



Tom Gruber  
405.235.5582  
tgruber@gablelaw.com

March 2, 2016

The Honorable Chris Bengé  
Oklahoma Secretary of State  
2300 N Lincoln Boulevard, Suite 101  
Oklahoma City, OK 73105-4897

Re: Initiative Petition

Dear Mr. Secretary:

Please find enclosed for filing on behalf of our client, Oklahomans for Consumer Freedom, Proponents, a true 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. The initiative petition requests that the proposed Article 28A of the Oklahoma Constitution be submitted to the voters at the general election on November 8, 2016.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Tom Gruber', with a long horizontal flourish extending to the right.

Tom Gruber  
For the Firm

Counsel for Proponents

TG:pke  
enclosure

cc: Oklahoma Attorney General Scott Pruitt

**RECEIVED**

MAR 02 2016

**OKLAHOMA SECRETARY  
OF STATE**

**FILED**

MAR 02 2016

**PROPOSED BALLOT TITLE**

OKLAHOMA SECRETARY  
OF STATE

This measure amends the entirety of Article 28 of the Oklahoma Constitution as an amendment by article repealing Article 28 and adopting a new Article 28A. Beverages that contain alcohol would be governed by the new article and other laws. It would require the Legislature to enact laws to regulate alcoholic beverages. Common ownership between tiers of the alcoholic beverage business would be prohibited. Some restrictions would be applied to manufacturers, brewers, winemakers and wholesalers. Direct shipments to consumers would be prohibited unless direct shipments of wine are authorized by law, subject to limitations. Certain retail licenses are specified. The Legislature would prescribe other licenses. Sales of wine and beer would be permitted at certain licensed retail outlets. Licensees could sell refrigerated or non-refrigerated products, and retail spirits licensees could sell products other than alcoholic beverages in a limited amount. Certain restrictions relating to the involvement of the state and political subdivisions and public employees would be specified. Municipalities could also levy an occupation tax. Certain acts would be made unlawful. The Legislature would by law designate days and hours during which alcoholic beverages could be sold, and would impose taxes on sales. The amendment would be effective October 1, 2018, with one provision becoming effective upon passage.

SHALL THE PROPOSAL BE APPROVED?

YES - For the proposal

NO - Against the proposal

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

**WARNING**

**IT IS A FELONY FOR ANYONE TO SIGN AN INITIATIVE OR REFERENDUM PETITION WITH ANY NAME OTHER THAN HIS OWN, OR TO KNOWINGLY SIGN HIS NAME MORE THAN ONCE FOR THE MEASURE, OR TO SIGN THE PETITION WHEN HE IS NOT A LEGAL VOTER.**

**FILED****INITIATIVE PETITION**

MAR 02 2016

To the Honorable Mary Fallin, Governor of Oklahoma:

OKLAHOMA SECRETARY  
OF STATE

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 8th day of November, 2016, 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 \_\_\_\_\_. The question we herewith submit to our fellow voters is:

Shall the following proposed amendment of the entirety of Article 28 of the Oklahoma Constitution, as an amendment by Article repealing Article 28 and adopting Article 28A, be approved?

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA THAT A NEW ARTICLE 28A OF THE OKLAHOMA CONSTITUTION BE APPROVED:

**§ 1. Definition – Alcoholic Beverages.**

All beverages that contain alcohol, unless otherwise defined by law, shall be considered alcoholic beverages by this state and therefore governed by this Article and all other applicable laws.

**§ 2. Legislative Enactments – Manufacturers – Brewers – Wholesalers – Retailers – Winemakers.**

A. The Legislature shall enact laws providing for the strict regulation, control, licensing and taxation of the manufacture, sale, distribution, possession, transportation and consumption of alcoholic beverages, consistent with the provisions of this Article. Provided, except for small brewers:

1. The following shall apply:

(a) There shall be prohibited any common ownership between the manufacturing, wholesaling and retailing tiers, unless otherwise permitted by this subsection. Following the effective date of this Article, brewers may obtain beer wholesaler licenses to distribute beer, also known as brewery-owned branches, to up to two (2) territories within the state. Any brewery-owned branch in operation on the date of adoption of this Article may not expand its distribution territory that was in effect on the date of adoption of this Article. If a brewer maintained one or more licenses to distribute low-point beer in the state prior to the effective date of this Article, then up to two (2) of the brewer's low-point beer distribution licenses shall automatically convert to beer distribution licenses upon the effective date of this Article. All low-point distribution licenses shall cease to exist following this conversion date.

(b) From the adoption of this Article by the voters until the effective date of this Article, brewers may continue to obtain and operate up to two (2) low-point beer brewery-owned branches pursuant to the existing low-point beer laws pertaining to the distribution of low-point beer by brewery-owned branches.

(c) Only after the effective date of this Article, the legislature may duly enact legislation to require, by statute, the divestiture of all brewery-branches. If the Legislature requires

brewers to divest, it must require full divestiture of every brewery-owned branch in the state, and it shall allow brewers at least (1) year but no more than three (3) years to complete said divestiture. Except as provided in this subsection, and except for a small brewer as defined by law, no other member of one tier may own an interest in a business licensed in a different tier.

2. A manufacturer, except a brewer, shall not be permitted to sell alcoholic beverages in this state unless such sales occur through an Oklahoma wholesaler. A manufacturer, except a brewer, or subsidiary of any manufacturer, who markets his or her product solely through a subsidiary or subsidiaries, a distiller, rectifier, bottler, winemaker or importer of alcoholic beverages, bottled or made in a foreign country, either within or without this state, may sell such brands or kinds of alcoholic beverages to any licensed wholesaler who desires to purchase the same. Provided, if a manufacturer elects to sell its products to multiple wholesalers, such sales shall be made on the same price basis and without discrimination to each wholesaler;

3. A brewer, with the exception of a small brewer as defined by law, shall not be permitted to sell beer in this state unless such sales occur through an Oklahoma licensed wholesaler pursuant to a wholesaler agreement and remain at-rest in the licensed wholesaler's warehouse for at least twenty-four (24) hours, unless the sale occurs through a wholesaler that has obtained a hardship exception to this twenty-four (24) hour at-rest requirement. The wholesaler agreement shall designate the territory within which the beer will be sold exclusively by the wholesaler;

4. Winemakers either within or without this state may sell wine produced at their wineries to any licensed wholesaler who desires to purchase the wine; provided, that if a winemaker elects to sell the wine it produces to multiple wholesalers, then such sales shall be made on the same price basis and without discrimination to each wholesaler. In addition to its sales through one or more licensed wholesalers, a winemaker may be authorized to sell its wine as follows:

