As you can see, our impact within  
8 Pennsylvania stretches far beyond serving the wine and  
9 spirit needs of Pennsylvania consumers, which was laid  
10 out as a goal of the Pennsylvania Wine and Spirits  
11 Association. We are proud to be firmly entrenched as  
12 one of the driving forces of the two largest  
13 agricultural sectors in Pennsylvania's economy, which  
14 are agriculture and tourism.

15           Speaking directly to agriculture, we are  
16 extremely proud to produce a Pennsylvania product on  
17 Pennsylvania farmland. We are PA Preferred. In  
18 addition to our 17 acres, the nine Lehigh Valley Wine  
19 Trails have over 220 acres devoted to viticulture. In  
20 April 2008, Lehigh Valley was designated a new  
21 viticulture region called AVA by the federal  
22 government. This is a testament to the potential of  
23 our region to produce world class wines like our  
24 fellow AVA regions such as Napa Valley and Sonoma.

25           Speaking directly to tourism, over 10,000

1 people visit our winery each year. Over 100,000  
2 people visit the nine wineries composing the Lehigh  
3 Valley Wine Trail each year. These people eat in  
4 Pennsylvania restaurants. They shop in Pennsylvania  
5 shops and boutiques and they stay in Pennsylvania  
6 hotels and bed and breakfasts.

7                   Consequently, in 2005 Pennsylvania  
8 wineries contributed \$661 million to the state  
9 economy. According to the economic impact study  
10 conducted in 2005 by MKF Research, in that year alone,  
11 the winery industry generated \$176 million in tourism  
12 expenditures and returned \$37.5 million in state and  
13 local taxes to the Pennsylvania economy.

14                   I would like to speak directly for a  
15 moment to the several actions that House Bill 2165  
16 proposes, which would severely cripple our growth and  
17 success.

18                   By limiting the winery output to 80,000  
19 gallons from the current 200,000, an unintended  
20 consequence would be restricted the growth of the  
21 family business. As a new generation joins this  
22 industry, it would be limiting to the families such as  
23 ours to grow. We have three wineries that are  
24 producing more than 60,000 gallons a year and as our  
25 industry expands, these wineries and others would

1 approach the 80,000 gallon a year limit. The  
2 implementation of an 80,000 gallon limit would  
3 restrict the growth of our expanding wine industry,  
4 which in turn embodies agriculture, manufacturing and  
5 tourism.

6 I believe that direct shipment to  
7 customers can be revenue positive for the State of  
8 Pennsylvania. Nationwide, 49 percent of all wine  
9 shipped is generated directly from winery tasting  
10 rooms. Pennsylvania wineries can be a major shipper  
11 of wines to their customers both in and out of the  
12 state. New Hampshire, a controlled state, has a  
13 simple permit system which charges eight percent sales  
14 tax and no permit fees. Less than .4 percent of their  
15 total sales is from shipping and last year they  
16 generated \$420,000 in revenue. I would expect a  
17 similar performance in Pennsylvania.

18 A sure way to stop shipping wine to our  
19 customers is to add 18 percent tax. This measure  
20 inhibits the growth of Pennsylvania wineries and would  
21 certainly restrict direct shipping. If the Johnstown  
22 Flood tax did not exist, would the price in wine in  
23 the State Store drop 18 percent? The market would  
24 just increase to cover the difference, since both tax  
25 and markup contribute to the state general fund. This

1 could be viewed as an attempt to increase taxes on the  
2 consumers who chooses to have wine shipped to them.

3           The Supreme Court did not find any  
4 relevance in the National Liquor Distributors claims  
5 that direct delivery of wine with adult signature  
6 represents a threat to minors' alcohol abuse. A  
7 system already exists to ensure adults' signatures and  
8 is operating efficiently and effectively in 30 other  
9 states. This proposal would cause additional cost and  
10 inconvenience to the consumer.

11           Vynecrest Winery firmly supports the  
12 position of the Pennsylvania Wine Industry on direct  
13 shipment of wine. We believe that Pennsylvania  
14 wineries should be permitted to ship directly to their  
15 customers provided they obtain a shipping permit from  
16 the PLCB and file quarterly reports with the PLCB. We  
17 also support permits for out of state wineries  
18 provided they follow the same rules and regulations  
19 and go through the PLCB in terms of permits and  
20 reports. We believe that this privilege should be  
21 afforded to all out of state wineries that have  
22 reciprocal shipping agreements with Pennsylvania.

23           In summary, we oppose House Bill 2165 as  
24 written and would recommend that the House Liquor  
25 Committee oppose the bill in its entirety.

1                   While we oppose House Bill 2165, Sam and  
2 I do have recommendations for legislative support that  
3 will benefit the 114 family owned Pennsylvania  
4 wineries.

5                   Work with our industry and the  
6 legislative winery caucus to create an interstate  
7 shipping bill for direct shipment for all customers  
8 using simple systems that have worked in other states.  
9 Support the requirements that wineries should receive  
10 a Pennsylvania limited winery license to use 75  
11 percent fruit in their wines. This has been a  
12 successful incentive that has increased the  
13 agriculture base of our industry. This support should  
14 include a provision for the Secretary of Agriculture  
15 to waive this requirement in case of crop failure.  
16 Finally, support our initiative to double the size of  
17 our industry by 2012.

18                   On a personal note, the creation of the  
19 vineyards and winery by my family has required a lot  
20 of investment, sweat equity and passion. We have  
21 carved out 75 acres of green space in a rapidly  
22 expanding township. Our family has dedicated time and  
23 energy to helping the Lehigh Valley Wine Trail, PWA  
24 and the Commodity Board invest of \$200,000 yearly of  
25 Pennsylvania wineries' funds into marketing and

1 research programs.

2           Our industry has had great support from  
3 the legislator. For example, in 2006 when the PLCB  
4 adopted a more restrictive permit --- festival permit  
5 policy, the legislature responded by passing  
6 legislation to clarify the intent of the law. This  
7 kind of support was deeply appreciated by the  
8 wineries.

9           I believe our industry could be the next  
10 Oregon, Washington or New York success story with your  
11 continued support and a working partnership with the  
12 PLCB.

13                   CHAIRMAN:

14           Thank you, Mr. Landis. Before we go any  
15 further, I want to welcome Representative Petri and  
16 Representative Beyer. And I want to recognize  
17 Representative Blackwell. Any questions? Oh, I'm  
18 sorry.

19                   MR. JOHN LANDIS:

20           Sam's got a little note.

21                   CHAIRMAN:

22           Okay.

23                   MR. JOHN LANDIS:

24           You want to ask questions?

25                   CHAIRMAN:



1                   No, go ahead. Do your testimony and then  
2 we'll take questions all at once.

3                   MR. SAM LANDIS:

4                   Good morning. My name is Sam Landis. As  
5 mentioned previously, I'm co-owner of Vynecrest Winery  
6 with my parents, John and Jan, both here today.

7                   Thank you again for the opportunity to  
8 speak to the House Liquor Committee regarding these  
9 very important issues we're faced with. I would like  
10 to follow up some of the previous testimony with some  
11 background information on why I feel so strongly about  
12 not only the future of Vynecrest Winery, but the  
13 Pennsylvania Winery Association.

14                   My parents planted our first grapes  
15 before I was born in 1974. And while I grew up with  
16 the Pennsylvania wine/grape issue, it was still very  
17 much a work in progress when I left for college in  
18 1994. After college, I had jobs in Boston, New York  
19 and California working for the largest winery in the  
20 world, E & J Gallo. But I finally returned to the  
21 family business in 2003 because there was an  
22 opportunity to have a fulltime career back home in  
23 Pennsylvania.

24                   In the short time that I was away, not  
25 only had the Pennsylvania wineries grown and

1 prospered, but the Pennsylvania consumer had changed.  
2 People were reaching out to support and consume a  
3 locally grown and produced product. With this change,  
4 Vynecrest, along with countless other Pennsylvania  
5 wineries, changed as well. We have invested heavily  
6 in our businesses over the last five years to meet the  
7 demands of this growth. I am one of many second  
8 generation winery families that has made a commitment  
9 to stay here in Pennsylvania and produce a 100 percent  
10 Pennsylvania product.

11           I have also made a commitment to serve on  
12 the PWA board for the last two years, where I  
13 currently serve as the vice president. Outside of  
14 seeing my business grow and succeed, nothing gives me  
15 greater pride than seeing other Pennsylvania family  
16 businesses grow and prosper with second generation  
17 family members making the same commitment to the  
18 industry as we have. I have served with no less than  
19 four second generation families on the PWB board in  
20 the last year alone, the Zimmerman family, Skrip  
21 family, Mazza family and Williams family. It gives me  
22 great hope for the future when I have the privilege to  
23 work with so many bright young college educated peers  
24 who have seen the opportunity and made the same  
25 commitment to grow our industry. They, like me, have

1 made the choice to stay here in Pennsylvania and  
2 strive to be future leaders in their family business  
3 that is centered on agriculture and tourism, two of  
4 Pennsylvania's biggest industries.

5           What concerns me today is that the same  
6 support for our industry that has allowed me to come  
7 home and work in my family business is being  
8 threatened by House Bill 2165. Our industry has never  
9 been stronger, and I hope your committee will become a  
10 partner in finding solutions that allow us to drive  
11 the agricultural tourism market in Pennsylvania.

12           In closing, I'm grateful for the  
13 opportunity to tell my story to you today and looking  
14 forward to serving as a resource to your committee.  
15 Thank you.

16                           CHAIRMAN:

17           Thank you. For the record, we want you  
18 to know we're very happy to have you in Pennsylvania  
19 and we want to help you in any way we can, to keep you  
20 here and be a profitable winery. And like I say, I  
21 want to thank both of you and your mother, you know,  
22 for coming here. Thank you. On that note, I'll turn  
23 it to Representative Costa.

24                           REPRESENTATIVE COSTA:

25           Thank you, Mr. Chairman and thank you. I

1 welcome Pennsylvania business. And as I stated early  
2 on, my goal is to help you, not to hurt you. And  
3 that's why we're having these hearings, to get input  
4 from you. One of the things that we did hear about  
5 was the 80,000 gallon limit. When we drafted this  
6 legislation four years ago, that was sufficient  
7 enough. Obviously, four years later it's not. And  
8 one of the other representatives suggested that we  
9 raise it and somehow have an increase every couple  
10 years. And I have no problem with that. Again, my  
11 goal is to help you, not to hurt you.

12           One of the comments that you made was  
13 about the working with the legislature. That's why  
14 you're here. We're looking for your input. So  
15 believe me, I have not tried to do anything to hurt  
16 you. I'm trying to help you. I want to make sure  
17 that you continue to be able to do direct wine  
18 shipment. I know the 18 percent is an issue, but we'll  
19 have to deal with that another way, the tax issue.  
20 But I do want to help you and I really want to thank  
21 you for having your input and your comments on what is  
22 good  
23 --- well, actually you didn't say anything good about  
24 the bill, but what's bad about the bill.

25           MR. JOHN LANDIS:

1           To respond to that, one of the things  
2 that I was --- one thing in research to talk to you,  
3 we had an opportunity to talk to some people in New  
4 Hampshire, another liquor state. And we did talk to  
5 some of the people who administer their program and  
6 they have a very --- a very well run low cost  
7 operation and seem to be working very effectively.  
8 They have good controls in place to make sure that  
9 people are following the law. And I might recommend  
10 that --- that's a resource you could use maybe to get  
11 some information on how to do, this kind of interstate  
12 shipping in a controlled state.

