

V. Glenn Coffee
Secretary of State



Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

April 3, 2012

Mr. Brian Howe
2601 Northwest Expressway
Ste. 210 – West
Oklahoma City, OK 73112

Dear Mr. Howe :

This will acknowledge receipt of the petition for filing which has been designated as:

State Question Number 763
Initiative Petition Number 396

filed this 3rd day of April, 2012 at 11:14 a.m.

Pursuant to 34 O.S. § 9, after the filing of the petition and prior to the gathering of signatures, the Secretary of State shall submit the proposed ballot title of this petition to the Attorney General for review as to legal correctness.

Please be aware that once the ballot title review is completed, there will be a Notice of Filing published, as required by 34 O.S. § 8, in which any citizen or citizens of the state may file a protest as to the constitutionality of the petition or the ballot title.

The circulation period for petitions, according to 34 O.S. § 8, is within ninety (90) days after such filing of an initiative petition or determination of the sufficiency of the petition by the Supreme Court, whichever is later. Should your due date fall on a weekend or holiday or a day that this office is closed for business, pursuant to 25 O.S. § 82.1 (C) and in accordance with AG Opinion 76-195, the due date for this petition will fall on the next succeeding business day that this office is open for business.

If our office may be of further assistance, please do not hesitate to contact the Executive Legislative Division at (405) 522-4564.

Sincerely, .

A handwritten signature in cursive script that reads "Michelle R. Day".

Michelle R. Day
Assistant Secretary of State

FILED

APR 03 2012

OKLAHOMA SECRETARY
OF STATE

State Question No. 763

Initiative Petition No. 396

"WARNING"

"It is a felony for anyone to sign an initiative or referendum petition with any name other than his own, or knowingly to sign his name more than once for the measure, or to sign such petition when he is not a legal voter."

INITIATIVE PETITION

To the Honorable Mary Fallin, Governor of Oklahoma:

We, the undersigned legal voters of the State of Oklahoma, respectfully order that the following proposed amendment to the constitution shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the regular general election, to be held on the 6th day of November, 2012, and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my residence or post office are correctly written after my name. The time for filing this petition expires ninety days from April 3, 2012. The question we herewith submit to our fellow voters is:

Shall the following proposed amendment to the Constitution be approved?

BALLOT TITLE

This measure adds a new Section 4.A and amends Section 10 of Article 28 of the State Constitution. It allows for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets and other grocery (except convenience) stores. It provides for a grocery store wine license. Such sales of wine would only be authorized after being approved at an election by the voters in counties with a population of 50,000 or more persons. The sale of wine to persons under 21 years of age would be prohibited. The measure provides for the days and hours, taxation on wine sales, fees for licenses and purchase and distribution of wine to be the same as for retail package stores. It allows corporations to hold grocery store wine licenses. It limits the number of locations by a licensee to six. It provides other limits on licenses. It would allow grocery store wine licenses to be held by corporations and other businesses from outside the state. It would allow an election to be called by the county commissioners or by a petition of registered voters.

SHALL THE PROPOSED AMENDMENT TO THE CONSTITUTION BE APPROVED?

___ Yes - For the proposition

___ No - Against the proposition

A "YES" vote is a vote in favor of this measure. A "NO" vote is a vote against this measure.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA THAT THE OKLAHOMA CONSTITUTION SHALL BE AMENDED BY ADDING A NEW SECTION 4.A TO ARTICLE 28 AND BY AMENDING SECTION 10 OF ARTICLE 28 AS FOLLOWS:

AN AMENDMENT TO THE OKLAHOMA CONSTITUTION BY ADDING A NEW SECTION 4.A TO PERMIT ANY COUNTY WITH A POPULATION OF 50,000 OR MORE PERSONS TO AUTHORIZE BY AN ELECTION THE SALE OF WINE FOR OFF-PREMISES CONSUMPTION UNREFRIGERATED AT RETAIL IN WAREHOUSE CLUBS, SUPERCENTERS, SUPERMARKETS AND OTHER GROCERY (EXCEPT CONVENIENCE) STORES PURSUANT TO A GROCERY STORE WINE LICENSE; ALLOWING THE SALE OF OTHER GOODS, WARES AND MERCHANDISE ON THE PREMISES; LIMITING SALE OF WINE BY A GROCERY STORE WINE LICENSEE TO THE SAME DAYS AND TIMES AS IN RETAIL PACKAGE STORES TO PERSONS WHO ARE PHYSICALLY PRESENT; PROHIBITING SALE OF WINE TO PERSONS UNDER THE AGE OF 21, BUT ALLOWING PERSONS UNDER THE AGE OF 21 TO PURCHASE OTHER GOODS, WARES AND MERCHANDISE SOLD ON THE PREMISES OF A GROCERY STORE WINE LICENSEE UNLESS SUCH SALES ARE PROHIBITED BY OTHER LAW; DEFINING HOW WAREHOUSE CLUBS AND SUPERCENTERS AND SUPERMARKETS AND OTHER GROCERY (EXCEPT CONVENIENCE) STORES; PROVIDING THAT PURCHASE AND DISTRIBUTION OF WINE TO GROCERY STORE WINE LICENSEES SHALL BE THE SAME AS FOR RETAIL PACKAGE STORES; PROVIDING THAT TAXATION OF THE RETAIL SALE OF WINE AND LICENSE FEES FOR GROCERY STORE WINE LICENSEES SHALL BE THE SAME AS FOR RETAIL PACKAGE STORE LICENSEES; LIMITING TO SIX THE TOTAL NUMBER OF LOCATIONS THAT COULD BE HELD BY ONE GROCERY STORE WINE LICENSEE AND ALLOWING NO MORE THAN TWO LICENSES TO BE ISSUED DURING EACH TWO YEAR PERIOD FOLLOWING THE EFFECTIVE DATE OF THIS SECTION; PERMITTING GROCERY STORE WINE LICENSES TO BE ISSUED TO CORPORATIONS AND OTHER BUSINESS ENTITIES FOR PREMISES OF 25,000 SQUARE FEET OR MORE; PROHIBITING GROCERY STORE WINE LICENSEES FROM HOLDING ANY OTHER CLASS OF LICENSE ISSUED BY THE OKLAHOMA ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION; PROVIDING FOR COUNTIES WITH A POPULATION OF 50,000 OR MORE PERSONS TO HOLD ELECTIONS TO AUTHORIZE THE SALE OF WINE AS PROVIDED BY SECTION 4.A TO BE CALLED BY THE BOARD OF COUNTY COMMISSIONERS OR UPON SUBMISSION OF A PETITION BY THE REGISTERED VOTES OF THE COUNTY; PROVIDING AN EFFECTIVE DATE FOR SECTION 4.A; AMENDING SECTION 10 OF ARTICLE 28 BY PROHIBITING THE ISSUANCE OF A GROCERY STORE WINE LICENSE TO INDIVIDUALS, TO PARTNERSHIPS WITH A PARTNER OR CORPORATIONS WITH AN OFFICER OR DIRECTOR WHO HAS BEEN CONVICTED OF A FELONY RELATING TO THE SALE, MANUFACTURE OR TRANSPORTATION OF ALCOHOLIC BEVERAGES; PROHIBITING THE ISSUANCE OF A GROCERY STORE LICENSE FOR A LOCATION WITHIN 300 FEET OF CERTAIN RETAIL PACKAGE STORES; PROVIDING THAT GROCERY STORE WINE LICENSES SHALL NOT BE PROHIBITED SOLELY BECAUSE THE APPLICANT IS A FOREIGN CORPORATION OR OTHER BUSINESS ENTITY; PROHIBITING DURATIONAL RESIDENCE REQUIREMENTS FOR GROCERY STORE WINE LICENSEES.

Section 4.A. A. Any county with a population of more than fifty thousand (50,000) persons according to the most recent federal decennial census may authorize by county election that wine may be sold for off-premises consumption unrefrigerated at retail in the original sealed package in warehouse clubs and supercenters and supermarkets and other grocery (except convenience) stores pursuant to a grocery store wine license. Other goods, wares or merchandise may be sold on the same premises. Sales of wine by a grocery store wine licensee shall only be permitted on the same days and at the same times that sales of wine are permitted in any retail package store and shall only be permitted to customers who are physically present on the premises of the grocery store wine licensee. No wine shall be sold to any person under the age of twenty-one (21) years;

however, persons under the age of twenty-one (21) years may purchase other goods, wares or merchandise sold on the premises of a grocery store wine licensee provided the sale of such goods, wares or merchandise is not prohibited to persons under the age of twenty-one (21) by provisions of this Constitution or other laws of this State.

A grocery store wine license may only be issued to warehouse clubs and supercenters and supermarkets and other grocery (except convenience) stores in counties that have authorized that wine may be sold in warehouse clubs and supercenters and supermarkets and other grocery (except convenience) stores. As used in this section, the terms "warehouse clubs and supercenters" and "supermarkets and other grocery (except convenience) stores" shall be defined by the 2007 North American Industry Classification System.

Wine shall be purchased by and distributed to grocery store wine licensees subject to the same requirements provided by this Constitution and the laws of this State for a retail package store. Taxation for retail sale of wine and license fees for grocery store wine licensees shall be the same as provided by law for retail package store licensees.

The number of grocery store wine licenses issued to a single licensee shall be limited as follows: Within the first two (2) years after this section becomes effective, a licensee shall be allowed no more than licenses for two (2) locations; during the two (2) years thereafter, a licensee shall be allowed no more than licenses for two (2) additional locations; during the two (2) years thereafter, a licensee shall be allowed no more than licenses for two additional locations. In no event shall a licensee be allowed licenses for more than six (6) locations in this State. No person, firm, corporation, association, or other combination of persons, directly or indirectly, or through any agent, employee, stockholder, or officer or other person or any subsidiary whatsoever, shall have a beneficial interest exceeding ten percent (10%) in more than six locations licensed to sell wine under this section. No person, firm, corporation, association or other combination of persons holding a grocery store wine license shall, directly or indirectly, or through any officer, director, or subsidiary whatsoever, have a beneficial interest in any business that holds any other class of license issued by the Oklahoma Alcoholic Beverage Laws Enforcement Commission. No grocery store wine license shall be issued for use in premises with fewer than twenty-five thousand (25,000) square feet of floor space.

B. The sale of wine as provided by Subsection A of this Section is hereby authorized within a county with a population of more than fifty thousand (50,000) persons according to the most recent federal decennial census if the voters of such county have previously approved such sale of wine at an election occurring after Section 4.A becomes effective. An election on the sale of wine as provided in Subsection A of this Section may be called by resolution adopted by the board of county commissioners of a county with a population of more than fifty thousand (50,000) persons according to the most recent federal decennial census. An election on the sale of wine as provided in Subsection A of this Section shall be called upon submission to the county clerk of a county with a population of more than fifty thousand (50,000) persons according to the most recent federal decennial census of a petition signed by a number of registered voters of the county equal to eight percent (8%) of the total number of votes cast in the county at the last general election for the Office of Governor. The ballot title

for all such questions shall be: "Shall the sale of wine in warehouse clubs and supercenters and supermarkets and other grocery (except convenience) stores be authorized for _____ County?" The title and the text of the measure in the petition shall read: "The provisions of Article 28, Section 4.A of the Oklahoma Constitution shall be authorized for _____ County." In other respects, requirements for initiative petitions as provided by Title 34 of the Oklahoma statutes shall be applicable to the petition, except that the board of county commissioners, the county clerk and the District Attorney shall perform the duties of the Governor, the Secretary of State and the Attorney General, respectively. An election on the question shall be scheduled by the board of county commissioners for a date no more than one hundred eighty (180) days following notification by the county clerk that the petition is sufficient and that objections or protests, if any, have been resolved. Upon approval by the voters, the provisions of Subsection A of this Section shall become effective in the county ninety (90) days after results of the election are certified by the county election board.

C. This Section 4.A shall become effective eighteen (18) months after its approval.

Section 10. No retail package store or wholesale distributor's license shall be issued to:

(a) A corporation, business trust or secret partnership.

(b) A person or partnership unless such person or all of the copartners including limited partners shall have been residents of the State of Oklahoma for at least ten (10) years immediately preceding the date of application for such license.

(c) A person or a general or limited partnership containing a partner who has been convicted of a violation of a prohibitory law relating to the sale, manufacture, or the transportation of alcoholic beverages which constituted a felony or misdemeanor.

(d) A person or a general or limited partnership containing a partner who has been convicted of a felony.

No license to sell alcoholic beverages by the individual drink for on-premises consumption shall be issued to:

(a) A person or a general or limited partnership containing a partner who has been convicted of a violation of a prohibitory law relating to the sale, manufacture, or the transportation of alcoholic beverages which constituted a felony.

(b) A person or a general or limited partnership containing a partner who has been convicted of a felony.

(c) A corporation which has an officer or director who has been convicted of a violation of a prohibitory law relating to the sale, manufacture, or the transportation of alcoholic beverages which constituted a felony.

(d) A corporation which has an officer or director who has been convicted of a felony.

No grocery store wine license, as provided for by Article 28, Section 4.A, shall be issued to:

(a) A person or a general or limited partnership containing a partner who has been convicted of a violation of a prohibitory law relating to the sale, manufacture, or the transportation of alcoholic beverages which constituted a felony.

(b) A person or a general or limited partnership containing a partner who has been convicted of a felony.

(c) A corporation which has an officer or director who has been convicted of a violation of a prohibitory law relating to the sale, manufacture, or the transportation of alcoholic beverages which constituted a felony.

(d) A corporation which has an officer or director who has been convicted of a felony.

(e) An applicant whose proposed location is within three hundred (300) feet of a licensed retail package store that has been in business at the same location continuously since July 1, 2012, as measured by a straight line from the nearest exterior perimeter walls of the licensed premises for each location.

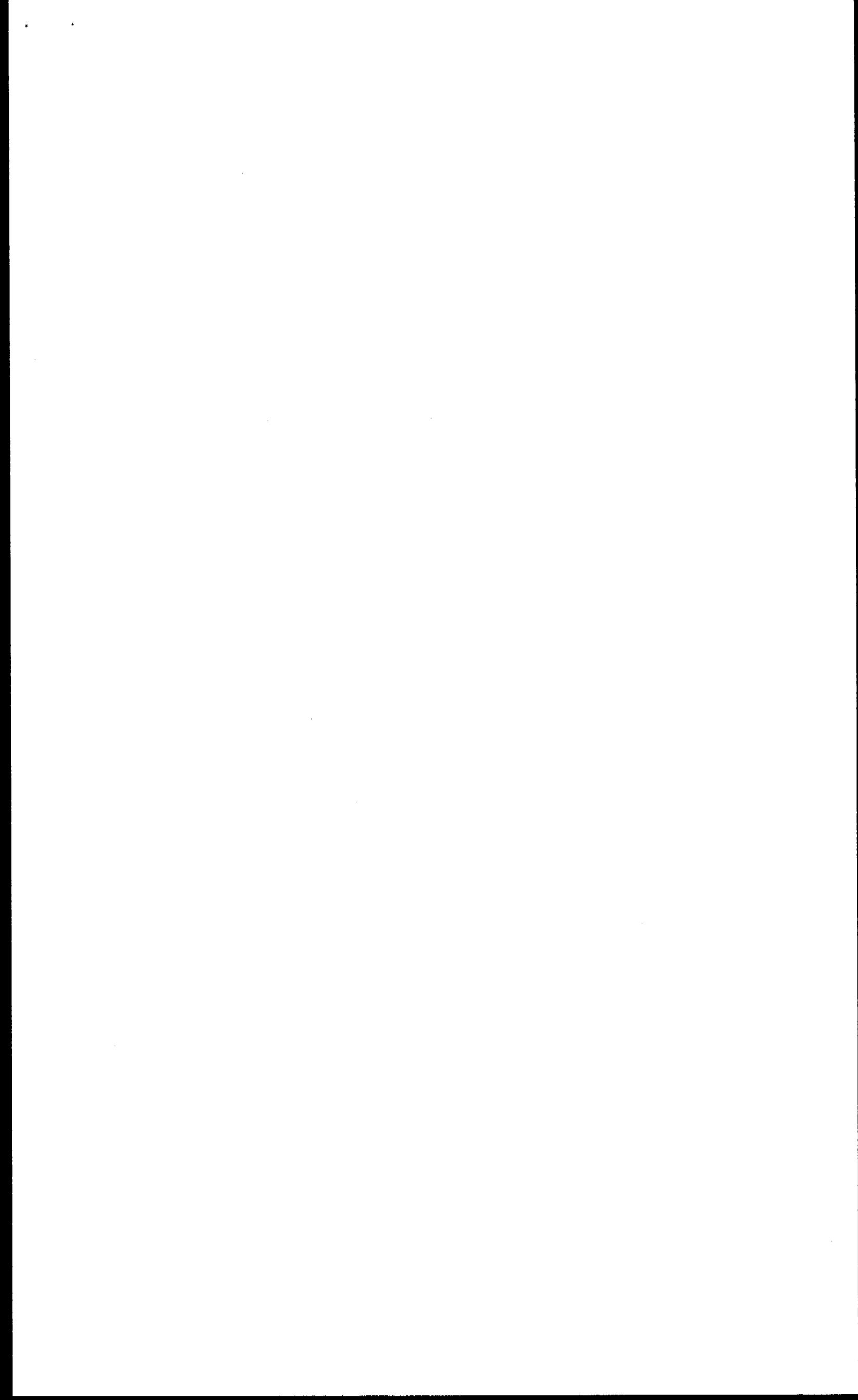
No provision of this Constitution or other laws of this State shall prohibit the issuance of a grocery store wine license solely because the applicant is a foreign corporation, a domestic corporation, a limited liability company, partnership or individual; nor shall any provision of this Constitution or other laws of this State require a durational residency requirement as a condition for being issued a grocery store wine license.

Names and Addresses of Proponents:

Oklahomans for Modern Laws
2601 Northwest Expressway, Suite 210-West
Oklahoma City, OK 73112

Sean Campbell
2601 Northwest Expressway, Suite 210-West
Oklahoma City, OK 73112

Brian Howe
2601 Northwest Expressway, Suite 210-West
Oklahoma City, OK 73112



SIGNATURES

The gist of the proposition is that it amends the State Constitution to allow for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets and other grocery (except convenience) stores. It provides for a grocery store wine license. Such sales of wine would only be authorized after being approved at an election by the voters in counties with a population of 50,000 or more persons. The sale of wine to persons under 21 years of age would be prohibited. The measure provides for the days and hours, taxation on wine sales, fees for licenses and purchase and distribution of wine to be the same as for retail package stores. It allows corporations to hold grocery store wine licenses. It limits the number of locations by a licensee to six. It provides other limits on licenses. It would allow grocery store wine licenses to be held by corporations and other businesses from outside the state. It would allow an election to be called by the county commissioners or by a petition of registered voters.

1	SIGNATURE	RESIDENCE ADDRESS	
	PRINTED NAME	CITY/TOWN	COUNTY
2	SIGNATURE	RESIDENCE ADDRESS	.OK
	PRINTED NAME	CITY/TOWN	COUNTY
3	SIGNATURE	RESIDENCE ADDRESS	.OK
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13	SIGNATURE	RESIDENCE ADDRESS	.OK
	PRINTED NAME	CITY/TOWN	COUNTY
14	SIGNATURE	RESIDENCE ADDRESS	.OK
	PRINTED NAME	CITY/TOWN	COUNTY
15	SIGNATURE	RESIDENCE ADDRESS	.OK
	PRINTED NAME	CITY/TOWN	COUNTY

AFFIDAVIT

STATE OF OKLAHOMA,)
) ss.
COUNTY OF _____)

I, _____, being first duly sworn say:

That I am a qualified elector of the State of Oklahoma and that

- | | |
|----------|-----------|
| 1. _____ | 9. _____ |
| 2. _____ | 10. _____ |
| 3. _____ | 11. _____ |
| 4. _____ | 12. _____ |
| 5. _____ | 13. _____ |
| 6. _____ | 14. _____ |
| 7. _____ | 15. _____ |
| 8. _____ | |

signed this sheet of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, post office address, and residence correctly, and that each signer is a legal voter of the State of Oklahoma.

Circulator's Signature

Post Office Address

City

Zip Code

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

Post Office Address

City

Zip Code

My Commission Number Is: _____

My Commission Expires: _____
(SEAL)

BALLOT TITLE

This measure adds a new Section 4.A and amends Section 10 of Article 28 of the State Constitution. It allows for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets and other grocery (except convenience) stores. It provides for a grocery store wine license. Such sales of wine would only be authorized after being approved at an election by the voters in counties with a population of 50,000 or more persons. The sale of wine to persons under 21 years of age would be prohibited. The measure provides for the days and hours, taxation on wine sales, fees for licenses and purchase and distribution of wine to be the same as for retail package stores. It allows corporations to hold grocery store wine licenses. It limits the number of locations by a licensee to six. It provides other limits on licenses. It would allow grocery store wine licenses to be held by corporations and other businesses from outside the state. It would allow an election to be called by the county commissioners or by a petition of registered voters.

