

May 6, 2016

The Honorable Chris Bengé
Oklahoma Secretary of State
2300 N. Lincoln Blvd., Ste 101
Oklahoma City, Oklahoma 73105

Re: Initiative Petition

Dear Mr. Secretary,

Please accept for filing the enclosed copy of an initiative petition and the suggested ballot title. Article 24, Section 1 of the Oklahoma Constitution requires that this proposed amendment of Article 28 be submitted to the voters at the next general election. The proposed amendment modifies the manner in which certain alcoholic beverages are distributed and sold to the public.

Respectfully,



Ann G. Richard-Farinha
Counsel for Proponents

Cc: Oklahoma Attorney General

RECEIVED
MAY 06 2016
OKLAHOMA SECRETARY
OF STATE

FILED

MAY 06 2016

Proposed Ballot Title

OKLAHOMA SECRETARY
OF STATE

This measure amends the entirety of Article XXVIII of the Oklahoma Constitution, as an amendment by Article repealing Article XXVIII and adopting Article XXVIII A. It permits licensees that currently hold licenses to sell low-point beer to sell all beer and malt beverages. It allows grocery stores and supercenters to obtain licenses to sell wine up to 14% alcohol by volume. Retail Package Stores and Retail Grocery Wine Stores must be located more than 500 feet apart. It allows small brewers to sell their products at additional locations. It provides that all employees who handle or sell alcoholic beverages must obtain an employee license from the Alcoholic Beverage Laws Enforcement Commission, be at least 18 years of age, with at least a 21-year-old present to supervise. It permits Retail Package Store licensees to sell items that are sold in convenience and grocery stores up to 30% of gross monthly sales. It limits sales of beer and wine by Retail Beer and Retail Grocery Wine Store licensees to 30% of gross monthly sales. It permits sales of alcohol on any day of the year except for Thanksgiving Day and Christmas Day. Amendments take effect on July 1, 2017.

Shall the amendments be approved?

For the amendments – Yes
Against the amendments – No

A "Yes" vote is a vote in favor of the Amendments. A "No" vote is a vote against the Amendments.

State Question No. 791 Initiative Petition No. 414

FILED

MAY 06 2016

WARNING

OKLAHOMA SECRETARY
OF STATE

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.

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 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 (90) days from _____. The question we herewith submit to our fellow voters is:

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

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

**CONSTITUTION OF OKLAHOMA, ARTICLE XXVIII A –
ALCOHOLIC BEVERAGE LAWS AND ENFORCEMENT**

§ 1. Alcoholic Beverage Laws Enforcement Commission - Appointment - Membership - Powers - Tenure

The purpose of the Alcoholic Beverage Laws Enforcement Commission (ABLE Commission) shall be to enforce the alcoholic beverage laws of the State, and the ABLE Commission shall have such power and authority to enforce such laws, rules and regulations as shall be prescribed by the Legislature.

The ABLE Commission shall consist of seven (7) members, to be appointed by the Governor with the advice and consent of the State Senate. Five (5) of the members shall be at-large members representing the lay citizenry. The remaining two (2) members shall be persons with law enforcement experience in the State. Any time there is a vacancy on the ABLE Commission the Governor shall appoint a replacement, with the advice and consent of the State Senate, within ninety (90) days. Members of the ABLE Commission shall be appointed for a term of five (5) years. The ABLE Commission shall appoint a Director, whose duties shall be defined by the Legislature. No more than four (4) members of the ABLE Commission shall be appointed from the same political party. No more than two (2) members of the ABLE Commission shall be appointed from the same federal congressional district.

No member of the ABLE Commission shall hold any license authorized by this Article, or have any interest in any capacity, in the manufacture, sale, distribution or transportation of alcoholic beverages.

The members of the ABLE Commission shall be removable from office for cause as other officers not subject to impeachment.

§ 2. Retail Beer License

As of July 1, 2017, all holders of a county and state license to sell low-point beer at retail shall be permitted to sell at retail to a consumer any beer or cereal malt beverage. All employees of such a licensee that handle or sell such products must be at least eighteen (18) years of age and directly supervised by an employee at least twenty-one (21) years of age and both must obtain an employee license from the ABLE Commission. Nothing shall prohibit a person authorized to sell alcoholic beverages by the individual drink for on-premises consumption from also becoming qualified to sell any beer or cereal malt beverage in the same location. All future successful applicants for any county beverage license shall be permitted to sell at retail any beer or cereal malt beverage. The total sales of beer and cereal malt liquor for a Retail Beer licensee must not exceed thirty percent (30%) of total gross monthly sales.

All lawful business entities recognized by the State of Oklahoma shall be permitted to apply for a Retail Beer License.

§ 3. Enactment of laws by Legislature - Nondiscrimination in sales to licensed wholesale distributors and to retailers - Sales by winemakers and brewers.

A. 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. Provided, that, except for a brewer or small brewer as defined by law, any manufacturer, 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, shall be required to sell such brands or kinds of alcoholic beverages to every licensed wholesale distributor who desires to purchase the same, on the same price basis and without discrimination, and shall further be required to sell such beverages only to those distributors licensed as wholesale distributors. Provided, all wholesale distributors licensed as wholesalers and beer wholesalers shall be required to sell such brands or kinds of alcoholic beverages to every licensed retail operator who desires to purchase the same, on the same price basis and without discrimination, and shall further be required to sell such beverages only to those retailers licensed to sell alcoholic beverages at retail.

A brewer, with the exception of a small brewer as defined by law, shall be required to sell its beer to a licensed wholesaler who desires to purchase same pursuant to a wholesaler agreement. The wholesaler agreement shall designate the territory within which the beer will be sold exclusively by the wholesaler.

Winemakers either within or without this state shall be required to sell wine they produce to every licensed wholesale distributor who desires to purchase the wine, but winemakers shall not be required to sell the wine they produce only to licensed wholesale distributors. 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.

Winemakers either within or without this state that annually produce no more than twenty thousand (20,000) gallons of wine may sell and ship only the wine they produce directly to licensed retail package stores and restaurants in this state; provided, however, that any such winemaker which elects to directly sell its wine to package stores and restaurants shall not also use a licensed wholesale distributor as a means of distribution, and shall be required to sell its wines to every package store and restaurant licensee who desires to purchase the same, as supplies allow, on the same price basis and without discrimination.

Brewers may sell beer produced by a licensed brewer to adult consumers who are at least twenty-one (21) years of age and are physically present on the premises of the brewery or at a festival or trade show. Small brewers as defined by law, either within or without this state, may sell or ship only the beer they produce directly to licensed retailers in this state offering beer for either on-premises or off-premises consumption. Provided, however, nothing in this Constitution or other law shall prevent a licensed brewer that also operates a restaurant co-located on the premises of the brewery from holding a license to sell beer, wine or spirits for on-premises consumption at such restaurant in counties in which the retail sale of alcoholic beverages by the individual drink for on-premises consumption is authorized. Nothing in this Constitution or other law shall prevent a small brewer as defined by law to sell beer dispensed from a keg into containers which are sealed on the licensed premises by a licensed employee.

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.

B. Any winemaker within or without this state that annually produces no more than twenty thousand (20,000) gallons of wine and elects to directly sell its wine to retail package stores and restaurants in this state 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.

C. All laws passed by the Legislature under the authority of the Article shall be consistent with this provision. All provisions of this amendment are declared to be interdependent. If any provision of this amendment applicable to small brewers as defined by law and/or winemakers is ruled to be unconstitutional by a court of competent jurisdiction, then no winemaker or small brewer as defined by law shall be permitted to directly sell its product to retail package stores or restaurants in this state.

§ 4. Retail sales by package stores and by the individual drink.

