In the name of God, Most Gracious, Most Merciful

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COUNCIL ON AMERICAN-ISLAMIC RELATIONS PENNSYLVANIA
PHILADELPHIA OFFICE
MEMORANDUM IN OPPOSITION TO HOUSE BILL 2029

RESPECTFULLY SUBMITTED
TO THE
PENNSYLVANIA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

Copies of this memorandum are being submitted to the following:

Marsico, Ron , Chair
Stephens, Todd , Secretary
Cutler, Bryan, Subcommittee Chair on Family Law
Grell, Glen R., Subcommittee Chair on Courts
Krieger, Timothy, Subcommittee Chair on Crime and Corrections

Creighton, Tom C.
Delozier, Sheryl M.
Ellis, Brian L.
Gillespie, Keith
Keller, Mark K.
O'Neill, Bernie
Rock, Todd
Saccone, Rick
Toepel, Marcy
Toohil, Tarah

Caltagirone, Thomas R. , Democratic Chair
Kula, Deberah , Democratic Secretary
Bradford, Matthew D., Subcommittee Democratic Chair on Crime and Corrections
White, Jesse, Subcommittee Democratic Chair on Family Law

Brennan, Joseph F.
Costa, Dom
DePasquale, Eugene
Neuman, Brandon P.
Sabatina, John P., Jr.
Waters, Ronald G.

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MEMORANDUM

TO: House Judiciary Committee

FROM: Amara S. Chaudhry, Civil Rights Director

DATE: January 27, 2012

RE: **OPPOSITION TO HOUSE BILL 2029**

INTRODUCTION

House Bill 2029 (hereinafter, "HB 2029) was introduced by the Honorable RoseMarie Swanger (hereinafter, "Rep. Swanger") on June 14, 2011, and referred to the House Judiciary Committee (hereinafter, "Committee") on November 18, 2011.

On December 12, 2011, the Council on American-Islamic Relations Philadelphia Office (hereinafter, CAIR-Philadelphia) submitted a letter to the Honorable Ron Marsico and the Honorable Thomas R. Caltagirone requesting an opportunity to be heard and expressing an intent to submit written materials for consideration by the Committee. A copy of that letter is attached hereto as "Exhibit A." We submit this memorandum to convey our concerns in a succinct format. We reserve the right to submit a more thorough memorandum of law, as circumstances may require.

SHORT ARGUMENT

If passed, HB 2029 would constitute a government disapproval of religion in violation of the Pennsylvania and federal constitutions. The history of HB 2029, as well as the history of the "American Laws for American Courts" (hereinafter, "ALAC") movement, demonstrate that either the intent, or the effect, of HB 2029 was to convey government disapproval of a particular religion in violation of Establishment Clause jurisprudence. Furthermore, this history clearly indicates that HB 2029 is not a "valid and neutral law of general applicability," which could survive Free Exercise Clause analysis, but instead, clearly targets a particular religion in violation of the Free Exercise Clause.

Similar legislation, arising out of Oklahoma, is being contested on constitutional grounds in federal court. Thus far, two federal courts have ruled in favor of the Council on American-Islamic Relations (hereinafter, "CAIR")[1] against the ALAC legislation. Most recently, on January 10, 2012, the United States Court of Appeals for the Tenth Circuit (hereinafter, "Tenth Circuit") issued a ruling that ALAC legislation in Oklahoma raises a "justiciable" claim pursuant to the Establishment Clause jurisprudence. CAIR-Philadelphia is unaware of any judicial decision which has upheld the constitutionality of ALAC legislation.

The crucial inquiry is not whether "Shariah law," or Islam, is "good" or "evil." As a legal matter, the crucial inquiry is whether HB 2029 targets "Shariah law" and, by extension, Islam itself. It is also legally irrelevant whether the bias which underlies HB 2029 is overt, implicit, or even unconscious.

HISTORY OF ALAC

Rep. Swanger has acknowledged that HB 2029 is based upon model ALAC legislation suggested by an organization known as the American Public Policy Alliance (hereinafter, "APPA").[2]

The APPA has asserted that the ALAC model legislation, upon which HB 2029 is based, was created specifically to guard against "the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Shariah Law."[3]

The APPA has defended the ALAC model legislation by asserting that the model ALAC legislation does not interfere with "Jewish law or Catholic Canon Law" because these religious laws do not pose the same threat to constitutional rights or public policy as "Islamic Shariah Law."[4]

ALAC legislation has been introduced in at least 23 states. Of these states, ALAC legislation has only been passed in 5: Oklahoma (federal litigation pending), Arizona, Louisiana, Tennessee, and Texas. According a report issued by the National Center for State Courts, most bills proposing ALAC legislation have been defeated in committee.[5]

That ALAC legislation is based upon nativist, xenophobic, and anti-minority sentiment is difficult to deny.[6] The New York Times has reported that the author of the ALAC model legislation has been quoted as saying that "most of the fundamental differences between the races are genetic" and that "there's a reason the founding fathers did not give women or black slaves the right to vote."[7] The Anti-Defamation League has quoted him as saying that African Americans are a "relatively murderous race killing itself."[8] He has also been quoted as that Jews "destroy their host nations like a fatal parasite" and that saying "America was the handiwork of faithful Christians, mostly men, and almost entirely white."[9][10]

HISTORY OF HB 2029

As previously indicated, Rep. Swanger has already acknowledged that HB 2029 is based upon the model ALAC legislation proposed by the APPA.[11]

The strongest evidence that HB 2029 targets the Islamic faith is the June 14, 2011, co-sponsorship memorandum titled "American and Pennsylvania Laws for Pennsylvania Courts – Shariah Law."[12] The mere title of this memorandum reveals that the bill's primary purpose of targeting "Shariah law" – not all foreign laws.

The June 14, 2011, memorandum continues to mention "Shariah law" multiple times throughout its text terms, as something which is "foreign," ominous, and menacing.

Copying, almost verbatim, the language used by the APPA in describing the model ALAC legislation, Rep. Swanger warns that "Unfortunately, increasingly, foreign laws and legal doctrines – including and especially Shariah law – are finding their way into US court cases."

Most alarmingly, Rep. Swanger singles out Islam as the target of HB 2029 and specifically warns of "Shariah law, which is inherently hostile to our constitutional liberties." Because "Shariah" is a common reference to Islam, Rep. Swanger's description of "Shariah" as "inherently hostile to our constitutional liberties" should be understood as an assertion that she believes that Islam itself is inherently hostile to constitutional liberties.

Rep. Swanger circulated a second memorandum regarding HB 2029 on October 18, 2011.[13] This second memorandum is a more sanitized version of her original co-sponsorship memorandum and makes no explicit references to "Shariah law." The omission of explicit references to Islam, Muslims, or "Shariah," in Rep. Swanger's second memorandum does not negate earlier evidence of an intent to target Islam, Muslims, and "Shariah."

U.S. CONSTITUTIONAL CONCERNS

The ALAC model legislation's author expressed the mistaken belief that "facially neutral" language could camouflage the discriminatory intent of ALAC legislation in the hopes of "avoiding the sticky problems of our First Amendment jurisprudence."[14]

In truth, neither HB 2029's arguably "facially neutral" language, nor Rep. Swanger's second, more sanitized memorandum in support of HB 2029, insulates HB 2029 from the religious freedoms guaranteed by the Pennsylvania and federal constitutions.

The Supreme Court of the United States (hereinafter, "U.S. Supreme Court") has determined that a government action violates the Establishment Clause of the federal constitution if it has either the intent or the effect of advancing or inhibiting religion.[15] Moreover, the U.S. Supreme Court has clarified that a government action will fail the "Lemon test" if that action conveys a message of government endorsement or disapproval of a particular religion.[16]

The U.S. Supreme Court has also held that legislation violates the Free Exercise Clause of the federal constitution if that legislation targets a particular religion. Furthermore, in determining whether legislation was intended to target a particular religion, the court may consider all evidence of discriminatory intent and is not limited to the plain text of the legislation itself.[17]

Contrary to the arguments asserted by the proponents of ALAC legislation, and contrary to the stated purpose of HB 2029, the U.S. Supreme Court has repeatedly indicated that religion cannot be used as an excuse to circumvent generally applicable laws.[18]

Moreover, HB 2029's carve-out exception for corporations, rather than insulating HB 2029 from constitutional scrutiny, make the legislation more susceptible to constitutional challenge. The carve-out exception for businesses demonstrates that HB 2029 is not targeted at all "foreign law," but, instead is targeted only against "Shariah law," as a moniker for the Islamic faith.

PENNSLVANIA LAW & HISTORY

The Commonwealth of Pennsylvania was established based upon the principle of religious tolerance. William Penn referred to Pennsylvania as his "Holy Experiment" when he came into possession of the territory in 1681.

When the Pennsylvania constitution was drafted in 1776, our founding fathers expressly added a Free Exercise Clause to protect Penn's ideals of religious freedom. The new Free Exercise Clause, contained in Article I, Section 3, provided that: "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences."

The Pennsylvania constitution also contains an Establishment Clause to further protect Penn's "Holy Experiment." Also contained in Article I, Section 3, Pennsylvania's Establishment Clause provides that "no preference shall ever be given by law to any religious establishments or modes of worship,"[19]

The religion of Islam was specifically discussed during debates regarding the new constitution. The Constitutionalists, who favored religious freedom, eventually won the debate against the Anticonstitutionalists, who advocated for governmental reliance only upon Protestant values.[20]

The Commonwealth of Pennsylvania also has statutory protections for religious freedom. In 2002, Pennsylvania passed the Pennsylvania Religious Freedom Protection Act to provide greater protection of religious freedom than the federal Free Exercise Clause.[21]

OPPONENTS TO ALAC LEGISLATION

Entities which have questioned the constitutionality of ALAC legislation in general, and HB 2029 here in Pennsylvania, include, but are not limited to, the following: the United States Court of Appeals for the Tenth Circuit, the United States District Court for the District of Oklahoma, the American Bar Association (hereinafter, "ABA"), the American Civil Liberties Union(hereinafter, "ACLU"), the Alaska Conference of Catholic Bishops, and the Pittsburgh Area Jewish Committee.

The only courts which have considered the constitutionality of ALAC legislation have ruled against the constitutionality of the ALAC legislation and in favor of the Council on American-Islamic Relations. To the knowledge of CAIR-Philadelphia, the only courts to have considered this issue are the U.S. District Court for the District of Oklahoma and the Tenth Circuit. Both courts have ruled in favor of the Council on American-Islamic Relations and against ALAC legislation.

Because ALAC legislation constitutes such blatant violations of the federal constitution, the American Bar Association (hereinafter, "ABA") passed a resolution in opposition to ALAC legislation.[22]

In other states, the Council on American-Islamic Relations has had support against ALAC from both civil rights organizations and the interfaith community. In Alaska, the Alaska Conference of Catholic Bishops submitted a letter in support of CAIR against ALAC legislation.[23] In Oklahoma, the ACLU served as co-counsel to CAIR in litigation opposing ALAC litigation which, thus far, has resulted in successive rulings in favor of CAIR and against ALAC.

Here in Pennsylvania, the Pittsburgh Area Jewish Committee has already voiced concerns regarding HB 2029[24]. In the opposite end of the state, CAIR-Philadelphia is already forming an interfaith coalition in opposition to HB 2029.[25] CAIR-Philadelphia is also prepared to litigate the constitutionality of HB 2029, should litigation become necessary to protect the religious guarantees of the Pennsylvania constitutions. Finally, HB 2029 has generated considerable negative media attention for the bill and its supporters.[26]

CONCLUSION

For the foregoing reasons, CAIR-Philadelphia opposes HB 2029 as inconsistent with the religious freedoms guaranteed by the U.S. and Pennsylvania constitutions and demonstrated by the history of this Commonwealth. We call upon the members of the House Judiciary Committee to vote "no" on HB 2029 in order to protect the very liberties HB 2029 purports to protect.

ENDNOTES

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[1] The Council on American-Islamic Relations ("CAIR") is the nation's largest civil rights organization advocating on behalf of American Muslims. CAIR has 30 offices in 19 states. CAIR's Philadelphia Office serves Eastern and Central Pennsylvania. When this memorandum refers to CAIR affiliates outside of Pennsylvania, the acronym "CAIR" will be used. When referring to the CAIR chapter representing Central and Eastern Pennsylvania, the acronym "CAIR-Philadelphia" will be used.

[2] See "Exhibit B."

[3] See "Exhibit C," printout from the APPA's internet web page (emphasis added).

[4] See "Exhibit D," printout from the APPA's internet web page (indicating that Jewish law does not interfere with constitutional rights).

[5] See <http://gaveltogavel.us/site/2011/11/28/bans-on-court-use-of-shariainternational-law-pennsylvania-bill-introduced/>

[6] The author of the model ALAC legislation has been reported to have previously called for a "war against Islam," has attempted to criminalize adherence to the Muslim faith, and to have advocated for a ban on all Muslim immigration. See Note 9, infra, and Exhibit G.

[7] See "Exhibit E," "The Man Behind the Anti-Shariah Movement." New York Times. July 30, 2011.

[8] See "Exhibit F," a printout from the Anti-Defamation League internet web site.

[9] See "Exhibit G," "Meet the White Supremacist Leading the GOP's Anti-Sharia Crusade," Mother Jones. March 1, 2011 (emphasis added on exhibit).

[10] For a more general discussion of the purpose and intent of ALAC legislation, in the words of the model legislation's purported author, see "Exhibit H" (a description of a CLE course prepared and presented by attorney David Yerushalmi).

[11] See Note 2, supra, and Exhibit B.

[12] See "Exhibit I" (emphasis added). CAIR-Philadelphia obtained a copy of this memorandum from the Commonwealth of Pennsylvania General Assembly official web site.

[13] See "Exhibit J."

[14] See Exhibit G (cited, supra, at Note 9).

[15] See Lemon v. Kurtzman, 403 U.S. 602 (1971) (also describing the "excessive entanglement" element of the three-prong "Lemon test").

[16] See Lynch v. Donnelly, 465 U.S. 668, (1984) (O'Connor, J., concurring).

Not only does Justice O'Connor describe an analytic framework for applying the "Lemon test," she also describes the reason why government approval or disapproval violates the Establishment Clause. According to Justice O'Connor, government endorsement or disapproval of religion results in political alienation of adherents of the disfavored faith, and it is this political alienation which is not permitted by the federal Establishment Clause.

As stated by Justice O'Connor:

> The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person's standing in the political community. Government can run afoul of [the Establishment Clause] in two principal ways. . . . The second and more direct infringement is government endorsement or disapproval of religion. . . Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.

Lynch, 465 U.S. at 688-689 (O'Connor, concurring) (emphasis added). Justice O'Connor's clarification, which would later become known as the "endorsement test," prohibits governmental "disapproval" of religion because of the effect that such government disapproval has upon the political standing of both adherents and "nonadherents" of a particular religion. Pursuant to O'Connor's analysis, the danger of HB 2029 is that it creates an official government disapproval of a particular religion, Islam, which sends a message that adherents of the Islamic religion, Muslims, are outsiders, not full members of the political community.

[17] See Lukumi Babalu Aye v. Hileah, 508 U.S. 520 (1993). In pertinent part, the Court in Lukumi concluded:

> 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.

Lukum Babalu Aye, 508 U.S. at 534 (internal citations omitted) (emphasis added).

[18] For example, the U.S. Supreme Court has held that the Free Exercise Clause cannot be used to circumvent generally applicable criminal laws relating to bigamy, Reynolds v. United States, 98 U.S. 145 (1878), and ingestion of controlled substances, see Employment Div. v. Smith, 494 U.S. 872 (1990). The Free Exercise Clause cannot be used to circumvent laws designed for the protection of children, see Prince v. Massachusetts, 321 U.S. 158 (1944) (relating to child labor laws), the regulation of business, see Braunfeld v. Brown, 366 U.S. 599 (1961) (relating to Sunday closing laws), the payment of taxes, see Lee, infra at n. 22 (relating to Social Security taxes) , and issues involving national security and the regulation of the military, see Gilette v. United States, 401 U.S. 437, 461 (1971) (relating to registration with Selective Service).