13           REPRESENTATIVE COSTA:

14           Thank you.

15           CHAIRMAN:

16           Thank you. Any other questions?

17 Representative Petri?

18           REPRESENTATIVE PETRI:

19           My apologies for being late. I did have  
20 a chance to review your testimony, though. And you  
21 raised an issue that is in your testimony that I'd  
22 like to ask you about because I think it's really the  
23 crux of the problem as I see it in trying to resolve  
24 out of state wineries and instate wineries and that's  
25 the 18 percent Johnstown Flood tax. Do I understand

1 your thoughts --- or you tell me your thoughts with  
2 regard to that. What would that do to your business  
3 and your ability to sell your product?

4 MR. JOHN LANDIS:

5 I --- what that would basically do is in  
6 addition to a six percent sale tax, we would now have  
7 a 24 percent tax on our shipped --- direct shipments.  
8 I guess the way to view it is if you look at the LCB,  
9 I view LCB as a retail organization and that they have  
10 a certain amount of overhead and they generate a  
11 certain amount of revenue. And part of that revenue  
12 they generate is 18 percent. We have our own cost for  
13 our own retail organization and adding 18 percent onto  
14 that is going to make it more difficult to compete.  
15 As far as I know, there's no state in the United  
16 States that charges 24 percent for shipping wine  
17 directly to a consumer. That cost is associated with  
18 the overhead of running an organization and it doesn't  
19 provide any benefit to us at all.

20 REPRESENTATIVE PETRI:

21 Okay. Follow-up question. In the beer  
22 industry, we hear from some of the breweries, in  
23 particular the large manufacturers of the beer  
24 beverage or ale that there's a sweet spot, an arranged  
25 sweet spots for their sales. Have you found that in

1 the wine --- private winery industry that there is  
2 more or less a consumer driven sweet spot where you  
3 make most of your sales? In other words, a price  
4 point where you have to bring your product in in order  
5 to have a reasonable volume of sales.

6 MR. JOHN LANDIS:

7 Sam is our marketing --- he worked for  
8 marketing for Gallo. I'll ask him.

9 MR. SAM LANDIS:

10 Okay. I think what separates us is the  
11 ability to sell wine that is unique to the consumer,  
12 and I think that's where we separate ourselves from a  
13 lot of things that are seen in the PLCB stores. And  
14 that's what makes shipping an important part of our  
15 business is the fact that people come in, tourists ---  
16 come into our winery from all over the surrounding  
17 states as well as Pennsylvania and they find something  
18 that we make that no one else can compete with and no  
19 one else can make because we grow it, we produce it.  
20 It never leaves our property. And they want to have  
21 that over the holidays to share with friends and  
22 family and they want to be able to have it shipped to  
23 them and have the luxury.

24 So I guess not really getting into price  
25 point, but getting into what we offer and the

1 uniqueness of it. It's really --- they'll pay ---  
2 they'll pay anything to have something that they can't  
3 get anywhere else, not anything, but it's more of just  
4 the uniqueness of the product.

5 REPRESENTATIVE PETRI:

6 Just a final comment, Mr. Chairman, I  
7 think this issue kind of brings us all the way full  
8 circle to where we were two or three years ago when  
9 Chairman Raymond raised the issue about eliminating  
10 the Johnstown Flood tax and trying to use variable  
11 pricing instead. I know that there's a cost to the  
12 state, a tremendous cost of eliminating the Johnstown  
13 Flood tax, but I think we may have to revisit that  
14 because otherwise imposing the Johnstown Flood tax on  
15 our private wineries, what I'm hearing from my  
16 wineries in Bucks County, would probably put them out  
17 of business. It sounds like that's the potential  
18 here. That's not what any of us want to do. So maybe  
19 that's the answer to solving this problem, that we try  
20 to find a way to phase out or eliminate the Johnstown  
21 Flood tax. Thank you.

22 CHAIRMAN:

23 Thank you. Representative Santoni?

24 REPRESENTATIVE SANTONI:

25 Thank you, Mr. Chairman. Just very



1 quickly a point of clarification. I know that Sam is  
2 the vice president of the Pennsylvania Winery  
3 Association. Are you speaking on behalf of the  
4 association?

5 MR. SAM LANDIS:

6 Yes, we are.

7 REPRESENTATIVE SANTONI:

8 Okay. Thank you.

9 CHAIRMAN:

10 Thank you. Representative Beyer?

11 REPRESENTATIVE BEYER:

12 Thank you, Mr. Chairman. You know, the  
13 Landis family is local, because here I am a Lehigh  
14 Valley representative and I have a Lehigh Valley  
15 winery here much to my surprise. And the Landis  
16 family is very well known to be not only incredible  
17 people, but happily one of the finest wineries in the  
18 Commonwealth I think. I enjoy your product very much.

19 So I'm just going to dovetail off of  
20 Representative Petri's comments on the Johnstown Flood  
21 tax issue. And my agreement with him is that it needs  
22 to be revisited. But let me --- let me ask you about  
23 the privatization just in general of the system. We  
24 know that's been a hot topic for debate and something  
25 that I have really not taken a position on and kind of

1 take all the facts in. How do you see that, the  
2 freeing up of allowing the privatization of liquor  
3 sales in general?

4 MR. JOHN LANDIS:

5 I have no position on that. As a person,  
6 I don't want to speak for the Pennsylvania Winery  
7 Association. I do think --- again, I'll go back to  
8 another province, in this case Ontario, which has a  
9 state controlled system. But they have a very good  
10 working relationship with their wine industry, and  
11 over 50 percent of the wine that they sell in the  
12 state store system in Ontario is from Ontario  
13 vineyards. So one of the things I think is going to  
14 be finding and seeking ways to have a better  
15 partnership of our industry with Pennsylvania and see  
16 if we can have a better way of marketing more of wines  
17 in the state store system, if we have that.

18 I don't think it's my position --- I have  
19 no position on privatization. I don't know if you  
20 want to speak to the --- to the PWA?

21 MR. SAM LANDIS:

22 You're getting me a little nervous. The  
23 only thing I would say is I can speak of privatization  
24 as the co-owner Vynecrest Winery --- and I mentioned  
25 in the testimony, agriculture and tourism will always

1 separate us from something that would eventually be  
2 found in a Wawa or a Sheetz. And I think that's what  
3 we really try to establish is when you come to our  
4 winery you see our vineyards and you stay overnight.  
5 You make a day of it. You have memories. And so the  
6 bottled wine is part of that, but really it's the  
7 whole package. And no matter if it's control or  
8 privatization, I think that's really the heart of our  
9 Pennsylvania wineries and having our business. That's  
10 really what we try to establish at our winery at  
11 Vynecrest.

12 REPRESENTATIVE BEYER:

13 One follow up on the Johnstown Flood tax.  
14 You're suggesting --- and I just want to make sure  
15 that I'm clear because I, like Representative Petri,  
16 came in a little late. The repeal of this tax is very  
17 valuable to you because it would then be able to allow  
18 you to price point your wine at a different level to  
19 make them much more competitive? Is that the ultimate  
20 goal?

21 MR. JOHN LANDIS:

22 I think what it would do is if we have a  
23 \$10 bottle of wine now and we now could sell it at the  
24 winery for \$10 and we added an 18 percent tax to that,  
25 that would add another \$1.80 to that bottle. So in

1 order for them to ship it to somebody, the cost to  
2 ship this skyrockets. So that's the problem with the  
3 Johnstown Flood --- using the Johnstown Flood tax when  
4 shipping wine directly to one of our customers either  
5 in Pennsylvania or anyplace in the United States. And  
6 that 24 percent now, if we're competing with a winery  
7 in New York State or California or Oregon, they aren't  
8 going to see that same increase on that bottle of  
9 wine. So in terms of competing outside the state with  
10 other wineries, it puts us at a disadvantage.

11 REPRESENTATIVE BEYER:

12 I'm sorry. I apologize. I worded it  
13 wrong, but you ultimately answered my question  
14 correctly.

15 CHAIRMAN:

16 Well, right now Pennsylvania wineries  
17 don't pay 18 percent.

18 MR. JOHN LANDIS:

19 That's correct.

20 CHAIRMAN:

21 For the record, the Court handed down a  
22 decision --- we've got to make a level playing field  
23 for everybody, you can't have favoritism for  
24 Pennsylvania wineries. If we do away with the 18  
25 percent, the Johnstown Flood tax, they don't have to

1 pay it either. So that's where ---.

2 MR. JOHN LANDIS:

3 You mean in the state store system?

4 CHAIRMAN:

5 No, no, no. I'm talking direct shipment,  
6 across the board.

7 MR. JOHN LANDIS:

8 Oh, yeah. I think that should be. I  
9 think no one should pay the 18 percent for shipping.

10 CHAIRMAN:

11 Like I said, we are in the process of  
12 talking about the Johnstown tax with Representative  
13 Raymond. But you've got to understand if we do away  
14 with the tax, we've got to figure how that money's  
15 going to be brought in, in a different way.

16 MR. JOHN LANDIS:

17 Well, I think the LCB has options of  
18 changing the markup.

19 CHAIRMAN:

20 But what I'm saying to you is believe me,  
21 Representative Raymond and myself, we spoke about this  
22 gradual reductions, whatever. We are looking at it  
23 and we'd like to do it. But any other questions?  
24 Thank you.

25 MR. JOHN LANDIS:

1 Thank you very much for having us.

2 CHAIRMAN:

3 We appreciate you coming in. Any  
4 questions you have with us?

5 MR. JOHN LANDIS:

6 No, I just --- I do like to thank ---  
7 again thank everyone for taking the time and effort to  
8 deal with this issue. It is important to our industry  
9 and I do appreciate the time you're taking to get the  
10 facts.

11 CHAIRMAN:

12 Thank you. I want to mention that  
13 Representative Gergely joined us. There he is. Mark  
14 Wilcox, please. Good morning, Mark.

15 MR. WILCOX:

16 Good morning. Good morning. I'm  
17 grateful to the committee for this opportunity to  
18 testify about direct shipment, and I'm going to  
19 suggest in my testimony at some length that New  
20 Hampshire, a state with a state liquor monopoly, shows  
21 us an approach to direct shipment that would provide  
22 substantial benefit to the citizens of the  
23 Commonwealth and wouldn't cost the government any  
24 revenue.

25 First a word about me, I bring two

1 perspectives to my testimony. First, I'm a lifelong  
2 citizen of Pennsylvania. I was born and brought up in  
3 Wellsboro in Tioga County and I've lived for the last  
4 35 years in Philadelphia. I found wine fascinating  
5 since I was old enough to drink it. With my father, I  
6 sampled and collected wine, reading and talking about  
7 it with friends. And I've let my interest in wine  
8 guide my travels over the years. Like many others  
9 with my interest, and there are a lot of us out there,  
10 I have long been troubled by Pennsylvania's efforts to  
11 limit its citizens' freedom in a way that almost no  
12 other state does.

13           My second perspective comes from my  
14 experience with a small importing business that's  
15 licensed in the District of Columbia. About ten years  
16 ago, I took a sabbatical from my law practice and  
17 moved my wife and small kids off to France. Of  
18 course, we settled in wine country and I spent a lot  
19 of time getting to know local producers and their  
20 wines. When we came back, I wanted to import those  
21 wines and wines of other producers that I continue to  
22 find in my travels. And that led eventually to the  
23 business in the District of Columbia, which sells  
24 largely to restaurants, but which is also licensed to  
25 ship wine to consumers in a number of states, among

1 them New Hampshire.

2           Both perspectives convinced me that  
3 creating a practical direct shipment option is the  
4 best way for Pennsylvania to resolve Granholm problem  
5 in which the Supreme Court invalidated the system  
6 where Pennsylvania wineries only were privileged to  
7 ship to consumers at six percent.

8           I don't need to catalog for the committee  
9 the ways in which wine lovers are aggravated by our  
10 system. No doubt every one of you has been  
11 buttonholed from time to time about damaged wine,  
12 unavailable wine, overpriced wine and other ills.  
13 Many of which have been significantly lessened by the  
14 recent focus on the consumer in our LCB.

