

A Twenty-First Century Encounter with Prohibition: The First Amendment Meets Texas's Arcane Alcohol Advertising Laws

By Peter D. Kennedy

"I am a firm believer in the people.

If given the truth, they can be depended upon to meet any national crisis.

The great point is to bring them the real facts, and beer."

– Quotation attributed to Abraham Lincoln (incorrectly)

Even if Honest Abe did not say those words, they distill the essence of this article. The most important commodity in both democracy and capitalism is *truth*. A citizen can neither vote responsibly nor make rational economic choices without full access to accurate information about what he or she is selecting—whether a representative or a product. While voting and political participating are essential, on a practical day-to-day basis the most frequent and important decisions a person makes are economic—where to shop, what to buy, where to save, and how to invest, if lucky enough to have anything left over.

For almost two hundred years, courts thought the First Amendment had little or nothing to say about commercial transactions. Even true product information could be suppressed if the government concluded that keeping consumers ignorant was best for them. The Constitution protected your right to cry "Give me liberty or give me death," but not your right to learn true information about products for sale—even essentials of good living like a well-made beer.

This changed in what is very recent history, constitution-wise, and the love of alcohol had a lot to do with it. But to understand the background of the story, you have to go back even further.

Prohibition in Texas begins—and ends.

Texas, with its diverse population, has had long and complex relationship with alcoholic beverages. In 1843—just seven years after the Battle of San Jacinto—the Congress of the Republic of Texas enacted what may have been the first local-option measure in North America, allowing localities to decide for themselves whether to allow for the production and sale of alcoholic beverages.¹ In 1845—on the verge of statehood—the Republic banned saloons entirely. The law went unenforced for a decade, though, and was repealed by the Legislature in 1856.²

In mid-nineteenth century Texas, except in "dry" households, it was commonplace to brew beer for home consumption, especially in German families.³ Commercial-level brewing in Texas began in the shadow of the Alamo. The Western Brewery, built by William A. Menger in 1855

¹ K. Austin Kerr, "Prohibition," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/vap01>.

² *Ibid.*

³ Michael C. Hennech and Tracé Etienne-Gray, "Brewing Industry," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/dib01>.



William A. Menger's commercial brewery preceded his historic hotel by four years, suggesting where Texans' true priorities lay. Photo by David A. Furlow.

on Alamo Square, is usually considered the first Texas commercial brewery.⁴ Menger's brewery came first: his famous hotel did not open until four years later, in 1859. A huge cellar with limestone walls three feet thick cooled by the Alamo Madre acequia helped keep the lager beers preferred by Germans cold.⁵ By 1860, there were eleven Texas breweries.⁶ The Western Brewery became the largest brewery in the state before it closed in 1878.⁷ The Menger Bar, however, continued serving Texas beer to thirsty visitors, including Teddy Roosevelt's Rough Riders in 1898. It remains open to this day.

The growth of Texas's commercial alcohol business was not unopposed; "dry" Baptists and Methodists argued with "wet" Germans and Catholics about the virtues of drinking. The State of Texas handled the dispute the same way the Republic of Texas had: local option. Article XVI, Section 20, of the 1876 Constitution required the Texas Legislature to "enact a law whereby the qualified voters of any county, justice's precinct, town or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits."⁸ The Fifteenth Legislature complied, passing a local option enabling statute on June 24, 1876.⁹

Local option created a patchwork around the state, with the legality of alcohol manufacture and sale determined at the county, city, town, or even precinct level. Frustrated that liquor was legal *anywhere* in the state, the "drys," including the Women's Christian Temperance Union¹⁰ and the Anti-Saloon League of Texas,¹¹ continued to press for complete prohibition. State prohibition constitutional amendments failed in 1887, 1908, and again in 1911, but with increasingly narrow margins as the national temperance movement grew.¹²

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Michael C. Hennech and Tracé Etienne-Gray, "Brewing Industry," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/dib01>.

⁷ *Ibid.*

⁸ See Kerr, "Prohibition," *Handbook of Texas Online*; Michael Ariens, *Lone Star Law: A Legal History of Texas* (Lubbock: Texas Tech University Press, 2011), 65–66.

⁹ Act of June 24, 1876, 15th Leg., R.S., ch. 33, 8 H.P.N. GAMMEL, *THE LAWS OF TEXAS, 1822–1897*, at 862 (Austin, Gammel Book Co. 1898), cited in Ariens, *Lone Star Law*, 296 n.85.