- a. winemakers either within or without this state may sell wine produced at the winery to adult consumers who are at least twenty-one (21) years of age and are physically present on the premises of the winery or at a festival or trade show, and
- b. winemakers either within or without this state that annually produce no more than fifteen thousand (15,000) gallons of wine may sell and ship only the wine they produce directly to licensed restaurants or other retail stores and outlets that may be from time to time authorized by the state to sell alcoholic beverages; provided, however, that any such winemaker which elects to directly sell its wine under this subparagraph shall not also use a licensed wholesaler as a means of distribution, and shall be required to sell its wines to every restaurant and other retail store or outlet that may be from time to time authorized by the state to sell wine for off-premises consumption who desires to purchase the same, as supplies allow, on the same price basis and without discrimination. As used in this section, "restaurant" means an establishment that is licensed to sell alcoholic beverages by the individual drink for on-premises consumption and where food is prepared and sold for immediate consumption on the premises. Any winemaker within or without this state that annually produces no more than fifteen thousand (15,000) gallons of wine and elects to directly sell its wine to restaurants and other retail stores and outlets that may be from time to time authorized by the state to sell wine for off-premises consumption must self-distribute the wine using only vehicle(s) owned or leased by the winemaker, and without the use of a common or private contract carrier.

All provisions of this paragraph are declared to be interdependent; and

5. Every wholesaler, except a beer wholesaler, must sell its products on the same price basis and without discrimination to all on-premises and off-premises licensees, unless otherwise provided by law. Every beer wholesaler must sell its beer to all on-premises licensees on the same price basis and without discrimination and to all off-premises licensees on the same price basis within a particular county and without discrimination. Every wholesaler must receive payment in full upon receipt of the alcoholic beverage by all on-premises and off-premises licensees. It shall be unlawful for any wholesaler to grant to any member of the retail tier, directly or indirectly, any credit, loan, discount, rebate, free goods, allowance or other inducement not otherwise expressly permitted by state law.

B. No alcoholic beverage shall be shipped directly to a consumer from a manufacturer within or without the state, unless such shipment has been authorized by law. Provided, if direct shipment is authorized by law, it shall be limited to the direct shipment of wine by wineries within or without the state who have secured all necessary permits and remitted all necessary taxes as prescribed by the state, to Oklahoma residents:

- a. who are at least twenty-one (21) years of age,
- b. who intend the wine for personal use and not for resale,
- c. who will not receive by direct shipment more than six (6) nine-liter cases of wine from any single winery per year, and
- d. who will not receive by direct shipment more than thirty (30) nine-liter cases of wine per year.

C. All laws passed by the Legislature under the authority of the Article shall be consistent with the provisions of this section. If any provision of this Article applicable to winemakers is ruled to be unconstitutional by a court of competent jurisdiction, then no winemaker shall be permitted to directly sell its wine to restaurants or other retail stores and outlets that may be from time to time authorized by the state to sell wine for off-premises consumption or to consumers in this state.

### **§ 3. Legislative Enactments – Licensing.**

A. The Legislature shall, by law, prescribe a set of licenses for the sale of alcoholic beverages to consumers for off-premises consumption, which shall include but not be limited to:

1. A Retail Spirits License, which shall be required in order to sell the following:
  - a. spirits in their original sealed package, and/or
  - b. refrigerated and non-refrigerated wine and beer in their original sealed package.

A holder of a Retail Spirits License shall be permitted to sell at retail any item that may be purchased at a grocery store or convenience store, as defined by law, so long as the sale of items other than alcoholic beverages do not comprise more than ten percent (10%) of the holder's monthly sales;

2. A Retail Wine License, which shall be required in order to sell refrigerated or non-refrigerated wine in the original sealed package. Retail Wine Licenses may be owned without limitation on number by retail locations; and

3. A Retail Beer License, which shall be required in order to sell refrigerated or non-refrigerated beer in the original sealed package. Retail Beer Licenses may be owned without limitation on number by retail locations.

B. As used in this section, the term "retail location" shall include but not be limited to:

1. Supermarkets, grocery stores, convenience stores, pharmacies and other drug stores, warehouse clubs and supercenters as defined by law; and/or
2. Retail outlets which were authorized to legally sell low point beer as of the effective date of this section.

C. The Legislature shall, by law, prescribe a set of licenses for the sale of alcoholic beverages to consumers for on-premises consumption, which may include the sale of spirits, wine and/or beer, provided that such sales of alcoholic beverages by the individual drink have been authorized by the voters in the specific county where the alcoholic beverages are sold, either prior to or after the enactment of this article. Beer or malt beverages to which caffeine has been intentionally added as a separate ingredient for the purpose of providing a stimulant effect shall not be bought or sold by any entity holding a license under this Section within the State of Oklahoma. This Section should not be interpreted to prohibit the

sale of beer brewed with ingredients used for their flavor profile that contain caffeine as a natural constituent, such as coffee and chocolate.

#### **§ 4. Required Licenses.**

A. A Retail Spirits License shall only be issued to a sole proprietor who has been a resident of this state for at least five (5) years immediately preceding the date of application for such license, or a partnership in which all the partners have satisfied the same residency requirement. A Retail Spirits License shall not be issued to a corporation, limited liability company or similar business entity, and not more than one retail package license shall be issued to any person or general or limited partnership. Retail sale of alcoholic beverages by the individual drink for on-premises consumption is hereby authorized within a county if the voters of such county have previously approved such retail sale at an election.

B. A Wine and Spirits Wholesaler's License shall only be issued to a sole proprietor who has been a resident of this state for at least five (5) years immediately preceding the date of application for such license, or a partnership in which all the partners have satisfied the same residency requirement, except as otherwise provided in this section. A Wine and Spirits Wholesaler's License shall not be issued to a corporation, limited liability company or similar business entity, except as otherwise provided in this section.

C. The holder of a license specified in subsection B of this section may enter into an agreement with a corporation, limited liability company or similar business entity that would otherwise be prohibited from obtaining a license in this state under this section, provided that the corporation, limited liability company or similar business entity:

1. Has operated as the holder of a substantially equivalent license in another state for at least one (1) year immediately preceding its application to be added as a corporate partner;
2. Will actively participate in the day-to-day operations of the license holder;
3. Will secure all necessary permits with the state; and
4. Will not maintain more than a fifty percent (50%) equity interest in the license holder at any time.

D. The provisions of subsection B of this section shall not apply to beer wholesalers. A wholesaler of beer shall not be subject to any residency requirements and shall not be limited in the types of entities which may own such wholesalers.

E. The State of Oklahoma shall not issue a license to any person who has been convicted of a felony, or to any entity if any individual, partner, director or officer who maintains an ownership interest in the entity, has been convicted of a felony, unless otherwise provided by law.

#### **§ 5. Unlawful Acts.**

A. It shall be unlawful for any licensee to sell or furnish any alcoholic beverage to:

1. A person under twenty-one (21) years of age;
2. A person who has been adjudged insane or mentally deficient; or
3. A person who is intoxicated.

