

Congressional Testimony of Stephen M. Gelé
before The United States House of Representatives
Subcommittee on the Constitution and Limited Government of the Committee on the Judiciary
“Sharia-Free America:
Why Political Islam & Sharia Law Are Incompatible with the U.S. Constitution”
Tuesday, February 10, 2026, 2:00 p.m.
Rayburn House Office Building, Room 2141

Thank you, Chairman Roy, Ranking Member Scanlon, and Members of the Subcommittee for inviting me here today to discuss: the phenomena of alternative, sharia law-based legal institutions; why the enforcement by American courts of decrees issued by such institutions would be inconsistent with the fundamental rights guaranteed by the United States Constitution; and potential legal remedies to prevent such violation of fundamental constitutional rights.

I am an attorney practicing in the State of Louisiana for over thirty-two (32) years. During the last seventeen (17) years, I have had the opportunity, largely on behalf of the Center for Security Policy, to research and study the interaction of foreign¹ law, including Islamic sharia, with American law.

The interaction of foreign law with American law in American courts arises in four (4) contexts: the enforcement of foreign judgments by American courts via comity²; the application of foreign law in American courts through conflicts of laws;³ the enforcement of choice of law clauses in contracts⁴; the enforcement of forum selection clauses in contracts;⁵ the enforcement of arbitration clauses in contracts;⁶ and the transfer of lawsuits to foreign jurisdictions under the doctrine of forum non conveniens⁷. In all these contexts, American courts—and even American law enforcement—could be called upon to enforce foreign law, even though the enforcement of foreign law would violate fundamental rights guaranteed by the U.S. Constitution.

I have studied the numerous occasions in which discordant foreign law, including sharia, has been litigated before American courts. Although the vast majority of foreign law applications are routine and do not violate American constitutional norms, over the past half century, the number of cases adjudicating the application of discordant foreign law in American State courts, including through arbitrations, has steadily increased.⁸ The most prominent category of foreign law that has been increasingly intruding upon American courts is Islamic sharia law, a body of law which consistently violates American public policy and fundamental constitutional rights, including the rights to equal protection (including based on race, religion, and gender), due process, freedom of religion, and freedom of speech. Numerous tenets of sharia show bias against women⁹, the LGBTQ community, non-Muslims¹⁰, former Muslims, and people designated as blasphemers. Courts in dozens of Muslim-majority nations, and some non-Muslim nations, currently apply sharia.

In hundreds of reported cases throughout the U.S., litigants have attempted to apply sharia, often succeeding. Examples include: the enforcement of foreign child custody judgments or jurisdiction not based on the best interests of the child but instead based on gender or religious discrimination;¹¹ the transfer of cases to foreign countries whose courts discriminate on gender or religion;¹² the enforcement of Islamic marriage contracts—dubbed mahrs—as prenuptial agreements;¹³ talaq or other sharia divorces;¹⁴ and increasingly, the creation of arbitration tribunals applying sharia law within the U.S.¹⁵ The law applied by such tribunals discriminates based on gender and religion,

and in the case of custody disputes, does not apply the best interests of the child standard. Those arbitration tribunals also lack traditional American legal formalities, lessening due process.

Furthermore, legislation over the past half century has suppressed certain American legal protections against the intrusion of discordant foreign law. Public policy exceptions and common law rules have been overwritten by Uniform Acts adopted by the States, sometimes related to foreign treaties.¹⁶ Some Uniform Acts now treat foreign country judgments like sister State judgments, essentially extending the Full Faith & Credit Clause¹⁷ of the U.S. Constitution to foreign nations.¹⁸ Moreover, the U.S. Court of Appeals for the Ninth Circuit has explicitly held that foreign court orders are not subject to the constraints of American constitutional law.¹⁹

Responding to this encroachment of discordant foreign law into the U.S., multiple efforts have been undertaken, primarily at the State, but also at the federal, level, to address discordant foreign law. The model statute, *American Laws for American Courts*²⁰, passed, in some form, in thirteen (13) States²¹ to protect fundamental constitutional rights against the infiltration of foreign law, such as sharia. Similar, but more limited, legislation has been passed by multiple States and the Congress. Legislation requiring some threshold for applying foreign law or empowering foreign venues, includes the SPEECH Act, *Rachel's Law* or the *Free Speech Defense Act*, and several Uniform laws. The *SPEECH Act* affords to defendants adjudged with libel in a foreign court standing to seek a declaratory judgment from a U.S. district court that any judgments issued by the foreign court are unenforceable. A similar law—dubbed *Rachel's Law* or the *Free Speech Defense Act*—passed in at least eleven (11) States.²² The *Free Speech Defense Act/Rachel's Law* affords protections to citizens exercising free speech against judgments rendered in libel suits filed in foreign countries where defendants do not have the same free speech protections that Americans enjoy under the First Amendment to the U.S. Constitution.²³ Statutory provisions establishing thresholds for the application of foreign law can be found in the *Uniform Child Custody Jurisdiction Enforcement Act* (UCCJEA)²⁴, the *Uniform Interstate Family Support Act* (UIFSA)²⁵, the *Uniform Foreign Money-Judgments Recognition Act*²⁶, and the *Uniform Model Choice Of Forum Act*.²⁷ However, these statutes either apply to narrow areas of law, or do not require an analysis of whether the foreign law or tribunal guarantees fundamental constitutional rights.

Potential additional federal legislation—including legislation that would protect Americans from efforts to establish alternative, sharia-based institutions—could include: strengthening the SPEECH Act;²⁸ creating a statutory threshold for the enforcement of foreign country judgments by federal courts;²⁹ creating a statutory standard for forum non conveniens in federal courts; enacting a federal version of *American Laws for American Courts*; and funding State efforts to require specific training for family law mediators and arbitrators based upon States restricting arbitrations.

Americans have for over two hundred and fifty (250) years, toiled and suffered, including spilling blood, towards guaranteeing fundamental constitutional rights: by war against foreign tyrannies and domestic insurrection; by engaging in social and political movements, such as the suffragette and civil rights movements; and by creating landmark legal precedents. No U.S. citizen should be denied the fundamental liberties guaranteed in our constitutional republic. Women and children, common victims of discriminatory foreign laws, especially deserve protection. The intrusion of discordant foreign laws, including sharia, into the American legal system should be resisted.

Thank you for your time, and I look forward to answering your questions.

¹ The word “foreign” as used herein refers to a foreign country, not a sister State or Territory of the United States.

² The conclusiveness of foreign judgments in American courts rests upon considerations of comity. One nation extends comity within its own territory upon recognition of the legislative, executive, or judicial acts of another. “Comity” is defined in BLACK’S LAW DICTIONARY as “courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will In general, [the] principle of ‘comity’ is that courts of one state or jurisdiction will give effect to laws and judicial decisions of another state or jurisdiction, not as a matter of obligation but out of deference and mutual respect.” Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. Comity is not a rule of law, but one of practice, convenience, and expediency. Although it is more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation. Comity rather is a nation’s expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws.

Many States have not codified their law of comity. *See, e.g.*, David Henry, Run from the Border: The Need for Recognition of Foreign-Commercial Judgments in Texas Courts, 31 Tex. Tech L. Rev. 211, 214 (2000).

³ Many States have few statutory provisions regarding conflicts of law but instead adopt the *Restatement (Second) of Conflict of Laws*. *See* Charles M. Thatcher, *Choice of Law in Multi-State Tort Actions After Owen v. Owen: The Less Things Change ...*, 35 S.D. L. Rev. 372, 388 (1990); Charles M. Thatcher, *Choice of Law under the Restatement (Second) of Conflict of Laws: A Suggested Analysis Applied to the South Dakota Cases*, 42 S.D.L.Rev. 66, 68–69 (1997). For example, South Dakota generally applies the *Restatement (Second) of Conflict of Laws* to determine which State’s laws govern in a particular factual situation. *Stockmen’s Livestock Exch. v. Thompson*, 520 N.W.2d 255, 257 (S.D.1994); *O’Daniel v. NAU Country Ins. Co.*, 2007 WL 4568991, *6 (D.S.D. Dec 21, 2007) (NO. CIV. 05-5089-KES). For conflict of law analysis involving sharia, *see Bidas Corp. v. Unocal Corp.*, 16 S.W.3d 893 (Tex. App. 2000)(applying laws of Turkmenistan and Afghanistan to a suit by a hydrocarbon developer against oil and gas companies, alleging civil conspiracy and tortious interference with existing and prospective contractual relationships between developer and governments of Turkmenistan and Afghanistan); *CPS Int’l, Inc. v. Dresser Indus., Inc.*, 911 S.W.2d 18 (Tex. App. 1995) (applying the law of Saudi Arabia to tort claims between an American corporation and its Panamanian subsidiary against a Saudi Arabian businessman); *In re Ombabi*, 2016 WL 4163311 (Ct. App. Minn. 2016) (Court rejected the demand of one of the parties that the “court should apply Islamic law ... with the males to receive ‘twice the share of the female’” in a wrongful death suit. The party argued “the law of all of parties ... is the Islamic Law and they are all Muslims and follow the specifics of the religion.” The party further contended that the Court should have “honor[ed] a legal declaration issued by the Sudanese Family Court ... under Sudanese Islamic law.”).

⁴ A choice of law provision in a contract dictates which jurisdiction’s law will apply but is separate from any determination relating to which jurisdiction should adjudicate the matter. Courts generally enforce contractual choice of law provisions when some material element of the contract has a real relation to the jurisdiction whose law was designated unless the choice of law would violate the public policy of the forum jurisdiction. However, as the regulation of contracts need only have a rational basis to meet constitutional muster, States regularly regulate choice of law provisions. For example, the *Uniform Commercial Code* has long regulated choice of law provisions in commercial contracts. A public policy review is incorporated into the *Second Restatement of Conflicts of Laws’* analysis of choice of law clauses under Section 187. *See Schulke Radio Productions, Ltd. v. Midwestern Broadcasting Co.*, 6 Ohio St.3d 436, 438; 453 N.E.2d 683 (Ohio 1983). Subsection (2), the heart of Section 187, states that the law of the state chosen by the parties to govern their contractual rights and duties will be applied unless either: (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the choice; or (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of Section 188, would be the state of the applicable law in the absence of an effective choice of law by the parties. Section 187(2) reflects the policy that the demands of certainty, predictability, and convenience dictate that, subject to some limitations, the parties to a contract have the power to choose the law applicable to their contract. *See* Jeffrey D. Dunn, Texas Choice of Law Analysis for Contracts, Tex. J. Bus. L., Spring 2004, at 37, 69. (To justify a court’s refusal to enforce a legal right accruing under the law of another state on public policy grounds, the legal right “must appear that it is against good morals or natural justice, or that for some other such reason the enforcement of it would be prejudicial to the general interests of our own citizens.”); *see DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 677 (Tex. 1990), cert. denied, 498 U.S. 1048 (1991). Thus, American jurisprudence, referencing the *Second Restatement of Conflicts of Laws*, allows for only a limited public policy analysis, and fails to require that the foreign law chosen not violate the fundamental constitutional rights of the parties. *See Jarvis v. Ashland Oil, Inc.*, 17 Ohio St. 3d 189, 192; 478 N.E.2d 786 (Ohio 1985). For analysis of choice of law clauses involving sharia, *see*

Barnett v. DynCorp Int'l, L.L.C., 831 F.3d296, 301 (5th Cir. 2016)(holding that Kuwaiti choice-of-law provision would not contravene a fundamental Texas policy.); Matt Anderson, *The Threat to Interest-Free Home Financing: The Problem of State Governments' Prohibition of Islamic-Compliant Financing Agreements*, 37 Hamline L. Rev. 311, 313 (2014).

⁵ See, e.g., *Petersen v. Boeing Co.*, No. CV-10-00999-PHX-ROS, 2014 WL 12516257 (D. Ariz. July 1, 2014).

⁶ Arbitrations in America are governed by the Federal Arbitration Act (FAA), and arbitration acts in the several States, which largely track the FAA, but often contain certain differences relating to arbitration procedure. Except for States that have adopted a form of *American Laws for American Courts*, described below, there is currently no requirement that, for a choice of forum or arbitration clause to be enforceable, the forum or arbitrator designated must grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and State Constitutions. See *In re Aramco Services Co.*, 01-09-00624-CV, 2010 WL 1241525 (Tex. App. Mar. 19, 2010) (under an arbitration agreement, governed by law of Saudi Arabia, the Saudi “Authority” would appoint arbitrators, instead of the Texas trial court.)

