MYTH VS. FACT ON H.R. 5034

H.R. 5034 is special-interest legislation that pretends to protect the public and reaffirm states' rights, but is really intended to put more money in wholesalers' pockets by doing an end-run around the Constitution. It would give wholesalers the ability to pass discriminatory laws that give them unfettered monopoly power, harm consumers, small businesses, jobs, and state and local economies.

There are many myths being circulated about this bill. Below are the facts about the impact H.R. 5034 would have on American businesses, the U.S. economy, and consumer choice if enacted into law.

MYTH: H.R. 5034 reaffirms that states have the primary authority to regulate alcohol."
FACT: Current state regulations are effective and every state taxes and controls alcohol beverages through various and effective measures. New federal legislation that preempts the Commerce Clause is unwarranted and unwise in an environment that already facilitates safe, balanced, and secure alcohol regulation at the federal, state, and local level. The bill is not an attempt to reaffirm states' rights (this isn't necessary), but rather to remove Constitutional values of fairness and equity altogether.

MYTH: H.R. 5034 would stop the avalanche of state lawsuits that are further burdening strained budgets.
FACT: In 2007, there were 30 court cases in state courts; today, there is only one case (Texas) pending in courts across the country.

MYTH: H.R. 5034 is for the benefit of the states, and has been endorsed by numerous Attorneys Generals.
FACT: The National Association of Attorneys General (NAAG) has no position on this bill. In fact, Washington State Attorney General Rob McKenna and 9 other state AGs felt so strongly about being misrepresented, they issued letters stating opposition to, or neutrality about, H.R. 5034.

MYTH: H.R. 5034 does not overturn *Granholm vs. Heald.*
FACT: The bill reduces the Supreme Court decision in *Granholm vs. Heald* to a narrow factual exception to the broad general rule that states can discriminate in open defiance of the Commerce Clause. The bill allows states to discriminate without qualification except when it facially discriminates against producers. In those situations, the state must show that it could not accomplish its goals by nondiscriminatory means. Yet non-facial discrimination against producers would be allowed. The lesson for states is that if it chooses to discriminate against producers, it should do so in a non-facial manner.

MYTH: H.R. 5034 protects consumers from deregulation of alcohol beverages.
FACT: There is no threat of alcohol deregulation. In fact, with direct-to-consumer shipping of wine available in 37 states and the District of Columbia, there is now more, and clearer, regulation of wine. Rather than protecting consumers, the bill would allow states to discriminate in such areas as taxation and product formulation. States don't need to discriminate to protect consumers.

MYTH: H.R. 5034 would not impact consumer choice.
FACT: Direct-to-consumer shipments accounted for $1 billion in annual sales through March 2010. The bill would lead to the passage of non-facial discriminatory laws such as those that require face-to-face transactions or that establish capacity or size restrictions that favor in-state interests . This bill is forcing Congress to pick winners and losers in an intra-industry dispute rather than fostering open competition and free markets.

MYTH: H.R. 5034 would not undermine small businesses, job creation, or economic growth.
FACT: This bill would stunt the economic growth of America's wineries, breweries and distilleries at a time when they're struggling to rebound from the recession. Direct-to-consumer shipping is critical to the survival of America's wineries that cannot get wholesalers to distribute their products. State and local tax revenue from grape products in 2007 was nearly $8 billion. Wineries are important tourist destinations, attracting 27 million visitors and supporting other businesses such as hotels, restaurants and shops. America's 6,700 wineries – the vast majority of which are small,

family-owned farms – are responsible for more than $20 billion in sales and support more than 1 million U.S. jobs. The legislation would make it virtually impossible for wineries harmed by discriminatory laws to seek legal recourse.