¹⁰ Judith N. McArthur, "Woman's Christian Temperance Union," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/vaw01>.

¹¹ <https://tshaonline.org/handbook/online/articles/vaa02>.

¹² See Kerr, "Prohibition," *Handbook of Texas Online*. See also James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 154–60.

In the midst of World War I, temperance won. The U.S. Congress in December 1917 sent the Eighteenth Amendment to the states for ratification. The amendment affirmatively prohibited the production, transport, and sale (but not consumption) of “intoxicating liquors anywhere in the nation.”¹³ The Texas Legislature quickly ratified the amendment on March 4, 1918. For good measure, Texas voters added a prohibition amendment to the Texas Constitution. By January 1919, enough states had joined Texas to make the Eighteenth Amendment the law of the land. Congress passed enabling legislation—the Volstead Act—in October 1919, displacing state liquor laws. President Wilson vetoed the Volstead Act, but Congress quickly overrode him. On January 16, 1920, Prohibition began.

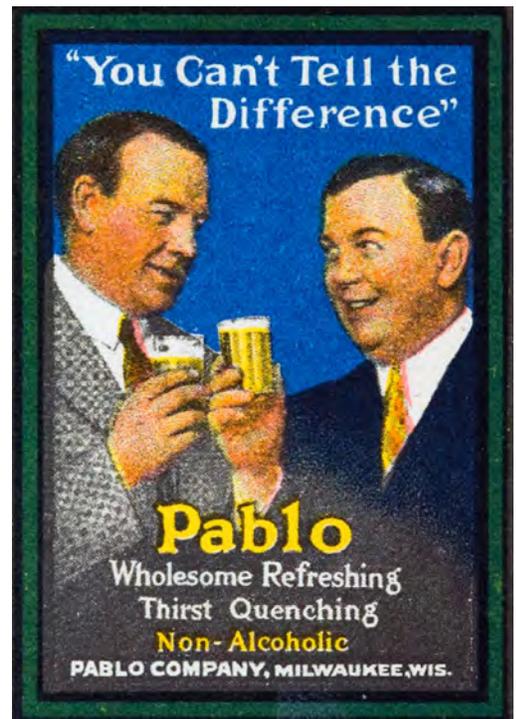
Significantly, the Eighteenth Amendment did not define “intoxicating liquors,” leaving the task to Congress or the courts. Because the temperance movement had focused mostly on saloons and distilled spirits, breweries had assumed beers, with a much lower alcoholic content than spirits, would be exempted from Prohibition. They were wrong: the Volstead Act defined “intoxicating liquors” as any beverage with .5% or more alcohol by volume (ABV)—lower than the naturally-occurring alcohol content of sauerkraut or root beer. The legal production of beer stopped cold.

Breweries that had enormous investments in equipment suddenly turned idle. They scrambled to stay open and preserve their brands, hoping Prohibition was a passing fad. Two strategies let some of the larger breweries survive. First, because consuming alcohol was not prohibited by the Volstead Act, breweries did everything except *ferment* their beer. They made and sold liquid malt extract, a sweet syrup extracted from malted barley. As every homebrewer knows, when combined with water and yeast at home, malt extract magically becomes beer.

Breweries also tried to keep their doors open by producing malt beverages of less than .5% ABV, which were classified as “cereal beverages” but commonly known as “near beers.” Despite optimistic advertising campaigns, non-alcoholic beers were (as they are now) only mildly successful.



This Prohibition-era photo shows Anheuser-Busch advertising its Budweiser-brand “hop flavored” “barley malt syrup”—which became beer with a bit of water and yeast.¹⁴



During Prohibition, Pabst claimed its “Pablo” non-alcoholic beer (a contraction of **PABst LOW**) was just as good as the real thing. These men look unconvinced.¹⁵

¹³ Volstead Act. See <http://www.druglibrary.org/schaffer/Library/studies/wick/wick1.html>, March 30, 2017. See also Kerr, “Prohibition,” *Handbook of Texas Online*; Ariens, *Lone Star Law*, 65–66.

¹⁴ Fedora Lounge website, http://farm4.staticflickr.com/3573/3943798771_ab39f2ec39_o.jpg.