⁷ Forum non conveniens is a common-law doctrine that allows a court to decline to exercise its otherwise statutorily mandated jurisdiction if it appears that there is a forum more convenient for the litigants and witnesses. The doctrine of forum non conveniens was designed to prevent a plaintiff from using a liberal venue statute to vex, oppress or harass a defendant by bringing a suit in a forum unrelated to the parties or cause of action. Accordingly, the doctrine permits a court to dismiss an action to further the ends of justice and to promote the convenience of the parties, even if jurisdiction and venue are otherwise proper in the court chosen by the plaintiff. See, e.g., *Gulf Oil Corp. v. Gilbert* (1947), 330 U.S. 501, 67 S.Ct. 839; *Rhodes v. ITT Sheraton Corp.*, 9 Mass. L. Rptr. 355 (Mass. Super. Ct. 1999; see also *Chandler v. Multidata Sys. Int'l Corp., Inc.*, 163 S.W.3d 537 (Mo. Ct. App. 2005) (evidence was sufficient to establish that Panama was an adequate forum despite contention that the Panama judicial system was subject to corruption and political manipulation); *Vazifdar v. Vazifdar*, 130 N.H. 694 (1988).

In 2008 the Rhode Island Supreme Court in *Kedy v. A.W. Chesterton Co.*, 946 A.2d 1171 (R.I. 2008) explained:

Our survey of sister jurisdictions reveals that forty-six states have recognized the doctrine of forum non conveniens for cases not involving child custody disputes.

At least twenty-two states have enacted forum non conveniens statutes or promulgated rules of civil procedure: Ala.Code § 6–5–430 (2005); Ark.Code Ann. § 16–4–101 D. (1999); Cal.Civ.Proc.Code § 410.30 (2004); Colo.Rev.Stat. Ann. § 13–20–1004 (West 2005); Ga.Code Ann. § 9–10–31.1 (2007); La.Code Civ. Proc. Ann. Art. 123 (2007); Md.Code Ann., Cts. & Jud. Proc. § 6–104(a) (2006); Mass. Gen. Laws ch. 223A, § 5 (West 2000); Miss.Code Ann. § 11–11–3(4) (1972); Neb.Rev.Stat. § 25–538 (1995); N.Y. C.P.L.R. 327(a) (McKinney 2001); N.C. Gen.Stat. § 1–75.12 (2007); Okla. Stat. tit. 12, § 1701.05 (1993); 42 Pa. Cons.Stat. § 5322(e) (West 1981); Tex. Civ. Prac. & Rem.Code § 71.051 (Vernon 1997); Va.Code § 8.01–265 (2000); W. Va.Code § 56–1–1a (Lexis Nexis 2007); Wis. Stat. Ann. § 801.63 (West 1994); Fla. R. Civ. P. 1.061; Ill. S.Ct. R. 187; Ind. R. Trial P. 4.4(C)–(E); N.D. R. Civ. P. 4(b)(5).

In Arkansas, California, Colorado, Florida, Georgia, Illinois, Massachusetts, Mississippi, New York, Oklahoma, Pennsylvania, Texas, and West Virginia the doctrine was recognized by the state’s highest court before the enactment or promulgation of the respective statute or rule of civil procedure. Including these states, thirty-eight states have recognized the doctrine through case law. See *Crowson v. Sealaska Corp.*, 705 P.2d 905, 907–08 (Alaska 1985); *First National Bank & Trust Co. v. Pomona Machinery Co.*, 107 Ariz. 286, 486 P.2d 184, 188 (1971); *Running v. Southwest Freight Lines, Inc.*, 227 Ark. 839, 303 S.W.2d 578, 580–81 (1957); *Price v. Atchison, T. & S.F. Ry. Co.*, 42 Cal.2d 577, 268 P.2d 457, 458–63 (1954); *McDonnell–Douglas Corp. v. Lohn*, 192 Colo. 200, 557 P.2d 373, 374 (1976); *Union Carbide Corp. v. Aetna Casualty and Surety Co.*, 212 Conn. 311, 562 A.2d 15, 19–21 (1989); *General Foods Corp. v. Cryo–Maid, Inc.*, 198 A.2d 681, 683–84 (Del.1964); *Kinney System, Inc. v. Continental Insurance Co.*, 674 So.2d 86, 87–94 (Fla.1996); *AT & T Corp. v. Sigala*, 274 Ga. 137, 549 S.E.2d 373, 375–77 (2001); *Lesser v. Boughey*, 88 Hawai’i 260, 965 P.2d 802, 804–06 (1998); *Whitney v. Madden*, 400 Ill. 185, 79 N.E.2d 593, 595–96 (1948); *Rath Packing Co. v. Intercontinental Meat Traders, Inc.*, 181 N.W.2d 184, 189–90 (Iowa 1970); *Gonzales v. Atchison Topeka and Santa Fe Railway Co.*, 189 Kan. 689, 371 P.2d 193, 196–200 (1962); *Beaven v. McAnulty*, 980 S.W.2d 284, 285–88 (Ky.1998); *MacLeod v. MacLeod*, 383 A.2d 39, 41–43 (Me.1978); *Universal Adjustment Corp. v. Midland Bank, Ltd. of London, England*, 281 Mass. 303, 184 N.E. 152, 157–62 (1933); *Cray v. General Motors Corp.*, 389 Mich. 382, 207 N.W.2d 393, 395–99 (1973); *Johnson v. Chicago, Burlington and Quincy Railroad Co.*, 243 Minn. 58, 66 N.W.2d 763, 767–76 (1954); *Strickland v. Humble Oil & Refining Co.*, 194 Miss. 194, 11 So.2d 820, 822–23 (1943); *State ex rel. Chicago, Rock Island & Pacific Railroad Co. v. Riederer*, 454 S.W.2d 36, 37–40 (Mo.1970); *Qualley v. Chrysler Credit Corp.*, 191 Neb. 787, 217 N.W.2d 914, 915–16 (1974); *Eaton v. Second Judicial District Court*, 96 Nev. 773, 616 P.2d 400, 401–02 (1980); *Thistle v. Halstead*, 95 N.H. 87, 58 A.2d 503, 505–07 (1948); *Gore v. United States*

Steel Corp., 15 N.J. 301, 104 A.2d 670, 672–76 (1954); *Buckner v. Buckner*, 95 N.M. 337, 622 P.2d 242, 243–44 (1981); *Silver v. Great American Insurance Co.*, 29 N.Y.2d 356, 328 N.Y.S.2d 398, 278 N.E.2d 619, 621–23 (1972); *Chambers v. Merrell–Dow Pharmaceuticals, Inc.*, 35 Ohio St.3d 123, 519 N.E.2d 370, 372–78 (1988); *St. Louis–San Francisco Railway Co. v. Superior Court*, 276 P.2d 773, 775–79 (Okla.1954); *Plum v. Tampax, Inc.*, 399 Pa. 553, 160 A.2d 549, 552–54 (1960); *Nienow v. Nienow*, 268 S.C. 161, 232 S.E.2d 504, 507–08 (1977); *Rothluebbbers v. Obee*, 668 N.W.2d 313, 316–21 (S.D.2003); *Zurick v. Inman*, 221 Tenn. 393, 426 S.W.2d 767, 768–72 (1968); *Dow Chemical Co. v. Castro Alfaro*, 786 S.W.2d 674, 676–79 (Tex.1990); *Mooney v. Denver & R.G.W.R. Co.*, 118 Utah 307, 221 P.2d 628, 638–49 (1950); *Burrington v. Ashland Oil Co.*, 134 Vt. 211, 356 A.2d 506, 509–11 (Vt.1976); *Werner v. Werner*, 84 Wash.2d 360, 526 P.2d 370, 377–78 (1974); *Norfolk and Western Railway Co. v. Tsapis*, 184 W.Va. 231, 400 S.E.2d 239, 242–45 (1990), abrogated by *State ex rel. Smith v. Maynard*, 193 W.Va. 1, 454 S.E.2d 46, 50–54 (1994) (holding that intrastate forum non conveniens is regulated by statute); *West Texas Utilities Co. v. Exxon Coal USA, Inc.*, 807 P.2d 932, 935 (Wyo.1991).

Three states have yet to definitively recognize the doctrine of forum non conveniens. The Montana Supreme Court has not seen fit to adopt the doctrine. *See Rule v. Burlington Northern and Santa Fe Railway Co.*, 325 Mont. 329, 106 P.3d 533, 536 (2005) (“this Court does not recognize the doctrine of forum non conveniens in FELA actions”); *State ex rel. Burlington Northern Railroad Co. v. District Court*, 270 Mont. 146, 891 P.2d 493, 498 (1995) (explaining that the court has “neither accepted nor rejected the application of forum non conveniens in non-FELA cases and we have neither denied nor recognized the existence of that doctrine in cases where there is no strong policy favoring plaintiff’s forum selection”). The Supreme Court of Idaho has mentioned the doctrine only in passing. *See Marco Distributing, Inc. v. Biehl*, 97 Idaho 853, 555 P.2d 393, 396–97 (1976) (deciding the case on personal jurisdiction grounds and not addressing the lower court’s forum non conveniens inquiry). Similarly, the Supreme Court of Oregon has not ruled on the matter definitively, but Oregon appellate courts have employed the doctrine. *See State ex rel. Hydraulic Servocontrols Corp. v. Dale*, 294 Or. 381, 657 P.2d 211, 216 n. 5 (1982) (mentioning forum non conveniens in dicta); *Maricich v. Lacoss*, 204 Or.App. 61, 129 P.3d 193, 195 n. 1 (2006) (“We assume, for purposes of this case, that the doctrine can be applied in Oregon courts.”).

Most States follow the federal forum non conveniens test. *See* Martin Davies, Time to Change the Federal Forum Non Conveniens Analysis, 77 Tul. L.Rev. 309, 315 (2002)(thirty States have “effectively identical” analyses to the federal test, and thirteen other states employ a “very similar” test); David W. Robinson & Paula K. Speck, Access to State Courts in Transnational Personal Injury Cases: Forum Non Conveniens and Antisuit Injunctions, 68 Tex. L.Rev. 937, 950 (1990) (as of 1990, thirty-two States recognized “something very closely resembling” the federal doctrine, and four other states indicated they would follow the federal doctrine).

Under the federal test, in determining whether a dismissal is proper based upon forum non conveniens, the trial court must consider the facts of each case, balancing the private interests of the litigants and the public interest involving the courts and citizens of the forum state. Important private interests include the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of the premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious, and inexpensive. *See, e.g., Gulf Oil Corp. v. Gilbert* (1947), 330 U.S. 501, 67 S.Ct. 839; *Chambers v. Merrell Dow Pharmaceuticals, Inc.*, 519 N.E.2d 370 (1988); Public interest factors to be considered include the administrative difficulties and delay to other litigants caused by congested court calendars; the imposition of jury duty upon the citizens of a community which has very little relation to the litigation; a local interest in having localized controversies decided at home; and the appropriateness of litigating a case in a forum familiar with the applicable law. *Id.* Because the central purpose of a forum non conveniens inquiry is to ensure that the trial is convenient, a foreign plaintiff’s choice of forum deserves less deference than that of a plaintiff who has chosen his home forum. *See id.; Lee v. Burnett*, Franklin App. No. 07AP-40, 2007-Ohio-3742, at ¶ 8-9. The traditional forum non conveniens analysis does not include any consideration of the whether the plaintiff’s fundamental constitutional rights would be recognized in the foreign forum.

The *Uniform Child Custody Jurisdiction Enforcement Act* (UCCJEA) contains a provision regarding inconvenient forums. None of the criteria in the UCCJEA forum non conveniens provision includes any consideration of constitutional, or even human, rights (although the human rights consideration of the jurisdictional provision might apply). Specifically, the traditional common law factors (“whether the parties will be ‘deprived of all remedies or treated unfairly.’ *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 671 (5th Cir. 2003); any ‘obstacles to [a] fair trial’ in the alternative forum. *Flaiz v. Moore*, 359 S.W.2d 872, 874 (Tex. 1962)) are not included in the list of factors enumerated in the UCCJEA.”) *See, e.g.,* Tex. Fam. Code Ann. § 152.207(2). In *Powell v. Stover*, 165 S.W.3d 322, 328 (Tex. 2005), the court explained that the UCCJEA allows the court in a child’s home state to defer jurisdiction to

a court of another state if the home state is an inconvenient forum under the circumstances and the other state would be a more appropriate forum.

⁸ Details on examples of sharia being invoked in U.S. court cases can be found in a 2011 study conducted by the Center for Security Policy: “Shariah Law and American State Courts.” See <http://shariahinamericancourts.com/>. The study found fifty (50) published appellate opinions across twenty-three (23) States where sharia was either relevant or highly relevant to the arguments made in or outcome of the case; see also jurisprudence cited herein. The vast majority of trial court filings and opinions are not widely published or electronically available, and therefore virtually impossible to monitor. Further, deleterious trial court rulings are often not appealed. The women often caught in these disputes typically lack the resources of the men who are seizing their children or denying them support or property upon divorce.

⁹ See *Aghaian v. Minassian*, 234 Cal. App. 4th 427, 435, 183 Cal. Rptr. 3d 822, 828 (2015), review denied (May 13, 2015) (finding that “the evidence is overwhelming that Iranian courts discriminate against women and non-Muslims. Among other things, ... the testimony of a woman counts for half the value of that of a man, and that women are not treated equally before the courts, particularly in personal status matters relating to marriage, divorce, inheritance, and child custody, and only men can serve as judicial officers. ... [T]he judiciary in Iran is heavily influenced by religious authorities and that the law requires the head of the judiciary as well as the prosecutor general and all Supreme Court judges to be high ranking clerics. [There are] ‘many accounts of unequal treatment afforded to non-Muslims by Iranian courts [and] the Iranian legal system discriminates on the grounds of sex, religion, and political opinion.’”).

