

Second, some African-American legislators argued that minorities would not be sufficiently represented in a convention, particularly if the elections were nonpartisan. 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>61</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 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 on 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>62</sup> (In the summer of 2003, Cumberland published the academic papers and the commission's report in its law review.)

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>63</sup> The author of this article served as cochairman 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 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>64</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>65</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>66</sup>

True to his intentions, Riley immersed himself in proposing to the Legislature a package of tax reforms that would not only provide an additional \$675 million to fund existing programs but also provide for long-term revenue growth. In the process, he proposed to address the notoriously regressive nature of the present tax system, especially its reliance on sales taxes. A deeply religious man, Riley drew inspiration for his actions from 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>67</sup>

Riley drew support from a group of top corporate executives who amassed a war chest of several million dollars to take this fight first to the legislature and then to the voters. Their leader was 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 organize the campaign. A gifted speaker with a broader social agenda than typically has been the case for BCA's executives, O'Connor envisioned tax reform coming together with

constitutional and education reforms in an all-out effort to catapult Alabama into regional leadership.<sup>68</sup>

Indeed, the work of the tax reformers intersected in key areas with that of Riley's 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 emphasized the high priority he placed on decentralizing government in Alabama so that elected county officials could decide local matters such as taxation without first seeking either a legislative act or a constitutional amendment. Riley qualified his endorsement of local home rule by insisting that voters have the right to approve any local tax increase. Still, he pitted himself on this issue against many legislators, particularly in rural areas, who did not want to surrender their virtually dictatorial powers over their counties.

Despite the common interests among reformers, the Riley administration's energies became absorbed in negotiating a complex package of statutory bills and proposed constitutional amendments to overhaul the tax system. What emerged was the most ambitious plan in the state's history to provide adequate funding for education, law enforcement, and other key services, while significantly alleviating the tax system's regressive burden. In the process, the five proposals for constitutional reform drifted without significant attention from the governor's office. When the legislative session ended, the governor had a \$1.2 billion tax package ready to present voters for their approval, but only one of his commission's proposed constitutional reforms survived. The legislature approved an amendment that would allow it to recompile the present constitution into a more concise document.

Meanwhile, Riley created one of the most unusual coalitions the state has seen to promote the constitutional amendments necessary to enact his proposed tax reforms. Many corporate leaders from Birmingham and other cities joined hands with social justice groups and school advocates to make the case for additional revenues. The powerful Alabama Education Association, whom many consider to be the state's number one interest group, threw its influence behind the campaign. These advocates also enjoyed the endorsement of mainstream religious denominations that called for better treatment of the poor through fair taxation. Aligned against this coalition, however, was the Alabama Farmers Federation and its allies within the state's powerful timber industry. These traditional

opponents of higher ad valorem taxes cultivated support among certain religious conservatives, such as the state's Christian Coalition group. And to Riley's dismay, many of the state's leading Republicans condemned the tax proposals for being contrary to their party's philosophy. While the governor drew praise from the nation's news media for his courageous actions,<sup>69</sup> his opponents managed to instill enough fear and distrust among the electorate to condemn his tax plan to an ignominious defeat. By a two-to-one majority, voters on September 9, 2003, turned down their governor's package, thereby forcing the legislature in special session to begin considering dramatic cuts in spending for services and agencies that already were among the most poorly funded in the United States. The election confirmed a deep, almost pathological distrust among Alabama's electorate for government at all levels, while putting even more pressure on an antiquated constitutional system to produce at least some temporary fix for long-festered problems.

## 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 endure 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 old populist fears that advantages will accrue to some citizens at the expense of others.

