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Nothing to Fear

*Debunking the Mythical “Sharia Threat” to
Our Judicial System*

A Report of the ACLU Program on Freedom of Religion and Belief



Introduction

Across the country, state legislators are considering proposed laws that would limit the ability of courts to adjudicate lawsuits brought by Muslims.¹ Proponents of these measures argue that they are necessary because so-called “Sharia law” is somehow taking over our courts. These claims are, simply put, wrong. They are based both on misinformation and a misunderstanding of how our judicial system works.²

There is no evidence that Islamic law is encroaching on our courts. On the contrary, the court cases cited by anti-Muslim groups as purportedly illustrative of this problem actually show the opposite: Courts treat lawsuits that are brought by Muslims or that address the Islamic faith in the same way that they deal with similar claims brought by people of other faiths or that involve no religion at all. These cases also show that sufficient protections already exist in our legal system to ensure that courts do not become impermissibly entangled with religion or improperly consider, defer to, or apply religious law where it would violate basic principles of U.S. or state public policy.

This report examines specific court cases that have been repeatedly cited by anti-Muslim advocates as evidence of the so-called “Sharia threat.”³ Breaking the cases down into three categories — cases involving religious freedom claims; contracts, arbitrations, and other agreements; and public policy issues — the report provides details of each case and puts them into proper context. It does not take a lawyer or expert to see that the cases are routine legal matters and do not stand for the principles that proponents of anti-Sharia measures contend. Rather, these cases are red herrings, meant to distract from the true aim of the recently proposed Sharia bans – to denigrate an entire faith system and to deny its followers the same access to the judicial system enjoyed by citizens of other creeds.

Cases Involving Religious Freedom Claims

Our federal and state laws afford people of all faiths the right to seek relief from the courts when their religious freedom is burdened.⁴ Because religious freedom rights are at the heart of such cases, they necessarily involve some consideration of, or reference to, religion. If courts undertake these examinations carefully, without becoming improperly entangled with religion, these cases do not present cause for concern. The alternative would be that people of faith would have no judicial recourse when the government violates their religious freedom rights.

The right of religious exercise has been recognized in court cases involving a variety of contexts and faiths.⁵ One such case cited by anti-Muslim groups, *Shaheed Allah v. Adella Jordan-Luster*,⁶ involved a Muslim inmate’s claim that a prison violated his religious exercise rights by failing to ensure that all meat served to him was prepared in accordance with his Islamic religious beliefs. Reliance on this case as evidence of the so-called “Sharia threat,” however, is misplaced for several reasons.

First, in *Shaheed Allah*, the court *rejected* the inmate’s claim, ruling that the prison’s practice of serving pork-free meals was sufficient to accommodate his Islamic religious needs. Second, even had the court granted the inmate’s request for a religious diet, the accommodation would be no different than similar diet accommodations that have been provided across the

country to, say, devout Catholic⁷ or Jewish⁸ prisoners.⁹ Indeed, religious exercise accommodations have been claimed or granted in a variety of contexts for prisoners of myriad faiths.¹⁰ Thus, *Shaheed Allah* can be considered evidence that Sharia law is “overtaking” our courts *only if* one believes that Muslims should be barred from asserting such claims at all.

Of course, Muslims cannot and should not be barred from asserting religious freedom claims in court; nor should courts be impeded in their ability to hear and grant these claims where appropriate under the law. Denying Muslims the same religious accommodations afforded to people of other faiths would be un-American and a complete betrayal of our core commitment to religious liberty and equality. When adjudicated within the guidelines of the First Amendment, cases involving Muslims’ right to free exercise no more threaten the imposition of Sharia law than, for example, cases involving the rights of Christians pose a “Biblical threat” to our courts.

Cases Involving Contracts, Arbitrations, and Other Agreements

Courts routinely consider cases that touch on religion in various ways, even where a religious freedom claim is not directly raised. Our judicial system has long recognized the ability of courts to consider these cases if they are able to evaluate and decide them using neutral principles of law. Singling out and prohibiting cases that happen to involve Islam, while allowing all other similar cases to proceed, would render Muslims second-class citizens and deny them equal access to the courts. Below are examples of the types of cases that proponents of anti-Sharia measures have seized on as evidence of the so-called “Sharia threat.”¹¹ Once again, however, even a cursory review of the cases reveals how misguided and misinformed these individuals and groups are.

