

# Frequently Asked Questions About Constitutional Reform

## Who Are We?

### 1. *What is ACCR? What is its mission?*

Alabama Citizens for Constitutional Reform is a nonprofit, nonpartisan, public interest group dedicated to educating the people of Alabama about the 1901 constitution and the need for reform, as well as encouraging citizen involvement in the reform process.

ACCR's mission is to provide credible, nonpartisan advocacy of constitutional reform and to educate Alabama's citizenry about constitutional reform proposals.

## Why a New Constitution?

### 2. *Is Alabama's 1901 constitution obsolete?*

Many parts are. In fact, much of the document's language was carried over from the post-Reconstruction 1875 state constitution. Since 1901, the Legislature has patched the present document with 742 amendments, but many flaws remain to the dismay of people who want modern, efficient government.

### 3. *With all those amendments, just how long is the Alabama Constitution?*

It's probably the longest constitution in the world—certainly the longest in this country. It has more than 315,000 words. By contrast, the average state constitution has about 26,000 words.

### 4. *Does the length of the constitution really matter?*

Yes, in that a citizen is hard pressed to read and understand what is supposed to be our state's fundamental laws. Alabama's constitution lacks clarity and coherence—two essential qualities for a good constitution.

### 5. *Hasn't the 1901 constitution been recompiled into a shorter document?*

Two separate recompilations of our Constitution have been completed as demonstration projects, in response to legislative request. House Resolution 538 asked the Alabama Law Institute for guidance in constitutional revision and to recompile the 1901 Constitution to create public awareness of its problems. This task was carried out by Professor Howard Walthall and the State Constitutional Law Project at Samford University's Cumberland School of Law. Senate Joint Resolution No. 88 asked the Legislative Reference Service (LRS) for a recompilation. LRS, following the requirements of Senate Joint Resolution 88, cleaned up the

constitution, removing those parts that have been amended and codifying related provisions.

Both are excellent documents showing the need for change. However, such recom compilations do NOT change or revise the Constitution in any way, nor do they remove archaic or racist language. No change is brought about by these studies. Rather, recom compilations demonstrate the cumbersomeness of our present Constitution, and how it could benefit from revision. The recom compilation is not reform. Citizens are still left with the same antiquated document and all of its many flaws.

6. *Some critics say the Alabama Constitution is racist. Is that true?*

The main purpose for the 1901 constitution was to deny voting rights to African-Americans and poor whites. The framers openly advocated white supremacy and considered Alabama's black citizens incapable of exercising full citizenship. The constitution also decreed that public schools would be segregated and it forbade interracial marriage.

7. *But hasn't all the racist language been changed?*

Federal laws and court rulings negated the blatantly racist provisions. Nonetheless, the offensive language remains in the document and serves as a reminder that it was written in the interests of a relatively small group of privileged whites.

8. *Some people say that reformers want to take God out of the Alabama Constitution. Is that true?*

No. The Constitution's preamble invokes the "favor and guidance of Almighty God." ACCR believes that this same preamble should be included in a new document.

9. *Is ACCR's goal really just to raise taxes?*

ACCR's goal is to achieve a modern constitution for Alabama. ACCR believes that a fairer tax system is one critical element of constitutional reform. A modern constitution means tax fairness, not tax favoritism.

10. *How will constitutional reform affect taxes?*

Ideally, a constitution addresses the fundamental principles behind taxation but is silent on the specifics. Thus the constitution authorizes certain types of taxation, such as an income tax, but leaves the details, such as income tax rates, for the Legislature to decide. This method, which the U.S. Constitution follows, provides for more flexibility and fairness in the tax system. By contrast, Alabama's constitution is virtually a code of taxation, all the way down to specifying the assessment rates for vehicles. The problem is two-fold: First, special interests secure favored treatment by putting their tax breaks in the constitution, which can be difficult to change. Second, this inflexibility invites crises in the funding of education and other vital services when revenues fail to meet expectations.

