THE INTERNATIONAL LAW SECTION OF THE FLORIDA BAR'S ("ILS") OPPOSITION TO SENATE BILL 58 (HAYES) AND HOUSE BILL 351 (METZ) ENTITLED "APPLICATION OF FOREIGN LAW IN CERTAIN CASES"

Summary of ILS's Opposition to SB 58 and HB 351

Senate Bill 58 and House Bill 351 are the latest iterations of proposed legislation that, for the past three years, has been introduced to address a perceived problem that in fact does not exist -- "to protect American citizens' constitutional rights against the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Shariah Law." [1] There is no such infiltration or incursion, and leaving for another day a discussion regarding the real agendas being advanced by such proposed legislation, the fact remains that SB 58 and HB 351 impermissibly encroach on the powers belonging to Florida's judicial branch, unnecessarily infringe upon an individual's fundamental liberties, including the freedom to contract, and cast our State as one that is not open for business to foreign companies, consumers, and prospective immigrants -- an image that Florida decidedly wants to avoid. On a more fundamental level, Florida's judges already are empowered to refuse to enforce any foreign law provision or doctrine that offends Florida's public policy, and this arrangement has been, and continues to be, more than adequate to protect this State's litigants and citizens. No new legislation, however well-intentioned, is needed to address this non-existent threat.

As set forth below, Florida legislators should carefully and seriously consider the consequences of enacting Senate Bill 58 and HB 351. Although the scope of this legislation appears narrower than the proposed laws that unsuccessfully were advanced in the past years, Senate Bill 58 and HB 351 essentially would render any decision issued by a Florida trial and appellate court judge, or a Florida arbitrator, in the context of family law disputes, void and unenforceable "if the court [or] arbitration [tribunal]. . . bases its ruling or decision in the matter at issue in whole or in part on any foreign law, legal code, or system that does not grant the parties affected by the ruling or decision the **same** fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution." SB 58 (emphasis added).

Apart from the constitutional and public policy infirmities of the proposed legislation, which are discussed in detail below, its wholly impractical and inefficient nature is apparent from a cursory reading of its text: Florida's already overworked judges will be forced to become comparative law specialists, and parties unnecessarily will have to expend significant resources (if they have them in the first instance) to hire foreign law experts, all in an attempt to satisfy this

[1] Like many other proposed state legislation on this issue, SB 58 and HB 351 are based on the model law drafted by a think tank called American Public Policy Alliance, whose stated mission is to "protect American citizens' constitutional rights against the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Shariah Law." *See* http://publicpolicyalliance.org/legislation/america-laws-for-american-courts/ (last visited Jan. 27, 2013).

proposed legislation's unfeasible standard -- does the foreign body of law sought to be applied grant the litigants the **same**[2] fundamental liberties, privileges, and rights as the Florida and U.S. Constitution?[3] This legislation simply is unworkable, inefficient, and also would create the risk of inconsistent determinations, by different trial and appellate courts, of whether foreign bodies of laws do, or do not, afford the same protections as the Florida and U.S. Constitutions.

Importantly, the American Bar Association ("ABA"), as well as the Business, International, and Family Law Sections of The Florida Bar, among other professional, civic, and religious organizations, have opposed, and continue to oppose, proposed legislation such as SB 58 and HB 351. In its August 8-9, 2011 House of Delegates Resolution, the ABA succinctly noted that proposed laws such as SB 58 and HB 351 "are inconsistent with some of the core principles and ideals of American jurisprudence," "are unnecessary, as existing law and judicial procedure have already proven sufficient to deal with the concerns that such [proposed laws] were designed to address," and are "likely to have an unanticipated and widespread negative impact on business, adversely affecting commercial dealings and economic development in the states in which such a law is passed and in U.S. foreign commerce generally."

