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## 2016 OKLAHOMA STATE QUESTIONS GUIDE

*Seven state questions will be on the Oklahoma ballot on November 8. Go to <http://bit.ly/16SQguide> to find more information about each state question and what supporters and opponents are saying. Read on for state question summaries.*

### **SQ 776: Constitutional Amendment on the Death Penalty**

SQ 776 is a constitutional amendment that affirms the state of Oklahoma's right to perform executions. It gives the Legislature the power to designate any method of execution, prohibits the reduction of death sentence due to an invalid method of execution, and prohibits the death penalty from being ruled "cruel and unusual punishment" or unconstitutional according to the Oklahoma Constitution.

### **State Question 777: Constitutional Limits on Regulation of Agriculture**

SQ 777 is a constitutional amendment that would give Oklahoma residents the right to engage in farming and ranching practices and employ agricultural technology. The amendment bans any new law regulating or prohibiting an agricultural practice unless it can be shown to have a "compelling state interest." That means any new agricultural regulations would have to pass strict scrutiny, the legal standard used for laws that deprive people of fundamental rights like free speech, gun ownership, or religious freedom.

### **State Question 779: Sales Tax for Education**

SQ 779 is a constitutional amendment that would raise the state sales and use tax by one percentage point. Of the total revenue generated by the new tax, 60 percent would go to providing a salary increase of at least \$5,000 for every public school teacher. The remaining funds would be divided between public schools (9.5 percent), higher education (19.25 percent), career and technology education (3.25 percent), and early childhood education (8 percent). The State Board of Equalization would be required to certify that revenues from the new tax are not being used to supplant existing funds.

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## State Questions 780 & 781: Criminal Justice Reform

SQ 780 changes the classification of simple drug possession crimes from felony to misdemeanor. It also raises the dollar amount that determines whether property crimes are a felony or misdemeanor from \$500 to \$1,000. Anticipating fewer prison receptions for drug possession, SQ 781 directs the cost savings from SQ 780 to a fund that would be distributed to counties to provide mental health and substance abuse services. The state Office of Management and Enterprise Services is directed to determine the annual savings, which will be distributed to counties in proportion to their population.

## State Question 790: Use of Public Resources for Religious Purposes

SQ 790 is a constitutional amendment that would repeal Article 2, Section 5 of the Oklahoma Constitution, which reads, “No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.” SQ 790 was placed on the ballot by the Oklahoma Legislature in response to a state Supreme Court ruling that required the removal of a Ten Commandments monument from the Oklahoma Capitol grounds.

## State Question 792: Alcohol Law Reform

SQ 792 would amend the Oklahoma constitution to allow grocery and convenience stores to sell wine and high-point beer. Currently these stores are prohibited from selling beer containing above 3.2 percent alcohol by volume, as well as all wine and all liquor. SQ 792 would also allow Oklahoma liquor stores to sell refrigerated beer and alcohol accessories (i.e., sodas, corkscrews). The measure would allow multiple beer and wine stores to be owned by one corporation (ownership would be limited to two stores per person if spirits are sold). Currently individual liquor store owners are not allowed to have more than one store. If SQ 792 passes, these changes would take effect on October 1, 2018.

***Go to <http://bit.ly/16SQguide> to find more information about each state question and what supporters and opponents are saying.***

***Go to <http://bit.ly/16OKvote> for information on how to vote in Oklahoma.***



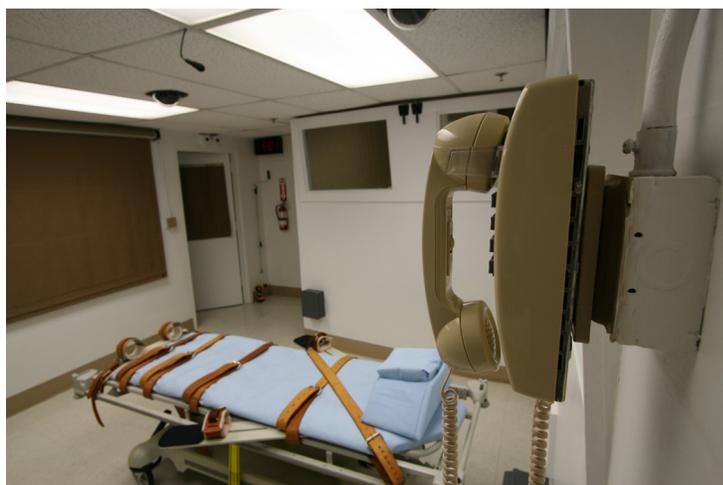
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## STATE QUESTION 776: CONSTITUTIONAL AMENDMENT ON THE DEATH PENALTY

