

REFERENCE TITLE: **judicial determinations; applicability**

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1026

Introduced by
Senator Pearce R; Representative Burges

AN ACT

AMENDING TITLE 12, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5;
RELATING TO JUDICIAL DETERMINATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 1, Arizona Revised Statutes, is amended
3 by adding article 5, to read:

4 ARTICLE 5. JUDICIAL DETERMINATIONS

5 12-181. Basis for judicial determinations: applicability:
6 definitions

7 A. A COURT SHALL NOT USE, IMPLEMENT, REFER TO OR INCORPORATE A TENET
8 OF ANY BODY OF RELIGIOUS SECTARIAN LAW INTO ANY DECISION, FINDING OR OPINION
9 AS CONTROLLING OR INFLUENTIAL AUTHORITY.

10 B. A COURT SHALL NOT USE, IMPLEMENT, REFER TO OR INCORPORATE ANY CASE
11 LAW OR STATUTE FROM ANOTHER COUNTRY OR A FOREIGN BODY OR JURISDICTION THAT IS
12 OUTSIDE OF THE UNITED STATES AND ITS TERRITORIES IN ANY DECISION, FINDING OR
13 OPINION AS EITHER:

14 1. CONTROLLING OR INFLUENTIAL AUTHORITY.

15 2. PRECEDENT OR THE FOUNDATION FOR ANY LEGAL THEORY.

16 C. ANY DECISION OR RATIFICATION OF A PRIVATE AGREEMENT THAT IS
17 DETERMINED, ON THE MERITS, BY A JUDGE IN THIS STATE WHO RELIES ON ANY BODY OF
18 RELIGIOUS SECTARIAN LAW OR FOREIGN LAW IS NULL AND VOID, IS APPEALABLE ERROR
19 AND IS GROUNDS FOR IMPEACHMENT AND REMOVAL FROM OFFICE.

20 D. THIS SECTION APPLIES TO A FEDERAL COURT SITTING IN DIVERSITY
21 JURISDICTION.

22 E. THIS SECTION DOES NOT APPLY TO:

23 1. A STATUTE OR ANY CASE LAW DEVELOPED IN THE UNITED STATES AND ITS
24 TERRITORIES THAT IS BASED ON ANGLO-AMERICAN LEGAL TRADITION AND PRINCIPLES ON
25 WHICH THE UNITED STATES WAS FOUNDED.

26 2. A STATUTE OR ANY CASE LAW OR LEGAL PRINCIPLE THAT WAS INHERITED
27 FROM GREAT BRITAIN BEFORE THE EFFECTIVE DATE OF THIS ARTICLE.

28 3. THE RECOGNITION OF A TRADITIONAL MARRIAGE BETWEEN A MAN AND A WOMAN
29 AS OFFICIATED BY THE CLERGY OR A SECULAR OFFICIAL OF THE MATRIMONIAL COUPLE'S
30 CHOICE.

31 F. FOR THE PURPOSES OF THIS SECTION:

32 1. "FOREIGN BODY" INCLUDES THE UNITED NATIONS AND ANY AGENCY
33 THEREUNDER, THE EUROPEAN UNION AND ANY AGENCY THEREUNDER, AN INTERNATIONAL
34 JUDICIARY, THE INTERNATIONAL MONETARY FUND, THE ORGANIZATION OF PETROLEUM
35 EXPORTING COUNTRIES, THE WORLD BANK AND THE SOCIALIST INTERNATIONAL.

36 2. "FOREIGN LAW" MEANS ANY STATUTE OR BODY OF CASE LAW DEVELOPED IN A
37 COUNTRY, JURISDICTION OR FOREIGN BODY OUTSIDE OF THE UNITED STATES, WHETHER
38 OR NOT THE UNITED STATES IS A MEMBER OF THAT BODY, UNLESS PROPERLY RATIFIED
39 AS A TREATY PURSUANT TO THE UNITED STATES CONSTITUTION.

40 3. "RELIGIOUS SECTARIAN LAW" MEANS ANY STATUTE, TENET OR BODY OF LAW
41 EVOLVING WITHIN AND BINDING A SPECIFIC RELIGIOUS SECT OR TRIBE. RELIGIOUS
42 SECTARIAN LAW INCLUDES SHARIA LAW, CANON LAW, HALACHA AND KARMA BUT DOES NOT
43 INCLUDE ANY LAW OF THE UNITED STATES OR THE INDIVIDUAL STATES BASED ON
44 ANGLO-AMERICAN LEGAL TRADITION AND PRINCIPLES ON WHICH THE UNITED STATES WAS
45 FOUNDED.

1 Sec. 2. Legislative findings

2 The legislature finds that:

3 1. The tenth amendment to the United States Constitution guarantees
4 and reserves to the states or their people all powers not specifically
5 granted to the federal government elsewhere in the constitution as they were
6 publicly understood at the time that the amendment was ratified on December
7 15, 1791, subject only to modification by duly ratified subsequent amendments
8 to the United States Constitution. The guaranty of those powers is a matter
9 of compact between the state and people of Arizona and the United States as
10 of the time that Arizona was admitted to statehood on February 14, 1912.

