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Maine State Liquor and Lottery Commission

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Maine State Armory

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179 Western Avenue

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Augusta, Maine

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Tuesday, July 11, 2017

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10:00 a.m.

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Boyce & Leighton
PO Box 954
Scarborough, Maine 04070
207-883-0378

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1 (This portion of the hearing commenced at
2 10:36 a.m. on July 11, 2017.)

3 * * * * *

4 CHAIRMAN McPHERSON: We'll call the meeting back to
5 order.

6 This part of the meeting is to consider the
7 recommendations of the Bureau of Alcoholic Beverages &
8 Lottery Operations of all 50-milliliter-sized spirit
9 products currently listed for sale in the State of Maine
10 be de-listed effective January 12th, 2018.

11 Under Title 28-A, Section 81 of the Maine Revised
12 Statutes, it is the Commission's responsibility to
13 determine which items may be listed for sale in this
14 state and whether any items should be discontinued or
15 de-listed.

16 In making such determinations, the Commission must
17 take into consideration the Legislature's intent, that
18 the growth in revenue from the sale of spirits be
19 achieved in a socially responsible manner.

20 The Commission has the written recommendations from
21 the Bureau which explains the reasons for the proposed
22 de-listing. The Commission also has written comments
23 from members of the public regarding the Bureau's
24 proposal.

25 For the purposes of today's meeting, the Bureau may

1 make an oral presentation followed by oral comments from
2 those members of the public who submitted a written
3 request to do so with the Bureau in accordance with the
4 public meeting notice dated June 13th, 2017.

5 I ask that you clearly state your name and spell
6 your name at the start of your comments so we have that
7 information in the record. As chair, it is -- as chair
8 of the Commission, I will exercise my discretion in
9 allowing Commission members to ask questions as to
10 whether the time for comments from any member of the
11 public should be extended for a reasonable length of
12 time, and last, that all questions and comments be made
13 through the chair with the permission of the chair.
14 I'll try to keep it orderly.

15 At the close of the public meeting, the Commission
16 will deliberate and vote on the proposed de-listing.
17 The Commission will consider the Bureau's
18 recommendations and all comments, both written and oral,
19 into careful consideration when making its decision.

20 All deliberations will be conducted in public, but
21 the Commission will not accept further public comment or
22 input at that time.

23 A written notice of the Commission's final decision
24 will be issued. And to those who will be making oral
25 presentation, you will be limited to 5 minutes, and at

1 the end of 4 minutes, with one minute left, you will be
2 given -- by the attorney sitting next to me -- a
3 1-minute notice that your time is running out.

4 With that, I will now recognize the chairman -- not
5 the chairman -- the director of the Bureau of Alcoholic
6 Beverages.

7 MR. MINEO: Thank you, Mr. Chair. I'm Greg Mineo,
8 director of the Bureau. Thank you for the opportunity
9 to speak on this issue today.

10 The Bureau's business plank and this Commission's
11 guiding principle must always remain a balance between
12 economic interests and social responsibility. This is
13 the mandate from the Legislature, and I quote, "It is in
14 the public interest to seek efficiencies and maximize
15 growth in the state's wholesale spirits' business while
16 ensuring that the growth in revenue from the business is
17 achieved in a socially responsible manner."

18 Our goal has always been to conduct and manage the
19 spirits' business in an orderly and responsible path to
20 market. The rapid growth in sales of 50 ml spirits'
21 products coupled with our mandate to manage the spirits'
22 business in a socially responsible manner presents us
23 with a genuine dilemma.

24 When we objectively look at the evidence, however,
25 it becomes increasingly clear that the sales of the 50

1 ml spirit size in the state runs counter to our
2 responsibilities as marketers representing the citizens
3 of Maine.

4 This size is really about price, portability, and
5 concealability. The low price, especially on about half
6 of the available codes, creates an advantageous
7 relationship to larger sizes, while its size and weight
8 make it extremely portable and concealable, especially
9 in motor vehicles. The data provided to the Commission
10 and the Bureau's comments leads to the commonsense
11 conclusion that many purchasers, who predominantly
12 frequent convenience stores, are consuming the size of
13 spirits in moving vehicles.

14 Roadside litter indicates that purchasers of 50
15 ml's are in fact consuming them in moving vehicles and
16 discarding the empty bottles out the window. By selling
17 spirits in 50 ml containers, we are making it too easy
18 for consumers to violate the law.

19 While the Bureau acknowledges the recent surge in
20 sales in the 50 ml size and its related profit returns,
21 we maintain that this size is not strategic to our
22 overall spirits' business model and to its future growth
23 potential. And this size is certainly not integral to
24 our mission to manage the business in a socially
25 responsible manner.

1 The Bureau's strategy is built on the growth of the
2 750 ml and the 1.75 litre sizes, the foundation of the
3 spirits' industry in Maine and elsewhere.

4 As the Commission knows from its oversight of the
5 Bureau, the utilization of aggressive price supports and
6 tactical trade marketing programs bolster these sizes
7 and strengthen our path to market.

8 You are likely still concerned about how de-listing
9 50 ml sized bottles will impact our business. In my 39
10 years in the drinks' business, I have seen brands come
11 and go, categories shift, and even the size mix
12 rebalanced. This industry will always find its own
13 level.

14 If the 50 ml is not available, the consumer will
15 migrate to another size, more than likely in the same
16 brand or category. It's been alleged in comments during
17 these proceedings that the Bureau's decision to
18 recommend de-listing of the 50 ml size was rash and
19 arbitrary; on the contrary, our decision to propose this
20 action is a thoughtful reaction to new information and
21 insights that arose from the discourse concerning LD 56.

22 While the Legislative committee's discussions were
23 about litter, they have also shown a light on concerns
24 that the 50 ml size was a factor in drinking and
25 driving. As a consequence, we took a serious look at

1 this issue.

2 We have a discipline system in place to constantly
3 analyze our strategies and tactics, perform research,
4 and respond to those learnings by adapting our programs.
5 Our diligence to constantly analyze our business
6 practice certainly requires us to respond to the
7 concerns raised during the LD 56 discussions, and we
8 have.

9 The financial effects that may arise from this
10 de-listing are temporary and manageable. Weighing these
11 minor effects against the fact that a 50 ml container
12 too easily facilitates drinking and driving, we must
13 conclude that the 50 ml size is inconsistent with our
14 responsible path to marketing.

15 In closing, the Bureau relies upon the benefits
16 from a strong and interactive relationship with the
17 State Liquor and Lottery Commission. This includes rich
18 dialogue, the sharing of sales' programs and trade
19 marketing tactics, and all this takes place during our
20 monthly public meetings with the Commission.

21 Today, like always, the process is transparent, and
22 we openly share our strategies, issues, and concerns.
23 The information you received has aided your ability to
24 make an informed decision and is reminded of the
25 Commission's mission, which is to "Maximize growth while

1 ensuring that growth and revenue from the business is
2 achieved in a socially responsible manner."

3 With today's decision, you have an opportunity to
4 make a responsible change to our business model in the
5 interest of public safety and safer roads.

6 I thank you for your time. I'm happy to answer any
7 questions now or at any time during these proceedings,
8 if you'd like to bring me back up. Thank you.

9 CHAIRMAN McPHERSON: We'll now -- no questions.
10 Anything further?

11 MR. MINEO: No, that's it. I'll entertain
12 questions, Mr. Chair. Thank you.

13 CHAIRMAN McPHERSON: We will now start on the list
14 of those that have asked permission to speak or make
15 presentation, and I guess I would just ask that there's
16 going to be a lot of repetition, I'm sure, and if it has
17 already been said, try to leave it right there.

18 On the list I'll start with Senator Saviello, is
19 it?

20 Saviello, I apologize.

21 STATE SENATOR SAVIELLO: No problem. I've been
22 called worse.

23 CHAIRMAN McPHERSON: I know what you're saying.

24 STATE SENATOR SAVIELLO: Thank you. I hope
25 everybody can hear me all right. I'm Senator Tom

1 Saviello. I represent Senate District 17, which is all
2 of Franklin County and parts of Kennebec County, and I'm
3 here to testify, obviously, against this proposal, but
4 I'm also -- as I appreciate Mr. Mineo's statements about
5 how the Commission or the BABLO has decided to relook at
6 this -- but let's make it very clear why we're here.

7 On May 16th, 2017, after my committee had worked on
8 this bill and decided that the best way we could handle
9 it was through deposit, we received a communication from
10 the Governor that said, Legislators say they want to
11 prevent littering of empty nip bottles but they do not
12 care for cuts into State programs or increased costs for
13 companies that do business here. Senator Saviello,
14 Mr. LePage said, said he would call my bluff -- I call
15 no one's bluff -- and that I would de-list the
16 50-milliliter nip bottles if the bill passes. A
17 nonlegislator should know better.

18 In his veto message to that, he said to us, Absent
19 increased penalties, which the bill failed to impose, an
20 alternate approach to discontinue the sale of 50
21 millimeter nips altogether. If this bill passes, I will
22 direct the Bureau of Alcoholic Beverages and Lottery
23 Operations to work with the Liquor Commission to de-list
24 these products. If the veto message says, fine, pass
25 what you want, I simply believe that we should de-list

1 them, I think we'd be in a different place today.

2 Let me start by saying that if you decide to
3 de-list them, then I would recommend and would certainly
4 support legislation to get the State out of the liquor
5 business.

6 We are in a profit-making business. You will be
7 walking away from the fourth largest sales item in our
8 business. We know that in 2016 about 8 million nips
9 were sold, and a projected 14 million are supposed to be
10 sold in 2018. I believe this represents a net profit to
11 the liquor budget, not to the general fund, of about \$4
12 million in 2016 and about \$8 million dollars projected
13 for 2018. This does not include approximately a 13
14 percent return to the stores selling the nips or the
15 liquor sales tax that goes to the general fund. Let me
16 also add that the nips' projection for the future is
17 \$150 million sales over the next ten years.

18 I know when I worked for the paper industry, which
19 I did for 32 years, we never walked away from our
20 forest's largest sales' items. If it had concerns, we
21 addressed those.

22 I would also recommend that all containers that are
23 empty that were carrying liquor at one time be
24 prohibited in the State of Maine. This includes
25 Bud Light because you'll hear, probably later, from

1 testimony, that it is the second most popular item found
2 on the side of the road even with the nickel deposit.

3 I would also recommend, as Mr. Mineo said, with a
4 smile on my face that we should ban McDonald's wrappers
5 because they are littering, too.

6 Let me also talk about the little statistical
7 diagram you saw in the report where it correlated nips'
8 sales to liquor sales -- or nips' sales to OUIs. I
9 would suggest that you redo the calculations. I just
10 did. In fact, there were about 3,500 OUIs -- and
11 remember, at this time nip sales had skyrocketed.

