The Need for State Alcohol Regulatory Funding

Fighting Deregulation by Defunding

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ABOUT THE AUTHOR

Pat Gagliardi served for 16 years in the Michigan House of Representatives, where he served on the Appropriations Committee before being elected floor leader by his colleagues. He held this position for 10 years until his retirement in 1998.

Pat was appointed in 2003 to the Michigan Liquor Control Commission. He served as an administrative commissioner until 2011 and was responsible for the review and consideration of liquor license issues and presided over contested cases brought on appeal before the Commission.

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Pat has been recognized repeatedly for his leadership abilities and his negotiation skills. Most recently, Pat was recognized for leading the charge that resulted in Michigan being the first state to ban caffeinated alcohol energy drinks.

Pat is married to his wife Debra, who is a senior assistant attorney general for the state of Michigan. They have four daughters and two grandchildren. He is a 1974 graduate of Lake Superior State University.

I. Introduction

"Regulation is essential. You can't have a free market work if you don't have regulation."
- Mitt Romney, Second Presidential Debate, 2012

Regulation is essential. However, it is not free. The regulated alcohol industry needs increased resources to ensure proper regulation for this growing industry.

America's relationship with alcohol regulation is well documented. In *Toward Liquor Control,* a book commissioned by John D. Rockefeller in 1933, the need to control alcohol beverages in the post-Prohibition era was clearly expressed. The possibility of increasing profits, the book concluded, would encourage private businesses to sell more alcohol, to buy political influence and undermine enforcement efforts and to violate laws. In his foreword to the book, Rockefeller stated:

> "Only as the profit motive is eliminated is there any hope of controlling the liquor traffic in the interests of a decent society. To approach the problem from any other angle is only to tinker with it and to ensure failure."[1]

In repealing Prohibition a national consensus was achieved that alcohol could be sold legally again, but only under state control. The debate over the nature and scope of alcohol regulation continues. In crafting alcohol policy today it is imperative that states understand both the history of alcohol regulation and the need for an effective regulatory structure. The fervor to cut budgets and anti-regulatory sentiment can lead to ill-considered changes in alcohol policy.[2]

II. State Alcohol Regulation

"If your house is on fire at 3 a.m., you are not calling the private sector, you need government action." - Ken Burns, Documentarian

Many states are able to effectively and actively supervise the alcohol marketplace using a variety of regulatory tools including but not limited to law enforcement, revenue agencies, health and safety regulations and other methods. Their efforts to promote orderly markets, temperance and other important goals utilize a combination of industry regulation to achieve these goals. States are increasingly trying to do more with less. A nation-wide review of the job responsibilities of alcohol enforcement agents reveals that their duties vary from state to state. Agents are responsible for compliance investigations that may include issues as diverse as review of licensed premises, underage drinking, fraudulent I.D. complaints, sales to intoxicated individuals, hidden ownership cases and illegal gambling issues. In 2003, there were approximately 589,000 on- and off-premise alcohol licenses in the United States regulated by 2,582 alcohol enforcement agents, making each agent responsible for approximately 228 licenses. In 2012, while the Recession caused the number of licenses to drop down to 569,000, the number of enforcement agents declined disproportionately to 2,030, making each agent responsible for 280 licenses in addition to their other duties.[3] These statistics

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[1] Raymond B. Fosdick and Albert L. Scott, Toward Liquor Control (1933), Foreword.
[2] This paper solely concentrates on the status of state alcohol regulatory budgets. The federal regulator of alcohol, the Department of Treasury's Alcohol Tax and Trade Bureau also has seen continued budget cuts and threats to its future but is beyond the scope of this paper. For example, http://newssun.suntimes.com/photos/galleries/16914601-417/booze-smokes-on-agenda-for-quirky-govt-group.html
[3] The National Alcohol Beverage Control Association Yearly Surveys from 2003 and 2012.

show that, in the course of 10 years, the workload of the average alcohol enforcement agent increased by 22%. It is not surprising that the National Highway Traffic Safety Administration concluded, after researching the role of alcohol beverage control agencies in the enforcement and adjudication of alcohol laws over three decades, that: a) Alcohol Beverage Control (ABC) agencies do not have enough agents to monitor activities of the licensees effectively; and, b) in at least some states, ABC agents do not have sufficient authority to carry out their duties.[4]

Fewer agents, combined with budgetary constraints, has severely strained the alcohol control system. Not only are there fewer enforcement agents, states have combined enforcement efforts of liquor officers with other departments, broadened agent responsibilities through larger geographic areas with fewer resources, or eliminated state enforcement efforts all together by shifting enforcement responsibilities to local units of government. Compliance costs, however, cannot be absorbed by shifting enforcement of alcohol regulations to local units. According to the Uniform Crime Statistics of the FBI, the number of full-time officers per 100,000 has gone down between 2001 and 2011 from 2.5 to 2.4. There are less resources available locally to take on additional alcohol compliance responsibilities.