Cases involving arbitration agreements

Anti-Muslim groups pushing passage of Sharia bans have pointed to several state court decisions involving agreements to arbitrate using Islamic principles or arbitrators as evidence of the alleged “Sharia threat.”¹² But these cases merely recognize the right of people of faith to agree to settle disputes in accordance with the principles of their religion – a right exercised routinely by non-Muslims.¹³

For example, in *Abd Alla v. Mourssi*¹⁴—a business partnership dispute in which the parties had agreed to Islamic arbitration—the court simply upheld an arbitration award after determining that the defendant had failed to challenge the award in time and that there was no evidence that the award “was the result of fraud, corruption, or other undue means.”¹⁵

It is well established that, if a party contracts to arbitrate its claims but later refuses to do so in accordance with the terms of the arbitration provision, a court may determine whether the arbitration provision is valid and enforceable. A court may also confirm or enforce a binding arbitration award if one side refuses to comply with the decision, or vacate an arbitration award if it violates public policy.¹⁶ Accordingly, these decisions follow basic, neutral principles of law and no more advance Sharia than arbitration cases involving rabbinical arbitration tribunals or Christian arbitrators.

Cases involving prenuptial agreements

Courts have similarly adjudicated claims brought by Muslims to enforce Islamic prenuptial agreements (“Mahr Agreements”) according to neutral principles of contract law. For example, in *Odatalla v. Odatalla*,¹⁷ the court applied contract law to find that “all of the essential elements of a contract are present.” The court thus upheld a Muslim husband’s promise, made as part of a prenuptial agreement, to pay \$10,000 to his wife, explaining that enforcement of the Mahr Agreement was proper because it was “based upon ‘neutral principles of law’ and not on religious policy or theories.”¹⁸

In another case, *Zawahiri v. Alwattar*,¹⁹ the court likewise applied neutral principles of contract law to a claim for enforcement of a Mahr Agreement. However, the court ultimately concluded that, unlike in *Odatalla*, the husband only entered into the agreement “as a result of overreaching or coercion.”²⁰ Specifically, he “was embarrassed and stressed” and “did not have the opportunity to consult with an attorney prior to signing the marriage contract.”²¹ Thus, as with any contract signed under duress, the court concluded that the Mahr agreement was not valid or enforceable.²²

Cases involving the validity of a marriage

Several other cases cited by proponents of anti-Sharia measures involve claims requiring that, as a preliminary matter to adjudicating the entire case, the court determine whether a particular marriage was valid under civil law. In *Hassan v. Holder*,²³ for example, a Muslim who had emigrated from Israel with a visa reserved for unmarried children of lawful permanent residents was set to be deported for allegedly lying about his marital status at the time of entry to the country. In order to determine whether the petitioner had falsely claimed to be unmarried, the court had to first assess whether there was sufficient evidence that he had completed the four-step Islamic marriage process in Israel, which would have culminated in recognition, under Israeli law, of a valid marriage. Applying neutral principles of law regarding evidence and the government’s burden of proof, the court ruled that the government had failed to produce sufficient evidence that a valid marriage had occurred in Israel before the petitioner entered the country and that he should not be removed.²⁴

These cases are unremarkable. Courts may be called on to determine the validity of marriages, which, of course, are often conducted via religious means and ceremonies.²⁵ Muslims cannot and should not be denied the right to utilize our courts in the same manner as people of other faiths.

Claims Implicating Public Policy Issues

Proponents of anti-Sharia laws have seized on and misused any case involving consideration — or even the mere mention — of Islam to stoke fears that our courts are imposing religious beliefs and doctrines that are incompatible with the American way. These fears are unwarranted. Our legal system has built-in protections to ensure that courts do not improperly apply foreign, international, or religious law. Courts are already barred by the Establishment Clause of the First Amendment from becoming improperly entangled with religion when considering cases involving matters of faith, and courts may not defer to *any* law — religious or not — if doing so would result in an outcome contrary to public policy. A closer review of the

cases highlighted by Sharia ban proponents shows that our courts are following these rules when it comes to disputes involving Islamic law, either as a purely religious matter or as it relates to a foreign country's civil legal system. Thus, these cases serve as a source of comfort and confidence that our judicial system is working as it should, and are not the harbingers of doom that anti-Sharia advocates have made them out to be.

