

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 12, 2006

PETITION TO ADOPT REGULATION AND/OR  
AMEND ALCOHOLIC BEVERAGE TAX REGULATION 2530

Reported by: Juli Price Jackson

No. CSR 5214

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P R E S E N T

For the Board  
of Equalization:

Claude Parrish  
Vice Chairman

Bill Leonard  
Member

Betty T. Yee  
Acting Member

Marcy Jo Mandel  
Appearing for Steve  
Westly, State Controller  
(per Government Code  
Section 7.9)

Gary Evans  
Acting Chief, Board  
Proceedings Division

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For the Department:

Robert Lambert  
Monica Brisbane  
David Hayes

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1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 DECEMBER 12, 2006

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5 MR. EVANS: The next item that will be taken up  
6 is Chief Counsel matter J5. This is a petition to amend  
7 Regulation 2350, inventories.

8 And Mr. Lambert will make the presentation.

9 We have ten speakers.

10 MR. LAMBERT: Good afternoon, my name is Robert  
11 Lambert and I'm with the Legal Department.

12 To my right is Monica Brisbane.

13 This is the petition to adopt the regulation to  
14 tax flavored malt beverages as distilled spirits and/or  
15 amend Alcoholic Beverage Tax Regulation 2530.

16 The petition was filed on October 30th by  
17 Friday Night Live, Students Making a Community Change  
18 and the California Youth Council.

19 Pursuant to Government Code Section 11340.7,  
20 the Board may deny the petition, initiate the rulemaking  
21 process or grant any other relief or take such other  
22 action as it may determine to be warranted.

23 MR. PARRISH: So, you may proceed.

24 We're going to give -- allocate a certain amount  
25 of time to every speaker; is that correct?

26 MR. EVANS: That's correct.

27 Three minutes, is that fine?

28 MR. PARRISH: Three minutes.

1 MR. PARRISH: How many minutes per speaker?

2 MR. EVANS: Three.

3 MR. PARRISH: Three, yes, that sounds good,  
4 that's customary, isn't it?

5 MR. EVANS: Yes, it is.

6 The first group we have is the Friday Night  
7 Live group.

8 MR. PARRISH: And you have them by the name  
9 here on the list? I guess they're in order?

10 MR. EVANS: Yes, I do.

11 We have -- the first four speakers -- and I  
12 will let you introduce yourselves and who you represent.

13 So, please feel free to begin.

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1 ELIANNA YANGER

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3 MS. YANGER: Good afternoon, ladies and  
4 gentlemen of the Board. My name is Elianna Yanger and  
5 this is James, Cindy and Jimmy (indicating.)

6 And we represent the youth of California. We  
7 would like to thank you for hearing our petition today  
8 on behalf the Friday Night Live, SMACC and the  
9 California Youth Council.

10 Friday Night Live is a youth led organization  
11 that gives you the opportunity to engage in the  
12 communities and make positive relationships with the  
13 adult allies.

14 SMACC stands for Students Making a Community  
15 Change. And SMACC is a part of a state incentive grant  
16 to reduce binge drinking with the Sacramento County  
17 Office of Education.

18 The California Council is a group of young  
19 leaders who come together to voice their opinions and  
20 the opinions of the youth throughout California. We are  
21 able to do so because the members of the California  
22 Council come from all different cultures, communities  
23 and counties throughout this state.

24 We are here today to voice our concerns and  
25 strongly urge you to follow or amend as necessary, the  
26 Government Code 11340.6 regulations. And we would also  
27 like you to address the proper taxation of alcopops,  
28 which are also known as flavored malt beverages. And

1 these beverages are sweet alcoholic drinks.

2 And alcopops are very popular among youth today  
3 and it's a often seen as a gateway drink for young  
4 people.

5 And the alcohol industry seems to agree with  
6 that statement because they say, "The beauty of this  
7 category is that it brings in new drinkers, people who  
8 really don't like the taste of beer."

9 And we know that many young -- many youth  
10 problems such as binge drinking and drunk driving are  
11 created by alcoholic beverages.

12 And this journey to this presentation hasn't  
13 been very easy because as a young person, and like the  
14 peers in my high school, like some them aren't so happy  
15 about this taxation going on. Because they seem like --  
16 they ask me, "Why are you trying to do this? You are  
17 trying to make it harder for us to get these drinks."  
18 Because many of my peers drink them.

19 And I just feel that because youth brings up  
20 that statement I think that this needs to be addressed  
21 today.

22 MR. PARRISH: Do you have remaining time? Or  
23 did she utilize the time?

24 MR. EVANS: She has a little bit of time left.

25 MR. PARRISH: Okay.

26 MR. EVANS: We'll go to to next person.

27 MR. PARRISH: Next person, okay.

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1 JAMES DUI

2 ---o0o---

3 MR. DUI: Hi, I'm James Dui from Hiram Johnson  
4 High School. And I represent Friday Night Live and  
5 Students Making a Community Change.

6 I appreciate the value of you listening to us  
7 today. We need you to help us.

8 Many of us not are aware of the trouble that  
9 alcopops bring, how they affect the youth population.

10 Okay, young people are talking about the  
11 potential consumers of these products. This is a pop, a  
12 soda drink, this is Jones and its counterpart, Smirnoff.  
13 If you notice, the bottle size and shape is almost  
14 identical. The color of the pop is exactly the same.

15 MR. PARRISH: Why don't you put them on the  
16 counter so that we can see them? That would be good.

17 That red one looks very delicious.

18 MS. MANDEL: Note for the record that  
19 Mr. Parrish is of drinking age.

20 MR. DUI: Oh, it's hard to tell, he looks so  
21 young.

22 MR. PARRISH: It's clean living.

23 MR. DUI: The graphics are --

24 MR. PARRISH: What flavor -- are there two  
25 different flavors up here?

26 I am going to give you extra time too because I  
27 am abusing your time, they're both red, is one cherry  
28 and one strawberry or what is the flavor -- just for

1 the, you know, the information?

2 MR. DUI: You know, Zima is punch. The Jones  
3 is strawberry/lime soda.

4 MR. PARRISH: Oh, strawberry/lime. So, one is  
5 strawberry/lime and the other is punch?

6 I never liked punch, but I would like  
7 strawberry/lime.

8 Please proceed and we're going to give you an  
9 extra minute because I've used up your time.

10 Continue.

11 MR. DUI: The graphics are very similar. And  
12 if you were to taste these products, it would be hard to  
13 tell the difference between an alcopop and a soda pop.

14 Many people would not know the difference  
15 unless they looked at them closely.

16 I know that my parents would definitely not  
17 notice.

18 MR. PARRISH: In other words, if you're  
19 standing on the street, it looks like a soda pop, that's  
20 true.

21 They don't have cola-flavored, do they? No, no  
22 cola?

23 MR. DUI: I don't know about that, maybe they  
24 do.

25 Another interesting about these products is  
26 that most of them are about the same price or sometimes  
27 cheaper than a bottle of water. Because at the stores  
28 it's like \$1.25, \$1.50 and at the store it's like \$1.30,

1 ,but at the gas stations it probably -- the water  
2 probably costs more than the alcopop.

3 MR. PARRISH: So, the price of the alcopop -- I  
4 mean the -- that's the slang term for it -- but those  
5 four items up there, what is the retail price if you are  
6 just averaging?