11. *Isn't this debate really about legalizing gambling?*

Not at all. The 1901 constitution prohibits most forms of gambling. No doubt its successor would do the same, unless a majority of the citizens of Alabama suddenly changed their minds. If that were to be the case, however, then it would not take a new constitution to legalize gambling. A simple amendment could do that. A new constitution clearly could continue or even perhaps strengthen Alabama's strong prohibition on gambling.

## **Constitutions and Conventions**

12. *What does a state constitution do anyway?*

It performs a role similar to that of the U.S. Constitution. For example, it lists citizens' rights, organizes government, and lays out the principles and rules that the people's representatives must follow.

13. *Aren't state constitutions redundant? After all, we already have a national constitution.*

Remember, we have a federal system, in which the states delegated certain powers to the national government, while reserving other powers for themselves. Each state has its own charter of fundamental laws, and there are many differences among these documents. For example, states sometimes protect more individual rights than does the U.S. Constitution.

Think of state constitutions as laboratories for trying new ideas in government, while preserving well-tested principles.

14. *Have most states had more than one constitution?*

Yes. Only 19 states have their original constitutions. Overall, the states have adopted 146 constitutions. For example, Alabama has had six constitutions since statehood in 1819, and Georgia has had 10. One reason for frequent change is that state constitutions often are specific in nature and therefore may become obsolete as conditions change.

15. *Did Alabama write its first six constitutions through conventions?*

Yes, in 1819, 1861, 1865, 1868, 1875 and 1901.

16. *When was the last time a state rewrote its constitution through a convention?*

Louisiana rewrote its constitution in 1973 and ratified it in 1974. Another successful convention in that decade: Montana wrote and ratified its constitution in 1972.

17. *Doesn't ACCR support a new constitution through a convention?*

One of ACCR's principles is that a citizens' convention is the best method to achieve a new constitution; however, the political reality is that a citizens' convention is not a possibility at this time in our state government. Meaningful reform, even if gained through a method other than a convention, is still meaningful reform. It is up to us to make certain that the proposals for reform are consistent with our Statement of Principles.

18. *But aren't legislators the ones we elect to write our laws? Shouldn't they rewrite the state's constitution?*

Legislators are charged with writing ordinary or statutory laws. These laws are easily changed from one legislative session to the next. Constitutional or fundamental laws are more important and may be changed only with the consent of the voters. Legislators may present amendments one at a time. The 1901 Constitution, however, prohibits the Legislature from drafting an entirely new document. The Alabama Supreme Court ruled in 1983 that only a convention of specially elected delegates enjoys that right.

19. *Is it likely that the Legislature will take the initiative to rewrite the constitution on its own, article by article?*

In the last 100 years, the amendment method has replaced only two of the constitution's 18 articles, which contain the document's main provisions. In 1973, retired U.S. Sen. Howell Heflin, who then was the state Supreme Court's chief justice, led a successful movement to modernize the judiciary through amendment of Article VI. Meanwhile, federal laws made inevitable the amendment of Article VIII, which contained the 1901 constitution's infamous restrictions on voting. There have been no other successful attempts by lawmakers in more than 25 years.

20. *So how might our daily lives be improved with a new constitution?*

Progress in Alabama is difficult at best under our current constitution. A new constitution would give our state the opportunity to improve vital state functions like education, public safety, prisons, and transportation infrastructure.

By enacting a new constitution, our state would be boldly addressing citizens' needs, rather than dragging its feet, as has been the case so often under the current document. We could expect our government at all levels to be more responsive to citizens' needs. And most important, we would have a constitution that expresses where the people of Alabama are today, rather than a document that represents the worst of where our state has been in the past. We can revitalize our democracy and renew our civic life at a time when America must project its values clearly to the entire world.

21. *You're talking about a lot of money to get a new or revised constitution, aren't you?*

Not in the context of the enormous stakes involved. Our present system wastes millions of dollars through ineffective government. Meanwhile, it inhibits Alabama from achieving the success one might expect of a state with great resources and people. The advantages gained from a new constitution could more than repay the cost of holding a special session or election.