[19] It could reasonably be argued that the Commonwealth of Pennsylvania provides greater protection of religious freedom than the guarantees provided by the federal Constitution. Though the history and interpretation of the federal Establishment Clause prohibits government approval or disapproval of a particular religion, the plain text of the Pennsylvania Establishment Clause contained an equivalent "endorsement test" centuries before the U.S. Supreme Court decided Lynch v. Donnelly, supra.

[20] See Charles D. Russell, Pennsylvania History, Summer 2009, Vol.76, Issue 3, p.250-275.

[21] The federal Establishment Clause has a complex history which, to a large extent, is beyond the scope of this memorandum. However, a brief history is necessary to understand the relevance of the Pennsylvania Religious Freedom Protection Act. In 1990, the U.S. Supreme Court, in Smith, supra at n. 13, severely limited the application of the "strict scrutiny test" which had previously been applied in cases such as Sherbert v. Verner, 374 U.S. 398 (1963), and Wisconsin v. Yoder, 406 U.S. 205 (1972). In the aftermath of Smith, the U.S. Supreme Court

reinvigorated the "strict scrutiny test" in 1993 in Lukumi Babalu Aye where the Court concluded that the "strict scrutiny test" could still be applied to laws which targeted a particular religion and, as a result, were not a "valid and neutral law of general applicability" which would survive constitutional scrutiny under Smith (citing, United States v. Lee, 455 U.S. 252, 263, n. 3 (1982) (Stevens, J., concurring)). These two cases, considered together, outline current federal Establishment Clause jurisprudence: (1) a "valid and neutral law of general applicability" survive constitutional scrutiny regardless of the effect upon religion, but (2) a law which targets a particular religion is not a "valid and neutral law of general applicability" and, therefore, only survives constitutional scrutiny if it can survive the "strict scrutiny test."

The dramatic statutory aftermath of Smith, characterized by the Religious Freedom Restoration Act (hereinafter, "RFRA") does not change this analysis. RFRA was enacted by Congress in 1993, the same year as Lukumi Babalu Aye was decided by the U.S. Supreme Court. RFRA was enacted to re-establish the "strict scrutiny test" after the Smith decision held that "strict scrutiny" analysis is not required to analyze neutral, generally applicable statutes. RFRA did not affect the constitutional analysis of statutes which targeted a particular religion and, thus, were not neutral, generally applicable laws. RFRA was held inapplicable to state and local governments in City of Boerne v. Flores. In 2006, Gonzales v. UDV held that RFRA can still be applied to the federal government. Following City of Boerne v. Flores, many states passed RFRA equivalents, more commonly referred to as "mini-RFRA's," including Pennsylvania which passed the Pennsylvania Religious Freedom Restoration Action in 2002.

Following all of this dramatic history, the crucial inquiry as to whether a state statute violates Free Exercise guarantees is whether that law is a neutral, generally applicable law, or whether the statute targets a particular religion. If the statute targets a particular religion, that statute is analyzed under a "strict scrutiny" standard pursuant to Lukumi Babalu Aye. If the state statute is a "valid and neutral law of general applicability" is upheld pursuant to Smith only if it also passes the relevant "mini-RFRA." In Pennsylvania, the relevant "mini-RFRA" is the Pennsylvania Religious Protection Act.

[22] See "Exhibit K," ABA Resolution 113A, and ABA Report in support of Resolution 113A.

[23] See "Exhibit L," letter from Alaska Conference of Catholic Bishops.

[24] See "Exhibit M," "Proposed State Law Draws Religious Criticism," Pittsburgh Post-Gazette, (December 12, 2011).

[25] See "Exhibit N," "Pa. Bill Attacked as Being 'Islamophobic,'" Philadelphia Inquirer (December 15, 2011).

[26] See Notes 25 & 26, supra, as well as "Exhibit O"), "Sharia as Bogeyman," Philadelphia Inquirer (Op Ed, December 21, 2011), and http://www.youtube.com/watch?v=alqG3vIKDKI (link to "Bill Seeks to Limit Religious Law in PA Courts," WFMZ-TV Channel 69 (serving the Lehigh Valley)).

Exhibit A

In the name of God, Most Gracious, Most Merciful

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December 12, 2011

The Honorable Ron Marsico
Chair, Judiciary Committee
Commonwealth of Pennsylvania
House of Representatives
4401 Linglestown Road, Suite B
Harrisburg, PA 17112
rmarisco@pahousegop.com
Via Electronic & First-Class Mail

The Honorable Thomas R. Caltagirone
Chair, Judiciary Committee
Commonwealth of Pennsylvania
House of Representatives
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Via Electronic & First-Class Mail

Re: **House Bill 2029**
American Laws for American Courts

Dear Chairmen Marsico and Caltagirone:

I am writing to you on behalf of the Council on American-Islamic Relations Philadelphia Office (CAIR-Philadelphia) to respectfully request an opportunity to be heard with respect to House Bill 2029 (HB 2029), titled American Laws for American Courts, which was referred to the Committee on Judiciary on November 18, 2011.

CAIR-Philadelphia has concerns regarding HB 2029 and the extent to which this legislation affects rights guaranteed by the Pennsylvania and United States constitutions. We respectfully request an opportunity to be heard regarding these concerns, and we intend to submit written materials that more fully elaborate on our position.

I thank you, in advance, for your consideration of my request, and I look forward to the opportunity to more fully articulate my concerns.

Respectfully,

Amara S. Chaudhry

Amara S. Chaudhry, Esquire
Civil Rights Director
(PA Bar No. 92584)

Exhibit B

From: [redacted]
Sent: Wednesday, December 28, 2011 10:17 AM
To: Amara Chaudhry
Subject: Fwd: [redacted]

[portions omitted]

On [redacted], RoseMarie Swanger <Rswanger@pahousegop.com> wrote:

[redacted], ALAC (American Law for American Courts) is the organization that helped me with research.

[redacted]

Rep. RoseMarie Swanger
2232 Lebanon Valley Mall
Lebanon PA 17042
717.277.2101 - DO
717.787.2686 - Hsbg.
www.RepSwanger.com

[portions omitted]

Exhibit C

American Laws for American Courts

Legislation > American Laws for American Courts

American Laws for American Courts was crafted to protect American citizens' constitutional rights against the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Shariah Law.

Why American Laws for American Courts?

Some 235 years ago, America's forefathers gathered in Philadelphia to debate and write a unique document. That single-page document announced the formation of a new country—one that would no longer find itself in the clutches of a foreign power. That document was the Declaration of Independence. Eleven years later, many of those same men gathered again to lay the foundation for how the United States of America was to be governed: The US Constitution, a form of government like no other *by the people, of the people and for the people.*

For more than two centuries, hundreds of thousands of courageous men and women have given their lives to protect America's sovereignty and freedom.

American constitutional rights must be preserved in order to preserve unique American values of liberty and freedom. State legislatures have a vital role to play in preserving those constitutional rights and American values of liberty and freedom.

America has unique values of liberty which do not exist in foreign legal systems, particularly Shariah Law. Included among, but not limited to, those values and rights are:

- Freedom of Religion
- Freedom of Speech
- Freedom of the Press
- Due Process
- Right to Privacy
- Right to Keep and Bear Arms

Civil and Criminal Law Serve as the Bedrock for American Values: We are a nation of laws.

Unfortunately, increasingly, foreign laws and legal doctrines, including Shariah law principles, are finding their way into US court cases.

Reviews of state laws provide extensive evidence that foreign laws and legal doctrines are introduced into US state court cases, including, notably, Islamic law known as Shariah, which is used in family courts and other courts in dozens of foreign Muslim-majority nations .

These foreign laws, **frequently at odds with U.S. constitutional principles of equal protection and due process**, typically enter the American court system through:

- Comity (mutual respect of each country's legal system)
- Choice of law issues and
- Choice of forum or venue

Granting comity to a foreign judgment is a matter of state law, and most state and federal courts will grant comity unless the recognition of the foreign judgment would violate some important public policy of the state. This doctrine, the "Void as against Public Policy Rule," has a long and pedigreed history.

Unfortunately, because state legislatures have generally not been explicit about what their public policy is relative to foreign laws, including as an example, Shariah, the courts and the parties litigating in those courts are left to their own devices – first to know what Shariah is, and second, to understand that granting comity to a Shariah judgment may be at odds with our state and federal constitutional principles in the specific matters at issue.

The goal of the **American Laws for American Courts Act** is a clear and unequivocal application of what should be the goal of all state courts: No U.S. citizen or resident should be denied the liberties, rights, and privileges guaranteed in our constitutional republic. **American Laws for American Courts** is needed especially to protect women and children, identified by international human rights organizations as the primary victims of discriminatory foreign laws.

By promoting American Laws for American Courts, we are preserving *individual* liberties and freedoms which become eroded by the encroachment of foreign laws and foreign legal doctrines, such as Shariah.

It is imperative that we safeguard our constitutions' fundamentals, particularly the individual guarantees in the Bill of Rights, the sovereignty of our Nation and its people, and the principles of the rule of law—*American laws, not foreign laws.*

MODEL LEGISLATION

AN ACT to protect rights and privileges granted under the United States or [State] Constitution.

BE IT ENACTED BY THE [GENERAL ASSEMBLY/LEGISLATURE] OF THE STATE OF [_____]:

The [general assembly/legislature] finds that it shall be the public policy of this state to protect its citizens from the application of foreign laws when the application of a foreign law will result in the violation of a right guaranteed by the constitution of this state or of the United States, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.

The [general assembly/state legislature] fully recognizes the right to contract freely under the laws of this state, and also recognizes that this right may be reasonably and rationally circumscribed pursuant to the state's interest to protect and promote rights and privileges granted under the United States or [State] Constitution, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.

[1] As used in this act, "foreign law, legal code, or system" means any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals, and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals For the purposes of this act, foreign law shall not mean, nor shall it include, any laws of the Native American tribes in this state.

[2] Any court, arbitration, tribunal, or administrative agency ruling or decision shall violate the public policy of this State and be void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its rulings or decisions in in the matter at issue in whole or in part on any law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.

[3] A contract or contractual provision (if capable of segregation) which provides for the choice of a law, legal code or system to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the law, legal code or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.

[4]

1. **A.** A contract or contractual provision (if capable of segregation) which provides for a jurisdiction for purposes of granting the courts or arbitration panels *in personam* jurisdiction over the parties to adjudicate any disputes between parties arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the jurisdiction chosen includes any law, legal code or system, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.
2. **B.** If a resident of this state, subject to personal jurisdiction in this state, seeks to maintain litigation, arbitration, agency or similarly binding proceedings in this state and if the courts of this state find that granting a claim of forum non conveniens or a related claim violates or would likely violate the fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions of the non-claimant in the foreign forum with respect to the matter in dispute, then it is the public policy of this state that the claim shall be denied.

[5] Without prejudice to any legal right, this act shall not apply to a corporation, partnership, limited liability company, business association, or other legal entity that contracts to subject itself to foreign law in a jurisdiction other than this state or the United States.

[6] This subsection shall not apply to a church, religious corporation, association, or society, with respect to the individuals of a particular religion regarding matters that are purely ecclesiastical, to include, but not be limited to, matters of calling a pastor, excluding members from a church, electing church officers, matters concerning church bylaws, constitution, and doctrinal regulations and the conduct of other routine church business, where 1) the

jurisdiction of the church would be final; and 2) the jurisdiction of the courts of this State would be contrary to the First Amendment of the United States and the Constitution of this State. This exemption in no way grants permission for any otherwise unlawful act under the guise of First Amendment protection.

[7] This statute shall not be interpreted by any court to conflict with any federal treaty or other international agreement to which the United States is a party to the extent that such treaty or international agreement preempts or is superior to state law on the matter at issue.

American Laws for American Courts has passed into law in the following states:

American and Tennessee Laws for Tennessee Courts

American and Louisiana Laws for Louisiana Courts

American and Arizona Laws for Arizona Courts

Exhibit D

FAQ On ALAC

AMERICAN LAWS FOR AMERICAN COURTS:

FAQ, Issues & Objections

14. American Laws for American Courts would interfere with Jewish law or Catholic Canon Law.

American Laws for American Courts would not interfere with Jewish law because Jewish law has a provision inherent which instructs people of the Jewish faith to follow the law of the land in which they live. Moreover, ALAC only applies when the use of a foreign legal doctrine in a court would violate someone's constitutional rights or state public policy. This is not the case with Jewish law.

Moreover, the model ALAC language contains specific language in recognition of the fact that it cannot be applied in such a way that would interfere with a church, religious corporation, association, or society, with respect to the individuals of a particular religion regarding matters that are purely ecclesiastical, to include, but not be limited to, matters of calling a pastor, excluding members from a church, electing church officers, matters concerning church bylaws, constitution, and doctrinal regulations and the conduct of other routine church business, where 1) the jurisdiction of the church would be final; and 2) the jurisdiction of the courts of this State would be contrary to the First Amendment of the United States and the Constitution of this State.

Exhibit E

July 30, 2011

The New York Times

The Man Behind the Anti-Shariah Movement

By ANDREA ELLIOTT

NASHVILLE — Tennessee's latest woes include high unemployment, continuing foreclosures and a battle over collective-bargaining rights for teachers. But when a Republican representative took the Statehouse floor during a recent hearing, he warned of a new threat to his constituents' way of life: Islamic law.

The representative, a former fighter pilot named Rick Womick, said he had been studying the Koran. He declared that Shariah, the Islamic code that guides Muslim beliefs and actions, is not just an expression of faith but a political and legal system that seeks world domination. "Folks," Mr. Womick, 53, said with a sudden pause, "this is not what I call 'Do unto others what you'd have them do unto you.' "

Similar warnings are being issued across the country as Republican presidential candidates, elected officials and activists mobilize against what they describe as the menace of Islamic law in the United States.

Since last year, more than two dozen states have considered measures to restrict judges from consulting Shariah, or foreign and religious laws more generally. The statutes have been enacted in three states so far.

Voters in Oklahoma overwhelmingly approved a constitutional amendment last November that bans the use of Islamic law in court. And in June, Tennessee passed an antiterrorism law that, in its original iteration, would have empowered the attorney general to designate Islamic groups suspected of terror activity as "Shariah organizations."

A confluence of factors has fueled the anti-Shariah movement, most notably the controversy over the proposed Islamic center near ground zero in New York, concerns about homegrown terrorism and the rise of the Tea Party. But the campaign's air of grass-roots spontaneity, which has been carefully promoted by advocates, shrouds its more deliberate origins.

In fact, it is the product of an orchestrated drive that began five years ago in Crown Heights, Brooklyn, in the office of a little-known lawyer, David Yerushalmi, a 56-year-old Hasidic Jew with a history of controversial statements about race, immigration and Islam. Despite his lack of formal training in Islamic

law, Mr. Yerushalmi has come to exercise a striking influence over American public discourse about Shariah.

Working with a cadre of conservative public-policy institutes and former military and intelligence officials, Mr. Yerushalmi has written privately financed reports, filed lawsuits against the government and drafted the model legislation that recently swept through the country — all with the effect of casting Shariah as one of the greatest threats to American freedom since the cold war.

The message has caught on. Among those now echoing Mr. Yerushalmi's views are prominent Washington figures like R. James Woolsey, a former director of the C.I.A., and the Republican presidential candidates Newt Gingrich and Michele Bachmann, who this month signed a pledge to reject Islamic law, likening it to "totalitarian control."

Yet, for all its fervor, the movement is arguably directed at a problem more imagined than real. Even its leaders concede that American Muslims are not coalescing en masse to advance Islamic law. Instead, they say, Muslims could eventually gain the kind of foothold seen in Europe, where multicultural policies have allowed for what critics contend is an overaccommodation of Islamic law.

"Before the train gets too far down the tracks, it's time to put up the block," said Guy Rodgers, the executive director of ACT for America, one of the leading organizations promoting the legislation drafted by Mr. Yerushalmi.