B. It shall be unlawful for any person under the age of twenty-one (21) years to misrepresent his or her age, for the purpose of obtaining the purchase of any alcoholic beverage.

C. The Legislature shall, by law, provide penalties for violations of the provisions of this section.

**§ 6. Legislative Enactments – Days and Hours of Operation.**

The Legislature shall, by law, designate the specific days, hours and holidays on which alcoholic beverages may be sold or served to consumers for off-premises and/or on-premises consumption. However, sales of beer and wine by a retail beer and wine licensee shall be permitted on the same days and at the same times that are allowed for the sale of existing low-point beer prior to this amendment.

**§ 7. Sales Tax Laws – Legislative Authority.**

The retail sale of alcoholic beverages shall be subject to the sales tax laws enacted by the Legislature and in addition thereto the Legislature may levy taxes upon the manufacture, possession and/or all sales of alcoholic beverages, including sales by any entity that sells alcoholic beverages to consumers for off-premises and/or on-premises consumption, the proceeds of which, except sales tax, shall be distributed provided by law.

**§ 8. State Prohibited – County Option Liquor by Individual Drink.**

The State of Oklahoma, or any political subdivision thereof, or any board, commission or agency thereof, is hereby prohibited from engaging in any phase of the alcoholic beverage business, including the manufacture, sale, transportation or distribution thereof, at wholesale or retail, and the maintenance, ownership or operation of warehouses or alcoholic beverage stores; except that if the voters of a county in which a state lodge is located approve retail sale of alcoholic beverages by the individual drink for on-premises consumption, and if the State Legislature enacts legislation approving such sales in any such lodges located in any such counties, then such sales are authorized. The Legislature may enact laws restricting the involvement of officers and employees of the state and political subdivisions thereof in the alcoholic beverage business.

Provided, that nothing herein shall prohibit the sale of alcoholic beverages legally confiscated as provided by law.

**§ 9. Cities and Towns May Levy Occupation Tax.**

Incorporated cities and towns wherein the sale of alcoholic beverages is lawful, may levy an occupation tax, not exceeding the amount of the State license fees, for the manufacture, distribution or sale of alcoholic beverages.

**§10. Repealer.**

Article 28 of the Constitution of the State of Oklahoma is hereby repealed. The Prohibition Ordinance, Section 7, Article 1, and Article 27 of the Constitution of the State of Oklahoma, previously repealed by Article 28, are not revived by this repealer.

**§11. Effective Date.**

The provisions of this Article, except for Section 2(A)(1)(b), shall be effective as of October 1, 2018. Section 2(A)(1)(b) shall be effective immediately after this Article is duly adopted by the voters.

Names and Addresses of Proponents:

Oklahomans for Consumer Freedom  
1833 South Morgan Road  
Oklahoma City, OK 73128

Ron Edgemon  
3700 Crail Drive  
Norman, OK 73072

Sean C Campbell  
7316 NW. 94th St.  
Oklahoma City, OK 73162

**SIGNATURES**

This measure amends the entirety of Article 28 of the Oklahoma Constitution as an amendment by article repealing Article 28 and adopting a new Article 28A. Beverages that contain alcohol would be governed by the new article and other laws. It would require the Legislature to enact laws to regulate alcoholic beverages. Common ownership between tiers of the alcoholic beverage business would be prohibited. Some restrictions would be applied to manufacturers, brewers, winemakers and wholesalers. Direct shipments to consumers would be prohibited unless direct shipments of wine are authorized by law, subject to limitations. Certain retail licenses are specified. The Legislature would prescribe other licenses. Sales of wine and beer would be permitted at certain licensed retail outlets. Licensees could sell refrigerated or non-refrigerated products, and retail spirits licensees could sell products other than alcoholic beverages in a limited amount. Certain restrictions relating to the involvement of the state and political subdivisions and public employees would be specified. Municipalities could also levy an occupation tax. Certain acts would be made unlawful. The Legislature would by law designate days and hours during which alcoholic beverages could be sold, and would impose taxes on sales. The amendment would be effective October 1, 2018, with one provision becoming effective upon passage.

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20.	_____ /	_____ /	_____ /	OK	_____
	Signature and Printed Name	Residence	City		County

**AFFIDAVIT**

STATE OF OKLAHOMA, )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn say:

That I am at least eighteen (18) years old and that all signatures on the signature sheet were signed in my presence; I believe that each has stated his or her name, mailing address, and residence correctly, and that each signer is a legal voter of the State of Oklahoma.

\_\_\_\_\_  
Circulator's Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City Zip Code

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Address

\_\_\_\_\_  
City Zip Code

My Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(SEAL)



Chris Bengé  
Secretary of State  
and  
Native American Affairs

Mary Fallin  
Governor

SECRETARY OF STATE  
AND  
NATIVE AMERICAN AFFAIRS

**FILED**

**MAR 02 2016**

OKLAHOMA SECRETARY  
OF STATE

March 2, 2016

Oklahomans for Consumer Freedom  
1833 South Morgan Road  
Oklahoma City, Oklahoma 73128

Ron Edgemon  
3700 Crail Drive  
Norman, Oklahoma 73072

Sean C Campbell  
7316 NW 94<sup>th</sup> Street  
Oklahoma City, Oklahoma 73162

Dear Proponent(s):

This acknowledges receipt of the petition submitted to our office, which has been designated as **State Question Number 786, Initiative Petition Number 410**, and filed accordingly this March 2, 2016.

Per Title 34 O.S. Section 8, subsequent to the publication of the notice of filing of said petition, the apparent sufficiency or insufficiency thereof and notice that any citizen(s) of the state may file a protest as to the constitutionality of the petition, the Secretary of State will provide a notification to the proponent(s) setting the date to begin circulation for signatures. The date set shall not be less than fifteen (15) days nor more than thirty (30) days from the date when all appeals, protests and rehearings have been resolved or the period for filing such has expired.

If we may provide any further assistance or should you have any questions, please do not hesitate to contact our office (405-522-4565 or [executivelegislative@sos.ok.gov](mailto:executivelegislative@sos.ok.gov)).

Sincerely,

Chris Bengé  
Secretary of State and  
Native American Affairs

Cc: Gable Gotwals



Chris Bengé  
Secretary of State  
and  
Native American Affairs

Mary Fallin  
Governor

SECRETARY OF STATE  
AND  
NATIVE AMERICAN AFFAIRS

March 3, 2016

**RECEIVED**

MAR 03 2016

STATE ELECTION  
BOARD

Secretary Paul Ziriak  
Oklahoma State Election Board  
Room 3, State Capitol  
Oklahoma City, Oklahoma 73105

Dear Secretary Ziriak:

Please be advised that an initiative petition, designated as **State Question 786, Initiative Petition 410**, was sufficiently filed with the Office of the Secretary of State on Wednesday, March 2, 2016. Proponents of record for said petition is as follows;

Oklahomans for Consumer Freedom	Ron Edgemon	Sean C Campbell
1833 South Morgan Road	3700 Crail Drive	7316 NW 94 <sup>th</sup> Street
Oklahoma City, Oklahoma 73128	Norman, Oklahoma 73072	Oklahoma City, Oklahoma 73162

Please find enclosed a true and exact copy of State Question 786, Initiative Petition 410 on record with the Office of the Secretary of State.