15           However, customer focus won't fix another  
16 equally significant shortfall, which is that wine  
17 lovers don't just want wine that someone found and put  
18 in the state stores. They want wine they've  
19 discovered or wines that friends or wine writers have  
20 recommended. They want a particular vintage or they  
21 want mature wine whose province can be guaranteed.  
22 They want wine from a small vineyard they visited and  
23 wine with some personal meaning to them. In short,  
24 they want the personal freedom that almost every other  
25 citizen has.



1 I want to draw the committee's attention  
2 to some trends that have changed the wine market  
3 dramatically. They're absolutely clear and they're  
4 huge. Worldwide there is a dramatic increase in  
5 wineries, in growing regions and numbers and types of  
6 wines. Same thing has happened in the United States.  
7 I thought maybe a graphic illustration might help.

8 My father bought this book called  
9 California Wine in 1973 when it was published. At the  
10 end of the book in an appendix, they were able to put  
11 all the California red wines --- wineries on one page  
12 --- two pages and all the --- these are the red wines.  
13 An another page they ended up with all the white  
14 wines. There it is in 1973 more or less the entire  
15 California wine industry. Fifteen (15) years later in  
16 1987 Robert Parker produced the Wine Buyer's Guide.  
17 3,000 wines and 700 pages and growing regions around  
18 the world. By 1993, it was up to 7,500 wines and  
19 1,150 pages. The Wine Spectator has weighed in with  
20 their own massive buying guides. But these guides  
21 only begin to suggest the variety that's out there for  
22 wine lovers now.

23 In Parker's first edition, all of South  
24 America got two paragraphs, Australia two pages, New  
25 Zealand not mentioned, South Africa not mentioned.

1 Now, each of these countries have hundreds of well  
2 made wines that are on the market.

3                   Here's the 2008 Le Guide Hachette Des  
4 Vins. It's French, published in France for French  
5 people --- or French speaking people anyway. It has  
6 10,000 wines selected from 6,500 producers all in  
7 France, and it's based on blind tastings of 35,000  
8 different wines. Now, when you add to this ---  
9 there's a comparable trend in the United States and  
10 I'll just give you winery numbers. According to Wine  
11 Institute, there were 1,683 wineries in the United  
12 States in 1993 when Parker published his second guide.  
13 Over half of those were in California. For 2007,  
14 according to the Wine Institute, there are 5,958  
15 wineries in the United States, of which more than  
16 3,000 are outside of California.

17                   Now, add to this explosion of wines the  
18 impact of the online world with databases and other  
19 resources that put information on wines and prices at  
20 everyone's fingertips, and it's clear that  
21 Pennsylvania faces a new reality. Pennsylvania can't  
22 hope to do a good enough job as the exclusive source  
23 of wine in all of today's growing and dynamic wine  
24 markets. And it shouldn't try. But Pennsylvania  
25 doesn't have to get out of the wine business to give

1 its citizens the freedom that they ought to have and  
2 that they want. Instead, it can follow the example of  
3 New Hampshire and create a practical direct shipment  
4 option.

5           New Hampshire now has ten years of  
6 experience with the direct shipment regimen, and it  
7 started it in 1998. Far from proving a threat to  
8 their state store system, it's proved a boon. In  
9 fact, New Hampshire is so pleased with the results of  
10 their permitting system that they dropped the fee for  
11 getting a permit in 2003.

12           Let me just describe the system briefly  
13 if I could. In New Hampshire, as in Pennsylvania, the  
14 state buys and resells all the wine and liquor. It  
15 retails wine and liquor to its citizens through state  
16 owned stores. If you driven through on the  
17 interstates, you've seen them, maybe even visited  
18 them. It wholesales to restaurants, hotels and  
19 certain supermarkets at a discount from the retail  
20 prices. The only exception is what comes in through  
21 the direct shipper program.

22           New Hampshire marks up its wines between  
23 30 and 60 percent according to the authorities that I  
24 spoke with. It's a level similar to Pennsylvania's,  
25 the 29 or 30 percent, plus the 18 percent Johnstown

1 Flood tax, plus the six percent sales tax.

2           New Hampshire allows wineries, importers,  
3 retailers and wholesalers who are licensed in other  
4 states to ship up to five cases a year direct to New  
5 Hampshire consumers. It collects an eight percent tax  
6 on all such shipments.

7           New Hampshire allows the direct shipment  
8 of wine to consumers whether or not the state also  
9 carries it in the state stores. In fact, more than  
10 150 producers whose wine is carried in the state  
11 system also have permits to ship direct. All the  
12 state requires of those producers is that if they ship  
13 more than 100 cases of wine into the state, they offer  
14 the wine to the state at wholesale prices so they can  
15 go to the state stores.

16           New Hampshire direct shippers must use  
17 licensed carries, must require an adult signature and  
18 must clearly mark the packages to show that they  
19 contain alcohol. And while direct shippers pay no  
20 annual fee for their permit, they're required to file  
21 a shipment report every month under penalties of  
22 perjury.

23           What does New Hampshire's ten years of  
24 experience show us? First and maybe most important  
25 for those who worry that direct shipment could

1 undermine the state's monopoly, the volume of this  
2 business will inevitably be only a tiny part of the  
3 total value of wine sold in the state. With my  
4 testimony, I've handed out a chart showing in large  
5 format what that would be, at most a percent. Second,  
6 a state can effectively regulate and collect tax on  
7 direct consumer shipments. Third, a properly  
8 regulated direct consumer system does not increase the  
9 problem of alcohol in minors. I'll elaborate on them  
10 briefly.

11           This simple chart shows the piece of the  
12 pie in New Hampshire in retail value in the New  
13 Hampshire system represented by direct shipping in  
14 fiscal year 2007, the tenth year of its involvement.  
15 And even though direct shipping includes beer and  
16 liquor as well as wine, and even though they don't  
17 limit it to wines not carried in the state stores,  
18 it's still only one percent. In fact, the 2007 figure  
19 is far higher than the average over this decade, which  
20 is about a half a percent.

21           Second, by getting electronic access to  
22 the records of its licensed shippers, New Hampshire's  
23 able to collect tax on all shipments into the state.  
24 I'll give you an example from my own experience. As I  
25 mentioned, my District of Columbia business is

1 licensed to sell to consumers in New Hampshire.  
2 Reports are due the 10th of the month and most months  
3 I file a zero sales report. Last November, I filed  
4 such a report for October, thinking I hadn't shipped  
5 any wine into the state for the month. A couple of  
6 weeks later I looked at my records and I realized that  
7 a shipment that I thought had happened the 1st of  
8 November had happened the end of October instead. So  
9 I wrote up an amended report, wrote a check and sent  
10 it off to New Hampshire. The very next day clear  
11 before my report had arrived, I got an e-mail from the  
12 enforcement division telling me that my zero report  
13 did not match up with the carrier's records and asked  
14 me for an explanation. Well, I had an explanation,  
15 but if anyone had any doubt that New Hampshire can  
16 effectively track wine coming into the state, it  
17 disappeared for me at that point.

18           Third, there's no evidence that direct  
19 shipment systems which exist in many states increase  
20 the problem of access to alcohol by minors. FedEx,  
21 the carrier with which I have a contract, has very  
22 stringent requirements about the delivery to adults.  
23 It requires every shipment have a large label, and  
24 I've given you each one, it's in your packet, attached  
25 to every box that clearly says the package contains

1 alcohol, an adult shipment --- signature is required,  
2 recipient must be 21, not intoxicated, et cetera.  
3 And, in fact, they won't accept wine without this  
4 label, without the purchase of an adult signature  
5 requirement.

6           New Hampshire reported to the FTC in  
7 2003, which addressed this issue in a report you may  
8 be familiar with, a comprehensive report on this  
9 question including access to minors, that it did not  
10 create a problem for them. And that view is  
11 consistent with the views of ten other states who  
12 responded to the FTC surveys. If you find it, you can  
13 find it on the web, they have copies of the letters  
14 from all the state enforcers saying essentially this  
15 did not create an increased problem with alcohol to  
16 minors. Of course, a minor can get somebody to make a  
17 purchase for him if they're an adult just as he can  
18 get somebody to go into the store and buy it if  
19 they're an adult. But it's not an increase in the  
20 problem.

21           Pennsylvania already has direct shipment,  
22 of course, but it's almost never used since it  
23 contains a prohibitive tax and raised other practical  
24 hurdles including the execution of an affidavit and  
25 delivery to the state stores, a one case limit.

1                   What changes should Pennsylvania make to  
2 its direct shipping statute to make it a practical  
3 option?

4                   The first and most important has been  
5 mentioned here today. That is to eliminate the  
6 prohibitive tax rate of 24 percent. As experience  
7 shows, consumers with a choice of buying wine  
8 elsewhere with a tax of between five and nine percent  
9 are not going to pay for shipping and a 24 percent tax  
10 rate. Our experience with our own direct shipping  
11 statute shows that. I think in an 18 month period a  
12 few years ago the total value of wine shipped under it  
13 was \$30,000. A normal tax rate, however, will capture  
14 significant tax revenue that now goes to other states  
15 or certainly it doesn't come here.

16                   The solution then is to repeal the  
17 Johnstown Flood tax. It's an embarrassment anyway.  
18 I'm sure you're tired of hearing about a tax that's 70  
19 years old. And note that the repeal won't cost the  
20 LCB a dime in the state stores as long as the mark up  
21 is increased to reflect the reduction of 18 percent  
22 from the Johnstown Flood tax. No one but the  
23 accountants will even notice because the flood tax is  
24 completely invisible in the state stores. The shelf  
25 price contains it. They won't even have to change a



1 single sign. It's simply an accounting issue.

2                   Bringing in tax on direct ship wine down  
3 to the sales tax has another benefit. It solves the  
4 Granholm problem. Now, out of state and instate  
5 wineries are treated the same and so you don't have to  
6 worry about the Bucks County or the Lehigh County  
7 wineries who are shipping wine to consumers at six  
8 percent.

9                   Now, unlike New Hampshire, Pennsylvania  
10 statute allows for direct shipment only of wine that's  
11 not on any of Pennsylvania's Regular, Specialty or SLO  
12 lists. Based on New Hampshire's experience, that  
13 restriction is unnecessary. You just don't simply get  
14 a large volume of revenue. However, should the  
15 legislature chose to continue such a condition, the  
16 definition needs to be improved. The state's purpose  
17 would be fully served by limiting direct shipment to  
18 wines not stocked and sold in Pennsylvania stores,  
19 specialty or regular.

20                   The current requirement that states that  
21 wine be delivered to the state stores is not necessary  
22 as is the affidavit requirement. Experience in New  
23 Hampshire and other states is now going on many years  
24 and it shows the requiring an adult signature is  
25 adequately protected with minors.

1           Similarly, the current one case per month  
2 limit be raised. I think recent administration draft  
3 on the issue has moved that to three case a month. I  
4 would suggest annualizing the limit so that that  
5 occasional larger purchase can fit and still maintain  
6 an annual limit.

7           But for me the answer is the Supreme  
8 Court's decision, now more than three years old, gives  
9 us an opportunity. And we need to decide whether  
10 we're going to look to the future or the past. In my  
11 view, the current bill could take us a step backwards  
12 and make our system more inflexible and backward  
13 looking than it's ever been. Taking the New Hampshire  
14 approach, creating a practical direct shipment option  
15 would move us forward and it's the classic win/win  
16 situation, more revenue for the Commonwealth, captured  
17 revenue that you're not getting now, genuine gains for  
18 the state's wine lovers and less dissatisfaction with  
19 the state store system, fewer people buttonholing you  
20 at parties to tell you how unhappy they are about not  
21 being able to get wine that they want. I urge the  
22 committee to move in that direction, and I thank you  
23 very much for your time and the opportunity to present  
24 these thoughts.

