

STUDY GUIDE

for

**ALABAMA
CONSTITUTIONAL
REFORM**

DRAFT

**INTERFAITH MISSION SERVICE
of
HUNTSVILLE, ALABAMA**

PREFACE

This study guide is prepared by an interfaith cooperative in Huntsville, Alabama. The cooperative's members are congregations of the diverse faith traditions in the community. Operationally, the member congregations plan the ministries of the cooperative and use a coordinating congregation concept to implement the plan. Several social justice issues have been identified as topics needing to be addressed within public square conversations.

Trinity United Methodist Church is the coordinating congregation for preparing the study guides to address these topics. Several congregations are involved in providing topic matter specialists and other necessary functions.

The cooperative is incorporated as the Interfaith Mission Service and is a 501(c) 3 organization. Further information about the cooperative can be obtained from the website, www.interfaithmissionservice.org, or by contacting 256.536.2401, or ims@interfaithmissionservice.org.

PURPOSE

The purpose of these study guides is to help faith communities challenge and equip their members for participation in public square conversations on chosen topics. These topics are of moral significance that affect the majority of Alabama citizens and will be addressed by our state legislators.

Volumes have been written for and against the faith community involving itself in political matters. The perspective presented by this study guide is that the domains of faith and public life are interrelated. However, as with most interrelated matters there is room for deliberation and discernment. Our objective is to establish a practice – with appropriate process and tools – to enable small groups to explore complex public policy topics and develop common themes for action.

Following are thoughts on the intersection of religious faith and social justice:

Every Christian perspective must somehow come to terms with the notion that the world of politics is a place of encounter between humanity and God. The notion by itself, can give rise to insufferable arrogance among Christians who are too confident that they alone are sure interpreters of the will of God...But if it is arrogant to claim to know all about God's will for politics, it may be equally so to try to maintain one's moral purity by avoiding politics altogether. Everybody who participates at all in the social world is inescapably involved in politics, for politics draws upon all of us whether we like it or not.

PRACTICE TO BE USED

Deliberative decision making equips a congregation to participate in public square conversations. It enables congregation members to deliberate among multiple approaches to a solution and arrive at common themes for action. This practice is based on work by the National Issues Forum Institute, the Kettering Foundation, and the David Mathews Center for Civic Life.

The practice includes four steps:

- **Naming the Topic**
Includes the name of the topic and an explanation of why this topic is being discussed in the public square.
- **Framing**
Includes describing multiple approaches for addressing the problems described in the naming step.
- **Deliberating**
Involves identifying the trade-offs among the multiple approaches and the underlying values.
- **Formulating**
Includes common themes for action to effect improvements in the public policies governing our civic life. These common themes for action are those decisions made through deliberation for presentation to the Alabama Legislature to encourage corrective measures.

NOTES

¹ J. Phillip Wogaman, *Christian perspectives on politics*, Volume 1999, (Kentucky: Westminster John Knox Press, 2000), 361-362

OBJECTIVES OF OUR DELIBERATION

The objectives of our deliberation are:

1. Believing one “must somehow come to terms with the notion that the world of politics is a place of encounter between humanity and God” *J. Phillip Wogaman (361)*¹, our first objective is to challenge and equip members of the faith community to participate fully in this encounter.
2. Our second objective is to provide a format for engaging a topic that enables the participants to explore the full range of solutions, discover the underlying values associated with the potential solutions, and deliberate with others to work towards decision making.
3. As a third objective, the decision making process should result in developing some common themes for action. Common in the sense that action can be taken as a group as well as an individual.

The common themes for action can be advanced through the following steps to ultimately effect improvements for social justice:

- Present to congregational councils for approval
- Discuss with state legislators prior to the next legislative session.

The Common Themes for Action Form, found in the Moderator’s Guide, will be utilized to report the group’s decisions.

ALABAMA CONSTITUTIONAL REFORM

A five-week study

Week One: INTRODUCTION TO ALABAMA CONSTITUTIONAL REFORM

Week Two: NAMING THE TOPIC and FAITH PERSPECTIVES

Week Three: DELIBERATIVE DISCUSSION USING THE ISSUE MAP

Week Four: DELIBERATIVE DISCUSSIONS CONTINUED

Week Five: DEVELOPING COMMON THEMES FOR ACTION USING
DELIBERATIVE DECISION MAKING

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WEEK TWO

NAMING THE TOPIC: ALABAMA CONSTITUTIONAL REFORM

OBJECTIVE: Name the topic and introduce faith perspectives concerning the social justice implications involved.

ACTIVITIES:

- Discuss the Naming the Topic module.
- Discuss the Faith Perspectives module.

