

SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



FROM: Supervisor Jeff Stone

SUBMITTAL DATE: August 24, 2010

SUBJECT: Resolution No. 2010-270, to Oppose H.R. 5034, the Comprehensive Alcohol Regulatory Effectiveness Act of 2010

**RECOMMENDED MOTION:** That the Board approve Resolution No. 2010-270 opposing H.R. 5034, the Comprehensive Alcohol Regulatory Effectiveness Act of 2010, in order to protect and preserve the ability of California wineries, and all wineries in the United States, to ship wine directly to consumers without discrimination between in-state and out-of-state wine producers.

**BACKGROUND:**

Currently, the United States Constitution advances mutually beneficial trade between the states. To that end, the Commerce Clause grants the U.S. Congress the sole power to regulate interstate trade and bars states from passing laws and regulations that impede such trade. In the Supreme Court case, *Granholm v. Heald* (2005), the court ruled that a state cannot pass laws that discriminate between in-state and out-of-state wineries unless the state could prove that it lacked other means of meeting policy objectives unrelated to protectionism, i.e., public health and safety. Since that ruling, states have begun to liberalize their liquor laws, particularly those regarding the shipping of wine. Problems have been few; adults present proof of legal age and sign to receive shipments. These changes have expanded options for consumers in open states, and pressure is mounting to expand consumer freedom in the other states.

H.R. 5034 would relinquish federal authority of alcohol regulation to the states, pending the careful balance of federal, state and local authority. Among other things, it would eliminate the protections granted by the Commerce Clause of the Constitution in the regulation of wine and alcohol. H.R. 5034 would take away other Constitutional protections as well. It would allow states to pass discriminatory laws and create new and oppressive evidentiary standards that would make it impossible to challenge the new discriminatory state statutes. This bill would allow the elimination of direct-to-consumer shipping in the 37 states and the District of Columbia which allow such sales. This will hurt businesses, jobs, and state and local economies.

H.R. 5034 will reduce consumer choice in wine and hurt wineries. Only 17% of wineries are distributed nationally, and 54% of them were unable to find a wholesaler in states where they actively sought representation, according to a survey by Wine Institute, a public policy trade association representing more than 900 California wineries. As a result, many wineries now rely on direct sales to survive. If a winery cannot secure distribution, but is prohibited from selling to its customers directly, it will be locked out of the market and consumer choice is significantly diminished.

  
\_\_\_\_\_  
Jeff Stone, Supervisor  
Third District

JS:vc

RESOLUTION #2010-270

1     **RESOLUTION BY THE BOARD OF SUPERVISORS TO OPPOSE H.R. 5034, THE**  
2     **COMPREHENSIVE ALCOHOL REGULATORY EFFECTIVENESS ACT OF 2010, IN**  
3     **ORDER TO PROTECT AND PRESERVE THE ABILITY OF CALIFORNIA WINERIES**  
4     **AND ALL WINERIES IN THE UNITED STATES, TO SHIP WINE DIRECTLY TO**  
5     **CONSUMERS WITHOUT DISCRIMINATION BETWEEN IN-STATE AND OUT-OF-**  
6     **STATE WINE PRODUCERS**

7     Whereas, California is the fourth largest wine producing region  
8     in the world; and

9     Whereas, California winegrowers ship over 193 million cases,  
10    representing some 467 million gallons of wine to the United  
11    States wine market; and

12    Whereas, the California wine industry creates more than 330,000  
13    jobs, billions of dollars in economic impact, and preserves  
14    agricultural land and family farms; and

15    Whereas, the California wine industry generates higher taxes than  
16    other industries because, as a regulated industry, it pays excise  
17    taxes to the state and federal government on every gallon of  
18    wine; and

19    Whereas, the California wine industry has an annual impact of  
20    \$61.5 billion on the state economy and produces the number one  
21    finished agricultural product in the state; and

22    Whereas, the California wine industry attracts 20.7 million  
23    tourists annually to all regions of California and generates  
24    wine-related tourism expenditures of \$2.1 billion; and