12 3,500 OUIs. That blows up to about 3,700 the next
13 year and 4,000 the next year. It's directly correlated
14 to your increase of sales, not nip sales. You talked
15 about an 8 percent increase in sales; it's about a 6
16 percent annual basis. It does not correlate to nips.

17 When I was in graduate school, we used to talk
18 about, take the data and knead it until it submits.
19 That's a classic example of doing that. I would suggest
20 that you look at better ways to attract -- increase the
21 cost of these things.

22 Let me add that I would also recommend that we take
23 down the Open for Business sign because you see the
24 people in the back with the black shirts on, they're
25 from Sazerac. They're from an organization that employs

1 about 130 people in the state of Maine and with plans to
2 put a \$1 million investment into this state, along with
3 31 employees moving into permanent status.

4 Also, I would recommend that you placate to those
5 who buy nips, that you really don't care about what
6 their preference is, because you're right, it is cheaper
7 to do that. Thank you.

8 Let me also add that one of the other correlations
9 you have directly to the increase in OUIs are the ads
10 you put out. These are sexy ads. Gees, I'm going to
11 try that stuff. I'll go buy a nip of it.

12 Take the commercials off the TV that make drinking
13 and driving and romanticize it.

14 So finally I recommend that you increase the price
15 of the nips to cover the costs of the deposit. You can
16 still do that and still drive people to the
17 750-milliliter container. You have the ability to do
18 that under Title 28.

19 I would also recommend that you talk to law
20 enforcement that they sit outside these convenience
21 stores. It won't take very many stops before this
22 problem stops, and if you put the deposit on it, the
23 material will be picked up. I would stop the
24 advertising. This is what drives people to drink and
25 drive, not nips.

1 And I would also thank the people from Sazerac
2 because they came to the table. They know that there's
3 an issue, they were willing to do it as a Maine company.
4 Don't put them out of business.

5 Thank you very much. I'll be glad to answer the
6 questions you might have.

7 CHAIRMAN McPHERSON: Senator Libby. No show.
8 Senator Mason. Representative Austin.

9 STATE REPRESENTATIVE AUSTIN: I showed. I'm here.
10 Good morning, ladies and gentlemen. Good morning to the
11 commissioner and good morning to those that came from
12 afar to be with us for this hearing.

13 I have to tell you one quick little nugget that
14 I've learned over the years as a Legislator. I often
15 tell my folks back home, I say, gee, you know, Sue, I'd
16 really like to put in this piece of legislation, and
17 what I say to them always, I remind them. Have you
18 thought this through clearly? Do you know what you're
19 doing? And do you really mean what you say? Because
20 once you submit a bill, a piece of legislation, and that
21 comes into the hands of a committee and on to the due
22 chambers, it takes on a very, very lively life of its
23 own.

24 At that point I have no control whatsoever about
25 what happens other than giving good testimony. So I

1 find that this is proof positive. Here we are today. I
2 started on a journey, which I will share with you, to do
3 something that I thought was very positive, and I feel a
4 bit hardened that this now has turned into the
5 possibility that we could actually lose a very, very
6 positive and successful business.

7 So I am Sue Austin, State Representative from Gray,
8 Sue, S-u-e, A-u-s-t-i-n. I represent my hometown of
9 Gray, portions of Raymond, Casco, and I have the
10 wonderful privilege of representing all of Frye Island,
11 which sits in Big Sebago Lake.

12 I'm going to give you a little history of how this
13 came about for me. By design the inception of the
14 bottle bill was to address environmental concerns hoping
15 to encourage the return of bottles and cans in order to
16 reduce litter along the highways and byways.

17 A good deal of my workout routine for the last 18
18 years has been accomplished by walking a 2-mile jaunt on
19 two heavily traveled roads in Gray. Over the last two
20 years, in particular, it has become blatantly obvious
21 that there are a tremendous number of wee bottles -- wee
22 as in wee, little bottles -- appropriately referred to
23 now, as I have found, nips on the side of the road, on
24 the shoulders, in the ditches, and on folks' lawns. It
25 also seemed that the small bottle was going to stay

1 right there day after day until I picked it up.

2 These nips were being consumed by folks, I would
3 assume, in vehicles, once emptied, were being tossed out
4 of the vehicle. I became compulsive in gathering them
5 up, putting them in plastic bags, and taking them to the
6 dump -- my endearing term for the Gray Transfer
7 Station -- for recycling.

8 That may also be the behavior of those who enjoy a
9 nip at home by the fire, but when en route, it appears
10 it's out the window they go.

11 It dawned on me that the die-hard bottle collectors
12 didn't care about these troublesome, worthless -- very
13 worthless -- little nips, empty nips. Worthless is why
14 they were keeping me company and being a constant
15 eyesore on my jaunt down the road.

16 True bottle pickers are on the hunt for as many
17 refundable bottles and cans that they can carry to the
18 redemption center or to miss the clink.

19 During my hands-on research, I have found that
20 clearly Fireball is the choice by far and very, very
21 popular. Upon closer inspection as I washed and
22 categorized my nips neatly, I read on the back of the
23 little bottle why it might be so much in demand, and I
24 said this in jest, and I quote, "Ignite the night."
25 There's some marketing for you. A clever marketing

1 suggestion. Hence, I ask you to consider allowing the
2 nips to go to the deposit de-list and just stay in the
3 Maine state market.

4 Had I not taken my exercise to the streets, I would
5 never have realized the extent of how many bottles --
6 how many bottles and cans -- not just nips are out there
7 on the side of our roads. It requires a very up-close,
8 very personal, somewhat slower than others' trips down
9 the side of the road.

10 My emphasis in the last six months has been, No on
11 nips. Make no mistake, they're not lonely. I've seen
12 everything. I've seen Twisted Tea, juice boxes, Coors,
13 Bud Light, pints of liquor -- pints, empty pints of
14 liquor, all of which eventually get picked up for a
15 5-cent tip.

16 I'll move along. I have served 11 years on the
17 business committee, eight years on the business research
18 and economic development, and another three years on the
19 labor and commerce, and that is where I became
20 acquainted with the bottle bill. Combining those 11
21 years and being very, very active in supporting business
22 here in Maine, I find that I am now, as I said,
23 heavy-hearted because I would not have taken this step
24 and been a part of losing a profitable, positive company
25 that's in the twin cities of Lewiston and Auburn and who

1 has offered you substantive, valued jobs to many who
2 need it.

3 I will share that our executive office, chief
4 executive officer's concern around drinking and driving
5 is very, very serious and real, but it's not just about
6 nips, and I think we need to address that. Because of
7 the --

8 CHAIRMAN McPHERSON: You are pretty well out of
9 time. You are out of time.

10 STATE SENATOR AUSTIN: I usually am.

11 MS. RICE: Thank you.

12 STATE SENATOR AUSTIN: Can I show you a few?

13 CHAIRMAN McPHERSON: Quickly.

14 STATE SENATOR AUSTIN: And I'll tell you why I did
15 this. It's kind of a dog and pony show at that
16 Legislature. When you have to educate 185, plus myself,
17 on an issue, you need to show them pictures and give
18 hands-on experience. Let me just show you a picture.

19 This is a bag that I picked up just within the last
20 two days right by my home, so as you can see, that is
21 out there all the time. Now, that does not mean it
22 stays there. The point is that doesn't stay there. It
23 gets picked up and it gets turned in, and this would
24 create another revenue stream for the redemption
25 centers.

1 This is a necklace. I had to get a little bit
2 creative because people up here really need to see
3 things to have a strong suggestion.

4 CHAIRMAN McPHERSON: You've got a whole bagful
5 there? I mean --

6 STATE SENATOR AUSTIN: I've got all kinds of things
7 here. It depends on how much you want. This is how
8 popular Fireball is (indicates).

9 CHAIRMAN McPHERSON: I think that one makes your
10 point.

11 STATE SENATOR AUSTIN: Does it? Am I good?

12 CHAIRMAN McPHERSON: You're good.

13 STATE SENATOR AUSTIN: I'm good to go and travel
14 on?

15 I thank you for your attention, and I ask that
16 you -- I know you will give it good deliberation and
17 fair decision. Thank you very much.

18 CHAIRMAN McPHERSON: Representative Shagoury.

19 STATE REPRESENTATIVE SHAGOURY: Good morning. My
20 name is Daniel Shagoury, S-h-a-g-o-u-r-y, and
21 Representative Golden could not be here this morning,
22 and he asks for your forgiveness and forbearance and to
23 allow me to give his written testimony.

24 STATE REPRESENTATIVE SHAGOURY: My name is Jared
25 Golden. I represent Maine House District 60, which is

1 part of Lewiston. I'm offering testimony in opposition
2 to the de-listing of 50 millimeter bottles of liquor,
3 also known as nips.

4 I share your concerns about drunk driving, however,
5 the State is in the business of selling liquor, and with
6 all due respect, all the other products sold in the
7 state containing alcoholic products do, if abused, lead
8 to a whole host of problematic and often criminal
9 behavior.

10 I believe it is unfortunate, but true, that there
11 are many other products the Commission puts on the
12 shelves that contributes to drunk driving.

13 The issue at hand did not arise out of a concern
14 about alcohol abuse and drunk driving. The Legislature,
15 in an act to help control litter, passed a law requiring
16 a 5-cent deposit on nips. While his veto of the bill
17 was being considered by the Legislature, the Governor
18 stated that he would just ban the 50 millimeter bottles
19 if we overrode his veto. I took his word seriously, and
20 I'm concerned for the workers whose livelihoods are at
21 risk by this de-listing. I did not vote to override the
22 Governor's veto.

23 There are jobs at stake here. Workers shouldn't
24 lose their jobs because the Legislature and the Governor
25 disagree about the correct approach to address a

1 problem. It is this policy disagreement that led us
2 here today, plain and simple.

3 Hurting businesses and workers over political
4 disagreements is not good government and is not the
5 Maine way of doing business. Let us not start with this
6 decision today. Thank you.

7 CHAIRMAN McPHERSON: Thank you. Representative
8 Grohman.

9 STATE REPRESENTATIVE GROHMAN: Thank you, chairman,
10 first, and members of the committee.

11 I, too, have brought a prop. This is my bottle of
12 nips that I collected around Biddeford as constituents
13 brought to me to ask me to bring this issue forward way
14 back last summer proposing legislation that ultimately
15 became LD 56.

16 So I'm Martin Grohman, House District 12 down in
17 Biddeford, a beautiful beachfront community. Come see
18 us.

19 I want to emphasize three things about this
20 legislation, if I can. We worked with everybody through
21 this process. I'm want to commend, in particular, Chair
22 Saviello and Chair Tucker for their work on the
23 environment and natural resources committee with this.