Cases involving foreign law and venues

It is often necessary for a court to consider foreign law to determine whether to defer to (*i.e.*, grant legal comity to) a foreign court decision,²⁶ or whether a foreign jurisdiction would be an appropriate venue for a particular case to be heard. In these circumstances, it is important to distinguish between civil and religious law; courts considering foreign law deal with Islamic law only to the extent that it forms the basis for the civil law of a foreign country.

In looking at foreign law in these contexts, one of the primary factors a court considers is whether the particular order, judgment, or legal system would violate U.S. or state public policy.²⁷ The cases cited by proponents of the anti-Sharia measures do the same, showing that there is no discernable trend of courts improperly enforcing Sharia law in violation of public policy. On the contrary, in nearly all of them, the courts *rejected*, on public policy grounds, deference to a foreign law judgment or legal system, again calling into question the curious claim that these cases illustrate a growing threat of Sharia.

For example, in *Amin v. Bakhaty*,²⁸ faced with an Egyptian court order granting custody to a Muslim father, the Louisiana Supreme Court refused to enforce the Egyptian order. The court held that Egypt's civil law pertaining to custody matters, which is based on Islamic family law, did not require Egyptian courts to consider the child's best interest as "paramount." Accordingly, the court concluded that enforcing the order would violate public policy, as Louisiana state law requires the "best interest of the child" to dictate custody decisions.²⁹

Similarly, in *Rhodes v. ITT Sheraton Corp.*,³⁰ the court determined that Saudi Arabia was not an adequate alternative forum in which the female plaintiff could litigate her claim for damages resulting from a diving injury incurred at a Saudi Arabia Sheraton hotel. Among the reasons proffered by the court was the likelihood that the plaintiff would be stymied by "systemic prejudices," including "biases against women and non-Muslims."³¹

Cases involving religious defenses

Defendants in criminal cases sometimes point to their religious beliefs in defense of their criminal actions. For example, defending against a murder charge after he shot abortion provider Dr. George Tiller, criminal defendant Scott Roeder claimed that his religious beliefs required him to act in defense of fetuses.³² This defense notwithstanding, Roeder was convicted and sentenced to life without parole. In the past, criminal defendants charged with polygamy in violation of the Mann Act have claimed that, because of their religious beliefs, they lacked the necessary criminal intent. The Supreme Court has rejected this defense.³³

Courts faced with criminal defendants' religious justifications based on Islam have likewise rejected them as violations of public policy. For example, anti-Muslim groups reached all the way back to 1976 to cite, as evidence of the "Sharia threat," the case of *People v. Benu*.³⁴ The case involved a Muslim man, who was charged with child endangerment for facilitating the

marriage of his underage daughter. He claimed that he was innocent because the marriage was permissible under Islamic law. But the court *rejected* that defense and found the defendant guilty. Similarly, in *S.D. v. M.J.R.*,³⁵ a state court of appeals unequivocally reversed a misguided lower court decision denying a wife's application for restraining order against her Muslim husband. The court condemned and rejected the lower court's reasoning that the husband's religious views pertaining to marriage and consensual sex caused him to lack the criminal intent necessary to sexually assault his wife. To hold otherwise would, of course, violate state public policy.

Because of due process concerns, courts may not simply ignore these asserted defenses in criminal proceedings, but as these cases illustrate, the courts have not permitted such religious justifications to absolve criminal defendants of guilt.

Conclusion

When the court cases cited by anti-Muslim groups are examined more closely, the myth of the "Sharia threat" to our judicial system quickly disappears. Far from confirming some fabricated conspiracy, these cases illustrate that our judicial system is alive and well, and in no danger of being co-opted or taken over by Islam.

Endnotes

¹ Some of the proposed measures expressly single out so-called "Sharia law" for unfavorable treatment. Others do not explicitly refer to "Sharia law" or Islam, but sponsors and proponents often will freely admit their intent to target Muslims through these measures, as well. Many of these proposed laws also would place sweeping limitations on state courts' ability to consider international and/or foreign law in rendering decisions, undermining the independence of our courts and violating basic requirements of the U.S. Constitution.