In summary, Florida's legal system already has built-in safeguards against the application of any foreign law or doctrine that is repulsive to this State's public policy. SB 58 and HB 351 are superfluous, and are based on unfounded fears because it seeks to protect rights that are already protected by existing law. The concerns raised by proponents of SB 58 and HB 351 are misguided. There is no support or evidence that shows that our judicial system is threatened by the application of foreign law, especially in the family law arena.[4] To the contrary, our judicial

[2] The word "same" can be properly zeroed-in on as one of the core problems with SB 58/HB 351, but revising the word to "substantially the same" or "similar" or "fundamentally the same" all still represent legal standards that are much more restrictive than then the existing standard that a foreign law will not be enforced if it is offensive to Florida's public policy. These potential modifications of the word "same" would all still require litigants, and therefore, the presiding judge, to analyze whether a foreign law is, in a nutshell, "close enough" to Florida law so it is enforceable. That analysis is, for the reasons discussed below, unconstitutional, counterproductive, runs counter to established precedent, and would facilitate further court clogging. We point this out because, to put it bluntly, tweaking the word "same" will not solve the problem. The only solution is to drop the word altogether, and in doing so, there is no further purpose to SB 58/HB 351.

[3] It gives one pause to think that our already under-resourced courts will have to spend hundreds, if not thousands, of hours of judicial labor to determine what the proponents of this legislation had in mind when they used the word "same" or "fundamental" in describing the applicable standard. It is wholly implausible that any foreign body of law will grant its citizens the "same" "fundamental liberties, rights, and privileges" of the Florida and U.S. Constitutions.

[4] Proponents of legislation such as SB 58 and HB 351 can point to only one Florida case to support their position that foreign law purportedly is threatening our courtrooms. This case involved a business dispute in Tampa regarding a mosque where parties had agreed to arbitrate under Sharia law. *See Mansour v. Islamic Education Center of Tampa*, No. 08-CA-3497 (Fla. 13th Cir. Ct. Mar. 22, 2011) (court upheld arbitral award issued under Sharia law because neutral principles of contract law dictated the result that, absent a violation of public policy, a parties choice of law should be enforced). As a preliminary matter, such a business dispute would not be subject to SB 58/HB 351 because it does not fall within the purview of Chapters 61 and 88 of the Florida Statutes, which govern marriage, child custody, and divorce, among other family law topics -- so the only purportedly problematic case identified by proponents actually would not be covered by their proposed legislation. More importantly,

system consistently has upheld Florida and U.S. Constitutional rights. For these and other reasons, SB 58 and HB 351 should be defeated and not allowed to become law.

Detailed Analysis of ILS's Opposition to SB 58 and HB 351

I. Separation of Powers

We appreciate that the bills' proponents would like to give guidance to Florida's judges as to when and how to apply foreign law in their courtroom, but that guidance is an impermissible and unconstitutional incursion into the domain of the judicial branch. It has long been recognized by this State that the legislature is not permitted to restrict, encroach or infringe on the inherent powers of the judicial body.[5] Interpretation of a statute, choice-of law clause or arbitration award is within the inherent powers of the judiciary, which at times may require the interpretation and application of foreign law.

Restricting or directing the judiciary's discretion encroaches upon their inherent power to be the sole interpreter of the State's Constitution and laws.[6] A legislative body cannot tell courts what they should or should not consider when interpreting contracts, statutes or Constitutional provisions.

The separation of powers doctrine is explicitly mandated by the Florida Constitution, which states:

> The power of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.[7]

SB 58 and HB 351 threaten the separation of powers by limiting and interfering with a court's decision making power as it relates to the consideration of foreign law. By its language, the legislature is limiting Florida courts' discretion and ability to consider a foreign law in their decisions by pre-determining when a foreign law shall be applied.

SB 58 and HB 351 also have the potential for disturbing a court's ability to make determinations about its subject matter jurisdiction. Florida courts have long recognized that, even if they have subject matter jurisdiction over a controversy, the Florida forum may not be the most convenient for the adjudication of the dispute.[8] Florida specifically has recognized that

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proponents of such legislation have been unable to identify specific instances, in the family law context, where Florida litigants have had their rights compromised by the application of foreign laws.

[5] FLA. CONST. Art II § 3.

[6] *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

[7] FLA. CONST. Art. II, § 3.

[8] After finding that Florida applied a less rigorous *forum non conveniens* standard, the Florida Supreme Court adopted the federal standard for *forum non-conveniens*. *See Kinney System, Inc. v. Continental Ins. Co.*, 674 So. 2d.

forum non conveniens accounts not only for the private interests but also for the public interests.[9] In dealing with suits arising out of state, the Florida Supreme Court has noted the importance of taking into account the impact of taking on those cases, which could have a "substantial effect on the taxpayers of this state and on the appropriation of public monies at both the state and local level to pay for costs of judicial operations."[10]

A hypothetical example illustrates the impact that SB 58 and HB 351 may have in a court's ability to issue a *forum non conveniens* dismissal. Consider the case of an Indian husband who, while on vacation with his wife in Miami, suddenly decides to dissolve the marriage (not an altogether implausible scenario considering the temptations of South Beach) and seeks to enforce the provisions of their post-nuptial agreement in a Miami-Dade trial court. Although the wife is present in Miami and was served with process, the post-nuptial agreement is to be governed by Indian law and, except for the ill-fated vacation, the couple lived, and all acts contributing to the dissolution took place, in India. Critical witnesses to the marital problems also are in India.

