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Focus Analysis Oklahoma Ban on Shariah is Unconstitutional

## Oklahoma Ban on Shariah is Unconstitutional

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By Liaquat Ali Khan

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by L. Ali Khan and Jasmine Abou-Kassem



On November 2, 2010, an overwhelming majority of Oklahoma citizens (slightly more than 70%) approved State Question (SQ) 755, as a state constitutional amendment, forbidding Oklahoma courts from "considering or using" international law or Shariah law. Oklahoma State Representative Rex Duncan, the amendment's principal author, characterized the Shariah as a "cancer that must be removed with a preemptive strike." A petition has already been filed with the United States District Court to seek a temporary restraining order against the enforcement of SQ 755. It remains to be seen whether the federal courts will strike down the amendment under the supremacy clause of the United States Constitution.

This commentary highlights the practical implications and legal effects of SQ 755 to conclude that the Oklahoma courts would be unable to surgically remove the Shariah from the myriad of legal relations emanating from the laws of the Qur'an and the Prophet's Sunnah, the primary sources of the Shariah law. Given the omnipresence of the Shariah law in Muslim life and its inseparability from practicing the religion of Islam, SQ 755 will go down in history as an ill-informed proposal that deceived the people of Oklahoma into voting for an illegal constitutional amendment, singled out the Oklahoma Muslim community for religious indignity, and tried to obligate Oklahoma courts to do what they, in good conscience, and as a matter of law, simply can not do.

### Religious Rights

SQ 755 impinges upon religious rights protected under the U.S. Constitution. The application of Shariah law is necessary to protect Muslims' civil rights and religious freedom under the U.S. Constitution. Take a simple case of supplying halal food for Muslim inmates in the Oklahoma prisons. The Shariah obligates Muslims to eat halal food much like Judaism obligates Jews to eat kosher food. In Massachusetts, Muslim inmates filed a civil rights action against the Department of Corrections for not providing halal food, alleging violations of the First and Fourteenth Amendments. The United States District Court held that refusal to provide halal food to Muslim inmates (and likewise a ban on their weekly group prayer services) "substantially burdened Muslim inmates' exercise of their religious beliefs." Relying on this holding, the Superior Court of Massachusetts extended the provision of halal food "to all inmates who have demonstrated a sincere belief in the tenets of Islam."

Now suppose this case were to arise in Oklahoma. SQ 755 would require the state courts to deny, as a matter of summary judgment, the Muslim inmates' petition for halal food simply because granting such a petition is tantamount to "considering or using" the Shariah law. But would the Oklahoma courts, in order to give effect to SQ 755, set aside the inmates' civil and religious rights protected under the U.S. Constitution? The courts would inevitably conclude that SQ 755 cannot override the U.S. Constitution.

### Choice of Law

Furthermore, SQ 755 impairs the freedom of contract. In a dynamic global economy, legal systems accommodate parties' considered decision to choose a law that would govern their contract and allows the parties to choose a forum to resolve potential contract disputes. The Shariah is the choice of law in numerous international contracts. In 1995, a Saudi Arabian corporation entered into a multi-million dollar contract with an American telecommunication company. The parties agreed to subject the contract to the Shariah law. Ruling on a breach of contract lawsuit, a United States Court enforced the Shariah law as the parties' choice of law – and rendered a Shariah ruling that was indeed favorable to the American corporation.

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Under SQ 755, Oklahoma courts would be obligated to disregard the parties' choice of law if it were the Shariah law. Even more importantly, SQ 755 inaccurately presumes that Oklahoma businesses, which may opt for the Shariah law in international transactions, would always be better off under the Oklahoma contract law than they would be under the Shariah law. In doing so, SQ 755 disregards Oklahomans' freedom of contract to make legally savvy and profitable business decisions. SQ 755 will also have a chilling effect on international investments. The ban on Oklahoma judges' discretion to consider international or Shariah law will discourage international businesses from investing in Oklahoma or consenting to the jurisdiction of Oklahoma courts.

### Family Rights

Thousands of Muslim families, derived from diverse ethnic groups, domestic and foreign, live in various cities of Oklahoma. Some of these families are native to Oklahoma, and some have migrated from Muslim states, including Egypt, Palestine, and Pakistan. For centuries, U.S. common law has recognized marriages contracted in foreign countries. Accordingly, a marriage that is valid under the law of the state or country where it is celebrated is valid in Oklahoma unless it is repugnant to public policy.


Under SQ 755, marriages contracted under the Shariah law of Egypt, Palestine, or Pakistan would no longer be valid because their validity will depend upon "considering or using" the Shariah law that SQ 755 specifically prohibits. For example, a couple married in Egypt will be unable to enforce their marital rights in Oklahoma because the Shariah marriage cannot be recognized under SQ 755. This invidious discrimination regarding the recognition of Shariah marriages will greatly impact the marital and family rights of numerous law-abiding Muslim citizens of Oklahoma. The non-recognition of Shariah marriages will also undermine the rights of children from these marriages who are born in Oklahoma.

### Air of Bigotry

While Oklahoma courts have been burdened with the impossible task of removing the Shariah law from the daily life of Muslim communities, SQ 755 spreads bigotry and prejudice throughout the state. Since 1995, when Timothy McVeigh, a U.S. army veteran, detonated a truck bomb in front of the Alfred P. Murray Federal Building in Oklahoma City, Muslims in Oklahoma have been singled out for unfair treatment and blatant discrimination. Muslim women have been denied jobs and drivers' licenses for wearing the headscarf. A number of Oklahoma newspapers have detailed discrimination stories against Muslim men and women. Additionally, politicians, including Rex Duncan, a lawyer by profession, continue to stir hatred against Muslim citizens of Oklahoma. Duncan's commentary on SQ 755 shows that the amendment is certainly focused on Shariah law and not international law. SQ 755 is an attempt to demonize the Muslim population in Oklahoma.

Ironically, in an effort to ensure only the application of Oklahoma law and U.S. Constitutional law, SQ 755 itself violates Article VI, clause 2 of the U.S. Constitution's mandate that all treaties and laws of the United States (including customary international law) be the supreme law of the land and binding on all state judges – notwithstanding any contrary state law. Fortunately, many Oklahoma residents, civil liberties and human rights organizations alike have recognized the unenforceability of SQ 755. A significant thirty percent of Oklahoma voters voted against SQ 755. We hope that the Oklahoma courts will find a way to discard SQ 755 from the fabric of the law.

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 2

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 Rod Wagner 2010-11-10 10:55:43

Rex Duncan loves to talk about "The will of the people."  
However, "the will of the people," is fickle and can be manipulated through "FEAR MONGERING" which is what exactly what he did to manipulate the good people of Oklahoma.  
We have a state and federal constitution and ALL laws must pass Constitutional standard to insure equality under the law.  
Duncan reminds me of Hitler who was in fact a "fear Monger" who's platform was morality and preemptive laws to protect the people, the good citizens of Germany. The rest is history of the what "fear mongering" can and will do.

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
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
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
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