Nevertheless, constitutional reform and the related issue of tax reform made great advancements on the state's political agenda from 2000 to 2003, often to the surprise of jaundiced veterans of Alabama politics. While the fear factor continues to manifest itself in both overt and subtle ways, public discussion has focused more on fundamental issues, such as local democracy and fair taxation, than at any time in recent memory. Despite the defeat of his tax package at the polls, Bob Riley staked his claim to membership among the celebrated fraternity of "New South" governors who helped modernize their states' government and identified strongly with improved education and economic development. With his reforms, he sought to unite the state's citizens, white and black, behind economic progress and fair taxation. He refused to propose a painless solution to the state's problems, such as a lottery, as did his predecessor. Instead, Riley simply asked citizens to join hands across racial lines and work with him to bring Alabama into the twenty-first century. Because the problems Alabama faces are so fundamental and the funding crisis is so severe, there is reason to believe that events of 2003 may prove to be the opening skirmish for a greater battle ahead.<sup>71</sup> If indeed, as some pundits predict, a calamity must befall the state before it will finally rid itself of the albatross it assumed in 1901, then all indicators suggest that the looming budget difficulties of 2004 and beyond may finally motivate the legislature to seek constitutional relief.

## NOTES

1. *Birmingham News*, January 28, 2003.

2. Sam Hodges, "World's Biggest but Nobody's Proud," *Mobile Register*, December 11, 1994.

3. 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.

4. 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.

5. 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.

6. 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.
7. *Williams v. Mississippi*, 170 U.S. 213 (1898).
8. 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.
9. *Official Proceedings of the Constitutional Convention of the State of Alabama*, 1901, vol. I, 12.
10. William H. Stewart, *The Alabama State Constitution: A Reference Guide* (Westport, Conn.: Greenwood Press), 106.
11. 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.
12. Louis D. Harland, *Booker T. Washington: Making of a Black Leader, 1856–1901* (New York: Oxford University Press, 1972), 299–303.
13. John Sparks, "American Negro Reaction to Disfranchisement, 1901–1904" (Master's Thesis, Samford University, 1973), 77–790.
14. Quoted in McMillan, *Constitutional Development in Alabama*, 343.
15. *Ibid.*, 350–51.
16. United States Constitution and the Alabama Constitution of 1901, Centennial Edition (2001)136–37.
17. *Ibid.*, 352–54.
18. Emmet O'Neal, *Educational Reform and a New Constitution* (Montgomery: Brown Printing Co. 1914), 5–6.
19. *Journal of the House of Representatives* (1915), 1:310–24.
20. 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.
21. 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 on the reminiscences of his uncle, former state Sen. Fuller Kimbrell, who served as Folsom's cocampaign chairman in 1954 and as the finance director for the governor's second administration.
22. Carl Grafton and Anne Permaloff, *Big Mules and Branchheads: James E. Folsom and Political Power in Alabama* (Athens: University of Georgia Press, 1985): 73–75.



23. James E. Folsom, "Inaugural Address; January 20, 1947," in *Speeches of Gov. James E. Folsom, 1947–1950* (Wetumpka Printing Co., n.d.), 5.
24. Sims, *The Little Man's Big Friend*, 53–58.
25. 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.
26. *Birmingham News*, April 14, 1954.
27. *Montgomery Advertiser*, May 5, 1955.
28. Opinion of the Justices, 81 So. 2d 678 (1955); *Birmingham News*, July 12, 1955.
29. *Birmingham News*, January 3, 1956; *Montgomery Advertiser*, January 4, 1956.
30. *Birmingham News*, January 21, 1956; Sims, *The Little Man's Big Friend*, 183–84.
31. Sims, *The Little Man's Big Friend*, 178–88.
32. William H. Stewart, Jr., *The Alabama Constitutional Commission: A Pragmatic Approach to Constitutional Revision* (Tuscaloosa: University of Alabama Press, 1975), 6–12.
33. 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, December 12, 2002.
34. *Proposed Constitution of Alabama: Report of the Constitutional Commission, May 1, 1973* (Reprinted by Samford University Press, 2002), iii–ix.
35. Tony A. Freyer and Paul M. Pruitt, Jr., *Reaction and Reform: Transforming the Judiciary Under Alabama's Constitution, 1901–1975*, 53 *Alabama Law Review*, 77–79 (2001).
36. 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: New South 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.
37. Stewart, *The Alabama State Constitution*, 173. The original provision in 1901 restricted the Legislature to quadrennial meetings.
38. *State v. Manley*, 441 So. 2d 864 (1983).
39. 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>.
40. *Huntsville Times*, June 21, 2000.
41. *Tuscaloosa News*, February 4, 2003; "Tax Laws Make Alabama a Laughingstock Again," editorial, *ibid.*, February 5, 2003. The full report can be found at *Governing's* web site at <http://www.governing.com/gpp/2003/gp3intro.htm>.
42. *Birmingham News*, February 28, 2003.

