

York County loses face-off with state over landfill

County's effort to have final say over landfill permit appears headed to Supreme Court after DEHC wins ruling

By Phillip Bantz, staff writer
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A power struggle pitting a county against a state agency has divided the South Carolina Court of Appeals and appears to be headed for the state's Supreme Court. The case's outcome could affect the powers of all S.C. local governments.

York County took the S.C. Department of Health & Environmental Control to court after the agency ignored an emergency ordinance that county councilors passed to keep a waste management company from building a landfill in Rock Hill.

The county believes that DHEC supplanted a local government's right to develop its own waste management plan. But DHEC contends that it, and not the county, has the sole authority to issue landfill permits.

The majority of a three-judge panel at the Court of Appeals agreed with DHEC, affirming an Administrative Law Court determination that the agency properly disregarded the county's ordinance when it permitted the landfill.

Judge John C. Few wrote in the Feb. 8 opinion that state law requires proposed landfills to comply with certain "local standards, [but] it does not designate the county as the final arbiter on whether the proposed facility complies with its local zoning, land use, and other ordinances." Judge Daniel F. Pieper concurred.

In his dissent, Judge James E. Lockemy asserted that local governments should be able to determine their own waste man-

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Unintended consequences seen in no-Sharia push

The anti-foreign law movement falters in the Carolinas as concerns arise that business development could suffer

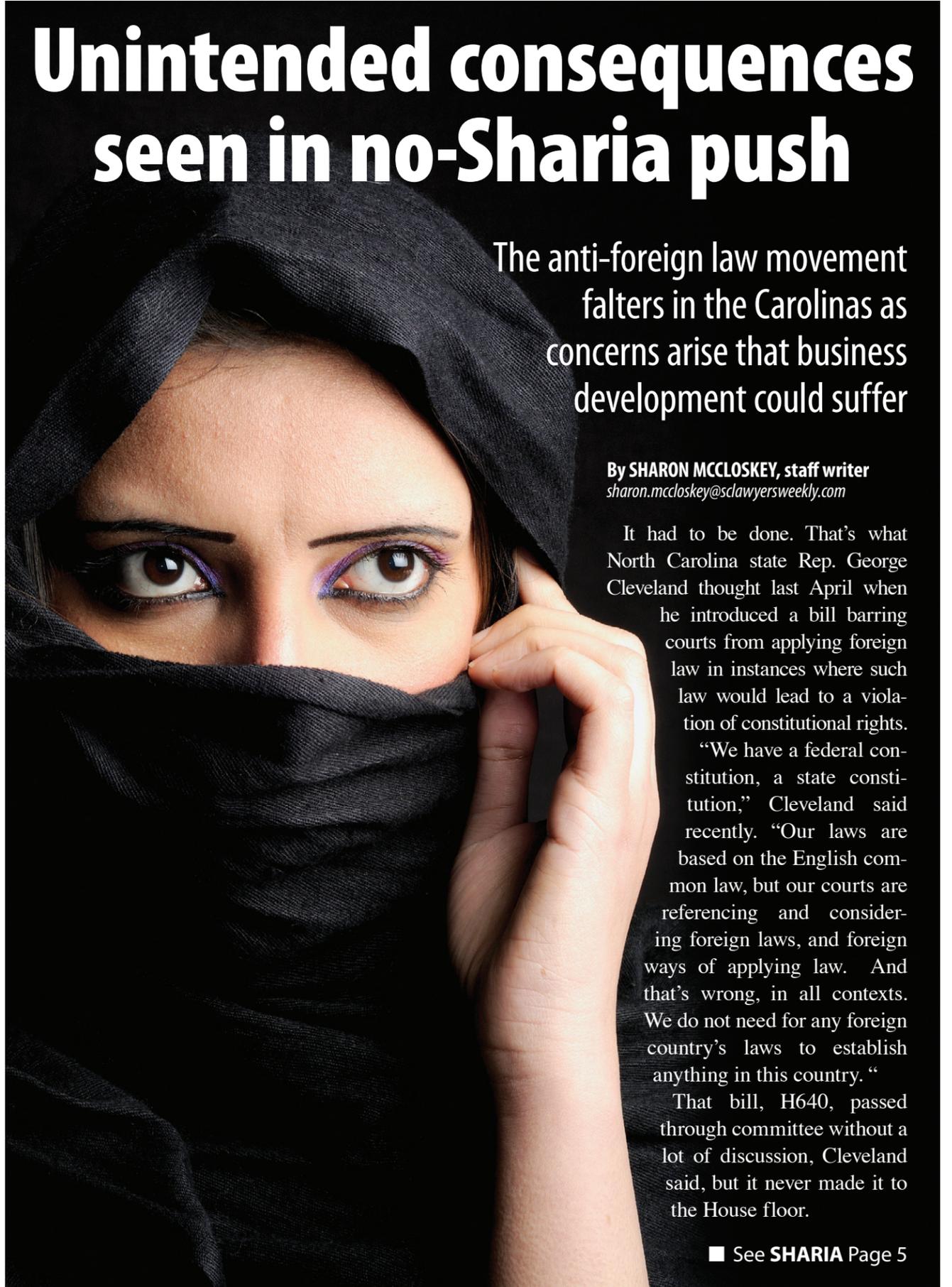
By SHARON MCCLOSKEY, staff writer
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It had to be done. That's what North Carolina state Rep. George Cleveland thought last April when he introduced a bill barring courts from applying foreign law in instances where such law would lead to a violation of constitutional rights.

