



Written by [Joe Wolverton, II, J.D.](#) on January 13, 2012

Appeals Court Upholds Injunction Against Okla. Sharia Law Amendment

Although the measure received overwhelming support from the citizens of the Sooner State, it was immediately challenged in court by the American Civil Liberties Union (ACLU) and the Council on American-Islamic Relations (CAIR).

Before reporting the Court's opinion, a bit of legislative history is in order.

On May 25, 2010, the Oklahoma House of Representatives and Senate passed House Joint Resolution 1056. The bill directed "the Secretary of State to refer to the people for their approval or rejection a proposed amendment to Section 1 of Article VII of the Oklahoma Constitution ... known as the "Save Our State Amendment."



The [proposed amendment](#) states:

The Courts provided for in subsection A of this section, when exercising their judicial authority, shall uphold and adhere to the law as provided in the United States Constitution, the Oklahoma Constitution, the United States Code, federal regulations promulgated pursuant thereto, established common law, the Oklahoma Statutes and rules promulgated pursuant thereto, and if necessary the law of another state of the United States provided the law of the other state does not include Sharia Law, in making judicial decisions. The courts shall not look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia Law. The provisions of this subsection shall apply to all cases before the respective courts including, but not limited to, cases of first impression.

HJR 1056 also provided that the ballot title should explain to voters that:

This measure amends the State Constitution. It would change a section that deals with courts of this state. It would make courts rely on federal and state laws when deciding cases. It would forbid courts from looking at international law or Sharia Law when deciding cases.

Upon further analysis of the ballot title, the Attorney General of Oklahoma decided that the proposed ballot title did "not comply with applicable laws" and that it did "not adequately explain the effect of the proposition because it [did] not explain what either Sharia Law or international law is."

The Attorney General drafted a revised ballot title, which explains that:

This measure amends the State Constitution. It changes a section that deals with the courts of this state. It would amend Article 7, Section 1. It makes courts rely on federal and state law when deciding cases. It forbids courts from considering or using international law. It forbids courts from considering or using Sharia Law.



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International law is also known as the law of nations. It deals with the conduct of international organizations and independent nations, such as countries, states and tribes. It deals with their relationship with each other. It also deals with some of their relationships with persons. The law of nations is formed by the general assent of civilized nations. Sources of international law also include international agreements, as well as treaties.

Sharia Law is Islamic law. It is based on two principal sources, the Koran and the teachings of Mohammed.

The revised ballot title was put on the ballot as State Question 755 and on November 2, 2010, over 70 percent of Oklahomans voted in favor of the amendment. Had the measure not faced immediate legal challenge, it would have become officially a part of Oklahoma's constitution on November 9, 2010.

For fuller context of the controversy, one need understand that Sharia, which means "path" in Arabic, is the sacred law of Islam. As noted above, the precepts of Sharia have two sources: the Koran and the writings of Mohammed. Sharia is the code that is responsible for the stoning of adulteresses; the caning of rape victims; and the restrictions on dress, rights of inheritance, and marital status of women. Institutional acceptance of this legal code has expanded rapidly, and frightfully to some, in Europe. The government of the United Kingdom, for example, has established five Sharia courts to settle disputes among Muslims. It is this level of deference that opponents on this side of the pond are seeking to avoid.

[In its opinion in the case of *Awad v. Ziriax*](#), the Appeals Court held that the proposed constitutional amendment violates the Establishment Clause of the First Amendment to the U.S. Constitution. On behalf of the three-judge panel, Judge Scott Matheson, Jr., an Obama appointee, wrote:

Federal courts should be wary of interfering with the voting process, but we agree with the district court and the Sixth Circuit that "it is always in the public interest to prevent the violation of a party's constitutional rights." ... "While the public has an interest in the will of the voters being carried out ... the public has a more profound and long-term interest in upholding an individual's constitutional rights." ... We therefore hold that the district court did not abuse its discretion in determining that the preliminary injunction was not adverse to the public interest.

In determining whether or not the appellee (Mr. Awad) rightly claimed that he was being discriminated against because of his religion, the Court applied the test set forth by the Supreme Court in the case of *Larson v. Valente*. The *Larson* test states: "If a law discriminates among religions, it can survive only if it is 'closely fitted to the furtherance of any compelling interest asserted.'"

The interest of the government and people of Oklahoma in proposing and approving the amendment at issue was described by the measure's "chief architect," State Representative Rex Duncan. Duncan told ABC News that the purpose of the "Save our State" amendment was to take a "preemptive strike" against the invasion of Islamic law.

"I see this in the future somewhere in America. It's not an imminent threat in Oklahoma yet, but it's a storm on the horizon in other states," explained Duncan.

Regardless of the Tenth Circuit's decision to uphold the injunction against the law, there is some evidence of the accuracy of Duncan's predictions.

Specific instances of the references to Sharia law in the briefs of defendants are listed [in an article](#) written by Christopher Holton, the vice-president of the Washington, D.C. think tank, Center for



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Security Policy.

The ACLU disagreed with Representative Duncan and the people of Oklahoma, however. A spokesman for the ACLU Program on Freedom and Religion and Belief said in [a press release](#) that “this amendment did nothing more than target one faith for official condemnation ... [and] [e]ven the state admits that there has never been any problem with Oklahoma courts wrongly applying religious law.”

His colleague at the ACLU Human Rights Program echoed those remarks, saying, “Attempts to paint international law as irrelevant to the American legal system are wrong-headed and dangerous,” and adding that preventing courts from considering international law violates the Constitution and undermines the ability of courts to interpret laws and treaties.

Since its approval by the citizens of Oklahoma, the measure has been under fire and the subject of legal challenges.

The underlying lawsuit was originally filed by [Muneer Awad](#), the executive director of the Oklahoma branch of CAIR.

As reported at [Religion Dispatches](#), Republican presidential candidates Rick Santorum and Newt Gingrich have spoken in support of banning Sharia law in the courts of the United States.

Photo: Oklahoma state flag



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