

## The Struggle in Alabama for Constitutional Reform

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On January 31, 2003, Alabama's new Republican governor, Bob Riley, convened a diverse group of citizens in Montgomery to begin deliberating changes he proposed for the state's 1901 Constitution. Thus he fulfilled his promise that constitutional reform would be the first item on his agenda to make Alabama more competitive for jobs and its government more efficient. In creating by executive order the Alabama Citizens' Constitution Commission, he gave the group ninety days to draft five changes he wanted to propose during the 2003 legislative session: providing "limited" home rule for counties on a local option basis, lessening reliance on designating revenues for particular purposes, strengthening the governor's veto power, re compiling the 1901 Constitution to remove amended language, and requiring a three-fifths majority of the Legislature to impose new statewide taxes. Riley said he would ask the commission members to look at other areas of the 1901 Constitution as reform moved forward.

Riley argued, as have many other Alabamians, that the 1901 Constitution's restrictions and antiquated provisions hinder efforts to move forward the state's public life. As a result, Alabama fares poorly in comparisons even with neighboring states. In particular, Riley has pointed to North Carolina's economic success to show the connection between

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progressive government and concrete results. By contrast, one would be hard pressed to find a politician from another state who held up Alabama as an inspiration. The U.S. Census Bureau reported, for example, that Alabama lost 12,200 people in 2001-02. Yet the state is the geographical heart of a booming region. Why are people going elsewhere? Analysts and business leaders attributed the trend to declining prospects for good jobs. As one exclaimed in exasperation, "It's disheartening that we're not growing as fast as Mississippi."<sup>2</sup>

This article explores how constitutional reform has emerged from 2000 to 2003 as a centerpiece for political, economic, and social change in a state that typically addresses its most serious issues only after the federal courts require a response. Repeated failures to revise or replace the 1901 Constitution, beginning within less than a generation of its ratification, illustrate the difficulty of achieving broad reforms, particularly when issues of race cloud discussions about substantive progress. Meanwhile, the Legislature and local governments have resorted to, as of early 2003, 743 amendments to patch the Constitution and evade its restrictive language. As a consequence, Alabama's Constitution has ballooned to nearly 350,000 words, making it by far the nation's longest. One wag noted the document is about the length of *Moby Dick*, give or take a few whaling chapters.<sup>3</sup>

Since 1914, advocates for constitutional reform have arisen mainly from among the state's business progressives, with the exception of Governor James E. Folsom Sr., whose two administrations in the post-World War II years revived populist themes that had lain dormant since the 1890s. What separates present attempts from previous ones is that for the first time advocates managed to create a dialogue at the grass-roots level, mainly through the

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<sup>2</sup> *Birmingham News*, Jan. 28, 2003.

<sup>3</sup> Sam Hodges, "World's Biggest but Nobody's Proud," *Mobile Register*, Dec. 11, 1994.

founding of Alabama Citizens for Constitutional Reform. The non-profit organization and the movement it has helped inspire have enjoyed extraordinary coverage and support from the state's newspapers, in contrast to lukewarm interest in previous reform efforts. This article examines the present movement's birth and tactics--a subject that the author approaches from first-hand experience as an advocate and co-founder of ACCR. Further, it looks at prospects for reform under the new gubernatorial administration. But first, let us briefly review the history of the 1901 Constitution and the earlier efforts to revise or replace its provisions.

### Origin of the 1901 Constitution

Alabama has had six constitutions, all written by conventions. Historians have praised the first document, which accompanied the state into the Union, for providing universal manhood suffrage for whites and embodying the aspirations of Jacksonian democracy. The next three constitutions reflected the state's experiences in leaving the Union and its forcible reintegration during Reconstruction. The 1875 Constitution, in turn, represented the return of conservative Democrats to power with the strong support of white yeoman farmers, who favored minimal government and low taxes. The new document limited the state's taxing authority, reduced the number of state offices, cut public salaries, and prevented local governments from lending credit to or subsidizing private corporations. The 1875 Constitution even forbade the state from engaging in internal improvements—a reaction to development schemes during Reconstruction that had more than quadrupled the state's debt.

(With good reason, Governor Joseph E. Johnston, elected in 1896, called the 1875 document a “constitution of prohibition.”)<sup>4</sup>

African-Americans continued to vote after the 1875 Constitution signaled the return of conservative rule, but the removal of federal soldiers from the state made them easy targets for intimidation. In the Black Belt region, where many of the state’s plantations lay, local whites actually came to value African-Americans as voters--but only in a fictitious sense. Having regained control of the election machinery and having largely forced independent-minded blacks from politics, these whites developed ballot fraud into an art form. Their purpose no longer was to seize power from blacks, who made up about three-fourths of the plantation region’s population; they already had accomplished that goal. Instead, conservative Democrats wielded the Black Belt’s heavily black voting rolls as a club against other parts of the state, particularly those counties where the populations were mostly white and agriculture was dependent on small farms. As one observer explained to Booker T. Washington, the famous black educator at Tuskegee, “[The black man] not only does not vote where his vote is regarded as dangerous, but upon the contrary, his vote is usually

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<sup>4</sup> The standard work on this history remains Malcolm Cook McMillan’s *Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism*. (Chapel Hill: University of North Carolina Press, 1955). For a discussion of yeoman whites’ support of the 1875 document, see Samuel L. Webb, "Jacksonian Democrat in Postbellum Alabama," *Journal of Southern History*, LXII ( May, 1996): 54-55.

'counted' wherever it is needed, upon the side of [D]emocratic candidates. They would rather count the Negro *in* as a democrat than count him *out* as a [R]epublican."<sup>5</sup>

Fraudulent voting became particularly critical for the plantation interests when agrarian unrest swept Alabama, as it did in many other southern and western states, in the late 1880s. Caught between falling prices and rising costs, small farmers demanded the government's help to stabilize incomes and battle what they perceived to be greedy corporations, especially railroads. The movement split the Democrats into warring factions and eventually inspired the formation of the Populist Party. The agrarians' champion, Reuben Kolb, twice sought the governorship during the emotional and sometimes violent campaigns of 1892 and 1894. At one point, three different parties competed: the conservative Democrats, the Populists, and the Republicans.<sup>6</sup>

Faced with this threat to their power, conservative Democrats began toying with disfranchisement. Particularly worrisome to them was the agrarians' appeal across racial lines for class solidarity between white and black farmers. Conservatives in the Black Belt even considered surrendering their fictitious black majorities in return for stripping African Americans elsewhere from the voting rolls. Moreover, they reasoned that voting restrictions such as literacy and property requirements eventually would snare most poor whites as well,

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<sup>5</sup> Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina Press, 2001), 181. Perman quotes Edgard Gardner Murphy, a noted reformer.

<sup>6</sup> For a good summary of these events, see Samuel S. Webb, "The Populist Revolt in Alabama: Prelude to Disfranchisement," in *A Century of Controversy: Constitutional Reform in Alabama*, ed. Bailey Thomson (Tuscaloosa: University of Alabama Press, 2002):1-14.

thereby devastating the agrarians' electoral base. A legislative act passed in 1893 made voting more difficult, especially for poorly educated citizens, and thereby diminished the agrarians' resistance. Finally, in 1901 the conservatives rolled up sufficient majorities in the plantation districts to carry an election calling for a constitutional convention in Montgomery. They brazenly hoisted the banner of white supremacy to cover a political agenda that went far beyond race.<sup>7</sup> Advocates of this strategy were emboldened in 1898 when the U.S. Supreme Court allowed Mississippi's disfranchisement plan to stand on the dubious notion that the state had not targeted blacks per se when it imposed literacy tests and the payment of poll taxes upon citizens who wanted to vote.<sup>8</sup>

The convention's 155 delegates, while elected, came mostly from well-to-do circles of planters, lawyers, and businessmen. No African-Americans served in that body and certainly no women. There were some dissident voices, men who were concerned about the worsening plight of small farmers and workers. And there were even a few Republicans who challenged the notion that only one party--a party for white men only--should rule the state.<sup>9</sup> Leaders of the convention, however, offered no concessions nor did they hide their determination to establish white supremacy. "There is a difference...between the uneducated white man and

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<sup>7</sup> Harvey H. Jackson III, "White Supremacy Triumphant: Democracy Undone," in *A Century of Controversy: Constitutional Reform in Alabama*, ed. Bailey Thomson (Tuscaloosa: University of Alabama Press, 2002): 17-31.