NAMING THE TOPIC

Alabama is governed by the 1901 Constitution, the sixth constitution for the state and one that was written by an elected Constitutional Convention. For the last few years, conversation has become more intense concerning Alabama Constitutional Reform because legislation to bring about reform has been introduced each year in the Legislature, and each year, support for reform has gained strength. Proponents for reform keep the topic in the public square because of their belief the present Constitution does not provide equal and equitable representation for all of the state's citizenry.

Common complaints of reformers about the present Constitution that places the discussion in the Public Forum include:

1) It restricts local democracy.

It concentrates power in Montgomery by restricting local democracy. Alabama is the only state in the southeast that deprives counties of local control, forcing county governments to seek legislative approval, via a ballot approved Constitutional amendment, for even the most mundane of matters, including rodent control, weed control, bingo, prostitution, and burying dead farm animals, among others.

Citizens in growing numbers are asking, "Why am I voting on a Constitutional Amendment for a county I know nothing about?" Alabama is one of only two states that does not allow home rule for its cities and towns. It is one of only thirteen states that do not allow self-government to counties. Our state legislature spends nearly 50% of its time debating local issues; over 70% of our constitutional amendments apply to a single city or county.

2) It locks in an unfair tax system.

The current constitution dictates the tax structure, whereas other states and the federal government determine tax law by statute and amend it as needed each year. The result is our constitutionally mandated tax structure forces our poorest citizens to pay a disproportionate share of Alabama income in taxes. For example, the wealthiest one

percent of Alabamans pay about 4% of their income in state taxes, while the poorest fifth of our citizens pay nearly 11%. Moreover, Alabama families begin paying income taxes after just \$12,600 in earnings, one of the lowest thresholds in the nation and certainly well below poverty level by any standard. By contrast, Mississippi does not begin collecting income tax until a family makes more than \$19,000 in a year.

Also, Alabama is one of only a handful of states that still collects sales taxes on groceries and non-prescription drugs. Alabamians have a strong Jacksonian Democracy dislike of taxation. In Alabama, the rigid, regressive taxation formula from 1901 still exists largely intact.

Alabama is a poor state, but even for a poor state, it does not make much of an effort to fund basic state services. Alabama ranks 46th in the nation in state and local tax collections per \$1,000 of personal income. It relies heavily on a regressive sales tax, which places a disproportionate burden on those citizens less able to pay. Alabama property taxes, on the other hand, are by far the lowest in the nation.

Property taxes are so low here that if they were raised by a third Alabama would still have the lowest property taxes in the nation. For Alabama property taxes to meet the national average, they would have to be increased by 400%! For example, one timber company pays \$4.50 an acre per year on the Georgia side of one forest, and then crosses the state line to pay Alabama only 77 cents per acre. It is estimated that the "current use" provision and accompanying laws cost Alabama about 25 to 30 million dollars each year. Money that is desperately needed for education and other services.

- Not only does Alabama have a weak tax structure, the constitution allows the governor and state legislature almost no flexibility in deciding how the state can spend the revenues generated. While the typical state earmarks about 23% of its revenues, Alabama earmarks nearly 90%. The extensive earmarking of Alabama revenue means that it is impossible to match revenues with current state needs. Regardless of changing needs or circumstances, state priorities are set in cement in the Alabama constitution. Excessive earmarking of revenues is a major barrier to effective financial decision-making. ("Reform: The Case for a New Constitution," *Proceedings and Selected Papers from the Symposium on the Alabama Constitution December 13-15, 1995* [Auburn: Center for Governmental Services, 1995]).

3) The Constitution hinders economic development.

The 1901 Constitution prohibits state and local government agencies from participating in internal improvements or economic development activities. Over 50 amendments allow various governing bodies different powers to promote economic development and invest in infrastructure projects, but the original provisions that put a straightjacket on economic development are still there. As a result, the restrictions apply fully in some counties, partially in others, and not at all in still others.

4) It limits budget flexibility.

On average, most states earmark 23% of their revenues; Alabama earmarks nearly 90%.

This would be the equivalent of having 90% of the national spending written into the U.S. Constitution with 10% left over for the Congress to decide each year. It gives the governor and the legislature very little flexibility to match available resources with the most pressing needs, particularly when revenues fall short, or to address the realities of a changing, growing state attempting to thrive. For example, our state's education budget has faced proration eight times in the last 17 years for the simple reason they were constitutionally prohibited from moving money to where it was needed.

5) It is the longest known constitution in the world.

The U. S. Constitution has a Preamble, Seven Articles, and 27 Amendments. It can be carried in a purse or breast pocket it is so brief. The nations business is handled by legislation which if passed becomes part of the U.S. Code, or statute, a separate law of the land that can be amended by Congress.

U.S. Alabama's constitution on the other hand has the basic text plus 828 amendments (including amendments dealing with bingo, mosquito control, catfish, soybeans, dead farm animals, beaver tails, and prostitution). Another 35 Amendments are pending approval on the Nov 2, 2010, general election ballot.

