



April 6, 2018

Re: Vermont Franchise Reform – Senate Hearing H.710

Good Morning and thank you to the Senate Economic Development, Housing and General Affairs Committee for the opportunity to speak this morning. My name is Daniel Fulham, and I am the President of the Long Trail Brewing Co. & Otter Creek Brewing Co.

Long Trail and Otter Creek are also members of the Vermont Brewers Association. As I mentioned during the franchise reform hearing with the House Committee, our company is in perhaps a unique situation here in Vermont since our brands are distributed by two Vermont distributors; Long Trail has been with the Farrell organization since 1989. Otter Creek and Shed have been with the Baker family since 1991. In both cases it has been a long standing partnership where each distributor has invested significant resources to help build our brands, just as we have invested extensive capital in the brands, in people, and brewing capacity; including a new, multi-million dollar state of the art brewhouse we brought on line in Middlebury last year which is the largest brewhouse by volume in the state.

Long Trail and Otter Creek are heritage brands that helped launch the craft movement in Vermont. And the Farrell and Baker families have been a central part of building our brands.

In the case of House Bill 710 that recently passed, we recognize that change is in the wind with respect to franchise reform. Our company welcomes and support efforts here in Vermont at reform that is sensible and fair for all stakeholders.

However, our company does not support H.710 as currently written and passed by the House for the following reasons:

- The House bill defines a so called small brewer as *“a brewer that makes or distributes 50,000 barrels or less of beer a year and is 3% or less by volume of the distributor’s beer portfolio.”*

The premise shared by many of my craft brewing colleagues in their advocacy of “so called” reform, is that they are somehow being harmed by current distribution agreements based on outdated market conditions and franchise law. As a point of reference, our company has contracts with Farrell and Baker that I do not believe have been out of the file drawer since they were signed. And that is because we have operated from the basis of a partnership and mutual trust for almost 30 years. We have had disagreements, but have maintained the spirit of working together as the fundamental basis of that partnership.

Many who have spoken in support of change feel government should not regulate contractual relationships between brewer and distributor. But in the same sentence ask for government intervention about what defines a “small brewer”, timing for no cause termination, and brand valuation.

The other major objection to H.710 is the termination without cause provision. As currently written,

- *“If there is no written contract, or if the contract does not include a termination without cause provision, a small brewer can terminate without cause by giving the distributor 30 days-notice and paying*

“compensation” which is defined as five-times (with a request to amend to 2X) the average annual gross profits earned by the distributor on the sale of the terminated brewer’s products.”

Many brewers who now want the right to exit without cause are the same brewers who have benefited from the access to the statewide distribution network when they were in their infancy. Their brands were taken in by a wholesaler and quite frankly have probably received a disproportionate share of time, investment, attention, and focus based on their size. Many Vermont craft brands have been grown from case 1 to sizeable annualized volume. And now that many brewers have reaped the benefits of the distributor efforts, are demanding a speedy, low cost, free option out of the same system they were happy to embrace at an earlier time.

As for valuation, applying a fixed multiple to a brand seems to ignore the fair market value concept that makes much more sense in a dynamic beer marketplace all are referencing. If a brand is growing with the support and effort of the distributor and therefore more valuable, it should trade at a higher multiple of gross profit. And the opposite holds true as well. If a brand is underperforming why should a premium be paid to the distributor for poor performance which the proposed fixed multiple could represent?

Instead of a fixed multiple we would support a mechanism to agree on fair market value between brewer and distributor without protracted litigation. The possibility of binding arbitration as a last resort is a way to assure that fair value is recognized based on current market trends.

On a final note, I would offer our company’s position on the issues of reform is guided by nearly a 30 year history with the 3 tier system in Vermont in general, and more specifically with the Bakers and the Farrells. They have been with us through many business cycles- when

things were good as well as when we have struggled. Almost every one of the small Vermont craft brewers have benefited from the current distributor model. Now that they have done so, the VBA wants to rewrite the rules. That sounds like having it both ways.

Thank you for your consideration.

Respectfully submitted,

Daniel W. Fulham, President & CEO
Long Trail Brewing Co.

