

Resolution 2
Urging the United States Government to Respect State Policies and Principles of Federalism with Regard to Enacting Legislation to Implement the Hague Convention on Choice of Court Agreements

WHEREAS, the Conference of Chief Justices, in fulfilling its leadership role for state judicial systems, has traditionally taken positions to defend against proposed policies that threaten principles of federalism or that seek to preempt proper state court authority; and

WHEREAS, the Hague Conference adopted the Hague Convention on Choice of Court Agreements in January, 2009, and the United States, having signed it in 2009, is currently considering ratifying the Convention through legislation; and

WHEREAS, the Hague Convention on Choice of Court Agreements is designed to ensure that: (1) choice of court agreements in international commercial contracts are valid, and (2) courts in the United States that are chosen by international parties in such contracts will recognize the choice of court and enforce judgments rendered by chosen courts; and

WHEREAS, legislation to implement the Hague Convention on Choice of Court Agreements is now being drafted for the United States by a working group headed by the United States Department of State and for the states by the National Conference of Commissioners on Uniform State Laws; and

WHEREAS, there are competing legislative proposals to implement the Hague Convention on Choice of Court Agreements including: (1) a complete federal preemption approach which would centrally establish the procedures and legal principles to be followed by chosen courts (including state courts), and (2) a "cooperative federalism" approach by which, to avoid preemption by federal statute, each state could choose to enact a uniform act that conforms to the terms of the Convention while preserving the application of relevant state common law doctrines and procedures;

NOW, THEREFORE, BE IT RESOLVED that the Conference urges the executive and legislative branches of the United States government, in the course of their drafting and enactment of legislation to implement the Hague Convention on Choice of Court Agreements, to take all available and reasonable steps to respect and accommodate principles of federalism and the authority of states to establish common law jurisprudence with respect to pertinent substantive law; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices urges the United States Congress to enact Convention-implementing legislation that takes a "cooperative federalism" approach that would avoid unilateral, compulsory preemption of relevant state jurisprudence and would encourage states to adopt a uniform international choice of court agreements act that is consistent with federal guidelines.

Adopted as proposed by the CCJ Civil Justice Committee at the 2010 Annual Meeting on July 28, 2010.