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A SPIRITED REVOLUTION: LOCAL OPTION ELECTIONS AND THE IMPENDING DEATH OF PROHIBITION IN ARKANSAS

I. INTRODUCTION

A man walks into a bar. He sees a beautiful, well-dressed woman sitting on a barstool alone. He walks up to her and says, “Hi there, how’s it going tonight?” She turns to him, looks him straight in the eyes and says, “I’ll screw anybody, anytime, anywhere, anyplace. It doesn’t matter to me.” The guy raises his eyebrows and says, “No kidding? What law firm are you with?”¹

[A] down-on-his-luck attorney was sitting in the bar, nursing his beer. “How’s it going?” asked a colleague. “Terrible,” said the attorney. “I just got evicted from my office. I wrote up the papers myself. Never would have done it if I hadn’t needed the money so bad.”²

Jokes, television shows,³ and movie scenes⁴ set in bars, taverns, or speakeasies have been prevalent in American pop culture for more than fifty years;⁵ these establishments, however, remain taboo in the more than 200 dry jurisdictions across the United States.⁶ In these dry jurisdictions, a man has never met a woman after walking into a bar; a lawyer has never drowned his sorrows while sitting on a barstool. These scenes are forbidden because of numerous statutes, rules, and regulations—rooted in Prohibition-era morality⁷—enforced on the sale and purchase of liquor.⁸

1. FRANK VERANO, *ALL KINDS OF HUMOR* 412 (2012).

2. *Lawyer Jokes, Part 4*, RICK WAGNER, PH. D., <http://rjwagner49.com/Art/Literature/Humor/LawyerJokes/LawJokes4.html> (last updated Mar. 31, 2012).

3. See Ilana Diamond, *The Top 10 TV Bars*, TV.COM (Mar. 17, 2010), <http://www.tv.com/news/the-top-10-tv-bars-20948/>.

4. See *The 20 Best Movie Bars*, SHORTLIST.COM, <http://www.shortlist.com/entertainment/films/the-20-best-movie-bars>.

5. See SCOTT MCNEELY, *ULTIMATE BOOK OF JOKES* 92 (2011) (noting that the first bar joke can be traced to a 1952 New York Times article written by C. B. Palmer).

6. Brian Wheeler, *The Slow Death of Prohibition*, BBC NEWS MAG. (Mar. 21, 2012), <http://www.bbc.com/news/magazine-17291978>.

7. See *id.*

8. See generally ARK. CODE ANN. § 3-8-101 (Repl. 2008) (providing that local option elections determine the legality or illegality of the sale of intoxicating liquors); KY. REV. STAT. ANN. § 241.010(29)(a) (West 2016) (providing that a local option election is “held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales”); TENN. CODE ANN. § 57-3-106(a)(1), (2) (West 2016) (providing that local option elections will forbid or permit the sale of intoxicating beverages).

Of these statutes, rules, and regulations, no provision impacts the uniformity of liquor laws more than the local option.⁹ Simply stated, a local option is the right of the people in a city, county, or similarly situated jurisdiction to determine, by decisive vote, whether they shall approve or prohibit the manufacture, sale, or purchase of intoxicating liquors¹⁰ within its boundaries.¹¹ In Arkansas, once voters declare their preference the jurisdiction is classified as either “wet” or “dry.”¹² Recent reformations of liquor regulations, however, have created an informal classification of “damp” jurisdictions.¹³ Additionally, local option elections enable areas within wet jurisdictions to become dry¹⁴ but prohibit areas within dry counties from becoming wet.¹⁵

Local options have undergone significant changes since their adoption in 1935.¹⁶ Most significantly, actions taken by the Arkansas General Assembly during the 1980s and 1990s have established procedures controlling present-day local option elections.¹⁷ Since 1993, only eight of Arkansas’s seventy-five counties have held local option elections.¹⁸ Local option elections

9. Compare Wheeler, *supra* note 6 (mapping the states with the highest number of dry counties, including Arkansas, Tennessee, and Kentucky), with ARK. CODE ANN. § 3-8-101, KY. REV. STAT. ANN. §241.010(29); TENN. CODE ANN. § 57-3-106 (each statute providing local option provisions for a state that has a high number of dry counties).

10. See ARK. CODE ANN. § 3-8-501(2) (Repl. 2008).

11. See *infra* Part II.B.

12. See ARK. CODE ANN. § 3-8-501(1), (3).

13. See generally ALASKA ALCOHOLIC BEVERAGE CONTROL BD., ALCOHOL LOCAL OPTION (2016), <https://www.commerce.alaska.gov/web/amco/AlcoholLocalOption.aspx> (describing a “damp” community as one that “allows limited amounts of alcoholic beverages”); Sheldon Richman, *Prohibition Battle in Arkansas: Local Control or Individual Rights?*, REASON.COM (Nov. 2, 2014), <http://reason.com/archives/2014/11/02/prohibition-battle-in-arkansas-local-con> (noting that the liberal “club” provision allows restaurants to serve alcohol within dry counties, resulting in a new category of county: “damp”).

14. See ARK. CODE ANN. § 3-8-305(2), (3) (Repl. 2008); see also Op. Ark. Att’y Gen. No. 88-199 (1988).

15. See generally Carter v. Reamey, 232 Ark. 211, 215, 335 S.W.2d 298, 300 (1960); Tabor v. O’Dell, 212 Ark. 902, 904, 208 S.W.2d 430, 431 (1948); Denniston v. Riddle, 210 Ark. 1039, 1046, 199 S.W.2d 308, 312 (1947) (The Supreme Court of Arkansas has repeatedly held that once a county votes “dry,” a subdivision within the county cannot thereafter vote “wet”).

16. See *infra* part II.A.

17. See *infra* part II.B.

18. See generally Gwen Moritz, *Arkansas, You’re All Wet*, ARK. BUS. (Sept. 8, 2014, 12:00 AM), <http://www.arkansasbusiness.com/article/100673/arkansas-youre-all-wet-gwen-moritz-editors-note> (noting that since 1993 only Marion, Clark, Sharp, Boone, Benton, and Madison Counties have held local option elections); *Saline County Legalizes Alcohol Sales*, ARKANSAS MATTERS (Nov. 5, 2014, 6:56 PM), <http://www.arkansasmatters.com/story/d/story/saline-county-legalizes-alcohol-sales/32512/NopNL4dAJk-aAq5DIZGYsg> (noting Saline County’s change from dry to wet in 2014); Mike McNeill, *Election Results: Columbia Coun-*

in all eight of these counties have taken place since 2006.¹⁹ This resurgence of local option elections has ushered a new era of liquor dominance unseen since Prohibition ended in Arkansas over eighty years ago.²⁰ Despite this resurrection, local option elections are flawed.

These elections are flawed because they have become a means to protect existing establishments instead of bolstering the rights of citizens;²¹ these elections have caused a disjointed system of liquor regulations throughout Arkansas;²² and, most importantly, local municipalities to lose out on millions of tax dollars due to local option laws.²³ This note addresses the relevancy of the local option election in a modern economy, as well as the “patchwork prohibition” created by these elections and why entities that champion “local control” seek to keep decisions anything but local.

Part II of this note provides background information on the evolution of liquor laws in Arkansas, including how this evolution has impacted local option elections. Part III of this note explains the disjointed system of patchwork prohibition created by Arkansas’s local option laws and the problems that this system creates. Additionally, Part III provides solutions to correct these problems, as well as examples of the positive socio-economic effect that Arkansas—especially Arkansas counties—can expect.

II. BACKGROUND

Since the repeal of Prohibition, Arkansas has been a battleground between those seeking to retain past liquor regulations and groups seeking to transition the state into a modern, liquor economy.²⁴ Both sides have experienced victories and defeats,²⁵ resulting in a state where it is legal to buy alcohol on one side of the street, but illegal on the other.²⁶ Over the past dec-

ty Goes Wet, Vann Wins Magnolia Mayor’s Race, Blair New County Treasurer, MAGNOLIA REPORTER (Nov. 4, 2014, 10:49 PM), http://www.magnoliareporter.com/news_and_business/local_news/article_17c16af2-64a7-11e4-9531-fbc1f09749fd.html (noting Columbia County’s change from dry to wet in 2014).

19. See Moritz, *supra* note 18; *Saline County Legalizes Alcohol Sales*, *supra* note 18; McNeill, *supra* note 18.

20. See *infra* Part II.B.

21. See *infra* Part III.A.

22. See *infra* Part III.A.

23. See *infra* Part III.C.1.

24. Compare BEN F. JOHNSON, III, JOHN BARLEYCORN MUST DIE: THE WAR AGAINST DRINK IN ARKANSAS 73–83 (2005), with John M. Glionna, *A Spirited Fight Breaks Out Over Local Alcohol Bans in Arkansas*, LOS ANGELES TIMES (Oct. 24, 2014, 5:00 AM), <http://www.latimes.com/nation/la-na-arkansas-alcohol-vote-20141024-story.html#page=1> (noting that groups advocating both viewpoints have been active from 1935 to the present).

25. See *infra* Part II.A.1.

26. See generally 006-02-000 ARK. CODE R. § 3 (LexisNexis 2016) (listing the dry jurisdictions located within wet counties).

ade, Arkansas counties have taken significant strides to address these inconsistencies.²⁷ This section lays the foundation of present day liquor laws in Arkansas, specifically addressing the areas in which local option elections have the greatest impact. First, the evolution of the local option since the passing of the Thorn Liquor Law is examined. Second, modern local option elections are analyzed by looking at their operation, recent successes and failures, and ability to be circumvented through existing procedures.

A. Post-Prohibition Evolution: Striking a Balance Between Wet and Dry

While there were numerous federal and state regulations on the production, sale, and transportation of intoxicating liquors prior to 1919,²⁸ ratification of the Eighteenth Amendment and subsequent enactment of the Volstead Act²⁹ rendered the entirety of these regulations moot.³⁰ In response, states enacted legislation that mirrored or furthered the interest of the Eighteenth Amendment.³¹ This system of regulation advanced prohibitionist ideals in the short term, but ultimately facilitated devastating consequences including the explosion of an enormous underground liquor market,³² an increase in alcohol consumption,³³ and lost revenue.³⁴ These problems, along

27. See *infra* Part II.B.1.

28. See *Craig v. Boren*, 429 U.S. 190, 205 (1976). “The history of state regulation of alcoholic beverages dates from long before adoption of the Eighteenth Amendment.” *Id.* The Court also notes that the Webb-Kenyon Act of 1913 prohibits the “shipment or transportation . . . of any . . . intoxicating liquor of any kind from one State, Territory, or District . . . into any other State, Territory, or District . . . (for the purpose of being) received, possessed, sold, or in any manner used . . . in violation of any law of such State, Territory, or District.” *Id.* at 205 n.19. See also Carole L. Jurkiewicz & Murphy J. Painter, *Why We Control Alcohol the Way We Do*, in *SOCIAL AND ECONOMIC CONTROL OF ALCOHOL: THE 21ST AMENDMENT IN THE 21ST CENTURY* 1, 3–5 (2008).

