



COLORADO WINE INDUSTRY DEVELOPMENT BOARD
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Dear Congressman Polis,
US House of Representatives
501 Cannon HOB
(202) 226-7840

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 bill would put a thumb on the scale in favor of states' alcohol beverage laws that discriminate against interstate commerce. By mandating "a strong presumption of validity" and disregarding the fact that a State's laws "may burden interstate commerce or may be inconsistent with an Act of the Congress," HR 5034 will severely restrict the effect of the Commerce Clause and every Act of Congress on alcohol beverage laws. As long as state laws meet the vaguely worded standard of not being "facially discriminatory, without justification" they would be immune from judicial scrutiny. It would also allow states to blatantly ignore federal antitrust laws and other Acts of Congress. (The quotations are all from the text of HR 5034.)

The Colorado Wine Industry Development Board feels that HR 5034 would:

- Upset the delicate balance between State's right to regulate alcohol as they see fit under the 21st Amendment and the Constitutional requirement for even handed regulations under the Commerce Clause and anti-trust laws by giving predominance to the 21st Amendment over all other elements of the Constitution
- Open the door to any and all discriminatory state laws passed under the guise of alcohol beverage regulation or with dubious justification that would then be presumed valid and shielded from legal challenges under the Commerce Clause or any other part of the US Constitution
- Allow well-funded or politically powerful entities to unduly influence state alcohol laws and regulations with no regard to Constitutional safeguards for fairness and equal access to markets, choking out new business models of alcohol distribution
- Severely hamper access to due process for small businesses, such as all of Colorado's emerging wine industry, that are subjected to unfair and discriminatory alcohol laws passed by and for large corporations with large lobbying funds
- Cement the existing "structure of the state alcoholic beverage distribution system[s]" regardless of whether the existing three-tier system discriminates against any class of licensee, thereby giving established businesses unfair advantage
- Shield wholesalers from legal challenges to laws that currently give them unfair advantages over new business models
- Restrict the ability of small producers that create local jobs and support local agriculture, such as wineries and breweries, to challenge long standing discriminatory laws.
- Inhibit the legal interstate sale of wine over the Internet and through non-traditional pathways, consequently decreasing states' excise, income and sales tax revenues from wineries at a time when states' budgets need all the revenue they can find.

Proponents' claim HR 5034 is simply a clarification of the interdependence of certain federal liquor laws. Yet it is more likely an anti-competitive request intended to protect and insulate wholesalers from competition and legal challenges to their monopolistic positions. 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.

The Supreme Court upheld these powers in *Granholm v. Heald* in 2005, allowing states to exercise their power under the 21st Amendment within the guidelines of the Constitutional principles of fairness as found in the Commerce Clause and due process provisions. These constitutional limitations are important and act as curbs against abusive and protectionist laws that solely benefit local economic interests. The *Granholm* decision repeatedly affirmed that *states may regulate, but cannot discriminate*. States can control price, limit the locations and hours of operation of alcohol beverage producers and retailers, establish restrictions on marketing and advertising materials, mandate ID checks, prohibit consumption by various classes of consumers, and conduct random compliance inspections provided all restrictions and regulations apply equally to in-state and out-of-state businesses. No state should be able to claim constitutional immunity for its exercise of 21st Amendment power, and a Congressional act that would grant such constitutional immunity, e.g. HR 5034, would simply give license to those with a vested economic interest and political clout to pass discriminatory state laws unfettered by any of the safeguards now provided by the U.S. Constitution.

If states are allowed to enact protectionist alcohol legislation without concern about Constitutionality of their laws, consumers will become the unintended victims as product selection shrinks and interstate market opportunities evaporate. States will lose out on excise tax revenues as HR 5034's unintended consequences choke out interstate shipping and commerce as well as the lost revenue from winery income and sales taxes. 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. The last 40 years of case law regarding alcohol regulations has been an attempt to fine-tune and modernize laws passed after the Repeal of Prohibition, and the process is still on-going. A blunt, simplistic reconfiguration of the relationship between the Constitution and state alcohol law such as HR 5034 is unwarranted and stifle the continuing evolution of alcohol regulation.

The Colorado Wine Industry Development Board asks that you carefully consider this legislation, its unintended consequences and potentially devastating impact on our wineries and other small businesses in Colorado before you sign on as a cosponsor. This legislation is not as simple or noncontroversial as it may seem on the surface. We are happy to discuss this with you or if your staff further. If you have questions, please do not hesitate to call me. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Caskey". The signature is written in a cursive, slightly slanted style.

Doug Caskey, executive director