

Statewide Amendment 1: The American and Alabama Laws for Alabama Courts Amendment

Background

Amendment 1, “The American and Alabama Laws for Alabama Courts Amendment,” seeks to prohibit courts from applying foreign law in cases where the application would violate the constitutional rights of Alabamians. This bill was sponsored by Senator Gerald Allen (R-Tuscaloosa) and passed both chambers in the 2013 legislative session by a vote of 22-6 in the Senate and 75 -6 in the House.¹ Alabama is one of at least 32 states to consider a measure restricting the use of foreign law by courts and would be the 8th state to adopt such a law.²

The driving force of this effort stems from concern, building over the past decade, about the federal judiciary’s use of foreign or international law in deciding cases. According to U.S. Supreme Court Justice Antonin Scalia, citing to foreign law “invites manipulation” as judges use it to bolster their own opinions and foreign law cannot possibly help a judge interpret the U.S. Constitution.³ CATO Institute Constitutional Law Scholar, Ilya Shapiro, wrote in 2010 that “[t]he interpretation of the U.S. Constitution should depend on that document’s text, structure, and history, what it means in the context of the American polity. . . . [f]ederal judges derive their powers from the Constitution, which is a wholly American document. To the extent they use foreign extrinsic evidence to interpret this document, they are engaging in something . . . that is not judging.”⁴

Along these same lines, states have begun to enact laws to ensure that state level judges are prohibited from applying foreign law when the application would violate an individual’s constitutional rights.

ISSUE SNAPSHOT

- At least 32 states have considered legislation to prohibit or restrict the use of foreign law in state courts. Seven states have enacted similar measures.
- The purpose of this amendment is to reaffirm that the Alabama Constitution is the supreme authority in the state and that courts are prohibited from applying foreign law when it would result in a violation of an individual’s constitutional rights.

Purpose of the Amendment

This amendment has two purposes: 1) to prohibit Alabama courts from giving full faith and credit to public acts or judicial proceedings of other states that violate Alabama’s constitution and 2) to prohibit the application of foreign law in violation of a citizen’s rights under the U.S. and Alabama Constitutions (corporations, partnerships, or other business associations are exempt).

The full faith and credit clause of the U.S. Constitution requires that judgments entered by a court of a state with jurisdiction over the matter must be honored by the courts of other states. However, the U.S. Supreme Court has held that the clause cannot be used to “compel a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.”⁵ The Alabama Supreme Court has made clear that, “a statute of a sister state that is clearly against public policy in Alabama will not be recognized here.”⁶ Part 1 of the amendment in

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question would merely formalize this precedent in the Alabama Constitution.

Part 2 of the amendment would make it unconstitutional to apply foreign law in Alabama court cases if the application would violate a citizen's rights under the U.S. or Alabama constitution. Opponents believe that this amendment is a solution in need of a problem—there are no known examples of Alabama courts attempting to apply foreign law to in violation of a citizen's constitutional rights. Proponents explain that this amendment would reinforce and clarify the well settled sovereignty of the U.S. Constitution and the laws of the state and the rights that they afford. Adding such a declaration to the Alabama Constitution would, in theory, deter or preempt an Alabama court from giving weighty deference to foreign law to the detriment of an individual's constitutional rights as has occurred in some instances in other states.⁷

¹ SB 4, 2013 Reg. Sess. (Ala. 2013) (enacted).

² Kimberly Railey, USA TODAY, *More states move to ban foreign law in courts*, Aug. 4, 2013.

³ U.S. Sup. Court Justices Antonin Scalia and Stephen Breyer, American Univ. College of Law, *A Conversation on the Relevance of Foreign Law for American Constitutional Adjudication* (Jan. 13, 2005) (transcript available at <http://www.wcl.american.edu/seclc/founders/2005/050113.cfm>).

⁴ Ilya Shapiro, *The Use and Misuse of Foreign Law in U.S. Courts*, CATO INSTITUTE, May 19, 2010, available at <http://www.cato.org/blog/use-misuse-foreign-law-us-courts>.

⁵ *Pacific Emp'rs Ins. Co. v. Industrial Accident Comm'n of California*, 306 U.S. 493, 501 (1939).

⁶ See *Whitney Bank v. Lorant*, No. 1121220, 3 n.2 (Ala. 2014) (Moore, R., dissenting). See also *Monarch Refrigerating Co. v. Faulk*, 228 Ala. 554, 557, 155 So. 74, 76 (Ala. 1934).

⁷ See, e.g., *S.D. v. M.J.R.*, 2 A.3d 412 (N.J. Super. Ct. App. Div. 2010).