<sup>8</sup> *Williams v. Mississippi*, 170 U.S. 213 (1898).

<sup>9</sup> For an analysis of how delegates voted and other useful data, see appendices in Sheldon Hackney, *Populism to Progressivism in Alabama* (Princeton: Princeton University Press, 1969), 335-61.

the ignorant negro," declared John B. Knox, a railroad lawyer, in his presidential address to the delegates. "There is in the white man an inherited capacity for government, which is wholly wanting in the negro."<sup>10</sup>

As the proceedings of the convention indicate, the framers meant to establish rule not just for whites but for only the right kind of white people. While quickly eliminating blacks' participation at the polls, the nation's most restrictive voting rules eventually would disfranchise an even larger number of poor whites. Suffrage provisions, for example, went beyond literacy and property holding to require that voters pay \$1.50 annually in poll taxes. The tax was accumulative until the age of 45--a feature that put the cost of voting at \$36, well beyond the means of many small farmers. The new rules also disqualified, under section 182, anyone from voting who had been convicted of a crime from a long list of offenses, which included vagrancy, a charge often used to keep blacks and poor whites in line, and miscegenation.<sup>11</sup> The convention's bosses did provide for a two-year grace period from complying with all of these new rules ostensibly so that Confederate veterans and their sons might register before the door closed.

Although some delegates considered themselves to be progressives, even justifying their votes for disfranchisement upon the argument that they were purifying democracy by removing unfit voters, the convention did not challenge the existing order of things. Representing mainly a coalition of planters and industrialists, its leaders wanted to preserve a weak state government and a docile and uneducated workforce. Thus the new document kept

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<sup>10</sup> *Official Proceedings of the Constitutional Convention of the State of Alabama, 1901*, Vol. I, 12.

<sup>11</sup> William H. Stewart, *The Alabama State Constitution: A Reference Guide* (Westport, Conn.: Greenwood Press), 106.

much of the anti-Reconstruction provisions of the 1875 Constitution, carrying forward, for example, its prohibition against the state's building roads, bridges, and docks, or making other internal improvements. Also preserved was the prohibition against local governments' entering into economic partnerships with corporations. Moreover, the proposed new constitution actually lowered taxes from the parsimonious levels permitted by the 1875 document. Real reforms, meanwhile, went begging. For example, the convention refused to provide better regulation of railroads. It also failed to correct the abusive system of leasing the state's convicts to private companies—a sore that would fester on the state's conscience until 1928.<sup>12</sup>

When the convention sent its handiwork to the voters for their ratification, opposition formed across racial lines. Even as the convention was under way, black leaders such as Booker T. Washington had petitioned delegates to treat their race fairly. Washington did not openly agitate against ratification. Instead he argued that restrictions, if applied fairly to both races, would make votes of educated, property owning blacks more valuable--rather than be tossed aside with others in fraud. As his leading biographer has noted, Washington was no great democrat.<sup>13</sup> Washington later would work behind the scenes, however, to have the new constitution's disfranchising provisions thrown out by the federal courts. Other blacks

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<sup>12</sup> For a good account of the consequences of such failures, see Douglas A. Blackmon, "From Alabama's Past, Capitalism Teamed With Racism to Create Cruel Partnership," *Wall Street Journal*, July 16, 2001. Blackmon reported that thousands of convicts died from abuse, while proceeds from their labor provided the state with one of its principal sources of revenue.

<sup>13</sup> Louis D. Harland, *Booker T. Washington: Making of a Black Leader, 1856-1901* (New York: Oxford University Press, 1972), 299-303.

adopted this strategy as well, although they were vociferous in their criticism of the document. On September 25, 1901, more than 100 African-Americans, united behind the leadership of A.N. Johnson, editor of the Mobile Press, met in Birmingham and called on poor whites to vote against the proposed constitution, since the latter group would also suffer disfranchisement under its suffrage article. The black protesters vowed to boycott the election and put their hopes in the U.S. Supreme Court.<sup>14</sup> White opponents of the proposed constitution, meanwhile, were far less likely to call for united action. "I am not speaking for the Negro in this campaign," retorted former Governor Johnston. "I am speaking for the white man, who can vote now because the old constitution said so, but next year only the Lord and three registrars will know what he can do."<sup>15</sup>

The 1901 Constitution's champions proved to be better organized and enjoyed the support of leading daily newspapers, who equated the proposed constitution with white supremacy and honest government. Proponents also had one last trump card to play. As totals came in on November 11, 1901, from the plantation districts, results showed the Democrats had outdone themselves in a final act of deceit. The "yes" vote was more than 95 percent in six Black Belt counties where African-Americans accounted for 75 percent of the population. Elsewhere, the proposed constitution lost, 76,263 to 72,389, in what was probably a more accurate reflection of the majority's will.<sup>16</sup> Despite the certainty of fraud, Governor William D. Jelks certified the new constitution on November 21, 1901.<sup>17</sup>

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<sup>14</sup> John Sparks, "American Negro Reaction to Disfranchisement, 1901-1904" (Master's Thesis, Samford University, 1973), 77-790.

<sup>15</sup> Quoted in McMillan, *Constitutional Development in Alabama*, 343.

<sup>16</sup> *Ibid.*, 350-51.

## Earlier Reform Efforts

The state's new charter achieved its framers' goal of eliminating any electoral threat to the privileged classes. By 1908, only two percent of black males could vote in Alabama. Less noticed was an even greater numerical decline over time of participation among whites, so that by 1940 only about a third of the state's adults were even registered to vote.<sup>18</sup> The Constitution also ensured a minimal role for government in keeping with the 1875 predecessor's many restrictions. Soon, however, governors began to chafe from the straightjacket on their power to address challenges of the twentieth century. The first to complain publicly was Emmet O'Neal, whose father had been governor before him. The younger O'Neal had served in the 1901 convention. He had argued for home rule to provide more autonomy to local governments, but the majority preferred to centralize power within the Legislature, where it could be more easily manipulated and controlled by conservative business and planter interests. O'Neal was elected governor in 1910 on the pledge to run the state like a good business, thereby reducing fraud and waste. Yet once in office, he recoiled from how few options the 1901 Constitution allowed for responsive government. In particular, he deplored how the state lacked money for schools. "The first and most important step to improve the educational conditions in Alabama would be the convening of a constitutional Convention to revise our present antiquated fundamental law," O'Neal said in

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<sup>17</sup> United States Constitution and the Alabama Constitution of 1901, Centennial Edition (2001)136-37.

<sup>18</sup> *Ibid.*, 352-54.

a speech to University of Alabama alumni in 1914.<sup>19</sup> He summarized his arguments in his annual report to the Legislature in 1915, declaring that the defects of the present document “are so numerous and radical, and so intermingled in the different sections” that only remodeling the entire Constitution could suffice.<sup>20</sup>

In the early 1920s, Governor Thomas E. Kilby, a progressive from the emerging industrial city of Anniston, likewise condemned the Constitution’s restrictive nature. To make government work more efficiently, he advocated naming a commission to recommend ways that a convention might rewrite the 1901 Constitution. Yet like O’Neal, Kilby left for others the great task of drafting what amounted to a new business plan for the state. Similar calls for reform came from two other sources before World War II. First, the Brookings Institution, in a report it prepared in 1932 at the request of Governor B.M. Miller, observed that no significant improvements in government could occur without rewriting many of the restrictive provisions of the 1901 Constitution. Later in that decade, a group of citizens who called themselves the Alabama Policy Committee began studying the Constitution and issuing papers about its defects. In 1938, the group called for a new constitution and then recommended a model document of its own. The efforts, however, produced no reforms.<sup>21</sup>

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<sup>19</sup> Emmet O’Neal, *Educational Reform and a New Constitution*, (Montgomery: Brown Printing Co.. 1914), 5-6.

