



WineAmerica Newsletter— July 2010

From the President's Desk

H.R. 5034

The wholesalers attempt to remove federal oversight from state actions, laws, and regulations affecting the alcohol trade, H.R. 5034, has gained great momentum but is now being seriously opposed by a united front of wine, beer and spirits producers. To date 124 members of the House of Representatives, a very large but perhaps manageable number, have co-sponsored the bill. Largely this sentiment has been based on the notion that alcohol is dangerous and that courts invalidating regulations and possible leading to a wide open deregulated environment would not be a positive development. The fear of court action leading in the same direction as Great Britain, which has seen alcohol abuse skyrocket in the wake of substantial deregulation, has heightened the interest in cosponsoring 5034. Also driving the movement towards sponsorship are the huge campaign contributions of the wholesale tier. Most members of Congress have not really examined the detailed legal problems associated with this bill. Developing awareness of the risks and inequities inherent in immunizing the states against federal oversight where economic players are involved is a more difficult and subtle task. The fact remains that H.R. 5034 would make it next to impossible to address inequities in state law, especially those involving favoritism for in-state companies. Commerce Clause and antitrust challenges in federal courts are the only effective mechanism to address those concerns and H.R. 5034 would immunize states from such actions..

We are now planning for a hearing before the House Committee on the Judiciary tentatively scheduled for July 14. This will be an opportunity to showcase the legal and operational flaws (see Cary Greene's article in this Newsletter) inherent in H.R. 5034. While the motives behind supporting the bill are, in many cases, admirable, it now time to consider the implications. This is typically done through Congressional hearings and we hope that the July hearing will bring forth sufficient expertise to expose the fatal flaws inherent in this bill.

Other Issues

More and more countries have reduced the standard for DUI from 0.08% to 0.05% which is quickly becoming the world standard. A review last month in the United Kingdom has now recommended a reduction in UK to the 0.05% level. Ireland implemented such a reduction last month. There is a good chance that this will be enacted. We can expect a similar push in the United States in the next few years, probably led by Congress.

On Leaving WineAmerica

At the end of July 31, my tenure at WineAmerica will be coming to a close. This is a quite bittersweet moment. My commitment to the goals and success of the organization remain strong. Given the challenges faced by wineries, a commitment to support WineAmerica in its efforts on behalf of American

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wineries is critical. I hope to be visiting many wineries in the next few months and I will continue to explain the importance of WineAmerica and the need to have strong representation in Washington.

I have great hopes that the priorities of WineAmerica will continue as growth of wineries across the country has been phenomenal. In the last ten years the number of wineries has more than tripled from about 2,100 to almost 6,700 with 57% of these from outside of California. The growth rate of non-California wineries in that period was an astounding 370%. This is much higher than the impressive 250% growth rate of California wineries. All of America's wineries need effective and strong representation to address the important national and international challenges they now face. A strong WineAmerica is critical to the task of empowering wineries throughout the country and helping to build strong winery laws and infrastructure.

A very important element in that empowerment has been the WineAmerica – State Associations Council (SAC), which serves as a networking forum and an important mechanism for sharing ideas and concerns for wineries at the state level. This council should be strengthened and developed. WineAmerica's important work in developing a model state winery law and implementing modernization of winery laws across the nation should be continued.

WineAmerica needs to continue its strong support for winery direct shipping laws across the nation and for simplifying these laws to facilitate such sales. We have come a long way from when there were but a few states that allowed shipping. However, there remains a lot of work yet to be done. It now seems that all players, wineries – both large and small, wholesalers, regulators and retailers have come around to the realization that direct shipping from wineries to consumers is a reasonable, viable and safe avenue for wine sales which does not threaten safety, temperance, or business interests. As this channel develops it has the potential of fundamentally altering, in a positive way, the business models for small wineries across the nation.