24 This is not the kind of bill where we, you know,
25 sort of tried to impose our will without hearing from

1 everyone affected. We worked with BABLO, with all of
2 the members of the business community, and really heard
3 from them, and I think you can see that in the
4 legislation that resulted; and two significant changes
5 were made to the legislation as proposed, and I would
6 like to highlight those.

7 The first is that the implementation date was
8 delayed until January 1st of 2019, and that was very
9 intentional. That was done based on feedback from the
10 manufacturers who said, in our natural cycle of updating
11 our labels, we will have an opportunity then to preprint
12 this information on the labels and it won't be necessary
13 to hand sticker, and I think that was a really important
14 change that we made.

15 And the other was, as proposed, the legislation had
16 a 15-cent deposit. I think there was a feeling that
17 that was pretty unreasonable for a \$1 item.

18 So those were the kinds of things that the chairs
19 of committee and working together with all the
20 stakeholders to change. I think that kind of attitude
21 was why the legislation was ultimately successful.

22 Look, I'm a member of the criminal justice and
23 public safety committee. We're passionate about all
24 kinds of issues related to drunk driving and have heard
25 very difficult stories personally related to that. I've

1 happened to sit right next to the roster where people
2 testify and have heard things that literally made me cry
3 many times, but I just don't see this as the solution to
4 that.

5 You know, there are all kinds of correlations you
6 could make to the increase in driving under the
7 influence, including, say, the sales of fidget spinners;
8 but I think we want to focus on that problem, but I
9 think this here is best treated as a separate issue.

10 So as a small business owner myself, I really ask
11 and implore you as the committee just, you know, think
12 about the impact here, and I think it would be very
13 real, and I think it would be very unfortunate. Perhaps
14 there are other changes that you could make.

15 I know in particular that the nips are -- 15 nips
16 are cheaper than a 750-millimeter bottle, which has
17 always struck me as somewhat odd, and that may not be an
18 item for consideration today but that's just to plant a
19 seed around that kind of thinking.

20 So just to sum up, the three things. I really
21 think we worked with everybody through the process. We
22 listened very attentively, we made sensible changes to
23 the legislation that made it much easier and simpler to
24 implement. It does not go into effect for about 18
25 months -- January 1st of 2019 -- so really allowing that

1 label reprint, and I'm very pleased as a member of the
2 criminal justice and public safety committee to work on
3 any issues related to operating under the influence.

4 Thank you. I'll wrap up there. I think I got the
5 gong.

6 MS. RICE: Thank you.

7 CHAIRMAN McPHERSON: Thank you. Mr. Chadbourne.

8 MR. CHADBOURNE: Thank you very much,
9 Chairman McPherson, and distinguished members of the
10 Maine State Liquor and Lottery Commission.

11 My name is Aaron Chadbourne, and I serve as senior
12 policy adviser to Governor LePage, and I'm here today to
13 testify on behalf of Governor LePage in support of the
14 Bureau's recommendation to de-list all 50-milliliter-
15 sized spirit products that are currently for sale in
16 Maine.

17 In the interest of time I will not repeat the
18 arguments presented by Director Mineo; however, I would
19 like to take this opportunity to thank Director Mineo
20 for his leadership of the Bureau of Alcoholic Beverages
21 and Lottery Operations.

22 Under his management and leadership, in
23 collaboration with your Commission, the State's spirit
24 business continues to be strong. Greg has become known
25 for his sound business judgment and his ability to forge

1 partners throughout the industry, while partnering with
2 you, to ensure that growth in the Maine spirit business
3 is sustainable and responsible.

4 Governor LePage thanks Director Mineo for his
5 careful handling of this sensitive issue before you
6 today.

7 I think we all know that we're here because of the
8 conversation surrounding LD 56, and LD 56 illuminated
9 several issues associated with the sale of 50-milliliter
10 containers and spirits, and those issues ought to be
11 examined and addressed while 50-milliliter containers
12 are removed from the market.

13 As has already been mentioned during the last
14 several months, the Legislature passed LD 56 and
15 overrode the Governor's veto of that bill to place a
16 5-cent deposit on 50-milliliter containers.

17 During the public debate on this proposal before
18 the Legislature, members of the public made it clear
19 that the discarding of empty 50-milliliter containers
20 has become a significant problem alongside the roads of
21 Maine. However, while the 5-cent deposit imposed by
22 LD 56 may alleviate the litter problem, it doesn't
23 answer the fundamental question of why are these
24 containers ending up on the side of Maine's roads in the
25 first place? The answer is clear. Motorists are

1 consuming alcohol in 50-millilitere containers and
2 throwing them out of their car and truck windows. Now,
3 some may argue that the 5-cent deposit of the miniature
4 bottles will cause motorists to think twice about
5 whether to toss their empties onto the side of the road,
6 but Governor LePage believes that for those individuals
7 who are already violating Maine's open container laws
8 and using alcohol while driving, the incentives are far
9 greater to simply discard the evidence of their crime.

10 Are there lawful uses of spirits packaged as
11 50-millilitere containers? Absolutely. And it was
12 likely those uses, such as product trial or
13 affordability, that led the Commission to list this
14 product size in the first place. However, by everyone's
15 admission, sales of this product size have exploded far
16 surpassing anyone's expectation when they were listed.

17 Further, it does not seem that the widespread issue
18 of drinking and discarding while driving was anticipated
19 when the Commission decided to list 50 ml's for sale in
20 Maine.

21 While de-listing 50 ml spirit products, will this
22 eliminate all drinking while driving and will it
23 eliminate incidents of operating under the influence?
24 Of course not; however, Governor LePage believes that 50
25 ml products make it much easier for drinking while

1 driving, and we should not turn a blind eye and make it
2 easier for them to do so.

3 Larger packaging makes it harder to conceal a
4 possession and use of spirit products, and
5 Governor LePage believes that is appropriate.

6 Drinking while driving is a threat to public
7 safety, and it's on the rise in Maine. As was stated in
8 more than one veto message to this legislative session,
9 Governor LePage is concerned that the Legislature is not
10 taking seriously the risk to the public of increased
11 drug and alcohol usage, particularly while operating a
12 motor vehicle.

13 These concerns and addressing them with de-listing
14 is also consistent with past action the Commission has
15 taken on products with packaging that seemed designed to
16 encourage underage drinking by appealing to youth or to
17 illegal concealment from law enforcement because they
18 looked too much like a soft drink container, for
19 instance.

20 Similarly, the 127th Maine Legislature was
21 concerned about public safety implications of selling
22 alcohol in powdered form, and you'll recall that they
23 passed a law prohibiting you from listing it before it
24 even got to this Commission for consideration.

25 Taking action to disallow the sales of spirits of

1 50-millilitere containers is consistent with this past
2 practice with a concern for public safety.

3 In addition to raising questions why 50-millilitere
4 spirit containers are ending up on the side of Maine's
5 roads and whether they're too easy to conceal from law
6 enforcement, consideration of LD 56 raised several other
7 questions, including pricing. I've listed the
8 discrepancy in my testimony that I handed out -- I'll
9 skip it. As Representative Grohman mentioned, buying
10 ten 50 milliliters gives you 500 milliliters for about
11 9.99, while the sales' price of a 375-milliliter is also
12 9.99.

13 Finally, de-listing is not permanent, and the
14 Commission may revisit its decision at any point in the
15 future.

16 Reports in the media characterize this proposal as
17 a ban, but we believe it's more responsible to
18 characterize this proposal as taking a step back to
19 allow the Commission to work from a clean slate while
20 making decisions about small-sized packaging for
21 spirits, including the expansion of 100 milliliters.

22 Governor LePage and the Bureau remain committed to
23 a strong spirit business for Maine. The progress the
24 state's made under the LePage administration is
25 undeniable and results in record profits for the state

1 enabling the repayment of hospital debt and great profit
2 to our agency liquor store partners, all of which has
3 increased as they have exceeded incentive markets like
4 you heard this morning.

5 For the 35 suppliers whose product lines will be
6 impacted by today's decision -- and I know one of them
7 is particularly well represented here today -- we remain
8 committed to working with them to grow their business in
9 the future.

10 CHAIRMAN McPHERSON: You have gone over the limit,
11 but it would be my call as courtesy to the Office of the
12 Governor for you to finish.

13 MR. CHADBOURNE: I thank the Chair for that
14 courtesy. I don't want to overstay my welcome.

15 I'll just say that because of the recent attention
16 to this issue, we really do feel that we can no longer
17 turn a blind eye to the problem this illuminated;
18 however, we also do appreciate the investments being
19 made locally by manufacturers and by suppliers, and we
20 are encouraged that they recently joined the local
21 Chamber of Commerce and the State's Chamber of Commerce.
22 We see them as a long-term business partner, and we look
23 forward to seeing continued growth in their other
24 product lines. Thank you.

25 CHAIRMAN McPHERSON: Thank you.

1 MS. RICE: Thank you.

2 CHAIRMAN McPHERSON: Bob Macdonald.

3 MR. MACDONALD: Good morning. My name is Robert E.
4 Macdonald, M-a-c-d-o-n-a-l-d, and I am the mayor of
5 Lewiston. I'm also a retired police detective from the
6 Lewiston Police Department.

7 I am here today in opposition to the proposed
8 de-listing of all 50-milliliter-sized spirits more
9 commonly known as nips.

10 Banning the sale of nip bottles is not an answer to
11 illegal drinking and driving. People who drink and
12 drive are not going to stop doing so due to a container
13 change. It is a conscious choice in their behavior that
14 needs changing.

15 If nip bottles aren't available, those individuals
16 will utilize larger bottles of alcohol. Banning nip
17 bottles will not deter those who want to drink and
18 drive.

19 In addition, the physical presence of nip bottles
20 does not automatically equal illegal behavior. If a
21 vehicle contains nip bottles, for instance, it does not
22 mean that the operator is driving while under the
23 influence. The only definitive way to actually
24 determine is to subject the driver to a Breathalyzer
25 is -- I'm sorry -- subject the driver to Breathalyzer or

1 blood tests.

2 What banning nips will do, however, is seriously
3 impact a Lewiston company, who we have their employees
4 out there. These are the faces that we're talking about
5 tonight.

6 Sazerac, a bottling facility and taxpayer in
7 Lewiston, employs 130 people. They are currently
8 occupying 90,000 square feet, and they are poised to
9 make a million-dollar expansion in Lewiston. They also
10 pay over \$166,000 in annual property taxes.

11 Half of the nips sold in Maine are of the Fireball
12 variety, which are bottled right here in Lewiston. If
13 one of the main items produced here is de-listed, then
14 jobs may be de-listed, too. This would be extremely
15 unfortunate, as the company has indicated that it could
16 transition 30 part-time positions to full-time if it
17 continues to grow. I would suspect that such a blow to
18 the company operations would also put its expansion on
19 hold.

