

## REGULATORY REFORM

# Not-So-Unlikely Coalitions

*“Bootleggers and Baptists” are alive and well in Arkansas.*

BY JEREMY HORPEDAHL

**N**early four decades ago in the pages of *Regulation*, Bruce Yandle introduced a simple model for understanding the seemingly unlikely coalitions that form to support or oppose some law or regulation. (See “Bootleggers and Baptists: The Education of a Regulatory Economist,” May/June 1983.) Successful coalitions essentially need two types of members: those that provide the money for political action and those that provide a good public face. Yandle, in a colorful story about Sunday closing laws for alcohol sales, gave these groups nice alliterative and illustrative names. The “bootleggers” had the money and were in it for the money. The “Baptists” were in it for advancing what they viewed as a moral good.

Why do the bootleggers need the Baptists? Moneyed interests, serving their own bottom line, don’t make for good publicity. They probably can’t convince legislators either, at least not in a public forum. (Perhaps they can do so behind closed doors.) That’s where the Baptists come in. They can provide the moral argument for the law or regulation. Baptists benefit by making the world a better place, at least from their perspective. Bootleggers benefit by securing an economic benefit, such as harming their competitors.

Since Yandle’s article was published, the bootleggers and Baptists model has been used by a variety of authors to explain many different seemingly odd coalitions. The article has been cited in over 300 academic articles and books according to Google Scholar. Yandle, himself, has applied the model to many different cases in several articles he has written, as well as in a 2014 book he co-authored with Adam C. Smith.

In a forthcoming article in the journal *Public Choice*, I identify an almost literal example of the metaphorical bootleggers and Baptists. “Bootleggers, Baptists and Ballots: Coalitions in Arkansas’ Alcohol-Legalization Elections” uses dry counties in Arkansas

as an example clearly fitting Yandle’s model. The bootleggers are the owners of liquor stores in nearby wet counties, where alcohol is already legal. The Baptists are, well, Baptists.

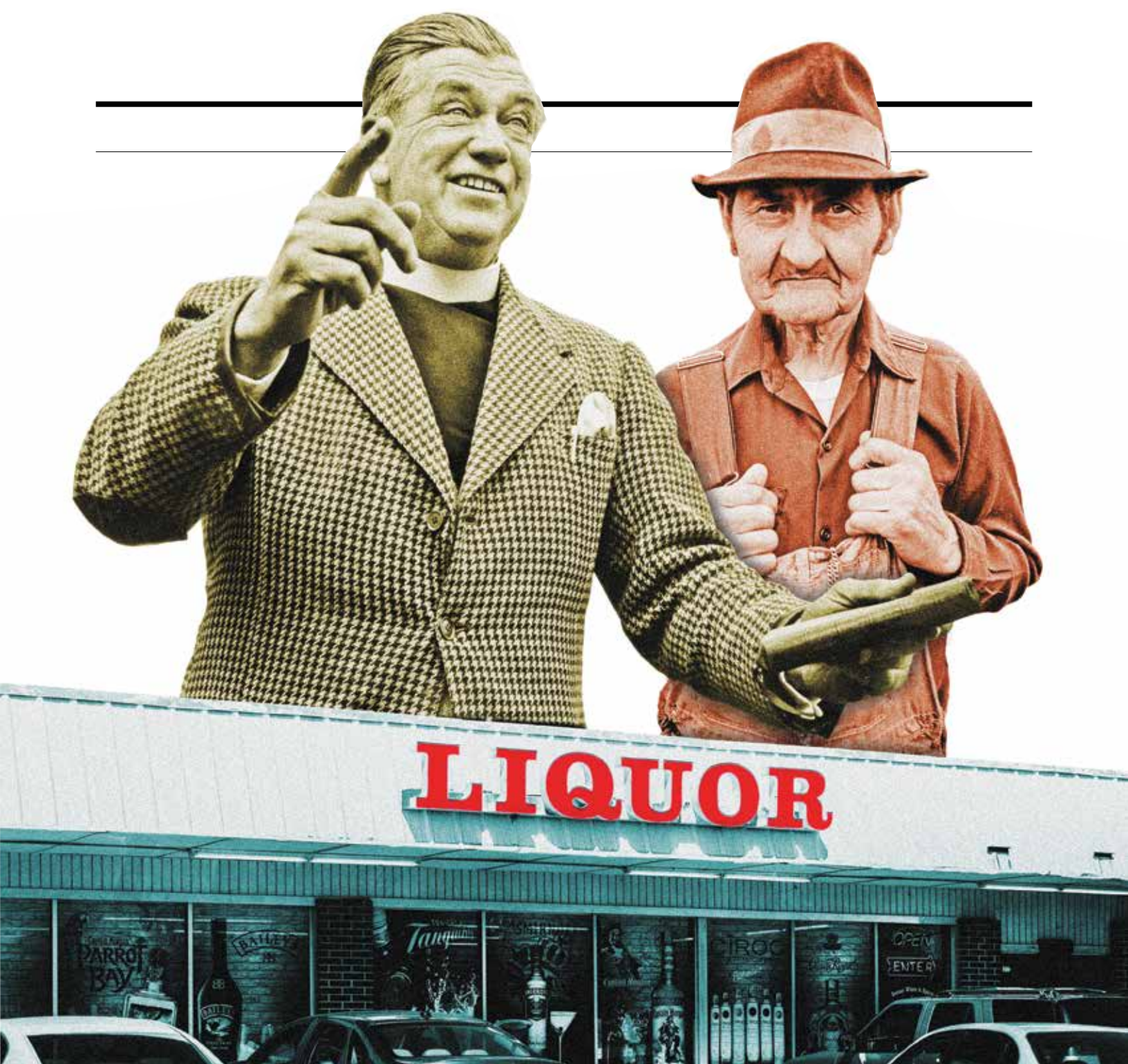
The temporary alliances between the groups were aptly described by a Baptist pastor in Arkansas in 2014. Speaking about his involvement in helping to defeat a statewide ballot measure to legalize alcohol in the state, he said that he had “joined with feminists to oppose pornography and cooperated with Mississippi casinos to fight gambling in Arkansas,” and so he was willing to join with liquor stores in wet counties. Similarly, when fighting an effort to legalize alcohol sales in the city of Jacksonville, a pastor there said he “utilized who was willing to help fight it. [The liquor stores] were honest with me, and I was honest with them.”