Except as hereinafter provided, a Retail Package Store shall be permitted to sell all alcoholic beverages lawfully permitted in Oklahoma. Retail Package Store sales of alcoholic beverages shall be limited to the original sealed package and alcoholic beverages dispensed from a keg into containers which are sealed on the licensed premise by a licensed employee, by privately owned and operated package stores, in cities and towns having a population in excess of two hundred (200) persons. Retail Package Stores shall be permitted to sell at retail any item that may be purchased at a grocery store or convenience store, so

long as the sale of items other than alcoholic beverages do not comprise more than thirty percent (30%) of the Retail Package Store's gross monthly sales. Provided, however, nothing in this Constitution or other law shall prevent Retail Package Stores from offering services associated with the promotion of or education in their products, including but not limited to serving alcoholic beverages by the drink, provided that the compensation paid is for the service, not the product.

Not more than two (2) retail package licenses shall be issued to any one 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.

§ 5. Prohibition of sales to certain persons - Penalties

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

A person under twenty-one (21) years of age; or

A person who has been adjudged insane or mentally deficient; or

A person who is intoxicated.

Sales, gifts, or deliveries to persons under twenty-one (21) years of age shall be deemed a felony; and any license issued pursuant to any law, in compliance with this Amendment, shall be revoked, upon conviction for such sale, gift, or delivery.

Sales to insane, mentally deficient, or intoxicated persons shall be deemed a felony.

Any person under the age of twenty-one (21) years who misrepresents his age, for the purpose of obtaining the purchase of any alcoholic beverage, shall be guilty of a misdemeanor.

§ 6. Prohibition of sales on certain days - Penalties

(a) It shall be unlawful for any Retail Package Store or Retail Grocery Wine Store Licensee to sell, at retail, any alcoholic beverage:

On Thanksgiving Day and Christmas Day. Otherwise, the Legislature shall designate the specific hours and days of the week on which Retail Package Stores and Retail Grocery Wine Store Licensees may sell alcoholic beverages.

(b) The voters of any county electing to authorize sales of alcoholic beverages by the individual drink for on-premises consumption under Section 4 hereof may designate as days on which such sales are not authorized, any or all of those days listed in subsection (a) of this section. It shall be unlawful for any licensee or person to make any such sale within any such county on days so designated.

(c) Any licensee or person violating the provisions of this section shall be deemed guilty of a misdemeanor and any license issued pursuant to provisions of this act shall be revoked upon conviction for such sale in violation of this section.

§ 7. Taxation and licensing - Distribution of funds

The retail sale of alcoholic beverages shall be subject to the sales tax statutes 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 retail package stores and sales by the individual drink for on-premises consumption, the proceeds of which, except sales tax, shall be distributed as follows:

(a) The Oklahoma Tax Commission shall collect and distribute the taxes collected under the terms of this Article and shall distribute ninety-seven percent (97%) of such taxes as are levied and as are attributable to retail sales by package stores as follows:

(1) One-third (1/3) of taxes attributable to sales by retail package stores shall be allocated to the counties of the State of Oklahoma on the basis of area and population (giving equal weight to area and population) and all of said funds shall be appropriated by the Board of County Commissioners in each county to all

incorporated cities and towns in said county on the basis of population within each city and town on a per capita basis based on the last preceding Federal Decennial Census.

(2) Two-thirds (2/3) of taxes attributable to sales by retail package stores shall be credited to the General Revenue Fund of the State of Oklahoma.

(b) The remaining three percent (3%) of taxes attributable to sales of alcoholic beverages by retail package stores; and up to (3%) of taxes attributable to sales of alcoholic beverages by the individual drink for on-premises consumption, as shall be determined by the State Legislature; shall be paid to the State Treasurer and placed to the credit of the Oklahoma Tax Commission Fund, to be paid out of said fund pursuant to appropriations made by the State Legislature.

(c) The remaining taxes attributable to sales of alcoholic beverages by the individual drink for on-premises consumption, shall be credited to the General Revenue Fund of the State of Oklahoma. The State Legislature shall appropriate to the Oklahoma Alcoholic Beverage Laws Enforcement Commission from all available taxes collected under this Article, whatever funds are necessary to provide for full enforcement of the alcoholic beverage laws of the State.

(d) All State license fees and brand registration fees shall be collected by the Oklahoma Alcoholic Beverage Laws Enforcement Commission. The ABLE Commission shall distribute thirty percent (30%) of the State license fees and brand registration fees to the Oklahoma Department of Mental Health and Substance Abuse for treatment and prevention of mental health disease related to alcohol addiction, and shall then retain seventy percent (70%) of all license and brand registration fees to use for its general operations.

§ 8. State and political subdivisions prohibited from engaging in business.

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. Occupation Tax

Counties or 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. Restrictions on issuance of licenses

No retail package store or wholesale distributor's license, except for a beer wholesaler 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 five (5) 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 Retail Grocery Wine Store license, beer wholesaler distributor's license, or 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.

(e) A limited liability company containing a member 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.

(f) A limited liability company which has a member who has been convicted of a felony.

Two (2) Retail Grocery Wine Store licenses will be available upon approval by the ABLE Commission at the enactment of this amendment per qualified person, general or limited partnership, corporation, or limited liability company. Two (2) additional such licenses can be obtained from the ABLE Commission each calendar year for the following nine (9) years after enactment of this amendment. Beginning in the tenth (10th) full calendar year after enactment of this amendment, there will be no limit to the number of Retail Grocery Wine Store licenses that can be obtained by a qualified person, general or limited partnership, corporation, or limited liability company. Each person or business entity purchasing a license must qualify for a Retail Grocery Wine Store license pursuant to this Article and any corresponding law enacted by the Legislature or rules promulgated by the ABLE Commission.

No Retail Package Store license or Retail Grocery Wine Store license may be issued to a location within five hundred (500) feet of another Retail Package Store or Retail Grocery Wine Store, as measured from the property line of any Retail Package Store or Retail Grocery Wine Store to the property line of the other Retail Package Store or Retail Grocery Wine Store.

§ 11. Repealer.

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

§ 12. Retail Grocery Wine Store licenses

A Retail Grocery Wine Store license shall be available to individuals, corporations, limited liability companies, limited liability partnerships, or any business entity recognized as lawful by the State of Oklahoma.

A Retail Grocery Wine Store license may sell wine up to fourteen percent (14%) alcohol by volume.

A Retail Grocery Wine Store license may only be issued to a grocery store, warehouse club or supercenter as defined by NAICS codes 445110 or 452910.

No Retail Package Store license or Retail Grocery Wine Store license may be issued to a location within five hundred (500) feet of another Retail Package Store or Retail Grocery Wine Store, as measured from the property line of any Retail Package Store or Retail Grocery Wine Store to the property line of the Retail Package Store or Retail Grocery Wine Store.

The total sales of wine and beer for a Retail Grocery Wine Store licensee must not exceed thirty percent (30%) of total gross monthly sales.

All employees who stock, handle or sell beer, wine or spirits must be at least eighteen (18) years of age and directly supervised by an employee at least twenty-one (21) years of age and hold an employee license issued by the ABLE Commission.

Name and Address of Proponents:

Retail Liquor Association of Oklahoma
PO Box 890822
OKC, OK 73189

Bryan Kerr
PO Box 890822
OKC, OK 73189

SIGNATURES

This measure amends the entirety of Article XXVIII of the Oklahoma Constitution, as an amendment by Article repealing Article XXVIII and adopting Article XXVIII.A. It permits licensees that currently hold licenses to sell low-point beer to sell all beer and malt beverages. It allows grocery stores and supercenters to obtain licenses to sell wine up to 14% alcohol by volume for off-premises consumption. These entities would be able to obtain 2 licenses upon enactment of this amendment and 2 more each year for the next 9 years and then an unlimited number thereafter. Retail Package Stores and Retail Grocery Wine Stores must be located more than 500 feet apart. It allows small brewers as defined by law to sell their products at a brewery or festival or trade show and allows them to sell alcoholic beverage by the drink at a restaurant co-located on the premises of the brewery. It increases the production limits for wineries that wish to self-distribute. It provides that all employees who handle or sell alcoholic beverages must obtain an employee license from the Alcoholic Beverage Laws Enforcement Commission and be at least 18 years of age with at least a 21-year-old present to supervise the sale. It permits Retail Package Store licensees to sell any and all items that are sold in convenience and grocery stores up to 30% of gross monthly sales. It permits Retail Package Stores to offer services associated with the promotion of or education in their products. It limits sales of beer and wine by Retail Beer and Retail Grocery Wine Store licensees to 30% of their gross monthly sales. It permits sales by Retail Package Store licensees and Retail Wine Grocery Store licensees on any day of the year except for Thanksgiving Day and Christmas Day. It provides direct funding for the Alcoholic Beverage Laws Enforcement Commission and the Oklahoma Department of Mental Health and Substance Abuse through licensing fees paid by the entities engaged in the sale of alcoholic beverages. Amendments take effect on July 1, 2017.

