

FILED

FEB 23 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 provides equal opportunity guarantees for Oklahoma businesses. It permits licensees that currently hold licenses to sell low-point beer to sell all beer and malt beverages regardless of percent alcohol by volume. It allows certain business entities, including grocery stores, to qualify for a license to sell wine for off-premises consumption. 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 provides that all employees who handle or sell alcoholic beverages must obtain an employee license from the Alcoholic Beverage Laws Enforcement (ABLE) Commission. It permits Retail Package Store licensees to sell any and all items that are sold in convenience and grocery stores. It permits Retail Package Stores to offer services associated with the promotion of or education in their products. It permits Retail Package Store licensees and Retail Wine Grocery Store licensees to sell their products on any day of the year except for Thanksgiving Day and Christmas Day. It eliminates the prohibition of advertising of alcoholic beverages. It provides funding for the Department of Mental Health for treatment and prevention of mental health disease. The 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.

FILED

FEB 23 2016

State Question No. 785 Initiative Petition No. 409

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 shall be to enforce the alcoholic beverage laws of the State, and the Commission shall have such power and authority to enforce such laws, rules and regulations as shall be prescribed by the Legislature.

The 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 Commission the Governor shall appoint a replacement, with the advice and consent of the State Senate, within ninety (90) days. Members of the Commission shall be appointed for a term of five (5) years. The Commission shall appoint a Director, whose duties shall be defined by the Legislature. No more than four (4) members of the Commission shall be appointed from the same political party. No more than two (2) members of the Commission shall be appointed from the same federal congressional district.

No member of the 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 Commission shall be removable from office for cause as other officers not subject to impeachment.

§ 2. Retail beer licenses

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 handles or sells such products must be at least eighteen (18) years of age and must obtain an employee license from the Alcoholic Beverage Laws Enforcement (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.

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 twenty percent (20%) 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 one retail package license 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.

One (1) Retail Grocery Wine Store license will be available upon enactment of this amendment per qualified person, general or limited partnership, corporation, or limited liability company. Persons or entities may obtain up to three (3) additional Retail Grocery Wine Store licenses by purchasing a Retail Package Store license or a Retail Grocery Wine Store license from a license holder. Only Retail Package Store licenses that have been in existence for more than two (2) years from the date that the ABLE Commission issues the first Retail Grocery Wine Store license shall be eligible for purchase for the purpose of converting to a Retail Grocery Wine Store license. Each person or business entity purchasing a license must qualify for a Retail Grocery Wine Store license pursuant to this Article. An eligible Retail Package Store license may be sold to another person or persons who qualify for a Retail Package Store license, or to a business entity that qualifies for ownership of a Retail Grocery Wine Store license.

No Retail Package Store license or Retail Grocery Wine Store license may be issued to a location within twenty-five hundred (2,500) feet of another Retail Package Store or Retail Grocery Wine Store, as measured from the entrance of any Retail Package Store to the property line of the 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.

After the one initial license provided for by § 10 of this Article, a Retail Grocery Wine Store license must be obtained through the purchase of either a Retail Grocery Wine Store license or the purchase of a Retail Package Store license for conversion into a Retail Grocery Wine Store license. Only Retail Package Store licenses that have been in existence for more than two (2) years from the date that the ABLE Commission issues the first Retail Grocery Wine Store license shall be eligible for purchase for the purpose of converting to a Retail Grocery Wine Store license.

When an eligible Retail Grocery Wine Store license is purchased or a Retail Package Store license is obtained for the purpose of converting that license into a Retail Grocery Wine Store license, such Retail Grocery Wine Store license shall be permitted for use only in the same county, municipality, and zip code in which the eligible Retail Grocery Wine Store license or Retail Package Store license existed.

No Retail Grocery Wine Store license may be issued to a location within twenty-five hundred (2,500) feet of another Retail Package Store or Retail Grocery Wine Store, as measured from the entrance of the Retail Package Store to the property line of the Retail Grocery Wine Store.

The total sales of wine and beer for a Retail Grocery Wine Store licensee must not exceed twenty percent (20%) of total gross monthly sales.

All employees who stock, handle or sell wine must be at least eighteen (18) 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 provides equal opportunity guarantees for Oklahoma businesses. It permits licensees that currently hold licenses to sell low-point beer to sell all beer and malt beverages regardless of percent alcohol by volume. It allows certain business entities, including grocery stores, to qualify for a license to sell wine for off-premises consumption. 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 provides that all employees who handle or sell alcoholic beverages must obtain an employee license from the Alcoholic Beverage Laws Enforcement (ABLE) Commission. It permits Retail Package Store licensees to sell any and all items that are sold in convenience and grocery stores. It permits Retail Package Stores to offer services associated with the promotion of or education in their products. It permits Retail Package Store licensees and Retail Wine Grocery Store licensees to sell their products on any day of the year except for Thanksgiving Day and Christmas Day. It eliminates the prohibition of advertising of alcoholic beverages. It provides funding for the Department of Mental Health for treatment and prevention of mental health disease. The Amendments take effect on July 1, 2017.

WARNING

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1.	_____ / _____	_____ / _____	OK
	Signature and Printed Name	Residence City	County
2.	_____ / _____	_____ / _____	OK
	Signature and Printed Name	Residence City	County
3.	_____ / _____	_____ / _____	OK
	Signature and Printed Name	Residence City	County
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11.	_____ / _____	_____ / _____	OK
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12.	_____ / _____	_____ / _____	OK
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	Signature and Printed Name	Residence City	County
18.	_____ / _____	_____ / _____	OK
	Signature and Printed Name	Residence City	County
19.	_____ / _____	_____ / _____	OK
	Signature and Printed Name	Residence City	County
20.	_____ / _____	_____ / _____	OK
	Signature and Printed Name	Residence City	County

AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF _____)

I, _____, being first duly sworn say:

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

Circulator's signature

Address

City Zip Code

Subscribed and sworn to before me this _____ day of _____ 2016.

