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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

14

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, flowing style.

---

LISA FITZGERALD, NOTARY PUBLIC  
Court Reporter

My commission expires: May 10, 2018



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