



WineAmerica Newsletter — October 2010

From the Chief's Desk

This past month, the House Judiciary Committee held its much anticipated hearing on H.R. 5034 (the “CARE” Act). WineAmerica has long opposed this bill because it would encourage states to pass protectionist and anti-competitive alcohol beverage laws. The Judiciary Committee hearing did little to alleviate our concerns with the bill’s language and intent.

For three hours, Committee Members heard testimony from House Members and alcohol industry representatives. Not surprisingly, the gallery was packed—chock full of industry insiders and policy minders. I think I counted 18 representatives from the National Beer Wholesalers Association (“NBWA”) and Wine & Spirits Wholesalers Association (“WSWA”) alone. If sheer attendance numbers could make good policy, we’d have an uphill fight. Fortunately, none of the wholesaler witnesses even remotely made the case that H.R. 5034 can accomplish any of its supposed goals.

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INSIGHTS Express quoted Chris Clements, CEO of Golden Eagle, a 10 million case Budweiser distributor and the only actual wholesaler in attendance, as saying:

In terms of the hearing, I was shocked and dismayed by two things: (1) There were no other wholesalers there—no one from the NBWA Board of Directors which made little sense given how we’re being told how important this bill is for our very survival; and, (2) that Marin [Institute, an anti-alcohol group] testified on behalf of the bill. That’s akin to having Hugo Chavez testify on the benefits of democracy. To the Marin Institute, beer wholesalers are nothing more than glorified drug dealers. They bludgeon our responsibility efforts at every turn. The fact that they are suddenly an ally on some industry issues is concerning.

And of the claims by NBWA and WSWA that H.R. 5034 would reduce an “avalanche” of litigation? Professor Steve Diamond, a wholesaler expert witness on alcohol law, could point to neither an “avalanche”—only 39 lawsuits on a range of issues since 2005—nor any evidence that the CARE Act would reduce litigation. In fact, Professor Diamond repeatedly and readily acknowledged that courts

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would be re-litigating and rehearing long settled principles of alcohol law for years to come if H.R. 5034 becomes law.

Nearly everyone at the witness table seemed to agree on two points: (1) that state regulators should have the power to make policy that reduces underage and abusive consumption; and (2) that the CARE Act does little to aid states in this effort. Indeed, states have made major strides over the last two decades establishing targeted, evidence-based strategies that reduce underage and abusive consumption. Despite wholesaler fear-mongering to the contrary, the Supreme Court's *Granholm v. Heald* decision—holding that state direct-to-consumer shipping laws must respect the Constitution's free market principles—has not changed these trends.

Rather than have me tell you the obvious, I'll let an independent expert speak to the issue. In written testimony submitted to the Judiciary Committee, respected economist Jerry Ellig, a senior research fellow at George Mason's Mercatus Center and a former Federal Trade Commission ("FTC") official, offered his conclusions on the trends following *Granholm*:

[I]t is clear that there has been no upsurge in underage access, drinking, or alcohol abuse since the *Granholm* decision in 2005. In fact, the percentage of affirmative responses on virtually all of the questions about alcohol use and abuse has fallen by several percentage points since 2005.

In other words, the evidence shows that *Granholm* has not hurt state efforts to reduce abuse of alcohol.

Professor Ellig goes further to suggest that the drastic and unnecessary Commerce Clause exemption proposed by H.R. 5034 would establish bad precedent in other ways:

[T]he alcohol industry is hardly unique in believing that it can offer an important reason it should receive special treatment under the law. Creating such an exemption would likely open the door for many other special-interest requests for exemptions from federal laws, the Commerce Clause, and perhaps other parts of the U.S. Constitution as well.

According to Professor Ellig, automobile, casket, contact lens, and legal service providers have all testified before FTC about the "uniqueness" of their products among consumer goods:

If Congress actually demonstrates its receptivity to such special pleading by passing a law making blanket exceptions to the Commerce Clause or federal laws for alcohol, it can expect a steady stream of requests from other industries for special treatment.

He sums up his findings as follows:

The argument that America faces a widespread and systemic problem that justifies a significant change in the federal legal standard applicable to state alcohol laws is nothing but an assertion. Underage drinking and alcohol abuse are declining, and they have continued to decline since the 2005 *Granholm* decision that is alleged to be the source of significant problems."

You can find Professor Ellig's complete testimony at: <http://mercatus.org/publication/competition-consumer-welfare-and-state-alcohol-regulation>. It's definitely worth the read.