Notary Public

Address

City Zip Code

My Commission Number Is: _____
My Commission Expires: _____
(SEAL)



Chris Bengé
Secretary of State
and
Native American Affairs

SECRETARY OF STATE
AND
NATIVE AMERICAN AFFAIRS

Mary Fallin
Governor

FILED

FEB 23 2016

OKLAHOMA SECRETARY
OF STATE

February 23, 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):

This acknowledges receipt of the petition submitted to our office, which has been designated as **State Question Number 785, Initiative Petition Number 409**, and filed accordingly this February 23, 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: H & E Law Firm



Chris Bengé
Secretary of State
and
Native American Affairs

Mary Fallin
Governor

SECRETARY OF STATE
AND
NATIVE AMERICAN AFFAIRS

February 24, 2016

RECEIVED

FEB 24 2016

OFFICE OF THE
GOVERNOR

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

Dear Governor Fallin:

Please be advised that an initiative petition, designated as **State Question 785, Initiative Petition 409**, was sufficiently filed with the Office of the Secretary of State on Tuesday, February 23, 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

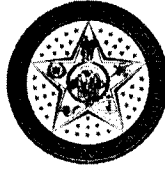
Please find enclosed a true and exact copy of State Question 785, Initiative Petition 409 on record with the Office of the Secretary of State.

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

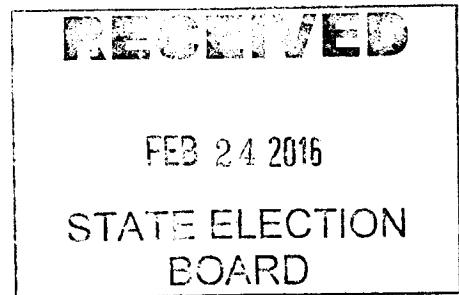


Chris Bengé
Secretary of State
and
Native American Affairs

Mary Fallin
Governor

SECRETARY OF STATE
AND
NATIVE AMERICAN AFFAIRS

February 24, 2016



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

Dear Secretary Ziriaux:

Please be advised that an initiative petition, designated as **State Question 785, Initiative Petition 409**, was sufficiently filed with the Office of the Secretary of State on Tuesday, February 23, 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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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

February 24, 2016

FILED

FEB 24 2016

OKLAHOMA SECRETARY
OF STATE

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

Dear Ms. Shea:

Please find enclosed the following for publication;

- **Notice of Filing for State Question 785, Initiative Petition 409**

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

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

Sincerely,

Chris Bengé
Secretary of State and
Native American Affairs

NOTICE OF THE FILING OF STATE QUESTION 785, INITIATIVE PETITION 409, 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 February 23, 2016, State Question 785, Initiative Petition 409 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 785, Initiative Petition 409 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 785, Initiative Petition 409:

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

Chris Benge
Oklahoma Secretary of State and
Native American Affairs

Auctions 503

ESTATE AUCTION
Sat., March 12 @ 10 a.m.
2009 Faircloud Dr., Edmond
WilliamCook.com
405-412-2013
AUCTIONS BY COOK, LLC

Books (Buy-Sell) 506

NEED 20,000 BOOKS, CDs, DVDs records, posters, art, comics, Tulsa. Will travel. Can pick up in 24 hrs. Gardner's Used Books. Largest book store in Okla!!
(918) 409-1096 627-7323 250-7381

Building Materials 507

Sheet Metal 3'x10' + \$16
Mon-Sat + 390-2077, 694-7534

Estate Sales 515

WOW!
Eclectic Large Quantity Estate Sale
4309 SE 55th Street
Fri-Sun Feb 26-28th 8am-5pm
Vintage Coca Cola and Avon Collectibles, Vintage Barbies and Handcrafted Plush, Lots of Craft Supplies and Collector Plates, Lawn and Garden, Kitchen, Christmas, Knickknacks, Curtains, Bedding, Vintage furniture and Gas Furnaces, and lots more! We offer a 10% Military Discount and Sunday is 50% off. Laura Motley, 405-760-5667.

Huge & Wonderful Estate Sale
The 1st of 2 Sales
1212 Davinbrook, 73118
Glenbrook Addition
Sun, Feb 28, 1-4

Final day for the first of two wonderful, eclectic sales! Plan to stay awhile as reductions are in place. Full kitchen, garage, designer furn., woman's designer clothing, shoes, handbags, men's items, porcelains, crystal, Patio

♦♦♦♦♦
Parking will be a challenge. Vans available from 12-30-4 in lot at 63rd & Grand to transport you into Glenbrook. You may park in

Furniture/Appliances 522

WE BUY FURNITURE
942-5865 No Appliances

GARAGE SALES

OKC Southwest 539
Best Garage Sale Ever, Sat & Sun, 10-3, sofa, fridge, crystal, coffee table, 2825 SW 78th St.

Health Care Equip. 545

Pace Saver Premium Plus III
Large Electric Cart, paid \$2600, only used 1 mo. \$1800
405-201-6003 after 5:00 PM

Invacare hospital bed, head+foot+bed raises, air matt.+saftey matt. 2 pumps, exc cond \$600. 210-5312

Pacer Simple 3-speed Treadmill \$35 ★ ★ ★ 282-4124

Pride-Jet 3 Electric Chair, manuals, new batteries \$475 751-5200

Hobbie, Arts, Crafts & Supplies 547

Bermina 1000 sewing machine, with corner cabinet, \$450, 721-8211 or 990-0283.

Jewelry, Furs, Silver 548

I BUY DIAMONDS
Must be over 3 Carats
I'm a private individual, I will pay more than ANY jewelry store.
Call 972-722-9393

Machinery & Tools 550

Used: Brake lathe; transmission flush machine; 2 post lift. \$1500-\$3000 Steve 405-823-2917.
Rockwell Radial Arm Saw Delta 990 w/stand \$100. 405-771-4440

Miscellaneous 551

New Shipment of Fruit & Pecan Trees - Assorted Varieties
Best for Oklahoma - Best Time to Plant - Just Arrived - Vegetables, Onions, Potatoes & Seeds
Best Prices in the Metro

Cattle & Livestock 571

MINI ZEBUS Registered.
BULLS AND HEIFERS
\$800-\$1200 ♦ 823-7848

2 Sim Bulls, 13 & 14mos LBW thick, meaty & high maternal \$1,800-\$2000. Clint 580-371-1736.

Dogs 573



350 Fine Pets AT FREE TO LIVE
4mi N of Waterloo on Western ALL Dogs & Cats \$80 Shts/Neut 282-8617 ★ ★ freetoliveok.org

American Pit Bullies \$300 POP. Pics on facebook 580-237-1961

Anatolian/Kangal cross pups, 2M, 1F, born 12/12/15, s/w, raised w/sheep & goats, \$250, call/text 405-258-8884 or -8885, Chandler.