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.

1.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
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	Signature and Printed Name	Residence City		County
3.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
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	Signature and Printed Name	Residence City		County
18.	_____ / _____	_____ / _____	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 Is: _____
My Commission Expires: _____
(SEAL)



Chris Bengé
Secretary of State
and
Native American Affairs

Mary Fallin
Governor

SECRETARY OF STATE
AND
NATIVE AMERICAN AFFAIRS

May 6, 2016

FILED

MAY 06 2016

OKLAHOMA SECRETARY
OF STATE

Retail Liquor Association of Oklahoma
PO Box 890822
Oklahoma City, Oklahoma 73189

Bryan Kerr
PO Box 890822
Oklahoma City, Oklahoma 73189

Dear Proponent(s):

This acknowledges receipt of the petition submitted to our office, which has been designated as **State Question Number 791, Initiative Petition Number 414**, and filed accordingly this 6th day of May, 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).

Sincerely,

Chris Bengé
Secretary of State and
Native American Affairs

Cc: Hartsfield & Egbert, PLLC



Chris Bengé
Secretary of State
and
Native American Affairs

Mary Fallin
Governor

SECRETARY OF STATE
AND
NATIVE AMERICAN AFFAIRS

MAY 11 2016

May 9, 2016

BY: _____

~~RECEIVED
MAY 09 2016
BY: _____~~

HAND DELIVERED

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 791, Initiative Petition 414**, was sufficiently filed with the Office of the Secretary of State on Friday, May 6, 2016. Proponents of record for said petition is as follows;

Retail Liquor Association of Oklahoma	Bryan Kerr
PO Box 890822	PO Box 890822
Oklahoma City, Oklahoma 73189	Oklahoma City, Oklahoma 73189

Please find enclosed a true and exact copy of State Question 791, Initiative Petition 414 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

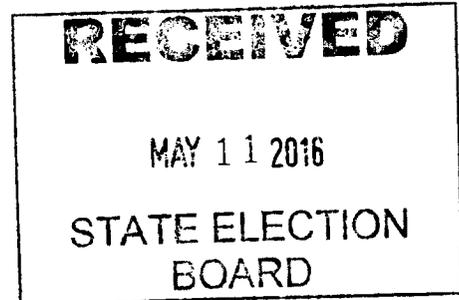


Chris Bengé
Secretary of State
and
Native American Affairs

Mary Fallin
Governor

SECRETARY OF STATE
AND
NATIVE AMERICAN AFFAIRS

May 9, 2016



HAND DELIVERED

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

Dear Secretary Zirix:

Please be advised that an initiative petition, designated as **State Question 791, Initiative Petition 414**, was sufficiently filed with the Office of the Secretary of State on Friday, May 6, 2016. Proponents of record for said petition is as follows;

Retail Liquor Association of Oklahoma
PO Box 890822
Oklahoma City, Oklahoma 73189

Bryan Kerr
PO Box 890822
Oklahoma City, Oklahoma 73189

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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

Oklahoma Press Service

3601 North Lincoln Blvd.

Oklahoma City, OK 73105-

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

Wednesday, May 25, 2016 09:29 AM

Page 1

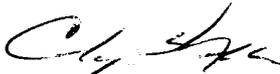
Proof of Publication Order Number 16-05-31

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: 05/15/2016

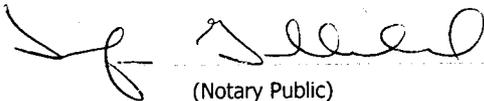
That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has 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 \$1,043.93



(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this
25 day of May 2016.



(Notary Public)

NOTICE OF THE FILING OF STATE QUESTION 791, INITIATIVE PETITION 414, 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 May 6, 2016, State Question 791, Initiative Petition 414 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 791, Initiative Petition 414 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 791, Initiative Petition 414:

Retail Liquor Association of Oklahoma	Bryan Kerr
PO Box 890822	PO Box 890822
Oklahoma City, Oklahoma 73189	Oklahoma City, Oklahoma 73189

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

Wednesday, May 25, 2016 09:29 AM

Page 1

Proof of Publication Order Number 16-05-31

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

Insertion: 05/15/2016

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 \$53.46



(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this
25 day of May 2016.



(Notary Public)

NOTICE OF THE FILING OF STATE QUESTION 791, INITIATIVE PETITION 414, 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)

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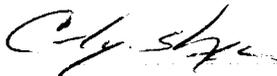
Proof of Publication Order Number 16-05-31

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

Insertion: 05/16/2016

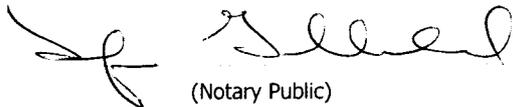
That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has 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 \$36.85



(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this
25 day of May 2016.



(Notary Public)



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Proponents of record for State Question 791, Initiative Petition 414:

Retail Liquor Association of Oklahoma Bryan Kerr
PO Box 890822 PO Box 890822
Oklahoma City, Oklahoma 73189 Oklahoma City, Oklahoma 73189

Chris Bengé
Oklahoma Secretary of State and Native American Affairs



ORIGINAL

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

**FILED
SUPREME COURT
STATE OF OKLAHOMA**

MAY 27 2016

**MICHAEL S. RICHIE
CLERK**

**OKLAHOMA GROCERS ASSOCIATION
and RON EDGMON,**

PETITIONERS,

v.

**RETAIL LIQUOR ASSOCIATION OF
OKLAHOMA and BRYAN KERR,**

RESPONDENTS.

#115032
No. _____

----- ORIGINAL -----
Receipts# _____
Mars# _____
Reys# _____
Cert# _____
Updates# _____

APPLICATION TO ASSUME ORIGINAL JURISDICTION

V. GLENN COFFEE, OBA # 14563
DENISE LAWSON, OBA #31532
-Of the Firm-
GLENN COFFEE & ASSOCIATES, PLLC
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ATTORNEYS FOR PETITIONERS,
OKLAHOMA GROCERS ASSOCIATION
AND RON EDGMON

MAY 27, 2016

Come now the Petitioners and ask this Court to assume original jurisdiction to review the constitutionality of Initiative Petition No. 414, State Question 791 (“the Petition”) which was filed with the Oklahoma Secretary of State on May 6, 2016. 34 Okla. Stat. § 8(B); Okla. Sup. Ct. R. 1.194. As will be shown in the brief supporting this application, Initiative Petition No. 414 is unconstitutional because the Petition violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

PARTIES

1. Oklahoma Grocers Association is an Oklahoma trade association incorporated with the Oklahoma Secretary of State that represents the food industry of independent grocers, convenience stores, suppliers and wholesalers throughout Oklahoma and having its headquarters at 25 N.E. 52nd Street, Oklahoma City, Oklahoma 73105.

2. Petitioner Ron Edgmon is a citizen of Oklahoma, resides in Cleveland County, Oklahoma, and has lived in Oklahoma for over 18 years.