7 I know it's difficult and probably varies from  
8 store to store.

9 MR. DUI: Last time we went, we checked the  
10 Smirnoff, it was like 1.30 because it was like 6  
11 something for 6.

12 MR. PARRISH: Oh, it's a six-pack it comes in?

13 MR. DUI: Yeah, so we just divided by six.

14 MR. PARRISH: So, maybe it's \$6.25, or  
15 something like that?

16 MR. DUI: And then the Jones and Starbucks is  
17 like \$1.50.

18 MR. PARRISH: Yes.

19 MR. DUI: So, the Smirnoff is cheaper than the  
20 Jones, so that, we --

21 MR. PARRISH: And it's all vodka-based, is it?  
22 Those you are presenting are all vodka-based?

23 I've seen some I think are whiskey-based, but  
24 the ones you have up here are all vodka?

25 MR. DUI: They're not vodka-based, they're  
26 distilled spirits.

27 MR. PARRISH: Distilled spirits, okay.

28 MS. MANDEL: I think the point is that the --

1 they're -- they often cost only as much as or are  
2 cheaper, depending on your retailer --

3 MR. PARRISH: I see.

4 MS. MANDEL: -- than a bottle of water, which  
5 is what he's got behind the counter there.

6 Maybe you can't see it.

7 MR. PARRISH: Yes.

8 MS. MANDEL: There you go. Thank you.

9 MR. PARRISH: Of course, beer is a little  
10 cheaper. You can get beer maybe -- I have seen 3.99 for  
11 a six-pack when I go in. So, it is -- this more  
12 expensive than beer, but less than water.

13 Please proceed.

14 And we've given you an extra minute.

15 That's not leaking into the microphone, right?

16 MR. DUI: If you were to tax these products  
17 properly, the alcopops or the distilled spirits, that is  
18 the cost should be like distilled spirits because  
19 distilled spirits do cost more than the water, so  
20 teenagers are more averse to buying them.

21 Yeah, I'm done.

22 MR. PARRISH: Thank you very much. Well, you  
23 did a fine job.

24 Next? Please proceed.

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1 CINDYSONG.

2 ---o0o---

3 MS. SONG: Another thing that you should know  
4 about the alcopops are that they are a common starter  
5 drinks for young women. Beer tastes terrible and so  
6 does hard liquor by itself. These drinks are made to  
7 taste like soda pop to get around the roadblock of that  
8 taste.

9 According to a study of the -- by the  
10 University of Michigan, 78 percent of 8th grade drinkers  
11 consume alcopops, 65 percent of 12th grade drinkers  
12 consume them and the number drops dramatically to  
13 36 percent of 25 to 30 years old drinkers. It seems  
14 that the older the consumer is, the less they're likely  
15 to chose an alcopop as a drink of choice.

16 According to the America Medical Association,  
17 the red representing Latino girls aging from 12 to 18,  
18 red, and those who does not drink, pink.

19 These are consequences of girls who have drink  
20 alcopops. The girls who drink alcopops vomit or pass  
21 out more than 20 percent than those girls who don't,  
22 which are under 5 percent. Those who have driven after  
23 drinking are at 20 percent, while those who haven't are  
24 under 5 percent.

25 And those who are more likely to be sexually  
26 active have -- over 10 percent of them have drunk  
27 alcopops. Those who have not are under 5 percent.

28 Lots of advertising connected with alcopops

1 show young-looking girls being flirtatious, sexy and  
2 outgoing.

3           Youths are much more likely to engage in risky  
4 behavior under the influence of alcohol. Teen suicide,  
5 car crashes, academic influence of alcohol (inaudible)  
6 failure, teen pregnancy incidence and sexual violence  
7 are just a few of the problems.

8           MR. PARRISH: Thank you.

9           Any questions?

10          MS. MANDEL: Just -- what's your name?

11          MS. SONG: Cindy Song.

12          MS. MANDEL: Thank you.

13          MR. PARRISH: And that concludes your  
14 presentation?

15          Very good.

16          Next?

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1 JIMMYJORDAN.

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3 MR. JORDAN: Okay. Hi, my name's Jimmy Jordan  
4 and I would like to thank you for let me here -- letting  
5 me speak my voice and make it heard.

6 I am very hopeful that you will agree that  
7 there is a taxation error that you are in a position to  
8 fix.

9 You already made a clear statement about the  
10 taxation of these products that contain distilled  
11 spirits. The Alcohol Beverage Tax, Section 711, which  
12 states,

13 "An alcohol beverage product, including beer  
14 and any amount of kind of distilled spirits  
15 does not meet the definition of beer and will  
16 instead be taxed as distilled spirits."

17 Because you aren't following your own law,  
18 alcopops are taxed incorrectly, which has created a huge  
19 consequence.

20 California is losing \$40 million in revenue  
21 just from not classifying it right, which could go into  
22 prevention or could go into a general taxation pot.

23 Also without -- right now as alcopops are  
24 taxed, alcopops are cheaper and easier for young people  
25 to buy. By taxing alcopops correctly, it would reduce  
26 the alcohol industry to stop making money from putting  
27 young people at risk.

28 Also, if you think about it, if alcopops are

1 one of the highest choice of drinks among young adults,  
2 then wouldn't you think if it's reclassified it would  
3 take those alcohols out of the youths' hands? It would  
4 reduce underage drinking and reduce substance abuse. It  
5 would reduce pretty much all of the underage drinking  
6 stuff.

7           And on behalf of youth from all over  
8 California, I am here to urge you to grant our petition  
9 and adopt the regulation that implements you, your  
10 Alcohol Beverage Taxation 711-2004-1.

11           This is a notion that is very clear. And if  
12 these products aren't being taxed as distilled spirits  
13 because the manufacturer claims they don't contain any,  
14 then they should provide evidence that supports their  
15 claim, just as my parents support evidence for their --  
16 if they file taxes -- just like pretty much any taxpayer  
17 provides evidence.

18           So, why shouldn't -- why should the alcohol  
19 industry do that as well?

20           We've had an opportunity to meet with honorable  
21 staff from John Chiang's office, Bill Leonard, Claude  
22 Parrish, Betty Yee and Assemblywoman Judy Chu. We  
23 actually know your Chief Counsel has recommended that  
24 you allow this issue to be decided in courts, which was  
25 filed by a different group.

26           Also over the past couple of weeks we have  
27 created a petition. In the two weeks this petition has  
28 gone all over California and in those two weeks we have

1 gathered over 500 signatures that we can give you to  
2 guys too.

3 Also through the California Youth Council, we  
4 have youth representatives in Trinity County. They  
5 actually went to the Board of Supervisors and convinced  
6 them to support our petition as well. They did. They  
7 wrote a letter in support of our petition.

8 So, I know you have not only the authority, but  
9 the responsibility to correctly tax in this issue. I  
10 would like to ask you to act upon this now, on this  
11 issue, and not wait to go to court.