Aussies (Miniature Am Shep)
AKC & ASDA reg 6ms, fancy blue merle Males \$500 823-7848

AUSSIES, TOYS

Registered, 2m 1f 7 weeks old s/w \$600 cash 405-567-5250

Australian Shepherds, Mini,
ASDR reg, 6wks, s/w/t/dc, 2M, 3F, red & blue merle, blk tri, POP \$650-\$750 ★ ★ ★ 405-567-5307

Australian Shepherds, ASDR reg,
Toy, 1 black tri M, 7wks. Adults: 6mos F, 9mos M, red merle. s/w/t/dc, \$500ea + \$50 656-2335



Biewer Yorkies & Chinese Crested
puppies. Home raised vet checked s/w/dc \$300-\$2500 380-490-1695

BLUE HEELER PUPS
Australian cattle pups 9 wks & vacc. \$200. 405-404-0091

Dogs 573



Great Dane AKC dob 1/8/16 F blk, Zharl, merl, bifwn, bifwmerl, dc/dwt \$750 Ready now 476-8673

Great Dane
Great Dane Puppy, 9 mo. with Pampers 10x10x6 pen, Great with kids, moving must sell. \$300 (580) 309-2416 or (580) 832-2705

Greyhound/Ddeerhound puppies, 6 weeks, 2M, 2F, black with some white, free, 495-3627, Bethany.

Jack Russell Wire Hair Terrier Mix, 3M, 11wks, s/w, \$30ea. 405-888-0743 Harrah

Jack Russell & Pug, 8 year males, free to good home, 405-517-1395.



Labrador Retrievers Silver AKC
AKC Silver LAB, 7 F, 1 M, 2 YEL-LOW M, VET CK, SHOTS, 5wks old \$850 (Silver) \$500 (Yellow) call 405-883-6022 or text 918-397-1460

Labs AKC, Chocolate,
2F, 8 weeks, shots & wormed, \$600 ea (405) 413-5340; 314-2943

MALSHIH (Maltese/ShihTzu)
2 CUTE! \$495 VISA/MC 826-4557

Morkie Male Puppies-registered
\$600 Call or text (405) 380-5014

MORKIES adorable s/w small adorable, \$300-\$450, 361-5317.
Papillon, ACA M, teacup, tricolor & white, \$750, 405-627-0419.

Dogs 573

Toy Fox Terriers 8wks s/w Tan/whit, Blk/tri \$800-\$1000 823-7848

Wolf Hybrid Puppies, 6M, 5F
POP, 1st s/w, born 12/27/15, Timberwolf Malmutte Cross, Stillwater area. Call Barbara 405-624-3859 or Jack 940-337-6801 10am-8pm Speak loudly & slow, sorry hard of hearing, \$300 Cash.

YORKIES, ACA reg, 7 weeks, s/w, small, \$400-\$450, 580-465-1571.

Yorkies, AKC, s/w, health guaranteed \$700-\$1200. 405-812-1820

Yorkie
Sweet 4 year old Yorkie. Very affectionate. I work a lot of hours and don't have the time for him he deserves. \$200. 405-835-0151

Horses, Equipment & Supplies 575
Jones Livestock Auction
Thursday Tack 6pm
Gate Cattle, E

Legal Notices 717

NOTICE OF THE FILING OF STATE QUESTION 785, INITIATIVE PETITION 409, 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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Proponents of record for State Question 785, Initiative Petition 409:
Retail Liquor Association of Oklahoma
PO Box 890822
Oklahoma City, Oklahoma 73189

Bryan Kerr
PO Box 890822
Oklahoma City, Oklahoma 73189

Chris Bengel
Oklahoma Secretary of State and
Native American Affairs

Bids & Proposals 710

REQUEST FOR PROPOSALS

The SHPO, OK Historical Society, requests proposals for FY 2016 survey and planning projects. Funding is from the U.S. Department of the Interior's Historic Preservation Fund. \$150,000 has been budgeted for these activities. Successful applicants will be the SHPO's subgrantees and must provide the nonfederal-matching share. Project work must conform to the Sec. of the Interior's Standards and Guidelines for Archeology and Historic Preservation. We anticipate funding only 3-4 projects. RFPs will be available March 1 by visiting <http://www.okhistory.org/shpo/rfp.htm> or submitting a written request by title to: Melvena Heisch, SHPO, OK Historical Society, 800 Nazih Zuhdi Drive, Oklahoma City, Oklahoma 73109, or by email at mheisch@okhistory.org. Proposals are due by 5:00 p.m., April 15, 2016.

Oklahoma Press Service

3601 North Lincoln Blvd.

Oklahoma City, OK 73105-

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

Thursday, March 03, 2016 11:45 AM

Page 1

Proof of Publication Order Number 16-02-62

I, Landon Cobb, 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: 02/28/2016

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 \$1,015.90

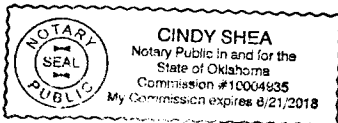
Landon Cobb

(Editor, Publisher or Authorized Agent)

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

Cindy Shea

(Notary Public)



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Insertion: 02/29/2016

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

Landon Cobb

(Editor, Publisher or Authorized Agent)

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Cindy Shea

(Notary Public)



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Insertion: 02/28/2016

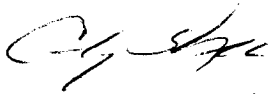
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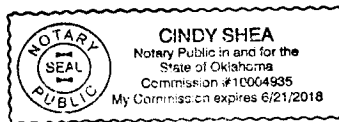
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Oklahoma City, OK 73189

Chris Bengel
Oklahoma Secretary of State and Native American Affairs

ABC



ORIGINAL

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
MAR 11 2016
MICHAEL S. RICHIE
CLERK

