

**CONSTITUTIONAL RIGHT TO FARM AMENDMENTS
AND OKLAHOMA SQ 777**

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ABSTRACT

Oklahoma voters defeated a right to farm amendment (State Question 777) to the state constitution in November 2016. Using data collected at the county-level, this paper examines the vote on SQ 777 to determine what lessons can be identified in the defeat. Media reports intimated that SQ 777 found weaker support in more urban counties and in those rural counties with more water resources. Counties with larger Native American populations also tended to exhibit more No votes. This paper uses OLS regression to better understand the electoral outcome presented by the Oklahoma media.

INTRODUCTION

On November 7, 2023, Texas became the fourth state to consider adding a right to farm amendment to the state constitution. Right to farm amendments are emerging as “the newest trend in an evolution of laws aimed at protecting farming and ranching across the United States, largely in response to unprecedented efforts to restrict and regulate agriculture.” (Overstreet-Akins 2016, 86). Most states have right-farm-laws (see Ashwood, *et al.* 2023). The second decade of the 21st Century saw the innovative of enshrining right-to-farm in state constitutions.

North Dakota enacted the North Dakota Farming and Ranching Amendment, a citizen-initiated constitutional amendment, in 2012. The amendment received support from 66.89 percent of voters¹ A right to farm amendment appeared on the 2014 Missouri ballot as a legislatively referred amendment. Missouri voters approved the amendment by a slight margin, winning 50.12 percent to 49.88 percent (Russell and Hall 2022, 94). Oklahoma voters rejected a legislatively referred amendment (SQ 777) in 2016 with only 39.7 percent of voters approving the measure.² Texas voters approved an amendment “to establish a right to farming, ranching, timber production, horticulture, and wildlife management on owned or leased personal property” in 2023. The vote on Proposition 1, a legislatively referred amendment, was not close with 79 percent of voters approving the measure (Ballotpedia, 2023).

The present research examines Oklahoma’s experience with SQ 777 in order to help inform the development of theories about direct democracy defeats. The basic research question is why did Oklahoma’s SQ 777 fail? While right-to-farm statutory law is well-studied (Ashwood, *et al.* 2023), there is little research literature on right-to-farm constitutional amendments. There are, however, a number of post-mortems of the 2016 election published in Oklahoma media accounts. This paper plumbs those post-mortems

for lessons for future states seeking to add right to farm amendments to their constitutions. This paper also adds to the growing body of state-specific research on direct democracy in Oklahoma (see Farmer and Rader 2009).

STATE QUESTION 777 – OKLAHOMA RIGHT TO FARM AMENDMENT

SQ 777 was one of seven measures certified to appear on the November 8, 2016, general election ballot (Ballotpedia 2016). The amendment was introduced by Representative Scott Biggs, a Republican from Chickasha, in April 2015. The measure cruised to easy passage in the House of Representatives by a vote of 85 to 7 and in the Senate by a vote of 39 to 6. (Oklahoma Farm Bureau Foundation for Agriculture 2016). The amendment was modeled on previous efforts in North Dakota and Missouri (Perry 2016). SQ 777 was filed with the Secretary of State on April 30, 2015. The legislature's initial ballot title was rejected by the Attorney General. In June 2015, Attorney General Scott Pruitt prepared the Final Ballot Title for SQ 777 (Oklahoma Legislature 2015). Voters encountered the following:

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 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 2014.

FOR THE PROPOSAL – YES
AGAINST THE PROPOSAL - NO³

On June 29, 2015, Governor Mary Fallin issued a proclamation placing SQ 777 on the ballot at the general election held on November 8, 2016.

A coalition of ecological groups filed a lawsuit claiming SQ 777 was unconstitutional. The plaintiffs argued that the Right to Farm, if enacted, would allow for unregulated waste dumping and the abuse of animals.⁴ Without ruling on the constitutionality of the amendment, the Supreme Court allowed the measure to appear on the November 2016 ballot.⁵

Governor Fallin’s proclamation launched a spirited campaign. Yes on 777 spearheaded the campaign in support of the state question. Individuals supporting the proposal included Senator James Inhofe and former Senator Tom Coburn, both Republicans. The Oklahoma Farm Bureau, the Oklahoma Pork Council, the Oklahoma Cotton Council, The Poultry Federation, and Oklahoma Agri-Women were a few organizations that supported the proposal. Campaign funds were raised by the Oklahoma Farmers Care SQ 777 Political Action Committee. In total, the PAC raised \$1,705,213 and spent

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\$1,691,769 on campaign activities. The *Sooner Politics* editorial board appears to be the only major media outlet in support of SQ 777 (Ballotpedia 2016). Supporters stressed that the amendment would allow continued freedom to farm.