25    Whereas, currently 37 states and the District of Columbia allow  
26    direct shipping of wine from winegrowers to consumers; and

27    Whereas, the innovation and entrepreneurial spirit of small  
28    California wineries drives the entire industry to improve and  
29    progress; and

30    Whereas, in order to reach consumers in other states, many  
31    California wineries have turned to direct marketing and shipping  
32    of their wines; and

33    Whereas, since 1985, California has pioneered consumer access to  
34    wine through reciprocal and permit shipping to alleviate scarcity

at the retail level of California wines; and

1 Whereas, over the past 10 years, consolidation trends within the  
2 wholesale tier have made it difficult for California wineries to  
3 achieve adequate distribution and as a result have limited  
4 consumer choice; and

5 Whereas, California wineries have offered voluntarily to have  
6 their direct marketing and shipping permitted and regulated by  
7 other states to ensure that those states collect the same taxes  
8 that wines sold through the three-tier system must pay, that  
9 direct deliveries would be made only to adults, and that direct  
10 deliveries are not made in "dry" areas, as defined under the laws  
11 of each state; and

12 Whereas, the California wine industry has developed comprehensive  
13 model direct shipping legislation to address all of the concerns  
14 expressed by state alcohol regulators across the country; and

15 Whereas, California has enacted a law to pen direct shipping of  
16 wine from other states to its own residents without limitation  
17 through a simple permit system to comply with the decision in  
18 Granholm v. Heald (2005) 544 U.S. 460; and

19 Whereas, States' rights to regulate wine and alcohol granted by  
20 the 21<sup>st</sup> amendment to the United States Constitution have always  
21 been subject to constitutional limitation and judicial review;  
22 and

23 Whereas, Court decisions over the last 40 years balance state  
24 authority to regulate alcohol with the framer's belief that the  
25 nation would only succeed if interstate commerce thrived; and

26 Whereas, the Commerce Clause has been applied judiciously by the  
27 courts to foster national economic goals while preserving  
28 nondiscriminatory state authority; and

Whereas, the landmark 2005 United States Supreme Court case,  
Granholm v. Heald, reaffirmed states' rights under the 21<sup>st</sup>  
Amendment to the United States Constitution to regulate wine as  
long as they do not discriminate between in-state and out-of-  
state producers, and correctly rules that these rights do not  
supersede other provisions of the Constitution; and

Whereas, H.R. 5034 would severely limit consumer choice in  
California wine throughout the nation as direct-to-consumer laws  
are amended or repealed; and

1 Whereas, H.R. 5034 would imperil markets access for California  
2 wineries that cannot secure effective wholesale distribution; and

3 Whereas, H.R. 5034 would stunt competition among the nation's  
4 7,011 wine producers as markets are artificially constrained and  
5 access is limited; and

6 Whereas, H.R. 5034 would allow certain state alcohol laws to  
7 avoid judicial scrutiny through a presumption of validity; and

8 Whereas, H.R. 5034 would reverse decades of long-established  
9 jurisprudence that has balanced interstate commerce concerns with  
10 state regulatory authority and fostered a dramatic growth in wine  
11 production sales and tax revenue; and

12 Whereas, H.R. 5034 would insulate and sanction discriminatory  
13 state laws by reversing evidentiary rules for Commerce Clause  
14 legal challenges and increasing the burden of proof for  
15 plaintiffs; and

16 Whereas, H.R. 5034 would be an unprecedented shift in the  
17 relationship between federal and state authority over wine; and

18 Therefore, Be It Resolved, that the Board of Supervisors of the  
19 County of Riverside formally opposes H.R. 5034, the Comprehensive  
20 Alcohol Regulatory Effectiveness Act of 2010 in order to protect  
21 and preserve the ability of California wineries, and all wineries  
22 in the United States, to ship wine directly to consumers without  
23 discrimination between in-state and out-of-state wine producers.  
24  
25  
26  
27  
28