<sup>20</sup> *Journal of the House of Representatives* (1915), 1:310-24.

<sup>21</sup> William H. Stewart, “Failure of Reform: Attempts to Rewrite the 1901 Constitution,” in *A Century of Controversy: Constitutional Reform in Alabama*, ed. Bailey Thomson (Tuscaloosa: University of Alabama Press, 2002): 50-52.

The most ardent champion for a new constitution proved to be not a business progressive but rather a spiritual heir of populism. Governor James E. Folsom had grown up listening to his father and uncle, an avowed populist, talk about politics. Voters in Coffee County, where they lived in the southeastern corner of the state, had been sympathetic to the agrarian revolt in the 1890s and opposed to the 1901 Constitution. As an adult, Folsom moved to Cullman County in northern Alabama to run his family's insurance business. There he found a similar political history. Thus Folsom's successful candidacy for governor in 1946 managed to span two distinct regions of the state and help unite them under a neo-populist platform.<sup>22</sup>

"Big Jim," who stood six feet and eight inches tall, campaigned with a string band called the Strawberry Pickers. They would warm up the crowds in school auditoriums or courthouse squares. Then Folsom would take the microphone and, holding up a corn shuck mop, promise to clean out Montgomery. He liked to talk about letting a "cool, green breeze" blow through the Capitol. In his rustic plain speech, he articulated what many people wanted, as attention shifted to peacetime and hopes for prosperity. He promised to build new roads and provide better schools. Old people would have small pensions, and teachers would earn

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<sup>22</sup> Two biographies of Folsom connect his populist roots with his political actions: George E. Sims, *The Little Man's Big Friend: James E. Folsom in Alabama Politics, 1946-1958* (Tuscaloosa: University of Alabama Press, 1985); and Grafton, *Big Mules & Branchheads: James E. Folsom and Political Power in Alabama*. The author also draws upon the reminiscences of his uncle, former state Sen. Fuller Kimbrell, who served as Folsom's co-campaign chairman in 1954 and as the finance director for the governor's second administration.

adequate pay. Above all, Folsom maintained that citizens should rule and not the plantation owners and industrialists who traditionally ran things in Montgomery.

Folsom shocked the political establishment, first by making the run-off election and then by defeating Lieutenant Governor Handy Ellis by 55,000 votes. Unlike many Southern politicians, Folsom did not appeal to racial prejudice, nor did he blame “outside agitators” for the state’s poor image and its low rankings on services such as public education. Rather, he tried to explain to people that Alabama had inflicted much of the backwardness on itself through its failure to embrace the nation’s democratic ideals.<sup>23</sup> True to his promise, Folsom brought constitutional reform to center stage. Unlike O’Neal and Kilby, he was prepared to commit political capital to this issue. Indeed, he declared in his inaugural address on January 20, 1947, “I am not afraid of too much democracy. I am afraid of what happens to people when they have too little democracy.”<sup>24</sup>

A few weeks later, Folsom called the Legislature into special session to demand it approve a constitutional convention. Only through rewriting the state’s fundamental charter, he argued, could citizens hope to achieve fair representation in place of the rotten borough system that had prevailed since 1901. Folsom complicated his efforts, however, by also asking the Senate to confirm three new trustees for the state’s land-grant college at Auburn. He intended to remove the powerful Agricultural Extension Service from political participation, an ambition that its leaders and their allies in the Alabama Farm Bureau were

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<sup>23</sup> Carl Grafton and Anne Permaloff, *Big Mules & Branchheads: James E. Folsom and Political Power in Alabama* (Athens: University of Georgia Press, 1985). 73-75.

<sup>24</sup> James E. Folsom, “Inaugural Address; January 20, 1947” in *Speeches of Gov. James E. Folsom, 1947-1950* (Wetumpka Printing Co., n.d.), 5.

determined to thwart. They worked through friendly senators to inflict a humiliating defeat upon Folsom.<sup>25</sup>

Nevertheless, Folsom repeatedly called lawmakers into special sessions to consider constitutional reform. His first objective remained reapportionment of the Legislature to break the stranglehold that the planter-industrialist coalition had enjoyed since 1901. In particular, Folsom wanted more representation for what he called the “piney woods and hill country,” areas that in the 1890s had revolted against rule by conservative Democrats. The Legislature’s refusal to reapportion itself according to population punished the former populist strongholds, while punitive voting rules continued to disfranchise most African-Americans and many poor whites. Folsom made some of his best arguments in a radio address on April 3, 1949: The main purpose of the 1901 Constitution, he told his listeners, was to deny the ballot to Alabama’s black citizens. But the document’s many voting restrictions, especially a punitive poll tax, had disfranchised poor whites as well. Thus the 1901 Constitution was profoundly racist and anti-democratic and contrary to the values that Americans had just fought to protect in World War II. Second, Folsom decried how the 1901 Constitution made no provision for allowing local people to govern themselves. Instead, legislators passed local laws for counties, often swapping favors among themselves to promote pet legislation. Indeed, the Constitution so distrusted government at all levels that it impeded progress and the creation of good jobs. Finally, the Constitution enshrined an unfair tax system that afforded certain groups special privileges, while denying the state adequate revenues. This practice violated the principle that each should pay according to his means. The Governor concluded his remarks by stating, “I believe that the progress we have made in

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<sup>25</sup> Sims, *The Little Man’s Big Friend*, 53-58.

the past 50 years will be many times surpassed during the half century ahead if we do not remain hide-bound by old-fashioned laws. And certainly the greatest single need toward that progress is a new constitution.”<sup>26</sup>

Folsom could not succeed himself in office, but the four years that intervened between his first and second terms left him more determined to finish what he had started in 1947. Re-elected without a run-off in 1954, he once again pushed for the long-awaited constitutional convention. Some legislators indicated they might go along if a convention could be limited to certain topics. They feared that the immensely popular Folsom might pressure the convention into allowing a governor to succeed himself. More indicative of the times, however, was their concern that a convention might weaken white supremacy.<sup>27</sup> Indeed, legislators from the Black Belt made no effort to hide the intent of the present voting laws. In opposing a bill to abolish the \$1.50 poll tax, Representative W.L. Martin of Greene County retorted that such action might “destroy the fundamental principles behind the constitution.” Noting that blacks outnumbered whites six to one in his county, he warned colleagues they might be sitting next to an African-American lawmaker if the poll tax were repealed.<sup>28</sup> The Alabama Supreme Court heightened such fears when it ruled that section 284 of the Constitution allowed for no restrictions on a convention.<sup>29</sup>

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<sup>26</sup> James E. Folsom, “Radio Address on the Need for a Constitutional Convention, April 3, 1949,” in *Speeches of Governor James E. Folsom, 1947-1950* (Wetumpka Printing Co., n.d.), 132.

<sup>27</sup> *Birmingham News*, April 14, 1954.

<sup>28</sup> *Montgomery Advertiser*, May 5, 1955.

<sup>29</sup> Opinion of the Justices, 81 So. 2<sup>nd</sup> 678 (1955); *Birmingham News.*, July 12, 1955.

Folsom called the Legislature to another special session on January 3, 1956, and again he asked for a convention.<sup>30</sup> The issue of school desegregation, however, quickly overtook his reform agenda. On January 19, the Legislature passed, with just four dissenting votes, a resolution declaring the U.S. Supreme Court's 1954 decision *Brown v. Board of Education* to be "null, void and of no effect." Folsom reacted with disdain, calling a press conference to scold the legislators for ignoring constitutional reform and for being obsessed with the race issue.<sup>31</sup> His political strength, however, which had been so evident the year before, quickly began to dissipate in relation to his continued moderation on race.