Arrayed against rural and agricultural interests was a group organized by the Oklahoma Stewardship Council. Opponents included several Democratic members of the Oklahoma Legislature and Cindy Simon Rosenthal, the mayor of Norman. A number of Native American nations and organizations worked in opposition to the measure including the Cherokee Nation, the Chickasaw Nation, and the Intertribal Council of the Five Civilized Tribes. Other organizations working to stop the amendment were the National Wildlife Federation, the Humane Society of the United States and its Legislative Fund⁶, Trout Unlimited, and the Young Democrats of Oklahoma. A number of municipalities passed resolutions opposing the measure. These included the cities of Oklahoma City, Tulsa, Norman, Edmond, Tahlequah, and Muskogee, among others. The Oklahoma Stewardship Council raised \$1,513,198 and spent \$1,519,192. A second political action committee, Oklahoma Food, Farm, & Family, raised \$935,980 and expended the same. The *Journal Record*, the *Norman Transcript*, The *Oklahoman*, and the *Tulsa World* editorialized against SQ 777 (Ballotpedia 2016). Legendary Oklahoma Sooners football coach Barry Switzer publicly opposed the proposal.⁷ Opponents blasted SQ 777 as allowing the freedom to harm. Former Oklahoma Attorney General Drew Edmondson, a Democrat, was a leading spokesman against SQ 777. He framed the argument in the *Red Dirt News*:

The world of industrial agriculture is changing with chemical additives to feed, growth hormones and genetic modifications. I can understand why they want to be free from scrutiny and regulation, but I cannot understand why we should let them.

Edmondson also said, “This question should have been named right to harm and been numbered 666” (Russell 2016). It is clear that the constitutional amendment proposed by State Question

777 would have been characterized as limiting government, specifically local governments (Farmer and Rader 2009, 81). This is particularly interesting as Farmer and Rader “suggest that once on the ballot, issues restricting government have a better chance of passing” (2009, 81). SQ 777 was a legislatively-referred constitutional amendment.

As election day neared, public opinion polls began to uncover weakening support for SQ 777 among the electorate. *The Sooner Poll* found that support for the proposal slipped from about 49 percent to 37 percent a few weeks before the election (Shapard 2016; Wertz 2016).

The public debate on SQ 777 campaign pitted “Freedom to Farm” against “Freedom to Harm”. On November 8, 2016, Oklahoma voters defeated the proposal with only 39.7 percent of voters in support. Several observers found interesting patterns evident in the distribution of votes across the state of Oklahoma.⁸ The present research seeks to better understand these patterns as well as see if a model may be built that will help predict the vote on similar constitutional amendments in other states.

METHOD

To better understand the voting patterns exhibited in the vote on SQ 777, this paper replicates a method used by Morgan and Meier (1980) in their study of voting on moral issues in Oklahoma. Morgan and Meier use multiple regression analysis to study the county-level vote on several Oklahoma ballot questions. Their dependent variable was the percentage of each county’s voters who supported the state question under examination. They used a number of independent variables including rural isolation, socio-economic status, liquor consumption, and three categories of religious affiliation. Despite the method’s relative simplicity and the level at which the data are aggregated, Morgan and Meier’s method has been used in a number of different types of studies, includ-

ing additional research examining morality (Gibson 2004; Haid-er-Markel and Meier 1996; LeDuc and Pammett 1995; Oldmixon 2002; Rausch and Rausch 2020; Satterthwaite 2005a, 2005b; Wilcox and Jelen 1990) as well as constitutional amendments on state legislative operations (Rausch 1994).

Research literature on voting for state constitutional rights to farm is scant. The present research is driven by hypotheses derived from comments found in media accounts of the vote on SQ 777. Several media explanations noted that the state question fared poorest in more densely populated areas (Wertz and Layden 2016). Several groups formed an alliance to oppose SQ 777 because of a concern about unregulated agricultural production and its effect on the state's water supply (Layden 2016b). "Many of the state's largest Native American nations also oppose SQ 777," primarily because of water resource concerns (Layden 2016b).

Using the information gathered from media reports, we should find that a regression analysis will show that rural counties will exhibit greater support for SQ 777 unless they have significant water supplies and larger Native American populations.