The more tangible effect of the movement, opponents say, is the spread of an alarmist message about Islam — the same kind of rhetoric that appears to have influenced Anders Behring Breivik, the suspect in the deadly dual attacks in Norway on July 22. The anti-Shariah campaign, they say, appears to be an end in itself, aimed at keeping Muslims on the margins of American life.

"The fact is there is no Shariah takeover in America," said Salam Al-Marayati, the president of the Muslim Public Affairs Council, one of several Muslim organizations that have begun a counteroffensive. "It's purely a political wedge to create fear and hysteria."

Anti-Shariah organizers are pressing ahead with plans to introduce versions of Mr. Yerushalmi's legislation in half a dozen new states, while reviving measures that were tabled in others.

The legal impact of the movement is unclear. A federal judge blocked the Oklahoma amendment after a representative of the Council on American- Islamic Relations, a Muslim advocacy group, sued the state, claiming the law was an unconstitutional infringement on religious freedom.

The establishment clause of the Constitution forbids the government from favoring one religion over another or improperly entangling itself in religious matters. But many of the statutes are worded neutrally enough that they might withstand constitutional scrutiny while still limiting the way courts handle cases involving Muslims, other religious communities or foreign and international laws.

For Mr. Yerushalmi, the statutes themselves are a secondary concern. "If this thing passed in every state without any friction, it would have not served its purpose," he said in one of several extensive interviews. "The purpose was heuristic — to get people asking this question, 'What is Shariah?' "

The Road Map

Shariah means "the way to the watering hole." It is Islam's road map for living morally and achieving salvation. Drawing on the Koran and the sunnah — the sayings and traditions of the prophet Muhammad — Islamic law reflects what scholars describe as the attempt, over centuries, to translate God's will into a system of required beliefs and actions.

In the United States, Shariah, like Jewish law, most commonly surfaces in court through divorce and custody proceedings or in commercial litigation. Often these cases involve contracts that failed to be resolved in a religious setting. Shariah can also figure in cases involving foreign laws, for example in tort claims against businesses in Muslim countries. It then falls to the American judge to examine the religious issues at hand before making a ruling based on federal or state law.

The frequency of such cases is unknown. A recent report by the Center for Security Policy, a research institute based in Washington for which Mr. Yerushalmi is general counsel, identified 50 state appellate cases, mostly over the last three decades. The report offers these cases as proof that the United States is vulnerable to the encroachment of Islamic law. But, as many of the cases demonstrate, judges tend to follow guidelines that give primacy to constitutional rights over foreign or religious laws.

The exceptions stand out. Critics most typically cite a New Jersey case last year in which a Moroccan woman sought a restraining order against her husband after he repeatedly assaulted and raped her. The judge denied the request, finding that the defendant lacked criminal intent because he believed that his wife must comply, under Islamic law, with his demand for sex.

The decision was reversed on appeal.

"It's wrong to just accept that the courts generally get it right, but sometimes get it wrong," said Stephen M. Gelé, a Louisiana lawyer who represents a nonprofit organization that has promoted Mr. Yerushalmi's legislation. "There is no reason to make a woman play a legal game of Russian roulette."

While proponents of the legislation have seized on aspects of Shariah that are unfavorable to women, Mr. Yerushalmi's focus is broader. His interest in Islamic law began with the Sept. 11 attacks, he said, when he was living in Ma'ale Adumim, a large Jewish settlement in the Israeli-occupied West Bank.

At the time, Mr. Yerushalmi, a native of South Florida, divided his energies between a commercial litigation practice in the United States and a conservative research institute based in Jerusalem, where he worked to promote free-market reform in Israel.

After moving to Brooklyn the following year, Mr. Yerushalmi said he began studying Arabic and Shariah under two Islamic scholars, whom he declined to name. He said his research made clear that militants had not "perverted" Islamic law, but were following an authoritative doctrine that sought global hegemony — a mission, he says, that is shared by Muslims around the world. To illustrate that point, Mr. Yerushalmi cites studies in which large percentages of Muslims overseas say they support Islamic rule.

In interviews, Islamic scholars disputed Mr. Yerushalmi's claims. Although Islam, like some other faiths, aspires to be the world's reigning religion, they said, the method for carrying out that goal, or even its relevance in everyday life, remains a far more complex subject than Mr. Yerushalmi suggests.

"Even in Muslim-majority countries, there is a huge debate about what it means to apply Islamic law in the modern world," said Andrew F. March, an associate professor specializing in Islamic law at Yale University. The deeper flaw in Mr. Yerushalmi's argument, Mr. March said, is that he characterizes the majority of Muslims who practice some version of Shariah — whether through prayer, charitable giving or other common rituals — as automatic adherents to Islam's medieval rules of war and political domination.

It is not the first time Mr. Yerushalmi has engaged in polemics. In a 2006 essay, he wrote that "most of the fundamental differences between the races are genetic," and asked why "people find it so difficult to confront the facts that some races perform better in sports, some better in mathematical problem-solving, some better in language, some better in Western societies and some better in tribal ones?" He has also railed against what he sees as a politically correct culture that avoids open discussion of why "the founding fathers did not give women or black slaves the right to vote."

On its Web site, the Anti-Defamation League, a prominent Jewish civil rights organization, describes Mr. Yerushalmi as having a record of "anti-Muslim, anti-immigrant and anti-black bigotry." His legal clients have also drawn notoriety, among them Pamela Geller, an incendiary blogger who helped drive the fight against the Islamic community center and mosque near ground zero.

A stout man who wears antique wire-rimmed glasses and a thick, white-streaked beard, Mr. Yerushalmi has a seemingly inexhaustible appetite for the arguments his work provokes. "It's an absurdity to claim that I have ever uttered or taken a position on the side of racism or bigotry or misogyny," he said.

When pressed for evidence that American Muslims endorse the fundamentalist view of Shariah he warns against, Mr. Yerushalmi argues that the problem lies with America's Muslim institutions and their link to Islamist groups overseas. As a primary example, he and others cite a memorandum that surfaced in the federal prosecution of the Holy Land Foundation for Relief and Development, a Muslim charity based in Texas whose leaders were convicted in 2008 of sending funds to Hamas.

The 1991 document outlined a strategy for the Muslim Brotherhood in the United States that involved "eliminating and destroying the Western civilization from within." Critics emphasize a page listing 29 Muslim American groups as "our organizations and the organizations of our friends." Skeptics point out that on the same page, the author wrote, imagine if "they all march according to one plan," which suggests they were not working in tandem.

Nevertheless, a study by the Abu Dhabi Gallup Center to be released next week found that only a minority of American Muslims say that domestic Islamic groups represent them. It also concludes that American Muslims have as much confidence in the judicial system as members of other faiths and are more likely than the other groups to say that elections in the United States are "honest."

"There's a conflation between the idea of Islam being a universalist, proselytizing religion and reducing it to a totalitarian movement," said Mohammad Fadel, an associate professor specializing in Islamic law at the University of Toronto. "All good propaganda is based on half-truths."

Reaching Out

The movement took root in January 2006 when Mr. Yerushalmi started the Society of Americans for National Existence, a nonprofit organization that became his vehicle for opposing Shariah. On the group's Web site, he proposed a law that would make observing Islamic law, which he likened to sedition, a felony punishable by 20 years in prison. He also began raising money to study whether there is a link between "Shariah-adherent behavior" in American mosques and support for violent jihad.

The project, Mapping Shariah, led Mr. Yerushalmi to Frank Gaffney, a hawkish policy analyst and commentator who is the president of the Center for Security Policy in Washington. Well connected in neoconservative circles, Mr. Gaffney has been known to take polarizing positions (he once argued that President Obama might secretly be Muslim). Mr. Gaffney would emerge as Mr. Yerushalmi's primary

link to a network of former and current government officials, security analysts and grass-roots political organizations.

Together, they set out to "engender a national debate about the nature of Shariah and the need to protect our Constitution and country from it," Mr. Gaffney wrote in an e-mail to The New York Times. The center contributed an unspecified amount to Mr. Yerushalmi's study, which cost roughly $400,000 and involved surreptitiously sending researchers into 100 mosques. The study, which said that 82 percent of the mosques' imams recommended texts that promote violence, has drawn sharp rebuke from Muslim leaders, who question its premise and findings.

Mr. Yerushalmi also took aim at the industry of Islamic finance — specifically American banks offering funds that invest only in companies deemed permissible under Shariah, which would exclude, for example, those that deal in alcohol, pork or gambling.

In the spring of 2008, Mr. Gaffney arranged meetings with officials at the Treasury Department, including Robert M. Kimmitt, then the deputy secretary, and Stuart A. Levey, then the under secretary for terrorism and financial intelligence. Mr. Yerushalmi warned them about what he characterized as the lack of transparency and other dangers of Shariah-compliant finance.

In an interview, Mr. Levey said he found Mr. Yerushalmi's presentation of Shariah "sweeping and, ultimately, unconvincing."

For Mr. Yerushalmi, the meetings led to a shift in strategy. "If you can't move policy at the federal level, well, where do you go?" he said. "You go to the states."

With the advent of the Tea Party, Mr. Yerushalmi saw an opening. In 2009, he and Mr. Gaffney laid the groundwork for a project aimed at state legislatures — the same year that Mr. Yerushalmi received more than $153,000 in consulting fees from Mr. Gaffney's center, according to a tax form filed by the group.

That summer, Mr. Yerushalmi began writing "American Laws for American Courts," a model statute that would prevent state judges from considering foreign laws or rulings that violate constitutional rights in the United States. The law was intended to appeal not just to the growing anti-Shariah movement, but also to a broader constituency that had long opposed the influence of foreign laws in the United States.

Mr. Gaffney swiftly drummed up interest in the law, holding conference calls with activists and tapping a network of Tea Party and Christian groups as well as ACT for America, which has 170,000 members and describes itself as "opposed to the authoritarian values of radical Islam." The group emerged as a "force multiplier," Mr. Gaffney said, fanning out across the country to promote the law. The American Public

Policy Alliance, a nonprofit organization formed that year by a political consultant based in Michigan, began recruiting dozens of lawyers to act as legislative sponsors.

Early versions of the law, which passed in Tennessee and then Louisiana, made no mention of Shariah, which was necessary to pass constitutional muster, Mr. Yerushalmi said. But as the movement spread, state lawmakers began tweaking the legislation to refer to Shariah and other religious laws or systems — including, in one ill-fated proposal in Arizona, "karma."

By last fall, the anti-Shariah movement had gained new prominence. ACT for America spent $60,000 promoting the Oklahoma initiative, a campaign that included 600,000 robocalls featuring Mr. Woolsey, the former C.I.A. director. Mr. Gingrich called for a federal law banning courts from using Shariah in place of American law, and Sarah Palin warned that if Shariah law "were to be adopted, allowed to govern in our country, it will be the downfall of America."

Also last fall, Mr. Gaffney's organization released "Shariah: The Threat to America," a 172-page report whose lead author was Mr. Yerushalmi and whose signatories included Mr. Woolsey and other former intelligence officials.

Mr. Yerushalmi's legislation has drawn opposition from the American Civil Liberties Union as well as from Catholic bishops and Jewish groups. Mr. Yerushalmi said he did not believe that court cases involving Jewish or canon law would be affected by the statutes because they are unlikely to involve violations of constitutional rights.

Business lobbyists have also expressed concern about the possible effect of the statutes, as corporations often favor foreign laws in contracts or tort disputes. This is perhaps the only constituency that has had an influence. The three state statutes that have passed — most recently in Arizona — make corporations exempt.

"It is not preferable," Mr. Yerushalmi said. "Is it an acceptable political compromise? Of course it is."

Exhibit F

David Yerushalmi: A Driving Force Behind Anti-Sharia Efforts in the U.S.

***Updated**: January 13, 2012*

One of the driving forces behind Shari'a-related conspiracy theories and growing efforts to ban or restrict the use of Shari'a law in American courts is David Yerushalmi, an Arizona attorney with a record of anti-Muslim, anti-immigrant and anti-black bigotry.

In recent years, Yerushalmi has created a characterization of Shari'a law (i.e., Islamic law) that declares there are "hundreds of millions" of Muslims who are either "fully committed mujahideen" or "still dangerous but lesser committed jihad sympathizers" who, because of Shari'a law, would be willing to murder all non-believers unwilling to convert, in order to "impose a worldwide political hegemony." Meanwhile, Yerushalmi asserts, the U.S. government itself has consciously chosen to turn a blind eye to this threat.

To combat this alleged threat, Yerushalmi has vigorously opposed all perceived "inroads" of Shari'a law in the United States, even entirely innocuous measures such as American financial institutions creating financing packages designed to be compatible with Islamic restrictions against loaning money at interest.

"American Laws for American Courts"

Yerushalmi's latest weapon is model anti-Shari'a legislation he has titled "American Laws for American Courts," developed for a group called the American Public Policy Alliance (APPA). The group claims that "one of the greatest threats to American values and liberties today" comes from "foreign laws and foreign legal doctrines," including "Islamic Shari'ah law," that have been "infiltrating our court system."

Yerushalmi's proposed legislation, which claims to "protect American citizens' constitutional rights against the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Shari'ah Law," has been the basis for anti-Shari'a measures introduced by state lawmakers in several states in recent years.

On its Web site, the APPA cites 17 cases where it claims that Shari'a has been introduced in state courts; this is its evidence of "creeping" Shari'a law within the United States.

A bill introduced by Sen. Alan Hays and Rep. Larry Metz in Florida to outlaw Shari'a (and other non-secular or foreign laws) in March 2011 is strikingly similar to Yerushalmi's model legislation. Tennessee, Louisiana and Oklahoma actually passed variations of Yerushalmi's legislation in 2010.

Although the bill in Oklahoma received support from 70% of voters, a January 2012 Federal Court ruling deemed the law unconstitutional. In response to the ruling, Yerushalmi co-founded the American Freedom Law Center (AFLC), an organization dedicated to "aggressively fight those who seek to undermine and destroy our Nation's founding [Judeo-Christian] principles." Among the supporters backing Yerushalmi's new organization is Pamela Geller, a leading anti-Muslim activist and executive director of Stop Islamization of America (SIOA).

Yerushalmi has even testified in support of the anti-Shari'a legislative efforts based on his proposal. For example, in a hearing before the Alaska House State Affairs Committee in March 2011, Yerushalmi claimed that "today, we are far more likely than ever before to have foreign laws in American courts...There are plenty of occasions in which foreign law informs what Alaskan law could be."

Demonizing Islam

Yerushalmi has not only actively promoted his conspiratorial vision of Shari'a law, but has also sought to portray all Muslims as a threat. In one March 2006 article, for example, Yerushalmi even went so far as to claim that "Muslim civilization is at war with Judeo-Christian civilization...The Muslim peoples, those committed to Islam as we know it today, are our enemies."

That same year, Yerushalmi founded the Society of Americans for National Existence (SANE), a "think tank" that has published anti-Muslim, anti-immigration and anti-black materials, as well as New World Order-style conspiracy theories. In 2007, SANE, declaring itself "dedicated to the rejection of democracy and party rule and a return to a constitutional republic [of the original founders of the US]," launched a campaign fueled by suspicion of all Muslims.

That campaign, "Mapping Shari'a in America: Knowing the Enemy," sought to determine exactly what type of Shari'a every single mosque and Muslim religious institution in the U.S. was advocating. A June 2007 press release announcing the campaign indicated that SANE would work to "test the proposition that Shari'a amounts to a criminal conspiracy to overthrow the U.S. government" by investigating and ranking the adherence to Islamic law of mosques and their associated day-schools throughout the U.S. The statement also promised to "advocate for the criminalization of Shari'a" if it felt its targeted investigation into mosques and Islamic day schools proved such a measure necessary.

SANE also proposed legislation that furthering or supporting adherence to Shari'a "shall be a felony punishable by 20 years in prison." It called on Congress to declare war on the "Muslim nation," which it defined as "Shari'a-adherent Muslims," and further asked Congress to define Muslim illegal immigrants as alien enemies "subject to immediate deportation."