### The Gist

SQ 776 is a constitutional amendment that affirms the state of Oklahoma's right to perform executions. It gives the Legislature the power to designate any method of execution, prohibits the reduction of death sentence due to an invalid method of execution, and prohibits the death penalty from being ruled "cruel and unusual punishment" or unconstitutional according to the Oklahoma Constitution.



### Background Information

Recent problems with the administration of the death penalty in Oklahoma led to a lawsuit that reached the U.S. Supreme Court. During Oklahoma's attempted execution of Clayton Lockett in April 2014, Lockett's vein apparently ruptured, causing him to writhe for about 45 minutes before the execution was halted. He died of a heart attack minutes later. Another man on death row, Charles Warner, challenged the use of the drug midazolam in the execution protocol. In January 2015, Warner was executed. It was later discovered that the Department of Corrections had used the wrong drug.

A grand jury investigation of Oklahoma's botched executions did not return any indictments but did find numerous flaws in the state's execution protocol and in state officials' conduct related to executions. Oklahoma courts put all executions in Oklahoma on hold during the investigation, and executions remain on hold until Oklahoma approves a new execution protocol.

Arguing that Oklahoma's right to carry out the death penalty was under threat, lawmakers proposed Senate Joint Resolution 31 in 2015. The Oklahoma Legislature overwhelmingly passed the measure, sending SQ 776 to the ballot. In June 2015, the U.S. Supreme Court upheld the state's execution protocol on a 5-4 vote in the case of *Glossip v. Gross*. However, a 2016 ruling in a death penalty case in Arkansas could lead the U.S. Supreme Court to re-examine its *Glossip* decision.

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## STATE QUESTION 776 (CONTINUED)

### Supporters Say...

- Oklahomans strongly support the death penalty, and the state should protect its ability to carry it out.
- The state should have the opportunity to find a workable method of execution if one is found to be invalid, rather than ending executions.

### Opponents Say...

- Death penalty opponents will likely challenge the measure, costing the state additional resources and energy to defend it.
- In specifying that the death penalty is not cruel and unusual punishment, the question attempts to eliminate the role of the Courts in its checks and balances role.
- Even if SQ 776 is approved, a U.S. Supreme Court decision that the death penalty violates the U.S. Constitution would override the state Constitution.

### Ballot Language

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.

To learn more, go to <http://bit.ly/oksq2016>.



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### STATE QUESTION 777: CONSTITUTIONAL LIMITS ON THE REGULATION OF AGRICULTURE

#### The Gist

SQ 777 is a constitutional amendment that would give Oklahoma residents the right to engage in farming and ranching practices and employ agricultural technology. The amendment bans any new law regulating or prohibiting an agricultural practice unless it can be shown to have a “compelling state interest.” That means any new agricultural regulations would have to pass strict scrutiny, the legal standard used for laws that deprive people of fundamental rights like free speech, gun ownership, or religious freedom.



#### Background Information

SQ 777 was placed on the ballot by the Oklahoma Legislature. The measure is modeled after an initiative that was approved by voters in North Dakota in 2012 and Missouri in 2014. The Farm Bureau in these states and in Oklahoma have been major backers of the initiatives.

SQ 777 has been called the “Right to Farm Amendment” by its supporters and “Right to Harm” by opponents.

By requiring strict scrutiny of any new laws affecting agriculture, the amendments would make it much more likely that these laws can be struck down in court. A UCLA study found that state laws challenged under strict scrutiny in federal courts are struck down 77 percent of the time and local ordinances are struck down 85 percent of the time.

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## STATE QUESTION 777 (CONTINUED)

SQ 777 has been supported primarily by agricultural trade groups such as the Oklahoma Farm Bureau, the Oklahoma Cattlemen's Association, and the Oklahoma Pork Council. Opponents of the measure include the Oklahoma Municipal League representing mayors and city councils, the Inter-Tribal Council of the Five Civilized Tribes, the Humane Society of the United States, and the Oklahoma Food Cooperative representing small farmers.