While the number of agents is only one variable in a complex system of regulation, it illustrates the impact that defunding has on compliance and enforcement. The following statistics show that two-thirds of the listed jurisdictions have less ability to enforce state alcohol policy because of a reduction in the number of enforcement agents.

NUMBER OF ENFORCEMENT AGENTS OVER THE LAST DECADE

STATE	2003 AGENTS	2012 AGENTS	CHANGE
Alabama	94	131	▲ increase
Alaska	4	4	▬ same
Arizona	19	15	▼ decrease
Arkansas	17	17	▬ same
California	247	213	▼ decrease
Colorado	16	21	▲ increase
Connecticut	21	28	▲ increase
Delaware	14	16	▲ increase
District of Columbia	10	16	▲ increase
Florida	152	156	▲ increase
Georgia	35	35	▬ same
Hawaii	15	7	▼ decrease
Idaho	1	2	▲ increase
Illinois	30	30	▬ same
Indiana	64	63	▼ decrease
Iowa	395	0	▼ decrease

[4] The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws, 2003 NHTSA publication, www.nhtsa.gov/people/injury/.../abcroleweb/.../ABCFinal.pdf.

Kansas	19	20	▲ increase
Kentucky	43	29	▼ decrease
Louisiana	47	47	━ same
Maine	14	6	▼ decrease
Maryland	18	21	▲ increase
***Montgomery County, Maryland**	6	6	━ same
Massachusetts	7	12	▲ increase
Michigan	38	46	▲ increase
Minnesota	3	2	▼ decrease
Mississippi	28	20	▼ decrease
Missouri	56	6	▼ decrease
Montana	16	21	▲ increase
Nebraska	12	12	━ same
Nevada	No State Alcohol Agency		No Agents
New Hampshire	23	21	▼ decrease
New Jersey	30	16	▼ decrease
New Mexico	23	23	━ same
New York	36	33	▼ decrease
N. Carolina	72	110	▲ increase
N. Dakota	No State Enforcement Agency		No Agents
Ohio	119	73	▼ decrease
Oklahoma	3	26	▲ increase
Oregon	40	45	▲ increase
Pennsylvania	117 state police 164 civilian officers	117 state police 164 civilian officers	━ same
Rhode Island	n/a	n/a	n/a
S. Carolina	35	varies	▼ decrease
S. Dakota	0	0	━ same
Tennessee	35	35	━ same
Texas	225	Authorized 250, filled 204	▼ decrease
Utah	12	21	▲ increase
Vermont	18	16	▼ increase
Virginia	151	111	▼ decrease
Washington	86	55	▼ decrease
W. Virginia	42	27	▼ decrease
Wisconsin	9	8	▼ decrease
Wyoming	1	3	▲ increase

Out of the above 52 jurisdictions surveyed over the last decade (including 50 states, Montgomery County, Maryland, and the District of Columbia), 21 have reduced the number of enforcement agents, 17 have more, 11 remained the same, and 3 have none. The number of agents has declined despite the enormous increase in the sale and consumption of alcohol across all jurisdictions.

In 2000, the retail sales of alcoholic beverages in the United States totaled $102.4 billion.[5] In 2003, alcohol sales in the United States amounted to $115.9 billion dollars annually.[6] In 2010, sales soared to $188.4 billion.[7] These figures only include legal sales and do not reflect illegal or bootleg sales. Thus, while two-thirds of the jurisdictions surveyed have reduced or maintained the same level of agents over the last decade, alcohol sales have almost doubled during the same period. Some of the increased revenue generated by increased sales should be dedicated to alcohol regulation. There are a record number of licenses to monitor. The alcohol industry is making record sums of money and is getting much bigger. But the number of people policing this growing pie is shrinking.