Emotions boiled over on February 3 when Autherine J. Lucy, an African-American, began attending classes at the University of Alabama. A riot ensued in Tuscaloosa, and on February 6 the Board of Trustees suspended its first black student, ostensibly for her own safety. Folsom's failure to act decisively during this crisis, coupled with many white Alabamians' anger over his lack of enthusiasm for resisting civil rights, caused him to suffer a humiliating loss the following May when Alabama voters overwhelmingly rejected his bid for a place on the Democratic National Committee. His crusades over, Folsom limped through the rest of his term in an alcoholic daze.<sup>32</sup>

Constitutional reform would be revived a decade later by a lawyer from Decatur named Albert Brewer. He had served in the Legislature during the second Folsom administration and went on to be speaker of the House. In 1966 he won election as lieutenant governor. Though forced to operate within the state's rigid segregationist system, Brewer

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<sup>30</sup> *Birmingham News*, Jan. 3, 1956; *Montgomery Advertiser*, Jan. 4, 1956.

<sup>31</sup> *Birmingham News*, Jan. 21, 1956; Sims, *The Little Man's Big Friend*, 183-84.

<sup>32</sup> Sims, *The Little Man's Big Friend*, 178-88.

wanted a new constitution. Like Folsom, he chafed at the planter-industrial coalition's control of the state's politics, to the detriment of his native Morgan County on the Tennessee River. Brewer got his chance when Governor Lurleen Wallace, a surrogate in office for her pugnacious husband, George, died of cancer on May 7, 1968. Upon succeeding her, Brewer began pursuing a progressive agenda, which included a new constitution.

He advocated a constitutional commission and in 1969 asked the Legislature to adopt a suitable plan for proceeding. After considerable wrangling within that body over how to appoint a commission—including one suggestion that all 140 legislators should serve—a conference committee finally produced an acceptable method. It called for a commission of twenty-one members, with the governor appointing fourteen of them. In signing the new legislation, Brewer put the full support of his young administration behind what would be the most ambitious effort since 1901 to draft a new constitution. He appointed Conrad Fowler, a respected probate judge from Shelby County, as chairman of the group and advised commissioners that they should concentrate on those areas of the old document that most needed reform. The group assembled a staff of experts and began deliberating.<sup>33</sup>

As the new commission worked, Alabama's politics continued to boil over racial integration—and over George Wallace's ambitions. Wallace told Brewer that he would not oppose the latter's election to a full term, but the former governor reneged because he needed access to high rollers who would contribute to his next presidential campaign in return for lucrative state contracts. Once in the race, Wallace returned to the segregation issue, which had propelled him to office in 1962, and he excoriated national politicians, federal

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<sup>33</sup> William H. Stewart, Jr., *The Alabama Constitutional Commission: A Pragmatic Approach to Constitutional Revision* (Tuscaloosa: University of Alabama Press, 1975), 6-12.

bureaucrats, and others whom he accused of taking away control of local schools. Most of the daily newspapers, however, threw their support behind Brewer, and the first primary ended with Wallace trailing. Shocked at what appeared to be a repudiation of his politics, Wallace and his supporters resorted in the second primary to a bagful of dirty tricks so outrageous that even the nation's press took notice. So that no one missed the point, Wallace's campaign newspaper warned that blacks were about to seize control of the state. The appeal to old prejudices worked, thereby ending Brewer's promising career as a reformer.<sup>34</sup>

Though orphaned and hardly a priority of the Legislature, the Brewer commission pressed on with its work. It presented its final report on May 1, 1973, along with its proposed revision of the 1901 Constitution. The changes it recommended for the Legislature to consider recognized seven basic principles for reformers to follow. One called for removing “undue and unnecessary restrictions on the power of the Legislature.” Annual sessions were viewed as one step toward this goal. Another principle advocated vesting more authority in the governor, in recognition of greatly increased responsibilities. Likewise, the state's court system needed modernization. One particularly significant feature was a proposed new article that would grant home rule to local governments, even to the point of allowing counties to operate under charters ratified by their electors. If adopted, this model for home rule would

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<sup>34</sup> Anne Permaloff and Carl Grafton, *Political Power in Alabama: The More Things Change* . . . (Athens: University of Georgia Press, 1995), 291-99; interview with Albert Brewer, Montgomery, Alabama, Dec. 12, 2002.

have tracked efforts in other southern states to provide for local democracy on issues such as growth management, environmental protection, and exercise of police powers.<sup>35</sup>

Wallace and the Legislature took little notice of the commission's recommendations, with a couple of notable exceptions. Legislators did approve and offer to voters in 1973 an amendment to rewrite the 1901 Constitution's judicial article. With the electorate's approval of what became amendment 328, Alabama replaced its chaotic and often ridiculed judicial system with one that quickly earned praise.<sup>36</sup> The leadership of Chief Justice Howell Heflin, who went on to become a U.S. senator, demonstrated that any reform, regardless of how well-intentioned, required a strong champion to overcome entrenched opposition.<sup>37</sup> Two years later, voters approved amendment 339, which provided for annual sessions of the Legislature. Reformers hailed this action for providing legislators with more flexibility to address the state's problems.<sup>38</sup>

Throughout these discussions, reformers had assumed that the Legislature could revise the 1901 Constitution or even draft a new document to replace it, subject to voters'

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<sup>35</sup> *Proposed Constitution of Alabama: Report of the Constitutional Commission, May 1, 1973* (Reprinted by Samford University Press, 2002), iii-ix .

<sup>36</sup> Tony A. Freyer and Paul M. Pruitt, Jr., *Reaction and Reform: Transforming the Judiciary Under Alabama's Constitution, 1901-1975*, 53 Ala. L Review, 77-79 (2001).

<sup>37</sup> For a discussion of Heflin's tactics in securing this reform, see John Hayman, *A Judge in the Senate: Howell Heflin's Career of Politics and Principle* (Montgomery: NewSouth Books, 2001), 172-86. For background on the Alabama court system at the time of this reform, see G. Alan Tarr and Mary Cornelia Aldis Porter, *State Supreme Courts in State and Nation* (New Haven: Yale University Press, 1988), pp. 69-123.

<sup>38</sup> Stewart, *The Alabama State Constitution*, 173. The original provision in 1901 restricted the Legislature to quadrennial meetings.

ratification. Indeed, they considered such a proposal from Governor Fob James, who succeeded Wallace in 1979. The Senate approved a proposed constitution he offered, but the House refused to go along. In 1983, the Legislature under the leadership of Lieutenant Governor Bill Baxley, who presided over the Senate, recompiled the 1901 Constitution and offered some improvements. The proposed document already was ready for submission to voters when a last-minute challenge, led by Rick Manley, a senator from the Black Belt region, persuaded the Alabama Supreme Court to declare Baxley's method to be unconstitutional. The court's majority narrowly interpreted section 286 of the Alabama Constitution to mean that only a convention could draft a new document. The Legislature could not simply offer what amounted to a new document under the guise of amending the Constitution. Instead, the Legislature had to proceed with revision on a piecemeal basis, although presumably it could offer more than one article at a time to voters.<sup>39</sup>

## The Current Reform Movement

### The Need for Reform

The case for replacing the 1901 Constitution remains overwhelming, even as the history of reform provides a sad story of frustration. The document suffers from at least three serious defects:

First, the Constitution places such severe restrictions on government that it often fails to meet the demands of a modern society. Stark evidence of this deficiency can be found in studies published in 1999 and 2001 by *Governing* magazine, in collaboration with the

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<sup>39</sup> *State v. Manley*, 441 So. 2d 864 (1983).

