

RESOLUTION AFFIRMING RELIGIOUS FREEDOM

WHEREAS, the Pennsylvania General Assembly is currently considering House Bill No. 2029, Printer's No. 2785 ("H.B. 2029"), titled "American Laws for American Courts" (ALAC).

WHEREAS, although the plain text of H.B. 2029 is facially neutral, the legislative history of the bill, and the larger ALAC movement from which it derives, demonstrates a clear intention to target Pennsylvania Muslims and the Islamic faith.

WHEREAS, the bill's sponsor has acknowledged that the bill is based upon model legislation drafted by the American Public Policy Alliance ("APPA"), and the APPA has indicated that the model legislation was drafted to guard against "the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Shariah Law."

WHEREAS, the original June 14, 2011, co-sponsorship memorandum circulated by the bill's sponsor contains the words "Shariah Law" in its title, mentions "Shariah law" throughout its text, and specifically warns of "Shariah law, which is inherently hostile to our constitutional liberties."

WHEREAS, such explicit multiple references to "Shariah law" indicates that H.B. 2029 was drafted to target "Shariah law," rather than a vague and ambiguous "foreign law."

WHEREAS, H.B. 2029 would apply not only to Islamic religious law, but would equally apply to the religious laws of other faiths, including Catholic and Jewish religious law.

WHEREAS, H.B. 2029 purports to prohibit Pennsylvania courts from considering foreign laws which are inconsistent with the Pennsylvania and U.S. constitutions.

WHEREAS, the passage of H.B. 2029 is not necessary to effect this purpose because the U.S. Supreme Court has consistently held that freedom of religion can never be used to circumvent a "valid and neutral law of general applicability." See Reynolds v. United States, 98 U.S. 145 (1878) (bigamy), Employment Division v. Smith, 494 U.S. 872 (1990) (ingestion of controlled substances), Prince v. Massachusetts, 321 U.S. 158 (1944) (child labor laws), Braunfeld v. Brown, 366 U.S. 599 (1961) (Sunday closing laws), U.S. v. Lee, 455 U.S. 252 (1982) (Social Security taxes), and Gillette v. United States, 401 U.S. 437, 461 (1971) (Selective Service System).

WHEREAS, in determining whether legislation violates the religion clauses of the U.S. Constitution, the initial inquiry is whether the statute was enacted with discriminatory intent. Once discriminatory intent is found, the statute is deemed unconstitutional and no further inquiry is required. See Lemon v. Kurtzman, 403 U.S. 602 (1971), Employment Division v. Smith, 494 U.S. 872 (1990), and See Lukumi Babalu Aye v. Hialeah, 508 U.S. 520 (1993).

WHEREAS, the U.S. Supreme Court has held that "facial neutrality" does not insulate a statute from constitutional scrutiny and that facially neutral bills are unconstitutional if enacted with discriminatory intent. See Lukumi Babalu Aye v. Hialeah, 508 U.S. 520, 534 (1993) ("We reject the contention advanced by the city that our inquiry must end with the text of the laws at issue. Facial neutrality is not determinative. The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause "forbids subtle departures from neutrality" and "covert suppression of particular religious beliefs." Official action that targets conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked as well as overt.") (emphasis added).

WHEREAS, the American Bar Association has adopted a resolution that opposes all state and federal legislation proposing a blanket rule prohibiting the consideration of all foreign laws and all religions laws and has issued a report in support of that resolution which specifically addresses state statutes which seek to limit courts' consideration of "foreign law" or "religious law." See Resolution 113A & Report 113A, attached.

WHEREAS, the Philadelphia Bar Association has a history of opposing legislation which infringes upon religious freedom. See Resolution Opposing Religious Freedom Amendment to the U.S. Constitution, October 1997.

NOW, THEREFORE, BE IT RESOLVED, that the Philadelphia Bar Association opposes the enactment of House Bill 2029, Printer's No. 2785, or any similar legislation which, on its face, or by its intent, contradicts the above-referenced provisions of the Pennsylvania Constitution and the U. S. Constitution.

AND BE IT FURTHER RESOLVED that the Philadelphia Bar Association authorizes the Chancellor or his/her designee to communicate the content of this resolution to the Governor, members of the General Assembly, state and local public officials, other bar associations, and the public at large and to take such other action as may be appropriate.

**PHILADELPHIA BAR ASSOCIATION
BOARD OF GOVERNORS
ADOPTED: _____**