Yerushalmi's Allies and Associates

Since founding SANE, Yerushalmi, who received his law degree from Arizona State University College of Law, has been involved with several notable anti-Muslim groups and campaigns, often providing legal services for them:

- Yerushalmi works closely with Pamela Geller, head of the anti-Muslim Stop Islamization of America (SIOA). For example, in September 2010 Yerushalmi represented Geller and Florida attorney John Stemberger when Omar Tarazi, a Columbus, Ohio, attorney sued them for allegedly saying he had contacts with terrorists. Tarazi had represented the parents of Rifqa Bary, a Christian teenager who fled to Florida, saying she feared harm from her Muslim mother and father. In his lawsuit, Tarazi said Geller wrongly linked him to Hamas. Yerushalmi reportedly incorporated the American Freedom Defense Initiative (AFDI), the non-profit organization through which Geller and Robert Spencer publish their blogs. He also defended AFDI ads on New York City buses opposing a planned mosque near Ground Zero that juxtaposed an image of an airplane headed toward the burning World Trade Center with another building labeled "WTC Mega Mosque" and the words "Why There?" Yerushalmi and Geller were also involved in a bus ad campaign in Miami that read: "Fatwa on your head? Is your community or family threatening you?"

- Yerushalmi was the attorney for the Stop the Madrassa Community Coalition in New York City, which lobbied for the Bloomberg administration to shut down the Khalil Gibran International Academy, an Islamic school, and requested the firing of its founding principal, Debbie Almontaser.

- In December 2008, the Thomas More Law Center filed suit against the federal government, claiming the government's loan to American International Group (AIG) was illegal because the insurance company had financial products that the group claimed promote Islam and are anti-Christian. Yerushalmi handled the case for the Center. In an article written around the same time, Yerushalmi even went so far as to suggest that U.S. companies that offer Shari'a-compliant finance measures might violate the Sedition Act.

- Yerushalmi is General Counsel to the Washington, D.C.-based Center for Security Policy, founded by Frank J. Gaffney. Gaffney has been active in opposing mosque construction and has made several statements about Islam that raise concerns. For example, in a 2009 article in the *Washington Times*, Gaffney claimed that "there is mounting evidence that the president not only identifies with Muslims, but actually may still be one himself." In 2010, the Center for Security Policy published the book *Shari'ah: The Threat To America,*

An Exercise in Competitive Analysis, Report of Team 'B' II, co-authored by Yerushalmi. The book repeated Yerushalmi's theories about a vast Shari'a threat to America.

- Yerushalmi has for many years been associated with the Institute for Advanced Strategic & Political Studies (IASPS), a right-wing think tank based in Israel and the United States, even serving as its chairman for five years, as well as writing a number of articles for it. IASPS now primarily supports the projects of SANE.

Other Hostile Views

Yerushalmi's main instrument, SANE, is also openly hostile to undocumented migrants in the United States. It advocates somehow sealing all American borders and building "special criminal camps" to house undocumented migrants, where they would serve a three-year detention sentence, then be deported. SANE also argues that the "immigration debate" should take into account that America was "founded and made strong by immigrants from western European countries with Judeo-Christian roots."

Yerushalmi has also claimed, as he wrote in a 2006 article, that the United States is in trouble because it "rejected its Christian roots, the Constitution and federalism," and because it "embraced democracy" and multi-culturalism. This has rendered it "incapable" of "overcoming the World State ideology of the Liberal Elites." These beliefs have caused Yerushalmi to defend people accused of anti-Semitism such as Mel Gibson and Pat Buchanan because they "have the potential to save the West from itself and from Islam." Liberal Jews, on the other hand, according to Yerushalmi are "the leading proponents of all forms of anti-Western, anti-American, anti-Christian movements, campaigns, and ideologies," and to argue otherwise one would have to be "literally divorced from reality." Liberal Jews, according to Yerushalmi, have also destroyed "their host nations like a fatal parasite."

Nor has Yerushalmi neglected the subject of race. Articles Yerushalmi has written for the SANE Web site argue that the "most of the fundamental differences between the races is genetic." In a 2006 essay for SANE entitled, "On Race: A Tentative Discussion," Yerushalmi claimed that "some races perform better in sports, some better in mathematical problem solving, some better in language, some better in Western societies and some better in tribal ones." He also contended that African-Americans are a "relatively murderous race killing itself." For Yerushalmi it was obvious: "If evolution and the biologists who espouse the theory are correct, then the idea that racial differences included innate differences in character and intelligence would[,] it seem[,] be more likely than not."

Exhibit G

Mother Jones

Meet the White Supremacist Leading the GOP's Anti-Sharia Crusade

States across the country are considering far-right bills to ban Islamic law. For that, we have hate-group leader David Yerushalmi to thank.

By Tim Murphy | Tue Mar. 1, 2011 3:00 AM PST

Last week, legislators in Tennessee introduced a radical bill that would make "material support" for Islamic law punishable by 15 years in prison. The proposal marks a dramatic new step in the conservative campaign against Muslim-Americans. If passed, critics say even seemingly benign activities like re-painting the exterior of a mosque or bringing food to a potluck could be classified as a felony.

The Tennessee bill, SB 1028 [1], didn't come out of nowhere. Though it's the first of its kind, the bill is part of a wave of related measures that would ban state courts from enforcing Sharia law. (A court might refer to Sharia law in child custody [2] or prisoner rights cases.) Since early 2010, such legislation has been considered in at least 15 states [3]. And while fears of an impending caliphate are myriad on the far-right, the surge of legislation across the country is largely due to the work of one man: David Yerushalmi, an Arizona-based white supremacist who has previously called for a "war against Islam [4]" and tried to criminalize [5] adherence to the Muslim faith.

Yerushalmi, a lawyer, is the founder of the Society of Americans for National Existence [5] (SANE), which has been called a "hate group [6]" by the Council on American-Islamic Relations (CAIR). His draft legislation [7] served as the foundation [8] for the Tennessee bill, and at least half a dozen other anti-Islam measures—including two bills that were signed into law last year in Louisiana and Tennessee.

With the exception of SB 1028, much of Yerushalmi's legislation sounds pretty innocuous: State courts are prohibited from considering any foreign law that doesn't fully honor the rights enshrined in the US and state constitutions. Because a Taliban-style interpretation of Islamic law is unheard of in the United States, the law's impact is non-existent at best. But critics of some of the proposed bills have argued they could have far-reaching and unintended consequences, like undoing anti-kidnapping statutes [9], and hindering the ability of local companies to enter into contracts overseas.

But Tennessee's SB 1028 goes much further, defining traditional Islamic law as counter to constitutional

principles, and authorizing the state's attorney general to freeze the assets of organizations that have been determined to be promoting or supporting Sharia. On Monday, CAIR and the ACLU called for lawmakers to defeat the bill.

"Essentially the bill is trying to separate the 'good Muslims' from the 'bad Muslims,'" said CAIR staff attorney Gadeir Abbas in an interview with *Mother Jones*. "Out of all the bills that have been introduced, this is by far the most extreme."

Reports about the rise of the anti-Sharia movement have typically focused on Oklahoma's voter-approved [10] constitutional amendment, which explicitly prohibited state courts from considering Islamic law (a federal judge issued a permanent injunction against the amendment in December). But the movement began much earlier, with a sample bill Yerushalmi drafted at the behest of the American Public Policy Alliance [11], a right-wing organization established with the goal of protecting American citizens from "the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Shariah Law."

In a 40-minute PowerPoint [12] that's available on the organization's site, Yerushalmi explained the ins and outs of the sample legislation. His bills differ from the failed Oklahoma amendment in one key way: They don't mention Sharia. Instead, they focus more broadly on "foreign laws and foreign legal doctrines." As Yerushalmi explained in an interview with the nativist *New English Review* [13] in December, the language is "facially neutral," thereby achieving the same result while "avoiding the sticky problems of our First Amendment jurisprudence."

Since crafting the sample legislation, Yerushalmi's services have been been in high demand as an expert witness. In mid-February, he flew to South Dakota to testify in support of a bill modeled on his "American Law for American Courts" plan. (He also offered to provide pro-bono legal support for the state if the law produced any legal challenges.)

Ultimately, the bill died in committee, after the state's attorney general testified that the bill could lead to lawsuits. "I am a little chagrined by the fact that none of the opponents of the bill have actually read it with any care," Yerushalmi told the committee. "Something else is at work here."

But it's not just Muslims who draw Yerushalmi's scorn. In a 2006 essay for SANE entitled *On Race: A Tentative Discussion* [14] (pdf), Yerushalmi argued that whites are genetically superior to blacks. "Some races perform better in sports, some better in mathematical problem solving, some better in language, some better in Western societies and some better in tribal ones," he wrote.

Yerushalmi has suggested that Caucasians are inherently more receptive to republican forms of government than blacks—an argument that's consistent with SANE's mission statement, which emphasizes that "America was the handiwork of faithful Christians, mostly men, and almost entirely white." And in an article published at the website Intellectual Conservative, Yerushalmi, who is Jewish, suggests that liberal Jews "destroy their host nations like a fatal parasite." Unsurprisingly, then, Yerushalmi offered the lone Jewish defense of Mel Gibson [15], after the actor's anti-Semitic tirade in 2006. Gibson, he wrote, was simply noting the "undeniable Jewish liberal influence on western affairs in the direction of a World State."

Despite his racist views, Yerushalmi has been warmly received by mainstream conservatives; his work has appeared in the *National Review* [16] and Andrew Breitbart's Big Peace [17]. He's been lauded in the pages of the *Washington Times* [18]. And in 2008, he published a paper on the perils of Sharia-compliant finance that compelled Sen. Minority Whip John Kyl (R-Ariz.) to write a letter to Securities and Exchange Commission chairman Chris Cox.

More recently, Yerushalmi co-authored a report [19] on the threats posed by Islamic law—among other things, he worries Sharia-compliant finance could spark another financial collapse—that earned plaudits [20] from leading Republicans like Michigan Rep. Pete Hoekstra. The report was released by Frank Gaffney's Center for Security Policy [21], for which Yerushalmi is general counsel.

In 2007, he pushed legislation to make "adherence to Shari'a" a felony, punishable by up to 20 years in prison. That same proposal called for the deportation of all Muslim non-citizens, and a ban on Muslim immigration. The United States, he urged, must declare "a WAR AGAINST ISLAM and all Muslim faithful."

Neither Yerushalmi nor the American Public Policy Alliance responded to a request for comment for this article.

If his racially infused writings and rhetoric are any indication, it's Yerushalmi, not his Muslim bogeymen, who seems most determined to remake the American political system. Per its mission statement [22], SANE is "dedicated to the rejection of democracy and party rule," and Yerushalmi has likewise criticized the universal suffrage movement. As he once put it, "there's a reason the founding fathers did not give women or black slaves the right to vote."

Click here to read David Yerushalmi's response. [23]

Links:

[1] http://www.scribd.com/doc/49501971/Tenn-Anti-Sharia-Senate-Bill-1028
[2] http://www.salon.com/news/islam/?story=/politics/war_room/2011/02/26/sharia_the_real_story
[3] http://motherjones.com/mojo/2011/02/has-your-state-banned-sharia-map
[4] http://www.cair.com/ArticleDetails.aspx?
ArticleID=26408&name=n&currPage=1&Active=1
[5] http://www.saneworks.us/indexnew.php
[6] https://pa.cair.com/actionalert/wash-times-promotes-hate-group/
[7] http://publicpolicyalliance.org/?page_id=38
[8] http://www.tennessean.com/article/20110223/NEWS0201/102230378/Tennessee-bill-would-jail-Shariah-followers
[9] http://motherjones.com/mojo/2011/02/sd-rep-who-authored-abortion-bill-nixes-sharia-ban
[10] http://motherjones.com/mojo/2010/12/sharia-fever-catch-it
[11] http://publicpolicyalliance.org/
[12] http://publicpolicyalliance.org/?page_id=71
[13] http://www.newenglishreview.org/custpage.cfm/frm/77157/sec_id/77157
[14] http://www.mcadamreport.org/The%20McAdam%20Report%28585%29-05-12-06.pdf
[15] http://www.intellectualconservative.com/2006/08/08/mel-gibson-and-why-jewish-liberals-give-jews-a-bad-name/
[16] http://www.nationalreview.com/corner/191091/threat-shariah-compliant-finance/david-yerushalmi
[17] http://bigpeace.com/author/dyerushalmi/
[18] http://www.washingtontimes.com/news/2008/oct/28/sell-off-or-sell-out/print/
[19] http://www.centerforsecuritypolicy.org/p18523.xml
[20] http://wonkroom.thinkprogress.org/2010/09/15/creeping-sharia-team-b-report-presented-to-congress/
[21] http://www.centerforsecuritypolicy.org/index.xml
[22] http://www.talk2action.org/story/2007/12/27/20819/823
[23] http://motherjones.com/politics/2011/02/david-yerushalmi-sharia-ban-tennessee#comment-159561650

Exhibit H

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CLE Course on Draft Uniform Act: American Laws for American Courts

November 07, 2010

Welcome to the continuing legal education course entitled, "American Laws for American Courts," prepared and presented by the Law Offices of David Yerushalmi, P.C. This course was made possible by the Public Policy Alliance, a non-profit group dedicated to resisting the application of foreign laws and transnational legal systems in U.S. domestic courts when those foreign laws, if passed by a state legislature, would violate U.S. and state fundamental constitutional privileges and liberties. The Public Policy Alliance turned to the Law Offices of David Yerushalmi, P.C., to craft a uniform act that state legislatures could enact that would prevent local courts from applying those offending foreign laws in state courts.

The purpose of this course is to analyze and to provide the factual and legal context for the draft legislation that goes by the name, American Laws for American Courts. We consider this draft legislation to be a model uniform law for the states.

The essence of this draft legislation is to provide a baseline law that provides a statutory framework for precluding constitutionally objectionable foreign laws and legal systems from finding their way into the state judicial system. One example of an offending transnational law is sharia—authoritative Islamic law that is applied as the law of the land in many countries around the world. Sharia is patently offensive to U.S. and state constitutional law because it criminalizes apostasy (violation of Free Excersise of Religion) and blasphemy against Islam, Mohammed, and sharia itself (violation of Free Speech). Sharia also violates principles of due process and equal protection by discriminating against non-Muslims and women.

Countries that apply sharia as the law of the land include Saudi Arabia, Iran, Sudan, and Somalia. Many Muslim countries apply shariah as the law of the land in specific legal areas such as family law and inheritance. Examples of these countries and political regimes include Pakistan, Afghanistan, Nigeria, parts of Indonesia, Gaza, Jordan, Yemen, and almost all of the Gulf states. In addition, just about all Muslim countries have a de jure or de facto sharia supremacy clause which effectively does not allow any "secular" law to violate sharia's fundamental principles of Islamic supremacy. Countries of this type include such "moderate" countries such as Egypt, Jordan, Afghanistan, and even Iraq.

This CLE course will analyze each provision of this draft legislation so that legislators will have a better idea why this legislation is needed and so that practicing lawyers and policy professionals will have a better understanding of how this law might impact litigation in state courts.

The uniform act reads as follows:

AN ACT to protect rights and privileges granted under the United States or [State] Constitution.

> WHEREAS, while the [general assembly/state legislature] fully recognizes the right to contract freely under the laws of this state, it also recognizes that this right may be reasonably and rationally circumscribed pursuant to the state's interest to protect and promote rights and privileges granted under the United States or [State] Constitution; now, therefore,
>
> BE IT ENACTED BY THE [GENERAL ASSEMBLY/LEGISLATURE] OF THE STATE OF [_____]:
>
> [1] As used in this act, "foreign law, legal code, or system" means any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals, and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals.
>
> [2] Any court, arbitration, tribunal, or administrative agency ruling or decision shall violate the public policy of this State and be void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its rulings or decisions in the matter at issue in whole or in part on any law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions.
>
> [3] A contract or contractual provision (if capable of segregation) which provides for the choice of a law, legal code or system to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the law, legal code or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions.
>
> [4] (a) A contract or contractual provision (if capable of segregation) which provides for a jurisdiction for purposes of granting the courts or arbitration panels in personam jurisdiction over the parties to adjudicate any disputes between parties arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the jurisdiction chosen includes any law, legal code or system, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions.