Maxwell School of Syracuse University. These studies ranked state governments' performance in various areas. In both studies, Alabama placed last.<sup>40</sup>

Second, the Constitution is profoundly distrustful of democracy, especially when exercised at the local level. In fact, Alabama is the only southeastern state that denies its counties the authority to plan for growth. Neighboring states allow counties to pass their own laws, provided they are consistent with statewide policy. By contrast, about half of the Alabama Legislature's agenda is devoted to issues of local interest, while lawmakers often ignore larger statewide questions.<sup>41</sup> Local governments often have little choice but to seek a change in fundamental law to achieve some needed action at home, such as pest control or even the removal of dead farm animals. Every critic of the Constitution has his favorite amendment to evoke a risible response to the document's statutory nature, but local governments depend upon such changes for authorization to do their essential work.

Finally, the 1901 Constitution enshrines an unfair and ineffective tax system. Indeed, a study published in the February 2003 issue of *Governing* ranked the system among the nation's bottom three for its unfairness.<sup>42</sup> Because two of the major tax sources--property and income--are shielded by the Constitution and thereby difficult to change, governments and school boards in Alabama must rely to a dangerous degree upon regressive and fickle sales

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<sup>40</sup> Results from the studies may be found in the February 2001 issue of *Governing* or on the magazine's Web site at <http://www.governing.com/gpp/2001/gp1glanc.htm>.

<sup>41</sup> *Huntsville Times*, June 21, 2000.

<sup>42</sup> *Tuscaloosa News*, Feb. 4, 2003; "Tax Laws Make Alabama a Laughingstock Again," editorial, *Ibid.*, Feb. 5, 2003. The full report can be found at *Governing's* Web site at <http://governing.com/gpp/2003/gp3intro.htm>.

taxes. Therein lie the seeds of the financial crisis that Riley, the new governor, inherited. On the eve of their regular session, lawmakers learned they would need \$500 million more than their experts had forecast to maintain present levels of spending and meet rising costs for pension and health care for public employees.<sup>43</sup>

Compounding the state's present financial difficulties is the practice of designating, either by constitutional or statutory law, how nearly 90 percent of state dollars must be spent. By comparison, Mississippi earmarks less than 30 percent of its public dollars, and North Carolina only 15 percent. The U.S. average is about 22 percent.<sup>44</sup> As a consequence of Alabama's extreme reliance on earmarking, the Legislature may not shift dollars from the \$4.2 billion education fund to the much smaller general fund to relieve, say, crowding in prisons. The Constitution earmarks revenues from the income tax for teachers' salaries, and the powerful Alabama Education Association ferociously guards this source. Besides, Alabama's public school system requires, by conservative estimates, at least an additional \$1 billion to achieve the goals that its board desires.

A modern constitution, by contrast, would establish broad principles under which government would operate, while not imposing restrictions to impede good lawmaking. Certainly, it would recognize that local problems need to be solved at home and not in Montgomery. While protecting citizens' rights, it would organize government into efficient branches. To provide for revenues, the constitution would need only to authorize certain types of taxation. By contrast, the present document is a virtual tax code in itself, specifying

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<sup>43</sup> *Birmingham News*, Feb. 28, 2003.

<sup>44</sup> "How Alabama Taxes Compare," Report by the Public Affairs Research Council of Alabama, No. 42 (Spring 2001), which is available at <http://parca.samford.edu>.

provisions right down to assessment rates for motor vehicles.<sup>45</sup> Finally, a modern constitution would speak to citizens' aspirations for their democracy. The U.S. Constitution is the model for the world because it embodies and articulates the belief that free people can govern themselves in a republic. That achievement contrasts with the Alabama's Constitution's shameful attempt to roll back democracy and freeze into place conditions that discouraged people from becoming educated, productive citizens.

### The Process of Reform

Such arguments received renewed attention in 1994, when the *Mobile Register* published a special report on the Alabama Constitution titled "Sin of the Fathers."<sup>46</sup> Motivation for this considerable investment of staff energy came from earlier investigations into persistent problems that bedeviled the state, particularly in the areas of inadequate educational funding and inefficient government at both state and local levels. The report, published in a tabloid format, provided in-depth explanation on how the document exacerbated these and other problems. An accompanying series of editorials, which called for a constitutional convention, became a finalist for the Pulitzer Prize. The newspaper's work inspired a conference in Montgomery in December 1995, attended by scholars, business leaders, politicians, and journalists. After hearing speeches from political leaders and papers by scholars and legal experts, the participants held a mock convention in the Alabama

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<sup>45</sup> Alabama Constitution of 1901. Amendment 373 of section 216, provision (a).

<sup>46</sup> *Mobile Register*, December 11, 1994.

House's chamber. Later, the event's sponsors published the conference's proceedings.<sup>47</sup> They also sponsored a statewide town meeting, televised by Alabama Public Television and moderated by David Mathews, president and chief executive officer of the Kettering Foundation. Panelists in various cities aired their views, pro and con, on the merits of constitutional reform.

Unfortunately for the reformers, however, the election of Fob James to his second term as Alabama's governor--this time as a Republican instead of a Democrat--put on hold any hopes for leadership on this issue. James not only had lost interest in rewriting the 1901 Constitution by this time but even showed hostility toward reform in general. For example, he expressed pride that Alabama had the nation's lowest taxes per capita. However, scholars such as Wayne Flynt, a distinguished history professor at Auburn University, noted the correlation between low taxes among Mississippi, Alabama, Louisiana, and Arkansas and with the low standings in certain key measures of quality of life, such as children living in hunger, births to teen-agers, low per-capita incomes, and high school dropouts.<sup>48</sup> Meanwhile, the Constitution continued to swell with new amendments, most of them addressing local matters.

Lieutenant Governor Don Siegelman trounced James from office in 1998, but the Democrat did not immediately embrace reform either. His failure to win voters' approval for a state lottery left him chastened to the point that he announced in early 2000 that he would not tilt at windmills such as constitutional and tax reform. Siegelman's ill-chosen words immediately inspired the *Birmingham News* to dub him "Don Quixote" and to ridicule his

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<sup>47</sup> The proceedings may be found on the ACCR Website at

[http://www.constitutionalreform.org/symposium/symp\\_papers.html](http://www.constitutionalreform.org/symposium/symp_papers.html).

<sup>48</sup> Birmingham News, January 18, 1998.

timidity in face of growing problems at the state level.<sup>49</sup> When Siegelman finally did support reform a year later, many citizens remained skeptical of his sincerity. The *Mobile Register's* cartoonist characterized his new enthusiasm as that of a convert on his political deathbed.<sup>50</sup>

Leadership for constitutional reform, meanwhile, surfaced among the citizenry when the West Alabama Chamber of Commerce in Tuscaloosa held a rally on April 7, 2000, to put the issue on the state's agenda. Former Governor Brewer and William Winter, a former reform-minded governor of Mississippi, were among the speakers, along with historian Wayne Flynt at Auburn, whose research and writing had pricked the state's conscience for years. Well attended and covered by the press, the rally brought back memories of old-style politics with its string music, food, and impassioned speeches. More important, the event marked the beginning of a statewide organization that would devote its energies to achieving the reformers' goals. The rally's participants confirmed Dr. Thomas E. Corts, president of Samford University in Birmingham, as the new chairman, while designating a dozen citizens to guide the new organization's formation.<sup>51</sup>

Alabama Citizens for Constitutional Reform (ACCR), the new reform group, could count on something new: Support was growing among business leaders for fundamental improvements in how Alabama governs itself. The old legislative coalition of Birmingham-area industrialists and large landowners from the Black Belt had disintegrated by the early

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<sup>49</sup> See, for example, "The Constitution, Again Another Chance to Build a New Windmill," editorial, *Birmingham News*, Sept. 25, 2000.

<sup>50</sup> *Mobile Register*, March 27, 2001.

<sup>51</sup> The author had the pleasure of serving on the chamber's steering committee and later on ACCR's founding group.

