

**An Analysis of Constitutional Amendments
on Ballots Statewide
In the Alabama General Election on November 4, 2014**

In the general election on November 4, 2014, five proposed amendments to the Alabama state constitution will be on every ballot in Alabama. The voter is asked, "Shall the following Amendment to the Constitution of Alabama be adopted?" followed by the "PROPOSED AMENDMENT WHICH APPLIES STATEWIDE."

The League of Women Voters presents here an analysis of each of these five proposed amendments. For each amendment, this paper presents the background of the amendment, a list of supporters and their argument for the amendment, and a list of those who oppose and their arguments against the amendment. This analysis is a public service of the League of Women Voters of Alabama Education Fund. Every effort has been made to present factual and unbiased information regarding the amendments. We hope that you find this information helpful in deciding how you will vote on these amendment referendums on November 4.

Text of Amendments

Amendment 1 - ...to prohibit the State of Alabama from giving full faith and credit to public acts, records, or judicial proceedings of another state that violate the public policy of the State of Alabama and to prohibit the application of foreign law in violation of rights guaranteed natural citizens by the United States and Alabama Constitutions, and the statutes, laws, and public policy thereof, but without application to business entities.

Amendment 2 - ... relating to the Capital Improvement Trust Fund, to increase the amount of the General Obligation Bonds authorized herein; to provide for additional payments from the Alabama Trust Fund to fund any bond issued; to provide for competitive bidding of the bonds; and to provide for the distribution of the proceeds for plans, construction, and maintenance of Alabama National Guard armories. (Proposed by Act 2013-266)

Amendment 3 - ... to provide that every citizen has a fundamental right to bear arms and that any restriction on this right would be subject to strict scrutiny; and to provide that no international treaty or law shall prohibit, limit, or otherwise interfere with a citizen's fundamental right to bear arms. (Proposed by Act 2013-

267)

Amendment 4 - ... to prohibit a general law, whose purpose or effect is to require a new or increased expenditure of at least \$50,000 of local funds annually, from becoming effective with regard to a city or county board of education without enactment by a 2/3 vote. (Proposed by Act 2014-185)

Amendment 5 - ... to clarify that the people have the right to hunt, fish, and harvest wildlife subject to reasonable regulations that promote conservation and management of fish and wildlife and preserve the future of hunting and fishing. (Proposed by Act 2014-286)

Analysis of Amendments

Amendment 1

Proposing an amendment to the Constitution of Alabama of 1901, to prohibit the State of Alabama from giving full faith and credit to public acts, records, or judicial proceedings of another state that violate the public policy of the State of Alabama and to prohibit the application of foreign law in violation of rights guaranteed natural citizens by the United States and Alabama Constitutions, and the statutes, laws, and public policy thereof, but without application to business entities.

(Proposed by Act 2013-269)

Yes ()

No ()

Background: Thirty-two or more state legislatures have had bills introduced that contain one or more of the provisions outlined in the proposed Alabama amendment. Early versions of the legislation specifically named Sharia law, but more recent legislation has focused the wording on foreign law in general. The Alabama amendment uses the foreign law reference, too. It exempts business entities from the impact of the amendment. It also seeks to prohibit full faith and credit of laws and actions taken in other states that conflict with Alabama public policy.

Trial courts have used international law for over two centuries. They have also considered the laws of other nations in their decision making as long as the laws do not conflict with existing public policy or the U.S. Constitution. The business exemption in the amendment is needed in order to maintain foreign companies investing in the state and to maintain contractual obligations. Trial courts,

particularly family relations courts, take religious law is taken into consideration as long as they do not conflict with existing public policy. Prenuptial agreements, divorce, and child custody cases are just a few examples.

An amendment passed in Oklahoma specifically barring the use of Sharia law in all circumstances. A federal judge invalidated the Oklahoma amendment and blocked its implementation. The decision said the amendment violated the U.S. Constitution's First Amendment of freedom of religion provision. At the time of this writing the Oklahoma Attorney General is considering whether to appeal.

Amendment Supporters:

David Yerushalmi (Arizona-based lawyer and a founder of the American Freedom Law Center (AFLC) which has pushed for anti-bar Sharia law legislation/amendments at the state level.)

Some conservatives

Some Tea Party members

Some conservative religious groups

Arguments for This Amendment:

1. Sharia law is a totalitarian ideology that must be stopped.
2. America's "unique values of liberty and freedom" must be protected from foreign law influences that do not support these values.