RECEIVED

APR 03 2012

OKLAHOMA SECRETARY
OF STATE

Lee Slater
Attorney at Law
2601 Northwest Expressway, Suite 210 West

Mail: Post Office Box 14785
Oklahoma City, Oklahoma 73113-0785
E-mail: leeslaterlaw@coxinet.net

Phone: (405) 608-0914
Cell: (405) 823-1534
Fax: (405) 608-0907

April 3, 2012

Hand-delivered

The Honorable V. Glenn Coffee
Secretary of State
State of Oklahoma
State Capitol
Oklahoma City, Oklahoma 73105

In re: Initiative petition and ballot title

Dear Sir:

I represent Oklahomans for Modern Laws, Sean Campbell and Brian Howe.

Tendered herewith for filing on behalf of Oklahomans for Modern Laws, Sean Campbell and Brian Howe, Proponents, are a true and exact copy of an initiative petition to amend the Oklahoma Constitution and a proposed ballot title, pursuant to the requirements of Article 5, Sections 1, 2 and 3 of the Oklahoma Constitution and Title 34 of the Oklahoma Statutes.

Respectfully submitted,



LEE SLATER

RECEIVED
APR 03 2012
OKLAHOMA SECRETARY
OF STATE

V. Glenn Coffee
Secretary of State



Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

April 3, 2012

INTERAGENCY MAIL

The Honorable E. Scott Pruitt
Attorney General
313 NE 21st Street
Oklahoma City, Oklahoma 73105

Dear Attorney General Pruitt:

You are hereby notified that Mr. Brian Howe, 2601 Northwest Expressway, Suite 210-West, Oklahoma City, OK, 73112, filed an initiative petition on April 3, 2012, with the Secretary of State. This petition is designated as State Question Number 763, Initiative Petition Number 396.

Pursuant to 34 O.S., § 8, the signatures for this petition are required to be filed within ninety (90) days after the filing of the petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later. The signature requirement for this petition is 155, 216.

The proposed ballot title is hereby submitted to you for review as to legal correctness pursuant to the provisions of 34 O.S. § 9(D).

If additional information is needed from this office, or if we may be of further assistance, please contact me.

Sincerely,

V. Glenn Coffee
Secretary of State

A handwritten signature in black ink that reads 'Michelle R. Day'. The signature is written in a cursive style with a large loop at the end.

Michelle R. Day
Assistant Secretary of State

Enclosures: State Question 763
Ballot Title

V. Glenn Coffee
Secretary of State



Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

April 3, 2012

Hand delivered

RECEIVED

APR 03 2012

**OFFICE OF THE
GOVERNOR**

The Honorable Mary Fallin
Governor, State of Oklahoma
Room 212, State Capitol
Oklahoma City, Ok 73105

Dear Governor Fallin:

Please be advised that Mr. Brian Howe, 2601 Northwest Expressway, Suite 210-West, Oklahoma City, OK, 73112, filed an initiative petition on April 3, 2012, with the Secretary of State. This petition is designated as State Question Number 763, Initiative Petition Number 396.

Pursuant to 34 O.S., § 8, the signatures for this petition are required to be filed within ninety (90) days after the filing of the petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later. The signature requirement for this petition is 155, 216.

The proposed ballot title has been submitted to the Attorney General for review as to legal correctness pursuant to the provisions of 34 O.S. § 9 (D).

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

V. Glenn Coffee
Secretary of State

A handwritten signature in black ink that reads "Michelle R. Day". The signature is written in a cursive style with a large loop at the end.

Michelle R. Day
Assistant Secretary of State

Enclosure: State Question 763

V. Glenn Coffee
Secretary of State



Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

April 3, 2012

Hand delivered

The Honorable Paul Ziriaux
Secretary, Oklahoma State Election Board
Room 3, State Capitol
Oklahoma City, Oklahoma 73105



Dear Secretary Ziriaux:

Please be advised that Mr. Brian Howe, 2601 Northwest Expressway, Suite 210-West, Oklahoma City, OK, 73112, filed an initiative petition on April 3, 2012, with the Secretary of State. This petition is designated as State Question Number 763, Initiative Petition Number 396.

Pursuant to 34 O.S., § 8, the signatures for this petition are required to be filed within ninety (90) days after the filing of the petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later. The signature requirement for this petition is 155, 216.

The proposed ballot title has been submitted to the Attorney General for review as to legal correctness pursuant to the provisions of 34 O.S. § 9 (D).

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

V. Glenn Coffee
Secretary of State

A handwritten signature in black ink that reads "Michelle R. Day".

Michelle R. Day
Assistant Secretary of State

Enclosure: State Question 763



E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

April 9, 2012

FILED
APR 10 2012
OKLAHOMA SECRETARY
OF STATE

Glenn Coffee, Secretary of State
Office of the Secretary of State
2300 N. Lincoln Blvd., Room 101
Oklahoma City, OK 73105-4897

Re: Ballot Title for State Question No. 763, Initiative Petition No. 396

Dear Secretary Coffee:

In accordance with the provisions of 34 O.S.2011, § 9(D), we have reviewed the Ballot Title for the above referenced State Question and conclude that it complies with applicable law. As a Title 34 Ballot Title Review, this letter does not constitute an Attorney General Opinion on the merits or constitutionality of the underlying proposed changes in the law, nor on the ability of federal law to preempt the changes in the law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", written over a horizontal line.

E. SCOTT PRUITT
ATTORNEY GENERAL

ESP/ab

V. Glenn Coffee
Secretary of State



Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

April 11, 2012

Cindy Shea
Oklahoma Press Service
3601 N. Lincoln
Oklahoma City, OK 73105

Dear Ms. Shea:

Please publish the attached Notice of Filing for State Question Number 763, Initiative Petition Number 396. Pursuant to 34 O.S. § 8, the publication must appear in at least one newspaper of general circulation in the State of Oklahoma. Please publish in The Oklahoman, Tulsa World, and the Journal Record as soon as possible.

Also, please provide the Secretary of State with a verified proof of publication of the Notice. Should you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads 'Michelle R. Day'. The signature is written in a cursive style with a large, looping 'D' at the end.

Michelle R. Day
Assistant Secretary of State

enc. Notice of Filing

cc: 2601 Northwest Expressway
Suite 210-West
Oklahoma City, OK 73112

**NOTICE OF THE FILING OF
STATE QUESTION NUMBER 763
INITIATIVE PETITION NUMBER 396**

NOTICE is hereby given that on April 3, 2012, State Question Number 763, Initiative Petition Number 396 was filed in the Office of the Secretary of State.

The ballot title for this initiative petition is as follows:

This measure adds a new Section 4.A and amends Section 10 of Article 28 of the State Constitution. It allows for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets and other grocery (except convenience) stores. It provides for a grocery store wine license. Such sales of wine would only be authorized after being approved at an election by the voters in counties with a population of 50,000 or more persons. The sale of wine to persons under 21 years of age would be prohibited. The measure provides for the days and hours, taxation on wine sales, fees for licenses and purchase and distribution of wine to be the same as for retail package stores. It allows corporations to hold grocery store wine licenses. It limits the number of locations by a licensee to six. It provides other limits on licenses. It would allow grocery store wine licenses to be held by corporations and other businesses from outside the state. It would allow an election to be called by the county commissioners or by a petition of registered voters.

SHALL THE PROPOSED AMENDMENT TO THE CONSTITUTION BE APPROVED?

_____ Yes – For the proposition

_____ No – Against the proposition

NOTICE is hereby given that, as provided in 34 O.S. § 8 and 10, any citizen or citizens of the state may file a protest as to the constitutionality of the petition or as to the ballot title, by a written notice to the Supreme Court and to the proponent or proponents filing the petition. Proponents filing are: Oklahomans for Modern Laws, Sean Campbell, and Brian Howe, all at 2601 Northwest Expressway, Suite 210-West, Oklahoma City, OK 73112. Any such protest must be filed within ten (10) days after this publication. A copy of the protest shall be filed with the Secretary of State.

V. Glenn Coffee
Secretary of State

FILED

APR 23 2012

OKLAHOMA SECRETARY
OF STATE

FILED
SUPREME COURT
STATE OF OKLAHOMA

APR 23 2012

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE: INITIATIVE PETITION NO. 396, STATE QUESTION NO. 763

MICHAEL RICHIE
CLERK

PROTEST TO INITIATIVE PETITION NO. 396

#110610

Yousef Javadzadeh, pursuant to 34 O.S. §8(B), submits this protest and objection to the sufficiency and constitutionality of Initiative Petition No. 396, State Question No. 763, a proposed amendment to the Oklahoma Constitution to allow the sale of wine at grocery stores, warehouse clubs, superstores, and supermarkets, as well as setting out numerous procedural requirements. In support of this protest and objection, Protestant advises the Court as follows:

Protestant is a citizen of the State of Oklahoma and authorized to file this protest pursuant to 34 O.S. §8. Proponents of State Question 763 filed an Initiative Petition with the Secretary of State on April 3, 2012, proposing amendments to Article 28 of the State Constitution that would create a new grocery store wine license allowing for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets, and other grocery (except convenience) stores. More specifically, the proposed amendments include the following changes to the Constitution:

1. Creates a new grocery store wine license for a limited category of grocery stores and warehouse clubs. (The amendment restricts the eligibility for the license to premises with at least twenty-five thousand (25,000) square feet of floor space.)
2. Allows for the sale of other goods, wares, or merchandise on the same premises as the sale of wine, which amends the current constitutional prohibition of such sales on the same premises.

3. Increases the number of licenses that a single licensee can hold, which would only apply to the grocery store wine license and not to other types of licenses currently allowed under the constitution. (The current construction of Article 28, Section 4 prohibits the issuance of more than one retail package store or wholesale distributor's license to a single licensee.)
4. Sets forth specific requirements for qualifying counties to hold elections to approve the sale of wine within the county (limited to counties with population of 50,000 or more), including the specific "ballot title" language that would be required to be utilized for such elections. The proposed amendment conflicts with the Initiative Petition and ballot title requirements set forth in 34 O.S. §1, et al.
5. Allows for the issuance of a grocery store wine license to corporations. Under the current constitutional structure, corporations, business trusts, and secret partnerships are prohibited from receiving retail package store and wholesale distributor licenses.
6. Restricts the location of a grocery store wine licensee to not be within 300 feet of a licensed retail package store.
7. Prohibits a durational residency requirement as a condition for being issued a grocery store wine license.

The Proposal is fatally flawed in a number of respects, all as more fully set out in this protest. The initiative petition is invalid, as it violates multiple provisions of both the United States Constitution and the Oklahoma Constitution, including, but not limited to the following constitutional provisions.

First, the proposed amendments include multiple subjects and violate the single-subject rule applicable to amendments to the Constitution. Article 24, §1 of the Oklahoma Constitution prohibits submitting proposed amendments to voters that include more than one general subject. Art. 24, §1 is applicable to initiative petitions. In Re Initiative Petition 314, 1980 OK 174, 625 P.2d 595. The inclusion of multiple subjects in one initiative petition misleads voters and does not afford voters the freedom of choice to approve only a portion of the proposed amendments. Id. For example, voters in favor of grocery store wine sales would be forced to also accept the other provisions of the amendments. This kind of “logrolling” is improper and renders Initiative Petition 396 invalid.

Second, the provisions create specific classes which will benefit from the amendment and excludes others without any rational justification for the distinctions that are drawn. Therefore, the provisions violate the United States and Oklahoma Constitutions. The Fourteenth Amendment to the United States Constitution declares that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend XIV, § 1. Generally, states possess broad powers under the Twenty-First Amendment to the Constitution of the United States (which repealed national prohibition of the sale of alcoholic beverages), as well as inherent police powers, to regulate, restrict, or ban the sale of alcoholic beverages within their borders. 37712, Inc. v. Ohio Dept. of Liquor Control, 113 F.3d 614, 618 (6th Cir. 1997) (internal citations omitted). However, this power may not be used to violate a person’s federal constitutional right. Id. (internal citations omitted).

Package stores and grocery stores would be similarly situated under the initiative petition, i.e, they both would be able to sell wine. However, the initiative petition, as written, treats these similarly situated persons differently under the law, as follows:

1. A grocery store may enter into business as a corporation or LLC, but a package store may not. See, Art 28, Sec. 10(a) of the OK Constitution.
2. A package store licensee may only own one package store, but a grocery store licensee may have up to six locations. See, 37 O.S. §534(A).
4. A package store licensee must be a ten-year resident of the State of Oklahoma, while grocery store licensees are exempt from this requirement. See, Art. 28, Sec. 10(b) of the OK Constitution.
5. A grocery store may sell products other than alcoholic beverages, but a package store may not. See, Art. 28, Sec. 4 of the OK Constitution.
6. A package store may be open only from 10-9, Monday through Saturday, and the same restrictions would not apply to grocery stores. See, 37 O.S. §537(c)(3).
7. Owner(s) of a package store may not have felony convictions, while the initiative petition does not address how this rule would be applied to corporations, partnerships, or LLCs which own a grocery store. See, Art. 28, Sec. 10(d) of the OK Constitution.
8. Package stores may permit entry only to persons over 21: however, the same restriction would not apply to grocery stores. See, 37 O.S. §537(c)(7).

The above list of disparities is not intended to be exhaustive, but illustrates that the result of the initiative petition would be to place restrictions upon one class of licensees (package stores) but not on another class of similarly situated licensees (grocery stores). Such disparity in treatment is a violation of the Equal Protection Clause. Therefore, the initiative petition is unconstitutional and should be determined to be insufficient and invalid.

For the reasons stated above, Protestant respectfully requests that the Court order Initiative Petition No. 396 invalid and that the Proponents be prohibited from presenting Initiative Petition No. 396 for signatures.

DATED this 23rd day of April, 2012.

Respectfully submitted,

By: Jon Bightfire by Gina K. Cheatham
Jon Bightfire, OBA No. 11623 *with permission*
Kenneth T. Short, OBA No. 22712
DOERNER, SAUNDERS, DANIEL
& ANDERSON, L.L.P.
Two West Second Street, Suite 700
Tulsa, OK 74103-3117
Telephone: (918) 582-1211
Facsimile: (918) 591-5360

AND
Gina K. Cheatham
J. Michael DeYong, OBA #11812
Gina K. Cheatham, OBA #18885
DEYONG & CHEATHAM, P.A.
4350 Will Rogers Parkway, Suite 380
Oklahoma City, OK 73108
Telephone: (405)943-6444
Facsimile: (405)943-6023

ATTORNEYS FOR PROTESTANT

CERTIFICATE OF MAILING TO ALL PARTIES AND
SECRETARY OF STATE

I hereby certify that a true and correct copy of the above and foregoing Protest was mailed this 23rd day of April, 2012 to:

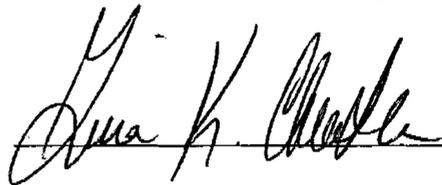
Oklahomans for Modern Laws
2601 Northwest Expressway, Suite 210-West
Oklahoma City, OK 73112

Sean Campbell
2601 Northwest Expressway, Suite 210-West
Oklahoma City, OK 73112

Brian Howe
2601 Northwest Expressway, Suite 210-West
Oklahoma City, OK 73112

by depositing it in the U.S. Mails, postage prepaid.

I further certify that a copy of the Protest was filed in the Office of Oklahoma Secretary of State on the 23rd day of April, 2012.



NOTICE OF PROTEST
STATE QUESTION NUMBER 763
INITIATIVE PETITION NUMBER 396

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Notice is hereby given of a protest as to the constitutionality of the above referenced
Petition by:

F.A.T.E. (Fighting Addiction Through Education), a 501c3 non profit organization

O.P.P.A. (Oklahoma Prevention Policy Alliance), an organization of citizens

It should be noted at the outset that the protestants are opposed to the proposed ballot
measure on grounds other than purely constitutional ones. While neither organization advocates
a return to the days of prohibition, both organizations and their members understand that
increasing alcohol availability increases the opportunity for alcohol abuse. It is an undeniable
reality that alcohol is the most abused drug in the state of Oklahoma, carrying with it an
incalculable expense in terms of human lives and economic capital. As noted in a recent series
of media stories about addiction in Oklahoma, the use and abuse of alcohol costs Oklahoma
greatly in lives and dollars; as much as 7.2 billion dollars a year in costs can be attributed to
substance abuse. One media article quoted the Commissioner of Mental Health and Substance
Abuse Services, Terry White:

*One of the keys to confronting Oklahoma's addiction crisis is dealing with
teenage drinking, she (Terri White, Commissioner of the Oklahoma Department
of Mental Health and Substance Abuse Services) said. The part of a person's brain
that handles critical thinking and decision-making is the prefrontal cortex. It
typically does not become fully developed until a person reaches the age of 20 to*

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25. Alcohol impairs its development. "*Significant alcohol use can actually permanently damage or stunt the growth of our prefrontal cortex,*" White said. "*One of the most dangerous things that happens is underage drinking.*"

Greater accessibility to alcohol by increasing the number of retail outlets where alcohol is available, is unquestionably a leading contributor to abuse and underage drinking. Increasing access leads to an inevitable rise in underage drinking and although these policy considerations cannot serve as the basis for a protest under Section 34, they provide an enlightened context within which this Court must make its ruling.

Constitutional basis for the protest:

Title 43, Section 8 provides in pertinent part:

B. It shall be the duty of the Secretary of State to cause to be published, in at least one newspaper of general circulation in the state, a notice of such filing and the apparent sufficiency or insufficiency of the petition. Such publication shall include the text of the ballot title as reviewed or, if applicable, as rewritten, by the Attorney General pursuant to the provisions of subsection D of Section 9 of this title, and shall include notice that any citizen or citizens of the state may file a protest as to the constitutionality of the petition, by a written notice to the Supreme Court and to the proponent or proponents filing the petition, or as to the ballot title as provided in Section 10 of this title. Any such protest must be filed within ten (10) days after publication. A copy of the protest shall be filed with the Secretary of State.

The above referenced citizens challenge the constitutionality of the proposed tate question being advanced by an organization known as Oklahomans for Modern Laws. The constitutional challenge is based on the following:

1. **The proposed ballot measure does not deal with a single subject.**

The single subject rule, guaranteed by Article V, Section 57 of the Oklahoma State Constitution, requires that state laws and proposals to change the Constitution address only one subject at a time. Here, the proposed Initiative Petition purports to address the single subject of wine sales, but, in reality, it addresses multiple issues under this overly broad umbrella, including:

Legal definitions: In Section 4.A the proposed ballot measure seeks to define certain retail establishments by reference to an external resource which is subject to change, i.e. the 2007 North American Industry Classification System.¹ However, the final paragraph of that section purports to redefine grocery stores which are eligible for wine licenses as being stores with greater than twenty five thousand square feet of floor space, posing both an internal inconsistency as well as an equal protection violation as noted below.

County election laws: In section 4.B the proposed ballot measure purports to dictate how counties of a particular size (fifty thousand or more persons) are to conduct elections on the sale of wine.

Zoning laws: In Section C 10 the proposed ballot measure seeks to amend Section 4.A by imposing arbitrary zoning restrictions which would deny a wine license to any applicant whose proposed location is within three hundred feet of a licensed retail package store that has been in business since July 1, 2012.

¹ Notably, the NAICS does not appear to contain a definition section nor was it intended as a legal measuring stick to be incorporated into state constitutions since it is a document subject to periodic change. See Appendix 1.

2. The proposed ballot measure violates the equal protection clause of the Oklahoma and United States Constitutions

The proposed ballot measure violates equal protection assured by both the Oklahoma and United States Constitutions in that it purports to treat similarly situated entities in a dissimilar and unfair manner.

- (1) First, the proposed ballot measure treats retail package stores unequally when compared to “grocery store wine licensees.” For example, the current Constitution provides:

No retail package store or wholesale distributor's license shall be issued to:

(a) A corporation, business trust or secret partnership.

(b) A person or partnership unless such person or all of the copartners including limited partners shall have been residents of the State of Oklahoma for at least ten (10) years immediately preceding the date of application for such license.

These restrictions do not apply to the proposed “grocery store wine” licensees, in essence imposing on retail package stores a residency requirement that is not placed on comparably situated grocery store wine licensees.

- (2) Second, the proposed ballot measure treats counties with fewer than fifty thousand residents differently than those counties with fewer than fifty thousand residents. There is no rational basis for treating these counties differently and, in fact, none exists.
- (3) Third, the proposed ballot measure purports to treat certain stores with less than twenty thousand square feet of floor space differently than those with greater than twenty five thousand feet of floor space. Again, no rational basis exists for this artificial distinction.

In fact, the group proposing the ballot measure recognizes that no rational basis exists for these distinctions other than the strategic consideration that making such distinctions raises the possibility of passage of the proposed initiative. On their website, <http://okmodernlaws.com/Facts.html>, the proponents list among the “reasons to support this measure” the following:

***Consideration of Local Liquor Retailers by Limiting Licenses** – In the surveys that we have conducted, a reason that Oklahomans might oppose this law change is an increase in accessibility. We have addressed this concern by limiting the number of licenses to the following three criteria: 1) Grocer with 25,000 square feet in Floor Space, 2) Counties with a population of 50,000 or greater, and 3) Two licenses per entity every two years phase-in period.*

Strategic electoral considerations cannot be the required rational basis necessary for making distinctions and the unequal application of laws.

