

\* \* \* positive or negative, therapeutic or curative, pro or con.” (*Id.* at 76). Mr. Campbell argued that the message was not misleading in that it “presumes nothing. It presupposes nothing. It in no way directs the outcome of any consultation the consumer may or may not undertake with his or her family physician. For all the winery knows, the doctor might tell all of his or her patients never to touch the stuff \* \* \*. It’s a thoroughly neutral and impartial message.” (*Id.* at 76–77).

Mr. Campbell expressed surprise at the controversy over the message, and said he would have expected that “every health professional and governmental agency in the country would welcome it. \* \* \* After all, if you can’t trust your family doctor for truthful and not misleading advice on health issues who can you trust?” (*Id.* at 78). Mr. Campbell noted that the American Heart Association “publishes a section on alcohol in their dietary guidelines that explicitly recommends that patients consult with their personal physician on questions of alcohol use \* \* \*.” (*Id.* at 80).

Mr. Campbell stated that on June 3, 1999, before the moratorium on approving directional statements went into effect, ATF approved a version of the directional statement which omitted the language about “the proud people who made this wine” and instead read as follows: “We encourage you to consult with your family doctor about the health effects of wine consumption.” (*Id.* at page 74). He stated that he now preferred this version, since he believes that it fits better in the label, it’s not pompous, and it was an appropriate response to the people who argued that the “proud people” language constituted an implicit endorsement of alcohol consumption. (*Id.* at page 87).

In response to a question from the panel, Mr. Campbell stated that he had gotten no feedback from consumers as to how they viewed the directional statements. He said that “[n]obody’s said anything, it’s unbelievable. I mean, it cost a lot of money to put these on the label.” (*Id.* at page 88).

Mr. Jack Stuart testified on behalf of the Napa Valley Vintners Association. He stated that “we think that the directional warning is a good thing. We don’t consider it to be a positive health claim. If you take out the phrase ‘proud people,’ certainly it’s a neutral statement, it’s simply a way of getting information, and we think it’s a good idea for anyone who is proposing to drink, or who does drink, or who does any other thing having to do with food, their diet, their lifestyle, to consult their

physician about the choices they make in that regard.” (May 24, 2000; San Francisco, California, page 200). In response to a question from the panel, Mr. Stuart suggested that “to have a balanced message, to me the ideal would be to somehow combine both the warning and the directional message.” (*Id.* at page 210).

Mr. Mark Chandler, the Executive Director of the Lodi-Woodbridge Winegrape Commission, also testified in favor of the directional statements. He stated that “[g]rowers and wineries have no intention to market their products as health food. But, unlike other food products, we are prevented by regulation from even mentioning our product’s positive health attributes, thus the need for directional labels.” (May 24, 2000; San Francisco, CA, page 250). Mr. Gordon Murchie testified on behalf of the Virginia Wineries Association in favor of the use of directional statements, calling them public service announcements that “direct the concerned citizen to another source of professional non-biased, balanced information.” (April 26, 2000; Washington, DC, page 78). In response to a question from the panel, Mr. Murchie said his members would be interested in using directional statements on labels, but were reluctant to do so until they saw that the statements were accepted by the Government and the public. (*Id.* at pages 86–87).

Dr. Ellen Mack, a physician and part owner of a winery, testified that “[i]f wine were considered a medication—and I’m not at all advocating that it should be—it would be like most other medications, the dose is critical. Too little may not have the desired effect, and too much can be dangerous or even deadly.” (May 23, 2000; San Francisco, CA, page 132). Dr. Mack suggested that “the directional wine labels are effective agents in that the sources of information—the U.S. Dietary Guidelines and personal physicians—will clearly make the point that the beneficial health effects result from moderate consumption of alcohol, and these sources will define moderate as no more than one drink per day for women and no more than two drinks per day for men.” *Id.*

Various other individuals testified in favor of the directional statement. For example, Ms. Annette Shafer, author of “The Wine Sense Diet” testified in favor of a “more balanced message on the bottle,” suggesting that the warning label is “very one-sided.” (May 24, 2000; San Francisco, CA, page 212).

### *B. Comments and Testimony in Opposition to Directional Statements*

Public health organizations and other commenters raised the following specific objections to the use of directional health-related statements in the labeling and advertising of alcohol beverages.

#### *1. Directional Statements Are Implicit Health Claims That Reinforce the Inaccurate Perceptions of Consumers About Alcohol and Health*

CSPI commented that the directional statements were actually implied health claims. Its comment argued that the “reference to the ‘health effects of wine consumption’ offers no useful information, but simply reinforces existing inaccurate knowledge about the health benefits of alcohol consumption, as spread through the media and the wine industry’s misleading publicity campaign, and implies that those benefits are substantial and universal.” (Comment 400).

The American Cancer Society noted that “[w]ith the publicity in the past few years about the health benefits of consuming alcoholic beverages, any less-detailed claim or reference to health impacts or benefits might be interpreted by the uninformed consumer as a suggestion that people should drink alcohol for their health. Sufficient information is needed to allow consumers to make a well-educated decision regarding their risk from consumption of this product.” (Comment 527). Accordingly, the American Cancer Society concluded that directional labels “may mislead the general public regarding the health benefits of alcohol consumption by providing inadequate information regarding the risks.”

Senator Thurmond commented that the directional statements were inherently misleading. He stated that it was unlikely that consumers who read the directional statements would actually send for the Dietary Guidelines or consult their physicians. Instead, Senator Thurmond suggested that “consumers may be left with the impression that these statements refer to studies that suggest drinking alcohol may have some positive health benefits.” He noted that “[t]his impression may reinforce inaccurate assertions about the health benefits of alcohol consumption spread through the media. These statements may also be inappropriately viewed as the government’s endorsement of drinking. However, any suggestion that the government endorses drinking for health reasons is false.” (Comment 526).