

SUMMARY OF STATEQUESTIONS



Seven state questions will appear on the Nov. 8 general election ballot. Legislative Referendums are placed on the ballot by the Oklahoma Legislature. Initiative Petitions are placed on the ballot by gathering signatures from citizens. Each question is reprinted here as it will appear on the ballot followed by a brief summary.

Death Penalty STATEQUESTION **776**

STATE QUESTION NO. 776 LEGISLATIVE REFERENDUM NO. 367

This measure adds a new section to the Oklahoma Constitution, Section 9A of Article 2. The new Section deals with the death penalty. The Section establishes State constitutional mandates relating to the death penalty and methods of execution. Under these constitutional requirements:

- The Legislature is expressly empowered to designate any method of execution not prohibited by the United States Constitution.
- Death sentences shall not be reduced because a method of execution is ruled to be invalid.
- When an execution method is declared invalid, the death penalty imposed shall remain in force until it can be carried out using any valid execution method, and
- The imposition of a death penalty under Oklahoma law—as distinguished from a method of execution—shall not be deemed to be or constitute the infliction of cruel or unusual punishment under Oklahoma's Constitution, nor to contravene any provision of the Oklahoma Constitution.

FOR THE PROPOSAL – YES
 AGAINST THE PROPOSAL – NO

SUMMARY: State Question 776 does two things: it addresses the method of execution for an inmate on death row, and it states that the death penalty shall not be deemed cruel and unusual punishment. If the proposal is approved, a new section would be added to the Oklahoma Constitution that allows the state to continue to impose the death penalty, even if a specific method of execution becomes unavailable. Death sentences would remain in effect until they can be carried out by any method not prohibited by the US Constitution.

If approved, the constitutional amendment would apply to the state constitution but not the federal constitution or courts applying federal law.

The Oklahoma death penalty law, enacted in 1976, has been consistently applied by Oklahoma elected officials: the state executed 191 men and three women between 1915 and 2014 at the Oklahoma State Penitentiary (82 by electrocution, one by hanging, and 111 by lethal injection). Statutes specifically allow gas inhalation, electrocution, and firing squad as backups to the primary form of execution by lethal injection.

In October 2015, Oklahoma suspended executions for a review of lethal injection protocols. One of the drugs most commonly used for lethal injection is sodium thiopental, which is no longer manufactured in the United States. In 2011, the European Commission imposed restrictions on the export of certain drugs used for lethal injections in the United States.

As a result, many states no longer have the drugs used to carry out lethal injection. Oklahoma has turned to other drugs as a substitute for sodium thiopental. However, recent instances of executions around the country in which alternative drugs were used may have produced adverse outcomes.

The death penalty is legal in thirty-one states, and illegal in nineteen.

Agriculture STATEQUESTION **777**

STATE QUESTION NO. 777 LEGISLATIVE REFERENDUM NO. 368

This measure adds Section 38 to Article II of the Oklahoma Constitution. The new Section creates state constitutional rights. It creates the following guaranteed rights to engage in farming and ranching:

- The right to make use of agricultural technology,
 - The right to make use of livestock procedures, and
 - The right to make use of ranching practices.
- These constitutional rights receive extra protection under this measure that not all constitutional rights receive. This extra protection is a limit on lawmakers' ability to interfere with the exercise of these rights. Under this extra protection, no law can interfere with these rights, unless the law is justified by a compelling state interest—a clearly identified state interest of the highest order. Additionally, the law must be necessary to serve that compelling state interest. The measure—and the protections identified above—do not apply to and do not impact state laws related to:
- Trespass,
 - Eminent domain,
 - Dominance of mineral interests,
 - Easements,
 - Right of way or other property rights, and
 - Any state statutes and political subdivision ordinances enacted before December 31, 2014.

FOR THE PROPOSAL – YES
 AGAINST THE PROPOSAL – NO

SUMMARY: If the proposal is approved, the measure would prevent lawmakers from passing legislation to regulate agriculture unless there is a compelling state interest. The proposal would forbid the state of Oklahoma from regulating the use of agricultural technology, livestock procedures, and ranching practices. The standard of "compelling state interest" is a key component to the question because it sets a very high standard for a law to be judged.

