



OKPOLICY.ORG

Oklahoma Policy Institute

## 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.

... over

## 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>.**