

Statement of Congressman Gary G. Miller
House Committee on the Judiciary
Hearing on H.R. 5034
The Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010
September 29, 2010

Chairman Conyers and Ranking Member Smith, thank you for the opportunity to testify before you today about the impact of H.R. 5034, the CARE Act. While the issue of alcohol regulation is complex, I would like to focus my testimony on the impact of this proposed legislation on underage drinking.

According to the National Alliance to Prevent Underage Drinking, every day, 7,000 children under the age of 16 take their first alcoholic drink. Youth who start drinking before age 15 years are five times more likely to develop alcohol dependence or abuse later in life than those who begin drinking at or after age 21 years. And according to the Centers for Disease Control, although drinking by persons under the age of 21 is illegal, people aged 12 to 20 years drink 11% of all alcohol consumed in the United States. With a nearly \$170 billion annual market for alcoholic beverages, underage drinking comprises a significant part of this market. One of the most important ways we can limit underage drinking is by reducing illegal access and increasing enforcement.

We must require a strong regulatory structure that balances the free market with public health concerns with respect to alcohol. The system of state-based regulation has served our nation well because states and localities know their own communities' needs best. A one-size-fits-all strategy doesn't work with alcohol. What is socially acceptable in one part of my congressional district—much less the country—won't work in another.

All alcohol regulation is a balance between competition, price, and availability, on the one hand, and appropriate control to mitigate immoderate and underage consumption, on the other. Each state must determine how this balance should be achieved and where the appropriate balance point should be fixed. States view alcohol differently and the authority of each state to regulate according to its local norms and standards must be safeguarded. Surely it is not in the public interest to advocate for weak regulations and an unrestricted marketplace.

While I understand that some of our nation's small businesses rely on the internet to widen their marketplace, we must ensure that appropriate precautions and regulations are followed so that the enforcement of state underage drinking laws can be adequately enforced. No one will argue that it is not the state's responsibility to monitor alcohol sales and consumption by instituting and enforcing age restrictions.

Indeed, minors on the internet can purchase cheap wine, beer, or grain alcohol with the click of a mouse and have it delivered to their door. Sting after sting by law enforcement and media consumer protection advocates has shown just how easy it is for minors to buy alcohol online with no I.D. check or age verification. Many online businesses rely on interstate carriers to verify the legality of the alcohol shipments. It is commonplace for the buyer to "self certify" that they are of age. It is up to the individual UPS or FedEx employee delivering the shipment to verify the age of the recipient. The problem is that the Supreme Court has ruled that states cannot require interstate carriers

to verify the recipient's age. This of course, raises questions as to where legal liability would lie if, indeed, a carrier delivered alcohol to a minor without first verifying their age.

Many of the legal decisions rendered since *Granholm* have been conflicting, leaving regulators, attorneys general, and legislatures in a dilemma with regard to their authority to regulate this unique product. We need to clarify Congressional intent that the states are the primary authority for regulating alcohol sales and that they should exercise that authority to protect the public interest. In a narrow, balanced fashion the revised version of H.R. 5034 accomplishes these goals.

H.R. 5034 keeps in place the state's authority to regulate alcohol, but it upholds the high standard of the *Granholm* decision to ensure interstate commerce. The CARE Act expressly prohibits a state from enacting discriminatory laws that favor in-state producers of alcohol to the detriment of out-of-state producers. In fact, the bill preserves the rights of states to enact strict regulations if such regulations advance a legitimate local purpose. Ensuring that minors do not have inappropriate access to alcohol is an example of such a purpose. In the end, the bill would force retailers to be responsible not only to their bottom lines but to communities they serve as well.

While the confusion in the court system spurred by the *Granholm* decision creates regulatory inconsistency based on judicial jurisdiction, this alone makes it necessary for Congress to clarify intent. However, according to the Concerned Women for America,

the authority for states to manage the distribution and sale of alcohol is especially critical for society to effectively regulate access to alcohol by minors. As a conservative, I'm regularly on the side of lessening the regulatory burden on our businesses across America. But I will not endorse a strategy that weakens state laws that help deter underage access to alcohol.