

Kluwer Arbitration Blog

International Law Banned in Oklahoma State Courts

Roger Alford (General Editor) (Notre Dame Law School) · Wednesday, November 3rd, 2010

Yesterday voters in Oklahoma [voted overwhelmingly](#) (70% in favor to 30% against) to ban the use of international law and Sharia law in state courts. It appears that the referendum will be headed to the courts for review, for as my colleague Michael Helfand has [noted](#), the ban on Sharia law may well be unconstitutional under the First Amendment.

The full text of the referendum reads as follows:

“The Courts . . . when exercising their judicial authority, shall uphold and adhere to the law as provided in 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 or Sharia Law.

How much of an impact will this referendum have? Hard to say. I can think of six scenarios. First, state courts will be prohibited from relying on international or Sharia law as a tool to develop the common law or to interpret Oklahoma statutes or the Oklahoma or federal constitutions. Second, governing law clauses in contracts that rely on international law or Sharia law will not be enforceable. Third, the provision prohibiting state courts from addressing “legal precepts of other nations or cultures” may preclude courts from enforcing foreign choice of law provisions. Fourth, the enforcement of foreign judgments that rely on foreign law as the rule of decision may also run afoul of the prohibition on looking to the “legal precepts of other nations or cultures.” Fifth, the enforcement of foreign arbitral awards that rely on international, Sharia, or foreign law may also now be suspect in Oklahoma state courts, although such a state law provision would be preempted under the FAA and the New York Convention, which must be applied in state courts under [Southland](#). Sixth, as Julian Ku has [noted earlier](#), foreign investors will now be wary of consenting to jurisdiction in Oklahoma state courts.

The backlash against *Lawrence v. Texas*, *Roper v. Simmons*, and *Graham v. Florida* continues. Or perhaps this referendum is more about animus against Islam and international and foreign law are collateral damage.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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