

STATE OF LOUISIANA  
CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS  
SECTION J

STATE OF LOUISIANA

CASE No. 512-135

V.

3-21-13 MRG  
PLEASE FILE IN RECORD

GLEN DRAUGHTER

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RULING

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Statutes are generally presumed to be constitutional and the party challenging the validity of the statute bears the burden of proving it is unconstitutional. State of Louisiana v. Hatton, 07-2377 (La.7/1/08), 985 So.2d 709, 719 (citing State v. Fleury, 01-0871, p. 5 (La.10/16/01), 799 So.2d 468, 472; State v. Brenner, 486 So.2d 101, 102 (La.1986); State v. Rones, 223 La. 839, 67 So.2d 99, 105 (1953)). Since the provisions of the Louisiana Constitution are not grants of power but instead are limitations on the otherwise plenary power of the people, exercised through the Legislature, the Legislature may enact any legislation the constitution does not prohibit. City of New Orleans v. Louisiana Assessors' Ret. & Relief Fund, 05-2548, pp. 11-12 (La.10/1/07), 986 So.2d 1, 12 (citing Louisiana Mun. Ass'n v. State, 04-0227, p. 45 (La.1/19/05), 893 So.2d 809, 842; Polk v. Edwards, 626 So.2d 1128, 1132 (La.1993)); Bd. of Comm'rs of Orleans Levee District v. Dept. of Natural Resources, 496 So.2d 281, 286 (La.1986)) The Louisiana Supreme Court has consistently held legislative enactments are presumed valid and their constitutionality should be upheld when possible. Hatton, 07-2377 at 14, 985 So.2d at 719 (citing State v. Caruso, 98-1415, p. 1 (La.3/2/99), 733 So.2d 1169, 1170). Due to this presumption, a party challenging the constitutionality of a statute must cite the specific constitutional provision that prohibits the legislative action. State v. Granger, 07-2285, p. 8 (La.5/21/08), 982 So.2d 779, 786. In view of this presump-

tion, judicial self-restraint is appropriate when statutes are under constitutional attack. Sherman v. Cabildo Construction Co., 490 So.2d 1386, 1390 (La.1986).

Therefore, the unconstitutionality of one portion of a law does not render the entire law unenforceable if the remaining portion is severable from the offending portion. Police Association of New Orleans v. City of New Orleans, 94–1078 p. 19 (La. 1/17/95); 649 So.2d 951, 965. Moreover, and consistent with the civilian tradition of respect for legislative will, the test for severability is whether the unconstitutional portions of the law are so interrelated and connected with the constitutional portions that they cannot be separated without destroying the intention of the legislative body enacting the law. Cox Cable New Orleans, Inc. v. City of New Orleans, 624 So.2d 890, 895 (La.1993).

#### CLAIM

In this case, the defendant moves to quash the bill of information citing that the statute for which he is charged, LA R.S. 14:95.1, is unconstitutional. As such, this Court must turn to the specific constitutional provision that allegedly prohibits the legislative enactment of LA R.S. 14:95.1.

Louisiana Constitution Article I Section II states:

The right of each citizen to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny.

Before addressing its constitutionality, at the outset, this Court must note that LA R.S. 14.95.1 is an infringement on the fundamental right to keep and bear arms, and must pass a strict scrutiny standard in order to remain constitutional. Under the strict scrutiny standard, government action is not presumed to be constitutional, and will not be upheld by [a] Court unless shown to be necessarily related to a compelling state interest. See J. Nowak, R. Rotunda, & J. Young, Handbook

on Constitutional Law 524–525 (1978); L. Tribe, American Constitutional Law 1000–02 (1978). Additionally, it must be narrowly tailored to achieve that interest.

DECREE

After applying the strict scrutiny standard to LA. R.S. 14.95.1, this Court concludes that the statute is not narrowly tailored to achieve the government’s interest. LA R.S.14.95.1 applies without discretion to nearly every felony crime enumerated in the Louisiana Criminal Code. As such, the statute, ‘as-is’, is unconstitutional in its entirety. This Court will not engage in a “judicial line item veto”, by deciding what predicate felony convictions should be included in LA R.S. 14:95.1. The Constitution of the State of Louisiana provides that the judicial branch shall not exercise legislative power. LA. CONST. arts. 1, 2. The relationship of the courts with the legislature has been defined on numerous occasions by the Louisiana Supreme Court. “The law is the solemn expression of legislative will” and the purpose of the judiciary is to “merely interpret such expressions.” Tullier v. Tullier, 464 So.2d 278, 282, (La.1985). Further, courts cannot question the wisdom of fundamental law and frustrate the will of the people; their function is to interpret and apply that law. After reviewing the law and applying a strict scrutiny standard, the Court finds LA R.S. 14.95.1 unconstitutional in its entirety.

Defendant’s Motion to Quash the Bill of Information is **GRANTED**.

NEW ORLEANS, LOUISIANA, this \_\_\_\_\_ day of \_\_\_\_\_,  
2013.

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Judge Darryl A. Derbigny