



Peter Franchot
Comptroller

Len N. Foxwell
Chief of Staff

December 19, 2017

Ms. Diane Riibe
Chairwoman, Board of Directors
U.S. Alcohol Policy Alliance
[Mailing Address Unknown]

TRANSMITTED VIA EMAIL: ap18@alcoholpolicy.org

Dear Ms. Riibe:

It is my responsibility and pleasure, as Chief of Staff to Maryland Comptroller Peter Franchot, to respond to your December 14 submission to the *Daily Record* ("Franchot misguided on Maryland alcohol policy"). Your opinion piece, penned under the banner of an entity called the "U.S. Alcohol Policy Alliance," raises several points with which I take strong yet respectful umbrage.

First, though, please allow me to sincerely apologize in advance if this correspondence fails to reach you in a timely manner. I assure you that it isn't attributable to a lack of effort. The official website for your organization appears to be in a state of permanent construction, leaving the guest simply with a message, circa 2014, to "*stay tuned for the U.S. Alcohol Policy Alliance Website.*" A website touting an upcoming conference in Northern Virginia offers only this e-mail address. Meanwhile, a Google search of the name "Diane Riibe" is of similarly limited utility, but does guide the reader to extensive coverage of your previous station of employment in the State of Nebraska.

Incidentally, the Nebraska organization you served with presumable distinction, Project Extra Mile, has something of a colorful history! The Nebraska press corps reported, in considerable detail, the outcome of an audit that was conducted of your organization, which is apparently funded primarily by taxpayer dollars, by the State Auditor. According to the [Omaha] *World-Herald*,

Project Extra Mile made a number of unallowable and unreasonable expenses with grant monies in 2015-16, including a \$4,600 recognition dinner that was "more of an entertainment-based event than a technical meeting" and too many meals from Jason's Deli for training events. In addition to the \$4,600 recognition dinner, the World-Herald reported that the organization spent "roughly \$3,300 [for] conference and travel expenses for four non-employees" and "used Highway Safety grant money to fund vacation time when not all employees are funded solely by the grant."

It is not my intent to focus on the details of that audit, which can be found online at http://www.omaha.com/news/crime/alcohol-prevention-group-scrutinized-in-state-audit/article_ed0e8c6a-8ab7-593e-b3f8-17c848111c0a.html. Rather, it is simply to underscore the extent of my effort to reach out to you via proper channels.

To be candid, it is also to question why someone who spent decades working in a government-funded advocacy group 1,400 miles away, now oversees an organization with no obvious ties to Maryland, and has no evidence of prior residency, advocacy or legislative engagement in our state, has suddenly adopted such a fervent interest – and has arrived at slanderous conclusions – surrounding Comptroller Franchot's efforts to reform Maryland's dysfunctional craft beer laws.

Putting the questionable timing of your concerns aside for the time being, I'd like to take a moment to respond to the issues raised in your conveniently-timed paean to Prohibition.

First, your comment that "*long before the comptroller's pro-industry task force on craft breweries, he appeared to be doing the bidding of the alcohol industry to expand alcohol sales in the state to the detriment of Marylanders' health, safety and general well-being*" is offered without citation, and simply reflects your lack of knowledge about Comptroller Franchot, his body of work or the duties of his office. Had you done your own research, you would have known the following:

- Comptroller Franchot is proud of his successful efforts to facilitate the growth of our state's amazing wine industry with the 2010 passage of the *Maryland Winery Modernization Act*. This landmark law, adopted with the support of both consumers and our business community, provided our local and independent growers with the legal framework needed to conduct successful tastings, host special events and sell products at community farmers' markets – all while ensuring responsible and moderate consumption.

This law is frequently cited as a primary catalyst for the remarkable growth of the Maryland wine industry over the course of recent years. If you can offer evidence that this law has had a deleterious effect on "health, safety and general well-being," I would strongly encourage you to share it with the rest of us.

I would apply that same request to a bill championed by Comptroller Franchot the following year to allow wineries that are duly registered with the State of Maryland, collect and remit taxes due, and follow all of the legally mandated safeguards designed to prevent underage access and consumption, to ship their products directly to Maryland consumers.

- Even whilst supporting statutory reforms designed to drag Maryland's wine laws into the 21st century, Comptroller Franchot was leading the charge to protect the health and safety of underage consumers. In November 2010, Comptroller Franchot brokered an agreement with Maryland's alcohol distributors and retailers to voluntarily discontinue the sale of caffeinated alcohol beverages – such as *Four Loko* and *Joose* – after numerous reports of serious injuries, deaths and fatal car crashes among underage consumers ("*Maryland takes out Four Loko,*" *Baltimore Sun, November 18, 2010*).

