

Dear Colleague,

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 most narrow 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 our state’s wineries, we strongly urge our colleagues not to sign on to this legislation which, if passed, would put the state’s small businesses at risk. We would be happy to discuss this with you further, or if your staff has questions, please do not hesitate to call ...