In *S.D. v. M.J.R.*, 415 N.J. Super. 417, 2 A.3d 412 (N.J. Super. A.D., 2010) (a New Jersey trial court, although later reversed on appeal, refused to grant a wife a restraining order against her husband who beat and sexually abused her because the husband lacked criminal intent as he was a Muslim, and sharia, as described by an imam, mandated that a wife submit to her husband’s sexual advances.)

¹⁰ See *Seda Galstian Aghaian, et al. v. Shahen Minassian*, 2015 WL 11027479 (Cal.) (Dispute over whether Iran is a suitable alternative forum to hear civil suit between non-Muslim Iranian citizens over land located in Iran.)

¹¹ Exemplar child custody cases include:

In *Hosain v. Malik*, 108 Md. App. 284 (Md. Special App. 1996), a Maryland appellate court, enforced a Pakistani custody order, issued under a sharia rule granting sole custody to the father when the child reaches the age of seven, handing a little girl brought to America by the mother over to the father. The Maryland court bowed to the order by the Pakistani court, even though the mother lacked representation during the Pakistani proceedings because, although she might have been arrested for adultery if she returned to Pakistan for the custody hearing, and been subject to “public whipping or death by stoning,” the court found such punishments were “extremely unlikely.” The appellate court judges explicitly proclaimed that the best interest of the child should not be “determined based on Maryland law, i.e., American cultures and mores,” but rather “by applying relevant Pakistani customs, culture and mores.” The appellate court, explaining that “in the Pakistani culture, the well-being of the child and the child’s proper development is thought to be facilitated by adherence to Islamic teachings,” intentionally applied Islamic, rather than American, cultural and legal precepts.

In *Amin v. Bakhaty*, 798 So.2d 75 (2001), Louisiana trial, appellate and supreme courts resisted attempts by a father to seize custody of his child. The Egyptian wife and mother traveled to Louisiana with her child to improve her relationship with her husband who lived in the U.S. Her husband, upon learning she traveled to the U.S., traveled to Egypt, had her convicted of the crime of leaving Egypt without her husband’s permission, filed for divorce and custody under Egyptian law, and then traveled to Louisiana to seize their child under the Egyptian custody decree. The Louisiana Supreme Court rejected the demand to enforce Egyptian child custody law because “Islamic family law ... structures some of the rights between family members based solely on gender” and not “the minor child’s best interest.”

In *In re Marriage of Malak*, 182 Cal.App.3d 1018 (1986), a California appellate court enforced a Lebanese custody decree granting custody to the husband, even though the trial court had found that the wife had been denied due process in Lebanon, and the Lebanese Islamic court did not base its ruling upon the best interests of the child.

In *In re Makhoul*, 695 N.W.2d 503 (Iowa Ct. App. 2005), an Iowa appellate court enforced a Jordanian Sharia Court of Appeals custody order awarding a daughter to her father solely because the mother had remarried.

In *Donboli v. Donboli*, 128 Wash.App. 1039, 2005 WL 1772328 (Wash.App. Div. 1), cert denied 156 Wash.2d 1032, 134 P.3d 232, Washington State trial and appellate courts resisted an attempt by a father to enforce an Iranian custody order against the mother who suffered spousal abuse, was detained in Iran against her will, and was not able to participate in the Iranian proceedings.

In *Noordin v. Abdulla*, 947 P.2d 745 (1997), a Washington State trial court, although later reversed on appeal, upheld a custody order by a sharia court in the Philippines granting a father custody.

In *In re Y.M.A.*, 111 S.W.3d 790 (Tex. App. 2003), a Texas court enforced an Egyptian decree—despite the father’s argument that an irrebuttable presumption under Egyptian law giving custody of a male child to the mother until the

age of ten violated the standards of human rights—finding that the father had failed to preserve the error for review because he did not specifically make the argument below that the basis for his contention was the Texas Equal Rights Amendment. The Texas trial court thereby enforced a foreign custody judgment that was rendered on a principle of foreign law that violated American concepts of equal protection. The Texas appellate court upheld the trial court, albeit on procedural grounds. A man lost custody of his child until his child was ten purely because of his gender.

In *Tazziz v. Tazziz*, 26 Mass.App.Ct. 809, 814-15 (1988), a Jordanian husband and dual citizen of Jordan and the U.S. wife married in Massachusetts in an Islamic ceremony. They then moved to Israel for 22 years. The wife returned with minor children to Massachusetts and filed for custody of the children in state court. Husband sought custody to be determined in Jerusalem by an Israeli Sharia Court. The trial court deferred to the jurisdiction of the Israeli Sharia Court. But the appellate court returned the matter to the trial court with instructions to address several concerns, including “the nature and the composition of the Sharia Court and of the substantive law and principles which would be applied” and “the wishes, intentions, and purposes of each of the parties and of each of their minor children with respect to their continued residence in Massachusetts and in the United States.” The appellate court instructed the lower court to inquire as to “whether and to what extent the law which the Sharia Court should apply is consistent with Massachusetts law . . . (in addition to due process requirements concerning such procedural matters as notices, representation by counsel, and opportunity to be heard).”

In *Wahba v. Abdel-Kerim*, 684 S.W.2d 868 (Mo. Ct. App. 1984), the court noted that “under Egyptian law, [the father] would be solely entitled to the son's custody.”

In *State ex rel. Rashid v. Drumm*, 824 S.W.2d 497 (Mo. Ct. App. 1992), a mother, U.S. citizen and resident of Missouri brought a dissolution of marriage action against Adel Mohammed Zaghdi, father, a citizen and resident of Saudi Arabia. The mother sought custody of the parties’ six-year-old daughter, a dual citizen whose home was in Saudi Arabia but was physically present in St. Louis at the commencement of the proceedings. The mother was given temporary custody of the child ex parte. The father filed a motion to set aside the temporary custody order on the grounds of fraud. The trial court treated the motion as a challenge to the jurisdiction of the court to determine child custody. After a two day hearing, the trial court, applying the provisions of the *Uniform Child Custody Jurisdiction Act* (UCCJA) as enacted in Missouri, § 452.440 et seq., ruled that it did not have jurisdiction to exercise custody jurisdiction and that Saudi Arabia did have jurisdiction, and ordered the child returned to the custody of the father. In addition, court held that the term “state” in Missouri’s then enacted UCCJA did not include foreign nations.

In *Elahham v. Al-Jabban*, 319 Mich. App. 112, 899 N.W.2d 768 (2017), the court addressed several issues in a divorce, including child custody, child support, spousal support, and property division. The court determined that it could not grant physical custody of the minor child to a parent while the parent resided in Egypt because Egypt was not a party to the *Hague Convention on the Civil Aspects of International Child Abduction*, explaining that if the parent decided not to return the minor child to the United States the trial court could not enforce the parenting time order. The court further determined that a later putative marriage in Egypt would not be recognized, explaining that “although there was a strong argument that plaintiff was married under Sharia law, the court was not bound by the religious law in Egypt.”

In *re Marriage of El Krim & Amin*, No. 16-1620, 2017 WL 2465806 (Iowa Ct. App. June 7, 2017), the appellate court held that the Iowa district court, not an Egyptian court under claim of forum non conveniens, had jurisdiction to dissolve a marriage and decide the related custody and property issues, and to award the father only supervised visitation because the father was a citizen of Egypt, a country that is not a signatory to the *Hague Convention*, his citizenship posing a risk of abduction.

In *Bergstrom v. Bergstrom*, 320 N.W.2d 119 (N.D. 1982), the North Dakota Supreme Court addressed the issue of child custody in the context of removing children from the United States, specifically restricting a parent from bringing the child to Dubai.

See also *In the Matter of Ismal Yaman and Linda Yaman*, 2014 WL 5798586 (N.H. 11/07/2014).

Intertwined with the child custody issue, there is an entire body of law, both statutory and jurisprudential, regarding restricting parents from bringing their children to certain foreign countries because those countries have a history of not respecting American custody orders and allowing one parent to keep the child in the foreign country. See, e.g., *Kelly v. Faizi*, 1 CA-CV 08-0583, 2009 WL 3116160 (Ariz. Ct. App. Sept. 29, 2009); *In re Marriage of Jawad & Whalen*, 326 Ill. App. 3d 141, 759 N.E.2d 1002 (Ill. App. Ct. 2001); *Al-Zouhayli v. Al-Zouhayli*, 486 N.W.2d 10 (Minn. Ct. App. 1992); *Kamal v. Imroz*, 277 Neb. 116, 759 N.W.2d 914 (2009); *Div. of Youth & Family Servs. v. D.L.*, A-1848-07T4, 2008 WL 4239439 (N.J. Super. Ct. App. Div. Sept. 18, 2008); *Bergstrom v. Bergstrom*, 320 N.W.2d 119 (N.D. 1982); *Al-Silham v. Al-Silham*, 93-A-1770, 1994 WL 102480 (Ohio Ct. App. Mar. 25, 1994); *Pirayesh v. Pirayesh*, 359 S.C. 284, 596 S.E.2d 505 (S.C. Ct. App. 2004); *Soltanieh v. King*, 826 P.2d 1076 (Utah Ct. App. 1992); *Long v. Ardestani*, 2001 WI App 46, 241 Wis. 2d 498, 624 N.W.2d 405. See also *In re S.M.*, 938 S.W.2d 910, 919-20 (Mo. Ct. App. 1997).

¹² In several cases Americans have suffered personal injuries in foreign countries, sued in the U.S., and have had to fend off motions to transfer or dismiss based on forum non conveniens to prevent being subject to very unfavorable foreign law that would not recognize fundamental constitutional rights. See, e.g., *Rhodes v. ITT Sheraton Corp.*, 9 Mass. L. Rptr. 355 (Mass. Super. Ct. 1999); *Wilmot v. Marriott Hurghada Management, Inc.*, 2016 WL 2599092, (D. Del. 2016), report and recommendation adopted, 2016 WL 3457007 (D. Del. 2016) (Egypt not an inconvenient forum to litigate slip and fall.); *DiFederico v. Marriott Int'l, Inc.*, 677 F. App'x 830, 833 (4th Cir. 2017) (application of Pakistani law regarding tort claims arising out of an event that occurred in Islamabad, Pakistan.)

¹³ Exemplar marriage contract cases:

In *Zawahiri v. Alwattar*, 2008-Ohio-3473; 2008 Ohio App. Lexis 2928; 2008 WL 2698679, Mohammed Zawahiri and Raghad Z. Alwattar were married, in an arranged marriage. The day of the wedding, Zawahiri signed a “mahr,” an Islamic marriage contract. The court refused to enforce the mahr on the grounds that it was not a valid antenuptial agreement because it was entered into as a result of overreaching or coercion. The wife’s father had presented the mahr to the husband only two hours before the ceremony was to begin after family and guests had arrived. Furthermore, the husband did not have the opportunity to consult with an attorney prior to signing the marriage contract. Therefore, the court refused to enforce the mahr as an antenuptial agreement.

In *Ahmed v. Ahmed*, 261 S.W.3d 190 (Tex. App. 2008), one spouse attempted to enforce an Islamic mahr agreement, whereby one spouse contracted to give the other spouse \$50,000 either at the time of the marriage or deferred in the event of a divorce, as a premarital agreement. The Texas appellate court remanded the case to the trial court to allow one spouse the opportunity to prove that the mahr agreement was enforceable as a partition and exchange agreement or otherwise.

In *Chaudry v. Chaudry*, 159 N.J. Super. 566 (1978), a New Jersey appellate court, applying Pakistani law, denied a wife spousal and child support, and division of property, based upon a prenuptial agreement signed by her parents allowing her only \$1,500 upon divorce.

In *Alesawy v. Badawi*, 56 Misc. 3d 949, 57 N.Y.S.3d 879 (N.Y. Sup. Ct. 2017), the court recognized a judgment of divorce from Abu Dhabi, including award of \$250,000 pursuant to the parties’ mahr.

See also, Matt Anderson, *The Threat to Interest-Free Home Financing: The Problem of State Governments’ Prohibition of Islamic-Compliant Financing Agreements*, 37 Hamline L. Rev. 311, 318-19 (2014).

¹⁴ Exemplar Islamic divorce cases:

In *Husein v. Husein*, 2001 Ohio App. Lexis 3334; 2001 WL 842023, the court refused to recognize a divorce certificate issued by the Sharia Court in Ramallah because no evidence was presented showing that Ramallah did not have the same residency requirement as Ohio, and the petitioner in the Ramallah divorce was only present in Ramallah for a short time prior to the alleged divorce. Because Ohio has a six-month residency requirement before granting a divorce and no evidence was presented that Ramallah did not require the same residency, the presumption that Ramallah law was the same as Ohio law was not rebutted, and the divorce was not recognized.