1960s, as urban interests diverged significantly from the old status quo on issues such as reapportionment and public services.<sup>52</sup> Moreover, urban business leaders came to recognize that they needed a well-educated workforce more than they needed a miserly tax system and weak government. By the 1990s a new generation of business leaders had emerged, inspired by examples such as William Smith, an heir and executive at Royal Cup Coffee who organized and led the state's most prominent educational reform group, A Plus. Ammunition came from carefully worded but forceful reports issued by the Public Affairs Research Council, a small think tank in Birmingham that provided citizens and lawmakers with independent analysis of the state's problems.

ACCR's organizers recruited a diverse group of leaders and civic activists for its board. Operating at first from the author's spare bedroom, the non-profit group gradually built membership and began issuing newsletters and holding public events. In January 2001, it opened a small office in Montgomery and hired a young consultant named Bill Smith, who had experience in managing Republican political campaigns. He helped refine ACCR's message and create a legislative agenda for 2001.

Crafting a legislative strategy was essential because the Legislature must initiate and approve any constitutional changes. By a three-fifths vote of each legislative chamber, it may submit proposed constitutional amendments to voters, as provided in section 284. Section 286 authorizes a majority of all members in each legislative chamber to call a constitutional convention. The Legislature decides how delegates will be selected and how the convention will organize itself. Once adopted, the proposal for a convention must be submitted to the electorate for approval.

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<sup>52</sup> Permaloff and Grafton, *Political Power in Alabama*, 137-39.

Leadership in the House of Representatives had tried on several occasions prior to 2001 to revise the 1901 Constitution on an article-by-article basis, beginning with the more outrageously antiquated provisions, but had succeeded only after federal legislative or court action already had nullified the original language. Thus in 1996 Amendment 579 replaced the lengthy Article VIII, which contained the infamous restrictions on voting. Four years later, voters ratified Amendment 667, which removed the prohibition on interracial marriages found in section 102. But progress stalled after those revisions. Representative Jack Venable of Tallassee, chairman of the House's Rules Committee, proposed in 2002 to amend six more articles. His target was outdated language, such as found in Article XIII, which authorizes state banks to circulate bills as money and to redeem them in gold or silver, and Article II, which inaccurately describes the state's boundaries. Opponents, however, read dark conspiracies into his proposed changes. The House approved the amendments, but the Senate either refused to act or added provisions that Venable would not accept.<sup>53</sup>

Despite such vocal protests against even a cleanup of constitutional language, public opinion polls consistently showed strong support for revision among citizens at large. The great majority of respondents who supported reform favored the convention method. For example, ACCR employed Washington pollster Jan van Lohuizen to conduct a scientific survey of six hundred registered voters from March 3 through 6, 2002. He found that two-

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<sup>53</sup> For a summary of action, see Bailey Thomson, "Alabama's Politics Can Be Peculiar," *Mobile Register*, April 28, 2002.

thirds of the respondents were aware of reform efforts. Of that group, 58 percent favored writing a new constitution, while only 12 percent trusted the Legislature to do the job.<sup>54</sup>

In hopes of encouraging the Legislature to push reform higher on its agenda while addressing the fears that many lawmakers expressed about holding a convention, ACCR in 2001 supported an alternative approach proposed by Representative Ken Guin, chairman of the House Elections Committee. He proposed an amendment that would permit the Legislature to submit a new constitution for voters' approval. In effect, this amendment would nullify the Alabama Supreme Court's 1983 *Manley* decision,<sup>55</sup> which limited legislative reform to no more than a few articles at a time. Guin was unable to generate sufficient interest among his House colleagues to pass the proposal, although he did manage to bring the issue to the floor for debate. The majority of members clearly were not ready yet to take responsibility for drafting a new constitution themselves, nor were they disposed to delegate that authority to a citizens convention.<sup>56</sup>

Still, reform continued to gain attention, as ACCR built a bipartisan base that managed to transcend the bitterness between Democrats, who retained a comfortable majority in both houses, and Republicans, who continued to smart over how the majority party in 1999 had prevented their colleague, Steve Windom, from exercising the traditional powers of lieutenant governor as presiding officer of the Senate. ACCR gained statewide attention in April 2001 when Siegelman publicly endorsed its mission at a rally in

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<sup>54</sup> Memorandum to the author from Bill Smith on behalf of Alabama Citizens for Constitutional Reform, Aug. 20, 2002.

<sup>55</sup> See footnote 38 for reference.

<sup>56</sup> Birmingham News, March 21, 2001.

Montgomery. Later that year, he summoned the spirit of Jim Folsom in calling for a convention to write a new constitution. He said school children would be the main beneficiaries once a new document lifted restrictions on how communities taxed themselves for education. At the time, the state's educational system was in the throes of "proration"—a reduction in spending that the 1901 Constitution mandates when revenues fall short of the budget's expectation. Siegelman vowed that schools would not suffer such a fate again under his watch if he could help it—a stance that drew praise from editorialists.<sup>57</sup>

ACCR continued to hold rallies and forums around the state through its strategy of educating and motivating voters. Donations from public-minded corporations, along with dues and contributions from about 1,500 members, allowed the organization to hire a small staff, with attorney Kathy Bowden as director. This emphasis on organization sharply distinguished the present movement from previous efforts. Although five governors and a lieutenant governor had advocated constitutional reform and on three occasions their efforts had even inspired proposed new documents, no citizens group had operated independently to build grassroots support for change. Indeed, this growing bipartisan movement belied the scoffing of some legislators and special interests that no one cared about a new constitution. It also triggered intense reaction from groups claiming to represent conservative Christians. Opponents began to crank up Web sites and issue press releases, warning that a new constitution could lead to higher taxes, anti-religious actions, or worse. The more outlandish and conspiratorial their responses, the more likely these opponents were to appear alongside the reformers on talk shows and during two televised statewide town meetings on

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<sup>57</sup> See, for example, "Siegelman's Call: Governor Can Take Action on Constitutional Reform," editorial, *Birmingham News*, Oct. 26, 2001.

constitutional reform. Yet opposition among certain conservative Christians has been matched by equally intense coverage of an evangelical law professor's indictment of Alabama's tax system. Susan Pace Hamill, in her thoroughly documented and theologically couched arguments, condemned the system for violating Judeo-Christian teachings by oppressing the poor for the benefit of the wealthy. In her commentaries for newspapers and frequent speeches, Hamill asserted that constitutional reform and tax reform are inseparable and must be pursued vigorously to redeem the state from its sinful practices.<sup>58</sup>

Although the state's press covered opposition groups, sometimes providing them with more attention than their numbers might warrant, reporters and editorial writers began conducting their own investigations of the constitutional issues. In the process, their remarkably thorough work helped make the complex history and issues of constitutional reform accessible to newspaper readers, while moving the subject higher on the public agenda. In this aspect of public attention, the present experience differed remarkably from previous efforts to achieve reform. In the early 1970s, for example, the state's newspapers showed little interest in the work of Brewer's commission, in part because it dragged on for more than three years, often with little enthusiasm among some of its members. A generation earlier when Folsom had repeatedly brought the Legislature into special sessions to call a convention, the dailies had focused more upon his political and personal failures rather than upon their obligation to explain the issues behind constitutional reform. By contrast, Alabama's newspapers began in 2000 publishing carefully researched reports and issuing

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<sup>58</sup> Susan Pace Hamill, "An Argument for Tax Reform Based on Judeo-Christian Ethics," *Alabama Law Review*, Vol. 54, No. 1 (Fall 2002): 1-112; Shailagh Murray, "Divinity School Article Debates Morality of Alabama Tax-Code," *Wall Street Journal*, Feb. 12, 2003.

thunderous editorials for change. This massive body of journalistic work amplified ACCR's message to an extraordinary volume, while providing independent evidence in support of reform.<sup>59</sup> Meanwhile, the attention lavished on constitutional reform helped inspire renewed scholarly interest in the subject. The *Alabama Law Review*, for example, devoted an entire issue in the fall of 2001 to constitutional reform.<sup>60</sup>

Among the principles that ACCR had promulgated in 2001 was a strong preference for a convention of citizen delegates to draft a new constitution. (The board, however, did not rule out pursuing revision through an article-by-article basis, preferring to emphasize the larger goal of reform over any particular methods.) With the help of Professor Howard Walthall and former Governor Brewer at the Cumberland Law School at Samford University, ACCR's staff and legislative specialists translated this preference into a resolution calling for a convention. Sympathetic lawmakers introduced the resolution in the 2002 regular session.<sup>61</sup>

The legislation offered the following provisions:

-- During the next general election, voters would decide whether to call a constitutional convention.