(b) If a resident of this state, subject to personal jurisdiction in this state, seeks to maintain litigation, arbitration, agency or similarly binding proceedings in this state and if the courts of this state find that granting a claim of forum non conveniens or a related claim violates or would likely violate the fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions of the non-claimant in the foreign forum with respect to the matter in dispute, then it is the public policy of this state that the claim shall be denied.

The CLE course is provided below as a 40-minute fully narrated online PowerPoint presentation. You can maximize the screen for best viewing. We trust you will find this course illuminating and most importantly, you will see through the examples we discuss that sharia is a real threat even now because it has already insinuated its way into our courts as litigants ask courts, applying the police power of the states, to enforce sharia judgments and arbitration decisions and to apply sharia as the law at work here in the U.S.

We also recommend you take our CLE course on shariah-compliant finance ("SCF"), which is a financial model promoted by the Muslim Brotherhood and sharia-advocating Islamists, properly understood as advocates of applying Islamic law within Muslim and non-Muslim countries as the law of the land in an effort to revitalize the concept of a worldwide Caliphate. Under sharia, the "Caliphate" is the goal: a sharia-based transnational political order. SCF is also promoted by transnational financiers and their facilitators, such as lawyers, who profit by promoting sharia in our financial system. SCF, we believe, is another of the great dangers to our financial system and to the integrity of our constitutional system. Our CLE course on SCF is available here.

CLE Course on American Laws for American Courts

Source:
Law Offices of David Yerushalmi, P.C.

< Prev

Next >

Exhibit I

ROSEMARIE SWANGER
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AGING & OLDER ADULT SERVICES
GAMING OVERSIGHT
LOCAL GOVERNMENT

CAUCUSES

PRO-LIFE
PEOPLE WITH INTELLECTUAL DISABILITIES
MILITARY BASE DEVELOPMENT
HOUSE REPUBLICAN ENERGY TASK FORCE
PROPERTY TAX RELIEF
SOUTH CENTRAL
LIBERTY

June 14, 2011

To: All House Members

From: Rep. RoseMarie Swanger

Subject: Proposed Legislation
AMERICAN AND PENNSYLVANIA LAWS FOR PENNSYLVANIA COURTS – SHARIAH LAW

I urge you to stand with me and co-sponsor my new legislation, "American and Pennsylvania Laws for Pennsylvania Courts." This legislation protects the individual constitutional rights of the people of Pennsylvania from the incursion of foreign laws, in cases in which the application of a foreign law or foreign legal doctrine would violate someone's constitutional rights.

Some 235 years ago, America's forefathers gathered in Philadelphia to debate and write a unique document. That single-page document announced the formation of a new country—one that would no longer find itself in the clutches of a foreign power. That document was the Declaration of Independence. Eleven years later, many of those same men gathered again to lay the foundation for how the United States of America was to be governed: The US Constitution, a form of government like no other *by the people, of the people and for the people.*

For more than two centuries, hundreds of thousands of courageous men and women have given their lives to protect America's sovereignty and freedom. American constitutional rights must be preserved in order to preserve unique American values of liberty and freedom.

State legislatures have a role to play in preserving constitutional rights and American values of liberty and freedom. If States did not have such a role to play, why then do states have constitutions which often mirror, echo and reinforce the US constitution?

America has unique values of liberty which do not exist in foreign legal systems, particularly Shariah Law. Included among, but not limited to, those values and rights are: Freedom of Religion, Freedom of Speech, Freedom of the Press, Due Process, Right to Privacy, Right to Keep and Bear Arms

Civil and Criminal Law Serve as the Bedrock for American Values: We are a nation of laws. Unfortunately, increasingly, foreign laws and legal doctrines—including and especially Shariah law--are finding their way into US court cases. Invoking Shariah

law, especially in family law cases, is a means of imposing an agenda on the American people while circumventing the US and state constitutions by using foreign laws which do not recognize our constitutional rights and liberties in US courts.

The potential impact of using foreign and international laws and legal doctrines in US courts on the liberty of ordinary American citizens are as profound as they are despairing. The embrace of foreign legal systems such as Shariah law, which is inherently hostile to our constitutional liberties, is a violation of the principles on which our nation was founded.

The founders of our nation believed that the United States of America and its individual states should never be subservient to any foreign power, country or legal system and that no foreign power, country or legal system should be allowed to encroach upon our rights under the Constitution.

The purpose of American and Pennsylvania Laws for Pennsylvania Courts is to preserve the sovereignty of the US and Pennsylvania and their respective Constitutions by preventing the encroachment of foreign laws and legal systems, such as Shariah law, that run counter to our individual constitutional liberties and freedoms.

By passing American and Pennsylvania Laws for Pennsylvania Courts, we will be preserving *individual* liberties and freedoms which become eroded by the encroachment of foreign laws and foreign legal doctrines, such as Shariah.

It is imperative that we safeguard our Constitutions' fundamentals, particularly the individual guarantees in the Bill of Rights, the sovereignty of our Nation and its people, and the principles of the rule of law—*American and Pennsylvania laws, not foreign laws.*

If you wish to join me in protecting the individual constitutional rights of the people of Pennsylvania from the incursion of foreign laws, please call my secretary, Lily Horst, 787-2686, or e-mail her at lhorst@pahousegop.com to be added to the list of co-sponsors.

Exhibit J

ROSEMARIE SWANGER
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MILITARY BASE DEVELOPMENT
HOUSE REPUBLICAN ENERGY TASK FORCE
PROPERTY TAX RELIEF
SOUTH CENTRAL
LIBERTY

Date: October 18, 2011

To: All House Members

From: Rep. RoseMarie Swanger

Subject: Proposed Legislation
American Laws for American Courts

Like many of you, I am concerned with the potential infiltration of foreign legal doctrine into our court system. When our nation was founded, our forefathers crafted a Declaration of Independence and a Constitution, both of which were intended to create a unique system of government grounded in liberty and free from the influence of foreign powers. As many young Americans throughout our history have fought and lost their lives to protect our sovereignty and freedom, I believe that it is vitally important to introduce legislation that will keep foreign legal doctrine out of our court system.

In the near future, I intend to offer legislation that will prohibit a Pennsylvania court from considering a foreign legal code or system, which does not grant the parties affected by a ruling or decision, the same fundamental liberties, rights and privileges granted under the United States Constitution. The fundamental liberties preserved under this bill include due process, freedom of religion, freedom of speech, freedom of the press and any right of privacy or marriage that is or will be defined in the Pennsylvania Constitution. I should also note that, under my legislation, a foreign legal code or system would capture any legal code or system of a jurisdiction outside of the United States, including an international organization or tribunal.

I hope you will join me in cosponsoring this important legislation, which is intended to ensure that no United States citizen or resident of the Commonwealth is denied the liberties, rights and privileges guaranteed by our constitutional republic because of the application of foreign legal doctrine.

Please contact Lily Horst, 787-2686, lhorst@pahousegop.com, if you would like to be added as a cosponsor.

Exhibit K

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 8-9, 2011

RESOLUTION

RESOLVED, That the American Bar Association opposes federal or state laws that impose blanket prohibitions on consideration or use by courts or arbitral tribunals of foreign or international law.

FURTHER RESOLVED, That the American Bar Association opposes federal or state laws that impose blanket prohibitions on consideration or use by courts or arbitral tribunals of the entire body of law or doctrine of a particular religion.

REPORT

I. INTRODUCTION

Over the last year or so, an increasing number of state constitutional amendments and legislative bills have been proposed seeking to restrict or prohibit, in varying degrees, state courts' use of laws or legal doctrines arising out of international, foreign, or religious law or legal doctrines (the "Bills and Amendments"). Some such provisions have already been enacted, such as Tennessee's "American and Tennessee Laws for Tennessee Courts" bill, which was signed into law on May 13 2010,[1] and Oklahoma's "Save Our State Amendment,"[2] which was approved by a majority of the state's voters on November 2, 2010, but which has not yet been certified due to a federal court's preliminary injunction based on the likelihood of its unconstitutionality.[3] In approximately 20 states, some form of legislation that would impact the use or consideration of international, foreign or religious law has been introduced or is being considered for introduction in the state legislatures.[4]

The language of these Bills and Amendments varies, often considerably, from state to state. Some, like the amendment in Oklahoma, seek explicitly to forbid courts from considering "international law" or a particular religious legal tradition, most often "Sharia law."[5] Others refer more generally to the use of "foreign law" or "religious or cultural law" in judicial decisions.[6] Some refer only to "any law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the U.S. and [state] Constitutions."[7] One proposed law, another Tennessee bill (SB 1028), as initially introduced, would have provided that "[t]he knowing adherence to sharia and to foreign sharia authorities is prima facie evidence of an act in support of the overthrow of the United States government and the government of this state...." and would have made the support

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[1] 2010 Tenn. Pub. Acts 983. Similar legislation has been signed into law in Louisiana, 2010 La. Acts 714.

[2] Okl. Enr. H.J.R. 1056 (2010).

[3] *Awad v. Ziriax*, 2010 WL 4814077 (W.D. Okla. Nov. 29, 2010).

[4] *The Law of the Land,* ABA JOURNAL 14 (Apr. 2011).

[5] U.S. courts may be called up to interpret Sharia in certain limited circumstances. For instance, suppose a W and H married religiously in Egypt. The Maryland resident wife files for divorce in Maryland; her husband moves to dismiss her complaint alleging that they were never legally married. The Maryland judge – based on conflicts of law – must determine whether the parties' marriage was valid where it was contracted in Egypt. As such, the court would require expert testimony about Egyptian family law, which is based on Sharia. Other situations requiring the consideration of Sharia principles might involve the recognition of foreign divorces and custody decrees, probating wills that reference Sharia principles, applying contracts governed by principles of Islamic finance, or where the parties to a cross-border commercial contract have chosen the law of a jurisdiction that applies Sharia principles (such as Saudi Arabia and Malaysia) to govern their contract. Of course, American courts are not required to recognize or enforce any foreign law, including Sharia law, that would violate American public policy. As discussed in Section III of this Report, this is the established jurisprudence for more than 100 years.

[6] *See, e.g.*, Ten. Pub. Acts 983, La. Acts 714, Georgia HB 45 (all referencing "foreign law"); Arizona HB 2582 (2011) (referencing "foreign law" and "religious sectarian law"); Texas HJR 57 (2011) (referencing "any religious or cultural law").

[7] This provision, which has already passed in Tennessee and Louisiana, and has been proposed in Florida, Georgia, Mississippi, Texas and a number of other states, is based on a model law drafted by a group called the Public Policy Alliance, which touts it as a way to preserve "individual liberties and freedoms which become eroded by the encroachment of foreign laws and foreign legal doctrines, such as Shariah". http://publicpolicyalliance.org/?page_id=38 (last visited May 9, 2011)

of any "sharia organization" linked to terrorism a felony punishable "by fine, imprisonment of not less than fifteen (15) years or both."[8]

While not expressly referring to Sharia, many of these legislative initiatives are aimed at Islamic law.[9] For instance, HB 45, which was introduced in Georgia (but not enacted), made no reference to Sharia, stating that "it shall be the public policy of this state to protect its citizens from the application of foreign laws when the application ... will result in the violation of a right guaranteed by the Constitution of this state or of the United States."[10] But the sponsor of the bill stated that the legislation was intended to "ban the use of Sharia law in state courts."[11] Florida's legislation (SB 1294) was copied almost verbatim from the "model legislation" posted on the website of a group called the American Public Policy Alliance.[12] The group's website indicates that the model legislation was "crafted to protect American citizens' constitutional rights against the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Sharia Law."[13]

Despite the differences in terminology used, on the whole these Bills and Amendments purport to protect state citizens from perceived risks to their constitutional rights or to prevent legal decisions that would run counter to the state's public policy. Some well-publicized decisions have understandably raised concerns. For instance, a trial court in New Jersey ruled that a husband, who was a Muslim, lacked the criminal intent to commit sexual assault upon his wife because "his desire to have sex when and whether he wanted to, was something that was consistent with his practices and it was something that was not prohibited."[14] Others have observed that certain Sharia rules governing divorce, child custody, and inheritance, as applied in certain jurisdictions or interpreted in certain schools of Islamic thought,[15] may discriminate

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[8] Tenn. SB 1028 (as initially filed, at http://www.capitol.tn.gov/Bills/107/Bill/SB1028.pdf) (last visited May 8, 2011); §39-13-902(13), §39-13-906(a)(1)(B). The legislation has since been amended to remove any specific reference to Sharia and is now facially neutral. *See* SB 1028 (as amended, at http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB1028) (last visited May 8, 2011).

[9] *The Law of the Land,* ABA JOURNAL 14 (Apr. 2011) (noting that in "South Dakota, state Rep. Phil Jensen says he learned from the Oklahoma decision to omit the word *Shariah* in similar legislation he sponsored. ... In South Carolina, state Sen. Michael Fair, a sponsor of an anti-Shariah bill in his state, says that he too has heeded the tactical wisdom to 'keep it bland'").

[10] Ga. HB 45 (http://www.legis.ga.gov/Legislation/en-US/History.aspx?Legislation=32048). The legislation remained in committee.

[11] Kathleen Baydala Joyner, *Lawyers Speak Against Ga. Bill That Bans Use of Foreign Laws in State Courts,* FULTON CO. DAILY REP. (Feb. 7, 2011).

[12] http://publicpolicyalliance.org/?page_id=38 (last visited May 8, 2011).

[13] *Id.*

[14] *S.D. v. M.J.R.,* 2 A.3d 412, 428 (N.J. Super. 2010).

[15] Sharia "law" is only "law" in the colloquial sense. The textual sources of the Sharia are the Quran and the Sunna. The Quran is the Muslim holy scripture. The Sunna is essentially the sayings and conduct of Mohammad, who is believed by Muslims to have been divinely guided. After these two primary sources, the two main secondary sources of Sharia are: (1) ijma (consensus of scholars and jurists), and (2) qiyas (reasoning by analogy to one of the higher sources). There is no single authoritative compilation of Sharia, or any judicial or legislative body with jurisdiction over all or even most Muslims. As recently noted, "[t]he amorphous nature of Sharia law can be difficult to appreciate as one often reads that a product is 'Sharia-compliant', or that a state applies 'Sharia law'. In fact, the term Sharia no more denotes a cohesive, codified law than the term 'natural law' does." Paul Turner & Robert Karrar-Lewsley, *Arbitration, Sharia & the Middle East,* 6 GLOBAL ARB. REV. (July 2011). As stated by one U.S. judge with respect to the indefinite nature of "Islamic law": "It is not possible to open up law books and read

against women in ways that would not be sanctioned by -- and indeed would often be illegal under -- the laws of this country.[16]

Yet that very fact highlights the point that the Bills and Amendments are duplicative of safeguards that are already enshrined in federal and state law. American courts will not apply Sharia or other rules (real or perceived) that are contrary to our public policy, including, for instance, rules that are incompatible with our notions of gender equality. Indeed, the New Jersey trial court decision referenced above was reversed by the Superior Court of New Jersey, which "soundly rejected" the lower court's "perception that, although defendant's sexual acts violated applicable criminal statutes, they were culturally acceptable and thus not actionable."[17] In so ruling, the Court relied on long-standing precedent that the government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development."[18]

While legislative initiatives that target specified conduct may be proper even if they run counter to the principles of a particular religion, such initiatives that target an entire religion or stigmatize an entire religious community, such as those explicitly aimed at "Sharia law," are inconsistent with some of the core principles and ideals of American jurisprudence. Thus, while the Supreme Court upheld the conviction of a Mormon on a polygamy charge in 1898 (at a time when polygamy was an accepted tenet of Mormonism), the law in question did not embody a broader "anti-Mormon" legislative initiative, but rather one aimed at specified conduct that was deemed socially harmful.[19]

Moreover, as further discussed in Section III of this Report, the provisions in these Bills and Amendments that seek to ban the use of international, foreign or customary law in U.S. state courts are unnecessary, as existing law and judicial procedure have already proven sufficient to deal with the concerns that such Bills and Amendments were designed to address.

