Idaho's Legislative Battle on the Hague Convention on Child Support

SB 1067 — a bill in the Idaho state legislature that would require the Gem State to accept changes to its Child Support Enforcement (CSE) guidelines to bring them into compliance with federal law — has generated a great deal of controversy. While its supporters claim it as necessary to ensure adequate enforcement of child support orders, its opponents object to its undermining of Idaho's state sovereignty. And this threat comes not only from Washington, but internationally, as well. The law if passed, would mandate that Idaho comply with U.S. participation in the 2007 Hague Convention on the International Recovery of Child Support.

In a guest op-ed piece in the *Idaho Statesman* for April 15, Representative Ronald M. Nate (R-District 34) provided an example of why he opposed to the bill, based on its capitulation to foreign rulings. He noted:

> When someone in Idaho has a foreign CSE order, SB 1067 says Idaho "… is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and … (m)ay not review the merits of the order." This means that Idaho could be stuck enforcing unfair and ill-gotten CSE orders made in foreign countries.

State lawmakers have taken their cases to the media in their battle to defend their respective positions. Representative John McCrostie (D-District 17) strongly played the child support angle, while highlighting a prime objection to the proposed legislation, stating:

> Idaho kids deserve access to child support. It's not right for Idaho children and families to lose their protections just to pacify nine far-right committee members.
>
> The ham-handed Gang of Nine punished Idaho children and co-parents by stifling debate on an update to Idaho's existing Uniform Interstate Family Support Act that provides adequate and appropriate modifications to *international standards* for Child Support Enforcement (CSE). [Emphasis added.]

McCrostie's identification of a "Gang of Nine" refers to the nine members of the House Judiciary, Rules & Administration committee who voted to hold SB 1067 in committee. In a Q&A column about SB 1067 published by the *Idaho Statesman* on April 16, reporter Melissa Davlin of *Idaho Reports* and *Statesman* reporter Bill Dentzer wrote that the legislators' concerns about the bill fell into five areas:

> 1.) Information security: Lawmakers objected to the potential that designated "Central Authorities" abroad would have access to personal information on Idahoans. Federal officials say this would not

happen.

2.) Due process: Though the legislation says Idaho tribunals can refuse to enforce orders if they are "manifestly incompatible with public policy," lawmakers said they were not convinced and worried that Idaho might have to enforce overseas judgments without question.

3.) Amendments: Lawmakers said they were told they could not amend the bill. They objected, noting amendments enacted in Wyoming when the Legislature passed the measure there. Federal officials said the Wyoming amendments were non-substantive.

4.) Forced compliance: Lawmakers complained of strong-arm tactics by the federal government, forcing the state to comply at the risk of losing aid. Some doubted the feds would actually pull the funds.

5.) Treaty obligations: Lawmakers worried about the implications of approving a measure that involves an international treaty under which they would then be bound.

Regarding both McCrostie's reference to "international standards" and the concerns of legislators opposed to the bill about it binding Idaho residents to an "international treaty," a brief look at that treaty is in order. Its formal name is The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and was drafted at the Hague Conference on Private International Law in 2007.

The treaty addressed three forms of maintenance: first, obligations toward children below the age of 21 (or 18, if a caveat to the treaty is made); second, spousal support in a case linked to child support; and third, spousal support (with limited governmental assistance in obtaining results).

The U.S. Senate approved the treaty by unanimous consent in 2010, and implementation legislation has been passed on a federal level. The Senate resolution declaring that the Senate would give its consent to the treaty did make note of the fact that the United States is not a party to the Convention on the Rights of the Child and that the mention of the convention in the preamble of the Treaty "does not create any obligations and does not affect or enhance the status of the Convention as a matter of the United States or international law."

The legislation implementing U.S. participation in the treaty was H.R.4980, the "Preventing Sex Trafficking and Strengthening Families Act," passed by Congress in 2014 and becoming Public Law No: 113-183. Part of the law states that it:

Amends SSA title IV part D (Child Support and Establishment of Paternity) to direct the Secretary [of Health and Human Services] to use the authorities otherwise provided by law to ensure U.S. compliance with any multilateral child support convention to which the United States is a party.

Grants the entity designated as a Central Authority for child support enforcement in a foreign reciprocating country or a foreign treaty country access to the Federal Parent Locator Service (FPLS).

Grants states the option to require individuals in a foreign country to apply through their country's appropriate Central Authority for child support enforcement services in a foreign reciprocating or foreign treaty country.

Allows the collection of past due support from federal tax refunds for state services for establishment of paternity and child support enforcement requested by a foreign reciprocating country or a foreign country with which the state has an arrangement.

> Revises state law requirements involving the use of the Uniform Interstate Family Support Act.

It is quite evident from the wording of this law that it dilutes U.S. sovereignty and makes U.S. law subservient to a "multilateral child support convention." An entity only "complies" with an entity to which it is inferior.

Reading further, we find that the law also threatens state sovereignty. By saying it "revises state law requirements," it not only makes state law subservient to federal law, but it also violates the Tenth Amendment to the Constitution, which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

References to child support (and other matters related to social services) are not found anywhere in the Constitution, and therefore remain the prerogative of the states — or they should.

When we look at the Hague Convention on the International Recovery of Child Support treaty and the federal law implementing it, the objections of Idahoans opposed to SB 1067 seem more reasonable and sound. The problem with the bill is not that it advocates that those responsible for child support should pay what they owe, but that it transfer enforcement authority to the federal government, and ultimately, to an international convention.

In an article in the opinion section of Idaho Reporter.com on April 16, news director Dustin Hurst wrote:

> We're now being told that the Legislature had no choice but to approve Senate Bill 1067 assenting to the 2007 Hague Convention on the International Recovery of Child Support.

In the article, Hurst explained how the long-known pitfalls of states receiving federal aid has become a thorn in the side of Idaho legislators opposed to the bill:

> Having voted to table the bill in the waning hours of the last legislative session, lawmakers have now received a letter from the Obama administration threatening to withhold millions of federal dollars and cut off our access to national child support payment resources if the state doesn't acquiesce to the federal government's demands by the middle of June.

Not surprisingly, the federal government is utilizing its favorite tool for keeping the once-independent states in line — comply or we'll cut off your federal funds. Idaho Governor "Butch" Otter, a Republican, is apparently so fearful of losing this aid that he is stumping for the Obama administration in this campaign. Hurst continues:

> The Otter administration, too, is piling on, sending a letter to 155,000 Idaho households that their child support checks could be jeopardized because stubborn state lawmakers wouldn't accept unilateral allegiance to enforce child support orders issued by foreign courts. The letters are intended to work people into such a tizzy, so lawmakers won't dare revolt again.

Child support, as with other social services, has traditionally been a state matter, preferably a local or county matter. Bureaucrats any higher up are far too removed from the problems of the local community to understand its needs. When such issues are usurped by the federal government — which is now taking its guidance from an international body — the inevitable results will be not only inefficiency and hopeless bureaucracy, but the loss of state and national sovereignty.

Since SB 1067 aims to surrender Idaho's state sovereignty to the federal government, its opponents stand on solid constitutional ground.