National Wine Experience

WineAmerica is a named sponsor to this year's inaugural National Wine Experience. The event will be held November 20, 2010 at the Newseum in Washington, D.C., and will feature American wines from a variety of states. While the event is something of an experiment (being the first ever of its kind), we're hopeful that over the long-term, it will be a great opportunity to showcase and promote American wineries from all 50 states.

Recent press (e.g., http://www.usatoday.com/travel/destinations/10great/2010-10-07-local-wines_N.htm) suggests that local wines are making deeper national inroads than ever before. As local wineries advance further into the consciousness of consumers, the market for American wine inevitably expands. This is true because loyal wine customers introduced to wine in their local tasting room typically experiment with wines from beyond home. With the high quality of local wine these days, (e.g., <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/28/AR2010092803890.html>; and <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/05/AR2010100502145.html>), we hope our industry has many bright days ahead.

A national showcase is a natural step. We hope the National Wine Experience is a major success.

Phone Problems Resolved—Temporary New Numbers

Our phones are back up and running following the failure of our telephone server recently. **You can reach us by telephone at a temporary new number (202) 223-5170. We can receive faxes at (202) 223-5174.** We are working with our provider to get our regular numbers back on-line shortly. Expect an ezine on the issue in the coming days.

WineAmerica in the News

WineAmerica has definitely been getting its name in the press recently and we thought we'd share some of the stories with you:

<http://www.winespectator.com/webfeature/show/id/43634>

<http://www.winebusiness.com/news/?go=getArticle&dataid=79226>

http://www.just-drinks.com/news/drinks-trade-unites-to-oppose-latest-hr-5034-draft_id101913.aspx

http://drinksmediawire.org/afficher_cdp.asp?id=7258&lng=2

<http://shipcompliantblog.com/blog/2010/09/28/h-r-5034-update-revision-reignites-debate-important-hearing-set-for-wednesday/>

<http://vintagetexas.com/blog/?p=2513>

<http://winecrushblog.com/?p=1865>

<http://www.idahostatesman.com/2010/09/17/1343120/bill-has-beer-retailers-winemakers.html>

<http://www.syvnews.com/articles/2010/09/07/news/featurednews/news01.txt>

http://www.carrollcountytimes.com/news/local/article_0eb7e676-be24-11df-847f-001cc4c03286.html

We were also quoted in Kane's Beverage News Daily (September 30 and October 1, 2010 issues) and The Daily Reflector out of Greenville, North Carolina (*Controversy Brews Over Alcohol Bill*, September 18, 2010, <http://www.reflector.com/news/controversy-brews-over-alcohol-bill-131966>). These stories are available by subscription only.

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WineAmerica Fall Meeting

By Michael Kaiser

Registration continues for the WineAmerica 2010 Fall Board of Directors and Membership Meeting at the Hampton Inn at Shelton Vineyards, November 8-10, 2010.

This year's Fall Meeting is very important. There have been many changes at WineAmerica this year and the future of the organization is now more essential than ever with issues such as H.R. 5034 threatening the industry. We hope that you can join us.

Please follow the link below for meeting registration and hotel information:

<http://www.wineamerica.org/membership/fallmeeting.cfm>

Please book your hotel room by October 24. The registration price increases after October 31, so please register as soon as possible.

About Shelton Vineyards

In 1994, brothers Charlie and Ed Shelton purchased at auction the land on which Shelton Vineyards sits. Although they had no firm plans for the future of the property, the land is located just a few miles from where the two brothers grew up.

Both brothers have a keen interest in fine wines. This, coupled with the area's ideal climate of mild winters and moderate summers, led the two to consider developing a vineyard as a personal hobby. After much study and consultation, the Sheltons' hobby quickly became a full-fledged business operation. "We saw the impact this vineyard, and others in the area, could have 20 to 30 years down the road," says Charlie Shelton. "With tobacco farming on the decline, we saw it as a great way to diversify the farming industry and open doors to new possibilities in the area, such as agri-tourism. People love to tour vineyards, taste the wine and hear the story of winemaking. And, at Shelton Vineyards, we believe we have a great story to tell."

The groundbreaking ceremony was held June 23, 1999. The winery is a 33,000 square-foot building designed by well-known North Carolina architect, Ray Troxell. This was his first time designing a winery, and the spectacular result speaks for itself.

Shelton Vineyards is a 90 minute drive from the Charlotte Douglas International Airport and a 70 minute drive from Piedmont Triad International Airport in Greensboro. Driving directions will be provided in the Meeting Book.