

## UNDER THE INFLUENCE

### A PROFILE OF THE WHOLESALE BEER AND WINE ASSOCIATION OF OHIO: HOW THEY HAVE INFLUENCED LEGISLATION AND USED THE INCREASED CAMPAIGN FINANCE CONTRIBUTION LIMITS TO THEIR ADVANTAGE.

The Wholesale Beer and Wine Association of Ohio represents the interests of more than 60 local beer and wine distributors from all over the state. Alcoholic beverage retailers such as grocery stores, bars, restaurants, and sporting events rely on wholesalers to store and deliver the goods produced by breweries and wineries.<sup>1</sup> Because alcohol is one of the most regulated industries, wholesalers have a huge financial stake in related legislation that comes out of the Ohio state capitol. To protect their interests, they have become one of the most powerful political forces in Columbus. From 2003 through 2006, the association's political action committee (PAC) and its executives have contributed over \$861,870 to state candidates and party committees. In 2006, they reported having 13 lobbyists working on their behalf. Over the last four years they have successfully fought off two recent attempts by former Governor Bob Taft (R) to raise the tax on beer and wine in

order to stem a budget crisis. It was their attempts to kill the alcohol tax increase that got the wholesalers' lobby some attention, not only for their generosity towards public officials, but their tactics as well.

The wholesalers' attempts to influence the legislature to stop the tax increase on beer and wine were implicated in a broad campaign finance scandal that led to state and national investigations of key legislative leaders and political fundraisers. Public pressure for reforming the system also forced the hand of the Ohio legislature to pass a bill addressing the campaign finance scandals. Unfortunately, the campaign finance "reform" bill that went into law was so flawed, it actually *helped* powerful industries such as the wholesalers to raise even *more* money. In 2005, the Ohio beer and wine wholesalers sharply increased their campaign donations to public officials and were able to kill a second attempt to raise taxes on their product.

This is the first of two reports by Common Cause Ohio addressing how the state's campaign finance laws fail to stem the influence of well-financed special interests on state legislation.

### **WHOLESALERS DEFEAT THE ALCOHOL TAX - TWICE**

In January 2003, Governor Taft announced a sweeping tax reform proposal designed to help eliminate the state's \$720 million deficit for the fiscal year.<sup>2</sup> Among those proposed reforms was doubling the tax on alcoholic beverages. The tax on different types of beverages varies, but the tax on a case of beer, for example, would have increased from 41 cents to 82 cents.<sup>3</sup> The tax increase for alcohol alone was estimated to raise \$113 million in revenue for the state during the next three years.<sup>4</sup> With millions of dollars needing to be cut from the next budget, and with Taft threatening to reshape the state tax system, lobbyists – including those working on behalf of the wholesalers – swarmed the legislature to ensure that their clients wouldn't lose out.

The state legislature rejected the proposed tax increase on alcoholic beverages. The failure to bridge the gap between the Governor and the legislature created a deficit of \$162 million for the

state. To make up the difference, the Governor threatened to make deep cuts to education, health assistance for the elderly, and job creation programs. Ironically, those proposed cuts included \$712,000 for alcohol and drug treatment programs which would have resulted in 710 fewer Ohioans receiving treatment for that year.<sup>5</sup>

Ultimately, most of those budgets cuts were avoided when the legislature and the governor agreed on a temporary increase in the sales tax.<sup>6</sup> For the beer and wine industry, the one-percent tax increase on the sale of all merchandise in the state was far less than the proposed tax increase targeted specifically for their products. With the compromise, the beer and wine industry was safe from additional taxes until the next budget agreement in 2005.