22. *Why can't citizens just call for constitutional changes, as they can in some other states?*

Citizens in 18 states, including Florida and Mississippi, do have the right to initiate constitutional change themselves. They may force a popular vote on a constitutional amendment by securing a required number of signatures on a petition. The 1901 Alabama Constitution, however, has no such provision. It provides for only two ways to rewrite the constitution, and both methods rest securely within the Legislature's control.

23. *Again, what are the ways we can get a new constitution in Alabama?*

There are only two ways to get a new constitution. The first method, as provided in Section 284, allows the Legislature to submit proposed constitutional changes to voters through amendments. Any proposed amendment requires a three-fifths vote of each legislative chamber. The second method, as provided in Section 286, requires a majority of all members in each legislative chamber to approve the call. First, the Legislature decides how delegates will be selected and how the convention will organize itself. Then the Legislature sends the proposal to voters for their approval. Only after voters say "yes" may a convention occur.

## **Local Democracy**

24. *Is constitutional reform mainly about providing what's known as "home rule" for Alabama's counties?*

Certainly local democracy is a major issue. In fact, it was a big issue in 1901 when framers drafted the present constitution and decided against allowing counties to decide local issues at home. (Indeed, Alabama is one of only a few states that deny counties the right to pass local laws.) Most of the framers wanted to concentrate power in Montgomery, where their interest groups could more easily control the state. They argued that voters would not elect "good men" to supervise local matters. Reformers, however, pointed out the fallacy in this argument: Why are voters expected to be so much wiser when electing legislators than in choosing local officials?

25. *Would unlimited “home rule” jeopardize the checks and balances of government?*

Home rule would not be unlimited. The Legislature would retain its power to pass general laws that would apply to all local governments. Home rule simply means that local governments would have the right to enact their own ordinances provided they are not in conflict with either the constitution or laws the Legislature passes. One great benefit of limited home rule is that it would encourage the Legislature to quit meddling in the affairs of specific counties. In fact, about 70 percent of the constitutional amendments apply to a single municipality or county. With limited home rule, citizens wouldn't have to beg the Legislature for permission when they wanted, say, to outlaw prostitution or control mosquitoes and other pests.

26. *Many of our county commissioners and other local officials say privately they don't want the responsibility of home rule. Why should we make them accept it?*

First, those officials, whoever they are, do not own their offices. They merely occupy them with permission of the voters. Whether a county should have home rule is for citizens to decide -- not officeholders. Perhaps officials who would be afraid to exercise local democracy in the name of the people should simply get out of politics.

27. *You seem to imply that home rule could be a matter of local option. Is that true?*

Yes, local option would probably be the best policy for Alabama. Many of our growing urban and suburban counties desperately need local home rule so they can address the many problems that growth is causing. Most voters in rural counties, on the other hand, might be content to remain under the Legislature's direct jurisdiction.

28. *Is there any one standard way of pursuing home rule?*

Actually, the states provide many different models, which vary in the degree of local control. Florida, for example, allows its counties to draft, with voters' approval, charters to guide local government's operation. This approach provides great flexibility in adapting local democracy to local needs. Most states, however, are more restrictive in granting home rule, but they do follow the principle that government closest to the people is usually best.

29. *If we vote for home rule, does that mean county commissions would have the power to raise our taxes?*

Only if that's what the people of Alabama want. Far more likely would be a provision that requires increases in local property and other taxes to be submitted for local voters' approval. The difference is that home rule would remove the Legislature from the process, thereby denying legislators the temptation to meddle in local affairs. This “logrolling” represents one of the most pernicious influences on government, as it allows lawmakers to cut political deals among themselves at the expense of local

governments. Clearly, even with home rule, each county could still require a vote of the people before raising taxes.

30. *Okay, I understand the principle behind home rule, but what really would change if we got it?*

First, you could expect more responsive local government. Your county commissioners no longer could throw up their hands when a problem arose and say it was out of their power to resolve. Many citizens have been astounded, for example, to learn their county governments could do nothing to prevent corporate hog farms, quarries and other nuisances from moving next door to them. Why? Because the constitution doesn't give counties the right to manage growth through provisions such as zoning. Second, you could also expect the Legislature to work harder on statewide issues. At present, it spends nearly half its time on purely local matters. No wonder Alabama tends to rank so low in education and other key statewide indicators.

