Proponent Testimony Before The Ohio House of Representatives Judiciary Committee
House Bill 339

Testimony of Stephen M. Gelé, Esq.
April 12, 2016

Chairman Butler, Vice Chairman Manning, Ranking Member Johnson, and honorable members of the House Judiciary Committee:

I have been a licensed attorney in Louisiana for over 20 years. My practice includes commercial litigation, federal practice, general civil including domestic, free speech, campaign finance and government relations. I have also assisted in drafting a Louisiana Constitutional Amendment, Statute and Code of Civil Procedure Article, and have testified before the Louisiana, Georgia, and Idaho Legislatures regarding foreign law interacting with state law, *forum non conveniens,* and comity of judgments. I have also been interviewed in the *New York Times*, the *Wall Street Journal*, the *Washington Post*, the *Washington Times*, the *American Bar Association Journal*, the *National Law Journal*, the Associated Press, the *American Spectator*, the *Pittsburgh Post-Gazette*, the *New Orleans Times-Picayune,* and *New Orleans City Business* and appeared on "Follow the Money with Eric Bolling" on Fox Business Network and CNN.com, as well as several radio shows in multiple states. I have consulted with ACT! for America, the American Public Policy Alliance, and the Center for Security Policy regarding the interaction of foreign law and American state law.

***Incidents of Discordant Foreign[i] Law, Including Sharia, in Ohio Courts***

Ohio has experienced several attempts to apply discordant foreign law, including sharia law, in its courts.

In *Zawahiri v. Alwattar*,[ii] 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 antenputial agreement because it was entered into as a result of overreaching or coercion. The wife's father had presented the majr 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 *Husein v. Husein*,[iii] 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 *Mir v. Birjandi*,[iv] the court refused to recognize a divorce certificate issued in Iran on the grounds that the proponent of the divorce certificate was not an Iranian resident at the time of the alleged divorce and did not present evidence to rebut the presumption that Iran requires the same six-month residency requirement before granting a divorce as Ohio.

In *Mustafa v. Elfadi*,[v] comity was not extended to a Sudanese divorce because its proponent never mentioned this 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. Finally, the Sudan Divorce Certificate was not authenticated, as the husband failed to provide any legal testimony as to what the document was purported to be under Sudanese law.

These appellate decisions evidence that Ohio state courts have repeatedly faced attempts by litigants to apply discordant foreign law, including Islamic sharia law.

***The Function of HB 339***

HB 339, which is a variant of the model American Laws for American Courts legislation (ALAC), addresses primarily four areas of law: 1) comity; 2) conflicts of laws; 3) choice of law or forum/venue; and 4) forum non conveniens.

Ten states have passed versions of ALAC. In 2010, the Louisiana Legislature passed Louisiana Revised Statute 9:6001 and the Tennessee Legislature passed Tennessee Code § 20-15-104.[vi] In 2011, Arizona passed House Bill 2064.[vii] 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. 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.[viii] Also in 2013, a version of ALAC, SB 5797, also passed into law for specialty courts in the state of Washington.[ix] On May 12, 2014, Florida Governor Rick Scott signed SB 386 into law.[x] In 2014, HB 522 passed the North Carolina House 75-37 and Senate 31-2.[xi] 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.[xii] 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.[xiii] Not one of these laws has ever been challenged in court. Additionally, in 2013 the Missouri Legislature passed by a wide margin a version of ALAC that was vetoed by the Governor. An attempt to override the veto failed by one vote.

Similar, but much more limited, legislation has been passed by multiple states and by the U.S. Congress. Legislation requiring some basic due process or constitutional protections regarding foreign judgments or venues, includes Rachel's Law[xiv], the *Uniform Child Custody Jurisdiction Enforcement Act* (UCCJEA)[xv], the *Uniform Interstate Family Support Act* (UIFSA)[xvi], the *Uniform Foreign Money-Judgments Recognition Act*[xvii], *Uniform Model Choice Of Forum*

*Act*[xviii] and the *SPEECH Act*.[xix] However, these statutes either apply to narrow areas of law, or do not require an analysis of whether the other jurisdiction guaranteed the constitutional rights of the parties. Further, of these laws, Ohio has only passed the *Uniform Foreign Money-Judgments Recognition Act*, the *Uniform Child Custody Jurisdiction Enforcement Act* (UCCJEA) and the *Uniform Interstate Family Support Act* (UIFSA).