Under our hypothetical, the wife moves for a *forum non conveniens* dismissal asking the Miami-Dade trial court judge to determine that India is the better forum for the resolution of the dispute with her husband. As part of the *forum non conveniens* analysis, the Florida trial court judge would analyze whether India was an "adequate forum" for the resolution of the dispute.[11] Importantly, under this analysis, the trial court only would find that India was not an adequate forum if, among other things, the remedy available [to the husband in India] clearly amounts to no remedy at all."[12] Even if, in India, the "available legal theories or potential recovery there are less generous than those available where suit was brought," it would not render India an inadequate forum.[13]

Pursuant to SB 58 and HB 351, however, the Miami-Dade trial court judge, because he is partially applying Indian law to arrive at the "adequate forum" determination, likely would require that the wife prove that Indian law afforded the **same** rights to the husband as the U.S. and Florida constitutions. This is quite a different standard than the adequate forum standard pronounced in a legion of *forum non conveniens* cases. Assuming, for purposes of our example, that the wife were not able to make such a showing as required by SB 58/HB 351 (or that the husband succeeded in convincing the Miami-Dade trial court judge to the contrary), the Miami-

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86 (Fla. 1996). Florida eventually codified the *forum non conveniens* factors enumerated in *Kinney* in Fla. R. Civ. P. §1.061.

[9] *See Kinney*, 674 So. 2d at 89-90.

[10] *Id.*

[11] *Kinney System, Inc. v. Continental Ins. Co.*, 674 So. 2d 86, 91 (Fla. 1996) (setting forth factors employed by Florida courts in a *forum non conveniens* analysis).

[12] *Id*. at 91.

[13] *Id.*

Dade trial court judge would not issue a *forum non conveniens* dismissal order because it would be null and void pursuant to SB 58 and HB 351.

Again, the intentions of the proponents of SB 58 and HB 351 are irrelevant -- the application of this proposed legislation would upset Florida courts' ability to manage their dockets and to determine whether they should decline to exercise subject matter jurisdiction over disputes that belong in other countries. Not only is this an unnecessary encroachment on the courts' affairs, it will further aggravate the clogging of Florida's courts.

II. Freedom to Contract

Florida jurisprudence reflects a longstanding respect for freedom to contract. Included in this recognized freedom to contract also is the recognition that parties have a right to choose the law that will govern their contract. Florida courts will enforce a choice of law provision "unless the law of the chosen forum contravenes strong public policy."[14]

SB 58 and HB 351, however, impermissibly infringe on the right of parties to agree upon the body of law that will apply to the resolution of their disputes. For purposes of illustration, consider the hypothetical example of an Argentine couple living in Sarasota. The Argentine couple wants to dissolve their marriage in Florida, but they have an antenuptial agreement that holds that Argentine law applies to any dispute arising under the antenupial agreement, and that any disputes shall be subject to arbitration.

Currently, this situation does not pose a problem -- Florida law governing the dissolution of marriages states that "[t]he court may enforce an antenuptial agreement to arbitrate a dispute in **accordance with the law and tradition chosen by the parties**." Fla. Stat. § 61.052(5) (emphasis added). Section 61.052(5), therefore, illustrates one of the many instances where Florida legislation governing the adjudication of family law disputes recognizes the long-held and constitutionally protected freedom to contract.[15]

If SB 58 and HB 351 are passed into law, however, the outcome may be different -- SB 58 and HB 351 hold that "[a]ny court [or] arbitration [tribunal] . . . decision violates the public policy of this state and is void and unenforceable if the court [or] arbitration [tribunal] . . . bases its ruling or decision in the matter at issue in whole or in part on any foreign law, legal code, or system that does not grant the parties affected by the ruling or decision the **same** fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution." (emphasis added).