Significantly, language in these Bills and Amendments dealing with "international law" or "foreign and customary law" is likely to have an unanticipated and widespread negative impact on business, adversely affecting commercial dealings and economic development in the states in which such a law is passed and in U.S. foreign commerce generally. Choice of law is a critical

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cases to discern [Islamic] law." *Saudi Basic Industries Corp. v. Mobil Yanbu Petrochemical Co., Inc.*, 2003 WL 22016864 (Del. Supr.).

[16] Farrah Ahmed, *Personal Autonomy & the Option of Religious Law*, 24 INT'L J. L. POL'Y & FAM. 222, 231 (2010); Vivian E. Hamilton, *Perspectives on Religious Fundamentalism and Families in the U.S.*, 18 WM. & MARY BILL RTS. J. 883, 884 (2010).

[17] *S.D. v. M.J.R.*, 417, 2 A.3d 412 (N.J. Super. 2010).

[18] *Id.* at 437 *quoting Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 *U.S.* 872, 885, 110 *S.Ct.* 1595, 1603, 108 *L.Ed.*2d 876, 889-90 (1990) (holding that the Free Exercise Clause did not require Oregon to exempt the sacramental ingestion of peyote by members of the Native American Church from Oregon's criminal drug laws).

[19] *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (1878). *See also Cleveland v. United States*, 329 *U.S.* 14, 67 *S.Ct.* 13, 91 *L.Ed.* 12 (1946) (affirming the conviction of defendant practitioners of polygamy under the Mann Act upon a determination that they transported their wives across state lines for immoral purposes and a rejection of defendants' claim that, because of their religious beliefs, they lacked the necessary criminal intent).

term in the negotiation of international business deals. Some of the Bills and Amendments take that bargaining chip off the table or limit the latitude of negotiations. Companies from states that enact such Bills or Amendments are unable to freely negotiate the choice of law term with a foreign company that would insist on the application of the law of its own jurisdiction to govern the contract. This places the U.S. company at a competitive disadvantage with companies from foreign jurisdictions that are not similarly hampered in such negotiations. In addition, the Bills and Amendments create a perception that the courts of those states with such enactments are hostile to the application of foreign law, even if freely negotiated by the parties, which makes it more difficult to negotiate for a domestic forum. Thus, a foreign company that would otherwise be willing to agree to a U.S. forum, subject to the application of the law of its own jurisdiction, will be more inclined to insist on a foreign forum. Moreover, a harsh attitude by states in this country toward the application of foreign law will likely harden the attitude of foreign jurisdictions with regard to the application of U.S. law. In short, the Bills and Amendments create unnecessary barriers to the conclusion of business deals. As stated by one court, "[w]e cannot have trade and commerce in world markets ... exclusively on our terms, governed by our laws."[20]

Moreover, many of the Bills and Amendments would infringe federal constitutional rights, including the free exercise of religion and the freedom of contract, or would conflict with the Supremacy Clause and other clauses of the Constitution. Even those versions of these laws that have been carefully crafted so as to be facially neutral, and avoid any mention of religious law in general or Sharia law in specific, are nonetheless liable to face constitutional scrutiny to the extent that the effect of such proposals is to prohibit all practice of Sharia law, to prohibit parties' freedom to contract, or to interfere with the powers of the Executive and the Senate to negotiate and ratify treaties.

II. CONSTITUTIONAL ISSUES

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.
>
> *W. Va. State Bd. of Educ. v. Barnette,* 319 U.S. 624, 638 (1943)

These various state Bills and Amendments, in all their incarnations, are attempting to do precisely what our founding fathers sought to prevent when they crafted our Constitution and Bill of Rights: deny fundamental rights to a group of citizens based on the vote of a state legislature or the results of a state-wide referendum. As set forth below, such legislation are unconstitutional because they violate the following provisions of the U.S. Constitution: the Supremacy Clause,[21] the Contracts Clause,[22] the First Amendment's free exercise of religion clause,[23] and the Full Faith and Credit Clause.[24]

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[20] *Laminoirs S.A. v. Southwire Co.*, 484 F.Supp. 1063, 1069 (N.D. Ga. 1980).

[21] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and

A. Violation of the Supremacy Clause

Under the Supremacy Clause of the U.S. Constitution, all treaties are "the supreme Law of the Land." Any provisions in the Bills and Amendments that bar state courts from considering "international law," as in Oklahoma's amendment, run afoul of the Supremacy Clause because of their effects on U.S. treaty obligations. Treaties are an important source of law applicable in state courts. For example, the United Nations Convention on Contracts for the International Sale of Goods (CISG)[25] is a treaty that applies directly to citizens or residents of a state who enter into a contract for the sale or purchase of goods with a party in another Contracting State, which includes such likely trading partners as Canada, Mexico and China. To illustrate, under the Supremacy Clause, a state court faced with a sale of goods dispute governed by the CISG between a state resident and a supplier in, say, France must apply the CISG unless the parties expressly opted out of it, and any state constitutional amendment or statutory provision that prohibited this outcome would violate the Supremacy Clause, which provides that, as a treaty, the provisions of the CISG are "supreme" over state law.

The Supreme Court of the United States has recognized that there are times to recognize and enforce foreign judgments and international arbitration agreements.[26] Yet the Bills and Amendments would call into question states' willingness to recognize and abide by treaties, many of which have a very direct effect on economic investment in the United States and overseas, as well as on protecting American business interests overseas. Businesses negotiate contract terms assuming the backdrop protections of these treaties and agreements, and to prohibit their consideration could undermine the legal foundation of such contracts.

B. Violation of the Contracts Clause

The constitutionally protected right of contract is threatened by language in these provisions that seeks to limit choice of law. The Contracts Clause of the U.S. Constitution provides that "[n]o State shall...pass any...Law impairing the Obligation of Contracts." One generally recognized

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the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, § 1, Cl. 2.

[22] "No State shall ...pass any...Law impairing the Obligation of Contracts,.... U.S. Const. Art. I, § 10, Cl. 1.

[23] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." U.S. Const. Amend. 1.

[24] "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. Const. Art. IV, § 1.

[25] There is a distinction between self-executing treaties, which are to be automatically given effect of law in domestic courts, and non-self-executing treaties, which must be implemented through legislation. *Medellin v. Texas*, 552 U.S. 491, 504-505 (2008). The CISG, which was ratified by the United States in 1986 and implemented in 1988, is generally considered to be a self-executing treaty and therefore directly applicable in state courts without implementing legislation. *See, e.g., Delchi Carrier SpA v. Rotorex Corp.*, 71 F.3d. 1024, 1027 (2d Cir. 1995).

[26] *See e.g., Medellin v. Texas*, 128 S. Ct. 1346, 1365; 522 U.S. 491, 519-520 ("Our holding does not call into question the ordinary enforcement of foreign judgments or international arbitral agreements. Indeed, we agree with Medellin that, as a general matter, 'an agreement to abide by the result' of an international adjudication--or what he really means, an agreement to give the result of such adjudication domestic legal effect--can be a treaty obligation like any other, so long as the agreement is consistent with the Constitution."); see also id. at 1364 (citing dissent at 1379-1380) (referencing numerous cases where the Supreme Court found a treaty to be self-executing and thus directly enforceable in U.S. courts without domestic implementing legislation).

right of contract is the right to choose the law that governs that contract. Courts, including the U.S. Supreme Court, generally honor the parties' choice of law, unless such law is contrary to public policy,[27] even if doing so results in an outcome contrary to the laws that would otherwise apply.[28]

Provisions barring courts from using foreign, international or religious law gut the constitutional protection of the Contracts Clause. It is common practice for commercial contracts to include a choice of law provision, especially in the cross-border context. As previously discussed, choice of law is often a hotly negotiated provision of the contract that can significantly affect the substantive terms of the parties' business deal. To varying degrees under the various proposed Bills and Amendments, state courts would be prohibited from applying foreign laws governing the parties' contracts, thereby "impairing the Obligation of Contracts"[29] and encouraging foreign parties to either avoid the U.S. party's preferred forum or to impose a high price in connection with some other term of the business deal in exchange for agreeing to resolve future disputes in the U.S. The more broadly worded Bills and Amendments might also affect not only Muslims seeking to resolve disputes using Sharia principles, but also Jews utilizing rabbinic tribunals, Christians resolving disputes through Christian Conciliation, and members of other religious groups participating in faith-based dispute resolution fora. They might also impact the enforcement in state courts of international arbitral awards decided on the basis of foreign law, and of child custody agreements that were negotiated overseas, but that a parent seeks to enforce in the United States.

Such provisions are therefore unconstitutional infringements of individual's right to contract that will seriously impede business and stymie economic development. As discussed in more detail in Section III below, they are also unnecessary as the protections they seek to provide are already present in existing law.

C. Violations of the First Amendment's Free Exercise Clause

Laws or amendments that explicitly seek to ban "Sharia Law" from being considered by a state court, as in the Oklahoma amendment voted on in November 2010, violate the First Amendment's Free Exercise Clause because they place a substantial burden on individuals' religious practices. A law imposes an unconstitutional burden on the free exercise or religion when it (1) prevents individuals from performing religious acts or rituals that are (2) religiously motivated, (3) based on a sincerely held religious belief, and (4) the acts or rituals in question do not endanger the health or safety of other individuals and therefore present a substantial burden on individual's free exercise rights.[30] Laws that create such burdens must meet different levels of judicial scrutiny, depending on whether or not they are facially neutral, and must be narrowly

[27] *Lauritzen v. Larsen*, 345 U.S. 571, 588-589 (1953) ("Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply."); *see also* 16 Am. Jur. 2d Conflict of Laws § 81. Courts may also refuse to give effect to a choice of law provision if made in bad faith or with the purpose of evading the law of the place where the contract was made. *Id.*

[28] *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629 (1985).

[29] U.S. Const., Art. 1, § 10.

[30] The federal government is prohibited "from substantially burdening a person's exercise of religion, unless the Government 'demonstrates that application of the burden to the person' represents the least restrictive means of advancing a compelling interest." *Gonzales v. O Centro. Esp. Benef. Uniao do Vege*, 126 S. Ct. 1211, 1216 (2006).

tailored to advance the asserted government interest. Most of the Bills and Amendments fail to pass these constitutional hurdles.

Those that either specify Sharia or other religious law, or which reference "international" or "foreign" law, clearly burden religious practice.[31] For example, many Muslims, such as the plaintiff who sought an injunction to prohibit the certification of the Oklahoma amendment, have wills that incorporate specific elements of Sharia law to determine the distribution of their estates. It will be impossible to probate such wills in states that ban the application of Sharia or religious law where their provisions do not endanger the health or safety of other individuals. Furthermore, as the validity of marriages and divorces, whether performed in the U.S. or in another country, may be based on Sharia or other religious law, banning such law from being "used" or "considered" by courts will prevent judges from considering evidence of such marriages or divorces, whether performed in the U.S. or abroad.[32] Most of the provisions are therefore likely to be found to create unconstitutional burdens on religious practice. This was the case in Oklahoma, where a federal district court issued a preliminary injunction based on its finding of a "substantial likelihood of success on the merits" of the plaintiff's Free Exercise Claim.

Provisions like the one in Oklahoma or Tennessee's SB 1028 that single out Sharia law are the most clearly unconstitutional; because they are not neutral on their face, they will only pass constitutional scrutiny if they are "justified by a compelling interest and narrowly tailored to advance that interest."[33] This will be a difficult case for states to make, because as demonstrated in Section III, the interests these provisions are designed to protect are already more than adequately covered through existing law. Moreover, prohibiting or singling out the lawful and peaceful religious practice of millions of U.S. citizens and residents is certainly not narrowly tailored to advance any state interest.

Provisions that refer to "religious law" more generally, such as Arizona's House Bill 2582, are likewise unconstitutional, because they are also not neutral – their discrimination simply extends

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[31] The Free Exercise Clause also works to protect an individual's right to avoid the imposition of religious law unless he or she has voluntarily agreed to be subject to such a law or doctrine. A court can determine whether the parties voluntarily agreed to appear before a religious tribunal, such as a Jewish rabbinic tribunal, or to be bound by religious law or principles by using "neutral, objective principles of secular law." *See*, Stein v. Stein, 707 N.Y.S.2d 754, 759 (N.Y. App. Div. 1999); *see also* Avitzur v. Avitzur, 446 N.E.2d 136, 138 (N.Y. 1983) (citing Jones v. Wolf, 443 U.S. 595, 602 (1979)).

[32] The Constitution, however, also prevents courts from interpreting religious law or canon or deciding disputed questions of religious doctrine. For example, anti-fraud ordinances regulation the use of kosher designations have been found invalid under the Establishment Clause of the First Amendment when they would require courts to interpret and determine religious law (i.e., whether the food represented to be kosher was, in fact, kosher), as such a determination would result in "excessive entanglement" with religion. *See, e.g., Barghout v. Bureau of Kosher Meat & Food Control*, 66 F.3d 1337, 1349-50 (4th Cir. 1995) (Wilkins, J., concurring). As stated by Justice Brennan in *Serbian Eastern Orthodox Diocese v. Milivajevich*, 426 U.S. 696, 709 (1976), "[W]here resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them."

[33] *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993).

to *all* religious beliefs.[34] Even facially neutral provisions that do not refer to religious law at all may also be unconstitutional if their object is to restrict or infringe on religious practices.[35] Otherwise, neutral provisions will pass First Amendment scrutiny only if they are found to have a rational basis and to be narrowly tailored.[36] However, as discussed further in Section III, they remain unnecessary additions to existing law.

D. Violation of the Full Faith and Credit Clause

Finally, such Bills and Amendments violate the Full Faith and Credit Clause of the U.S. Constitution to the extent that they seek to refuse to enforce a judgment from another state court if that state includes religious law, "foreign" law, or "international" law in making judicial decisions. This is the case in Oklahoma's amendment, which would permit its state courts to uphold the decisions of courts in other states only "provided the law of the other state does not include Sharia law, in making judicial decisions."[37]

It is unclear how, after enactment, a court in the states with the new legislation would determine whether another state's law "included" prohibited "Sharia," "foreign," or "international law," and how broadly these terms might be interpreted. Would a state in which a will was probated that allowed for the distribution of the estate in accordance with a religious legal tradition (such as Sharia or a Rabbinical court ruling) be considered to "include" "foreign" law in its judicial decisions for purposes of these amendments? Would a marriage recognized under New York law because it was solemnized according to Sharia, Christian canon, or rabbinical rules be recognized? Would billions of dollars worth of sovereign wealth funds that operate around the world but were organized under New York state law and recognized Sharia legal principles have to be restructured? While the exact parameters and processes under which such a determination would be made are unclear, and the law in this area remains unsettled,[38] a state's refusal to respect the judicial decisions of another state is a serious matter that may in many cases give rise to a constitutional violation.

III. Existing Law Already Provides Adequate Protections

Proponents of the Bills and Amendments argue that they are necessary to protect constitutional rights, preserve U.S. law and prevent that application of religious or foreign legal principles which are considered unfair, discriminatory or offensive to basic American values. That is not so; U.S. citizens are already protected by existing law.

