***Opposition to sb 1360***

Dear Senator [NAME]:

I am writing to you on behalf of the International Law Section (“ILS”) of the Florida Bar to express our opposition to SB 1360.  We respectfully request that you vote against any further action on this bill and vote against it should it reach the Senate Floor.

SB 1360 seeks to limit the application of foreign laws in family law matters.  Presently, Florida law permits, under certain circumstances, foreign laws to be considered by judges in some family law disputes.  This is important and necessary in deciding certain cases involving foreign couples and families.  For example, a foreign couple living in Florida wishes to divorce and their freely negotiated prenuptial agreement contains a foreign law provision.  Under this bill, the prenuptial agreement could not be honored because non-Florida law applies.  Thus, this unwarranted and unnecessary restriction would create great uncertainty and lead to serious difficulties in many cases. The bill is most likely unconstitutional because it violates the principal of separation of powers by limiting the court’s freedom to interpret and apply laws. There are also serious U.S. Constitution Contracts Clause issues as well as a likely violation of the federal government’s power to set unified foreign policy.

What makes matters even worse is that the proposed legislation is totally unnecessary. The bill is a "solution" for a non-existent problem: existing court precedent is sufficient to handle the issue of when foreign laws should apply in Family Court.  This legislation also has the potential to create significant and serious unintended consequences that would clog up our courts for years and impose significant unnecessary costs on parties and the courts.

The bill is the latest iteration of a movement to ban the application of foreign laws generally in Florida Courts across many disciplines.  The bill (and companion bill in the House) has been scaled back in the 2012 Legislative Session to only apply to family law matters.  Last year, the ILS actively opposed the prior versions of the bill that went beyond the family law arena and the bills did not reach the floors of the Senate or House.  Much of the same language in the 2011 bills is present in the 2012 versions.

We understand that the Family Law Section of The Florida Bar has expressed their great concerns with SB 1360 and is independently reaching out to you.  Moreover, the American Bar Association has passed Resolution 113A which explicitly states their opposition to laws that try to wholesale block the application of foreign laws in U.S. Courts, which is effectively what this bill attempts to do.

Finally, we, along with many other stakeholders in the private sector and various agencies of our state and local governments, have worked diligently to develop Florida as a business gateway to Latin America and the Caribbean, and have strived to create an environment that is friendly to international businesses and tourists.  The ILS has specifically worked to develop Florida as an international arbitration and mediation center for Latin America and the Caribbean.  This type of legislation sends a strong message that our State is hostile to international companies and visitors and will undermine the work done to develop international business and the resulting jobs it would bring.

Your assistance is greatly appreciated.

Sincerely Yours,

[NAME]

Member, International Law Section of The Florida Bar