***Comity***

> HB 339 reads in pertinent part:
>
> Sec.2701.01(B)(1) No court, administrative agency, or arbitrator shall base any ruling or decision in whole or in part on any statutory or other law of a system of foreign law that does not grant the parties affected by the ruling or decision one or more of the following fundamental liberties, rights, and privileges granted under the constitution of this state or the United States:
>
> (a) Equal protection of the laws;
> (b) Due Process of law;
> (c) Freedom of religion;
> (d) Freedom of speech;
> (e) Freedom of the press;
> (f) Any right of privacy or marriage
>
> (2) A ruling or decision made by a court, administrative agency, or arbitrator in violation of division (B)(1) of this section is void and unenforceable.

These provisions address comity of foreign judgments.

The conclusiveness of foreign judgments in American courts rests upon considerations of comity. "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.

Ohio, like most U.S. states, has no general statutory law on comity.[xx] However, Ohio has passed the *Uniform Child Custody Jurisdiction And Enforcement Act* (UCCJEA). O. R. C. Ann. §3127.01 *et seq*.[xxi] The Ohio UCCJEA includes a provision that an Ohio court need not apply the chapter if the child custody law of a foreign country violates fundamental principles of human rights. O.R.C. Ann. §3127.04. The provision reads:

> **(A)** A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying sections 3127.01 to 3127.24 of the Revised Code.

> **(B)** Except as otherwise provided in division (C) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of sections 3127.01 to 3127.53 of the Revised Code shall be recognized and enforced under sections 3127.31 to 3127.47 of the Revised Code.
> **(C) A court of this state need not apply sections 3127.01 to 3127.53 of the Revised Code if the law governing child custody determinations of a foreign country violates fundamental principles of human rights.**
>
> (Emphasis added.)

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 United States courts, and since most foreign countries do not provide such recognition, the UCCJEA affords far greater deference to foreign custody orders than United States custody orders are afforded by other countries.[xxii]

The requirement that the foreign country not violate "fundamental principles of human rights" is analogous to HB 339's requirement that the foreign jurisdiction assure the same fundamental constitutional rights. The allowance that the foreign custody judgment need not be granted comity "if the child custody law of a foreign country violates fundamental principles of human rights" is similar in spirit to HB 339. However, the UCCJEA does not clearly indicate what qualifies as fundamental principles of human rights. For example:

> 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.[xxiii] 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. [xxiv]

Further, there is a dearth of jurisprudence establishing what constitutes a violation of fundamental principles of human rights.[xxv] 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."[xxvi] The Official Comment to Section 105 states that the UCCJEA "takes no position on what laws relating to child custody would violate fundamental freedoms," and should be "evoked only in the most egregious cases." According to the U.S. Department of State's legal analysis of the Convention, the "human rights/fundamental freedoms" defense to return 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." *Id.*

A Texas court has already 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).[xxvii]

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.[xxviii] However, there is some dispute as to the proper function of the "in substantial conformity" provision.[xxix] Yet, several courts interpreted the UCCJA to require application of a "best interests" or similar standard in the foreign court.[xxx] 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, it appears as though the adoption of the UCCJEA may have made it easier to enforce foreign custody decrees. Further, the current standard of the UCCJEA requiring a violation of "fundamental principles of human rights" appears to be much narrower than the common law standard of not violating public policy.[xxxi]

Thus, HB 339 would clarify what constitutes "fundamental principles of human rights."

Please note that some of the most common and most egregious applications of discordant foreign law in American courts have involved the enforcement of foreign custody decrees. For example, a Maryland appellate court, in *Hosain v. Malik*, 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.[xxxii] 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.[xxxiii]

*Hosain* is certainly not the only case in which an American appellate court enforced a custody decree rendered under sharia. A California appellate court, in *In re Marriage of Malak*[xxxiv], 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. Further, an Iowa appellate court, in *In re Makhlouf*[xxxv], enforced a Jordanian Sharia Court of Appeals custody order awarding a daughter to her father solely because the mother had remarried.