One specific example of the dangers of failing to pay for alcohol regulation is the scale of underage drinking. The best way to prevent underage drinking is with continued and visible enforcement. A 1994 American Medical Association study concluded that underage drinkers account for approximately 10% of alcohol sales. Applying this study to 2010 sales, underage drinkers could account for upwards of $18 billion dollars worth of illegal consumption. The social harm caused by underage drinking alone justifies a fully-funded regulatory scheme. Underage drinking and drunk driving are not the only things strong regulation guards against. The impact of regulation is much broader. Experts agree that strong regulation of alcohol supports:

- the prevention of dominance by a few big retailers and box stores;
- an even and fair playing field for big and small retailers and suppliers;
- prohibitions on advertising that targets youth;
- pricing controls designed to limit excessive consumption;
- product safety; and
- an effective and responsive enforcement system.

Achieving the above goals will cost money. Unfortunately, in addition to a reduction in the boots on the ground, states are reducing overall budget allocations for alcohol regulation. The following chart shows that 17 out of 44 states reviewed (40%) have reduced alcohol control appropriations in recent years.

STATE BUDGET ALLOCATIONS FOR ALCOHOL CONTROL

(Over the Past 5 Years)

STATE	FY INFORMATION	INCREASE/DECREASE APPROPRIATION
Alabama	Alcohol Control Board FY07:$230,370/FY10:$254,001	▲ increase
Alaska	Department of Public Safety FY07:$1.2M/FY13: $1.8M	▲ increase
Arizona	Dept. of Liquor Licenses and Control	▲ increase

[5] Economics of Alcohol and Tobacco - U.S. Alcohol Sales And Consumption, How Much Do Individuals And Families Spend On Alcohol?, Economic Research Service of U.S. Department of Agriculture.
[6] *Ibid.*
[7] U.S. Drinks Conference 2010 (USDC), Translating Industry Trends into Actionable Insights; The B.I.G. Handbooks; www.docstoc.com/docs/68195874/Ginley-USDC-2010.

	FY09:$3.8M/FY13:3.9M	
Arkansas		▼ decrease
California	Dept. of Alcoholic Beverage Control FY07:50.9M/FY10:48.9M	▼ decrease
Colorado	Liquor Enforcement Division FY08:$1.4 M/FY(projected)$1.7	▲ increase
Connecticut	Dept. of Consumer Protection (Liq. Div.) FY 07-08:$3.2M/FY 11: $1.7M	▲ increase
Delaware	Alcoholic Beverage Control Commission FY 12: $862,000/FY 13: $869,6000	▲ increase
Florida	Div. Of Alcoholic Beverages and Tobacco FY 08: $16.7M/FY 12: $15.4 M	▼ decrease
Georgia		▲ increase
Hawaii (Honolulu County)	Honolulu Liquor Commission FY 08: $2.5M/FY 11: $2.1M	▼ decrease
Illinois	Illinois Liquor Control Commissioner FY 01: $3.9M/FY 11: $7.8M	▲ increase
Indiana	Alcohol and Tobacco Commission FY 09: $16.3M/FY 12:19.4M	▲ increase
Iowa	Alcohol Beverage Division FY 09:$2.1M/ FY 11: $1.4M	▼ decrease
Kansas	Dept. of Revenue Alcohol Beverage Control FY 07: $2.2M/ FY11: $2.9M	▲ increase
Kentucky	Div. Alcoholic Beverage Control (ABC) FY 11: $5,734,300/ FY 12: $5,573,500	▼ decrease
Louisiana	Dept. of Revenue Alcohol and Tobacco FY 05-06:$5.3M/ FY 13 $7.0M	▲ increase
Maine	Dept. of Public Safety FY 08: $766,363/ FY 11 $879,109	▲ increase
Massachusetts	Alcoholic Beverages Control Commission FY 08: $2.1M/ FY 10: $2.0M	▼ decrease
Michigan	Liquor Control Commission FY 07: 13.2M/ FY 10: 15.0M	▲ increase
Minnesota	Dept. of Public Safety-Liquor Control Commission – Enforcement Bureau FY 11, 12 and 13:$1.6M	▬ same
Missouri	Alcohol and Tobacco Control FY 08: $3.4M/ FY 13: $1.3M	▼ decrease
Montana	Liquor Control Division FY 08: $1.9M/ FY 11 $2.2M	▲ increase
Nebraska	Liquor Control Commission FY 08-09:$992,570/ FY 12-13 $973,825	▼ decrease
Nevada	Department of Taxation FY 06: $37.3M/ FY09:38.4M	▲ increase
New Hampshire	State Liquor Commission FY 08 $33M/FY 10 $39.4M	▲ increase
New Mexico	Regulation and Licensing Department FY 08 $1M/ FY 13 $4M	▲ increase
New York	State Liquor Authority FY 08: $17.6M/ FY 17.0M	▼ decrease
N. Carolina	Alcoholic Beverage Control Commission FY 09:12.2M/FY 9.3M	▼ decrease
N. Dakota		▬ same
Ohio	Liquor Control Commission FY 06:$674,307/FY$736,207	▲ increase
Oklahoma	Alcohol Beverage Law Enforcement Commission	▲ increase

