

Concerns Regarding Idaho State Legislature Senate Bill 1067

In principle, Senate Bill 1067 is a piece of legislation that seeks to reduce the financial burden on the Idaho tax payer through improved enforcement of American child and family maintenance support orders and the recovery of support remunerations from responsible parties living in those foreign legal jurisdictions that are party to the 2007 Hague Convention.

Significant Concerns Regarding This Bill

1) The clear purpose of this bill is to include the specific acceptance of rulings from a “**foreign country,**” or “**foreign tribunal,**” that deal with “parentage of a child” (ex. pg. 4, line 12 section 7, line 37 section 12, line 39 section 13, line 41 section 14, line 47 section A), child support and spousal support orders. There is NO SPECIFIC LANGUAGE in the bill that would protect the rights of those dealing with parentage, child support and support orders from a foreign country that would contradict our laws here in Idaho.

2) Page 20, line 3, section 35: **CHOICE OF LAW:** It states that “except as otherwise provided in subsection (4) of this section, the law of the issuing state or **foreign country governs.**” This is troubling language that would open the door for the application of foreign law in the State of Idaho. There is NO WHERE in this bill that specifies that no foreign law or ruling in a foreign tribunal can be used in Idaho if that foreign law violates our constitutionally protected rights.

- It is for this very reason that 8 states have passed laws (American Laws for American Courts) prohibiting the use of foreign law in our courts and in those states if they are found to violate our constitutionally protected rights.
<http://www.usatoday.com/story/news/nation/2013/08/04/states-ban-foreign-law/2602511/>
- This protection would apply to all Americans who seek lawful protection under our Constitution and way of life. This would include Muslims who would expect to have protections here in America based on our laws, not based on the laws of a foreign country, particularly one governed under Islamic law.

3) If the passing of this bill is mandatory according to the “Statement of Purpose,” why was it introduced so late in the session? Why so late when it has not allow the time for legislators to properly and affectively read and understand the ramifications of this 31 page bill?

4) Page 4, line 3, part (b) under the definition of a “foreign country,” states that section 7-1023, of the Idaho Code deals with “reciprocal arrangement.” Section 7-1023 states that the determination of the “foreign country” is under the purview of the Attorney General of the State of Idaho. Why would the legislature pass a bill written by the Department of Health and Welfare that would give up their authority for oversight and hand it to the AG?

5) Page 4: Line 12 (7) defines a "Foreign tribunal" as "a court, administrative agency or quasi-judicial entity of a foreign country which is authorized to establish, enforce or modify support orders or to determine parentage of a child."

- **"quasi-judicial entity of a foreign country":** There are some of the reciprocal countries in the treaty such as Bosnia & Albania (http://www.hcch.net/index_en.php?act=conventions.status2&cid=131) that are Muslim controlled countries and governed under Islamic Law. Islamic law does not protect the rights of the child or of the mother as does our laws. (Ex. In an Islamic tribunal governed by Shari'ah, a women does not have the right to custody of her children unless granted to her by her husband)
- There are other countries on the treaty list such as the UK (with over 85 Shari'ah compliant tribunals as of 2009 <http://www.theguardian.com/uk/feedarticle/8581818>), France, Belgium, Netherlands, that have recognized Shari'ah Courts as quasi-judicial entities and have granted them permission to adjudicate lower court cases and for the decisions of those cases to be honored by the state judicial system.
- Would the rulings of these "foreign tribunals" be accepted in the jurisdiction of the State of Idaho? If such, would this not open the door to foreign law and particularly Islamic law (Shari'ah) in Idaho tribunals?
- To what degree would Senate Bill 1067 obligate Idaho residents to accept decision(s) of a "foreign tribunal" that do not share the common values regarding individual/human rights. Of particular concern are those foreign tribunals where cases would be adjudicated without due consideration to the rights of the child, mother or even the father. (Example: A child born in the United States, the custody being in dispute, is adjudicated by a foreign tribunal wherein the custody rights of a mother are considered secondary to the rights of the father as is the case in Islamic law.)
- If we become obligated to accept the decisions of foreign tribunals as those discussed above, it appears we have on the basis of precedence opened the door to foreign law or particularly Shari'ah Law in Idaho.

6) Since Idaho is not one of the 8 states that has passed legislation to protect its courts and laws from foreign law, it would appear that this bill is opening the door for the acceptance of the laws of foreign nations or foreign tribunals, particularly in the areas of parentage, custody, financial support orders for children and for the spouses.

Recommended Action: For all the above reasons and more that can be articulated given more time, there are significant concerns with this legislation as is and the recommendation would be to not pass this bill in the current session. It would be prudent to take time to rework this legislation and present it in a subsequent session. This would allow the necessary time for legislators to have a greater opportunity to fully study the bill and propose better language that would accomplish the main purpose of Senate Bill 1067 while working to protect the State of Idaho and its citizens from the application of any foreign law.

References:

Many states have introduced legislation that prohibits the use of any foreign law in American courts. Map of states and legislation

<http://www.usatoday.com/story/news/nation/2013/08/04/states-ban-foreign-law/2602511/>

The legislation, entitled American Laws For American Courts, has been passed in at least the following states:

Alabama (SB4, November 2014)

Arizona (HB2064, May 2011)

Florida(SB386)

Kansas (SB79)

Louisiana (HB785, June 2010)

North Carolina (July 2013)

South Dakota

Tennessee (HB 3768, April 2010)

Mayor of Irvine, Texas passes city ordinance banning foreign law in their city in direct opposition to the first of its kind Islamic Tribunal in America. <http://www.bizpacreview.com/2015/03/24/our-laws-not-sharia-female-mayor-tells-unhappy-muslims-respect-them-obey-them-embrace-them-189525>