3. Respondent Retail Liquor Association of Oklahoma is named on the Initiative Petition as a Proponent.

4. Respondent Bryan Kerr is named on the Initiative Petition as a Proponent.

THE COURT’S JURISDICTION

6. Initiative Petition 414 was filed with the Oklahoma Secretary of State on May 6, 2016.

7. The Petitioners bringing this case are citizens of this State qualified to protest the constitutionality of the Initiative Petition filed by the proponents. 34 O.S. § 8(B).

8. This Court's jurisdiction to review a challenge to the Initiative Petition is set forth in 34 O.S. § 8. Pursuant to Rule 1.194 of this Court, a challenge to an initiative petition shall be treated as an original action in this Court.

9. The Notice of the Petition was published by the Secretary of State on Sunday, May 15, 2016. Pursuant to 34 O.S. § 8(B), the Petitioner has ten business days after notice is published in which to file a challenge. Saturdays, Sundays, and holidays are not counted. *In re Initiative Petition 397*, 2014 OK 23, ¶ 19, 326 P.3d 496. Counting business days (excluding the intervening Saturdays and Sundays) the tenth business day is today, Friday, May 27, 2016.

MERITS

10. The Brief in Support filed herewith demonstrates that the geographic restriction in Sections 10 and 12 of Initiative Petition 414 is unconstitutionally because it violates the Equal Protection Clause in two ways.

11. First, Petition 414 treats grocery stores that would currently be eligible for Grocery Store Wine Licenses under the terms of the Petition unequally based upon their current location *and* upon the future actions of an economically interested third party that is able to intervene in the midterm.

12. Second, Petition 414 violates the Equal Protection Clause because the geographic restriction elevates the interests of the Retail Package Stores above those of the future Grocery Store Wine Licensees. The 500-foot geographic restriction incentivizes liquor stores to obtain licenses in the midterm and open stores within the affected area in order to prevent grocery store access to the marketplace. Once again, the Proponents are attempting to elevate the power of an economically-motivated third party at the expense of

grocery store and public access.

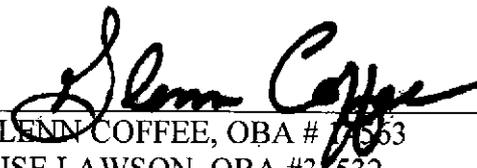
13. Any purported governmental purpose of the geographic restriction will not be achieved because the law will serve to increase the availability of high-alcohol liquor at the expense of grocery store access to lower-content alcoholic beverages.

14. Ultimately, the gist of the petition is self-serving in its aims and fails to give the public the information necessary to make an informed decision about the law. When the gist of a petition is insufficient, the proper remedy is to strike it from the ballot. *In re Initiative Petition No. 342*, 1990 OK 76, 797 P.2d 331, 333.

CONCLUSION

This Court should rule that Initiative Petition 414 is unconstitutional, invalid, and should not be presented for a vote of the people.

Respectfully submitted,



V. GLENN COFFEE, OBA # 17653

DENISE LAWSON, OBA #31532

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ATTORNEYS FOR PETITIONERS,
OKLAHOMA GROCERS ASSOCIATION
AND RON EDGMON

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2016, a true and correct copy of the forgoing Application to Assume Original Jurisdiction was served by U.S. Mail, postage prepaid, as follows:

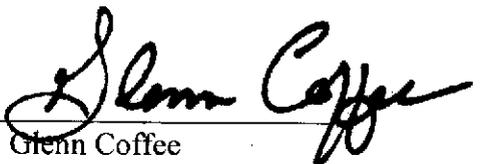
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V. Glenn Coffee



ORIGINAL

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OKLAHOMA and BRYAN KERR,**

RESPONDENTS.

Receipts	_____
Marshals	_____
Reynolds	_____
Certificates	_____
Books	_____

**BRIEF IN SUPPORT OF APPLICATION
TO ASSUME ORIGINAL JURISDICTION**

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DENISE LAWSON, OBA #31532
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MAY 27, 2016

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INTRODUCTION

Initiative Petition 414 (“the Petition”) is unconstitutional and legally insufficient. This Court should order that it not be submitted for a vote of the people.

Section I of the Arguments and Authorities will demonstrate that the geographic restriction clause of Initiative Petition 414 violates the mandates of the Equal Protection Clause. This section will provide the relevant framework analysis for Equal Protection Claims and show how retail package stores and grocery stores are similarly situated entities in regard to the restriction at issue.

Section II will then show that Petition 414 violates the Equal Protection Clause because it treats similarly situated entities differently without any reason to believe that a legitimate government interest will be achieved. The Equal Protection violation is evident in two ways. First, Petition 414 treats grocery stores that would currently be eligible for Grocery Store Wine Licenses under the terms of the Petition unequally based upon their current location *and* upon the future actions of an economically interested third party that is able to intervene in the midterm. Second, Petition 414 violates the Equal Protection Clause because the geographic restriction elevates the interests of the Retail Package Stores above those of the future Grocery Store Wine Licensees.

Section III will demonstrate that any purported public purpose of the geographic restriction will not be achieved and the law will likely have the converse effect because it will serve to expand the market presence of high alcohol content liquor at the expense of lower alcohol content beverages. This effect will not comport with any claimed interest in public safety or general industry regulation. Thus, even if the Proponents, the Retail Liquor Association (“RLA”) and Bryan Kerr, claim that the geographic limitation serves legitimate

governmental interests, the claimed interests are too attenuated from the practical effect of the law to justify the disparate treatment imposed by the Petition.

Finally, Section IV will argue that any asserted governmental interests are a mere pretext for the true purpose of the geographic restriction – pure economic protectionism.

ARGUMENTS AND AUTHORITIES

“This Court has entertained pre-election attacks on initiative petitions to avoid costly and unnecessary elections.” *In re Initiative Petition No. 366*, 2002 OK 21, ¶ 4, 46 P.3d 123, 125. “The right of initiative petition is not absolute with both constitutional and statutory limitations placed on the process.” *In re Initiative Petition 342*, 1990 OK 76, ¶ 11, 797 P.2d 331; *In re Initiative Petition 344*, 1990 OK 75, 797 P.2d 326, 330; *In re Initiative Petition 382*, 2006 OK 45, ¶ 3, 142 P.3d 400, 403 (“[T]he right of the initiative is not absolute, and is subject to constitutional and statutory limits.”) This Court has jurisdiction over protests challenging the sufficiency of an initiative petition. *See* 34 O.S. § 8. Upon filing of a protest, the Court reviews to ensure the petition complies with the Oklahoma Constitution, legislative enactments and the Court’s jurisprudence. *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 9, 164 P.3d 125, 129.

An initiative petition that violates federal constitutional law must be declared unconstitutional and invalid for all purposes. *See* Okla. Const. Art. 1, § 1 (“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.”) In exercising the important right of the initiative petition “it is necessary that the provisions of the Constitution should be adhered to.” *Ralls v. Wyland*, 40 Okla. 323, 138 P. 158, 160 (1914); *see also In re Initiative Petition No. 349*,

State Question No. 642, 1992 OK 122, 838 P.2d 1, 9. Thus, if an initiative petition violates Constitutional protections it must be struck from the ballot.

I. PETITION 414 VIOLATES THE EQUAL PROTECTION CLAUSE.

“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 US 1, 10, 112 S.Ct. 2326, 2331 (1992). This Clause directs that “all persons similarly situated should be treated alike.” *Plyer v. Doe*, 457 US 202, 216 102 S.Ct. 2382, 2394 (1982). Where the classification at issue does not involve invidious classifications or the denial of fundamental rights, the Equal Protection Clause requires that the classification bear a rational relationship to legitimate governmental ends. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 105 S.Ct. 3249, 320–321 (1985). The Equal Protection Clause does not forbid classifications, but keeps governmental decision makers from treating differently person who are in all relevant respects alike. *Coalition for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir.2008). 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.