- In 2015, Comptroller Franchot once again worked with Maryland's distributors and retailers on a voluntary gesture of responsible corporate citizenship – this, a ban on the sale of powdered alcohol, which when mixed with water would create a powerful and – if consumed improperly or without knowledge – a highly dangerous drink (*Franchot, distributors agree on powdered alcohol ban,* Baltimore Sun, March 25, 2015).
- Owing to the experienced and effective leadership of Mr. Jeff Kelly and his dedicated agents within our Field Enforcement Division, the Maryland Comptroller's Office has earned a national reputation for its work to crack down on the smuggling of both alcohol and tobacco products, prevent illegal sales, guarantee that all appropriate taxes are collected and remitted, and ensure that these products are kept out of the hands of children. Since Comptroller Franchot has taken office, his Field Enforcement team has worked with our state and local partners to seize nearly \$5 million worth of contraband cigarettes and Other Tobacco Products (OTP); 82,000 containers of smuggled beer, as well as 4,500 gallons of wine and distilled spirits that would otherwise have been sold illegally, and without the proper collection of taxes, to Maryland's children and other consumers.

It goes without saying that this impressive record of prevention, partnership and enforcement would have been made readily available to you – or to your “colleagues” at the “Alliance” – had you simply made the effort to communicate with our agency.

Second, I wish to take you back to the passage in your column stating that *“Franchot's hands-on involvement advocating for the expansion of alcohol sales and consumption seems to be unprecedented for someone in his position. This extraordinary focus on expanding alcohol sales – while ignoring the concerns of many in the state who don't think a bar, brewery or liquor store on every corner is needed – exemplifies gross disregard on the part of an elected state official.”*

Like that unlucky Nebraska state auditor tasked with reviewing your former organization's spending practices, I don't even know where to begin. I'll begin by saying that every single word of your statement, as cited above, is both incorrect and inane. First, one is challenged to identify a public official who is more ideally positioned to point out the shortcomings of current laws and regulations than the one who is entrusted with their daily enforcement. Your assertion, pushed to its logical conclusion, would prohibit Maryland's agencies of environmental stewardship from recommending changes to inadequate environmental laws, or the Secretary of Housing and Community Development from initiating policy reforms that would better incentivize investment in Maryland's downtown communities. Consumers and policymakers alike have depended on the expertise of governmental agencies that have oversight or regulatory jurisdiction over specific policy areas as legislatures work to chart the course for laws, policies, and regulations that benefit our communities.

Second, at no point has Comptroller Franchot ever advocated for the “*expansion of alcohol sales and consumption.*” In fact, the work of the *Reform on Tap Task Force* proceeded with the guidance from the National Beer Wholesalers Association (NBWA) that beer consumption in Maryland, as in the country as a whole, is flat (pun unintended). Given the improbability that this trend will change as a result of any government action, it was Comptroller Franchot’s priority, through the Task Force, to dismantle those antediluvian laws that may have been necessary in decades past, but which now work to the exclusive benefit of industrial beer conglomerates and a handful of prodigiously-connected Annapolis insiders who distribute their products.

This, due to an analysis that illustrated the obvious multiplier effect associated with the consumption of Maryland beer. According to the Maryland Bureau of Revenue Estimates, the economic benefits of consuming Maryland craft beer are 54 percent greater than those associated with consuming a brand from, say, Nebraska. When a Maryland resident or tourist enjoys a good Cosmic Giggle from Baltimore’s Union Craft, a Big Red Norm American Red Ale from Silver Spring’s own Denizens Brewing Company, or even a *Saison du Franchot* (a powerful yet subtle presentation from Frederick’s Monocacy Brewing Company), that money is recycled throughout the community in the form of local jobs, investments in other local businesses, and civic and philanthropic contributions. Of course, let us not forget the considerable tax revenue that this industry contributes to local, state, and federal coffers – totaling \$108 million in 2016 – that help support vital government and public programs such as quality public schools, affordable health care, public safety, and environmental protection.

In that spirit and context, it is wholly appropriate for the State of Maryland’s independently-elected Chief Fiscal Officer to use his position and platform to elevate public awareness of our state’s 84 working craft breweries, and to advocate for laws that will foster their competitiveness, success and long-term growth. In fact, one could argue that it would be an abdication of duty if he failed to embrace policies that strengthen his state’s long-term fiscal and economic outlook.

Furthermore, in case anyone reading your piece fears that Comptroller Franchot actually aspires to transform Maryland communities into scenes from a Toulouse-Lautrec exhibit, I respectfully challenge you to point out one instance where he has called for a “*bar, brewery or liquor store on every corner.*” I cannot speak to the legal protocols in Nebraska, but here in Maryland, decisions on the location, dimension, scope and aesthetic characteristics of these and other local businesses rest in the hands of our local governments, and not the Office of the Comptroller.

As an aside, and whilst I’m on that same paragraph of your letter, I must confess to laughing at your statement that the Community Preventive Services Task Force “*discourages the removal of government control of retail sales as effective measures to prevent alcohol consumption.*” Given that 23 of Maryland’s 24 jurisdictions have done just that, and given that the 24th is under mounting public pressure to follow suit in wake of the lost revenues, economic benefits, and customer service inefficiencies associated with the public dispensary model, I might respectfully suggest that you’ve arrived at the barn a bit too late to corral the horses.