² These claims are also based on a fundamentally flawed understanding of "Sharia law." As explained in a recent report issued by the Center for American Progress, the "'Sharia threat' argument is based on an extreme type of scripturalism where one pulls out verses from a sacred text and argues that believers will behave according to that text." *Understanding Sharia Law*, Center for American Progress, March 2011, at p. 3 (*available online at* http://www.americanprogress.org/issues/2011/03/pdf/sharia_law.pdf). But "[t]here is no one thing called Sharia." Rather, "[a] variety of Muslim communities exist, and each understands Sharia in its own way." *Id.* Thus, attributing particular beliefs and activities to all Muslims based on the Quran or other religious writings would be akin to declaring, based on the Bible, that "all Jews stone disobedient sons to death (Deut. 21:18-21) or that Christians slay all non-Christians (Luke 19:27)." *Id.* Moreover, because Sharia "is overwhelmingly concerned with personal religious observance such as prayer and fasting, and not with national laws," characterizing it as a threat to our courts or country "is the same thing as saying that all observant Muslims are a threat," as "[i]t is impossible to find a Muslim who practices any ritual and does not believe himself or herself to be complying with Sharia." *Id.* In short, "Muslims are suspect simply by virtue of being Muslims." *Id.* at 5.

³ Specifically, this report examines cases identified by the American Public Policy Alliance ("APPA") in *Representative Civil Legal Cases Involving Shariah Law* (*available online at* http://publicpolicyalliance.org/wp-content/uploads/2010/11/Shariah_Cases_11states_11-08-2010.pdf), as well as several other cases cited by legislators and proponents of anti-Sharia measures.

⁴ The right to free religious exercise is guaranteed by, and reflected in, a number of sources, including, among others: the Religion Clauses of the First Amendment to the U.S. Constitution; the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb et seq.; the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc-1 et seq.; various state constitutional provisions; and state religious freedom statutes.

⁵ In *Sherbert v. Verner*, 374 U.S. 398, 410 (1963), the Supreme Court explained that right of free religious exercise extends to individuals of all religions, including, among others, “Catholics, Lutherans, Mohammedans [i.e., Muslims], Baptists, Jews, Methodists . . . Presbyterians, or the members of any other faith.” See also, e.g., *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 425 (2006) (members of South American Christian Spiritist sect); *Cutter v. Wilkinson*, 544 U.S. 709, 712 (2005) (adherents of Church of Jesus Christ Christian, Asatru, Wiccan, and Satanist religions); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (Santerians); *Frazee v. Ill. Dep’t. of Emp’t Sec.*, 489 U.S. 829 (1989) (Christian); *Hobbie v. Unemployment Appeals Comm’n*, 480 U.S. 136 (1987) (Seventh-day Adventist); *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707 (1981) (Jehovah’s Witness); *McDaniel v. Paty*, 435 U.S. 618 (1978) (Baptist); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (Amish); *Cruz v. Beto*, 405 U.S. 319 (1972) (Buddhist).

⁶ No. 04-1083, 2007 WL 2582199 (C.D. Ill. Aug. 3, 2007).

⁷ See, e.g., *Nelson v. Miller*, 570 F.3d 868, 869 (7th Cir.2009) (finding that denying a non-meat diet during Lent and on Fridays substantially burdened the religious practice of a Roman Catholic prisoner).

⁸ See, e.g., *Kahane v. Carlson*, 527 F.2d 492 (2d Cir. 1975) (holding that federal prison was required to provide Orthodox Jewish inmate with kosher meals consistent with his religious beliefs).