A. Equal Protection demands classifications between similarly situated entities be rationally related to a legitimate government end.

The Equal Protection Clause applies to determine the validity of Petition 414 because it proposes different treatment for similarly situated persons, namely Retail Package Store Licensees and Grocery Store Wine Licensees, who, under the Petition, would both be able to sell wine in Oklahoma. Second, the Equal Protection Clause applies

because the Petition proposes different treatment for a grocery store dependent upon whether it is located within a certain geographic radius of a liquor store, verses those that are not, effectively treating the same entity differently based upon a factor that is controlled by a third party.

In order for the protections of the Equal Protection Clause to apply, the entities must be “similarly situated.” While “[t]here is no precise formula to determine whether an individual is similarly situated to comparators, [. . .] [i]t is clear that similar individuals must be very similar indeed.” *McDonald v. Village of Winnetka*, 371 F.3d 992, 1002 (7th Cir. 2004). Retail Package Store Licensees and Grocery Store Wine Licensees are undoubtedly competitors in the market. Sections 10 and 12 place these two competing entities into the same category and subject to the same restriction, and thus are “similarly situated” entities for purposes of this restriction. The Equal Protection violation occurs because these two entities receive disparate treatment under operation of the proposed law. In other words, the net effect of this seemingly neutral provision is that it places grocery stores at a severe disadvantage while favoring retail liquor stores.

Specifically, Petition 414 **twice** reiterates the geographic restriction that it places on grocery stores who wish to obtain a Retail Grocery Wine Store license. Section 10 and Section 12 of Petition 414 identically state:

No Retail Package Store license or Retail Grocery Wine Store license may be issued to a location within five hundred (500) feet of another Retail Package Store or Retail Grocery Wine Store, as measured from the property line of any Retail Package Store or Retail Grocery Wine Store to the property line of the Retail Package Store or Retail Grocery Wine Store.

B. The geographic restriction in Sections 10 and 12 of Petition 414 violates the Equal Protection Clause.

Even under the more lenient rational basis review, this Petition does not withstand challenge. The Petition provides unequitable treatment to similarly situated entities in the following ways which will be more fully explained below.

First, the restriction denies equal protection grocer-to-grocer. Certain grocery stores are treated unequally with other grocery stores under Petition 414 based upon whether a Retail Package Store is located within 500 feet of the grocery store. Functionally, this provision works to automatically exclude certain grocery stores that are within the proximity to a liquor store, then further works to incentivize liquor stores to locate within a grocery store's proximity in the interim period between passage and the Article's effective date. This means that certain stores that may meet the licensure requirements today could be forced to play on an uneven playing field with their competition within the same mile area based solely upon the decisions of a third party – the economically interested retail liquor store industry.

Second, the restriction denies equal protection between grocers and retail liquor stores. Retail Package Store Licenses are currently available and will remain available for purchase until the effective date of Petition 414 on July 1, 2017. Placing 500 foot geographic restriction incentivizes individuals to open up Retail Package Store within the prohibited geographic zone surrounding a grocery store prior to the effective date of the Article. In so doing, the liquor store would prevent the grocery store from being eligible to obtain a license when Grocery Store Wine Licenses become available for purchase. **This unnecessarily, arbitrarily and irrationally discriminates against future holders of a Grocery Store Wine License because they are not permitted to apply for licenses until**

after the effective date. This distinction gives the Retail Package Store a **real and unfair competitive advantage** and places grocery stores ability to enter the marketplace at the whim of the Retail Liquor Store industry that has an economic interest in attempting to box out competition.

1. Grocery Stores are provided with unequal opportunities based upon geographic proximity to existing (or future) Retail Package Stores.

The language of Sections 10 and 12 unequivocally prevent grocery stores from obtaining a license based solely upon an arbitrary distance requirement of 500 feet. Thus, this provision places grocery stores on uneven footing with each other based upon their current location. In essence, this means that even if a grocery store meets all of the eligibility requirements for licensure, certain stores could be denied access market based upon mere proximity to a Retail Package Store. As will be explained in greater detail in section (2) below, this problem is compounded if the Article is to become law because liquor stores would then have an incentive to obtain a license in an area nearby a local grocery store in order to later prohibit their entry into the marketplace.

Additionally, this problem disproportionately effects those in small towns who may only have one local grocery store. Even if the citizens of these small towns were to vote for this law, believing that it would potentially allow their local grocer to apply for a license, they could be prevented from ever benefitting from this law based upon the actions of an interested third party. In a persuasive dissenting opinion in *In re Initiative Petition No. 396, State Question No. 763*, 2012 OK 67, ¶ 12, 281 P.3d 1275, 1277, Justice Colbert advocated the Court strike down a law on equal protection grounds that would have limited the availability of grocery store wine licenses to those in counties more than 50,000 people. In discussing the inequitable impact of this law upon citizens in disenfranchised counties,

Justice Colbert reminded the Court that arbitrary classifications of this sort impact the “one-person-one-vote” principle of the Fourteenth Amendment because “if adopted, the measure provides a benefit in convenience and tax revenues only on the populous counties.” *Id.* at ¶ 12 (Colbert, J., dissent). In essence, the rural areas were “being asked to vote on a measure that can benefit only those who live or shop in urban area ... As a result, the vote of a rural resident will be less the 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.” *Id.* Although less direct, the pragmatic effect of the restriction proposed by the RLA is similar. Rural areas that only have one grocery store are far more likely to be barred from receiving the benefit of wine in grocery stores because a liquor store may already exist in that same shopping center. This problem is compounded by the ability of the liquor stores to prohibit grocery store entry into the marketplace in the midterm by continuing to purchase licenses. In other words, this arbitrary and irrational restriction discriminates against those in rural areas by asking them to vote on a measure where they may never enjoy the benefit.

Grocers clearly fall within the category of “similarly situated” entities that should be “treated alike” under the command of the Equal Protection Clause. *Plyer*, 457 US 202, 216. Thus, the classification must bear a rational relationship to a legitimate government end, and the classification must not bear such an **attenuated** relationship to the asserted goal “as to render the classification arbitrary or irrational.” *Cleburne*, 473 U.S. at 446. Here, the classification fails both of those standards and is a mere pretense designed to protect the retail liquor industry at the expense of grocery stores and voters alike.

- 2. Equal Protection is violated because Grocery Stores can be barred entrance to the marketplace by Retail Package Stores who obtain licenses prior to the effective date of the Article.**

Petition 414 treats similarly situated Retail Package Stores and grocery stores differently dependent upon whether they are able to gain access to the marketplace prior to the effective date of the Article. A retail package store that desires to obtain a license before July 1, 2017 is free to do so without the 500-foot geographic restriction, whereas grocery stores are unable to compete for those licenses until the effective date of the Article. In so doing, the Petition potentially expands the market presence of high-alcohol content intoxicating liquor at the expense of low-alcohol content beverages in the marketplace. The retail liquor industry would have an incentive to obtain new licenses within the geographic area in order to preempt grocery store competition in 2017.

C. The purported public purpose of the geographic restriction will not be achieved.

Courts have previously upheld geographic restriction on the sale of alcohol for the purposes of public safety. *See Jarboe Sales Co. v. Oklahoma Alcoholic Beverage Laws Enft Comm'n*, 2003 OK CIV APP 23, ¶ 1, 65 P.3d 289, 290. However, this goal will not be accomplished by allowing retail liquor stores to continue to increase their market presence until the effective date of the new law. Petition 414 will likely have the converse effect of this legitimate government end because it will increase the presence of high-alcohol content liquors at the expense of lower-alcohol content beverages.