The constitution itself is easily the longest in the nation and is 12 times longer than the typical state constitution. In addition, it will continue to grow because, under the Alabama Constitution, the only way to make most legislative changes is with a constitutional amendment.

Critics argue this is an inefficient and ridiculous way to handle beaver tails and dead farm animals, especially when it requires a majority of the state's voters in statewide elections to approve the simplest change.

6) It has undemocratic origins.

The main objectives of the framers of the 1901 Constitution were to remove the voting rights of African-Americans and poor whites in Alabama while centralizing power in the hands of a few special interests in Montgomery. These goals were achieved with astounding success. By 1903, the number of African-American citizens registered to vote had dropped from 181,000 to less than 4,000, and over 40,000 white citizens had lost their right to vote as well. Although the infamous voting restrictions of 1901 were overturned by federal courts, evidence of this embarrassing legacy still remains in our Constitution today, and the centralization of power remains as strong as ever.

Alabama has historically had one of the highest poverty levels of any state. Nearly one in four children lives below the federal poverty line. Alabama per capita income is 8th from the bottom of all states. Numerous attempts to address this issue have failed.

Constitutional Reform proponents fall into two categories: those that want the Legislature to address and fix the problem, and those that want a Constitutional Convention to write a new constitution. There are many in the state that feel the 1901 Constitution provides adequate governance for the state and are unwilling to entertain the idea of reform in any way.

FAITH PERSPECTIVES

As demonstrated in the previous segment, there are several moral and quality of life government concerns with the constitution as it currently stands. This segment of the study guide provides the participants with a perspective from the teachings of our faith traditions.

The derivation of this perspective has been developed through a synthesis of Scripture, a review of how faith traditions have applied the teachings of Scripture, and the resulting experience of those applications.

In the preface, we noted J. Phillip Wogaman's statement that "...the world of politics is a place of encounter between humanity and God" and that "we cannot leave God safely in a theological ghetto while we busy ourselves with the affairs of state".

That being the case we have chosen to structure this segment using Wogaman's concept of "theological entry points". He writes, "The idea is not that there is only one grand theological conception that must be applied to politics, nor even that only one conception is helpful in illuminating any one problem. But it remains that certain theological concepts ... may be particularly relevant to particular problems."

1. The Sovereignty of God

For many church members the notion of separation of church and state is a stumbling block when someone suggests that the topic of conversation is one in which the church be engaged. For Christians the question of allegiance was answered by Peter in Acts 5:29 "We must obey God rather than any human authority". This perspective has been carried forward into the doctrinal and practice statements of many of the faith traditions. See the appendix for example of these statements.

There still remains the question of limits to political activity before breaking the rules of the state with regard to the IRS. The appendix contains relevant excerpts from a study done by the Pew Forum on Religion and Public Life.

2. God's Covenant and Justice

Every study of the Scriptures, Old and New Testament is built around the concept of the covenant God made from the very beginning with his creatures, all of them. Covenant is primary with Noah, Abraham, and all the patriarchs of the faith as it is lived out, broken, and renewed again and again. The Gospels make it clear that Jesus is the ultimate fulfilling of the covenant God makes with God's people. Jesus is not an isolated figure in history but embodies the tie, the bond, the covenant God puts into all creation.

The covenant, as it was given and is given to us today, is one that is based on responsibility to God and on responsibility toward the neighbor whether face-to-face or indirectly through the social institutions we establish. The prophets cast this concept in terms of justice. Micah sums it up: "He (Yahweh) has showed you O man what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?" (Micah 6:8)

The covenant was broken each time God’s people forgot they were to live in the framework of justice for all. The covenant was renewed by God’s grace. The human response to God’s covenant is to come back, again and again, to the realization that all of the earth, our part and everyone else’s, belongs to God and we are to live up to it for the good of all people. This means we cannot leave justice issues up to someone else or to secular institutions but must address them as the people of God.

3. The Covenant Idea and Our Constitution

In a sense, crafting a constitution is similar to crafting a covenant. It is defining a relationship between government and those governed. Although in our system, the governed establish the relationships, once the relationships are established there is a sense that the government and the governed become two different entities. This tendency makes it imperative that provisions and practices that ensure justice and fairness are woven into the constitution.

As we participate in the conversation in the public square we need to keep in mind Acts 5:29...”We must obey God rather than any human authority”. Further, we need to consider how the attributes of justice, mercy, love of neighbor, welcoming the stranger, and inclusiveness apply to the existing constitution and any possible modifications.

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WEEK THREE

DELIBERATIVE DISCUSSION USING THE ISSUE MAP

OBJECTIVE: Begin the deliberation process through introduction of the issue map.

ACTIVITIES:

- If more than eight in the small group, divide into even smaller discussion groups
- Designate a discussion moderator
- Read each of the choices and “What supporters say” and “What critics say”
- Discuss Choice 1. Ascertain the underlying values held by the members of the discussion group.