3. The proposed ballot measure constitutes an impermissible, unfunded mandate upon a constitutional agency, the Alcohol Beverage Laws Enforcement (ABLE) Commission

The proposed ballot measure constitutes an unfunded mandate upon a constitutional agency, the Alcohol Beverage Laws Enforcement Commission (ABLE Commission) imposing additional burdens on that agency without providing for additional resources to meet the additional demands. This not only constitutes a violation of the constitutional responsibilities of the ABLE Commission, but abrogates and invades the province of the Legislature as provided in Article 10, Section 2 which provides that:

The Legislature shall provide by law for an annual tax sufficient, with other resources, to defray the estimated ordinary expenses of the State for each fiscal year.

As noted in by ABLE Commission Executive Director, Keith Bur in a Legislative Update posted on the ABLE Commission website:

Unfortunately, the ABLE Commission wasn't immune from the budget cuts that affected nearly every state agency. Legislative leaders and the Governor also struck a budget accord resulting in a 7% decrease (\$236,000) in our agency's General Revenue Appropriations. 'This is an equivalent of four full time positions. While we are grateful that most of our funding was left intact, we are still fated with the fact that our agency's budget has been cut by over 20% since 2009.

The additional demands imposed upon this constitutional agency would be virtually impossible to meet given the current level of responsibilities and scarce resources available to the Commission. The proposed ballot measure thus undermines the mission and significantly impairs the ability of an agency authorized and mandated by the Oklahoma Constitution without providing resources for the proposed increased responsibilities necessitated by the measure.

Conclusion

For the reasons set forth above the proposed ballot measure should be rejected as unconstitutional and it should not be permitted to appear on the November ballot.

Respectfully submitted,

Jim T. Priest, OBA #7310
RUBENSTEIN & PITTS, PLLC
1503 E. 19th Street
Edmond, OK 73013
Telephone: 405-340-1900

Fax: 405-340-1001
jpriest@oklawpartners.com
Counsel for Protestors

CERTIFICATE OF SERVICE

This is to certify that on April 23, 2012, a true and correct copy of the foregoing Protest was mailed, postage prepaid, to:

Brian Howe and Sean Campbell
Oklahomans for Modern Laws
2601 NW Expressway, Suite 210W
Oklahoma City, OK 73112

And delivered to the Oklahoma Secretary of State

Jim T. Priest

Appendix 1

The proposed ballot measure states: *As used in this section the terms “warehouse clubs and supercenters” and “supermarkets and other grocery (except convenience stores) shall be defined by the 2007 North American Industry Classification System.* The Classification System, however does not contain a definition section and, further, parts of the System have already been subject to revision since 2007. Thus, the proposed ballot measure relies upon an external source which does not contain definitions and is subject to change. A federal agency, the Bureau of Labor Statistics, is responsible for overseeing the NAICS and Attachment 3 briefly outlines the origin and purposes of the NAICS. It was never intended to serve as a constitutional measuring stick nor to be incorporated into a state constitution.

<http://www.bls.gov/bls/naics.htm>

Introducing NAICS

Developed in cooperation with Canada and Mexico, the North American Industry Classification System (NAICS) represents one of the most profound changes for statistical programs focusing on emerging economic activities. NAICS, developed using a production-oriented conceptual framework, groups establishments into industries based on the activity in which they are primarily engaged. Establishments using similar raw material inputs, similar capital equipment, and similar labor are classified in the same industry. In other words, establishments that do similar things in similar ways are classified together.

NAICS provides a new tool that ensures that economic statistics reflect our Nation’s changing economy. However, improved statistics will result in time series breaks. Every sector of the economy has been restructured and redefined: A new Information sector combines communications, publishing, motion picture and sound recording, and online services, recognizing our information-based economy. Manufacturing is restructured to recognize new high-tech industries. A new sub-sector is devoted to computers and

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electronics, including reproduction of software. Retail Trade is redefined. In addition, eating and drinking places are transferred to a new Accommodation and Food Services sector. The difference between Retail and Wholesale is now based on how each store conducts business. For example, many computer stores are reclassified from wholesale to retail. Nine new service sectors and 250 new service industries are recognized.

NAICS Coding Structure

NAICS uses a six-digit hierarchical coding system to classify all economic activity into twenty industry sectors. Five sectors are mainly goods-producing sectors and fifteen are entirely services-producing sectors. This six-digit hierarchical structure allows greater coding flexibility than the four-digit structure of the SIC. NAICS allows for the identification of 1,170 industries compared to the 1,004 found in the SIC system. See also: Report on the American Workforce, Chapter 3.

NAICS 2007

NAICS 2007 includes revisions to NAICS 2002 across several sectors. The most significant revisions are in the Information Sector, particularly within the Telecommunications area.



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Page 1

Proof of Publication - Order Number 12-04-57

I, Cindy Shea, of lawful age, being duly sworn upon oath, deposes and says: That I am the Authorized Agent of OKC-JOURNAL RECORD, a Daily newspaper printed and published in the city of OKLAHOMA CITY, county of Oklahoma, and state of Oklahoma, and that the advertisement referred to, a true and printed copy of which is here unto attached, was published in said OKC-JOURNAL RECORD in consecutive issues on the following dates-to-wit:

Insertion: 04/13/2012

That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has a general paid circulation, and publishes news of general interest, and otherwise conforms with all of the statutes of the Oklahoma governing legal publications.

PUBLICATION FEE \$61.35

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this 23 day of April 2012.

(Notary Public)



NOTICE OF THE FILING OF STATE QUESTION NUMBER 763 INITIATIVE PETITION NUMBER 396

NOTICE is hereby given that on April 3, 2012, State Question Number 763, Initiative Petition Number 396 was filed in the Office of the Secretary of State.

The ballot title for this initiative petition is as follows:

This measure adds a new Section 4.A and amends Section 10 of Article 28 of the State Constitution. It allows for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets and other grocery (except convenience) stores. It provides for a grocery store wine license. Such sales of wine would only be authorized after being approved at an election by the voters in counties with a population of 50,000 or more persons. The sale of wine to persons under 21 years of age would be prohibited. The measure provides for the days and hours, taxation on wine sales, fees for licenses and purchase and distribution of wine to be the same as for retail package stores. It allows corporations to hold grocery store wine licenses. It limits the number of locations by a licensee to six. It provides other limits on licenses. It would allow grocery store wine licenses to be held by corporations and other businesses from outside the state. It would allow an election to be called by the county commissioners or by a petition of registered voters.

SHALL THE PROPOSED AMENDMENT TO THE CONSTITUTION BE APPROVED?

YES - FOR THE PROPOSITION

NO - AGAINST THE PROPOSITION

NOTICE is hereby given that, as provided in 34 O.S. § 8 and 10, any citizen or citizens of the state may file a protest as to the constitutionality of the petition or as to the ballot title, by a written notice to the Supreme Court and to the proponent or proponents filing the petition. Proponents filing are: Oklahomans for Modern Laws, Sean Campbell, and Brian Howe, all at 2601 Northwest Expressway, Suite 210-West, Oklahoma City, OK 73112. Any such protest must be filed within ten (10) days after this publication. A copy of the protest shall be filed with the Secretary of State.

V. Glenn Collee
Secretary of State

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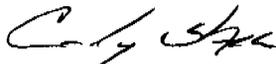
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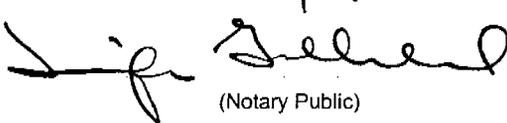
Insertion: 04/13/2012

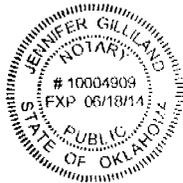
That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has a general paid circulation, and publishes news of general interest, and otherwise conforms with all of the statutes of the Oklahoma governing legal publications.

PUBLICATION FEE \$1,074.79


(Editor, Publisher or Authorized Agent)

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(Notary Public)



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- NO - AGAINST THE PROPOSITION

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V. Glenn Coffee
Secretary of State

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I, Cindy Shea, of lawful age, being duly sworn upon oath, deposes and says: That I am the Authorized Agent of TULSA WORLD - Legal, a Daily newspaper printed and published in the city of TULSA, county of Tulsa, and state of Oklahoma, and that the advertisement referred to, a true and printed copy of which is here unto attached, was published in said TULSA WORLD - Legal in consecutive issues on the following dates-to-wit:

Insertion: 04/13/2012

That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has a general paid circulation, and publishes news of general interest, and otherwise conforms with all of the statutes of the Oklahoma governing legal publications.

PUBLICATION FEE \$436.16

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SUBSCRIBED and sworn to me this 23 day of April 2012.

(Notary Public)



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V. Glenn Coffee
Secretary of State

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

APR 26 2012

Thursday, April 26, 2012

MICHAEL S. RICHIE
CLERK

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

110,610 - IN RE: INITIATIVE PETITION NO. 396; STATE QUESTION NO. 763
110,611 - FIGHTING ADDICTION THROUGH EDUCATION, etc., V.
OKLAHOMANS FOR MODERN LAWS

On the Court's own motion, these original proceedings are consolidated under surviving No. 110,610.

Protestants' briefs may be filed no later than May 4, 2012; all other parties may file briefs not later than May 17, 2012.

Oral presentation to a Referee is set for May 23, 2012, at 1:30 p.m.

110,511 - (comp. w/No. 109,485 and 109,954) FIRST SECURITY BANK AND TRUST COMPANY, INC. V. TABERNACLE BAPTIST CHURCH, INC., ET AL., and EDDIE PERKINS, in his capacity as Chairman of the BOARD OF DEACONS OF TABERNACLE BAPTIST CHURCH OF OKLAHOMA CITY

The appellees are directed to respond, not later than May 15, 2012, to appellant's motion to dismiss Daryl R. Hairston as a party appellee to this appeal.


CHIEF JUSTICE

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RUBENSTEIN
& PITTS^{PLLC}

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(405) 340-1900
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Jim T. Priest
Writer's Direct Line: (405) 705-1117
Email: jpriest@oklawpartners.com
jim@changeyourfate.org

May 4, 2012

Oklahoma Secretary of State
2300 N. Lincoln Boulevard, Ste. 101
Oklahoma City, OK 73105-4897

Re: Initiative Petition No. 396; State Question No. 763
Fighting Addiction Through Education *et al.* v. Oklahomans for Modern Laws

Please find enclosed the Brief and Appendix filed today in the referenced case.

Very truly yours,

RUBENSTEIN & PITTS, PLLC



Jim T. Priest

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OKLAHOMA SECRETARY
OF STATE

IN THE SUPREME COURT
STATE OF OKLAHOMA

IN RE: INITIATIVE PETITION NO. 396;
STATE QUESTION NO. 763

FIGHTING ADDICTION THROUGH
EDUCATION ET AL

V.

OKLAHOMANS FOR MODERN LAWS

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MICHAEL S. RICHIE
CLERK

NO. 110,610

BRIEF IN SUPPORT OF PROTEST

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jpriest@oklawpartners.com
Counsel for Protestors

**IN THE SUPREME COURT
STATE OF OKLAHOMA**

**IN RE: INITIATIVE PETITION NO. 396;
STATE QUESTION NO. 763**

**FIGHTING ADDICTION THROUGH
EDUCATION ET AL**

V.

NO. 110,610

OKLAHOMANS FOR MODERN LAWS

BRIEF IN SUPPORT OF PROTEST

F.A.T.E. (Fighting Addiction Through Education), a 501c3 non profit organization and O.P.P.A. (Oklahoma Prevention Policy Alliance), a non profit organization of citizens involved in substance abuse prevention efforts, respectfully file this brief in support of their protest of the proposed State Question 763. These citizens oppose the proposed ballot question not only on Constitutional grounds, but also because of the impact which the proposed state question would have on alcohol abuse and underage drinking in Oklahoma, which is a significant societal substance abuse problem. The proposed state question would increase the density of alcohol outlets in the state which will, in turn, increase alcohol consumption and underage drinking; because of the significance of the issue, it is a matter which should be addressed through the legislative process rather than an unconstitutional initiative petition.

The Context of the Protest

As stated in the previously filed Notice, the protestants are opposed to the proposed ballot measure on grounds other than purely constitutional ones. While this Court's review of the proposed State Question is limited to issues of constitutionality, seemingly "non-constitutional"

but consequential objections are inextricably intertwined with Oklahoma's Constitution. The Preamble to our Constitution states that the people of Oklahoma ordained and established the Constitution in order to (*inter alia*) *promote our mutual welfare and happiness*. This improvidently proposed State Question will negatively impact the welfare and health of Oklahomans and must be carefully evaluated. An evaluation of issues broadly affecting the welfare and happiness of the people is normally the province of the legislature, but this Court has the responsibility to insure that the Constitutional promises contained in the Preamble are not undermined by an initiative process which violates the Constitution and has not been subject to the rigors of the legislative process. This is especially true given the language of Section 2 of Article 28 of the Constitution:

The *Legislature* shall enact laws providing for the strict regulation, control, licensing, and taxation of the manufacture, sale, distribution, possession, and transportation of alcoholic beverages, consistent with the provisions of this Amendment.

The Constitution clearly provides that it is *the legislature* which shall enact laws dealing with alcohol sales.

It is an undeniable reality that the welfare and happiness of Oklahoma is dramatically affected by the abuse of alcohol. Alcohol is not typically thought to be a drug, but it is. Alcohol impacts the body and brain in unseen and significant ways, as shown in Appendix 1, spect scans from the Amen Clinic. In fact, alcohol is the most abused drug in the state of Oklahoma, carrying with it an incalculable expense in terms of human lives and economic capital.

The significance of Oklahoma's substance abuse has been expressed by Governor Mary

Fallin:

"Oklahoma has two main public health issues: substance abuse and obesity."

Congresswoman Mary Fallin, *The Oklahoman*, October 24, 2010

"...That's why I'm continuing to offer my full support to programs like "Women in Recovery" and other initiatives that address substance abuse, prevent incarceration, and allow more families to stay together. By fighting the hold that substance abuse has on our communities, we can make Oklahoma healthier and safer while working towards reducing our incarceration rates."

Governor Mary Fallin, 2011 *State of the State* address

"There are several major factors that hurt our health ranking: obesity, tobacco, poor nutrition, infant mortality, substance abuse and lack of physical activity, just to name a few. It's time to address these problems, move the numbers in the right direction and take control of our own destiny." Governor Mary Fallin, 2012 *State of the State* address

As noted in a recent series of media stories about addiction in Oklahoma, the use and abuse of alcohol costs Oklahoma greatly in lives and dollars; as much as 7.2 billion dollars a year in costs can be attributed to substance abuse. This alcohol abuse problem is especially vexing as it affects young Oklahomans. One media article quoted the Commissioner of Mental Health and Substance Abuse Services, Terry White:

One of the keys to confronting Oklahoma's addiction crisis is dealing with teenage drinking, she (Terri White, Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services) said. The part of a person's brain that handles critical thinking and decision-making is the prefrontal cortex. It typically does not become fully developed until a person reaches the age of 20 to 25. Alcohol impairs its development. "Significant alcohol use can actually permanently damage or stunt the growth of our prefrontal cortex," White said. "One of the most dangerous things that happens is underage drinking."

The prospect of increased availability and accessibility of alcohol through retail outlets contributes directly to this problem. As was stated in an article entitled *The Effectiveness of*

Limiting Alcohol Outlet Density As a Means of Reducing Excessive Alcohol Consumption and Alcohol Related Harms:

Excessive alcohol consumption, including both binge drinking and heavy average daily alcohol consumption, is responsible for approximately 79,000 deaths per year in the US, making it the third leading cause of preventable death in the nation. ... The reduction of excessive alcohol consumption is thus a matter of major public health and economic interest.

And with respect to the impact of alcohol outlet density¹ on alcohol abuse, the article notes:

Using a variety of different study methods, study populations, and alcohol measures, most of the studies included in this review reported that greater outlet density is associated with increased alcohol consumption and related harms, including medical harms, injuries, crime, and violence.

See Appendix 2, page 556 and page 565 respectively. Further, a publication of the National Institute of Alcohol Abuse and Alcoholism (NIAAA), (which is a division of the National Institute of Health) states:

States and cities often place a legal limit on the number of alcohol establishments in a neighborhood, town, or city as a strategy to reduce alcohol consumption and alcohol-related problems among the general population. Recent studies using advanced analytical methods show that a higher density of alcohol outlets is related to increased rates of homicides and assaults (Gorman et al. 2001; Lipton and Gruenewald 2002). Treno and colleagues (2003) evaluated how density of alcohol outlets affects driving after drinking among 15- to 20-year-olds, finding that higher alcohol outlet density is associated with greater prevalence of driving after drinking. Research also indicates that colleges with more neighborhood alcohol outlets experience more drinking and drinking-related problems (Weitzman et al. 2003; Wechsler et al. 2002). Because most studies of alcohol outlet density are largely cross-sectional, it is not certain that higher numbers of alcohol outlets actually cause increased alcohol consumption and related problems, and each individual study has limitations. Nevertheless, the increasing methodological sophistication of density studies, longitudinal studies of effects of sudden changes in density, and repeated findings of relationships between outlet density and alcohol use and alcohol problems provide growing evidence that outlet density may cause increased alcohol use and problems.

¹ Alcoholic beverage outlet density refers to the number of physical locations in which alcoholic beverages are available for purchase either per area or per population. Appendix 2.

Environmental Influences on Young Adult Drinking by Alexander C. Wagenaar, Ph.D., Traci L. Toomey, Ph.D., and Kathleen M. Lenk, M.P.H. found at:

<http://pubs.niaaa.nih.gov/publications/arh284/230-235.htm>

As evidenced in the statements of Governor Fallin, Commissioner White, and the cited learned articles, it is clear that the welfare and health of the people of Oklahoma would be harmed if the proposed State Question were passed, thus violating the Preamble to the Constitution. At the very least, before such a health related proposal becomes law it should be subject to a thoughtful legislative process which considers all aspects of the issue, rather than an ill conceived initiative petition which incorporates illusory standards like the 2007 North American Industry Classification System, as does the proposed Question.

The proposed initiative petition is not, as has been represented by many, simply a matter of “economic development” and “modernizing” Oklahoma liquor laws. In fact, if economic development is truly to be thoughtfully pursued, concerted efforts should be undertaken to address the negative \$7.2 billion economic impact which substance abuse has annually on Oklahoma.

Brief history on the proposed State Question

Oklahomans for Modern Laws has submitted an initiative petition to the Secretary of State (Initiative Petition No. 396, State Question No. 763) seeking to amend Article 28 of the Oklahoma Constitution in a manner which violates not only Article 28, but other provisions of the Oklahoma Constitution. The proposed state question provides for an election procedure by which certain larger counties in the state could submit a question to their voters which would allow the retail sale of wine by grocery stores. The proposed state question goes on to assume that one or more counties would pass such a vote and, in anticipation of this assumed affirmative,

would create a new and unique classification of licensees and further providing for certain zoning restrictions regarding the locations from which the permitted wine could be sold. A cursory glance at the ballot title of the proposed state question underscores the many sundry topics it seeks to address, all emanating from, but distinct from, the core issue, i.e. the sale of wine in grocery stores. The ballot title approved by the Attorney General reads as follows, (spacing and bullet points added):

- This measure adds a new Section 4.A and amends Section 10 of Article 28 of the State Constitution.
- It allows for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets and other grocery (except convenience) stores.
- It provides for a grocery store wine license.
- Such sales of wine would only be authorized after being approved for an election by the voters in counties with a population of 50,000 or more persons.
- The sale of wine to persons under 21 years of age would be prohibited.
- The measure provides for the days and hours, taxation on wine sales, fees for licenses and purchase and distribution of wine to be the same as for retail package stores.
- It allows corporations to hold grocery store wine licenses.
- It limits the number of locations by the licensee to six.
- It provides other limits on licenses.
- It would allow grocery store wine licenses to be held by corporations and other business from outside the state.
- It would allow an election to be called by the county commissioners or by a petition of registered voters.

This Court is vested with the responsibility of determining whether the proposed state question passes facial constitutional muster. As this Court recently stated in *In re Initiative Petition No. 395, State Question No. 761* (not yet released for publication):

1. The people of Oklahoma have reserved to themselves "the power to propose laws and amendments to the Constitution." Okla. Const. art. 5, § 1.
2. The proposals, however, are subject to the constitutional limitation that "such changes be not repugnant to the Constitution of the United States." Okla. Const. art. 2, § 1.
3. Therefore, "[a] pre-submission determination of the constitutionality of [an] initiative petition is appropriate and necessary where the proposal is facially unconstitutional and is justified when a costly and futile election may be avoided." *In re Initiative Petition No. 349, State Question 642*, 1992 OK 122, ¶ 16, 838 P.2d 1, 8. In 2009, the Oklahoma Legislature codified that holding. A protest to the legal sufficiency of an initiative petition must now be heard by this Court in advance of a challenge to the numerical sufficiency of the initiative petition. *See Okla. Stat. tit. 34, § 8* (2011).

