



STATE STRICT SCRUTINY BALLOT INITIATIVES

- ❑ **Bottom Line:** In recent years, the gun lobby has lobbied for state constitutional amendments that force courts to evaluate firearms-related laws, rules, and regulations using the most severe form of judicial analysis — known as “strict scrutiny.” These amendments call all state and local public safety laws into question, threatening even the most basic laws designed to keep guns out of the hands of felons and domestic abusers. These amendments are also expensive because the state has to pay to defend the constant lawsuits brought by criminal defendants. This cost and uncertainty can lead to a chilling effect on prosecutors — leaving dangerous criminals on the streets.
- ❑ **Three states have adopted strict scrutiny amendments.**
 - In 2012, **Louisiana** became the first state to adopt a constitutional amendment forcing courts to evaluate gun laws using the extremely onerous “strict scrutiny” standard. The amendment passed 73% to 27%. Specifically, the Louisiana strict scrutiny amendment:
 - (1) deleted language in the Louisiana constitution that expressly permitted the legislature to pass laws regarding concealed carry;
 - (2) declared the right to bear arms a “fundamental” right; and
 - (3) required that Louisiana courts evaluate gun laws under strict scrutiny.¹
 - On August 5, 2014, **Missouri** voters approved a strict scrutiny measure by a 61% to 39% vote which:
 - (1) expanded the right to keep and bear arms to encompass the right to keep and bear “ammunition, and accessories typical to the function of such arms;”
 - (2) removed a provision from the constitution stating that the right to bear arms does not “justify the wearing of concealed weapons”; and
 - (3) required that Missouri courts evaluate gun laws under strict scrutiny.²
 - In November 2014, **Alabama** voters approved a similar constitutional amendment by a 72.5% to 27.5% vote. This amendment:
 - (1) classified the right to bear arms as a “fundamental” right;
 - (2) required that Alabama courts evaluate gun laws under strict scrutiny; and
 - (3) prohibited Alabama citizens’ gun rights from being restricted by international treaty.³
 - A strict scrutiny amendment was proposed in the **Oklahoma** legislature in 2014, but it was not added to the ballot.⁴
- ❑ **States that have adopted constitutional amendments forcing courts to apply strict scrutiny have already suffered costly and dangerous repercussions.**
 - In **Louisiana**, the strict scrutiny requirement has inspired numerous costly court cases challenging common-sense gun laws.
 - Louisiana taxpayers foot bill for these cases, paying for the public defenders, the prosecutors who are forced to defend the laws, and the courts that hear the cases.



In reviewing Louisiana’s experience, the Missouri State Auditor determined that these cases had required “significant time, effort, and expenditures by Louisiana’s public defenders and district attorney’s offices,” imposing “significant workload and related costs on the Louisiana government.”⁵

- At least one lower court found that Louisiana’s law prohibiting felons from having guns was unconstitutional. Fortunately, the Louisiana Supreme Court reversed this ruling.⁶
- The Louisiana Supreme Court has generally upheld the state’s gun laws even under strict scrutiny. In particular, the state’s high court has upheld:
 - Louisiana’s laws prohibiting carrying a concealed weapon without a permit and prohibiting minors from carrying handguns;⁷
 - Louisiana’s laws prohibiting possession of a firearm while in possession of illegal drugs or during the sale or distribution of a controlled dangerous substance;⁸ and
 - Louisiana’s felon-in-possession law — as applied both to felons still on probation or parole and those who have completed their sentences.⁹
- In **Missouri**, too, the constitutionality of the state’s felon-in-possession law been challenged in multiple lawsuits, and the state auditor concluded that costly litigation will continue. Because of the strict scrutiny requirement, one court has already thrown out the charges against a felon who illegally possessed a handgun. And a Missouri prosecutor has declined to prosecute a felon who illegally possessed guns because the prosecutor feared the felon-in-possession law could not survive strict scrutiny.
 - In one case, a circuit court judge threw out the criminal charges against a convicted felon who was caught carrying a handgun in violation of a longstanding Missouri law that prohibits felons from possessing guns.¹⁰
 - The judge concluded that the defendant had not been convicted of a “violent felony” and that strict scrutiny made him dismiss the charges against the defendant — even though the defendant had previously been convicted of a felony for carrying a concealed weapon, had prior arrests involving assault and resisting arrest, had admitted to beating a man who stole his tools, and had been carrying a gun even though it was illegal.
 - The decision underscores that strict scrutiny amendments call into question basic firearm laws, weakening public safety for families and communities where they apply.
 - In another case, the Missouri Supreme Court is currently reviewing a constitutional challenge brought by a felon who had been convicted on federal drug charges — and therefore prohibited from gun ownership under state law — and who was charged with illegal gun possession after he was found with a revolver, a shotgun, and a rifle.¹¹ Missouri’s high court is considering whether strict scrutiny requires that it throw out those charges — and the felon-in-possession law as a whole.



