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**To the Committee on the Judiciary  
House of Representatives  
United States Congress**

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

**September 29, 2010**

## TESTIMONY OF MICHELE SIMON, MARIN INSTITUTE, IN SUPPORT OF H.R. 5034

Thank you to Chairman Conyers and to the members of the Committee for the opportunity to testify at this hearing in support of H.R. 5034.

I am a public health lawyer and the Research and Policy Director at Marin Institute, a nonprofit whose mission is to protect the public from alcohol-related harm. In addition to almost four years of experience in alcohol policy, I am also a recognized expert in food policy. As a result of my educational training in law and public health, combined with many years of experience, I have become a strong advocate for the rights of states, whether under the broad police powers granted by the 10<sup>th</sup> Amendment, or under the specific authority of the 21<sup>st</sup> Amendment, to enact laws to protect public health.

While the discourse over this bill has pitted different sectors of the alcohol industry against each other, we offer our unique public health perspective. It is irrelevant to us if the bill favors any particular party's economic interests. Marin Institute often disagrees with the industry proponents of this bill on other matters, and will likely continue to do so. Our goal is to advance policies to reduce alcohol harm. Likewise, this Committee's deliberations should be focused on what is in the best interests of the public.

Founded in 1987, Marin Institute advances policies to reduce over-consumption of alcohol and the many physical, mental, and societal harms that result. Marin Institute also monitors and reports on alcohol industry practices that can undermine public health and safety. While our organization is based in California, we have always been a national leader and we closely monitor and promote sound alcohol policy in every state.

More specifically, we work closely with public health advocates at the state and local levels throughout the nation, supporting them to effectively reduce underage drinking and adult over-consumption and related alcohol-related harm in their communities. In working with our allies, I can attest to the critical role that state regulation of alcohol plays in protecting public health. The current state-based system of alcohol regulation has been in place for a long time because for the most part it works well. So I testify today on behalf of the thousands of people doing this crucial work in every state.

Indeed I just returned from speaking in Wisconsin and Massachusetts where state and local lawmakers, along with public health advocates, were gathered to learn how they can help advance effective policies to reduce alcohol harm in their communities. At both events, it was well understood that states have the authority to regulate alcohol. And yet this authority, which has largely been taken for granted, is increasingly coming under attack by those who want to see federal law trump well-established state authority. This is why Marin Institute supports the CARE Act, and why we're asking for your support.

### **Alcohol Consumption: Still a Major Threat to Public Health and Safety**

Far from a benign substance, alcohol use causes a wide variety of harm, even when consumed at what the federal government defines as moderate levels. Unfortunately,

unlike other public health problems (such as smoking) the serious scope of alcohol-related harm largely goes unrecognized by the general public and policymakers alike.

In the United States today, alcohol is the third leading cause of preventable death.<sup>1</sup> In 2000 (the most recent year for which figures are available), 85,000 deaths were attributable to alcohol consumption.<sup>2</sup> Moreover, according to the Surgeon General's 2009 "Call to Action" on underage drinking, approximately 5,000 people under the age of 21 die annually from injuries caused by drinking alcohol.<sup>3</sup>

While of course, the impact of these figures is felt most significantly by the families of the victims, society at large also bears much of the burden. The economic costs of alcohol were estimated to have been a startling \$220 billion in 2005.<sup>4</sup> Much of that cost is from lost productivity, meaning that businesses and our economy also suffer greatly.

In addition, our healthcare system bears a tremendous burden from alcohol consumption. According to the U.S. Centers for Disease Control and Prevention, in 2005 alone, there were more than 1.6 million hospitalizations and 4 million emergency room visits for alcohol-related conditions.<sup>5</sup> Other research has estimated U.S. healthcare costs from alcohol problems amount to more than \$26 billion annually.<sup>6</sup>

The alcohol-related harm experienced by Americans is not only felt on a national level. State and local governments across the U.S., along with communities, also bear the personal and financial burden of alcohol over-consumption and its related harm.

In 2008, Marin Institute published a landmark study, estimating the total annual cost of alcohol problems in the state of California. The results included deaths, hospitalizations, crimes, traffic crashes, and economic losses both to individuals and to society. We found that the total economic cost of alcohol use is \$38.4 billion annually, with more than 10,000 lives lost each year in California due to alcohol consumption.

California's data is but one example, albeit a large one, of the multitude of problems states experience from alcohol sales and consumption. Sadly, because most states do not have the resources to conduct similar analyses, we are lacking in the data to describe the specific burdens experienced by each state. But we know it is significant.

### **Federal Agency Recognition of Alcohol Problems**

Due to the severity and significance of the problems alcohol causes throughout our country, numerous federal agencies work to assist states in addressing their many alcohol-related prevention, treatment, law enforcement, and research needs. Many of the local groups that Marin Institute works with and supports in various states are actually funded in whole or in part by one or more of these federal agencies.