This protest, and one consolidated with it filed by Yousef Javadzadeh, takes the position that the proposed state question is facially unconstitutional and must be declared void on its face and stricken.

1. The proposed ballot measure does not deal with a single subject.

The single subject rule, guaranteed by Article V, Section 57 of the Oklahoma State Constitution, requires that state laws and proposals to change the Constitution address only one subject at a time. This Court has set forth the standard for assessing whether the single subject rule has been violated:

This Court interprets the single subject rule using a "germaneness" test: if the provisions are germane, relative, and cognate to a readily apparent common theme and purpose, the provisions are related to a single subject. The most relevant questions under this analysis are whether a voter is: 1) able to make a

choice without being misled; and 2) forced to choose between two unrelated provisions contained in one measure.

In re: Initiative Petition No. 382, State Question No. 729, 2006, OK 45. This

Court further explained later in the opinion:

Whether we explicitly stated it or not, the issue is not how similar or "related" any two provisions in a proposed law are, or whether one can articulate some rational connection between the provisions of a proposed law, but whether it appears that either the proposal is misleading or provisions in the proposal are so unrelated that many of those voting on the law would be faced with an unpalatable all-or-nothing choice.

Here, the proposed Initiative Petition purports to address the single subject of wine sales, but, in reality, it addresses multiple issues under this overly broad umbrella, thereby misleading voters and forcing them to choose between multiple unrelated provisions, including:

Legal definitions: In Section 4.A the proposed ballot measure seeks to define certain retail establishments by reference to an external resource which is subject to change, i.e. the 2007 North American Industry Classification System.² By seeking to incorporate a labile standard into the Constitution, voters are misled into thinking that an inviolable standard has been incorporated into their Constitution when, in fact, a changeable standard has been "constititutionalized." Further, the final paragraph of that section purports to redefine grocery stores which are eligible for wine licenses as being stores with greater than twenty five thousand square feet of floor space, posing both an internal inconsistency as well as an equal protection violation as noted below.

² Notably, the NAICS does not appear to contain a definition section nor was it intended as a legal measuring stick to be incorporated into state constitutions since it is a document subject to periodic change. See Appendix 3.

County election laws: In section 4.B the proposed ballot measure purports to dictate how counties of a particular size (fifty thousand or more persons) are to conduct elections on the sale of wine, thereby invading the province of these counties in the conduct of elections.

Zoning laws: In Section C 10 the proposed ballot measure seeks to amend Section 4.A by imposing arbitrary zoning restrictions which would deny a wine license to any applicant whose proposed location is within three hundred feet of a licensed retail package store that has been in business since July 1, 2012.

Clearly, the proposed initiative petition violates the practical assessment standard set forth by this Court in *Petition No. 382*.

2. The proposed ballot measure violates the equal protection clause of the Oklahoma and United States Constitutions

The proposed ballot measure also violates the equal protection of laws assured by both the Oklahoma and United States Constitutions in that it purports to treat similarly situated entities in a dissimilar and unfair manner.

(1) First, the proposed ballot measure treats retail package stores unequally when compared to “grocery store wine licensees.” For example, the current Constitution provides:

No retail package store or wholesale distributor's license shall be issued to:

(a) A corporation, business trust or secret partnership.

(b) A person or partnership unless such person or all of the copartners including limited partners shall have been residents of the State of Oklahoma for at least ten (10) years immediately preceding the date of application for such license.

These restrictions do not apply to the proposed “grocery store wine” licensees, in essence imposing on retail package stores a residency requirement that is not placed on comparably situated grocery store wine licensees.

- (2) Second, the proposed ballot measure treats counties with fewer than fifty thousand residents differently than those counties with more than fifty thousand residents. There is no rational basis articulated for treating these counties differently and, in fact, none exists.
- (3) Third, the proposed ballot measure purports to treat certain stores with less than twenty thousand square feet of floor space differently than those with more than twenty five thousand feet of floor space. Again, no rational basis is articulated or exists for this artificial distinction.

In fact, the group proposing the ballot measure recognizes that no rational basis exists for these distinctions other than the strategic consideration that making such distinctions raises the possibility of passage of the proposed initiative. On their website Oklahoma for Modern Laws, <http://okmodernlaws.com/Facts.html>, lists among the “reasons to support this measure” the following:

***Consideration of Local Liquor Retailers by Limiting Licenses** – In the surveys that we have conducted, a reason that Oklahomans might oppose this law change is an increase in accessibility. We have addressed this concern by limiting the number of licenses to the following three criteria: 1) Grocer with 25,000 square feet in Floor Space, 2) Counties with a population of 50,000 or greater, and 3) Two licenses per entity every two years phase-in period.*

Strategic electoral considerations cannot provide the required rational basis necessary for making distinctions and the unequal application of laws.

3. The proposed ballot measure constitutes an impermissible, unfunded mandate upon a constitutional agency, the Alcohol Beverage Laws Enforcement (ABLE) Commission

The proposed ballot measure constitutes an unfunded mandate upon a constitutional agency, the Alcohol Beverage Laws Enforcement Commission (ABLE Commission) imposing additional burdens on that agency without providing for additional resources to meet the additional demands. This not only constitutes a violation of the constitutional responsibilities of the ABLE Commission, but abrogates and invades the province of the Legislature as provided in Article 10, Section 2 which provides that:

The Legislature shall provide by law for an annual tax sufficient, with other resources, to defray the estimated ordinary expenses of the State for each fiscal year.

As noted by ABLE Commission Executive Director, Keith Burt in a Legislative Update posted on the ABLE Commission website:

In recent years the ABLE Commission has experienced budget cuts like those experienced by virtually every state agency. Legislative leaders and the Governor also struck a budget accord resulting in a 7% decrease (\$236,000) in our agency's General Revenue Appropriations. This is an equivalent of four full time positions. While we are grateful that most of our funding was left intact, we are still faced with the fact that our agency's budget has been cut by over 20% since 2009.

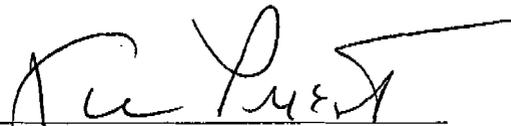
In light of these budget reductions, the ABLE Commission experiences daily challenges in meeting the Constitutional responsibilities outlined for the Commission. The additional responsibilities which would be imposed by the passage of State Question 763 would result in an unfunded mandate that would severely burden the Commission and impermissibly undermine the Commission's ability to carry out its Constitutional and statutory responsibilities.

The additional demands imposed upon this constitutional agency would be virtually impossible to meet given the current level of responsibilities and scarce resources available to the Commission. The proposed ballot measure thus endangers the mission and significantly impairs the ability of an agency authorized and mandated by the Oklahoma Constitution, without providing resources for the proposed increased responsibilities necessitated by the measure.

Conclusion

For the reasons set forth above the proposed ballot measure should be rejected as unconstitutional and it should not be permitted to appear on the November ballot.

Respectfully submitted,



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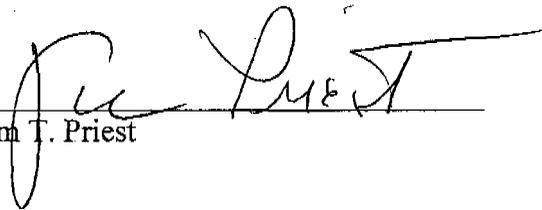
CERTIFICATE OF SERVICE

This is to certify that on May 4, 2012, a true and correct copy of the foregoing Brief in Support of Protest was mailed, postage prepaid, to:

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And to the Oklahoma Secretary of State



Jim T. Priest

IN THE SUPREME COURT
STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAY - 4 2012

MICHAEL S. RICHIE
CLERK

IN RE: INITIATIVE PETITION NO. 396;
STATE QUESTION NO. 763

FIGHTING ADDICTION THROUGH
EDUCATION ET AL

V.

NO. 110,610

OKLAHOMANS FOR MODERN LAWS

FILED

MAY 08 2012

OKLAHOMA SECRETARY
OF STATE

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3. NAICS Information

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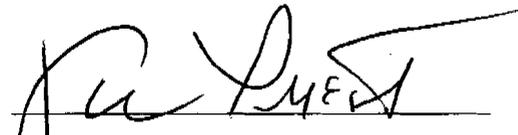
OKLAHOMANS FOR MODERN LAWS

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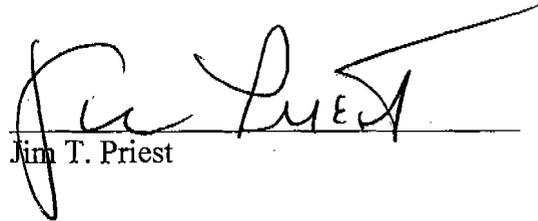
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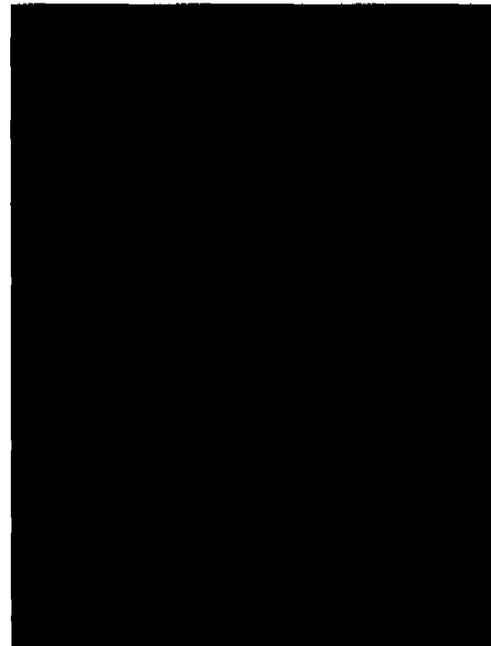
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1. Spect scan comparison of a healthy brain (top) and the brain of a person who is a heavy user of alcohol (bottom). Source: Amen Clinics

<http://70.32.73.82/brain-science/spect-image-gallery/spect-atlas/images-of-alcohol-and-drug-abuse/>



2. *The Effectiveness of Limiting Alcohol Outlet Density As a Means of Reducing Excessive Alcohol Consumption and Alcohol-Related Harms*

The Effectiveness of Limiting Alcohol Outlet Density As a Means of Reducing Excessive Alcohol Consumption and Alcohol-Related Harms

Carla Alexia Campbell, MHS, Robert A. Hahn, PhD, MPH, Randy Elder, PhD, Robert Brewer, MD, MSPH, Sajal Chattopadhyay, PhD, Jonathan Fielding, MD, MPH, MBA, Timothy S. Naimi, MD, MPH, Traci Toomey, PhD, Briana Lawrence, MPH, Jennifer Cook Middleton, PhD, the Task Force on Community Preventive Services

Abstract: The density of alcohol outlets in communities may be regulated to reduce excessive alcohol consumption and related harms. Studies directly assessing the control of outlet density as a means of controlling excessive alcohol consumption and related harms do not exist, but assessments of related phenomena are indicative. To assess the effects of outlet density on alcohol-related harms, primary evidence was used from interrupted time-series studies of outlet density; studies of the privatization of alcohol sales, alcohol bans, and changes in license arrangements—all of which affected outlet density. Most of the studies included in this review found that greater outlet density is associated with increased alcohol consumption and related harms, including medical harms, injury, crime, and violence. Primary evidence was supported by secondary evidence from correlational studies. The regulation of alcohol outlet density may be a useful public health tool for the reduction of excessive alcohol consumption and related harms.
(*Am J Prev Med* 2009;37(6):556–569) Published by Elsevier Inc. on behalf of American Journal of Preventive Medicine

Introduction

Excessive alcohol consumption, including both binge drinking and heavy average daily alcohol consumption, is responsible for approximately 79,000 deaths per year in the U.S., making it the third-leading cause of preventable death in the nation.¹ Approximately 29% of adult drinkers (≥ 18 years) in the U.S. report binge drinking (five or more drinks on one or more occasions for men and four or more drinks for women) in the past 30 days, as do 67% of high school students who drink.^{2,3} The direct and indirect costs of excessive alcohol consumption in 1998 were \$184.6 billion.⁴ The reduction of excessive alcohol consumption is thus a matter of major public health and economic interest.

From the Community Guide Branch of the National Center for Health Marketing (Campbell, Hahn, Elder, Chattopadhyay, Lawrence, Middleton); National Center for Chronic Disease Prevention and Health Promotion (Brewer, Naimi), CDC, Atlanta, Georgia; Los Angeles County Department of Health Services (Fielding), Los Angeles, California; and University of Minnesota School of Public Health (Toomey), Minneapolis, Minnesota

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The density of retail alcohol outlets is often regulated to reduce excessive alcohol consumption and related harms. Alcoholic beverage outlet density refers to the number of physical locations in which alcoholic beverages are available for purchase either per area or per population. An outlet is a setting in which alcohol may be sold legally for either on-premises or off-premises consumption. On-premises settings may include restaurants, bars, and ballparks; off-premises settings may include grocery and convenience stores as well as liquor stores. In 2005, the most recent year for which data are available, there were more than 600,000 licensed retail alcohol outlets in the U.S., or 2.7 outlets per 1000 population aged ≥ 18 years.⁵ The number of outlets per capita in states with state-owned retail outlets varied from a low of 0.48 per 1000 residents in Mississippi to a high of 7.25 per 1000 in Iowa.⁵

Alcohol outlet density is typically controlled by states. Under state jurisdiction, outlet density may be regulated at the local level through licensing and zoning regulations, including restrictions on the use and development of land.⁶ This regulation may be proactive as part of a community development plan, or in response to specific issues or concerns raised by community leaders. However, local control can be limited by state pre-emption laws, in which state governments explicitly or implicitly curtail the ability of local authorities to

regulate outlet expansion.⁷ Thus, both state and local policies need to be considered when assessing factors that affect outlet density.

The WHO has published a review that identifies outlet density control as an effective method for reducing alcohol-related harms.⁸ Similarly, in 1999, the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention review concluded that there was a "medium" level of evidence supporting the use of outlet density control as a means of controlling alcohol-related harms.⁹ In addition, several organizations have advocated the use of outlet density regulation for the reduction of alcohol consumption and alcohol-related harms. These include the European Union (in their 2000–2005 Alcohol Action Plan)¹⁰ and the WHO Western Pacific Region.¹¹ The criteria used in the WHO report are not specified and may be expert opinion rather than systematic assessment of the characteristics of available studies. The SAMHSA review uses specified characteristics of included studies in drawing conclusions; however, the studies included are not up to date. In the present synthesis, 14 of the studies reviewed were published after 2000. Finally, a recent review by Livingston et al.¹² presents useful conceptual hypotheses and notes the importance of outlet "bunching"—which the team referred to as "clustering"—density at a more micro level.

Further, the present review assesses whether interventions limiting alcohol outlet density satisfy explicit criteria for intervention effectiveness of the *Guide to Community Preventive Services (Community Guide)*, and assesses studies available as of November 2006. In addition, unlike any of the prior documents, the present review considers evidence from assessments of policies that are not explicitly considered density-related but that have direct effects on outlet density (i.e., privatization, liquor by the drink, and bans). If effective, policies limiting alcohol outlet density might address several national health objectives related to substance abuse prevention that are specified in *Healthy People 2010*.¹³

Guide to Community Preventive Services

The systematic review described in this report represents the work of CDC staff and collaborators on behalf of the independent, nonfederal Task Force on Community Preventive Services (Task Force). The Task Force is developing the *Community Guide* with the support of the USDHHS in collaboration with public and private partners. The book *The Guide to Community Preventive Services. What Works to Promote Health?* presents the background and the methods used in developing the *Community Guide*.¹⁴

Methods

The methods of the *Community Guide* review process^{15,16} were used to assess whether the control of alcohol outlet density is an effective means of reducing excessive alcohol consumption and related harms. In brief, this process involves forming a systematic review development team (the team); developing a conceptual approach to organizing, grouping, and selecting interventions; selecting interventions to evaluate; searching for and retrieving available research evidence on the effects of those interventions; assessing the quality of and abstracting information from each study that meets inclusion criteria; drawing conclusions about the body of evidence of effectiveness; and translating the evidence on intervention effectiveness into recommendations. Evidence is collected on positive or negative effects of the intervention on other health and nonhealth outcomes. When an intervention is shown to be effective, information is also included about the applicability of evidence (i.e., the extent to which available effectiveness data might generalize to diverse population segments and settings), the economic impact of the intervention, and barriers to implementation. The results of this review process are then presented to the Task Force on Community Preventive Services (Task Force), an independent scientific review board from outside the federal government, which considers the evidence on intervention effectiveness and determines whether the evidence is sufficient to warrant a recommendation.¹⁵

Conceptual Approach and Analytic Framework

Outlet density is hypothesized to affect excessive alcohol consumption and related harms by changing physical access to alcohol (i.e., either increasing or decreasing proximity to alcohol retailers), thus changing the distance that drinkers need to travel to obtain alcohol or to return home after drinking. Increases in the density of on-premises outlets can also alter social aggregation, which may adversely affect those who are or who have been drinking excessively, leading to aggressive or violent behavior (Figure 1). With alcoholic beverages acquired in off-premises settings, the consumption more often occurs at the purchaser's home, and excessive consumption may be associated with domestic violence and suicidal behavior.

Decreases in off-premises or on-premises alcohol outlets, or both, are expected to decrease access to alcoholic beverages by increasing the distance to alcohol outlets, increasing alcohol prices, reducing exposure to on-premises alcohol marketing, and potentially by changing social norms around drinking, thereby decreasing excessive alcohol consumption and related harms. Decreases in outlet density are expected to decrease social aggregation in and around on- and off-premises alcohol outlets which, in turn, may decrease aggressive behavior potentially exacerbated by alcohol consumption.¹⁷ Finally, decreased density increases distances traveled to and from alcohol outlets, thus increasing the potential for alcohol-related crashes. However, this potential harm could be mitigated by decreased alcohol consumption and hence decreased alcohol-impaired driving.^{18,19} Thus, the expected effect of outlet density on motor-vehicle crashes may be mixed.²⁰

The effect that density has on consumption and harms may be further influenced by at least seven characteristics

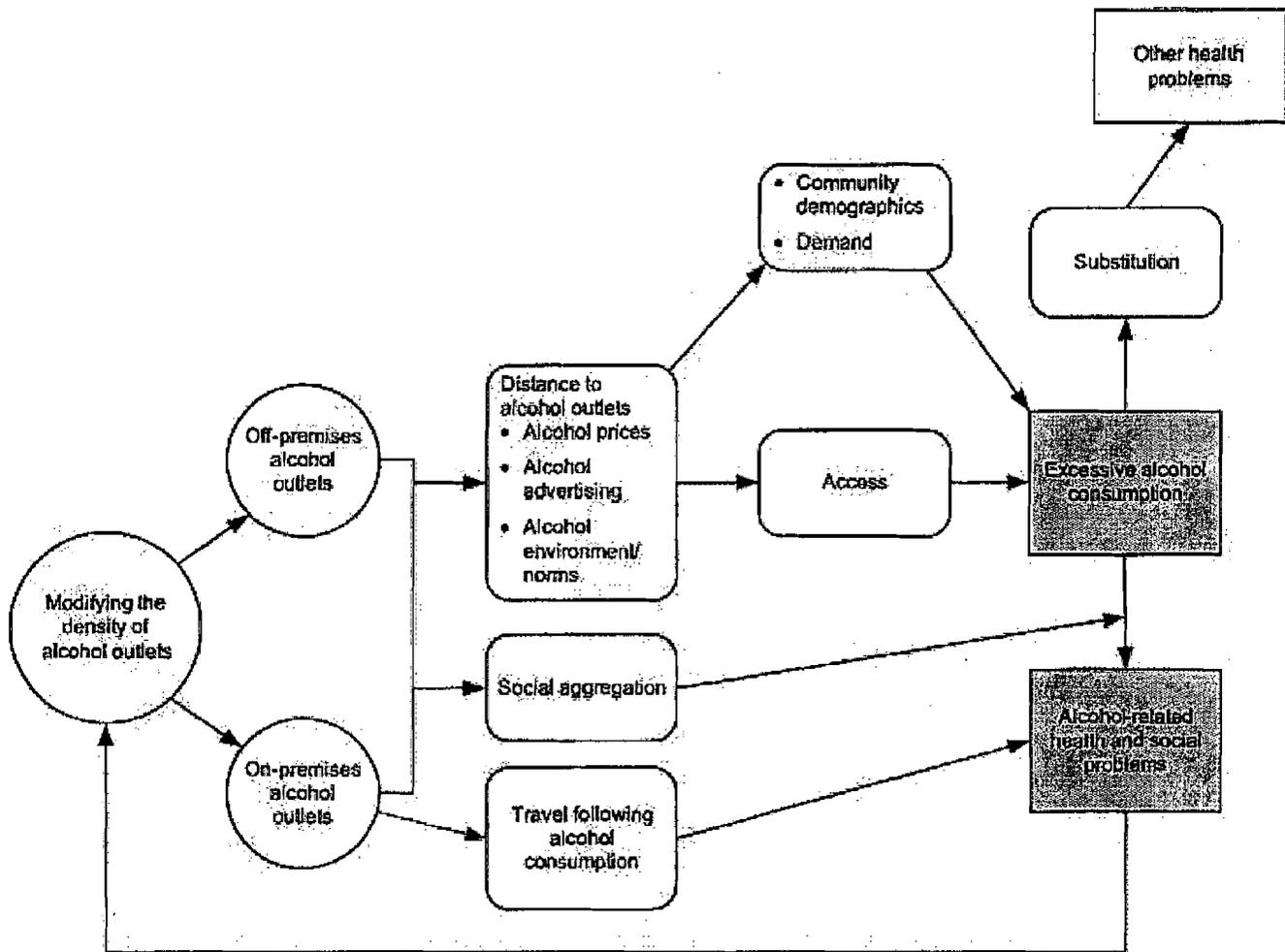


Figure 1. Analytic framework showing the hypothesized effects of changes in outlet density on excessive alcohol consumption and related harms

of retail alcohol outlets and the communities in which they are located: (1) outlet size (i.e., the physical size of the retail premises or the volume of its sales); (2) clustering (i.e., the level of aggregation of outlets within a given area); (3) location (i.e., the proximity of alcohol retail sites to places of concern, such as schools or places of worship); (4) neighboring environmental factors (e.g., demographics of the community and the degree of isolation of a community); (5) the size of the community (which may affect access to other retail sites); (6) the type and number of alcohol outlets (e.g., bar, restaurant, liquor store, grocery store) in a community may also influence whether and how outlet density affects drinking behavior²¹; and (7) alcohol outlets may be associated with illegal activities, such as drug abuse, which may also contribute to public health harms. As with other policies and regulations, the effects of regulations affecting outlet density may depend on the degree to which the policies are implemented and enforced.