[14] *Mazzoni Farms, Inc. v. E.I. DuPont de Nemours & Co.*, 761 So. 2d. 306, 311 (Fla. 2000).

[15] Under the Contracts Clause of the U.S. Constitution, states are prohibited from passing any law that would impair "the Obligation of Contracts." U.S. Const. Art. IV, § 1.

In sum, if the proposed legislation is enacted, and in order to even *attempt* to have a Florida court enforce a contractual choice of law provision that the divorcing parties *agreed* would apply to their dispute, the Argentine litigants will have to retain and pay for an Argentine law expert to opine on whether Argentine law affords the litigants the "**same** fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution." Indeed, as written, the Argentine couple could not even *stipulate*, in the court or arbitral proceedings, that Argentine law afforded them the same rights as the Florida and U.S. Constitutions -- SB 58 and HB 351 appear to require an *independent*, and undoubtedly costly and time-consuming, analysis of Argentine law before the trial court judge or arbitrator even could consider the matter. Assuming for purposes of this example that the trial court judge or arbitrator were able to rely solely on the opinion of the retained expert, it appears that, if the case went on appeal, the District Court of Appeal would have to perform a *de novo* review of Argentine law and the expert's findings to ensure that Argentine law indeed grants the litigants the *same* rights as the U.S. and Florida Constitutions. On its best day, this proposed legislation is grossly inefficient and unworkable. On its worse, it will generate chaos.

Florida courts, for decades, generally honor a choice of law provision, whether designating foreign or religious as applicable, unless its application would (1) violate principles of contract law or (2) violate public policy. A study of this state's jurisprudence demonstrates that there is no need for additional safeguards. SB 58 and HB 351 are unnecessary and would impair the freedom of parties to choose the law to govern their contractual/domestic relationship without fear that choosing that law would force them into expensive and tedious litigation in order to defend the exercise of that freedom.

III. First Amendment Issues

After much outcry from religious groups against previous versions of the bill, SB 58 and HB 351 attempt to avoid First Amendment concerns by stating the obvious. First, the legislation uses religious-neutral language, and secondly, it explicitly excludes from the interpretation of the proposed legislation a grant of authority or requirement that courts adjudicate so-called "ecclesiastical" matters.[16] The First Amendment already limits a court's authority to decide

[16] The use of the adjective "ecclesiastical" in the proposed legislation is problematic because the term generally is defined as "of or relating to a **church** especially as an established institution." SB 58 and HB 351 attempt to broaden the definition of "ecclesiastical" matters, however, and define it as "including, but not limited to, the election, appointment, calling, discipline, dismissal, removal, or excommunication of a member, officer, official priest, nun, monk, pastor, rabbi, imam, or member of the clergy of the religious organization, or determination or interpretation of the doctrine of the religious organization, if such adjudication or prohibition would violate s. 3, Art. I of the State Constitution or the First Amendment of the United States Constitution . . ."

internal disputes and practices of religious institutions, making this provision redundant and unnecessary in light of already established law.[17]

Despite added language in SB 58 and HB 351 to alleviate any First Amendment concerns, the proposed legislation still has the power to interfere with an individual's ability to enforce a contract governing his/her domestic relationship in a state court, when that contract is based on a religious law or code. The reason is as follows: since the proposed legislation does not specifically exclude religious law from its definition of foreign law,[18] it would require Courts, in family law matters involving religious law, to determine whether religious law affords the same protections as the Constitution in matters not purely ecclesiastical, thus threatening to violate the separation of Church and state. That inquiry would obligate trial court judges to engage in a comparative analysis of religious law with Florida law, which is impermissible, all in an effort to determine if the religious law provides the "same" protections as Florida law. In the words of the Supreme Court, "if the purpose or effect of a law is to impede the observance of one or all religions . . ., that law is constitutionally invalid even though the burden may be characterized as being only indirect."[19]

In sum, the proposed legislation could affect the ability of individuals to settle their dispute in family matters in accordance to religious guidelines. In light of the language and purpose of this legislation, fear that courts may reject adjudication of contracts based on religious law could infringe on an individual's religious freedom.[20]

IV. Federal Preemption

All states, including Florida, are preempted from interfering with foreign affairs. SB 58 and HB 351 exclude the application of the statute in the event of a conflict with a federal treaty or other international agreement.[21] However, under the doctrine of preemption, the United States Supreme Court has held that a state law can be preempted, even in the absence of a conflict with federal law or treaty, if it infringes upon the federal government's exclusive power to conduct foreign affairs.[22]

