



The Anti-Islam Hysteria Behind Banning ‘Religious or Cultural Law’

HJR 43 by Rep. Dan Flynn

A number of state legislatures are currently attempting to pass laws that would explicitly ban courts from applying religious and cultural law. Many of these efforts are based on the unfounded accusation that American Muslims are trying to impose Islamic or Sharia law on U.S. courts.

These discriminatory proposals are...

Unnecessary

- As a recent American Bar Association (ABA) resolution and report opposing anti-Sharia measures makes clear, there is simply no need for this sort of legislation.¹ And for the last two Texas legislative sessions, supporters have failed to produce any clear examples of Texas courts imposing Islamic law on unwilling parties.
- Insofar as this is an attempt to ban the imposition of Sharia law, the First Amendment to the U.S. Constitution already prohibits U.S. courts from imposing religious law as civil law. And Article I, Section 6, of the Texas Constitution does likewise.

Legally Problematic

- These proposals could have unintended implications in the area of conflict of laws. For example, couples who are married outside the U.S. and who wish to have their marriages recognized in the state, parents who wish to adopt children from abroad, and parents involved in custody disputes all rely on the ability of state courts to consider the judgments of foreign courts and the requirements of international law.
- The broad language of the proposed statute could interfere with Texas firms engaged in international trade litigation and with Texas businesses negotiating international deals. The ABA foresees an “unanticipated and widespread negative impact on business, adversely affecting commercial dealings and economic development in the states in which such a law is passed.”²

Potentially Unconstitutional

- This bill is based on similar legislation being considered around the country, which is written neutrally, but has the specific purpose of prohibiting courts from considering Sharia law.
- As the Anti-Defamation League states: These bills “are, at their core, predicated on prejudice and ignorance. They constitute a form of camouflaged bigotry that enables their proponents to advance an idea that finds fault with the Muslim faith and paints all Muslim Americans as foreigners and anti-American crusaders.”³

¹ American Bar Association. “Opposes Blanket Provisions International Law.” <http://www.abanow.org/2011/07/2011am113a/>

² Ibid.

³ Anti-Defamation League. “Shout Down the Sharia Myth Makers.” <http://www.adl.org/press-center/c/shout-down-the-sharia-myth-makers.html#.USKCN6U4t8E>.