There are several challenges to directly evaluating the effectiveness of local policies in changing outlet density on alcohol consumption and related harms. Direct studies of the effects of policies changing density on alcohol-related public health outcomes have not been conducted. Policy changes may occur in small communities in which documentation and

data may be unavailable and where the number of retail alcohol outlets, alcohol-related outcomes, or both may be small; thereby it may be difficult to assess the relationship between outlet density and excessive alcohol consumption and related harms. Further, the effects of policy decisions on outlet density may be gradual. Other changes in alcohol control policies (e.g., enhanced enforcement of the minimum legal drinking age) may occur simultaneously, making it difficult to isolate the effect of changes in outlet density on drinking behavior.

The team used both primary and secondary scientific evidence to help address these challenges and to comprehensively assess the impact of changes in alcohol outlet density on excessive alcohol consumption. Primary evidence included studies comparing alcohol-related outcomes before and after a density-related change. In this category were (1) studies assessing the impact of privatizing alcohol sales—commonly associated with increases in density; (2) studies assessing the impact of bans on alcohol sales—associated with decreases in density; and (3) studies of other alcohol licensing policies that directly affect outlet density (e.g., the sale of liquor by the drink). Time-series studies (i.e., studies in which the association between changes in outlet density and alcohol-related outcomes is assessed over time) were also used to provide primary evidence

of intervention effectiveness, even when the cause of the observed change in outlet density was unknown. The team did not include studies of strikes in the production or distribution of alcoholic beverages or studies of interventions among college populations. Secondary evidence included cross-sectional studies, which do not allow the inference of causality.

Inclusion and Exclusion Criteria

To be included in this review, studies had to meet the following criteria: First, they had to evaluate changes in outlet density or policy changes that clearly resulted in changes in outlet density. Studies of policy changes (e.g., privatization or the legalization of liquor by the drink) had to provide evidence that there was a corresponding change in alcohol outlet density. Second, studies had to be conducted in high-income nations,²² be primary research (rather than a review of other research), and be published in English. Third, studies had to report outcome measures indicative of excessive alcohol consumption or related harms. Direct measures that had the strongest association with excessive alcohol consumption included binge drinking, heavy drinking, liver cirrhosis mortality, alcohol-related medical admissions, and alcohol-related motor-vehicle crashes, particularly single-vehicle nighttime crashes, which are widely used to indicate motor-vehicle crashes due to drinking and driving.²³ Less direct measures included per capita ethanol consumption, which is a well-recognized proxy for the prevalence of heavy drinkers in a population^{8,24}; unintentional injuries; suicide; and crime, such as homicide and aggravated assault. In most studies included in this review, consumption is measured by sales data; the team referred to this measure as "consumption" and note the exceptional study in which self-reported consumption is directly assessed. Fourth, studies had to be published in a peer-reviewed journal or in a government report. Reports not published or published by private organizations were not included.

Search for Evidence

The following databases were searched from inception up to November 2006 to identify studies assessing the impact of changes in alcohol outlet density and other review topics: EconLit, PsycINFO, Sociological Abstracts, MEDLINE, EMBASE, and EtOH (no longer available after 2003). The search yielded 6442 articles, books, and conference abstracts, of which 5645 were unique. After screening titles and abstracts, 251 papers and articles and 17 books were retrieved specifically related to outlet density; five articles could not be retrieved. After assessing quality of execution and design suitability (see below), 88 articles or books were included in the review. The actual number of studies that qualified for the

*World Bank High-Income Economies (as of May 5, 2009): Andorra, Antigua and Barbuda, Aruba, Australia, Austria, the Bahamas, Bahrain, Barbados, Belgium, Bermuda, Brunei Darussalam, Canada, Cayman Islands, Channel Islands, Cyprus, Czech Republic, Denmark, Equatorial Guinea, Estonia, Faeroe Islands, Finland, France, French Polynesia, Germany, Greece, Greenland, Guam, Hong Kong (China), Hungary, Iceland, Ireland, Isle of Man, Israel, Italy, Japan, Republic of Korea, Kuwait, Liechtenstein, Luxembourg, Macao (China), Malta, Monaco, Netherlands, Netherlands Antilles, New Caledonia, New Zealand, Northern Mariana Islands, Norway, Oman, Portugal, Puerto Rico, Qatar, San Marino, Saudi Arabia, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Trinidad and Tobago, United Arab Emirates, United Kingdom, U.S., Virgin Islands (U.S.)

review was less than this, however, because some studies were described in more than one report or publication.

Assessing the Quality and Summarizing the Body of Evidence on Effectiveness

Each study that met the inclusion criteria was read by two reviewers who used standardized review criteria (available at www.thecommunityguide.org/library/ajpm355_d.pdf) to assess the suitability of the study design and threats to validity. Uncertainties and disagreements between the reviewers were reconciled by the team. The classification of study design was based on *Community Guide* standards, and thus may differ from the classification reported in the original studies. Studies with greatest design suitability were those in which data on exposed and control populations were collected prospectively. Studies with moderate design suitability were those in which data were collected retrospectively or in which there were multiple pre- or post measurements but no concurrent comparison population. Studies with least-suitable designs were cross-sectional studies or those in which there was no comparison population and only a single pre- and post-intervention measurement. On the basis of the number of threats to validity (maximum: nine; e.g., poor measurement of exposure or outcome, lack of control of potential confounders, or high attrition) studies were characterized as having good (one or fewer threats to validity); fair (two to four threats); or limited (five or more threats) quality of execution. Studies with good or fair quality of execution, and any level of design suitability (greatest, moderate, or least), qualified for the body of evidence synthesized in the review.

The team summarized the results of cross-sectional studies based on whether drinking occurred on- or off-premises. However, some studies did not stratify their findings by outlet type and so were presented in a combined category. For each outcome and setting, the team summarized study findings by comparing the relative number of positive and negative findings. Finally, elasticities—summary effect measures showing the percentage change in an outcome per 1% change in an exposure (e.g., outlet density)—were calculated if the study provided sufficient information.

Other Harms and Benefits, Applicability, Barriers, and Economics

Harmful and beneficial outcomes not directly related to public health (e.g., vandalism or public nuisance) were noted if they were described in the studies reviewed or if the team regarded them as plausible. In addition, if an intervention was found to be effective, the team assessed barriers to implementation; the applicability of the intervention to other settings, populations, or circumstances; and the economic costs and benefits of the intervention.

Results

Intervention Effectiveness—Primary Evidence

Time-series studies of alcohol outlet density change. The team found ten studies^{20,25-33} that directly evaluated the effect of changes in outlet density over time without identifying the causes for density changes. Of these, eight were "cross-sectional time-series" (i.e., panel)

studies of greatest design suitability^{20,25-29,31,33} and two were single-group time-series studies of moderate design suitability.^{30,32} Eight of the studies were of good execution^{25-31,33} and two were of fair execution.^{20,32} Few took spatial lag (i.e., the likelihood that neighboring geographic units are not statistically independent) into account. Five studies assessed associations between changes in outlet density and population-level alcohol consumption,^{25,26,28,31,33} and the remainder assessed specific alcohol-related harms.^{20,27,29,30,32}

Consumption. All five studies that assessed the association between outlet density and population-level alcohol consumption found that they were positively associated; increased density was associated with increased consumption, and vice versa. Three studies examined the relationship between outlet density and the consumption of spirits in the U.S. The first study estimated that, from 1955 to 1980, for each additional outlet license per 1000 population, there was an increase of 0.027 gallons in per capita consumption of spirits ethanol ($p < 0.01$).²⁸ The second study reported an elasticity of 0.14 ($p < 0.01$) for outlet density and spirits for the period 1970-1975.³¹ The third study examined the association of outlet density and the sale of spirits and wine in 38 states over a period of 18 years; the effects of consumption on density were separated out by use of two-stage least squares regression. The elasticity for spirits and wine was found to be 0.033 (NS) and 0.015 (NS), respectively.²⁶

A study assessing trends from 1952 to 1992 in the United Kingdom²⁵ reported an elasticity of 2.43 ($p < 0.05$) for off-premises density and beer consumption but no significant association for other beverages (except hard cider). Finally, a study³³ examining data from 1968 to 1986 in Canada reported a significant association between reductions in off-premises density and reductions in alcohol consumption. This study also found an association between changes in outlet density and cirrhosis mortality, which was mediated by changes in alcohol consumption. When the alcohol consumption variable was added to the analytic model, the coefficient for cirrhosis mortality was no longer significant.

Motor-vehicle crashes and other injury outcomes. Two studies by one author,^{20,30} using the same methods and database in California, found mixed results when evaluating the association between on- and off-premises outlet density and fatal and nonfatal motor-vehicle crashes in small California cities (i.e., with total populations $< 50,000$) during two different time periods and among different populations. The first study assessed the association between outlet density and crashes from 1981 through 1989 across all age groups. The author found a negative association between off-premises outlet density and both fatal and nonfatal crashes, and a

positive association between on-premises outlets and both fatal and nonfatal crashes.²⁰ The second study assessed the association between outlet density and fatal and nonfatal crashes from 1981 through 1998 among people aged ≥ 60 years. This study reported a negative association for nonfatal crashes (elasticity: -0.69 , $p < 0.05$) and a positive association for fatal crashes (elasticity: 1.18 , $p < 0.05$).

Three studies^{27,29,32} assessed the relationship between outlet density and suicide or interpersonal violence. A study of young people aged 10-24 years in the U.S. from 1976 through 1999 found positive associations between outlet density (on- and off-premises outlets combined) and suicides for most gender and age strata assessed, but only the findings for boys/men aged 15-19 years were significant (elasticities ranged from -0.03 to 0.10 for girls/women and from 0.05 to 0.12 for boys/men).²⁹

The effect of changes in the density of on-premises outlets and violent crime was investigated in Norway from 1960 through 1995.³² The researcher used autoregressive integrated moving average (ARIMA) modeling and found that each alcohol outlet was associated with 0.9 violent crimes investigated (by the police) per year. A supplementary analysis found that this association persisted even after controlling for amount of alcohol consumption, suggesting that the effect of increased density was independent of the effect of increased alcohol consumption ($p < 0.03$). This suggests that the social aggregation of drinkers in and around alcohol outlets directly affects assaults, as indicated in Figure 1 (under "social problems").

Finally, a study of 581 California neighborhoods identified by ZIP code from 1996 through 2002²⁷ indicated that an increase in on- and off-premises outlet density was associated with an increase in hospitalizations for assault, but that this association varied for on-premises and off-premises locations, and among various types of on-premises locations (e.g., bar or restaurant) as well. The researchers used random-effects regression models, taking spatial lag into account, thus allowing for the lack of independence of neighborhoods in the association of outlets and alcohol-related harms. Within a given ZIP code, the elasticity for off-premises outlets and alcohol-related assaults on residents was 0.167 ($p < 0.001$); for restaurants, it was -0.074 ($p < 0.01$); and for bars, 0.064 ($p < 0.001$). The elasticity for bars and assaults involving residents of neighboring ZIP codes was also significant (0.142 , $p < 0.001$); however, the elasticities for off-premises alcohol outlets and for restaurants relative to assaults involving residents of neighboring ZIP codes were not significant. Based on these results, the authors estimated that, on average, eliminating one bar per ZIP code in California would reduce the number of assaults requiring overnight hospitalization by 290 per year in the state.

Summary

Seven of nine time-series studies found positive associations between changes in outlet density and alcohol consumption and related harms, particularly interpersonal violence. However, two studies assessing the relationship between alcohol outlet density and motor-vehicle crashes in small California cities during two different time periods^{20,30} had inconsistent findings for which no clear explanation was apparent. The studies reviewed also suggested that the association between outlet density and interpersonal violence may at least partially be due to social aggregation in and around alcohol outlets, and that the density of outlets in a given locale can also influence the probability of assaults involving residents of neighboring communities.

Privatization Studies

Alcohol privatization involves the elimination of government monopolies for off-premises alcohol sales to allow sales by privately owned enterprises. In the U.S. and Canada, privatization occurs at the state or provincial level; in many European nations, privatization may occur at a national level, currently guided by policies of the European Union. In the U.S., one alcoholic beverage may be privatized at a time; for example, wine might be privatized (i.e., subsequently for sale in commercial settings) while spirits may not be privatized, or may be privatized at a different time. Typically, privatization results not only in a substantial increase in the number of outlets where alcohol can be purchased but also in changes in alcohol price, days and hours of sale, and marketing.^{21,34} This combination of events limits the ability to attribute subsequent changes in alcohol consumption and related harms to changes in outlet density alone. Nonetheless, because of the impact privatization generally has on outlet density, the team concluded that privatization studies were relevant for assessing the impact of changes in outlet density on excessive alcohol consumption and related harms.

The effects of privatization on the privatized beverages are assessed first, followed by an assessment of the effects of privatization on beverages other than those for which sales were privatized. If privatization affects consumption and related harms by means of increased outlet density, the consumption (and related harms) of the privatized beverage should increase, while consumption of other beverages might decline if usual drinkers of these other beverages now switch to the newly available privatized beverage. Comparing the association between alcohol consumption and alcohol-related harms associated with privatized and nonprivatized alcoholic beverages, respectively, provides a basis for assessing the impact of privatization on alcohol consumption and related harms while controlling for other factors that might be occurring simultaneously.

Following an analysis of the effects of privatization, this section then reviews the effects of remonopolization, that is, reversing privatization by reinstatement of government monopoly control over the retail sales of alcohol beverages. This policy change would be expected to have the opposite effects of privatization and result in lower alcohol outlet density.

Eleven events of privatization and one of remonopolization, analyzed in 17 studies and reported in 12 papers,³⁵⁻⁴⁵ met the review inclusion criteria. The units of analysis were eight U.S. states (AL, ID, IA, ME, MT, NH, WA, WV); two Canadian provinces (Quebec and Alberta); and (in the sole study of remonopolization) Sweden. Several studies assessed overlapping privatization events. For example, two research teams assessed the privatization of wine and then spirits in Iowa,^{34,38,39,45} and two researchers assessed early phases of the privatization of wine in Quebec, while one of these researchers also assessed the later phases, with each phase counted as a separate privatization event.^{36,46} In addition, several papers assessed the effects of privatization in more than one state and provided separate effect estimates for the privatization in each state; for purposes of this review, each state-level assessment was treated as a separate study. Finally, a single state or province could privatize different beverages at different times, resulting in separate privatization events. Altogether, the events assessed in these studies occurred between 1978 and 1993. In all areas assessed, the number of outlets increased dramatically following privatization. The studies used ARIMA time-series study design; all except two studies^{36,46} reported results for comparison populations.

All studies used alcohol sales data as a measure of population-level alcohol consumption. One study also assessed fatal motor-vehicle crashes (MVCs),⁴² another study³⁴ also evaluated single-vehicle nighttime crashes and liver cirrhosis. The single study of remonopolization⁴⁰ assessed hospitalizations for alcoholism, alcohol intoxication, and alcohol psychosis combined, alcohol intoxication alone, assaults, suicides, falls, and MVCs.⁴⁰ Fourteen studies (in seven papers)^{35,38,39,42-44,46} were of greatest design suitability; three studies (in two papers)^{37,40} were of moderate design suitability. All studies were of fair execution.

Effects of Privatization on Privatized Beverages

Seventeen studies³⁵⁻⁴⁴ assessed the effects of privatization on the sale of at least one of four beverage types (wine, spirits, full-strength beer, and medium-strength beer) in ten settings. The median relative increase in alcohol sales subsequent to privatization was 42.0%, with an interquartile interval of 0.7% to 136.7%. That is, among the studies reviewed, compared with consumption prior to privatization, the median effect was

an increase of 42.0% in consumption of the privatized alcoholic beverage. Studies of three events of privatization, two in Iowa and one in Alberta, yielded inconsistent findings, which merit further description.

In Iowa, wine was privatized in 1985, and spirits in 1987. Wagenaar and Holder^{35,43} reported that wine consumption increased 93.0% (95% CI=69.3, 120.2) from baseline to 44 months after privatization of retail wine sales. Following the subsequent privatization of retail spirits sales in Iowa 2 years later, these researchers^{35,43} reported a 9.5% (95% CI=3.5, 15.9) increase in spirits consumption; they also found no evidence that privatization affected cross-border alcohol purchasing.^{35,43} In contrast, Mulford and Fitzgerald³⁹ found that wine privatization in Iowa was associated with a nonsignificant increase of only 0.5% (95% CI= -13.2, 16.4) in wine sales, and that spirits privatization was associated with a nonsignificant increase of 0.7% (95% CI= -4.3, 6.0) in spirits sales. Differences between the findings of these research groups may be due to differences in time periods assessed, modeling variables and procedures, beverage types included in the assessment (e.g., Mulford and Fitzgerald exclude wine coolers that were not affected by the policy change and Wagenaar and Holder do not), use of a control population, and outcome measurement. Fitzgerald and Mulford³⁴ also report small unadjusted rate decreases in single-vehicle nighttime crashes (-1.6%) and alcoholic cirrhosis mortality (-5.5%) associated with the privatization of wine and spirits in Iowa.

A study in Alberta, Canada, estimated that gradual privatization over a period of 20 years resulted in an increase in spirits consumption of 12.7% (95% CI=2.2, 24.4) and no change in either wine or beer consumption.⁴² Although the process of privatization occurred over an extended period, the major events of privatization occurred essentially at the same time (in 1992); thus, considered in aggregate, privatizing spirits in Alberta increased total alcohol sales by 5.1% (95% CI= -2.8, 13.7) over this 20-year period. Despite the increased alcohol sales, the authors reported that there was an estimated 11.3% (95% CI= -33.8, 19.0) decrease in traffic fatalities. However, neither the increase in total alcohol sales nor the decrease in traffic fatalities was significant.

Effects of Privatization on Beverages Not Subject to Privatization

Five publications^{37,38,43,44,47} assessed the effects of privatization in eight settings on the concomitant sales of alcoholic beverages that were not privatized during the same period. Overall, these studies reported that there was a minimal decline: a median of 2.1% (interquartile interval [IQI]: -4.8% to 2.7%) in the sales on nonprivatized beverages.

Effects of Remonopolization on Alcohol-Related Outcomes

A single before-and-after study⁴⁰ evaluated the effects of remonopolization of sales of medium-strength beer in Sweden. This study compared the association between the number of retail alcohol outlets and the occurrence of six different alcohol-related outcomes during a 51-month period following the remonopolization of medium-strength beer, with that for a similar period prior to remonopolization. Among young people aged 10-19 years, alcoholism, alcohol intoxication, and alcohol psychosis (which were considered in combination) decreased by 20% ($p<0.05$) following remonopolization. These outcomes also decreased by >5% among people aged ≥ 40 years, although the change was not significant ($p>0.05$). Hospitalizations for acute alcohol intoxication also decreased between 3.5% and 14.7% ($p>0.05$); suicides decreased by 1.7% to 11.8% ($p>0.05$); and falls decreased by 3.6% to 4.9% ($p>0.05$) following remonopolization, although none of these changes were significant either. Motor-vehicle crashes (MVCs) significantly decreased by 14% ($p<0.05$) in all age categories except one (those aged 20-39 years). Other nonsignificant changes include assaults, which decreased by 1.4% among those aged 20-39 years, but increased by 6.9% to 14.8% ($p>0.05$) in the other age groups: 10-19, 40-59, ≥ 60 years. The authors did not provide any explanation for this seemingly inconsistent finding.