12 Save the taxpayers money. Save time. Help us  
13 make California safer for all ages.

14 Tax alcopops the way they should be taxed.

15 MR. PARRISH: Thank you.

16 That concludes your presentation?

17 And we'll call the next group of speakers.

18 MR. EVANS: Yes.

19 MR. PARRISH: Thank you.

20 MS. MANDEL: Thank you very much.

21 MR. EVANS: Okay, the next speakers will be  
22 Fred Jones, Marc Sorini, John Janosko.

23 MR. PARRISH: Just three?

24 MR. EVANS: We have two more after that.

25 MR. PARRISH: Very good.

26 MR. LEONARD: Mr. Chairman?

27 MR. PARRISH: Yes?

28 MR. LEONARD: Just for the record, I want it

1 noted that the alcohol that has been brought into the  
2 room for exhibit purposes is being handled by adults.

3 Who is the adult representative that's in  
4 charge of --

5 MS. GOODWIN: I am.

6 MR. LEONARD: Thank you very much, ma'am.

7 You're hiding behind the poster there. Thank  
8 you.

9 Let the record show --

10 MS. GOODWIN: I'd be happy to leave them with  
11 Mr. Parrish if he'd like to sample them.

12 MR. PARRISH: That's okay. You know, they're  
13 not cold.

14 Thank you.

15 So, we have the next speaker? Why don't you  
16 call the name of the next speaker, then we'll know?

17 MR. EVANS: Fred Jones.

18 MR. PARRISH: Fred Jones, you may proceed.

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1 FRED JONES

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3 MR. JONES: I represent the California Council  
4 on Alcohol Problems. I was not prepared to speak today,  
5 but I will just briefly comment.

6 I believe this issue will eventually end up in  
7 the legislature and process of policies and discussions  
8 will probably happen. But I don't think that will  
9 happen unless this Board acts.

10 ABC had an opportunity to act. They chose not  
11 to.

12 And given the clear state of the law, it's an  
13 opportunity for this Board to do what it should be doing  
14 and that's properly seeking taxation on products.

15 And then we can have a discussion with  
16 Mr. Leonard's colleagues -- former colleagues, in the he  
17 legislature and others about the policy merits. But at  
18 least as the law is concerned today, it's clear and this  
19 is an opportunity for the Board to do the right thing.

20 I appreciate the time.

21 MR. PARRISH: Thank you.

22 Next?

23 MR. EVANS: Marc Sorini.

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1 MARCSORINI.

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3 MR. SORINI: Members of the Board, thank you  
4 for this opportunity to address you. I am here  
5 representing a coalition of companies that collectively  
6 produce and distribute more than half of these flavored  
7 beers sold in this country.

8 And the first thing to make clear is that  
9 underage drinking is a serious problem. And I really  
10 applaud all of the -- all of the kids who came out  
11 here to talk about it. The fact that they are this  
12 committed to the issue I think is a testament to the  
13 people who have -- who have organized them and gotten  
14 them mobilized.

15 But we also respectfully submit that underage  
16 drinking is a complex societal problem that's not really  
17 suited to a feel good issue of raising the tax on a  
18 product that represents less than two and a half percent  
19 of the beer market, and probably, therefore, a much  
20 smaller percentage of overall alcohol market.

21 The proof of that -- or the proof of the fact  
22 that flavored malt beverages don't particularly drive  
23 the underage drinking issue is that when this category's  
24 latest phase of popularity really peaked, which was in  
25 the 2000-2002 period, the long term decline in underage  
26 drinking, which has been going on since the early  
27 1980's, actually continued unabated. It is simply --  
28 this is not an alcohol -- this is not a flavored beer

1 driven issue. It's a complex societal issue.

2 70 percent -- or nearly 70 percent of all the  
3 youths are getting their alcohol from adults, older  
4 friends, from their older siblings. This is the problem  
5 that need to be tackled and I think that there is some  
6 very serious work being done both by industry and  
7 government to try to tackle that.

8 But with that said, the fact is that the  
9 question before this Board is simply not underage  
10 drinking. The question before this Board is a highly  
11 technical question, which is the proper taxation of  
12 flavored beers.

13 And on that question, I think both the law and  
14 the facts are very clear. These products are properly  
15 taxed as beer.

16 Don't take my word for it, you can take the  
17 word of the California ABC that has looked into this and  
18 decided to classify these as beer. You can take the  
19 word of the Court of Appeals, which rejected a challenge  
20 to the ABC's position last -- earlier this year; the  
21 Supreme Court, which denied cert on that rejection of  
22 the challenge earlier this year or the federal  
23 government, which after seeking 16,000 comments -- a  
24 record in that agency's history -- on this issue, came  
25 up with a standard for flavored -- for flavored beer.  
26 And I say flavored malt beverages sometimes because the  
27 federal statutory -- the primary federal statutory term  
28 is malt beverage, whereas in California the statutory

1 term is beer. But also concluded that these things are  
2 properly taxed as beer as long as they are made within  
3 the guidelines that now manufacturers comply with  
4 throughout the country.

5 Now a couple of quick questions, since I know  
6 my time is limited that I can --

7 MR. EVANS: It's expired.

8 MR. SORINI: If you would indulge me for --

9 MR. PARRISH: I gave someone one minute.

10 MR. SORINI: -- two minutes.

11 MR. PARRISH: That's all I can do.

12 MR. SORINI: I appreciate that, a couple of  
13 questions.

14 No. 1, there is a distinction between distilled  
15 spirits and products containing alcohol like these,  
16 loaded with alcohol, distilled alcohol that are  
17 flavored.

18 If -- if the Board decides that the addition of  
19 a flavor to an alcoholic beverage product renders that  
20 product a distilled spirit, is the Board prepared to  
21 look to the many craft brewers that contain flavors?

22 Is the Board prepared to look to many wines  
23 that contain flavors and reclassify them?

24 And, while we're at it, what about the use of  
25 hop extracts, which do also contain alcohol? Again it's  
26 alcohol, but it is not a distilled spirit, it's alcohol  
27 that is deemed not a beverage and, therefore, its  
28 addition to a product doesn't render that product a

1 distilled spirit.

2           You take on the monumental task of second  
3 guessing the federal government's decisions on what is a  
4 beverage product and what is a non beverage product, a  
5 task that the federal government currently employs a  
6 very expensive, sophisticated lab in Maryland and  
7 several dozen chemists to determine.

8           I don't think California really needs to go  
9 down that road.

10           Thank you for my time and and thank you for  
11 indulging me.

12           If you have any questions, I would be happy to  
13 answer them.

14           MR. PARRISH: Next speaker?

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1 JOHNJANOSKO.

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3 MR. JANOSKO: Hi, I'm John Janosko, I'm the  
4 Vice President and General Manager of Mesa Beverage  
5 Company here. We're out of West Sacramento. And we  
6 distribute beer and flavored beers across the eight  
7 counties in Northern California.

8 Sorry, I didn't bring any samples, but I will  
9 do the best I can.

10 I want to talk a little bit about the negative  
11 impact of reclassifying -- reclassifying flavored beers  
12 as a distilled spirit would have on businesses like the  
13 one that I manage.

14 Flavored beers are packaged, taxed and they  
15 compete directly with beers. They are marketed and sold  
16 to individuals 21 years of age and up. As far as  
17 alcohol in them is concerned, they are pretty much like  
18 beer, between 3 and 5 percent alcohol by volume, even  
19 though there is many beers out there that are well above  
20 5 percent, some are actually in excess of 10 percent.

21 The federal government says that these are  
22 beer, except that they taste a a little bit different.  
23 For licensing, distribution and taxing of these  
24 products, California should be in line with what the  
25 federal standard is on these.