<p>OKLAHOMA GROCERS ASSOCIATION and RON EDGMON,</p> <p>PETITIONERS,</p> <p>v.</p> <p>RETAIL LIQUOR ASSOCIATION OF OKLAHOMA and BRYAN KERR,</p> <p>RESPONDENTS.</p>
--

No. **#114792**

Received	
Marked	
Revised	
Certified	
Updated	

APPLICATION TO ASSUME ORIGINAL JURISDICTION

V. GLENN COFFEE, OBA # 14563
DENISE DAVICK, OBA #31532
-Of the Firm-
GLENN COFFEE & ASSOCIATES, PLLC
P.O. Box 437
Oklahoma City, OK 73101
Phone: (405) 601-1616
gcoffee@glenncoffee.com
denisedavick@glenncoffee.com

ATTORNEYS FOR PETITIONERS,
OKLAHOMA GROCERS ASSOCIATION
AND RON EDGMON

MARCH 11, 2016

Come now the Petitioners and ask this Court to assume original jurisdiction to review the constitutionality of Initiative Petition No. 409, State Question 785 (“the Petition”) which was filed with the Oklahoma Secretary of State on February 23, 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. 409 is unconstitutional because (a), the Petition unlawfully delegates licensure power to economically-interested private entities, and (b) the gist of the Petition is statutorily insufficient and misleading.

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 409 was filed with the Oklahoma Secretary of State on February 23, 2016 and a copy of that Petition is included as Item “A” to the Appendix.
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, February 28, 2016. (App'x Tab B) 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, March 11, 2016.

MERITS

10. The Brief in Support filed herewith demonstrates that Initiative Petition 409 is unconstitutional in two respects.

11. First, the Petition attempts to implement an unlawful transfer of the ABLE Commission's licensure power to private retailers in violation of the non-delegation principles found in Article 4 and Article 5 of the Oklahoma Constitution. The Petition fails under the scrutiny imposed by Oklahoma courts when analyzing a transfer of public power to private entities.

12. Specifically, the Petition cannot withstand delegation analysis because it imposes a system of retail licensure controlled largely by the retailers themselves, without including the proper oversight or due process for those who fall within that system. Further, the Petition violates the non-delegation rule by removing the decision originally vested with ABLE and assigning it to economically self-interested retailers.

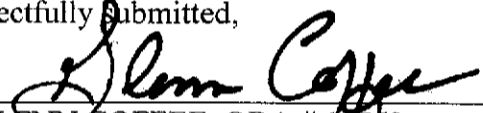
13. Second, the gist of Initiative Petition 409 is neither statutorily sufficient nor accurate in its description of the nature or effects of the new Article 28A. The deficiencies of the gist of Petition 409 are not only the numerous material omissions it makes but also include affirmative misrepresentations of what the new Article entails. Specifically, the Petition attempts to characterize itself as providing “equal opportunity guarantees for Oklahoma businesses” when in reality it serves to greatly expand the power and economic interests of Retail Package Stores at the expenses of potential Grocery Store Wine licensees.

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 409 is unconstitutional, invalid, and should not be presented for a vote of the people.

Respectfully Submitted,



V. GLENN COFFEE, OBA # 14653

DENISE DAVICK, OBA #31532

-Of the Firm-

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CERTIFICATE OF SERVICE

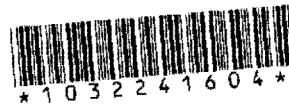
I hereby certify that on this 11TH day of March, 2016, a true and correct copy of the forgoing Application to Assume Original Jurisdiction was served by U.S. Mail, postage prepaid, as follows:

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

Attorney General's Office
State of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105

Secretary of State's Office
State of Oklahoma
101 State Capitol
Oklahoma City, OK 73105

Bryan Kerr
PO Box 890822
Oklahoma City, OK 73189



ORIGINAL

**FILED
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**MICHAEL S. RICHIE
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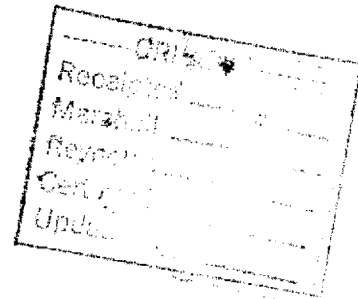
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MARCH 11, 2016

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MARCH 11, 2016

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INTRODUCTION

Initiative Petition 409 ("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 Petition attempts to implement a transfer of the Alcoholic Beverage Laws Enforcement ("ABLE") Commission's licensure power to private retailers in violation of the Oklahoma Constitution's non-delegation principles. Oklahoma courts have joined the appellate courts of numerous jurisdictions in holding that a transfer of public power to private entities warrants special scrutiny in delegation analysis. The Petition fails under this scrutiny because it contemplates a system of retail licensure controlled principally by the retailers themselves, without including provisions for adequate public oversight, due process for those seeking to enter or expand their presence in the retail marketplace, or protections to ensure that licensure eligibility requirements will be upheld under the retailers' control. Most significantly, the Petition subjects licensure decisions originally vested with ABLE to the economic self-interests of retailers -- a clear violation of the non-delegation rule.

Section II will then show that the gist of the Petition is legally insufficient and misleading under Oklahoma law. Petition 409 fails to provide proper notice of the changes or the practical effect of the Petition, wholly omitting reference to many of the most significant characteristics of the Petition. However, the deficiencies with the gist of the Petition are not merely the numerous omissions, but also a fundamental mischaracterization of the very nature of the Petition. Specifically, Section II(C) will explain that the proponents of the Petition attempt to mislead the public by including a statement that the Petition provides "equal opportunity guarantees for Oklahoma businesses" without any basis in the language or practical effect of the new law. The inclusion of this language would allow proponents of the Petition to garner signatures based upon a falsehood, and does not withstand the requirement that the gist of a petition be "free from the taint of misleading

terms or deceitful language.” *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 9, 164 P.3d 125, 129. The proponents of Petition 409 should not be allowed to omit all reference to the increased power transferred to Retail Package Stores while continuing to characterize the petition as “equal opportunity” for Oklahoma businesses.

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.”)