Summary

These studies indicate that privatization increases the sales of privatized beverages but has little effect on the sales of nonprivatized alcoholic beverages. The one study that evaluated the reintroduction of government monopoly control of sale of an alcoholic beverage (medium-strength beer) found that remonopolization led to a significant decrease in motor-vehicle crashes for most age groups and a significant decrease among youth for several, but not all, alcohol-related harms.

Studies of Alcohol Bans

The team found seven studies^{18,41,48-52} that examined the effects of bans on local on- or off-premises alcohol sales or consumption (i.e., "dry" towns, counties, or reservations). Five studies examined the effects of bans in American Indian and Native settings in Alaska,^{49,50,53} northern Canada,⁵² and the southwestern U.S.⁵¹ Two studies assessed the effects of bans in nontribal areas of the U.S. and Canada.^{18,41} Two studies were of greatest design suitability^{18,41}; two of moderate design suitability^{50,51}; and three of least suitable design.^{49,52,53} All were of fair execution. The studies examined events that occurred from 1970

through 1996. Two additional studies modeled the association of multiple policies, including local policies of dry counties, with spirits consumption²⁸ and with juvenile suicide.²⁹ Both of these studies were of greatest design suitability and good execution, and the team considered them comparable to studies of bans and as primary evidence.

An additional cross-sectional study of bans⁵⁴ was not used as primary evidence of effectiveness, but provided insights into the effect that alcohol availability in areas surrounding dry communities (e.g., outside Indian reservations) has on the occurrence of alcohol-related harms among residents of the dry communities.

Effects of Alcohol Bans in Isolated Communities

All of the studies that evaluated the effect of bans in isolated northern communities found substantial reductions in alcohol-related harms with the exception of suicide.^{18,41,49,51-59} In the communities that instituted bans, rates of harm indicated by alcohol-related medical visits were reduced by 9.0% for injury deaths to 82% for alcohol-related medical visits (CIs not calculable). One of these studies⁵⁰ found that the effects were reversed when the ban was lifted, and found similar benefits when the ban was then reimposed (Figure 2).⁵⁰ Two of these studies suggest that bans on alcohol sales in isolated communities led residents to decrease their use of other intoxicants. In Barrow, Alaska, medical visits for use of isopropyl alcohol declined during ban periods.⁵⁰

An additional study qualitatively evaluated a Canadian Inuit community⁵² that overwhelmingly voted to

ban alcohol in 1978. Although comparative data are not available from this study (and the study thus does not meet review inclusion criteria), it is notable that during the 3 years following the implementation of this prohibition there were only five arrests for the illegal possession of alcohol and, of these, four were associated with a single incident. The reported reduction in alcohol consumption in general and among youth in particular was linked with several societal benefits, including improved mental and physical health among community members, and a reduction in conflicts within the community. The ban on alcohol sales was associated with a reduction in the use of other substances of abuse (e.g., inhalants) by youth.

Effects of Alcohol Bans in Less-Isolated Communities

Studies assessing the impact of bans (particularly bans on on-premises sales) in less-isolated communities have produced mixed results. Some studies have found that bans are associated with increases in alcohol-related harms, including motor-vehicle crashes^{18,46} and alcohol-related arrests.⁵¹ However, two studies^{28,29} found that states that had a larger proportion of their population living in dry counties had less alcohol consumption and related harms than states that had a smaller proportion of their population living in dry counties. One study²⁸ found that living in dry counties was associated with lower rates of spirits consumption ($p < 0.01$). The other study found small, nonsignificant associations with male suicide (elasticities of -0.002 to -0.066) and female suicide (elasticities of -0.021 to -0.038).²⁹

A cross-sectional study of injury deaths in New Mexico³⁴ highlights the potential harms associated with alcohol sales bans in areas (in this case reservations, 80% of which are dry) that are adjacent to other areas where alcohol is readily available. This study found that in these settings, although the relative risk (RR) of total injury deaths was greater for American Indians than for whites (RR=3.1; 95% CI=2.6, 3.6), the relative risk was greatest for deaths involving pedestrians struck by vehicles (RR=7.5; 95% CI=5.3, 10.6) and for hypothermia (i.e., freezing to death; RR=30.5; 95% CI=17.7, 48.7). Furthermore, American Indians in New Mexico who died of these causes were likely to

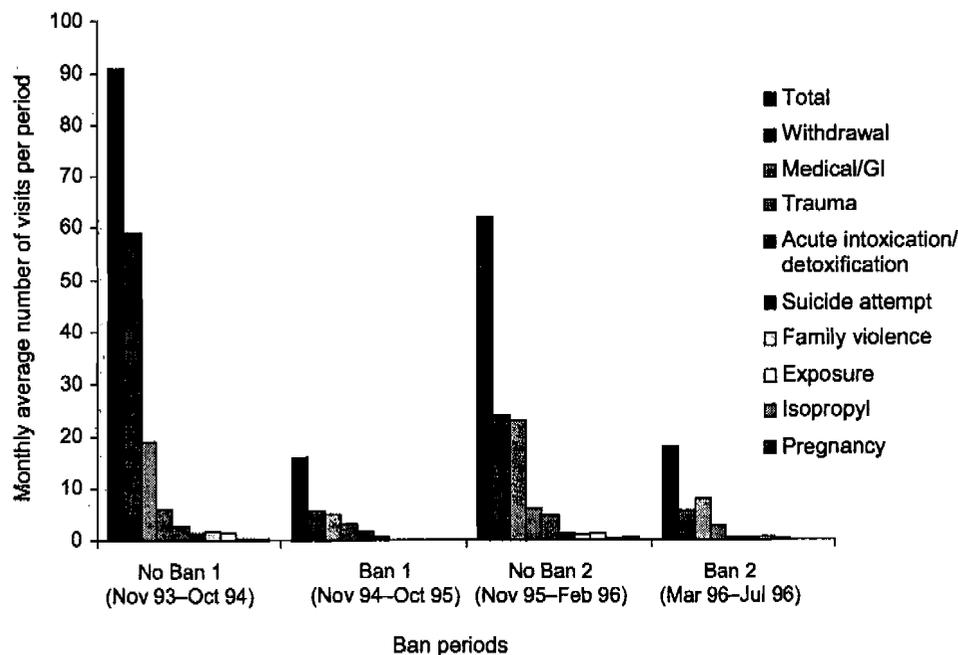


Figure 2. Alcohol-related outpatient visits associated with changes in alcohol ban policy, Barrow, Alaska, 1993–1996⁵⁰

have elevated blood alcohol levels (an average of 0.24 g/dL and 0.18 g/dL for pedestrian deaths and hypothermia, respectively). A disproportionate number (67%) of these deaths occurred in counties bordering reservations, despite the fact that most American Indians live on reservations. Although the design of this study does not allow causal inference regarding the effect of bans, these findings suggest that travel between dry reservations and adjacent areas where alcohol is readily available may increase the risk of death from these external causes among those traveling off-reservation to purchase alcohol.

Summary

The effectiveness of bans in reducing alcohol-related harms appears to be highly dependent on the availability of alcohol in the surrounding area. In isolated communities, bans can substantially reduce alcohol-related harms. However, where alcohol is available in areas nearby those with bans, travel between these areas may lead to serious harms.

Studies of Licensing-Policy Changes Affecting Outlet Density

The team identified four studies of national or local licensing-policy changes that resulted in increased outlet density. The studies were conducted in Iceland,⁶⁰ Finland,⁴⁷ New Zealand,⁶¹ and North Carolina.⁶² The policy changes assessed occurred between 1969 and 1990. The North Carolina study was of greatest design suitability and good execution. The other three studies were of moderate design suitability and good execution.^{47,60,61} These studies examined various indices of alcohol consumption; the North Carolina study also assessed effects on alcohol-related motor-vehicle crashes. Another study assessed the effect of a change in national policy controlling the sale of table wine in New Zealand.

Effects on Excessive Alcohol Consumption and Related Harms

The only U.S. study that met criteria for this category of interventions evaluated the decision by several North Carolina counties to allow on-premises sale of spirits (i.e., "liquor by the drink" [LBD]), replacing the previous option of "brown-bagging,"⁶² in which patrons of an establishment bring their own alcoholic beverage (in a bag) and the establishment supplies other items (e.g., a drink glass, ice, water). Of the 100 counties in North Carolina, three approved liquor by the drink in November 1978 and eight approved it in January 1979. The policy change was followed by the opening of many bars and lounges adjacent to restaurants. Interrupted time-series models indicated that, relative to counties that did not change their policies, sales of spirits increased in LBD counties by 8.2% ($p < 0.05$) among

the first group of counties to adopt the new policy, and by 4.3% ($p < 0.05$) among the second group. Nighttime single-vehicle crashes among men of legal drinking age also increased in both early- and late-adopting counties by 18.5% ($p < 0.01$) and 15.7% ($p < 0.01$), respectively. However, there were no significant changes in rates of nighttime single-vehicle crashes among boys/men aged <21 years, who were not permitted to drink spirits and were thus not (legally) affected by the policy change.

In Finland, the enactment in 1969 of a policy allowing the sale of medium-strength beer resulted in a 22% increase in the number of monopoly alcohol outlets and a 46% increase in restaurant liquor licenses, and permitted 17,400 grocery stores to sell medium-strength beer. During the year following these changes, overall alcohol sales in Finland increased by 46%. Of the increase, 86% was attributed by the researchers to the increased availability of beer. Overall alcohol consumption increased by 56%, with the greatest volume increases among those drinking more than a half liter of pure alcohol per year (1/2 liter of pure alcohol is equivalent to 1/3 gallon of 80-proof liquor). However, alcohol consumption increased significantly among all adults at all levels of alcohol consumption in Finland subsequent to this policy change, regardless of their baseline pattern of consumption, including those who had previously reported that they had not consumed alcohol during the past year.

In Iceland,⁶⁰ a policy change in 1989 resulted in an expansion in off-premises monopoly outlets and commercial on-premises outlets in Reykjavik and in rural areas. Over the subsequent 4-year period, consumption increased by 43% among men who drank more than 350 centiliters of alcohol per year at baseline, but changed minimally among women and men who drank at lower levels.

In New Zealand,⁶¹ a policy change in 1989 allowed the sale of table wine in grocery stores, resulting in an increase of approximately 25% in the number of wine outlets in the country over a 2-year period. This resulted in a 17% (95% CI=9.8%, 24.9%) increase in wine sales during this time, but in no change in the sales of other alcoholic beverages. This indicates that there was an overall increase in alcohol consumption in New Zealand subsequent to this policy change, and that wine, the privatized beverage, was not being substituted for other nonprivatized alcoholic beverages.

Summary

These studies consistently indicated that more permissive licensing procedures increased the number of on- and off-premises alcohol outlets, which in turn led to increases in alcohol consumption. Two of these studies specifically reported increases in alcohol consumption among heavy drinkers, and one study reported an increase in drinking among survey subjects who reported not drinking during a specified period at the

baseline assessment. The single study that evaluated alcohol-related harms (alcohol-related motor-vehicle crashes) found that they increased substantially after allowing the sale of liquor by the drink.

Intervention Effectiveness—Secondary Evidence

Although the primary evidence just reviewed is heterogeneous in topic and design and does not allow summary tabular presentation, the secondary evidence presented below is based on consistent statistical procedures and readily allows a summary table.

Cross-Sectional Studies

Findings from studies of on- and off-premises outlets combined. The 28 cross-sectional studies^{19,55–57,63–86} that assessed the association of outlet density (on-premise and off-premise, not distinguished) assessed 47 alcohol-related outcomes. Of these outcomes, 41 (87.2%) found a positive association, that is, as density increased, so did consumption and alcohol-related harms, and vice versa (Table 1, A). Positive associations were found for consumption-related outcomes (e.g., per capita alcohol consumption); violence and injury outcomes; and several medical conditions (e.g., liver disease). The mean elasticities ranged from 0.045 for crime to 0.421 for motor-vehicle crashes.

Findings from studies of on-premises outlets. The 23 studies^{23,58,78,79,87–105} that assessed the association of outlet density and alcohol-related outcomes in on-premises outlets reported on 25 outcomes. Of these, 21 (84.0%) indicated a positive association (Table 1, B). Positive associations were also found for consumption-related outcomes, several forms of violence and injury outcomes related to alcohol consumption, and one medical condition. Mean study elasticities could be estimated for most outcome types, and values ranged from 0.021 for child abuse to 0.250 for population consumption.

Findings from studies of off-premises outlets. The 23 studies^{58,79,89–92,94–99,101–111} that assessed the association of outlet density and alcohol-related outcomes in off-premises outlets reported on 24 outcomes. Of these, 18 (75.0%) also indicated a positive association (Table 1, C). Positive associations were found for consumption-related outcomes, several forms of violence and injury outcomes related to alcohol consumption, and one medical condition. Mean study elasticities could be estimated for most outcome types and values ranged from -0.15 for injury to 2.46 for population consumption. Mean elasticity was also high (0.483) for violent crime.

Summary

Cross-sectional studies generally show consistent positive associations between alcohol outlet density and

Table 1. Cross-sectional studies, outcomes by setting type

Outcomes	# of studies	% positive	M elasticity
A. ON- AND OFF-PREMISES AGGREGATED			
Consumption			
Population consumption	7	85.7	0.27
Binge drinking	5	80.0	
Underage drinking	2	100.0	
Violence and injury			
Violent crime	15	93.3	0.32
Injury	3	100.0	0.23
Motor-vehicle crashes	6	50.0	0.42
Drunk driving	1	100.0	
Crime	2	100.0	0.04
Medical conditions			
Alcohol medical visits	1	100.0	
Alcoholism	1	100.0	
Liver disease	4	100.0	
Total all premises	47	87.2	
B. ON-PREMISES			
Consumption			
Population consumption	3	33.3	0.25
Binge drinking	1	100.0	
Violence and injury			
Violent crime	4	100.0	0.12
Injury	3	100.0	0.14
Motor-vehicle crashes	6	66.7	0.05
Drunk driving	2	100.0	
Crime	1	100.0	
Child abuse	2	100.0	0.02
Medical conditions			
Liver disease	3	100.0	0.06
Total on-premises	25	84.0	
C. OFF-PREMISES			
Consumption			
Population consumption	2	100.0	2.46
Binge drinking	1	100.0	
Violence and injury			
Violent crime	6	100.0	0.48
Injury	3	66.7	-0.15
Motor-vehicle crashes	5	80.0	0.10
Drunk driving	2	50.0	
Crime	1	100.0	
Child abuse	2	100.0	0.01
Medical conditions			
Liver disease	2	50.0	-0.05
Total off-premises	24	76.9	

excessive alcohol consumption and related harms, with the possible exception of injuries, for which the findings were less consistent. The largest effect sizes were for studies relating outlet density to population consumption and violent crime.

Summary of the Body of Scientific Evidence on Alcohol Outlet Density and Excessive Drinking and Related Harms

Using a variety of different study methods, study populations, and alcohol measures, most of the studies included in this review reported that greater outlet

density is associated with increased alcohol consumption and related harms, including medical harms, injuries, crime, and violence. This convergent evidence comes both from studies that directly evaluated outlet density (or changes in outlet density) and those that evaluated the effects of policy changes that had a substantial impact on outlet density, including studies of privatization, remonopolization, bans on alcohol sales and the removal of bans, and changes in density from known policy interventions and from unknown causes. Studies assessing the relationship between alcohol outlet density and motor-vehicle crashes produced mixed results.^{18,20,62,112}

Other Benefits and Harms

Communities commonly seek limits on alcohol outlet density, either through licensing or zoning, for purposes that may not be directly related to public health (e.g., the reduction of public nuisance, loitering, vandalism, and prostitution).^{7,113} Although the team did not specifically search for studies that assessed these outcomes, some of the studies the team reviewed suggested that there may be an association between outlet density and these outcomes as well. For example, a study from New South Wales, Australia, reported an association between outlet density and "neighborhood problems with drunkenness" but did not find a significant association with property damage.¹¹⁴ There was evidence of one potential harm of decreased outlet density (i.e., an increase in fatal single-vehicle nighttime vehicle crashes) presumably associated with an increase in driving in response to greater distances between alcohol outlets.¹⁹

Applicability

Evidence of the association of outlet density and alcohol consumption and related harms derives from studies conducted primarily in North American and in Scandinavian countries. One study²⁷ indicated that the impact of changes in outlet density may be affected by demographic characteristics (e.g., gender distribution) of the population; in this case, the association of outlet density with assaults requiring hospitalization was stronger where there was a greater proportion of boys/men in the population. Most of the studies reviewed assessed the effects of increased outlet density, which is a consequence of the general trend toward liberalization of alcohol policies associated with outlet density. Few data were found from which to draw inferences about regulations that control or reduce outlet density.

Studies of bans on alcohol sales, conducted primarily among American Indian and Alaska Native populations, consistently report a reduction in excessive consumption and related harms following the implementation of a ban on alcohol sales, possession, or both,

provided the area affected by the ban was not surrounded by other sources of alcoholic beverages.

Barriers

Reductions in outlet density, with resultant reductions in consumption, are likely to have substantial commercial and fiscal consequences, and thus may be opposed by commercial interests in the manufacture, distribution, and sale of alcoholic beverages. In keeping with its commercial interests, the alcoholic beverage industry has tended to support policies that facilitate outlet expansion.¹¹⁵

State pre-emption laws (i.e., laws that prevent implementation and enforcement of local restrictions) can also undermine efforts by local governments to regulate alcohol outlet density.⁷ Indeed, the elimination of pre-emption laws related to the sale of tobacco products is one of the health promotion objectives in *Healthy People 2010*.¹³ However, there is no similar objective in *Healthy People 2010* related to the sale of alcoholic beverages.

Economic Evaluation

The team's systematic economic review did not identify any study that examined the costs and benefits of limiting alcohol outlet density. Although there has been speculation that reducing the number of alcohol outlets may result in a loss of revenue to state and local governments owing to a loss of licensing fees and alcohol tax revenues, the team found no studies that have documented this speculation. In addition, there may be economic gains resulting from revenue generation from merchants and consumers who would otherwise avoid areas known to have a high alcohol outlet density; however, the team found no studies about this topic. Moreover, in 2006, alcoholic beverage licenses accounted for only \$406 million (0.9%) of the \$45 billion that state governments received from all licensing fees, and alcohol taxes accounted for only 0.7% of all taxes (\$4.9 billion of \$706 billion) collected by state governments (www.census.gov/govs/statetax/0600usstax.html).

Even in the absence of published data on program implementation costs and other costs related to this intervention, it should be expected that the cost of restricting access to alcohol by limiting the number of alcohol outlets is likely to be small relative to the societal cost of excessive alcohol consumption in the U.S. For example, in 1998, the most recent year for which data are available, the societal cost of excessive alcohol consumption in the U.S. was \$185 billion, including, among other costs, approximately \$87 billion in lost productivity due to morbidity, \$36 billion in lost future earnings due to premature deaths, \$19 billion in medical care costs, \$10 billion in lost earnings due to crime, \$6 billion in costs to the criminal justice

system, and \$16 billion in property damage related to motor-vehicle crashes.⁴ Moreover, each state alcohol enforcement agent is responsible for monitoring an average of 268 licensed establishments¹¹⁶; thus, reducing the number of retail alcohol outlets might reduce their enforcement responsibilities. In summary, no existing study examines the economic costs and benefits of limiting alcohol outlet density.

Research Gaps

Although the scientific evidence reviewed indicates that the regulation of alcohol outlet density can be an effective means of controlling excessive alcohol consumption and related harms, it would be useful to conduct additional research to further assess this relationship:

- There are few if any studies evaluating how local decisions are made regarding policies affecting alcoholic beverage outlet density or the consequences of such policy changes. Such case studies may be difficult to conduct, but they could provide important insights to guide policy decisions regarding alcohol outlet density in other communities.
- The majority of outlet density research explores the impact of increasing alcohol outlet density on alcohol-related outcomes; there is a lack of research on the impact of reducing outlet density. This might be done by observing the impact of temporal changes in outlet density on excessive alcohol consumption and related harms.
- The association of on- and off-premises alcoholic beverage outlets with illegal activities such as prostitution and drug abuse should be examined. In themselves, these may have adverse public health and other outcomes; in addition, they may confound the apparent association of alcohol outlets with these outcomes.
- Relatively little is known about the impact of density changes relative to baseline density levels. Some authors (e.g., Mann¹¹⁷) have proposed that the association between outlet density and alcohol consumption follows a demand curve, such that when density is relatively low, increases in density may be expected to have large effects on consumption, and when density is relatively high, increases in density should be expected to have smaller effects.^{21,117} Thus, it would be useful to assess this hypothesis empirically using econometric methods, with different kinds of alcohol-related outcomes. Such information would allow communities at different alcohol outlet density "levels" to project the possible benefits of reducing density by specific amounts or the potential harms of increasing density.
- For public health practitioners, legislators, and others attempting to control alcohol outlet density to reduce alcohol-related harms, it would be useful to

catalog approaches to regulation beyond licensing and zoning that may have an effect on outlet density (e.g., traffic or parking regulations that, in effect, control the number of driving patrons who may patronize an alcohol outlet).

