

Testimony by Rep. Mike Thompson (CA-1)

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

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Committee on the Judiciary

2138 Rayburn House Office Building

Good afternoon Chairman Conyers, Ranking Member Smith, Members of the Committee and colleagues. I appreciate the opportunity to testify today.

A few months ago, I testified before the Courts and Competition Policy Subcommittee that the wholesalers' legislative proposal would seriously harm thousands of American businesses that make wine, beer and spirits.

Since the bill – H.R. 5034 – was introduced, these businesses, joined by more than a hundred major organizations like the American Farm Bureau, the National Association of Manufacturers, the American Bar Association's Antitrust Section, Progressive Policy Institute, and Freedom Works, joined in opposition against it because it would discriminate against producers and limit the choices for American consumers.

Today, we are back discussing a rewritten version of this bill, which I can tell you unequivocally is just as damaging as the original version.

This bill is still opposed by wine, beer and spirits producers, including all the major organizations that represent them. It still allows states to discriminate against producers in ways that promote economic protectionism. It would still seriously harm American businesses and take choice away from American consumers.

You'll hear today from legal scholars and industry experts who can tell you the broad, negative implications of this bill. But I am here to tell you how if passed into law this bill would hurt the lives and livelihoods of people across our nation.

I can tell you about the family-run winery that's only in business because of the following they've developed through online sales. The small vineyard that wouldn't be in business – and the ag land that would probably be lost – if wineries couldn't sell directly to retailers and

restaurants. The rural consumer who can't get her favorite spirit unless she can buy it online. The brewery that can't get the wholesalers to pay attention to their microbrew, but is in business because of a cult following nationwide. These are the people this bill hurts. Those entrepreneurs and farmers are scared that Congress is going to irreparably harm their businesses by passing this bill.

Small businesses are struggling in every one of our districts. Times are equally tough for the wineries in my district, but they are finding innovative new ways to reach customers. Many of these wineries are small, with a very limited production, and they have to be innovative because many wholesalers won't give them the time of day! This bill, if passed into law, would keep them from selling an American product to American consumers, and as a result, would threaten thousands of good jobs.

Is this bill needed to solve a problem? Absolutely not. Is the current system broken? No. State-based three-tiered alcohol distribution systems are working extremely well. Are states being treated unfairly? No. A state's right to pass alcohol laws is fully protected by the Constitution. In fact, there are over 4,000 state alcohol laws on the books. And there is no avalanche of litigation to suggest otherwise. Are wholesalers being treated unfairly? No. In California, our wineries can distribute to anyone – consumers, restaurants, even Costco, and our wholesalers are thriving! According to a recent study, the top two wine and spirits wholesalers in California brought in over \$10.5 billion in 2009 sales revenues, and are estimated to bring in \$10.7 billion in 2010, a more than \$200 million increase in the middle of a recession! In the U.S. wine business, the top 10 wholesalers control over 60 percent of the market – clearly they are doing well.

This bill is at best a solution looking for a problem. But if passed, it would be the problem for U.S. businesses and consumers.

The Commerce Clause – from which the alcohol industry would be exempt were this bill to become law – was designed to ensure a fair national marketplace. A state can pass their own laws, they just can't discriminate against out-of-state producers and products. Congress and the Supreme Court have upheld this principle. Why would Congress want to turn back these decisions and deprive family businesses of their constitutional right?

Mr. Chairman and Members, this bill is not needed and would unfairly discriminate against producers and retailers and limit the choices of consumers purely to give a competitive advantage to wholesalers.

I urge you to oppose this bill. Thank you.