I. PETITION 409 VIOLATES THE RULE OF NON-DELEGATION.

A. General principles of licensure and non-delegation.

“The State in the exercise of its police power has the right to regulate any and all occupations and/or professions for the protection of the lives and health of its people” *Burger v. Richards*, 1963 OK 79, ¶ 6, 380 P.2d 687, 689. This power may be exercised “by appropriate legislation to the extent reasonably necessary to protect the public health,” and the Legislature may, in turn, delegate to an administrative agency the regulation of an occupation or profession through licensure requirements. *Id.* Any such transfer at least potentially implicates the non-delegation doctrine rooted in Articles 4 and 5¹ of the Oklahoma Constitution. *See In re Initiative Petition No. 366*, 2002 OK 21, ¶ 17, 46 P.3d 123, 128.

Oklahoma’s constitutional jurisprudence establishes that a legislative enactment²

¹ These provisions generally prohibit one branch of government from exercising the powers of another (Art. 4, § 1), and charge the Legislature with policymaking for the State (Art.5, § 1).

² Because the voters act as the Legislature through the initiative process, “[t]he non-

“does not constitute an illegal delegation of legislative authority” in a licensure context “[w]here the Legislature has prescribed the necessary legal standards relating to the qualifications of an applicant for a license” *Burger*, 1963 OK 79 at ¶ 11, 380 P.2d at 690. Delegation becomes a constitutional concern, however, when it results in severe attenuation of the originally vested authority. This is the “principal of constitutional dimension known under the Latin maxim of *delegate non potest delegari*” (“delegated authority cannot be re-delegated”), which this Court has applied as “an extratextual yardstick for measuring legislative conformity to the constitution’s prohibition against unlawful abandonment of power.” *Bushert v. Hughes*, 1996 OK 21, ¶ 11, 912 P.2d 334, 339 and n.25. Of even greater concern are instances in which delegation results in a transfer of public power to private entities. “The general rule has become fixed that the legislature may not delegate legislative functions to private persons.” *Potter v. State*, 1973 OK CR 228, ¶ 5, 509 P.2d 933, 934-35. This rule applies with special force “when the delegation serves private interests or raises the possibility that a conflict of interests will affect the decisions taken.” 16 C.J.S. *Constitutional Law* § 337; see also 16A Am. Jur. 2d *Constitutional Law* § 323 (“[T]he legislative branch cannot delegate to private individuals in industries to be regulated the power to establish codes of fair competition.”).

Thus, in *American Home Products Corp. v. Homsey*, 1961 OK 91, 361 P.2d 297, this Court struck down the Oklahoma Fair Trade Act, finding that it was “in reality a selective price control act which leaves to the producer of trademark commodities the arbitrary right to determine if and when it shall take effect.” *Id.* at ¶ 0, 298 (syllabus at ¶ 2). The Act was held unconstitutional “in that it delegates to private persons the right to prescribe a rule governing conduct for the future which is binding upon those who do not consent,” while

delegation doctrine applies to enactments by the people in the same manner it applies to enactments by the Legislature.” *In re Initiative Petition No. 366*, 2002 OK 21 at ¶ 17, 46 P.3d at 128.

lacking a mechanism for “hearing or safeguards” or review of any kind. *Id.* (syllabus at ¶ 3). Similarly, the *Potter* Court found that the Legislature’s delegation to a private entity of the right to determine movie distribution rights in Oklahoma was unconstitutional because, in part, the enactment provided “no rules or standards to govern” the private entity, and provided “for no hearings, and no review procedure.” *See* 1973 OK CR 228 at ¶¶ 5-7, 509 P.2d at 934-35.

The appellate courts of several jurisdictions are in accord on these principles, and have applied them to nullify legislative enactments in the specific context of licensure. *See Munson v. City of Colorado Springs*, 84 P. 683, 685 (Colo. 1906) (“The power to license ticket brokers has been conferred by the General Assembly upon the city council of cities, but that body may not relinquish the delegated power, or any essential part of it, to a private person or corporation or a purely voluntary private association”); *New Jersey Dep’t of Transp., Div. of Aeronautics v. Brzoska*, 354 A.2d 650, 651 (N.J. Super. Ct. App. Div. 1976) (“The power to determine who shall have the right to engage in an otherwise lawful enterprise may not be validly delegated to a private person or body, not subject to public accountability, particularly where the exercise of such power is uncontrolled by adequate legislative standards inhibiting arbitrary or self-motivated action by such private parties.”); *Fink v. Cole*, 97 N.E.2d 873, 876 (N.Y. 1951) (“In our view the delegation by the Legislature of its licensing power to The Jockey Club, a private corporation, is such an abdication as to be patently an unconstitutional relinquishment of legislative power in violation of . . . the Constitution of this State”); *Texas Boll Weevil Eradication Found. V. Lewellen*, 952 S.W.2d 454, 475 (Tex. 1997) (Act permitting private organization to impose regulatory fees on cotton growers “as a whole represents an overly broad delegation of legislative authority to a private entity Therefore, the Act cannot stand.”); *Union Trust Co. v. Simmons*, 211 P.2d 190, 193 (Utah 1949) (Statute requiring denial of application to establish branch bank where applicant could not obtain consent of other banks in a given area held to be an improper

delegation of legislative power).

B. Petition 409 unlawfully delegates licensure power to private entities.

Although Oklahoma's appellate courts have recognized special concerns associated with delegations of public power to private entities, they do not appear to have generated clear guidelines for determining the lawfulness of such delegations, as distinguished from delegations of power to another public body. Facing the realization that its own precedents also lacked such guidelines, the Texas Supreme Court in *Lewellen*, drawing upon the analyses of several legal scholars, developed a set of eight factors applicable specifically to private delegations:

1. Are the private delegate's actions subject to meaningful review by a state agency or other branch of state government?
2. Are the persons affected by the private delegate's actions adequately represented in the decisionmaking process?
3. Is the private delegate's power limited to making rules, or does the delegate also apply the law to particular individuals?
4. Does the private delegate have a pecuniary or other personal interest that may conflict with his or her public function?
5. Is the private delegate empowered to define criminal acts or impose criminal sanctions?
6. Is the delegation narrow in duration, extent, and subject matter?
7. Does the private delegate possess special qualifications or training for the task delegated to it?
8. Has the Legislature provided sufficient standards to guide the private delegate in its work?