26 Currently all establishments in California that  
27 sell beer and wine can sell flavored beers. Were this  
28 product to be reclassified, there would be a whole line

1 of accounts that would not be able to sell these --  
2 probably about 35,000 retail accounts in California.  
3 This would constitute a huge loss of business for those  
4 folks and also be a loss of business to folks like us as  
5 well.

6 These products represent somewhere in the  
7 neighborhood of 6 percent of the volume of the products  
8 that I sell and a little bit more than that in terms of  
9 the profitability.

10 Jeopardizing this not only -- jeopardizing the  
11 sale of these products, not only jeopardizes them, it  
12 also jeopardizes businesses like ours.

13 My humble opinion is that a decision like this  
14 is best left to the folks at the Alcohol Beverage  
15 Control.

16 I live and work in this community and I have  
17 family here and believe that nothing is more  
18 important -- nothing is more important than preventing  
19 underage drinking and enforcement of the laws as we  
20 speak, the laws as we have them.

21 I've been in this business almost thirty years  
22 and have had a chance to listen to some young folks over  
23 here and other people here who have good intentions of  
24 what they want to try and do.

25 And my opinion -- I don't think raising the  
26 price or taxing these differently is going to really do  
27 anything to effect underage drinking.

28 You know, we have laws on the books for that.

1 They need to enforced. They need to be respected.

2 Thank you.

3 MR. PARRISH: Now, I am going to ask you a  
4 question because something -- you brought up something  
5 that is a valid concern.

6 Certain restaurants have a total liquor  
7 license -- they can sell hard liquor, beer, wine -- but  
8 there is other restaurants, usually small inns, small  
9 restaurants, and they just usually have a beer and wine  
10 license; is that correct?

11 MR. JANOSKO: That is correct.

12 MR. PARRISH: That's a different type of  
13 license? So, they're able to wine and various types of  
14 beer.

15 So, what you're saying is by reclassification,  
16 then these small businesses -- and you mentioned the  
17 number of 35,000, but I guess we know exactly how many  
18 licenses there are, I mean we have a record -- the State  
19 does -- of the beer and wine, correct, so is that where  
20 you got the 35,000 from?

21 MR. JANOSKO: That is what I got from talking  
22 with people in the industry.

23 MR. PARRISH: Could be correct?

24 MR. JANOSKO: General buzz and general number  
25 that has been talked about is there are 35,000 beer and  
26 wine establishments that would not be able to sell these  
27 products.

28 MR. PARRISH: Which are basically restaurants?

1 MR. JANOSKO: Pretty much.

2 MR. PARRISH: Pizza places and other small  
3 restaurants?

4 MR. JANOSKO: Yeah, you've got it right.

5 MR. PARRISH: I see. That's a valid concern.

6 One other thing I want to ask the other  
7 gentleman, I used to -- I see these, I've never tasted  
8 any of them, but I've seen them and I think the samples  
9 they brought -- Smirnoff, I was under the impression  
10 that that it was vodka-based mixed with flavors, but, in  
11 effect, they are a malt beverage with flavors?

12 In other words, they are not gin, whiskey --  
13 they are malt in origin, is that it?

14 MR. SORINI: That's right.

15 And one of the prior speakers correctly pointed  
16 out that you have a tax annotation that says if you add  
17 a distilled beverage -- gin or vodka or tequila -- to a  
18 beer base, it converts it into a distilled spirit, but  
19 that --

20 MR. PARRISH: Because there's a Jack Daniels  
21 thing that I see, that's probably more money, I take it?

22 MR. SORINI: You can -- leaving aside the brand  
23 name, if somebody takes a whiskey --

24 MR. PARRISH: A whiskey, yeah.

25 MR. SORINI: -- and puts it into a beer, then  
26 it becomes a -- then it becomes a distilled spirit  
27 product.

28 MR. PARRISH: And is taxed different?

1 MR. SORINI: And it's taxed differently.

2 But if you put -- and in Smirnoff Ice, for  
3 example, it has the Smirnoff brand name but it's been  
4 formulated to be a beer-based product.

5 MR. PARRISH: I see.

6 MR. SORINI: So, what it's got is it's got a  
7 malt beverage base and then there are flavorings,  
8 carbonated waters, et cetera, added to make it what it  
9 is.

10 Now, the federal ruling says that if you've got  
11 a product that is approximately the same strength as  
12 beer, a majority of the alcohol has to come from the  
13 fermented beer base and not from any added flavorings.

14 If it's higher alcohol than that, then the  
15 standard becomes much more stringent and virtually all  
16 of the alcohol has to come from the beer base.

17 But all of these are primarily made of beer.

18 MR. PARRISH: Thank you for answering those  
19 questions.

20 Now we have other speakers and we'll continue.

21 MR. EVANS: We have two more speakers that have  
22 signed up, Beverly Swanson and Jonathan Holtzman.

23 MR. PARRISH: Oh, yes, Proceedings, I think,  
24 should call the name.

25 MR. EVANS: Miss Swanson?

26 MR. PARRISH: You may proceed.

27 ---o0o---

28

1 BEVERLY SWANSON

2 ---o0o---

3 MS. SWANSON: Looks like they threw the ball on  
4 my court.

5 MR. PARRISH: Oh, they did.

6 MS. SWANSON: I'm glad you wanted the  
7 lemon/lime, because I was eyeing the punch.

8 Good afternoon, my name is Beverly Swanson. My  
9 husband and I own a tavern in Santa Cruz, California.  
10 And I am also President of the California Licensed  
11 Beverage Association.

12 And I, as well, applaud these students. And I  
13 think it speaks wonderfully of our young people.  
14 However, I am am afraid that they're greatly misguided  
15 and greatly misinformed.

16 As we said, if it looks like a duck, walks like  
17 a duck, talks like to duck, it is a duck. Flavored malt  
18 beverages are brewed like beer. They have the same  
19 alcohol content as beer, are packaged like beer, shipped  
20 like beer, stocked like beer, shelved like beer. And we  
21 sell them like beer.

22 They are not spirits. They are not distilled.  
23 No one orders a Smirnoff Ice to mix with OJ. You order  
24 a Smirnoff vodka to make that screwdriver. No one  
25 orders a Mike's Hard Lemonade to mix with 7-Up. They  
26 order a Jack and Coke. People drink these products  
27 without mixing them, as one does beer.

28 This proposal requires a 1,500 percent tax

1 increase, which will rob small mom and pop  
2 establishments of any competitive edge and will price  
3 these items right off their shelves.

4 We ID. Our bartenders' first and foremost  
5 responsibility is to ID. I am a mom as well. Underage  
6 drinking is, indeed, an issue of concern for parents and  
7 the beverage alcohol industry. A reclassification of  
8 these beverages will do nothing to curb underage  
9 drinking and everything to curb profits for small mom  
10 and pop businesses.

11 If, indeed, the goal here is to curb underage  
12 access, efforts would be better -- and I would join your  
13 coalition -- efforts would be better spent stiffening  
14 the penalties for adults who purchase for minors,  
15 stiffening the penalties for the few licensees who sell  
16 to minors. If, that is, indeed the goal.