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ISSUE MAP

Constitution Reform Issue Map LH v.2

<p>Choice One: Leave Constitution As Is Our constitution protects our ways of life and gives more power to citizens. Its approach has been in place for a long time. It has its own provisions for making changes when they are needed, but our basic policies don't need changing. We don't need to venture into uncharted waters by amending or revising the constitution.</p>	<p>Choice Two: Seek Targeted Changes through the AL Legislature We have areas of state governance that need changing in major ways, but we must move cautiously and with clear focus on what we want to achieve. We cannot risk a constitutional convention with the lack of checks and balances in procedures that are available in the legislature.</p>	<p>Choice Three: Seek a Thorough Revision through Constitutional Convention We simply cannot do what we need to do in a timely manner without putting all the questions in the hands of the people, not the state legislature. A constitutional convention of citizens, not legislators, will have a new sheet of paper on which to write. It will remove the</p>
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<p>What supporters say:</p> <ul style="list-style-type: none"> •(A) Continues ways of doing business to which we have become accustomed. •(A) Maintains continuity among generations & appeals to pride in the past •(A) Don't risk losing what we already have like God in the Constitution. •Enhances control over personal and family environments •(A) Emphasizes the role of tradition..for many that means religious values and protecting reference to Almighty God in the constitution.. •Provide citizens with layers of protection 	<p>What critics say:</p> <ul style="list-style-type: none"> •Ignores serious problems inherent in current constitution. •Leaves inadequate and unfair tax system in place, a system that underfunds basic state services. •Structure creates a terrible education system – must be changed. •Would keep 90% earmarking in place, restricting legislative and executive freedom to address current needs. •Prohibits home rule, requiring 70% of legislative time & effort on local and city issues. 	<p>What supporters say:</p> <ul style="list-style-type: none"> •We have framework to make needed changes under the present constitution. •Legislature provides needed checks and balances when making changes. •Takes advantage of representative government, freeing citizens to pursue personnel needs. •Allows needed focus on separate manners .. Home rule, taxation, governmental structure. •Allows local governments to tailor 	<p>What critics say:</p> <ul style="list-style-type: none"> •History shows fundamental and comprehensive through the legislature won't happen. •Current legislature has had chance to act for decades and hasn't; they have too much political pressure on them and are part of the problem. •Legislators are not apt to concede their control over tax structure/home rule. •Special interest lobbyists have extreme influence on the legislature making serious reforms difficult 	<p>What Supporters say:</p> <ul style="list-style-type: none"> •The tried and true & preferred way to re-write constitutions •Elected citizen delegates would bring fresh and fair representation. •Increases possibilities for broad and comprehensive changes that are necessary re: tax policy, governing, education funding, earmarking, etc. •Focuses attention all at one time on the task as opposed to piecemeal approach. •Allows comprehensive changes in 	<p>What critics say:</p> <ul style="list-style-type: none"> •Citizen delegates wouldn't know enough to rewrite, aren't sufficiently engaged to give proper guidance. •Special interests will dominate even more without the control of legislative oversight. •Who knows what will result? A constitutional convention has no prior limits on what it can consider. •All sorts of controversies particularly in the area of traditional values, will be the subjects of media field days. •Issues that have
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DISCUSSION OF 1, 2, 3

Choice One: Maintain the Status Quo

Our constitution protects a way of life and gives more power to citizens. Its approach has been in place for a long time. It has its own provisions for making changes when needed. We don't need to venture into uncharted waters by encouraging widespread change in a short amount of time.

What supporters of this view say:

(A) What makes life productive is close association with family and friends in a community of caring people. For many that closeness is rooted in religious faith that promotes unity of purpose and support for one another. The preamble to the Constitution of 1901 says:

(A) We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and Our prosperity, invoking the favor and guidance of Almighty God [emphasis added], do ordain and establish the following Constitution and form of government for the State of Alabama."

(A) That way of life must be protected against practices that promote getting something for nothing (such as gambling) and lifestyles of substance abuse and gender preference that offend traditional concepts of family and community. Our current constitution protects these things we hold valuable. It is a historic document that records our state's struggles and successes.

Arguments that the Alabama constitution is too long simply miss the point of the nature of a state constitution. A state constitution is not meant to be like the U.S. Constitution. Our federal constitution follows an idea in law called the higher law tradition. This tradition argues that a constitution should be a brief document that sets governmental framework and outlines the basic civil liberties of citizens. Such a constitution is brief and deliberately difficult to amend.

State constitutions on the other hand follow a different tradition. That tradition is known as a positive law tradition. Under this tradition, a constitution may also include laws enacted by a legislature. These laws are called statutory law. As a result, state constitutions are much longer than the U.S. Constitution. The U.S. Constitution has about 8,700 words. The average state constitution has about 30,000 words.

