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Representative Carl Gatto

HB 88 Use of Foreign Law

HB 88 aims at preventing "a court or other enforcement authority" from enforcing foreign law in Alaska. The bill will preempt violations of an individual's constitutional rights resulting from the application of foreign law.

America has unique values of liberty which do not exist in foreign legal systems. Yet foreign laws are increasingly finding their way into U.S. court cases, particularly in the area of family law, involving divorce and child custody.

According to Christopher Holton with the Washington, DC-based Center for Security Policy (CSP), "There are numerous examples in dozens of states in which parties to such a dispute attempted to invoke sharia." David Yersushalmi, general counsel to the CSP, argues it's not just "patently bad foreign laws [creeping into our court systems]," it's that once in the system, the state's police power would be used to "enforce laws that could never pass federal or state constitutional muster."

HB88 offers 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 Alaska constitutional law because it criminalizes apostasy (violation of Free Exercise 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 sharia 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, and Yemen. 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.

Alaska, like other states, recognizes the growing need to emphasize the fact that our state and U.S. constitutions are the fundamental basis for civil law for everyone in our country. To those who are accustomed to their religion and their civil laws being inextricably connected, we must clarify that all individual rights are guaranteed and protected under the Constitution of the State of Alaska and the United States Constitution.

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