¹⁵ Source: <https://www.hakes.com/Auction/ItemDetail/67845/PROHIBITION-ERA-POSTER-STAMPS-PROMOTE-PABLO-NON-ALCOHOLIC-DRINK-BY-PABST>.

As the Twenties ended and the Depression began, Prohibition—inconsistently enforced and openly flaunted—was largely seen as a failed experiment. To the relief of brewers, Congress amended the Volstead Act in 1933 to permit the sale of beer up to 4% ABV, which simply required amending the statutory definition of “intoxicating liquor.” Texas amended its constitutional prohibition provision in the same way, allowing beer sales to resume. National Prohibition fell when the Twenty-First Amendment became effective on December 15, 1933, leaving alcohol regulation largely to the states.

In August 1935, Texas voters fully repealed statewide prohibition, and the state reverted to its pre-Prohibition local option system, which remains in place to this day. The Legislature, meeting in special session, enacted the Liquor Control Act (precursor to the Alcoholic Beverage Code) and created the Liquor Control Board (precursor to the Alcoholic Beverage Commission), beginning the modern era of alcohol regulation in Texas.

Commercial speech gains First Amendment protection.

The First Amendment to the U.S. Constitution states, *inter alia*, that Congress shall not abridge freedom of speech and freedom of the press:

Congress Shall Make No Law Respecting an Establishment of Religion, or Prohibiting the Free Exercise Thereof; or Abridging the Freedom of Speech, or of the Press; or the Right of the People Peaceably to Assemble, and To Petition the Government for a Redress of Grievances.

Yet during Prohibition and for years after, neither the First Amendment nor the Texas Constitution was applied to commercial speech. In *Valentine v. Chrestensen*, the U.S. Supreme Court said the Constitution imposes “no restraint on government as respects purely commercial advertising.”¹⁶ “As a result of *Chrestensen* and for a number of years thereafter, the term ‘commercial speech’ was used as an incantation sufficient to strip any expression with commercial content of all constitutional protection.”¹⁷

Therefore, as states regulated alcohol labeling and advertisement in the years after Prohibition, they operated under no constitutional limits, often imposing severe restrictions. For example, some states prohibited any off-premises advertisements for alcohol entirely; some prohibited price advertising; many prohibited advertising alcoholic strength. At least one state prohibited any alcohol advertising whatsoever.

Post-Prohibition, Texas, like many states, adopted the “three-tier” system. This theoretically required complete separation of ownership and control between manufacturers, distributors, and retailers of alcoholic beverages. Over time, the Alcoholic Beverage Code imposed a dizzyingly complex system of licensing and regulation for different tiers, for different types of alcoholic beverages, and for labeling and advertising. The Alcoholic Beverage Commission added

¹⁶ 316 U.S. 52 (1942).

¹⁷ See James B. Franks, “The Commercial Speech Doctrine and the First Amendment,” 12 *Tulsa Law Review* 699, 701 (1977).

complexity with a vast number of permits and licenses, administrative rules, informal practices, and inconsistent enforcement.

In the meantime, the Supreme Court began to recognize some constitutional protection for commercial speech, culminating in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*.¹⁸ *Central Hudson* still dominates commercial speech doctrine today, holding that commercial speech merits “intermediate” constitutional protection if it concerns lawful activity and is not false or misleading. Government may prohibit or regulate such speech only to advance a “substantial” governmental interest, and only through regulations that “directly advance” the asserted interest and that are “not more extensive than necessary” to serve the governmental interest.¹⁹ After *Central Hudson*, regulations of commercial speech began to fall to constitutional challenges left and right, led in part by an alcoholic beverage industry still chafing under post-Prohibition and pre-*Central Hudson* laws.

For instance, fearing it was gaining a reputation as a “watery” beer, Coors successfully challenged a federal law prohibiting beer labels from displaying alcoholic content.²⁰ The Supreme Court was unconvinced that the ban on providing customers truthful information about Coors’s products was necessary to prevent “strength wars” among brewers, when states retained the power to limit alcoholic strength directly.²¹

A chain of liquor stores, frustrated at its inability to advertise prices lower than its competitors, successfully challenged a state law prohibiting off-site advertising of liquor prices.²² The U.S. Supreme Court was unconvinced that prohibiting truthful speech would effectively advance the state’s purported goal of limiting alcohol consumption, especially when direct restrictions on sales volumes could have been enacted.²³

The craft beer phenomenon comes to Texas.