The Speaker of the House during this period was Larry Householder (R). Since becoming speaker in 2001, Householder garnered a reputation for his aggressive fundraising style. He and his campaign team had been accused of activities such as providing legislative quid-pro-quo in return for political donations to allies and threatening retribution against campaign donors to political opponents.<sup>7</sup> By 2004, Householder, along with a number of his staff and associates, was under investigation

by the U.S. Justice Department and the Ohio Secretary of State for his fundraising tactics. One of the many reports that spurred the investigations was a story about the wholesaler association's chief lobbyist, Andy Herf. During a taped interview with the Cleveland-based *Plain Dealer* in the summer of 2003, State Representative Tim Grendell (R) – who was running for a state Senate seat at the time – related to the journalist a conversation with Herf in which he asked the lobbyist how much it had cost to get the tax increase on beer and wine out of the state budget bill. His response was “eighty large” – meaning \$80,000.<sup>8</sup> Herf said that he didn't remember the conversation, but he was subpoenaed by then-Secretary of State Ken Blackwell (R) as part of the investigation into potential campaign finance violations.<sup>9</sup> A review of PAC donations by the *Plain Dealer* revealed that in 2003, the PAC of the beer and wine wholesalers gave almost \$80,000, or “at least \$77,400 to House Republican candidates and committees and to state candidate funds tied to Householder and his team.”<sup>10</sup>

Ultimately, no charges were filed against Householder or his allies. But in August 2004, Governor Taft joined with Secretary of State Blackwell and state

legislative leaders in calling for sweeping campaign finance reform. They pressed for changes that included providing more disclosure for independent political groups and shutting down the use of county-based political committees that were used to shuffle donations anonymously in amounts far beyond regular contribution limits to candidates.<sup>11</sup> In December, when no campaign finance bill emerged from the legislature, Taft ordered them into special session to pass a bill before the beginning of the following year.<sup>12</sup> Finally, during the special session, both chambers of the legislature passed a bill on a party line vote.<sup>13</sup> Governor Taft signed it into law on December 30.<sup>14</sup>

The new campaign finance reform law, however, was seriously flawed. While the legislation provided some improvements for disclosure, it also *quadrupled* the contribution limits by individuals and PACs, to \$10,000 for each the primary and general elections, up from \$2,500 for each primary and general elections. In total, the bill allows an individual to give \$20,000 to a state legislative or statewide candidate during a two-year election cycle.<sup>15</sup> In addition, the new law failed to address some of the key issues at the center of Householder's campaign finance scandals. In the Senate,

for example, a provision that would have required more disclosure for campaign consultants responsible for fundraising was removed from the bill.<sup>16</sup> The *Dayton Daily News* editorialized, “In the name of reform they made the system worse. They cynically jammed through money-grubbing measures in a hastily called special session, leaving little time for the public to consider, much less reflect, on what really was being done.”<sup>17</sup> Senator Eric Fingerhut (D), who voted against the bill, said “it was the worst piece of legislation he had ever voted on.”<sup>18</sup> Instead of curbing the influence of special interests such as Wholesale Beer and Wine Association of Ohio, the legislature increased it.

A little more than a month after signing into law the campaign finance bill, Governor Taft introduced his 2006-2007 budget proposal, which again included doubling the tax on beer and

wine.<sup>19</sup> He estimated that the increase in the alcohol tax would provide an additional \$50 million a year to the state.<sup>20</sup> Opponents

immediately mobilized to stop the legislature from passing the tax increase. They delivered 100,000 petitions in beer trucks to the state capitol, while the National Beer Association of Ohio published ads in local papers urging legislators to oppose the tax increase.<sup>21</sup> During 2005, the beer and wine wholesalers’ PAC gave \$228,000 in campaign contributions to candidates – a 32 percent increase over the previous year, and a surprisingly large jump for a non-election year. Their 2005 contribution total was 80 percent higher than 2003, the last non-election year, and the last time they fought a tax increase. With higher contribution limits, the association was able to give large donations early in the election cycle and still have the flexibility to make significant

contributions closer to the 2006 elections. During the entire 2005-2006 election cycle, the contribution limit increase allowed the wholesalers’ PAC to donate an

| <b>Contributions From The Wholesale Beer and Wine Association of Ohio PAC and Executives to Ohio State Candidates and Political Parties</b> |                      |                   |                  |
|---|----------------------|-------------------|------------------|
| <u>Year</u>   | <u>To Candidates</u> | <u>To Parties</u> | <u>Total</u>     |
| 2003  | \$125,429            | \$34,000          | <b>\$159,429</b> |
| 2004  | \$171,000            | \$42,000          | <b>\$213,000</b> |
| 2005  | \$228,000            | \$50,000          | <b>\$278,000</b> |
| 2006  | \$158,592            | \$52,850          | <b>\$211,442</b> |
| <b>Total</b>  | <b>\$683,021</b>     | <b>\$178,850</b>  | <b>\$861,871</b> |

\*Data available from the Office of the Ohio Secretary of State through March 2006.

additional \$90,600 to Ohio statewide and legislative candidates.

