

**Testimony of Richard A. Doyle
Chairman & CEO of The Harpoon Brewery**

On Behalf of

The Brewers Association

Hearing on HR 5034

“Comprehensive Alcohol Regulatory Effectiveness Act of 2010”

United States House of Representatives

Committee on the Judiciary

September 29, 2010

Background on The Harpoon Brewery

Two friends and I founded The Harpoon Brewery was founded in Boston in 1986. Today we employ 135 people and operate breweries in Boston, Massachusetts, and Windsor, Vermont. Our 2009 production ranked The Harpoon Brewery as the 10th largest craft brewery in the US. We sell our beer in 25 states.

Background on Brewers Association

The Brewers Association represents 1,100 of the 1,600 small brewers from every American state and the District of Columbia. More than 19,000 homebrewers and adult beer consumers around the nation belong to our affiliate, the American Homebrewers Association. More than 700 larger brewers, beer wholesalers, vendors, and individual brewing professionals are associate members.

Mr. Chairman and Members of the Committee, my name is Richard Doyle, and I am Chairman and Chief Executive Officer of The Harpoon Brewery. We operate breweries in Boston, Massachusetts and Windsor, Vermont. On behalf of the Brewers Association, I appreciate the opportunity to speak today. I am here to give you a small brewer's view of HR 5034. You are entrusted to make the rules, and I want to provide my perspective on what it would be like to successfully play by the rules if HR 5034 is enacted.

The wholesale or middle tier, of the three tier system of beer distribution is very important to small brewers. We do not have the scale to establish our own distribution network and need wholesalers to reach markets, particularly in other states. A successful and vibrant middle tier is vital to the interest of small brewers and our consumers.

By and large, the current system has also served the public well for the last seventy-seven years. There is a delicate balance between state-based regulation that reflects the needs of individual states and a federal role to promote and protect interstate commerce. Passage of HR 5034, even in its amended form, risks exposing that delicate balance to unintended consequences.

Our brewery sells beer in twenty-five states. The wholesalers we sell to typically do business in only one state. State franchise laws, with the stated goal of protecting wholesalers from dominant large brewers are also used to dictate the terms of trade between small brewers and wholesalers. I have worked through franchise agreements mandated by state laws with dozens of wholesalers, and we have developed beneficial business relationships and even friendships. But those negotiations are always tough because state laws provide wholesalers with strong leverage. We are always the "away team" playing in a state system that favors the "home team" wholesalers. HR 5034 would undeniably make this situation worse. Not only would we be

playing away, but the state-based referee would not have any concern about being tempered by federal oversight.

Similarly, small brewers also are concerned about the diminution of the federal role. State label regulation is a good practical example of how subtle discrimination would work. If we are required to have twenty-five different labels for the twenty-five states where Harpoon sells beer, the cost would be prohibitive. We would not be able to manage the inventory and keep our beer fresh. We would need to sell in fewer states and our brewery and our customers would be worse off. Small brewers also tend to make many different styles of beer, which only compounds any state-based labeling requirements. This is not a hypothetical situation. In the last two years, wholesalers have lobbied successfully in Michigan and New York for unique labeling requirements. The New York law was struck down as a violation of the Commerce Clause, and the Michigan legislation had to be amended to exempt small producers. Under HR 5034, those laws would stand, and I would be at a great disadvantage in both states.

We appreciate the threat that wholesalers feel to their businesses from a change of the status quo, and more power flowing to large retailers. However, we do not think that solving a problem for wholesalers by creating a problem for brewers makes sense. It is very unfortunate that more than a year of discussion between wholesalers and suppliers did not yield a compromise. Brewers large and small worked very hard and in good faith to reach a compromise despite the fact that there was nothing we would gain from the legislation.

Each version of HR 5034 that we have seen this year is detrimental to small brewers in three respects. First, it repeals the Wilson Act of 1890, which prohibits discrimination against out-of-state producers and products. Second, the new language in HR 5034 encourages states to adopt laws that discriminate in subtle ways. Finally, the bill diminishes the federal role in regulating interstate commerce.

As a small brewer in Massachusetts, I do not have the resources to fight every discriminatory state statute and regulation that restricts my ability to compete and to grow in other states. I spend thousands of dollars every year attempting to comply with state laws, many of which were clearly intended to protect local economic interests. I make great beers, and I want to sell them to your constituents.

The Harpoon Brewery in Boston is across the harbor from the Bunker Hill monument, and I am reminded every day of the wisdom and the sacrifices of those who founded our nation. In practical terms, the drafters of our constitution understood that legislators will always try to help their constituents. From the aftermath of Prohibition to the 2010 session of the Massachusetts Legislature, thousands of protectionist state bills have been introduced and many have been signed into law.

Great principles of limited government and free enterprise are often ignored when local economic interests and legal authority are combined with no checks and balances. The federal courts provide that constitutional check, and they have exercised it responsibly in decisions concerning alcohol beverages. The Supreme Court and appellate courts have overturned a relative handful of unconstitutional state laws. Those policies clearly favored state and local

interests or reduced competition in ways that have nothing to do with temperance or public safety.

Mr. Chairman, you and I come from cities in the Northeast and the Midwest that have suffered greatly in the current economic climate. I do not believe, however, that additional state regulation of alcohol distribution will help us navigate these uncertain times.

In closing, I respectfully urge the Committee to refrain from reporting HR 5034. Federal legislation is not needed to better address underage drinking, drunk driving, or other problems that rightly concern Congress, state lawmakers, and all conscientious citizens. Our industry is already adequately regulated at the federal and state level. No credible group or industry organization is attempting to deregulate the sale and consumption of beer, wine, and spirits. In 2010, I cannot think of any regulated business or social relationship in the United States in which Congress would step in to give a green light to discrimination.

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