In *Mustafa v. Elfadi*, 2013-Ohio-1644; 2013 Ohio App. LEXIS 1534; 2013 WL 1787383, comity was not extended to a Sudanese divorce because its proponent never mentioned his divorce in his answer and counterclaim to his wife’s complaint, in which he invoked the trial court’s jurisdiction, requested a fair and equitable division of the parties’ assets and liabilities, and sought custody of a minor child of the marriage. Further, the court held that the Sudanese proceeding denied the wife due process, as she was never served with notice of the proceeding or participated therein and her husband participated in absentia.

In *Tarikonda v. Pinjari*, No. 287403 (Mich. Ct. App. 2009), a husband and wife were married in India. The husband obtained an Islamic summary divorce by verbally performing a talaq renunciation (repeating “I divorce you” three times) against his wife. The wife, possibly without knowing about the talaq, filed for divorce in Michigan. The trial court granted comity to the talaq verbal divorce that the husband pronounced in India and dismissed wife’s complaint. The appellate court reversed the trial court, holding that the talaq divorce ritual violated wife’s right to due process because: (a) she had no prior notice of the talaq pronouncement; (b) she had no right to be present at the pronouncement and did not have an attorney; and (c) the talaq provided no opportunity for a hearing. The Michigan appellate court also held that the talaq violated equal protection because women do not also enjoy the right to pronounce talaq. Additionally, the appellate court held that talaq violated Michigan public policy because, upon divorce, Islamic law allows women to recover only the property that is in their names while Michigan law provides for an equitable division of the marital estate.

In *Aleem v. Aleem*, 947 A.2d 489, 404 Md. 404 (2008), Maryland trial and appellate courts resisted attempts by husband to enforce a talaq divorce performed in Pakistan which would have precluded the wife from receiving her share of the community property.

In *Hamdeh v. Hamdeh*, Kan. Ct. App., No. 111,998 (11/10/2016), a Wichita State University physics professor, who filed for a divorce from his wife, sought to apply provisions of their Islamic marriage contract, made in Lebanon,

which granted the wife only a \$5,000 payment should they divorce. He argued that the contract settled all property issues, and Islamic law limited spousal maintenance payments to her to three months.

In *Mohammadi v. Abdolaziz*, 2016 WL 3401958 (Ct. App. Wash. Div. 3 2016), the wife argued that a “mahr, which is an agreement under Islamic law where the husband agrees to pay a dowry to his wife in exchange for marrying him,” was not contrary to public policy and a valid contract.

In *Ahmad v. Khalil*, 51 Misc. 3d 1212(A), 37 N.Y.S.3d 206 (N.Y. Sup. Ct. 2016), the court found that the Islamic marriage contract was not a valid prenuptial agreement preventing wife from seeking equitable distribution of assets.

In *Ashfaq v. Ashfaq*, No. 01-14-00329-CV (Tex. Ct. App. 1st Dist. April 28, 2015), a Texas appellate upheld on appeal a trial court recognizing a Pakistani talaq divorce in dismissing a Texas resident’s petition for divorce.

In *Seth v. Seth*, 694 S.W.2d 459 (Tex. App. 1985), a purported second wife filed a petition for divorce, and the first wife intervened. The second wife contended that the Texas court should recognize a talaq divorce between the first wife and the husband. The Texas court explained that a talaq divorce is a “summary, ex parte procedure [wherein] the divorce [is] rendered when [the] husband pronounce[s] three times: ‘I divorce you.’” The appellate court held that circumstances justified applying Texas law instead of Islamic law. The court explained that Texas law governed a case in which a wife claimed her husband divorced her unlawfully in an ex parte Islamic proceeding in a foreign country. The factors the court considered were that the couple lived and acquired property in Texas and that Islamic law, allowing for ex parte divorces, ran counter to notions of good morals and natural justice.

See also *Schacht v. Schacht*, 435 S.W.2d 197 (Tex. Civ. App.—Dallas 1968, no writ); *Dunn v. Tiernan*, 284 S.W.2d 754 (Tex. Civ. App.—El Paso 1955, writ ref’d n.r.e.); *Manjlai v. Manjlai*, 447 S.W.3d 376 (2014)(referencing an apparent talaq divorce “pursuant to Islamic law” and “Islamic tradition.”); § 7:218. Divorce obtained in foreign country, 2 Tex. Prac. Guide Family Law § 7:218 (2012-2013 ed.); see also *Overseas Inns S.A. P.A. v. U.S.*, 685 F. Supp. 968 (N.D. Tex. 1988).

¹⁵ In *Jabri v. Qaddura*, 108 S.W.3d 404, 413-14 (Tex. App.-Fort Worth 2003, no pet.), one spouse sought to enforce a “purported Islamic Dowry agreement” labeled **Error! Main Document Only**. “Islamic Society of Arlington Islamic Marriage Certificate” in district court, but the other spouse sought to enforce an agreement to arbitrate “according to the Islamic rules of law by Texas Islamic Court.” The Texas appellate court held that the agreement to arbitrate before the Texas Islamic Court was valid and enforceable and stayed the proceedings in the district court so that the Texas Islamic Court could rule, thereby requiring arbitration of child custody before the Texas sharia arbitration panel. See *In re N.Q.*, No. 2-09-159-CV (Court of Appeals of Texas, Fort Worth, July 15, 2010) 2010 WL 2813425. The Texas appellate court thereby acknowledged both the existence of the “Islamic Court” and permitted binding arbitration by the “court.” See also *In re N.Q.*, No. 2-09-159-CV (Court of Appeals of Texas, Fort Worth, July 15, 2010) 2010 WL 2813425; see also Press coverage of a Texas case involving an Islamic tribunal chosen through an arbitration clause, Tuesday, February 19th, 2008, Don Cruse, Supreme Court of Texas Blog (<http://www.scotxblog.com/news-and-links/islamic-tribunal-chosen-through-an-arbitration-clause/>). Only a relatively small percentage of arbitrations that are litigated in trial courts are later appealed to appellate courts rendering published written decisions. There might be numerous instances of rulings applying foreign law that have never been challenged in a district court or appealed to an appellate court— in Texas or elsewhere.

Enforcing arbitration awards rendered in reliance on foreign laws fails in many, but not all, States. Some State courts simply refuse to recognize any arbitration of child custody. The State of New York, which has a well-developed jurisprudence regarding arbitration of family law matters by Jewish beth din arbitration panels, does not uphold arbitration of child custody disputes. In *Cohen v. Cohen*, 600 N.Y.S.2d 996 (App. Div. 1993), a New York appellate court simply stated, “[d]isputes over custody and visitation are not subject to arbitration.”; *Stein v. Stein*, 707 N.Y.S.2d 754, 758 (Sup. Ct. 1999) (“[c]ustody of children, once a proper subject for arbitration, is no longer subject to arbitration based upon the public policy of this state”); see *Rakoszynski v. Rakoszynski*, 663 N.Y.S.2d 957, 958 (Sup. Ct. 1997) (citing *Cohen v. Cohen*); Ginnine Fried, *The Collision of Church and State: A Primer to Beth Din Arbitration and the New York Secular Courts*, 31 Fordham Urb. L.J. 633 (2004); see also *Berg v. Berg*, No. 25099/05, 2008 WL 4155652, at *11 (N.Y. Sup. Ct. Sept. 8, 2008), aff’d, 926 N.Y.S.2d 568 (N.Y. App. Div. 2d Dept. 2011); *Schechter v. Schechter*, 881 N.Y.S.2d 151, 152 (App. Div. 2009); *Hom v. Hom*, 704 N.Y.S.2d 885, 885 (App. Div. 2000); *Glauber v. Glauber*, 600 N.Y.S.2d 740, 743 (N.Y. App. Div. 1993); *Lieberman v. Lieberman*, 149 Misc.2d 983, 566 N.Y.S.2d 490 (N.Y. Sup. 1991). Further, Ohio jurisprudence holds that child custody and parental visitation cannot be subject to binding arbitration. See *Kelm v. Kelm*, 92 Ohio St. 3d 223; 749 N.E.2d 299; 2001-Ohio-168 (2001) (Allowing arbitration of spousal and child support, but not child custody and visitation). The Canadian Province of Ontario has also banned arbitration of child custody under religious law.

Some States refuse to recognize child custody arbitration rulings unless the best interests of the child were considered, such as whether domestic violence has occurred and is likely to continue in the future. See, e.g., *In re Marriage of Popack*, 998 P.2d 464, 468-69 (Colo. App. 2000); *Miller v. Miller*, 620 A.2d 1161, 1164 (Pa. Super.

Ct. 1993). Other States have adopted a much less stringent standard, requiring that child custody arbitration be honored unless “harm to the child” can be shown because of the ruling. *See, e.g., Fawzy v. Fawzy*, 973 A.2d 347, 362 (N.J. 2009); *See also, Dick v. Dick*, 534 N.W.2d 185, 191 (Mich. Ct. App. 1995); *see, generally*, Evan M. Lowry, Note, Where Angels Fear to Tread: Islamic Arbitration in Probate and Family Law, a Practical Perspective, 46 *Suffolk U. L. Rev.* 159 (2013); E. Gary Spitko, Reclaiming the “Creatures of the State”: Contracting for Child Custody Decisionmaking in the Best Interests of the Family, 57 *Wash. & Lee L. Rev.* 1139 (2000); Amanda M. Baker, A Higher Authority: Judicial Review of Religious Arbitration, 37 *Vt. L. Rev.* 157 (2012); Christina Fox, Note, Contracting for Arbitration in Custody Disputes: Parental Autonomy vs. State Responsibility, 12 *Cardozo J. Conflict Resol.* 547, 547 (2011); Aaron E. Zurek, Note, All the King’s Horses and All the King’s Men: The American Family After Troxel, the *Parens Patriae* Power of the State, a Mere Eggshell Against the Fundamental Right of Parents to Arbitrate Custody Disputes, 27 *Hamline J. Pub. L. & Pol’y* 357, 373-75 (2006).

In Tex. Fam. Code Ann. § 153.0071, Texas rejected the approach of prohibiting its courts from recognizing the arbitration of child custody but has followed an approach that allows review as to whether the decision is in the best interest of the child. However, Texas has required that the person challenging the arbitration ruling bear the burden of proof and has not addressed whether the parties have been granted fundamental constitutional rights in the arbitration proceeding. Tex. Fam. Code Ann. § 153.0071 (West). It should be noted that arbitrations of child custody before Islamic Courts in Texas can be distinguished from other religious tribunals, such as the operation of Catholic canon law tribunals, or even Jewish *beth din* arbitration tribunals. Catholic canon law tribunals address ecclesiastical matters, and their decisions as to annulments have no civil effect. Catholic canon law does not encroach upon typical matters of civil litigation, such as divorce and child custody, even within the Vatican. *See Magi XXI, Inc. v. Stato Della Città Del Vaticano*, 818 F. Supp. 2d 597 (E.D. N.Y. 2011). And although Jewish *beth din* arbitration tribunals may address family law matters, as noted above, New York State, which has the most Jewish *beth din* arbitration panels, does not uphold arbitration of child custody and visitation disputes.

In 2005, the American Academy of Matrimonial Lawyers published a *Model Family Law Arbitration Act* (UFLAA), which allows a court to refuse to recognize child custody arbitration decisions that fail to meet the best interests of the child standard. The UFLAA is an overlay statute meant to work together with the State’s existing choice-of-law rules and contractual arbitration law. Unlike the *Uniform Arbitration Act* and the *Revised Uniform Arbitration Act*, however, the UFLAA is designed to address the unique complexities of family law arbitration, imposes explicit restrictions on arbitrator authority, and allows more judicial oversight in disputes relating to family law, with special and often stricter provisions for child-related disputes. For example, arbitrators under the UFLAA cannot grant a dissolution or legal separation, terminate parental rights, grant an adoption, or issue domestic violence protection orders. Moreover, unless waived by the parties, the UFLAA requires arbitrators to be trained in detecting domestic violence and child abuse before arbitrating a family law dispute. The UFLAA imposes additional safeguards on the arbitration of child-related matters such as heightened court oversight—an award may not be confirmed by a court unless the court finds that the award complies with applicable law and is in the best interests of the child—mandatory recording of hearings, additional affirmations made in written agreement, requirements to serve the best interests of the child, and mandatory reporting of suspected abuse or neglect. If the arbitrator detects abuse, the arbitrator must stay the arbitration and refer the dispute to court. Likewise, if a party is subject to a protection order, the dispute will be referred to court for resolution. States may exclude child-related disputes (i.e. custody, visitation, or child support) from arbitration altogether. Versions of the UFLAA have been adopted by Utah, Washington, Montana, Hawaii, D.C., Pennsylvania, North Carolina, and North Dakota.