29. See *Alexander v. State*, 148 Ark. 491, 493, 230 S.W. 548, 548 (1921). The Volstead Act is the commonly used title for a federal statute “enacted to enforce the Eighteenth Amendment to the federal Constitution.” *Id.*

30. See Sidney Spaeth, Comment, *The Twenty-First Amendment and State Control Over Intoxicating Liquor: Accommodating the Federal Interest*, 79 CALIF. L. REV. 161, 176 (1991).

31. See *McCormick & Co. v. Brown*, 286 U.S. 131, 143–44 (1932); see also Spaeth, *supra* note 30 (“The eighteenth amendment gave states concurrent power with the federal government to enforce the ban on the manufacture, sale, and transportation of alcoholic beverages.”).

32. See Spaeth, *supra* note 30, at 176–78.

33. See Jurkiewicz & Painter, *supra* note 28, at 6.

34. See generally Donald J. Boudreaux, *Alcohol, Prohibition, and the Revenuers*, FOUNDATION FOR ECONOMIC EDUCATION (Jan. 1, 2008), http://fee.org/the_freeman/detail/alcohol-prohibition-and-the-revenuers.

with several additional issues,³⁵ brought an end to Prohibition in 1933 leaving Arkansas without any means to regulate liquor.³⁶

Arkansas acted swiftly by initially legalizing the “manufacture and sale of beer and wine containing no more than [sic] 3.2 percent of alcohol.”³⁷ In 1935, the Arkansas General Assembly enacted additional liquor regulations due to pressure from the federal government,³⁸ declining state revenues,³⁹ and prohibitionist groups.⁴⁰ The Arkansas General Assembly considered several measures to alleviate these pressures, including creating a state government monopoly on liquor sales⁴¹ and production;⁴² however, it ultimately adopted a measure proposed by Harve B. Thorn.⁴³

Act 108 of 1935 (“Thorn Liquor Law”)⁴⁴ was highly controversial, passing by a narrow margin in both chambers.⁴⁵ While several provisions were original to Arkansas, much of the Thorn Liquor Law—including Article VII—was taken from pre-Prohibition Kentucky statutes.⁴⁶ Upon the enactment of the Thorn Liquor Law, Arkansas ceased to distinguish between previously recognized wet and dry counties, creating a state where liquor was available by default.⁴⁷ For those holding on to the dream of revamping Prohibition, the local option section was the most critical element of the law, providing the only means for prohibitionists to regain a foothold in Arkansas.⁴⁸

35. See Jurkiewicz & Painter, *supra* note 28, at 5–6 (noting factors such as increased consumption by women and youths, doctors who skirted the boundaries of the law, and over 75,000 arrests by 1928).

36. See The Arkansas Alcoholic Control Act, No. 108, art. X, 1935 Ark. Acts 258, 301 (“Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors.”).

37. JOHNSON, *supra* note 24, at 73.

38. See *id.* at 74.

39. 1935 Ark. Acts 301 at art. X.

40. See JOHNSON, *supra* note 24, at 73.

41. See *id.*

42. See *id.*

43. See *id.* at 75. Harve B. Thorn was Speaker of the Arkansas House of Representatives in 1935. *Id.*

44. *Denniston v. Riddle*, 210 Ark. 1039, 1041, 199 S.W.2d 308, 309 (1947).

45. See JOHNSON, *supra* note 24, at 75. Governor Futrell waited until the General Assembly adjourned to sign the bill into law to prevent significant changes to the bill. Additionally, the Governor, who objected to the “revival of saloons,” had struck a bargain to accept the law, as passed, in exchange for the inclusion of a refusal to “permit the sale of alcohol by the glass or individual drink.” *Id.*

46. *Denniston*, 210 Ark. at 1041, 199 S.W.2d at 309.

47. See JOHNSON, *supra* note 24, at 75; *Denniston*, 210 Ark. at 1044, 199 S.W.2d at 311 (noting that “under the Thorn Liquor Law the sale of liquor was made legal in the entire state, and the burden of having local option elections was thus placed on the ‘drys’”).

48. See JOHNSON, *supra* note 24, at 75.

Article VII of the Thorn Liquor Law brought several changes to previous local option procedures. Most notably, local option elections prior to Prohibition were compulsory, occurring every two years.⁴⁹ Under the new system, local option elections became voluntary,⁵⁰ allowed only every three years.⁵¹ Additionally, the Thorn Liquor Law required those seeking to exercise their local option to submit a petition signed by thirty-five percent of the electorate in the locality.⁵² Due to these standards, liquor remained eligible for purchase and sale in areas where it had not been available since the late nineteenth century.⁵³ Prohibitionist groups contested these standards throughout the late 1930s,⁵⁴ and successfully changed the law in 1942 by passing Initiated Act No. 1 of 1942 (“1942 Initiated Act”) with a decisive fifty-six percent of voters approving.⁵⁵

The 1942 Initiated Act brought drastic changes to the local option procedures in Article VII of the Thorn Liquor Law. Most significantly, the Act reduced the required number of signatures from thirty-five percent to fifteen percent⁵⁶ and reduced the waiting period from three years to two years.⁵⁷ These changes had a devastating impact on the progress made by pro-liquor groups through the Thorn Liquor Law. In 1943, anti-liquor activists successfully campaigned to turn thirty-two of forty counties holding local option elections into dry counties.⁵⁸ Ultimately, anti-liquor activists would successfully turn forty-three of seventy-five Arkansas counties dry.⁵⁹ Despite this victory, support for prohibitionist ideas soon waned.⁶⁰ When Arkansans be-

49. Carroll H. Woody & Samuel A. Stouffer, *Local Option and Public Opinion*, 36 AM. J. SOC. 175, 177, 188 (1930).

50. *See id.* at 177. Local option elections are either voluntary or compulsory. Because an election was no longer mandated and was only held if those seeking the measure to be placed on the ballot received enough signatures, the election would be classified as voluntary. *Id.*

51. The Arkansas Alcoholic Control Act, No. 108, art. VII, sec. 12, 1935 Ark. Acts 258, 297 *repealed by* Initiated Act No. 1, sec. 1, 1943 Ark. Acts 998, 998 (codified at ARK. CODE ANN. § 3-8-208 (Repl. 2008)).

52. 1935 Ark. Acts 290 at art. VII, sec. 1 (codified at ARK. CODE ANN. § 3-8-302 (repealed 2013)).

53. *See* JOHNSON, *supra* note 24, at 75.

54. *See id.*

55. *See* ARK. SEC’Y OF STATE, HISTORICAL INITIATIVES & REFERENDUM ELECTION RESULTS (2014), <http://www.sos.arkansas.gov/elections/Documents/Revised%20Initiatives%20and%20Amendments%201938-2014.pdf>.

56. *Compare* 1935 Ark. Acts 290 at art. VII, sec. 1 *with* 1943 Ark. Acts 998 at sec. 1 (codified at ARK. CODE ANN. § 3-8-202 (Repl. 2008)); *Denniston v. Riddle*, 210 Ark. 1039, 1044, 199 S.W.2d 308, 311 (1947) (noting the different percentage of signatures required by the 1935 and 1943 Acts).

57. *Compare* 1935 Ark. Acts 297 at art. VII, sec. 12, *with* 1943 Ark. Acts 1000 at sec. 2 (codified at ARK. CODE ANN. § 3-8-208 (Repl. 2008)).

58. JOHNSON, *supra* note 24, at 77.

59. Moritz, *supra* note 18.

60. *See* JOHNSON, *supra* note 24, at 79–80.

gan to accept that liquor was here to stay,⁶¹ lawmakers sought to capitalize on benefits that legalized liquor brought to the state.

In response to a boom in the Arkansas economy during the 1950s, state officials used liquor to boost economic development through tourism.⁶² Legislation adopted in 1943 and 1965 allowed restaurant and hotel patrons to “buy a bottle of beer to drink on premises and to have Arkansas wine served with a meal.”⁶³ The success of these measures prompted the Arkansas Legislature to pass Act 132 of 1969 (“1969 Act”), which allowed the sale of mixed drinks to be included as part of local option elections.⁶⁴

The 1969 Act represented the enactment of the most liberal liquor laws seen since the end of Prohibition—a step that previous lawmakers were unwilling to take.⁶⁵ This law allowed voters to hold local option elections to determine the legality of the sale of mixed drinks for on-premises consumption.⁶⁶ Additionally, the 1969 Act allowed a local option election to occur in areas that had previously rejected intoxicating liquors such as beer and native wine.⁶⁷ Most importantly, section 10 of the 1969 Act permitted “private clubs”⁶⁸ to be established in dry locales.⁶⁹ This section was highly controversial because, although the county had voted to reject the sale and purchase of alcohol, the 1969 Act allowed mixed drink sales without the approval of voters or elected officials.⁷⁰ The premise behind this Act is still alive and well today, and can be seen throughout many counties in Arkansas.⁷¹

61. *See id.* at 80.

62. *See id.*

63. *Id.*

64. *See* Act of Feb. 28, 1969, No. 132, sec. 3, 1969 Ark. Acts 384, 389 (codified at ARK. CODE ANN. § 3-9-203 (Supp. 2015)); JOHNSON, *supra* note 24, at 80. Governor Rockefeller “believed that authorizing local option elections for mixed drink sales would boost tourism and reform the inconsistent application of existing liquor laws.” Johnson, *supra* note 24, at 80.

65. *See generally* JOHNSON, *supra* note 24, at 75 (noting that the Thorn Liquor Law acknowledged Governor Futrell’s objections to the “revival of saloons” by refusing to “permit the sale of alcohol by the glass or individual drink”).

66. 1969 Ark. Acts 389 at sec. 3.

67. *See* 1969 Ark. Acts 391 at sec. 4(g).

68. 1969 Ark. Acts 388 at sec. 2(j) (defining a “Private Club” as “a non-profit organization, association or corporation organized and existing under the laws of this State . . . having not less than one hundred (100) members regularly paying annual dues of not less than Five Dollars (\$5.00) per member, conducted for some common . . . nonprofit object or purpose other than the consumption of alcoholic beverages”) (codified at ARK. CODE ANN. § 3-9-202(14) (Supp. 2015)).

69. 1969 Ark. Acts 395 at sec. 10(a).

70. *See generally* 1969 Ark. Acts 394–96 at sec. 10(a) (noting that a private club needs a permit from the Director of the Department of Alcoholic Beverage Control in order to be deemed eligible to operate in a county that prohibits liquor).

71. *See infra* II.B.2.