Per Title 34 O.S. Section 8, subsequent to the publication of notice of filing of said petition, the apparent sufficiency thereof and notice that any citizen(s) of the state may file a protest as to the constitutionality of the petition, the Secretary of State will provide a notification to the proponent(s) setting the date to begin circulation for signatures. The date set shall not be less than fifteen (15) days nor more than thirty (30) days from the date when all appeals, protests and rehearings have been resolved or the period for filing such has expired.

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

Sincerely,

Chris Bengé  
Secretary of State and  
Native American Affairs



Chris Bengé  
Secretary of State  
and  
Native American Affairs

Mary Fallin  
Governor

SECRETARY OF STATE  
AND  
NATIVE AMERICAN AFFAIRS

March 3, 2016

RECEIVED

MAR 03 2016

OFFICE OF THE  
GOVERNOR

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

Dear Governor Fallin:

Please be advised that an initiative petition, designated as **State Question 786, Initiative Petition 410**, was sufficiently filed with the Office of the Secretary of State on Wednesday, March 2, 2016. Proponents of record for said petition is as follows;

Oklahomans for Consumer Freedom	Ron Edgemon	Sean C Campbell
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If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

Chris Bengé  
Secretary of State and  
Native American Affairs



Chris Bengé  
Secretary of State  
and  
Native American Affairs

Mary Fallin  
Governor

SECRETARY OF STATE  
AND  
NATIVE AMERICAN AFFAIRS

March 3, 2016

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

Dear Ms. Shea:

Please find enclosed the following for publication;

- **Notice of Filing for State Question 786, Initiative Petition 410**

Per Title 34 O.S. § 8, the publications must appear in at least one newspaper of general circulation in the State of Oklahoma. Please publish the enclosed notices in *The Oklahoman*, *Tulsa World*, and the *Journal Record* as soon as possible.

Also, upon the completion of publication, please provide our office with the corresponding Affidavits of Publication. Should you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink that reads "Chris Bengé".

Chris Bengé  
Secretary of State and  
Native American Affairs

**NOTICE OF THE FILING OF STATE QUESTION 786, INITIATIVE PETITION 410, THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)**

**NOTICE** is hereby given that on March 2, 2016, State Question 786, Initiative Petition 410 was filed in the Office of the Oklahoma Secretary of State.

**NOTICE** is also hereby given that State Question 786, Initiative Petition 410 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State.

**NOTICE** is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponents or proponents filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 786, Initiative Petition 410:

Oklahomans for Consumer Freedom 1833 South Morgan Road Oklahoma City, Oklahoma 73128	Ron Edgemon 3700 Crail Drive Norman, Oklahoma 73072	Sean C Campbell 7316 NW 94 <sup>th</sup> Street Oklahoma City, Oklahoma 73162
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**Chris Benge  
Oklahoma Secretary of State and  
Native American Affairs**

Classified provided by The Oklahoman. Phone may have area code of 405 if not mentioned.

## legal-notice > Legal Notices - Classified *9 Listings*

- March 16** C&J Energy Services will be applying for an Application for Pipe Pulling and Well Plugging License Form 1055 to plug and abandon wells in the State of Oklahoma.
- 
- March 13** C&J Energy Services will be applying for an Application for Pipe Pulling and Well Plugging License Form 1055 to plug and abandon wells in the State of Oklahoma.
- 
- March 13** **NOTICE OF THE FILING OF STATE QUESTION 786, INITIATIVE PETITION 410, THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, ? 8) NOTICE** is hereby given that on March 2, 2016, State Question 786, Initiative Petition 410 was filed in the Office of the Oklahoma Secretary of State. **NOTICE** is also hereby given that State Question 786, Initiative Petition 410 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State. **NOTICE** is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponents or proponents filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State. Proponents of record for State Question 786, Initiative Petition 410: Oklahomans for Consumer Freedom 1833 South Morgan Road Oklahoma City, Oklahoma 73128 Ron Edgemon 3700 Crail Drive Norman, Oklahoma 73072 Sean C Campbell 7316 NW 94th Street Oklahoma City, Oklahoma 73162 **Chris Bengé Oklahoma Secretary of State and Native American Affairs**
-

# Oklahoma Press Service

3601 North Lincoln Blvd.

Oklahoma City, OK 73105-

Voice (405) 499-0020 Fax (405) 499-0048

Monday, March 21, 2016 11:08 AM

Page 1

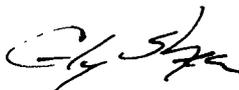
## Proof of Publication Order Number 16-03-47

I, Cindy Shea, of lawful age, being duly sworn upon oath, deposes and says: That I am the Authorized Agent of OK-THE OKLAHOMAN, 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 OK-THE OKLAHOMAN in consecutive issues on the following dates-to-wit:

Insertion: 03/13/2016

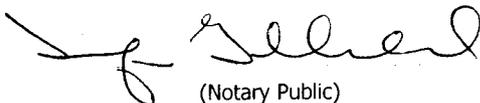
That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has 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 \$1,128.00



(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this  
21 day of March 2016.



(Notary Public)



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Proponents of record for State Question 786, Initiative Petition 410:

Oklahomans for Consumer Freedom  
1833 South Morgan Road  
Oklahoma City, Oklahoma 73128

Ron Edgemon  
3700 Crail Drive  
Norman, Oklahoma 73072

Sean C Campbell  
7316 NW 94th Street  
Oklahoma City, Oklahoma 73162

**Chris Bengé**  
Oklahoma Secretary of State  
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Insertion: 03/13/2016

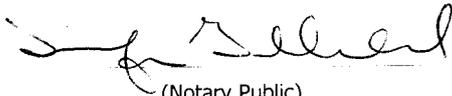
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PUBLICATION FEE \$57.22

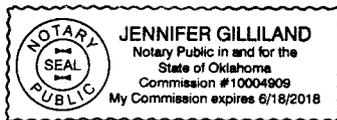


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Sean C Campbell  
7316 NW 94th Street  
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**Chris Benge**  
Oklahoma Secretary of State  
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Insertion: 03/14/2016

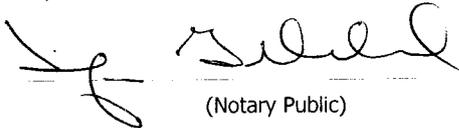
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PUBLICATION FEE \$36.15



(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this  
21 day of March 2016.



