

Gavel to Gavel

A review of state legislation affecting the courts

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Focus: Foreign Law/Decisions & State Courts

Several states have attempted to ban or otherwise prohibit the use or reference of “foreign” law or court decisions (defined in a variety of ways) in state courts. Among the proposals introduced in 2010 are:

Law/Approved

[Idaho HCR 44](#) Declares “For any domestic issue, no court should consider or use as precedent any foreign or international law, regulation, or court decision.” Declares any federal judge that does not honor the Tenth Amendment or the limited powers of the federal government “should be brought to question by Congress.” Approved by full Senate 3/26/10. Transmitted to Secretary of State for transmission to Congress, the President, and the other states.

Proposed

Arizona [HB 2379](#) & [SB 1026](#) Enacts the “Arizona Foreign Decisions Act” Declares the acceptance of Arizona into the Union was a “compact”. Declares “Congress has no authority to preempt state regulation of

state courts.” Prohibits courts from implementing, referring or incorporating or using “a tenet of any body of religious sectarian law” and specifically includes sharia law, canon law, halacha and karma, but exempts decisions based on Anglo-American legal tradition, laws or case law from Great Britain prior enactment of the statute, or the definition of marriage as between one man and one woman, “and the principles on which the United States was founded.” Prohibits use of any case law or statute from a non-U.S. jurisdiction or “foreign body”, including the United Nations. Decisions that make use of a body of religious sectarian law or foreign law declared void and usages declared to be grounds for impeachment. Declares these provisions apply to Federal courts sitting in diversity jurisdiction. Requires any court that construes this statute must do so in a way to confine the power of Congress and the federal judiciary.

[Arizona SB 1396](#) Prohibits any judicial determination citing or based on foreign law or decisions of international or U.N. courts.

[Florida SB 1962](#) Enacts “American and Florida Laws for Florida Courts Act.” Declares choice of foreign law provisions void if the foreign law would not grant the parties the same fundamental liberties, rights, and privileges granted under the



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NATIONAL CENTER FOR STATE COURTS
300 Newport Avenue, Williamsburg, VA 23185
Phone (800) 616-6109 Fax (757) 564-2022

Editor's Email: wraftery@ncsc.org

Subscribe: gaveltogavel@ncsc.org

Blog: www.gaveltogavel.us

Online: http://www.ncsconline.org/D_Research/gaveltogavel/



United States and Florida Constitutions. Provides that certain child custody orders violate the public policy of Florida.

[Georgia HB 880](#) Defines “offense of racketeering by color of law”. States a judicial officer or other person commits the offense when they “attempt to enforce any federal, multinational, international, or global law not recognized as valid by application of the standards set forth in subsection (a) of this Code section.”

[Iowa HB 2313](#) Prohibits judges from using “judicial precedent, case law, penumbras, or international law as a basis for rulings.” Requires judges use only the U.S. and Iowa Constitutions and the Code of Iowa in making decisions. Permits use of the Federalist papers and other writings of the founding fathers, but only “if such source material is used in full context.” Prohibits any court from reviewing the legislation. Deems any violation of the act grounds for impeachment.

[Oklahoma HJR 1056 \(Constitutional Amendment\)](#) Prohibits the courts to “look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia Law.” Requires courts adhere only to the U.S. & Oklahoma Constitutions, federal and state law and regulations, and where necessary the laws and regulations of another state.

Tennessee [HB 3768](#) & [SB 3740](#) States that any contract or custody arrangement for a minor child based on the law of a foreign state or country that incorporates any law that would violate any rights and privileges granted under the U.S. or Tennessee

constitution are against the public policy of this state and are void and unenforceable in this state. In House Judiciary Committee.

[Utah HB 296](#) Requires Utah courts to apply United States and Utah law in cases and controversies before them unless the foreign law sought to be applied would provide protection equal to or stronger than specific elements of United States and Utah law.

Jurisdiction: Newly Introduced

[Minnesota HB 3738 \(Constitutional Amendment\)](#) Declares federal laws do not apply in Minnesota unless approved by two-thirds vote of state legislature and governor. Declares Minnesota courts must provide jury trials for violations of this provision. In House State and Local Government Operations Reform, Technology and Elections Committee.

