

## Truth Squad Weighs in on Suit Against TABC

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Dear Client:

Last week we reported news that the Texas Association of Business and McLane Company were suing the TABC for variable enforcement of its “One Share” rule. Recall, McLane tried to secure an alcohol distribution permit from the TABC back in 2012, but was denied for its violation of the One Share Rule.

The complaint holds that the TABC does not apply the rule “equally” amongst industry participants: According to the TAB, roughly 40 manufacturers, distributors and retailers with overlapping ownership had more than 2,500 permits approved or renewed by the TABC.

A local Truth Squadder wrote in with some interesting insights:

“The Code gives TABC the authority in Sec 11.42 to compel a corporation to hand over a complete list of the actual owners of the stock of the corporation ...

“HOWEVER, TABC has chosen by rule to have Corporations only have to file a list of officers and directors in the application processes, whereby other entities (LLCs, Partnerships, Sole Proprietorships) must file a complete list of all owners who have even one share. Because TABC neither has the interest or the resources to compel a list of owners per Sec 11.42, they have no way of cross referencing the lists of owners in separate tiers, especially when the owners of publicly traded companies changes daily.

“Let’s look at the world’s largest brewer and the world’s largest retailer... with about 30 seconds of research on Yahoo Finance, we can find that Bank of America holds \$1.2 BILLION worth of Wal-Mart stock and \$500 million of ABI stock (and these are not mutual fund holdings, these are institutional holdings). Per TABC’s own One-Share rule, they have the authority to cancel the TABC licenses of WMT and BUD today if they wanted to.

“What does TABC, or you, or any rational person believe poses a greater threat to the 3-tier system... (a) hundreds of millions (or even billions) of dollars of cross-tier investments (b) small business holdings in multiple tiers by private individuals (say, a small craft brewer owning an off-site tap room) or (c) an absurd, selectively enforced reading of 3-tier that puts the entire code at risk of litigation?”