25                           CHAIRMAN:

1 Thank you. Before we go to questions, I  
2 want to recognize Representative Brennan. And  
3 Representative Costa?

4 REPRESENTATIVE COSTA:

5 Yeah, a quick one. Your comments about  
6 New Hampshire permitting five cases per year, is that  
7 throughout the whole state or is that from each  
8 individual?

9 MR. WILCOX:

10 It's per individual or address I think is  
11 the way it works, so that any given address five cases  
12 is the limit.

13 REPRESENTATIVE COSTA:

14 You can get five and I can get five?

15 MR. WILCOX:

16 Yes.

17 REPRESENTATIVE COSTA:

18 Not just you?

19 MR. WILCOX:

20 That's right. It's a per consumer.

21 REPRESENTATIVE COSTA:

22 Thank you.

23 CHAIRMAN:

24 I also want to recognize Representative  
25 Harhai. Any other questions? Representative Petri?

1                   REPRESENTATIVE PETRI:

2                   Yes, I do. Very quick direct questions.  
3 One, and I don't know if you know the answer, under  
4 New Hampshire's system where they have a 30 and a 60  
5 percent markup, how is that done? Is that done by  
6 privatization or by a label? In other words, would  
7 the 30 --- some wineries get 30 and some get 60, or  
8 would it be more by product? Spirits at one number,  
9 wine at another, et cetera?

10                   MR. WILCOX:

11                   I don't know the answer to that. I got  
12 the numbers from the enforcement people in New  
13 Hampshire, but I only got them at that level.

14                   REPRESENTATIVE PETRI:

15                   I like the concept. The only concern I  
16 would have is that every product type at least be  
17 treated fairly because otherwise I think you run into  
18 the same factors and questions, if you give the Liquor  
19 Control Board the discretion, and you're a winery and  
20 Karen Beyer has a winery are they marked up the same  
21 way. Next question I thought your testimony was very  
22 interesting with regard to New Hampshire cataloged and  
23 documented sales. Under Pennsylvania's current  
24 system, how does our current system of out of state  
25 wineries and their reporting requirements compare to

1 what New Hampshire has? Subsequent question to that  
2 is, do you believe that there's some out of state  
3 wineries that might be compliant in reporting in  
4 Pennsylvania so that we may already have lost revenue?

5 MR. WILCOX:

6 I've never had anyone ask to ship to  
7 Pennsylvania. The system is so cumbersome and so  
8 difficult to use that no one uses it. It's just not  
9 done. And on the other point, I mean, I guess you can  
10 always cheat. There are always --- there's always the  
11 risk that people are going to ship you-name-it through  
12 interstate commerce, claiming it's something else.  
13 But if there is a realistic option with a genuine  
14 practical way to do it, I suggest you're going to find  
15 that most people would like to --- would like to  
16 comply and are happy to see the revenue go to  
17 Pennsylvania. You'll capture revenue from other  
18 states that way. You'll be well ahead.

19 REPRESENTATIVE PETRI:

20 Thank you.

21 CHAIRMAN:

22 Thank you. Chairman Raymond?

23 REPRESENTATIVE RAYMOND:

24 Yes, thank you. Mr. Wilcox, in the last  
25 meeting the board chairs had with the Governor, which

1 was the last session actually we had that meeting, I  
2 proposed exactly what you said and I was pushing the  
3 concept of why should the LCB have the ability to  
4 slide their profit --- eliminate the 18 percent  
5 Johnstown Flood tax and let them go to a sliding  
6 scale, which would go up to 40 percent markup. And my  
7 bill would reduce the Johnstown Flood tax by three  
8 percent a year for six years and eliminate it. At the  
9 time I proposed it, we had quite a surplus. We were  
10 doing pretty good. I think in these times it's  
11 problematical as far as the economic times that we  
12 have. I told him, I said, Governor, you can be a hero  
13 of the world, you got rid of an 18 percent tax rate,  
14 \$234 million. Imagine Ed Rendell the tax god because  
15 everybody says Ed Rendell is a tax raiser and just let  
16 the LCB slide that profit margin 30 to 48 percent,  
17 whatever. Just do it on casual basis, so all wines  
18 are sold at the same markup you pay for other people.  
19 And we got in a pretty good discussion. That's a  
20 great idea and a good idea that's been out there for a  
21 while. I don't know where it's going to go at this  
22 point in time, but you're absolutely correct.

23 MR. WILCOX:

24 My point is that if you eliminated the  
25 Johnstown Flood tax tomorrow, the state could the very

1 same day move the markup to add 18 percent and the  
2 money comes in the door. Not a dime of revenue is  
3 lost. Variable pricing, whether or not you chose to  
4 do that, can be dealt with. But the tax itself  
5 doesn't have to be a tax ---. I've submitted proposed  
6 language for the direct shipping statute and at the  
7 end I have proposed language for eliminating the  
8 Johnstown Flood tax and mandating, should you think it  
9 necessary, that 18 percent of revenues from wine and  
10 liquor be moved to the general fund. You probably  
11 don't need to do that. The Liquor Control Board is  
12 going to send the money over anyway. But if there  
13 were a timing question, that would take care of it as  
14 well.

15 REPRESENTATIVE RAYMOND:

16 And one final point that the LCB gave to  
17 me was their opposition to allowing consumers to buy  
18 in bulk. They'd rather if it was restaurants, hotels  
19 and the big consumers of large amount of product that  
20 they want to see them getting direct shipments from  
21 outside the state. And I'm sure that the speaker  
22 later on can address that, the Restaurant Association.  
23 But that's another point. It's a complex problem. I  
24 appreciate your testimony. You did a great job.

25 CHAIRMAN:

1 Thank you, Chairman Raymond.

2 Representative Beyer?

3 REPRESENTATIVE BEYER:

4 One quick ---. You said something --- I  
5 enjoyed your testimony very much. But you said  
6 something that I barely heard you say, but I wanted  
7 you to expound on it. You said the system is  
8 cumbersome. The Pennsylvania system is cumbersome.  
9 Give me some highlights and point out as to why it is  
10 so cumbersome.

11 MR. WILCOX:

12 Well, the direct shipment statute  
13 requires that wine be --- first there's a one case per  
14 month limit. It includes a fee --- a handling fee  
15 that's tacked on in addition to 24 percent tax. And  
16 it has to be shipped to the state stores. Now, the  
17 stores are doing a better job than they used to do  
18 about taking care of wine. But somebody who goes to  
19 the trouble of finding a case of very important to  
20 them wine, whether it's expensive or not, if they have  
21 to have it shipped through the state store, the  
22 chances of coming in and find it in the window or next  
23 to the heater or someplace that it's not taken care of  
24 are substantial. And so people don't use it. When  
25 you combine those, when you add those all up, it's



1 just not used.

2                   So in order to make direct shipment a  
3 real option, you can put the limits that you chose to  
4 put on it, but you need to allow people the practical  
5 chance to do it.

6                   REPRESENTATIVE BEYER:

7                   I can actually verify something you just  
8 said because yesterday we toured a liquor store and  
9 there was a --- a storage area, a cooler, if you will,  
10 where all the more expensive wines were held for the  
11 public. And a half a case of \$75 a bottle port was  
12 laying underneath a conveyer covered in dirt and dust  
13 and debris. That very same bottle of port was being  
14 sold out in the cooler for \$75 a bottle. And that's  
15 absolutely now how you would treat an extraordinarily  
16 expensive bottle of port. We saw that that was the  
17 case I think with other products as well. So if you  
18 or I can verify thins like this just in one store I  
19 actually saw what you're suggesting. That it's not  
20 being cared for as you would think it should be. That  
21 was interesting. Thank you very much.

22                   CHAIRMAN:

23                   Thank you. I have a question. You use  
24 FedEx. What procedure do they do like as far as the  
25 heat and that?

1                   MR. WILCOX:

2                   Well, they --- frankly, I don't ship in  
3 the summer because ---.

4                   CHAIRMAN:

5                   In other words, they do nothing?

6                   MR. WILCOX:

7                   They don't --- they don't promise. And  
8 you really kind of watch the weather and you decide to  
9 ship when it's not ---.

10                  CHAIRMAN:

11                  So they don't it any way different than  
12 the LCB would do?

13                  MR. WILCOX:

14                  There are vendors who are starting to  
15 make more temperature retentive or temperature  
16 excluding shipping materials. I think that's coming.  
17 Particularly for high end wines it's going to become  
18 easier to do. But right now, you watch the calendar  
19 and the weather report.

20                  CHAIRMAN:

21                  All right. Thank you. Karly Moore ---  
22 oh, I'm sorry, Karin. Karin Moore. I apologize.

23                  MR. MOORE:

24                  That's quite all right. Good morning.  
25 My name is Karin Moore and I am the Assistant General

1 Counsel of the Wine & Spirit Wholesalers of America, a  
2 trade association based in Washington, D.C. that  
3 represents America's wine and spirit wholesalers.  
4 Essentially, we're the middlemen of the three tier  
5 system. I'd like to thank the members of the House  
6 Liquor Committee and specifically Chairman Donatucci  
7 and Representative Costa for allowing me to testify  
8 today.

9                   In June of 2004, the Attorney General of  
10 Massachusetts announced charges against a number of  
11 purveyors of alcohol, both licensed in the state and  
12 unlicensed out of state, for illegally shipping  
13 alcohol to minors. Along with those companies, the  
14 state also brought actions against UPS, DHL and FedEx,  
15 delivery services whose carriers ignored the explicit  
16 instructions and warnings on the boxes being delivered  
17 by failing to require any form of ID or proof of age  
18 from the minor recipients.

19                   General Reilly got it right when he said,  
20 I have seen for myself, as District Attorney and now  
21 as Attorney General, how destructive underage drinking  
22 can be to our children and to our families and to our  
23 communities. This is a serious problem, and by making  
24 alcohol available online to young people, the segment  
25 of our population that is by far the most internet

1 savvy, only makes the problem worse. Nobody should be  
2 surprised by the results of that law enforcement  
3 operation in Massachusetts.

4           Later beginning in 1999, the State of  
5 Michigan conducted a much larger and longer lasting  
6 sting that as of May 2002 had intercepted over 1,300  
7 bottles of alcohol including over 1,000 bottles of  
8 wine, several hundred bottles of beer and 20 bottles  
9 of spirits that had been ordered by minors and shipped  
10 illegally into Michigan. The state took action as a  
11 result of that sting against scores of wineries and  
12 out of state retailers. As in the Massachusetts  
13 sting, carriers failed to obtain both signatures or  
14 ask for identification, permitting minors to obtain  
15 the alcohol.

16           The State of Iowa, which is also a  
17 controlled state, conducted a sting operation at the  
18 University of Iowa. While the person doing the  
19 ordering was an adult, not only did the driver not ask  
20 for ID, but the beer was delivered despite the fact  
21 that Iowa doesn't allow the shipment of alcohol other  
22 than from certified winemakers.

23           WSWA itself conducted dozens of similar  
24 tests with the same results, and I failed to bring my  
25 stack of bottles of wine with me.

1 Proponents of direct alcohol sales argue  
2 that such stings don't show that kids are actually  
3 buying alcohol online, only that they can, and that in  
4 the absence of evidence of kids actually getting  
5 alcohol delivered, they argue that there is no real  
6 problem, but the facts speak for themselves.

7 The National Academy of Sciences in their  
8 2003 study entitled Reducing Underage Drinking - A  
9 Collective Responsibility found that ten percent of  
10 underage purchases are made through the internet or  
11 other home delivery sales.