31. *How does our current constitution affect protection of the environment?*

One big problem is that the constitution fails to grant counties the power to pass planning ordinances. Thus unmanaged growth sprawls into the unincorporated areas with little protection against runoff and other threats to streams and natural habitats. Indeed, Alabama is the only Southeastern state that fails to grant its counties planning power. For example, Florida invests its counties with significant responsibility for ensuring that growth pays for itself and does not put the environment at risk. Even Mississippi is far ahead of Alabama in granting its counties a significant role in planning for sustainable growth.

## **Transition**

32. *I've heard that a new constitution would create havoc and chaos in the legal system, as new provisions replace old laws and negate judicial precedence. Is that true?*

Keep in mind that Alabama has had six constitutions, and the legal system continued to function with each new document, just has been the case in the other 31 states that have replaced their constitutions. Each new constitution contains a section called "schedule" which lays out a smooth transition from old to new. Provisions under the old constitution that have not been replaced or negated by the new document become statutory in nature and go right on as law. Old precedents continue until the courts rule otherwise. Yes, there are always some questions raised by the transition, but legal experts say that this challenge is easily manageable and is part of the American tradition of progress.

33. *So would all those amendments just continue being law?*

Yes, all of them that have not already been superseded by later amendments or by the new constitution itself. But keep in mind that our present constitution is mostly a ragtag collection of what under normal circumstances would be local ordinances. There's simply no good reason for these local laws to be clogging up our fundamental charter. They don't belong there.

34. *Let's say we voters approve amendments that grant home rule and reform the tax system. Wouldn't constitutional reform just go away then?*

Probably not, because we would still be stuck with many other outdated or debilitating provisions that weaken our state's performance. For example, our constitution still prohibits the state from making internal improvements. Local governments cannot enter into partnerships with industries. These two restrictions alone have accounted for dozens of amendments seeking relief in individual situations. More broadly, we see stark evidence of our state's backwardness in studies conducted by the Maxwell School of Citizenship and Public Affairs at Syracuse University in 1997 and 2001. These studies ranked state governments' performance. In both cases, Alabama placed last. The best way to address these many issues is to draft a modern document that looks forward to the 21st century, rather than backward to the 19th.

The goal of comprehensive constitutional reform will not be fully accomplished just because we have home rule and tax reform.

### **ACCR Commission**

35. *What is the Alabama Citizens' Commission on Constitutional Reform?*

Alabama Citizens for Constitutional Reform organized a commission called Alabama Citizen's Commission on Constitutional Reform in early 2002 and asked then Secretary of State Jim Bennett to be its chairman. Joining him were 22 citizens, who were independent of ACCR and representative of the state's population.

36. *What did the Alabama Citizens' Commission on Constitutional Reform accomplish?*

The Commission held four public meetings around the state and produced a final report that was submitted to the Governor and the Legislature. The report represented six months of study and deliberations on the commission's part, with the support and technical guidance of nearly two dozen leading authorities within Alabama's universities and its legal profession. Included were top political scientists and legal scholars, as well as retired justices of the state's Supreme Court. Many of the papers that the experts prepared for the commission are to be published in law reviews and similar journals, thereby providing an invaluable body of research to guide future reforms. Equally important, the ACCR commission listened to extensive comments and concerns from citizens who spoke during the four meetings held in

different cities across Alabama. This work and experience provided a blueprint for Gov. Riley when he appointed his own constitutional commission in January 2003.

## **Additional questions**

37. *What are the chances of getting a new constitution?*

There is a pretty good chance some substantive reform could be on the ballot this fall in the form of limited home rule, tax reform, recompilation, and removal of racist language. But ultimately it will be up to the voters since they must approve any changes to the constitution.