### Supporters Say...

- SQ 777 will give farmers another “tool in their toolbox” to defend themselves from unwarranted laws and regulations, including ballot initiatives funded by deep-pocketed animal-rights groups.
- By guarding against overly restrictive laws and regulations, SQ 777 will allow consumers to make the choice about what farming and ranching practices they want to support.

### Opponents Say...

- SQ 777 creates an advantage for large, industrialized factory farms by preventing new state laws to protect small farmers and natural resources.
- SQ 777 undermines democracy by preventing Oklahoma's elected leaders from establishing reasonable standards for food production, environmental protection, and animal welfare.
- SQ 777 would make it much harder to protect Oklahoma's drinking water from pollution by animal waste disposal.

### Ballot Language

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, • Easements, • Right of way or other property rights, and • Any state statutes and political subdivision ordinances enacted before December 31, 2014.

**To learn more, go to <http://bit.ly/oksq2016>.**



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### STATE QUESTION 779: SALES TAX FOR EDUCATION

#### The Gist

SQ 779 is a constitutional amendment that would raise the state sales and use tax by one percentage point. Of the total revenue generated by the new tax, 60 percent would go to providing a salary increase of at least \$5,000 for every public school teacher. The remaining funds would be divided between public schools (9.5 percent), higher education (19.25 percent), career and technology education (3.25 percent), and early childhood education (8 percent). The State Board of Equalization would be required to certify that revenues from the new tax are not being used to supplant existing funds.

#### Background Information

The ballot initiative is responding to concerns among educators, parents, and others about teacher salaries and education funding.

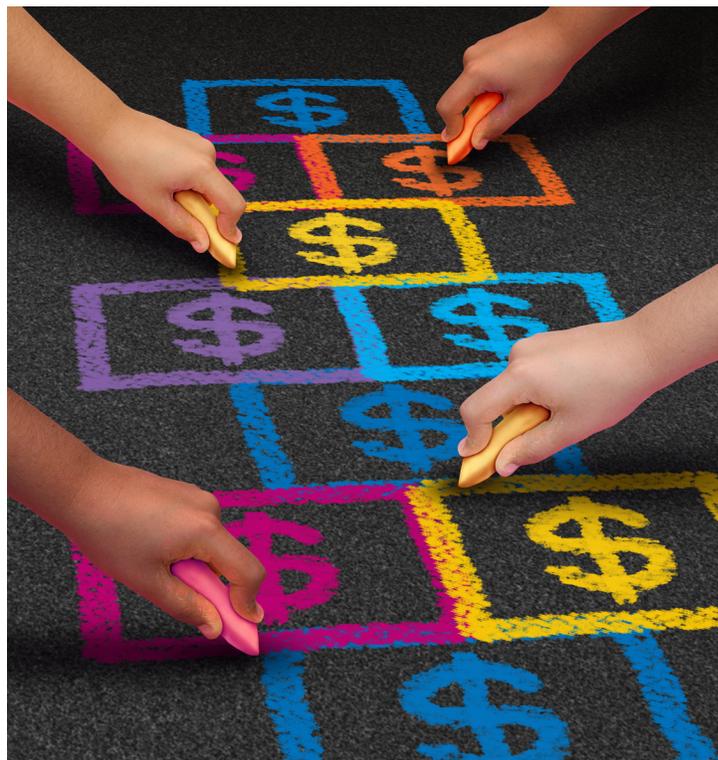
Average compensation for Oklahoma teachers has fallen to 49th in the nation, and school districts are struggling to recruit and retain enough qualified teachers. Since 2008, Oklahoma has cut state support for the school aid formula by more than \$170 million, and funding for higher education and career tech has also been cut.

This year about 1,500 teaching positions and 1,300 support worker positions have been lost to budget cuts in Oklahoma schools, yet schools still report about 1,000 unfilled teaching positions. Hundreds more positions are being filled by emergency certified teachers who do not meet the state's legal qualifications to be a classroom teacher.

SQ 779 was placed on the 2016 ballot through a successful initiative petition effort that gathered over 300,000 signatures, more than double the required number (123,725). An effort to block the initiative as a violation of the single-subject rule of the state Constitution was rejected by the Oklahoma Supreme Court.

If approved, the new sales tax would take effect July 1, 2017 and is projected to raise \$615 million in its first full year.