12 More recently, the National Clearinghouse  
13 for Alcohol and Drug Information, which is part of the  
14 Department of Health and Human Services, Substance  
15 Abuse and Mental Health Services Administration,  
16 reported that, and I quote, an increasing number of  
17 teens have credit or debit cards providing an easy and  
18 anonymous way to order alcohol off the web. The  
19 internet acts as a general store where computer users  
20 can get hold of almost anything such as beer, wine and  
21 hard liquor, including tequila and vodka, without  
22 verification of age. It further warns, underage  
23 college students can order alcohol off the internet  
24 and have it delivered right to their dorm room door,  
25 no questions asked. Teenagers don't need fake IDs to

1 purchase alcohol on the internet and they don't face  
2 the danger of getting caught at a store with a fake  
3 ID.

4           A 2006 survey commissioned by WSWA and  
5 conducted by respected pollster Teenage Research  
6 Unlimited, TRU, who has been used by the CDC and the  
7 AMA, is consistent with these findings of the NAS and  
8 confirms that a significant number of teens purchase  
9 beer, wine and liquor online. Specifically, TRU's  
10 survey of 14 to 20-year olds confirms that two percent  
11 or over half a million kids, if you extrapolate the  
12 figure, say they personally have bought alcohol  
13 online. Twelve (12) percent report having a friend  
14 who's ordered alcohol online. As exposure and  
15 awareness of buying alcohol online increase, even more  
16 minors can be expected to purchase wine, beer and  
17 liquor online. Nearly one in ten of those ages 14 to  
18 20 have visited a site that sells alcohol. One third,  
19 nearly 8.9 million, if you extrapolate, are open to  
20 the possibility of an online alcohol purchase before  
21 age 21. And 75 percent say that their parents aren't  
22 able to control what they do on the internet.

23           In May, this past May, John Manfreda, who  
24 is the Administrator of the Alcohol and Tobacco Tax  
25 and Trade Bureau, ATTB, testified before the House

1 Ways and Means Committee that underage sales to minors  
2 over the internet is a significant public policy  
3 concern. Mr. Manfreda has federal jurisdiction over  
4 all the alcohol laws.

5           The question you as legislators must ask  
6 yourself is whether it's wise policy to create or  
7 perpetuate an unregulated, unaccountable, non  
8 face-to-face channel of access for our kids knowing  
9 that there's already serious concern with minors  
10 finding a way to circumvent the local system of  
11 safeguards to illegally obtain and abuse alcohol.

12           In 2002, Pennsylvania put in place a  
13 highly effective and consumer friendly internet  
14 ordering system for wines that may not be available  
15 locally. That system ensures every internet purchase  
16 goes through the controlled system, is properly taxed  
17 and accounted for and ultimately results in  
18 face-to-face transactions to the buyer at the local  
19 retail level. As you know, face-to-face transactions  
20 are the gold standard. They're not perfect, but they  
21 are better than the other methods out there, but the  
22 best way to avoid unlawful purchases by those of 21  
23 age or younger.

24           We support direct shipping and  
25 legislation to the extent it requires face-to-face

1 purchases or delivery by accountable instate  
2 retailers.

3           The three tiered system for alcohol  
4 distribution arose out of lessons learned from the  
5 failures and excesses of the vertically integrated and  
6 largely unregulated distribution of alcohol system  
7 that existed prior to Prohibition. By forcing  
8 suppliers to go through licensed instate wholesalers,  
9 the states created a system that fostered competition,  
10 created a dependable and accountable revenue gathering  
11 apparatus and ultimately benefited consumers in the  
12 form of reasonable and dependable pricing structure  
13 and increased product variety. The pure three tiered  
14 system is a tried and true system that has gained the  
15 imprimatur of the U.S. Supreme Court, which when  
16 speaking about the three tier system in the Granholm  
17 decision called it unquestionably legitimate.

18           WSWA and its member wholesales and  
19 brokers do not believe that there should be commerce  
20 at any cost. Alcohol is different. It's not books.  
21 It's not CDs. It's not clothing that you just order  
22 over the internet. It should and must be treated  
23 differently, and a face-to-face transaction is the  
24 best way to prevent underage access.

25           I encourage you to protect your



1 regulatory system and your children by recognizing the  
2 value of the three tiered system and removing any  
3 exemptions that might put that at risk. Thank you for  
4 the opportunity to testify. I'm happy to answer any  
5 questions.

6 CHAIRMAN:

7 Thank you, Karin. This is one of my  
8 concerns, is the underage drinking issue. I  
9 appreciate you coming up with some detailed facts for  
10 us. Is there any one carrier better than another and  
11 have you seen that like the prior speaker mentioned  
12 FedEx ---?

13 MS. MOORE:

14 I think all of the carriers, you know, to  
15 the extent they can do an exceptional job of training  
16 their personnel to check IDs, if that's required by  
17 the shipment or whether the wine is stored in one  
18 truck or not --- I can't attest to that.

19 CHAIRMAN:

20 No, I'm not ---.

21 MS. MOORE:

22 But I think they all have fairly similar  
23 --- and I understand someone from UPS is on the list  
24 as well to testify and that person may be able to  
25 answer more questions, but all of them have been

1 taught in providing --- the job of the delivery man  
2 simply is to get packages out. I mean, checking IDs  
3 isn't something that maybe they should be required to  
4 do. I think there's also a question of liability. I  
5 mean, personally I feel liability needs to stay with  
6 the retailer, the winery that's shipping it, and not  
7 so much on the carrier. And keeping the liability on  
8 the carrier I think is not the way I would do it.

9 CHAIRMAN:

10 Representative Petri?

11 REPRESENTATIVE PETRI:

12 Yes. I have a question. Do you know if  
13 any state requires direct shippers to barcode their  
14 products so they can be tracked to see if it falls  
15 into unsafe hands? Do you know if that's been done  
16 before?

17 MS. MOORE:

18 If they track ---?

19 REPRESENTATIVE PETRI:

20 If they require direct shippers, people  
21 who want to ship directly to a customer, to barcode  
22 their product so it can be tracked to see if it falls  
23 into minors' hand? Second question, do you think  
24 that's a good practice?

25 MS. MOORE:

1 I am not sure. I think the prior person,  
2 Mark, might be able to address that better than I do.  
3 I know that the carriers can track it, and I believe  
4 that's done by barcode. I think the issue is those  
5 wineries, and I'll extend this to retailers, don't put  
6 --- don't admit that they're shipping alcohol. I  
7 think that's a huge problem and we have no idea of the  
8 extent of the problem because they're not fessing up  
9 to it.

10 REPRESENTATIVE PETRI:

11 Thank you. I'm sorry.

12 CHAIRMAN:

13 Chairman Raymond?

14 REPRESENTATIVE RAYMOND:

15 Thank you. The recent case out of Maine  
16 dealt with kids and cigarettes where the federal  
17 government ruled that you can't require common carriers  
18 to check for IDs on cigarette shipments. Do you think  
19 that will have an impact on alcohol as well?

20 MS. MOORE:

21 Yeah. That is the case that great minds  
22 differ on how it might impact alcohol, and that case  
23 is Rowe versus New Hampshire Motor Transport  
24 Association. Personally, I feel that it is going to  
25 impact alcohol. It hasn't been tested. The carriers

1 are currently voluntarily abiding by the requirement  
2 that they check ID. As I said, it hasn't been tested.

3 The question from a legal perspective is will the  
4 21st Amendment carry the day over the commerce clause  
5 issue that was raised. And personally, I don't know  
6 that it will, but we'll see. Essentially, for those  
7 who aren't aware of this case, it's a case that talks  
8 about the shippers being required under Maine State  
9 law to check ID of those that they were delivering  
10 cigarettes to. So it's somewhat synonymous to  
11 alcohol, in that there was an age requirement.

12 The Supreme Court said that the state  
13 could not impose addition burdens on the interstate  
14 carriers and did not require them to check IDs and a  
15 number of other steps that they needed to take.

16 REPRESENTATIVE RAYMOND:

17 That's exactly --- that's the point I  
18 want to bring up. Your testimony speaks to the age  
19 old quandary in Pennsylvania, should we be a  
20 controlled state or not a controlled state. And when  
21 we get to sniffing around the edges like we do in  
22 direct shipment of wine and all the other stuff that's  
23 here, you've got to figure do you want to be a  
24 controlled state and control it all. They want to  
25 have all shipment of wine into Pennsylvania. They

1 want us to be a controlled state where you go to the  
2 LCB and that's it and control access of wine to  
3 underage drinkers and stuff. And then you get people  
4 like Representative Costa who are progressing in their  
5 thinking and trying to move us into the 21st Century  
6 in some form or fashion to take care of our  
7 Pennsylvania wineries and our agricultural products in  
8 the state and move forward.

9           This has been an age old problem. It  
10 goes back to when Chairman Goodman was chairman of the  
11 LCB. It's not new. It's that old. And that's why  
12 we're still talking about it now because it's not  
13 easy, but thank you for your testimony.

14           MS. MOORE:

15           Thank you.

16           CHAIRMAN:

17           Thank you, Chairman Raymond. Any  
18 questions? Representative Costa?

19           REPRESENTATIVE COSTA:

20           Thank you, Mr. Chairman. Karin, it's  
21 good to see you again. Mr. Landis in his testimony,  
22 he brought up about reciprocal agreements that you  
23 have with the state. And at the conference we were at  
24 last week, that was one of the subjects ear on, direct  
25 wine shipment. There was a lot of people leaned that

1 way and then they all switched over. Was that ---  
2 they were required to do it, or that was just a  
3 choice?

4 MS. MOORE:

5 That was just a choice.

6 REPRESENTATIVE COSTA:

7 Okay. So you still would have the  
8 option?

9 MS. MOORE:

10 Yes.

11 REPRESENTATIVE COSTA:

12 And we wouldn't be violating Granholm if  
13 we did that, because we wouldn't be treating all  
14 states?

15 MS. MOORE:

16 Well, reciprocity is meaning that you  
17 would only allow direct shipments from other states  
18 that allow direct shipment. Whereas, if you go the  
19 full on direct shipping, you're essentially allowing  
20 any winery from any country --- sorry, any state to  
21 ship into the state.

22 REPRESENTATIVE COSTA:

23 And we wouldn't be violating Granholm  
24 because if I'm a winemaker in Minnesota that doesn't  
25 --- Minnesota doesn't allow shipping. Then you're not

1 allowing me ---.

2 MS. MOORE:

3 Well, that's a Minnesota --- that's a  
4 Minnesota state law that you don't have any control  
5 over. That's how I would look at it. I don't see  
6 that to be a distinct problem. So if you're saying an  
7 out of state winery, if you're allowed to by your own  
8 state law to ship out of the state, then you can ship  
9 into our state.

10 REPRESENTATIVE COSTA:

11 Thank you.

12 CHAIRMAN:

13 Thank you, Representative Costa. Any  
14 other questions? Karin, thank you for your testimony.  
15 It was very interesting and informative. Rick Fraser.  
16 Welcome.

17 MR. FRASER:

18 Thank you.

19 CHAIRMAN:

20 Whenever you're ready ---.

21 MR. FRASER:

22 I think I'm ready. Good morning,  
23 committee members. My name is Rick Fraser and I'm an  
24 owner of Wycombe Vineyard and Winery located in the  
25 center of Bucks County, Pennsylvania.

1                   First, I'd like to thank Chairman  
2 Donatucci and the House Liquor Control Committee for  
3 giving us the opportunity to present testimony today  
4 on House Bill 2165 on behalf of our winery.

5                   I am here to present my opposition to the  
6 bill, not as any special interest, but rather as a  
7 farmer who has invested heavily in Pennsylvania's open  
8 space programs, sustainable agriculture and as a  
9 valuable Pennsylvania tourism resource.