	(ABLE) FY 08:$4.3M/FY 10 $4.8M	
Oregon	Liquor Control Commission FY 07-09:$120.6M/FY 11-13: $138.5M	▲ increase
Rhode Island	Dept. of Business Regulation/Commercial Licensing, Racing & Athletics FY 07:$1.3M/	▼ decrease
S. Dakota	Dept. of Revenue & Regulation, Division of Special Taxes and Alcohol FY 06: $740.000/ FY 10: $996,490	▲ increase
Tennessee	Alcoholic Beverage Commission FY 08: $5.5M/ FY 11: $6.2M	▲ increase
Texas	Alcoholic Beverage Commission FY 10:$45.8M/ FY 11: $44.4M	▼ decrease
Utah	Department of Alcoholic Beverage Control FY 08:$27.3M/ FY 12:$31.4M (supplemental funds added, $100,000)	▲ increase
Vermont	Department of Liquor Control FY 09:$5.1M/ FY 12: $5.5M	▲ increase
Virginia	Department of Alcoholic Beverage Control FY 09: $12.7M/ FY 12:$17.5M	▲ increase
Washington	Liquor Control Board FY 07: $15.5M/ FY 11:10.9M	▼ decrease
W. Virginia	Alcohol Beverage Control Administration FY 09: $9M/ FY 12: $8.5M	▼ decrease
Wisconsin		▲ increase
Wyoming	Liquor Division FY 07-08/ $3.2M/ FY 11-12: $7.2M	▲ increase

Comparing one state budget to another state is the proverbial apples to oranges problem. States differ as to where they house liquor control funds. Some fund liquor control within a Department of Revenue, some within a Department of State Police or Public Safety and others within an Alcohol Control Agency or Department. Some states supplement their joint tobacco and alcohol budgets with federal tobacco grants. Some states do not detail line item allocations specifically for alcohol licensing and control but combine these allocations with those for tobacco and gaming control funding. The fact that the budgets for alcohol control are dwindling is evident regardless of what state department or agency receives funds. Two states, Idaho and Missouri, highlight the differences in approaching both funding and allocating enforcement personnel to alcohol regulation. Both states have suffered the pains associated with inadequate funding of alcohol regulation. The state of Washington, which was recently forced to privatize the sale of alcohol via ballot initiative, has not had enough time under their new program to determine how it will impact alcohol consumption rates and related crime[8].

In Idaho, the underfunding of enforcement of the Alcohol Beverage Control Bureau, under the jurisdiction of the Idaho State Police, was tantamount to deregulation of alcohol beverages. Between 2002 and 2010, retail alcohol beverage licenses increased by 18%, litigation cases increased by 55%, and wine shipping permits resulted in 300 new permits per year. These increases, and the need to maintain enforcement of ABC regulations, were obviously too much for one detective in the Idaho State Police to enforce. The Idaho Legislature analyzed the deregulation/privatization of alcohol issue in detail and determined that the Idaho State Liquor Division (ISDL) was well managed as a control state enterprise and recognized the need for additional personnel.[9] With leadership by the local alcohol

[8] At the same time, some states like CO and WA are trying to ramp up a regulatory agency for marijuana.
[9] Idaho State Liquor Division (ISDL) Annual Report, 2011.

industry members and the state regulators, the Idaho State Legislature earmarked, from license fees, an estimated $1.5 million (nearly three times the prior appropriation level) dedicated to enforcement. An Alcohol Beverage Control Fund was created[10] in which two state police sergeants, eight specialists and two technical record specialists, along with equipment and supplies, can be dedicated or earmarked for enforcement.

