

Memorandum

From: Texas Wine and Grape Growers Association

To:

Date: April 23, 2010

RE: HR 5034 Endangers Wine Industry

The CARE Act (Comprehensive Alcohol Regulatory Effectiveness Act), or HR 5034, was recently introduced by Rep. William Delahunt (D-MA) and Rep. Howard Coble (R-NC). This damaging bill would put a thumb on the scale in favor of alcohol beverage laws that discriminate against interstate commerce. By severely restricting the effect of the Commerce Clause and every Act of Congress on alcohol beverage laws, the bill would harm small businesses by leaving them little recourse if a discriminatory law had a disproportionate impact on them.

HR 5034 would rewrite more than forty years of jurisprudence, and allow states to ignore the tempering effect of the Commerce Clause in all but the narrowest circumstances. As long as state laws were not “facially discriminatory, without justification” they would be immune from judicial scrutiny. It would also allow states to blatantly disregard federal antitrust laws and other Acts of Congress and undermine the legitimate policy goals of federal alcohol laws. In other words, HR 5034 would encourage abuse by inviting commercial actors to advocate for state laws that shielded them from competition.

There are no legitimate policy reasons to justify passage of HR 5034. States already have broad authority under their police powers—their ability to protect the public—and the Twenty-first Amendment to regulate the movement and sale of alcohol beverages, collect taxes and promote temperance. For example, states can control price, limit the locations and hours of operation of alcohol beverage retailers, establish restrictions on marketing and advertising materials, mandate ID checks, prohibit consumption by various classes of consumers, and conduct random compliance inspections.

There are wineries in all 50 states. Passage of HR 5034 would encourage unfair competition and balkanize the national market in wine by minimizing the effect of federal statutes and the Commerce Clause. If states are allowed to protect monopoly behavior by politically powerful local interests at the expense of smaller and out-of-state players, consumers will experience diminished choice and wineries will see fewer interstate market opportunities. Alcohol beverages are aggressively regulated at the federal, state and local levels. Courts historically have struck a careful balance between the Twenty-first Amendment and other parts of the Constitution that respects this regulatory framework, and a blunt reconfiguration of the relationship between the Constitution and state alcohol law is unwarranted.

As supporters of the Texas wine and grape industry, we strongly urge you not to sign onto this legislation, which if passed, would put the state’s small businesses at risk. We would be happy to discuss this with you further; please do not hesitate to call the Association’s chief governmental affairs officer, Dacota Haselwood at (210) 867-2576 or contact her by e-mail at Dacota@twgga.org.

Below this memorandum is a copy of a memorandum from Congressional Wine Caucus co-chairs Rep. Thompson and Rep. Radanovich. In this instance, what is good for the California wine and grape industry is good for the Texas wine and grape industry.

Sincerely,

Cliff Bingham, President
Texas Wine and Grape Growers Association

Beer Wholesaler Proposal Promotes Discriminatory State Laws, Hurts Wineries, Breweries, Distilleries and Consumers

From: The Honorable Mike Thompson
Sent By: anne.warden@mail.house.gov
Date: 4/13/2010

Dear Colleague:

As you know, alcohol is highly regulated at the federal, state and local levels. For decades, our courts have struck a proper balance between the 21st Amendment, which allows states to regulate the transportation or importation of alcohol, and other constitutional rights such as the Commerce Clause, the First Amendment and Due Process, which ensures the federal government's right to protect fair and non-discriminatory commerce across state lines. Most noteworthy is the Supreme Court's *Granholm vs. Heald* decision of 2005.

On March 18th we testified before the House Judiciary Subcommittee on Courts and Competition Policy at a hearing entitled "Legal Issues Concerning State Alcohol Regulation." We testified that state regulation of alcohol remains strong and effective and asked the Committee to be wary of taking sides in an intra-industry feud. We asked them to oppose legislation that tips the balance and picks winners and losers in the wine, beer and distilled spirits sectors.

It has come to our attention that legislative language is being circulated by the beer wholesalers that would make the dormant Commerce Clause inapplicable to any state laws dealing with alcohol unless "unjustified" and "facially discriminatory." It would shift the burden of proof away from the states to defend laws they pass and make state laws supersede any federal law that is inconsistent with state law's provisions. Laws like the recently struck-down direct shipment law in Massachusetts, which was not facially discriminatory but found by the U.S. Court of Appeals to be discriminatory and a Commerce Clause violation, would be immune from Constitutional scrutiny.

While we do not yet know if these proposals – or even a scaled-back version – will be introduced, we do know that any one of these proposals alone would set back the clock on smart and effective alcohol regulation at all levels.

These proposals would devastate California's and other states' wine industries, stunt economic growth, and harm consumers by allowing discriminatory law and regulation to be passed and go unchallenged. As co-chairs of the Congressional Wine Caucus, we urge our colleagues to join us in refraining from signing on to such legislation. We would be happy to talk to you more about this in person and if your staff has any questions, please do not hesitate to have them contact Anne Warden (Thompson) at 225-3311 or Ted Maness (Radanovich) 225-4540.

Sincerely,

MIKE THOMPSON

GEORGE RADANOVICH
