



OPPOSE – HB 568: THE “FOREIGN LAW” BILL

HB 568, which purports to regulate Idaho courts’ use and recognition of foreign law is not only unnecessary, but also has the potential to create significant unintended consequences in the everyday lives of Idahoans who marry abroad, file for divorce, adopt children from overseas, or conduct other family matters that involve foreign or international law. HB 568 could also deter multinational corporations from locating in Idaho. For all these reasons, we urge you not to pass HB 568.

HB 568 is a solution in search of a problem.

- This bill is motivated by an unfounded concern that so-called “Sharia law” is overtaking Idaho courts, but there is no evidence of that.
- The First Amendment already prohibits U.S. courts from imposing religious law as civil law, so this measure is completely unnecessary.

HB 568 will have serious unintended consequences.

- **Creating confusion and a legal nightmare for many Idahoan families:** Courts routinely consider the law of foreign countries for a variety of reasons. It’s especially important in family law matters. Courts look to foreign law to determine the validity of marriages and adoption agreements conducted abroad. But under this bill, a court would be prohibited from recognizing a foreign marriage, an international adoption agreement, or a will executed abroad unless the court first determines that the pertinent country’s legal system provides *the exact same rights and liberties as our laws* with respect to the issue at hand. That’s a problem because most countries have laws that differ from ours, even when it comes to fundamental liberties and rights, and it could leave many Idahoan families in an untenable position.
 - *Otherwise legal marriages would be invalidated:* A couple from Idaho who is married abroad would be unable to have their marriage recognized at home unless they choose to be married in a country that provides the exact same procedural and substantive rights relating to marriage as our laws do. Similarly, married couples who move to Idaho from countries lacking the exact same legal protections (for example, Israel) might not be able to have their marriages recognized.
 - *Otherwise legal international adoptions would be voided:* An Idaho family who adopts a child from a foreign country must obtain a foreign adoption decree in compliance with the law of that country. But under HB 568, a court would be prevented from recognizing a foreign adoption decree as valid if the pertinent country does not provide the exact same procedural and substantive rights relating to adoption as our laws do. The measure would

also raise significant legal difficulties for adoption agencies, both religious and secular, that facilitate international adoptions.

- **Weakening the right of religious arbitration:** Many people of faith, including followers of Christianity and Judaism, agree to settle family or business disputes and other matters through religious arbitration panels, and courts have long been permitted to enforce these agreements provided that doing so would not violate public policy or cause the court to become too entangled in religion.¹ However, because the religious systems of law used by these arbitration panels do not provide the exact same procedural and substantive rights as our civil laws do, such religious arbitration agreements could be deemed unenforceable by Idaho courts, impairing the right of people of faith to settle disputes in accordance with the principles of their religion.
- **Bad for business and our economy:** Despite the text of section 73-501(1), HB 568 could still cast uncertainty on international business transactions conducted by Idaho companies. And it could drive away multinational corporations, jeopardizing Idaho's ever-expanding international technology and agricultural industries by making it clear that Idaho's policy for recognizing foreign law is based on unfounded xenophobia. These companies are more likely to take their business to another state, where they don't have to contend with the risks posed by HB 568.

These are just a few examples of the serious problems with HB 568 and we urge your rejection

¹ For example, in *Zeiler v. Deitsch*, 500 F.3d 157, 164 (2d Cir. 2007), the U.S. Court of Appeals for the Second Circuit properly enforced an agreement among two Jewish business partners to arbitrate the division of their assets before a Jewish arbitration panel). And in *Encore Productions, Inc. v. Promise Keepers*, 53 F. Supp.2d 1101, 1112 (D. Colo. 1999), a federal court properly enforced an agreement to arbitrate a business dispute in accordance with the Rules of Procedure for Christian Conciliation because the plaintiff was "bound by its contract").