¹⁶ The American law of comity of foreign judgments, choice of law contractual clauses, conflicts of laws analysis, or pleas of *forum non conveniens*, which often was primarily jurisprudential, has become increasingly codified, often through Uniform Laws, sometimes implementing international treaties. The National Conference of Common Uniform State Laws, the creator of the *Uniform Child Custody Jurisdiction Enforcement Act* (UCCJEA), the *Uniform Interstate Family Support Act* (UIFSA), the *Uniform Foreign Money-Judgments Recognition Act*, and the *Uniform Model Choice Of Forum Act*, appears to approach the international aspects of those acts as an afterthought, and does not appear to be sensitive to the unique problems often caused by the application of foreign law that is incompatible with American constitutional norms. Their codifications deviate from traditional common law and lack specific protections of American constitutional rights in the application of foreign law, only sometimes allowing for vague protections of human rights. Moreover, these uniform laws often implement treaties.

Examples of international treaties that affect the rights of natural persons include the *Convention on the Civil Aspects of International Child Abduction*, the 2007 *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, and the *Hague Convention on Choice of Court Agreements of June 30, 2005*. The *Convention on the Civil Aspects of International Child Abduction* with its enabling federal legislation entitled the *International Child Abduction Remedies Act* does preempt regarding some jurisdictional issues for child custody, but

only as to nations who are signatories to the *Convention*. See http://en.wikipedia.org/wiki/Hague_Convention_on_the_Civil_Aspects_of_International_Child_Abduction.

Countries that apply discordant foreign law, including sharia law, are generally not signatories to the *Convention on the Civil Aspects of International Child Abduction*, with the exceptions of Turkey, Morocco, Albania, Bosnia, Turkmenistan, Uzbekistan, Sri Lanka, Singapore and Israel. Further, Article 20 of the *Convention on the Civil Aspects of International Child Abduction* states: “The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.” Also, Article 13 of the *Convention* states that: “Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that - ... b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.” See *Souratgar v. Fair*, 2012 WL 6700214 (S.D.N.Y., December 26, 2012). Thus, even when the *Convention on the Civil Aspects of International Child Abduction* does apply, the treaty grants the state courts discretion as to “fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.”

The 2007 *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* was signed by the U.S. on November 23, 2007, and the Senate gave its consent to, and the President signed, the *Convention* in 2010. Signatories to the 2007 *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* include only a few Muslim majority nations that would likely apply discordant sharia law: Albania, Azerbaijan, Bosnia and Herzegovina, Kazakhstan, Kyrgyzstan, and Turkey. Although the federal preemption of the issue via the treaty clause was sufficient to make the *Convention* “the law of the land,” see U.S. Const. art. VI., cl. 2, the treaty is not self-executing, and therefore additional federal or State statutory enactments are necessary to enable the treaty. In 2010 the *Strengthen and Vitalize Enforcement (SAVE) Child Support Act of 2010* was introduced in, but not passed by, Congress. See *Strengthen and Vitalize Enforcement Child Support Act of 2010*, S.3848, 111th Cong. (2010). The *SAVE Act* was designed to encourage States to adopt provisions implementing the *Hague Convention*. The *SAVE Act* would condition federal funds on implementation of the 2007 *Hague Convention*, like the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (“*PRWORA*”) used conditional spending as a means to institute uniformity of State law and the universal enactment of *Uniform Interstate Family Support Act (UIFSA)*.

There does not appear to be sufficient communication between the Governors who appoint the Uniform Law Commissioners, the Uniform Law Commissioners who draft the Uniform Laws, the diplomats who negotiate the respective treaties, the U.S. Congressmen and Senators who pass enabling legislation for the treaties and Uniform Laws, and the State legislators who enact the Uniform Laws in the several States, including Uniform Laws that implement non-self-executing treaties. There certainly does not appear to be any unity of policy regarding foreign law regarding those Governors, Commissioners, diplomats, Congressmen, U.S. Senators, and state legislators.

¹⁷ The Full Faith & Credit Clause of the United States Constitution only applies to sister States. Moreover, even sister States may deny comity if the Sister state’s judgment violates the domestic state’s public policy.

¹⁸ For example, an earlier version of the model *Uniform Commercial Code*, replaced in 2008, did not allow foreign law to be applied “to the extent that application of the law of the State or country designated would be contrary to a fundamental policy of the State or country whose law would govern in the absence of agreement.” However, the current version of the model *Uniform Commercial Code*, approved in 2008, deletes the distinction between “international” and “domestic” transactions, deletes the requirement that the foreign law may not be “contrary to a fundamental policy of” the State, but requires only that the “transaction bears a reasonable relation to” the other State or nation.

For another example, the *Uniform Child Custody Jurisdiction Act* (“*UCCJEA*”), which imposes jurisdictional restrictions upon a court’s capacity to uphold a foreign custody decree, as of 1997 mandates that the court analyze the dispute as if the custody decree was rendered in any U.S. State other than the state in which the action was filed. “A court of this state shall treat a foreign country as if it were a state of the United States” See *Barajas v. Santiago*, 01-10-00914-CV, 2012 WL 760921 (Tex. App. Mar. 8, 2012) (§ 152.105(a) (providing that foreign country is treated “as if it were a state of the United States” for purposes of section 152.201)).

The *UCCJEA* has been passed in all U.S. states except Massachusetts. It also has not been adopted in Puerto Rico. See Ala. Code § 30-3B-105 (2009); Alaska Stat. § 25.30.810 (2009); Ariz. Rev. Stat. § 25-1005 (2009); Ark. Code Ann. § 9-19-105 (2009); Cal. Fam. Code § 3405 (West 2009); Colo. Rev. Stat. § 14-13-105 (2005); Conn. Gen. Stat. § 46B-115D (2009); Del. Code tit. 13, § 1905 (2009); D.C. Code § 16-4601.04 (2009); Fla. Stat. § 61.506 (2009); Ga. Code Ann. § 19-944 (2009); Haw. Rev. Stat. § 583A-105 (2009); Idaho Code Ann. § 32-11-105 (2009); 750 Ill. Comp. Stat. § 36/105 (2009); Ind. Code. § 31-21-1-3 (2009); Iowa Code § 598B.105 (2009); Kan. Stat. Ann. § 38-1340

(2008); Ky. Rev. Stat. Ann. § 403.806 (West 2009); La. Rev. Stat. Ann. § 13:1805 (2008); Me. Rev. Stat. Ann. tit. 19-A, § 1735 (2009); Md. Code Ann., Fam. Law § 9.5-104 (West 2009); Mich. Comp. Laws § 722.1105 (2009); Minn. Stat. § 518D.105 (2009); Miss. Code Ann. § 93-27-105 (2008); Mo. Rev. Stat. § 452.720 (2009); Mont. Code Ann. § 40-7-136 (2007); Neb. Rev. Stat. § 43-1230 (2009); Nev. Rev. Stat. § 125A.225 (2008); N.H. Rev. Stat. Ann. § 458-A:4 (2009) (effective December 1, 2010); N.J. Rev. Stat. § 2A:34-57 (2009); N.M. Stat. § 40-10A-105 (2009); N.Y. Dom. Rel. Law § 75-d (2009); N.C. Gen. Stat. § 50A-105 (2009); N.D. Cent. Code § 14-14.1-04 (2008); Ohio Rev. Code Ann. § 3127.04 (West 2009); Okla. Stat. tit. 43, § 551-105 (2009); Or. Rev. Stat. § 109.714 (2003); 23 Pa. Cons. Stat. § 5405 (2009); R.I. Gen. Laws § 15-14.1-5 (2008); S.C. Code Ann. § 20-7-6008 (2007); S.D. Codified Laws § 26-5B-105 (2009); Tenn. Code Ann. § 36-6-208 (2009); Tex. Fam. Code Ann. § 152.105 (Vernon 2009); Utah Code Ann. § 78B-13-105 (2009); Va. Code Ann. § 20-146.4 (2009); Wash. Rev. Code § 26.27.061 (2005); W. Va. Code § 48-20-105 (2009); Wis. Stat. § 822.05 (2009); Wyo. Stat. Ann. § 20-5-205 (2009). Some states, such as Missouri, have not adopted the provision of the *UCCJEA* applying the statute to international judgments. See *Rashid v. Drumm*, 824 S.W.2d 497 (1992). Additionally, when South Dakota adopted the *Uniform Child Custody Jurisdiction Act* (UCCJA), South Dakota initially omitted the provision regarding international judgments. See CHILD CUSTODY JURISDICTION, Roger M. Baron, 38 S.D. L. Rev. 479 noting that S.D.C.L. § 26-5A-23 was described in the South Dakota Codified Laws as “Reserved.” However, in 2005 South Dakota revised its version of the *UCCJA* through 2005 South Dakota Laws Ch. 137 (HB 1193) and included section 26-5B-105.

Although the *UCCJEA* only applies to foreign child custody judgments for those foreign countries not “contracting parties” to the *Hague Child Abduction Convention*, and 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,” the *UCCJEA* does not clearly indicate what qualifies as fundamental principles of human rights. The *UCCJEA* states in pertinent part: “(3) A court of this state need not apply this part if the child custody law of a foreign country violates fundamental principles of human rights.” Section 61.506 of the *Uniform Child Custody Jurisdiction and Enforcement Act* (*UCCJEA*) (ss. 61.501-61.542). This language is derived from Article 20 of the *Hague Convention on the Civil Aspects of Child Abduction*. The article reads, “The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested state relating to the protection of human rights and fundamental freedoms.”

The drafting committee of the *UCCJEA* did not attempt to define what aspects of a foreign custody law would violate fundamental principles of human rights. The committee considered a hypothetical case where the foreign custody law awarded custody of children automatically to the father. When asked to decide whether such a provision violated fundamental principles of human rights, the committee, along with the advisors and observers, could not agree. Therefore, the application of that provision was left to the courts to determine on a case-by-case basis.

Jurisprudence has also failed to clarify the interpretation of “fundamental principles of human rights” in this context. However, according to the U.S. Department of State’s legal analysis of the *UCCJEA*, the “human rights/fundamental freedoms” defense to may be invoked “on the rare occasion that the return of a child would utterly shock the conscience of the court or offend all notions of due process.” See Marianne Blair, *International Application of the UCCJEA: Scrutinizing the Escape Clause*, 38 Fam. L. Q. 547, 565-66 (2004).

A Texas court acknowledged this lack of guidance in the law, stating: “The text of section 152.105(c) ... provides little guidance; it is silent with respect to what constitutes a violation of ‘fundamental principles of human rights.’” *In re Hickman*, No.01-12-00572-CV, 2012 WL 4858070, at *2 (Tex.App. Houston [1st Dist.] Oct. 11, 2012, orig. proceeding). A handful of courts in other jurisdictions have addressed the issue, but none have clearly defined what would constitute a violation of fundamental principles of human rights. In *In McKinney’s DRL § 75-d. S.B. v. W.A.*, a New York court held that an award of child custody to the mother, in a divorce decree entered by Abu Dhabi court, was entitled to recognition, registration, and entry in New York, based on principles of comity, under *UCCJEA*, where the Abu Dhabi court had jurisdiction over the parties at the time the award was made, and the country’s child custody laws, on which the award was based, did not violate fundamental principles of human rights. 38 Misc. 3d 780, 959 N.Y.S.2d 802 (Sup 2012). In *Dyce v. Christie*, a Florida court held that Jamaican child-custody laws did not violate fundamental principles of human rights, as necessary to warrant refusal to enforce a registered child custody judgment in Florida under the *UCCJEA*, codified at Fla. Stat. Ann. § 61.506(3), despite the father’s contention that the foreign court had failed to apply the principle of considering the best interests of the child, given that the foreign law recognized the principle of considering the child’s best interest, regardless of whether it had correctly applied the principle. 17 So. 3d 892 (Fla. Dist. Ct. App. 4th Dist. 2009).

The *UCCJEA*’s requirement that foreign countries must almost always be treated as if they were sister States applies regardless of whether the foreign country affords similar recognition to U.S. courts, and because most foreign countries do not provide such recognition, the *UCCJEA* affords far greater deference to foreign custody orders than U.S. custody

orders are afforded by other countries. See, e.g., Morley, *International Family Law Practice* § 7:1; 66 ALR6th 269; *Kelly v. Faizi*, 1 CA-CV 08-0583, 2009 WL 3116160 (Ariz. Ct. App. Sept. 29, 2009); *In re Marriage of Jawad & Whalen*, 326 Ill. App. 3d 141, 759 N.E.2d 1002 (Ill. App. Ct. 2001); *Al-Zouhayli v. Al-Zouhayli*, 486 N.W.2d 10 (Minn. Ct. App. 1992); *Kamal v. Imroz*, 277 Neb. 116, 759 N.W.2d 914 (2009).

