



Opinion



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# Beware of CARE

**By: [Jacob Grier](#)****Special to The Examiner****08/19/10 2:33 PM EDT**

As a general rule, the cuter the acronym politicians attach to a bill, the worse that bill actually is. Such is the case with the CARE Act, a.k.a. The Comprehensive Alcohol Regulatory Effectiveness Act, currently before Congress. The bill is backed by wine and beer wholesalers who benefit from a restrictive three-tier alcohol distribution system and opposed by, well, [pretty much everyone else in the alcohol industry](#).

The bill would essentially undo [Granholm v. Heald](#), the landmark 2005 Supreme Court case that helped liberalize wine shipping laws in the United States. At issue is Section 2 of the 21st Amendment repealing Prohibition, which states:

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Read literally, the amendment seems to imply that states can pass any law they please regarding alcohol without concern for the rest of the Constitution. Historically, however, the amendment was intended only to ensure that individual states could choose to remain dry, as was the case with the patchwork of temperance laws that existed before Prohibition. It was not meant to exempt alcohol laws from all other review. (For more on this interpretation, see Stuart Banner's contribution to the [Cato Supreme Court Review 2004-2005](#), "[Granholm v. Heald: A Case of Wine and a Prohibition Hangover](#).”)

Unfortunately, some early Supreme Court rulings took a literal view of the amendment, allowing states to pass discriminatory laws that would have clearly been unconstitutional if applied to any other product. The laws challenged in *Granholm* specifically favored in-state wineries over out-of-state wineries. Michigan allowed only the former to ship directly to consumers, forcing wineries in other states to go through a distributor. New York technically allowed direct shipping from out-of-state but placed restrictive and expensive hurdles in the way of wineries who sought to sell there. Rejecting post-Prohibition precedent, the Court struck down both of these laws as violations of the Dormant Commerce Clause, opening state alcohol regulations that treat in- and out-of-state producers unequally to challenge in the courts. The decision was a clear win for consumers and smaller wineries, who are often unable to find or afford distributors willing to connect them to each other in the three-tier system.

The CARE Act would reverse this salutary decision by insulating state laws from judicial review. It would compel courts to interpret state laws challenged under the Commerce Clause as having “a strong

presumption of validity” and putting the burden of proof on challengers to show that a law has “no effect on the promotion of temperance, the establishment or maintenance of orderly alcoholic beverage markets, the collection of alcoholic beverage taxes, the structure of the state alcoholic beverage distribution system, or the restriction of access to alcoholic beverages by those under the legal drinking age.”

Just about any law could be said to have some effect on those goals. The better question, and the question asked by the Court in *Granholm*, is whether those goals can be met without discriminating against out-of-state wineries. And clearly they can: The location of a winery has no bearing on whether it could mistakenly ship wine to a minor. Current jurisprudence allows states to forbid such shipments, and many of them do. They just have to be consistent about it. The claim that important state interests are being undercut by courts is a canard.

So who would benefit from the CARE Act? Not small wineries, who would lose their ability to reach out-of-state customers. And certainly not consumers, who will have to deal with higher prices and reduced selection. The law would benefit only wholesalers, who hate seeing a bottle of wine, beer, or liquor slip into their states without collecting their cut. Wholesalers have [contributed more than \\$2 million to congressmen](#), earning them 136 co-sponsors of the bill in the House.

The CARE Act is a clear sop to wholesalers at the expense of everyone else. At a time when buyers of countless other products enjoy the long tail of diverse options available for order online, wholesalers want to trap alcohol consumers in a 1930s model of distribution. Congress should reject this bill and uphold the principles set forth in *Granholm v. Heald*.

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