The particular importance of limiting the expansion of retailers that sell high-alcohol content beverages was noted by the 6th Circuit in the 2014 case, *Maxwell's Pic-Pac, Inc. v. Dehner*, 739 F.3d 936, 940 (6th Cir. 2014), when it explained:

The state indisputably maintains a legitimate interest in reducing access to products with high alcohol content. According to Fosdick and Scott, “states must use their control systems to steer society to lower alcohol form[s] of products.” Products with high alcohol content exacerbate the problems caused by alcohol, including drunken driving. The state's interest applies

not only to the general public; minors, inexperienced and impressionable, require particular vigilance. And the state's interest applies to abstinent citizens who, morally or practically objecting to alcohol exposure, wish to avoid retailers that sell such drinks. (internal citations omitted.)

As noted in *Dehner*, Courts have recognized that unique restrictions on liquor retailers serve government interests. In other words, because retail package stores are the only retailers authorized to sell high-alcohol content spirits, *see* 37 O.S. § 521(H), such laws are intended to be more restrictive than laws regarding the sale of lower-alcohol content beverages. *Id.* at 940 (Laws restricting sale of liquor to certain types of retail locations serve “a legitimate interest in reducing access to products with high alcohol content.”). However, Petition 414 would do the opposite – expanding the footprint of retail package stores while simultaneously preempting the market participation of grocery stores and their lower-alcohol content beverages.

Even when “applying even the lowest level of scrutiny, a legitimate and rationally-related reason for classifying similarly situated individuals differently must be articulated.” *In re Initiative Petition No. 396*, 2012 OK 67, ¶ 11, (Colbert, J. dissent).¹ Proponents of Petition 414 simply cannot do so here if their true goal is public safety. *See also State ex rel. Hart v. Parham*, 1966 OK 9, 412 P.2d 142, 147 (“At the outset we must recognize that the liquor industry because of the very nature of its product requires strict control and close supervision.”) In short, the clear goal of the geographic restriction is not public safety but

¹ Once again, Justice Colbert’s dissent is persuasive in this context as a reason why this Court should force the Proponents of Petition 414 to provide a legitimate government end that can be achieved through this restriction, and not just treat the rational basis test as a pass through:

¶ 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.

instead represents the retail liquor store industry's obvious attempt to serve their own economic self-interest and protect their historic monopoly in the alcohol industry.²

D. The true purpose of the geographic restriction is protectionism for the liquor store industry.

The 500 feet distance restriction of Sections 10 and 12 of Petition 414 is excessive. Of interest, this distance requirement is 200 feet *further* than the distance required between facilities that sell alcohol and schools and churches. Currently, Oklahoma law only requires 300 feet between churches, schools, and liquor stores or restaurants that serve alcohol. 37 O.S. § 518.3.

As discussed above, it is anticipated that the Proponents of Petition 414 might instead claim that the geographic restriction is an attempt to limit the number of outlets which is consistent with the general police power of the state, and serves the public interest by limiting increased access to alcoholic beverages. However, these arguments are a distraction from the true purpose of Petition 414's geographic restriction—sheer economic protectionism. The Proponents cannot deny that individuals wishing to purchase a Retail Package Store License would be able to do so during the interim period, thereby pushing out possible grocery store competition. In this sense, the provision is similar to the discriminatory Sunday law in *Ex parte Hodges*, 65 Okla.Crim. 69, 83 P.2d 201 (1938), that was struck down by the Court because it was a special law that violated Art. 5, Section 59 of the Oklahoma Constitution. The Court held in relevant part:

² See Benjamin Grubb, *Exorcising the Ghosts of the Past: An Exploration of Alcoholic Beverage Regulation in Oklahoma*, 37 Okla. City U.L. Rev. 289, 311-12 (2012) (“An unintended consequence of Oklahoma's regimented approach to alcohol regulation is the retail package stores' virtually uncontested dominance over the retail liquor market. Although the regulatory environment in Oklahoma restricts the activities of retail package stores to a significant extent, no external competition exists for retail package stores, beyond other retail package stores. The three-tier system itself perpetuates a highly localized system of marketing, which “ultimately amounts to a system of fiefdoms.”)

There can be no doubt of invalidity of the ordinance on account of its repugnancy to the statute. It is clear that the ordinance, in so far as it prohibits the sale of groceries by the petitioners, is directed at a particular class of business with an exemption to another class, prohibiting the petitioners from opening their place of business and selling groceries on Sunday and permitting drug stores to remain open all day. **It would seem from the ordinance that the only thing the commissioners attempted to do in said ordinance was to prohibit certain classes of business from opening on Sunday and granting to others the privilege to remain open.** (Emphasis added.)

Id. at 204. *Hodges* allowed a certain class of businesses to remain open while forcing others to close. Here, the geographic restriction allows certain classes of businesses (current liquor store owners) and even *future* classes of businesses to open (Retail Package Store Licensees who obtain a license prior to the effective date of the Act), at the expenses of potential Grocery Store Wine licensees. Thus, proponents cannot argue that the provision is equally applicable to both retail package stores and grocery stores because it fundamentally treats them differently, and the purpose for doing so is clear – to protect their own economic interests.

In the previous version of the Retail Liquor Association's initiative petition (Petition 409), RLA proposed that grocery stores were prohibited from receiving a Retail Grocery Store Wine license if they were within 2,500 feet of an existing Retail Package Store.³ After Petition 409 was struck from the ballot, RLA redrafted and resubmitted their petition, noticeably decreasing the distance restriction from 2500 feet to 500 feet in order to make the restriction seem more palatable. However, because the retail liquor store industry is still effectively being given a trump card by maintaining the ability to expand in the midterm, the true purpose of this provision becomes evident. Proponents are not interested in public safety, they are simply interested in their pocketbooks.

³ <https://www.sos.ok.gov/documents/questions/785.pdf>

This type of protectionism is not consistent with the Oklahoman's desire for alcohol modernization. Along those lines, we would ask the Court take note that the Legislature, through its deliberative process, has placed a referendum on this topic on the ballot.⁴

In sum, Petition 414 violates the Equal Protection Clause because it treats similarly situated entities differently without any reason to believe that a legitimate government interest will be achieved. The only appropriate remedy for initiative petitions that violate the Constitution is to strike them from the ballot. *See In re Initiative Petition No. 349, State Question No. 642*, 1992 OK 122.

CONCLUSION

This Court should rule that Initiative Petition 414 is unconstitutional, invalid, and should not be presented for a vote of the people.

Respectfully submitted,


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ATTORNEYS FOR PETITIONERS,
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AND RON EDGMON

⁴ <http://newsok.com/voters-will-get-to-decide-beer-wine-issue/article/5500553>;
http://www.tulsaworld.com/blogs/scene/whattheale/what-the-ale-sb-and-sb-pass-the-house-on/article_50a587c0-a27a-5be8-8597-f5ba38b4587c.html.

CERTIFICATE OF SERVICE

I hereby certify that on this 27TH day of May, 2016, a true and correct copy of the forgoing Brief in Support of Application to Assume Original Jurisdiction was served by U.S. Mail, postage prepaid, as follows:

Retail Liquor Association of
Oklahoma
PO Box 890822
Oklahoma City, OK 73189

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State of Oklahoma
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Oklahoma City, OK 73105

Secretary of State's Office
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V. Glenn Coffee



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUN 27 2016

MICHAEL S. RICHIE
CLERK

IN RE: INITIATIVE PETITION NO. 414,)
STATE QUESTION NO. 791) No. 115,032

ORDER

Original jurisdiction is assumed. All relief is denied.

DONE BY THE ORDER OF THE SUPREME COURT IN CONFERENCE

THIS 27TH DAY OF JUNE, 2016.



ACTING CHIEF JUSTICE

CONCUR: Reif, C.J., Winchester, Edmondson, Colbert, Gurich, JJ.

DISSENT: Combs, V.C.J., Kauger, Taylor, JJ.

NOT PARTICIPATING: Watt, J.