Things were relatively quiet in Texas, however, at least for beer. The brewing industry had consolidated down to a few large companies. Consumer tastes had homogenized down to light or lighter pilsners, with a few regional exceptions such as Shiner Bock. The Alcoholic Beverage Code remained byzantine. While large brewers battled for market share, they offered a narrow range of styles that did not run into state regulatory problems of significance.

There was one exception: in a nearly-forgotten administrative law case, Pearl Brewing Company of San Antonio challenged the Alcoholic Beverage Commission’s (TABC’s) denial of its application to approve labels for private label budget beer brands, such as Value-Time Beer, Scotch Buy Beer, Cost Cutter Beer and Slim Price Beer.²⁴ Pearl, still an independent brewery,

¹⁸ 447 U.S. 557, 566 (1980).

¹⁹ *Ibid.*

²⁰ 514 U.S. 476 (1995).

²¹ *Ibid.* at 514 U.S. at 483–91.

²² *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996).

²³ *Ibid.* at 483–91.

²⁴ *TABC v. Pearl Brewing Co.*, No 04-83-00529-CV (Tex. App.—San Antonio Dec. 31, 1985) (unpublished).

argued that such private labels were “the only method by which Pearl may successfully compete with the large national breweries which increasingly dominate the Texas market,” and that “without this marketing avenue, Pearl would be unable to continue its recent operation in Texas.”²⁵ Without reaching any First Amendment issue, the San Antonio court held TABC’s denial of Pearl’s labels was legally erroneous and exceeded its statutory authority.²⁶ The TABC, however, continues to deny approval of private label beers, ignoring *Pearl Brewing Co.* and the settlement it reached with Pearl afterwards.²⁷

Enter the craft brewers. Starting first on the West Coast, independent breweries began to spring up in the 1990s, offering a far wider range of beers—pale ales, IPAs, imperial stouts, porters, session ales, Belgian ales, dark lagers, and dozens of other beer styles.²⁸ The craft beer phenomenon reached Texas a bit late, but it came with a vengeance and continues unabated today. Starting from a handful of on-and-off-again microbreweries and brewpubs in the 1990s, according to the Texas Craft Brewers Guild there are now at least 105 craft breweries and 67 brewpubs in the state.²⁹

However, these new brewers ran smack into Texas’s post-Prohibition advertising and labeling laws—still on the books seventy years later—that threatened to hold down the explosion in Texas of this new industry. Three laws were particularly problematic.

First, as part of the three-tier system, Texas law prohibited breweries from giving anything of value to a retailer.³⁰ The TABC interpreted this to mean prohibiting a brewery from advertising where their beer was being sold. Breweries literally risked their licenses if their webpage identified stores or bars where their beers were available, or if they answered the question during a tour about where a visitor might buy a six-pack. Wineries, on the other hand, unquestionably could advertise where their products could be bought, thanks to a 2005 amendment to the Code.³¹

Second, the Alcoholic Beverage Code retained a unique—and inaccurate—set of definitions to describe malt beverages. “Beer” is commonly used to describe any fermented beverage made from malted grain, including ales and lagers. “Ale” and “lager” are different styles of beer, depending on the method of fermentation. Texas, however, alone in the United States, defines “beer” by its alcoholic content—no more than 4% alcohol by weight (ABW).³² Any malted beverage above 4% ABW, regardless of style, could not be called “beer.” They were required to be called “ale” or (an unattractive option for craft brewers) “malt liquor.”³³

²⁵ *Ibid.*, 15.

²⁶ *Ibid.*

²⁷ See *Mark Anthony Brewing, Inc. v. TABC*, No. D-GN-13-003570, 345th District Court, Travis County, Texas, Final Declaratory Judgment (Oct. 7, 2015); *Ibid.*, Findings of Fact and Conclusions of Law (Nov. 25, 2015).

²⁸ See Joe Satran, “Craft Beer Growth Pushes Number of Breweries in U.S. Higher than Ever Before,” *Huffington Post* (Dec. 13, 2012), http://www.huffingtonpost.com/2012/12/13/craft-beer-breweries_n_2287906.html.

²⁹ See “Members,” *Texas Craft Brewers Guild*, <https://texascraftbrewersguild.org/members>.

³⁰ *Authentic Beverages Co. v. Texas Alcoholic Beverage Commission*, 835 F. Supp. 2d 227 (W.D. Tex. 2011); Alcoholic Beverage Code Annotated §102.07(2).