⁹ Courts have recognized that, “[u]nder both the Free Exercise Clause and RLUIPA in its most elemental form, a prisoner has a ‘clearly established . . . right to a diet consistent with his . . . religious scruples[.]’ . . . A prison official violates this clearly established right if he intentionally and without sufficient justification denies an inmate his religiously mandated diet.” *Lovelace v. Lee*, 472 F.3d 174, 198-99 (4th Cir. 2006) (granting Muslim inmate’s request for Ramadan meal). Thus, inmates of many faiths routinely request religious diets. Courts grant or deny these requests after considering several factors, including the nature of the inmate’s claimed religious beliefs, the sincerity of his beliefs, and the prison’s justification for refusing the religious diet. See, e.g., *Koger v. Bryan*, 523 F.3d 789 (7th Cir. 2008) (ordering religious diet requested by inmate follower of Thelema – a magic-based faith); see also, e.g., *Taylor v. Pelican Bay*, No. C 07-639 MHP, 2010 WL 2671989 (N.D. Cal. July 2, 2010) (Christian Scientist inmate); *Owens-Ali v. Pennell*, 672 F. Supp.2d 647, 650 (D. Del. 2009) (Moorish American National adherent-inmate); *Cooper v. Evans*, No. 08-cv-742-MJR, 2009 WL 1708627 (S.D. Ill. June 17, 2009) (Buddhist prisoner); *Mitchell v. N.Y. State Dep’t of Corr. Servs.*, No. 06-CV-6278 CJS, 2009 WL 185757 (W.D. N.Y. Jan. 26, 2009) (inmate-member of Nation of Islam); *Porter v. Caruso*, 479 F. Supp.2d 687 (W.D. Mich. 2007) (inmate-follower of Kemetic Spiritual Science); *Ephraim v. Angelone*, 313 F. Supp.2d 569 (E.D. Va. 2003) (Charismatic Christian inmate); *Adams v. Stanley*, 237 F. Supp. 2d 136 (D. N.H. 2003) (Taoist inmate); *Caldwell v. Caesar*, 150 F.Supp.2d 50 (D.D.C. 2001) (inmate-member of Liberal Catholic Church).

¹⁰ See also, e.g., *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 332 (5th Cir. 2009) (Christian inmate successfully sought worship space that contained a cross and altar), *aff’d*, 131 S. Ct. 1651 (2011); *Heleva v. Kramer*, 330 Fed. App. 406 (3d Cir. 2009) (Christian inmate requested access to religious literature); *Greene v. Solano County Jail*, 513 F.3d 982, 988 (9th Cir. 2008) (Christian inmate challenged group worship ban); *Spratt v. R.I. Dep’t of Corr.*, 482 F.3d 33 (1st Cir. 2007) (Christian inmate sought right to preach at Christian services); *United States v. Zimmerman*, 514 F.3d 851 (9th Cir. 2007) (Roman Catholic inmate refused to give blood sample based on Biblical passage); *Boles v. Neet*, 486 F.3d 1177 (10th Cir. 2007) (Orthodox Jew challenged prison restrictions on religious garments and headwear); *Kay v. Bemis*, 500 F.3d 1214 (10th Cir. 2007) (Wiccan inmate claimed right to possess Tarot cards, incense, and religious books); *Williams v. Bitner*, 455 F.3d 186 (3d Cir. 2006) (Muslim inmate could not be required to handle pork while assisting in kitchen); *Kikumura v. Hurley*, 242 F.3d 950 (10th Cir. 2001) (inmate requested visits by Christian pastor); *Ganther v. Ingle*, 75 F.3d 207 (5th Cir. 1996) (Protestant inmate sought

right to use chapel for Sunday services and Bible study); *Bryant v. Gomez*, 46 F.3d 948, 949 (9th Cir. 1995) (inmate demanded that prison hold full Pentecostal services).

¹¹ One case, *Wafra Leasing Corp. 1999-A-1 v. Prime Capital Corp.*, requires little explanation because the connection to Islam was so tenuous and unrelated to the actual claims at hand that the court saw fit to mention it only once. There, the plaintiff, an investment fund, alleged a violation of the SEC Act of 1934, fraud, negligent misrepresentation, breach of contract, unjust enrichment, and conversion against a defendant corporation. The court noted that the investment fund sought “to comply with Islamic law, or Sharia, which prohibits investors from collecting interest, but allows them to earn money from the ownership and operation of assets.” No. 01 C 4314, 2004 WL 1977572, *2 (N.D. Ill. Aug. 31, 2004). However, this Islamic orientation was mentioned only in passing and was not a factor in the rest of the case, which was decided based on neutral principles of law.

¹² An arbitration agreement is a contract between parties stipulating, in advance of any dispute, that they will try to resolve their disagreements outside of the courts by submitting any contested issues to an arbitrator. The parties often consent to the rules of the arbitration and the rules of law that will be applied. Arbitration is typically much quicker and less expensive than litigation, thereby conserving the parties’ and courts’ limited resources. It is also usually less contentious and stressful than litigation, which can be an important factor when parties’ relationships are likely to continue beyond the dispute at hand. In addition, arbitration proceedings are confidential and do not produce a public record as with courts. Moreover, where parties agree that whatever decision the arbitrator makes will be binding and enforceable by a court, arbitration provides a more immediate sense of finality than litigation.