Chris Bengé
Secretary of State
and
Native American Affairs

Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

July 21, 2016

Retail Liquor Association of Oklahoma
PO Box 890822
Oklahoma City, Oklahoma 73189

Bryan Kerr
PO Box 890822
Oklahoma City, Oklahoma 73189

Dear Proponent(s):

Per Title 34, Section 8 of the Oklahoma Statutes, no petitions for rehearing have been filed and the period for such has expired, therefore notice is hereby given that the signature gathering period for **State Question Number 791, Initiative Petition Number 414** is set to begin on August 2, 2016 and all signatures are due within ninety (90) days of the date set. Signatures will not be accepted for filing after 5:00 p.m. on October 31, 2016. The current signature requirement for amendments to the Oklahoma Constitution is 123,725.

Please find enclosed two true and accurate copies of said petition on record with the Secretary of State office and a copy of the current signature requirements for statewide petitions as certified by the Secretary of the Oklahoma State Election Board.

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).

Sincerely,

A handwritten signature in cursive script that reads "Chris Bengé".

Chris Bengé
Secretary of State and
Native American Affairs

Cc: Hartsfield & Egbert, PLLC

State Question No. 791 Initiative Petition No. 414

FILED

MAY 06 2016

WARNING

OKLAHOMA SECRETARY
OF STATE

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.

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 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 (90) days from ~~AUG 02 2016~~ The question we herewith submit to our fellow voters is:

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

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

**CONSTITUTION OF OKLAHOMA, ARTICLE XXVIII –
ALCOHOLIC BEVERAGE LAWS AND ENFORCEMENT**

§ 1. Alcoholic Beverage Laws Enforcement Commission - Appointment - Membership - Powers - Tenure

The purpose of the Alcoholic Beverage Laws Enforcement Commission (ABLE Commission) shall be to enforce the alcoholic beverage laws of the State, and the ABLE Commission shall have such power and authority to enforce such laws, rules and regulations as shall be prescribed by the Legislature.

The ABLE Commission shall consist of seven (7) members, to be appointed by the Governor with the advice and consent of the State Senate. Five (5) of the members shall be at-large members representing the lay citizenry. The remaining two (2) members shall be persons with law enforcement experience in the State. Any time there is a vacancy on the ABLE Commission the Governor shall appoint a replacement, with the advice and consent of the State Senate, within ninety (90) days. Members of the ABLE Commission shall be appointed for a term of five (5) years. The ABLE Commission shall appoint a Director, whose duties shall be defined by the Legislature. No more than four (4) members of the ABLE Commission shall be appointed from the same political party. No more than two (2) members of the ABLE Commission shall be appointed from the same federal congressional district.

No member of the ABLE Commission shall hold any license authorized by this Article, or have any interest in any capacity, in the manufacture, sale, distribution or transportation of alcoholic beverages.

The members of the ABLE Commission shall be removable from office for cause as other officers not subject to impeachment.

§ 2. Retail Beer License

As of July 1, 2017, all holders of a county and state license to sell low-point beer at retail shall be permitted to sell at retail to a consumer any beer or cereal malt beverage. All employees of such a licensee that handle or sell such products must be at least eighteen (18) years of age and directly supervised by an employee at least twenty-one (21) years of age and both must obtain an employee license from the ABLE Commission. Nothing shall prohibit a person authorized to sell alcoholic beverages by the individual drink for on-premises consumption from also becoming qualified to sell any beer or cereal malt beverage in the same location. All future successful applicants for any county beverage license shall be permitted to sell at retail any beer or cereal malt beverage. The total sales of beer and cereal malt liquor for a Retail Beer licensee must not exceed thirty percent (30%) of total gross monthly sales.

All lawful business entities recognized by the State of Oklahoma shall be permitted to apply for a Retail Beer License.

§ 3. Enactment of laws by Legislature - Nondiscrimination in sales to licensed wholesale distributors and to retailers - Sales by winemakers and brewers.

A. 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. Provided, that, except for a brewer or small brewer as defined by law, any manufacturer, 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, shall be required to sell such brands or kinds of alcoholic beverages to every licensed wholesale distributor who desires to purchase the same, on the same price basis and without discrimination, and shall further be required to sell such beverages only to those distributors licensed as wholesale distributors. Provided, all wholesale distributors licensed as wholesalers and beer wholesalers shall be required to sell such brands or kinds of alcoholic beverages to every licensed retail operator who desires to purchase the same, on the same price basis and without discrimination, and shall further be required to sell such beverages only to those retailers licensed to sell alcoholic beverages at retail.

A brewer, with the exception of a small brewer as defined by law, shall be required to sell its beer to a licensed wholesaler who desires to purchase same pursuant to a wholesaler agreement. The wholesaler agreement shall designate the territory within which the beer will be sold exclusively by the wholesaler.

Winemakers either within or without this state shall be required to sell wine they produce to every licensed wholesale distributor who desires to purchase the wine, but winemakers shall not be required to sell the wine they produce only to licensed wholesale distributors. 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.

Winemakers either within or without this state that annually produce no more than twenty thousand (20,000) gallons of wine may sell and ship only the wine they produce directly to licensed retail package stores and restaurants in this state; provided, however, that any such winemaker which elects to directly sell its wine to package stores and restaurants shall not also use a licensed wholesale distributor as a means of distribution, and shall be required to sell its wines to every package store and restaurant licensee who desires to purchase the same, as supplies allow, on the same price basis and without discrimination.

Brewers may sell beer produced by a licensed brewer to adult consumers who are at least twenty-one (21) years of age and are physically present on the premises of the brewery or at a festival or trade show. Small brewers as defined by law, either within or without this state, may sell or ship only the beer they produce directly to licensed retailers in this state offering beer for either on-premises or off-premises consumption. Provided, however, nothing in this Constitution or other law shall prevent a licensed brewer that also operates a restaurant co-located on the premises of the brewery from holding a license to sell beer, wine or spirits for on-premises consumption at such restaurant in counties in which the retail sale of alcoholic beverages by the individual drink for on-premises consumption is authorized. Nothing in this Constitution or other law shall prevent a small brewer as defined by law to sell beer dispensed from a keg into containers which are sealed on the licensed premises by a licensed employee.

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.

B. Any winemaker within or without this state that annually produces no more than twenty thousand (20,000) gallons of wine and elects to directly sell its wine to retail package stores and restaurants in this state 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.

C. All laws passed by the Legislature under the authority of the Article shall be consistent with this provision. All provisions of this amendment are declared to be interdependent. If any provision of this amendment applicable to small brewers as defined by law and/or winemakers is ruled to be unconstitutional by a court of competent jurisdiction, then no winemaker or small brewer as defined by law shall be permitted to directly sell its product to retail package stores or restaurants in this state.

§ 4. Retail sales by package stores and by the individual drink.

Except as hereinafter provided, a Retail Package Store shall be permitted to sell all alcoholic beverages lawfully permitted in Oklahoma. Retail Package Store sales of alcoholic beverages shall be limited to the original sealed package and alcoholic beverages dispensed from a keg into containers which are sealed on the licensed premise by a licensed employee, by privately owned and operated package stores, in cities and towns having a population in excess of two hundred (200) persons. Retail Package Stores shall be permitted to sell at retail any item that may be purchased at a grocery store or convenience store, so

long as the sale of items other than alcoholic beverages do not comprise more than thirty percent (30%) of the Retail Package Store's gross monthly sales. Provided, however, nothing in this Constitution or other law shall prevent Retail Package Stores from offering services associated with the promotion of or education in their products, including but not limited to serving alcoholic beverages by the drink, provided that the compensation paid is for the service, not the product.

Not more than two (2) retail package licenses shall be issued to any one 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.

§ 5. Prohibition of sales to certain persons - Penalties

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

A person under twenty-one (21) years of age; or

A person who has been adjudged insane or mentally deficient; or

A person who is intoxicated.

Sales, gifts, or deliveries to persons under twenty-one (21) years of age shall be deemed a felony; and any license issued pursuant to any law, in compliance with this Amendment, shall be revoked, upon conviction for such sale, gift, or delivery.

Sales to insane, mentally deficient, or intoxicated persons shall be deemed a felony.