(Notary Public)



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Sean C Campbell  
7316 NW 94th Street  
Oklahoma City, Oklahoma 73162

**Chris Bengé**  
**Oklahoma Secretary of State**  
**and Native American Affairs**

MAR 24 2016

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA MICHAEL S. RICHIE  
CLERK

In re: )  
INITIATIVE PETITION 410 )  
STATE QUESTION 786 )

#114835

No. \_\_\_\_\_

**PROTEST TO THE INITIATIVE PETITION**

To: THE SUPREME COURT OF OKLAHOMA

-AND-

Oklahomans for Consumer Freedom  
1833 South Morgan Road  
Oklahoma City, Oklahoma 73128

Ron Edgemon  
3700 Crail Drive  
Norman, OK 73072

Sean Campbell  
7316 N.W. 94<sup>th</sup> Street  
Oklahoma City, Oklahoma 73162

Tom Gruber, Esq.  
Gable Gotwals  
One Leadership Square 15th Floor, 211 N. Robinson  
Oklahoma City, Oklahoma 73102

Chris Bengé  
Secretary of State  
421 N.W. 13<sup>th</sup> Street, Suite 210 & 220  
Oklahoma City, Oklahoma 73103

The Retail Liquor Association of Oklahoma, a non-profit organization founded under the laws of Oklahoma, and Bryan Kerr, an Oklahoma resident, protest the legal sufficiency of Initiative Petition No. 410, State Question No. 786 ("IP 410"), as follows:

RECEIVED

MAR 24 2016

OKLAHOMA SECRETARY  
OF STATE

### **Preliminary Statement**

1. IP 410 is unconstitutional because it denies to certain persons equal protection under the law in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

2. IP 410 violates Article 2, Section 7 of the Oklahoma Constitution because it contains several unconstitutionally vague provisions.

3. IP 410 violates federal law by leaving open the possibility of wholesalers offering discounts or incentives to members of the retail tier.

4. The gist of IP 410 is legally insufficient and misleading under Oklahoma law.

### **Background**

5. On March 2, 2016, the proponents of IP 410 filed that Petition with the Secretary of State. *See* Letter from Sec'y of State Chris Benge to Oklahomans for Consumer Freedom (March 2, 2016), *available at*: <https://www.sos.ok.gov/documents/questions/786.pdf>.

6. On March 13, 2016, the Secretary of State published notice of the filing of IP 410 in newspapers of record in Oklahoma.

### **The Oklahoma Supreme Court Has the Power to Conduct a Pre-Election Review of an Initiative Petition**

7. Oklahomans have the right to enact laws by a vote of the people through the initiative petition process, which 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 important right is protected by the Court, it is not absolute. *In re Initiative Petition No. 384*, at ¶ 2 (internal citation omitted). Any citizen can protect the sufficiency and

legality of an initiative petition. *Id.* (citing Okla. Stat. tit. 34, § 8).

8. The Court has original jurisdiction over protests challenging the sufficiency of an initiative petition. Okla Stat. tit. 34, § 8. Upon 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 and manifest constitutional infirmities." *Id.*

9. An initiative that violates federal constitutional law must be declared unconstitutional and invalid for all purposes. *See* Art. 1, § 1, of the Oklahoma Constitution ("The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.")

#### **IP 410 Violates the Fourteenth Amendment to the U.S. Constitution**

10. "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, 10 112 S.Ct. 2326, 2331 (1992). The Equal Protection Clause does not forbid classifications, but instead keeps governmental decision-makers from treating differently persons who are alike in all relevant aspects. *Id.* (internal citation omitted); *see also Okla. Broadcasters Ass'n v. Crisp*, 636 F.Supp. 978 (W.D. Okla 1985). The Equal Protection Clause is essentially a direction that "all persons similarly circumstanced should be treated alike." *Plyler v. Doe*, 457 U.S. 202, 216, 102 S.Ct. 2382, 2394

(1982). Where the classification at issue involves neither an invidious classification nor the denial of a fundamental interest, the Equal Protection Clause requires that the classification bear a rational relationship to legitimate governmental ends. *City v. Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446, 105 S.Ct. 3249, 3257-3258 (1985). States may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational. *Id.*

11. The Equal Protection Clause applies to IP 410 because IP 410 proposes different treatment for similarly situated persons – retail spirits license holders, who can sell spirits, wine and beer, and retail wine and beer license holders, who can sell wine and beer. IP 410 also proposes unequal treatment for in-state and out-of-state corporations wishing to hold a wine and spirits wholesalers license.

A. **IP 410 violates the Equal Protection Clause because it limits the number of retail spirit licenses a person may hold while imposing no limit on the number of retail wine and beer licenses a person may hold**

12. Section 4(A) of IP 410 provides that only one retail package store license can be issued to any person or general or limited partnership.

13. Sections 3(A)(2) and 3(A)(3) of IP 410 provide that retail wine licenses and beer licenses may be owned without limitation on number by retail locations.

14. Permitting retail wine licensees and beer licensees an unlimited number of licenses unnecessarily, arbitrarily, and irrationally discriminates against holders of retail spirits licenses, who are permitted to hold only one license for the sale of wine and beer. This distinction gives the wine and beer licensees a real and unfair competitive advantage and places retail spirit licensees at an enormous economic disadvantage. Such a restriction on retail spirit license holders would result in many smaller stores closing due to the rapid influx of retail wine

and beer license holders (which would include, but not be limited to, grocery stores, pharmacies, convenience stores, and supercenters). There is no rational basis or legitimate state interest furthered in allowing retail and wine beer license holders to have unlimited locations and restricting retail spirits license holders to only one license and one location.

**B. IP 410 violates the Equal Protection Clause because it limits the sale of items other than alcoholic beverages by retail package store licensees but places no limitation on the sale of any product, alcoholic or non-alcoholic, by retail wine and beer licensees.**

15. Section 3(A)(1) of IP 410 limits the sale of items other than alcoholic beverages by retail spirit license holders to no more than ten percent (10%) of the holder's monthly sales. There is no corresponding limitation on retail wine and beer license holders as to their sales of either alcoholic beverages or retail items.

16. The limitation on retail spirit license holders without a corresponding limit on retail wine and beer license holders unnecessarily, arbitrarily, and irrationally discriminates against holders of retail spirits licenses. Retail spirit license holders are at a distinct economic disadvantage compared to retail wine and beer license holders as any sale of items besides alcoholic beverages by the retail spirit license holders is so limited as to make it difficult for them to compete with a retail grocery store or convenience store, which under IP 410 can sell as much alcohol and as many retail items as they desire.

