WINE INSTITUTE

WineAmerica
The National Association of American Wineries

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OPPOSE H.R. 5034 – WHOLESALERS MONOPOLY PROTECTION BILL

H.R. 5034, introduced at the urging of the National Beer Wholesalers Association (NBWA) with the support of Wine & Spirits Wholesalers of America (WSWA), proposes to reverse more than forty years of jurisprudence and Constitutional protections. These protections have ensured that states have ample authority under the Twenty-first Amendment to regulate alcohol beverages within the confines of other vital federal Constitutional interests, including protection of interstate commerce. <u>The bill would undermine federal authority over taxation, product formulation, advertising, labeling and product safety that has been essential to protect the public.</u>

NBWA and WSWA attempt to paint a bleak picture to justify H.R. 5034, claiming litigation is threatening states' rights to regulate alcohol. Recent litigation does not challenge state power to regulate alcohol. Instead, it simply applies longstanding legal principles to ensure that states do not discriminate. For example, in the U.S. Supreme Court's 2005 decision, *Granholm v. Heald*, the Court followed precedent in finding that states' rights under the Twenty-first Amendment must be balanced with other Constitutional protections and that states can regulate but not discriminate when it comes to direct-to-consumer shipping. The lawsuits that followed *Granholm* applied this precedent and challenged discriminatory state alcohol laws passed at the urging of wholesalers.

The litigation seen in recent years has not in any way limited state authority to carry out legitimate Twenty-first Amendment powers. Seven court cases remain and only two cases have been filed in the last 12 months. Despite this, H.R. 5034 would take the drastic step of allowing states to discriminate against interstate commerce and make it next to impossible to seek redress in the only effective forum which addresses discrimination, federal courts.

Among the bill's stated purposes are "clarifying" evidentiary rules and "ensur[ing] the collection of all alcohol taxes." In fact, the bill drastically changes evidentiary rules. Moreover, recent direct-to-consumer shipping laws have allowed states to establish clear guidelines for tax payment and collection by state agencies.

Provisions of H.R. 5034 include:

- Authorizing states to pass discriminatory laws that will permit facial discrimination with justification and all forms of non-facial discrimination, immunizing these laws from Commerce Clause protections;

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- Allowing states to completely disregard important Supreme Court decisions that protect against discriminatory alcohol beverage distribution when regulating alcohol beverages;
- Creating onerous evidentiary standards that do not now exist that will presume the validity of all state alcohol beverage laws, then make this presumption impossible to overcome by imposing an insurmountable burden of proof on challengers;
- Reversing years of Constitutional and judicial precedent regarding evidentiary procedures and burdens of proof and insulating states from having to justify their alcohol laws;
- Creating a state legislative environment for alcohol products that can explicitly ignore Commerce Clause and federal principles;
- Granting Congressional authority to treat out of state products differently than in-state products.

This legislation springs from an intra-industry dispute between producers and wholesalers. NBWA and WSWA are asking Congress to cede federal authority to the states so that wholesalers can pass discriminatory and anticompetitive laws. For example, H.R. 5034 would allow states, at the urging of the wholesalers, to eliminate direct-to-consumer shipping in 37 states and the District of Columbia. This is protectionist legislation intended to give monopoly advantage to powerful in-state interests, and it should be opposed.

New federal legislation is unwarranted in an environment that already facilitates safe and secure regulation at the federal, state, and local level. On behalf of the more than 6,000 wineries in all 50 states, we strongly urge you to oppose this misguided legislation which would put wineries at risk and stifle regulatory reforms that benefit consumers and are equitable for producers, wholesalers and retailers of wine, beer and distilled spirits.

Respectfully submitted,

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