20 I'm 100 percent opposed to drinking and driving,
21 and I am 100 percent supportive of local business.
22 However, the choice to drink and drive is not about
23 containers; it's about individuals' lack of
24 responsibility as to public safety.

25 Thank you.

1 CHAIRMAN McPHERSON: Thank you. Stephen Roop.

2 MR. ROOP: Hi. My name is Stephen Roop, with -p-h
3 and R-o-o-p. I own six liquor stores in the state of
4 Maine: Five in Lewiston/Auburn and the new one in
5 Oxford, by the way, which was a million dollar
6 investment.

7 But had I known that the Governor was going to take
8 this stance and call it a drinking/driving issue, I can
9 tell you right now that my beer sales in all of my
10 stores exceed all of our liquor sales.

11 Our nip sales, I'll just give you an idea of what
12 that means to me personally in our business. It was
13 over \$700,000 last year, gross sales in nip sales. So
14 if you want to call us a culprit, then we're a culprit.
15 That's \$84,000 in gross profit.

16 This affects how I do business. Is it going to
17 shut me down? No. No, I'll make adjustments, and
18 anybody who's been in business before knows where those
19 adjustments come from, and quite frankly, I don't need
20 to say much more because Tom Saviello was very graceful
21 in the way he went about it.

22 Here you are listing 200-milliliter items. You
23 just did. You just did. What is the difference between
24 that and a ml? 50 ml? Nothing. So there's your
25 argument.

1 Do we want to go back to the prohibitionist's way
2 to rule this industry, or do we want to let it continue
3 to grow and let the culprits that drink and drive be
4 handled by law enforcement?

5 I have every faith in the world in our law
6 enforcement in this state, but this just seems to be a
7 vindictive way for the Governor to get back at maybe one
8 or two or more senators and legislators who to dare go
9 up against him.

10 I voted for him twice. I don't think I'd vote for
11 him again. He's childlike, and I don't mind saying that
12 in front of the cameras. And if he wants to call me, he
13 knows where I live.

14 If anyone has any questions of me, please feel
15 free. I'm very passionate about this. Thank you.

16 MS. RICE: Thank you.

17 CHAIRMAN McPHERSON: Cathleen Sullivan.

18 MS. SULLIVAN: Thank you for listening to testimony
19 today. This is my prop master, Rick, right here.

20 My name is Cathleen Sullivan, S-u-l-l-i-v-a-n.
21 With my brother, Steven, we own RSVP Discount in
22 Portland.

23 RSVP has been in business since 1981 and has been
24 an agency store since '93. We have a reseller's
25 license, and we also sell to bars and restaurants. We

1 employ 33 employees with access to medical and
2 retirement benefits.

3 I am strongly opposed to the de-listing of 50 ml,
4 or nips. In my experience, there are three types of nip
5 consumers: Samplers. These are people who are just
6 trying the product before they commit to a full bottle
7 and a nip is a convenient way for them to do so.

8 There's also the type of consumer who buys small
9 quantities for recipes that just need a teaspoon of a
10 particular product. Grand Mayan clearly is an example.
11 They don't want to spend \$35 because they need a
12 teaspoon per recipe.

13 Portion control. These are my second group of
14 consumers. These are consumers who want to limit their
15 consumption. They come in and they might buy --
16 typically nips are wrapped in 10s or 12s. They might
17 buy a container of them to last them a week or two weeks
18 or however they want to do it, but they don't want to
19 buy a 750 ml.

20 Some people buy smaller containers because they
21 don't want to have extra booze left around their house,
22 they just want what they need.

23 Some like to have something to offer to guests --
24 whether it's gin, rum, vodka -- but they don't typically
25 consume spirits in their home.

1 Then there's the savvy consumer. These are
2 consumers who know their prices and realize the 50 ml is
3 a good deal. It is a cheaper cost per ounce to purchase
4 the No. 1 selling 50 ml than it is to buy any package
5 smaller than a half gallon of that package.

6 So that product is so explosive in this state
7 because it's a great deal. So why not buy it and save
8 money?

9 I believe if we remove nips for sale in Maine, I
10 believe these consumers will look elsewhere, and by that
11 I mean outside of Maine for these products, but they
12 simply will switch to nonspirits to fill these needs.

13 Moreover, removing the nips will dramatically limit
14 responsible marketing opportunities to these consumers
15 because it will restrict, or in some cases eliminate,
16 the chance to sell these consumers a higher priced
17 product. This will include many of the VAPs that we see
18 at the holidays. You buy a bottle and they have one or
19 two nips of corresponding products.

20 This past holiday season we had the typical candy
21 canes, which I know were a huge success. That was a \$5
22 gift. People gave those with something else.

23 This is my favorite, Delle Gavine gift pack. It
24 sells for 23.99. There's three products in here, and in
25 a 750-milliliter bottle, those products range from 62.99

1 to the great product that's on the luxury price list for
2 139.99. So you get to try a product that costs \$140 in
3 a package here that you might not normally try or buy
4 the bigger product later on. So we're seriously
5 limiting ourselves.

6 De-listing 50 ml's will not reduce OUIs. Have the
7 people who have made this claim taken into consideration
8 other product changes in the marketplace? Have they
9 taken into consideration the increase in sales of beers
10 with a higher alcohol content or Tetra Packs of wine or
11 the proliferation of single-serve sizes now available to
12 the consumer, and they're everywhere. It's not just in
13 liquor, it's everywhere.

14 For that matter, check out the actual difference in
15 size between a 50 ml, 100 ml, and a half pint. There's
16 really not that much difference in size. If someone
17 wants to break the law by drinking and driving, any of
18 these packages can easily be concealed.

19 In 2016, there were 3,700-plus convictions in Maine
20 for operating under the influence. This figure takes
21 into account consumption of any spirit, any alcohol, not
22 just spirits.

23 Over a roughly similar 12-month period of time
24 there were nearly 10 million units of 50 ml's sold. The
25 vast majority of the consumers who purchase these 50 ml

1 packages did not and do not break the law.

2 By de-listing the nips, it will lead to a
3 significant loss of revenue for everyone involved in the
4 liquor business in Maine, giving up 5.5 million in
5 annual gross profit to save the 1.6 million projected
6 with ongoing bottling, handling fees, and pick-up costs
7 does not make any business sense whatsoever.

8 The State stands to lose over \$4 million in gross
9 profits; agents stand to lose over 1.5 million in gross
10 profits. As stated by BABLO, this represents a majority
11 of independent stores.

12 Ultimately, less business for us means fewer jobs
13 for our employees. I would like to suggest that the
14 circumstances that have brought us all to this point
15 today, a proposal to de-list nips because of the
16 impending 5-cent deposit, provides us with a unique
17 opportunity to grow the spirit business responsibly.

18 Let's find a way to eliminate some of these costs
19 associated with the deposit law. Perhaps it is possible
20 to work with suppliers to get voluntary compliance for
21 labeling. Many suppliers do this already for other
22 sizes. This could eliminate all of the initial start-up
23 costs.

24 Alternatively, this would be a good time to
25 evaluate pricing and see if a 99-cent nip is what the

1 State wants to grow. Maybe a price for 1.49 would be
2 acceptable, and this could offset Maine redemption
3 costs. Thank you very much.

4 CHAIRMAN McPHERSON: Thank you.

5 MS. RICE: Thank you.

6 CHAIRMAN McPHERSON: Ed Bearor.

7 MR. BEAROR: Good morning. Thank you,
8 Mr. Chairman. My name is Ed Bearor. I'm an attorney
9 from Bangor. I'm here representing the Sazerac Company
10 today.

11 My job is primarily to introduce you to the company
12 and to the representatives who will be speaking in a
13 moment.

14 I recognize the chairman's admonishment to not
15 repeat everything that previously has been said, and it
16 would seem that the testimony and the evidence that you
17 heard is rather compelling for not de-listing this
18 particular product.

19 At a minimum, you seem to be taking time out.
20 There's been some rather precipitous behavior on the
21 part of some politicians that have brought us here
22 today, an unattended consequence of the good work of the
23 legislators who were trying to solve a littler problem.

24 So let me focus just for a moment, if I can, with
25 my time on what I think is in front of you.

1 You're political appointments but you have an
2 independent job to do regardless of the source of the
3 recommendation before you today. You have to make your
4 decision based upon the evidence and the testimony that
5 you hear, and I think one thing that's plainly clear,
6 despite all of the State's suggestions to the contrary,
7 is that there's no direct correlation between nips and
8 OUI convictions. There is none. And if there was,
9 there would be law enforcement personnel here to speak
10 in support of this proposition. There are none. There
11 haven't been any. I haven't read or heard any
12 commentaries from law enforcement personnel supporting
13 this proposition.

14 I've had personal contact and reached out to law
15 enforce personnel and have been told that they know of
16 no connection between consumption of nips and OUI
17 convictions.

18 There have been more OUI stops in recent years
19 because the Federal government has provided funding for
20 such stops, not to find drunk driving, but drugged
21 drivers that they're finding. Obviously, they're
22 finding drunk drivers in the same net.

23 But there's no record, there's nothing that you can
24 point to, the State can point to that connects the nip
25 to the OUI convictions. They call it a spike or an

1 increase. Yes, it's gone up in the last two years.
2 You've heard the sales' report, it's no wonder, but it's
3 dropped dramatically over the last ten years, and the
4 rate that it's currently at, the 3,700 or so, is much
5 lower than it was 5 or 10 or 15 years ago.

6 So you have a difficult decision because you're
7 presented with having to accept or reject a
8 recommendation, which I describe is nothing more than a
9 very poorly packed snowball. The evidence is lacking.

10 Taking two phenomena and trying to connect them
11 saying that's all we have is rather revealing in and of
12 itself. There is nothing that connects the consumption
13 of nips to OUI convictions. Absolutely nothing that's
14 been said or presented to you in written testimony that
15 does that.

16 Now, I'm going to present to you three individuals
17 who are going to speak to you: Andy Muschinski, the
18 plant manager at Sazerac in Lewiston; Gerry Reid works
19 for the company and you probably know him as the former
20 director of BABLO; and Mark Brown is the president of
21 the company.

22 I beg your indulgence. This is a very important
23 matter for this company and for its employees. We have
24 trimmed our presentation list by half. There are three
25 people who we were going to have present who are not,

1 and we would ask that you indulge, at least Mr. Brown,
2 with one to two extra minutes for his presentation, and
3 with that, that's all I have. Thank you.

4 CHAIRMAN McPHERSON: Andy Muschinski.

5 MR. MUSCHINSKI: Good morning. My name is Andy
6 Muschinski. It's M-u-s-c-h-i-n-s-k-i. I'm the plant
7 manager for Sazerac Boston Brands of Maine in Lewiston.

