

Testimony before the Committee on Judiciary

The Honorable Peter DeFazio

September 29, 2010

H.R. 5034, the "Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010"

Good afternoon Chairman Conyers, Ranking Member Smith, Members of the Committee and colleagues.

I appreciate the opportunity to speak to you today. I have the honor of being the cofounder and co chairman of the House Small Brewers Caucus. The caucus was created in 2007 to educate members and their staff about the business of running a small brewery and the economic and regulatory challenges small brewers face every day.

There are over 1,600 small breweries in this country. The brewers working in them are true craftsmen creating a uniquely American product. They are also small businessmen, creating thousands of jobs in local communities across the country. They do all of this in one of the most highly regulated business sectors. Small brewers are for the most part not rich men and women, and operate with smaller margins and higher costs than the giant corporations they compete against every day. Even small changes in the client base can have a massive impact on their ability to survive.

For 75 years since enactment of the Twenty-first Amendment ending prohibition, sale and distribution of alcohol have been effectively regulated at the state level within the bounds of the Commerce Clause of the Constitution. The dormant Commerce Clause, which prevents states from enacting unfair or anti discriminatory laws affecting interstate commerce, has been a settled principle of American law since 1829. In addition to Constitutional principles, Congress has enacted statutes governing labeling, advertising, the minimum drinking age, and other alcohol regulatory measures that clearly affect interstate commerce. In short, the federal government has always played a vital role in alcohol regulation. This balanced approach has helped the industry grow while at the same time protecting consumers and the general public.

H.R. 5034, the CARE Act, is a direct threat to that success. The bill would demolish the constitutional balance and the federal oversight over alcohol regulation. The effect would be devastating to America's small brewers. The CARE Act would virtually eliminate the role of the federal courts in stopping states from enacting discriminatory laws, violating antitrust laws, and even undermining acts of Congress. There are dozens of cases stretching back decades where federal courts have relied on the commerce clause to strike down blatantly discriminatory state alcohol laws.

- In New York, federal courts struck down a state law that required all beer to have its own unique UPC code. This meant that any small brewers, who operate on small budgets and tight margins, would have had to spend thousands of dollars on new labels just to be required to sell in one state.
- In Oklahoma, the court struck down a state law that banned the interstate transmission of alcohol beverage commercials

If H.R. 5034 is enacted these types of laws can, and will, return. Even worse; states would have free reign to come up with new ways to discriminate against small brewers. They could pass laws giving all in state brewer's preferential treatment, or tax breaks for using in-state ingredients. States would then retaliate against other states over unfair laws. This bill is anti-consumer, special interest legislation of the worst sort, and it undermines the basic economic principles of our Constitution.

What is the reason for such a drastic and unprecedented step as H.R. 5034? If we are to believe the advocates pushing this bill, they would tell you it is to stop the flood of lawsuits that were the result of the Supreme Court decision that struck down laws in Michigan and New York that barred out-of-state wineries from selling directly to consumers. That ruling was a win for consumers. The litigation surrounding direct shipping of wine is not a threat to a state's ability to license and tax businesses engaged in the sale of alcohol beverages. Small brewers in Oregon and elsewhere obtain licenses, register their brands, and file tax returns in every state in which they do business.

Excessive lawsuits cannot be the driving force to H.R. 5034. The number of pending lawsuits challenging state alcohol laws is in the low single digits. Compare that with the number of other cases pending against states, and the alcohol litigation is a tiny part of the thousands of cases filed annually against state governments.

H.R. 5034 is a solution to a nonexistent problem. I urge you all to reject it. Thank you.