952 S.W.2d 454, 472 (condensed from Louis L. Jaffe, *Law Making by Private Groups*, 51 Harv. L. Rev. 201, 247-53 (1937); George W. Liebmann, *Delegation to Private Parties in American Constitutional Law*, 50 Ind. LJ. 650, 717-18 (1975); David M. Lawrence, *Private*

Exercise of Governmental Power, 61 Ind. L.J. 647, 686-94 (1986)); *see also* 16A Am. Jur. 2d, *supra*, at § 322 (Articulating similar factors “[t]o determine whether a private delegation of legislative power is constitutional . . .”).

Section 10 of Petition 409’s proposed Article 28A is entitled “Restriction on issuance of licenses,” and contains the following language:

One (1) Retail Grocery Wine Store license will be available upon enactment of this amendment per qualified person, general or limited partnership, corporation, or limited liability company. Persons or entities may obtain up to three (3) additional Retail Grocery Wine Store licenses by purchasing a Retail Package Store license or Retail Grocery Wide Store license from a license holder . . . Each person or business entity purchasing a license must qualify for a Retail Grocery Wine Store license pursuant to this Article. An eligible Retail Package Store license may be sold to another person or persons who qualify for a Retail Package Store license, or to a business entity that qualifies for ownership of a Retail Grocery Wine Store license.³

These provisions reveal the economic scheme at the heart of the Retail Liquor Association of Oklahoma’s proposal – the ability of alcoholic beverage retailers to control competition. Application of the *Lewellen* factors to these provisions plainly demonstrates that, if approved, Petition 409 would result in an unconstitutional delegation of power.

1. Proposed Article 28A provides no meaningful review over the sale of licenses.

Section 1 of proposed Article 28A reestablishes the ABLE Commission and empowers ABLE to enforce “the alcoholic beverage laws of the State” according to the “power and authority to enforce such laws . . . prescribed by the Legislature.” Section 10 lists several criteria, presumably to be applied by ABLE, for the licensure of Retail Package Stores and Retail Grocery Wine Stores. However, according to § 10, once a license is issued to a qualifying person or entity, that license may later be sold to another qualifying person or entity, and nothing within the proposed Article applies public oversight to that sale. The Article clearly does not contemplate that a prospective buyer will be deemed eligible by

³ Section 12 of proposed Article 28A contains substantially similar language.

ABLE before it buys a license. If ABLE review is intended, why not simply leave ABLE as the only entity capable of issuing licenses? Rather, the Article is entirely silent on who bears the responsibility for ensuring that a license buyer satisfies all licensure qualifications.

Nor does the Article provide any mechanism for ensuring that a retailer can actually obtain a license by purchase if it qualifies, without being subject only to the whim of a current license holder. Presumably, as a matter of due process, ABLE would have no authority to deny an initial license to an applicant who meets all eligibility criteria. However, after obtaining an initial license, a qualified person or entity may obtain subsequent licenses (up to a limit of three) only by buying a license from another license holder. If a dispute ensues between a license holder and a would-be buyer over the buyer's qualifications, what is the buyer's recourse? And even if some mechanism exists for the buyer to conclusively establish its qualifications, nothing in the Article requires the license holder to sell. The "meaningful review" factor plainly weighs against the constitutionality of the Petition.

2. *Proposed Article 28A provides no representation for qualifying persons or entities who can only obtain a license through purchase.*

The power delegated in the proposed Article, particularly in §§ 10 and 12, is the power to determine who may become licensed. Those affected by this delegated power are the qualifying persons or entities seeking to obtain a license, but who may only do so by purchase from a current license-holder. Such a scenario might arise as a result of licensure saturation within a given area (since no two licensed stores may exist within 2,500 feet), or whenever a qualifying retailer has obtained one license from ABLE, but wishes to obtain another. By precluding such persons or entities from obtaining licenses other than through a private, arms-length transaction, the proposed Article ensures that they will have no representation in the seller's decision over whether to permit licensure. This factor must also weigh toward finding that Petition 409 would create an unconstitutional delegation of power.

3. *Under proposed Article 28A, license holders have a clear pecuniary interest that conflicts with their delegated power.*

As discussed above, the proposed Article is conspicuously designed to place control over entry or expansion into the marketplace within the hands of current license-holders. The conflict of interest created by this shift of power is apparent on the face of the Article itself. Under § 1, members of the ABLE Commission are prohibited from holding “any license authorized by this Article,” or having “any interest in any capacity, in the manufacture, sale, distribution, or transportation of alcoholic beverages.” The obvious purpose of this prohibition is to preclude conflicts between an ABLE officer’s public duties and private interests. No similar provision applies, however, after the power to license subsequent retailers shifts from ABLE to a licensee. Rather, given that the mechanism for transfer of a license after that point is a private sale, § 10, in practical effect, reverses § 1’s conflict-of-interest protections and *guarantees* that licensees will be motivated by economic self-interest. The “pecuniary interest” factor can only tip the scale farther toward unconstitutionality.

4. *The delegation of power under proposed Article 28A is unlimited in duration.*

Although the subject matter of the delegation may be limited to licensure, nothing within the Article places a durational limit on a licensee’s power of sale. Presumably, for as long as a licensee holds a license, the licensee maintains control over the decision to sell, and, therefore, control over entry or expansion into the marketplace. On balance, this factor should also weigh against the constitutionality of Petition 409.

5. *Licensees will have no apparent qualifications or training for making licensure determinations, effectively making the delegation standardless.*

Because the proposed Article lacks any suggestion that ABLE will participate in determining the eligibility of license purchasers, the task of screening buyers would presumably fall to the sellers. This means that sellers must ensure that prospective purchasers of Retail Package Store licenses are not a corporation, business trust, or secret partnership; that the individual or all persons comprising the entity have been Oklahoma residents for at

least five years; that the individual or all persons comprising the entity have never been convicted of a felony or misdemeanor relating to the sale, manufacture, or transportation of alcohol; and that the individual or all persons comprising the entity have never been convicted of a felony of any kind. (Art. 28A, § 10.) For prospective purchasers of a Retail Grocery Wine Store license, the seller must make similar determinations for all corporate directors and officers, or all members of a limited liability company. (*Id.*)

Regardless of the type of license to be purchased, in order to comply with §§ 10 and 12, the seller must also ensure that the prospective buyer does not already hold a license, and that the prospective buyer's store is not located within 2,500 feet of another licensed store. (*Id.*) Finally, in the case of a purchaser seeking to buy a Retail Grocery Wine Store license, the buyer must ensure that the purchaser's store is "a grocery store, warehouse club or supercenter as defined by NAICS codes 445110 or 452910." (Art. 28A, § 12.)