Enhancing federal support for wine and grape related research and extension has been a key priority for WineAmerica in the fifteen years I have worked here. I believe continuing that emphasis and building on earlier achievements remains crucial to the long term future and competitiveness of our membership. Wineries need to know how to improve their product, how to adjust to new production areas and how to adjust to the inevitable changes in the labor market. A new Farm Bill is beginning to emerge in Congress with a target date of 2012. The 2007 Farm Bill included many components which will need to be protected and grown in the face of declining fund availability, the National Clean Plant Network, Specialty Crop Research Initiative, block grants for specialty crops and value added grants.



My time at WineAmerica has been productive and exciting. I hope you will all continue to support WineAmerica, its staff and board, as they move WineAmerica into the next decade.

The Next Farm Bill is Just Around the Corner

Jennifer K. Montgomery

As hard as it is to believe, Congress is already preparing for the 2012 Farm Bill. Field hearings around the country and on the Hill already are in full swing as House Agriculture Committee Chairman Collin Peterson (D-MN) has decided to get a head start on the process. In response to this extended lead-time, the Specialty Crop Farm Bill Alliance (SCFBA), including WineAmerica, has reformed its legislative and steering committees to begin preparations for the Agricul-

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ture policy deliberations to come.

The Farm Bill, which is re-authorized by Congress every five years, was last passed in 2008, one year later than planned. That bill, for the first time in its 60-year history, contained mandatory funding for specialty crops including several programs that are critical to the grape and wine industry:

- The **National Clean Plant Network** was designed to improve opportunities for growers to obtain disease free planting stock for grapevines, fruit trees and nut trees. Plant materials such as grapes, apples, peaches, and other fruits which are provided by nurseries to orchards and vineyards, can be particularly vulnerable to viruses. This program established a network of clean plant centers in the United States that conducts diagnostic and pathogen elimination services to ensure that nurseries can continue to provide safe, virus-free plant materials to vineyards, orchards and other growers. As additional crops are anxious to be included in this program it will be essential to increase funding in the next farm bill. *Program funding - \$20 million in mandatory funding (\$5 million per year, 2009-2012).*

Specialty Crop Block Grant Program – The focus of the Specialty Crop Block Grants program is to assist local efforts that improve producers’ ability to compete in the marketplace and provide consumers with safe, abundant food. This program allows states to invest in programs and projects that support production-related research, commodity promotion, product quality enhancement, consumer health, food safety and other programs that enhance the competitiveness of specialty crop producers.

- Specifically, these grants have been used by the wine and grape industry for: (1) marketing; (2) research; (3) wine trails; (4) establishing wine and cuisine partnerships; (5) developing online educational manuals for new and existing wineries and growers; (6) procurement of more efficient wine processing equipment; and (7) other projects to help industry producers. *Program funding – \$499 million in budget authority mandatory funding (\$10 million in fiscal year 2008, \$49 million in fiscal year 2009, and \$55 million in fiscal years 2010-2012).*
- **Specialty Crop Research Initiative** – The Specialty Crop Research Initiative develops and disseminates science-based tools to address the needs of specific crops and their regions. Research is conducted on important priorities such as plant breeding, pests and diseases, mechanization, genetics, food safety and pollination. *Program funding – \$230 million in mandatory funding for fiscal years 2008-2012.*

Not surprisingly, the budget constraints the Congressional Agriculture Committees will have to work within regarding the upcoming bill will be extremely tight, so the challenge will be to make sure the wine industry’s key programs remain in the Farm Bill and that their funding levels are ramped up. To help with this goal, it will be important to show that the industry has been good stewards of the previously mentioned programs and that they are a good investment of federal money. As with most of the federal issues that are of importance to the industry, this effort will take a lot of persistence from the staff at WineAmerica and lot of work from the grassroots, one of association’s most valuable assets.

WineAmerica will keep membership advised of developments as the Farm Bill- related activities continue.



WineAmerica Battles Substantial Threat to Our Industry

Cary M. Greene

The signs are becoming clearer that our industry is in the midst of fighting its most significant federal legislative battle in more than a decade. The bill at issue is H.R. 5034. It bears the clever, but inaccurate, acronym “CARE Act” (short for Comprehensive Alcohol Regulatory Effectiveness Act). The breadth and reach of the bill could result in serious and lasting damage to our ability to sell wine in interstate commerce or challenge state laws that violate federal policy. We must defeat this bill.

