



State Representative
Ron Young
Sponsor Testimony for HB 339
Before the House Judiciary Committee
October 27, 2015

Chairman Butler, Vice Chairman Manning, Ranking Member Stinziano, Members of the House Judicial Committee, thank you for taking the time to hear sponsor testimony on HB 339, a bill that will prevent Ohio courts from basing any ruling, in whole or part, on a foreign law that does not guarantee the parties equal protection under the law, due process, and other rights that exist under American Law. It will also restrict contracts from being enforced if by their terms they are to be interpreted based on a foreign law that does not guarantee signatories the same rights they would receive under American Law.

Foreign Law that is contrary to Ohio Law, U.S. law, or the rights and liberties thereof, should not be used in Ohio courts. Foreign Law is used in Ohio right now, and is usually applied appropriately. Often this is in family cases dealing with custody or divorce.

If a couple is married or had children in a foreign country, but are now residing in Ohio, they are subject to Ohio law. The U.S. Supreme Court has held that the First Amendment and the Equal Protection and Due Process Clauses apply to all persons within the U.S., regardless of the person's legal status or nationality. Therefore, foreign nationals are generally entitled to equal protection under the law, freedom of speech and association, and due process of the law where their lives, liberty, or property are at stake.

In our increasingly global community, Ohio courts at ever increasing rates are asked by litigants to apply foreign law. In routine matters applying existing family law, courts may have to consider foreign law. The idea that a U.S. court may defer to the ruling of a foreign court or to apply foreign law in a case is called legal comity: the principle whereby one sovereign nation voluntarily adopts or enforces the laws of another sovereign nation out of deference, mutuality, and respect.

However, comity is not automatic. Under this principle, a reviewing court does not retry a case that has already been heard in a foreign court. Instead, the reviewing court examines the foreign law and judicial system. The reviewing court may choose to respect and enforce the foreign court's judgment, or after considering certain factors it may reject the foreign law. Factors an Ohio court may consider include whether the foreign law in question is repugnant to American law or public policy; for example, if the foreign judgment violates any provision of the Ohio or U.S. Constitutions.

The principle of international comity is a murky¹ area of law because the U.S. Supreme Court has not set down specific guidelines for its application. Closer to home, this body, the Ohio General Assembly, has not fulfilled its responsibility of providing Ohio courts with a statutory definition of Ohio's public policy which they must observe when considering the application of foreign laws and judgments that parties may ask them to apply.

¹ Donald Earl Childress III, Comity as Conflict: Resituating International Comity as Conflict of Laws, 44 UC Davis L. Rev. 011, 51-53 (2010)

Consequently, our courts must find their own way. In doing so in the past they have taken varying paths to properly apply foreign law.

General guidelines such as the “repugnant” rule of thumb offer some criteria upon which a court may base an opinion. However, no definitive overarching procedure exists upon which a court can base an opinion in these matters. The purpose of HB 339 is to offer more definitive guidance.

HB 399 is an attempt to offer direction to judges attempting to find guidance in this murky area of law. While over 10 states have adopted the well accepted process outlined in HB 339 to determine when comity should be applied, Ohio has yet to act, and Ohio residents are suffering.

Today we live in society constantly in flux, and large numbers of immigrants are seeking refuge within our borders. Many of these immigrants come with viewpoints and values very different from our American traditions and legal rights. At the same time the rulings of our court system are having every increasing impact in our daily lives.

In summary, this legislation is designed to ensure that those residing legally in the U.S. have all the protections and freedoms afforded by law. It states that no foreign law, regardless of how attractive or well presented, that violates our system of justice and our public policy may be applied. In order to achieve this goal our judges need well thought-out guidelines to consistently deal properly with foreign law.

Our justice system has worked effectively for over 200 years providing safety, security, and predictability. Immigrants have come from all over the world and most have successfully adapted to our way of life. It is critical that we protect that way of life, and that includes our system of justice protecting and watching over them.