This licensure scheme plainly contemplates an application process, criminal background checks, possible review of records concerning the formation and structure of an applying business entity, access to records of existing licensures, surveying, and research regarding a purchaser's NAICS status – tasks normally suited to an administrative agency authorized to license and regulate an occupation or industry. On the other hand, the proposed Article includes no requirements or assurances of a seller's qualifications to perform these detailed investigations. Thus, despite the inclusion of numerous licensure criteria, the decision-making authority of a licensee will effectively be rendered standardless in any instance in which a licensee is not equipped or lacks the resources to make *all* of the required determinations. In other words, the proposed Article's lack of any provision for ensuring that sellers will be capable of making complete licensure determinations practically ensures that licensure standards cannot be implemented when a license is transferred by sale. Thus, both the "special qualification" and "sufficient standard" factors support a determination that Petition 409 seeks the voters' approval of an unconstitutional delegation.

II. THE GIST OF PETITION 409 IS MISLEADING AND INSUFFICIENT.

Initiative Petition 409 should be stricken from the ballot because the gist of the petition is insufficient and misleading under Oklahoma law.

A. The gist requirement.

Oklahoma Statutes Title 34, § 3 requires that “a simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet.” The purpose of the gist is to prevent deceit, fraud, and corruption in the initiative process. *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 9, 164 P.3d 125, 129. The gist must provide potential signatories with “sufficient information to make an informed decision about the true nature of the legislation.” *Id.* at ¶ 12. Although the gist “does not extend to describing policy arguments for or against the proposal,” it must at least “explain the effect on existing law.” *Id.* at ¶ 8.

The pre-circulation period is an appropriate time to challenge the gist. Pre-circulation challenges to the sufficiency of the petition are governed by 34 Okla. Stat. § 8(B), and post-circulation challenges are governed by 34 Okla. Stat. § 8(I). Post-circulation challenges are limited to objections related “only to the validity or number of the signatures or a challenge to the ballot title.” The gist is distinct from the “more detailed requirements of the ballot title” and not subject to revision by the Attorney General, and thus should be challenged at the pre-circulation stage. *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 6, 164 P.3d at 129. In a case recently decided by this Court, Justice Taylor indicated in his dissent that the gist can be challenged before a petition is circulated for signatures, and the rest of the Court did not dispute that point. *In re Initiative Petition No. 403*, 2016 OK 1, ¶ 21 (Taylor, J., dissenting); *id.* n. 2 (majority opinion). As Justice Taylor stated, “[t]his Court can examine the gist before the petition has even been put before potential signatories as the Legislature has deemed the gist a necessary part of the pamphlet and we are not at liberty to ignore that requirement.” *Id.* (internal citations omitted).

The placement of the gist of the petition on the signature page underscores the

importance of its role and the necessity of a fair description of the law for the education of the public. It is because the initiative process is so important that the gist—the simple statement that describes the law—must be accurate. When the gist of the petition omits fundamental information or mischaracterizes various aspects of the petition, it undermines the very ability of the people to effectively use the initiative petition process to create law. Unlike the ballot title, Title 34 does not allow the Attorney General the opportunity to amend the gist, so the only remedy if the gist of the petition is insufficient is to remove the petition from the ballot. If the gist of a Petition is insufficient, the initiative petition should be stricken from the ballot. *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 13, 164 P.3d at 130. “[N]oncompliance is fatal.” *In re Initiative Petition No. 403*, 2016 OK 1, ¶ 20 (Taylor, J., dissenting). The gist provision is “indispensable and noncompliance is fatal.” *In re Initiative Petition No. 342*, 1990 OK 76, 797 P.2d at 333.

B. The gist of Petition 409 fails to give proper notice of the changes or the practical effect of the Petition.

The first requirement of the gist of a petition is that it put potential signatories “on notice of the changes being made.” *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 7, 164 P.3d 125 (internal quotations omitted). Without this requirement, potential signatories are stripped of the ability to make an informed decision regarding the proposal. However, Petition 409 fails this requirement in the following ways:

1. **Tax Increase.** The gist does not put citizens on notice that all beer, including 3.2% beer, will be taxed as alcohol. This will have the effect of raising taxes on the beer sold at grocery stores and convenience stores.
2. **Brewery Owned Branches.** No notice that the three-tier system will be collapsed into two tiers for beer because a brewery could own its own distributor in Oklahoma. This would be a significant change in Oklahoma law.
3. **Distance Restriction.** No notice that a Retail Grocery Store Wine license cannot be issued to any grocery store, warehouse club, or supercenter (collectively “grocery store”) located within just less than half-a-mile (2,500 feet) from an existing packages store.

4. **License Restriction.** No notice that only one Retail Grocery Store Wine license will be issued by ABLE to people and entities with multiple stores.
5. **Date Limit for Selling Licenses.** No notice that Retail Package Store licensees who are issued licenses after July 1, 2015 will be prohibited from selling their licenses to a grocery store for conversion to a Retail Grocery Store Wine License.
6. **Geographic Restriction on Selling Licenses.** No notice that Retail Package Store licensees are limited in selling their licenses to grocery stores in the same county, municipality *and* zip code.

The second requirement is that the gist convey the practical effect of the petition. *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 8, 164 P.3d at 129. Petition 409 fails this requirement in the following ways:

1. **Licenses for Retailers.** The gist does not explain that the effect of the proposition is to create significant additional economic value for Retail Package Store licenses because they can be transformed into Grocery Store Wine licenses.
2. **Taxation.** The gist does not explain that the practical effect of taxing all beer, including 3.2% beer, as alcohol means taxes will increase on the beer sold at grocery stores and convenience stores.
3. **Distance Restriction.** Even though consumers believe they are signing a petition to allow wine to be sold in grocery stores, the practical effect of the 2,500 foot distance restriction is that many grocery stores will not be eligible for a Grocery Store Wine license.
4. **License Restriction.** Even though consumers believe they are signing a petition to allow wine to be sold in grocery stores, the practical effect of the one-license-per-grocery-store limit is that many grocery stores will not be eligible for Grocery Store Wine licenses unless they can purchase Retail Package Store licenses.
5. **Date Limit for Selling Licenses.** The practical effect of only allowing Retail Package Store licenses that were issued before July 1, 2015 to be sold for conversion to Grocery Store Wine licenses is to permanently restrict the number of grocery store wine retailers.