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## STATE QUESTION 779 (CONTINUED)

### Supporters Say...

- Since lawmakers have made large cuts to education funding and repeatedly failed to approve a teacher pay raise, there is no other solution to the education funding crisis than passing a ballot initiative that includes a dedicated revenue source.
- Higher teacher salaries are needed to stop the flow of teachers to other states and other professions and to ensure a high-quality education for Oklahoma children. Low-income students are being harmed most by heavy teacher turnover and would benefit most from teachers being paid competitive salaries.
- The ballot measure includes strong constitutional safeguards to make sure the dollars will be spent as intended.
- In addition to the \$5,000 pay raise for teachers, the measure would provide funds for such worthwhile purposes as improving reading, increasing high school graduation rates, creating a merit pay system, improving college affordability, and strengthening early childhood education.

### Opponents Say...

- While teachers deserve a raise, there are ways to fund a pay raise without raising taxes and without committing to more spending on higher education and career tech.
- The sales tax is regressive, which means that the tax increase will affect low- and moderate-income households more than wealthier households.
- Oklahoma already has one of the highest combined state and local sales tax rates in the nation. A one percentage point increase will give Oklahoma the nation's highest sales tax rate and push the rate above 10 percent in some areas. Cities, which are heavily reliant on the sales tax, will be hindered in their capacity to raise the sales tax for municipal priorities.
- Even with the measure's language preventing money from SQ 779 supplanting other funding, there is nothing to prevent the Legislature from enacting further tax cuts that will offset this increase.

### Ballot Language

This measure adds a new Article to the Oklahoma Constitution. The new Article creates a limited purpose fund to improve public education. It levies a one cent sales and use tax to provide revenue for the fund. It allocates funds for specific institutions and purposes related to the improvement of public education, such as increasing teacher salaries, addressing teacher shortages, programs to improve reading in early grades, to increase high school graduation rates, college and career readiness, and college affordability, improving higher education and career and technology education, and increasing access to voluntary early learning opportunities for low-income and at-risk children. It requires an annual audit of school districts' use of monies from the fund. It prohibits school districts' use of these funds for administrative salaries. It provides for an increase in teacher salaries. It requires that monies from the fund not supplant or replace other education funding. The Article takes effects on the July 1 after its passage.

**To learn more, go to <http://bit.ly/oksq2016>.**



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### STATE QUESTIONS 780 & 781: CRIMINAL JUSTICE REFORM

#### The Gist

SQ 780 changes the classification of simple drug possession crimes from felony to misdemeanor. It also raises the dollar amount that determines whether property crimes are a felony or misdemeanor from \$500 to \$1,000. Anticipating fewer prison receptions for drug possession, SQ 781 directs the cost savings from SQ 780 to a fund that would be distributed to counties to provide mental health and substance abuse services. The state Office of Management and Enterprise Services is directed to determine the annual savings, which will be distributed to counties in proportion to their population.



#### Background Information

SQ 780 and SQ 781 are intended to reduce the prison population and provide funding that allows communities to address mental health and substance abuse issues. Oklahoma has the second highest incarceration rate in the country and the highest incarceration rate for women. The state's prisons are badly overcrowded, holding around 110 percent of their rated capacity. Further, Oklahoma has the second-highest rate of adults with serious mental illness, but ranks 44th in the U.S. for funding the treatment of mental illness.

In 2016, the Legislature took steps to lessen penalties for drug offences. HB 2479 reduces the minimum mandatory punishment for drug offenders charged only with possession. However, simple drug possession can still be charged as a felony. SQ 780 would reduce the penalty for all drug possession offences to a misdemeanor punishable by up to one year in jail and/or a fine of up to \$1,000.

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## STATE QUESTIONS 780 & 781 (CONTINUED)

A coalition called Oklahomans for Criminal Justice Reform (OCJR) submitted both ballot initiatives and gathered over 110,000 signatures for each question, well over the 65,987 required. Attorney General Scott Pruitt rewrote the ballot language for both questions, and OCJR challenged the rewrites as biased against the initiative. The Oklahoma Supreme Court rejected both the original and Pruitt's proposed ballot language and instead wrote its own.

