



**Statement Submitted for the Record by
The Specialty Wine Retailers Association**

Hearings: H.R. 5034, the "Comprehensive Alcohol Regulatory Effectiveness Act of 2010"

**September 29, 2010
House of Representatives Judiciary Committee**

The bill under consideration, H.R. 5034, reverses decades of Congressional intent and Supreme Court jurisprudence by stripping wine merchants of their protection against discrimination in interstate trade under the Commerce Clause of the Constitution—only the second time in history that an industry has been stripped of its Commerce Clause protections by congressional decree. Any other interpretation of this bill’s impact is a misreading and a misunderstanding.

The new H.R. 5034 language submitted by Representative Delahunt specifically excludes wine merchants from the protection against facial discrimination by states that producers receive in the bill’s newest iteration. This exclusion not only leads to the radical dismantling of Commerce Clause protection for America’s wine retailers, but also disregards the fact that wine producers receive protection in the bill for carrying out exactly the type of transactions that wine merchants undertake every day. This represents a unique and radical departure from Congressional policy and judicial opinion.

To demonstrate where Congress and the federal judiciary has stood with regard to the states, the 21st Amendment and interstate commerce in alcohol, I quote from *Granholm v. Heald*, the 2005 Supreme Court decision that this bill is a response to:

“The aim of the Twenty-first Amendment was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use. The Amendment did not give States the authority to pass nonuniform laws in order to discriminate against out-of-state goods, a privilege they had not enjoyed at any earlier time.”

U.S. Supreme Court, *Granholm vs. Heald* (2005)

If passed, H.R. 5034 would give states the authority to pass exactly these kind of non-uniform laws meant to discriminate against out of state goods—a privilege the states have not enjoyed at any earlier time. To give states such authority to pass discriminatory legislation to favor in-state economic interests violates a core principle of our Federal System—that we are a National Economic Union, not competing states.

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Why now, after 223 years since the Constitution has governed this nation, do we need to strip wine merchants of their Commerce Clause protection from state discrimination in interstate trade? What has transpired to occasion this radical departure from our political and legal traditions?

The proponents of H.R. 5034 argue that this kind of radical departure is necessary in order to assure states can continue to regulate alcohol effectively. They argue that lawsuits have damaged the states' ability to regulate alcohol effectively.

On the contrary, what the lawsuits have demonstrated is that some of the states' alcohol regulations have ineffectively guarded against the discrimination of out-of-state goods that the Constitution requires them to protect.

Passing H.R. 5034 would give states the authority to pass laws that have been deemed unconstitutional for more than 200 years, laws that are almost always written and introduced into state legislatures where out-of-state business are not represented, and laws advocated by local interests looking to protect their own financial interests at the expense of free and fair interstate commerce and the interests of consumers.

The Specialty Wine Retailers Association represents wine merchants across the country who, under H.R. 5034, would suffer in ways we can not even imagine at this point because the legislation being consider is so far reaching, so radical and so disconnected from our political, legal and commercial traditions that its impact of stripping an industry of its Commerce Clause protections has only occurred one other time in the history of our nation.

H.R. 5034 would allow states to pass laws that

1. Facially discriminate against out-of-state wine merchants
2. Impose huge fees on non-resident retailers doing business in states
3. Prohibit retailers from purchasing goods from out of state producers
4. Prohibit non-resident retailers from opening more than one store in a state while allowing resident retailers to open many
5. Place much higher taxes on wines purchased from out-of-state retailers
6. Allow in-state retailers to advertise, but ban out-of-state retailers from advertising in the state

The list goes on and on in ways we can't imagine because under H.R. 5034 the ways by which states may discriminate against interstate commerce is unlimited.

Wine retailers ask for a well-regulated but level playing field on which they may do business. No more. No less.

On behalf of wine retailers across the country, we respectfully ask that the members of the House Judiciary Committee vote in opposition to H.R. 5034 in order to assure that the hundreds of thousands of wine retailers across the country not be thrown under the Constitutional bus for reasons that can't rationally be justified beyond seeking to protect the special interests driving the bus.

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