

Parry on Oklahoma's Save our State Amendment

John Parry, who is a professor of law at Lewis and Clark Law School, has posted Oklahoma's Save Our State Amendment and the Conflict of Laws on SSRN.

In November 2010, Oklahoma voters adopted the "Save Our State Amendment," which provides a catalog of legal sources that Oklahoma courts may use when deciding cases, as well as a catalog of forbidden sources, which include "the legal precepts of other nations or cultures," international law, and "Sharia Law." A federal district court has enjoined the entire amendment in response to establishment and free exercise concerns (and without considering whether the "Sharia Law" portions could be severed from the rest of the amendment).

Much of the reaction to the amendment has focused on these same constitutional issues and related political concerns. This essay, by contrast, approaches the Save Our State Amendment from a conflict of laws perspective, and I treat it primarily as a choice of law statute. Seen in this way, the Save Our State Amendment is a wretched piece of work, at least under the rather formal issue spotting analysis that I present here. If the amendment goes into effect – whether in whole or in part – it will raise a host of questions, some of them difficult, that could take years to work their way through the Oklahoma judicial system.

The first section of this essay addresses the scope of the amendment – the entities to and the situations in which it applies. The second section considers the amendment's impact on Oklahoma choice of law doctrine through its list of approved and forbidden legal sources for Oklahoma courts (and, by extension, federal district courts in Oklahoma when hearing diversity cases). The final section is a brief conclusion that assesses the larger impact of the issues I identify in this essay.

I do not claim to have identified or fully addressed every issue that the amendment raises or every problem that it creates, and I have largely left discussion of the religion clauses issues to other writers, but I trust that this

essay says enough to convince even those who support the amendment's political goals that this is an irresponsible way to make law.