A. Dormant Federal Foreign Affairs Clause

[17] To demonstrate the redundancy of this legislation on the First Amendment issue, ,the United States Supreme Court has already held that civil courts are not a constitutionally permissible forum for a review of ecclesiastical disputes. *See e.g., Serbian Eastern Orthodox Diocese v*. Milovojevich, 426 U.S. 696, 710 (1976).
[18] SB 58 only excludes the common law and statute law of England, and Native American law from its definition of foreign law.
[19] *See Sherbert v. Verner*, 373 U.S. 398, 404 (1963).
[20] Florida Constitutions prohibits any law "respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Fla. Const. Art. I, §3.
[21] *See* SB 58, § 7(b).
[22] *Id.*

SB 58 and HB 351 have the potential to impact foreign relations, and thereby violate the federal foreign relations power. First, this proposed legislation has the possibility of restricting the enforcement of judgments from other countries in Florida, thereby creating issues of reciprocity with those countries. Second, it may interfere with the federal government's ability to enact a unified foreign policy when Florida courts are directed to consider foreign decisions and law in a particular manner.

As an example, if Broward County trial court judge decides not to enforce an antenuptial agreement governed by Venezuelan law because Venezuelan law does not afford the "same" safeguards as the Florida and U.S. Constitutions, and the Fourth District Court of Appeal affirms that decision, but the Third District Court of Appeal reaches a contrary decision in another matter involving Venezuelan law, then the Florida Supreme Court will be called upon to decide this split in the District Courts of Appeal and will have to answer the following question: should Florida enforce Venezuelan law antenuptial agreements? It is likely the Florida Supreme Court would recognize that they are intruding on foreign policy making decisions and would rule that no such blanket rule could be made, but in the event the Florida Supreme Court did take a side, then there likely would be a basis to appeal such a decision to the U.S. Supreme Court because of the offense to the Dormant Federal Foreign Affairs Clause. In turn, the U.S. Supreme Court will have to decide the following question: can Florida decide, as a matter of policy, that it will not enforce Venezuelan antenuptial agreements?

The answer should be no, unless the U.S. Supreme Court wants to invite every state in the Union to set foreign policy and thereby offend the U.S. Constitution. By this point, the hypothetical fact pattern should make it obvious that SB 58 and HB 351 open the door to an unnecessary intrusion into the federal government's ability to set and conduct foreign policy. The right call is to keep things as they are: trial court judges will not enforce foreign laws that are offensive to Florida's public policy, but no judge should have to pass judgment and have trials as to whether a foreign law is the "same" as ours, and therefore worthy of enforcement. The test always has been the reverse: we will enforce the foreign law unless someone proves it is offensive to Florida. That is a fundamental principal of comity that keeps judges out of the foreign policy weighing arena and having trials on policy issues.

V. Other Considerations

A. Comity & the Principle of Priority

States often have to consider decisions rendered by foreign courts, specifically in the areas of family and contract law. For example, states have honored child support decrees and divorces granted in other countries.[23]

[23] *Leitch v. Leitch*, 382 N.W. 2d 448, 448-49 (Iowa 1986); *Yu v. Zhang*, 175 Ohio App. 3d 83 (2008).

While Florida courts are not required to give full faith and credit to judgments from foreign courts, historically courts have recognized, under principles of comity, "the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." [24]

SB 58 and HB 351 threaten to undermine the long-standing tradition that courts in this State have held of granting comity to foreign judgments so long as those judgments do not violate the State's public policy.[25] Under comity, courts have applied a principle of priority in cases where two jurisdictions have concurrent jurisdiction over disputes, allowing the first-filed action to proceed.[26] SB 58 and HB 351 would complicate the application of the principle of priority by requiring that the foreign forum's laws afford the **same** liberties, privileges and rights as those afforded by the Florida and U.S. Constitutions. It is not difficult to imagine that foreign bodies of law may offer, for example, due process in a different manner that would comport to Florida and U.S. constitutional standards, but may not necessarily be the **same** as required by SB 58 and HB 351.

Furthermore, SB 58 and HB 351 could affect the recognition and enforcement in another country of court decrees or family law contracts originating in Florida. Other countries may decline recognition or enforcement due to Florida's potential lack of reciprocity, making it harder for Floridians to have their antenuptials, or other contracts involving family law issues, enforced in foreign countries to where they may have relocated.