17. In addition, the requirement that retail spirit license holders ensure that only ten percent (10%) of their sales are associated with items other than alcoholic beverages is overly burdensome and oppressive as compared to the retail wine and beer license holders who are not required to keep track of the relative sales of alcoholic beverage versus other retail items. There is no rational basis for this distinction and burden, nor is there a legitimate state interest in restricting retail spirit license holders in this way. As an example, convenience stores could

become exclusively wine/beer outlets, while retail spirits licensees are burdened with restricting sales of non-alcohol merchandise and the requisite bookkeeping.

C. **IP 410 violates the Equal Protection Clause because it contains a residency requirement for the holder of a retail spirits license as well as a limitation on the types of entities that can hold such a license, while having no such restrictions for a retail wine or beer license holder**

18. Section 4(A) IP 410 states, “A Retail Spirit License shall only be issued to a sole proprietor who has been a resident of this state for at least five (5) years immediately preceding the date of application for such license, or a partnership in which all the partners have satisfied the same residency requirement. A Retail Spirits License shall not be issued to a corporation, limited liability company, or similar business entity...”

19. IP 410 has no such restriction on the types of business entities that can obtain a retail wine or beer license, nor does it impose a residency restriction on applicants for these licenses.

20. In *Meyer v. Okla. Alcoholic Beverage Law Enforcement Comm'n*, 1995 OK CIV APP 11, ¶ 13, 890 P.2d 1361, the Court discussed the current version of Article 28 of the Oklahoma Constitution which contains the laws regarding alcohol sales and distribution. The Court noted that one of the evident purposes of Oklahoma’s licensing requirements and prohibitions is to assign personal responsibility for the compliance with Oklahoma liquor laws. Allowing out of state corporations and other similar business entities to hold retail wine and beer licenses shields these entities from the type of personal responsibility that Oklahoma law has sought to enforce on such license holders.

21. The restriction on the types of business entities who can apply for retail spirit licenses and the residency requirement on said applicants unnecessarily, arbitrarily, and irrationally discriminates against the applicants for and holders of retail spirit licenses. Retail

spirit license holders are entirely personally responsible for compliance with Oklahoma's liquor laws as well as any negligent or criminal acts on the premises, whereas the retail wine and beer license holders would not be. This places retail spirit license holders at a disadvantage as a single incident could bankrupt a sole proprietorship, while the same incident would have little to no effect on an out-of-state corporation. In addition, retail spirit license holders are the face of their business and are personally accountable to the state and the public for all activities at their establishment. Retail wine and beer license holders are shielded from individual scrutiny by the corporate structure, whereas the retail spirit license holders are forced to face such direct public scrutiny.

22. There is no rational basis or legitimate state interest furthered by such a distinction between retail spirit license holders and retail wine and beer license holders.

**D. IP 410 violates the Equal Protection Clause by providing different regulations on the days and hours during which the different license holders may sell their products**

23. Section 6 of IP 410 states, "The Legislature shall, by law, designate the specific days, hours and holidays on which alcoholic beverages may be sold or served to consumers for off-premises and/or on-premises consumption..." IP 410 further states, "However, sales of beer and wine by a retail beer and wine licensee shall be permitted on the same days and at the same time that are allowed for the sale of existing low-point beer prior to this amendment."

24. Under current Oklahoma law, low-point beer can be sold Monday through Saturday from 7:00 a.m. until 2:00 a.m. and on Sundays from noon to 2:00 a.m. Retail package stores (which are the equivalent of the retail spirits licensees under IP 410) can only sell alcoholic beverages Monday through Saturday from 9:00 a.m. to 10:00 p.m. In addition, retail package stores are not allowed to be open on certain holidays.

25. This provision provides that no matter what the Legislature chooses to do regarding hours, days and holidays for sales of alcoholic beverages, retail wine and beer license holders are guaranteed that they will never be restricted to anything less than what the low-point beer establishments had prior to the amendment. Retail spirit license holders have no guarantee on what the Legislature can and cannot do.

26. Providing a guaranteed minimum days and hours of sale for retail wine and beer license holders unnecessarily, arbitrarily, and irrationally discriminates against the holders of retail spirit licenses. The legislature could severely curtail the hours and days of the week on which the retail spirit license holder could sell its products while the retail wine and beer license holders have no such concerns.

27. There is no rational basis or legitimate state interest furthered by such a distinction between retail spirit license holders and retail wine and beer license holders when all three are selling wine and beer.

E. **IP 410 violates the Equal Protection Clause by allowing out-of-state corporations become wholesale license holders but not allowing in-state corporations the same privilege**

28. Section 4(B) of IP 410 provides, "A Wine and Spirit Wholesaler's License shall only be issued to a sole proprietor who has been a resident of this state for at least five (5) years immediately preceding the date of application for such license, or a partnership in which all the partners have satisfied the same residency requirement, except as otherwise provided in this section. A Retail Spirits License shall not be issued to a corporation, limited liability company, or similar business entity, except as otherwise provided in this section." However, in Section 4(C), IP 410 provides that the holder of such a license can enter into an agreement with a corporation or other similar business entity that would otherwise be prohibited from obtaining a

wholesaler's license, provided that the entity has operated as the holder of a substantially equivalent license in another state, among other qualifications.

29. By providing that a corporation can enter into an agreement to be a wine and spirit wholesale license holder if it has held a similar license in another state, IP 410 discriminates against in-state corporations and other business entities, who are unlikely to have held such a license in another state, in favor of out-of-state corporations. This provision unnecessarily, arbitrarily, and irrationally discriminates against Oklahoma businesses. There is no rational basis or legitimate state interest furthered by allowing an out-of-state business, with no history or ties to the State of Oklahoma, to have such a license while not allowing an Oklahoma business the same opportunity.

**IP 410 Violates Article 2, Section 7 of the Oklahoma Constitution Because It Is Unconstitutionally Vague**

30. In the case of *In re Initiative Petition No. 366*, 2002 OK 21, 46 P.3d 123 (2002), this Court thoroughly addressed the vagueness issue in a state question proposal, and declared an initiative petition legally insufficient for submittal to the Oklahoma people for a vote in part because the initiative petition was found to be unconstitutionally vague.

31. This Court, citing *Grayned v. City of Rockford*, 408 U.S. 104, 107, 92 S.Ct. 2294 (1972), stated in pertinent part:

¶13 The due process clause of the Oklahoma Constitution requires statutory prohibitions to be clearly defined. Statutory prohibitions which are not clearly defined will be void for vagueness. Laws must afford "[a] person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that [the person] may act accordingly."

¶14 There are several inherent dangers of vague laws. Vague laws "may trap the innocent" by failing to provide fair warning. By failing to provide explicit standards, vague laws delegate basic policy matters to judges and juries for ad hoc resolution resulting in discriminatory enforcement. (impertinent portions omitted)

¶15. (Impertinent portions omitted) A vague statute's prohibitions become clear only after "courts [have] proceeded on a case-by-case basis to separate out constitutional from unconstitutional areas of coverage."

