

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

April 6, 2017

The Honorable Scott Sales
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Austin Knudsen
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Sales and Speaker Knudsen:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 97 (SB 97), "AN ACT ESTABLISHING THE PRIMACY OF MONTANA LAW BY PROHIBITING THE APPLICATION OF FOREIGN LAW WHEN IT VIOLATES A FUNDAMENTAL RIGHT GUARANTEED BY THE MONTANA OR UNITED STATES CONSTITUTION; PROVIDING EXCEPTIONS; AND PROVIDING AN APPLICABILITY DATE."

SB 97 would void all contractual provisions and all decisions of Montana courts that rely, to any degree, on foreign legal systems that do not grant the same liberties, rights and privileges granted under the Montana or U.S. constitutions. While SB 97 may have an unobjectionable title and bland, legalistic language, its purpose and effect would upend our legal system and debase what we stand for as Montanans and Americans.

The title of SB 97 is misleading. The substantive text of the bill renders void and unenforceable any contractual provision or court decision that relies on a foreign legal system that does not grant the *same rights* as granted under the U.S. or Montana constitutions. This is an astonishingly broad prohibition. For example, Montanans have an inalienable right to a "clean and healthful environment." Art. II, Sec. 3, Mont. Const.; *see, e.g., Seven Up Pete Venture, et al. v. State of Montana, et al.*, 2005 MT 146, ¶ 46 ("[T]he Montana Constitution provides that 'the right to a clean and healthful environment' is an inalienable right of every person. It further requires that a clean and healthful environment shall be preserved for future generations."). I am not aware that such a provision is common in the laws of other nations. But by the plain language of SB 97, Montana courts could not even *consider* a decision or law as persuasive authority from any country that did not have the same liberties, rights and privileges as in our state constitution.

Moreover, "foreign law" is infused throughout the American legal system. One of the very first and oldest provisions of our own state code, dating back to the Bannack statutes of 1871, provides: "The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the

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United States or the constitution or laws of this state, is the rule of decision in all the courts of this state.” § 1-1-109, MCA. Foreign monetary judgments from all over the world are recognized under state law, as are marriages that were performed in other countries, child custody arrangements, and probate matters. International law, in addition to state law, governs contracting with foreign nationals and corporations. The U.S. Supreme Court frequently references foreign law. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 575 (2005) (discussing international treaties and foreign law in holding unconstitutional the execution of minors). SB 97 would inject enormous uncertainty in multiple areas of law. The bill’s vague exceptions do not save it from its complete unworkability.

There is absolutely no need for this bill. The U.S. and Montana constitutions contain strong protections for Montanans – protections that our courts are sworn to uphold. The rights of due process, equal protection, privacy, and freedoms of religion and expression are the bedrock of our constitutional protections and, indeed, our cultural identity. Any domestic application of foreign law that is antithetical to the U.S. or Montana constitutions is, by that very fact, unconstitutional and void. When foreign law or foreign decisions are relied upon by Montana courts, it is done pursuant to established legal standards that protect our rights. *See, e.g.,* § 40-5-1005, MCA (setting standards for child support proceedings in state courts involving foreign support orders or foreign tribunals); §§ 25-9-601, *et seq.*, MCA (setting standards for the recognition of foreign-country money judgments). Proponents of SB 97 cite no instance of a Montana court demonstrating confusion on this matter. Even if such confusion were to occur, I have no doubt that the appeal would be swift and reversal certain.

Finally, as the Seventh Circuit Court of Appeals once observed, “if it walks like a duck, swims like a duck, and quacks like a duck, it’s a duck.” *Lake v. Neal*, 585 F.3d 1059 (2009). SB 97 fails the duck test. It cannot seriously be denied that the bill is drawn from “Sharia law bans” that have been tried in other states. The intent of these bills is to target a particular religion and group of people for disfavored treatment. Even more disturbing, I fear that the Sharia law ban implicit in SB 97 will be interpreted by some as state endorsement for anti-Muslim sentiments and activity.

We are already in the midst of a nation-wide surge in hate crimes. This bill, if passed, would open a dark chapter in our state’s history and violate the constitutional norms it claims to protect. We must instead recommit ourselves to protecting the religious and cultural diversity that makes our state and nation strong, while remaining steadfast in our resolve to stop those who intend to do us real harm.

For these reasons, I veto SB 97.

Sincerely,



STEVE BULLOCK
Governor

cc: Legislative Services Division
Secretary Corey Stapleton