B. Local Option Elections in the Modern Era

The purpose of the local option has not changed since it was adopted by Arkansas in 1935.⁷² Local option election procedures, however, have undergone several reformations during this time.⁷³ Similarly to the 1942 Initiated Act, the Arkansas General Assembly in 1985 and 1993 took steps to reform the signature requirement and the frequency that the issue can be presented.⁷⁴

Since the enactment of the Thorn Liquor Law, the number of required signatures has fluctuated from thirty-five percent to fifteen percent.⁷⁵ In 1993, the Legislature, again, addressed the signature requirement through the adoption of Act 243 of 1993 (“1993 Act”), which increased the number required of signatures to the current mark.⁷⁶ The 1993 Act requires those seeking to submit a local option question to voters obtain signatures from “thirty-eight percent (38%) of the qualified electors, as shown on the voter registration records of the county.”⁷⁷ Once it is determined that thirty-eight percent of qualified electors have called for a vote, the question will be placed on the ballot.⁷⁸ Liquor proponents tested the 1993 Act, and eventually challenged it in the United States Court of Appeals for the Eighth Circuit.⁷⁹ Despite these legal battles, Arkansas law still requires a thirty-eight percent threshold in order to get the issue to the voters.⁸⁰

Similarly, the Legislature has addressed how frequently a local question may be presented to voters.⁸¹ Act 266 of 1985 (“1985 Act”) provides that, once an election has been held, “at least four years (4) shall elapse be-

72. Compare The Arkansas Alcoholic Control Act, No. 108, 1935 Ark. Acts 258, and Initiated Act No. 1, 1943 Ark. Acts 998 (codified at ARK. CODE ANN. § 3-8-201 to -202, -205, -208 (Repl. 2008)), with ARK. CODE ANN. § 3-8-101 (Repl. 2008) (noting local option elections have been a means to “determine the legality or illegality of the manufacture, sale, bartering, loaning, or giving away of intoxicating liquors” in a specified jurisdiction).

73. Compare 1935 Ark. Acts 290, 297 at art. VII, secs. 1, 12, with 1943 Ark. Acts 998, 1000 at secs. 1, 2 (the 1943 act reduced the signature threshold and the mandated waiting period).

74. See Act of Mar. 5, 1985, No. 266, secs. 1, 2, 1985 Ark. Acts 423, 424, 426 (codified at ARK. CODE ANN. §§ 3-8-202, -208(c) (Repl. 2008)); Act of Feb. 28, 1993, No. 243, sec. 1, 1993 Ark. Acts 430, 430 (codified at ARK. CODE ANN. § 3-8-205 (Supp. 2015)).

75. See 1935 Ark. Acts 290 at sec. 7; 1943 Ark. Acts 998 at sec. 1.

76. See 1993 Ark. Acts 430 at sec. 1; Act of Apr. 8, 2015, No. 1251, sec. 5, 2015 Ark. Acts 5867, 5871 (codified at ARK. CODE ANN. § 3-8-803 (Supp. 2015)).

77. 1993 Ark. Acts 430 at sec. 1.

78. See 1993 Ark. Acts 430 at sec. 1.

79. See *Wellwood v. Johnson*, 172 F.3d 1007 (8th Cir. 1999).

80. ARK. CODE ANN. § 3-8-303.

81. See Act of Mar. 5, 1985, No. 266, sec. 2, 1985 Ark. Acts 423, 426 (codified at ARK. CODE ANN. 3-8-208(c) (Repl. 2008)); Initiated Act No. 1, sec. 2, 1943 Ark. Acts 998, 1000; The Arkansas Alcoholic Control Act, No. 108, art. VII, sec. 12, 1935 Ark. Acts 258, 297.

fore another election . . . may be held in the territory affected.”⁸² This was a significant increase from the previously held one and two year waiting periods.⁸³ The 1985 Act and 1993 Act, coupled with remaining provisions of the Thorn Liquor Law, provide the basis for present day local option election procedures.

Once the issue reaches the ballot, there are two possible outcomes. Either, the electorate can vote to prohibit liquor sales,⁸⁴ or the voters can accept liquor within their jurisdictions.⁸⁵ Depending on the status of the territory prior to the election, the jurisdiction may: (1) remain a wet territory, (2) remain a dry territory, (3) change from wet to dry, or (4) change from dry to wet.

Rights and responsibilities of retailers, wholesalers, and manufacturers remain largely unchanged if the jurisdiction votes to retain its previous status,⁸⁶ but there are several statutory requirements if voters decide to abandon their current status.⁸⁷ First, if a majority of the electors vote against the manufacture or sale of intoxicating liquors, the Director of the Alcoholic Beverage Control Division (“ABC”) and local officials are barred from issuing “any license or permit for the manufacture, sale, barter, loan, or giving away of any intoxicating liquor . . . unless and until the prohibition [is] repealed by a majority vote.”⁸⁸ Additionally, if the jurisdiction changes from a wet jurisdiction to a dry jurisdiction “any license or permit which has already been issued, authorizing the manufacturing or sale or the bartering, loaning, or giving away of intoxicating liquor within the territory affected shall be immediately cancelled.”⁸⁹

The Legislature has provided a grace period of sixty days to these retailers, which affords them the opportunity to dispose of stock after voters rescind the availability of liquor.⁹⁰ Further, during this sixty-day period, the retailers are forbidden from purchasing any additional alcoholic beverages, and they must restrict their business “to the sale of those items on hand as of the date the election results are finally determined.”⁹¹ This provision not only applies to retailers within these jurisdictions, but to wholesalers and manufacturers as well.⁹² Wholesalers and manufacturers are not completely

82. 1985 Ark. Acts 426 at sec. 2.

83. *See* 1943 Ark. Acts 1000 at sec. 2; 1935 Ark. Acts 297 at art. VII, sec. 12.

84. *See* ARK. CODE ANN. § 3-8-101 (Repl. 2008).

85. *See id.*

86. *See id.* § 3-8-208(a) (Repl. 2008).

87. *See generally id.* §§ 3-8-208(b),(d), -201, -203, -205, -209 (Repl. 2008 & Supp. 2015) (providing the consequences that ensue when a jurisdiction switches from wet to dry).

88. *Id.* § 3-8-208(b).

89. *Id.* § 3-8-208(d).

90. ARK. CODE ANN. § 3-8-102(a) (Repl. 2008).

91. *Id.* § 3-8-102(b).

92. *See id.* § 3-8-103(a) (Repl. 2008).

barred from capitalizing on current stock as long as the product is in a facility “in use or under construction for use prior to the filing of the petitions for local option election.”⁹³

Conversely, if the electorate chooses to embrace intoxicating liquors, the county becomes a wet jurisdiction.⁹⁴ This, however, does not mean that retailers, wholesalers, and manufacturers are allowed to immediately capitalize on the newly legal industry. Arkansas mandates a sixty-day waiting period before a license can be granted to “any person, firm, or corporation” seeking to sell intoxicating liquor in the territory.⁹⁵ In counties that have changed their status, gas stations, convenience stores, and supermarkets may apply to the ABC immediately after a local option election, but are barred from receiving a license until sixty days have passed.⁹⁶ Other retailers, such as package stores, are required to observe an even longer waiting period plus additional restrictions.⁹⁷

Once a jurisdiction embraces liquor sales, package stores are not issued permits until six months after the local option election.⁹⁸ Counties are allowed a maximum of one package store per five thousand residents, as determined at each decennial census.⁹⁹ Those seeking to open package stores must apply for a permit from the ABC.¹⁰⁰ In Arkansas, entities are restricted from possessing more than one permit.¹⁰¹ The permitting process requires the submission of an application and a two thousand dollar application fee.¹⁰² Once applications are approved, applicants are placed into a “double blind” drawing to determine which applicants will be awarded permits.¹⁰³ If an applicant is awarded a permit, he must then comply with additional statutory requirements.¹⁰⁴ However, if an applicant is unsuccessful, he is refunded one thousand dollars of the application fee.¹⁰⁵

Finally, even though a county may vote wet, the 1969 Act mandates a separate referendum election “for the purpose of determining whether the sale of alcoholic beverages for on-premises consumption shall be author-

93. *Id.*

94. *See id.* § 3-8-101 (Repl. 2008).

95. *See id.* § 3-8-310(c) (Repl. 2008).

96. Kelley Ray, *Wet-Dry Issues Answered at Chamber Luncheon*, SALINE 24-7 (Dec. 4, 2014), <http://saline76.rssing.com/browser.php?indx=5243789&item=1365>.

97. *See id.*

98. *See id.*

99. ARK. CODE ANN. § 3-4-201(c)(1)(A) (Supp. 2015).

100. *Id.* § 3-4-208 (Repl. 2008).

101. *Id.* § 3-4-205(b)(1)(A), (B) (Supp. 2015).

102. *Id.* § 3-4-208(i).

103. *See Ray, supra* note 96.

104. *See generally* ARK. CODE ANN. § 3-4-208 (providing the statutory requirements).

105. *Id.* § 3-4-208(i).

ized.”¹⁰⁶ These elections “may not be held . . . for a period of six (6) months” following a local option election.¹⁰⁷ Depending on the outcome of this election, restaurants and hotels may be allowed to sell beverages for on-premises consumption.¹⁰⁸ If voters decline to allow on-premises consumption, these entities are permitted to dispense alcoholic beverages if they possess a private club permit.¹⁰⁹

1. *Local Option Elections and Arkansas Counties*

Over the past decade, Arkansas has seen more local option elections receive enough votes to pass since the reformation of local option procedures during the 1980s and 1990s.¹¹⁰ The resurgence of the local option election began with Marion County in 2006,¹¹¹ followed by Clark and Boone Counties, in 2010,¹¹² and Benton, Madison, and Sharp Counties in 2012.¹¹³ These elections are notable because of their swing from the dry to wet column. This swing represented the first time, since 1942, that a majority of Arkansas counties would be wet—thirty-eight wet counties to thirty-seven dry counties.¹¹⁴ This split, however, did not last long. Successful local option elections in Saline and Columbia Counties, during the 2014 election cycle,¹¹⁵ gave wet counties the edge over dry counties—forty to thirty-five, respectively.¹¹⁶ No county has voted to change its status from wet to dry since a Conway County proposal failed by a mere thirty-three votes in 1986.¹¹⁷

106. Act of Feb. 28, 1969, No. 132, sec. 3, 1969 Ark. Acts 384, 389 (codified at Ark. Code Ann. § 3-9-203(c)(2) (Supp. 2015)).

107. ARK. CODE ANN. § 3-9-208(a) (Repl. 2008).

108. *Id.* § 3-9-203(b).

109. *See id.* § 3-9-208, -221

110. *See supra* note 18.

111. *See Moritz, supra* note 18.

112. *See* Gwen Moritz, *Clark, Boone Counties Gear Up for Liquor Sales*, ARK. BUS. (Nov. 22, 2010, 12:00 AM), <http://www.arkansasbusiness.com/article/35684/clark-boone-counties-gear-up-for-liquor-sales?page=all>.

113. *See* Kate Knable, *Three Arkansas Counties Go ‘Wet’*, ARK. BUS. (Nov. 7, 2012, 10:39 AM), <http://www.arkansasbusiness.com/article/88535/three-arkansas-counties-go-wet>.

114. Josh Sanburn, *Arkansas Keeps ‘Patchwork Prohibition’ on Alcohol*, TIME (Nov. 5, 2014), <http://time.com/3558419/2014-election-arkansas-prohibition/>.