The *Uniform Child Custody Jurisdiction Act* (UCCJA), which was the predecessor to the *UCCJEA*, and still applies in Massachusetts, specifically required that the foreign law be “in substantial conformity with the provisions” of the U.S. State’s law, which is arguably a stricter standard that most States applied before adopting the *UCCJEA*. However, there was some dispute as to the proper function of the “in substantial conformity” provision. Yet, several courts interpreted the UCCJA to require application of a “best interests” or similar standards in the foreign court. It would be much more difficult to interpret the *UCCJEA* to require such a standard. The *UCCJEA* only requires the “child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of” the *UCCJEA*. Thus, the adoption of the *UCCJEA* made it easier to enforce foreign custody decrees. Further, the current standard of the *UCCJEA* requiring a violation of “fundamental principles of human rights” is much narrower than the common law standard of not violating public policy. See generally, Stoner, *The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)—A Metamorphosis of the Uniform Child Custody Jurisdiction Act (UCCJA)*, 75 N.D. L.Rev. 301, 313 (1999); House Comm. on Juvenile Justice and Family Issues, *Bill Analysis*, Tex. H.B. 797, 76th Leg., R.S. (1999) (stating that “this Act revises the child custody jurisdiction law to prioritize home state jurisdiction”); see *In re Forlenza*, 140 S.W.3d at 374–75 (discussing the *UCCJEA* in the context of continuing jurisdiction over custody matters).

Additionally, the proposed *2013 Amendments Pertaining to International Proceedings* (“*2013 Amendments*”) to the *UCCJEA* would not provide significant additional protections against foreign custody judgments rendered under discordant foreign law. Instead, the proposed *2013 Amendments* appear to weaken such protections. Generally, the *2013 Amendments* maintain the same requirement that custody judgments rendered in foreign countries be enforced, like custody judgments rendered in sister States, except when the child custody law of the foreign country violates fundamental principles of human rights. However, the *2013 Amendments* actually appear to require that a court must enforce the custody judgments rendered in a foreign country, even when the child custody law of the foreign country violates fundamental principles of human rights, as long as the foreign country in which the judgment was rendered is a party to *The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (“*1996 Hague Convention*”). Yet, the *2013 Amendments* do allow a court to decline to recognize a custody judgment rendered in a foreign country that is party to the *1996 Hague Convention* when “the issuing authority did not allow the respondent an opportunity to be heard [or] the issuing authority did not provide the child an opportunity to be heard in violation of fundamental principles of procedure of this state. ...” However, these additional procedural protections are minimal and only apply to foreign countries that are members of the *1996 Hague Convention*. (The *2013 Amendments* are unlikely to be adopted by the several States soon because the U.S. State Department is still in the process of considering the appropriate federal model to implement the *1996 Hague Convention*. Because federal implementing legislation has not yet been passed, the Uniform Law Commission does not intend to present the *2013 Amendments* for State enactment at this time. See, e.g., *In the Interest of S.L.*, 61 2d 276, 303 (Kan. App. 11/12/21).

To cure the lack of guidance to the courts, and the lack of specific protection to children and parents, found in the *UCCJEA*, a few States, including New York (N.Y. Dom. Rel. Law § 75-d(c)), New Jersey (N.J. Stat. Ann. § 2A:34-57(c)), and Connecticut (C.G.S.A. § 46b-115ii; Conn. Gen. Stat. Ann. § 46b-115ii (West)), have recently passed legislation analogous to *ALAC*. The Connecticut statute specifically precludes enforcement of a foreign custody determination that is “repugnant to the public policy of this state.” This language permits a court in Connecticut to review the foreign custody order in its entirety and to determine whether it was issued in compliance with Connecticut’s public policy.

For an additional example of a uniform law being liberalized to accommodate foreign law, the *Uniform Interstate Family Support Act* (UIFSA) (2008), was amended in 2008 with all States passing the 2008 amendments—New Jersey being the last in May of 2016. In the 2008 Amendments to *UIFSA* the term “of a state,” was amended to read, “of a state or foreign country.” UIFSA2008 § 102(26). Further, the *UIFSA* now states that “a tribunal of this state may refuse recognition and enforcement of a registered Convention support order [if]: (1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard,” which sets a standard similar to, but not as rigorous as, *American Laws for American Courts* (ALAC), discussed below. UIFSA2008 § 708(b).

¹⁹ In *Naoko Ohno v. Yuko Yasuma*, 723 F. 3d 984, 993 (9th Cir. 2013), the United States Court of Appeals for the Ninth Circuit explicitly held that, although an American court, state or federal, may not be able to substantively render a certain judgment because of the U.S. Constitution, an American court can enforce such a judgment issued by a

foreign court and recognized under State law, because the content of the foreign judgment is not attributable to a state actor. *Id.* at 993-95. The Court reasoned that, because a foreign court is not considered a state actor, and without a state actor there can be no constitutional violation, a foreign court may therefore render a judgment in clear violation of American constitutional rights, and a U.S. federal or state court can enforce that judgment in the United States without running afoul of the United States Constitution.

²⁰ The American Public Policy Alliance, a non-partisan organization that advocates for the constitutionality of U.S. and State laws and public policies, promotes the model *American Laws for American Courts Act* (ALAC) to prevent enforcement of foreign law that violates fundamental constitutional rights. ALAC limits interactions between U.S. and foreign law by imposing various exceptions to the enforcement of foreign laws and judgments. The overarching limitation imposed by the ALAC prohibits the application of foreign law only to the extent that it would violate a fundamental constitutional right. In practice, these violations have occurred primarily, but not exclusively, in the context of sharia law. ALAC precludes enforcement of choice of law provisions if the chosen law would not grant the same rights that would be required under the U.S. or a particular State's constitution. To that effect, ALAC imposes a statutory directive requiring courts to conduct a threshold inquiry into whether the application of foreign law would deny parties the fundamental rights and liberties guaranteed by the U.S. or a particular State's constitution. Instead of relying on judicial discretion and piecemeal doctrines developed across choice-of-law, conflicts-of-law, family-law, arbitration, forum-non-conveniens, and comity jurisprudence, ALAC directs the codification of a single, consistent standard, thereby reducing uncertainty and preventing contractual or procedural mechanisms from being used to circumvent these constitutional safeguards. Generally speaking, if a dispute is arbitrated under foreign law, any arbitration ruling or award based upon the foreign law will not be upheld unless a court determines that the arbitrator granted the parties the same fundamental constitutional rights guaranteed by the U.S. Constitution, including the rights to equal protection, due process, free speech and free exercise of religion. See *Soleimani v. Soleimani*, 2012 WL 3729939 (Kan. Dist. Ct. 2012).

²¹ In 2010, the Louisiana Legislature passed Louisiana Revised Statute 9:6001 and the Tennessee Legislature passed Tennessee Code § 20-15-104. La. Rev. Stat. Ann. § 9:6001 (2010); H.B. 3768, Reg. Sess. (Tenn., 2010), signed into law as TENN. STAT. CODE. ANN. § 20-15-104 (Westlaw 2010). In 2011, Arizona passed House Bill 2064. H.B. 2064, 50th Leg., 1st Reg. Sess. (Ariz., 2011) (Unlike the bills passed in Louisiana and Tennessee, the Arizona bill does not go into nearly as much detail regarding specific enforcement and application.) In 2012, the Kansas Legislature, by an overwhelmingly bipartisan 33-3 vote in the Kansas Senate, following a unanimous 120-0 vote in the Kansas House of Representatives, passed SB 79, which was then signed into law by Governor Sam Brownback. K.S.A. 60-5101, et seq, 2012 Kansas Laws Ch. 136 (S.B. 79), eff. July 1, 2012. (Also in 2012, South Dakota passed a statute that achieved a similar effect as ALAC: "No court, administrative agency, or other governmental agency may enforce any provisions of any religious code.") S.D. Codified Laws §19-8-7 H.R. 1253, 2012 Legis. Assemb., 87th Sess. (S.D. 2012)). In 2013, HB 1060 passed the Oklahoma House of Representatives 85-7 and the Oklahoma Senate 40-3. The bill was signed into law by Governor Mary Fallin on April 18, 2013. Okla. Stat. Ann. tit. 12, § 20 (West). Also in 2013, a version of ALAC, SB 5797, also passed into law for specialty courts in the State of Washington. Wash. Rev. Code Ann. § 2.28.165; Wash. Rev. Code §4.24.820. On May 12, 2014, Florida Governor Rick Scott signed SB 386 into law. Fla. Stat. Ann. § 61.0401 (West). In 2014, HB 522 passed the North Carolina House 75-37 and Senate 31-2. N.C. Gen. Stat. Ann. § 1-87.12, et seq (West). Moreover, a version of ALAC passed the Alabama legislature overwhelmingly in 2014 as constitutional Amendment 1 that on November 4, 2014, passed a statewide vote of the people with over 72% in favor. Ala. Const. Art. I, §13.50 (also cited as Ala. Const. Amend. No. 884); See also S.B. 33, 2012 Leg., Regular Sess. (Ala. 2012)(prior version). On March 23, 2015, Mississippi Governor Phil Bryant signed into law HB 177 after it passed the Mississippi House 115-3 and the Mississippi Senate 52-0. 2015 Miss. Laws WL No. 104 (H.B. 177); 2015 HB 177; Miss. Code Ann. § 11-63-1 (2015). In 2017, a version of ALAC became law after passing the Arkansas House with approximately three times more yeas than nay votes and after passing the Arkansas Senate with approximately twice as many yeas as nay votes. Act 980, 2017 Ark. Laws (HB1041) available at <http://www.arkleg.state.ar.us/assembly/2017/2017R/Pages/BillInformation.aspx?measureno=HB1041>; AR ST § 1-1-103. Also in 2017, Texas Governor Greg Abbott signed into law House Bill 45, a version of ALAC that passed the Texas House 135-8, and the Texas Senate 26-5. 2017 Tex. Sess. Law Serv. Ch. 771 (H.B. 45). (Unlike other versions of ALAC, the Texas version requires the Texas Supreme Court to adopt ALAC-like provisions by rule.) These statutes have most often passed by large, bipartisan margins. (Even when versions of ALAC have not become law, ALAC has often passed legislative committees or houses by overwhelming margins, such as in the New Hampshire House, the Indiana Senate twice, and the Judiciary Committee of Georgia, only to be scuttled through interventions by legislative leadership. Likewise, in 2013 the Missouri Legislature passed by a wide margin a version of ALAC that was vetoed by the Governor. On June 2, 2013, Missouri Governor Jeremiah ("Jay") Nixon returned to the Missouri Secretary of State Senate Substitute for Senate Bill No. 267, entitled the *Civil Liberties Defense Act*. An

attempt to override the veto failed by one vote.) Not one of these laws has ever been challenged in court. In addition to these statutes passed in thirteen (13) States from the Pacific to the Atlantic, and from the Midwest to the entire Gulf Coast, in 2010 the Idaho House of Representatives passed House Concurrent Resolution 44 that provided, similar to *ALAC*, in pertinent part: “For any domestic issue, no court should consider or use as precedent any foreign or international law, regulation, or court decision” H.R. Con. Res. 44, 60th Leg., Reg. Sess. (Idaho 2010) (enacted); See <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2010/legislation/HCR044.pdf>.

Some courts have referenced or interpreted *ALAC* statutes. In 2014, a federal district court sitting in Arizona applied the Arizona version of *ALAC* “to preclude application of Saudi law for . . . claims for intentional infliction of emotional distress and negligent infliction of emotional distress by a former employee plaintiff who claimed injury while being employed in Saudi Arabia,” despite the former employee having executed an “employment agreement that provided that Saudi law would govern the terms and conditions of his employment.” *Petersen v. Boeing Co.*, No. CV-10-00999-PHX-ROS, 2014 WL 12516257 (D. Ariz. July 1, 2014). The federal judge commented that the employee plaintiff was “correct that under Arizona law, courts are precluded from enforcing foreign law if doing so ‘would conflict with the laws of the United States or of [Arizona].’” This ruling came on the heels of the U.S. Court of Appeals for the Ninth Circuit ruling that a forum selection clause requiring any contractual disputes to be resolved in the Labor Courts of Saudi Arabia could not be enforced without an evidentiary hearing. *Petersen v. Boeing Co.*, 715 F.3d 276, 278–79 (9th Cir. 2013). The Ninth Circuit noted that “evidence submitted by [plaintiff] corroborated his concerns: the United States Department of State’s 2009 *Human Rights Report* on Saudi Arabia states that ‘[i]n practice, the judiciary was not independent’ and that ‘the judiciary was subject to influence’ by powerful individuals within the executive or legislative branch. Furthermore, ‘judges may discount the testimony of . . . persons of other [non-Muslim] religions.’” *Id.* at 281.