-- If they said yes, then seven months later, they would elect 105 delegates from the newly apportioned House districts. These districts would ensure a fair representation of minority voters.

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<sup>59</sup> A perusal of ACCR's Web site, which has links to much of this reporting and commentary, reveals the intense interest of the press.

<sup>60</sup> *Alabama Law Review*, Volume 53, Fall 2001, Number 1.

<sup>61</sup> HJR 152 of the 2002 Regular Session of the Alabama Legislature.

-- Delegates would convene the following August to organize and elect a president.

Afterward, they could adjourn to wherever they saw fit to conduct their business. They would be fairly compensated for up to 120 days. They would also have the support of the legislative staff to conduct their work.

--The convention would present its document to the voters for ratification no sooner than 90 days after the work was finished. This interim would assure voters ample time to get copies of the proposed constitution and study it.

-- If voters approved, the new constitution would take effect the following January 1.

In offering its plan for calling a convention, ACCR meant to provide the Legislature with a blueprint rather than insist that the legislation be accepted or rejected in its original form. In retrospect, the failure to consult with more legislators beforehand, particularly members of the black caucus, left opponents with an excuse to dismiss the legislation without giving it full consideration. While Siegelman publicly endorsed ACCR's legislation and substituted it for a convention plan he had announced earlier, the governor's office proved to be of little help in securing legislative support. Nevertheless, ACCR's plan did survive its first committee hearing, a raucous affair in which opponents of every persuasion testified along with advocates for change. But the bill failed on a voice vote on the House floor.<sup>62</sup>

ACCR did see the passage without opposition of its proposed amendment to clarify confusion over interpretations of section 286 and guarantee that voters would have final say on any new constitution. This proposal sought to quell fears, fanned by opponents of reform, that a convention might run wild and saddle citizens with unpopular provisions and higher

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<sup>62</sup> Huntsville Times, March 24, 2002.

taxes. In the general election of November 4, 2002, the measure, now Amendment 714, passed with an approval rate of 81 percent – by far the largest margin of that election.

The arguments offered by opponents to ACCR's carefully drawn plan for a convention deserve some comments here, even as Riley has chosen to pursue reform through amendments to the present document.

First, legislators expressed fear that special interests would dominate a convention. ACCR's response was that its proposed legislation imposed some of the tightest restrictions possible under present law on political contributions and gifts. For example, a supporter could contribute only \$100, either in money or services, to a candidate for delegate. A candidate could accept no gift, not even a cup of coffee. By contrast, Alabama law imposes no limit on how much an individual or a political action committee may donate to someone running for the Legislature. Legislators even refused to end the practice of political action committees' transferring money back and forth to one another, thereby obscuring the sources of political contributions. Equally insidious is that a lobbyist may spend up to \$250 per day on each legislator--plying him or her with meals, trips and other gifts--without having to report the expenditure to the state Ethics Commission.

Second, some African-American legislators argued that minorities would not be sufficiently represented in a convention, particularly if the elections were non-partisan. ACCR's plan called for electing 105 delegates on a non-partisan basis from newly drawn House districts because their boundaries already had passed muster with the federal courts as fairly representing Alabama's racial composition. In ACCR's view, electing delegates on this basis would virtually guarantee a strong minority presence in a convention, just as the districts assure such representation in the Legislature. Under the plan, the remaining

delegates would be the twelve lawmakers whom the Legislature elects every four years to serve on a council that conducts business between sessions. Without being large enough to dominate the proceedings, this group would bring to the convention valuable experience in the practical aspects of government. Four of the elected council members in 2002 were African-Americans. Such arguments, however, failed to quell the objections, although many black legislators assured ACCR's leadership that they favored constitutional reform.<sup>63</sup>

Finally, certain legislative leaders insisted, mostly in private conversations, that drafting a constitution was too complicated to entrust with citizens elected as convention delegates. Their concerns, however, did not explain why the same voters, who appeared to be quite competent when electing legislators, could not be trusted to select delegates for a convention. This attitude on the part of lawmakers was in stark contrast to sentiments expressed in public opinion polls and letters to the editor that voters actually trusted citizen delegates far more than legislators to draft a new constitution. ACCR's plan actually prohibited legislators and other statewide elected officials from running as a delegate on the grounds that responsibility for writing job descriptions for such elected officials was best left to the employers themselves: the citizens.

Whatever their reasons for opposing a convention, legislators sidestepped the central issue: Who deserves the final say in Alabama? Article I, section II, of the Alabama Constitution vests all political power in the people. They have an "inalienable and indefeasible right to change their form of government in such manner as they may deem

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<sup>63</sup> The author attended a lively session with the Black Caucus on Dec. 4, 2002, in Tuscaloosa, along with ACCR Chairman Thomas E. Corts, and heard these concerns firsthand, along with expressions of support for the broader mission of reform.

expedient." But for now, at least, it appears that the people will have to exercise this right indirectly through the Legislature, which shows no inclination to surrender any of its considerable prerogatives to a convention of elected delegates.

With the 2002 legislative session over, politics focused upon the primaries and general elections of 2002. Siegelman announced that he would campaign for a constitutional convention and launched a series of town meetings around the state to discuss this issue and others. As the campaign progressed, however, Siegelman said less about constitutional reform and focused instead on condemning large companies for escaping taxation through loopholes in a new state corporate tax law—a law that Siegelman earlier had blessed. With this tactic, he resorted to a populist theme of condemning big business for the state's inadequate revenues, ignoring that middle-class homeowners were among the major beneficiaries of the regressive tax structure. Congressman Bob Riley, meanwhile, won the Republican primary and offered himself as a progressive alternative to Siegelman. Riley targeted financial scandals that the *Mobile Register* and other newspapers had uncovered within the Siegelman administration as evidence that Alabama needed new leadership. Moreover, he announced that he would run government in keeping with sound business practices and that he would immediately begin addressing chronic problems in the tax system and the 1901 Constitution. Riley rejected a constitutional convention as the best means for achieving reform, preferring instead to appoint blue-ribbon commissions to recommend changes.

Already, ACCR had anticipated the need to move beyond principles and provide a blueprint for substantive changes to the Constitution. Former Governor Brewer suggested at the executive committee's meeting in December 2001 that ACCR revive the idea of asking a

diverse group of citizens to recommend reforms. ACCR's board accepted the challenge and then raised money through its members and private donors to support the work. The board appointed twenty-two commission members largely from outside its organization, drawing on dozens of nominations from around the state. In a highly publicized press conference in Montgomery, ACCR's chairman, Thomas Corts, introduced Secretary of State Jim Bennett, a long-time advocate for reform, as the commission's new chairman. The author agreed to serve as the group's volunteer educational director, and Professor Walthall at the Cumberland Law School became its volunteer technical director. They assembled two dozen technical advisers who agreed to draft papers on various issues and present their findings at the commission's statewide hearings. This group of experts included political scientists and legal scholars, as well as retired justices of the Alabama Supreme Court.

The commission held its organizational meeting on July 15, 2002, at Huntsville's Constitutional Village--the site of a convention that wrote Alabama's 1819 Constitution. Several hundred citizens turned out to view the proceedings, and more than forty people spoke to the commission members on whether Alabama needed a new constitution. Most agreed that it did. Similar events occurred later in 2002 in Birmingham, Mobile, and the Auburn/Opelika area.