In the case of Missouri, the total number of employees in the Missouri Division of Alcohol and Tobacco Control in 2010 was decreased from 36 to 19, and the number of enforcement officers was decreased from 22 to 5. At that time, these five enforcement officers were to monitor and regulate over 12,804 off- and on-premise alcohol beverage licensees throughout the state. This is tantamount to the deregulation of enforcement in the state, and the budget for this state agency has steadily been reduced from $3.4 million in Fiscal Year 2008 to $1.3 million in Fiscal Year 2012. As a result, Missouri only processes licenses. All liquor law enforcement, including license and compliance checks, is handled by local law enforcement. This ranges from police and sheriffs departments to various city hall employees. Several years ago, the Associated Press reported in *The Columbia Daily Tribune* that state legislators complained that all of the responsibility for regulating alcoholic beverages was put on the shoulders of local law enforcement without training, funding and jurisdiction. The article noted, “Kansas City Police Sergeant Brad Dumit, supervisor of the department's vice section, said his four detectives will now have to enforce liquor laws, while also investigating prostitution, human trafficking, and illegal gambling.”[11]

The Missouri cuts also underscore attacks on the basic structure of the alcohol industry. The investigation into licensing, hidden ownership and whether alcohol industry members are being used as a front group for terrorists or other criminals to launder money are not simple investigations. Nor are investigations to ascertain hidden ownership of industry members among the various tiers of the three-tier system or to investigate illegal trade practices. Missouri’s cuts seriously undermine its regulation and potentially other states if this practice spreads.

Another approach has been taken by Washington state. With the passage of Initiative 1183, the Washington State Liquor Control Board (WSLCB) will cease state liquor store and liquor distribution operations. The measure, backed by retailing giant Costco Wholesale Corp., allows stores larger than 10,000 square feet and some smaller stores to sell liquor. The Seattle Distribution Center - which supplies state and contract liquor stores with spirits - and its assets, was sold. The initiative permits retailers to act as their own distributors for wine and spirits and circumvents the three-tier system that has long grown the industry. In opposing the initiative, Jim Cooper, president of the Washington Association for Substance Abuse and Violence Prevention[12] argued:

> “If we’re going to destroy our current system, we need to understand what will replace it. I-1183 raises more questions than it answers. What we do know is this: at least 1,400 stores will be allowed to sell liquor under I-1183, without a penny for more liquor compliance officers. The Centers for Disease Control and Prevention recently recommended against liquor privatization because it caused a sharp increase in alcohol consumption and problem drinking. Our state stores have one of the best enforcement rates in the country when it comes to checking identifications. According to Liquor

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[10]The statute “earmarking” the allocation of $1.5 million was signed into law on March 27, 2012, and can be found in the Idaho Statutes, Title 23, Chapter 9, 23-940, creating an “Alcohol Control Fund” for use by the Idaho State Police.
[11]Columbia Daily Tribune, June 14, 2010.
[12]Washington Association for Substance Abuse & Violence Prevention; wasavp.org.

> Control Board compliance checks, grocery stores sell to minors who try to buy alcohol one time out of four attempts. Studies show teens don't drink for the taste, they drink for the buzz. And if they can get their hands on the hard stuff, they will.
>
> And here's another statistic: alcohol kills more kids than any other drug combined."[13]

Proponents of privatization are lobbying for similar changes in other states. There have been many articles highlighting problems with the new system including outright theft of liquor from stores and much higher prices to the consumer leading to increased border sales. The proponents of the Washington initiative have gone to court and the legislature to weaken many of the remaining alcohol regulations and funding mechanisms that remain in Washington state. Like others at the time, John D. Rockefeller, in his foreword to the groundbreaking book *Toward Liquor Control*, concluded that government control of the distribution of alcohol was the most effective means to regulate and control behavior and ensure obedience to the law."[14]

Another way of illustrating the increased burden on over-strapped enforcement agents in this era of budget cuts is to understand the geographic area each alcohol enforcement officer is assigned:

GEOGRAPHIC AREA PER STATE ENFORCEMENT AGENT

California	1,100 miles
Colorado	6,900 miles
Indiana	350 miles
Iowa	56,236 miles (no agents)
Kansas	4000 miles
Michigan	1,200 miles
Minnesota	28,000 miles
Missouri	13,000 miles
Nebraska	9,600 miles
New Mexico	5,900 miles
N. Dakota	70,704 miles
Ohio	320 miles
Oregon	2,600 miles
S. Dakota	77,116 miles (no agents)
Tennessee	1,300 miles
Wisconsin	2000 miles
Wyoming	22,000 miles

The differences in geographic areas assigned to enforcement agents must be considered when evaluating state funding of alcohol regulation. Developing a better understanding of the differences in state enforcement of liquor laws will aid in developing more effective policies that impact alcohol regulation and enforcement.

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[13] The Columbian, "Pro & Con: Initiative 1183 on privatizing alcohol debated", Tom Owens and Jim Cooper, Sunday, October 2, 2011.

[14] Harry G. Levine, Alcohol Prohibition and Drug Prohibition; Lessons from Alcohol Policy for Drug Policy, 2004.