We assess this hypothesis using data collected from a variety of sources while testing for other explanations of support for SQ 777. Data were collected on each of the 77 counties in Oklahoma.

Research on Colorado's 1996 parental rights amendment presents evidence of the conditions needed for an initiative to fail. The amendment was placed on the Colorado ballot as a citizen initiative designed to "add to the list of inalienable rights found in the (Colorado) state constitution, the right of parents to 'direct and control the upbringing, education, values, and discipline of their children (Smith and Herrington 2000, 179). The initiative was defeated by Colorado voters. The researchers argue that while the initiative was popular at the start of the campaign, opponents were able to control the narrative in the campaign (Smith and Her-

ington 2000, 191). In the present research, we are only able to hint at the narrative. A longer and more complete analysis will include a content analysis of campaign messages delivered in the Oklahoma news media.

The present research employs aggregate data collected at the county level. While individual-level data collected by a survey would be preferable to county-level data, the level of aggregation chosen is more practical and will allow for future comparisons across states. The reliability of the data is much greater than a survey because of issues of respondent recall (Murphy, et al. 2020). County-level data are useful for examining the political, economic, and social environment in which voters make their decisions on referenda (Giles 1977; Hero 1998; Key 1950; Morgan and Meier 1980; Oliver and Mendelberg 2000; Rausch 1994; Rausch and Rausch 2020; Satterthwaite 2005a, 2005b; Smith, DeSantis, and Kassel 2005; Tolbert and Hero 2001).

Election return data are found on the Oklahoma State Election Board website (<https://oklahoma.gov/elections.html>). Demographic data are from the United States Census. The information on water resources was derived the Gazetter Files available from the United Census Bureau (<https://www.census.gov/geographies/reference-files/time-series/geo/gazetteer-files.html>).

MEASURES

SUPPORT FOR STATE QUESTION 777

The dependent variable, support for SQ 777, is measured by the percentage of voters in each of the 77 Oklahoma counties who cast a ballot in favor of the state question. The highest percentage of “Yes” votes was 79.28 percent in Roger Mills County in western Oklahoma. The lowest support was 28.57 percent in Tulsa County in the northeastern part of the state. The mean county vote was 52.56 percent with a standard deviation of 12.12 percent. Please note that the strongest support for SQ 777 came from counties

with fewer voters.

POPULATION DENSITY

The present research uses population density as a measure of a county's rurality (Gimple, Lovin, May, and Reeves, 2020). This measure is a new way to look at the rural/urban divide and it provides a useful continuous variable to use in regression equations. The data are drawn from the United States Census. Population density by county in Oklahoma ranged from 1.22 persons per square mile (Cimarron County) to 1,154.30 persons per square mile (Tulsa County). The mean population density is 72.14 persons per square mile with a standard deviation of 187.61.

PERCENT WATER AREA

Percent water area is measured using data on the percent of the area of a county covered by water. The county with the least area covered by water is Ellis County at 0.03 percent. McIntosh County has the most area covered by water at 13.17 percent. The mean water area 2.12 percent with a standard deviation of 2.43.

NATIVE AMERICAN POPULATION

The percentage of each county's population identifying as Native American was found in Census data. The county with the least Native American population is Cimarron County with 1.2 percent. The county with the most Native American residents is Adair County with 45.7 percent. The mean county Native American population is 11.66 percent with a standard deviation of 8.36.

POLITICAL VARIABLES

Two political variables were included in the model as controls. The first is a measure of party identification. While Oklahomans identify their political party affiliation when registering to vote, we use the vote for Republican presidential nominee Donald Trump. The vote on SQ 777 occurred at the same election as the 2016 presidential election. In addition, it is likely that many Democrats, dissatisfied with their party's nominee, voted for the Republican

candidate. Voters in Oklahoma County provided the least support to Trump with 51.68 percent while Cimarron County exhibited the most support at 89.25 percent. The mean county vote for the Republican was 75.41 percent with a standard deviation of 7.62.

Another variable included as a control was turnout. In Oklahoma, State Questions usually appear on the ballot with other candidate races. The vote on SQ 777 was no different. It is difficult to determine if the SQ 777 drove the turnout. It is interesting to note that 1,452,992 Oklahomans voted for President while 1,434,495 cast a ballot on SQ 777. Bryan County had the least turnout with 53.45 percent while Adair County led the state with 76.52 percent voting. The mean turnout was 66.48 percent with a standard deviation of 4.75.