³¹ Alcoholic Beverage Code Annotated §108.9.

³² Alcoholic Beverage Code Annotated §104(12).

³³ Alcoholic Beverage Code Annotated §104(15).

Third, although *Rubin v. Coors* had allowed brewers to put the alcoholic strength on their labels, Texas still prohibited brewers from advertising alcoholic strength or using any name suggesting alcoholic strength, such as “strong,” “full strength,” or “prewar strength.”³⁴

These rules were apparently not a problem for the large breweries. Their products were lagers of less than 4% ABW, so they could be called “beer.” Their products were widely available, so they had no need to promote specific retail locations. And their growth was in *light* beers, so they had no need to advertise or suggest their beers might be stronger than expected.

Not so for craft brewers. With small output and limited distribution, they *needed* to tell customers where their beers were being sold. Retailers were not likely to feature a new, unusual product with limited shelf space. Proud of their revival of traditional beers and experimentation with new styles, craft brewers balked at mislabeling their strong lagers as “ales” or choosing between misnaming their session (low-alcohol) pale ales as simply “beer” or raising their alcohol content to use the accurate term “ale.”

No one wanted to call unique, hand-crafted beer “malt liquor.” At least thirty styles in the Association of Brewers’ Beer Style Guidelines could not be accurately labeled or described under Texas’ law.³⁵ And craft brewers *wanted* to advertise the strength of their beers’ styles. Not because high alcohol sells, but because drinkers *need* to know whether the new, unfamiliar beer they are trying is a 2.5% table beer or a whopping 9% imperial IPA.

The TABC’s arcane advertising rules caused real problems both for brewers and for Texas consumers. Many out-of-state craft breweries refused to ship their beers into Texas because it would require name and/or label changes. The laws caused the much-ridiculed label addition “Ale in Texas,” as if beer changed its nature when it crossed state lines. Brewers changed their formulations to meet the beer/ale distinction, resulting in beers of *higher* alcohol content simply to maintain the integrity of the product’s name—hardly a sensible result of regulation.³⁶

But to challenge these laws required nerve—it would mean suing the very government agency that grants breweries their license and right to operate. Fortunately, one Austin brewery, Jester King, joined by a distributor (Authentic Beverages Co.) and a retailer (Zak’s Restaurant), found the nerve to bite the hand that fed them, the TABC.

Authentic Beverages v. TABC.

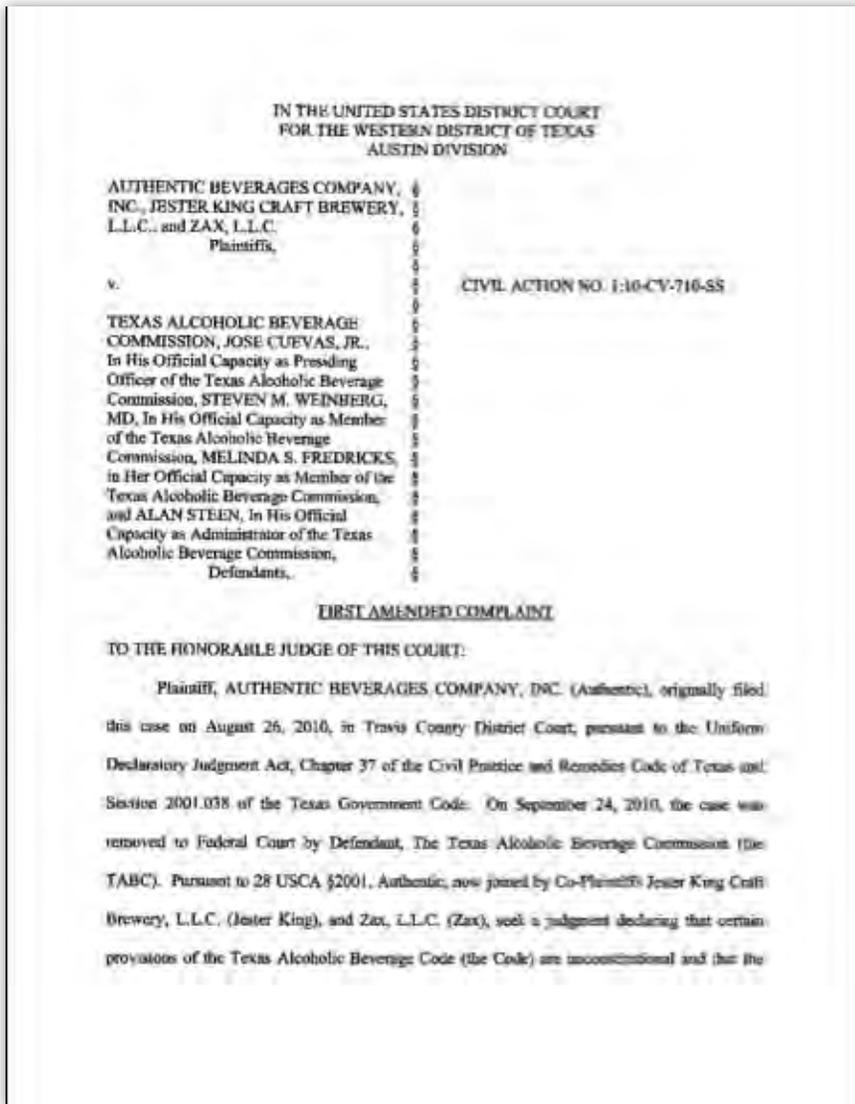
Jester King in particular faced problems with TABC’s rules. It brewed a pale ale that fell below 4.0% ABW, so it increased the strength in order to accurately call it an “ale.” Its Commercial Suicide Oaked Dark Mild had to omit the final word “Ale” from its name because it fell below 4.0%, as it was meant to do. It could not use the word “beer” to describe its Wytchmaker Rye IPA, Black Metal Imperial Stout or Boxer’s Revenge Farmhouse Provision Ale, because they exceeded 4%.³⁷ Nor could it tell customers— even during brewery tours—where its unique farmhouse