*In re Initiative Petition No. 366*, 2002 OK 21, ¶¶ 13-15, 46 P.3d 123 (2002).

32. The Protestants submit that several sections of IP 410 should be declared void for vagueness.

33. First, Section 2(A)(3) sets out a 24-hour "at-rest" provision, wherein a beer wholesaler is required to hold product in its warehouse for twenty-four hours unless the wholesaler has obtained a "hardship" exception. The "at-rest" provision is meant to ensure proper taxation on the product. It is difficult to imagine such a beer emergency wherein a "hardship" exception would be warranted. The drafters of IP 410 apparently could not do so either, because they never defined a "hardship", nor do they define who has the authority to declare such an emergency. Since no explicit standards are provided that inform the voter as to what constitutes a hardship, as well as the failure to declare how to obtain a hardship or who has the authority to grant a hardship, this provision violates Article 2, Section 7 of the Oklahoma Constitution.

34. Another impermissibly vague provision is Section 2(A)(5), which reads in pertinent part, "Every wholesaler, except a beer wholesaler, must sell its products on the same price basis and without discrimination to all on-premise and off-premise licensees, **unless otherwise permitted by law...**" (emphasis added). The Protestants submit that the drafters of IP 410 are trying to pull a "fast one" here. Again, the voter is forced to speculate as to whether he or she is voting for equal prices. Further, the voter will be unsure what is intended by the phrase "unless otherwise permitted by law", which of course renders the non-discrimination portion of the sentence meaningless. This leads to the classic situation warned against by this

Court in *In re Initiative Petition No. 366, Id.*, where "vague laws delegate basic policy matters to judges and juries for ad hoc resolution resulting in discriminatory enforcement." For these reasons, Protestants submit that Section 2(A)(5) is a clear violation of Article 2, Section 7 of the Oklahoma Constitution.

35. Section 3(B) contains yet another impermissibly vague provision. It reads in pertinent part, "As used in this section, the term 'retail location' shall include **but not be limited to:**

1. Supermarkets, grocery stores, convenience stores, pharmacies and other drug stores, warehouse clubs and supercenters as defined by law; and/or
2. Retail outlets which were authorized to legally sell low point beer as of the effective date of this section.

(emphasis added)

36. Again, the voter must speculate as to which type of retail locations will be permitted to sell wine and beer, since the provision clearly does not limit the locations to "supermarkets, grocery stores, convenience stores, pharmacies and other drug stores, warehouse clubs and supercenters as defined by law." In fact, this provision can be read to place no limits at all on which type of businesses may become a "retail location." For these reasons, Protestants submit that Section 2(A)(5) is a clear violation of Article 2, Section 7 of the Oklahoma Constitution.

37. Section 4(E) of IP 410 is another impermissibly vague provision. This section reads, "The State of Oklahoma shall not issue a license to any person who has been convicted of a felony, or to any entity if any individual, partner, director, or officer who maintains an ownership interest in the entity, has been convicted of a felony, **unless otherwise provided by law.**" (emphasis added). Here, it is impossible for the voter to know whether convicted felons will be permitted to hold licenses or not. This type of speculation is exactly what this Court

prohibited in *In re Initiative Petition No. 366, Id.*, when it stated, "**Laws must afford "[a] person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that [the person] may act accordingly.**" Emphasis added. Due to the vagueness of its language, Protestants submit that Section 4(E) of IP 410 should be declared an impermissible violation of Article 2, Section 7 of the Oklahoma Constitution.

**IP 410 Violates Federal Law by Expressly Preserving the Ability of Wholesalers to Induce Members of the Retail Tier to Purchase Products from that Wholesaler to the Exclusion of other Wholesalers**

38. "It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., art. VI, cl. 2, invalidates state laws that 'interfere with, or are contrary to,' federal law." *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712, 105 S.Ct. 2371, 2375 (1985) (citing *Gibbons v. Ogden*, 22 U.S. 1 (1824)).

39. There are several ways that federal laws can supersede state laws. State law can be nullified if it conflicts with federal law. This conflict arises when "compliance with both federal and state regulations is a physical impossibility..." *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143, 83 S.Ct. 1210, 1217 (1963).

40. The Code of Federal Regulations, Title 27 deals specifically with alcohol. Chapter 1, Subchapter A, Part 6, Subpart A, § 6.3 of Title 27 of the Code of Federal Regulations states as follows:

Except as provided in subpart D, it is unlawful for any industry member to induce, directly or indirectly, any retailer to purchase any products from the industry member to the exclusion, in whole or in part, of such products sold or offered for sale by other persons in interstate or foreign commerce by any of the following means:

(a) By acquiring or holding (after the expiration of any license held at the time the FAA Act was enacted) any interest in any license with respect to the premises of the retailer;

(b) By acquiring any interest in the real or personal property owned, occupied, or used by the retailer in the conduct of his business;

- (c) By furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to the exceptions contained in subpart D;
- (d) By paying or crediting the retailer for any advertising, display, or distribution service;
- (e) By guaranteeing any loan or the repayment of any financial obligation of the retailer;
- (f) By extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions as prescribed in §6.65; or
- (g) By requiring the retailer to take and dispose of a certain quota of any such products.

41. This provision makes it unlawful for an industry member (such as a wholesaler) to induce a retailer to purchase its products through certain means.

42. Section 2, Paragraph 5 of IP 410 states in relevant part, "It shall be unlawful for any wholesaler to grant to any member of the retail tier, directly or indirectly, any credit, loan, discount, rebate, free goods, allowance or other inducement **not otherwise expressly permitted by state law.**" (emphasis added).

43. This provision leaves open the possibility that wholesalers will be able to offer incentives to members of the retail class, in direct violation of federal law.

#### **The Gist of IP 410 is Misleading and Legally Insufficient**

44. 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 Supreme Court in *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 9, 164 P.3d 125, 129 describes the purpose of the gist is to prevent deceit, fraud and corruption in the initiative process. The gist must provide adequate information so that potential signatories can make an informed decision about the legislation. *Id.* at ¶ 12. The gist must also "explain the proposal's effect." *Id.* at ¶ 8.