In addition to the UCCJEA, Ohio has also adopted the *Uniform Interstate Family Support Act.* O.R.C. Ann. § 3115.01, et seq. § 3115.01, *Definitions* defines a "State" whose orders and jurisdiction must be recognized as follows:

> (U)"State" has the same meaning as in section 1.59 of the Revised Code, except that it also includes both of the following:
>
> (1) An Indian tribe;
>
> (2) 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 sections 3115.01 to 3115.59 of the Revised Code, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.[xxxvi]

Therefore, the provisions of the Ohio 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 Ohio or have a similar law.[xxxvii] 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*[xxxviii], the *Strengthen and Vitalize Enforcement* (SAVE) *Child Support Act of 2010*[xxxix] was introduced in, but not passed by, Congress. The SAVE Act was designed to encourage states to adopt provisions implementing the *Hague Convention.*[xl] Ohio has also not adopted the 2008 Amendments to UIFSA[xli] which are designed to facilitate full implementation of the *2007 Hague Convention.* Thus, the version of UIFSA in effect in Ohio primarily applies to foreign jurisdictions with reciprocity agreements, with child support orders from other jurisdictions being subject only to the Ohio 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, Ohio will likely be pressured to revisit its version of UIFSA in the future.

Thus, Ohio has already circumscribed the application of comity to foreign judgments regarding child custody and support, and HB 339 simply better defines those limits by requiring that the parties be accorded the same fundamental rights guaranteed by the U.S. and Ohio constitutions.

Please note that Ohio has also adopted the *Uniform Foreign Money-Judgments Recognition Act.* O.R.C. Ann. 2329.91 et seq. Similar in spirit to HB 339, the *Uniform Foreign Money-Judgments Recognition Act* does not require that a foreign judgment be granted comity if "rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law" or "the cause of action on which the judgment is based is repugnant to the public policy of this state."

However, Ohio has not passed any statutes governing libel judgments, such as Rachel's Law/*Free Speech Defense Act.*[xlii] Several states and the U.S. Congress have passed laws that protect citizens against foreign libel judgments. In April 2008, New York passed the first version of a foreign defamation judgment act, the *Libel Terrorism Protection Act,*[xliii] also known as

Rachel's Law after Rachel Ehrenfeld, an American reporter who was sued for libel in London by a Saudi prince.[xliv] Subsequently, in August 2008, Illinois passed Public Act 095-0865 as part of its Code of Civil Procedure.[xlv] In 2009, California passed Senate Bill No. 320 as part of the

These provisions concern contractual choice of law clauses, except those contracts entered into by non-natural persons.

The Ohio Supreme Court has stated periodically that an Ohio court is not required to enforce a foreign law if enforcement would be contrary to Ohio public policy.[lvi] A public policy review is incorporated into the Second Restatement's analysis of choice of law clauses under Section 187. However, "the law of Ohio will only be applied when it can be shown that this state has a materially greater interest than the chosen state in the determination of the particular issue."[lvii]

Section 187 of the Second Restatement was adopted by the Ohio Supreme Court in *Schulke Radio Productions, Ltd. v. Midwestern Broadcasting Co.* to determine the validity of contractual choice of law clauses under Ohio common law principles.[lviii] 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. *Id.* at 439. Section 187(2) reflects the policy argument that the demands of certainty, predictability, and convenience dictate that, subject to some limitations, the parties to a contract should have the power to choose the law applicable to their contract.[lix] Thus Ohio jurisprudence allows for a limited public policy analysis, but does not require that the foreign law chosen not violate the fundamental constitutional rights of the parties.