The commission divided into five committees to make recommendations in the areas of local democracy, taxation and indebtedness, economic development, education, and government organization. The committees met independently and, in many cases, conducted their own research to supplement that provided by the experts. Each committee chairman, in turn, participated in drafting the commission's final report and submitted it to Chairman Corts and the ACCR board on January 16, 2003—just four days before Riley took his oath of

office. Newspapers quickly publicized the report and their editorial boards weighed in with thoughtful editorials, generally endorsing the commission's conclusions.<sup>64</sup>

The timing of this work proved to be propitious indeed. Once in office, Riley kept his campaign promise and announced the appointment of his own commission to undertake selected revisions of the 1901 Constitution. He also journeyed to Huntsville to connect symbolically with the state's 1819 constitutional convention, which produced a model document for its time. With his administration's first executive order, Riley announced that Secretary Bennett would chair his commission, just as he had led the ACCR group. The vice-chairman would be Lenora Pate, an energetic lawyer and activist from Birmingham. Thirty-three other citizens with diverse backgrounds and political views filled the commission's ranks. The group's assignment was to propose amendments that would (1) bring limited home rule to Alabama's counties, (2) strengthen the governor's veto powers, (3) eliminate earmarking of revenues, (4) recompile the 1901 Constitution into a more user-friendly document, and (5) impose a three-fifths majority vote in the Legislature for any tax increases.<sup>65</sup> The author of this article served as co-chairman of the home rule committee.

The Governor's call to action on the first three items closely tracked the ACCR commission's recommendations. The last two items, however, concerned many reformers. They feared that recompilation might become an excuse for making few if any substantive changes. Simply removing dead language and organizing local amendments in some coherent

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<sup>64</sup> *Huntsville Times*, Jan. 17, 2003; *Mobile Register*, Jan. 24, 2003; "A Solid Foundation: Constitution Group's Report Not Perfect, but Great Start," editorial, *Birmingham News*, Jan. 19, 2003; "Document Outlines Road to Reform," editorial, *Tuscaloosa News*, Jan. 22, 2003.

<sup>65</sup> *Montgomery Advertiser*, Jan. 23, 2003; *Birmingham News*, Jan. 24, 2003.

fashion would leave the status quo untouched. Moreover, the Public Affairs Research Council and the Legislature's research staff already have offered similar recompilations as a convenience to lawmakers and citizens. Opponents of the three-fifths rule, meanwhile, deplored the prospect of erecting yet another constitutional barrier to achieving tax fairness. Supporters of the measure countered that it was necessary to guard against runaway taxation once tax reform removed other constitutional barriers. Despite such reservations, the commission voted on March 14 to approve the work of its five committees and send the recommendations to the Governor.<sup>66</sup>

Earlier, Riley had indicated he would ask another blue-ribbon group to address tax reform. His action had precedent, although not one to inspire much confidence. Twice in the early 1990s, similar blue-ribbon commissions returned sensible suggestions for broadening the state's tax base and lessening its dependence on regressive taxation, but the Legislature refused to act.<sup>67</sup> In 1991 the *Birmingham News* won a Pulitzer Prize for editorials that championed tax reform. Yet as a speaker noted at the 2003 meeting of the Public Affairs Research Council, children who entered kindergarten that year never enjoyed the benefit of adequate tax revenues to support their education.<sup>68</sup>

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<sup>66</sup> Alabama Citizens' Constitution Commission, "Report of the Alabama Citizens' Constitution Commission to Governor Bob Riley," March 27, 2003.

<sup>67</sup> See "How Alabama's Taxes Compare." For a good overview of the issue, see James W. Williams, Jr., "Alabama's Revenue Crisis: Three Tax Problems," in *A Century of Controversy: Constitutional Reform in Alabama*, ed. Bailey Thomson (Tuscaloosa: University of Alabama Press, 2002): 101-113.

<sup>68</sup> Don Logan, "Remedial lesson: State still failing schools," *Birmingham News*, Feb. 2, 2003.

As Riley prepares to address tax reform separately from other constitutional issues, he will have the support of a group of top corporate executives who have declared their intention to see that the Legislature finally tackles this job. They have amassed a war chest of several million dollars to take this fight first to the Legislature and then to the voters. Leading the group is one of the state's most astute lobbyists, William O'Connor, who left a lucrative position as head of the Business Council of Alabama to address this challenge. A gifted speaker with a broader social agenda than typically has been the case for BCA's executives, O'Connor sees tax reform coming together with constitutional and education reforms in an all-out effort to catapult Alabama into regional leadership.<sup>69</sup>

Efforts by O'Connor's group and the Governor's own tax reform commission will quickly intersect with the work of the new constitutional commission. For example, local governments and school boards are prohibited by Amendment 373 from raising ad valorem taxes without first securing the Legislature's permission and then holding a referendum to seek voters' approval. Repeatedly, Riley has emphasized the high priority he places upon decentralizing government in Alabama so that elected county officials may decide local matters without first seeking either a legislative act or a constitutional amendment. Although he wants still to reserve the right of voters to approve any local tax increase, he will be up against some legislators, particularly in rural areas, who do not want to surrender their virtually dictatorial powers over their counties. He most certainly will face opposition from groups that have a vested interest in the present arrangement of government and taxation, such as the Alabama Farmers Federation. Many observers speculate that it may take a

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<sup>69</sup> Interview with William O'Connor, Tuscaloosa, Alabama, Nov. 25, 2002.

conservative Republican to break this century-long impasse and push Alabama into a modern frame of mind.

## Conclusion

In the introduction to his authoritative *Reference Guide*, William H. Stewart observes, "It is impossible to separate Alabama constitutionalism from issues of race relations. ... One cannot presume to understand the Constitution without an understanding of the politics of race."<sup>70</sup> What was patent in 1901 remains at least beneath the surface of present discussions about reform. Among the motivations of people who seek to replace or revise Alabama's Constitution, which authorizes much of the state's regressive tax system, is a desire for constructive biracial discussions about the future. As long as fear and resentment divide Alabamians along racial lines, reformers reason, the state will continue to lag behind its neighbors in economic and political development. Overcoming this resilient tradition, however, remains the biggest challenge, in that both whites and blacks express concern over who will write the new laws and for what purposes. It is simply a given in Alabama that voters often prefer to trust the devil they know rather than to risk replacing it with something new, particularly when uncertainty arises over who will benefit. The growth in power and wealth of special interest groups, such as those who represent teachers, big landowners, trial lawyers, and large businesses, exacerbate traditional fears that advantages will accrue to some citizens at the expense of others.

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<sup>70</sup> Stewart, *The Alabama State Constitution: A Reference Guide*, 5.

Nevertheless, constitutional reform and the related issue of tax reform have advanced on the state's political agenda from 2000 to 2003, often to the surprise of many jaundiced veterans of Alabama politics. While the fear factor continues to manifest itself in both overt and subtle ways, public discussion tends to focus more now on fundamental issues, such as local democracy and fair taxation, than at any time in recent memory. As is usually the case in public affairs, reformers have to go about their work in unexpected and creative ways. Nevertheless, Riley has excited hopes in some circles that finally Alabama may have a chief executive who ranks among the celebrated fraternity of "New South" governors who helped modernize their states' government and identified strongly with improved education and economic development. Yet the new governor is untested in the political wars of Montgomery, and his conservative record as a congressman suggests a cautious nature. Still, he managed during his first months in office to present a vision that seeks to unite the state's citizens, white and black, behind economic progress and social justice. Moreover, he did not propose a painless solution to the state's problems, such as a lottery, nor did he single out any group to blame for present difficulties. Instead, he simply asked citizens to join hands across racial lines and work with him to bring Alabama into the twenty-first century.

For now, at least, reformers take some pleasure in seeing their agendas move forward, if not with the giant strides they might have dreamed about earlier, then at least in measured steps toward their goals. Meanwhile, Alabama's citizens, thanks in no small measure to these reform efforts, are having a productive conversation about their future. They are learning to deliberate about their needs and choices, as opposed to recoiling in fear and postponing the inevitable.