



March 25, 2010

The Honorable Hank Johnson
Chairman
House Judiciary Subcommittee on
Courts and Competition Policy
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Howard Coble
Ranking Member
House Judiciary Subcommittee on
Courts and Competition Policy
2138 Rayburn House Office Building
Washington, DC 20515

VIA EMAIL

RE: Hearing on Legal Issues Concerning State Alcohol Regulation by the Subcommittee on Courts and Competition Policy – Committee on the Judiciary

Dear Chairman Johnson and Ranking Member Coble:

Marin Institute appreciates the opportunity to comment on the matter pending before the Subcommittee on Courts and Competition Policy involving the Legal Issues Concerning State Alcohol Regulation. Because Marin Institute did not testify at the hearing held by the subcommittee on March 18, 2010, we now submit these written comments.

Founded in 1987, Marin Institute is a nonprofit organization whose mission is to protect the public from alcohol-related harm. We advance policies to reduce over-consumption and monitor alcohol industry practices that undermine public health and safety. Given this background, Marin Institute is uniquely qualified to comment on the legal issues concerning state alcohol regulation and to help ensure that any changes to the federal oversight of alcohol are made in the interest of public health and safety.

GENERAL CONCERNS

The history of alcohol use and regulation in the United States is a study in contrasts that resulted in two Constitutional amendments. With the passage of the 21st Amendment, the federal government granted the states the authority to regulate alcohol. Since that

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time, states have established varying regulatory systems that allow for the orderly distribution and taxation of alcohol within their borders. While there is always room for improvement, the regulation of alcohol by the states has by most measures been a success that balances the desire of adults to consume alcohol with the state's right and duty to protect the public's health and safety.

While times have improved since the era before Prohibition, problems with alcohol still persist. Every day the lives of people in the United States are affected by problems associated with alcohol use. The U.S. Centers Disease Control and Prevention estimates nearly 80,000 Americans die each year from alcohol-attributable deaths. Other problems include underage drinking, drunk driving, violence, and addiction, as well as broader societal costs including lost work productivity, healthcare costs, and criminal justice costs. State laws and regulations controlling alcohol sales were passed to help protect the health and safety of the public. It is this public imperative that must be protected and strengthened.

Over the past few years, market forces have been challenging state regulatory authority and threaten to undermine the protections every state has established. Court cases such as those in *Granholm v. Heald*¹ and *Costco v. Hoen*² are chipping away at the authority of states to regulate the sale of alcohol within their borders by allowing the direct shipment of alcohol by out-of-state retailers into states and by undermining in-state distribution systems. Similarly, efforts for federal action to preempt states' ability to control alcohol sales and other business practices such as labeling and advertising will further undermine the public health and safety that state-based regulation protects.

AREAS OF SPECIFIC CONCERN

I. ACCESS TO ALCOHOL

The scientific literature is abundantly clear that the more access people (especially youth) have to alcohol, the greater the number of problems communities will suffer. In addition to the individual struggles of dependence and addiction, societal challenges include drunk driving, increased health care costs, violent crime, child abuse and neglect, just to name a few. In addition to the specific comments below, Marin Institute stresses that in all considerations, the subcommittee should bear this reality in mind.

Currently states have the authority to directly sell alcohol or license private retailers to do so. By controlling where and when alcohol is sold, states can seek to prevent those issues associated with increased availability. For example studies have demonstrated that the higher the alcohol outlet density in a given area, the greater the incidence of community violence, drinking-driving incidents, injuries, underage drinking, public nuisance activities, among other societal problems. Because states are in the best position to evaluate and address problems facing its communities, Marin Institute supports actions that reinforce the authority of states to regulate all aspects of the sale of alcohol within its borders.

¹ 544 U.S. 460 (2005).

² 538 F.3d 1128 (2008).