115. Marine Glisovic, *What’s Next for a Wet Saline County*, KATV (Nov. 5, 2014), <http://www.katv.com/story/27293492/whats-next-for-a-wet-saline-county>.

116. Astrid Solorzano, *Residents React to Saline County Going Wet*, THV 11 (Nov. 5, 2014), <http://mocux.thv11.com/story/news/politics/2014/11/05/residents-react-to-saline-county-going-wet/18563253/> (the number is adjusted to account for legalization in Columbia County as well).

117. *See Moritz, supra* note 18. This local option election was the basis for the 1993 revision to the law. *Id.*

Currently, forty of seventy-five counties embrace the sale of alcoholic beverages, and thus fall distinctly in the wet column. Of these forty counties, however, only about a third are considered truly wet.¹¹⁸ These counties are primarily located in the Delta, Central, and Northwest regions of the state.¹¹⁹ Despite colorful county histories involving bootlegging operations and moonshiners,¹²⁰ the hills of North Central and Western Arkansas comprise the largest portion of Arkansas's dry counties.¹²¹ These counties are not alone in their battle against liquor; several jurisdictions within wet counties have continued to fight against the sale of alcoholic beverages.¹²²

Localities in twenty-six of the forty wet counties have continued to outlaw the sale of liquor.¹²³ Because of this limitation, counties containing independent dry localities are often referred to as "damp" counties.¹²⁴ Even though forty counties are the only ones that fall distinctly in the wet column, all but six of Arkansas's seventy-five counties are home to private clubs.¹²⁵

2. *Private Clubs in Arkansas Counties*

The difficulty for counties to hold a local option election caused many dry jurisdictions to seek innovative methods to endorse the sale of alcohol. Act 1813 of 2003 ("2003 Act"), which provided an expansion to the justification for forming private clubs, proved to be the most effective technique.¹²⁶ Prior to 2003, a "private club" was defined as "a nonprofit . . . corporation . . . conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, or other nonprofit object or purpose other than the consumption of alcoholic beverages."¹²⁷ Act 1813 of 2003

118. Shelby Danielson, *Campaign 2014: Statewide Alcohol Sales Could Mean Fewer DWI Arrests*, THV 11 (Oct. 22, 2014, 7:15 PM), <http://mocux.thv11.com/story/news/local/little-rock/2014/10/22/statewide-alcohol-sales-could-mean-fewer-dwi-arrests/17748513/>.

119. See Patrick A. Stewart et al., *Effects of Prohibition in Arkansas Counties*, 32 POL. & POL'Y 595, 599 (2004) (providing a table that shows most Delta counties fall distinctly into the wet column); ARK. DEP'T OF FIN. & ADMIN., UNOFFICIAL LOCAL OPTION ELECTION STATUS, <http://www.dfa.arkansas.gov/offices/abc/rules/Pages/UnofficialLocal.aspx>.

120. JOHNSON, *supra* note 24, at 21–30.

121. See UNOFFICIAL LOCAL OPTION ELECTION STATUS, *supra* note 119.

122. See ARK. DEP'T OF FIN. & ADMIN., WET COUNTIES WITH THEIR RESPECTIVE EXCEPTIONS, <http://www.dfa.arkansas.gov/offices/abc/rules/Pages/wetCounties.aspx>.

123. See 006-02-000 ARK. CODE R. § 3 (LexisNexis 2016).

124. See Danielson, *supra* note 118.

125. Jan Cottingham, *If Arkansas Goes Wet, ABC Has Plan*, ARK. BUS. (Sept. 29, 2014), <http://www.arkansasbusiness.com/article/101020/if-arkansas-goes-wet-abc-has-plan?page=1>.

126. See JOHNSON, *supra* note 24, at 82.

127. Act of Feb. 28, 1969, No. 132, sec. 2(j), 1969 Ark. Acts 384, 388 (codified at ARK. CODE ANN. § 3-9-202(14)(A)(i) (Supp. 2015)).

modified the private club law to include entities promoting “community hospitality, professional association, [and] entertainment.”¹²⁸

Prior to the 2003 expansion of the private club law, entities, namely restaurants, were rejected for having an invalid private club purpose.¹²⁹ Afterwards, restaurants and other establishments providing community hospitality services were allowed to sell liquor in localities where alcohol had only previously been available to nonprofit entities.¹³⁰ Similar to other reformations, the Arkansas General Assembly rationalized this change as a means of boosting tourism in many parts of the state.¹³¹ Legislators believed that restaurants and hotels located in dry jurisdictions would be more appealing to individuals seeking to hold meetings and conventions if “persons visiting hotels or large-event facilities in [dry] areas will be able to enjoy the amenities that a person might find in other states.”¹³² The private club exception is unique because it provides a means for restaurants to sell alcohol in jurisdictions that have explicitly rejected sale for on-premises consumption pursuant to the 1969 Act.¹³³

Since 2003, dry communities throughout the state have seen an influx of private clubs open within their borders.¹³⁴ Former dry strongholds, such as Independence, Craighead, and Faulkner Counties, have embraced private clubs in their largest cities¹³⁵ despite widespread opposition to acknowledge alcohol on a larger scale.¹³⁶ Some jurisdictions have retained their dry status despite the availability of alcohol at local restaurants.¹³⁷ However, parts of

128. An Act to Clarify the *Purpose* for Obtaining a Private Club Permit; and for Other Purposes, No. 1813, sec. 1, 2003 Ark. Acts 6959, 6960 (codified at ARK. CODE ANN. § 3-9-202(14)(A)(i)).

129. See *Chili’s of Jonesboro, Inc. v. State Alcohol Beverage Control Div.*, 75 Ark. App. 239, 244, 57 S.W.3d 228, 231 (2001), *superseded by statute*, 2003 Ark. Acts 6960 at sec. 1, *as recognized in* *Barnes v. Ark. Dep’t of Fin. & Admin.*, 2012 Ark. App. 237, 419 S.W.3d 20.

130. *Barnes*, 2012 Ark. App. 237, at 12, 419 S.W.3d at 27.

131. ARK. CODE ANN. § 3-9-221(a)(3) (Supp. 2015).

132. *Id.* § 3-9-221(a)(3)(C).

133. See Act of Feb. 28, 1969, No. 132, sec. 10, 1969 Ark. Acts 384, 394–97.

134. See generally Rob Moritz, *Lawmaker Seeks Local Rule Over Alcohol Sales in Dry Counties*, ARK. NEWS (Feb. 25, 2013, 6:00 PM), <http://arkansasnews.com/sections/news/arkansas/lawmaker-seeks-local-rule-over-alcohol-sales-dry-counties.html> (noting that as of 2013, about 260 private club permits had been issued in Arkansas’s 37 dry counties).

135. See Jay Barth, *Barth: Get Rid of Dry Counties*, ARK. TIMES (Nov. 28, 2013), <http://www.arktimes.com/arkansas/get-rid-of-dry-counties/Content?oid=3123804>.

136. See Max Brantley, *Booze UPDATE: Local Option Drives Dropped in Faulkner and Craighead Counties; Saline Target Met*, ARK. TIMES (July 31, 2014, 5:45 PM), <http://www.arktimes.com/ArkansasBlog/archives/2014/07/31/booze-update-local-option-drives-dropped-in-faulkner-and-saline-counties>.

137. See Moritz, *supra* note 112.

the state that have overwhelmingly embraced the private club law have seen a change in liquor laws.¹³⁸

III. ARGUMENT

Arkansas's liquor law—namely the local option provision—has enabled the continuance of Prohibition in a disjointed, patchwork form throughout the state. Patchwork prohibition and its effects have undermined the purpose of the local option. Instead of allowing jurisdictions to exercise local rights, patchwork prohibition results in protectionism of county line liquor stores and the silencing of local voices.¹³⁹ Patchwork prohibition could be defeated through sweeping reforms of Arkansas's eighty-year-old liquor law, however, minor changes to existing rules and regulations could alleviate some issues.¹⁴⁰ Correcting local option elections will result in economic prosperity and social reformation that is greatly needed in Arkansas counties.¹⁴¹ However, if these solutions are not enacted, the local option system will continue to negatively impact Arkansans.

A. Problems with Patchwork Prohibition

According to some, only two individuals, Jesus Christ and Michael Langley,¹⁴² are able to comprehend “the enigmatic labyrinth of Arkansas's liquor laws.”¹⁴³ When asked about the “tangled web of patchwork rules based more on fluctuating social mores . . . than any reasoned science, physiology or rational understanding of how humans interact with and around political boundaries and the free market system,” former Director Langley responded by stating “disjointed is [a] better term for our liquor laws . . . [they] are all over the place.”¹⁴⁴ Herein lies the problem: Arkansas's current liquor laws are the product of attempts to unify the state, later undone by those holding opposing values, and enactment of piecemeal legislation over the past eighty years.¹⁴⁵ Arkansas's “tangled web of patchwork rules”¹⁴⁶—

138. See generally Michael Tilley, *Arkansas' Arcane Liquor Laws Stir Opportunity and Opposition*, TALK BUS. & POL. (Nov. 4, 2009, 2:28 PM), <http://www.thecitywire.com/node/6791#.VGTNCodYXww> (noting that Benton County had 123 private club permits prior to passing a local option to allow liquor sales).

139. See *infra* III.A.1.

140. See *infra* III.B.

141. See *infra* III.C.

142. Michael Langley is the former Director of the Arkansas Beverage Control Division, Noel Oman, *Alcohol Control Division Chief Goes: Hutchinson to Switch Out Langley as Top Drink Regulator*, ARK. DEMOCRAT-GAZETTE, Feb. 6, 2015, at A9.

143. Tilley, *supra* note 138.

144. *Id.*

145. See *supra* Part II.

rooted in largely abandoned religious values and social norms of the mid-1900s¹⁴⁷—has led to a system of law that is largely ineffective in a modern economy. This unique juxtaposition of values created a system designed to protect county line liquor stores and prevent citizens from exercising local choice.

I. Economic Protectionism

Many believe that the resistance to change stems from a fight between two conflicting ways of life—urban versus rural.¹⁴⁸ Nearly two-thirds of Arkansans reside in wet cities, such as Little Rock and Fayetteville.¹⁴⁹ The remaining one-third resides in counties that are considered dry or damp.¹⁵⁰ Residents in rural, conservative areas of the state view the wet-dry issue as a means for liberal, populous counties and large out-of-state retailers to gain a foothold in the rural, conservative regions.¹⁵¹ Supporters of widespread reformation believe that any ban on alcohol sales is an “unrealistic holdout from the Prohibition era.”¹⁵² This claim, however, illuminates only part of the underlying justification to continue patchwork prohibition.¹⁵³

County line stores are establishments, usually liquor or convenience stores, which operate on the boundary separating a wet jurisdiction from a dry jurisdiction. If a dry-county resident seeks to purchase liquor for off-premises consumption, he is forced to do so at businesses operating in neighboring counties.¹⁵⁴ Patchwork prohibition has allowed county line stores to capitalize on generations of dry-county residents subjected to regulations based on the morals of those who came before them.¹⁵⁵ It is not man-

146. Tilley, *supra* note 138.

147. *See supra* Part II.