8 I'd like to tell you a little bit about myself, our
9 plant, and our employees. First, a little about my
10 position at Boston Brands of Maine and my connection to
11 Maine.

12 In general, it is my job to make things run more
13 safely, efficiently, and productively in large
14 operations such as Sazerac in Lewiston. Throughout my
15 career I've been in various manufacturing plants in the
16 food, chemical, and alcohol industries. Over the years
17 my family and I have lived in several different
18 locations due to my career path, but it has always been
19 a hope of ours to find a position in Maine. My wife and
20 I have family here, and we have always wanted to move
21 closer to them.

22 When I came on board Sazerac in January, it felt
23 like everything was starting to fall into place for my
24 family and I.

25 Second, the plant. The plant itself has an

1 interesting history. In 2012, Beam Suntory purchased it
2 with the idea to move production and shutter the plant.

3 When Sazerac purchased the facility in 2013, it may
4 well have been the intention of the company to allow
5 that to continue down the path of closure, but as our
6 COE, Mark Brown, has told me -- and I wholeheartedly
7 agree -- he encountered a very dedicated productive
8 workforce in Lewiston and determined it was worth
9 building versus tearing up.

10 And as you've heard from my background, I'm someone
11 who understands the logistics and cutting costs out of
12 production systems. It makes no logical sense to have a
13 plant in Lewiston, Maine. We have no suitable raw
14 materials, plastic, or glassware suppliers nearby, and
15 our location is not advantageous to low-cost
16 transportation. It follows no good rationale unless you
17 factor in the workforce. Once you do that, the
18 negatives and positives all balance out and it makes
19 complete sense.

20 To be clear, Sazerac is not in Maine but for our
21 dedicated workforce. We presently have 124 employees
22 and we run seven production lines. We average five
23 lines every two shifts, as well as a third shift and
24 some Saturdays. We have plans to expand upon those
25 numbers, including the employees.

1 We also produce several products that highlight our
2 connection to Maine, such as Maynard vodka and
3 Mr. Boston's Coffee Flavored Brandy that uses locally
4 roasted coffee beans.

5 Which brings me to my final point: The 124
6 employees at Boston Brands of Maine and the additional
7 30-plus temporary positions that support our operation.
8 I cannot adequately describe the toll this issue has
9 taken on them.

10 If you consider that many of them have fresh
11 memories of their plant being slated for shutdown and
12 are now confronted daily by news articles that puts
13 their livelihood at stake, it creates serious unease.

14 Just the other day this is what we had to wake up
15 to from an editorial board of the Press Herald:
16 Bottling those nips also provides good paying jobs to a
17 number of Mainers, but that cannot be the deciding
18 factor here. If the tiny bottles are making Maine roads
19 unacceptably less safe, and it appears they are, those
20 jobs have to go.

21 I was surprised by the callousness of this
22 statement, because regardless of how we got here, this
23 really comes down to over 160 peoples' piece of minds.

24 We are the most important part of all of this, yet
25 no one seems to consider that fact. Our plant, despite

1 its less than ideal location from a pure business
2 standpoint, is looking to increase its positive economic
3 impact on Maine. We have a \$1 million capital
4 investment plan on hold now due to the unrest, and with
5 that investment could well come full-time positions for
6 30 of our part-time workers.

7 I urge the Commission to think about what is at
8 stake with this entire spectacle: The well-being and
9 future of 160 Maine workers in Lewiston.

10 Thank you for the opportunity to speak today.

11 CHAIRMAN McPHERSON: Gerry Reid.

12 MR. REID: Good day, commissioners. My name is
13 Gerry Reid. It's Gerry with a G- and R-e-i-d.

14 When I last spoke to you, it was a few years ago, I
15 was your BABLO commissioner -- or director, excuse me.
16 We worked together to create and improve a wholesale
17 distribution contract for the State. I'm very proud of
18 that accomplishment.

19 I was quite gratified to hear Director Mineo's
20 performance review that the business continues to do
21 well. That means that it's working, so that's a great
22 accomplishment.

23 When I departed BABLO, I went back to the private
24 sector where I had come from originally, to the Sazerac
25 Company, and I'm very proud, also, to perform a

1 significant role with that company. A very professional
2 organization nationally but particularly in the state of
3 Maine, and it's also quite a high integrity
4 organization.

5 Now, I just want to touch on two points, and I'll
6 be brief because several people have quoted my figures
7 already.

8 What I do want to say with a little bit of emotion,
9 if you'll forgive me, the economic impact on the State
10 of Maine would be impacted and dreadful. Do not
11 underestimate that. Do not look in the rearview at this
12 year and back. Look at an accurate forecast of the
13 future.

14 This business is positively on fire, it's on a
15 growth trajectory like this (indicates) led by my
16 company for reasons which I'll touch on in just a
17 second.

18 But what we've done, if you take that growth rate
19 of this year and you actually step it down by 5
20 percentage points a year until there is no more
21 growth -- 50 ml's I'm talking about -- at the end of
22 about ten years it's not growing any longer.

23 That value to the State of Maine and its current
24 gross profit is approximately \$250 million.

25 Now, you might look at me and say, that's way too

1 optimistic, you're never going to get that much out of
2 this business. I would say to you, I think we can, but
3 reduce my number by half. You're still talking about a
4 massive number. It's not an insignificant number. It's
5 the phenomenon of compounding, folks, and anybody who's
6 done banking knows what compounding does to cash
7 projections. It's a wonderful thing when a business is
8 going this way (indicates), and that's the real number
9 that needs to be taken into consideration.

10 Others have talked about taxes and -- property
11 taxes and sales taxes, so I won't elaborate on that, but
12 just to say, they're on top of the figure I just talked
13 about.

14 Now, the other side of this equation, which I think
15 is equally important, is it has been suggested that if
16 you de-list 50 ml's, that business would just simply go
17 back to larger sizes.

18 I would respectfully disagree with that. We,
19 having led this business, have measured and monitored
20 where the business has come from. If it was going to go
21 back to larger sizes, that would suggest that during its
22 growth trajectory, those larger sizes would have gone
23 down, okay. If it's going to go back, then it must have
24 come from there.

25 Well, they're not going down. Okay. It is

1 incremental to a large degree to this category, so there
2 is no evidence that that business will simply migrate
3 back, and that's the most dangerous assumption I've
4 heard in all of these things.

5 Now, the last part of this equation is, why is this
6 business doing so well? I've heard words like
7 concealment, and so forth, which make me recoil, quite
8 frankly. It's doing so well because if you look
9 across -- beer, soft drinks, water, snack foods, coffee
10 microwaved dinners, laundry detergents -- all of these
11 categories are growing in single-serve pack sizes
12 dramatically. It's not just spirits. The consumers
13 want them. They're convenient, they're lifestyle
14 consistent, and their cash outlay is much smaller
15 compared to the larger size. There's no mystery to
16 this. That's why these things are doing so well.

17 So finally concluding this point -- and I only have
18 one more -- we respectfully suggest to the Commission
19 that providing consumers an incentive to purchase larger
20 spirit bottles is not desirable State policy, in fact,
21 strikes me as bizarre in a certain way.

22 Consumers -- nor do we want to give consumers
23 another reason to go to the State of New Hampshire.

24 I'm getting my time notice. I'm going to go to OUI
25 very quickly and say, others have commented on this.

1 The recent 3,700 or so OUIs, in eight of the ten
2 previous years, that number was higher, substantially
3 higher. So this is not a high number.

4 Also, the 800-pound gorilla in the room is the beer
5 business. Beer is 12 times the physical volume of
6 spirits -- 12 times. Beer is almost all single-serve.
7 Before there ever was a nip, there were beer cans and
8 beer bottles.

9 And lastly, don't forget the spirit industry has
10 grown 3 to 5 percent a year in our state for over ten
11 years. A reasonable conclusion of that would be that
12 the cumulative effect of that might have caused the
13 limited increase in OUI.

14 So I conclude simply by saying, denying consumers
15 the right to choose a legal product we think is really
16 not appropriate public policy in Maine, and just from my
17 view, the independent voters of this state have approved
18 medicinal and recreational marijuana at the ballot box.
19 De-listing 50 ml spirits seems strangely out of touch
20 with the will of the electorate. Thank you.

21 MS. RICE: Thank you.

22 CHAIRMAN McPHERSON: Mark Brown.

23 MR. BROWN: Good morning. My name is Mark Brown,
24 M-a-r-k, B-r-o-w-n, and I am the president and CEO of
25 the Sazerac Company. I have just completed my 45th year

1 in the industry and have been fortunate enough to work
2 in over 50 countries.

3 My involvement in Maine dates back to 1980. In my
4 career I have made over 100 presentations advocating for
5 industry responsibility and regulation. I strongly
6 believe in a responsible industry in partnership with
7 elected officials, regulators, and law enforcement.

8 Over this time I have learned many lessons.
9 Through the most important lessons I've learned,
10 prohibition does not work, and OUI is an ongoing and
11 serious problem. Prohibition did not work in 1919 and,
12 the type of discriminatory nonevidence-based prohibition
13 being proposed today is not going to work either.

14 The prohibition proposed by BABLO covers almost
15 half of the unit spirits sold in the state of Maine. It
16 sets a very dangerous precedent. How does it not
17 logically lead to total prohibition?

18 BABLO argues that substantial evidence of increased
19 drinking while driving should lead to prohibiting all
20 sales of 50 ml products. First, even if there were
21 evidence to support the correlation -- and BABLO has
22 presented none -- then why would we not be back here in
23 30 days dealing with the prohibition on other sizes or
24 the banning of alcohol in bars and restaurants?

25 The supposed logic that says prohibiting 50 ml

1 spirit products decreases OUI risks should apply to all
2 alcohol containers and behavior, should it not?

3 Second, Maine consumers are not going to tolerate
4 targeted prohibition either. They will simply shift all
5 of their alcohol purchases to neighboring states,
6 inflicting economic harm to the state and undoing the
7 wonderful job the State has been doing on regaining
8 cross-border business. If you believe BABLO's theory,
9 it will make the roads much less safe.

10 OUI is a serious problem not to be trivialized.
11 BABLO presents no fact-based evidence to support its
12 theory that the small reported increase in OUI is
13 related to an increase in 50 ml purchases. The agency
14 is simply guessing.

15 Is it due to an increase in the large-sized
16 bottles? Is it because more federal grant money to
17 crack down on drugged drivers via more sobriety check
18 points is in fact catching more violators?

19 Where were the violators drinking? On premise?
20 Off premise? What were they drinking? Beer, wine, or
21 spirits? Where is the study BABLO is required to
22 perform to answer the question?