- A primary rationale for limiting alcohol outlet density is to improve public health and safety. Furthermore, the economic efficiency of limiting outlet density is difficult to assess without data on the economic impact of this intervention. To remedy this, future studies on the impact of changes in alcohol outlet density should assess both health and economic outcomes, so that the economic impact of this intervention can be assessed empirically.

The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the CDC.

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3. NAICS Information

The proposed ballot measure states: *As used in this section the terms "warehouse clubs and supercenters" and "supermarkets and other grocery (except convenience stores) shall be defined by the 2007 North American Industry Classification System.* The Classification System, however does not contain a definition section and, further, parts of the System have already been subject to revision since 2007. Thus, the proposed ballot measure relies upon an external source which does not contain definitions and is subject to change. A federal agency, the Bureau of Labor Statistics, is responsible for overseeing the NAICS and Attachment 3 briefly outlines the origin and purposes of the NAICS. It was never intended to serve as a constitutional measuring stick nor to be incorporated into a state constitution.

<http://www.bls.gov/bls/naics.htm>

Introducing NAICS

Developed in cooperation with Canada and Mexico, the North American Industry Classification System (NAICS) represents one of the most profound changes for statistical programs focusing on emerging economic activities. NAICS, developed using a production-oriented conceptual framework, groups establishments into industries based on the activity in which they are primarily engaged. Establishments using similar raw material inputs, similar capital equipment, and similar labor are classified in the same industry. In other words, establishments that do similar things in similar ways are classified together.

NAICS provides a new tool that ensures that economic statistics reflect our Nation's changing economy. However, improved statistics will result in time series breaks. Every sector of the economy has been restructured and redefined: A new Information sector combines communications, publishing, motion picture and sound recording, and online services,

recognizing our information-based economy. Manufacturing is restructured to recognize new high-tech industries. A new sub-sector is devoted to computers and electronics, including reproduction of software. Retail Trade is redefined. In addition, eating and drinking places are transferred to a new Accommodation and Food Services sector. The difference between Retail and Wholesale is now based on how each store conducts business. For example, many computer stores are reclassified from wholesale to retail. Nine new service sectors and 250 new service industries are recognized.

NAICS Coding Structure

NAICS uses a six-digit hierarchical coding system to classify all economic activity into twenty industry sectors. Five sectors are mainly goods-producing sectors and fifteen are entirely services-producing sectors. This six-digit hierarchical structure allows greater coding flexibility than the four-digit structure of the SIC. NAICS allows for the identification of 1,170 industries compared to the 1,004 found in the SIC system. See also: Report on the American Workforce, Chapter 3.

NAICS 2007

NAICS 2007 includes revisions to NAICS 2002 across several sectors. The most significant revisions are in the Information Sector, particularly within the Telecommunications area.

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FILED
SUPREME COURT
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA MAY - 4 2012

MICHAEL S. RICHIE
CLERK

IN RE: INITIATIVE PETITION No. 306,)
STATE QUESTION NO. 763)
ASSOCIATION)

No. 110610

RECEIVED

MAY - 4 2012

CLERK'S OFFICE

PROTESTANT YOUSEF JAVADZADEH'S
OPENING BRIEF IN OPPOSITION TO INITIATIVE PETITION NO. 396

FILED

MAY 08 2012

OKLAHOMA SECRETARY
OF STATE

Respectfully submitted,

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ATTORNEYS FOR PROTESTANT
YOUSEF JAVADZADEH

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OKLAHOMA SECRETARY
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YOUSEF JAVADZADEH

May 4, 2012

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Yousef Javadzadeh, pursuant to Okla. Stat. tit. 34, § 8(B) and the April 24, 2012 Order of this Court, submits this Opening Brief in Opposition to Initiative Petition No. 396, State Question No. 763, a proposed amendment to the Oklahoma Constitution to allow the sale of wine at grocery stores, warehouse clubs, superstores, and supermarkets. In support, Javadzadeh states as follows:

INTRODUCTION

On April 3, 2012, Brian Howe, Sean Campbell, and Oklahomans for Modern Laws submitted an initiative petition to the Secretary of State regarding the retail sale of wine. The petition was designated as Initiative Petition No. 396, State Question No. 763 by the Secretary of State. Initiative Petition No. 396 seeks to amend Article 28 of the Oklahoma Constitution to permit the retail sale of wine by grocery stores, and the like, for off-premises consumption. Initiative Petition No. 396 would create a new classification of licensees that are not subject to the same restrictions and requirements as retail package store licensees.

The proposed ballot title of Initiative Petition No. 396 states:

This measure adds a new Section 4.A and amends Section 10 of Article 28 of the State Constitution. It allows for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets and other grocery (except convenience) stores. It provides for a grocery store wine license. Such sales of wine would only be authorized after being approved for an election by the voters in counties with a population of 50,000 or more persons. The sale of wine to persons under 21 years of age would be prohibited. The measure provides for the days and hours, taxation on wine sales, fees for licenses and purchase and distribution of wine to be the same as for retail package stores. It allows corporations to hold grocery store wine licenses. It limits the number of locations by the licensee to six. It provides other limits on licenses. It would allow grocery store wine licenses to be held by corporations and other business from outside the state. It would allow an election to be called by the county commissioners or by a petition of registered voters.

Pursuant to Okla. Stat. tit. 34, § 9(D), the proposed ballot title was submitted to the Attorney General for review as to the legal correctness of the ballot title. The Attorney General has not ruled on the legal correctness of the ballot title.

The proposed gist found at the top margin of the signature page of Initiative Petition No. 396, which is nearly the exact same language as the proposed ballot title, states:

The gist of the proposition is that it amends the State Constitution to allow for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets and other grocery (except convenience) stores. It provides for a grocery store wine license. Such sales of wine would only be authorized after being approved for an election by the voters in counties with a population of 50,000 or more persons. The sale of wine to persons under 21 years of age would be prohibited. The measure provides for the days and hours, taxation on wine sales, fees for licenses and purchase and distribution of wine to be the same as for retail package stores. It allows corporations to hold grocery store wine licenses. It limits the number of locations by the licensee to six. It provides other limits on licenses. It would allow grocery store wine licenses to be held by corporations and other business from outside the state. It would allow an election to be called by the county commissioners or by a petition of registered voters.

On April 23, 2012, Javadzadeh filed a protest to Initiative Petition No. 396. Javadzadeh owns a retail package store in Oklahoma City, Oklahoma and will be directly and adversely affected by Initiative Petition No. 396. Javadzadeh asserts that Initiative Petition No. 396 is invalid and unconstitutional.

ARGUMENT AND AUTHORITIES

A. Supreme Court review of Initiative Petitions.

The right of Oklahomans to enact laws by a vote of the people through initiative petition is reserved by Article 5, § 1 of the Oklahoma Constitution. *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 2, 164 P.3d 125. Initiative is the power reserved to the people by the constitution to propose bills and laws and to enact or reject them at the polls independent of legislative assembly. *In re Initiative Petition No. 348*, 1991 OK 110, ¶ 5, 820 P.2d 772.

While this fundamental and precious right is zealously protected by the Court, it is not absolute. *In re Initiative Petition No. 384*, at ¶ 2 (internal citation omitted). Any citizen can protest the sufficiency and legality of an initiative petition. *Id.* (citing Okla. Stat. tit. 34, § 8).

The Court has original jurisdiction over protests challenging the sufficiency of an initiative petition. Okla. Stat. tit. 34, § 8; *see also In re Initiative Petition No. 348*, at ¶¶ 1-2. Upon the filing of a protest, the Court must review the petition to ensure it complies with the parameters of the rights and restrictions as established by the Oklahoma Constitution, legislative enactments, and the Court's jurisprudence. *In re Initiative Petition No. 384*, at ¶2 (internal citation omitted). The Court may reach a facial constitutional attack in a pre-election setting, when raised, if in the Court's opinion to do so could prevent a costly and unnecessary election. *In re Initiative Petition No. 360*, 1994 OK 97, ¶ 10, 879 P.2d 810 (internal citations omitted). Such pre-election review is limited to "clear or manifest facial constitutional infirmities." *Id.*

B. Initiative Petition No. 396 is unconstitutional because it violates the "single subject" rule of Article 24 of the Oklahoma Constitution.

Article 24, § 1 of the Oklahoma Constitution states "[n]o proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than one general subject." A single-subject measure within the meaning of Article 24, § 1 of the Oklahoma Constitution "is one whose componential ingredients, no matter how numerous, are so interrelated as to all form parts of an integrated whole." *In re Initiative Petition No. 363*, 1996 OK 122, ¶ 15, 927 P.2d 558. "The purpose of the one-general-subject criterion is to guard against deceit or against the presentation of a misleading proposal as well as to prevent log rolling – the combining of unrelated proposals." *Id.*

The Court has defined "log-rolling" as "the offering of unrelated proposals in order to secure approval by appealing to different groups which will support the entire proposal in order

to secure some part of it although perhaps disapproving of the other parts.” *In re Initiative Petition No. 360*, 1994 OK 97 at ¶ 17; *see also In re Initiative Petition No. 363*, 1996 OK 122 at n.32, 927 P.2d 558 (“Log rolling is defined as a ‘legislative practice of embracing in one bill several distinct matters, none of which perhaps, could singly obtain the assent of the legislature, and then procuring its passage by a combination of the minorities in favor of each of the measures into a majority that will adopt them all.’”) (internal quotation omitted).

The single-subject rule prevents “corruption in making, procuring, and submitting initiative and referendum petitions.” *In re Initiative Petition No. 360*, 1994 OK 97 at ¶ 18 (internal citation omitted). When testing a proposed constitutional amendment for its components’ germaneness, the Court “looks to whether each of its several facets bears a common concern or impacts one general object or subject.” *In re Initiative Petition No. 363*, 1996 OK 122, ¶ 16.

Initiative Petition No. 396 is invalid because it contains multiple subjects in an attempt to persuade voters to approve the entire Petition. The goal of Initiative Petition No. 396 is to provide for the sale of wine in Oklahoma grocery stores, supermarkets, and warehouse stores. However, the drafters of Initiative Petition No. 396 did not stop there. Instead, they included many other subjects and provisions within the Petition, such as the issuance of licenses, including the number of licenses issued and the issuance of licenses to non-residents and corporations; taxation; limitations on days and hours of sale; voting procedures; the sale of other wares and goods; limitations on the location of a wine licensee’s premises; which counties are authorized to hold elections; and delineating which persons may purchase wine and other goods, among others.

The inclusion of multiple subjects in the Petition would be misleading to Oklahoma voters and would not afford them the freedom of choice to approve portions of the Petition. *See In re Initiative Petition No. 314*, 1980 OK 174, ¶ 59, 625 P.2d 595. Voters who are in favor of the sale of wine in grocery stores would be forced to vote in favor of other portions of the Petition with which they may disagree, such as issuing licenses to non-residents. *See id.* Indeed, in *In re Initiative Petition No. 314* the Court struck down a petition dealing with multiple alcohol-related subjects – liquor by the drink, advertising of liquor, and the franchising of liquor sales. 1980 OK 174, ¶ 57.

The subjects contained in Initiative Petition No. 396 bear no direct relation to each other. Their only connection is that they are embraced by a broader subject – the sale of alcohol. The Court should declare that Initiative Petition No. 396 is invalid and unconstitutional because it violates the “single-subject rule” of Article 24 of the Oklahoma Constitution.

C. Initiative Petition No. 396 is invalid because it violates the ballot title and gist requirements of Title 34 of the Oklahoma Statutes.

Okla. Stat. tit. 34, § 9 requires that any person proposing a measure by initiative petition must also submit a suggested ballot title. § 9(B). Section 9(B) sets forth requirements for suggested ballot titles. It states ballot titles:

1. Shall not exceed two hundred (200) words;
2. Shall explain in basic words, which can easily be found in dictionaries of general usage, the effect of the proposition.
3. Shall not contain any words which have a special meaning for a particular profession or trade not commonly known to the citizens of this state;
4. Shall not reflect partiality in its composition or contain any argument for or against the measure;
5. Shall contain language which clearly states a that a “yes” vote is a vote in favor of the proposition and a “no” vote is a vote against the proposition; and

6. Shall not contain any language whereby a “yes” vote is, in fact, a vote against the proposition and a “no” vote is, in fact, a vote in favor of the proposition.

Okla. Stat. tit. 34, § 9(B)(1)-(6). The ballot title should be sufficient to allow the voters to make an informed choice. *In re Initiative Petition No. 342*, 1990 OK 76, ¶ 14, 797 P.2d 331.

Okla. Stat. tit. 34, § 3 requires that a “simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet.” The gist must explain the effect of the proposal. *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 8, 164 P.3d 125. The explanation of the effect on existing law, however, does not extend to describing policy arguments for or against the proposal. *Id.* (internal citation omitted). Gists need only convey the practical, not the theoretical, effect of the proposed legislation. *Id.* (internal citation omitted). The gist is distinguished from the ballot title; it is a shorthand explanation of a proposition’s terms. *Id.* at ¶ 9 (internal citation omitted). The gist should be sufficient to put the signatories on notice of the changes being made. *Id.* at ¶ 7 (internal citation omitted). Both the gist and the ballot title must be brief, descriptive of the effect of the proposition, not deceiving but informative and revealing of the design and purpose of the petition. *Id.*

Initiative Petition No. 396 is invalid because its ballot title and gist do not accurately explain its effect on existing Oklahoma law. As discussed above, *Initiative Petition No. 396* contains multiple subjects, addressing each in minute detail. One of the pitfalls of having a petition that addresses several subjects is that the ballot title cannot be written to accurately reflect the contents of the petition. *In re Initiative Petition No. 342*, 1990 OK 76, ¶ 13, 797 P.2d 331. The ballot title and the gist become so insufficient that they are deceptive and misleading. *Id.* Here, the ballot title and gist do not contain the level of sufficiency necessary to educate Oklahoma voters on the issue. For example, neither the ballot title nor the gist state that package store licensees are ineligible for wine licenses, or that under Oklahoma law corporations and

non-residents are not permitted to hold package store licenses. In fact, because Initiative Petition No. 396 addresses so many different subjects and issues, it would be nearly impossible for the ballot title and gist to do so while still adhering to the requirements of Title 37 of the Oklahoma statutes.

The Court should declare that Initiative Petition No. 396 is invalid because its ballot title and gist are not sufficiently accurate.

D. Initiative Petition No. 396 is unconstitutional because it denies certain persons equal protection under the laws in violation of the Equal Protection Clause of the United States Constitution.

The “states possess broad powers under the Twenty-First Amendment to the Constitution of the United States (which repealed national prohibition of the sale of alcoholic beverages), as well as inherent police powers, to regulate, restrict, or ban the sale of alcoholic beverages within their borders.” *37712, Inc. v. Ohio Dept. of Liquor Control*, 113 F.3d 614, 618 (6th Cir. 1997) (citing *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 515 (1996) (stating states have “ample power to prohibit the sale of alcoholic beverages in inappropriate locations”)). “However, this state power may not be abused to violate a person’s federal constitutional rights.” *Id.* (internal citations omitted). Specifically, the states cannot “insulate the liquor industry from the Fourteenth Amendment’s requirement of equal protection.” *California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 108 (1980).

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution commands that no State shall deny to any person within its jurisdiction the equal protection of the laws. *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). The Equal Protection Clause does not forbid classifications, but keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike. *Id.* (internal citation omitted); *see also Okla. Broadcasters Ass’n v. Crisp*, 636 F.Supp. 978, 988 (W.D. Okla. 1985) (stating the Equal

Protection Clause “is essentially a direction that all persons similarly situated should be treated alike”) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). Where neither an invidious classification nor a deprivation of a fundamental interest is alleged, the equal protection clause requires that the classification bear a rational relationship to legitimate governmental ends. *Brown v. City of Lake Geneva*, 919 F.2d 1299, 1302 (7th Cir. 1990) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985)); *see also Crisp*, 636 F.Supp. at 988 (“The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.”) (citing *Schweiker v. Wilson*, 450 US 221, 230 (1981)). States may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational. *Cleburne*, 473 U.S. at 446.

The Equal Protection Clause applies to determine the validity of Initiative Petition No. 396 because it proposes different treatment for similarly situated persons – package store licensees and wine licensees, who, under the Petition, would both be able to sell wine in Oklahoma.

- 1. Initiative Petition No. 396 violates the Equal Protection Clause and facially violates the Oklahoma Constitution because it permits corporations to hold wine licenses.**

The Oklahoma Constitution prohibits package store owners to enter into a business as a corporation or limited liability company. Article 28, § 10(a); *Meyer v. Okla. Alcoholic Beverage Laws Enforcement Comm’n*, 1995 OK CIV APP 11, ¶ 5, 890 P.2d 1361. Initiative Petition No. 396 seeks to create a new classification of wine licensees who, unlike package store licensees, are permitted to enter into a business as a corporation or limited liability company. This new classification contravenes long-standing Oklahoma law and policy on the issuance of licenses for the sale of alcoholic beverages.

In *Meyer* this Court was tasked with determining whether the Oklahoma Constitution permits limited liability companies to hold retail package store licenses. 1995 OK CIV APP 11, ¶ 5. The Court stated that one of the evident purposes of Article 28 of the Oklahoma Constitution was the assignment of personal responsibility for compliance with liquor laws. *Id.* at ¶ 13. Thus, business forms such as corporations and LLCs, which do not insure such personal responsibility, are excluded from eligibility for licensing. *Id.* The Court determined that the limited liability inherent in LLCs is an unconstitutional shield from the very responsibility and accountability that the constitutional provisions regarding alcoholic beverage laws and enforcement sought to impose. *Id.* at ¶ 14. Initiative Petition No. 396 directly violates Article 28, as interpreted by this Court. It seeks to allow licensees to sell alcoholic beverages within the State, without ensuring that they are personally liable and responsible for complying with Oklahoma law.

Furthermore, to permit wine licensees to operate as corporations or limited liability companies would unnecessarily, arbitrarily, and irrationally discriminate against package store licensees who must operate as sole proprietorships or partnerships. As discussed above, such a distinction puts package store licensees at a marked disadvantage. Package store licensees are entirely personally liable for compliance with Oklahoma alcohol laws and for any negligent or criminal acts which may occur on their premises. Initiative Petition No. 396 allows wine licensees to strategically avoid any and all personal liability by entering into a business as a corporation or limited liability company. Similarly, wine licensees would not face the same accountability as package store licensees. The Oklahoma Constitution requires package store licensees to operate as sole proprietorships or partnerships so that licensees are individually accountable for their business. Initiative Petition No. 396 does not require wine licensees who

operate as a corporation or limited liability company to disclose their shareholders or members. Accordingly, the Oklahoma Alcohol Beverage Laws Enforcement Commission has no way of knowing who has an actual stake in the wine license. Under Initiative Petition No. 396, the numerous holders of a wine license would not be individually accountable to the State.

The Court should strike down Initiative Petition No. 396 as facially unconstitutional and invalid because it permits corporations and limited liability companies to engage in the sale of wine.

2. Initiative Petition No. 396 violates the Equal Protection Clause and the Oklahoma Constitution because it permits the sale of wine on premises where other goods, wares, or merchandise are sold.

The Oklahoma Constitution has long prohibited the sale of other goods, wares, or merchandise on premises where wine is sold. Article 28, § 4 (“No goods, wares, or merchandise shall be sold and no services shall be rendered on the same premises on which retail package alcoholic beverages are sold.”); *see also* Okla. Stat. tit. 37, § 506(3) (defining alcoholic beverage as alcohol, spirits, beer, and wine). Similarly, Oklahoma law provides that “[n]o package store license shall be issued for premises unless said premises are separated from premises on which any other goods, wares or merchandise are sold or services are rendered by nontransparent walls which may be broken by a passageway to which the public is not admitted.” Okla. Stat. tit. 37, § 534(A); *see also Shadid v. Okla. Alcoholic Beverage Control Bd.*, 1982 OK 3, ¶ 5, 639 P.2d 1239 (stating “[t]he constitutional and statutory restrictions were imposed to prevent . . . the sale of other goods in retail liquor package stores”).

In direct violation of Oklahoma law and policy, Initiative Petition No. 396 permits the sale of other goods, wares, and merchandise on premises where alcoholic beverages, specifically wine, are sold. The Oklahoma Constitution, Oklahoma statutory law, and this Court’s jurisprudence have long prohibited the sale of other products where alcoholic beverages are sold.

Initiative Petition No. 396 facially violates Article 28 of the Oklahoma Constitution by permitting wine licensees to sell other goods.