B. Conflict with Existing Laws

1. Uniform Out-of-Country Foreign Money Judgment Recognition Act

SB 58 and HB 351 could conflict with Florida's Uniform Out-of-Country Foreign Money Judgment Recognition Act under § 55.601, Florida Statutes. Unlike its federal counterpart, Section 55.601 does not exclude its application to cases dealing with "support in matrimonial or family matters."[27]

To illustrate the potentially detrimental impact of SB 58 and HB 351, take the hypothetical example of a German divorce decree that awarded a monetary sum to the former husband as a result of a marriage dissolution proceeding that took place in Germany. The former wife has assets in Miami, and when the former husband attempts to domesticate his divorce

[24] *Hilton v Guyot*, 159 U.S. 113 (1895).
[25] *See e.g., Al-Fassi v. Al-Fassi*, 433 So. 2d 664 (Fla. 3d DCA 1983) (Court did not recognize Bahamian custody decree because it violated Florida's public policy that they custody decision be based upon the best interest of child).
[26] *See e.g., Stock v. Stock*, 677 So. 2d 1341 (Fla. 4th DCA 1996) (holding that because Swiss custody action was pending prior to Florida action, Swiss action had priority under Fla. Stat. §61.1314(1);*Gillis v. Gillis*, 391 So. 2d 773 (Fla. 3d DCA 1980) (Court held that child support case should be stayed until determination was made in an identical action previously filed in England).
[27] *See* 2005 Recognition Act §3(b); 1962 Recognition Act § 1(2).

award in a Florida court in order to recover the amounts that he is owed under the divorce decree, his former wife or another intervening party may attempt to rely on SB 58 and HB 351 and argue that the Florida court should not domesticate the award because German law did not afford her the **same** protections as the U.S. and Florida constitutions. Such a situation is entirely possible because SB 58 and HB 351 apply whether the court decision was even "in part" based on foreign law. What is a judge to do under this fact pattern? Does she decide to domesticate the out-of-country judgment under the FS 55.601 standard - of offending Florida laws - which is substantially less restrictive than the SB 58/HB 351 standard? There is an obvious conflict in Florida's laws here that SB 58/HB 351 would create.

2. Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA")

Among the primary purposes of UCCJEA is to avoid jurisdictional conflicts with other jurisdictions in child custody matters and to expedite the resolution of child custody conflicts.[28] UCCJEA applies to the recognition and enforcement of custody decrees issued in other nations.[29] The UCCJEA expressly requires the recognition of a custody decree from another country so long as the "factual circumstances [are] in substantial conformity with the jurisdictional standards" of the statute, and with the requirement that the "child custody law of the foreign country not violate fundamental principles of human rights."[30]

SB 58 and HB 351 may create a conflict with UCCJEA because the proposed legislation requires a higher standard to allow the application of foreign law in the recognition of a foreign court's judgment by requiring that the **same** exact privileges, rights and liberties afforded under the Florida and U.S. Constitutions exist under the subject foreign law. The repercussions would be serious: child custody issues involving foreign laws would be unnecessarily complicated and drawn out, with children being the main victims of that delay.

Conclusion

The list of serious concerns relating to SB 58 and HB 351 discussed in this memorandum is not exhaustive -- implementation of this proposed legislation inevitably will lead to years of litigation over its intended and unintended consequences. Were a compelling reason for its implementation to exist, then a debate over the effectiveness of SB 58 and HB 351 perhaps would be warranted. But no such compelling need exists. Florida courts for decades have protected litigants from foreign law concepts or doctrines that are repugnant to Florida's public policy. Legislating over this traditionally judicial territory offends the constitutional doctrine of separation of powers, right to contract, and federal foreign affairs exclusivity. Implementing the proposed legislation also will cause the myriad of problems discussed above -- from further

[28] *See* Fla. Stat.§ 61.502
[29] *See* Fla. Stat. §61.506 ("A court of this state shall treat a foreign country as if it were a state of the United States for purposes of applying §§ 61.524-61.540").
[30] *See* Fla. Stat. §61.506

clogging the caseloads of our judicial courts to portraying Florida as a state that does not welcome, and fundamentally understand, foreign laws and concepts.

In light of the foregoing, the International Law Section of the Florida Bar respectfully requests you vote against SB 58 and HB 351.

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