17 In closing, I trust we all know a duck when we  
18 see one.

19 MR. PARRISH: Thank you.

20 Next?

21 MR. EVANS: Mr. Holtzman.

22 ---oOo---

23

24

25

26

27

28

1 JONATHANHOLTZMAN.

2 ---o0o---

3 MR. HOLTZMAN: Good afternoon. I'm here with  
4 my co-counsel. My name is John Holtzman. I'm a partner  
5 in the firm of Renne Sloan Holtzman and Sakai, which is  
6 the firm that filed the lawsuit that I imagine you guys  
7 were talking about in there a little bit -- which is the  
8 County of Santa Clara versus BOE.

9 I am here with Cheryl Stevens, who is Deputy  
10 County Counsel for the County of Santa Clara, as well as  
11 Scott Dickey, who has been our lead counsel on this case  
12 and on other cases that we have been handling on a pro  
13 bono basis for the last year and a half -- attempting to  
14 address this very, very serious problem.

15 First, I want to say we fully support the  
16 petition of the youths here and believe that this is the  
17 time and this is the petition that you should grant.  
18 All they are asking for is that reasonable regulations  
19 be developed that insure that these beverages that do,  
20 in fact, contain distilled spirits, be classified as  
21 distilled spirits, as the law requires. That's all  
22 we're seeking also.

23 And we -- as we said in a letter to your  
24 counsel, we would be more than happy to grant a  
25 continuance, et cetera, while you move forward with this  
26 process, because we're not seeking anything more than  
27 the proper classification -- the very same thing that  
28 these youths are. It's not a lawsuit over money. This

1 is an attempt to have the BOE do what I think -- and I  
2 hope it will recognize -- is the right thing.

3 I am not going the talk about a feel good issue  
4 here. Let me talk about a tax issue. \$40 million a  
5 year is being lost because we are not taxing beverages  
6 that, in fact, contain distilled spirits.

7 The argument that these are beer is absolutely  
8 laughable. The federal government has already done a  
9 study which says the way that these are created is that  
10 you start with beer, then you go through a process in  
11 which you remove the beer. You take out the taste, you  
12 take out the flavor, you take out a fair amount of the  
13 alcohol.

14 And then you add flavorings -- which everybody  
15 concedes contains distilled spirits. In some cases  
16 those of flavorings are more than 50 percent of the  
17 product. But whether they're more or less than  
18 50 percent of the product, the standard in California,  
19 under California law and under this Board's own  
20 interpretation is if you add distilled spirits, it is  
21 distilled spirits and it must be taxed as distilled  
22 spirits.

23 So, all we are asking you to do is, you know,  
24 it's very important, the underlying issues here in terms  
25 of youth and youth drinking are certainly -- I would  
26 readily admit -- are the issues that motivated us around  
27 what's happening here, but the fact of the matter is  
28 that this is a golden opportunity to do the right thing

1 for the taxpayers of California.

2 Where you have an industry that has very  
3 clearly produced a product that is subject to taxation  
4 as distilled spirits under your own existing precedent  
5 and we call on you today to do that.

6 Now, I just want to see if any -- if Cheryl or  
7 Scott has anything to add?

8 MR. PARRISH: You know before you -- we pass on  
9 the next speaker, if you wouldn't mind, I do have  
10 some -- three questions to ask you directly since you  
11 apparently are very knowledgeable on this subject.

12 No. 1, and I think you touched on it in your  
13 conclusion, we've heard testimony that this is a process  
14 that's fermented. And we understand that the difference  
15 between fermenting, which is a beer process with enzymes  
16 and whatnot and yeast, fermenting beer, create alcohol  
17 by that process plus -- versus the distillation process,  
18 which is you put the mash and all sorts of chemicals and  
19 foods and sugars in the pot, you boil it and that  
20 distills off alcohol. So, that's a distilled product,  
21 right?

22 Okay, my understanding initially is that this  
23 is a brewed process, where it's brewed like beer. But  
24 then you have indicated that then it's processed in a  
25 manner -- I don't know if all of them are processed in  
26 this manner -- where there is a flavoring added.

27 Now, flavoring, of course -- flavoring is added  
28 to a number of things. Flavoring is added to cakes,

1 cookies, pies, and it's also, I guess, in your instance,  
2 added to the beverage.

3 So, I guess what you are saying is because the  
4 vanilla flavoring or the cherry flavoring contains  
5 alcohol in it that, therefore, it creates some distilled  
6 spirit.

7 Is that your position?

8 Maybe you could elaborate?

9 MR. HOLTZMAN: Yes, except I hate to compare it  
10 to, for example.

11 What they're are doing is they're actually  
12 adding distilled spirits, pure distilled spirits, that  
13 may or may not not be part of the flavoring itself.

14 MR. PARRISH: Now --

15 MR. HOLTZMAN: And up to 50 percent, even under  
16 the federal guideline, now, bear in mind, first of all,  
17 that the federal guideline -- you have heard a lot about  
18 the federal guideline, needless to say, the federal  
19 guidelines don't bind the State, that's No. 1 -- because  
20 we all recall prohibition and the 21st Amendment. And  
21 as a result of that, the State gets to classify its own  
22 beverages. And, in fact, states do classify them  
23 differently.

24 So, the federal guideline is not of concern.  
25 But, no, what they do is they actually add distilled  
26 spirits, real live distilled spirits.

27 MR. PARRISH: Now, when you say --

28 MR. HOLTZMAN: You don't have to -- hold on one

1 second.

2 MR. PARRISH: I'm going to interrupt you and,  
3 of course, I have the right to.

4 MR. HOLTZMAN: You do have the right.  
5 I apologize.

6 MR. PARRISH: I have the right to order you out  
7 of here, actually.

8 MR. HOLTZMAN: You do, yes.

9 MR. PARRISH: Now, the distilled spirits, and  
10 in all courtesy, when you say "distilled spirits" there  
11 is different types of alcohols -- one is a gin, one is a  
12 vodka, one is a whisky, we -- some is rum.

13 There is -- they're all actually different  
14 alcohols. If you mix them -- if you mix -- sad to say,  
15 I'm aware of this, if you mix gin with vodka, you are  
16 going to get very sick.

17 Now may I ask you -- may I ask you what type of  
18 direct alcohols do you have knowledge or -- that are put  
19 into some of these adult beverages -- let's call them  
20 that?

21 Could you just say the term "distilled spirits"  
22 but please be specific, if you can.

23 MR. HOLTZMAN: What I'd refer you to, your  
24 Honor --

25 MR. PARRISH: No, I'm just a Board Member, a  
26 lowly Board Member.

27 MR. HOLTZMAN: All right -- is the federal  
28 annotation regarding how these drinks are created is

1 very, very very specific on all of these issues and lays  
2 this out in great detail.

3 So, this is not something you have to take my  
4 word for, just read the Federal Register provisions on  
5 this.

6 What's really, really, striking, it's --

7 MR. PARRISH: I'm going to ask you --

8 MR. HOLTZMAN: I'm sorry, I'm doing it again, I  
9 have to --

10 MR. PARRISH: I'm going to interrupt you again.

11 I'm going to ask you if you know, real simple,  
12 you can say yes or no, how's that?

13 You're an attorney, aren't you?

14 You understand you yes or no questions?

15 MS. MANDEL: I think he couldn't --

16 MR. PARRISH: No, I'm asking him a question, I  
17 asked him what type of alcohol is put in a specific  
18 drink? Is it gin? Is it vodka? Is it whiskey? Or you  
19 don't know?