23 BABLO has not answered any of these questions nor
24 has it presented any evidence or data to support its
25 call for the targeted prohibition. This is not the way

1 you tackle OUI. It can only be tackled through robust
2 education at very early ages and strong enforcement
3 programs, both of which we support.

4 So let's move to 50 ml's. 50 ml's are part of a
5 broad consumer trend in portion control products from
6 snack bars to Keurigs. 50 ml's are the opposite of
7 BABLO's characterization. They are, in fact, good news
8 for our industry because they are the most socially
9 responsible package sold. This allows the consumer to
10 keep precise tabs on their consumption versus a
11 free-pouring 750 bottle. They represent a substantial
12 step forward in measured consumption.

13 In Maine, in addition, 50 ml's represent a further
14 step towards moderation and social responsibility since
15 these are lower proof products, typically 66, 48, or
16 even less, and that is in sharp contrast to the growth
17 in 80-proof products in the larger sizes.

18 A 50 ml is not even a standard drink. It is less
19 than one 5 percent 12-ounce beer. In a worst-case
20 scenario, according to the NHTSA, a 100-pound woman
21 would have an expect BAC of less than .05 after
22 consuming a 50 ml of Fireball.

23 Significantly, there has been no testimony or even
24 anecdotal evidence from law enforcement that 50 ml's are
25 responsible for the change in OUI.

1 BABLO suggests that 50 ml sales are increasing
2 because Maine consumers are experiencing some sort of
3 pent-up --

4 CHAIRMAN McPHERSON: Excuse me just a minute. Are
5 you on your last page there?

6 MR. BROWN: I am on my last page.

7 BABLO suggests that 50 ml's are increasing because
8 Maine consumers are experiencing some sort of pent-up
9 demand and propensity to drive drunk, behavior BABLO
10 would have us to believe is facilitated by the sale of
11 50 ml bottles. The theory is simply false and
12 unsupported by any hard facts whatsoever.

13 We would respectfully recommend that the Commission
14 decline BABLO's unsupported and discriminatory proposal
15 to target a single spirit size or product for
16 prohibition.

17 Thank you for the time. I'm happy to answer any
18 questions.

19 CHAIRMAN McPHERSON: Josh Tardy.

20 MR. TARDY: Good morning. Mr. Chairman,
21 Commissioners, I am Joshua Tardy. I'm a resident of
22 Newport. I am here today in my capacity of local
23 counsel, co-counsel with Mr. Bearor, the Sazerac
24 Company, and I don't want to repeat Mr. Bearor's
25 comments. I just want to add on briefly.

1 I was troubled when I reviewed Mr. Mineo's reply
2 comments in which he suggested, or rather strongly
3 asserted, that nobody in the public comments disputed
4 the Bureau's conclusion that 50 ml containers were
5 "inordinately contributing to illegal drinking and
6 driving." I would just respectfully disagree with that
7 assertion.

8 I think the public comments and the written
9 comments and, in fact, Sazerac's written comments, which
10 specifically have a heading disputing the assertion,
11 make the record clear that we disagree respectfully with
12 Mr. Mineo's conclusion that nip sales are up and that
13 OUIs are up and that therefore nips cause OUIs. It kind
14 of gave me a bad flashback of when I used to have
15 arguments with my parents and I questioned them. I'd
16 say, but, mom, why? And she'd say, because I said so.
17 And then I'd try to appeal it to my dad and I said, and
18 I said why? And he said, because your mother said so.

19 And just because the department and Mr. Mineo says
20 that nip sales can be attributed to the increase in
21 OUIs, I just would respectfully suggest that we call
22 that a logical fallacy, okay, it's begging the question,
23 if you will.

24 Listen, the evidence is clear about OUI in the very
25 Bureau's submission. If you look at it, I would

1 respectfully suggest that you look at a ten-year
2 average.

3 Skowhegan court, for example, has court on
4 Wednesdays. On a particular Wednesday, four or five
5 people might go in and plead guilty to an OUI, and on a
6 Thursday, because they don't have court scheduled,
7 there's nobody that's pleading guilty to an OUI. So is
8 it fair to say that OUIs are on a decrease on a
9 Thursday, or is it more fair to look at it over a
10 ten-year period?

11 I think the record is clear, the data is clear that
12 OUIs are not on an uptick. So I respectfully dispute
13 that assertion.

14 Anecdotally -- I don't know, Mr. Chair, if you can
15 take judicial notice of anything that you hear on the
16 George Hale/Rick Tyler show, but Chris Greeley, police
17 chief of Holden, did talk about how he didn't think it
18 was fair to attribute the uptick in OUIs, if there were
19 any, to nips. He thought that was unfair. He thought
20 it would be more about opioids, and more importantly,
21 the treatment for opioid addiction and the relationship
22 of impaired driving to methadone treatment.

23 We also know that medical marijuana has been a very
24 tough policy discussion at the Legislature and how you
25 quantify THC levels and how do you compute that to

1 impairment and how do you deal with that from a public
2 safety standpoint.

3 So I don't think it's fair to say that because nip
4 sales are up that you can cause this public policy
5 debate in this manner. Craft brew, craft beer -- an
6 emerging industry -- craft brew sales are up. I don't
7 think it's fair to say that that's to blame for OUI
8 increases.

9 And I'll just say, finally, on behalf of Sazerac
10 and myself as a taxpayer and citizen in this state, I
11 appreciate your service, Mr. Chair and members of the
12 Commission. I understand the role that you have to
13 play. I have some in my past experience. I know what
14 it's like to cast difficult votes, and I would suggest
15 that -- and I think you all know this -- that your
16 actions today put you under a microscope, and very
17 importantly, they put Maine and its very important
18 asset, the liquor business, under a microscope and has
19 major implications, not just for the great employees of
20 Sazerac, but for Maine taxpayers and the general fund.

21 You all probably talked about it in your
22 applications to become commissioners and through the
23 confirmation process. You probably talked about your
24 willingness to contribute your public service commitment
25 and understanding the great, great resource that this

1 business is to the general fund.

2 And so I would just say, stop, pause, deliberate,
3 and good luck in this deliberation. Thank you.

4 CHAIRMAN McPHERSON: Dana Connors.

5 MR. CONNORS: Thank you, Mr. Chair and members of
6 the Commission of Liquor and Lottery Commission. My
7 name is Dana Connors. I'm the president of the Maine
8 State Chamber of Commerce, and it is my pleasure to be
9 here today to present you our strong opposition to the
10 de-listing of this product.

11 I think I'd be happy to yield my time to the
12 previous four because I think they made some very
13 compelling -- very compelling -- and convincing
14 arguments as to why it should not be de-listed.

15 I'm here today on behalf of all businesses because
16 we truly believe that this can open the door to a lot of
17 other problems that have been presented to you today by
18 various parties that have commented.

19 I simply want to point out that I remember not too
20 long ago, in fact four to five years ago, that the
21 current -- then current foreign owner of this Lewiston
22 liquor bottling business was prepared to close, they
23 were going to abandon this business; but instead, the
24 owner, as you've heard the manager say, the facility,
25 family-owned American company, Sazerac Company, who's

1 CEO, Mark Brown, saw the potential when he came to the
2 facility and spoke with the employees. He liked what he
3 saw and heard from them, and today he credits those
4 employees, their commitment, dedication, and hard work
5 with much of the company's success.

6 But in addition to what Sazerac saw in our Maine
7 workforce, it was a changing regulatory environment and
8 marketing strategy on behalf of Maine's liquor industry,
9 and today, in a relatively short period of time, it has
10 gone from a probable shutdown to a success story.

11 That same business in Lewiston that's been
12 modernized today employs over 120 full-time Mainers with
13 the possibility of adding 30 more full-time from their
14 part-time employee pool. In addition, revenue to our
15 State has multiplied. This business is now the No. 1
16 supplier of nips in our state and plans call for an
17 added investment of \$1 million to their bottling
18 facility in Lewiston, which will grow and expand jobs
19 even more, and that is the good news.

20 But instead of celebrating and rewarding that
21 success, its significance to our state and our economy,
22 the proposal before you today seems, instead, to punish
23 that success. As good corporate citizens, the company
24 agreed to the 5-cent deposit to address the issue of
25 litter, but in spite of that, they face a possible

1 action that would take away a major portion of their
2 business.

3 With the lack of predictability and consistency in
4 policy being a paramount concern facing businesses
5 today, this appears to be a shining example of why that
6 is so, and bringing with it a cloud of uncertainty for
7 their future planned investment, as well as its impact
8 on employment and revenue to our state.

9 The proposal before you today, if it were accepted,
10 would have a significant negative impact on the local
11 economy in Lewiston and once again bring back an unlevel
12 playing field for our retail community as they compete
13 against our neighbor in New Hampshire.

14 In light of economic impact to our state, I
15 strongly urge you, on behalf of all business in the
16 state of Maine, to reject this recommendation that's
17 before you today.

18 With that I thank you very much for your time and
19 consideration.

20 CHAIRMAN McPHERSON: Rebecca Swanson Conrad.

21 MS. SWANSON CONRAD: I'm Rebecca Swanson Conrad,
22 the president and CEO of the Lewiston Auburn
23 Metropolitan Chamber of Commerce. I'm here on behalf of
24 our region and our member Sazerac Boston Brands, as well
25 as numerous Lewiston-Auburn retailers, to ask the Bureau

1 not to ban the sale of 50-milliliter bottles in Maine,
2 and certainly without further study and discussion.

3 Definitive evidence has not been presented that
4 removing only this particular-sized bottle for sale in
5 Maine will address the issues of litter or drunk driving
6 and that makes a ban premature. It also sets a
7 dangerous precedent with long-range implications for the
8 alcoholic beverage production, distribution, and sales
9 industries in Maine.

10 A decision of this magnitude that will reduce State
11 revenue, substantially reduce income for retailers
12 across Maine, and in the case of the Lewiston producer,
13 Sazerac Boston Brands, have a direct impact on
14 employment levels, business growth, and the resulting
15 economic impact is in direct opposition and to the
16 supportive business environment that our region and our
17 state seeks to promote.

18 Boston Brands, in particular, is an important
19 member of the Lewiston Auburn economy, not only carrying
20 on, but expanding a facility with deep roots in the
21 community.

22 Sazerac made a significant commitment to remain in
23 Lewiston Auburn, Maine's second largest economy. One of
24 our many niche manufacturing industries linked to a
25 national market, they are exactly the type of company we

1 seek to attract, retain, and most importantly, help to
2 expand to ensure that our region has a broad range of
3 good job opportunities for our increasing population.

