

Testimony by Rep. Mike Thompson (CA-1)

“Hearing on Legal Issues Concerning Alcohol Regulation”

March 18, 2010

Subcommittee on Courts and Competition

2138 Rayburn House Office Building

Good afternoon Chairman Johnson, Ranking Member Coble and Members of the Subcommittee. I appreciate the opportunity to testify today.

I understand that this hearing is primarily focused on issues between beer wholesalers and beer producers. I am here today to ask the committee to be very wary of taking sides and avoid legislation that ultimately picks winners and losers rather than picking the path that benefits the public.

As many of you know, my district is home to hundreds of wineries. But it is also home to many small breweries, the most of any congressional district.

Unfortunately, my wine producers heard about this hearing little more than a week ago. We've also learned that there may be a proposal by the National Beer Wholesalers Association to give states complete and total control over alcohol sales, which would have serious negative consequences for wineries, small breweries and retailers, as well as the American consumers who enjoy their products.

State regulation of alcohol is alive and well and has not been impaired since the Supreme Court's Granholm decision. In this direct to consumer shipping case, the decision was simple: states can regulate, but not discriminate. In truth, Granholm and the decisions that came before it give great deference to the 21st Amendment and state regulation of alcohol, but it affirms that these rights do not supersede other provisions of the Constitution, such as the Commerce Clause.

States have never been able to pass unconstitutional laws simply because they deal with alcohol. And we cannot write laws that grant free license to states that create an environment of discrimination and unfairness.

For decades, wholesalers have expended great resources to protect their state-mandated distributions system in ways that have harmed wineries and breweries. These efforts have stunted competition and weakened producers, which ultimately leads to fewer choices for consumers. I hope this hearing will be about stopping these unfair practices.

It's important for you to know that there has been a dramatic increase in the number of wine and beer producers, which has resulted in more jobs for American workers. Wine is produced in all 50 states, including more than 6,000 wineries – a 500% increase in the past 30 years. Yet the number of wine wholesalers has decreased by more than 50%, creating a distribution bottleneck. For example, in my home state, there are only two major wine wholesalers.

Rather than take my word for it, take a look at how the system is working now. There are really no pure three-tier systems in any state. For example, sales of wine are made in a variety of ways, with many transactions not needing a wholesaler. Self-distribution laws allow a winery to sell straight to retailers and tasting rooms sells right to consumers. And when states allow direct to consumers sales and shipping, consumers have many more product choices. All of these transactions are licensed and regulated, and the interests of the states are met with revenue collection and temperance. If any other type of business found ways to provide consumers with better choices in a more efficient manner, we'd applaud them! The wineries in my district rely on these alternative means of licensure. Without it, they'd lose jobs.

The powers vested in the states under the 21st Amendment are not absolute. Forty years of court decisions have made it clear that while state power is great, it must be balanced with other constitutional rights such as the Commerce Clause, the Due Process Clause and the First Amendment. Further, states should encourage, not stifle competition. And

they cannot make efforts to control prices or distribution that violate the Sherman Act or other antitrust principles simple because the product is alcohol.

There are no compelling reasons for Congress to intervene and tip the balance by saying that 1) the 21st Amendment trumps all other provisions of the Constitution, or 2) that these laws be exempt form antitrust principles or 3) that states should not have to bear the burden of proving that their laws do not discriminate.

We've upheld this principle before. In 2003, Congress passed the 21st Amendment Enforcement Act, which originated with the wholesalers themselves. Under this law, State Attorney Generals can access federal courts to pursue litigation for alleged violations of state regulations of alcohol shipping. However, the law says they have to demonstrate the state regulation in question is a valid exercise of power under the 21st Amendment and not inconsistent with any other provision of the Constitution. The proposal being put forth by the National Beer Wholesalers Association would turn that on its head, ceding all powers to the state and ignoring the legitimate role of the federal government and courts.

You may hear today that this legislation is needed to curb litigation by wineries and breweries. These cases are modest in number, but all point to discriminatory state laws that favor wholesalers. We don't need a new federal law – the litigation will stop when the states stop passing discriminatory laws promoted by the wholesalers.

In conclusion, today's hearing should not be about legislation to further protect a monopoly protection distribution system. That would be a power grab with dramatic unintended consequences. And it will be strongly opposed by those who value our nation's wineries and breweries and expanded choice for American consumers.

Thank you.