In the end, the tax was stopped in the state Senate. Instead of increasing the tax on beer and wine, the final proposal increased a new tax on cigarettes by an additional 25 cents.<sup>22</sup>

#### **THE LATEST BATTLE FOR BEER AND WINE WHOLESALEERS – PRESERVE THE MANDATORY MARKUPS**

The defeat of Taft's beer and wine tax showed the strong influence the wholesalers' lobby had in the Ohio state legislature. Unfortunately for them, they did not have such influence in the United States Supreme Court.

In Ohio, wine has been traditionally sold to the consumer through a three-tier system, meaning that the vintner sells his or her wine to a wholesaler, who in turn sells it to the retailer, who then sells to the consumer.<sup>23</sup> Ohio wine sale regulations are very favorable to wholesalers. They pocket the receipts from a mandatory 33 percent markup of all wines that are sold to retailers, who are then required to impose another markup of at least 50 percent to consumers.<sup>24</sup> Like a handful of other states, however, Ohio allowed in-state wineries to sell their products directly to Ohio consumers without the involvement of wholesalers. Though they are required to

mark up the price at the same level as the wholesalers, in-state wine producers could keep the increase for themselves.<sup>25</sup>

In May 2005, the United States Supreme Court struck down New York and Michigan state laws that, like Ohio's, had different distribution laws for in-state wineries and wine produced outside the state.<sup>26</sup> To comply with the decision, the state of Ohio removed the requirement for out-of-state wine producers to sell wine through wholesalers, allowing them to sell wine directly to Ohio consumer, thus denying wholesalers their markup.

Since the wine producers have been allowed to sell wine directly to Ohio consumers, legislation was drafted to preserve the wholesalers' markup. In 2005, the Wholesale Beer and Wine Association of Ohio lobbied to support House Bill 300, a bill that would have banned all wine and other alcoholic beverages from being sold directly to consumers in Ohio. The legislation was sponsored by Democratic Representatives John Domenick, Todd Book, and Tim DeGeeter. The wholesalers' PAC contributed \$5,250 to Book from 2003 to 2006, including a \$2,500 donation received the month before the bill was introduced. The PAC also donated \$3,650 to DeGeeter since 2003.<sup>27</sup>

Ultimately, the bill never reached the floor for a vote. However, according to *The Columbus Dispatch*, Representative Matthew Dolan (R) was circulating a draft bill in the spring of 2006 that would require all large wine and beer manufacturers to sell their products through wholesalers, a proposal strongly supported by the wholesalers themselves. The *Dispatch* story also noted that Dolan received a \$2,500 contribution from the wholesalers' PAC as proposals for the legislation were circulating, though both Dolan and the wholesalers denied any connection.<sup>28</sup> Dolan did not introduce a bill before the legislative session ended, but the bill may be re-introduced in 2007.

Wholesalers faced an even bigger threat to their bottom line. Representative Bill Seitz (R) introduced legislation in 2005 that would strip from the Ohio Liquor Control Commission the authority to set minimum markups for wine wholesalers (H.B. 306).<sup>29</sup> Seitz argued that the elimination of the state-mandated markup would increase competition and drive down prices. In January 2006, the Ohio General Assembly held hearings on the issue, where both proponents and opponents from separate sectors in the wine industry testified. A group of California wine

producers called the Coalition of Fair Wine Laws testified that the markups had no other purpose but to preserve automatic profits for wholesalers. Among the critics that testified was a group called Ohioans for Choice and Competition, which represented a number of retailers and wholesalers. They claimed that the legislation was an attempt by large nationwide retailers to overtake the Ohio wine market. A representative for the Wholesale Beer and Wine Association of Ohio, which strongly opposed the legislation, also stated in his testimony, "... there are social costs that need to be balanced against purely economic considerations when the product in question is alcoholic beverages."<sup>30</sup> His implication was that it is necessary for the cost of alcoholic beverages to be kept at an elevated level to deter alcohol abuse, though this argument by the wholesalers was absent during the debate on the beer and wine tax increases in the previous years. Ultimately this bill also failed to make it out of committee.

