

ARAB AMERICAN INSTITUTE

ANTI-SHARIA BILLS IN U.S. STATE LEGISLATURES

Background

David Yerushalmi is a lawyer, political activist, and the primary force behind anti-Sharia movements in the United States. In 2007, Yerushalmi pushed for legislation to make adherence to personal religious observances known as “Sharia” a felony with a twenty-year prison sentence. Unsuccessful in his first attempt, in 2010 Yerushalmi authored the model text for an anti-foreign law bill that state legislatures across the country would use, nearly verbatim, to expressly prohibit the use of all foreign law in American courts. Known as the American Laws in American Courts Act this initiative is a thinly veiled attack on religious freedom and rife with anti-Arab and anti-Muslim bigotry.

Since 2010, 35 states in the U.S. have either outlawed, or are in the process of outlawing, the legal application of foreign law in their judicial system. These efforts are a waste of time and legislative attention; and unnecessary given Sharia’s limited application by adherents to personal affairs such as fasting, prayer, marriage, divorce, inheritance, and guardianship. Legislators supporting these bills argue they are meant to protect the United States from terrorism and safeguard Judeo-Christian values, but proponents have failed to site any instance in which personal Islamic observances have threatened U.S. laws in any way. The targeting of Sharia law undercuts American democracy, disregards our country’s longstanding history of religious tolerance, and establishes a dangerous division between America and its fastest-growing religious minority.

There are also serious legal implications for other religious groups and businesses. Orthodox Jews, for example, often have divorce cases mediated by a religious arbiter and request that the courts adopt the decision; this would be explicitly illegal under anti-foreign law bills. The same legislation also interferes with the process of international adoptions, international business, and matters of contract law.

Current Bills in State Legislatures

2010 marked the first year in which state legislatures (Louisiana and Tennessee) officially enacted bans on the use of foreign law. Between 2011 and 2014, six more states followed suit (Alabama, Arizona, Florida, Kansas, North Carolina, and South Dakota). 28 other states have seen legislative attempts to ban foreign law in their state houses, but the bills have failed to pass into law. Those states are: Alaska, Arkansas, Georgia, Indiana, Iowa, Kentucky, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

The following states are currently considering legislation to ban foreign law, which, in practice, will regulate personal conduct based on religious observances:

Indiana

- SB 38 was approved by the Senate on January 29, 2015 and subsequently referred to the House on February 3, 2015.
 - Legislative Language: “Provides that a court may not apply, enforce, or grant comity, res judicata, claim preclusion, or issue preclusion to a foreign law, ruling, or judgment if doing so would violate the fundamental liberties, rights, and privileges guaranteed by the Constitution of the United States or the Constitution of the State of Indiana...”

Kentucky

- HB 29 was introduced to the House on January 6, 2015 and has since been referred to the interim Joint Committee on Judiciary.
 - Legislative Language: “to establish legislative intent that the rights of an individual afforded under the Constitutions of the Commonwealth and the United States take precedence over the application of any foreign law in any judicial or quasi-judicial proceeding...”

Minnesota

- SF 1264 was introduced and referred to the Judiciary committee on March 02, 2015.
 - Legislative Language: “The legislature finds that it is the public policy of this state to protect its citizens from the application of foreign laws when the application of foreign law will result in the violation of a right guaranteed by the U.S Constitution or Minnesota Constitution...”

Mississippi

- SB 2116 was referred to the Judiciary committee in January 2015 but died in committee shortly afterwards.
- HB 177 passed the House on February 4, 2015 and subsequently passed as amended in the Senate on March 4, 2015. On March 23, 2015, the Governor approved the bill.
 - Legislative Language: “an act to address the application of foreign laws in judicial proceedings in this state ... to prohibit the use and enforcement of foreign laws under certain circumstances...”

Montana

- SB 199 was voted on in the Senate Judiciary Committee on February 10, 2015 but failed to pass. It currently remains in the committee.
 - Legislative Language: “an act establishing the primacy of Montana law by prohibiting the application of foreign law when it violates a fundamental right guaranteed by the Montana or United States Constitution...”

New Hampshire

- HB 461 currently resides in the House Judiciary committee where it has been laid on the table, meaning that consideration of the bill will be postponed until further notice.
 - Legislative Language: “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 one of the following fundamental rights guaranteed by the constitution of this state or of the United States: due process, equal protection, freedom of religion, speech, or press, the right to keep and bear arms and any right of privacy or marriage as specifically defined by the constitution of this state...”

Oregon

- SB 176 was initially introduced in the Senate on January 12, 2015 and has been referred to the Judiciary committee since January 20, 2015.
 - Legislative Language: “A court of this state may not consider Sharia law in making judicial decisions.”

South Carolina

- S 101 was pre-filed in December 2014 and has since been referred to the Committee on Judiciary.
 - Legislative Language: “to prevent a court or other enforcement authority from enforcing foreign law in this state from a forum outside of the United States...”

Texas

- HB 670 was referred to the Judiciary and Civil Jurisprudence committee on February 26, 2015. The caption of the text reads, “relating to the application of foreign laws and foreign forum selection in this state.”
- HB 828 was sent to the Judiciary and Civil Jurisprudence committee on February 23, 2015.
 - Legislative Language: “to the application of foreign and international laws and doctrines in this state and requiring a court of this state to uphold and apply certain laws, including the doctrine requiring courts to refrain from involvement in religious doctrinal interpretation or application...”

Virginia

- SB 1318 was referred to the Committee for Courts of Justice but on January 21, 2015 the bill was voted down at the request of members of the Court
 - Legislative Language: “Provides that if a court, administrative agency, arbitrator, mediator, or other adjudicative or enforcement authority in a domestic relations matter bases its ruling or decision on the application of foreign law, and such ruling or decision violates an individual’s fundamental constitutional rights, then such decision is void as violative of the public policy of the Commonwealth...”

Washington

- HB 1246 has been in the House Judiciary committee since January 16, 2015. The bill seeks to “protect citizens from the application of foreign laws that would result in a violation of a constitutional right.”
- SB 5192 has been in the Senate Law & Justice committee since January 15, 2015 and seeks to ensure that courts cannot invoke “foreign laws, codes or system.”

West Virginia

- HB 2994 was introduced on February 24, 2015 and currently rests in the House Judiciary committee. According to a summary of the bill, it seeks to “prohibit courts from using, implementing, referring to or incorporating a tenet of any body of religious sectarian law into any decision...”