10                   I understand the committee has already  
11 received factual testimony concerning the substantial  
12 and continuous stream of revenue received by the state  
13 and derived solely from the efforts of my fellow  
14 wineries, so I need not be redundant.

15                   Speaking for myself, I do agree with the  
16 PWA concerning the proposed provisions concerned the  
17 direct shipment of wine. Any provision that increases  
18 the cost of product distribution of a limited winery  
19 is a severe market disadvantage when competing with  
20 the mega-wine producers of California, Australia, et  
21 cetera. By definition, limited wineries promote  
22 tourism and recreational development in Pennsylvania  
23 and produce wine mainly from Pennsylvania grown  
24 agricultural commodities. We are limited by statute,  
25 but are forced to compete by statute in our own state



1 with competition that is unlimited in size and  
2 resources and has no interest whatsoever in  
3 Pennsylvania other than to make a profit.

4           Another issue of concern in the bill is  
5 the new proposal to limit wine sales by the glass to  
6 the primary location only. The Bucks County  
7 Department of Health includes wine in its very broad  
8 definition of food. When sold by the glass, rather  
9 than by the bottle as take out from the manufacturer,  
10 they define the operation as a food establishment with  
11 table service, which falls under their regulation. I  
12 am quite sure that most wineries in Pennsylvania would  
13 fall under similar county health regulations. Most,  
14 if not all, farm environments would not pass health  
15 department mandates and handicapped accessibility  
16 requirements in order to serve food or wine by the  
17 glass. Also, local zoning would most likely prohibit  
18 a food establishment in an agricultural district.

19           Most limited wineries are family owned  
20 and located in a farming environment. Traveling to a  
21 country farm in the summertime to purchase wine is a  
22 pleasant experience. Transversing (sic) unpaved farm  
23 lanes in February is not so pleasant. For this  
24 reason, many farm wineries are closed to the public in  
25 the first quarter. Additionally, with fuel prices at

1 unprecedented levels, many customers think twice  
2 before traveling to the country wineries. The ability  
3 to have a satellite location in a local town where  
4 people routinely shop and dine is a vital option for a  
5 local winery.

6           Most importantly, though, restricting  
7 sales of wine by the glass and food pairings to only  
8 the primary location would virtually render most  
9 limited wineries a seasonal operation, as sales by the  
10 bottle alone would not the overhead on a satellite  
11 location in town. Sales by the glass with food in  
12 town increases the tax revenue to the state at least  
13 fivefold, it brings the Pennsylvania product closer to  
14 the consumer and increases public awareness of this  
15 exceptional resource that originates on a Pennsylvania  
16 farm.

17           Sales by the glass with food does not  
18 unfairly compete with any other type of licensees.  
19 Our hours generally prohibit wine sales after 9:00  
20 p.m. We can offer no other alcohol products except  
21 our own Pennsylvania made wine. Restricting this  
22 ability would immediately benefit the retail license  
23 holders at the expense of the small business farmer by  
24 running the farmer and his product out of town.

25           I am also mystified by the proposal to

1 cut annual production to 80,000 gallons of wine. In  
2 my farmer's mind, only out of state special interests  
3 would want to limit the production of a Pennsylvania  
4 farm product. I can think of no other Pennsylvania-  
5 based product where such a restriction is in place.  
6 It is simple economic fact that the larger the  
7 production the smaller the unit cost. Again, such a  
8 restriction benefits the out of state producers who  
9 have no such restrictions in the Pennsylvania  
10 marketing system.

11           On a personal note, we are the newest  
12 winery in Buck County, opening in 2005. We started  
13 investing by planting and building infrastructure in  
14 2000. We placed the vineyard lands in the township  
15 preservation program thereby creating open space  
16 buffers to deflect the rapid housing development of  
17 the township. Our investment not only benefited the  
18 township, but also Bucks County, since there was yet  
19 another winery in Bucks County Wine Trail. Currently  
20 Bucks County receives thousands of out of state  
21 visitors each year via county tourism marketing  
22 efforts spanning several states. Many of these  
23 visitors come here just to visit our wineries. I see  
24 many, many entities benefiting from our personal  
25 investment. We made the investment in our community,

1 our county and our state because we believe in a free  
2 market system, fair competition and the opportunity to  
3 share the bounty with our community partners. It is  
4 to me disappointing to see any legislative proposals  
5 that undermine these fundamental American principles.

6 I urge you to reject House Bill 2165 in  
7 its entirety, as I can find no benefit, but only harm  
8 to me and the Pennsylvania wine industry as a whole.

9 Once again, thank you for the opportunity  
10 to present this testimony on behalf of Wycombe  
11 Vineyard and Winery.

12 CHAIRMAN:

13 Thank you for your testimony.  
14 Representative Costa?

15 REPRESENTATIVE COSTA:

16 Thank you, Mr. Chairman. And, Mr.  
17 Fraser, thank you very much. The issue that you  
18 brought up was actually brought up to us by another  
19 --- a couple other wineries, one of them actually from  
20 your area, Mr. Connors. Is it Tom Connors?

21 MR. FRASER:

22 Carroll. Tom Carroll.

23 REPRESENTATIVE COSTA:

24 Mr. Carroll brought this to our  
25 attention, and that's something that actually we're

1 looking at changing because we --- that was not  
2 intentional. We weren't trying to prohibit that. And  
3 when we do amend this, that's going to be taken care  
4 of. Thank you.

5 CHAIRMAN:

6 Representative Petri?

7 REPRESENTATIVE PETRI:

8 You and I should carpool together. We'd  
9 save gas.

10 MR. FRASER:

11 And maybe time, too.

12 REPRESENTATIVE PETRI:

13 Yeah, I think so. Just a question. If  
14 you have to pick some sort of gallonage or limitation,  
15 what do you think is a reasonable number or a  
16 threshold to protect the Pennsylvania wineries?

17 MR. FRASER:

18 Well, I would think that for most  
19 wineries in Pennsylvania --- I think you already heard  
20 testimony here today that 80,000 is probably --- three  
21 or four wineries I've heard that are getting close to  
22 that limit. So most wineries aren't there yet. But  
23 it's not so much the total gallons. It's that the  
24 proposal that I heard today to increase it  
25 incrementally may be tied in with some factor where

1 the sales of wine to the PLCB would be tracked and  
2 say, well, increase sales, we increase the allotment.  
3 But certainly dropping from 200,000 down to 80,000,  
4 that makes no sense. I think keep it at 200,000 and  
5 put some kind of an index in there to see how the wine  
6 sales are going or how the Pennsylvania agricultural  
7 market is or how many wineries are coming into  
8 Pennsylvania and starting investing like we did.

9           With a Winery you can make hundreds of  
10 thousands of dollar in investment. You see, the best  
11 we're going to do for six years is to get that  
12 investment back maybe depending on what falls out of  
13 the sky. You know, they look at that, why should we  
14 invest in that, because there's a cap. We're only  
15 allowed to get so big. But if there was some --- some  
16 kind of factor in there that could keep that door open  
17 to factor in the reality of the market, I think that  
18 would be beneficial.

19                   REPRESENTATIVE PETRI:

20           One quick follow up on another topic.  
21 How significant a hurdle or value is it to your  
22 business that there is a requirement that most of your  
23 grapes, other than some exception, be grown in  
24 Pennsylvania? Do you think it's a hurdle or is it  
25 just something generally about that?

1                   MR. FRASER:

2                   Well, just a real life example, we grow  
3 --- we grow probably 90 percent of our own grapes,  
4 okay. And we have a lot more land that was put in  
5 preservation and we can plant more grapes. So last  
6 Thursday we had hail. I don't think anybody else had  
7 hail, maybe just not significant. But if that damaged  
8 our crop, then we have to look elsewhere. And lot of  
9 you --- a lot of your wineries, the larger wineries  
10 have growers under contract. Well, we don't have  
11 growers under contract at this point. So we would  
12 have to be able to go take advantage of that out of  
13 the state or 350 mile provision. We'd have to look.

14                   So I don't really want to have --- I  
15 don't think to me, speaking for myself on this  
16 litigation, that it would be desirable to have  
17 Pennsylvania wine diluted with out of state wine  
18 product. Okay. But I think there has to be  
19 circumstances to take in crop failure, some kind of a  
20 shortage of crop. We have to have something in there  
21 for that.

22                   REPRESENTATIVE COSTA:

23                   Thank you, Mr. Chairman. Thank you for  
24 your testimony.

25                   CHAIRMAN:

1                   Thank you. Any other questions? Thank  
2 you. Ray Hottenstein? Before you start, Ray, UPS  
3 cancelled out on us very shortly, but if we have  
4 another hearing, they want to testify. It's just they  
5 couldn't do it today. Thank you. Ray, you can begin  
6 any time you're ready.

7                   MR. HOTTENSTEIN:

8                   Thank you, Chairman. And thank you,  
9 everybody, for allowing me to come today to testify in  
10 favor of the direct shipment for the Pennsylvania  
11 Restaurant Association and our licensees.

12                   I want to thank the folks here at  
13 Paradocx for providing this venue. This is --- it's  
14 almost like Napa Valley or driving down and stopping  
15 at a place on Silverado Trail. This is very --- this  
16 is a testament to what's happening here in  
17 Pennsylvania with the vineyards and wine growers.  
18 It's just an absolutely amazing place, and it's  
19 obvious that we have to help protect our Pennsylvania  
20 heritage.

21                   Being a small business person myself, I  
22 understand what it's like to work nine days a week  
23 trying to make a living and protect our jobs and  
24 employees and everything we've worked for as a family  
25 business person.



1           The PRA supports direct shipment of wine  
2 for both consumers and Pennsylvania licensees. House  
3 Bill 2165 addresses the idea of direct shipment, but  
4 it will do something else in the process. It will  
5 raise the costs of Pennsylvania wines throughout the  
6 state and add operating costs to the Pennsylvania  
7 Liquor Control Board. This will be done by shipping  
8 to and from the PLCB. Direct shipping costs from  
9 California now range between \$35 and \$110 per case,  
10 depending on whether it is a second or third party  
11 shipper, and this is without the cost of the PLCB  
12 shipping and additional charges. These increases will  
13 have to match all the costs and prices added to  
14 Pennsylvania wines as well.

15           For example, a case of Moondancer  
16 Chardonnay in York County that retails currently for  
17 \$15 a bottle or \$180 a case will increase its basic  
18 cost to \$20.63 or \$247 a case. Or use the cost of the  
19 \$16.45 Cabernet Franc from Judy Nissley and Nissley  
20 Winery in Lancaster County and then you can add the 30  
21 percent cost, which nobody has talked about today, and  
22 you will start to see the resistance from the consumer  
23 since the difference between a Pennsylvania wine and a  
24 wine in California, Washington or Oregon may look like  
25 a better value. The same will play out all through

1 Pennsylvania at all the wineries. Also, the cost of  
2 the product will increase to the consumer, but the  
3 vineyards will not receive any additional compensation  
4 and will be actually increasing their costs in the  
5 collection of the new taxes on the bottle, since most  
6 everybody today pays with a credit card. So every  
7 time we swipe a credit cards, it's three percent off  
8 that. So if it's a \$10 increased cost, it's not \$10,  
9 you had to add that three percent, very similar to  
10 what goes on in the notoriety throughout the whole  
11 State of Pennsylvania and the nation with the  
12 increased costs of bank fees. The increased cost that  
13 I speak of do not include any cost of shipping to the  
14 PLCB and it would be to assume that there would be a  
15 minimal additional charge of \$30 at least to  
16 compensate for the shipment.