If passed, the proposal would apply to any democratically elected body that can trace its creation to the state legislature, including county and city governments, but not school boards. Federal laws would not be impacted; current state laws about farming and ranching would be grandfathered in, and would not be repealed by this amendment. Grandfathered laws could be amended or repealed in the future.

Similar proposals have been presented to voters in other states, first in North Dakota. A similar amendment passed in Missouri in 2014; another amendment was considered in Nebraska earlier this year but was not approved by legislators for a vote of the people. Oklahoma's State Question 777 is inspired in part by opponents of Proposition 2 in California. Proposition 2 required certain farm animals to be able to lie down, stand up, fully extend limbs, and turn around freely. SQ 777 is unique in that it added the "compelling state interest" clause.

Oklahoma's top agricultural products in revenue are cattle, hogs, poultry, wheat, and dairy. Agriculture is the state's fourteenth highest economic sector, accounting for less than 2 percent of GDP, (higher than agriculture's national rate). For decades, as technology and yields have advanced, the number of agricultural jobs and farms has declined. Nine in ten Oklahoma crop and animal operations are owned by private citizens, many of whom contract with larger corporations.

Education Funding Tax STATEQUESTION **779**

STATE QUESTION NO. 779 INITIATIVE PETITION NO. 403

This measure adds a new Article to the Oklahoma Constitution. The article creates a limited purpose fund to increase funding for public education. It increases State sales and use taxes by one cent per dollar to provide revenue for the fund. The revenue to be used for public education shall be allocated: 69.50% for common school districts, 19.25% for the institutions under the authority of the Oklahoma State Regents for Higher Education, 3.25% for the Oklahoma Department of Career and Technology Education, and 8% for the State Department of Education. It requires teacher salary increases funded by this measure raise teacher salaries by at least \$5,000 over the salaries paid in the year prior to adoption of this measure. It requires an annual audit of school districts' use of monies. It prohibits school districts' use of these funds for increasing superintendents' salaries or adding superintendent positions. It requires that monies from the fund not supplant or replace other educational funding. If the Oklahoma Board of Equalization determines funding has been replaced, the Legislature may not make any appropriations until the amount of replaced funding is returned to the fund. The article takes effect on July 1 after its passage.

FOR THE PROPOSAL – YES
 AGAINST THE PROPOSAL – NO

SUMMARY: If this proposal is approved, Article 8-C would be added to the Oklahoma Constitution creating a limited purpose fund—the Education Improvement Fund.

An increase of the sales and use tax by one cent on the dollar would provide revenue for the fund. School districts that benefit from the fund would be subject to an annual audit. Funds generated by the tax cannot be used to replace other state funding of common, higher, career and technology, and early childhood education.

The provisions of the new article require a minimum \$5,000 salary increase for teachers over the salaries paid in the year prior to adoption. The funds generated would not be used to increase the salaries of school superintendents or to add superintendent positions.

Oklahoma's average compensation for teachers, including salary and benefits, is \$44,921. According to the National Education Association, Oklahoma ranks 49th in the nation in teacher pay.

A section within the new article to the state constitution establishes that monies collected would be distributed as follows:

- 69.5 percent to common education
 - > 86.33 percent of common education funding would be used to provide teachers with a minimum \$5,000 raise and otherwise address or prevent teacher and certified instruction staff shortages.
 - > 13.67 percent of common education funding would be used to adopt or expand, but not maintain, programs, opportunities or reforms for improving reading in early grades, improving high school graduation rates, and increasing college and career readiness.
- 19.25 percent to higher education
- 3.25 percent to career and technology education
- 8 percent to early childhood education

Law Enforcement STATEQUESTION **780**

STATE QUESTION NO. 780 INITIATIVE PETITION NO. 404

This measure amends existing Oklahoma laws and would change the classification of certain drug possession and property crimes from felony to misdemeanor. It would make possession of a limited quantity of drugs a misdemeanor. The amendment also changes the classification of certain drug possession crimes which are currently considered felonies and cases where the defendant has a prior drug possession conviction. The proposed amendment would reclassify these drug possession cases as misdemeanors. The amendment would increase the threshold dollar amount used for determining whether certain property crimes are considered a felony or misdemeanor. Currently, the threshold is \$500. The amendment would increase the amount to \$1000. Property crimes covered by this change include; false declaration of a pawn ticket, embezzlement, larceny, grand larceny, theft, receiving or concealing stolen property, taking domesticated fish or game, fraud, forgery, counterfeiting, or issuing bogus checks. This measure would become effective July 1, 2017.