³⁴ Alcoholic Beverage Code Annotated §45.49(a); §45.82(f).

³⁵ See <https://www.brewersassociation.org/resources/brewers-association-beer-style-guidelines/>.

³⁶ Docket Entry 33 at 6–12.

³⁷ *Ibid.*



beers could be found. This made no sense.

Filing suit in Austin federal court, Jester King and the others drew the sometimes acerbic Judge Sam Sparks, who quickly realized the lawsuit concerned “two cornerstones of American society—the Constitution, and alcohol.”³⁸ After initially holding that the plaintiffs had standing to attack the laws and rules at issue and that Jester King had stated a First Amendment claim, Judge Sparks considered the parties’ merits arguments on cross-motions for summary judgment.³⁹

The TABC—defending a hand of cards dealt almost seventy years before—gamely tried to argue that there was some “substantial” government interest in the web of rules ensnaring Jester King and the rest of the burgeoning craft beer industry in Texas. Judge Sparks was unconvinced.

First, the TABC suggested that the law preventing brewers from advertising which resellers sell their products prevented “vertical integration” of the beer industry.⁴⁰ Describing the TABC’s argument as “anemic,” Judge Sparks held that while “prevention of vertical integration may well be a substantial government interest, a restriction on the free speech rights of producers and resellers cannot be justified by pointing out that retailers are free to speak their minds.”⁴¹ That is, the fact that the government did not gag retailer outlets did not justify its gagging of brewers. “Nor does the existence of a substantial government interest justify the imposition of any restriction on speech the government deems appropriate; in the commercial speech context, such a restriction must directly advance the interest, and be no more extensive than necessary to do so. TABC offers neither argument nor evidence on these issues.”⁴²

Second, the TABC tried to justify the beer-ale distinction by claiming that it helped

³⁸ Doc. 18.
³⁹ *Authentic Beverages*, 835 F. Supp.2d at 231.
⁴⁰ *Ibid.* at 243.
⁴¹ *Ibid.* at 243-44.
⁴² *Ibid.* at 244.

consumers and retailers know the alcoholic content of beverages being bought and served, and it facilitated local communities administer local option limitations which permitted only “beer” sales.⁴³ Again, however, Judge Sparks held that the TABC failed to show “the beer-ale dichotomy directly advances any of these interests or, more obviously, that the regulations at issue are not more extensive than necessary to do so.”⁴⁴ While conceding that the beer-ale distinction might be “better than nothing” in conveying information about alcoholic strength, “‘better than nothing’ is not the standard required by the First Amendment...”⁴⁵

As the Plaintiffs had argued, the beer-ale distinction “is simply not that good at conveying information about the alcohol content of malt beverages.⁴⁶ The TABC showed that the weighted ABW of the twenty most popular malt beverages in 2004 was approximately 3.8% ABW.⁴⁷ But Judge Sparks realized this *disproved* TABC’s point: if most beer is very near the beer-ale threshold of 4% ABW, the beer-ale distinction conveys very little useful information.

