

Constitutional Reform Essential For Real Progress in Alabama

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There is a great deal of discussion in the press, and among citizen groups, as to the need for constitutional reform in Alabama. Pointing to a tax structure that unfairly burdens the poorest Alabamians while raising dismally inadequate revenues and a legal structure that severely interferes with local governments' ability to meet local needs, constitutional reform supporters accuse Alabama's constitution of wrongfully locking in the present tax inequities and thwarting other desperately needed improvements.

It remains, however, extremely difficult to convince average Alabamians that something as abstract and seemingly removed from day-to-day life as a constitution could possibly be guilty of concrete harm. A colleague, stopping me in the hall, expressed this dilemma well: "I wish someone would explain exactly how and why our constitution causes such bad results."

A quick look at the United States Constitution, which enjoys widespread recognition as the highest example of how a constitution should work, provides helpful background. The U.S. Constitution guarantees all people certain fundamental rights, including freedom of speech, free exercise of religion, due process of law, equal protection under the laws and the right to vote.

The U.S. Constitution also delegates to Congress (the United States Senate and House of Representatives) the power to pass laws addressing a variety of issues, for example, regulating commerce between the states, borrowing money, and levying federal taxes. By reserving powers to the individual states, the U.S. Constitution strikes a healthy balance between federal law covering issues of national concern, while allowing the states the ability to meet their needs, without seeking permission from Congress.

The U.S. Constitution is the shortest, most effective and longest lasting constitution in the world largely because it guards these fundamental rights without unnecessarily obstructing the ability of Congress and the state legislatures to meet their separate needs. Both Congress and the state legislatures pass and amend laws under a legislative process that does not involve the cumbersome procedural steps necessary to amend a constitution.

The U.S. Constitution was not intended to be amended often and has only been amended 17 (not counting the first ten amendments which make up the Bill of Rights) times over the past 200 years. Most of these amendments either create greater fundamental rights or establish broad procedural safeguards of major importance. By guarding the fundamental rights of all people while delegating to Congress and the states the power to pass laws without being encumbered by the constitutional amendment process, metaphorically the U.S. Constitution resembles a well functioning air conditioner over a long, hot Alabama summer: both silently keep oppression at bay without interfering with the business of day-to-day life.

Alabama's constitution fails to even come close to resembling the U.S. Constitution. Rather than guarding fundamental rights and appropriately delegating the power to pass laws to the State Legislature and the local governing bodies, Alabama's constitution contains numerous detailed provisions that do not belong in a constitution. Alabama's constitutional amendment process unreasonably obstructs both the Legislature and the local governments from meeting

state and local needs. By subjecting proposed changes to state and local laws to the constitutional amendment process, Alabama's constitution makes it extremely difficult to change the details of these laws.

The negative effects of Alabama's constitution can be clearly seen in the area of taxation. Rather than following the model of the U.S. Constitution, which would delegate the authority over all tax matters to the Legislature or the local governing bodies, Alabama's constitution contains a thicket of tax provisions. It caps the state income tax rate, mandates certain deductions, dictates the process for assessing the value of property and strictly limits property tax rates and the actual dollar amount that can be collected from property taxes.

The requirement that a constitutional amendment is needed to raise property tax rates, has produced the largest number of amendments in any single category, over 200 of the more than 700 amendments. This proves that Alabama's constitution forces local governments to jump through unnecessary procedural hoops and represents only one of many examples that make Alabama's constitution a spectacle and an object of ridicule.

The harsh consequences of Alabama's constitution does not stop there. The burdensome constitutional amendment process severely obstructs the ability of the Legislature to amend the tax structure for fairness. As a result Alabama's tax structure immorally oppresses the poorest Alabamians while greatly benefitting the wealthiest Alabamians. The income tax structure taxes the poorest Alabamians deep in poverty, at income levels starting at as low as \$4,600 a year. The constitutionally mandated deductions and the low assessment ratios for property taxes allow the wealthiest Alabamians to escape with the lightest tax burden. For example, timber property, which covers 71% of Alabama's real property and earns substantial profits accounts for less than 2% of Alabama's property taxes, averaging less than \$1 an acre per year.

The constitutional limitations on property taxes result in Alabama's property tax and overall revenues being the lowest per person in nation. As a result Alabama cannot fund minimum needs such as public education, thereby immorally denying the poorest Alabamians a minimum opportunity to improve their lives. In addition, these dollar limitations on property taxes force local governments to raise sales tax rates to levels among the highest in the nation, causing Alabama to rely on sales taxes for more than fifty percent of its revenue. These sales taxes, which can be raised under the less cumbersome procedures of the legislative process, fail to exempt even the most basic necessities such as food, and harshly burden the poorest Alabamians.

Although Alabama's critical need for tax reform is one of the most important issues deeply intertwined with the issue of constitutional reform, Alabama's constitution significantly blocks improvement and progress in a number of other areas. Because of restrictions embedded in the constitution, the state and localities must go through the cumbersome constitutional amendment procedure or secure permission from the courts to borrow on the full faith and credit of the state or local government. Constitutional restrictions also inhibit the ability of counties to exercise police powers to protect their residents in the areas of health, safety, land use planning, and future growth.

For example, local zoning rules to keep hog farming sufficiently distant from people's homes have been seriously delayed by the constitutional amendment process. Even more astounding, in at least one case, a county had to obtain a constitutional amendment in order to forbid prostitution within that county's borders. The numerous constitutional amendments addressing economic development convict the constitution as guilty beyond a reasonable doubt of being a stumbling block in an area vital to the state's future.

Metaphorically, Alabama's constitution resembles a broken down air conditioner in the middle of a long, hot Alabama summer: both allow a highly oppressive environment to obstruct the business of day-to-day life. Before any real progress is possible in Alabama, the constitution must be reformed because it subjects laws that should be covered by the state or local legislative process to the constitutional amendment procedure.

Alabama's constitution always was and continues to be an immoral document. The purpose behind many of the provisions, including the property tax limitations, of the 1901 Constitution was to deny black Alabamians basic rights and protections, such as the right to vote as well as minimum education and health care. To this day Alabama's constitution oppresses the poorest Alabamians and stands as a barrier keeping Alabama at or near the bottom in all measurements of minimum well being. The act of defending Alabama's constitution is as illegitimate today as the creation of it was a century ago.

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