Alabama's constitution has about 174,000 words. Granted it is the longest among state constitutions, but it is not unlike many of them in containing statutory as well as fundamental law. The average state constitution is amended at least once every two years. Alabama's constitution has averaged nearly seven amendments per year since 1901. Alabama's amendments are much more numerous than the average, but the number of amendments is evidence of how responsive our constitution is to ultimate citizen control of politics.

The length of our constitution is itself a testimony to our history. In areas such as civil rights, where needed changes have been made, our constitution provides a one-volume record of our progress. Much of the argument about excessive length is simply an argument against history.

Ultimate citizen control of politics is the answer to those who argue that the centralization of political power in the state legislature inhibits county and municipal government. Unless expressly granted by the legislature, county and municipal governments can only enact those measures that are approved by the state legislature and ratified by voters throughout the state.

This feature protects Alabama citizens from local cliques raising taxes and imposing their wills without adequate safeguards. Under our present constitution, local officials must convince a broad array of citizens directly and indirectly through their elected representatives of the soundness of their plans. The way our constitution now works controls the actions of counties (which are creations of the state). It prevents quarrels between counties and municipalities over taxation and other powers. So called "home rule" would open the door to confusion and litigation among local governmental jurisdictions.

The answer to problems in public education, for example, is not to provide more money but to better manage the money that is available. "Throwing money" at school problems is not an answer. The answer is in greater accountability, more emphasis on discipline and standards, and greater attention to developing moral character among students. Emphasizing these matters in schools will also lower costs for law enforcement and health care and social services for such things as substance abuse, teenage pregnancies, and children of broken families.

Finally, obviously we need to make changes from time to time in our laws. However, calling for a constitutional convention risks too much.

The legislature cannot restrict what may or may not be considered in a call for a constitutional convention. Such an approach opens the door to every special interest in the state without the checks and balances of careful consideration by the legislature. For example, if we open up consideration of taxes to a constitutional convention, we risk objectionable measures already defeated such as lotteries and other forms of gambling.

Those who advocate changes in the constitution ignore the fact that the constitution itself provides an orderly way to make them. Let's continue with the approach we have in place. Let the legislature carefully consider proposed changes. If three-fifths of our elected representatives approve, the voters can then accept or reject those proposals by statewide vote.

What critics of this view say:

Alabama simply has too many problems that need solving. We cannot continue with an antiquated constitution. The 1901 constitution was originally written to weaken the political power of poor farmers especially blacks and to centralize control in a legislature dominated by special interests. It does not measure up to the challenges of the twenty-first century.

Granted that state constitutions are generally not like the U.S. Constitution in their legal tradition, but there is no excuse for the length, complexity, and negative image of the Alabama constitution. The outmoded, racist provisions in the constitution should be put in history books and archives.

In general, states with the weakest political parties have the longer constitutions. When political parties are weak, specific interests find it easier to get provisions favoring their interests written into constitutions. This has been the case in Alabama.

Alabama is one of only two states that does not allow home rule for its cities and towns. It is one of only thirteen states that do not allow self-government to counties. About 70% of Alabama's amendments apply to a single city or county. Eliminating legislation affecting only local governments from the constitution would give it brevity and respectability.

City and county governments shouldn't be forced to seek change in the state constitution before they can address many local problems. This situation explains much of the length of the Alabama constitution. Simply put, in Alabama county and municipal governments are prevented from doing anything unless the legislature has first authorized them to do it.

Home rule takes an opposite position. It says that local governments can do anything that does not violate the state constitution or that has not been forbidden by legislative action. For example, the Tenth Amendment to the U.S. Constitution says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Home rule in Alabama would tend toward a statement of that sort in an Alabama constitution.

Home rule by current governmental jurisdictions may not be the proper focus. For example, today economic development depends upon being able to address factors that transcend current county and municipal Jurisdictions. We need ways to take on issues in regional ways that is, arrangements among counties and municipalities.

We need other fundamental changes. We need to put a modern governor in the position of being able to lead and to hold governmental agencies accountable. The National Municipal League, for example, has drafted a model state constitution that would have citizens elect the governor, the lieutenant governor, and the legislature. The governor would appoint heads of departments, who would then be directly responsible to the chief

executive. The governor would also appoint Supreme Court justices and other judges with the consent of the legislature. This would eliminate candidates for judgeships accepting campaign contributions from those who might one day appear before those very judges. The legislature would elect the state treasurer. These changes would give Alabama a chief executive who could act as a chief executive should. Our federal government operates this way; why shouldn't Alabama?

Alabamans need to take a serious, careful look at how we can match what we want with how we can best pay for it. Criticisms of Alabama's current tax structure are many. A few years ago, Joe Sumners, Director of the Economic Development Institute at Auburn University, summarized Alabama's tax structure in this manner.