"We have a federal constitution, a state constitution," Cleveland said recently. "Our laws are based on the English common law, but our courts are referencing and considering foreign laws, and foreign ways of applying law. And that's wrong, in all contexts. We do not need for any foreign country's laws to establish anything in this country."

That bill, H640, passed through committee without a lot of discussion, Cleveland said, but it never made it to the House floor.

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Domestic Relations

The S.C. Supreme Court overturns *Webb v. Sowell*, so family courts may once again order a non-custodial parent to contribute to his child's college expenses.

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An estate wasn't able to show that its decedent intended a \$100,000 IRA to satisfy a \$100,000 bequest she made in her will.

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SHARIA

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“My understanding, and I don’t know if this is true, is that the [House] speaker asked the chairman not to read it out onto the floor,” Cleveland said. “In other words, he pigeonholed it.”

It was near the end of session, Cleveland added, and there were too many other things going on for him to start a battle over his bill. “It’s dead, until I file it again in 2013.”

Though similar bills have been introduced with much media fanfare in South Carolina and other states, their passage into law is less certain, with pushback from people concerned about judicial independence and sensitive to the message such bills might send to the global marketplace.

The movement

The push for the enactment of laws preventing courts from applying foreign law stems in large part from concerns about a perceived infiltration of Islamic Sharia law into state jurisprudence. The conservative American Public Policy Alliance, which decries Sharia law and concepts of transnationalism as extremist and un-American, has drafted the “American Law for American Courts” act, after which proposed state legislation has been modeled.

On its website, the Alliance highlights cases in a handful of states — all involving Sharia law and marital or custody disputes — as examples of the dangers in honoring foreign law. None of those cases arose in the Carolinas.

In South Carolina, Rep. Wendy Nanney and Sen. Michael Fair introduced bills

modeled after the act in January 2011. Nanney said she offered the bill after learning that family court judges were running into problems applying foreign laws in custody disputes, according to an article in *The State*.

Since then 28 members have signed on as sponsors in the house, and last month members of the House judiciary committee debated the bill. But according to *The State*, the Senate bill did not clear subcommittee after members learned from family court judges that Sharia or other foreign law wasn’t actually impacting their rulings in divorce or custody cases. (Sen. Fair did not return a call for comment.)

Where the House bill now stands is unclear, as no one is talking. Rep. Nanney, minority leader Harry Ott, judiciary chairman James Harrison and first vice-chairman James Smith did not return calls for comment. An assistant in Rep. Harrison’s office said that the committee had adjourned debate.

Elsewhere, some 20 states are considering similar laws, according to a Feb. 7, 2012 article in the *Wall Street Journal*, and Tennessee, Louisiana and Arizona have passed legislation.

In November 2010, voters in Oklahoma passed an amendment to the state constitution prohibiting state courts from applying or considering Sharia law. But this past January, the 10th U.S. Circuit Court of Appeals affirmed a lower court’s injunction postponing enforcement of that amendment on the grounds that it likely violated the establishment clause of the U.S. Constitution.

The pushback

Critics say that legislative action on this issue is a solution without an actual problem, as judges in South Carolina and elsewhere are finding ways to accommodate foreign law.

Matthew Wilson, a professor at the University of Wyoming College of Law, agrees. “Foreign law is increasingly applied in state and federal courts,” he said, “and particularly in international business transactions, courts are moving towards developing mechanisms to interpret and understand such law.”

Wilson recently wrote about that trend in an article for the *Wake Forest Law Review*, “Demystifying the Determination of Foreign Law in U.S. Courts: Opening the Door to a Greater Global Understanding.”

“Each jurisdiction has its own choice of law rules, so that you often wind up with the application of ‘foreign law,’ defined broadly to include the law of another state or country,” Wilson said. “Courts are deemed competent to apply that law.”

And when that foreign law conflicts with domestic policy, courts will exclude that law and fall back on the choice of law rules of their own jurisdictions, Wilson added. “Courts are already doing that — here and in other jurisdictions.”

The trend now is for courts to better familiarize themselves with laws of other jurisdictions, Wilson said. “Judges are recognizing that this is something that’s happening increasingly in a globalized world and that they need to make sure that they get things right.”