III. The Need for Adequate Funding

"There is no such thing as free regulation." - John Hutton, Former Member of the English Parliament, Current Chairman of the Royal United Services Institute

"We have some real political differences among us, but we all share the same goals: clean air and water, injury free workplaces, safe transportation systems, to name a few of the good things that can come from regulation." - Fred Thompson, Former United States Senator, Tennessee

The alcohol industry is motivated primarily by profit and cannot be left to self-regulate in this field. The problems with alcohol can only be addressed by restricting the availability, accessibility and marketing of alcohol through enforcement of regulations that apply to all. It's the right thing to do. For example, in Britain there has been a push to *return* to tighter regulation where the permissive 24-hour sale of alcohol, absence of control on volume discounts and lack of price controls have caused a dramatic increase in alcohol-related illnesses and death. Their lack of industry regulation has led to a dramatic increase in black market, counterfeit and illicit (and deadly) production of alcohol.[15]

The need for adequate funding is essential for the regulation of alcohol to work. A fully funded system will strengthen the regulatory framework that supports alcohol policy compliance and enforcement. There are many subtle methods beyond the obvious budget cutting tools wielded by the proponents of deregulation. "Stealth deregulation" has been described as "a story of devious appointments, slashed budgets, weakened rules, and relaxed enforcement."[16] Industry education, strong regulation, effective criminal law enforcement and public advocacy are all important tools that help craft responsible alcohol regulation.

Adequate funding is also essential to avoid other consequences of deregulation that are often overlooked, including money laundering, smuggling, Internet sales to minors, blind pigs, gang activity and underground economies, especially in urban areas with private clubs that go unchecked. Regulation must be flexible enough to expand to enable technologically effective oversight of new ways to circumvent the law, not only for public health reasons, but for the tax revenue as well. A 2008 Michigan study conservatively estimated that the state lost $14 million in tax revenue by the cross-border smuggling of alcohol. The study concluded that the addition of six full-time enforcement agents tasked with capturing this lost revenue would amount to a 1400% return on investment over the cost of their salaries.[17]

Blind pigs, unlicensed "clubs" and after-hours operations are an ever present problem. The failure to adequately fund enforcement efforts, especially when agents are assigned to impossibly large geographic areas, only frustrates the problem. These problems, prevalent in urban areas, are next to impossible to monitor when agents are spread so thin. Specialists in state funded ABCs are needed to do background checks, cross and hidden ownership investigations, and tracing chain of custody investigations for alcohol with industry help. This is something a decreasing and overstretched local police force should not have put in their laps.

Internet sales to minors is a new and growing problem experienced by the states. A University

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[15] World UK News, November 19, 2012; guardian.co.uk.
[16] Douglas J. Amy (Professor of Politics at Mount Holyoke College), Stealth Deregulation, 2007.
[17] 2008 Michigan Liquor Control Commission Report to the Legislature.

of North Carolina study shows that, out of 100 orders placed by underage buyers over the Internet, 45 out of 100 sales were successfully completed, while only 28% were rejected as the result of age verification. Most vendors (59%) used weak, if any, age verification at the point of order, and, of 45 successful orders, 23 (51%) used none.[18] In other words, there is a long way to go in adequately preventing online sales to minors. Currently, Internet sales undermine the ability of states to police underage drinking. Most consumers would pay a premium to have alcohol delivered directly to their front door; the problem is that persistent minors will as well. To date, states' focus has been on loosening commerce restrictions to allow interstate shipment of alcohol rather than the development of tools to enforce age restrictions on such sales over the Internet. Few resources have been dedicated to developing enforcement tools to keep up with technology in this arena.

There is a real danger that state alcohol control will be reduced to the point of ineffectiveness by overburdening the regulatory system that, to date, has been successful and has enjoyed overwhelming public support. The problem is evidently not a lack of revenue from the sale of alcohol, but rather the shift in states' priorities from a strong regulatory environment to bottom-line budget concerns. The reality is that smarter and better equipped regulation and enforcement of existing laws can result in increased tax revenue and improved public health and safety. Advocates for retaining a strong state-run alcohol policy understand that sufficient resources must be dedicated to the regulation of alcohol to ensure a fair marketplace as well as reduce substance abuse and to protect the health and safety especially of children.

The alcohol beverage industry in the U.S. pays $7.6 billion in federal excise taxes each year and also provides a source of tax revenue for state and local governments. The industry contributes directly or indirectly to the U.S. economy by providing nearly 4 million jobs and roughly $400 billion in economic activity annually – and the industry is only getting bigger.[19] Although a resolution of the federal budget is beyond the scope of this paper, it is illustrative of the fact that states need look no further than current revenues from alcohol sales and regulation for funding sources.