4 The best conclusions follow healthy debate. Please
5 do not make a unilateral decision on this issue. Thank
6 you.

7 CHAIRMAN McPHERSON: Thank you. Victor Horton.

8 That being the end of public comment --

9 PARTICIPANT: I'm sorry, did you say Victor Horton?
10 I didn't hear you. I apologize.

11 MS. WRIGHT: My name is Shelly Wright, and I'm here
12 to testify in place of Victor Horton, my executive
13 director, who was unable to make it today.

14 I represent the Maine Resource Recovery
15 Association, which is the State's nonprofit sharing
16 organization for recycling and solid waste
17 professionals. As such, we work to support economically
18 sustainable and environmentally friendly recycling and
19 solid waste practices that uphold the State's waste
20 hierarchy set by the Maine State Legislature.

21 We are writing to support the discontinuance of
22 sales of the so-called nips and also the Bureau's --
23 BABLO's recommendation to de-list all 50-millilitere
24 spirit products.

25 Recent legislative hearings have brought to light

1 the growing problem of roadside litter in Maine and
2 established consensus that tiny 50-millilitere nips'
3 bottles are a rapidly increasing contributor.

4 MRRA created Maine -- Keep Maine Clean program
5 earlier this year to encourage outdoor enthusiasts to
6 pick up roadside litter and work against illegal dumping
7 on private lands. When LD 56 came into the public
8 forum, our Facebook page was literally inundated with
9 pictures of nips taken by citizens as they walked
10 Maine's roads and combed their beaches.

11 Our members supported adding small containers to
12 the Bottle Bill as proposed in LD 56; however, when
13 Governor LePage suggested doing away with the small
14 spirit containers altogether, we needed only to look at
15 Maine's solid waste hierarchy for guidance.

16 The hierarchy sets State policy regarding solid
17 waste management and the priority with which an
18 integrated approach to waste shall be based.

19 It establishes such priorities in the following
20 order: Reduction, reuse, recycling, composting of
21 biodegradable waste, processing that reduces the volume
22 of waste in landfills -- including incineration -- and
23 lastly, landfills.

24 The statute further establishes the above list as a
25 guiding principle in making decisions related to solid

1 waste management and goes on to establish that it is
2 Maine State policy -- and I quote the statute --
3 Actively promote and encourage waste reduction measures
4 from all sources.

5 By reducing the amount of unnecessary single-use
6 packaging and thereby stopping the multitudes of
7 discarded containers on Maine's roadsides from piling up
8 in the first place, logic dictates that the de-listing
9 of the 50-milliliter spirits is not only a socially
10 responsible solution, but it is the optimum course of
11 action to uphold Maine's solid waste hierarchy and
12 achieve the litter reduction goals of LD 56.

13 MRRA supports the recommendation of BABLO to
14 de-list the wasteful single-use 50-milliliter delivery
15 method for spirits.

16 Thank you for your consideration.

17 CHAIRMAN McPHERSON: Thank you. That concludes the
18 public comments.

19 PARTICIPANT: Chair McPherson, I believe there are
20 people who would like to address the Commission, if at
21 all possible. We were not aware of the sign-up and did
22 not think that it was a requirement. I would ask the
23 Commission to oblige those --

24 CHAIRMAN McPHERSON: It was well posted and
25 notified that they had to make --

1 PARTICIPANT: Nowhere on the website did I see that
2 it was a requirement to sign up.

3 CHAIRMAN McPHERSON: Pardon?

4 STATE REPRESENTATIVE HANDY: Nowhere on your
5 website did I see that it was a requirement to sign up
6 in order to speak -- my name is Representative Jim
7 Handy, by the way -- and I say that because this plant
8 is in my district, and I care about every one of the
9 employees there, and I care about all the other
10 employees and small businesses that will be impacted by
11 this.

12 But also, the other thing I'd like to say is that
13 the OUI and the attempt to correlate OUI --

14 CHAIRMAN McPHERSON: Sir, we have --

15 STATE REPRESENTATIVE HANDY: -- is not --

16 CHAIRMAN McPHERSON: We have that information.

17 STATE REPRESENTATIVE HANDY: You have that
18 information, but just let me make my point.

19 My point is that if that's a faulty piece of
20 evidence that you have before you, what other evidence
21 do you have before you that's equally at fault?

22 CHAIRMAN McPHERSON: That's been brought out by
23 some of the others that spoke.

24 STATE REPRESENTATIVE HANDY: And I would join with
25 Senator Saviello and making this open free market idea

1 with a well regulated free market liquor sales in the
2 state with the proper liquor enforcement that has been
3 decimated. Thank you for the opportunity.

4 CHAIRMAN McPHERSON: Thank you. We'll end the
5 public comment right there. I think we have the
6 information we need to continue and make a decision.

7 MR. RANDLETT: So just for members of the public,
8 we've ended the public comment portion of this meeting.
9 At this point the Commission members are going to
10 discuss the issues and deliberate to their decision.

11 For those who don't know, my name is Mark Randlett,
12 I'm An assistant attorney general. I'm here to advise
13 the Commission members during the deliberations. I do
14 not have a vote, but I will assist them in terms of the
15 process and give them any guidance with regard to legal
16 questions they may have.

17 So at this stage it's up to the Commission members
18 to talk about it and reach a decision. There will be no
19 further public comment. At this point it's purely among
20 Commission members, although it is a public process so
21 you're welcome to stay and listen to the process.

22 And the last thing I will just point out is that
23 after the Commission votes today, assuming they are able
24 to reach a decision today, the final decision will be
25 put into writing and I assume will be posted on the

1 Commission's website for public viewing, and that
2 written decision will explain the vote and the reasons
3 for that decision, which they will articulate during
4 their deliberations today, but today will be their, I
5 presume, final decision assuming they're able to reach a
6 consensus on this issue.

7 So at this point I'm going to turn the
8 deliberations over to the Commission members. I just
9 want to point out a couple things. First of all, as the
10 chairman pointed out in his opening statements, the --
11 it is the Commission members' decision to determine
12 whether or not items should be listed or de-listed in
13 the state of Maine.

14 As far as I can tell from my review of the law,
15 that that is a discretionary function of the Commission,
16 in other words, the standard that you have is whether or
17 not you believe that there is good reason to make a
18 decision to de-list or a good reason to make a decision
19 not to de-list. That's up to you.

20 It's a discretionary matter, but I would ask that
21 in making that determination, you take into
22 consideration all the evidence you've heard, and when
23 making your determination, articulate the reasons why
24 you believe that these items should be de-listed or why
25 they should not be de-listed so that they can go into an

1 appropriate decision.

2 Does anybody have any questions about the process
3 that we're going to go through?

4 MR. DAVIS: Any chance we can get a break?

5 MR. RANDLETT: I'd be happy to take a -- I mean,
6 that's up to you guys. I don't control the scope of the
7 meeting at this point, so if you want to take like a
8 five-minute break before you deliberate, that would be
9 fine. I would just ask that if you are going to take a
10 break, that members of the public not approach
11 Commission members with anything further at this point,
12 that the Commission members just be allowed to go about
13 their business on their own and then we'll be back in
14 five minutes. Thank you.

15 (There was a break in the hearing at 12:04 p.m. and
16 the hearing resumed at 12:12 p.m.)

17 MR. RANDLETT: Please take your seats. We're going
18 to start with the Commission deliberation. Thank you.

19 The problem with taking a break like that, it makes
20 me think about a couple more things to say.

21 Just for the public's information, the way this is
22 going to work is the Commission members will have a
23 discussion about the issues. At some point when they
24 get to making a decision, they'll have to make a motion
25 to de-list by the board -- by a Commission member. It

1 will have to be seconded and then they'll vote on it.

2 There might be more discussion after that or not.

3 That's up to the Commission. But there will be a vote.

4 There are five Commission members here today, which
5 is a forum of the Commission, and there will have to be
6 three people to vote in favor of de-listing before it
7 can pass, and the only other thing we can do is we'll
8 have to make sure Commission members have a working
9 microphone in front of them when you're speaking so
10 people can hear you.

11 So at this point I'm going to turn it over to the
12 chairman to start opening the deliberations.

13 CHAIRMAN McPHERSON: I have a question. Did I
14 understand that if this proposal doesn't pass, then the
15 nips will stay, so to speak, and given a period of time,
16 the labels can be changed so that the 5-cent deposit
17 will be on the bottle?

18 MS. RICE: Yes.

19 MS. SHEEHAN: Yes, that's my understanding. In
20 2019, I believe, is the changeover.

21 MS. FITZGERALD: Yes.

22 MS. SHEEHAN: Which would give the industry time to
23 repackage.

24 CHAIRMAN McPHERSON: All right. Any other comments
25 or questions?

1 MS. RICE: We're in the discussion period?

2 CHAIRMAN McPHERSON: Yes, we're in the discussion
3 period.

4 MS. RICE: I have listened to the testimony and
5 I've looked at this binder full of information, and I
6 looked at the OUI data over the 11-year period given for
7 2006 through 2017. And the highest OUI convictions were
8 in 2006 and 2007 when the nips' sales were the lowest
9 versus about 500,000 nips' bottles versus 8.4 million at
10 this point.

11 So I find that attributing the increase of OUIs to
12 an increase in nip sales is not sustainable.

13 I also looked at the average of the OUIs, and
14 although there was a little uptick in 2014, I don't
15 think that is statistically significant, and 2014 was a
16 year when we had cold winters and high snow levels,
17 which may have influenced driving and the possibility of
18 OUI convictions.

19 I think LD 56 should be given a chance to work and
20 see how things go. That was just instituted by the
21 Legislature, and that should help with the roadside
22 debris.

23 There were some other suggestions that were made
24 today that you may also look at is the pricing,
25 education, and enforcement.

1 So I think that we should be -- not take a hammer
2 to this kind of -- as a business decision, I think it
3 would affect jobs, hurt small businesses, and affect
4 consumer choice. That's the way I am looking at this
5 situation.

6 MS. SHEEHAN: Pat, I'm going to add to that as
7 well. Looking over the information on the OUI, you
8 know, one of my questions, too, was were those
9 vacationland people? Were they from the state of Maine
10 or were they from out of state with the OUI convictions?

11 I just see no correlation with the OUI and just the
12 nip itself.

13 And then I took a look at our mission. Our mission
14 is to achieve a social responsible manner, and I truly
15 believe on this Commission that Pine State, our friends,
16 have done great campaigns and that we do do that mission
17 of keeping everything very responsible, and I found the
18 debate of actual -- the size -- that the alcohol level
19 is actually less in the nip achieving our social
20 responsibility to our Mainers.

21 And then our social responsibility, too, can be
22 jobs. These are very important jobs in the state of
23 Maine and I find that very compelling.

