

Alabama Bound: Our Unjust 1901 Constitution

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The Alabama constitution of 1901 is, in many ways, the opposite of its federal counterpart. The concise, rarely amended U.S. Constitution is honored around the world as one of the landmark documents in the history of civilization. Our state constitution, on the other hand, is widely reviled as overreaching, poorly written and harmful to many of the people it governs. This fact sheet will examine the main arguments and prospects for constitutional reform in Alabama, as well as some of the obstacles that continue to hinder reform efforts.

A shameful start

In his opening remarks to the 1901 constitutional convention, the president of the body defined its purpose as “within the limits imposed by the federal Constitution, to establish white supremacy in this state.” The resulting document effectively removed the voting rights of African Americans and poor Whites. By concentrating power in the hands of a few special interests, it allowed Black Belt landowners, for example, to keep their property taxes low at the expense of decent schools for low-income children.

Federal courts have overturned most of the discriminatory provisions, yet the shameful evidence of this legacy persists in inoperable sections on poll taxes and segregated schools. The concentration of power remains an obstacle to effective local government. And our constitutional tax provisions hinder the state from modernizing our tax system to serve new economic realities and changing needs.

The home rule question

Since the 1901 constitution centralizes political decision-making in Montgomery, counties must seek constitutional amendments to conduct routine functions of local government. At 827 amendments and counting, the Alabama constitution is 12 times longer than the average state constitution and 40 times longer than the U.S. Constitution. Among the hodgepodge of local concerns the Alabama constitution addresses are the establishment of garbage collection districts in Jefferson County (Amendment 239) and the authority of the Madison County Commission to excavate human graves

(Amendment 520). Because most amendments require a statewide vote, the rights and privileges of people in one county are often granted or denied by residents of other counties that would not be affected by the proposed changes.

Just ask someone from Trussville. In 2004, residents of that city wanted to raise their property taxes to increase funding for public schools. Leaders first had to get a bill passed at the State House in Montgomery – no easy feat amid partisan gridlock and horse trading. Once passed, the proposal went to a statewide election, where 55 percent of Alabama voters rejected it despite 68 percent support from Trussville voters.

Such examples highlight the absurdity of our current system, but thus far there has been no real groundswell from county leaders and local voters frustrated at the lack of “home rule.” When local changes become necessary, the majority of county commissions

appear content to lobby their legislators to pass a bill in Montgomery and go through the cumbersome process of the statewide ballot.

Having tax policies in the constitution makes our tax system difficult to modernize in response to changing needs.

Our antiquated tax system

The 1901 constitution preserves a tax structure that favors the wealthy, burdens the poor and worsens over time. The state property tax rate, for example, has not increased since the constitution was written. And the document required a voter referendum for raising local property taxes to support schools. For decades, the poll tax ensured that only prosperous White voters had a voice in elections. A series of amendments in the 1970s placed restrictions on the assessment of taxable property value, which further limited funding for public schools. Each of Alabama’s 133 school districts receives a modest annual state allotment of around \$5,000 per pupil, plus some federal money. Any additional funding comes from local property taxes, which vary widely. As a result, Alabama has some prosperous districts that spend more than twice as much per pupil as high-poverty districts spend.

Because our state and average local property tax rates are among the nation’s lowest, our education

system is one of the most poorly funded. Research has shown education to be the primary tool for escaping poverty. Alabama's outdated education funding locks many low-income students into low-paying jobs.

When a 1933 amendment established the state income tax, it was designed to affect only the wealthiest citizens. Because the income levels for these rates have changed very little in 75 years, most Alabamians now pay at the top tax rate. As a result, Alabama's income tax is the highest in the nation for families at the poverty line. Similarly, those with the highest incomes no longer pay a fair share. Writing tax policies into the constitution made these policies difficult to modernize in response to changing needs.

Sales tax is perhaps the most regressive tax, taking nearly eight times the share of income for the state's lowest earners as for its wealthiest families. Like income taxes and unlike property taxes, sales taxes rise and fall with the economy. As a result, our state education budget, which relies on income and sales taxes, is at risk of sharp cuts when the economy slows.

The constitution hinders Alabama's provision of needed services for struggling families. For example, a 1952 amendment has the effect of prohibiting state funding for public transit. As a result, inadequate transportation keeps thousands of Alabamians from meeting basic needs, such as getting to work, to the doctor or to the grocery store. Every year, Alabama leaves millions of federal matching dollars on the table because we can't put up the state share.

Our antiquated tax system also places a strait-jacket on state funding for other vital services, such as health care and child care. Most states earmark, or set aside for particular uses, a little more than 20 percent of their tax revenues. Alabama earmarks more than 80 percent, leaving the governor and the Legislature little flexibility to match available resources to the most pressing needs. The citizens of Alabama lose when earmarking prevents an emergency allocation for children's health insurance or denies an opportunity to maximize federal matching funds. With so little flexibility, budget writers resort to one-time sources of revenue, such as court settlements, bond issues for current spending, or the dubious practice of depleting an agency's trust fund.

A new path to reform?

Advocates for a new Alabama constitution have been divided for decades over how best to achieve that goal. Some have wanted to hold a convention at which elected delegates would craft a new constitution

all at once, subject to voter approval. Others have favored a gradual, article-by-article rewrite. The 2003 Amendment One vote showed the difficulty of achieving complex reform at the ballot box. A new development may render the debate moot, at least temporarily. In 2011, the Legislature established the Constitutional Revision Commission to revise 11 of the constitution's 18 articles over four years.

Though Alabama's regressive tax structure (embedded in Article XI of the 1901 document) is not within the commission's scope of review, the home rule and education provisions are included. If the Legislature approves bills reflecting the commission's deliberations, the resulting article rewrites will go to voters for approval.

It is too early to know whether the commission will merely recommend a streamlined version of the current charter, or if it will take seriously the opportunity to make substantive changes to our foundational document. Initial reports suggest that at least a version of limited home rule may emerge from the commission. The measure may face an uphill battle in the Legislature and at the ballot box.

The 2011 Legislature also passed an amendment to remove segregationist provisions from the constitution. It will appear on the November 2012 general election ballot. Though the proposal would strike sections on poll taxes and segregated schools, Black lawmakers opposed it for failing to address underlying racial inequities in the constitution, such as the Jim Crow era Amendment 111, which removed the 1901 constitutional right to an education. A similar proposal in 2004 that did seek to reverse Amendment 111 failed at the polls after Judge Roy Moore and others alleged in a last-minute campaign that the right to an education would cause a tax increase.

The remaining tasks

The constitutional reform commission's work-plan leaves many crucial questions unanswered. Even if the commissioners produce and win voter support for 11 exemplary articles, vesting power with counties and cleaning up the 1901 constitution, huge challenges will remain. The article-by-article schedule appears to have little potential for improving the lives of low-income Alabamians. That would require addressing the biggest barrier to progress in our state: the tax system.

This fact sheet was prepared by ACPD policy analyst Stephen Stetson and communications director Jim Carnes. It may be reproduced with acknowledgment of Arise Citizens' Policy Project, Box 1188, Montgomery, AL 36101; (800) 832-9060; arisecitizens.org.