Jurisdiction: Floor and Committee Activity

[Idaho HCR 44](#) Declares “For any domestic issue, no court should consider or use as precedent any foreign or international law, regulation, or court decision.” Declares any federal judge that does not honor the Tenth Amendment or the limited powers of the federal government “should be brought to question by Congress.” Approved by full Senate 3/26/10. Transmitted to Secretary of State for transmission to Congress, the President, and the other states.

[Kansas HB 2039](#) AMENDED: Allows plaintiff to file unlimited number of small claims cases per year (currently, limited to

20). Approved as amended by full Senate 3/24/10. House does not concur in Senate amendment.

[Maryland HB 434 \(Constitutional Amendment\)](#) Increasing minimum amount of civil suit entitled to jury trial from \$10,000 to \$20,000. Approved by full House 3/24/10.

[Maryland HB 436](#) Increasing minimum amount of civil suit entitled to jury trial from \$10,000 to \$20,000. Approved by full House 3/24/10.

[Missouri HJR 88 \(Constitutional Amendment\)](#) Prohibits Missouri judiciary or any branch from “recognizing, enforcing, or acting in furtherance” of any federal law, judicial ruling, etc. that exceeds the powers given the federal government and specifies this to include the right of private citizens to bear arms, fund or legalize abortions, purchase or sale of carbon credits, public option health care, same sex marriage, the “wall of separation” between church and state, or home schooling. Requires Missouri courts interpret U.S. Constitution as intended by signers or amendments based on congressional sponsor's intent. Prohibits view of U.S. Constitution as being a “living, breathing document”. Permits a cause of action in state court under this amendment to void any federal action and permits the determination of whether a federal action has exceeded constitutional authority retroactively either by the state's Supreme Court or legislature. Approved by House Rules Committee 3/23/10.

Qualifications and Terms: Newly Introduced

NONE

Qualifications and Terms: Floor and Committee Activity

[Alabama HB 537 \(Constitutional Amendment\)](#) Increases mandatory retirement age for judges from 70 to 72. Approved by House Judiciary Committee 3/25/10.

[Arizona SCR 1040 \(Constitutional Amendment\)](#) Increases mandatory retirement age for judges from 70 to 75. Approved by House Judiciary Committee 3/25/10.

[Maryland HB 417 \(Constitutional Amendment\)](#) Requires judges of the Orphans' Courts *in the city of Baltimore only* be attorneys. Approved by full Senate 3/23/10.

[Maryland SB 770 \(Constitutional Amendment\)](#) Requires judges of the Orphans' Courts *in the city of Baltimore only* be attorneys. Approved by full Senate 3/24/10.

Rule Making Authority: Newly Introduced

[California AB 1926](#) Authorize courts to sign or verify trial court documents using a computer or other technology. Requires the Judicial Council to adopt rules to establish the standards and guidelines for the creation, maintenance, reproduction, and preservation

of court records. In Assembly Judiciary Committee.

Rule Making Authority: Floor and Committee Activity

[Connecticut HB 5406](#) Requires the adoption of probate court regulations concerning record maintenance. Permits court of probate to hear matters outside the probate district, but within the state, to facilitate attendance by a party. Allows towns within a probate district to allocate expenses pursuant to agreement or in proportion to their grand lists. Approved by Joint Committee on Judiciary 3/26/10.

[Illinois HB 5381](#) Provides that the circuit clerk may provide notice to a party by hard copy or by electronic notice, pursuant to a uniform and standard policy adopted by the circuit clerk. Provides that a recipient may elect to receive notices by hard copy or electronically via the electronic address he or she has registered with the circuit clerk and that the clerk must provide notice in the recipient's chosen format. Provides that for electronic notices, the circuit clerk shall maintain a copy of the electronic content and a delivery receipt. Provides that administrative communications of either the clerk or the court are not subject to the electronic notice requirements. Provides that if all policies and statutes are complied with, electronic notices shall have the same effect as hard copy notices. Approved by full House 3/25/10.