¹³ See, e.g., *Zeiler v. Deitsch*, 500 F.3d 157, 164 (2d Cir. 2007) (looking to neutral principles of law and Federal Arbitration Act to enforce agreement to arbitrate division of assets before Jewish arbitration panel and uphold panel’s award); *Encore Productions, Inc. v. Promise Keepers*, 53 F. Supp.2d 1101, 1106 (D. Colo. 1999) (upholding agreement to arbitrate in accordance with the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation, because the plaintiff was “bound by its contract”); *Prescott v. Northlake Christian Sch.*, 141 Fed. App. 263, 274 (5th Cir. 2005) (“The parties freely and knowingly contracted to have their relationship governed by specified provisions of the Bible and the Rules of the ICC, and the arbitrator’s determination that NCS had not acted according to the dictates of Matthew 18 relates to that contract.”).

¹⁴ 680 N.W.2d 569, 574 (Minn. Ct. App. 2004).

¹⁵ See also *Jabri v. Qaddura*, 108 S.W.3d 404, 413-14 (Tex. App. 2003) (holding in divorce dispute that “the Arbitration Agreement signed by the parties is valid and enforceable and covers all disputes between the parties that arose prior to the date the parties signed the Arbitration Agreement”); *Mansour v. Islamic Educ. Ctr. of Tampa*, No. 08-CA-3497 (Fla. Cir. Ct. Mar. 22, 2011) (identifying, in response to motion to enforce arbitrator’s award, question as to whether proper dispute resolution procedure were used pursuant to parties’ agreement to arbitrate before Islamic panel). Both cases have been cited by proponents of Sharia law bans.

¹⁶ See, e.g., *Rent-A-Center, West, Inc. v. Jackson*, 130 S. Ct. 2772, 2776 (2010) (“The [Federal Arbitration Act] places arbitration agreements on an equal footing with other contracts, and requires courts to enforce them according to their terms[.] Like other contracts, however, they may be invalidated by ‘generally applicable contract defenses, such as fraud, duress, or unconscionability.’”) (internal citations omitted).

¹⁷ 355 N.J. Super. 305, 307 (N.J. Super. Ch. 2002).

¹⁸ *Id.* at 310 (“Clearly, this court can enforce a contract which is not in contravention of established law or public policy.”).

¹⁹ No. 07AP-925, 2008 WL 2698679 (Ohio Ct. App. July 10, 2008).

²⁰ *Id.* at * 6.

²¹ *Id.*

²² *Id.* In a third case cited as evidence of the alleged “Sharia threat,” *Ahmed v. Ahmed*, 261 S.W.3d 190 (Tex. App. 2008), a state court rejected a claim that a Mahr Agreement entered into after the marriage occurred could be enforced as a prenuptial agreement under Texas law. Consistent with neutral principles of law, however, the court remanded the case to the lower court, to determine whether “the Mahr agreement constitute[d] a valid *postmarital* partition and exchange agreement . . . based on the other statutory requirements for such agreements.” *Id.* at 195.

²³ 604 F.3d 915 (6th Cir. 2010).

²⁴ See also *Aghili v. Saadatnejadi*, 958 S.W.2d 784, 785 (Tenn. Ct. App. 1997) (holding, in divorce action, that officiant of Islamic wedding “possessed the authority to administer Islamic blessings” such that marriage was valid under Tennessee law even though officiant had failed to return license and divorce action could proceed). This case also has been relied on by proponents of Sharia bans.

²⁵ See, e.g., *Persad v. Balram*, 187 Misc. 2d 711, 714-715 (N.Y. Sup. Ct. 2001) (holding that Hindu wedding ceremony resulted in valid marriage despite lack of marriage license because the evidence “more than adequately established that . . . [the officiant] possessed the requisite authority under [state statute] to solemnize marriages in the Hindu religion” and “the substance of the ceremony” was sufficient under the law); *In re Cossin’s Estate*, 126 N.Y.S.2d 363, 364 (N.Y. Surr. Ct. 1953) (holding that decedent’s second marriage was void where an earlier marriage was “performed and solemnized in strict accordance with Orthodox Jewish ritual and practice and [thus] entitled to recognition in the courts of this state”).

