

Chicago Daily Law Bulletin®

Volume 158, No. 10

Monday, January 16, 2012

Jenner & Block submits brief challenging Shariah provision

By Shaun Zinck

Special to the Law Bulletin

SPRINGFIELD — A recent ruling by the 10th U.S. Circuit Court of Appeals upholding the blockage of an Oklahoma constitutional provision has ties to Chicago.

The American Jewish Committee asked the Chicago office of Jenner & Block LLP to submit on its behalf a friend-of-the-court brief, asking the court to uphold a ruling made by a lower court to block the amendment.

This amendment to the Oklahoma Constitution says, “The courts shall not look to legal precepts of other nations or cultures. Specifically the court shall not consider international or Sharia[h] law” when ruling on cases.

The 10th Circuit ruling upheld the blockage of the amendment and said the plaintiff, Muneer Awad, can challenge its constitutionality. Voters adopted the constitutional provision by popular referendum in November 2010 with nearly 70 percent approval.

Craig C. Martin, a partner at Jenner & Block who wrote the brief, said the law firm worked with AJC previously on other pro bono work and found this issue particularly interesting.

“When you have a provision that singles out a specific religion — that goes against everything in the First Amendment of the Constitution,” Martin said.

In the brief, Martin argues the provision,

called the Save our State Amendment, failed the purpose and effect prongs established in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). *Lemon*, a case involving public funding for teachers of secular classes in nonpublic schools, which established three tests to determine if government laws violate the establishment clause in the First Amendment.

In the brief, former Oklahoma state Rep. Rex Duncan, who was the primary author of the bill, said the inspiration came from a case in New Jersey when a judge denied a Muslim woman’s request for a restraining order against her husband because the “mistreatment was supposedly permissible under Sharia[h] law.”

Duncan intended to pass the amendment in order to prevent Oklahoma courts from being taken over by Shariah law, the brief says.

But Martin said the Oklahoma amendment mentions Shariah law twice and therefore doesn’t have a secular purpose. He also said the amendment doesn’t hide that it opposes Islam and thus interferes too heavily in a religion.

Daniel W. Elbaum, regional director for AJC Chicago, said the Oklahoma law attracted the attention of the national office of AJC. Elbaum said even though the provision only names Shariah law, AJC views it as a “fundamental issue of self-defense.”

“If you’re going to have a First Amendment mean anything, you can’t have

a policy that targets a single religion,” Elbaum said. “The strength of the First Amendment is really what has allowed minority groups to thrive.”

Americans United for the Separation of Church and State joined in on the brief. Gregory M. Lipper, the group’s senior litigation counsel, said his group wanted to show how Oklahoma interfered with religion in this amendment.

“When you’re singling out a religion for disfavored treatment, that is just as much of a violation of the separation of church and state as when government promotes a religion,” Lipper said.

Lipper said the amendment was “constantly on our radar” and the federal court upholding the ruling didn’t surprise him.

Stephen Suleyman Schwartz, executive director of the Center for Islamic Pluralism (CIP), who also signed the brief, said “Shariah had never been introduced in a legal procedure in Oklahoma. We weren’t really sure what the problem was.”

Schwartz also said CIP opposes using Shariah law in any legal standard. He said currently only Saudi Arabia, Iran and Sudan use Shariah as its legal basis and most Muslim countries are against using it as public law.

“It just seemed to address a problem that doesn’t exist,” he said.

The case is *Muneer Awad v. Paul Ziriaux, Thomas Prince, Ramon Watkins, and Susan Turpen*. No. 10-6273.