38. *What is the timeline for constitutional reform?*

ACCR does not have a set “timeline” for constitutional reform, although we would hope to see it happen as soon as possible.

39. *Does ACCR already have a new constitution written, ready to replace the existing one?*

No. ACCR has always maintained that the citizens of Alabama should be involved as directly as possible in the process. We do have some good ideas of what we think should be included in a new constitution and they are set forth in our Statement of Principles.

40. *Who are the opponents of constitutional reform?*

I don't like to speak for other people so I can't say much, but usually it is those people or special interest groups that have benefited from the current system. Also there is a general inertia that must be overcome since it is easier to just say “no” to new and different things.

41. *Why hasn't constitutional reform happened yet?*

That's a complicated question. Part of it has to do with the Legislature being reluctant to give up their current power. Part of it has been a historic lack of public groundswell for reform (until now of course). Part of it may be the result of being distracted by racial problems in this state for so long. It's a combination of all these and more.

42. *Some people say constitutional reform is about taking away people's guns and other rights. Is that true?*

Absolutely not. I don't know where those rumors come from but they have no validity. Even if that was the case, the U.S. Constitution protects those rights. Most likely these are just scare tactics that opponents of reform use to confuse people.

43. *Aren't most of these problems caused by waste in government and bad politicians?*

There will always be some waste in government and bad politicians, and they should both be eliminated as much as possible, but they are not the root of the problem. In fact, by modernizing the constitution we could make our government much more efficient and probably attract more highly qualified citizens to run for office.

44. *I like knowing where my taxes are going. Why do you want to end earmarking?*

Earmarking is not always a bad thing. But in Alabama we have a much higher level of earmarking than any other state (nearly four times the national average). This does not allow for flexibility in times of financial crisis. For instance, let's say you started a savings account to pay for a trip to Disney World and a checking account to buy your groceries. If you lost your job and needed to buy some food, you would not be allowed to take that vacation money and spend it at the Piggly Wiggly if those funds were earmarked.

45. *Are you just trying to change something for the sake of changing it?*

No. The constitution is broken and we must fix it if we want to become the best Alabama we can be.

46. *Who would write a new constitution? I'm afraid they would make it worse.*

Either Legislators making revisions article-by-article or delegates at a constitutional convention. Either way, any changes must be voted on by the people and it seems doubtful that the constitution could get much worse than it already is.

47. *What is ACCR's number one goal?*

ACCR's mission is to inform Alabamians about the weaknesses of the 1901 state constitution while advocating the adoption of a modern document. We care more about the outcome of reform rather than the method of reform.

48. *What will be on the ballot this fall?*

As of right now, it remains to be seen. But there could be something on tax reform, limited home rule, recompilation, and removal of racist language.

49. Sales taxes seem fair to me. How are they “regressive” (or unfair)?

This is a difficult concept and I’ll try to do my best to explain it. Sales taxes are applied only on purchases and not income. Because poorer families have to spend a higher percentage of their income on essential items (food for example), the sales tax takes a higher chunk out of their income than wealthier families. The wealthiest one percent of Alabamians pay about 3% of their income in state and local taxes, while the poorest fifth of our citizens pay nearly 12%.

### **Action**

50. How can I get involved?

- Join ACCR for as little as \$15.
  - Join online or use the form in the back of our brochure.
  - Students can join for free.
  - If you don’ t want to join today, but would like more information, please join our mailing list.
- Get involved with a local chapter
- Call or write your legislator
- Help pass resolutions of support (City Councils, Chambers of Commerce, churches, County Commissions, etc.)
- Write letters to your local newspaper
- Read "A Century of Controversy"
- Help educate fellow citizens
- Invite someone to speak about constitutional reform to a group or club in your area
- Visit our website at [www.constitutionalreform.org](http://www.constitutionalreform.org)
- Join our email list either through our website or by signing the mailing list to receive our e-newsletter, updates, and action alerts.

**GENERAL NOTE: It is always OK to just admit that you don’t know the answer to a question and that you can try to find out the answer or a resource for the answer.**