[Kansas SB 519](#) Authorizes, upon the appropriate Supreme Court rule, an electronic signature of the Clerk of the District Court which would have the same

legal effect as a manual signature on records and judicial proceedings requiring the attestation of the Clerk. Eliminates the requirement that certain docket fees must be paid by mail or in person. Approved by full House 3/24/10. To Governor for approval.

[South Carolina HB 4450](#) Provides that municipal court judges and magistrates are responsible for the dockets of their courts and for exclusively setting what cases are to be heard. Approved as amended by House Committee on Judiciary 3/24/10.

Salary and Budget: Newly Introduced

[Delaware HJR 9](#) Requests Congress enact legislation that adds unpaid court-ordered restitution, fines, fees, and costs to delinquent obligations that can be intercepted through the U.S. Department of Treasury Offset Program. In House Judiciary Committee.

[Florida SB 2702](#) Requires state court administrator report to legislature the number of assigned new and reopened cases and the number of cases closed by each judge in each division and circuit for the period January 1, 2010, through December 31, 2010 for purposes of implementing certain appropriations. In Senate Policy & Steering Committee on Ways and Means.

[Louisiana HB 1060](#) Repeals 38 separate fees the clerks of court charge in criminal matters. Replaces with \$7.50 as court costs from criminal prosecutions, \$50 fee for conviction of misdemeanors, \$100 for conviction of felony, \$1 for copies per page, \$3 for conformed copies, \$5 for certification

of copies, \$20 for criminal history search, \$10 for an extract of court minutes, and actual costs for mailing. In House Judiciary Committee.

[Louisiana HB 1218](#) Requires the clerks of court to remit unused funds or to demand payment for costs in civil matters within a certain period of time. In House Judiciary Committee.

[Louisiana SB 649](#) Provides that when judicial district courts are divided, fund balances are distributed according to how much each parish contributes. In Senate Judiciary A Committee.

Salary and Budget: Floor and Committee Activity

[Florida HB 5401](#) Transfers Clerks of the Court Trust Fund to Department of Revenue. Provides additional powers & duties of Legislative Budget Commission. Revises distributions of filing fees for trial & appellate proceedings. Deletes provisions providing for housing Florida Clerks of Court Operations Corporation within Justice Administrative Commission. Specifies corporation as commission budget entity & specifying corporation employees as commission employees. Subjects corporation & clerks of court to specified procurement requirements. Revises requirements for budget procedure for court-related functions of clerks of court, distribution of fines, fees, service charges, & court costs and specified filing fees collected by clerks of court. Revises required budget procedures for budget requests for funding court-related functions of clerks of court. Requires specified filing fees to be retained

as fee income of office of clerk of circuit court. Approved by Appropriations Council on Education & Economic Development 3/23/10.

[Florida HB 5403](#) Provides for deposit of specified fees into State Courts Revenue Trust Fund rather than state court's Operating Trust Fund. Approved by Appropriations Council on Education & Economic Development 3/23/10.

[Florida SB 1400](#) Requires that \$50 from the Supreme Court filing fee be deposited into the State Courts Revenue TF. Renames the Operating Trust Fund in the state courts system as the "Administrative Trust Fund." Directs that fees from the foreign language court interpreters program be deposited into the Administrative Trust Fund within the state courts system. Increases the portion of certain filing fees to be deposited into the General Revenue Fund. Approved by Policy & Steering Committee on Ways and Means 3/26/10.

[Idaho HB 687](#) Establishes emergency surcharge fee for court action. Requires surcharge fees collected go to Idaho Statewide Trial Court Automated Records System (ISTARS) Technology Fund and the Drug Court, Mental Health Court and Family Court Services Fund. Approved by full House 3/22/10. Approved by full Senate 3/25/10. To Governor for approval.