43. "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>.
44. Alabama Constitution of 1901, Amendment 373 of section 216, provision (a).
45. *Mobile Register*, December 11, 1994.
46. The proceedings may be found on the ACCR web site at [http://www.constitutionalreform.org/symposium/symp\\_papers.html](http://www.constitutionalreform.org/symposium/symp_papers.html).
47. *Birmingham News*, January 18, 1998.
48. See, for example, "The Constitution, Again Another Chance to Build a New Windmill," editorial, *Birmingham News*, September 25, 2000.
49. *Mobile Register*, March 27, 2001.
50. The author had the pleasure of serving on the chamber's steering committee and later on ACCR's founding group.
51. Permaloff and Grafton, *Political Power in Alabama*, 137–39.
52. For a summary of action, see Bailey Thomson, "Alabama's Politics Can Be Peculiar," *Mobile Register*, April 28, 2002.
53. Memorandum to the author from Bill Smith on behalf of Alabama Citizens for Constitutional Reform, August 20, 2002.
54. See footnote 38 for reference.
55. *Birmingham News*, March 21, 2001.
56. See, for example, "Siegelman's Call: Governor Can Take Action on Constitutional Reform," editorial, *Birmingham News*, October 26, 2001.
57. A perusal of ACCR's web site, which has links to much of this reporting and commentary, reveals the intense interest of the press.
58. *Alabama Law Review*, vol. 53, Fall 2001, Number 1.
59. HJR 152 of the 2002 Regular Session of the Alabama Legislature.
60. *Huntsville Times*, March 24, 2002.
61. The author attended a lively session with the Black Caucus on December 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.
62. *Huntsville Times*, January 17, 2003; *Mobile Register*, January 24, 2003; "A Solid Foundation: Constitution Group's Report Not Perfect, but Great Start," editorial, *Birmingham News*, January 19, 2003; "Document Outlines Road to Reform," editorial, *Tuscaloosa News*, January 22, 2003.
63. *Montgomery Advertiser*, Jan. 23, 2003; *Birmingham News*, January 24, 2003.
64. Alabama Citizens' Constitution Commission, "Report of the Alabama Citizens' Constitution Commission to Governor Bob Riley," March 27, 2003.
65. 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 Con-*

*trovery: Constitutional Reform in Alabama*, ed. Bailey Thomson (Tuscaloosa: University of Alabama Press, 2002): 101–13.

66. Don Logan, “Remedial lesson: State still failing schools,” *Birmingham News*, February 2, 2003.

67. 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*, February 12, 2003.

68. Interview with William O’Connor, Tuscaloosa, Alabama, November 25, 2002.

69. See, for example, Alan Erenhalt, “Big Mule Renewal,” *Governing*, July 2003, at <http://www.governing.com/archive/2003/jul/assess.txt>. Erenhalt, who has followed Alabama politics closely, concludes that eventually the state’s business leaders, often known as the Big Mules, will get what they want: an adequate and fair tax system.

70. Stewart, *The Alabama State Constitution: A Reference Guide*, 5.

71. Riley’s respected finance director, Draton Nabers, Jr., reaffirmed the reality of a \$675 million deficit for 2004 in an essay titled “State deficit no ‘far cry’ from projections.” See *Birmingham News*, September 21, 2003.