

MEMORANDUM

TO Interested Parties
FROM Giffords
DATE March 12, 2019
RE Iowa Legislators not Listening on Gun Issues

In the midst of an ongoing gun violence crisis that impacts Iowa every day, the state legislature is once again considering a constitutional amendment that would weaken gun laws. This proposal puts Iowa laws like the current handgun licensing system at risk by requiring a judge to apply “strict scrutiny” to state gun laws if those laws were challenged in court.

The measure passed the state legislature last year, but stalled after a procedural error by Iowa Secretary of State Paul Pate. Key Republicans have pledged to bring the amendment to a vote again this year. **Their commitment is at odds with Iowans’ stance on gun safety.**

A recent poll of likely Iowa voters by Giffords found **86 percent support for requiring a background check on all gun buyers.**

Support for background checks crosses party lines, with **83 percent of Republicans and 89 percent of Democrats** in favor. It also unites all communities, with **83 percent** of rural voters supportive of background checks. The poll of 939 voters was conducted Jan. 30-31, and has a margin of error of 3.18 percent.

As Iowans continue to support stronger gun laws, the state House is moving forward tomorrow with a vote on this dangerous amendment. If you are writing about these new developments, Giffords has a number of experts who can speak with you about the potential implications of this amendment.

GIFFORDS EXPERTS AVAILABLE FOR COMMENT

- [Peter Ambler](#), Executive Director, Giffords
- [Robyn Thomas](#), Executive Director, Giffords Law Center
- [Hannah Shearer](#), Staff Attorney, Giffords Law Center
- Nico Bocour, State Legislative Director, Giffords

BACKGROUND ON “STRICT SCRUTINY” AMENDMENT

The proposed amendment adds Second Amendment language to the Iowa Constitution, but it’s paired with a poison pill that forces judges to apply a legal standard called “strict scrutiny” to “any and all restrictions” of the right to keep and bear arms. **Strict scrutiny is the most demanding standard applied in constitutional cases: it requires judges to assume a challenged policy is unconstitutional until the state proves otherwise.** The amendment would force judges to review “any and all” gun safety laws and regulations, without exception, under the strict scrutiny standard.

DANGERS OF THE PROPOSED CONSTITUTIONAL CHANGES

Some supporters say the constitutional amendment simply protects Second Amendment rights in Iowa. But this ignores the dangerous strict scrutiny provision, which only 3 states (Louisiana, Missouri, and Alabama) have ever adopted. These states are outliers that have taken the most radical steps to deregulate guns, and their gun death rates are much higher than Iowa's. If the experiences of these other states holds true, the amendment would endanger all of Iowa's gun laws and lead to frivolous litigation that burdens the justice system at taxpayers' expense.

- **The amendment would make it much easier to challenge Iowa's gun laws in court.** The amendment requires courts to apply "strict scrutiny" to all permissible restrictions on individuals' right to possess and carry firearms, including background check laws, and restrictions on guns in schools. This is a dangerous and radical policy that would constrain the discretion of Iowa's legislature to regulate guns and force state judges to apply a legal standard under which laws evaluated are more frequently struck down.
- **The proposed constitutional amendment will drive frivolous litigation.** Strict scrutiny gives every criminal offender who violates Iowa's gun laws a new tool to challenge their convictions under the state Constitution. As a result, the amendment will encourage much more litigation over Iowa's laws, even lifesaving gun regulations that are clearly constitutional, such as restrictions on gun possession by felons and domestic abusers.
- **The proposed constitutional amendment is dangerously vague and overbroad.** It doesn't define "arms," so could make it impossible to restrict extremely dangerous weapons like bump stocks and machine guns. And the strict scrutiny mandate broadly applies to any and all firearm "restrictions," which means the proposal would not only endanger gun safety laws, but also a wide range of other policies, like state agency and school board rules, and actions taken by prosecutors and police if challenged in court.

UNFORTUNATE CONSEQUENCES OF CONSTITUTIONAL CHANGES

Amendments like the one proposed in Iowa have had dangerous, unintended consequences in other states, including frivolous legal challenges from criminal defendants.

- Missouri has seen felons repeatedly challenge the state's ban on them possessing firearms since the state adopted an amendment requiring judges to apply a standard of "strict scrutiny" when evaluating gun laws. The Missouri Supreme Court alone heard 4 such cases in about 4 years.
- In Louisiana, a number of felons and other convicted criminals have used "strict scrutiny" to challenge the state's felon-in-possession ban as well as sentencing enhancements for using a gun in the commission of a crime, including kidnapping or drug dealing.
- Alabama is the third state with the "strict scrutiny" standard in its constitution, and it has the second-highest gun death rate in the U.S, followed by third-highest Louisiana, and seventh-highest Missouri.

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