In comparison with the information that is conveyed the public in the current gist of the title, it is noteworthy that the Proponents saw fit to mention none of the aforementioned aspects of the new proposed Article. This sort of selective emphasis by the Proponents simply does

not meet the requirements of the gist of a Petition.

C. The gist of Petition 409 contains misleading language and fails to alert signatories of the effect on the balance of power.

For the gist of a petition to pass review of the Supreme Court, it must be “free from the taint of misleading terms or deceitful language.” *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 9, 164 P.3d 125, 129. Here, the gist of Petition 409 wholly omits the important information referenced above, and instead claims that, “[i]t provides equal opportunity guarantees for Oklahoma businesses.” This statement is both false and misleading. Under the terms of Petition 409, the following inequalities of the opportunities for businesses exist:

- Retail Package Stores are subject to disparate treatment based upon their length of existence. For certain Retail Package Stores, the value of an established Retail Package Store license will appreciate overnight because it can be sold to a grocery store. However, new Retail Package licensees that receive their licenses after July 1, 2015 cannot sell their licenses to a grocery store.
- Small wineries and breweries can self-distribute, but large wineries and breweries cannot.
- A beer wholesaler can have an exclusive territory, but wine and spirit wholesalers cannot.
- Grocery stores located near a retail package store cannot receive a wine license, but grocery stores more than 2,500 feet from a liquor store qualify for a license.
- If a person or entity owns one grocery store (not located near a package store), they can receive a wine license. However, if a person or entity owns multiple grocery stores, they will receive a license for only one of their locations unless they can persuade a Retail Package Store licensee in the same county, municipality *and* zip code to go out of business and sell the grocery store their license.

If the ultimate goal of the gist of a petition is to ensure that “[t]he voters, after reading the statement on the petition and the ballot title, should be able to cast an informed vote,” Petition 409 squarely fails this test by its use of deceitful language in describing the opportunities between business as “equal” under the terms of its petition. *In re Initiative*

Petition No. 344, State Question No. 630, 1990 OK 75, 797 P.2d 326, 330.

Most significantly, the gist of Petition 409 fails to inform the people of the changes in the delegation of licensing power, as discussed in Section II of this brief. In *In re Initiative Petition No. 384*, the Supreme Court struck down a petition “failed to alert potential signatories to the effect the proposed statute would have on the balance of power between local school boards and the state.” 2007 OK 48, ¶ 12, 164 P.3d at 130. Specifically, the Court focused on the fact that gist spent too much time defining certain terms (“‘classroom instructional expenditures’ in mind-numbing detail”), but failed to even note the other important changes in the law, for instance the larger shift in power and the “additional authority given to the Superintendent.” *Id.*

Here, Petition 409 follows a similar pattern. It spends 78 words of the 239 words of the gist discussing products or services that can be provided by retail liquor stores or small brewers. However, nowhere in those 239 words does it mention that the powers of the ABLE Commission will effectively be vested in certain Retail Package Store owners. As discussed at length in Section II, Petition 409 has effectively delegates a vast amount of the licensing power vested in ABLE to Retail Package Stores. A change of this magnitude simply cannot be omitted from the gist of the petition if it is to pass constitutional muster.

When the gist of the petition is insufficient and misleading, the only appropriate remedy is to strike the measure from the ballot. “[T]he Legislature has deemed the gist a necessary part of the pamphlet and we are not at liberty to ignore that requirement, since we must presume that the Legislature ‘expressed its intent’ in creating the gist requirement and ‘that it intended what it so expressed.’” *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 13, 164 P.3d at 130 (citing *TXO Prod. Corp. v. Okla. Corp. Comm’n*, 1992 OK 39, ¶ 7, 829 P.2d 964, 969). The gist of the petition is the key element to educating voters about the true nature of the measure, and thus is “indispensable and noncompliance is fatal.” *In re Initiative Petition No. 342*, 1990 OK 76, 797 P.2d at 333. Due to the significant omissions

and affirmative misstatements present in the gist of Petition 409, the appropriate legal recourse is for the Court to strike it from the ballot.

CONCLUSION

This Court should rule that Initiative Petition 409 is unconstitutional, invalid, and should not be presented for a vote of the people.

Respectfully submitted,



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CERTIFICATE OF SERVICE

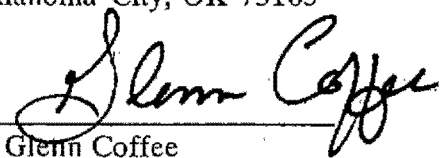
I hereby certify that on this 11TH day of March, 2016, a true and correct copy of the forgoing Brief in Support of Application to Assume Original Jurisdiction was served by U.S. Mail, postage prepaid, as follows:

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V. Glenn Coffee



MAR 16 2016

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

Wednesday, March 17, 2016

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

114,712 - (cons. w/114,723) IN RE: INITIATIVE PETITION NO. 407, STATE QUESTION NO. 783

State Question No. 783 Initiative Petition No. 407 having been withdrawn by the proponent in the Office of the Secretary of State, this original proceeding is dismissed as moot.

114,792 - IN RE: INITIATIVE PETITION NO. 409, STATE QUESTION NO. 785; OKLAHOMA GROCERS ASSOCIATION, *et al.* v. RETAIL LIQUOR ASSOCIATION OF OKLAHOMA, *et al.*

Proponent of Initiative Petition No. 409, and any other interested party are directed to respond to the proponents' challenge to the constitutionality not later than April 8, 2016.

Oral presentation before a Referee of this Court is set for April 14, 2016 at 10:30 a.m.

CHIEF JUSTICE

RECEIVED

MAR 17 2016

OKLAHOMA SECRETARY
OF STATE