These agencies include: the Substance Abuse and Mental Health Services Administration (SAMHSA) and its Center for Substance Abuse Prevention, which

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houses the National Clearinghouse for Drug and Alcohol Information and has developed the Strategic Prevention Framework, which promotes community-based solutions; the Department of Education's Higher Education Center for Alcohol, Other Drug Abuse and Violence Prevention; and the Department of Labor's Working Partners for an Alcohol- and Drug-Free Workplace. Also, the Office of National Drug Control Policy directs the Drug-Free Communities Support Program in partnership with SAMSHA.

Especially important to reducing underage drinking through law enforcement and other strategies is the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, which supports states and local communities in their efforts to develop and implement effective alcohol prevention programs for youth. Also, the Department of Defense has an Alcohol Abuse and Tobacco Use Reduction Committee to address concerns about alcohol use and related harm in the military.

The Department of Transportation's National Highway Traffic Safety Administration and the Department of Health and Human Services' Centers for Disease Control and Prevention also allocate some of their resources toward reducing alcohol-related harm. The CDC is especially critical in providing researchers the tools they need to measure alcohol harm in specific populations and geographic areas. Finally, the National Institute of Alcoholism and Alcohol Abuse and the National Institute on Drug Abuse both research important topics such as the various types of harm attributed to alcohol use.

Each of these agencies provides critical support in the form of data collection, educational materials, and funding for programs and other resources that assist efforts at the state and local levels to prevent alcohol harm in communities. While these federal resources remain insufficient to address the true scope of the problem (and are increasingly being cut back), the CARE Act could go a long way to help ensure that such efforts are not undermined by current legal threats to state-based regulation.

### **State-based Regulation Under Attack**

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 21<sup>st</sup> Amendment, the federal government granted the states the authority to regulate alcohol. After the pervasive lawlessness of the Prohibition era, states wanted to restore legitimacy to the government and law enforcement while minimizing alcohol consumption and its various associated harms—the conditions that led to Prohibition in the first place. The idea was to balance people's desire for legal alcohol sales with the government's interest in protecting public health and safety.

Since that time, states have established varying regulatory systems that allow for the orderly distribution and taxation of alcohol within their borders. Regulatory models vary to some extent among states, but all express a policy of restricting alcohol availability to reduce consumption and associated problems. 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 consumers to consume alcohol with the state's right and duty to protect the public's health and safety.

Whether it is through the direct sale alcohol, the licensing of retailers, or a combination of the two, the most direct and effective method for states to reduce problems with alcohol is to control its sale. The scientific literature is abundantly clear that the more access people (especially youth) have to alcohol, the greater the number of alcohol related problems communities will suffer.

The benefits of state alcohol control are significant: lower consumption, especially by underage youth; less alcohol-related harm; and a stable source of revenue for state services and programs. State laws and regulations controlling alcohol sales were passed to help protect the health and safety of the public; however, certain special interests are challenging state regulatory authority and threaten to undermine the very protections every state has established.

One such legal challenge by the wine sector went as far as the Supreme Court of the United States. In *Granholm v. Heald*, the Court struck down laws in Michigan and New York that permitted direct shipping from in-state wineries but forbade it from out-of-state. *Granholm* was meant to be a narrow decision dealing with discrimination between in-state and out-of-state wineries, but there has since been a proliferation of lawsuits fighting to expand *Granholm*'s meaning to allow further deregulation. Various lawsuits have challenged volume caps, online retailers and license restrictions, supplier-owned wholesalers operations, and in-person purchase requirements—all the very types of regulations that can promote moderate consumption and reduce alcohol-related harm.

Court rulings such as those in *Granholm v. Heald* and *Costco v. Hoen* 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, as well as issues such as labeling and advertising, will further undermine the public health and safety that state regulation promotes. Rather than allowing the continual erosion of this public imperative, in contrast, state-based alcohol regulation should be protected and strengthened.

## **Examples of State-based Regulation to Protect the Public**

### **I. Access to Alcohol**

As noted above, the scientific literature is abundantly clear that the more access people (especially youth) have to alcohol, the greater the number of problems communities will experience. In addition to the individual struggles of dependence and addiction, societal challenges include impaired driving, increased health care costs, violent crime, suicide, and child abuse and neglect, just to name a few.

Currently, states have the authority to either directly sell alcohol or license private parties to do so. By controlling where and when alcohol is sold, states can seek to prevent those problems 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, and public nuisance activities, among other societal problems. Because states are in the best position to evaluate and address problems facing their communities, Marin Institute supports policies that reinforce the authority of states to regulate all aspects of the sale of alcohol within its borders.