ANALYSIS AND FINDINGS

The present research seeks to understand the vote on State Question 777 in which Oklahoma voters defeated a proposal to enact a right to farm amendment into the state constitution. In order to allay any concerns about multicollinearity and determine if there are any potential relationships between the independent variables, a correlation matrix was produced for the independent variables.

The matrix exhibited few surprises. Donald Trump did well in counties with lower population densities. We also see that counties with larger Native American populations had lower voter turnout.

Table 1: Correlation Between Selected Independent Variables

	(a)	(b)	(c)	(d)	(e)
(a) Percent Water	1				
(b) Population Density	.043	1			
(c) Native American Population	.308**	-.120	1		
(d) Percent Vote for Trump	-.210	-.588**	-.302**	1	
(e) Turnout	-.139	.020	-.388**	.277*	1

** Correlation is significant at the 0.01 level (2-tailed).

* Correlation is significant at the 0.05 level (2-tailed).

An ordinary least squares regression model was calculated. The results are presented in Table 2. The variables included in the model are water area, the county population density, the percent of each county claiming to be Native American, the county vote for Trump, and the turnout percent. The model explains 55 percent of the variance in the county vote in support of SQ 777. The model is statistically significant.

Table 2: OLS Regression of County Vote on State Question 777

	Beta	p
% Water Area	-.171	.039
Population Density	-.246	.020
% Native American Population	-.349	<.001
% Vote for Trump	.420	<.001
% Turnout	-.192	.028
	R ² = .581 Adj. R ² = .551 p = <.001	

The model presents two strong associations. The first is a strong, negative relationship between Native American population and support for SQ 777. Counties with larger Native American populations exhibited lower support for the state question. The other association is a positive one between vote for Trump and support for SQ 777. The challenge for supporters of SQ 777 is that Trump voters tend to live in rural areas and that rural areas tend to have smaller populations. The positive relationship does not appear to have made a significant difference in the statewide outcome for SQ 777.

DISCUSSION AND CONCLUSIONS

The present research seeks to understand the relationship between geography and politics and support for a constitutional right to farm in Oklahoma. This paper finds that the observers who published in the Oklahoma media after the election were accurate: geography matters! Rural areas supported SQ 777, but not all rural areas. Some counties with larger water supplies as well as larger Native American populations had more negative voters than one would expect in rural counties. For this reason, this “deep dive” in the election results is useful even if it produced a model that explains only slightly more than half the variance. The challenge in creating a model with more explanatory power is the possibility of introducing multicollinearity.

The primary lesson learned from Oklahoma’s experience with State Question 777 is that it is possible to defeat a constitutional right to farm at the polls. Opponents spent money to mobilize their voters and the voters did their job. With significant resources, opponents were able to control the narrative of the campaign. As more states consider constitutional right to farm amendments, we will be able to collect more data on who votes to support these measures.

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ENDNOTES

- ¹ Blake Nicholson, “North Dakota Becomes First Right-to-Farm State,” *The (Spokane, WA) Spokesman-Review*, 9 November 2012.
- ² Brianna Bailey, “State Question 777 Divided Oklahoma Along Geographic Lines,” *The Oklahoman*, 10 November 2016.
- ³ This language is duplicated from the sample ballot found on the website of the Cleveland County Election Board: <https://www.clevelandcountyelectionboard.com/sites/www.clevelandcountyelectionboard.com/files/General%20Election%20Ballot.pdf>
- ⁴ “STIR Part of Lawsuit that Challenges Right to Farm Amendment,” *Bartlesville Examiner-Enterprise*, 3 March 2016. <https://www.examiner-enterprise.com/story/news/state/2016/03/03/stir-part-lawsuit-that-challenges/27346769007/>; see also Layden (2016a).
- ⁵ D. E. Smoot, “Foes of SQ 777 Change Tactics After Court Challenge Dismissed,” *Muskogee Phoenix*, 10 August 2016. https://www.muskogee phoenix.com/news/foes-of-sq-777-change-tactics-after-court-challenge-dismissed/article_eac09187-e2be-5458-9456-d3e9fa9140b0.html
- ⁶ The Humane Society appears to be the “bogeyman” in the movement to enact Right to Farm constitutional amendments.
- ⁷ Barry Switzer, “Why I Oppose State Question 777,” *The Oklahoman*, 26 October 2016, <https://www.oklahoman.com/story/opinion/columns/guest/2016/10/26/barry-switzer-why-i-oppose-state-question-777/60642543007/>
- ⁸ Bailey, 2016; see also Wertz and Layden (2016).