20 Yes or no?

21 MR. HOLTZMAN: I certainly don't know --

22 MR. PARRISH: That's enough, you don't know.

23 MR. HOLTZMAN: -- I have not been allowed  
24 access to that information.

25 MR. PARRISH: That's enough.

26 MR. HOLTZMAN: That was --

27 MR. PARRISH: You know, badgering and  
28 getting -- I am trying to be constructive here and find

1 out what's going on.

2 So, I am --

3 MR. HOLTZMAN: I see that.

4 MR. PARRISH: All I want to know is what you  
5 know. I don't want your opinion.

6 I don't care if you're for it or against it.  
7 What do you think about that? I could care less. I  
8 just want to get to the facts.

9 MR. HOLTZMAN: Okay.

10 MR. PARRISH: I don't care if you like it or  
11 you don't like it or you want us to change the  
12 regulation or you don't.

13 I am here to get the facts. And then the  
14 Members will actually make the decisions. And I won't  
15 even be here to make the decision, thank goodness,  
16 because I'll be gone month.

17 But, at least, I want to get the facts out on  
18 the record.

19 So, you're -- you know, I don't want to put  
20 words in your mouth, but I think what you're saying is  
21 because of the fact that this malt beverage adds flavor  
22 to it and the flavoring contains alcohol, that then the  
23 Board should classify this as hard liquor and tax it.

24 Is that kind of what you're saying?

25 MR. HOLTZMAN: I'm saying because it is created  
26 out of distilled spirits, it meets the definition under  
27 the statute of distilled spirits.

28 And I would cite you 70 Federal Register 194,

1 which very specifically discusses the process by which  
2 these are made.

3           These are no more beer than a boilermaker.

4           MR. PARRISH: That's -- this is opinions that  
5 you are giving, I appreciate everything until that  
6 comment.

7           Okay, thank you. We'll go to the next speaker,  
8 please.

9           MR. LEONARD: Mr. Chairman?

10          MR. PARRISH: Yes, Mr. Leonard?

11          MR. LEONARD: I do have a question, I guess to  
12 Mr. Lambert.

13          The last witness mentioned that the issue is  
14 money and cited a \$40 million number, which I assume is  
15 the calculation of the higher tax rate on the last  
16 year's sales of these products.

17          Have we asked our economics people to take a  
18 look at the -- at what might change in the market should  
19 the tax rate be changed to --

20          MR. LAMBERT: Yes, we do. We have a revenue  
21 estimate, we published a revenue estimate.

22          MS. BRISBANE: The revenue estimate was  
23 prepared in connection with AB417. And it's purely an  
24 estimate as to what would change in the current year of  
25 how much distilled spirits and how much beer -- not any  
26 analysis on what might change.

27          MR. LEONARD: I'm asking for then an analysis,  
28 because my logic says that if -- if I'm kind of

1 indifferent to the product, unless I'm in love with one  
2 of those to fruity things, and the price of that product  
3 just goes up 15 times in terms of the tax rate -- I  
4 don't know what the base price is -- then I just may  
5 choose to switch to something else so that the alcohol  
6 consumption doesn't go down, but the taxes either stay  
7 the same, I guess is my logic, but certainly aren't left  
8 on the table.

9           So, if -- have we looked at it? Can we look at  
10 it before our next round on any discussions on this?

11           Because I think you raised the point, it is --  
12 it's clearly a money issue in terms of the lawsuit.

13           MR. HAYES: Actually, we did look at that.

14           MR. LEONARD: Identify yourself so everybody  
15 knows who you are.

16           MR. HAYES: Dave Hayes, Research and Statistics  
17 with the Board of Equalization.

18           And the revenue estimate is mine. We looked at  
19 it under -- there were sort of two things that we looked  
20 at: One, is what would happen if just the price  
21 increases, if all we'r going to do is add -- change the  
22 tax rate on it, what happens there? And, actually,  
23 that's a small thing. You are right, the price  
24 elasticity on an alcohol beverage is very small.

25           The bigger issue is where you can sell it.  
26 If -- if it's classified as distilled spirits, the  
27 locations that those can be sold at --

28           MR. LEONARD: Sure.

1 MR. HAYES: -- goes down quite a bit.

2 MR. LEONARD: Thousands we heard earlier, yes.

3 MR. HAYES: At mini marts, convenience stores,  
4 things like that, so, we have looked into that.

5 MR. LEONARD: Okay. And can you -- you have a  
6 rough number, ballpark range?

7 The revenue goes down from what we're  
8 collecting now is what you're saying?

9 MR. HAYES: No, actually, I think the revenue  
10 still goes up -- we're looking at an excise tax revenue  
11 increase about 54 million.

12 MR. LEONARD: While consumption goes down?

13 MR. HAYES: We're assuming consumption of this  
14 product would go down, but the tax increase is quite  
15 high.

16 We're still looking at this product being sold.

17 MR. PARRISH: In other words --

18 MR. LEONARD: Sold, I guess --

19 MR. PARRISH: You're going to --

20 MR. LEONARD: -- in a thousand less locations,  
21 how do you then sell the same volume?

22 MR. PARRISH: Here is how it's done.

23 MR. HAYES: You're not selling the same volume.  
24 We believe --

25 MR. LEONARD: What you're doing --

26 MR. PARRISH: Just a second and I'll let you  
27 talk.

28 You can correct me. In my opinion, where he is

1 getting his records is it's 40 million one way and  
2 54 million the other way. They're increasing tax ten  
3 times. They're decreasing the locations by 90 percent,  
4 but the tax is going up ten times, so, therefore, it's  
5 almost a wash.

6 But as -- can the companies that -- can the  
7 companies that are producing products survive with  
8 90 percent of their volume eliminated and probably a lot  
9 of companies that produce products like this or this  
10 product might become extinct.

11 Because if I told any manufacturer of any  
12 product I'm going to eliminate your sales by 80 or  
13 90 percent, they'll probably just discontinue the  
14 product, you see.

15 Go ahead. You may comment on my observations.

16 MR. HAYES: You are correct. We do believe  
17 that there will be less of this sold, but there would be  
18 an increase in excise tax because we're increasing the  
19 tax rate by so much.

20 MR. LEONARD: Did you look at whether  
21 manufacturers will find a way to flavor beer in a way  
22 that meets the standard being proposed?

23 MR. HAYES: We assume that that is a  
24 possibility, but I don't really have any way to measure  
25 that.

26 MR. LEONARD: If it's chemically a possibility  
27 and it substitutes the same shape bottle, same color  
28 liquid and same flavor and it is beer by everybody's

1 agreement -- not just any ambiguity -- then I'm assuming  
2 that that's where the market goes.

3 MR. HAYES: I would assume so too.

4 MR. PARRISH: Here is answer to that: A lot of  
5 flavorings created by extracting or direct chemical  
6 process using alcohol to extract the flavor, but a  
7 similar process can be established, it's a little more  
8 costly, they use a glycerin base solution, so it would  
9 be nonalcoholic, to extract the flavorings.