FOR THE PROPOSAL – YES
 AGAINST THE PROPOSAL – NO

SUMMARY: If the measure is approved, State Question 780 would reclassify certain offenses, such as simple drug possession and property crimes, as misdemeanors rather than felonies. The reclassification of the drug possession offense is intended to be applied to persons who use the drugs, not to those who are selling or manufacturing the drugs. The measure also would change the dollar amount threshold for property crimes charged as felonies from \$500 to \$1,000.

The goal of this measure is to reduce the size of the state's prison population and to reduce the amount of state funds being spent on prisons. SQ 780 proposes to change Oklahoma statutes, not the constitution.

According to the U.S. Bureau of Justice in 2014, Oklahoma had the second highest incarceration rate in the nation at 700 inmates per 100,000 U.S. residents. Oklahoma also had the highest incarceration rate for women that year. The total correctional population of a state includes people incarcerated and on probation or parole.

The Oklahoma Department of Corrections indicated in August 2016 that the prison system was at 104 percent of its capacity with 27,097 inmates being held. Drug offenders comprise 26.3 percent of inmates. Another 23.3 percent of inmates are imprisoned for other nonviolent crimes. According to the Oklahoma DOC 2015 annual report, the Oklahoma prison population has increased by 22.6 percent since 2006. In fiscal year 2016, the Oklahoma legislature appropriated \$485 million to the Oklahoma Department of Corrections.

If the measure is approved, the changes proposed would not be retroactive. Sentences for current inmates would not change.

STATE QUESTION NO. 781 INITIATIVE PETITION NO. 405

This measure creates the County Community Safety Investment Fund, only if voters approve State Question 780, the Oklahoma Smart Justice Reform Act. This measure would create a fund, consisting of any calculated savings or averted costs that accrued to the State from the implementation of the Oklahoma Smart Justice Reform Act in reclassifying certain property crimes and drug possession as misdemeanors. The measure requires the Office of Management and Enterprise Services to use either actual data or its best estimate to determine how much money was saved on a yearly basis. The amount determined to be saved must be deposited into the Fund and distributed to counties in proportion to their population to provide community rehabilitative programs, such as mental health and substance abuse services. This measure will not become effective if State Question 780, the Oklahoma Smart Justice Reform Act, is not approved by the people. The measure will become effective on July 1 immediately following its passage.

FOR THE PROPOSAL – YES
 AGAINST THE PROPOSAL – NO

SUMMARY: The implementation of State Question 781 is contingent on the passage of State Question 780. If SQ 781 is approved by voters, but SQ 780 is not, none of the changes described in SQ 781 will be enacted.

If both measures are approved, SQ 781 would create the County Community Safety Investment Fund. That fund would hold any cost savings achieved by reducing numbers of people incarcerated—a decrease resulting from reclassifying certain property crimes and drug possession as misdemeanors. The new Investment Fund would be a revolving fund not subject to fiscal year limitations. Any savings or averted costs would be calculated by the Office of Management and Enterprise Services.

If savings are determined, the legislature would be required to appropriate that amount from the general fund to the County Community Safety Investment Fund.

The money must be used for county rehabilitative programs, including those that address mental health and substance abuse, or provide job training or education. The money would be distributed to Oklahoma counties in proportion to their population.

The Office of Management and Enterprise Services will use actual data or make its best estimate when calculating cost savings per year. Its calculation would be final and would not be adjusted because of subsequent changes in underlying data.

The intent of SQ 781 is to focus on root causes of criminal behavior such as addiction and mental health problems, as opposed to placing more people charged with lower-level offenses behind bars.