[Illinois HB 6368](#) Modifies Judicial Pension Code. For those participating in Judicial Pension program on or after July 1, 2010; (i) changes the manner in which retirement annuities are calculated (including caps on the amount of retirement annuities); (ii)

changes the eligibility requirements for a retirement annuity; (iii) makes changes concerning survivor annuities; and (iv) provides that annual increases shall be 3% or the annual change in the Consumer Price Index for All Urban Consumers, whichever is less, of the annuity then being paid. Makes other changes. Approved by full House 3/19/10.

[New Hampshire SB 361](#) Grants an allowance for justices, and their surviving spouses, who served prior to court unification in 1984 as part-time district court justices but who had full-time case loads. Adds a benefit to a surviving spouse of certain retired judges of probate. Approved by full Senate 3/24/10.

[Ohio HB 431](#) Consolidates references to costs and fees, other than attorney fees, that apply in courts of record, generally organizes costs and fees according to the courts in which they apply, and cross-references the Revised Code sections that create the costs and fees. Approved by House Judiciary Committee 3/24/10.

[Washington SB 2681](#) Entitles a visiting part-time district court judge, when not serving in a judicial capacity in his or her district, to compensation for judicial services as long as the legislative authority of the county in which the visited district is located has approved the payment before the visit. Approved by full House 3/10/10. To Governor for approval.

Selection: Newly Introduced

[Alabama SB 561](#) Permits but does not require nonpartisan election of circuit and

district court judges. Allows counties to “opt in” when a majority of circuit court judges submit a petition to their county commission. In Senate Constitution, Campaign Finance, Ethics, and Elections Committee.

[Louisiana SB 325 \(Constitutional Amendment\)](#) Provides that if the clerk of the district court or other office that is not otherwise provided for voluntarily leaves office prior to the end of term, the person assuming the office shall not be an eligible candidate in the next election to fill the office whether the next election is for the unexpired term of that office or for a new term. In Senate Government Affairs Committee.

[Louisiana SB 369 \(Constitutional Amendment\)](#) Provides that if the clerk of the district court or other office that is not otherwise provided for voluntarily leaves office prior to the end of term, the person assuming the office shall not be an eligible candidate in the next election to fill the office whether the next election is for the unexpired term of that office or for a new term. In Senate Government Affairs Committee.

Selection: Floor and Committee Activity

[Arizona SB 1081](#) Establishes statutory guidelines for filling vacancies for nonattorney members on trial court appointment commissions. Requires the commission to notify the member of the board of supervisors from the district where the vacancy will occur at least 90 days before term expiration of a nonattorney

member on the commission. Requires the member of the board of supervisors from the district where the vacancy will occur to appoint a nominating committee of seven members who reside in the district. Requires the nominating committee, within 21 days of appointment, to provide public notice that a vacancy on the trial court appointments commission exists and to solicit applications. Specifies that within 60 days after providing public notice of a vacancy, the nominating committee is to review and forward the applications, including the committee's recommendations, to the Governor. Requires the Governor to appoint a member as provided by law, subject to confirmation by the Senate. Approved by full Senate 3/22/10.

[Georgia HB 1057](#) Specifies it is the General Assembly that names and provides for the compensation of the clerk of a magistrate's court unless a local law is put into effect. Approved by full House 3/24/10.

[Hawaii SCR 37](#) Urges Governor consider gender equality when appointing judges and justices. Approved by Senate Judiciary Committee 3/29/10.

[Hawaii SR 26](#) Urges Governor consider gender equality when appointing judges and justices. Approved by Senate Judiciary Committee 3/29/10.

[Kansas HB 2079](#) AS AMENDED: Includes judicial retention elections within current campaign finance laws. Approved by Senate Ethics and Elections Committee 3/19/10.

Structure Changes: Newly Introduced

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Research Division

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NATIONAL CENTER FOR STATE COURTS

3/26/10

300 Newport Avenue, Williamsburg, VA 23185

Phone (800) 616-6109 Fax (757) 564-2022

Editor's Email: wraftery@ncsc.org

Subscribe: gaveltogavel@ncsc.dni.us

Blog: www.gaveltogavel.us

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[Louisiana SB 389 \(Constitutional Amendment\)](#) Provides that when legislature divides a judicial district composed of 2 or more parishes to create a new judicial district consisting of the entire territorial jurisdiction of 1 or more parishes, approval of the referendum shall be in the parish or parishes that will compose the new judicial district. In Senate Government Affairs Committee.