24 LD 56, you know, a 5-cent redemption, I don't know
25 if that will really solve anything, but if we do have

1 all these extra funds, I would really like to see money
2 spent more on education and possibly even going towards
3 more of our Maine state problem in the drug epidemic
4 that we have here in the state.

5 That's my position.

6 MR. DAVIS: Thank you. When I try to make a
7 decision about something that's critical, I ask, what is
8 the most important thing we're deciding on, and I've got
9 all this book of data -- actually before that when I got
10 a lot of information sent to me -- I asked where the
11 critical information was, and to me the critical
12 information was, what do OUIs result in?

13 OUIs result in crashes, and the crashes result in
14 injury and death, and I haven't gotten any information
15 about that aspect of this decision.

16 So I asked for some of that, fatality statistics,
17 and I asked a variety of State agencies to provide me
18 with as much information as they could about crashes and
19 fatalities. So I look at the facts.

20 The basic facts are, nips are exponentially through
21 the roof. You go from under a million to 8.5 million in
22 a very short amount of time, and there's a whole host of
23 reasons why that happens.

24 We then look at our roadsides and we find that
25 they're all over the roadsides, and we pick them up,

1 obviously, that's an environmental problem. But why are
2 they on the roadside? That's because somebody's
3 throwing them out of a moving vehicle, which means
4 they're drinking them in the vehicle. I mean, you can't
5 escape that.

6 So then I said, OUIs. We've got a ten-year drop
7 like a stone of OUIs, all of a sudden it stops and
8 starts to go the other way. So I said, okay, there's a
9 correlation there. Something's triggered that.

10 I then thought, well, what are the crashes like?
11 What's happened with crashes? Well, crashes have
12 increased also -- not significantly but there's enough
13 movement that it went from in 2015 from less than 1,200
14 to almost 1,400.

15 And then what happened to fatalities? Well, that's
16 when you get into the real mud because I don't care
17 whose numbers you look at, they're different. So
18 there's no consistency from Alcohol Alert, which is an
19 agency that tracks fatalities, the National Highway
20 Safety -- the Transportation Safety Administration, they
21 track fatalities, and the State Police; however, in
22 those three short years, fatalities are up. Let me give
23 you some examples.

24 In 2000- -- the State Police. In 2013, they were
25 26; in 2014, they were 27, and then in 2015, they're 39.

1 If you look at the National Highway, 2014, they're
2 37; 2015, they're 52. If you look at the Alcohol Alert,
3 2014, they were 49 and now they're 52.

4 Clearly there's an increase in fatalities, and so
5 for me that's the most important issue. I mean, we make
6 \$4 million. How many people in the room here would
7 spend \$4 million to bring back somebody who had died of
8 a loved one? And for me that is the crucial thing I'm
9 going to decide on.

10 MR. RANDLETT: If you have written material or
11 other items that you relied upon, I would ask that you
12 make them available to the Commission and to the Bureau
13 so they can be included in the record.

14 MR. DAVIS: Certainly. I want to caution you
15 there. They're my handwritten draft paper notes.

16 MR. RANDLETT: I think they probably -- to the
17 extent you did any individual figuring on this, I think
18 it should be in the official record. If you could just
19 provide those.

20 MR. DAVIS: I will.

21 MS. FITZGERALD: Thank you. I would echo what at
22 least a couple of my commissioners have said in terms of
23 the reliance on some of the data.

24 I just know that from my perspective, which is
25 Washington County, that we certainly understand the fear

1 of losing employment. There's no place in Maine that
2 can afford to lose, you know, 25, 50, 75 jobs or
3 whatever it is, and I am, I guess, almost persuaded by
4 that alone.

5 We do see the nips by the side of the road in
6 Washington County just like everybody else does, but the
7 impact of de-listing them at this time, I think, does
8 more harm than good, and I am persuaded by the process
9 of allowing LD 56 to operate for a while.

10 We can always go back and amend it or change it or
11 withdraw it; but I think that the Legislature debated
12 it, as I'm sure they did, and felt that this was a
13 reasonable action that for the entire state.

14 I mean, I have one perspective, my commissioner's
15 have other perspectives. But the Legislature, we
16 assume, they have the statewide perspective, and like it
17 or not, I have to rely upon the fact that they used that
18 perspective when voting on LD 56.

19 CHAIRMAN McPHERSON: Anything further?

20 MR. DAVIS: I'll make one other comment. You have
21 an opportunity to be socially responsible, and one of
22 the things you do, is if you do de-list this -- which is
23 where I'm going to be coming out -- if you do de-list
24 it, it's not a permanent situation.

25 If you did it for three years, you could see what

1 would happen to OUI and you would see what would happen
2 to fatalities and injuries and crashes, and if those
3 numbers change dramatically and went down, I think that
4 would be a wonderful thing, but you'll never know unless
5 you have the experiment, and the experiment is to
6 de-list it and see what kind of impact de-listing has
7 for two or three years.

8 You'll have a different governor, you'll have a
9 different commission. They can certainly make a change
10 and bring them back if that really happens.

11 But I suspect that something will happen. I think,
12 from what I can tell, you will see a drop in all those
13 things: OUIs, crashes, and fatalities.

14 You're going to stop some people -- not all people,
15 obviously -- you'll stop some people from using those
16 nips.

17 I mean, you go into any convenience store -- and I
18 have a business of my own and we put these kinds of
19 items, those cheap items that have great margin on
20 them -- you put them right by the cash register, and we
21 encourage people by putting them there as an impulse
22 item.

23 I was in the store the other day and somebody
24 bought four cans of Bud Light, their most favorite beer
25 in the world -- and they bought four nips, and that's

1 how it goes.

2 It's a very cheap impulse-driven product, and I
3 suspect that there's going to be some deaths and
4 injuries that are caused by those products.

5 CHAIRMAN McPHERSON: Thank you. The question in my
6 mind is why has the sale of nips increased so in the
7 convenience stores but in the big supermarkets, like
8 Hannaford or Shaw's, the sales have gone down?

9 I think somewhere in here it's because you can go
10 in and buy a sandwich or something and grab a nip or
11 whatever. It just confuses me, that's all.

12 MS. SHEEHAN: Well, I think there's been discussion
13 about this. That's a behavior that needs to be
14 modified. That's -- we heard from, I believe, the mayor
15 of Lewiston that he talked about basically that's a
16 behavior. I mean, that's an addiction problem.

17 MR. DAVIS: I'd like to make a motion. I can't
18 wait. I'd like to make a motion that we accept the
19 de-listing of the 50 ml containers. Do I need to say
20 anything more about that?

21 CHAIRMAN McPHERSON: Looking for a second.

22 It's been moved that we accept the Bureau's
23 recommendation. Is there a second? The motion dies.

24 MR. DAVIS: That's kind of a macabre way to say it.
25 It dies. Okay.

1 CHAIRMAN McPHERSON: Is there another motion?

2 MS. SHEEHAN: Motion to keep the 50 ml's as
3 current.

4 MS. RICE: Second.

5 MR. RANDLETT: Just for the record, I think -- I
6 think that without a motion to take a positive action
7 that you'd be good, but I think just for the purpose of
8 the record here, I don't think it would hurt to have an
9 affirmative motion for some action that you have a
10 record, and I think that could be a motion to reject the
11 proposed de-listing of 50 ml spirits. I think that
12 would give a more positive statement of the motion, and
13 that would be what I recommend that you make.

14 MS. SHEEHAN: Thank you.

15 MS. RICE: I move to reject the motion to de-list
16 the 50 ml bottles.

17 MS. SHEEHAN: I'll second that.

18 CHAIRMAN McPHERSON: It's been moved and seconded.
19 Is there further discussion?

20 MR. DAVIS: Yes, one more. When this issue came
21 up, I thought it was -- and I'm a business person, I've
22 been in business all my life -- I thought it was kind of
23 a business decision, but the more I thought about it and
24 I started looking in the paper, I started watching the
25 paper for all the OUIs, and the deaths contributed by

1 OUIs.

2 The one that struck me was a pedestrian walking
3 along the street that was run over and killed -- wasn't
4 in a car -- they were just walking on the street and
5 they were run over and killed by a person who was under
6 the influence.

7 You have that number of deaths in the state and you
8 have a chance to do something about it, and try to
9 experiment to see if maybe it might have some kind of
10 impact on that.

11 Search your hearts to do that. Thank you.

12 MS. FITZGERALD: A couple of things. I think the
13 suggestion to, you know, try it for three years and then
14 if it doesn't work, undo it, if we listen to the time
15 period to implement this was January of '19, this is not
16 something that turns on the dime.

17 So that saying, well, you know, we can change this
18 in two or three years, I think that's a whole other
19 massive retooling of something, and I guess I would be a
20 little concerned that it would be more difficult and
21 what we tried to achieve would not be achieved.

22 But the other thing -- and no disrespect to my
23 fellow commissioners -- but as a history major, if you
24 remember prohibition -- and there's nobody in this room
25 that is old enough to do that, so forget it -- but the

1 point is that we couldn't legislate morality back then,
2 and I don't think we should be doing that now.

3 CHAIRMAN McPHERSON: Anything further?

4 MR. DAVIS: Nothing.

5 MS. SHEEHAN: Nothing.

6 CHAIRMAN McPHERSON: We'll call for a vote. All
7 those in favor of leaving it, in favor of the motion.

8 Opposed.

9 Three to one, and the chair would concur with the
10 majority.

11 MR. RANDLETT: Okay, that concludes the
12 deliberations. The motion has been made. The proposal
13 to de-list the 50 ml bottle has been rejected by a 4 to
14 1 margin.

15 I will put that decision in written form explaining
16 the rationale for it, and it will be provided to the
17 Bureau for posting on its website.

18 That concludes my issue.

19 CHAIRMAN McPHERSON: The only other thing is we've
20 got to confirm the next meeting date. The
21 August meeting is Tuesday, August 8th, and the
22 September meeting will be September 12th. With that a
23 motion to adjourn is in order.

24 MS. SHEEHAN: I make a motion to adjourn.

25 MS. RICE: Second.

1 CHAIRMAN McPHERSON: Seconded and we adjourn. All
2 those in favor?

3 That's unanimous. Thank you for your patience.

4 (The deposition was concluded at 12:33 p.m.)
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CERTIFICATE

I, Lisa Fitzgerald, a Notary Public in and for the State of Maine, hereby certify that on July 11, 2017, a hearing was held by the Maine State Liquor and Lottery Commission, and that this hearing was stenographically reported by me and later reduced to typewritten form with the aid of computer-aided transcription; and the foregoing is a full and true record of the testimony given by the witness.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this July 17, 2017.

A handwritten signature in black ink that reads "Lisa Fitzgerald". The signature is written in a cursive style with a large initial "L".

LISA FITZGERALD, NOTARY PUBLIC
Court Reporter

My commission expires: May 10, 2018

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