***Choice of Forum/Venue***

HB 339 states in pertinent part:

> (C)(1) A contract, or a contractual provision that is severable from the contract, that designates a system of foreign law or authorizes the choice of a system of foreign law to govern some or all of the disputes between the parties or that grants personal jurisdiction over the parties to any court, administrative agency, or arbitrator that operates under a system of foreign law is void and unenforceable if the system of foreign law designated or chosen or under which the court, administrative agency, or arbitrator operates does not grant the parties one or more of the following fundamental liberties, rights, and privileges granted under the constitution of this state or the United States:
>
> (a) Equal protection of the laws;
> (b) Due process of law;
> (c) Freedom of religion;
> (d) Freedom of speech;
> (e) Freedom of the press;
> (f) Any right of privacy or marriage.

Arbitrations in Ohio are governed by the *Federal Arbitration Act* (FAA)[lx], and the *Ohio Arbitration Act* (OAA)[lxi], which largely tracks the FAA, but contains certain differences relating

to arbitration procedure. Under both the FAA and the OAA, arbitration is considered a matter of contract law; therefore, courts may require a party to submit a dispute to arbitration only if the party has expressly agreed to do so.[lxii][lxiii]

There is currently no requirement in Ohio law that for a choice of forum or arbitration clause to be enforceable, the forum or arbitrator designated would grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and Ohio Constitution, such as equal protection of the laws, due process of law, freedom of religion, freedom of speech, and freedom of the press.

HB 339 would prevent arbitration decisions from being enforced if a party was denied constitutional rights.

***Conflict of Laws***

HB 339 states in pertinent part:

> Sec.2701.01(B)(1) No court, administrative agency, or arbitrator shall base any ruling or decision in whole or in part on any statutory or other law of a system of foreign law that does not grant the parties affected by the ruling or decision one or more of the following fundamental liberties, rights, and privileges granted under the constitution of this state or the United States:
>
> (a) Equal protection of the laws;
> (b) Due Process of law;
> (c) Freedom of religion;
> (d) Freedom of speech;
> (e) Freedom of the press;
> (f) Any right of privacy or marriage
>
> (2) A ruling or decision made by a court, administrative agency, or arbitrator in violation of division (B)(1) of this section is void and unenforceable.

This provision addresses conflicts of laws, i.e., the determination of the law of what jurisdiction applies, absent any agreement thereto, and separate from any determination of which jurisdiction should adjudicate the matter.

Ohio has few statutory provisions regarding conflicts of laws.[lxiv] Ohio generally applies the *Restatement (Second) of Conflict of Laws*. Importantly, the *Restatement* and Ohio jurisprudence do not, like HB 339, require the foreign law to grant the parties the same rights granted under the U.S. and Ohio Constitutions to be applied under a conflicts of laws analysis.