148. Glionna, *supra* note 24.

149. *Id.*

150. *Id.*

151. Sanburn, *supra* note 114.

152. John M. Glionna, *Arkansas Rejects Statewide Alcohol Sales*, L.A. TIMES (Nov. 4, 2014, 10:01 PM), <http://www.latimes.com/nation/politics/politicsnow/la-pn-arkansas-alcohol-sales-20141104-story.html>.

153. Tilley, *supra* note 138 (Former Director Langley believes that this unreasonably high bar was set “to protect the status quo; to protect dry counties and to protect county-line liquor stores.”).

154. *See generally* Alan Ehrenhalt, *Liquor Dealers Leading Arkansas’ Fight to Keep Prohibition*, GOVERNING (Oct. 17, 2014), <http://www.governing.com/columns/assessments/gov-arkansas-prohibition-ballot-measure.html> (stating that “[r]esidents of dry counties . . . who want a six-pack of beer have to purchase it from a wet county liquor store just across the county line”).

155. *See generally* Glionna, *supra* note 24 (noting that 67 Liquor in Possum Grape, Arkansas, has been located on the Jackson-Craighead county line for over sixty years); Moritz, *supra* note 112 (noting that Ship ‘n Shore Liquor Mart operated for twenty-five years and,

datory that these residents purchase alcohol at county line stores,¹⁵⁶ but it is often the most convenient place to do so.¹⁵⁷ This convenience factor ensures that these stores will have a customer base, as long as the neighboring jurisdiction prohibits the sale of alcohol. Local option elections have created a form of economic protectionism for county line stores and their ineffectiveness in a modern economy facilitates its continuance.

Advancements since the Thorn Liquor Law—such as the interstate highway system¹⁵⁸ and a commuting workforce¹⁵⁹—have mooted the effectiveness of the local option. A resident of a dry community may commute to a wet jurisdiction for his job, passing numerous liquor retailers along his route.¹⁶⁰ If this resident desires to purchase alcohol, local option elections and the resulting patchwork prohibition are effective only to the extent that they require him to purchase alcohol prior to reaching the county line.¹⁶¹ The stakes are high for county-line liquor stores: an impending local option election could be the difference between a successful business and losing everything.¹⁶²

While many thought the 2003 private-club expansion would help to loosen the stranglehold of county-line stores,¹⁶³ it has done the opposite. Private clubs provide substantial revenue to county-line stores.¹⁶⁴ Unlike entities operating in wet jurisdictions, private clubs are unable to purchase alcohol from wholesalers; therefore, they must turn to county-line retailers

prior to 2012, received as much as sixty-five percent of its business from neighboring dry counties).

156. Residents of dry communities seeking to purchase alcohol do not have to buy products from stores located on the county line. They may wish to make a purchase further into a wet jurisdiction.

157. See Ehrenhalt, *supra* note 154.

158. See generally Nathaniel Baum-Snow, *Did Highway's Cause Suburbanization?*, 122 Q. J. ECON. 775 (2007) (discussing the decentralization of cities after construction of the interstate highways).

159. METROPLAN, CENTRAL ARKANSAS COUNTY-TO-COUNTY COMMUTING PATTERNS (2008), http://www.metroplan.org/files/53/Four-County_Commute2000-2008.pdf.

160. See generally *id.* (showing that residents of dry counties, such as Faulkner, Lonoke, and Perry, commute to wet counties such as, Pulaski and Saline, regularly).

161. See Ehrenhalt, *supra* note 154.

162. Kate Knable, *A Liquid Market: Newly Wet Counties See Modest Tax Growth*, ARK. BUS. (Oct. 8, 2012, 12:00 AM), <http://www.arkansasbusiness.com/article/87598/a-liquid-market-newly-wet-counties-see-modest-tax-growth?page=1> (describing Ship 'n Shore Liquor Mart's rise and fall).

163. See Tilley, *supra* note 138.

164. See generally Paul Gatling, *Benton County Restaurateurs: Wet is Winner*, ARK. BUS. (Apr. 9, 2012, 12:00 AM), <http://www.arkansasbusiness.com/article/32492/benton-county-restaurateurs-wet-is-winner?page=all> (noting that Joe Lisuzzo, a noted restaurateur, spent \$250,000 annually purchasing alcohol for one of his restaurants in neighboring Washington County).

to procure products.¹⁶⁵ Dealing with county-line retailers comes at an increased cost to private clubs. From added paperwork, transportation expenses, and additional sales taxes, the cost of selling alcohol is substantially more for private clubs than competitors operating in wet jurisdictions.¹⁶⁶ Additionally, private clubs are unable to offer the selection afforded to others, thus undermining the purpose of the private-club expansion.¹⁶⁷ Recognizing this discrepancy, lawmakers have taken steps to allow private clubs to purchase inventory from wholesalers within a dry jurisdiction.¹⁶⁸

Patchwork prohibition creates a system that awards those operating in neighboring counties while hindering legitimate businesses. Additionally, patchwork prohibition ensures the economic prosperity of county-line stores at the expense of dry county residents.¹⁶⁹ Regarding this economic impact, Ed Clifford, CEO of the Bentonville Chamber of Commerce, explains:

That is the smoking gun part of this. . . . As soon as everybody understands that these [private clubs] have been going down [to a wet county] and paying retail, they'll get the picture. It's not just all about package stores at all. A very different picture begins to emerge and that's the one that [county-line stores] . . . [are] a little bit afraid of.¹⁷⁰

Local option elections are about catering to the beliefs of the electorate in each locality, allowing local choice.¹⁷¹ County-line stores undermine local choice by providing themselves as the only option. These entities champion the need to keep local decisions local,¹⁷² but do not hesitate to provide outside influence when their pocketbooks are at stake.¹⁷³ Savvy business practices, such as selling liquor at the periphery of dry jurisdictions, are acceptable in a free market system. However, county-line stores, which influence local option elections in order to continue their stranglehold on neighboring

165. See ARK. CODE ANN. § 3-9-221(b), (c) (Supp. 2015).

166. Gatling, *supra* note 164.

167. *Id.* The purpose of the private-club expansion is to allow entities located in dry communities to offer the same services as those in wet communities, thus attracting tourism. See ARK. CODE ANN. § 3-9-221. This purpose is eroded if private clubs are unable to compete.

168. H.B. 1975, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).

169. See Gatling, *supra* note 164. The \$250,000, spent annually by Mr. Lisuzzo, is money that would be added to county and city revenue, thus increasing services and amenities. *Id.*

170. *Id.*

171. See generally ARK. CODE ANN. § 3-8-101 (Repl. 2008).

172. See *The Issue*, CITIZENS FOR LOCAL RIGHTS (Nov. 17, 2014, 9:29 PM), <http://citizensforlocalrights.com/the-issue/>.

173. Lee Hogan, *Reports Shed Light on Backers of Wet, Dry Groups in Arkansas*, ARK. BUS. (June 19, 2014, 4:12 PM), <http://www.arkansasbusiness.com/article/99393/wet-dry-county-ballot-initiatives-heat-up-across-the-state?page=all>.

jurisdictions,¹⁷⁴ should not be endorsed by the state. Reformation of the local option is critical to return it to a true “local option” unencumbered by those seeking to suppress the will of the people.

2. *Losing Local Choice*

The Supreme Court of Arkansas has repeatedly held that local option elections are “in the nature of” referendum measures.¹⁷⁵ This is a logical comparison because, at their core, local option elections are simply specialized referendums.¹⁷⁶ Like local options, referendums must gather signatures to be placed on the ballot.¹⁷⁷ Referendums, however, are subjected to a much lower standard. First, groups proposing a referendum in counties and municipalities must meet a fifteen percent threshold.¹⁷⁸ Secondly, signatures must come from a specified group known as “legal voters.”¹⁷⁹ A legal voter is a person who is registered at the time of signing the petition pursuant to the Arkansas Constitution.¹⁸⁰ Thus for referendums, the threshold mark is computed by determining fifteen percent of “the total vote[s] cast” for a specified office “at the last preceding general election.”¹⁸¹ Even though courts view local option elections as being similar to referendums, local option elections are held to a significantly higher standard.

At thirty-eight percent, the threshold requirement for local options is drastically higher than the fifteen percent requirement for referendums. The crucial difference between local option elections and referendums is the pool from which signatures must be gathered. Local option petitioners must

174. ARK. ETHICS COMM’N, LOCAL-OPTION BALLOT QUESTION COMMITTEE FINANCIAL REPORT: CITIZENS FOR LOCAL RIGHTS (2014). The “Citizens for Local Rights” was a group opposing the Arkansas Alcoholic Beverage Amendment. The financial filing indicates that liquor stores throughout the state contributed a substantial amount of funding to the opposition effort. *See id.*; *see also* Max Brantley, *Liquor Stores Contribute \$1.2 Million to Fight Alcohol Sales*, ARK. TIMES (Sept. 14, 2014, 8:11 AM), <http://www.arktimes.com/ArkansasBlog/archives/2014/09/14/liquor-stores-contribute-12-million-to-fight-alcohol-sales>.

175. *See, e.g.*, *Brown v. Davis*, 226 Ark. 843, 846, 294 S.W.2d 481, 483 (1956).

176. A referendum is “[t]he process of referring . . . an important public issue to the people for final approval by popular vote.” *Referendum*, BLACK’S LAW DICTIONARY (10th ed. 2014). For local option elections, the important public issue is determining the legality of the manufacture or sale of intoxicating liquors.

177. ARK. CONST. art. V, § 1, *amended by* ARK. CONST. amend. 93.

178. *Id.*

179. *Id.*

180. ARK. CODE ANN. § 7-9-101(5) (repealed 2013). A 2013 amendment to election law replaced the term “legal voter” with “registered voter.” *Id.* § 7-9-101(9) (Supp. 2015); An Act Concerning Local Option (Wet-Dry) Elections, Op. Ark. Att’y Gen. No. 2015-014.

181. ARK. CONST. art. V, § 1, *amended by* ARK. CONST. amend. 93. Countywide referendums are required to look at the votes cast for the office of circuit clerk, while municipalities must look at the votes cast for the office of mayor. *Id.*

gather signatures from qualified electors,¹⁸² while referendums are allowed to gather from those voters who cast ballots in the “last preceding general election.”¹⁸³ Due to declining voter participation, this distinction is significant.¹⁸⁴ Jurisdictions will rarely experience one hundred percent voter participation.¹⁸⁵ Therefore, the pool from which local option petitioners must gather signatures will ordinarily be higher than that for referendum measures.