As an example, Wilson points to a memorandum of understanding between the New York Court of Appeals and the Supreme Court of New South Wales in Sydney, Australia. That agreement “enables judges in both jurisdictions to exchange legal analysis about a substantial legal issue when one court needs to apply the law of the other and the litigants consent to such an exchange,” Wilson wrote in his article.

The quandary

In the Carolinas, a movement towards

the restriction of foreign law flies in the face of stated efforts to welcome international business. “In our world of globalization, particularly in states concerned about fostering international business, it seems to me that there’s a disconnect,” Wilson said.

Both N.C. Gov. Bev Perdue and S.C. Gov. Nikki Haley have made the recruitment of international business a priority.

“I spend a large part of every single day encouraging businesses to come to South Carolina,” Haley wrote in a Sept. 7, 2011 editorial in *The Post and Courier*, justifying her June trade and economic development meetings in Europe.

Efforts to make laws uncertain or unfriendly can easily drive those businesses away, Wilson said, because international business transactions are helped by flexibility in the legal system. “If parties engaged in cross-border transactions don’t have that certainty, then the cost of that transaction is going to increase, and that transaction might not happen,” he said. “If you’ve got a company negotiating a deal, and if you’ve got negotiators saying it’s North Carolina law or bust, why wouldn’t an international company go somewhere else, like New York, where the law’s very user friendly?”

Even though the bills introduced in North and South Carolina purport to limit foreign law only where there’s an impact on constitutional rights, their very codification sends a message to the business community.

“We already have the idea of comity — the cooperation between nations — and are applying other law in our courts so long as it doesn’t violate our public policy,” Wilson said. “But if the legislature is taking that stance, the state may be seen as unfriendly on the international stage. It’s creating more uncertainty, because companies then have to worry about the interpretation of what’s ‘constitutional.’”

White House’s proposed budget offers peek into legal priorities

By KIMBERLY ATKINS
Dolan Media Newswires

BOSTON, MA — The proposed fiscal 2013 budget released by the White House in February outlines a number of the administration’s priorities related to lawyers.

Employment-related enforcement boosted: The Department of Labor’s budget seeks to enhance enforcement efforts. The spending plan calls for \$372 million for the Mine Safety and Health Administration to enforce safety and health laws, among other things. The plan calls for a \$565 million budget for the Occupational Safety and Health Administration, including a \$5 million increase to bolster OSHA’s enforcement of anti-retaliation rules.

The budget proposal also allotted \$238 million for the Wage and Hour Division, which includes a \$6 million increase in funding for enforcement of the Fair Labor Standards Act and the Family and Medical Leave Act.

The commission also proposed measures to increase enforcement of civil rights laws in the employment context through collaboration with other agencies, including the Department of Justice and the Department of Labor.

FDA would get more attention: The Food and Drug Administration is requesting a \$654 million increase over fiscal 2012, which would increase its budget to \$4.4 billion.

The budget calls for boosting resources used to detect and address risks of imported products, imposing new user fees to implement the Food Safety Modernization Act and reauthorizing current user fees imposed for prescription drugs, medical

devices and other products.

Justice gets more for mortgage fraud, immigration, civil rights: The Justice Department spending plan calls for an additional \$55 million to investigate and prosecute financial and mortgage crimes. The increased funding will support additional FBI agents, prosecutors, civil litigators, investigators, forensic accountants and other support positions to aid the investigation and prosecution of financial fraud-related crimes. That includes securities and commodities fraud, investment scams and mortgage foreclosure schemes.

The requested amount would also cover proposed increased action to address emerging cyber security threats and to support the department’s transnational organized crime enforcement activities, among other measures.

On the immigration front, the department seeks to fund additional programs related to enforcement, detention, judicial functions, administrative hearings and litigation.

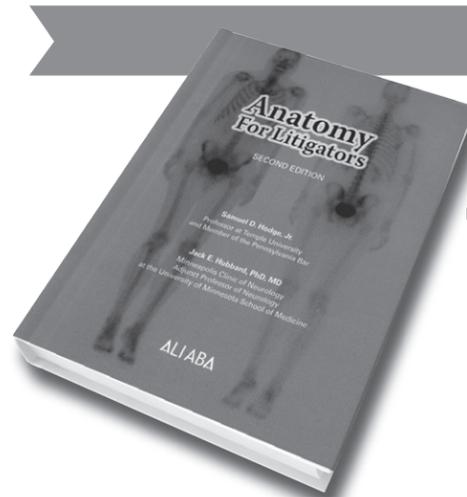
The plan also calls for “vigorous” enforcement of federal civil rights laws focused on human trafficking, hate crimes, voting rights enforcement and fair lending enforcement, according to the budget statement.

Modest boost for legal services: The White House plan calls for a 15 percent increase in the budget of the Legal Services Corp., which would bring the agency’s funding to \$402 million for fiscal 2013. The proposal was applauded by the president of the American Bar Association, which declared that the current LSC budget of \$348 million is inadequate to cover the 63 million Americans the agency serves.

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