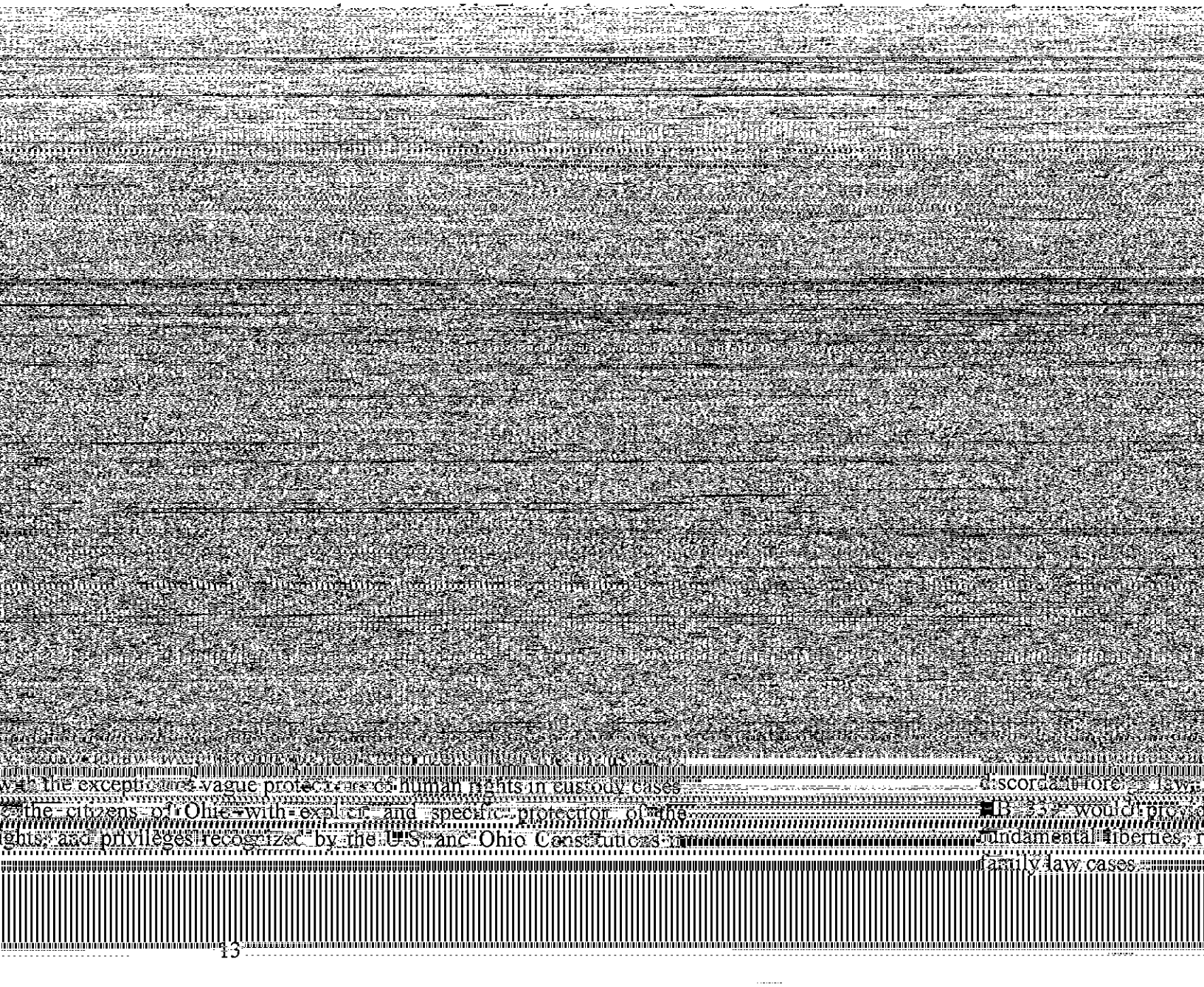
***Forum Non Conveniens***

HB 339 reads in pertinent part:

> (D) If, in an action or proceeding commenced by a resident of this state, an adverse party makes a motion based on forum non conveniens or a similar doctrine, the court shall deny the motion if it finds that granting the motion would likely result in the violation in the

foreign forum of the fundamental liberties, rights, and privileges granted under the constitution of this state or the United States with respect to the matter in dispute.

Forum non conveniens is a common-law doctrine that allows a court to decline to exercise the jurisdiction even when jurisdiction is authorized by a venue statute, if it appears that there is a forum more convenient for the litigants and witnesses.[lxv] In Ohio there is no general rule governing forum non conveniens, but an Ohio court may apply the doctrine pursuant to their inherent powers.[lxvi] The doctrine applies only to cases in which the more convenient forum is in



forum may be raised upon motion of a party, the court's own motion, or request of another court.
(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
(b) The length of time the child has resided outside this state;
(c) The distance between the court in this state and the court in the state that would assume jurisdiction;
(d) The relative financial circumstances of the parties;
(e) Any agreement of the parties as to which state should assume jurisdiction;
(f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
(h) The familiarity of the court of each state with the facts and issues in the pending litigation.
(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.
(4) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

None of the criteria in O.R.C. Ann. § 3127.21 include any consideration of constitutional, or even human, rights, although the human rights consideration of O.R.C. Ann. § 3127.04, discussed above, may apply.

***Role of Federal Versus State Government***

The federal power to set foreign policy does not preclude states from applying their own law of comity, conflict of law, choice of law or forum contractual clauses, and forum non conveniens.

HB 339 would also govern how federal courts respond to foreign judgments because the federal courts deter to state public policy.

> It has been accepted that 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.[lxxi]

Thus, this is an appropriate area of law for a state legislature to legislate.