Prior to the 2014 General Election, local option petitioners in Saline County experienced the challenge this distinction causes first hand. At the time of the 2012 general election, Saline County was home to 66,398 registered voters.¹⁸⁶ Under the thirty-eight percent of qualified electors standard, supporters needed to gather 25,231 signatures in order to get the local option question on the ballot.¹⁸⁷ Conversely, Saline County had 39,178 electors cast ballots in the 2012 General Election.¹⁸⁸ Under a requirement similar to referendums, petitioners would have only needed to gather 5,877 signatures.¹⁸⁹ This distinction is significant, because legal battles over legitimate signatures nearly caused the Saline County local option initiative to fail by a mere eighty signatures.¹⁹⁰

182. ARK. CODE ANN. § 3-8-803 (Supp. 2015). “Qualified electors” are those who hold the qualifications of an elector and are registered to vote. ARK. CODE ANN. § 7-1-101(33) (Supp. 2015). According to the Supreme Court of Arkansas in *Allred v. McCloud*:

Those people holding the qualifications of an elector, or qualified electors, must be registered pursuant to Amendment 51 of the Arkansas Constitution. Plus, an elector is defined as a person who is eligible to vote in the county in which he resides on the date thirty-one calendar days before the election. There are no other general eligibility requirements for these offices specified in the general law of this state.

343 Ark. 35, 40, 31 S.W.3d 836, 838 (2000) (citation omitted). Additionally, “a person has to be a registered voter at the time he or she signs the petition and a person is not registered until the county clerk receives and acknowledges his or her voter registration application.” *Mays v. Cole*, 374 Ark. 532, 539, 289 S.W.3d 1, 5 (2008).

183. ARK. CONST. art. V, § 1, amended by ARK. CONST. amend. 93.

184. See Max Brantley, *Voter Turnout Up in Arkansas in 2014, Contrary to National Trend*, ARK. TIMES BLOG (Nov. 6, 2014, 7:24 AM), <http://www.arktimes.com/ArkansasBlog/archives/2014/11/06/voter-turnout-up-in-arkansas-in-2014-contrary-to-national-trend>.

185. See generally ARK. SEC’Y OF STATE, VOTER TURNOUT (Nov. 4, 2014), <http://results.enr.clarityelections.com/AR/53237/149792/Web01/en/summary.html> (showing the highest voter turnout in the 2014 General Election was Van Buren County with 62.3 percent).

186. SALINE CNTY. CLERK, GEN. ELECTION – OFFICIAL RESULTS (Nov. 19, 2012), http://dpnfam.net/elecprep/wp-content/downloads/AR/Saline/Results/AR62_20121106_GEN_S.HTM (2012 was the last General Election prior to the 2014 General Election).

187. See generally *id.* (thirty-eight percent of the registered voters).

188. See *id.* (noting the number of votes cast for circuit clerk).

189. See generally *id.* (fifteen percent of the ballots cast for circuit clerk).

190. See *Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552.

Higher signature requirements for local option elections are a proven method of suppressing local choice on liquor issues.¹⁹¹ Requiring groups to present signatures from thirty-eight percent of qualified electors unduly hinders local voices and has, until recent years, prevented those in dry communities from garnering enough support to hold local option elections.¹⁹² The thirty-eight percent requirement flows directly from the issues caused by patchwork prohibition.¹⁹³ Well-funded campaigns from outside groups, such as county-line liquor stores, can easily persuade voters to refuse to sign the petition¹⁹⁴ and thus create a goal that has been met only eight times since the thirty-eight percent requirement was adopted.¹⁹⁵ The Arkansas Constitution provides voters with the right to hold initiatives, but that right is trampled on when it comes to the issue of alcohol.¹⁹⁶

B. Proposed Solutions

“Change is scary. Change is difficult.”¹⁹⁷ However, the failure of the local option has made change necessary. There is still hope for alcohol tolerance in Arkansas. In order to return local options to their intended purpose, the signature requirement must be amended. Further, legislative revision allowing local option elections to encompass both retail alcoholic beverages and the sale of mixed drinks by the glass is required. However, the most substantial step that the Legislature could take would be to abolish local option elections and adopt a statutory version of Initiated Act No. 4 of 2014 (“The Arkansas Alcoholic Beverage Amendment”).

1. *The Arkansas Alcoholic Beverage Amendment*

In 2014, Arkansans were presented with an opportunity to abolish the statutory local option through adoption of The Arkansas Alcoholic Beverage Amendment.¹⁹⁸ This amendment would have legalized the “manufacture, sale, distribution and transportation of intoxicating liquors . . . within the

191. See Tilley, *supra* note 138; Moritz, *supra* note 18.

192. See generally Moritz, *supra* note 18 (noting that State Senator Mike Everett recognized that this increase would take away electors right to choice).

193. See *supra* note 117 and accompanying text.

194. Glionna, *supra* note 24.

195. See *supra* note 18 and accompanying text.

196. See ARK. CONST. art. V, § 1, amended by ARK. CONST. amend. 93. This constitutional right is most adversely affected by the courts refusal to hold local option elections to the same standard as referendums, even though it recognizes that these elections are complimentary.

197. Cottingham, *supra* note 125.

198. *Issue No. 4: The Arkansas Alcoholic Beverage Amendment*, SOS.ARKANSAS.GOV (2014), <http://www.sos.arkansas.gov/elections/Documents/2014%20Issue%20No%204.pdf>.

entire geographic area of each and every county of this state.”¹⁹⁹ Further, The Arkansas Alcoholic Beverage Amendment called for a repeal of all conflicting laws, including local option elections.²⁰⁰ Even though The Arkansas Alcoholic Beverage Amendment fell flat with voters,²⁰¹ it provided the most comprehensive opportunity to reform the current system of patchwork prohibition in recent memory. Abolishing local option elections would have ended patchwork prohibition and loosened the hold that county-line stores have on dry localities. Most significantly, the broad legalization of intoxicating liquors would have enabled lawmakers to enact a new statutory framework, while allowing the state to experience benefits associated with legalized liquor.

Critics of the Amendment argued that eliminating the local option would have caused communities to lose local control.²⁰² Primarily, opponents were concerned with how retail stores would be regulated, warning that liquor stores would open only feet from schoolhouse steps and church house doors.²⁰³ Additionally, critics feared that repealing current standards would allow alcohol retailers to oversaturate jurisdictions.²⁰⁴ However, lawmakers have recognized these issues, and have taken steps to ensure that local control would be an essential part of new statutory regulations.²⁰⁵

First, lawmakers have established regulatory provisions, such as “buffer zones,”²⁰⁶ a top priority.²⁰⁷ While individual legislators and elected officials may differ on how far buffer zones should extend,²⁰⁸ many believe that the method of measuring these zones should be addressed.²⁰⁹ Legislators are seeking to enlarge buffer zones by redefining the statutory meaning of

199. *Id.*

200. *Id.*

201. See HISTORICAL INITIATIVES & REFERENDUM ELECTION RESULTS, *supra* note 55.

202. *The Issue*, *supra* note 172.

203. See *id.*

204. See *id.*

205. Cottingham, *supra* note 125.

206. Buffer zones are regulated areas, around churches or schools, where businesses holding either a “retail liquor permit” or an “off premises retail beer permit” are prohibited from operating, 006-02-001 ARK. CODE R. § 1.33(6) (LexisNexis 2016).

207. See H.B. 1024, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); H.B. 1257, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); H.B. 1270, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); H.B. 1390, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); H.B. 1391, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); H.B. 1416, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).

208. Compare Cottingham, *supra* note 125, with H.B. 1024, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); H.B. 1959, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).

209. Cottingham, *supra* note 125.

“church” and “school.”²¹⁰ ABC officials believe the opposite approach should be taken.²¹¹

Enlarged buffer zones hurt economic development by prohibiting new businesses from locating in many areas.²¹² Prohibiting legitimate businesses from establishing themselves near churches is ineffective. Once liquor is established within a jurisdiction, it is readily available outside this buffer zone. Members of a congregation are no more tempted to purchase liquor if it is located within 1,000 feet than they are when passing package stores outside this buffer zone. Further, even churchgoers who are tempted to partake would be unable to purchase alcohol from such businesses, because liquor stores are forbidden from operating on Sunday.²¹³ Additionally, a church is already broadly defined.²¹⁴ By expanding this definition further, lawmakers run the risk of legislating retail stores out of communities who have accepted liquor.

For schools, however, buffer zones are justified to an extent.²¹⁵ Currently, only retail liquor stores are barred from operating in the buffer zone surrounding a school.²¹⁶ Anti-liquor advocates, however, have proposed that entities, such as restaurants, breweries, and convenience stores, should be subjected to the same standard.²¹⁷ This goes too far. Restaurants that offer mixed drinks to patrons, and breweries that operate restaurants, are distinctly different entities than those who offer liquor for off-premises consumption.

Second, the Legislature has attempted to place a new limit on the number of package stores within a county.²¹⁸ Currently, counties are able to have a package store for every 5,000 residents.²¹⁹ New regulations would likely limit the number of package stores to one for every 7,500 residents.²²⁰ The current standard is based on the idea that wet jurisdictions need excess retail

210. H.B. 1390, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); H.B. 1391, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).

211. Cottingham, *supra* note 125.

212. See Francois Guilloux, *ABC Launch of Saline County New Liquor Permit Application*, LIQUOR-CONSULTANT.COM (Mar. 4, 2015), <http://www.liquor-consultant.com/#!special-alert/c1scb>.

213. ARK. CODE ANN. § 3-3-210 (Supp. 2015).

214. See *Ark. Alcoholic Beverage Control Div. v. Person*, 309 Ark. 588, 590, 832 S.W.2d 249, 250 (1992).

215. ELI MOORE ET AL., PACIFIC INSTITUTE, *MEASURING WHAT MATTERS* 56-63 (May 2009), <http://pacinst.org/wp-content/uploads/sites/21/2014/04/measuring-what-matters.pdf>.

216. ARK. CODE ANN. § 3-4-206 (Supp. 2015).

217. See H.B. 1416, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).

218. Cottingham, *supra* note 125.

219. ARK. CODE ANN. § 3-4-201(c)(1)(A) (Supp. 2015).

220. See H.B. 1024, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); H.B. 1795, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).

stores to keep up with demand from those in dry counties.²²¹ Abolishing dry counties would mean that wet jurisdictions would no longer need to accommodate this customer base. Allowing one package store for every 7,500 residents would keep communities from being oversaturated with package stores while ensuring that demand is met.

By adopting legislation that embodies reform measures included in The Arkansas Alcoholic Beverage Amendment, the Legislature would cure the current disjointed system. This revolution would ensure the death of patchwork prohibition, while allowing voices on both sides of the debate to be heard. Advocates of local control would be able to guarantee that counties and cities could prevent retail stores from operating too close to schools and churches, while ensuring that buffer zones would not inhibit economic development. Advocates of broadly legalized liquor would be able to create alcohol regulation built for a modern economy, while moving into areas where their products were previously prohibited.

The failure of The Arkansas Alcoholic Beverage Amendment during the 2014 General Election proved that prohibitionist forces are still prominent throughout the state. However, Arkansans who believe that this reform remains necessary have taken steps to return in 2016 with a better-organized and well-funded campaign.²²² The Arkansas Alcoholic Beverage Amendment is not the only means to ensure the death of patchwork prohibition. If “true” local options were created through a reformation of current procedures, the Arkansas Legislature could eliminate the negative impacts associated with this system.