Alabama is a poor state, but even for a poor state it does not make much of an effort to fund basic state services. Alabama ranks 46th in the nation in state and local tax collections per \$1,000 of personal income. It relies heavily on a regressive sales tax, which places disproportionate burden on those citizens less able to pay. Alabama property taxes, on the other hand, are by far the lowest in the nation.

Property taxes are so low here that if they were raised by a third Alabama would still have the lowest property taxes in the nation. For Alabama property taxes to meet the national average, they would have to be increased by 400% !

...For example, one timber company pays \$4.50 an acre per year on the Georgia side of one forest, and then crosses the state line to pay Alabama only 77 cents per acre. It is estimated that the "current use" provision and accompanying laws cost Alabama about 25 to 30 million dollars each year money that is desperately needed for education and other services.

Not only does Alabama have a weak tax structure, the constitution allows the governor and state legislature almost no flexibility in deciding how the state can spend the revenues generated. While the typical state earmarks about 23 percent of its revenues, Alabama earmarks nearly 90 percent. The extensive earmarking of Alabama revenue means that it is impossible to match revenues with current state needs. Regardless of changing needs or circumstances, state priorities are set in cement in the Alabama constitution. Excessive earmarking of revenues is a major barrier to effective financial decision making. ("Reform: The Case for a New Constitution," Proceedings and Selected Papers from the Symposium on the Alabama Constitution December 13-15, 1995 [Auburn: Center for Governmental Services, 1995]).

Discussing taxes is probably the most sensitive of matters relating to the Alabama constitution, but we simply must do it. Education is woefully under funded. Alabama's tax structure is simply unfair. Alabama has the lowest threshold for paying income taxes in the nation. Food and medicine are taxed. Numerous exemptions favoring special interests mean that tax burdens fall on many least able to pay.

Choice Two: Seek Targeted Changes through the Alabama Legislature

We have areas of state governance that need changing, but we must move cautiously and with clear focus on what we want to achieve. We cannot risk a constitutional convention with the lack of checks and balances in procedure that are available in the state legislature.

What supporters of this view say:

Although we need a number of changes in the state constitution, we must focus our efforts so that each initiative is carefully considered. We must ensure that we get what we aim for. Each of the proposed areas of reform has many critical elements that we must approach with precision.

For example, home rule is not a simple matter of taking power from the legislature and giving it to local governments. Counties and municipalities are different. Counties are creations of the state. Municipalities are creations of citizens who live in a geographical area.

The state legislature has already granted more powers to municipalities than to counties. We need to continue that careful analysis of just what powers should be lodged where. We can extend powers to local governments where evidence exists that such would be beneficial. Local officials do not necessarily have the experience and capacity to handle matters now monitored by state legislators. Normal procedures for assuring local accountability are not always in place. A case-by-case examination will allow us to proceed with wisdom and eventually to eliminate much of the lengthy detail in the constitution.

The argument for home rule is largely about what powers county governments can have. Municipalities are concerned that giving more power to counties could adversely affect them. For example, county taxes would be levied on municipal residents but not necessarily spent for the benefit of those residents. Numerous other conflicts are likely unless we move cautiously. Moreover, we need to think about how to develop more effectively cooperative arrangements among county and municipal jurisdictions to address such challenges as economic development.

There may be an element of truth in the argument that the necessity of submitting local legislation to statewide ratification is an important aspect of citizen control of government. Working through the state legislature gives us the control that is necessary to prevent duplication and litigation among competing local governmental jurisdictions.

Home rule is related to taxation. Giving more authority to local governments increases the chances of increased taxes. Alabama's tax system needs serious attention, but there are many different ideas about what changes are necessary and proper. Some feel that the tax system is unfair and needs fundamental overhaul to relieve the tax burdens of poorer citizens. Some feel that a few simple changes, such as eliminating the deduction for federal taxes, will do the job. Others worry that the current system does not produce

dependable income for specific needs, such as education. Others worry that excessive earmarking limits the flexibility we need to apply money where it is most needed from situation to situation. These differences should be subjected to statewide deliberation in the legislature, not left to local variations. We want coherent policies.

Basic restructuring of state government is a big step. Suggestions for reducing the number of state offices subject to popular election and increasing the powers of the governor require careful examination. The state legislature is the natural place to consider how the executive branch should be structured.

Delegates to a constitutional convention would not likely be subject to the discipline of re-election if they don't perform well. Who knows what doors a constitutional convention would open in a sea of conflicting ideas.

We do not need serious matters of governmental structure and taxation subjected to the kind of media campaigning that exists today. Election campaigns are bad enough, but once they are over, those elected enter into an environment with many checks and balances. Those checks and balances would be missing in a constitutional convention, which would be subject to maximum popular pressure. When it was all over and a new constitution subjected to statewide voter ratification, we might find that it has so many different, objectionable provisions in it that it would be defeated. We would have gone to a great deal of expense and trouble for nothing.