However, it should be noted that 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.*[lxxii] 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."[lxxiii]

Also, please note that the *Hague Convention on Choice of Court Agreements of June 30, 2005*[lxxiv] 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. 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, please note that even once the Convention is implemented in Ohio, 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 HB 339.

Please note that HB 339 explicitly recognizes that its provisions may on occasion be preempted by international treaties to which the United States is a signatory, stating:

> (G) No court shall interpret this section to conflict with any federal treaty or other international agreement to which the United States is a party to the extent that the treaty or international agreement preempts or is superior to state law on the matter at issue.

However, please also note that HB 339 would not conflict with the *Hague Convention on Choice of Court Agreements* as Article 9 states:

> Recognition or enforcement may be refused if – ... (e) 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.

HB 339 would simply better specify such "public policy" and "fundamental principles of procedural fairness."

***Business Exception***

Please note that HB 339 includes a business exception that states in pertinent part:

> (E) This section does not apply to any non-natural person that contracts to subject itself to a system of foreign law in a jurisdiction outside the United States.

This provision allows corporate entities to contractually agree to the application of foreign law in a foreign jurisdiction, and therefore prevents HB 339 from interfering with international commerce while still protecting individual constitutional rights.

***Tribal Law***

Sincerely,

Stephen M. Gelé

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[i] Herein the word "foreign" indicates a foreign country, not a sister State of the United States, consistent with the model American Laws for American Courts legislation and HB 339.

[ii] 2008-Ohio-3473; 2008 Ohio App. Lexis 2928; 2008 WL 2698679.

[iii] 2001 Ohio App. Lexis 3334; 2001 WL 842023.

[iv] 2007-Ohio-3444; 2007 Ohio App. LEXIS 3150.

[v] 2013-Ohio-1644; 2013 Ohio App. LEXIS 1534; 2013 WL 1787383.

[vi] 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).

[vii] 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.)

[viii] Okla. Stat. Ann. tit. 12, § 20 (West).

[ix] Wash. Rev. Code Ann. § 2.28.165 (West).

[x] Fla. Stat. Ann. § 61.0401 (West).

[xi] N.C. Gen. Stat. Ann. § 1-87.12, et seq (West).

[xii] Ala. Const. amend. 884; *see* http://ballotpedia.org/Alabama_Foreign_Laws_in_Court,_Amendment_1_(2014).

[xiii] 2015 Miss. Laws WL No. 104 (H.B. 177).

[xiv] *See* Wikipedia, *Rachel Ehrenfeld,* http://en.wikipedia.org/wiki/Rachel_Ehrenfeld#Rachel.27s_Law_and_Free_Speech_Legislation (last visited 9/10/14) (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, the New York legislature took action and passed the *Libel Terrorism Protection Act*, which is known as "Rachel's Law." 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.)

[xv] The UCCJEA has been passed in all U.S. states except Massachusetts. It also has not been adopted in Puerto Rico. Further, please note that 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.

[xvi] The Uniform Interstate Family Support Act has been passed in all U.S. states in some form.

[xvii] About half of the states, including Ohio, have passed a version of the Uniform Foreign Money-Judgments Recognition Act. Alabama just 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. Thus, HB 339 has a precursor for foreign money-judgments. The Act is also an example of legislatures codifying the requirements for comity, said past codification retorting the argument that long-standing jurisprudence on comity is always sufficient and therefore HB 339 is unnecessary.

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 HB 339, but only as to First Amendment rights.

[xviii] 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.

[xix] SPEECH Act 28 U.S.C. 4101-4105; *See* http://publicpolicyalliance.org/?page_id=170, http://en.wikipedia.org/wiki/SPEECH_Act.

[xx] Comity herein is addressed in terms of recognition of foreign judgments. However, the term comity is also employed to defer to foreign jurisdiction when a prior lawsuit was filed in the foreign jurisdiction.