Similarly, Marin Institute supports actions that limit the direct shipment of alcohol. The ease of Internet sales has the potential of undermining the ability of states to fully account for the sale of alcohol within its borders. Marin Institute supports actions that allow for states to strictly limit or ban Internet sales of all alcoholic beverages. Such strict measures are necessary because in addition to the aforementioned problems associated with increased access to alcoholic beverages, Internet sales present increased opportunities for underage youth to purchase alcohol, which is nearly impossible to police. In addition, Internet sales represent an end-run around the three-tier system that potentially deprives the government of taxes paid by wholesalers.

II. PRICING

Marin Institute strongly supports measures that reinforce the authority of states to set the prices for alcohol. Substantial research shows that higher prices of alcohol are associated with reduced alcohol consumption and alcohol-related problems, especially in youth. As a result, the subcommittee ought to seek to reinforce the rights of states to set the price of alcohol both through control measures and taxation.

III. LABELS & ADVERTISING

Marin Institute supports the ability of states to regulate labeling and the advertising of alcoholic beverages within its borders. Alcohol advertising and packaging have been shown to influence both adult and underage drinking. As a result, active regulation of labels and advertising can have a positive impact on reducing alcohol consumption.

Some have argued that combined with federal labeling laws, state labeling laws are unnecessary, duplicative, and result in a lack of uniformity. However, this argument presupposes that one, the federal government is better suited to establish labeling rules for than state authorities; and two, the need for alcohol companies to enjoy uniform labeling outweighs a state's citizens to have the most effective labeling laws possible, neither of which is necessarily true. Moreover, the 21st Amendment grants states with the power to regulate alcohol within their border. As for concerns with regard to advertising, states are already held accountable by the 1st Amendment.

IV. THREE-TIER SYSTEM

Maintaining the integrity of the three-tier system is necessary for ensuring the health and safety of the public. The three-tier system ensures that alcoholic beverages are distributed and sold in a responsible manner. By requiring all alcoholic beverages sold in states to go through the channels established in a three-tier system, states are able to more easily hold parties responsible for violations of the law, as well as more easily collect taxes. Prior to the establishment of the three-tier system, manufacturers could sell directly to drinkers through tied houses. These vertically integrated systems often resulted in overly aggressive marketing and excessive sales, which in turn led to problems with over-consumption. Because larger manufacturers were not located in

many of the communities in which their beverages were sold, it was difficult for communities to hold manufacturers responsible for their irresponsible sales practices.

The system now requires manufacturers to sell their products to local or regional distributors, who in turn sell the products to local retailers. The three-tier system creates a structure that ensures that the state has adequate oversight of alcohol sales. It is in this way that the three-tier system helps prevent aggressive and abusive marketing and sales techniques, as well as encourage moderation. For these reasons, Marin Institute strongly supports maintaining the integrity of the three-tier system.

V. ANTITRUST AND INDUSTRY CONSOLIDATION

Finally, we want to point out two reports Marin Institute released last year that illustrate concerns we have regarding the increasing consolidation of the alcohol industry, the potential impacts on the state-based three-tier distribution system, along with other public health concerns: “Big Beer Duopoly: A Primer for Policymakers and Regulators”³ and “The Myth of the Family Winery: Global Corporations Behind California Wine.”⁴

CONCLUSION

Alcohol use remains a major problem in America today. Increasingly powerful forces are challenging state regulatory authority that threatens to undermine the protections each state has established. Thus, the subcommittee must be careful to consider any proposed change within the greater context of public policy and public interest.

While chipping away at the current regulatory system may provide some economic benefit to a few businesses in the short run, the long-term toll on public health and safety will ultimately be felt (and paid for) by everyone, personally and collectively. Instead, the subcommittee can seize this opportunity to recommend strengthening the regulatory authority of states, and more broadly reduce alcohol-related harm and ensure that the public health and safety of the American people remain the top priority.

Thank you for the opportunity to comment on this important matter.

Sincerely,

Michele Simon, JD, MPH
Research and Policy Director
Marin Institute

³ Available here: http://www.marininstitute.org/site/images/stories/pdfs/big_beer杜opoly.pdf.

⁴ Available here: <http://www.marininstitute.org/site/images/stories/pdfs/winemythereport.pdf>.