

The Battle Between Oklahoma and Foreign Law

Yesterday was election day in the United States, when the entire House of Representative and one third of the US Senate stood for reelection. It was also a day when ballot measures were taken up in several states. Strangely, choice of law was on the ballot in one state. Voters in Oklahoma were given the option to approve the following measure:

“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.”

Nearly 70% of those voting approved the measure to ban the use of international law and Sharia law in Oklahoma state courts. While this bears some resemblance to initiatives in the 1800s that sought to prevent US courts from relying on the common law, I am fairly comfortable in stating that this may very well be the first time the US electorate (or the electorate of one US state) has voted on a choice of law initiative and has voted to close a state’s doors to foreign, non-U.S. law. I have no doubt that the courts will be asked to step in to reivew this. It may be the case that such a ban is unconstitutional under the First Amendment, as my colleague Michael Helfand has recently explained. And to think that most Americans thought this election was about the economy!