While its supporters have managed to finagle a list of 122 co-sponsors in the House (there are 435 House members), WineAmerica is fighting back with the help of our members, our State Associations Council, and our friends at Wine Institute, the Distilled Spirits Council of the United States (DISCUS), Beer Institute, and the Brewers Association. The counter effort is now gaining momentum and cohesion. On June 23, all five federal producer trade associations signed a joint letter to Congress opposing H.R. 5034—possibly the first time that has ever happened. We expect this counter effort to only ramp up further in the coming weeks and months.

H.R. 5034 is a vast overreach. Pushed by the National Beer Wholesaler Association (NBWA) and the Wine & Spirits Wholesalers of America (WSWA), the bill would undermine more than 100 years of court precedent that seeks to limit state abuse of alcohol regulatory power. In essence, H.R. 5034 would allow states to discriminate against out-of-state producers with all but the slimmest of justifications. States could also pass laws that run roughshod over significant federal policies. Laws prohibiting anti-competitive business practices, sale of unsafe or mislabeled alcohol beverages, and Balkanization of interstate alcohol beverage markets could all be at risk.

NBWA and WSWA have argued that H.R. 5034 is necessary because they believe courts are undermining the Twenty-first Amendment and forcing the “deregulation” of alcohol beverages. They want to provide the states virtually unlimited power when it comes to regulating alcohol. To paraphrase one NBWA supporter’s arguments, at the time it was ratified “everyone knew” the Twenty-first Amendment “trumped” the Commerce Clause (the section of the Constitution that gives Congress the power to regulate interstate commerce) and other federal laws.

Unfortunately, this revisionism ignores the forty years of history, case law and federal statute that preceded the Twenty-first Amendment. As Supreme Court cases from the 1880s and 1890s confirm, states were *never* permitted to pass protectionist laws that favored local alcohol beverages or alcohol beverage dealers. During this period, Congress also indicated that states may only regulate out-of-state alcohol “to the *same* extent and in the *same* manner as though such [alcohol beverages] had been produced in such State or Territory.” In other words, court efforts to curb state protectionist tendencies have a long and telling pedigree and—reasonably enough—continue to shape court interpretation of the Twenty-first Amendment.

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States wield a variety of judicially supported powers that are not in jeopardy, including: (1) establishing “control” jurisdictions; (2) licensing and investigating license applicants; (3) imposing and monitoring pricing controls; (4) conducting random compliance inspections; (5) establishing restrictions on hours of operation and outlet density; (6) establishing restrictions on exchange and use of marketing and advertising materials; (7) prohibiting consumption by various classes of consumers including those who are underage; (8) mandating ID checks; and (9) imposing excise and other taxes.

As with our other producer trade group colleagues, WineAmerica supports state rights to regulate alcohol, and has no interest in seeing alcohol abused. At the same time, states should not be encouraged by Congress, as H.R. 5034 proposes to do, to abuse their regulatory power by passing laws that undermine the interstate commercial character of our national markets.

Federal courts have wisely used their powers of judicial review to strike down state alcohol laws that are anti-competitive, protectionist or a violation of vital Constitutional interests. At the same time, courts have repeatedly affirmed laws that actually enforce “core” Twenty-first Amendment concerns, such as temperance. H.R. 5034 would blast to pieces this thoughtful balance and put in its place a blunt presumption—flimsy state rationalizations would win out over strong federal interests.

As is plain from their support, wholesalers clearly believe that H.R. 5034 would benefit them. So far they’ve had momentum on their side. 122 co-sponsors is no small feat. If nothing else, this shows what a powerful and well-funded organization can do, even when pushing bad legislation.

We must come together as an industry to push back against H.R. 5034. The power of our organizational grassroots and the economic support of our members are more important than ever. If you’re behind on your dues, it’s time to catch up. If you know wineries that were members or aren’t members of WineAmerica, it’s time to get them to join. H.R. 5034 is a fundamental threat to our industry, and we must face it together.