Finally, given that you were not present for the waning weeks of the 2017 Maryland General Assembly session and the events that accompanied the passage of House Bill 1283, I'd like to provide some potentially helpful background information. To quote from the final report of the Task Force, *"it is difficult to overstate the damage this legislation has done to the state's reputation within the industry. The episode focused undesirable national attention on, and public ridicule of, Maryland's arcane and restrictive beer laws. It also fostered an unwelcome public narrative that Maryland's business climate is inherently hostile to craft brewers and subject to the undue influence of well-funded special interests."*

Before this infamous bill was amended by the Senate, it included such poison pills as:

- A virtual prohibition of "contract brewing;"
- A restriction of operating hours that were not applied to bars, restaurants and taverns, but were exclusive to Maryland's production breweries; and,
- A provision that required breweries to sell their own beer to a distributor, and subsequently repurchase it at a markup, before selling it to in their own taprooms.

This piece of legislation was conceived in privacy and without the input of lawmakers who were nominally responsible for the fate of alcohol related legislation in Annapolis (*"Del. Charles Barkley Says House Kept in Dark About HB 1283, Wants Brewers to Prosper;" Naptown Pint, April 6, 2017*). If passed in its unrefined form, it would have effectively halted all future growth of a craft beer industry that, in spite of the hurdles that the State of Maryland has erected, is still responsible for \$637 million in annual economic output, supports 6,541 Maryland-based jobs, generated more than \$228 million in annual wages.

I personally challenge you to explain to your readers how these and other arbitrarily restrictive trade policies - which in this region are exclusive to Maryland - serve to advance your alleged priorities of health, safety and moderation. In furtherance of that point, I would encourage you to share, publicly, any data you may have that would suggest that our neighboring jurisdictions - Delaware, Pennsylvania, Virginia and the District of Columbia - have compromised the well-being of its residents, while leaving the social order teetering in the proverbial balance - due to an absence of such policies. Needless to say, I'll grant all the time you might need.

To be sure, there are more questions than answers surrounding your abrupt arrival to the debate over the State of Maryland's craft beer laws. What is striking is that the timing and message of your piece - coincidental or otherwise - are in perfect synchronicity with those of the leadership of our House of Delegates. Your belated concerns for the public health and safety of a state in which you don't reside mirror those expressed by none other than House Speaker Michael E. Busch during his recent and highly irregular appearance at an alcohol briefing hosted by the Economic Matters Committee. As do your complementary suggestions - without a shred of evidence that such a move would serve the public interest - that the Maryland Comptroller's Office be relieved of its responsibility to regulate our state's alcohol industry.

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Your missive is also compatible in tone with an editorial penned several days ago by Delegate Dereck Davis, who serves as Chairman of the House Economic Matters Committee. In that piece, he serves to assure his readers – few if any of whom actually reside in his 25th Legislative District – that House Bill 1283 is a really good thing for Maryland’s craft brewers. This, in subtle, shaded contrast to the belief of Maryland’s craft brewers that House Bill 1283 is a really bad thing for Maryland’s craft brewers.

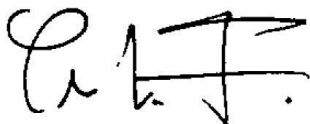
Given your untutored interest in Maryland’s campaign finance system – as evidenced by the bizarre accusations leveled against Comptroller Franchot without the benefit of explanation or substance - I’ll respectfully offer some free advice. If you are interested in a prevalent theory about why a group of powerful leaders you’ve never met went into a backroom that you’ll never see, to dismantle a thriving industry of innovators that everybody loves, I commend to you a blog titled *Naptown Pint* (www.naptownpint.com), written and maintained by the incomparable Liz Murphy.

Every aspect surrounding your abrupt engagement on the issue of craft beer reform – from the startling lack of public information about the organization that you purportedly represent, to your highly choreographed attack on the integrity of an elected official you’ve never met in a state that you really don’t know – is highly suspicious and, in fact, bears all of the standard earmarks of a familiar Annapolis archetype – the advocate-for-hire.

Moreover, in a state where the political clout of Budweiser, Miller Coors, and their business partners is the stuff of legend, and accumulated through the years with nary a word of protest from the U.S. Alcohol Policy Alliance, your theatrical outrage at Comptroller Franchot’s efforts to support a small but emerging industry of local entrepreneurs bears all of the motivational purity of a Jimmy Swaggart pledge drive. To do under the guise of public health and safety is deeply insulting to those commendable and accomplished Marylanders who actually do work within our state’s legislative arena to safeguard the public interest.

Thank you for your time and consideration. Cheers!

Sincerely,

A handwritten signature in black ink, appearing to read 'L. N. Foxwell'. The signature is stylized with a large initial 'L' and a horizontal line across the middle.

Len N. Foxwell
Chief of Staff
Comptroller of Maryland