[xxi] As noted by the Mississippi Supreme Court: "Prior to the adoption of the Uniform Child Custody Jurisdictional Act (UCCJA), no state was bound to honor a custody decree rendered in another state." *Laskosky v. Laskosky*, 504 So. 2d 726 (Miss. 1987). Effective April 11, 2005, Ohio adopted the UCCJEA, which replaced the previously adopted Uniform Child Custody Jurisdiction Act (UCCJA). 125th General Assembly S.B. 185. The UCCJA provided four bases for jurisdiction over a custody dispute, but did not

prioritize one over the others. This often led courts in different states to simultaneously exercise jurisdiction in child-custody cases. The UCCJEA was designed, in large part, to remedy this situation by prioritizing home-state jurisdiction. 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). The Ohio UCCJEA accordingly prioritizes home-state jurisdiction and provides in pertinent part that a court of this state has jurisdiction to make an initial child-custody determination only if "this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state[.]" O.R.C. Ann. §3127.15.

[xxii] Morley, International Family Law Practice § 7:1; 66 ALR6th 269. 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.

[xxiii] The hypothetical is consistent with provisions of sharia law. *See Hosain v. Malik*, 108 Md. App. 284 (Md. Special App. 1996).

[xxiv]Memorandum: "Accommodating the UCCJEA and the 1996 Hague Convention," Robert Spector, p. 9; http://www.uniformlaws.org/shared/docs/hague_convention_on_protection_of_children/hpoca_introductory%20memo_mar11.pdf.

[xxv] International Application of the UCCJEA: Scrutinizing the Escape Clause, Marianne Blair, 38 Fam. L. Q. 547, 565-66 (2004), accessible at http://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=1305&context=fac_pub .

[xxvi] *See Official Comment* to Section 105; Blair, 38 Fam. L. Q. 547, 563-64.

[xxvii] 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).

[xxviii] *See* Mass. Gen. Laws ch. 209B, § 14 (2007).

[xxix] *See* Blair, 38 Fam. L. Q. 547, 556-60.

[xxx] *In re Marriage of Malak*, 227 Cal. Rptr. 841, 847-48 (Ct. App. 1986); *Malik v. Malik*, 638 A.2d 1184, 1190 (Md. Ct. Spec. App. 1994); *Custody of a Minor (No. 3)*, 468 N.E.2d 251, 255 (Mass. 1984); *Hovav v. Hovav*, 458 A.2d 972, 974-75 (Pa. Super. Ct. 1983).

[xxxi] *See* Blair, 38 Fam. L. Q. 547, 554-56 (2004).

[xxxii] *Hosain v. Malik*, 108 Md. App. 284 (Md. Special App. 1996).

[xxxiii] *See* International Application of the UCCJEA: Scrutinizing the Escape Clause, Marianne Blair, 38 Fam. L. Q. 547, 575-77 (2004).

[xxxiv] 182 Cal.App.3d 1018 (1986).

[xxxv] 695 N.W.2d 503 (Iowa Ct. App. 2005).

[xxxvi] As of 2008, bilateral agreements had been reached with eleven Canadian provinces and fourteen nations: Australia, Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, and the United Kingdom. *See* http://www.acf.hhs.gov/programs/css/resource/foreign-reciprocating-countries. Of these countries, only Israel has sharia courts.

> No reciprocating agreement exists between the United States and Mexico for the enforcement of child support obligations.2 *See* Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, 69 Fed.Reg. 59,980 (Oct. 6, 2004)(listing the following countries that have been designated foreign reciprocating countries for child support enforcement: Australia, Czech Republic, Ireland, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, and nine Canadian provinces and territories).

*In re V.L.C.*, 225 S.W.3d 221, 227-28 (Tex. App. 2006).

[xxxvii] The UIFSA was preceded by the *Uniform Reciprocal Enforcement of Support Act* ("URESA"), 1997 Ohio HB 352, and the *Uniform Desertion and Non-Support Act*, which were adopted by Ohio, but did not focus on support orders from foreign countries. The 2001 amendments to UIFSA, adopted by over twenty other 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 Uresa, 20 U. Dayton L. Rev. 425 (1994). Prior to these changes, UIFSA continued the basic approach first found in RURESA which defined a state as "any foreign jurisdiction in which this [RURESA] 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 clearly provided that an order issued by a foreign country may be enforced as a matter of comity.