Any person under the age of twenty-one (21) years who misrepresents his age, for the purpose of obtaining the purchase of any alcoholic beverage, shall be guilty of a misdemeanor.

§ 6. Prohibition of sales on certain days - Penalties

(a) It shall be unlawful for any Retail Package Store or Retail Grocery Wine Store Licensee to sell, at retail, any alcoholic beverage:

On Thanksgiving Day and Christmas Day. Otherwise, the Legislature shall designate the specific hours and days of the week on which Retail Package Stores and Retail Grocery Wine Store Licensees may sell alcoholic beverages.

(b) The voters of any county electing to authorize sales of alcoholic beverages by the individual drink for on-premises consumption under Section 4 hereof may designate as days on which such sales are not authorized, any or all of those days listed in subsection (a) of this section. It shall be unlawful for any licensee or person to make any such sale within any such county on days so designated.

(c) Any licensee or person violating the provisions of this section shall be deemed guilty of a misdemeanor and any license issued pursuant to provisions of this act shall be revoked upon conviction for such sale in violation of this section.

§ 7. Taxation and licensing - Distribution of funds

The retail sale of alcoholic beverages shall be subject to the sales tax statutes 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 retail package stores and sales by the individual drink for on-premises consumption, the proceeds of which, except sales tax, shall be distributed as follows:

(a) The Oklahoma Tax Commission shall collect and distribute the taxes collected under the terms of this Article and shall distribute ninety-seven percent (97%) of such taxes as are levied and as are attributable to retail sales by package stores as follows:

(1) One-third (1/3) of taxes attributable to sales by retail package stores shall be allocated to the counties of the State of Oklahoma on the basis of area and population (giving equal weight to area and population) and all of said funds shall be appropriated by the Board of County Commissioners in each county to all

incorporated cities and towns in said county on the basis of population within each city and town on a per capita basis based on the last preceding Federal Decennial Census.

(2) Two-thirds (2/3) of taxes attributable to sales by retail package stores shall be credited to the General Revenue Fund of the State of Oklahoma.

(b) The remaining three percent (3%) of taxes attributable to sales of alcoholic beverages by retail package stores; and up to (3%) of taxes attributable to sales of alcoholic beverages by the individual drink for on-premises consumption, as shall be determined by the State Legislature; shall be paid to the State Treasurer and placed to the credit of the Oklahoma Tax Commission Fund, to be paid out of said fund pursuant to appropriations made by the State Legislature.

(c) The remaining taxes attributable to sales of alcoholic beverages by the individual drink for on-premises consumption, shall be credited to the General Revenue Fund of the State of Oklahoma. The State Legislature shall appropriate to the Oklahoma Alcoholic Beverage Laws Enforcement Commission from all available taxes collected under this Article, whatever funds are necessary to provide for full enforcement of the alcoholic beverage laws of the State.

(d) All State license fees and brand registration fees shall be collected by the Oklahoma Alcoholic Beverage Laws Enforcement Commission. The ABLE Commission shall distribute thirty percent (30%) of the State license fees and brand registration fees to the Oklahoma Department of Mental Health and Substance Abuse for treatment and prevention of mental health disease related to alcohol addiction, and shall then retain seventy percent (70%) of all license and brand registration fees to use for its general operations.

§ 8. State and political subdivisions prohibited from engaging in business.

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. Occupation Tax

Counties or 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. Restrictions on issuance of licenses

No retail package store or wholesale distributor's license, except for a beer wholesaler 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 five (5) 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 Retail Grocery Wine Store license, beer wholesaler distributor's license, or 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.

(e) A limited liability company containing a member 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.

(f) A limited liability company which has a member who has been convicted of a felony.

Two (2) Retail Grocery Wine Store licenses will be available upon approval by the ABLE Commission at the enactment of this amendment per qualified person, general or limited partnership, corporation, or limited liability company. Two (2) additional such licenses can be obtained from the ABLE Commission each calendar year for the following nine (9) years after enactment of this amendment. Beginning in the tenth (10th) full calendar year after enactment of this amendment, there will be no limit to the number of Retail Grocery Wine Store licenses that can be obtained by a qualified person, general or limited partnership, corporation, or limited liability company. Each person or business entity purchasing a license must qualify for a Retail Grocery Wine Store license pursuant to this Article and any corresponding law enacted by the Legislature or rules promulgated by the ABLE Commission.

No Retail Package Store license or Retail Grocery Wine Store license may be issued to a location within five hundred (500) feet of another Retail Package Store or Retail Grocery Wine Store, as measured from the property line of any Retail Package Store or Retail Grocery Wine Store to the property line of the other Retail Package Store or Retail Grocery Wine Store.

§ 11. Repealer.

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

§ 12. Retail Grocery Wine Store licenses

A Retail Grocery Wine Store license shall be available to individuals, corporations, limited liability companies, limited liability partnerships, or any business entity recognized as lawful by the State of Oklahoma.

A Retail Grocery Wine Store license may sell wine up to fourteen percent (14%) alcohol by volume.

A Retail Grocery Wine Store license may only be issued to a grocery store, warehouse club or supercenter as defined by NAICS codes 445110 or 452910.

No Retail Package Store license or Retail Grocery Wine Store license may be issued to a location within five hundred (500) feet of another Retail Package Store or Retail Grocery Wine Store, as measured from the property line of any Retail Package Store or Retail Grocery Wine Store to the property line of the Retail Package Store or Retail Grocery Wine Store.

The total sales of wine and beer for a Retail Grocery Wine Store licensee must not exceed thirty percent (30%) of total gross monthly sales.

All employees who stock, handle or sell beer, wine or spirits must be at least eighteen (18) years of age and directly supervised by an employee at least twenty-one (21) years of age and hold an employee license issued by the ABLE Commission.

Name and Address of Proponents:

Retail Liquor Association of Oklahoma
PO Box 890822
OKC, OK 73189

Bryan Kerr
PO Box 890822
OKC, OK 73189

SIGNATURES

This measure amends the entirety of Article XXVIII of the Oklahoma Constitution, as an amendment by Article repealing Article XXVIII and adopting Article XXVIII.A. It permits licensees that currently hold licenses to sell low-point beer to sell all beer and malt beverages. It allows grocery stores and supercenters to obtain licenses to sell wine up to 14% alcohol by volume for off-premises consumption. These entities would be able to obtain 2 licenses upon enactment of this amendment and 2 more each year for the next 9 years and then an unlimited number thereafter. Retail Package Stores and Retail Grocery Wine Stores must be located more than 500 feet apart. It allows small brewers as defined by law to sell their products at a brewery or festival or trade show and allows them to sell alcoholic beverage by the drink at a restaurant co-located on the premises of the brewery. It increases the production limits for wineries that wish to self-distribute. It provides that all employees who handle or sell alcoholic beverages must obtain an employee license from the Alcoholic Beverage Laws Enforcement Commission and be at least 18 years of age with at least a 21-year-old present to supervise the sale. It permits Retail Package Store licensees to sell any and all items that are sold in convenience and grocery stores up to 30% of gross monthly sales. It permits Retail Package Stores to offer services associated with the promotion of or education in their products. It limits sales of beer and wine by Retail Beer and Retail Grocery Wine Store licensees to 30% of their gross monthly sales. It permits sales by Retail Package Store licensees and Retail Wine Grocery Store licensees on any day of the year except for Thanksgiving Day and Christmas Day. It provides direct funding for the Alcoholic Beverage Laws Enforcement Commission and the Oklahoma Department of Mental Health and Substance Abuse through licensing fees paid by the entities engaged in the sale of alcoholic beverages. Amendments take effect on July 1, 2017.

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.

1.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
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	Signature and Printed Name	Residence City		County
11.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
12.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
13.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
14.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
15.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
16.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
17.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County
18.	_____ / _____	_____ / _____	OK	_____
	Signature and Printed Name	Residence City		County