2. *Creating a “True” Local Option*

Reducing the local option signature requirement is necessary to create a local option that is truly representative of the electors in a jurisdiction. The current recognition that local options are “in the nature of” referendum measures²²³ provides a logical baseline for local option procedures. Additionally, the Arkansas Legislature should adopt provisions allowing municipalities to circumvent the signature requirement. Recent attempts to hold local option elections in Saline,²²⁴ Faulkner, and Craighead Counties illuminate the need for change.²²⁵

221. Cottingham, *supra* note 125.

222. Sanburn, *supra* note 114; The Arkansas Alcoholic Beverage Amendment, Op. Ark. Att’y Gen. No. 2015-012.

223. *Brown v. Davis*, 226 Ark. 843, 846, 294 S.W.2d 481, 483 (1956).

224. *See supra* notes 184–90 and accompanying text.

225. *See Brantley, supra* note 136.

In 2012, Faulkner County was home to 67,682 registered voters.²²⁶ Under the current thirty-eight percent standard, petitioners needed to gather signatures from 25,719 qualified electors.²²⁷ Conversely, if local options were subject to the referendum standard, petitioners would have only needed to gather 6,049 signatures.²²⁸ Petitioners gathered an estimated 18,800 signatures,²²⁹ falling 6,000 signatures short of the current mark. However, this number is more than triple the number of signatures needed for a referendum measure. Craighead County provides a similar story with groups turning in 20,956 signatures,²³⁰ more than quadruple the amount needed for a referendum.²³¹ Thirty-eight percent is an unworkable standard that silences local decisions on liquor legality, despite significant support. Localities seeking to exercise their local option should be provided a means to get the question to voters when they are barred by current procedures.

For referendums, municipalities are authorized to adopt ordinances, and subsequently present the issue to voters.²³² For alcohol issues, Arkansas law prohibits this practice, providing that “[n]o municipality may authorize the sale or consumption of alcoholic beverages.”²³³ Amending this provision would be beneficial to municipalities, because they would be vested with the authority to present a local option to voters without obtaining signatures. In order to do this, the Arkansas Legislature could amend this section to read, “a municipality may authorize the sale or consumption of alcoholic beverages by adoption of an ordinance referring the matter to the qualified electors of the municipality.” This amendment would provide two key safeguards not afforded to local options.

First, by permitting city councils to submit the issue to voters, outside influences would have a more difficult time defeating local option measures. City council members answer directly to the electorate of their precincts. This would ensure that the issue would not be brought arbitrarily. Because city council members have direct contact with the electorate, if the jurisdiction illustrated that there was significant support for the sale of alcoholic beverages, city council members would have to consider the proposal. Sec-

226. ARK. SEC’Y OF STATE, VOTER TURNOUT – OFFICIAL RESULTS (Nov. 21, 2012), http://results.enr.clarityelections.com/AR/42843/113233/en/vt_data.html.

227. *See id.* (thirty-eight percent of the registered voters).

228. *See generally* ARK. SEC’Y OF STATE, CNTY. CLERK – OFFICIAL CNTY. RESULTS (Nov. 16, 2012), <http://results.enr.clarityelections.com/AR/Faulkner/42867/112569/en/summary.html#> (obtained by dividing the number of votes cast for the office of county clerk by fifteen percent).

229. *See* Hogan, *supra* note 173.

230. *Id.*

231. *See generally* VOTER TURNOUT – OFFICIAL RESULTS, *supra* note 226 (fifteen percent of the registered voters in Craighead County would have amounted to 7,537 signatures).

232. ARK. CODE ANN. § 14-55-302 (Repl. 1998).

233. ARK. CODE ANN. § 14-43-605 (Repl. 2013).

only, if societal disconnects between residents in rural areas and those residing in cities are truly the problem,²³⁴ this amendment would allow cities to legalize liquor sales, while keeping the remainder of the county dry. Liquor sales have a greater effect on municipalities,²³⁵ therefore, these entities should have a greater voice when it comes to liquor issues. Lastly, city council meetings would provide a forum for honest, public debate, separating moral and religious arguments from the practical and economic arguments.

Despite local option petitions garnering significant support, voters rarely decide these questions. Instead, procedural issues often defeat local options before they make it to the ballot box. A fifteen percent standard for local option elections would restore the rights of these voters and provide a voice for those who want to see change within their communities. Much like proponents of The Arkansas Alcoholic Beverage Amendment, those seeking to change the local option signature requirement wish to present the issue to voters in the upcoming General Election.²³⁶ Additionally, a method allowing city councils to propose these measures would allow local options to occur in jurisdictions where the signature threshold cannot be met, but there is significant public support.

C. Effects of a Broadly Legal Liquor Industry

Arkansas's liquor laws are based largely on religious mores of past generations, rather than a structure designed to facilitate economic growth within the state.²³⁷ This fact has harmed Arkansas communities, who miss out on the benefits of legalized liquor.²³⁸ If modern liquor regulations are enacted, Arkansas will undoubtedly usher in a new era of growth and prosperity. Localities that have made the switch from dry to wet have most often experienced two positive effects—economic growth and new social benefits.

1. *Economic Boom*

From permit fees to sales and excise taxes, alcohol provides multiple avenues of revenue in jurisdictions where it is legal.²³⁹ In Arkansas, beer and

234. See *supra* notes 148–53 and accompanying text.

235. See *infra* Part III.C.

236. See An Act Concerning Local Option (Wet-Dry) Elections, Op. Ark. Att'y Gen. Nos. 2015-014, -025.

237. See *supra* notes 142–47 and accompanying text.

238. See David Couch, *Why Arkansas Voters Should OK Alcoholic Beverage Amendment*, TALK BUS. & POL. (Oct. 29, 2014, 8:33 PM), <http://talkbusiness.net/2014/10/david-couch-why-arkansas-voters-should-ok-alcoholic-beverage-amendment/>.

239. See ARK. DEP'T OF FIN. & ADMIN., STATE TAX RATES (2015), <http://www.dfa.arkansas.gov/offices/exciseTax/salesanduse/Pages/StateTaxRates.aspx>;

liquor are subjected to an excise tax, one and three percent respectively,²⁴⁰ and sales tax, at the state, county, and local level.²⁴¹ According to the Arkansas Department of Finance and Administration (“DFA”), during the 2015 Fiscal Year, Arkansas netted \$10,086,660 in revenue from liquor sales.²⁴² Additionally, the DFA reports net revenue of more than \$12,331,231 in beer sales through the same period.²⁴³

Mixed drinks are taxed at much higher rates than either beer or liquor.²⁴⁴ At the state level, a fourteen percent tax is levied on the sale of mixed drinks.²⁴⁵ At the county and municipal levels, governments place additional taxes on these drinks.²⁴⁶ In the City of Little Rock, for example, the mixed drink tax rate is based on the status of the establishment where the sale occurs.²⁴⁷ If the sale is made at a private club, the drink is taxed at an additional rate of five percent, but if it is made at a restaurant, the rate is an additional ten percent.²⁴⁸ This brings the cumulative tax rate for mixed drinks, in the City of Little Rock, to twenty-eight percent for private club sales and thirty-three percent for restaurant sales.²⁴⁹

Counties allowing the sale of alcoholic beverages report that the benefits of liquor sales go above and beyond availability to the local consumer; increased tax revenue can prove to be a saving grace in counties facing hard economic times.²⁵⁰ Before the passing of a local option election in Clark County, the county had experienced a \$28,000 decrease in sales tax revenue.²⁵¹ After the county passed its local option measure, sales tax revenue

Couch, *supra* note 238; ARK. DEP’T OF FIN. & ADMIN., LIST OF CITIES AND COUNTIES WITH LOCAL SALES AND USE TAX (2016), <http://www.dfa.arkansas.gov/offices/exciseTax/salesanduse/Documents/cityCountyTaxTable.pdf>.

240. STATE TAX RATES, *supra* note 239.

241. *See id.*

242. ARK. DEP’T OF FIN. & ADMIN., LIQUOR MONTHLY REVENUE (2015), <http://www.dfa.arkansas.gov/offices/exciseTax/MiscTax/Documents/liquorRevenueFY2015.pdf>.

243. ARK. DEP’T OF FIN. & ADMIN., BEER MONTHLY REVENUE (2015), <http://www.dfa.arkansas.gov/offices/exciseTax/MiscTax/Documents/beerRevenueFY2015.pdf>.

244. STATE TAX RATES, *supra* note 239.

245. *Id.*

246. *See generally* Jan Cottingham, *Mixed-Drink Sales Vital to Restaurant Bottom Lines*, ARK. BUS. (July 14, 2014), <http://www.arkansasbusiness.com/article/99726/mixed-drink-sales-vital-to-restaurant-bottom-lines> (noting that Jonesboro collects an additional five percent tax on mixed drinks sold in private clubs, and the cities of Little Rock and North Little Rock place an additional ten percent tax on these sales).

247. *See* CITY OF LITTLE ROCK, STATE, CNTY., & MUN. TAXES (2014), http://www.littlerock.org/userfiles/editor/docs/Finance/Wel%202%20LR-sales%20tax_Rev3.pdf.

248. *Id.*

249. *See id.*; STATE TAX RATES, *supra* note 239.

250. *See* Jordan Bontke, *Alcohol Sales Impact on Clark County*, KATV (Aug. 1, 2014), <http://www.katv.com/story/26178253/alcohol-sales-impact-on-clark-county>.

251. *Id.*

increased by more than \$123,000.²⁵² Other counties making the switch from dry to wet are expected to experience similar results.²⁵³

When Benton County embraced the sale of liquor in 2012, experts estimated that \$77,998,281 would be spent on retail alcohol sales.²⁵⁴ These expenditures would account for increased sales tax revenue of \$779,983 for the county and over \$1.4 million for cities.²⁵⁵ Additionally, property taxes levied on new construction would provide up to \$160,906 to be used to fund school districts, cities within the county, and the county.²⁵⁶ Benton County was expected to experience a \$33,044,913 economic impact from allowing retail sales of alcohol.²⁵⁷ Saline County is expected to see similar results.

If Saline County had been wet in 2013, experts believe that residents would have spent over \$34 million on retail alcohol sales.²⁵⁸ While Saline County does not have a countywide sales tax, cities could have expected an additional \$373,573 in revenues.²⁵⁹ Property taxes levied on new construction would provide an estimated \$58,822 used to fund school districts, cities, and the county.²⁶⁰ Saline County is expected to experience a \$12,546,003 economic impact from retail alcohol sales.²⁶¹

Additionally, Arkansas has experienced a boom in liquor related industries over the past five years.²⁶² Of these industries, the craft beer sector has seen the largest growth.²⁶³ In 2010, Arkansas was home to only four craft beer breweries.²⁶⁴ In 2015, Arkansas had nineteen native breweries and three

252. *Id.*

253. *See generally* KATHY DECK, UNIV. OF ARK. SAM M. WALTON COLL. OF BUS., ECONOMIC IMPACT OF LEGALIZING RETAIL ALCOHOL SALES IN CRAIGHEAD, FAULKNER, AND SALINE COUNTIES (June 2014), http://cber.uark.edu/files/_Economic-Impact-of-Legalizing-Retail-Alcohol-Sales-in-Craighead-Faulkner-and-Saline-Counties.pdf (noting the projected economic impact of liquor sales Craighead, Faulkner, and Saline Counties).