[xxxviii] The Convention was signed by the U.S. on November 23, 2007, the Senate gave its consent to, and the President signed, the Convention in 2010. 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. Signatories to the *2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* include Albania, Bosnia and Herzegovina, European Union, Norway, Ukraine and Burkina Faso. Of these only Albania, Bosnia and Herzegovina are Muslim majority nations.

[xxxix] *Strengthen and Vitalize Enforcement Child Support Act of 2010*, S.3848, 111th Cong. (2010), available at http://www.govtrack.us/congress/bill.xpd?bill=S111-3848.

[xl] 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 UIFSA.

[xli] Uniform Interstate Family Support Act (2008), available at http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_final_08.pdf. Only Florida, Maine, Missouri, Nevada, New Mexico, North Dakota, Rhode Island, Tennessee, Utah and Wisconsin have passed the 2008 Amendments. The term "of a state," was amended to read, "of a state or foreign country." UIFSA2008 § 102(26). Further, the Act 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, HB 339. UIFSA2008 § 708(b).

[xlii] 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).

[xliii] N.Y. C.P.L.R. 5304 (McKinney).

[xliv] *See* Wikipedia, *Rachel Ehrenfeld*, http://en.wikipedia.org/wiki/Rachel_Ehrenfeld#Rachel.27s_Law_and_Free_Speech_Legislation (last visited 9/10/14) (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, the New York legislature took action and passed the *Libel Terrorism Protection Act*, which is known as "Rachel's Law." 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.)

[xlv] 735 ILCS 5/12-664 (West).

[xlvi] Ca. Civ. Pro. § 1716 (West).

[xlvii] Fla. Stat. Ann. § 55.605 (West).

[xlviii] Md. Cts. & Jud. Pro. § 10-704 (West).

[xlix] Tenn. St. § 26-6-108 (West).

[l] Ut. St. § 78B-5-321 (West).

[li] 735 ILCS 5/12-664 (West). 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.

[lii] Louisiana Code of Civil Procedure Article 2542.

[liii] Ok. St. Tit. 12 § 718A (West).

[liv] S.D. St. § 15-16-44 (West).

[lv] Ohioans would 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 judgment may have been enforceable.)

[lvi] *Schulke Radio Productions, Ltd. v. Midwestern Broadcasting Co.*, 6 Ohio St.3d 436; 453 N.E.2d 683 (Ohio 1983).

[lvii] *Jarvis v. Ashland Oil, Inc.*, 17 Ohio St. 3d 189, 192; 478 N.E.2d 786 (Ohio 1985).

[lviii] 6 Ohio St.3d 436, 438; 453 N.E.2d 683 (Ohio 1983).

[lix] *See* Jeffrey D. Dunn, Texas Choice of Law Analysis for Contracts, Tex. J. Bus. L., Spring 2004, at 37, 69.

[lx] 9 U.S.C. §§ 1, et seq.

[lxi] O.R.C. Ann. §2711.01 et seq.

[lxii] *Kline v. Oak Ridge Builders*, 102 Ohio App. 3d 63; 656 N.E.2d 992 (1995) (Absent statutory authority, a party to a lawsuit cannot be compelled to arbitrate a dispute that it has not agreed in writing to arbitrate.)

[lxiii] Though many issues may be encompassed by a binding arbitration agreement, 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). Please note that even New York State, 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. *See Rakoszynski v. Rakoszynski*, 663 N.Y.S.2d 957, 958 (Sup. Ct. 1997) (citing *Cohen v. Cohen*, 600 N.Y.S.2d 996 (App. Div. 1993)); 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).

[lxiv] This is not that uncommon among U.S states. For example, South Dakota has few statutory provisions regarding "conflicts of law." *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). 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).

[lxv]

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.).

[lxxii] *See* http://en.wikipedia.org/wiki/Hague_Convention_on_the_Civil_Aspects_of_International_Child_Abduction.

[lxxiii] *See Souratgar v. Fair*, 2012 WL 6700214 (S.D.N.Y., December 26, 2012).

[lxxiv] *See* http://www.hcch.net/upload/conventions/txt37en.pdf .