10 So, it's scientifically possible to create  
11 flavoring without alcohol.

12 Anyhow, now we'll hear from our next speaker.

13 MR. EVANS: Unless there are any other folks  
14 that would like to speak, that's all of the speakers  
15 that we had.

16 MR. PARRISH: I thought we had one more  
17 speaker.

18 We had somebody up there that wishes to speak.

19 MR. EVANS: We had one speaker that had to  
20 leave.

21 MR. PARRISH: Okay, there was this lady here  
22 and this gentleman there (indicating).

23 MR. EVANS: They're part of the law firm.

24 MR. DICKEY: Yes, we are.

25 MR. PARRISH: Well, listen, you're here, let's  
26 hear three minutes from you, you're a good man.

27 MR. DICKEY: Well, thank you.

28 ---o0o---

1 SCOTT DICKEY

2 ---o0o---

3 My name is Scott Dickey. I'm with the Law Firm  
4 of Renne Sloan Holtzman & Sakai.

5 MR. PARRISH: Right.

6 MR. DICKEY: Like everyone else up here, I do  
7 support the efforts of the young people in bringing this  
8 petition.

9 I think that we have gotten a bit far afield on  
10 what the agenda item is today and have been discussing a  
11 little bit too much of the merits.

12 But having done that, what we have here is a  
13 situation where it does not matter what the federal law  
14 is because that doesn't control in California. We don't  
15 follow it. The feds don't even expect us to follow it.

16 They say in federal regulation -- Federal  
17 Register 70, Federal Register 194, they say, in reaction  
18 to -- to questions from states, that they neither expect  
19 nor require the states to follow their -- their  
20 regulations.

21 So, we really are talking about a question that  
22 is purely of California law. California law makes it  
23 very clear that any beverage -- any alcoholic beverage,  
24 anything that is meant to be consumed as -- in total, as  
25 a finished product as an alcoholic beverage that  
26 contains distilled spirit of any kind or of any amount  
27 is a distilled spirit and has to be taxed and has to be  
28 regulated and has to be classified as a distilled

1 spirit.

2 This Board has come to that conclusion in 1997.  
3 It issued the annotation where it looked at the law and  
4 said, yes, that's the way this works -- any amount, any  
5 kind of distilled spirit in an alcoholic beverage makes  
6 it a distilled spirit for purposes of taxation.

7 The Attorney General in 2005 looked at this  
8 issue, on the request of this Board, and said, yes, we  
9 have looked at the law.

10 The law says that if it has a distilled spirit  
11 in it of any amount or any kind, you have to tax it as a  
12 distilled spirit -- and actually directed this Board to  
13 do so.

14 That's consistent with the courts' treatment of  
15 this in the 1930s this issue came up where a number of  
16 beverages were on the market that were made up of beer  
17 or wine and fruit juices and whiskey or something that  
18 was supposed to be whiskey but it was really a lesser  
19 distilled spirit.

20 One of the questions that up earlier was  
21 whether this was whiskey or gin or vodka or something  
22 like that. I would be very surprised if we were looking  
23 at high quality distilled spirits in these products  
24 because they are sold so cheaply.

25 But the alcohol in them does come from  
26 distillation as opposed to fermentation. And that's --  
27 I will get to that in a moment.

28 But, at any rate, the California Court of

1 Appeals has twice dealt with this issue and has twice  
2 concluded that, A, an alcoholic beverage containing  
3 distilled spirits in any mixture with any other kind of  
4 alcohol is still a distilled spirit for purposes of the  
5 California law.

6 And the Petitioners here and we, in the County  
7 of Santa Clara, in our litigation are asking the  
8 court -- asking the Board to recognize that.

9 Now, with respect to --

10 MR. EVANS: Time has expired.

11 MR. PARRISH: Now, I let you talk and didn't  
12 interrupt you or anything.

13 When I first came in to this hearing I was  
14 thinking, you know, why not -- why not change the  
15 regulation? It's a few pennies of taxation.

16 Maybe raising the price, a few -- you know, a  
17 few percentage points maybe will deter young people from  
18 drinking -- although they should never have this in  
19 their possession in the first place because in every  
20 single instance it's illegal.

21 Either the store gives it to them or their  
22 parents give it to them or their friends have stolen it  
23 or they have pilfered it somewhere -- it's all illegal.  
24 They shouldn't be having it any way in any respect.

25 But I was still inclined, but then the  
26 information is presented to me that, well, this is a --  
27 this is a fermented product, but that your firm's  
28 position or the proponents of us have entered into

1 regulation is that even the flavoring contains some  
2 alcohol and because of that it should be taxed just like  
3 whiskey.

4 And, of course, you know whiskey -- you know  
5 what 80 proof whiskey is? 100 proof whiskey? You  
6 understand the proof concept?

7 MR. DICKEY: Oh, absolutely.

8 MR. PARRISH: Yeah, 80 proof whiskey is  
9 40 percent alcohol, right?

10 MR. DICKEY: Right.

11 MR. PARRISH: And 100 proof is 50 percent.

12 This stuff is 4 and 5 percent, right,  
13 6 percent, right?

14 I've heard testimony it runs between 3 and  
15 5 percent, maybe it's more, I don't know, but it seems  
16 to be a meeting of the minds around 5 percent alcohol --  
17 which is probably below the alcoholic content of beer.

18 Now, the severe issue is we're talking about  
19 raising the tax here. We would -- if we would tax this  
20 like hard liquor, we're talking about increasing the tax  
21 1000 percent, that's -- that, you know, doesn't seem --  
22 you know, there is no fairness statute, but that doesn't  
23 seem fair to me, No. 1.

24 If it's going to go up a percentage, maybe  
25 50 percent, maybe even 100 percent, but for something to  
26 go up 1000 percent doesn't seem to make any logical  
27 sense.

28 And, second, we're talking about the

1 possibility of 35,000 retailers not having this product.  
2 That doesn't seem fair either. It seems like it's an  
3 intentional design to -- to destroy an industry.

4 In other words, if I would take 90 percent of  
5 your business away or even 70 percent of it, you would  
6 probably go out of business. And almost any retailer in  
7 California or any other business, if you took 80 to  
8 90 percent of their business away or you took 35,000 of  
9 their customers away, it looks likes you're -- this is a  
10 business killer thing. This isn't a fairness issue,  
11 this is something to kill a product, kill a business and  
12 it sounds like it's predatory.

13 And I am not going to allow you to answer  
14 because I'm hardly at all disposed to to hurt 35,000  
15 businesses that -- deny them a product at their place of  
16 business, a flavored beverage.

17 And I am also not motivated to destroy an  
18 industry that's providing a legal product because, in  
19 effect, even our own analysis section says that if you  
20 raise the tax on this 1000 percent, the revenue will go  
21 up from X dollars to X dollars, but it looks like the  
22 sales will be cut between 80 and 90 percent.

23 So, this is designed to destroy a specific  
24 product.

25 Now I will let you respond.

26 MR. DICKEY: Okay. Well, I would point you to  
27 Mr. Sorini's comment -- and Mr. Sorini, of course, is  
28 counsel for the Flavored Malt Beverage Coalition.