254. UNIV. OF ARK. SAM M. WALTON COLL. OF BUS. CTR. FOR BUS. & ECON. RESEARCH, ECONOMIC IMPACT OF LEGALIZING RETAIL ALCOHOL SALES IN BENTON COUNTY 9 (Feb. 2012), http://cber.uark.edu/files/Economic_Impact_of_Legalizing_Retail_Alcohol_Sales_in_Benton_County.pdf.

255. *Id.* at 9, 10

256. *Id.* at 10.

257. *Id.* at 3.

258. Deck, *supra* note 253, at 18.

259. *Id.* at 19.

260. *Id.* at 20.

261. *Id.* at 21.

262. *See* Jan Cottingham, *Craft Brewers' Growth Spurs Look at Rules*, ARK. BUS. (Jan. 12, 2015, 12:00 AM), <http://www.arkansasbusiness.com/article/102774/craft-brewers-growth-spurs-look-at-rules?page=all>.

263. *See id.*

264. *See* Lindsey Miller, *Arkansas Enjoying a Craft Beer Boom*, ARK. TIMES (Oct. 24, 2013), <http://www.arktimes.com/arkansas/arkansas-enjoying-a-craft-beer-boom/Content?oid=3084063>.

microbrewery restaurants.²⁶⁵ These industries have had a tremendous economic impact on the state.²⁶⁶ In 2012, craft breweries provided \$211,600,000 in revenue.²⁶⁷ Despite this growth, Arkansas ranks in the bottom ten nationally in breweries per capita.²⁶⁸ However, Arkansas can expect to see further growth in the craft beer industry, due to a change in the liquor market.²⁶⁹ This growth will convert to increased tax revenues for the state, counties, and municipalities who embrace legal liquor. Lawmakers recently enacted legislation that loosened regulations on native brewers.²⁷⁰ However, there is significantly more that needs to be done before this industry can reach its full potential. Although economic growth provides an extremely compelling reason to allow the sale of liquor, counties have learned that the benefits reach far beyond that.

2. *Social Benefits*

From safer roads to better infrastructure to attracting new jobs, “alcohol sales impacts so much more than just money inside a cash register.”²⁷¹ Opponents of legalized alcohol often argue that proponents of the issue should consider more than what is good for the economy.²⁷² Opponents often point to the possibility of higher crime rates, lowered property values, and increased lives lost to drunk drivers as detrimental effects that result from counties embracing alcohol.²⁷³ While these arguments are real concerns to people voting for local options, they often carry very little merit or factual support.

A study conducted in Arkansas found a small correlation between crime rates and alcohol availability.²⁷⁴ However, other studies have shown the opposite to be true.²⁷⁵ Clark County Sheriff Jason Watson has noted that,

265. Cottingham, *supra* note 262.

266. BREWERS ASS'N, STATE CRAFT BEER SALES & PRODUCTION STATISTICS (2013), <http://www.brewersassociation.org/statistics/by-state/>.

267. *Id.*

268. *Id.*

269. Nicolas Duva, *Elitism, or Something Else? Millennials and the War on Big Beer*, CNBC (Nov. 8, 2014, 10:00 AM), <http://www.cnbc.com/id/102147667>.

270. See S.B. 646, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); S.B. 1032, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); S.B. 1033, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).

271. Bontke, *supra* note 250.

272. John Lyon, *Sponsor of Alcohol Measure '100 percent' Sure Arkansas Will Go Wet*, ARK. NEWS (Aug. 2, 2014, 2:00 AM), <http://arkansasnews.com/news/arkansas/sponsor-alcohol-measure-100-percent-sure-arkansas-will-go-wet>.

273. *Id.*

274. Danielson, *supra* note 118.

275. See generally Michael Conlin et al., *The Effect of Alcohol Prohibition on Illicit-Drug-Related Crimes*, 48 J.L. & ECON. 215, 230–31 (2005) (finding that local alcohol access

since the county voted wet in 2010, the number of driving while intoxicated (“DWI”) arrests and alcohol related fatalities have decreased.²⁷⁶ Sheriffs in other counties that have recently adopted liquor sales are reporting the same types of occurrences.²⁷⁷ Boone County, which voted to go wet in 2010, has reported a dramatic decrease in DWI arrests in the years since.²⁷⁸ Harrison Mayor Jeff Crockett notes that the number of DWI arrests in Boone County has fallen almost forty percent from 262 between 2008 and 2011, to 155 in the years since.²⁷⁹

Additionally, counties embracing legal liquor have seen a decrease in non-liquor related crime.²⁸⁰ A recent study has indicated that dry counties have more meth lab seizures per capita than wet counties.²⁸¹ Arkansas is among the ten states with the most methamphetamine use and arrests.²⁸² While liquor stands to inject millions of tax dollars into Arkansas’s economy, methamphetamine use costs employers millions of dollars annually.²⁸³ Not only have the accusations of increased crime and DWI instances proved to be false, these worries pale in comparison to the remaining benefits that communities see when they embrace the sale of liquor.

Supporters of liquor point to the fact that removing their communities from the dry column makes them more attractive to outside investors. David Nelson, chairman of the “Vote for Growth in Columbia County” committee,

decreases the prevalence of crimes associated with illicit-drug consumption and drug related mortality); *see also* Danielson, *supra* note 118.

276. *See* Bontke, *supra* note 250; *see also* Danielson, *supra* note 118 (reporting that in 2011, the year after the successful local option election, law enforcement made 109 arrests, followed by 102 in 2012, 81 in 2013, and 73 as of October 2014).

277. *See* Danielson, *supra* note 118.

278. *Id.* (reporting that DWI arrests fell from 173 in 2011, the year after Boone County held a successful local option election, to 162 in 2012, 115 in 2013, and 47 as of October 2014).

279. *See* Glionna, *supra* note 24.

280. *See generally* Ben Leubsdorf, *Local Alcohol-Prohibition Laws May Lead to Less Liquor, but More Meth, Economists Say*, WALL STREET JOURNAL (Jan. 4, 2015, 11:30 AM), <http://blogs.wsj.com/economics/2015/01/04/local-alcohol-prohibition-laws-may-lead-to-less-liquor-but-more-meth-economists-say/> (noting this phenomenon in Kentucky and Texas).

281. *See* Joshua Pinkston et al., *Breaking Bad: Are Meth Labs Justified in Dry Counties?* 7–10 (Univ. of Louisville, Working Paper, Nov. 2014), https://www.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwis-Jmk4530AhWI2SYKHskACAQFggeMAA&url=https%3A%2F%2Fwww.aeaweb.org%2Fconference%2F2015%2Fretrieve.php%3Fpdfid%3D731&usg=AFQjCNenkzVbkQs_5SgJciVAHckQxPFLQ.

282. Kate Jordan, *Arkansas Among Top 10 States with Most Meth Arrests*, ARK. TRAVELER (Mar. 5, 2014, 8:00 AM), http://www.uatrav.com/news/article_df184342-a34f-11e3-83b6-0017a43b2370.html.

283. *See* Dr. Russ Kennedy & Dr. Timothy Killian, *Methamphetamine – Human and Environmental Risks*, ECON. AND ENVTL. ISSUES IN ARK.: A POL’Y AND PERSP. SERIES, at 4, https://www.uaex.edu/business-communities/public_policy/research_publications/exec_summary/kennedy_executive_summary.pdf.

believes that being a dry county makes Columbia County less competitive than those that are wet.²⁸⁴ Mr. Nelson has noted that “being ‘dry’ hurts [Columbia County] in business recruitment and even wages,” and “it also can affect whether your children can find a good job and stay close to home or move away, causing us to loose [sic] population.”²⁸⁵ Studies have shown that Mr. Nelson may know what he is talking about.²⁸⁶

The same studies determining the economic impact that retail alcohol sales would have on Saline and Benton County looked to see how industry in the counties would be affected. In Benton County, experts believe that the additional economic activity would be associated with an additional 542 jobs across all industries.²⁸⁷ The amount of labor income would amount to almost \$15.5 million.²⁸⁸ In Saline County, experts believe that the additional economic activity would be associated with an additional 142 jobs.²⁸⁹ The amount of labor income would total nearly \$7 million.²⁹⁰

The socio-economic benefits resulting from successful local option campaigns far outweigh the theoretical arguments often used to counter these campaigns. When counties experience millions in added revenue and hundreds of jobs, the residents experience a better quality of life. From better school districts to better funded police, fire, and emergency medical services, the well-being of each and every member of the community increases. However, there are detrimental effects to counties that surround a newly wet locality.

Millions of dollars will flow to the new counties, taken from the pockbooks of the county-line liquor stores that previously catered to the residents of dry counties. Because of these lost revenues, stores will close and jobs will be lost. Additionally, the lost revenues will mean lost sales taxes for these counties. There are ways that these impacts can be mitigated. Manufacturers, wholesalers, and distributorships that currently operate in wet counties will see an increased demand for their product. These entities will need to hire new truck drivers, salesmen, and brewers in order to handle the increased demand.

284. *Columbia County Group Attempting To Get “Wet-Dry” Issue on November Ballot*, MAGNOLIA REPORTER (Jan. 21, 2014, 1:30 PM), http://www.magnoliareporter.com/news_and_business/local_news/article_e691dd4c-82cd-11e3-aa6e-001a4bcf887a.html.

285. *Id.*

286. *See* UNIV. OF ARK. SAM M. WALTON COLL. OF BUS. CTR. FOR BUS. & ECON. RESEARCH, *supra* note 254.

287. *Id.* at 13.

288. *Id.*

289. Deck, *supra* note 253, at 22.

290. *Id.*

IV. CONCLUSION

Local options are flawed. There is great need to address the patchwork prohibition caused by the current disjointed system of dry and wet municipalities in Arkansas. Additionally, the perversion of local options by county-line liquor stores must be stopped. Simple solutions, such as reforming alcohol regulations or adopting a new statutory framework, would alleviate many problems facing Arkansas communities. Since the repeal of Prohibition, Arkansas has been a battleground between those seeking to retain past liquor regulations and groups seeking to transition the state into a modern liquor economy. Addressing these issues can provide increased revenue for cities and counties, which will help boost Arkansas into the twenty-first century. Lastly, the acceptance of liquor on a larger scale will include societal benefits, such as an attorney meeting a woman for drinks in a bar or to provide him with a place to drown his sorrows. David Couch, an attorney who has championed the need for change, stated it best when he acknowledged that “[t]hese dry counties make my state look kind of backward, and I don’t like that.”²⁹¹

Justin Wayne Harper *

291. Josh Sanburn, *Arkansas Could Finally End Prohibition After More Than 80 Years*, TIME (Nov. 4, 2014), <http://time.com/3556871/arkansas-liquor-amendment-prohibition-election/>.

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