In 2012, a Kansas district court explained that the recently passed Kansas version of *ALAC* “intended to preclude the courts from applying foreign law, legal codes or systems that violate the public policy of our state or federal constitutions.” *Soleimani v. Soleimani*, 2012 WL 3729939 (Kan. Dist. Crt. 2012). The judge noted that the Kansas version of *ALAC* “has been widely viewed as precluding courts from applying Shari’a law, although it does not mention the same.” *Id.* The judge refused to uphold an Islamic mahr marriage contract entered into as part of a “temporary” Iranian marriage. *Id.* The court spent much effort to explain how legal application of the policy considerations behind Islamic cultural marriage practices were incompatible with Kansas public policy and equal protection between the sexes. *Id.* He noted that the “temporary marriage” “allows a man to engage in relations with a woman for a negotiated period of time,” and “is not impeded by an existing marriage.” *Id.* Moreover, he explicated that “under Islamic law, a husband enjoys . . . unilateral rights” to divorce. *Id.* The Court characterized the Iranian temporary marriage as a form of “legally sanctioned prostitution in Iran.” *Id.* The judge highlighted that “[a]s part of this ‘temporary’ marriage, an exchange of a Quran, a mirror, a pair of candlesticks and a promise to pay 14 gold coins (valued at \$500) was required.” *Id.* The judge further explained that for the wife “it was degrading for her to marry an older man like petitioner but she did so anyway and returning now would be a further humiliation.” *Id.* Although acknowledging that her abusive, domineering “relationship with [her husband] reflected a more conservative relationship consistent with Islamic culture that precluded her from working and learning English,” the judge rejected her plea that she could not support herself in the United States, holding that “she will have to support herself eventually in a manner that is decidedly different from a paternalistic society.” *Id.* The judge further rejected her claim for 1,354 gold coins in accordance with the mahr. *Id.* He noted that enforcing the mahr terms “may require evidence of Islamic law” and would be “contrary to the public policy of Kansas law.” *Id.* After extensive discussion of legal commentary and jurisprudence regarding Islamic mahrs, the judge concluded that “mahr agreement[s] . . . clearly emanate from a legal code that may be antithetical to Kansas law [and] stem from jurisdictions that do not separate church and state, and may, in fact, embed discrimination through religious doctrine.” *Id.* The court found that the legal and cultural precepts underpinning Islamic mahrs suggest women are, comparatively-speaking, chattel, not human beings. This entire valuation process is contrary to American jurisprudence even if a Western court could somehow divine a purpose for in the mahr amount for anticipated spousal support, as opposed to simply divining an intangible value for a wife’s cultural value. The judge proclaimed that “[p]erpetuating such discrimination under the guise of judicial sensitivity to Establishment Clause prohibitions would, in effect, abdicate the judiciary’s overall constitutional role to protect such fundamental rights, a concern that presumably lead to the recently-enacted [Kansas *ALAC*].” *Id.* The judge ultimately concluded that “the protection of Kansas law . . . requires an equitable division of property in a secular system that is not controlled by the dictates of religious authorities or even a society dominated by men who place values on women in medieval terms.” *Id.*

There have been numerous references to versions of *ALAC* in legal literature. Versions of *ALAC* have been addressed in several legal treatises. See, e.g., 3 *Litigation of International Disputes in U.S. Courts* § 18:5; 5 *Kan. Law & Prac., Code of Civ. Proc. Anno. § 60-5101* (5th ed.). Approximately thirty (30) law review articles published since 2010

have cited and discussed versions of *ALAC*. Intisar A. Rabb, *The Islamic Rule of Lenity*, 44 VAND. J. TRANSNAT'L L. 1299 (2011); Martha F. Davis & Kalb Johanna, *Oklahoma and Beyond: Understanding the Wave of State Anti-Transnational Law Initiatives*, 87 Ind. L. J. Supp. 1, 3 (2011); Aaron Fellmeth, *International Law and Foreign Laws in the US. State Legislatures*, 15 ASIL Insights (May 26, 2011); Carlos M. Vasquez, *Customary International Law as U.S. Law: A Critique of the Revisionist and Intermediate Positions and a Defense of the Modern Position*, 86 Notre Dame L. Rev. 101 (2011); Asma T. Uddin & Dave Pantzer, *A First Amendment Analysis of Anti-Sharia Initiatives*, 10 First Amend. L. Rev. 363 (2012); Lee Tankle, *The Only Thing We Have to Fear Is Fear Itself: Islamophobia and the Recently Proposed Unconstitutional and Unnecessary Anti-Religion Laws*, 21 WM. & MARY BILL RTS. J. 273 (2012); David L. Nersessian, *How Legislative Bans on Foreign and International Law Obstruct the Practice and Regulation of American Lawyers*, 44 Ariz. St. L.J. 1647 app. (2012); David L. Nersessian, *How Legislative Bans on Foreign and International Law Obstruct the Practice and Regulation of American Lawyers*, 44 Ariz. St. L.J. 1647 (2012); Aaron Fellmeth, *U.S. State Legislation to Limit Use of International and Foreign Law*, 106 Am. J. Int'l L., 107 (2012); Bradford J. Kelley, *Bad Moon Rising: The Sharia Law Bans*, 73 LA. L. REV. 601 (2013); Sarah M. Fallon, Note, *Justice for All: American Muslims, Sharia Law, and Maintaining Comity Within American Jurisprudence*, 36 B.C. INT'L & COMP. L. REV. 153 (2013); Ryan H. Boyer, "Unveiling" Kansas's Ban on Application of Foreign Law, 61 U. KAN. L. REV. 1061, 1061 (2013); Davis, M.F., *Shadow and Substance: The Impacts of the AntiInternational Law Debate on State Court Judges*, 47 NEW ENG. L. REV. 631 (2013); Prasatik, S., *Assessing the Viability of State International Law Prohibitions*, 35 HOUS. J. INT'L L. 465 (2013); Fellmeth, *U.S. State Legislation to Limit Use of International and Foreign Law*, 106 Am. J. Int'l L. 107 (2012); Volokh, *Foreign Law in American Courts*, 66 Okla. L. Rev. 219 (2014); Estin, A. L., *Foreign and Religious Family Law: Comity, Contract, and the Constitution*, 41 Pepp. L. Rev. 1029 (2014); Samir Islam, *The Negative Effects of Ill Advised Legislation: The Curious Case of the Evolution of Anti Sharia Law Legislation Into Anti Foreign Law Legislation and the Impact on the CISG*, 57 How.L.J. 979 (2014); Strong, S.I., *Recognition and Enforcement of Foreign Judgments in U.S. Courts: Problems and Possibilities*, 33 REV. LITIG. 45 (2014); James A. Sonne, *Domestic Applications of Sharia and the Exercise of Ordered Liberty*, 45 SETON HALL L. REV. 717 (2015); Symeon C. Symeonides, 63 AM. J. COMP. L. 299 (2015); Judith Resnik, *Constructing the Foreign: American Law's Relationship to Non Domestic Sources*, COURTS AND COMPARATIVE LAW 437 (2015); Rahdert, *Exceptionalism Unbound: Appraising American Resistance to Foreign Law*, 65 Cath. U. L. Rev. 537 (2016); Andrew L. Milne, *Sharia And Anti-Sharia: Ethical Challenges For The Cross-Cultural Lawyer Representing Muslim Women*, 57 S. Tex. L. Rev. 449 (2016); Holly Tao, *Congress, Courts, And Control Over Persuasive Sources Of Law*, 51 Gonz. L. Rev. 235 (2016); Ann M. Lousin, *Symposium*, 77 Ohio St. L.J. 387 (2016); Judge M. Margaret McKeown, *How International Law Became A Four-Letter Word*, 23 Sw. J. Int'l L. 101 (2017); see also Molina III, *2012 Legislative Update*, 81 J. Kan. B. Ass'n 30, 33 (2012). The American Bar Association has passed a resolution addressing legislation which some argue encompasses versions of *ALAC*. Salli A. Swartz, *American Bar Association Resolution and Report 113A* (Aug. 8-9, 2011)(ABA resolving, inter alia, "[t]hat the American Bar Association opposes federal or state laws that impose blanket prohibitions on consideration or use by courts or arbitral tribunals of foreign or international law.") The Center for American Progress and the Brennan Center for Justice issued a policy paper addressing versions of *ALAC*. Patel, Duss, & Toh, *Foreign Law Bans: Legal Uncertainties and Practical Problems* (Center for American Progress and Brennan Center for Justice, May 2013) available at <http://www.brennancenter.org/sites/default/files/publications/ForeignLawBans.pdf>. Several state bar associations and committees of state bar associations have addressed *ALAC* or the issues raised by *ALAC*. Several state attorneys general have supported *ALAC* or issued letters or formal opinions addressing versions of, or the policies underpinning, *ALAC*. See Texas Attorney General Opinion KP-094.

²² See Wikipedia, *Rachel Ehrenfeld*,

http://en.wikipedia.org/wiki/Rachel_Ehrenfeld#Rachel.27s_Law_and_Free_Speech_Legislation (last visited 2/7/26) (Rachel Ehrenfeld wrote a book, "Funding Evil," that alleged that Saudi billionaire Khalid bin Mahfouz had financed terrorist groups through his bank and charity organization. Mahfouz sued Ehrenfeld in England and was awarded a default judgment against her for defamation. Ehrenfeld pre-emptively countersued Mahfouz in New York to obtain a declaration that the judgment would not be enforced in the United States and that the book was not defamatory under U.S. laws. The New York court ruled that they lacked personal jurisdiction and dismissed the case. However, in April of 2008, the New York legislature passed the *Libel Terrorism Protection Act*, which is known as "Rachel's Law." N.Y. C.P.L.R. 5304 (McKinney). The law offers New Yorkers greater protection against libel judgments from countries whose laws are inconsistent with the freedom of speech guaranteed by the U.S. Constitution.)

Subsequently, in August 2008, Illinois passed Public Act 095-0865 as part of its Code of Civil Procedure. 735 ILCS 5/12-664 (West). In 2009, California passed Senate Bill No. 320 as part of the California Code of Civil Procedure. Ca. Civ. Pro. § 1716 (West). In 2009, Florida passed House Bill No. 949. Fla. Stat. Ann. § 55.605 (West). In 2010, Maryland's Senate Bill No. 13 was added to the Maryland Code of Courts and Judicial Proceedings. Md. Cts. & Jud.

Pro. § 10-704 (West). Also in 2010, Tennessee added Section 26-6-108 to the Annotated Code, Tenn. St. § 26-6-108 (West). Utah passed House Bill 96, Ut. St. § 78B-5-321 (West), Illinois passed Public Act 095-0865, 735 ILCS 5/12-664 (West), and Louisiana passed Acts 712 and 878, Louisiana Code of Civil Procedure Article 2542. (Although Illinois adopted a form of *Rachel's Law* in 2008, part of the statutory language constituting *Rachel's Law* was overwritten in 2012 when Illinois adopted the current version of the *Uniform Foreign Money-Judgments Recognition Act*. 735 ILCS 5/12-618 to 5/12-626 repealed by P.A. 97-140, § 10, eff. Jan. 1, 2012.) In 2013, Oklahoma passed House Bill 2072. Ok. St. Tit. 12 § 718A (West). In March of 2013, South Dakota's governor signed Bill No. 174, South Dakota's *Free Speech Defense Act*. S.D. St. § 15-16-44 (West). In 2017, Connecticut passed its version. 2017 CT S.B. 1020 (NS); Public Act No. 17-88. Thus, eleven (11) states have passed versions of *Rachel's Law/Free Speech Defense Act*.

²³ The problem of foreign libel judgments violating the rights to free speech and press has been widely recognized. See Doug Rendleman, *Collecting a Libel Tourist's Defamation Judgment?*, 67 Wash. & Lee L.Rev. 467, 468 (2010); Tara Sturtevant, *Can the United States Talk the Talk & Walk the Walk When it Comes to Libel Tourism: How the Freedom to Sue Abroad Can Kill the Freedom of Speech at Home*, 22 Pace Int'l L.Rev. 269, 269 (2010); Robert L. McFarland, *Please Do Not Publish This Article in England: A Jurisdictional Response to Libel Tourism*, 79 Miss. L.J. 617, 625 (2010); Sarah Staveley-O'Carroll, *Libel Tourism Laws: Spoiling the Holiday and Saving the First Amendment?*, 4 N.Y.U. J.L. & Liberty 252, 264 (2009); Marissa Gerny, Note, *The SPEECH Act Defends the First Amendment: A Visible and Targeted Response to Libel Tourism*, 36 Seton Hall Legis. J. 409 (2012); Lili Levi, *The Problem of Trans-National Libel*, 60 Am. J. Comp. L. 507 (2012); Daniel C. Taylor, Note, *Libel Tourism: Protecting Authors and Preserving Comity*, 99 Geo. L.J. 189 (2010).

See *Pontigon v. Lord*, 340 S.W.3d 315 (Mo. Ct. App. 2011) (Petitioner, who prevailed in defamation suit against author in Canada, sought registration of purported judgment. The district court granted registration of judgment. Author appealed. The appellate court held that: trial court neglected to consider whether defamation laws of foreign jurisdiction afforded minimal free speech protections to author; and the record did not contain a certified and authenticated copy of the purported judgment as was necessary to afford the judgment full faith and credit.)

²⁴ The *UCCJEA* has been passed in all U.S. States except Massachusetts. It also has not been adopted in Puerto Rico. Some States, such as Missouri, did not adopt the provision of the *UCCJEA* applying the statute to international judgments. See *Rashid v. Drumm*, 824 S.W.2d 497 (1992). Additionally, please note that when South Dakota adopted the *Uniform Child Custody Jurisdiction Act* (UCCJA), South Dakota initially omitted the provision regarding international judgments. See CHILD CUSTODY JURISDICTION, Roger M. Baron, 38 S.D. L. Rev. 479 noting that S.D.C.L. § 26-5A-23 was described in the South Dakota Codified Laws as "Reserved." However, in 2005 South Dakota revised its version of the UCCJA through 2005 South Dakota Laws Ch. 137 (HB 1193) and included section 26-5B-105.