17           The losses of fine small business  
18 partners and vintners in Pennsylvania would be a  
19 devastating blow to the economy of the agricultural  
20 community. The dedicated family run vineyards and  
21 wineries in this state help to get us clean and green.  
22 In each and every county in Pennsylvania, they  
23 encourage tourism with visits and tastings and give us  
24 beautiful placed for weddings and gatherings, all  
25 while working hard, silently raising the crops and

1 producing good wines for all of our enjoyment. It  
2 will be difficult to produce fine Pennsylvania  
3 agricultural products off of the macadam and asphalt  
4 shingles that will surely replace them if they're  
5 driven out of business.

6           What is happening is that Pennsylvania is  
7 finally approaching the millennium in another way. We  
8 at the PRA always like to talk about this when we get  
9 the chance, every chance we can. It has recognized  
10 that the 30 percent Special Liquor Order markup, that  
11 should not be added to the direct shipment language.  
12 This action will level the playing field for  
13 distributors, for the vineyards and for the licensee  
14 and most certainly the consumer. This is a proposal  
15 that the PRA has carried to the PLCB and many  
16 legislators for many years. Why should they be  
17 allowed to add a 30 percent markup to items they do  
18 not carry, inventory or even handle? The SLO system  
19 was put into effect to keep the PLCB inventories down  
20 and yet allow our great industry access to the many  
21 fine wines and spirits that are available throughout  
22 America and the world. Perhaps a token three percent  
23 plus the traditional tax would be appropriate for the  
24 handling of SLO products.

25           As you are aware, we have a three tiered

1 system here in Pennsylvania, and as in many other  
2 states, distributors are certainly necessary and good  
3 business partners. These private distributors employ  
4 thousands of Pennsylvanians with good jobs and pay  
5 their fair share of taxes. They deal with negotiate  
6 for and provide great products from vineyards,  
7 wineries and spirit companies throughout Pennsylvania  
8 as well as other parts of America and the world.  
9 Without them we would not have the selection we now  
10 enjoy. It is called simply good old American  
11 capitalism and it works. Allowing direct shipment  
12 will not harm or deteriorate the distributors.

13 Caymus, Beringer, Mondavi and Sterling  
14 all will continue to work through DIAGEO, Capital Wine  
15 and Southern Wine and Spirits and many other  
16 distributors in Pennsylvania, but the consumer will be  
17 given access to the wine clubs as well as the small  
18 wineries that product boutique wines that we in  
19 Pennsylvania can now not get to. This will awaken  
20 even more of an interest in the safe and enjoyable  
21 product that produces many fine hours of conversation  
22 over restaurant dinner tables.

23 The wine and spirits industry looks to us  
24 to pre-market those products at our expense and  
25 introduce them to the customers at our bars, our

1 dinner tables, our wine lists and our wine dinners,  
2 and this is at minimal or no cost to the state. There  
3 is hardly a new listed item in Pennsylvania on a state  
4 store shelf that doesn't or hasn't been introduced  
5 through our tables.

6           But we still have to pay the 30 percent  
7 markup, and by doing that marketing job while it  
8 actually penalizes the distributor since it adds  
9 margin to their product that he sold directly to the  
10 state --- or to the retailer and not to the PLCB for  
11 resale. Factually, we are used to presell --- we are  
12 used to presell and then the distributors can approach  
13 the PLCB to put this product on the shelves, all while  
14 charging the 30 percent markup. We'd ask you to amend  
15 the SLO percentage out of the equation for licensees  
16 only and do that on all SLO purchases in the future.

17           For the licensee, this will add new value  
18 to our wine list and give us the opportunity to  
19 survive in a now harsh business environment with  
20 absolutely no financial risk to the distributors or  
21 the PLCB. Your actions to allow this to continue with  
22 or without legislation will be a win/win for all us  
23 who are struggling in this industry and prevent the  
24 Pennsylvania wineries from a huge price increase,  
25 increased costs and decreased consumer value

1 perception and certainly lower sales because of it  
2 and, of course, will allow Pennsylvanians as Americans  
3 their right to participate in the free market as we  
4 all have enjoyed utilizing in other areas.

5           So we're saying that we advocate the same  
6 position that we've always in the past and that is to  
7 allow the system to continue to stay open as it is  
8 now. There is absolutely no threat to PLCB profits.  
9 There is no threat to the union jobs of the PLCB state  
10 store employees, and since you must be 21 to ship and  
11 sign a release on acceptance, there is minimal risk  
12 that an underage person is using this as a vehicle to  
13 buy wine illegally. It's difficult for me to believe  
14 with two kids that went through college that they're  
15 going to spend the extra \$35 to \$100 a case to  
16 purchase wine over the internet and deliver it to a  
17 fraternity house at Penn State. It just --- I can't  
18 fathom it.

19           But anyway, I want to move on to say that  
20 the law has been struck since 2005. The PLCB has  
21 enjoyed record profits with no increase in costs  
22 policing direct shipment. It's a win for all. No  
23 additional costs or loss of revenue to the PLCB. No  
24 job loss for the unions and certainly not loss to our  
25 great restaurant industry. I urge you or encourage

1 you to keep an open mind and keep direct shipment open  
2 to all Pennsylvanians. And I thank you very much for  
3 this opportunity again.

4 CHAIRMAN:

5 Thank you. Chairman Raymond?

6 REPRESENTATIVE RAYMOND:

7 Thank you. Ray is the proprietor of the  
8 Olde Greenfield Inn, which has a Wine Spectator award  
9 winning wine list, a restaurant that has some of the  
10 most wildly successfully wine and food pairings of any  
11 restaurant in Lancaster County anyway. You guys do a  
12 great job at that. How much of Pennsylvania wine do  
13 you use on your wine list when you're pairing the  
14 stuff?

15 MR. HOTTENSTEIN:

16 We offer between two and five. It  
17 depends on the list. My daughter does the list. It  
18 depends on what product is available. Actually, I  
19 have never heard of this winery today. I gave them my  
20 card because certainly if I'm seeing this, I'm sure  
21 they're going to have some great product for us to try  
22 to sell. But we do try to go between two and five.  
23 We used to have a whole page of Pennsylvania wineries,  
24 but we had some difficulties in getting the product.  
25 So we just, by the nature of the business, try to keep

1 between two and five.

2 REPRESENTATIVE RAYMOND:

3 Based on your testimony, as this bill is  
4 written, the shipper being through LCB and having it  
5 delivered to --- it's a no-go for you guys?

6 MR. HOTTENSTEIN:

7 It is. And one of the things that these  
8 guys haven't thought out yet is if they have to ship  
9 through the PLCB, they're going to pay 30 percent  
10 markup to the PLCB. They're going to pay 18 percent  
11 Johnstown Flood tax, \$1.50 on the bottle, the nine  
12 cent round up and the six percent sales tax. They're  
13 going to put them out of business because --- and  
14 that's the reason ---. And that is not why --- the  
15 only reason we're against this. We feel that  
16 certainly I would love to be able to buy a case of  
17 Passalacqua wines from Napa Valley. I don't think  
18 that it's reasonable for me to pay Pennsylvania sales  
19 tax on that wine. I don't see myself --- Passalacqua  
20 by the way will not send it to me. Yet, I can go out  
21 there and drink it. Now, I can buy it and take it  
22 someplace else and ship it back third-party, so it can  
23 be done. But the problem is it's now \$110.

24 REPRESENTATIVE RAYMOND:

25 Is that legal or not legal?



1                   MR. HOTTENSTEIN:

2                   Is it legal? Yes, it is legal in  
3 Pennsylvania to ship it because there's no law in  
4 Pennsylvania. But you have to pay the appropriate six  
5 percent sales tax. And not that I would ever do ---  
6 not that I would ever do anything wrong, Major, I want  
7 to make sure you understand that.

8                   This is a deep issue for us as well as it  
9 should be for these folks because --- and it will be  
10 for you because by doing this you're going to put them  
11 out of business, maybe not these two here or this guy,  
12 but you're going to put the small guy or the big guy,  
13 just depends on how they operate. But to add 55  
14 percent to their product will raise their cost 60  
15 percent because they have to --- and then it's going  
16 to raise the price to the customer.

17                   REPRESENTATIVE RAYMOND:

18                   And I've been with you guys, trying to  
19 get rid of the SLO. And Representative Donatucci as  
20 well. It's a numbers issue. He said it was \$12  
21 million and then he said it was \$200 million. It was  
22 crazy. We got nowhere with it. I don't believe that  
23 Representative Costa's bill is going to establish that  
24 you're going to have to pay 30 percent. If we do your  
25 bill they're going to say it's the wineries wanting to

1 screw the LCB.

2 REPRESENTATIVE COSTA:

3 That --- actually, you're correct. And,  
4 Ray, for the record, I'm against the SLO tax, too. I  
5 think that's not far. And I can see charging a  
6 minimal fee --- not 30 percent for something you don't  
7 keep inventory of. I would assume that if we can get  
8 that changed this would fall under --- at least my  
9 intention is to make sure it falls under the same  
10 category, that it doesn't --- it's not really going  
11 through the state store system, so it shouldn't get to  
12 the 30 percent markup.

13 My intent --- and I asked Chairman Conti  
14 at the last hearing if he was okay if I'm a winery and  
15 I ship it to you, I can ship it directly to you as  
16 long as there's a purchasing order that was sent  
17 notifying to the LCB that this was sent just for  
18 record keeping. But there was no --- actually I don't  
19 extend it to the third party getting it back to you,  
20 directly to you. So under my intent if we ever get  
21 through the law, we said there would be no 30 percent  
22 markup.

23 MR. HOTTENSTEIN:

24 Great. And that's what we're --- we're  
25 hoping that we're able to keep this discussion going

1 so that we don't have --- we don't see that markup on  
2 SLOs.

3 REPRESENTATIVE RAYMOND:

4 In fact, as you know, in all discussions  
5 with LCB and with merchants in this state, you can't  
6 find ten people in the state that have the same  
7 understanding of the same issue at the same time, it  
8 just doesn't happen and part of the problem is it not  
9 clear. But that being said, I thank you for your  
10 time.

11 REPRESENTATIVE COSTA:

12 Just another comment. We just had two  
13 different wineries here. One was for the 75 percent.  
14 One was against it.

15 MR. HOTTENSTEIN:

16 The 75 percent ---?

17 REPRESENTATIVE COSTA:

18 Purchasing of Pennsylvania grapes.

19 MR. HOTTENSTEIN:

20 That part is --- that is ---.

21 REPRESENTATIVE COSTA:

22 I thought you said that ---?

23 MR. JOHN LANDIS:

24 Both of us said we support Pennsylvania.

25 REPRESENTATIVE COSTA:

1                   Okay. I'm sorry.

2                   MR. HOTTENSTEIN:

3                   I thought that what they did say was they  
4 supported that if there was a crop failure --- unless  
5 there was a crop failure.

6                   MR. JOHN LANDIS:

7                   Let me just interject on that. In the  
8 Winery Act, the Secretary of Agriculture when you crop  
9 failure waived that 77 percent, which allows you to  
10 continue to function by buying grapes outside of the  
11 state.

12                   CHAIRMAN:

13                   Thank you. Any others? Representative  
14 Petri?

15                   REPRESENTATIVE PETRI:

16                   Just one quick question. A little bit  
17 off the subject, but it certainly does revolve into  
18 this issue of shipping. From a restaurant association  
19 point of view and a restaurateur, how okay is it if  
20 you have to pick up the product particular wines if  
21 that's your forte at the state store? Does that make  
22 sense? Does that --- does that in some way especially  
23 with your specialty wines cause there to be more  
24 handling, more labor intensive nature to the PLCB and  
25 potentially more harm to the product?