There are many different ways states can seek to increase funding for their state ABCs. These are listed as items of consideration. Political calculations of the likelihood of these options would need to be determined on a state by state basis. I understand that there is a growing tendency to avoid "earmarks" or specialized dedicated funding. My experience has been that legislators (whether Democrat or Republican) have sought to increase the general unrestricted fund to mete out budget priorities and often chafe at having this flexibility stymied. I note here just a few ways to increase ABC budgets:

- Option 1: Dedicate portion of Excise tax. Florida does this with first $2 million. It is not enough to run the agency but it is an option to consider. It is related to the tax. It helps ensure that the tax is collected. [20]

- Option 2: Increase general fund appropriations. Prioritizing budget allocations is a problem currently facing most states and ABC funding issues compete against innumerable other priorities. The difference that can be stressed in regard to alcohol regulation is that it is a revenue-generating state operation, unlike other priorities like health care and crime

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[18] Rebecca S. Williams, MHS, PhD and Kurt M. Ribisi, PhD, Internet Alcohol Sales to Minors, American Medical Association, May 7, 2012,.
[19] http://www.ttb.gov/pdf/budget/2013/cj.pdf.
[20] Florida Stat. Ann. § 561.

prevention. Additionally, it should be stressed that keeping the marketplace regulated and competitive generates both revenue and jobs as well as directly impacts tourism and businesses.

- Option 3: Increase license fees and dedicate all increases to ABC. The ability to make, distribute and sell alcohol in a state is a privilege afforded by the state, not the right of an individual. It is entirely reasonable for the state to attach proper funding mechanisms to this regulated industry in order to effectuate the regulatory goals of the state. This is what Idaho did and they were able to drastically increase the size of their enforcement division. Additionally, suppliers are engaging in activities across state lines. Sales agents for suppliers that operate in multiple states should be licensed and pay a fee for each state in which they do business. Having an important and suspendable license helps with compliance, but is also an additional source of revenue for states.

- Option 4: Impose user fees on industry to protect public safety. There are many ways a state can secure some funding to both fund the agency and serve a regulatory purpose. For example, since the states have 21st Amendment responsibility to determine what alcohol can be sold in the state and who can sell it, a requirement that no alcoholic product can be sold in the state without it being registered with the state is defendable. The fees for this registration can help fund the ABC and the requirement of this fee. States have the primary responsibility to know what is being sold in their state and this registration fee helps with that purpose.

- Option 5: Some combination of all of above.[21]

These changes can be effectuated without alienating small business. A poll of 500 small-business owners nationwide found that 78 percent of small businesses believe regulations are needed to protect small businesses from unfair competition. And 86 percent see regulations as a necessary part of a modern economy.

> "With football at the top of everyone's mind, if we played the game with no rules, the Super Bowl winner would come down to which team was bigger or willing to play dirtier," said Frank Knapp, Jr., Vice Chair of the American Sustainable Business Council. "Well, regulations are the rules of the game we call private-sector competition. An overwhelming percent of small-business owners agree that without fair regulations creating a level playing field, small businesses won't be able to compete against big businesses."[22]

In other words, effective regulation does not aim to interfere with the responsible marketing of alcohol but instead forces the industry to maintain a level playing field. The four “P's” of marketing are “product, promotion, placement and price.” Regulation interferes with this paradigm only when public safety demands that action be taken. Because of the huge amount of money to be made in the alcohol business, manufacturers are always looking to develop new products that will sell well in an extremely competitive market. Unfortunately, the lure of the marketplace can foster unfair competition as well as the introduction of unsafe products.

The great equalizer between the well funded interests of a multi-billion dollar alcohol industry

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[21] See for example, http://alcoholjustice.org/images/stories/pdfs/states_that_charge_for_harm.pdf.
[22] Frank Knapp, Jr., Vice Chair of the American Sustainable Business Council.

and the public good is a well funded regulator.[23] Well funded and effectively enforced regulation is essential to ensure the safest and fairest alcohol market possible. The game should be played by rules made and enforced by those best equipped to impose them fairly and responsibly. As the NFL experienced when it endured replacement referees in 2012, some things are better left to professionals who have no skin in the game and best know the rules. Indianapolis Colts defensive end Cory Reading expressed what most of the public felt about the NFL strike and use of replacement referees because the owners did not want to pay more for regulation:

> “'What I'm looking for is the game to be played the way it should be played and for it to be called the way it should be called."

