AMERICAN LAWS FOR AMERICAN COURTS (ALAC)

FAQ, ISSUES AND OBJECTIONS

1. **This bill is not needed because it states what is already reality in state courts**

First, this is not true. Most states merely state that foreign laws and judgments that violate the state's "public policy" shall not be recognized. But the courts consistently rule that the state legislature has the responsibility to articulate clearly what the state's public policy actually is. For the state to make clear that comity, choice of law, and choice of venue issues must still safeguard fundamental state and federal constitutional rights is precisely the role of the state legislature.

Second, there are actually hundreds of cases on the books in which foreign laws and foreign legal doctrines were invoked by parties to a dispute. In many cases those foreign laws and foreign legal doctrines are anathema to our constitutional ideals.

2. **This bill is not needed because shariah is not a threat in the US and is not in our court systems.**

The Act is not simply about shariah but also transnationalism—or the documented creep of foreign and offensive laws being recognized by state and federal courts. More, shariah has already creeped into the legal systems of Western Europe, including 85 shariah courts operating openly with the full authority of law in the United Kingdom. There are numerous cases in which shariah doctrines have been invoked in the US. Here is a sampling of 17 examples from 11 states:

http://publicpolicyalliance.org/wp-content/uploads/2010/11/Shariah_Cases_11states_11-08-2010.pdf

3. **This bill interferes with foreign treaties.**

By operation of law this cannot be. Treaties, when signed by the President of the United States and ratified by the United States Senate, are the law of the United States, and not foreign law. Thus, the *Act*, or a specific application of the *Act*, could not by operation of the Supremacy Clause affect in any way a treaty.

Some uninformed critics of the Act assume, without citation, that certain ratified treaties require the enforcement of foreign judgments or the application of foreign law in contradiction with the *Act*. Although some treaties address the treatment of foreign arbitral awards or child custody judgments, all of these treaties have an exemption when the foreign tribunal enforces a law that violates the fundamental public policy of the domestic

state. This is also the common law and state statutory rule for recognizing foreign judgments of any kind not affected by federal treaty or federal preemptive statutes.

The Act articulates what the boundaries are for the state's important public policy—to protect fundamental state and federal constitutional liberties.

Further, state courts consistently hold that it is up to the state legislature to set the state public policy in the first instance.

4. **This bill restricts the right to contract.**

The right to contract is not unlimited. The state may legitimately restrict the right to contract if the contract is found to have some deleterious effect on the public or to contravene some other matter of public policy. As the Supreme Court has noted, a state's police power to protect the health and safety of its citizenry in the area of contract law not touching upon a suspect class is subject to a rational basis scrutiny—does the state law have any rational basis.

Innumerable regulations exist governing contractual provisions, including choice of law and forum selection clauses. For an impairment of a contract to violate the constitutional right to contract the state regulation must constitute a substantial impairment, and no significant and legitimate public purpose may justify the regulation. The requirement of a legitimate public purpose is primarily designed to prevent a state from embarking on a policy motivated by a simple desire to escape its financial obligations or to injure others through the repudiation of debts or the destruction of contracts or the denial of the means to enforce them.

It is patently clear that the Act—which merely sets fundamental state and federal constitutional liberties as protectable interests—is constitutional.

Indeed, all of the state courts and the federal courts have allowed such impairments of contract when the provisions violate the public policy announced in statutes.

Moreover, American Laws for American Courts only restricts the right to contract in terms of enforcement. Theoretically, people can contract for whatever they want to, on whatever terms. Obviously the only time the state gets involved with regard to policy is when there is a dispute and the parties go to the courts to resolve and enforce. In this case it is properly the role of the state to protect constitutional liberties.

5. **This bill impacts "comity" and violates the Full Faith & Credit Clause of the US Constitution**

The Full Faith & Credit Clause only applies to sister states. Moreover, even sister states may deny comity if the sister state's foreign judgment violates the domestic state's public policy. In the context of the Act, however, only foreign country judgments are at issue. All state courts have ruled, as has the U.S. Supreme Court, that foreign judgments from aboard are subject to the public policy of the state granting comity.

Even in the case of granting domestic arbitral awards comity or recognition in state courts, the Federal Arbitration Act permits states to preclude granting comity or recognition if the arbitral award was based on a decision process or law that was contrary to public policy.

6. **This bill interferes with business activity and commerce and thus would adversely impact economic development in the state.**

Protecting the fundamental constitutional rights of the citizens of a state does not adversely impact commerce or business. In fact, quite the contrary. Our free enterprise system was built upon the fundamental liberties in our constitutions and thus preserving them protects free enterprise.