What critics of this view say:

Relying on a highly centralized state legislature to reform itself is folly. Lack of progress in making needed changes over the past century is evidence that relying on the state legislature is foolish. Responsible people have been arguing for significant changes in the Constitution of 1901 since the first few years after it was adopted. Little fundamental change has occurred.

The most glaring failure is in the area of providing sufficient funds for the needs of a modern state government and its citizens, particularly in providing adequate education. The Public Affairs Research Council of Alabama reported in 1999 that Alabama generates the lowest revenues among states because it applies a very low tax rate to a very small base of taxable resources. That base largely excludes property as a significant source of revenue. Since property taxes are for most states primary source of revenue for schools, Alabama's tax structure is unbalanced in this area.

Ira Harvey, researcher in the State Department of Education, argues that Alabama's tax effort ranks last in the nation. Moreover, Alabama's tax effort ranks last in the twelve Southeastern states. The argument that Alabama is a poor state and can't do better doesn't hold. If Alabama were to make the same tax effort as its peer states: South Carolina; Kentucky; Louisiana; Arkansas; West Virginia; and Mississippi, revenues would increase from a low of \$800 million to a high of \$2 billion. Alabama's current tax effort (use of its tax bases) is last among its peer states in the Southeast. That is \$400 per capita less than Kentucky and \$192 per capita less than Mississippi.

State politicians who continually run on pledges of "no new taxes" have not made significant reforms in the past. They are not likely to do so in the future. Alabama will continue to rank near the bottom in many measures of quality of life, education, and opportunity until we make better use of what we do have. With modest adjustments in our tax structure to invest more in our human resources, we can leverage what we do have into greater advantages.

Perhaps the greatest weakness of the state legislature as an instrument of reform is the influence of special interests. Powerful organizations in the state are well-organized and well-funded. The legislature lacks staff necessary to do its own thorough research. It is dependent upon information provided by lobbyists. Candidates for the state legislature depend heavily upon campaign contributions from special interest organizations. We can't expect state legislators to take bold steps beyond the wishes of their major contributors.

State legislators should be focused on matters pertaining to the state as a whole. Only with adequate attention to the needs of Alabama as a state can we hope to keep pace economically and intellectually with other states. Moreover, allowing citizens to deal with their problems as directly as possible with local officials has many advantages. It promotes civic responsibility and involvement. It will improve the accountability of governmental officials and build a more focused and effective political climate at the local level.

At the same time, we need to be more aggressive in looking at how we can get county and municipal governments working together to address modern challenges. Economic development, for example, requires thinking about matters that transcend current governmental jurisdictions.

If we are to get any serious attention to questions of restructuring state government, we must take their consideration beyond the state legislature. There are many proposals for making state government more effective. There are also many examples of states that have made beneficial changes. Unless we put those ideas up for consideration by a constitutional convention, they will never receive much discussion.

Those who say that we can make the constitution more intelligible and shorter by simply rewriting to eliminate redundant and outdated sections miss the main point. The constitution does not need simple editing, although that would help. It needs major structural overall. Home rule provisions would take out 70 percent of the length - permanently. Fundamental statements about human rights would remove the racist provisions that still haunt a reading of the Constitution of 1901 and understanding of our state by outsiders. Basic principles of governmental organization and of tax structure would give us the foundational document that modern circumstances require. The state legislature would never be able to limit its involvement to basic principles.

Choice Three: Seek a Thorough Revision through Constitutional Convention

We simply cannot do what we need to do in a timely manner without putting all the questions in the hands of the people, not the state legislature. A constitutional convention of citizens, not legislators, will have a new sheet of paper on which to write. It will remove the barriers that have kept reform from occurring.

What supporters of this view say:

Alabama's needs are serious. They require timely attention. They require the voices of the people, not just the legislature. The legislature is subject to tremendous special interest influence and cannot be expected to reform itself.

The specific areas that need attention - complexity, home rule, other questions of governmental structure, and tax policies - have been discussed in Choices One and Two. To those matters, we should add the important subject of recognizing diversity and expanding opportunity in our state.

Alabama is not the place it was in 1901 or even ten years ago. We live in a global society. We no longer have a work force made up primarily of men - both black and white - who were born and raised in this state. Women and minorities have increasingly significant roles in our society. Our Hispanic population is growing rapidly. We have major industrial and service businesses that bring many nationalities into Alabama. Our school systems and our social organizations are increasingly diverse. Our population is aging. The baby boomer generation is approaching retirement. We are going to have fewer workers whose productivity furnishes resources for dependent generations - those under 16 and over 65. We have new challenges that need new ways of organizing and enabling our state to deal with them.

