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July 1, 2010

Via Express Mail

The Honorable John Conyers, Jr.
Chairman
U.S. House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 5034

Dear Chairman Conyers:

I write to outline my views on the June 29 letter you received from a number of civil rights organizations¹ concerning H.R. 5034, also known as the "CARE Act." I am an alcohol beverage attorney with detailed knowledge of the legal and constitutional issues addressed in H.R. 5034. My clients include large and small manufacturers and importers of alcohol beverages, and my review of the June 29 letter leads me to conclude that the civil rights organizations were misled about the factual and legal bases for the bill.

H.R. 5034 seeks to shield state alcohol beverage laws from legal challenges under all federal laws, as well as challenges arising from the Commerce Clause of the Constitution. Past legal challenges have impacted commercial and economic regulation, not state laws addressing alcohol abuse or the safety of our communities. In reality, H.R. 5034 is a vehicle to provide protection for powerful economic interests in the "wholesaler-tier" of the industry. The bill is not needed to better address underage drinking, drunk driving, or other problems that rightly concern civil rights organizations.

Not a single federal lawsuit has struck down states' abilities to, among other things:

¹ The following groups cosigned the June 29, 2010 letter: A. Philip Randolph Institute; Afro-Latino Development Alliance; Healthy Kinder, Inc.; Labor Council for Latin American Advancement; League of Rural Voters; League of United Latin American Citizens; MANA, A National Latina Organization; National Association for Equal Opportunity in Higher Education; National Coalition of Latino Clergy and Christian Leaders; and National Congress of Black Women.

- Establish "control" jurisdictions that make the government the monopoly wholesaler and, in some cases, retailer of alcohol beverages.
- Prohibit sales to underage or intoxicated persons.
- Require the licensing of activities within the jurisdiction of the state (whether manufacturing, wholesaling, or retailing) concerning the distribution and sale of alcohol beverages.
- Detect and punish drunk drivers.
- Limit the hours of sale or specific activities of state licensed alcohol beverage businesses.

Thus, each year states punish thousands of drunk drivers and illegal underage drinkers. Hundreds of retail outlets also face fines, license suspension, or revocation for illegal sales to minors or intoxicated persons. In short, state regulation of alcohol beverages is alive and well.

To the contrary, only a relative few state alcohol beverage laws have been struck down or modified under legal theories based on the Commerce Clause and federal statutes, (*i.e.*, the antitrust laws). The state tax and regulatory measures struck down:

- Discriminated between in-state and out-of-state goods by erecting protectionist barriers to interstate commerce.
- Facilitated price fixing by wholesalers through so-called "price posting" laws.
- Imposed state regulation on activities occurring (and legal) outside the state's borders.
- Directly interfered with federal functions like the distribution of alcohol on military posts and within federal customs-bonded areas.

The foregoing state laws are not necessary for the orderly regulation of alcohol. Instead, such laws benefit certain parochial economic interests (*e.g.*, by discriminating in favor of local businesses) and do not serve a broader public-policy purpose. A state has many mechanisms to regulate the price of alcohol without resorting to legally-sanctioned price fixing by a small number of private businesses.

The June 29 letter clearly indicates that the civil rights organizations were misled. There is no conspiracy by "large, foreign-owned" corporations seeking to legalize alcohol sales with little or no controls. In fact, in the last five years, virtually all of the two dozen or so lawsuits challenging state alcohol laws were filed by small American wineries and American wine consumers seeking equal access to markets. In that same five-year period, only three other significant lawsuits were filed against states. None of this litigation poses a threat to state

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regulation of alcohol beverages that addresses societal concerns over alcohol abuse or illegal sales.

For two decades, small wineries have sought changes in state laws so that they can sell directly to consumers or specialty wine stores. Most of these small wineries do not produce enough wine to warrant a large and expensive distribution network, and the increasingly-concentrated wholesaler tier of the industry has no interest in their products. Small wineries were demanding equal access to consumers and equal treatment of wine produced in- and out-of-state. No threat to public safety has been raised by the wine industry litigation and legislative advocacy.

The great increase of legalized direct-to-consumer wine shipment during the past decade has occurred without any signs of increased alcohol abuse. Indeed, Congress strengthened federal law in 2000 to permit state attorneys general to take action in federal courts to prevent illegal direct shipments from other states. A decade has now passed and not a single state has found it necessary to use that law.

Of the three recent cases I am aware of that were not filed by small wineries or wine consumers, only one was filed by a large manufacturer - - Anheuser-Busch. That current dispute involves a business arrangement (Anheuser-Busch ownership of an Illinois wholesaler) that Illinois authorities had approved for decades, then suddenly declared illegal earlier this year. Two other lawsuits were filed by retailers in Maryland and Washington State were filed by retailers in part because the laws required price posting, which allows wholesalers to share pricing information. In fact, in 1980 the Supreme Court found such price posting activity to be illegal and anticompetitive, and the majority of states successfully regulate alcohol without resorting to price posting laws. The Washington State case involved a challenge to other state laws, but the state prevailed on all of the challenged laws except its price posting requirement. None of the suits challenged state underage drinking requirements, restrictions on hours of operation, licensing schemes limiting sales to certain retail outlets, or any other fundamentals of alcohol regulation.

In short, it appears that the civil rights organizations were drawn into supporting H.R. 5034 by a combination of incomplete or inaccurate legal and factual information. I would be happy to provide further information to assist you and the Judiciary Committee in evaluating H.R. 5034. Thank you in advance for your time and attention.

Respectfully yours,


Marc E. Sorini

cc: The Honorable Lamar Smith