1           He represented that alcopops represent about  
2 two and one-half percent of the alcohol sales in the  
3 country. So, no one is going to -- I mean, we're not  
4 talking about a 90 percent loss of business. We're not  
5 talking about huge damages to companies. The companies  
6 that produce alcopops, there are -- there are a couple  
7 of small -- smaller manufacturers, but we're talking  
8 about Anheuser Busch, Miller Brewing Company -- huge,  
9 huge market participants -- Diaggio, the  
10 international -- multinational corporations.

11           They are not -- this isn't -- this isn't  
12 litigation, this isn't a petition that is aimed at  
13 getting at the little guy or trying to run anybody out  
14 of business.

15           What it is is a recognition of the fact that  
16 these products are overwhelmingly preferred by people  
17 who are underage and overwhelming consumed by them.

18           The AMA studies -- the American Medical  
19 Association studies showing that as people as --  
20 particularly women -- reach the age of majority,  
21 alcopops, which were their favorite choice for years,  
22 suddenly become their least favorite drink because they  
23 can something that isn't sweet and almost unctuous like  
24 these things.

25           The other point that I would like to make in  
26 response to your concern, was that -- I have heard you  
27 come back to this number of times about the fermentation  
28 process -- and I would like to -- Mr. Holtzman pointed

1 you in this direction -- and I would like to point you  
2 again to the Federal Register where the federal  
3 Department of Alcohol and Tobacco Taxation and Trade,  
4 the TTB, which is the new agency that replaced the ATF,  
5 they changed their name. But, at any rate, they did an  
6 exhaustive study of how these are made.

7           And virtually all of them are made the same in  
8 the United States -- where there is a tax advantage, in  
9 most states, to have a product classified as beer. They  
10 start off by making beer. And then they take the  
11 alcohol out of it. They take the flavor out of it.  
12 They take the color out of it. And they take the odor  
13 out of it. And they're left with a base that is,  
14 essentially, from what we understand, water.

15           And the only reason that these things are  
16 alcoholic at all is because they put distilled spirits  
17 in them. They're not -- this isn't a peach-flavored  
18 beer, this is a sweet, watery drink with distilled  
19 spirits in it.

20           In other countries, where there is no tax  
21 advantage to doing this, they start making these  
22 products, the same companies, with water.

23           So, this is -- this is really a contrivance to  
24 get around the way these things should be properly  
25 taxed. We think that it is clear from the studies that  
26 have been done by the federal government --

27           MR. PARRISH: You know, forgive me, I didn't  
28 want to let you go on too long because it's just not

1 fair.

2 But -- and I appreciate your response because I  
3 think it's an honest response. I think -- what I think,  
4 of course, is just what I think, not what my colleagues  
5 think -- but a more direct and straightforward and  
6 forthright approach would be for you, your firm, your  
7 sponsors or supporters, your clients to say, let's just  
8 go for an out and out prohibition. This product should  
9 be eliminated, like prohibition. It's okay, it's been  
10 done before.

11 Because, in effect, that's what you're doing.  
12 You are -- what you are doing is you want this product  
13 not to exist any more because what you just told me is  
14 that they take wear, they brew it up, they reduce it  
15 back to water and it's all big scam, it's all improper  
16 and young people are drinking it and you think this  
17 stuff is bad.

18 And just by taxing it, as you very well know,  
19 wouldn't be eliminating it unless you can tax it to the  
20 point that it would be eliminated.

21 And I think that's what you're trying to do,  
22 trying to tax it to the point it's extinct.

23 So, be more forthright, more honest. I use the  
24 term "honest," for you to out and out say, "Look this  
25 ought to be banned."

26 Would you say that?

27 MR. DICKEY: Yes.

28 MR. PARRISH: It should just be banned.

1 MR. DICKEY: If -- if you're correct, sir, that  
2 the practical effect of increasing the taxation would be  
3 to eliminate this product, then you are essentially  
4 admitting that you believe that the only people who  
5 drink it are people who are 16 and under.

6 MR. PARRISH: I don't know.

7 MR. DICKEY: Because --

8 MR. PARRISH: I don't say that.

9 MR. DICKEY: -- because despite what -- what  
10 your staff analyst has said, there isn't an awful lot of  
11 elasticity in demand for alcoholic products among people  
12 who aren't of legal drinking age, because they don't  
13 have much income.

14 So, no, we aren't asking for a prohibition,  
15 what we're asking for --

16 MR. PARRISH: You are asking --

17 MS. MANDEL: Mr. Parrish --

18 MR. PARRISH: Go right ahead, we'll let you  
19 talk.

20 MS. MANDEL: Well, I'm a little --

21 MR. PARRISH: Because, you know, he just  
22 said -- he likes to put words in my mouth, that I'm for  
23 people that are 16 years old to drink -- which is an  
24 outrageous comment.

25 And it's just as disingenuous and just as  
26 dishonest as this whole charade is, using school  
27 children to do your dirty work, when, in fact, what you  
28 are trying to do is eliminate a product. You don't have

1 the guts to come here and say, "I think this should just  
2 be eliminated," which in effect is what you want to do  
3 because you want devastating taxes that would tax this  
4 out of existence, cutting off, by our own estimates, as  
5 much as 90 percent of the volume.

6 If that doesn't put something out of business,  
7 nothing else will.

8 So, everybody in this room gets to hear what  
9 you have to say and what I have to say. And they'll  
10 make their own opinion and make their own judgment.

11 But clearly, if your proposal were to go  
12 forward this -- these products wouldn't exist any more,  
13 so -- but I think they're legitimate products -- unless  
14 it's proven.

15 And it's totally inappropriate, as some of the  
16 speakers have said, for young people to have this, this  
17 is illegal, improper. And it's just like saying, well,  
18 you know, we should tax -- tax medical pain relievers,  
19 while they should be taxed out of existence if they're  
20 not obtained through prescription.

21 Anyhow, I'm going to let my colleague ask a  
22 question.

23 MS. MANDEL: Well, I -- your characterizations  
24 of their testimony, being your characterizations --  
25 certainly what we hear through the petition and these  
26 witnesses is tax this product -- these products,  
27 consistent with the way the California law reads.

28 And that if the result of that is that the

1 availability of these products changes because of  
2 locations at which they could then be sold, that that is  
3 simply the way the California system would, in fact,  
4 work.

5           Now I don't know if the other lady up here --  
6 she was with Mr. Holtzman and Mr. Dickey, she may not  
7 have something to add, but I can tell you that on behalf  
8 of the Controller I am prepared to, at this point, and  
9 do move to grant the petition and initiate the  
10 rulemaking process with the direction to staff, since we  
11 do not currently have regulatory proposed language with  
12 that petition, to draft the regulatory language for the  
13 public hearing consistent with the request in the  
14 petition.

15           MR. PARRISH: Okay, now we have a motion. And  
16 you are going to need a second, of course.

17           MS. YEE: I'll second.

18           MR. PARRISH: Okay. We're going to -- we have  
19 a motion and second, is there any discussion?

20           Hearing none, please open the roll.

21           MR. EVANS: Mr. Leonard?

22           MR. LEONARD: No.

23           MR. EVANS: Mr. Parrish?

24           MR. PARRISH: No.

25           MR. EVANS: Miss Yee?

26           MS. YEE: Aye.

27           MR. EVANS: Miss Mandel?

28           MS. MANDEL: Yes.

1 MR. EVANS: Motion fails.

2 MR. PARRISH: Yes. Okay, well, with that, I  
3 guess the next item.

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