In fact, this evidence could be taken to mean that “beer” in Texas typically means, “a malt beverage with an alcohol content probably a little less than 4% ABW, but potentially as low as 0.5% AB[W]; and “ale” means “a malt beverage with an alcohol content probably a little greater than 4% AWB, but potentially much greater.” If, as TABC asserts, Texas wishes to allow consumers and providers to monitor alcohol consumption by themselves and those they serve, these two categories are not especially helpful.⁴⁸

The court agreed with the Plaintiffs’ argument that an actual statement of alcohol content—standard practice in the sale and serving of craft beer—serves the government’s asserted interest better than the statutory definitions of “beer” and “ale,” which “potentially conceal as much information as they provide.”⁴⁹

Finally, Judge Sparks quickly held against the arcane prohibition against mentioning alcoholic strength in advertising, noting that the TABC failed to respond to the argument at all.⁵⁰ In doing so, he noted the seeming incoherence of the regulations:

Indeed, it is difficult to articulate a substantial government interest that forbids advertisement of wine and malt beverages by reference to alcohol content; seems to require advertisement of the alcohol content of distilled spirits; permits inclusion of alcohol content on labels; but forbids the use of certain terms in doing so. The most obvious potential interest, informing consumers about the strength of alcoholic beverages, is clearly inadequate, because these regulations frustrate this interest as much as they advance it.⁵¹

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* at 245.

⁴⁹ *Ibid.* at 246.

⁵⁰ *Ibid.* at 242.

⁵¹ *Ibid.* at 243.

Judge Sparks thus ensured Texas brewers may now confidently obtain TABC label approval of a “Prewar Strength Ale,” correctly describe their products, and tell consumers where to buy them without risking their manufacturing permits and brewing licenses!

Conclusion

Authentic Beverages dealt Texas’s outdated alcohol advertising regulations a significant blow, and the TABC declined to appeal. But the case turned out to be just the start of broad-ranging alcoholic beverage regulation battles in Texas. The *Authentic Beverages* plaintiffs also challenged seemingly irrational licensing distinctions, but did not succeed in a more difficult equal protection challenge.⁵² Each legislative session since *Authentic Beverages* has seen a raft of bills seeking to equalize, simplify, and rationalize a byzantine regulatory system that, to some observers at least, exists in large part to justify itself. And the lawsuits have not ended; in 2015 a Travis County District Judge declared another set of TABC labeling regulations unconstitutional, the same set challenged decades ago by Pearl Brewing.⁵³

Texas’ love of beer and their suspicion of government overreach make for a potent combination, so it seems unlikely these controversies will end any time soon.

⁵² *Ibid.* at 247–51.

⁵³ *MarkAnthony Brewing, Inc. v. TABC*, No. D-GN-13-003570, 345th District Court, Travis County, Texas, Final Declaratory Judgment (Oct. 7, 2015); *ibid.*, Findings of Fact and Conclusions of Law (Nov. 25, 2015). The TABC *did* appeal this adverse ruling, and the case was set for oral argument before the Third Court of Appeals on April 26, 2017.



PETE KENNEDY is an avid craft beer drinker and co-founder of Old Homestead Brewing, his backyard home brewing operation. He has practiced law in Austin since 1990, after graduating from the University of Chicago Law School and clerking for Sr. Judge Thomas Fairchild of the Seventh Circuit in Madison, Wisconsin. Pete practices at the intersection of law and disruptive business models and technologies, where government regulations inhibit creative endeavors. He has handled a wide variety of intellectual property, Internet, commercial, and First Amendment litigation, as well as counseling clients on legal risk avoidance and mitigation. Pete is Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization and was named 2017 Austin First Amendment Litigation Lawyer of the Year by Best Lawyers.



Left: Pete’s dad made sure he got an early start. Photo by Francis Kennedy, ca. 1964. Middle: Old Homestead Brewing in operation. Photo by Pete Kennedy. Right: Pete sporting a *Jester King* shirt on the Cliffs of Moher, County Clare, Ireland. Photo by Camila Kennedy.

[Return to Journal Index](#)