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Lawmakers urged to address Sharia

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Kansas legislators have yet to tackle the state budget, tax policy and pension reform in a session that will reconvene April 25. But some have seen their email inboxes fill up with messages urging them to act on a very different concern — the influence of Islamic law, also known as "Sharia."

"I had a large number of emails — like in the thousands — during the last couple weeks of session (before the current break)," said Sen. Jeff King, R-Independence.

King said he had to instruct his assistant to funnel them into a separate folder and further separate the emails that actually came from his constituents, which he said narrowed the number to "dozens."

Sen. Tim Owens, R-Overland Park, recently said his inbox also was full of anti-Sharia emails, most of them from out-of-state.

Owens and King appear to have been targeted by a national movement. The Washington Post reported April 6 that bills meant to keep foreign laws out of American courts, drafted by a right-wing think tank called the Center for Security Policy, have been introduced in a number of states.

While the Post reports that the measures have died in Oklahoma, Florida, Georgia, Indiana, Minnesota and New Jersey, a heavily amended version is still alive in the Kansas Legislature.

Supporters say it is important to reaffirm the state's values and prevent the creeping threat of Sharia. But several attorneys outside the Legislature said the bill asserts rights that are already protected under the Constitution and could be damaging to the state's economy and image.

The Kansas bill doesn't specifically ban Sharia like a 2010 Oklahoma law that was declared unconstitutional. Instead the bill, brought to the House floor by Rep. Greg Smith, R-Overland Park, would void "Any court, arbitration, tribunal or administrative ruling or decision based on a foreign law, legal code or system" that runs counter to the Kansas or U.S. Constitutions.

But House members left no doubt that the bill is largely about Islam. Rep. Janice Pauls, D-Hutchinson, told her colleagues it was important to vote for it to stave off Sharia — a view shared by Rep. Peggy Mast, R-Emporia. The bill passed 122-0 in the House.

"I want to make sure people understand there's sometimes a conflict between other laws and the Constitution, and we need to assert our Constitution is still the law of the land," Mast said.

It is unlikely anyone in the Legislature has done more research on the creeping threat of Sharia than Mast. She provided numerous links to stories about Islamic courts in Britain and a print-out from the "Islam Review" — a website that stated purpose is "to demonstrate that the fundamental teachings of Islam are incompatible with the Christian faith, and the American way of life."

For sale on the site is a book called "The Islamization of American Schools," which warns that "Under the guise of teaching 'World history and geography,' Muslim activists are infiltrating the American educational system."

Mast also provided a Center for Security Policy report called "Shariah Law and American Courts" that analyzes 50 cases in 23 states involving a "conflict of law" between Sharia and state statutes. Mast's prime example is a civil dispute between members of a Florida mosque in which the judge, Richard Nielsen, agreed to let the suit proceed according to Islamic law.

The Tampa Bay Times reported that Nielsen later walked back on that decision, dismissing the case on constitutional grounds.

Mast's research didn't turn up any instances of Kansas courts invoking Sharia, but she said she

thinks it is important to be "proactive."

Mast said she expects Sharia to continue to spread in U.S. courtrooms as colleges and universities teach it to their law students.

University of Kansas professor Raj Bhala teaches International and Comparative Law — courses that include Sharia, as well as Chinese law and other systems. He said students understand U.S. law better by learning about other countries and knowledge of foreign systems is absolutely imperative for anyone who plans to practice international law.

Bhala said the anti-Sharia bill sounds "wrong-headed."

"Sometimes the worst legislation is spawned by fear," he said. "This is an example of that."

A Catholic, Bhala has written a book called "Understanding Islamic Law" that provides "systematic comparisons" between Sharia, U.S. law and Catholic teachings. He also teaches Sharia to U.S. Army Special Operations officers at Fort Leavenworth — classes he said generally garner rave reviews for their applicability to current conflicts.

Mast said she isn't concerned about Bhala so much as Muslim instructors who teach Sharia as part of less comprehensive continuing education law courses.

She said a student she talked to who had been in one such course didn't seem to have a full understanding of how incompatible Sharia family law is with western law.

"The individual I spoke to, I asked him 'Did you learn that under Sharia a husband can divorce his wife simply by saying three times, 'I divorce you?' " Mast said. "He said, 'No.' "

When asked if such a divorce would stand up in a U.S. court, Lenexa family law attorney Ron Nelson had a simple and immediate response.

"No," he said.

"Last I checked, Kansas doesn't have Sharia law," he said.

Mast said she is concerned some immigrants, especially Muslim women, might be unaware of that. Nelson said it is unlikely they will become more aware simply because the Legislature passes a law.

Bhala said Mast is correct in that immigrants in insular communities of all faiths and nationalities may be less aware of their rights than natural-born citizens. But he said that is a problem best addressed with education, not legislation.

Nelson said the Legislature would set a dangerous precedent by telling the courts what to do in situations of "conflict of law" because lawmakers could be painting with far too broad a brush.

"Then if a judge applies any law from a system abhorrent to the Kansas Legislature, it's void, regardless of whether that law is good?" Nelson said.

Nelson wondered what the bill currently making its way through the Legislature would mean for Catholic or Jewish marital contracts, or Catholic annulments.

Mast said the bill exempts ecclesiastical court decisions protected by religious rights.

King, a lawyer, said he addressed Nelson's concerns by narrowing the scope of the bill to only void judgments that violate specific civil rights, such as freedom of speech, religion, and the press and the right to equal protection and due process.

Those rights are already protected under the Constitution, but King said it is useful to pass a state law to reaffirm them — what he called a "belt and suspenders" approach.

King said he also sees benefits to the bill that have nothing to do with Sharia law, such as ensuring other countries don't try to use Kansas courts to enforce foreign judgments for actions committed abroad that are protected in the U.S., like certain defamation or libel lawsuits.

But Chris Redmond, a Kansas City, Mo., attorney who specializes in multijurisdictional litigation, business bankruptcy and international law, said the bill could cause undue complications for Kansas companies with foreign ties.

He said businesses like predictability and foreign business leaders might be dissuaded from working with Kansas companies if they aren't sure their countries' laws will be honored.

"Whether you like it or not, it's a world economy," Redmond said. "It's going to be affected by other parts of the world."

Redmond, who represents the U.S. in the United Nations Commission on International Trade Law, said the bill in question might cause foreign entities to take their business elsewhere.

He raised the possibility of a Middle Eastern company or family looking to buy an airplane, but requiring the payments be structured without interest, as proscribed by Sharia law.

"Is that appropriate to lose the sale of a substantial Kansas product?" Redmond asked.

King said he had a very similar concern when the bill was in committee, which is why he attached another amendment exempting business-to-business transactions.

"I think the concerns he's voicing were ultimately addressed in the amendments," King said.

Mast said she supports King's changes.

"I'm not trying to say that Kansas isn't open for business with international companies," she said.

But Bhala said that might be exactly what the Legislature does if it passes the law. He said if the state gains a reputation for intolerance — like other states did after enacting strict immigration enforcement laws — it could turn off businesses that generally prefer to operate in cosmopolitan environments familiar with foreign customs and languages.

"If we are trying to promote business in Kansas, we ought not be enacting legislation that will turn business away," he said.

Redmond agreed.

"This is not the image of our state we want to project," he said. "There's nothing wrong with saying we're a solid state with principles and ideals. But we should not be insular."

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