Constitutional conventions are an accustomed way of dealing with major shifts in the life of our state. We have had six constitutional conventions. The first was in 1819 to form the state. The second was in 1861 to secede from the Union. The third was in 1865 to be restored to the Union. The fourth was in 1868 to be re-admitted to the Union. The fifth was in 1875 to counter the effects of Reconstruction. The sixth was in 1901 - sadly - to disenfranchise blacks (and many poor whites) and to centralize power in the hands of wealthy interests. Surely, we are as capable - or more so - than those who wrote these previous constitutions.

The Constitution of 1901 itself outlines the basic steps for a constitutional convention. First, the state legislature must approve by majority vote of both houses a resolution calling for a constitutional convention. Such a resolution does not require the governor's approval. (The Alabama House of Representatives postponed a vote on such a resolution in March 2002.) If approved, the resolution would go before voters of the state. If approved by a majority, the next step would be selection of delegates. A resolution

authorizing a constitutional convention would outline procedures and qualifications of delegates.

The legislature cannot restrict the jurisdiction and power of the convention. No agenda of matters to be considered can be stated in advance. That power is in the hands of the citizens' delegates. The constitution also provides for a schedule for transition Alabama Citizens for Constitutional Reform (ACCR) have proposed a plan for a constitutional convention. They recommend 105 delegates, one from each of the House districts. No legislator or other elected state official could run for one of the 105 seats, since the convention would be writing the job descriptions of state officials. However, since the legislature is a key player, the ACCR plan would permit twelve members of the legislative council - six from each house - to serve in the convention. These twelve would be selected by secret ballot by their peers.

Supporters of a constitutional convention point out that under our democratic system, a constitution reflects the fundamental value that citizens are supreme. Citizens acting through a constitutional convention exercise powers that citizens cannot delegate. Citizens establish the legitimacy of government, they grant it specific powers for the common good and the protection of individual rights, they give it purpose and basic direction, and they evaluate its performance.

The openness and freshness of a constitutional convention are required to deal with Alabama's challenges, especially adequate funding for education.

What critics of this view say.

The principal problem with this approach is that it is threatened to be uncontrollable. The resolution calling for a constitutional convention cannot place any restrictions on what can be considered by the convention.

The initial control comes in who are elected delegates. If the period for selecting delegates is short, the likelihood is that delegates will be selected who have name recognition or who can buy it quickly. That means people who are already obligated to special interests will be elected. Talk of "the people" is misleading.

On the other hand, if the period for selecting delegates is long, ordinary citizens cannot take the time to campaign and then take more time away from their jobs to serve in the convention. As always, those who have professional jobs that allow them flexible schedules, who have the money, and who have the backing of special interests will be involved. Again, talk of "the people" is rhetoric. The convention will be a battleground among special interests - without the normal controls of legislative operations.

If legislators cannot run for delegate positions, we will have two bad possibilities. One is that the delegate election will attract people who will not again run for office and therefore are unaccountable for their actions. The other is that they will be people who do

plan to run for office after the convention. They will use the convention as a campaign platform to test the waters for possible future office.

Demagogic appeals to narrow interests in electoral districts without regard to the overall welfare of the state are likely. Current references to such things as "the favor and guidance of Almighty God..." will come under attack and possible elimination. We live in times when traditional values are under heavy attack. Others will defend those values. Media will have a field day with the controversies that are apt to arise.

Everybody wants more money for favorite interests. The outcome is apt to be proposals for radical changes in taxation. Issues already defeated, such as a lottery, are apt to come up again. Certainly, there will be a vigorous effort to increase gambling in the state. The woes in our public education are not just money problems, if that. Those who would like to separate taxation questions from other aspects of constitutional change have no way to do it in a constitutional convention.

Home rule has some appeal to many people. It is perhaps the least objectionable of the matters people are raising about the constitution. However, in a constitutional convention, there is no telling how far the impulse for home rule and governmental restructuring might go. At the end of the constitutional convention, voters would be faced with accepting or rejecting a blanket proposal, not a case-by-case extension of power to local governments carefully monitored by the legislature.

All in all, it is just as likely that the constitutional convention will produce something voters will not ratify. We will have spent time, energy, and money on things we can accomplish through focused efforts in the legislature. We need to increase citizen participation in discussing issues and in voting. When citizens can clearly articulate needs, the legislature is the place to address them.

There is much in the Constitution of 1901 that does not need changing. What changes are needed should be addressed carefully as those needs arise, not in a wholesale rush to remake the state in the image of current special interests.

WEEK FIVE

DEVELOPING COMMON THEMES FOR ACTION USING DILIBERATIVE DECISION MAKING

(Report group decisions on Common Themes for Action form in Moderator's Guide.)

OBJECTIVE: Develop common themes for action, deciding on recommendations to congregational council and other actions to take.

ACTIVITIES:

- Develop common themes of action
- Determine recommendations to be made to congregational council
- Determine other group and/or individual actions based on common themes
- Complete Post-Deliberative questionnaires

NOTES