²⁶ As the Supreme Court explained in *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895): “‘Comity,’ in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to 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. . . . A judgment affecting the status of persons, such as a decree confirming or dissolving a marriage, is recognized as valid in every country, unless contrary to the policy of its own law.”

²⁷ Where foreign law conflicts with state public policy, courts refuse to recognize or apply it. See, e.g., *Innes v. Carrascosa*, 391 N.J. Super, 453, 491 (N.J. Super. 2007) (holding that, because child custody order issued by court of Spain “contravene[s] the public policy of this state that both parents should share in the custodial rights of the child absent a finding that it would not be in the best interest of the child, comity cannot be afforded”); *Telnikoff v. Matusевич*, 347 Md. 561, 599 (Md. 1997) (declining to enforce British court’s libel judgment because “[t]he principles governing defamation actions under English law . . . are so contrary to Maryland defamation law, and to the policy of freedom of the press underlying Maryland law, that [the] judgment should be denied recognition under principles of comity”); *Al-Fassi v. Al-Fassi*, 433 So.2d 664, 668 (Fla. Dist. Ct. App. 1983) (noting, with respect to child custody order issued by Bahamian court, that “the principles of comity do not require recognition since the decree is offensive to a public policy of our state, i.e., that a custody decision be based upon the best interests and welfare of the minor children”).

²⁸ 798 So.2d 75, 86 (La. 2001).

²⁹ *Id.* See also *Aleem v. Aleem*, 404 Md. 404 (Md. 2008) (refusing to enforce Pakistani law pertaining to divorce and division of assets because Pakistani law did not afford the wife due process, a violation of state public policy); *Tarikonda v. Pinjari*, No. 287403, 2009 WL 930007 (Mich. App. Apr. 7, 2009) (denying recognition of divorce conducted according to laws of India that govern Muslim marriage because wife was not afforded due process or equal protection rights under Indian law and divorce thus violated state public policy). Both cases have been cited by anti-Sharia advocates. In two other cases cited by proponents of Sharia bans as evidence of the “Sharia threat,” the courts concluded, after detailed examinations, that specific foreign court orders did not violate U.S. law or state public policy. For example, in *Hosain v. Malik*, 108 Md. App. 284 (Md. Ct. Spec. App. 1996), the court considered

whether to grant comity to a Pakistani court's child custody order. Noting that "[t]he evidence was overwhelming that, as a general principle, Pakistan follows the best interest of the child test in making child custody decisions," the court concluded that the order did not violate Maryland public policy. *Id.* at 309-10 (inquiring "whether the Pakistani courts applied a rule of law, evidence, or procedure so contradictory to Maryland public policy as to undermine the confidence in the trial"). In *Saleh v. U.S. Dep't of Justice*, 962 F.2d 234 (2d Cir. 1992), a federal court refused to reverse a deportation order for a Yemeni man recently released from state prison after serving a sentence for murdering a fellow Yemeni. The man claimed that he would be persecuted upon his return to Yemen because a Yemeni Islamic court, recognized by Yemeni law, had sentenced him to death for the murder. After examining Yemeni law, the appeals court rejected the defense, holding that "the nondiscriminatory application of Yemeni criminal law to his international killing of a fellow Yemeni Moslem . . . imposing a punishment that would be inflicted in many secular jurisdictions" did not amount to persecution. *Id.* at 236.

³⁰ No. CIV.A. 97-4530-B, 1999 WL 26874 (Mass. Super. 1999).

³¹ *Id.* at *3.

³² See Ed Pilkington, *I Shot US Abortion Doctor to Protect Children, Scott Roeder Tells Court*, *The Guardian*, Jan. 29, 2010, at <http://www.guardian.co.uk/world/2010/jan/28/scott-roeder-abortion-doctor-killer>.

³³ See *Cleveland v. United States*, 329 U.S. 14 (1946).

³⁴ 87 Misc. 2d 139 (N.Y. City Crim. Ct. 1976).

³⁵ 415 N.J. Super. 417 (N.J. Super. App. Div. 2010).