- And in a third case, in Springfield, a convicted felon charged with five counts of illegal gun possession is asserting that those charges must be dropped due to the strict scrutiny amendment.¹²
- The Missouri State Auditor has projected that these cases — and many others like them — will impose “substantial” costs on state and local government agencies.
 - Overall, the auditor’s office estimated that the strict scrutiny amendment will cost Missouri state agencies at least **\$17 million** in fiscal year 2015, and more than **\$219 million** in fiscal year 2016. In addition, it estimated that local governments would incur more than **\$9 million** in costs in fiscal year 2015 and more than **\$24 million** in costs in fiscal year 2016.¹³
 - The auditor concluded that, as in Louisiana, Missouri courts would be flooded with “substantial expected litigation related to the amendment,” including challenges to the prohibitions on fugitives, drug addicts, and children possessing guns; the requirement to obtain a permit to carry a concealed, loaded gun in public; and the restrictions on carrying guns in schools, bars, houses of worship, government buildings, and stadiums. The auditor projected that this litigation would impose serious costs on the Missouri Attorney General and public defender offices.
 - The auditor also noted that the amendment would impose significant costs on the state Departments of Corrections and Public Safety and the Office of Administration, and would require significant costs to reestablish security at the state capitol.
- A Missouri prosecutor has also pointed to the strict scrutiny amendment in declining to bring felon-in-possession cases against a felon who possessed illegal guns. The St. Charles County Prosecutor decided not to charge a convicted felon with possessing an illegal gun even after he shot and killed a neighbor’s dog in a residential suburban neighborhood.¹⁴

¹ The official ballot text for Amendment 2 stated as follows:

Do you support an amendment to the Constitution of the State of Louisiana to provide that the right to keep and bear arms is a fundamental right and any restriction of that right requires the highest standard of review by a court?

Approved by a 73%-23% vote on November 6, 2012, Amendment 2 amended Article I, Section 11 of the Louisiana Constitution as follows:

The right of each citizen to keep and bear arms **is fundamental and** shall not abridged **infringed.** ~~but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.~~ **Any restriction on this right shall be subject to strict scrutiny.**



² The official ballot text for Amendment 5 stated as follows:

Shall the Missouri Constitution be amended to include a declaration that the right to keep and bear arms is an unalienable right and that the state government is obligated to uphold that right?

Approved by a 61%-39% vote on August 5, 2014, Amendment 5 amended Article I, Section 23 of the Missouri Constitution as follows:

That the right of every citizen to keep and bear arms, ammunition, and accessories typical to the normal function of such arms, in defense of his home, person, family and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons. The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement. Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those duly adjudged mentally infirm by a court of competent jurisdiction.

³ The official ballot text for the Alabama Firearms Protection Amendment provides as follows:

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.

The proposed amendment would amend Article I, Section 26 of the Alabama Constitution as follows:

(a) That every Every citizen has a fundamental right to bear arms in defense of himself or herself and the state. Any restriction on this right shall be subject to strict scrutiny.

(b) No citizen shall be compelled by any international treaty or international law to take an action that prohibits, limits, or otherwise interferes with his or her fundamental right to keep and bear arms in defense of himself or herself and the state, if such treaty or law, or its adoption, violates the United States Constitution.

⁴ Oklahoma State Legislature, HJR 1026, at <http://bit.ly/1pP4ujV>.

⁵ Missouri State Auditor, Fiscal Note (14-SJR 36), June 12, 2014.

⁶ State v. Taylor, 24th Judicial Dist. Ct. for Parish of Jefferson (2014).

⁷ State in the Interest of J.M., 2014 La. LEXIS 206 (La. S. Ct. 2014).

⁸ State v. Webb, 2014 La. LEXIS 1148 (La. S. Ct. 2014).

⁹ State v. Draughter, 130 So.3d 855 (La. S. Ct. 2013 (felon still under state supervision); State v. Eberhardt, 2014 La. LEXIS 1570 (2014) (felon who has completed sentence); State v. Zeno, 2014 La. App. LEXIS 2203 (Sept. 19, 2014) (felon who has completed sentence).

¹⁰ See State v. Robinson, No. 1422-CR02936-01 (Mo. Cir. Ct. 22nd Cir.).

¹¹ See State of Missouri v. Merritt, No. SC94096 (Mo. S. Ct.).

¹² Felon facing gun charge cites new gun law in defense, Springfield News-Leader, Sept. 22, 2014, available at <http://sgfnw.co/1xQ1ujY>.

¹³ See Missouri State Auditor, Fiscal Note (14-SJR 36), June 12, 2014.

¹⁴ Editorial, Gun Amendment Brings a New Type of Lunacy to Missouri, St. Louis Post-Dispatch, Sept. 25, 2014, available at <http://bit.ly/1rkuHjn>.