²⁵ The *Uniform Interstate Family Support Act* has been passed in all U.S. States in some form. The current *UIFSA* defines a "State" whose orders and jurisdiction must be recognized to include "A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under [the *UIFSA*], the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act." Therefore, the provisions of the current *UIFSA* determine when comity should be granted to foreign child support judgments from foreign countries which are foreign reciprocating countries under federal law, have a reciprocal arrangement with the United States or have a similar law.

The *UIFSA* was preceded by the *Uniform Reciprocal Enforcement of Support Act* ("URESAs"), and the *Uniform Desertion and Non-Support Act*, which did not focus on support orders from foreign countries. The 2001 amendments to *UIFSA*, adopted by over twenty States, began to focus, for the first time, on international obligations pertaining to the international aspects of child support. See Tina M. Fielding, *The Uniform Interstate Family Support Act: The New Uresas*, 20 U. Dayton L. Rev. 425 (1994). Prior to these changes, *UIFSA* continued the basic approach first found in RURESAs which defined a state as "any foreign jurisdiction in which this [RURESAs] or substantially similar reciprocal law is in effect." The 2001 amendments expanded the definition of "state" to include foreign countries that had entered into bilateral agreements with the United States. The definition of "state" was expanded to include foreign countries that the U.S. State Department had declared to be reciprocating jurisdictions. However, the determination that a foreign nation was a reciprocating country was merely advisory and did not obligate the States to act. The amendments also clearly provided that an order issued by a foreign country may be enforced as a matter of comity.

Since 2010, when the U.S. Senate gave its advice and consent to the 2007 *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, the *Strengthen and Vitalize Enforcement (SAVE) Child Support Act of 2010*, S.3848, 111th Cong. (2010), was introduced in, but not passed by, Congress. The SAVE Act was designed to encourage States to adopt provisions implementing the *Hague Convention*. (Although the federal preemption of the issue via the treaty clause was sufficient to make the Convention "the law of the land," see U.S.

Const. art. VI., cl. 2, the treaty is not self-executing, and therefore additional federal or State statutory enactments are necessary to enable the treaty.) Not all States have adopted the 2008 Amendments to *UIFSA* which were designed to facilitate full implementation of the *2007 Hague Convention*. Thus, the version of *UIFSA* in some States primarily applies to foreign jurisdictions with reciprocity agreements, with child support orders from other jurisdictions being subject only to the common law of comity. However, with an estimated 150,000 international child support cases that currently involve parties in the United States and attempts at implementing the *2007 Hague Convention* through the 2008 Amendments to *UIFSA* ongoing, States will likely continue to be pressured to revisit their versions of *UIFSA*.

²⁶ About half of the States have passed a version of the *Uniform Foreign Money-Judgments Recognition Act*. Alabama passed the Act in 2012. See Ala.Code 1975 § 6-9-250. See also Alaska AS 09.30.100 to 09.30.180.; Connecticut P.L. 88-39, C.G.S.A. §§ 50a-30 to 50a-38; Delaware 10 Del.C. §§ 4801 to 4808; District of Columbia D.C. Law 11-84, D.C. Official Code, 2001 Ed. §§ 15-381 to 15-388; Florida F.S.A. §§ 55.601 to 55.607; Georgia O.C.G.A. §§ 9-12-110 to 9-12-117; Illinois S.H.A. 735 ILCS 5/12-618 to 5/12-626; Maine 14 M.R.S.A. §§ 8501 to 8509; Maryland §§ 10-701 to 10-709; Massachusetts M.G.L.A. c. 235, § 23A; Missouri V.A.M.S. §§ 511.770 to 511.787; New Jersey N.J.S.A. 2A:49A-16 to 2A:49A-24; New York McKinney's CPLR 5301 to 5309; North Dakota NDCC 28-20.2-01 to 28-20.2-06; Ohio R.C. §§ 2329.90 to 2329.94; Pennsylvania 42 P.S. §§ 22001 to 22009; Texas V.T.C.A., Civil Practice and Remedies Code §§ 36.001 to 36.008; Virgin Islands 5 V.I.C. §§ 561 to 569; Virginia Code 1950, §§ 8.01-465.6 to 8.01-465.13. The Act requires that any foreign money-judgment may only be enforced if the foreign court followed basic due process and the claim is not repugnant to the public policy of the State. The Act is an example of legislatures codifying the requirements for comity, retorting the argument that long-standing jurisprudence on comity is always sufficient. For example, the *Florida Uniform Foreign Money Judgments Recognition Act*, Fla. Stat. §§ 55.601 to 55.607 circumscribes the granting of comity to foreign judgments. Section 55.605(h), Florida's version of Rachel's law, mimics *ALAC*, but only as to First Amendment rights.

²⁷ The *Uniform Model Choice of Forum Act* has only been adopted by Nebraska, Neb. Rev. Stat. § 25-413 et seq., and New Hampshire, N.H. Rev. Stat. § 508-A:1 et seq. It is designed to implement the *1965 Hague Convention on the Choice of Courts*. Under the *Uniform Model Choice of Forum Act*, if another forum is chosen by contract, the plaintiff's case shall be dismissed unless the plaintiff "cannot secure effective relief in the other state" or it would be "unfair or unreasonable to enforce the agreement." No consideration of constitutional rights is explicated.

²⁸ All Americans receive some protection from the *SPEECH Act*, 28 U.S.C. 4101-4105. However, the *SPEECH Act* contains the following exception limiting its effectiveness:

(B) even if the defamation law applied in the foreign court's adjudication did not provide as much protection for freedom of speech and press as the first amendment to the Constitution of the United States and the constitution and law of the State, the party opposing recognition or enforcement of that foreign judgment would have been found liable for defamation by a domestic court applying the first amendment to the Constitution of the United States and the constitution and law of the State in which the domestic court is located.

See Trout Point Lodge, Ltd. v. Handshoe, 729 F.3d 481, 486 (5th Cir. 2013) (suggesting that, had more evidence been introduced in the Canadian proceeding, the foreign libel judgment may have been enforceable.) Section (B) could be removed to strengthen the Act.

Moreover, an anti-suit injunction provision could be added to the *SPEECH Act*. An anti-suit injunction could order the plaintiff(s) in the foreign court to cease to pursue the litigation in the foreign court, and if the plaintiff(s) continued to pursue the litigation in the foreign court, the plaintiff(s) could be held in contempt of court by the American court, be assessed a fine, and either arrested if they travel to the United States, or have any property in the United States seized to satisfy any fine. The model *Free Speech Defense Act* contains the following anti-suit injunction language:

F. Any person against who a foreign defamation action has been instituted may bring an action for an injunction where the foreign defamation action would: (1) frustrate a policy of the State, the guarantee of due process, and the protection of freedom of speech; (2) be vexatious or oppressive; or (3) where the proceedings prejudice other equitable considerations.

²⁹ In the absence of a federal statute or treaty or some other basis for federal jurisdiction, such as admiralty, recognition and enforcement of foreign country judgments is a matter of State law, and an action to enforce a foreign country judgment is not an action arising under the laws of the United States. Thus, State courts, and federal courts applying State law, recognize and enforce foreign country judgments without reference to federal rules. American Law Institute, Restatement of the Law (Third) – Foreign Relations Law of the United States, §481, cmt a. 13 A.L.R. Fed. 208 explains:

§ 3. State or federal law as controlling

The United States Supreme Court's decision in *Erie R. Co. v. Tompkins* (1938) 304 US 64, 82 L Ed 1188, 58 S Ct 817, 114 ALR 1487, established the general principle that, except as to matters governed by the Federal

Constitution or by acts of Congress, the federal courts are required, in diversity of citizenship cases, to apply state law rather than federal law in determining issues of substantive law. And the Supreme Court's decision in *Klaxon Co. v Stentor Electric Mfg. Co.* (1941) 313 US 487, 85 L Ed 1477, 61 S Ct 1020, established the general principle that on the basis of the *Erie v Tompkins* decision, a federal court was required, in a diversity of citizenship case, to follow the conflict-of-laws rules of the state in which the court was sitting. On the basis of these general principles, it has been held, in diversity of citizenship cases decided subsequently to *Erie v Tompkins*, that state law rather than federal law is controlling in determining whether a valid judgment of a court of a foreign country is entitled to extraterritorial effect in a Federal District Court.

Thus, in *Svenska Handelsbanken v Carlson* (1966, DC Mass) 258 F Supp 448, the court, relying upon *Erie v Tompkins*, concluded that Massachusetts law rather than federal law was applicable in determining whether to give conclusive effect to a judgment by a Swedish court.

Similarly, in *Somportex Ltd. v Philadelphia Chewing Gum Corp.* (1971, CA3 Pa) 453 F2d 435, 13 ALR Fed 194, cert den 405 US 1017, 31 L Ed 2d 479, 92 S Ct 1294, the court, relying upon *Erie v Tompkins*, held that where jurisdiction was based solely on diversity of citizenship, the question whether an English judgment was entitled to recognition by a Federal District Court was governed by the law of the state where the federal court was located.

See Compania Mexicana Rediodifusora Franteriza v Spann (1941, DC Tex) 41 F Supp 907 (affd (CA5) 131 F2d 609)(court, citing *Erie v Tompkins* and *Klaxon v Stentor*, indicated that it would assume that State law was controlling as to the question whether a Mexican judgment was against public policy); *Territory of Curacao v Solitron Devices, Inc.* (CA2 NY) 489 F2d 1313, cert den 416 US 986, 40 L. Ed. 2d 763, 94 S Ct 2389 (*Convention on Recognition and Enforcement of Arbitral Awards* (9 U.S.C.A. §§ 201 et seq.) involves only enforcement of foreign arbitral awards and not enforcement of foreign judgments confirming foreign arbitral awards, and accordingly State law is not pre-empted to extent that it permits, regulates, and establishes procedure for enforcement of foreign money judgment.); *Kim v. Co-op. Centrale Raiffeisen-Boerenleebank B.A.*, 364 F. Supp. 2d 346 (S.D. N.Y. 2005)(Under New York choice of law rules, in determining preclusive effect of foreign court's judgment, court looks to law of foreign jurisdiction and gives judgment same preclusive effect that it would enjoy in that jurisdiction.); *Ecoban Finance Ltd. v. Grupo Acerero Del Norte, S.A. De C.V.*, 108 F. Supp. 2d 349 (S.D.N.Y. 2000)(Decision whether to grant comity in diversity suit, deferring to foreign proceeding, is to be determined under State law.); *South Carolina Nat. Bank v Westpac Banking Corp.* (1987, DC SC) 678 F Supp 596. (Enforceability of judgments rendered by courts of foreign nations is to be determined under law of State in which enforcement is sought.); *Hunt v BP Exploration Co., Ltd.* (1984, ND Tex) 580 F Supp 304, § 7[c]; *Ingersoll Milling Machine Co. v Granger* (1986, ND Ill) 631 F Supp 314, affd (CA7 Ill) 833 F2d 680. (Federal District Court sitting in diversity action should apply State law in determining conclusive effect of foreign court judgment.); *Toronto-Dominion Bank v Hall* (1973, DC Ark) 367 F Supp 1009 (citing annotation). (In diversity of citizenship action, enforceability of judgment obtained in Canada would be governed by State law.).

However, the *Convention on the Civil Aspects of International Child Abduction* with its enabling federal legislation entitled the *International Child Abduction Remedies Act* does preempt regarding some jurisdictional issues for child custody, but only as to nations who are signatories to the *Convention*. Countries that apply sharia law are generally not signatories to the *Convention*, with the exceptions of Turkey, Morocco, Albania, Bosnia, Turkmenistan, Uzbekistan, Sri Lanka, Singapore and Israel. Further, Article 20 of the *Convention* states: "The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms." Also, Article 13 states that: "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that - ... b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." *See Souratgar v. Fair*, 2012 WL 6700214 (S.D.N.Y., December 26, 2012).

Also, the *Hague Convention on Choice of Court Agreements of June 30, 2005* has been signed by the United States, and provides for the enforcement of choice of court agreements and the recognition and enforcement of judgments of the chosen court in the courts of Contracting States. *See* <http://www.hcch.net/upload/conventions/txt37en.pdf>. The Uniform Law Commission has been working with the U.S. Department of State and other interested parties, most recently under the auspices of the American Society of International Law, to develop an implementation method for the Choice of Court Convention that will allow that Convention to be implemented by State law to the extent that State law implementation is effective to ensure that the United States meets its treaty obligations under the Convention. The implementation, through revision of the *Uniform Foreign-Country Money Judgments Recognition Act*, has not been accomplished. Additionally, even once the Convention is implemented in a State, Article 9 Refusal of recognition

or enforcement, Section (e), allows for non-recognition if “recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State,” which is similar, but not as specific as *American Law for American Courts* legislation.