### Supporters Say...

- Oklahoma's high incarceration rate has not led to safer communities; we still have above average rates of crime, while other states have seen bigger drops in their crime rates in recent years.
- Harsh punishments of low-level crimes contributes to the growth of the prison population. People who serve time in prison for low-level crimes are a greater threat to public safety when they are released.
- Without a felony conviction on their records, those who have been convicted of simple drug possession offences will have a better chance of finding good-paying, steady employment, as well as housing and public assistance when needed.
- By directing the cost savings back to communities, the state can address the substance abuse and mental health issues that cause crime in the first place.

### Opponents Say...

- Without felony drug possession charges, defendants are less likely to complete substance abuse treatment. Prosecutors would no longer be able to use the threat of felony drug possession charges to compel gang members to testify against one another.
- Criminal justice reforms that passed through the Legislature this year, which reduced mandatory minimum sentences for drug possession, raised the felony theft threshold, and allow prosecutors to charge most felonies as misdemeanors, are sufficient for progress on the problem.
- SQ 781 leaves the calculation of cost savings to the Office of Management and Enterprise Services, but there is no guidance on how the calculation should be made. Counties that may have more people in jail or on community supervision will be responsible for more offenders but may not have sufficient funding to handle them.

**To learn more and see the ballot language, go to <http://bit.ly/oksq2016>.**



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## STATE QUESTION 790: USE OF PUBLIC RESOURCES FOR RELIGIOUS PURPOSES

### The Gist

SQ790 is a constitutional amendment that would repeal Article 2, Section 5 of the Oklahoma Constitution, which reads, “No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.”



### Background Information

SQ 790 was placed on the ballot by a majority vote in the Oklahoma Legislature. Supporters of the state question in the Legislature said they were motivated by a recent Oklahoma Supreme Court decision, *Prescott v. Oklahoma Capitol Preservation Commission*, where the court ruled that a Ten Commandments monument on the State Capitol grounds was an unconstitutional use of public property based on Article 2, Section 5.

Another recent Oklahoma Supreme Court case involving Article 2, Section 5 was *Oliver v. Hofmeister*, a challenge to Oklahoma’s “Lindsey Nicole Henry Scholarships” that use public money to provide scholarships for students with disabilities to attend private schools, including religious schools. A lower court had found that the scholarship program violated the Oklahoma Constitution, but the state Supreme Court reversed that decision. The court found that because scholarship money is distributed to parents who then make an independent decision on which school to use it for, this program does not violate the prohibition against state support of religion.

The court also found in 1946 that paying public money to a religious orphanage was not a violation of Article 2, Section 5, because the orphanage was being paid for services that were of substantial value to the state. On the other hand, in 1965 the court found that providing free public school bus transportation to students of a private religious school did violate Article 2, Section 5 because it was direct aid to the religious school with no corresponding value for the state.

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## STATE QUESTION 790 (CONTINUED)

Even if voters approve SQ 790, there is some possibility that the United States Supreme Court will rule that the Ten Commandment monument's display on public grounds violates the First Amendment of the U.S. Constitution. Previous U.S. Supreme Court decisions have prohibited some Ten Commandment monument displays while allowing others. The Court's reasoning has depended on the history and context of each monument.

### Supporters Say...

- The Oklahoma Supreme Court's interpretation of Article 2, Section 5 to prohibit Ten Commandments monuments on public grounds makes Oklahoma hostile to religion.
- The original history behind Article II, Section 5 was motivated by a desire to discriminate against immigrants and Catholic schools.

### Opponents Say...

- Repealing Article 2, Section 5 threatens to allow taxpayer support of sectarian religion in ways that would threaten the separation of church and state and divide Oklahomans along religious lines.
- The language of the Article was originally motivated by concerns about religious freedom and a history of forced Christianization of Native American students, not by discrimination against Catholics.

### Ballot Language

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.

**To learn more, go to <http://bit.ly/oksq2016>.**



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### STATE QUESTION 792: ALCOHOL LAW REFORM

