

Hearing before the Kansas Senate
Committee on the Judiciary
Written Testimony in Support of House Bill No. 2087
Monday, January 30, 2012

Dear Mr. Chairman, Committee Members, Ladies and Gentlemen:

I am honored to have been given the opportunity to share with you my written testimony in support of House Bill No. 2087. The protection House Bill No. 2087 will provide to the laws of the State of Kansas and its citizens against the weapons that are being raised against it is invaluable. I believe as legislators, there should be no question about the objective to serve our State of Kansas and its citizens by passing House Bill No. 2087.

Kansas laws reflect and uphold the fundamental freedoms and liberties under due process and First Amendment rights under the Constitution of the United States. As Americans, this is the way of life we have enjoyed since the inception of our nation. As such, individuals and communities are free to govern their lives through private agreements executed to resolve private issues through contracted terms of arbitration. In contract law, the choice of law concept allows parties to agree on the law of a specific and or foreign jurisdiction to govern the contract. However, if enforcement of that law would effectively divest one of the parties of their Constitutional rights, it threatens our inherent way of life and flies in the face of freedom. House Bill No. 2087 seeks to preserve those freedoms that Kansans enjoy by preventing any Kansas court, arbitration, tribunal or administrative agency from basing its rulings or decisions in whole or in part on any foreign law, legal code or system if it should violate the public policy of this state. House Bill No. 2087 in no way limits the remedies available under the concepts of choice of law or comity by allowing a limited consideration of foreign law. It merely allows for the protection of core human rights such as liberty, equality, and freedom from cruel and unusual punishment, unless its effect violates public policy.

There may be some argument that the courts have always considered foreign law in interpreting the U.S. Constitution, in defining the status of Indian tribes, *see Worcester v. Georgia, 31 U.S. 515 (1832)*, and in holding that legislation prohibiting bigamy is constitutional, *see Reynolds v. United States, 98 U.S. 145, 164-65 (1879)*. I do not disagree that at times it may be necessary to look at foreign or international law as stated above. However, there are several state cases that have relied on foreign law as binding authority which violate public policy, *see S.D. v. M.J.R., 2 A.3d 412 (N.J. Super. Ct. App. Div. 2010)* where appellate court reversed trial court holding that husband did not commit sexual assault of his wife because he was acting on his beliefs, and *see In re Custody of R., minor child, No. 21565-9-II (Wash. Ct. App. 1997)* where appellate reversed lower court's decision that enforced Sharia court's ruling

instead of considering the best interest of the child. This is precisely what House Bill No. 2087 was created to protect against.

We have seen world-wide tumultuous situations globally which, given the politically correct spirit of these times, could lead to the widespread use of foreign law in the interpretation of state and federal law, to the degradation of our fundamental state and federal constitutional liberties. As stated above, there are several cases that demonstrate a tendency of some courts to cite foreign law selectively. This is a dangerous practice and should not be allowed in Kansas courts.

In light of the recent Oklahoma Constitutional Amendment that was struck down by the Tenth Circuit Court of Appeals, the drafters of House Bill No. 2087 were careful to use proper language construction. Accordingly, House Bill No. 2087 seeks to ensure the protection of our state and constitutionally protected liberties by using facially neutral and indiscriminant language mandated by the U.S. Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

It is my belief that without House Bill No. 2087 in place to prohibit the consultation with and referral to foreign laws when deciding or hearing cases in Kansas, we will be headed down a slippery slope, setting irreversible precedent and making it easier for foreign laws to erode the integrity of Kansas laws and the national sovereignty of the United States. I ask that you take a strong stance in support of House Bill No. 2087 and the citizens of Kansas.

Respectfully submitted,

Krista E. Morgan