Amendment Opponents:

Anti-Defamation League

Various religious freedom organizations

American Bar Association

American Civil Liberties Union

Brennen Center for Justice, New York University Law School

Some conservatives and libertarians

Some Tea Party members

Liberals

Arguments against This Amendment:

1. If passed, the amendments would result in high levels of litigation and confusion.
2. Even if businesses are exemption from portions of the amendment, attacks on the laws of specific religions and the laws of other nations send negative messages about political and social climate of a state.
3. Existing contractual agreements are likely to be in jeopardy. Examples: adoption agreements made in other countries; divorces granted abroad.
4. The amendments are in contradiction to at least four areas of the U.S. Constitution:

The Full Faith and Credit clause

Article IV Section 1: “Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.”

The Contract clause

Article I Section 10: “No state shall . . . pass any . . . law impairing the obligation of contracts

“Separation of powers – limiting what judges may consider may impact separation of powers

Article III Section 1: “The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish.”

Section 2: “The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority...

The Supremacy clause

Article VI Section 1: “This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.”

[Note: The federal court decision in Oklahoma raises a fifth constitutional concern violation of First Amendment rights related to religion. This suggests

that if one calls Sharia law an ideology as some supporters of the anti-Sharia/anti-foreign law supporters do, the violation may be of free speech, not just religion.]

5. The Brennan Center notes: “Foreign law is honored in both federal and state courts as long as it does not conflict with public policy.”

This approach is driven by practical considerations. Those considerations include maintaining “healthy international relations” and avoiding retaliation that might result from judging the laws of other nations.

6. If one religious group can be singled out by such a law based on the actions of some of its supporters, every religious group can become a target for a new series of legislation.

7. The amendment with its denial of full faith and credit of state laws in conflict with Alabama public policy could be expanded to attempts to block gay marriage and other social policies.

Amendment 2

Proposing an amendment to the Constitution of Alabama of 1901, as amended, relating to the Capital Improvement Trust Fund, to increase the amount of the General Obligation Bonds authorized herein; to provide for additional payments from the Alabama Trust Fund to fund any bond issued; to provide for competitive bidding of the bonds; and to provide for the distribution of the proceeds for plans, construction, and maintenance of Alabama National Guard armories. (Proposed by Act 2013-266)

Yes ()

No ()

Background: Passage of Amendment 2 would give the State new authority to borrow up to \$50 million from the Capital Improvement Trust Fund for the purpose of the planning, constructing, and maintaining National Guard armories. Matching funds from the Department of Defense are possible.

The funds would be raised by issuing bonds that must be repaid within 20 years. Alabama Trust Fund proceeds would be used to repay the bonds. The Legislative

Fiscal Office estimates the potential cost to the Trust Fund to be \$3.7 million per years for 20 years.

The Alabama Trust Fund is funded by revenues generated by oil and gas production in the Gulf of Mexico. The recent economic downturn reduced revenues coming into the fund.

The Armory Commission of Alabama for Alabama National Guard armories would be in charge of fund distribution.

Amendment Supporters:

National Guard supporters
Some anti-taxation individuals

Arguments for This Amendment:

If Amendment 2 does not pass, the State would have to find other ways to fund construction and maintenance activity. Given the economic slowdown of the past several years, such funds will be difficult to find. No new taxes pledged by most of the Legislature have closed down one source of funding.

The State has deferred maintenance in many areas of activity due tight funds during the economic downturn. This bonding process is one way to ensure proper maintenance of the Guard facilities.

The amendment enabling legislation insures the bonds will be let using a competitive public process – either sealed low bids or public auction.

Receipt of matching funds from the federal government requires committed state funds.

Arguments against This Amendment:

Amendment Opponents:

Association of County Commissioners of Alabama
Those who believe money from the Alabama Trust Fund should be used mainly for emergencies and then be repaid.

Arguments against This Amendment:

Continuous reliance on the Alabama Trust Fund to solve fiscal problems is a poor substitute for long-term planning.

The recent trend of issuing bonds to handle maintenance in addition to construction increases the debt load the State holds. Traditionally, maintenance has not been funded by bonds, but by the budgeting process itself.

Amendment 3

Proposing an amendment to the Constitution of Alabama of 1901, to provide that every citizen has a fundamental right to bear arms and that any restriction on this right would be subject to strict scrutiny; and to provide that no international treaty or law shall prohibit, limit, or otherwise interfere with a citizen's fundamental right to bear arms. (Proposed by Act 2013-267)

Yes ()

No ()

Background:

This and similar legislation introduced in other states is largely a defensive move in response to efforts by the United Nations to establish a legally enforceable Arms Trade Treaty (ATT) to control illegal arms sales and thereby reduce war, terrorism, and other actions that destabilize nations. President Obama has given basic support to this effort, and in September 2013, the ATT was signed by Secretary of State John Kerry, but it has not yet been ratified by the senate. Over 100 nations have signed, but ratifications numbers are low so far.