#### The Gist

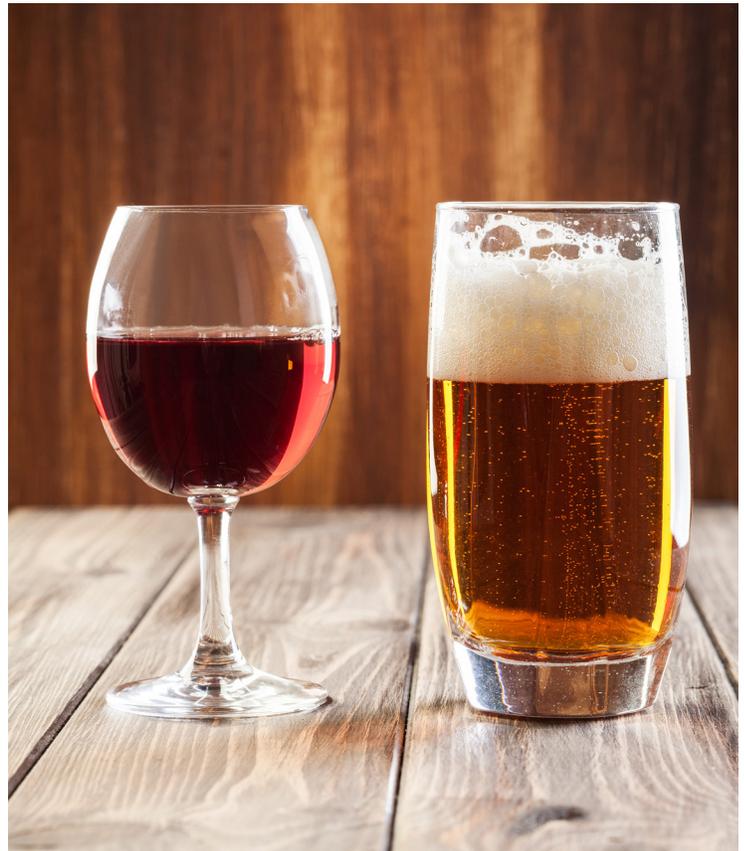
SQ 792 would amend the Oklahoma constitution to allow grocery and convenience stores to sell wine and high-point beer. Currently these stores are prohibited from selling beer containing above 3.2 percent alcohol by volume, as well as all wine and all liquor. SQ 792 would also allow Oklahoma liquor stores to sell refrigerated beer and alcohol accessories (i.e., sodas, corkscrews). The measure would allow multiple beer and wine stores to be owned by one corporation (ownership would be limited to two stores per person if spirits are sold). Currently individual liquor store owners are not allowed to have more than one store. If SQ 792 passes, these changes would take effect on October 1, 2018.

#### Background Information

Oklahoma currently has among the most restrictive laws in the nation on grocery store alcohol sales. In 41 other states, grocery stores and convenience stores are allowed to sell wine, and only 5 other states have prohibitions based on the proof of beer.

SQ 792 was placed on the ballot by the Oklahoma Legislature to reform these laws. A companion bill, SB 383, will go into effect if SQ 792 passes. The companion bill allows direct shipment of wine into Oklahoma, increases the clerk age for selling beer from 16 to 18, and establishes other regulations on the sale of alcohol.

Another state question petition, SQ 791, has been circulated by a group of liquor store owners, but they did not collect enough signatures in time to put it on the November ballot. SQ 791 would have prohibited grocery stores from selling wine if there was a liquor store within 500 feet, prohibited out-of-state ownership of any part of a wholesale or retail liquor license, and required that alcohol sales not make up more than 30% of a grocery store's total sales.



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## STATE QUESTION 792 (CONTINUED)

### Supporters Say...

- Oklahoma's current regulations of alcohol sales are outdated. These laws are inconveniencing consumers, sending money out of state, and preventing the growth of local industries.
- SQ 792 will support Oklahoma's economy by allowing local businesses to operate under comparable legislation as their competitors in neighboring states.
- Consumers will no longer need to make a separate trip to the liquor store for high-point beer and wine. At the same time, liquor stores will be able to sell mixers and corkscrews, which will make the liquor store a "one-stop" alcohol destination.
- Current restrictions on the sale of refrigerated beer means that various types of craft beer cannot be stocked due to temperature requirements. SQ 792 will allow new craft beers to become available to Oklahoman consumers.

### Opponents Say...

- SQ 792 may cause liquor stores to go out of business due to inability to compete with the convenience of grocery stores and the added cost of refrigeration for beer.
- By easing restrictions on ownership of multiple liquor stores, SQ 792 will allow large chains to take over the alcohol market in Oklahoma.
- SQ 792 could lead to fewer choices for consumers, because a few large brands offered in grocery stores would crowd out the more diverse offerings in liquor stores.
- Allowing grocery stores to sell higher point beer could lead to the end of production of low-point beer.

### Ballot Language

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.

**To learn more, go to <http://bit.ly/oksq2016>.**