ALAC FAQ

Legislation > American Laws for American Courts
Frequently Asked Questions, Issues and Objections

1 . American Laws for American Courts 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 public policies and constitutional rights is precisely the role of the state legislature.

Second, there are actually many 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 directly opposed to our constitutional ideals and state public policy.

Details on examples of foreign laws being invoked in US court cases can be found in a study conducted by the Center for Security Policy: "Shariah Law and American State Courts." That study is available for free at the following web site:

http://shariahinamericancourts.com/

2 . American Laws for American Courts is not needed because shariah and other foreign laws are not in conflict with the Constitution and state public policy in the US, and no cases are in our court systems.

The ALAC Act is not simply about shariah and other foreign laws, but also transnationalism—or the documented creep of foreign and anti-public policy laws being recognized by state and federal courts. More, shariah has already entered into the legal systemsof Western Europe, including 85 shariah courts operating openly with the full authority of law in the United Kingdom. There are numerous cases inwhich shariah doctrines have been invoked in the US. The Center for Security Policy's recent study found 50 legal cases across 23 states, all published appellate cases, where shariah was either relevant or highly relevant to the arguments or outcome of the case.

3. American Laws for American Courts interferes with foreign treaties.

By operation of law this cannot be. Treaties, when signed by the President ofthe 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 ofthe Act, could not by operation of the Supremacy Clause affect in any way a treaty.

Some uninformed critics of American Laws for American Courts 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.

Furthermore, the model American Laws for American Courts language advising courts that they are not to use

American Laws for American Courts to create a conflict with any treaty or international agreement to which the USA is a party:

http://publicpolicyalliance.org/?page_id=170

American Laws for American Courts articulates what the boundaries are for the state' s important public policy—to protect fundamental state and federal constitutional liberties, 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 the state.

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

4 . American Laws for American Courts 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 ALAC 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, 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 the state.

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 American Laws for American Courts 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 abroad are subject to the public policy of the state granting comity.

Granting comity to a foreign judgment is thus 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.

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 . American Laws for American Courts interferes with business activity and commerce and thus would adversely impact economic development in a state.

Because the overwhelming majority 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 has been included in the model language to exempt businesses and corporations while still protecting individual constitutional rights, 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 the state:

“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.”

7 . The business exemption language used in American Laws for American Courts violates the equal protection clause of the constitution.

American Laws for American Courts 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 to provide greater protections for individuals’ rights, 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 the state.

8 . Provisions of American Laws for American Courts 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. Therefore there would no conflict for signatory juridictions.

9 . American Laws for American Courts could violate the federal Parental Kidnapping PreventionAct (PKPA)

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

10. American Laws for American Courts 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 memberof the Hague Convention is Morocco. Out of 193 sovereign nations worldwide, only 85 are signatories to the Hague Convention, so possible conflicts between foreign laws and state laws on child custody and abduction are widespread. Conflict of law cases in Japan in particular, and China, regarding child custody and state public policy are not uncommon, so foreign laws other than shariah are also relevant. The following countries are not parties to the Hague Convention and also adherent to Shariah law to varying degrees, particularly for family and personal status cases, and may have a conflict of law with state public policies:

• 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. American Laws for American Courts 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 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.

1 2. American Laws for American Courts would open up states that pass it to expensive law suits.

This legislation already passed in two states in 2010 (Tennessee and Louisiana) with no legal challenges, and another state so far in 2011 (Arizona), also 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.

1 3. American Laws for American Courts would interfere with Native American tribal law.

Federal law, in the form of treaties with Native Americans, preempts state law. Thus, ALAC does not apply to tribal law because it could not as a matter of law affect those federal laws. Moreover, language has been included in the model ALAC language expressly defining Native American tribal law as outside the scope of the ALAC legislation.

1 4. 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.

15. American Laws for American Courts 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, 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 the state.

In fact, Ibrahim Hooper, spokesman for the Council on American Islamic Relations, acknowledged the desirability of protecting American constitutional rights and liberties in a recent statement regarding efforts in France to impose a dress code on Muslim women:

> *"Our position is that no company doing business in America has the obligation to enforce discriminatory foreign policies on American employees," he said. "A discriminatory dress code implemented in France does not supersede American laws protecting the religious rights of American citizens."*
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> *It is ironic that while Muslims are being smeared for wanting to upend the constitution and institute sharia law, that we at CAIR are defending American law over foreign intrusion," Hooper said.*

http://www.fairfaxtimes.com/article/20110708/NEWS/707089736&template=fairfaxTimes