45. The gist of IP 410 contains many instances of either misrepresentation about the content of the proposal or outright omissions of major changes to existing law. These include

the following:

- a. The gist states that “Common ownership between tiers of the alcoholic beverage business would be prohibited.” This is a bold-faced lie. Under Section 2(A)(1)(a), brewers (a type of manufacturer and a separate tier) can obtain beer wholesaler licenses (a separate tier) and distribute their own beer, in violation of the traditional three tier system. Section 4(C) of IP 410 also provides that out of state corporations to be able to hold up to a 50% interest in a wine and spirits wholesaler license if they hold a “substantially similar” license in another state. This could allow a manufacturer who holds a wholesaler license in another state to purchase 50% of an in-state wholesaler’s license, thereby allowing common ownership between tiers.
- b. The gist states that “Certain restrictions would be applied to manufacturers, brewers, winemakers and wholesalers.” This is not only vague, but it fails to inform the potential signatory that the “restrictions” contained in the proposal are in some instances immediately negated by other provisions of the proposal or by language such as, “unless otherwise provided by law.” See IP 410, Sections 2(A)(5) and 4(E). The reference to “restrictions” is misleading as most if not all of the restrictions are qualified with language allowing the Legislature to do away with the restriction.
- c. The gist fails to inform the potential signatory that under Section 4(A), only one retail spirit license is allowed per person or partnership, but that retail wine and beer licenses are unlimited pursuant to Section 3(A)(2) and (3).
- d. The gist fails to explain the discriminatory treatment of retail spirit license holders

on available days and hours of operation as compared to retail wine and beer license holders under Section 6.

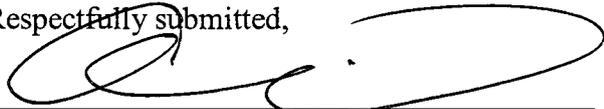
- e. The gist omits the fact that Section 4(C) provides that an out-of-state corporation can now own up to a 50% share of a wine and spirit wholesalers license, but provides no such opportunity for in-state corporations.
- f. Most importantly, the gist fails to inform the potential signatory that this proposal eliminates the Alcoholic Beverage Law Enforcement (“ABLE”) Commission. The gist fails to mention that enforcement of liquor laws would now be in the hands of seventy-seven individual sheriff's departments and hundreds of local police departments, which would likely result in varying application and enforcement of those laws.

46. When the gist of the petition is insufficient or misleading, as the gist of IP 410 is, the only course of action for the Court is to strike the proposal from the ballot.

WHEREFORE, the Protestant respectfully requests that this Court declare IP 410 unconstitutional, insufficient as a matter of law and invalid for all purposes, for the reasons set forth above.

Dated: March 24, 2016

Respectfully submitted,



Ann G. Richard-Farinha, OBA #20815

Janna Dunagan Gau, OBA #18370

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ATTORNEYS FOR PROTESTANT

**CERTIFICATE OF MAILING TO PARTIES**

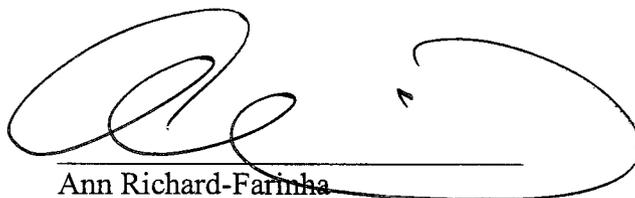
25<sup>th</sup> I certify that a true and correct copy of the Protest to Initiative Petition was mailed this day of March, 2016, by depositing it in the U.S. Mail, postage prepaid to the following:

Oklahomans for Consumer Freedom  
1833 South Morgan Road  
Oklahoma City, Oklahoma 73128

Ron Edgemon  
3700 Crail Drive  
Norman, OK 73072

Sean Campbell  
7316 N.W. 94<sup>th</sup> Street  
Oklahoma City, Oklahoma 73162

Tom Gruber, Esq.  
Gable Gotwals  
One Leadership Square 15th Floor, 211 N. Robinson  
Oklahoma City, Oklahoma 73102



Ann Richard-Farinha



Tom Gruber  
405.235.5582  
tgruber@gablelaw.com

April 26, 2016

**FILED**

APR 27 2016

OKLAHOMA SECRETARY  
OF STATE

The Honorable Chris Bengé  
Oklahoma Secretary of State  
2300 N Lincoln Boulevard, Suite 101  
Oklahoma City, OK 73105-4897

Re: Initiative Petition

Dear Mr. Secretary:

Please be advised that our client, Oklahomans for Consumer Freedom, Proponents of the initiative petition designated as State Question 786, Initiative Petition 410, respectfully request to withdraw the petition.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Tom Gruber'.

Tom Gruber  
For the Firm

Counsel for Proponents

TG:pke

cc: Oklahoma Attorney General Scott Pruitt  
Oklahoma Supreme Court (In re: Initiative Petition 410, Case No. 114,835)  
The Retail Liquor Association (Protestors, Case No. 114,835)  
Institute for Responsible Alcohol Inc. and John Maisch  
Glenn Coffee (Proponents, Case No. 114,835)

**RECEIVED**

APR 27 2016

OKLAHOMA SECRETARY  
OF STATE

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

APR 26 2016

MICHAEL S. RICHIE  
CLERK

**IN THE SUPREME COURT FOR THE STATE OF OKLAHOMA**

IN RE: INITIATIVE PETITION NO. 410, ) Case No. 114,835  
STATE QUESTION NO. 786 )

**MOTION TO WITHDRAW STATE QUESTION 786,**  
**INITIATIVE PETITION 410**

COMES NOW Thomas W. Gruber, counsel for Oklahomans for Consumer Freedom, Proponents of this State Question Number 786, Initiative Petition Number 410 (collectively, the "Movant"), and hereby moves to: 1) withdraw State Question Number 786, Initiative Petition Number 410 from consideration by this Court and future submission to the Oklahoma State Election Board for placement on the ballot and 2) dismiss this matter.

**WHEREFORE**, Movant requests that this Honorable Court find that: 1) Movant is allowed to withdraw State Question Number 786 from consideration by this Court and future submission to the Oklahoma State Election Board, and 2) this matter regarding State Question Number 786 is dismissed.

Respectfully submitted,



Thomas W. Gruber, OBA No. 3647  
GABLEGOTWALS  
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211 North Robinson Ave.  
Oklahoma City, OK 73102-7101  
(405) 235-5500 | (405) 235-2875 (fax)  
[tgruber@gablelaw.com](mailto:tgruber@gablelaw.com)  
**COUNSEL FOR OKLAHOMANS  
FOR CONSUMER PROTECTION**

**FILED**

APR 27 2016

OKLAHOMA SECRETARY  
OF STATE

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of April, 2016, a true and correct copy of the forgoing was mailed by First Class U.S. Mail, postage prepaid, addressed to the following:

The Honorable Chris Bengé  
Oklahoma Secretary of State  
2300 N Lincoln Blvd, Suite 101  
Oklahoma City, OK 73105-4897

The Honorable Scott Pruitt  
Attorney General of Oklahoma  
313 NE 21<sup>st</sup> Street  
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Norman, OK 73072

Sean Campbell  
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Ann G. Richard-Farinha  
Janna Dunagan Gau  
Hartsfield & Egbert, P.L.L.C.  
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Thomas W. Gruber