Structure Changes: Floor and Committee Activity

[Alabama HB 348](#) Authorizes but does not require drug courts be established by the presiding judges of the judicial circuits. Requires Administrative Office of Courts assist in planning, developing, and implementing of drug courts. Approved by House Government Appropriations Committee 3/25/10.

[Pennsylvania SB 383](#) Authorizes the establishment of problem solving court, including, but not limited to, drug courts, mental health courts and driving under the influence courts, in all courts of common pleas and the municipal court of Philadelphia. Approved as amended by full House 3/23/10. To Senate to concur with House amendment.

[Vermont HB 470](#) AS AMENDED: Restructures state's entire judiciary. Eliminates probate, family, and district courts. Establishes a unified court system consisting of only the supreme court, the superior court, and the judicial bureau, with the supreme court to exercise administrative control. Divides superior court into civil,

criminal, family and probate, divisions. Reduces number of probate judges from 14 to 5 by ending practice of drawing probate court districts along county lines, instead creating five regional probate districts. Requires probate judges be attorneys. Eliminates judicial functions of “assistant judges”. Approved by full House 3/24/10.

Other: Newly Introduced

[Georgia HB 1770](#) Informs Georgia Supreme Court Chief Justice Carol W. Hunstein that Georgia is a republic, not a democracy. Finds that “the judicial branch of government is not the sole interpreter of the Constitution.” In House (no committee).

[Louisiana SB 654](#) Authorizes judicial district courts to enter into intergovernmental agreements to operate joint programs funded by state and federal funds in order to share administrative costs. In Senate Judiciary A Committee.

Other: Floor and Committee Activity

[Connecticut HB 5408](#) Alters various provisions related to the redistricting of probate courts, probate court reforms and the office of the Probate Court Administrator. Approved by Joint Committee on Judiciary 3/26/10.

[Georgia HB 545](#) Requires Administrative Office of the Courts create a system for certification of process servers. Approved by Senate Committee on Public Safety 3/22/10.

[Mississippi HB 297](#) ORIGINAL: Requires Justice Courts set aside one day a week to hear only traffic cases. AMENDED: Requires Justice Courts in counties with a population under 150,000 set aside half a day a month to “give priority” to traffic cases. For counties over 150,000, one full day a month or two half-days. House and Senate concur in conference report 3/26/10. To Governor for approval.

[Missouri HB 1692](#) Prohibits the Department of Revenue from releasing the home address or any other information contained in the motor vehicle or driver registration records of any state or federal judge or his or her immediate family members. Allows any state or federal judge to request issuance of special license plate or driver’s license for security reasons. Allows for the appointment of an acting county municipal court judge on a temporary basis in the event any judge of a county municipal court becomes ill or is otherwise unavailable. Approved as amended by full House 3/24/10.

[Missouri HCR 25](#) Declares any “Judicial Order by the Judiciaries of the United States of America which assumes a power not delegated to the government of the United States of America by the Constitution of the United States of America and which serves to diminish the liberty of any of the several States or their citizens are unconstitutional under the Constitution of the United States of America by the government of the United States of America.” Approved by House Rules Committee 3/23/10.

[Oklahoma SB 2170](#) Creates Task Force on Standardization of Courtroom Security

Procedures. Task Force to be made up of legislators, only. Approved by House Judiciary Committee 3/23/10.

[Oklahoma SB 499](#) ORIGINAL: Permits Members of the Council on Judicial Complaints to hold an office in addition to serving as councilmember. Allows Council to employ counsel as needed. AMENDED: Deletes reference to employment of counsel. Approved House Judiciary Committee 3/23/10.

[Vermont SB 279](#) Allows civil jury findings/verdicts with “not more than one juror dissenting” unless the parties agreed otherwise. Requires the state court administrator report on the effects of the change, especially hung juries, amount of damages (in general), med-mal (in particular) case frequency and duration, and the impact on the courts in general. Approved by full Senate 3/23/10.