Religion & the State STATEQUESTION **790**

STATE QUESTION NO. 790 LEGISLATIVE REFERENDUM NO. 369

This measure would remove Article 2, Section 5 of the Oklahoma Constitution, which prohibits the government from using public money or property for the direct or indirect benefit of any religion or religious institution. Article 2, Section 5 has been interpreted by the Oklahoma courts as requiring the removal of a Ten Commandments monument from the grounds of the State Capitol. If this measure repealing Article 2, Section 5 is passed, the government would still be required to comply with the Establishment Clause of the United States Constitution, which is a similar constitutional provision that prevents the government from endorsing a religion or becoming overly involved with religion.

FOR THE PROPOSAL – YES
 AGAINST THE PROPOSAL – NO

SUMMARY: State Question 790 addresses public funding and property use regarding the separation of church and state. It is a proposal to repeal a section of the state's constitution. If the measure is approved, Article 2, Section 5 of the Oklahoma Constitution would be repealed. By removing this section, public expenditure or property use for religious purposes would not be explicitly prohibited.

Under the First Amendment to the United States Constitution, "congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Under the Oklahoma Constitution's Article 2, Section 5, state money or property cannot be used directly or indirectly to support a church, sect, denomination, or system of religion.

This state question is a response to recent controversy over display of the Ten Commandments monument on the grounds of the Oklahoma State Capitol. In 2009, the Ten Commandments Monument Display Act was passed by the state legislature and, three years later, a privately donated Ten Commandments monument was erected on the grounds of the State Capitol. Lawsuits followed, and by June 2015, the Oklahoma Supreme Court ruled the monument's placement on state property was unconstitutional, ordering that it be removed. The basis for the court's decision was Article 2, Section 5 of the Oklahoma State Constitution. In October 2015, Oklahoma Governor Mary Fallin called on the legislature to repeal that section of the state constitution in order to allow the monument at the State Capitol.

Alcohol STATEQUESTION **792**

STATE QUESTION NO. 792 LEGISLATIVE REFERENDUM NO. 370

This measure repeals Article 28 of the Oklahoma Constitution and restructures the laws governing alcoholic beverages through a new Article 28A and other laws the Legislature will create if the measure passes. The new Article 28A provides that with exceptions, a person or company can have an ownership interest in only one area of the alcoholic beverage business—manufacturing, wholesaling, or retailing. Some restrictions apply to the sales of manufacturers, brewers, winemakers, and wholesalers. Subject to limitations, the Legislature may authorize direct shipments to consumers of wine. Retail locations like grocery stores may sell wine and beer. Liquor stores may sell products other than alcoholic beverages in limited amounts. The Legislature must create licenses for retail locations, liquor stores, and places serving alcoholic beverages and may create other licenses. Certain licensees must meet residency requirements. Felons cannot be licensees. The Legislature must designate days and hours when alcoholic beverages may be sold and may impose taxes on sales. Municipalities may levy an occupation tax. If authorized, a state lodge may sell individual alcoholic beverages for on-premises consumption but no other state involvement in the alcoholic beverage business is allowed. With one exception, the measure will take effect October 1, 2018.

FOR THE PROPOSAL – YES
 AGAINST THE PROPOSAL – NO

SUMMARY: If the proposal is approved, it would repeal Article 28 of the Oklahoma Constitution and replace it with Article 28A, which restructures the laws governing alcohol. If approved, the measure will go into effect on October 1, 2018.

Currently, under Oklahoma law, liquor stores can sell full-strength, unrefrigerated beer but cannot sell cold beer or chilled wine. Refrigerated beer can sell wine and spirits but no other items. Grocery and convenience stores can sell cold low-point beer (3.2 percent alcohol by weight) but not spirits, wine, or high-point beer.

State Question 792 would change the current alcohol laws to allow grocery, convenience, and drug stores to sell cold, high-point beer (up to 8.99 percent alcohol by volume) and wine (up to 15 percent alcohol by volume). Liquor stores would be allowed to sell cold beer and any item that also may be purchased in a grocery store or convenience store—except motor fuel—in limited amounts. Liquor or spirits will still only be available for purchase from licensed retail liquor stores.

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