Specifically, state courts have consistently refused to allow parties to enter into agreements that violate public policy. Moreover, a party to a contract does not typically knowingly waive his/her/its fundamental constitutional liberties. The question the courts consistently ask is whether the contract waiver was entered into knowingly and at arm's length. Courts consistently reject waivers of a parties statutory or inherent rights when the parties are not equally sophisticated and where there is evidence that the contract was an adhesion contract more or less forced upon the waiving party.

If these protections are applied to statutory or inherent rights, a fortiori they apply to is a purported waiver of a fundamental constitutional liberty.

Thus, in the case of two businesses entering into a contract and one business waiving its constitutional protections, at the very least any amendment to the Act should limit such waivers only to cases where all of the parties to the contract are businesses and the waiving party has expressly waived its fundamental constitutional liberties protected by the Act.

Nevertheless, because so many of the cases involving foreign laws that violate constitutional rights infiltrating our state legal systems involve family law, particularly the rights of women and children, appropriate language can be included to exempt businesses and corporations without destroying the intent of American Laws for American Courts.

7. **The business exemption language used in some states violates the equal protection clause of the constitution.**

The *Act* would not likely be struck as violative of "equal protection" simply because it exempts contracts involving corporations. There is no "protected class", such as race, religion, sex or even age, affected by distinguishing individuals from corporations, that would require "strict scrutiny" by the judiciary. All the legislature requires is a "rational basis" for the distinction, the lowest level of judicial scrutiny. As constitutional rights affecting individuals rationally receive greater concern than rights of businesses, and businesses tend to be more sophisticated in entering contracts, the legislature has a rational basis for making the distinction and allowing businesses to contractually waive rights when submitting to foreign law, but individuals to not.

8. **Provisions of this bill would violate the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).**

The UCCJEA only applies to foreign child custody judgments for those foreign countries not "contracting parties" to the Hague Child Abduction Convention. The UCCJEA specifically exempts states from granting comity or enforcing a foreign child custody judgment or foreign jurisdiction when doing so violates "fundamental principles of human rights." It is hard to imagine how fundamental state and federal constitutional liberties are not fundamental human rights in the context of state law.

And, even among the contracting parties to the Hague Child Abduction Convention, the treaty exempts cases where the foreign jurisdiction or judgment would violate the public policy of the domestic jurisdiction.

9. **This bill could violate the federal Parental Kidnapping Prevention Act (PKPA)**

The PKPA does not apply to foreign jurisdictions. It applies within the US between the states.

10. This bill would violate international treaties dealing with child custody, namely the Hague Convention.

As noted above, the Hague Convention itself provides a public policy exemption. Beyond this, as a treaty entered into by the federal government, the Hague Convention is federal law and cannot be trumped by state law. There is no way for ALAC to do so. Moreover, it is important to note that the only country that employs shariah in its legal system that is a member of the Hague Convention is Morocco. The following countries are some that are not parties to the Hague Convention, thus it does not apply to US relations with them:

- Egypt
- Iran
- Pakistan
- Saudi Arabia
- Syria
- Jordan
- Libya
- Sudan
- Somalia
- Algeria
- Lebanon
- Indonesia
- Afghanistan
- Iraq
- India
- Bangladesh
- Nigeria
- Kuwait
- Bahrain
- Qatar
- Tunisia
- Yemen
- United Arab Emirates
- Oman

11. This bill would interfere with English Common Law

To the extent that English Common Law forms the foundation of our legal traditions, it is not a foreign law. Moreover, all states have by statute or by "common law" adopted the common law as adopted by the courts in that state to be part of state law and thus not foreign.

Moreover, this bill does not ban all foreign or international law, just the use of such law when it would violate the constitutional rights of someone in the state AND specifically applied in the particular case. The fact that a country like Germany or China might have some law that violates our constitutional liberties is wholly irrelevant. It only becomes relevant if the particular offensive law is the law at issue in the particular case being litigated in the domestic state court.

12. This bill would open up states that pass it to expensive law suits

This legislation already passed in two states in 2010 with no legal challenges. There is no basis on which to challenge a law which seeks to safeguard individual constitutional rights as its express purpose. Indeed, it is absurd to even suggest such a proposition. A state might be sued if it does NOT protect fundamental state and federal constitutional liberties.

13. This bill would interfere with Native American tribal law

Federal law, in the form of treaties with Native Americans, preempts state law. Thus, ALAC would not because it could not as a matter of law affect those federal laws. If absolutely necessary, language can be inserted in ALAC expressly confirming this.

14. This bill would interfere with Jewish law

This bill 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. This is not the case with Jewish law.

15. ALAC unfairly targets Muslims

Nothing in the ALAC bill prevents any person from freely exercising his or her right to freedom of religion and worship. ALAC only applies to legal doctrines in our court systems. Furthermore, ALAC is facially neutral. It does not discriminate in any way based on faith of any kind. The bill makes no mention of Islam or Muslims and is not even principally focused on religious law, but any foreign law that violates constitutionally protected liberties.