Passage of this amendment would elevate gun ownership to the level of a fundamental right, and would mean that any attempts to establish curbs on that right would be subject to the highest level of scrutiny in the courts.

Amendment Supporters:

National Rifle Association

Conservatives
Libertarians
Some Moderate Democrats

Arguments for This Amendment:

Republican members of Congress and some moderate Democrats have expressed concern that such an ATT treaty could go too far and infringe on the right to bear arms. They argue that the government should not support a treaty that violates this Bill of Rights guarantee. Republican legislators also express concern that with the lack of the necessary 2/3 Senate majority in support of ratification of ATT, the President might attempt to implement through executive order.

Amendment Opponents:

Gun control advocates
Liberals

Arguments against This Amendment:

If the amendment is defeated, the right to own guns is still a right protected by the U.S. Constitution. It simply is not elevated to the level of a fundamental right.

Supporters of the amendment wrongly state that the focus of the ATT is on gun control. Rather, it is a treaty aimed at stopping the illegal weapons trade and an attempt to add stability to the international system.

Amendment 3 and similar bills in other states represent political devices aimed at garnering political support for candidates involved in the anti-gun-control movement.

Amendment 4

Proposing an amendment to the Constitution of Alabama of 1901, to prohibit a general law, whose purpose or effect is to require a new or increased

expenditure of at least \$50,000 of local funds annually, from becoming effective with regard to a city or county board of education without enactment by a 2/3 vote. (Proposed by Act 2014-185)

Yes ()

No ()

Background: The 2/3 voter requirement now exists for other governmental entities due to Amendment 621. The school boards would now operate under the same procedures. Other elements of Amendment 621 are also involved. (See Arguments for Amendment.)

Amendment Supporters:

Alabama Association of School Boards

Arguments for This Amendment:

The Alabama Association of School Boards supports the amendment because it brings school boards under current Amendment 621 and thereby exempts them from unfunded mandates.

According to the Association:

“Without passage of Amendment 4 (Act 2014-185), local revenue that school leaders prioritize for specified purposes can be diverted to comply with unfunded state mandates; and local school boards, which have no authority to generate revenue, are treated differently than counties/cities which can raise local revenue—it makes no sense .”

The original version of Amendment 621 included school boards. They were excluded in order to insure legislative passage and getting the amendment to the voters.

Another provision of Amendment 4 “protects employee salaries and benefits to prevent differing pay scales for state or local funded positions.”

All decision-making bodies in the state should follow the same procedures.

Amendment Opponents:

Little organized opposition

Arguments against This Amendment:

Extraordinary majority votes on matters relating to fiscal policy (taxing and spending decisions) are designed to prevent action. In times of division (ideological, public v. private school support, etc.) agreement is harder to achieve.

Amendment 5

Proposing an amendment to the Constitution of Alabama of 1901, to amend Amendment 597, now appearing as Section 36.02 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, to clarify that the people have the right to hunt, fish, and harvest wildlife subject to reasonable regulations that promote conservation and management of fish and wildlife and preserve the future of hunting and fishing. (Proposed by Act 2014-286)

Yes ()

No ()

Background: In recent years this amendment has been introduced in various forms in several state legislatures. One of its major supporters is the National Rifle Association which has supported it and other amendments (see proposed Amendment) as a way to place references that support the right to bear arms into state constitutions.

Amendment Supporters:

National Rifle Association
Some sportspersons and wildlife conservationists

Argument for This Amendment:

1. The amendment is a defense against those who oppose hunting and fishing. It will guarantee that coming generations of hunters and fishers will have access to these sports.
2. Wildlife conservation and management are protected with hunters and

fishers remaining the major method of game management.

3. According to the NRA, the state would avoid having to manage game through the use of “taxpayer-funded sharpshooters and unproven, expensive wildlife contraception schemes employed in other jurisdictions.”

Amendment Opponents:

Some sportspersons and wildlife conservationists

Argument against This Amendment:

Amendment 597, the “Sportsperson’s Bill of Rights,” already exists. It states: “All persons shall have the right to hunt and fish in this state in accordance with law and regulations.” A new amendment is not needed.

Stating a preferred method of conservation and management has no place in a state constitution. It should be determined by law and regulation and reflect best practices that protect wildlife and public access to hunting and fishing.

The wildlife management and conservationist practices in place today are consistent with the amendment making that portion of the amendment unnecessary.

This amendment is part of the scare tactics used by anti-gun control groups, especially the National Rifle Association, as part of their right to bear arms campaigns. The right to bear arms is explicitly given in the Alabama Constitution. Article I, Declaration of Rights, Section 26 states: “that every citizen has a right to bear arms in defense of himself and the state.”