1                   MR. HOTTENSTEIN:

2                   That's a great question, and there's a  
3 whole bunch of different answers. My answer would be  
4 that if I'm --- if I'm going to --- I have to entrust  
5 someone to go pick this product up. And the procedure  
6 is, you know, we, of course, order it via e-mail or  
7 however they do this and then we --- or call it in.  
8 And then we pick the product up and we count  
9 everything that comes into the --- from the boxes into  
10 the truck and then we take off. I think the timing is  
11 that I would prefer myself personally to have my own  
12 persons pick this up. I don't want to depend on the  
13 State of Pennsylvania to add --- don't take this  
14 personal because we'll all Pennsylvanians here, but I  
15 just think bureaucracy is adding additional cost to  
16 this process. And I still have to count everything  
17 that I receive.

18                   And I guess --- my daughter picks it up.  
19 I don't pay her very much money unfortunately. She'll  
20 probably hear this now, but she goes to pick it up or  
21 I go to pick it up or we have somebody else that we  
22 have on our signature card. So we --- I think to  
23 answer your question, it would be less bureaucracy for  
24 us to continue to do it then for you to do that.

25                   REPRESENTATIVE PETRI:

1           A follow-up question. Do you think most  
2 restaurateurs would be willing to change the system  
3 where they could actually have their distributor ship  
4 it to them directly and then have a bill, if you will,  
5 come from the state with tax. So effectively what  
6 happens, for restaurants only, they would be able to  
7 get a direct ship but have to do the proper reporting  
8 so that the tax could be collected. Is that worth  
9 talking about?

10           MR. HOTTENSTEIN:

11           Are you talking wine or spirits or wine  
12 and spirits?

13           REPRESENTATIVE PETRI:

14           I'm really just talking wine.

15           MR. HOTTENSTEIN:

16           It used to be that way. It used to be  
17 that --- that's --- or it used to come directly to us  
18 and we just filled out a little piece of paper. We  
19 paid them and they took the paper and it was all taken  
20 care of. It was very clean. But I think that with  
21 the distribution points in Pennsylvania, I think that  
22 --- and I'm guessing back now. I've been at this for  
23 a long time. But that changed probably 17, 18, 20  
24 years ago where it was all shipped into the state.  
25 And you could see why, because 30 percent of nothing

1 is a lot of money. And actually, I think that the SLO  
2 market or special liquor order market for the products  
3 that we would buy from you sellers is a very small  
4 part of a total package of the --- but it's large to  
5 us. For example, we probably do 85 percent of our  
6 purchases as our own system, we as Old Greenfield Inn.  
7 You know, friends of ours that probably don't ---  
8 they probably do 90-some percent and huge amounts of  
9 money because they have  
10 --- they deal directly with the distributor or their  
11 distributor's salesperson. And so it would be huge  
12 for all of us to be able to do this. It would be a  
13 big savings to the consumer because that --- whacking  
14 that 30 percent cost off of --- off of a bottle would  
15 cost me --- whatever it costs me, you know, I'm going  
16 to share it. I have to share it because competition  
17 will force me to share that savings because if I don't  
18 he will or you will or somebody will.

19 REPRESENTATIVE PETRI:

20 And I know it varies by region, but is  
21 there a generally a sweet spot. I understand for your  
22 industry there's a sweet spot of sales, some number  
23 where consumers are driven and they're always trying  
24 to get more of their products into the sweet spot. Do  
25 you find as a restaurateur that there tends to be a

1 range or a sweep spot in the market?

2 MR. HOTTENSTEIN:

3 I don't think so. Beer is different than  
4 --- beer --- those products are much different than  
5 what wine is because wine is made by --- they're made  
6 by human beings. Each person that --- I keep going  
7 this way because I know they are sitting over there.  
8 But each person is like artists. I mean, there are  
9 people that just put everything they can into  
10 different vintages. Some produce maybe only 400  
11 bottles --- 400 cases of wine. Other people produce  
12 thousands and thousands of gallons. But it's still  
13 that winemaker that makes each thing --- each product  
14 differently than Budweiser or --- who makes, you know,  
15 45 million barrels or whatever they do. So that's why  
16 I think it'd be different than beer.

17 REPRESENTATIVE PETRI:

18 Thank you, Mr. Chairman.

19 CHAIRMAN:

20 Thank you. Any other questions?

21 Representative Payne?

22 REPRESENTATIVE PAYNE:

23 Thank you, Mr. Chairman. Just briefly I  
24 want to thank everybody for attending today. And this  
25 is not the first hearing I've been at this week, but



1 they're common themed. The other day I was at a  
2 hearing and discussions pertained to GPS ankle  
3 bracelets for sexual predators. Thirty-three (33)  
4 states already use them, have no problems.  
5 Pennsylvania, there might be a problem. Here we sit  
6 today. New Hampshire's already doing it.  
7 Pennsylvania, there might be a problem.

8 I think most of the people we represent  
9 are tired of hearing about pushbacks, problems and  
10 they want to see results. They want to know why we in  
11 Pennsylvania can't do something that New York, New  
12 Jersey, New Hampshire, wherever has been doing, not  
13 just started to do. I think it's unbelievable that we  
14 still have a tax in place from a flood that occurred  
15 before I was born that most of our constituents would  
16 say was that really going to Johnstown, to help those  
17 people out there. Of course not. The ability --- I  
18 don't know who brought it up. It was a good point  
19 that if we eliminate the flood tax today, the liquor  
20 stores, the price is already on that label. So  
21 whether it's \$9 bottle of wine or a \$70 bottle of  
22 wine, they adjust their markings and there's not a  
23 dollar difference in the price. It's seamless.  
24 There's absolutely no reason we couldn't eliminate the  
25 tax and let the store, the LCB just fluctuate the

1 markup.

2           I know I think there's a huge opportunity  
3 here for us to have direct shipments. I know one of  
4 the concerns that was brought up today is once we  
5 allow direct shipment of wine, you can almost assume  
6 that, of course, we're going to go direct shipment for  
7 hard spirits, direct shipments for anything else. I  
8 understand that, but I think we can regulate that or  
9 at least let the courts decide if we can, on the  
10 Pennsylvania wineries, and wineries and how we handle  
11 that, how we do the markups and collect the fees.

12           I want to thank --- Mr. Chairman, I want  
13 to thank you for having this hearing. It's very  
14 important, very important to me. I would like to move  
15 forward with some kind of legislation. Thank you.

16           CHAIRMAN:

17           Thank you. Any other questions? Thank  
18 you.

19           MR. HOTTENSTEIN:

20           Thank you.

21           CHAIRMAN:

22           Jimmy Goodman?

23           MR. GOODMAN:

24           In the interest of time, I believe you  
25 have my statement. If you want, I'll waive reading

1 that and maybe instead respond to some of the things I  
2 heard --- well, I didn't pick it all up, but I'll  
3 respond to some of the things I heard and open myself  
4 up to questions if that's agreeable.

5           One, I think it was you, Ron, that asked  
6 whether it was mandatory or not whether you went from  
7 a reciprocal state. And Granholm did really knock out  
8 reciprocity because reciprocity says that, you know,  
9 you can ship to me if I can ship to you. So Granholm  
10 kind of knocked that out and made it necessary to go  
11 to permit states where you get a permit to ship. And  
12 there are now 35 states that allow direct shipping.  
13 The Granholm case was a New York and Michigan case  
14 where they ruled on them.

15           In November '05, just going on three  
16 years now, Judge Fullham in responding to a --- well,  
17 the LCB when the Granholm came out stated that you had  
18 to level up and level down. So they leveled down and  
19 stopped the Pennsylvania wineries from shipping. Fran  
20 O'Brien represented the wineries, went into the court,  
21 got an order and then Justice Fullham, Third Circuit  
22 in Philadelphia, in November of '05 said that the  
23 state is open, that the LCB did not have the power.  
24 It could only be done by legislation to prohibit it.  
25 And so the state can ship according to Granholm, out

1 of state can ship.

2                   Since that time, nothing's been done  
3 until a few months ago when facing a potential court  
4 hearing, the Liquor Board said that out of state  
5 wineries can obtain a limited winery license same as  
6 Pennsylvania at a rather prohibitive cost of \$700 a  
7 year. I think one winery has applied for it. Yes,  
8 has been issued a permit.

9                   Representative Petri was asking about the  
10 FedEx and UPS tracking. I don't know if you were at  
11 the National Conference of State Legislators last  
12 week. Newt Gingrich was on the panel, said about  
13 talking to his friend the president of FedEx who told  
14 him that between FedEx and UPS they track 23 million  
15 parcels a day and at any time day or night, 24/7 you  
16 can get on and find out where the parcel is. And he  
17 kind of --- he kind of related it to a governmental  
18 function such as Homeland Security knows they have 12  
19 million illegals, but they don't know where they're  
20 at. His solution was just have FedEx and UPS send  
21 them a package.

22                   One of the other points that was brought  
23 out in the bill about the gallonage, which The Wine  
24 Institute vehemently opposes. Some states have put it  
25 into place. The courts have upheld it someplace. We

1 expect Massachusetts will rule in an opposite manner,  
2 which means once again it's probably on its way to the  
3 Supreme Court. But in just --- this is a list of only  
4 California wineries that would be excluded, over  
5 250,000 gallons, which is high as anyone has gone.  
6 That's just a list of California wineries, five pages.

7           If you're talking about something like  
8 80,000, you're talking probably 80 percent of the  
9 market. And, you know, I mean, it again smacks of not  
10 being constitutional, of everybody being treated the  
11 same if you set a gallonage to cover every  
12 Pennsylvania winery and exclude above that number.  
13 And, of course, it's going to be litigated again for  
14 many years, I assume. But like, you know, even a lot  
15 of --- you're talking about 50 wineries probably  
16 represent 80 percent of production in the country.  
17 And even a lot of those large wineries have small  
18 wineries within them, the limited editions and so  
19 forth. They would be excluded from this market  
20 because it counts for the overall company.

21           You were talking about the distributors  
22 handling the products. As you see in my testimony,  
23 there's like 25,000 new products, each vintage.  
24 There's not a distributor that's going to carry those  
25 kind of products. Now, in Pennsylvania, you've got

1 the two largest distributors in the country, Southern  
2 Wine and Spirits and Tower. I mean, they're your  
3 largest. They're both in I'm sure at least 20-some  
4 states. I mean, you're not going to have to hold  
5 testimony --- that's who has been primarily opposing  
6 this legislation throughout the country, the  
7 distributors. No one wants to do away with trying to  
8 do away with the LCB or --- or with the three tiered  
9 system. But the internet is here to stay. I mean, if  
10 anyone believes that the internet's going to go away,  
11 well, then you might as well put all the restrictions  
12 you want on it. But you and I both know that that's  
13 not going to happen to the internet. And you've got  
14 to be able to tweak these systems to adhere to modern  
15 business practices.

16           Having been a former chairman and  
17 legislator, it's embarrassing for me. That our  
18 industry's go to invariably introduce this. Nine of  
19 ten, the eyes roll. The other ones restrain  
20 themselves or are too polite. I'm not sure what it  
21 is, but it hurts me to see this because it's not just  
22 LCB and those of us in the industry. It's the state.  
23 It's the state that's being a modern proconsumer state  
24 and that's what this issue is. It's a proconsumer  
25 state. You said about running for profit. Guilty. I

1 don't consider that dirty words. It's said if you  
2 want to make a small fortune in the wine industry  
3 start out with a big one. It's a tough business. But  
4 California is certainly doing well enough for any of  
5 them. But it just doesn't --- doesn't really make  
6 sense.

7 CHAIRMAN:

8 Do we have any questions? Seeing  
9 none, ---.

10 MR. GOODMAN:

11 I answered all your questions? I think  
12 they're hot and hungry.

13 CHAIRMAN:

14 Thank you, Jim. On that note, I want to  
15 thank Paradox Winery and all the members that are  
16 here today. And on that note, we are in adjournment.  
17 This hearing is adjourned.

18

19 \* \* \* \* \*

20 HEARING CONCLUDED AT 12:42 P.M.

21 \* \* \* \* \*

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25