As we will see, members of these coalitions are not always willing to be so public about their cooperation in advancing their mutual goals, but the alliances exist nonetheless. Much of the information in this article is expanded on in more detail in my forthcoming article.

## BACKGROUND ON ALCOHOL REGULATION IN ARKANSAS

Following adoption of the 21st Amendment ending national Prohibition, the power to regulate alcohol was returned to the states. Some states, such as Mississippi, went back to the status quo before the 18th Amendment implemented Prohibition, and outlawed the sale of alcoholic beverages statewide. However, most states, including Arkansas, permitted alcohol sales, but allowed for local jurisdictions to outlaw sales via referendum. This local option is crucial to understanding the subsequent eight-plus decades of alcohol regulation in Arkansas, as well as the coalitions that form to oppose legal alcohol sales.

The Arkansas option includes a petition requirement to put the question on the ballot. Initially, the law required 35% of a



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jurisdiction's voters to sign the petition, but during World War II a state referendum lowered that requirement to 15%. Within two years of the rule change, 18 counties and 32 towns and other municipalities had prohibited alcohol sales. Of the state's 75 counties, 51 have at some point voted themselves dry, though in some cases they later used the same referendum process to reinstitute the legal sale of alcohol.

In 1985, the state legislature tried to close the door on future local option elections by raising the signature requirement to 30% of registered voters. When that didn't prove adequate, they raised it to 38% in 1993. Yet, local jurisdictions continue to undertake the ballot initiative process to change their status to either wet or dry.

#### THE EMERGENCE OF COALITIONS

In 2006, Marion County became the first Arkansas county to legalize alcohol sales under the new signature requirement, daunting as the 38% requirement is. A local Baptist church attempted to organize opposition to the measure just one month before the election, but to no avail. The ballot question committee (the legal name in Arkansas for groups supporting or opposing voter initiatives) that they formed, Citizens for a Dry Marion County, raised less than \$2,000 from individual donations, most of which they spent on signs and newspaper advertisements.

As later opposition groups would learn, the high signature threshold presents an interesting conundrum: once an initiative

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to legalize alcohol gets on the ballot, it is almost assured of passing. Given that 38% of registered voters have signed a successful petition and that voter turnout is rarely above 50%, legalization initiatives already have more than enough supporters to pass in the general election. So, spending funds on advertising to stop an initiative at the last minute is doomed to fail.

The optimal strategy for opponents of legal booze is to prevent the question from getting on the ballot in the first place. This strategy could involve dissuading registered voters from signing the petitions, but more often it involves legal challenges to the signatures already collected. To mount such challenges, a funding source greater than the local Baptist and other churches is needed. Enter the bootleggers from Yandle's model: liquor stores in neighboring jurisdictions.

The first identifiable coalition of bootleggers and Baptists in Arkansas came just two years after the Marion County vote, in Sharp County in 2008. Two separate ballot question committees were formed to oppose the proposed ballot measure. The first was the Committee to Keep Sharp County Dry, which raised over \$18,000—about \$17,000 of which came directly from churches in the county. The second group, the Committee to Oppose Alcohol in Sharp County, raised much more money: just over \$56,000. The source of that funding was liquor stores in nearby counties, as well as liquor and beer distributors in Missouri, just across the state line.

This second committee realized important strategic requirements of defeating the initiative. In their filing documents with the Arkansas Ethics Commission to create the committee, the committee's stated purpose wasn't to win the referendum, but to "disqualify the Wet/Dry issue from being placed on the November 4th ballot in Sharp County." They realized that dissuading voters from signing the petition or eventually voting for the measure was not the best strategy. Keeping it off the ballot in the first place was the best strategy, and the two committees did so by spending 94.5% of their budgets combined on legal fees.