11 2. As a matter of compact between the state and people of Arizona and
12 the United States as of the time that Arizona was admitted to statehood on
13 February 14, 1912, the tenth amendment to the United States Constitution
14 guarantees to the state and people of Arizona that other than the enumerated
15 powers expressly granted to the United State under article I, section 8 of
16 the United States Constitution, Congress and the federal government will not
17 exercise any purported control over or commandeer the courts of the state of
18 Arizona.

19 3. At the time the United States Constitution was ratified on June 21,
20 1788, the sole and sovereign power to regulate the state courts rested in the
21 state legislature and has always been a compelling state concern and central
22 to state sovereignty. Accordingly, the foregoing public meaning and
23 understanding of article I, section 8, the establishment clause of the first
24 amendment and the tenth amendment of the United States Constitution are
25 matters of compact between the state and people of Arizona and the United
26 States as of the time that Arizona was admitted to statehood on February 14,
27 1912.

28 4. At the time the United States Constitution was ratified on June 21,
29 1788, the commerce clause was not meant or understood to authorize Congress
30 or the federal judiciary to regulate the state courts in the matter of state
31 substantive law or state judicial procedure. This meaning and understanding
32 of article I, section 8, the establishment clause of the first amendment and
33 the tenth amendment of the United States Constitution, as they pertain to the
34 validity of religious sectarian or foreign law as being controlling or
35 influential precedent, have never been modified by any duly ratified
36 amendment to the United States Constitution. Accordingly, the foregoing
37 public meaning and understanding of article I, section 8 and the tenth
38 amendment of the United States Constitution are matters of compact between
39 the state and people of Arizona and the United States as of the time that
40 Arizona was admitted to statehood on February 14, 1912.

41 5. At the time the United States Constitution was ratified on June 21,
42 1788, the commerce clause was not meant or understood to authorize Congress
43 or the federal judiciary to establish religious sectarian or foreign statute
44 or case law as controlling or influential precedent. This meaning and
45 understanding of article I, section 8, the establishment clause of the first

1 amendment and the tenth amendment of the United States Constitution, as they
2 pertain to controlling or influential legal authority, have never been
3 modified by any duly ratified amendment to the United States Constitution.
4 Accordingly, the foregoing public meaning and understanding of article I,
5 section 8, the establishment clause of the first amendment and the tenth
6 amendment of the United States Constitution are matters of compact between
7 the state and people of Arizona and the United States as of the time that
8 Arizona was admitted to statehood on February 14, 1912.

9 6. The Congress and the federal government are denied the power to
10 establish a sectarian religion by recognizing or ratifying judicial decisions
11 based on religious sectarian law.

12 7. The Congress and the federal government are denied the power to
13 bind the states under foreign statute or case law other than those provisions
14 duly ratified by the Congress as a treaty, so long as the treaty does not
15 violate the United States Constitution.

16 8. The Congress has no authority to preempt state regulation of state
17 courts.

18 9. Under the tenth amendment of the United States Constitution, the
19 people and state of Arizona retain their exclusive power to regulate the
20 state courts of Arizona subject only to the fourteenth amendment's guaranty
21 that the people and state of Arizona shall exercise such sovereign power in
22 accordance with each citizen's lawful privileges or immunities, and in
23 compliance with the requirements of due process and equal protection of the
24 law.

25 10. The ninth amendment of the United States Constitution secures and
26 reserves to the people of Arizona as against the federal government their
27 natural rights to life, liberty and property as entailed by the traditional
28 Anglo-American conception of ordered liberty and as secured by state law,
29 including their rights as they were understood and secured by the law at the
30 time that the amendment was ratified on December 15, 1791, as well as their
31 rights as they were understood and secured by the law in the state of Arizona
32 at the time the Arizona constitution was adopted on December 9, 1910. The
33 guaranty of those rights is a matter of compact between the state and people
34 of Arizona and the United States as of the time that Arizona was admitted to
35 statehood on February 14, 1912.

36 Sec. 3. Short title

37 This act may be cited as the "Arizona foreign decisions act".

38 Sec. 4. Construction and severance

39 A. Any court that construes this act must adopt a construction of each
40 provision that:

41 1. Confines the power of Congress and the federal judiciary to impose
42 religious sectarian law and foreign law to the least expansive interpretation
43 permitted under binding precedent.

1 2. Secures the authority of the state of Arizona to exclusively
2 regulate its courts under the tenth amendment of the United States
3 Constitution to the greatest extent permitted under binding precedent.
4 3. Protects the constitutional rights of Arizonans under Article I,
5 section 8 of the United States Constitution, as well as the first, ninth and
6 tenth amendments to the United States Constitution to regulate its judiciary
7 permitted under binding precedent.
8 B. If a provision of this act or its application to any person or
9 circumstance is held invalid, the invalidity does not affect other provisions
10 or applications of the act that can be given effect without the invalid
11 provision or application, and to this end the provisions of this act are
12 severable.