And let's not forget some of the positive results from existing regulation that are at risk if deregulation by defunding continues:

- Alcohol-related deaths have declined over the last decade.
- The CDC reports that alcohol impaired driving episodes have declined by 30% from a peak in 2006 through 2010. [24]
- The Substance Abuse and Mental Health Services Administration (SAMSA) points out that “there has been progress in reducing underage drinking in recent years, particularly among those 17 years old and younger.”[25]
- Alcohol-related fatal crashes involving teen drivers have dropped by more than half – from 22 per 100,000 licensed drivers age 15-20 in 1982 to fewer than 10 per 100,000 in 2003.[26]

Reducing or shifting funding away from alcohol programs ignores the fact that there is a lot of bang for the buck in alcohol regulation. There has been an increase in tax revenue from the increase in alcohol sales over the last decade. A portion of this increase could be dedicated to alcohol policy compliance. This is exactly what happened in Idaho, where increased resources were committed to a recently created Alcohol Fund. On September 9, 2012, Lt. Robert Clements, Bureau Chief, Idaho State Police Alcohol Beverage Control Bureau, indicated that the public health and safety of Idaho citizens is better served by the increase in boots-on-the-ground enforcement of state liquor laws. His comments referred to the 10 new officers Idaho added to regulate 5,000 licensed establishments. Prior to 2012, Idaho had only two officers assigned to this task (while Idaho had 43 Brand Inspectors to regulate cattle).[27]

A level playing field is what is best for everyone. Alcohol control helps reduce excessive consumption, protects the public and supports the existence and fair growth of alcohol related business.

IV. Conclusion – Effective Regulation Works

> ***“Is regulation per se bad? Is better regulation bad? I think better regulation is good for the business community, and I think that's something we should get together on.” - Ed Rendell, Former Governor of Pennsylvania***

[23]Raymond B. Fosdick and Albert L. Scott, Toward Liquor Control (1933).
[24]www.cdc.gov/mmwr/preview/mmwrhtml/mm60e1004a1.htm.
[25]www.stopalcoholabuse.gov/media/pdf/underagerpttocongress.pdf.
[26]NHTSA Annual Report.
[27]Alcohol Law Symposium, Center for Alcohol Policy, Dallas, September 9, 2012.

The alcohol industry in this country is thriving and, in addition to enhancing other businesses, it is responsible for employing hundreds of thousands of people nationwide. Most agree that regulation and enforcement of alcohol helps curb alcohol related social problems and is crucial to maintaining a strong competitive industry. The mom-and-pop market down the street and the small non-franchise restaurants need state regulation to ensure that the big box stores and franchise restaurant chains are not the only consumer choices that remain.

The alcohol market is far from stymied by current regulation in the United States. There is growth in all areas of the industry. “With more than 2,000 brewers (in the United States) and at least 13,000 labels of beer for customers to enjoy, it is clear that today's regulatory system works so well for so many.”[28] Moreover, “[t]he wine industry will improve slowly and steadily in 2013, with sales growth ranging from 4 to 8 percent.”[29] Finally, “Liquor sales rose by 4% last year, and growth was particularly strong in terms of exports of American spirits.”[30] Given these statistics, there is no compelling reason to change a system that is working.

As a former state legislator and regulator, I feel that an effective alcohol policy can be achieved to protect both the public as well as the business community. Until now alcohol regulation in this country has kept consumption rates and associated alcohol problems at lower rates than in Europe and other countries. This distinction is being threatened by nationwide budget problems that have spurred deregulation and defunding efforts. In this era of tight budgets and anti-regulatory sentiment, states must be ever more vigilant to keep up with the dramatic growth in alcohol sales. It is imperative that states be made aware of the true consequences of reduced alcohol control and enforcement to maintain the fair and balanced distribution of alcohol and avoid slipping into the problems deregulation has caused in other countries. The revenue is there to support a comprehensive regulatory and enforcement system. Hopefully, today's policymakers will see the value of this 80-year old regulatory tradition.

"Always do right; this will gratify some people and astonish the rest." - Mark Twain

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[28]National Beer Wholesalers Association (NBWA) President and CEO Craig Purser, address to the NBWA National Convention, October 16, 2012.
[29]Napa Valley Register. Com, Report: Wine industry growth 'slow and steady', January 15, 2013.
[30]http://business.time.com/2012/01/31/cheers-increase-in-liquor-sales-bodes-well-for-economic-recovery, January 31, 2012.