Permitting wine licensees to sell other goods also unnecessarily, arbitrarily, and irrationally discriminates against package store licensees who are clearly prohibited from doing the same. Initiative Petition No. 396 allows wine licensees to sell any other goods or wares in addition to the sale of wine. This places package store licensees at an economic disadvantage. Under Initiative Petition No. 396, wine licensees are permitted to sell glassware, corkscrews, food and groceries, and many other items, whether the items are commonly associated with wine consumption or not. Package store licensees may sell only alcoholic beverages. Accordingly, package store licensees are at a distinct economic disadvantage because, presumably, consumers will choose the convenience of purchasing wine in a grocery store. There is no rational reason advanced and no legitimate State interest furthered by prohibiting package store licensees to sell other wares or goods while permitting wine licensees to do so. Such discrimination unfairly, arbitrarily, and unconstitutionally discriminates against package store licensees.

The Court should strike down Initiative Petition No. 396 as facially unconstitutional and invalid because it permits the sale of other goods, wares, and merchandise on the same premises where wine is sold.

3. Initiative Petition No. 396 violates the Equal Protection Clause and Oklahoma law because it permits wine licensees to hold more licenses for the sale of wine than retail package store licensees.

Package store licensees may hold only one license and own only one package store. Okla. Stat. tit. 37, § 534(A). Initiative Petition No. 396 permits wine licensees to hold up to six wine licenses, permitting such licensees to sell wine on six different premises. Furthermore, the Petition prohibits package store licensees from even obtaining a single wine license.

Permitting wine licensees to hold up to six licenses for the sale of wine unnecessarily, arbitrarily, and irrationally discriminates against package store licensees who are permitted to hold only one license for the sale of wine. As discussed above, this distinction gives wine licensees a marked competitive advantage. Each wine licensee can sell wine at five more locations than any of their package store competitors. Initiative Petition No. 396 permits wine licensees, as a whole, to create a monopoly on the sale of wine, driving out package store licensees.

The Court should strike down Initiative Petition No. 396 as unconstitutional and invalid because it permits wine licensees to hold more licenses for the sale of wine than retail package store licensees may hold.

4. Initiative Petition No. 396 violates the Equal Protection Clause and the Oklahoma Constitution because it permits non-residents to sell wine.

The Oklahoma Constitution requires that package store licensees, including all copartners, must be a ten-year resident of the State of Oklahoma. Article 28, § 10(b). As discussed above, in *Meyer* this Court stated that the purpose for Oklahoma's licensing requirements and prohibitions is to assign personal responsibility for the compliance with Oklahoma liquor laws. 1995 OK CIV APP 11, ¶ 13. Initiative Petition No. 396 allows wine licensees to sidestep the Court's personal responsibility requirements by permitting non-residents to sell wine in Oklahoma.

Additionally, permitting non-residents to sell wine in Oklahoma unnecessarily, arbitrarily, and irrationally discriminates against package store licensees who must be Oklahoma residents for ten years before they are licensed to sell wine within the State. There is no rational reason advanced and no legitimate State interest furthered by permitting the issuance of wine licenses to non-residents. As discussed above, legitimate state interests are furthered by

restricting non-residents from obtaining any type of license to sell alcoholic beverages. Oklahoma residents are more accountable to the laws of Oklahoma and have more at stake in insuring that their package stores comply with Oklahoma liquor laws.

The Court should strike down Initiative Petition No. 396 as unconstitutional and invalid because it permits non-residents to sell wine within Oklahoma.

5. Initiative Petition No. 396 violates the Equal Protection Clause and Oklahoma law because it permits the sale of wine on premises that do not comply with the hours requirements set forth in Okla. Stat. tit. 37, § 537(c)(3).

Oklahoma law permits package stores to be open only from the hours of 10:00 a.m. to 9:00 p.m. Monday through Saturday. Okla. Stat. tit. 37, § 537(c)(3). Initiative Petition No. 396 requires wine licensees to sell wine during the same hours, but permits their premises to be open any other time for the sale of other goods, wares, or merchandise. As discussed above, package store licensees are permitted to sell only alcoholic beverages on their premises.

Permitting wine licensees to avoid the hours requirements of Okla. Stat. tit. 37, § 537(c)(3) unnecessarily, arbitrarily, and irrationally discriminates against package store licensees. Package store licensees sole source of revenue are the sale of alcoholic beverages during limited hours and on certain days of the week. Permitting wine licensees to be open for the sale of other goods during extended hours places wine licensees at an economic advantage. Wine licensees would have more revenue streams and, presumably, the possibility of more income than package store licensees.

The Court should strike down Initiative Petition No. 396 as unconstitutional and invalid because it permits wine store licensees to keep their premises open any hour for the sale of non-wine goods, wares, or merchandise.

6. Initiative Petition No. 396 violates the Equal Protection Clause and Oklahoma law because it permits the sale of wine on premises allowing the entry of persons under 21 years of age.

Package stores may permit entry only to persons over 21 years of age. Okla. Stat. tit. 37, § 537(c)(7). Initiative Petition No. 396 permits wine licenses to allow minors on their premises for the purchase of other wares, goods, or merchandise.

Furthermore, permitting wine licensees to allow persons under 21 years of age on their premises while prohibiting package store licensees to do the same unnecessarily, arbitrarily and irrationally discriminates against package store licensees. Package store licensees must diligently ensure that not only do they not sell alcoholic beverages to minors, but that they not permit minors to enter onto their premises. Wine licensees would not be subject to the same stringent requirement. Furthermore, Initiative Petition No. 396 provides minors more exposure and access to alcoholic beverages and provides minors the opportunity to illegally acquire or possess alcoholic beverages. There is no legitimate State interest furthered by permitting wine licensees to allow minors on their premises while prohibiting package store licensees from doing the same.

The Court should strike down Initiative Petition No. 396 as unconstitutional and invalid because it permits wine licensees to allow persons under 21 years of age to enter premises where alcoholic beverages are sold.

CONCLUSION

For the reasons stated above, Protestant Yousef Javadzadeh respectfully requests that the Court order Initiative Petition No. 396 invalid and unconstitutional, and that the Proponents be prohibited from presenting Initiative Petition No. 396 for signatures.

Respectfully submitted,

By: *Jon Brightmire*

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ATTORNEYS FOR PROTESTANT
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CERTIFICATE OF MAILING TO ALL PARTIES AND

I hereby certify that a true and correct copy of the above and foregoing Opening Brief was mailed May 4, 2012 to:

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by depositing it in the U.S. Mails, postage prepaid.



Jon E. Brightmire

SUPREME COURT
STATE OF OKLAHOMA

MAY 15 2012

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MICHAEL S. FICHIE
CLERK

IN RE: INITIATIVE PETITION NO. 396;

Case No. 11-0110

STATEQUESTION NO. 763

FILED

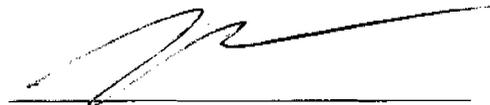
MAY 16 2012

Entry of Appearance

OKLAHOMA SECRETARY
OF STATE

The undersigned attorney hereby appears as counsel for Oklahomans for Modern

Laws, Sean Campbell and Brian Howe, Proponents, in this case.



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MAY 16 2012

OKLAHOMA SECRETARY
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CERTIFICATE OF SERVICE

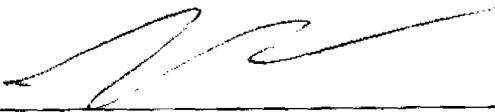
The undersigned certifies that on the 15th of May, 2012, a copy of the foregoing document was mailed to the following:

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FILED

JUL 02 2012

2012 OK 67

FILED
SUPREME COURT
STATE OF OKLAHOMA
JUN 28 2012

OKLAHOMA SECRETARY
OF STATE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

In re: Initiative Petition No. 396, State)	
Question No. 763.)	No. 110,610
)	(consolidated with 110,611)
)	FOR OFFICIAL PUBLICATION
)	

ORDER

¶1 Pursuant to 34 O.S.2011, § 8(B), and after examining the briefs and hearing the oral argument of June 21, 2012, this Court finds that Initiative Petition No. 396, State Question No. 763 does not violate the Constitution of the State of Oklahoma, nor the Constitution of the United States.

¶2 The single subject rule found in Article 24, § 1 of the Constitution of the State of Oklahoma is not violated. We find that all portions of the proposed amendment are germane to the subject of Initiative Petition No. 396, State Question No. 763.

¶3 The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States is not violated. Neither an invidious classification nor any deprivation of a fundamental interest is shown, and there is a rational basis for the provisions within Initiative Petition No. 396, State Question No. 763.

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OF STATE

DONE BY ORDER OF THE SUPREME COURT THIS 28th DAY OF
JUNE, 2012.



ACTING CHIEF JUSTICE

CONCUR: KAUGER, WINCHESTER, EDMONDSON, REIF and GURICH, JJ.,

DISSENT: TAYLOR, C.J., (The provisions of this initiative petition violate the Constitutional mandates of strict regulation of alcohol, single subject rule and Equal Protection. I would not approve it.), COLBERT, V.C.J. (by separate writing), WATT, J. and COMBS, J. (by separate writing)

FILED

JUL 02 2012

**OKLAHOMA SECRETARY
OF STATE**

2012 OK 67

**FILED
SUPREME COURT
STATE OF OKLAHOMA
JUN 28 2012
MICHAEL S. RICHIE
CLERK**

In re: Initiative Petition No. 396,) No. 110,610 (cons. w/110,611)
State Question 763.) For Official Publication

COLBERT, V.C.J., with whom Watt, J. joins, dissenting

¶ 1 In its unnecessary haste to dispose of this matter with a one-page order containing legal conclusions only, this Court fails to explain any rationale for today's decision. Close examination of the proposed constitutional amendment however, demonstrates serious constitutional infirmities which this Court has never addressed.

¶ 2 Initiative Petition No. 396, State Question No. 763, is proposed for a vote of the people by Oklahomans for Modern Laws and others. This protest is brought by two public interest groups, Fighting Addiction Through Education and the Oklahoma Prevention Policy Alliance, which challenge the constitutionality of the proposed measure. Additionally, one of the organizations challenges the ballot title and gist. No mention of that challenge appears in the majority's abbreviated order. The proposed ballot title of Initiative Petition No. 396 states:

This measure adds a new Section 4.A and amends Section 10 of Article 28 of the State Constitution. It allows for the retail sale of wine for off-premises consumption in warehouse clubs, superstores, supermarkets and other grocery (except convenience) stores. It provides for a grocery store wine license. Such sales of wine would only be authorized after being approved at an election by the voters in counties with a population of 50,000 or more persons. The sale of wine to persons under 21 years of age would be prohibited. The measure provides for the days and hours, taxation on wine sales, fees for licences and purchase and distribution of wine to be the same as for retail package stores. It allows corporations to hold

grocery store wine licenses. It limits the number of locations by a licensee to six. It provides other limits on licenses. It would allow grocery store wine licenses to be held by corporations and other businesses from outside the state. It would allow an election to be called by the county commissioners or by a petition of registered voters.

¶ 3 Under Oklahoma's current scheme of alcohol regulation, Oklahoma resident sole proprietors and partnerships, but not corporations, are allowed to sell wine and other liquor in package stores. The scheme is one of "strict regulation" of alcoholic beverages, Okla. Const. art. II, § 28, and it is designed to maintain personal responsibility for the sale of alcohol by package stores. See, Meyer v. Okla. Alcoholic Beverages Laws Enforcement Comm'n, 1995 OK CIV APP 11, ¶ 13, 890 P.2d 1361, 1364. A license for a package store is limited to one location.

¶ 4 Wine has become a large and lucrative commodity in Oklahoma and it generates an enormous amount of revenue from its sale. The proposed measure departs from Oklahoma's regulation of wine in a number of significant ways. It would no longer treat wine as liquor when it is sold in a grocery store and instead it would essentially place it in a new category between 3.2 percent beer, which is sold in grocery and convenience stores for off-premises consumption, and intoxicating liquors, which are sold for off-premises consumption in package stores only. It would allow for the sale of wine in grocery stores, but not convenience stores. The proposed measure calls for a statewide vote to determine whether the Oklahoma Constitution will be amended to permit counties

of 50,000 or more population to vote on whether wine will be sold in grocery stores.

¶ 5 Only select grocery stores, however, would be allowed to participate in and benefit from the sale of wine. Only large grocery businesses, those with over 25,000 square feet of floor space, could sell wine; the smaller grocers could not. They could do so in multiple locations. Further, only stores located in counties with a population of 50,000 or more persons would be eligible for a license, provided that voters in the county approved such sales. Additionally, in counties that have approved such sales, out of state corporations would be permitted to purchase multiple licenses for the sale of wine.

¶ 6 The proposed ballot measure suffers from a number of constitutional infirmities; some were identified by the protestants and some were not. At least two of them merit discussion.

¶ 7 The Fourteenth Amendment's promise of equal protection prohibits regulatory classifications that are arbitrary and capricious or are not rationally related to a legitimate legislative goal.¹ The proposed measure creates two classes of grocery store owners within counties of 50,000 or more which have approved the sale of wine in grocery stores; those with a floor space larger than 25,000 square feet and smaller grocery stores. No plausible rational basis for

¹ The cases cited in Justice Combs' dissent in this matter adequately demonstrate this rule of law.

this classification has been offered and the majority opinion fails to provide one.

¶ 8 The economic advantage which the proposed measure would provide to large grocers, most of which are owned by out-of-state corporations, is a radical change from the locally-owned, sole proprietor or partnership approach that the voters in Oklahoma have adopted to regulate the sale of liquor. It would shift away the individual responsibility for regulation provided in the package store approach to the corporate interests of large chain corporate grocers. It will seriously impact the tax revenues of the rural localities that are near urban centers. That loss of revenue will certainly impact the schools and local governments that rely on such revenues.

¶ 9 Additionally, the measure creates two classes of counties based on population. The proposed measure creates an urban class that will enjoy the convenience of grocery store wine sales and the accompanying revenues which benefit local schools and local government. The measure also creates a rural class that will never enjoy the convenience or benefit of such sales merely because fewer than 50,000 people live in their county.

¶ 10 The proponents of the measure have not identified a rationale for treating the two classes of similarly situated residents differently except to say that fewer residents equates to fewer police officers to enforce the regulation of the sale of wine in grocery stores. This asserted rationale for the classification is not rationally related to a need to classify residents for purposes of the proposed

measure. Therefore, to arbitrarily put a requirement of 50,000 population and 25,000 square feet without a rational basis articulated, arguably constitutes deliberate and systemic invidious discrimination and disparate treatment of a class of people constituting taxpayers, homeowners, and children being educated in those communities that have a population of less than 50,000. The proposed measure fails the rational relationship test and therefore it violates the Equal Protection Clause of the Fourteenth Amendment and Article V, section 46 of the Oklahoma Constitution.

¶ 11 The majority treats the “rational relationship” test as if it were an automatic pass for any economic regulation that does not involve a suspect class.

Apparently it has failed to realize that the presence of a suspect class would invoke strict scrutiny, not the rational basis test. However, in applying even the lowest level of scrutiny, a legitimate and rationally-related reason for classifying similarly situated individuals differently must be articulated. An adequate and meaningful equal protection analysis must consist of more than the majority’s one-sentence conclusion of law.

¶ 12 The arbitrary population classification also impacts the one-person-one-vote principle of the Fourteenth Amendment. “Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges that right.” Wesberry v. Sanders, 376 U.S. 1, 17-18 (1964). The population classification will diminish

the rural resident's vote in two ways. First, if adopted, the measure provides a benefit in convenience and tax revenues only on the populous counties.

Therefore, rural voters are being asked to vote on a measure that can benefit only those who live or shop in urban areas. The benefits are by design reserved only to the populous counties. Additionally, the number of voters in urban areas far exceeds that of rural voters.² The rural vote will therefore not significantly impact the vote as to adoption of the proposed measure. As a result, the vote of a rural resident will be less valuable than that of an urbanite in terms of both its relative effect on the election and any benefit the rural voter will actually enjoy from the measure.

¶ 13 As recently as January of this year, a majority of this Court, speaking in the context of a redistricting challenge, expressed a commitment to "continue to adjudicate all claims of voter inequality." Wilson v. State ex rel. State Election Bd., 2012 OK 2, ¶ 3, 270 P.3d 155, 159 (Colbert, V.C.J., with whom Kauger, Watt, Reif, Combs, and Gurich, JJ., join concurring). Today's retreat from that commitment is troubling.

¶ 14 Although the voters of Oklahoma have reserved to themselves the right to

² Population data provided by the Oklahoma Department of Commerce on its website demonstrate that in 2010 approximately 66 per cent of Oklahoma residents were located within the 15 counties with populations in excess of 50,000. In 2000, those 15 counties contained approximately 63 per cent of the population of Oklahoma. The remaining population resided in the other 62 counties.

propose changes to the Oklahoma Constitution, those proposals must pass constitutional muster. It is this Court's duty to insure that challenges to initiative petitions are carefully considered and thoroughly analyzed. The majority's failure to adequately address the constitutional issues presented in a matter that potentially impacts the right to a meaningful vote and the right of equal treatment among those similarly situated are matters that require more than perfunctory conclusions concerning this protest.

FILED

JUL 02 2012

2012 OK 67

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SUPREME COURT
STATE OF OKLAHOMA
JUN 28 2012

OKLAHOMA SECRETARY
OF STATE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

In Re: Initiative Petition No. 396)
State Question No. 763.)

No. 110,610 (cons.w/ 110,611)

FOR OFFICIAL PUBLICATION

COMBS, J. , with whom Colbert, V.C.J. and Watt, J., join, dissenting

¶1 I must dissent to the majority's order. Although I do not believe the ballot title for Initiative Petition 396 violates the single subject rule found in Article 24, §1, I cannot reach the same conclusion as to the Equal Protection Clause.

¶2 The proposal limits the applicability of the amendment to those counties having a population of 50,000 or more persons according to the most recent federal decennial census. These counties¹ would have the opportunity to determine on an individual county basis by a vote of the public to approve the provisions of this amendment. This process is identical to the option counties have with the provisions for liquor by the drink, previously adopted by popular vote. See, Okla. Const. art. 28, §4. The difference however is that all counties, regardless of an arbitrary population number have the fundamental right to vote to allow or disallow the provisions of liquor by the drink. This constitutional amendment, if

¹ Counties affected include: Oklahoma, Tulsa, Cleveland, Comanche, Canadian, Rogers, Payne, Wagoner, Muskogee, Creek, Pottawatomie, Garfield, Grady, Washington and LeFlore.

approved by popular vote by the citizens of the entire state, provides no opportunity for the voters in counties having populations less than 50,000 to exercise their right to vote to participate.

¶3 Oklahoma presently has 62 counties who would not have the fundamental right to vote on the issue. Each of the 15 counties above the 50,000 limitation has approved liquor by the drink. Statewide, 51 counties have approved liquor by the drink,² therefore 36 counties that have approved liquor by the drink would have no opportunity to vote on the provisions to allow wine sales in grocery stores.

¶4 Although this Court on many occasions has upheld population based criteria in determining whether a law was a special or general law, the test for constitutionality is not numerical, but rather whether the classification is clearly capricious, arbitrary, and wholly unrelated to the Act. *See Burks v. Walker*, 1909 OK 317, ¶ 23, 109 P. 544, 549; *City of Enid v. Public Employees Relations Board*, 2006 OK 16, ¶ 15, 133 P.3d 281, 287; *Justice Kauger's concurring opinion in Jacob's Ranch, L.L.C. v. Smith*, 2006 OK 34, 148 P.3d 842.

¶5 The rational basis for the population limitation given by the proponents is the impact on law enforcement agencies in the enforcement of the law on counties having fewer than 50,000 people. The argument being that these "smaller"

² ABLE Commission as of 1-25-2010

counties would be unable to effectively enforce the grocery store sales. Shouldn't the individual county be allowed to consider such an impact as one aspect of approval or rejection of grocery store wine sales? The Equal Protection Clause of the United States Constitution states "[n]o State shall... deny to any person within its jurisdiction the equal protection of the laws."³ The Equal Protection Clause does not forbid classifications, but keeps governmental decision makers from treating differently persons who are in all relevant respects alike.⁴ Each of Oklahoma's 77 counties will have the right to vote on this question and the amendment to the Constitution. Each County should be treated equally and have the right to vote on the applicability of these amendments, not just the 15 largest counties in the State.

¶6 Where the impact on local law enforcement is a concern, who better to determine the impact than the citizens themselves by going to the polls and exercising their fundamental right to vote.

¶7 I respectfully dissent.

³ U.S. Const. amend. XIV, §1.

⁴ *Coalition for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

FILED

AUG 03 2012

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August 3, 2012

The Honorable V. Glenn Coffee
Secretary of State
2300 N. Lincoln Boulevard, Ste. 101
Oklahoma City, OK 73105-4897

Re: **State Question No. 763,
Initiative Petition No. 396**

Dear Sir:

I represent Oklahomans for Modern Laws, Sean Campbell and Brian Howe, Proponents of State Question No. 763, Initiative Petition No. 396 (collectively, "Proponents").

Please consider this letter to provide written notice as authorized by 34 O.S. § 8(E) that Proponents withdraw Initiative Petition No. 396, effective immediately.

Thank you for the courtesies and professionalism demonstrated by you and your staff during this process.

Sincerely,



LEE SLATER

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AUG 03 2012

**OKLAHOMA SECRETARY
OF STATE**