In Sharp County, both the bootlegger and Baptist groups filed suits challenging the validity of the signatures collected. The courts merged their two suits, which made the Baptist group publicly unhappy. One member of the group told the *Arkansas Democrat-Gazette* that "taking money from alcohol interests was always out of the question and that rumors associating churches or his group with alcohol money are false." We should not doubt the honesty of that statement, but nonetheless the group likely was very happy with the eventual outcome: the case went all the way to the Arkansas Supreme Court, and enough signatures were rejected to put the petition below the 38% threshold, meaning the question was not put to the voters in that election. Moreover, the courts recognized an important part of Yandle's model: while the bootleggers and Baptists may have had different motivations, they had a shared interest in keeping alcohol illegal in Sharp County.

Things ultimately changed in Sharp County in 2012, when a measure was put on the ballot to legalize alcohol sales and passed. The 2012 successful switch to a wet county also demonstrates the

power of Yandle's model: for reasons that are unclear, in 2012 there was no bootlegger committee opposing legalization. Only a Baptist group was formed in 2012, the Coalition for the Future of Sharp County. This group was entirely funded by churches, collecting about \$11,000 in contributions. Not only was this a smaller amount than in 2008, but the group did not seem to learn the lesson of their prior victory, as over three-quarters of the funds were spent on advertising. None were spent on legal fees.

#### **COALITIONS RAMP UP FUNDING, BUT NOT IN EVERY COUNTY**

Sharp County demonstrates that as a coalition, bootlegger and Baptists can prevail. But the Baptists alone, with the moral argument but not the massive funding, are not as successful in their attempts to keep booze off the shelves.

The lessons of Sharp County played out again and again over the next decade in Arkansas. Failed petitions to legalize alcohol sales happened in the counties of Craighead, Crawford, Faulkner, Independence (twice), Johnson, Randolph, and Yell in 2014 and 2016. Almost all of those counties had an identifiable bootlegger interest group, in some cases raised over \$100,000, and even over \$300,000 in Johnson County in 2016—much more than the Baptist groups were able to raise.

In some of those counties, the Baptists did not even form an official committee to raise funds. In those cases, the Baptists often provided support in non-monetary ways. For example, when news organizations covered the stories and provided each side a chance to make their case, they rarely talked to the owners of self-interested liquor stores in other counties. Instead, they talked to a local church leader or the leader of several statewide religious organizations.

For example, the Arkansas Family Coalition is a religious organization that is sometimes quoted by media, such as when TV station KAIT covered Craighead County's 2014 legalization effort. Also in 2014 in Faulkner County, the local newspaper interviewed the president of the local Baptist college, who is a pastor, as the representative of the opposition to legalization. Both counties saw massive amounts spent by liquor stores to fight the measures: \$119,900 in Craighead and \$280,000 in Faulkner. The media stories did not mention the liquor store donations. Both of those measures failed to appear on the ballot in 2014. Another interesting form of non-monetary support from a church is the public posting of the names of anyone who signs a petition, as one pastor did in both 2010 in Boone County and again in neighboring Newton County in 2014.

The stories of failed petitions are balanced out by other counties that did legalize liquor sales in recent years. Since the Marion County change in 2006, there have been 11 counties that legalized alcohol sales in Arkansas, including two counties in 2020. In just one of those 11 counties, Saline in 2014, was there a large bootlegger group opposing legalization. In the other 10 counties, no bootlegger group was formed, or it raised small amounts of funds. And in the case of Saline County in 2014, the \$157,500 raised by



the bootlegger group was no match for the over \$700,000 raised by a pro-legalization group. In recent years, another interest group has arisen to support legalization: Walmart, which provided the bulk of the funding in Saline County and was joined by several other pro-legalization groups across the state.

### THE WINNING COALITION

In their 2014 book, Smith and Yandle describe bootleggers and Baptists as a “winning coalition.” The examples from dry counties in Arkansas demonstrate this truth in both a positive and negative sense. When bootleggers and Baptists team up in Arkansas, they are extremely successful at defeating alcohol legalization measures. But when there is no coalition (explicit or implicit), the advocates of legalizing alcohol almost always get their way.

This raises a question: why in some cases does the coalition *not* form? Sometimes this may simply be because of an accident of geography, as when a dry county in Arkansas is “landlocked” between other dry counties. Thus, there may be no liquor stores located close enough to the county in question to make it worth the time and money to fight the measure. But in other cases, it does seem like a genuine puzzle, such as in Sharp County: the winning coalition from 2008 failed to form again just four years later. We can speculate on why that failed to happen, but the ultimate answer must be that the liquor stores no longer saw it

as being in their interest to fight. Why not? This is an important area for future research.

### CONCLUSION

The metaphor Yandle employed in 1983 came to life in Arkansas in the decades that followed. Bootleggers and Baptists in Arkansas may not have much in common, but they both strongly oppose further legalization of alcohol sales, leading them to work for the same goals. Sometimes they work together explicitly, but more often the coalition is a tacit one, where they work separately to keep a jurisdiction dry. R

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