It is a general principle of U.S. law that our courts will not give effect to foreign or religious laws or to rights based on such laws if doing so would be contrary to the settled "public policy" of the forum, would violate good morals or natural justice, or would otherwise be prejudicial to the

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[34] *Id.* at 532 ("At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.").
[35] *Id.* at 534.
[36] *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879 (1990).
[37] Okl. Enr. H.J.R. No. 1056, Section C.
[38] The area in which this is most clearly seen is in interstate conflicts regarding the recognition of same-sex marriages and civil unions.

forum state or its citizens.[39] Our courts (both state and federal) have more than sufficient legal tools to permit them to reject foreign or religious law and refuse to enforce foreign judgments that do not meet our fundamental standards of fairness and justice. Constitutional rights (such as those contained in the Bill of Rights) protect everyone in the United States, and all courts throughout the country are bound to respect them. Under our Constitutional order, these rights cannot be infringed, even where foreign or religious law has been chosen by the parties (for example by contract) or is otherwise applicable to them (for example, foreign law because of their foreign citizenship). This is true of all laws. Long ago, for example, the Connecticut Supreme Court held that the courts of Connecticut "will not enforce the law of another jurisdiction, nor rights arising thereunder, which are injurious to our public rights, or to the interest of our citizens, nor those which offend our morals or contravene our public policy, or violate our positive laws."[40] It is the same in Colorado, where foreign law will not be enforced where it is "contrary to public policy."[41] As will be seen, the laws of many other states are consistent.

This is a proper application of the doctrine of comity, which the U.S. Supreme Court has described as:

> 'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.[42]

Under our law, courts will decline to enforce the choice of a foreign law where the result would violate state or federal public policy. In this context, public policy is generally understood to include fundamental social values and morals, principles of justice, and public welfare; this concept permits a court to disregard the parties' choice of law and apply local law (the lex fori) instead when necessary to protect the policies and interests of the forum. For example, under California's choice-of-law principles, an agreement designating a foreign law will not be given effect if it would violate a strong California public policy or result in an evasion of a statute of the forum protecting its citizens.[43] Under Florida law, courts will not enforce choice-of-law provisions where the law of the chosen forum contravenes strong public policy.[44] Georgia law is similar: "[e]nforcement of a contract or a contract provision which is valid by the law governing the contract will not be denied on the ground of public policy, unless a 'strong case' for such action is presented."[45]

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[39] *See Loucks v. Standard Oil Co. of New York*, 120 N.E. 198, 201 (N.Y. 1918) (enforcement not required when it "would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal").
[40] *Christilly v. Warner*, 87 Conn. 461, 88 A. 711 (1913).
[41] *Gray v. Blight*, 12 F.2d 696 (10th Cir. 1940), cert. denied 311 U.S. 704 (1940).
[42] *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895).
[43] *See Kaltwasser v. Cingular Wireless LLC*, 543 F.Supp.2d 1124 (N.D. Cal. 2008), *aff'd* 350 Fed.Appx.108 (9th Cir. 2009).
[44] *See Maxcess, Inc. v. Lucent Technologies, Inc.*, 433 F.3d 1337 (11th Cir. 2005).
[45] *See Terry v. Mays*, 161 Ga.App. 328, 329 (1982).

A similar rule applies in respect of torts. As a matter of principle, U.S. courts will not consider actions based on a foreign cause of action the enforcement of which would be contrary to the strong public policy of the forum, nor will they apply foreign law to determine the outcome of a case when it would violate some prevalent conception of good morals or fundamental principle of natural justice or involve injustice to the people of the forum state.[46] In South Carolina, for example, the Supreme Court will not apply foreign law if it violates the public policy of South Carolina.[47]

Under U.S. law, judgments rendered in foreign nations are not entitled to the same "full faith and credit" protection that sister-state judgments receive under the U.S. Constitution. Thus, a state of the United States is free to refuse enforcement of a foreign judgment on the ground that the original claim on which the judgment is based is contrary to its public policy.[48] A foreign judgment need not be enforced, for example, if it was rendered under a system which does not provide impartial tribunals or procedures compatible with due process of law" or if the defendant did not receive notice of the proceedings in sufficient time to enable him to defend.[49] Versions of these uniform acts are in force in a majority of states, including Colorado (C.S.R. A. § 13-62-104 ("the judgment or the claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States"), Georgia (O.C.G.A. § 9-12-114), New York (McKinney's CPLR § 5304) and North Carolina (N.C.G.S.A. § 1C-1853).

Recognition of foreign marriages in the United States is for the most part governed by the principle that if the marriage is valid where performed or celebrated, it is valid in the U.S. unless violative of the public policy of the forum.[50] Some states provide for this result by statute.[51]

Courts will also refuse to enforce decisions made by religious tribunals when such decisions violate public policy or involve matters considered non-arbitral on public policy grounds, such as questions involving child custody.[52] Public policy considerations will also prevent courts from confirming awards by religious tribunals that would deprive a party of his or her constitutional rights or that attempt to usurp the state's prerogative in criminal matters.[53]

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[46] *See* Restatement (2d), Conflicts of Law §116.
[47] *Boone v. Boone*, 345 S.C. 8, 546 S.E.2d 191 (S.C. 2001).
[48] *See* Restatement (2d) Conflicts of Law §117.
[49] *See Hilton v. Guyot*, 159 US 113 (1895); *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406 (9th Cir.1995), cert. denied, 516 U.S. 989 (1995); *Bridgeway Corp. v. Citibank*, 201 F.3d 134 (2nd Cir.2000). See generally the 1962 Uniform Foreign Money-Judgments Recognition Act, 13 U.L.A. pt. II, at 39 (2002) and the 2005 Uniform Foreign-Country Money Judgments Recognition Act, 13 U.L.A. pt. II, at 5 (Supp. 2007).
[50] *See, e.g., Hesington v. Estate of Hesington*, 640 S.W.2d 824, 826 (1982).
[51] *See* Cal. Civ. Code Ann., § 63 (West 1998); Idaho Code Ann. § 32-209 (1997); Kan. Stat. Ann. § 23-115 (1997); Ky. Rev. Stat. Ann. § 402.040 (Michie 1984); Neb. Rev. Stat. § 42-117 (Revised 1995); N.M. Stat. Ann. § 40-1-4 (Michie 1994); S.D. Codified Laws § 25-1-38 (Michie 1992); Utah Code Ann. § 30-1-4 (1995).
[52] In many states, for example, custody and visitation issues are considered inappropriate for resolution by arbitration, religious or otherwise, although courts may sometimes support arbitral decisions on such issues unless they are found not to be in the child's best interest. See generally Elizabeth A. Jenkins, Annotation, *Validity and Construction of Provisions for Arbitration of Disputes as to Alimony or Support Payments or Child Visitation or Custody Matters*, 38 A.L.R.5th 69 (1996).
[53] *See, e.g., Hirsch v. Hirsch*, 774 N.Y.S.2d 48, 50 (N.Y. App. Div. 2004) (court refused to enforce rabbinic tribunal's decision directing wife to withdraw pending criminal complaint against husband).

III. Conclusion

Legislation that bars courts from considering foreign or international law or the entire body of law of a particular religion impose unconstitutional burdens on various constitutional rights, threaten to impinge American commercial interests, and are unnecessary additions to existing law. Accordingly, the American Bar Association should oppose the enactment of such laws.

Respectfully Submitted,

Salli A. Swartz
Chair

113A

GENERAL INFORMATION FORM

Submitting Entity: Section of International Law

Submitted By: Mike Byowitz and Josh Markus, Delegates, Section of International Law

1. **Summary of Resolution(s).**

This Resolution opposes federal or state laws imposing blanket prohibitions on the consideration or use of foreign or international law or the entire body of law or doctrine of a particular religion.

2. **Approval by Submitting Entity.**

Yes.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

No.

4. **What existing Association policies are relevant to this resolution and how would they be affected by its adoption?**

This Resolution does not affect any existing policies of the Association.

5. **What urgency exists which requires action at this meeting of the House?**

As indicated in the April 2011 issue of the ABA JOURNAL, legislators in 20 states are considering more than 40 bills that would ban or restrict the consideration or use of foreign, international or religious law in state courts. *The Law of the Land*, ABA JOURNAL 14 (Apr. 2011).

6. **Status of Legislation.** (If applicable)

More than 40 bills are now pending in various stages of the legislative process.

7. **Cost to the Association.** (Both direct and indirect costs)

None.

8. **Disclosure of Interest.** (If applicable)

N/A.

9. **Referrals.**

This resolution is being provided to other ABA entities for support.

10. **Contact Name and Address Information.** (Prior to the meeting)

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11. **Contact Name and Address Information.** (Who will present the report to the House?)

Michael H. Byowitz
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113A

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution opposes federal or state laws imposing blanket prohibitions on consideration or use of foreign or international law and the entire body of law or doctrine of a particular religion.

2. Summary of the Issue that the Resolution Addresses

Over the last year or so, an increasing number of state constitutional amendments and legislative bills have been proposed seeking to restrict or prohibit, in varying degrees, state courts' use of laws or legal doctrines arising out of international, foreign, or religious law or legal doctrines. Some such provisions have already been enacted, such as Tennessee's "American and Tennessee Laws for Tennessee Courts" bill, which was signed into law on May 13 2010, and Oklahoma's "Save Our State Amendment," which was approved by a majority of the state's voters on November 2, 2010, but which has not yet been certified due to a federal court's preliminary injunction based on the likelihood of its unconstitutionality. In approximately 20 states, some form of legislation that would impact the use or consideration of international, foreign or religious law has been introduced or is being considered for introduction in the state legislatures.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Legislation that bars courts from considering foreign or international law or the entire body of law of a particular religion impose unconstitutional burdens on various constitutional rights, threaten to impinge American commercial interests, and are unnecessary additions to existing law. The Policy would oppose the enactment of such laws.

4. Summary of Minority Views

Many of these legislative initiatives are aimed, either explicitly or implicitly, at Islamic or Sharia law. Some well-publicized decisions have understandably raised concerns. For instance, a trial court in New Jersey ruled that a husband, who was a Muslim, lacked the criminal intent to commit sexual assault upon his wife because "his desire to have sex when and whether he wanted to, was something that was consistent with his practices and it was something that was not prohibited." Others have observed that certain Sharia rules governing divorce, child custody, and inheritance, as applied in certain jurisdictions or interpreted in certain schools of Islamic thought, may discriminate against women in ways that would not be sanctioned by -- and indeed would often be illegal under -- the laws of this country.

Yet that very fact highlights the point that these anti-Sharia initiatives are duplicative of safeguards that are already enshrined in federal and state law. American courts will not apply Sharia or other rules (real or perceived) that are contrary to our public policy, including, in particular, rules that are incompatible with our notions of gender equality. Indeed, the New Jersey trial court decision referenced above was reversed by the Superior Court of New Jersey, which "soundly rejected" the lower court's "perception that, although defendant's sexual acts violated applicable criminal statutes, they were culturally acceptable and thus not actionable." *S.D. v. M.J.R.*, 417, 2 A.3d 412 (N.J. Super. 2010). In so ruling, the Court relied on long-standing precedent that the government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." *Id.* at 437 *quoting Employment Div., Dep't of Human Res. of Oregon v. Smith,* 494 *U.S.* 872, 885, 110 *S.Ct.* 1595, 1603, 108 *L.Ed.*2d 876, 889-90 (1990) (holding that the Free Exercise Clause did not require Oregon to exempt the sacramental ingestion of peyote by members of the Native American Church from Oregon's criminal drug laws).

While legislative initiatives that target specified conduct may be proper even if they run counter to the principles of a particular religion, such initiatives that target an entire body of religious doctrine or stigmatize an entire religious community, such as those explicitly aimed at "Sharia law," are inconsistent with the core principles and ideals of American jurisprudence.

Exhibit L

Alaska Catholic Conference

March 30, 2011

Representative Mike Chenault
Room 208 Alaska State Capital
Juneau, Alaska 99811

Dear Representative Chenault:

We are writing today to express our concerns on CSHB88, "An Act prohibiting a court, arbitrator, mediator, administrative agency, or enforcement authority from applying a law, rule, or provision of an agreement that violates an individual's right under the Constitution of the State of Alaska or the United States Constitution."

Within the Roman Catholic Church, we operate under Canon Law which could be considered "foreign law" as the bill is currently written. Passage of CSHB88 would impact decisions made by the bishops and or their canon lawyers on matters important within the church. For example, one of us could make the decision to close a parish within our jurisdiction, completely within the bounds of canon law. However, we could envision a situation where a suit gets filed by parishioners claiming the process that lead to our decision did not afford all of the constitutional protections to members of the congregation. This has happened in St Louis. A second example could be priests who could be canonically required to operate under Canon Law requirements that would have no bearing in a civil court.

However, of a larger concern is our Marriage Tribunals. The tribunals operate within the confines of Canon Law specifically in regards to marriages and divorces. The tribunal process allows for Catholic marriages, once the civil decisions are rendered, to be annulled allowing for remarriage within the Church at a future date. During the tribunal process often very personal information is shared about one person or the other in the marriage. Sometimes these people hold public positions within the community. While we respect civil law, the tribunal has nothing to do with civil law. This legislation could potentially allow for one party or the other to sue in civil court to obtain confidential information shared in the marriage tribunal office that had no bearing on a civil divorce case.

Alaska Catholic Conference of Bishops
Archdiocese of Anchorage • Diocese of Fairbanks • Diocese of Juneau
225 Cordova Street • Anchorage, AK 99501
Phone 907-297-7744 • Fax: 907-279-3885

We have contacted Bishops in other regions of the country where similar legislation has been introduced. We thought you might be interested to see the language that Arizona is currently considering within it's legislature. That link is: http://www.azleg.gov/legtext/50leg/1r/adopted/s.2064jud.pdf We have been assured by our lawyers that this legislation would not effect the Catholic churches ability to operate under the direction of Canon Law. We respectfully ask that you consider this language if this legislation will advance.

Sincerely,

+Roger L. Schwietz, OMI	+Donald Kettler	+Edward J. Burns
Archbishop of Anchorage	Bishop of Fairbanks	Bishop of Juneau

cc: House Judiciary Committee

Alaska Catholic Conference of Bishops
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Exhibit M

post-gazette.com LOCAL / STATE

Proposed state law draws religious criticism

Monday, December 12, 2011
By Ann Rodgers, Pittsburgh Post-Gazette

A proposed Pennsylvania law to ban courts from considering any "foreign legal code or system" that doesn't grant the same basic rights as the federal and state constitutions was drafted by an anti-Islam activist but is drawing fire from some Jews.

They believe House Bill 2029 could compromise the divorce cases of Orthodox Jews and religious matters that end up in civil court. To examine this, Deborah Fidel, executive director of the Pittsburgh Area Jewish Committee, organized a forum for 7 p.m. today at Rodef Shalom Congregation, Shadyside.

Scholars of Jewish, Islamic and Catholic law will discuss how their religious codes interact with civil courts.

The bill doesn't use the word "sharia" or Islamic law, as some versions in other states did, but it's the same movement, she said.

"In a rush to villainize Muslims, the people backing these bills aren't thinking through the ramifications," she said.

But the bill's critics don't agree with its proponents or each other on what it aims to do.

Its principal sponsor, state Rep. RoseMarie Swanger, R-Lebanon, said it would have limited application, primarily to protect women and children in custody cases. It exempts corporate and business contracts.

"I have read about some other states where foreign law has been creeping into the courts, especially family courts," she said. "I'm thinking of the Near East, where women are not highly regarded and don't have the same rights as men. If those women come here, I want them to have the same rights that we have."

She said the law only would apply if the foreign law denied constitutional rights at stake in the case. It wouldn't stop courts from otherwise considering religious rulings, she said.

That's not clear to Howard Friedman, emeritus professor of law at the University of Toledo whose blog, The Religion Clause, tracks freedom of religion issues.

"When the statute talks about not using another code that denies the rights and privileges granted under the United States Constitution, it's not clear whether that means that it somehow has to be related to this dispute," he said.

"If you read this literally, as long as there is anything that would be contrary to the constitution ... that [law] can't be considered. You've got a statute that probably has a lot of unintended consequences."

Opponents of the law say that American jurisprudence already forbids denying constitutional rights in favor of another code. One thing that all sides agree on is that religious law is sometimes at issue in civil courts.

Haider Ala Hamoudi, an assistant professor of law at the University of Pittsburgh and an expert on Islamic law, has worked on immigration cases where a judge must determine marital status based on religious law. He believes the bill prohibits any consideration of such law, and said women and children would be hurt by that.

He cited a woman married in India. Her husband obtained a sharia divorce under Muslim law and disappeared with another woman. The ex-wife then married a Marine and they moved to Pennsylvania, where she applied for citizenship through marriage.