Similarly, Marin Institute supports actions that limit the direct shipment of alcohol. The Internet has created a more interconnected world; however, this also potentially undermines the ability of states to fully account for the sale of alcohol within its borders. Marin Institute supports policies that allow 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 are nearly impossible to police. In addition, Internet sales represent an end-run around the three-tier system that potentially deprives government of tax revenue.

## **II. Pricing**

Marin Institute strongly supports measures that reinforce the authority of states to advance policies that ensure alcohol is priced reasonably to ensure public safety. For example, policies that prohibit volume discounts make good sense from a public health perspective. Substantial research shows that higher alcohol prices are associated with reduced alcohol consumption and alcohol-related problems, especially in youth. As a result, Marin Institute is concerned about legal challenges by certain chain stores in the retail sector over pricing. The only consideration should not be cheap prices for consumers. In fact, such concerns should be secondary to public health and safety.

## **III. Three-Tier System**

Maintaining the integrity of the three-tier alcohol control 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 more easily able to 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.

#### **IV. Labeling and 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 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. As for free speech concerns with regard to advertising, states are already held accountable by the 1<sup>st</sup> Amendment.

#### **Conclusion**

Although the battle over the control of alcohol sales and distribution may seem like any other rhetorical debate over the role of private industry and government regulation, there is an important difference: The demonstrated likelihood of diminished state regulation of alcohol to increase the number of lives lost, damaged, and forever changed by alcohol consumption. For decades, alcohol has been recognized as being different, because it is. The cornerstone of that recognition is the state's authority under the 21<sup>st</sup> Amendment to regulate the sale of alcohol to ensure an orderly marketplace.

Alcohol use remains a major problem in America today. While it is not the health and safety catastrophe that it was prior to Prohibition, special interests are constantly challenging state regulatory authority and continuously threatening to undermine the protections every state has established that prevent problems from getting worse.

As long as the public and policymakers think this is all just an industry food fight, the science and historical context to support strong state regulation gets lost in the shuffle. While the fight between alcohol distributors and producers presents an obvious disagreement of economic interests, H.R. 5034 must not be dismissed as industry infighting. Indeed, alcohol wholesalers and distributors are subject to state-based regulation whether or not it happens to support that sector's economic interests.

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The Committee should be careful to consider decisions about state control of alcohol with public health and safety as the top priority. While chipping away at the current regulatory system may provide economic benefit to some businesses in the short run, all of us—individually and collectively—will ultimately suffer from the long-term toll on public health and safety, along with the related societal economic burdens.

Through our engagement with advocates and community members around the nation, we continue to see firsthand the critical role that state regulation plays in curbing potential harm from alcohol sales and consumption. Thousands of people throughout our nation work at the state and local levels to reduce underage drinking and adult over-consumption, and they rely heavily on the authority granted by the 21<sup>st</sup> Amendment to be able to continue to do so. H.R. 5034 supports the public health and prevention efforts of these advocates. Moreover, it supports the health and safety of each one of us.

The Committee can seize this rare opportunity to strengthen 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. In conclusion, we urge the Committee to support this important bill, and to continue to seek additional ways to shore up critical state-level efforts to reduce alcohol-related harm.

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

### Citations

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<sup>1</sup> Institute for Health Policy. Brandeis University. *Substance Abuse: The Nation's Number One Health Problem: Key Indicators for Policy*. Princeton, NJ, Robert Wood Johnson Foundation, 1993. Smoking remains number one, while poor diet and lack of exercise are second.

<sup>2</sup> Mokdad AH, Marks JS, Stroup DF, Gerberding JL. Actual causes of death in the United States, 2000. *JAMA*. 2004;291:1238-1245.

<sup>3</sup> U.S. Department of Health and Human Services. The Surgeon General's Call to Action To Prevent and Reduce Underage Drinking. U.S. Department of Health and Human Services, Office of the Surgeon General, 2007. Available at: <http://www.surgeongeneral.gov/topics/underagedrinking/calltoaction.pdf>. Accessed July 22, 2009.

<sup>4</sup> Center for Addiction and Substance Abuse cost of living adjustment, using the Bureau of Labor Statistics Inflation Calculator, of 1998 data by Harwood, H. (2000). Updating Estimates of the Economic Costs of Alcohol Abuse in the United States: Estimates, Update Methods, and Data. Report prepared by The Lewin Group for the National Institute on Alcohol Abuse and Alcoholism, 2000.

<sup>5</sup> Centers for Disease Control and Prevention (CDC). General Information on Alcohol Use and Health. Available at: [http://www.cdc.gov/Alcohol/quickstats/general\\_info.htm](http://www.cdc.gov/Alcohol/quickstats/general_info.htm). Accessed July 9, 2009.

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