

**TESTIMONY OF STEVE HINDY**  
**Founder, Chairman, and President of The Brooklyn Brewery**

**U.S. House of Representatives**  
**Committee on the Judiciary**  
**Subcommittee on Courts and Competition Policy**  
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Chairman Johnson, Representative Coble, and members of the Subcommittee on Courts and Competition, I am pleased to present this testimony on behalf of the 1,500 small brewers in the United States. My name is Steve Hindy and I am founder, chairman and president of The Brooklyn Brewery, New York's leading brewery. I started my company in 1988. I employ 40 people in Brooklyn and am currently expanding my brewery and adding 20 jobs. I also brew at the Saranac brewery in Utica, NY, which employs 120 people.

I am a member of the Brewers Association, the trade association of small brewers, and the Beer Institute, the trade group representing large and small brewers and importers of beer in the United States. I have had the honor of serving on the Boards of Directors of both organizations.

The three-tier system of beer production and distribution evolved after 1933, when Prohibition ended. In general, businesses operate in three "tiers" as producers of beer, distributors of beer, or retailers of beer. States often mandate a separation between the tiers by law. Virtually all the beer produced, distributed and sold in this country passes through the three-tier system.

The three-tier system has served our country well in both regulating the safe production and distribution of high quality beers and in helping to foster the craft brewing renaissance that

has seen the genesis of 1,500 local breweries in the past 25 years. There has been no comparable renaissance in many countries around the world where large brewing companies dominate all three tiers: production, distribution and retailing.

The three-tier system is primarily governed by state laws, but with federal government oversight. Through the Commerce Clause of the Constitution, the federal government insures that no state laws unfairly favor one group of brewers over another. The federal government, through the Alcohol & Tobacco Tax & Trade Bureau, collects federal excise taxes and oversees licensing of breweries, formulation of beers, labeling, and advertising and marketing of beer brands. The federal government mandated the 21-year-old drinking age.

The three-tier system is not broken and has helped to foster the craft brewing resurgence we have since in the past several decades. But consolidation at the distributor level has made it difficult for some small brewers to get to market. Some states make exceptions to the three-tier system to address this problem. When I started Brooklyn Brewery in 1988, none of the large New York City distributors were interested in carrying my beers. I was able to distribute my own beer and build my brand and eventually sell the rights to my brand to one of those big distributors. There have been similar success stories among small brewers in other states, such as Sam Adams in Boston. Without the right to self-distribute, it is doubtful we could have established our businesses.

American consumers are demanding a wider range of products and some large retailers want to buy directly from brewers, winemakers and liquor companies. In an effort to get products not available through the three-tier system, some wineries and consumers have brought suit, challenging state alcohol laws that mandate that alcohol beverages be sold through the three-tier system. A small number of state laws have been struck down as being discriminatory,

but most have been upheld. The cost of defending these lawsuits and the threat of more litigation seeking exceptions in the three-tier system have raised concern among some members of in the beer industry.

We understand those concerns, but we do not see any need for a drastic change in the balance between state and federal authorities that has served the public for many years. There has been talk of ceding control of alcohol beverage regulation to the states. That would be a disaster for small brewers. Separate state regulations on formulation, labeling or advertising would be incredibly expensive for all brewers. Last year in my own state of New York, for example, the courts wisely struck down a law that would have required brewers to create separate, New York-specific, UPC codes for any beer sold in the state. This would have effectively closed the New York market to smaller suppliers who could not afford the expense of special New York-only labels.

Brewers like mine also benefit from other aspects of the current federal-state balance. Discriminatory tax regimes like those struck down by the courts for many years would unfairly hamper our ability to enter new markets. Laws on “post and hold” price posting, “price affirmation” and other measures long ago declared illegal by the courts could reappear to the detriment of brewers, consumers and competition. And separate state regulations on drinking age in lieu of the national 21 standard could create confusion and chaos.

The current system has also served the public’s interest in controlling the abuse of alcohol. My review of available national statistics shows that our nation has made significant progress in reducing drinking by underage youth and drunk driving. Brewers, wholesalers and retailers alike are committed to making further progress in these areas. It is not clear, to me at least, what a radical change in the federal-state balance would do to these very positive trends.

The number one issue facing small brewers is state franchise laws that give distributors virtually absolute control of our brands. In some states, non-performing wholesalers sit on our brands to insure their competitors do not get them. Beer distributors have significant clout in all state legislatures, and there is fear among small brewers that a switch to exclusive state regulation would only exacerbate this problem.

In spite of challenges, the three-tier system is alive and well in the United States. We want to see that system continue without radical changes that could harm the interests of America's craft brewers and the consumers who responsibly enjoy our products.