"She had to show that she was not already married at the time she married the Marine. How could she do that without mentioning sharia?" he said.

Rabbi Scott Aaron, community scholar at the Agency for Jewish Learning in Squirrel Hill, said Orthodox Judaism doesn't recognize civil divorce, and women can't apply for a religious one. Their civil divorce settlements may require the husband to obtain a religious divorce. If he doesn't, the civil court sorts it out, he said.

Other cases, from state regulation of kosher food supervision to disputes over autopsies, often bring Jewish law into civil courts, he said.

There's disagreement over whether the bill could cause problems for Catholic canon law. In Alaska, where a similar law was proposed, the Catholic bishops said it could wreak havoc if a bishop closed a church and parishioners sued to keep it.

Theoretically that shouldn't happen, said the Rev. Lawrence DiNardo, vicar for canonical services in the Diocese of Pittsburgh and a former president of the Canon Law Society of America. Canon law differs from Jewish and Islamic law because it's an internal system, with no civil implications, he said.

In property litigation, the case would be based on a civil trust, not canon law, he said. No one can apply for a Catholic annulment without first obtaining a civil divorce.

Nevertheless, he thinks the bill is a threat.

"I believe that a law like this has the potential of restricting people's religious freedom and their exercise of faith," he said.

Rabbi Aaron agreed.

"When we start restraining access or even wisdom from [religious] legal systems, we are playing with fire constitutionally. We are really violating the basic tenets of what it means to be Americans. Jews, of all people, know that these things start with one community and it works its way out to others," he said.

The Becket Fund for Religious Liberty, which represents people of all faiths, hasn't litigated the issue but is concerned about similar bills proposed in two dozen states last year.

"We are concerned that if enacted, such a law might make it impossible, for example, for Orthodox Jewish courts to function. ... Since arbitration by religious tribunals of all faiths has gone on for decades in this country, it is unclear what problem these bills are trying to solve," said Eric Rassbach, deputy director at Becket.

The state bills are based on a model from the American Public Policy Alliance. Stephen Gele, an attorney and spokesman for the group, said it wouldn't prevent recognition of religious divorce unless that divorce violated fundamental American rights.

The model was drafted by anti-sharia activist David Yerushalmi, a New York attorney who presents use of sharia in the United States as a trojan horse intended to pave the way for a violent Islamic takeover. He's Jewish, but the Jewish Anti-Defamation League has castigated his work, citing a "record of anti-Muslim, anti-immigrant and anti-black bigotry."

Mr. Gele said the bill should be judged on its merits, not on opinions about its author.

It "isn't meant to prevent the practice of Islam as a religion," he said.

The disagreement over what the law will do shows that "the bill is a hodgepodge of poorly conceived words," said Gadeir Abbas, staff attorney with the Council on American Islamic Relations in Washington, D.C.

"The real purpose of this bill is to provide a forum for Islamophobic bigots to come to the state assembly hearing and say nasty things about Muslims."

In Alaska, prominent anti-Islam activists Pamela Geller and Robert Spencer testified at the hearing. Ms. Geller criticized stores that allowed Muslim cashiers to change jobs so they wouldn't have to handle pork and cases in which Muslim workers filed successful complaints seeking prayer breaks.

"These actions are merely devices in which to impose Islam on nonbelievers," she said.

Mr. Gele cites about 50 cases in which courts upheld sharia in family disputes to the detriment of women, though most were reversed on appeal. Among those overturned was a New Jersey case in which a husband beat and raped his pregnant wife, but the trial judge denied her a restraining order on the grounds that it would violate his religious rights under Moroccan sharia.

A Maryland custody case upheld by the appellate court concerned a Pakistani wife and mother who fled to America with their 7-year-old daughter. When her husband found them several years later she refused to appear in Pakistani family court, citing fear of execution.

The Maryland appellate court voted 6-2 to uphold a Pakistani verdict giving custody to the father.

"That little girl was sent back to Pakistan. The courts did not do the right thing," Mr. Gele said.

But Mr. Hamoudi said the custody case didn't place sharia law above U.S. law. It held that the Pakistani court used the same "best interest of the child" standard that American courts do.

"They found nothing against Maryland policy in the [Pakistani] decision, which granted custody to the father against a mother who effectively kidnapped the child," he said.

The proposed law isn't needed because "American courts do not enforce judgements based on foreign law, whether that's sharia-driven or otherwise, if those judgments do not comport with American standards of fairness," Mr. Hamoudi said.

The other cases were overturned because "judges do make mistakes, which is why we have appeals," he said.

But Mr. Gele said mistakes show a need for a law, because many victims can't afford to appeal.

The medieval scholars who codified sharia minimized the possibility of draconian penalties, Mr. Hamoudi said. To convict someone of adultery required four eye-witnesses to the precise act of penetration.

"The general view by modern Muslims has been that it is very difficult to enforce any of this Islamic criminal punishment and that the classical authorities really didn't intend them to be carried out because they created such stringent evidentiary rules," Mr. Hamoudi said.

Some modern Islamic movements in Iran and elsewhere have enacted the penalties in an ideological reaction against western influence, he said. Cutting off hands of embezzlers is "more a matter of identity politics than of application of the law," he said.

He believes identity politics also drives these bills.

"There is an intolerance of members of the community who happen to adhere to the Islamic faith," he said.

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Exhibit N

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Pa. bill attacked as being 'Islamophobic'

December 15, 2011 | By Michael Matza, Inquirer Staff Writer

A rabbi, an interfaith leader, and a Temple University professor joined the Council on American-Islamic Relations (CAIR) on Wednesday to denounce as "Islamophobic" a Pennsylvania bill they say is an attack on sharia law, which is followed by devout Muslims.

House Bill 2029, introduced by Rep. Rosemarie Swanger (R., Lebanon), says state courts shall not, in deciding cases, "consider a foreign legal code or system" that lacks "the same fundamental liberties" as the state and federal Constitutions.

The language is plain and seems innocuous. Swanger's June 14 letter promoting the bill to her colleagues, however, repeatedly mentioned sharia law as a menace.

"Increasingly, foreign laws and legal doctrines - including and especially sharia law - are finding their way into U.S. court cases," she wrote. "Invoking sharia law, especially in family law cases, is a means of imposing an agenda on the American people."

In her October memo to colleagues, Swanger warned of "infiltration of foreign legal doctrine" but made no mention of sharia.

Critics say her bill is based on a model of legislation, introduced nationally two years ago, that has had the effect of ostracizing Muslims.

Separately, the Anti-Defamation League of Eastern Pennsylvania, a Jewish antibias group, also criticized the bill.

Since 2009, more than two dozen states have considered measures to restrict judges from consulting sharia, or foreign and religious laws more generally.

"This bill feeds the perception that Muslims are anti-American foreigners," CAIR's Philadelphia chapter director, Moein Khawaja, said at a Center City news conference. He called on Gov. Corbett to veto the bill if it reaches his desk.

"You seldom see such direct evidence of discriminatory purpose, particularly in a public document," said CAIR attorney Amara Chaudhry, waving a copy of Swanger's June memo. Nor, she added, is the bill needed, because the Supreme Court has ruled that religious laws cannot be used to circumvent generally applicable civil laws.

In a telephone interview from Harrisburg, Swanger's aide, Lily Horst, said the critics were misinformed about the bill's intent. Swanger was not immediately available for comment.

Sharia is the process by which Islamic jurists, using the Koran and the sayings of Muhammad, attempt to determine God's will in every aspect of Muslim life. Unlike the U.S. Constitution, it is not a single, universally applied document.

U.S. courts are frequently called on to interpret foreign law in international commercial disputes. They interpret Jewish, Muslim, and Catholic canon law as well.

Speaking at the news conference, Rabbi Linda Holtzman of Philadelphia's congregation Mishkan Shalom said she feels in the June memo for the Pennsylvania bill "the echoes . . . of Germany in the 1930s," when Jewish law repeatedly was defamed "as a means of defaming all of Jewish tradition."

Even if the bill is ruled unconstitutional, said Vic Compher of Philadelphia's Interfaith Walk for Peace and Reconciliation, Muslims will have been harmed because the legislative process creates "a forum for Islamophobic rhetoric."

Khalid Blankinship, a professor of religion at Temple University, said America's Muslim population is smaller than 1 percent.

"The purpose of the sharia law for the Muslims," he said, "is regulating matters [of marriage, inheritance, etc.] among themselves . . . just as the Jewish law practiced by Orthodox Jews is for that very purpose."

Responding to a question about sharia being used to mete out gruesome punishments in some parts of the world, such as Afghanistan under the Taliban, he said that could never happen in the United States.

Gadeir Abbas, an attorney with CAIR's headquarters in Washington, said the bill introduced in Pennsylvania is based on legislation written by a Jewish lawyer from Brooklyn, N.Y., who has a history of controversial statements about race and immigration.

Such bills, he contended, are "vehicles for stigmatizing" American Muslims.

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Exhibit O

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Sharia law as bogeyman

December 21, 2011 | By Patrick Kerkstra

Osama bin Laden is dead, al-Qaeda is reeling, Middle East dictators are deposed seemingly every other Tuesday, and yet, in the fevered and delirious minds of far too many of our elected leaders, the United States is forever on the verge of becoming just another province in the ever-expanding Muslim caliphate.

Never mind that the last actual caliph lost that title back in 1922, when the Ottoman Empire dissolved. Or that most estimates put the Muslim population of the United States at less than 1 percent. For those determined to live in fear of Muslims, those facts are irrelevant, and the only thing preventing the United States of America's Western character from being utterly overwhelmed by Islam is eternal vigilance.

Just ask Newt Gingrich, whose two-week run atop the Republican presidential field seems to be nearing a predictable and merciful end. Last year, he described sharia law -the moral and religious law of Islam -as a "mortal threat to the survival of freedom in the United States."

We've come to expect that kind of hysteria from Gingrich. But he's hardly alone. Increasingly, sharia law is becoming a mainstream bogeyman. Since 2009, more than two dozen states have considered legislation to ban state judges from considering sharia law in their rulings.

Now, Pennsylvania is among them. In November, State Rep. RoseMarie Swanger (R., Lebanon) introduced House Bill 2029, which says that state tribunals "shall not consider a foreign legal code or system" in their deliberations.

Swanger's bill -which has at least 42 cosponsors - does not explicitly mention sharia law, but it might as well. Back in June, before the bill was introduced, a memo with Swanger's signature was circulated among members. It called sharia law "inherently hostile to our constitutional liberties" and "a violation of the principles on which our nation was founded."

Swanger says the memo was written by committee staff and published under her name in error. She has since released a second legislative memo that does not explicitly single out Sharia law. But she doesn't deny that sharia is what has her and her colleagues spooked.

"I am concerned about women's rights. Everyone knows under sharia law, women don't have rights. They're property," Swanger said.

That's not entirely true, but I get her point. The sort of sharia law practiced by the Taliban in prewar Afghanistan is utterly abhorrent. And there's no room in American culture or courts for the strict sharia law that governs, say, Saudi Arabia.

But these comparisons are next to useless for a few reasons. For one, sharia law isn't a monolith, nor is it just a legal code. For many Muslims, particularly in the United States, sharia is primarily considered a set of moral principles, not legal ones. Second, there are some instances where it may make sense to consider sharia customs. For instance, a practicing Muslim might wish to have his assets divided after his death according to sharia tradition. Are you really prepared to deny him the right to choose his heirs as he pleases simply because sharia is a scary word for some Westerners?

Interestingly, a number of Jewish groups have opposed the anti-sharia movements almost as vocally as Muslim organizations, largely out of fear that the legislation could infringe on the use of Halakha, Jewish religious law, which some Jews have used to settle disputes in the United States through arbitration.

The biggest reason, though, to reject the anti-sharia movement is that it is built on a foundation of fear and prejudice, and not on evidence that courts in the United States are being subverted by foreign legal theories.

There are two cases (two!) that the sharia fearmongers most often cite when they talk about creeping Islamization of the American justice system. One was a Florida case involving a dispute between current and former trustees of a Tampa Bay mosque, in which the judge had said he would try the case under "ecclesiastical Islamic Law." That same judge reversed himself last week and dismissed the case.

Also cited is a New Jersey ruling from 2010 in which a judge denied a restraining order for a woman who said she had been repeatedly raped and assaulted by her husband. The judge found that the husband believed his wife must submit to his sexual demands under Islamic law, and thus lacked criminal intent.

That's reprehensible. And guess what? The decision was reversed on appeal, which is exactly what's supposed to happen when judges get it wrong. But for the anti-Islam warriors among us, these two cases, plucked from the untold tens of thousands tried in American courts each year, somehow warrant a national assault on sharia. All in the name of the separation of religion and state, of course.

One wonders if these Western warriors will still have enough time left over after beating back the sharia menace to devote their usual energy to the War for Christmas. We can only hope. After all, somebody has to go the mat for the right to put the Nativity scene on public land.

Bill seeks to limit religious law in PA courts

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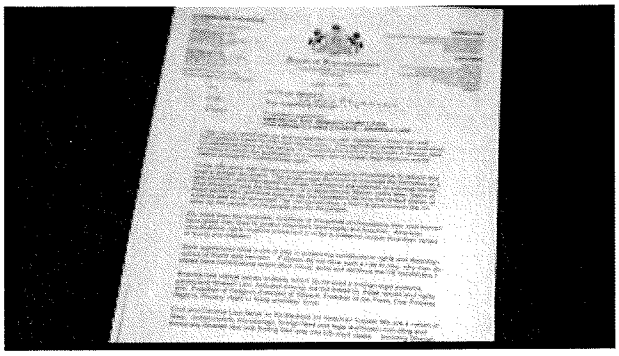

Bill seeks to limit religious law

Should religious law have any place in Pennsylvania courtrooms? One state lawmaker says no, and she's pushing a bill in Harrisburg to ban them.

State Rep. RoseMarie Swanger, R - Lebanon Co., said she's only trying to protect women's rights in divorce and custody cases, but interfaith leaders claim the bill is vague and violates their religious rights.

"This proposed legislation is simply unconstitutional," said Amara Chaudhry, an attorney and civil rights director for the Philadelphia Council on American-Islamic Relations (CAIR).

Jewish and Muslim leaders held a news conference Wednesday to protest the bill.

Swanger's bill would ban Pennsylvania courts from considering any "foreign or religious code" that doesn't afford the same rights as the U.S. Constitution.

"Under some foreign law, some women have very little right as far as custody of children," said Swanger. "Some foreign law says there's no question, the father will always get custody of the children."

Religious leaders argue the bill is vague.

"The term used by the bill 'foreign law' seems to be pretty vague," said Ben Davis, Outreach Director for the Jewish Federation of the Lehigh Valley.

Davis and others said the law, if passed, could lead to unintended consequences.

"Some examples would be the labelling of kosher food, laws related to performing autopsies on Jewish people, and laws related to divorce and other civil matters," he said.

"In a rush to villainize Muslims, those backing these bills just aren't thinking through the ramifications," added Philadelphia Rabbi Linda Holtzman.

Five states have already passed similar laws; CAIR successfully blocked a similar bill in Oklahoma last year. Sixteen other states, including New Jersey, have rejected such laws.

Religious leaders accused Swanger of targeting Mulisms for discrimination. In a memo distributed to

Pennsylvania House members, she called Muslim law "hostile" to the American constitution.

"When I saw this memo right here, I was stunned," said Chaudhry. "As a lawyer, you seldom see such direct evidence of discriminatory purpose, particularly in a public document."

"That's ridiculous," countered Swanger. "Here in America, we have rights and everybody should have those rights. I don't care if you're an atheist or a Muslim, a Jew, anybody."

Opponents also said the law isn't even necessary. Swanger could not provide specific examples of religious law altering a court case's final outcome, although national proponts haved noted rulings that were later overturned on appeal. Several divorce attorneys told us they've never seen it happen either.

Pennsylvania House Bill 2029 is currently in the Judiciary Committee. Read the text of House Bill 2029.