## CONCLUSION

The Wholesaler Beer and Wine Association of Ohio plays the game of politics like many other well-funded special interests in the state. They spread campaign

donations to an array of legislators and state office holders, giving the most to lawmakers that are in the best position to support their interests, regardless of their political affiliation. They hire well-heeled lobbyists to schmooze with lawmakers and political party operatives who work together to raise campaign donations. When lawmakers threatened to raise taxes on their product, they argued that that it was against the interests of the consumer. When a U.S. Supreme Court decision threatened their state-mandated markup that would potentially lower the price of wine in the state, they said that the markup was in the interest of public health. The industry is already off to a quick start in 2007. The wholesalers were one of 33 organizations, unions and industries that contributed the maximum \$25,000 to newly-elected

Governor Ted Strickland's (D) inauguration committee.

The Ohio state legislature's attempt to address the issue with their campaign finance "reform" bill in 2005 only succeeded in giving the beer and wine wholesalers, and other industries with similar clout, even more political leverage by quadrupling the contribution limits to candidates.

Ohioans have been bombarded by reports of ethical scandals surrounding public officials over the last couple of years. The new administration and legislature elected in 2006 could take a strong step forward in regaining the trust of the public by rolling back the contribution limit increases and passing real campaign finance reform.

| <b>Who Benefited the Most From the Contribution Limits Increase?</b>   |  |              |                 |
|--|--|--------------|-----------------|
| Ohio State Candidates who received more than \$5,000 in total contributions from Wholesale Beer and Wine Association from in 2005-2006 |  |              |                 |
| <b>Candidate</b>   | <b>Office</b>  | <b>Party</b> | <b>Total</b>    |
| Ted Strickland   | Governor   | D            | \$20,000        |
| Bill Harris  | Senator (President of the Senate)                          | R            | \$17,500        |
| Ken Blackwell  | Former Secretary of State (failed bid for governor)        | R            | \$15,000        |
| Jon Husted   | Representative (Speaker of the House)                      | R            | \$11,000        |
| John Carey   | Senator  | R            | \$10,500        |
| Jennifer Brunner   | Secretary of State   | D            | \$10,500        |
| Tom Roberts  | Senator  | D            | \$10,000        |
| Betty Montgomery   | Attorney General   | R            | \$10,000        |
| Steve Buehrer  | Senator  | R            | \$9,300         |
| Geoffrey Smith   | Former Representative (defeated in 2006 general election)  | R            | \$8,500         |
| Jim Carmichael   | Representative   | R            | \$7,500         |
| Jim Petro  | Former Ohio Attorney General (failed bid for governor)     | R            | \$7,500         |
| C. J. Prentiss   | Former Senator (term limited in 2006)                      | D            | \$7,500         |
| Keith Faber  | Senator  | R            | \$7,500         |
| Larry Mumper   | Senator  | R            | \$7,000         |
| Jim Hughes   | Representative   | R            | \$6,550         |
| Marc Dann  | Attorney General   | D            | \$6,500         |
| Earl Martin  | Former Representative (defeated in 2006 general election)  | R            | \$6,000         |
| Tom Raga   | Former Representative (failed bid for lieutenant governor) | R            | \$6,000         |
| Robert Spada   | Senator  | R            | \$5,500         |
| Steve Driehaus   | Representative   | D            | \$5,500         |
| Mary Taylor  | Auditor  | R            | \$5,250         |
| <b>Total Contributions over Former Contribution Limits</b>   |  |              | <b>\$90,600</b> |

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