

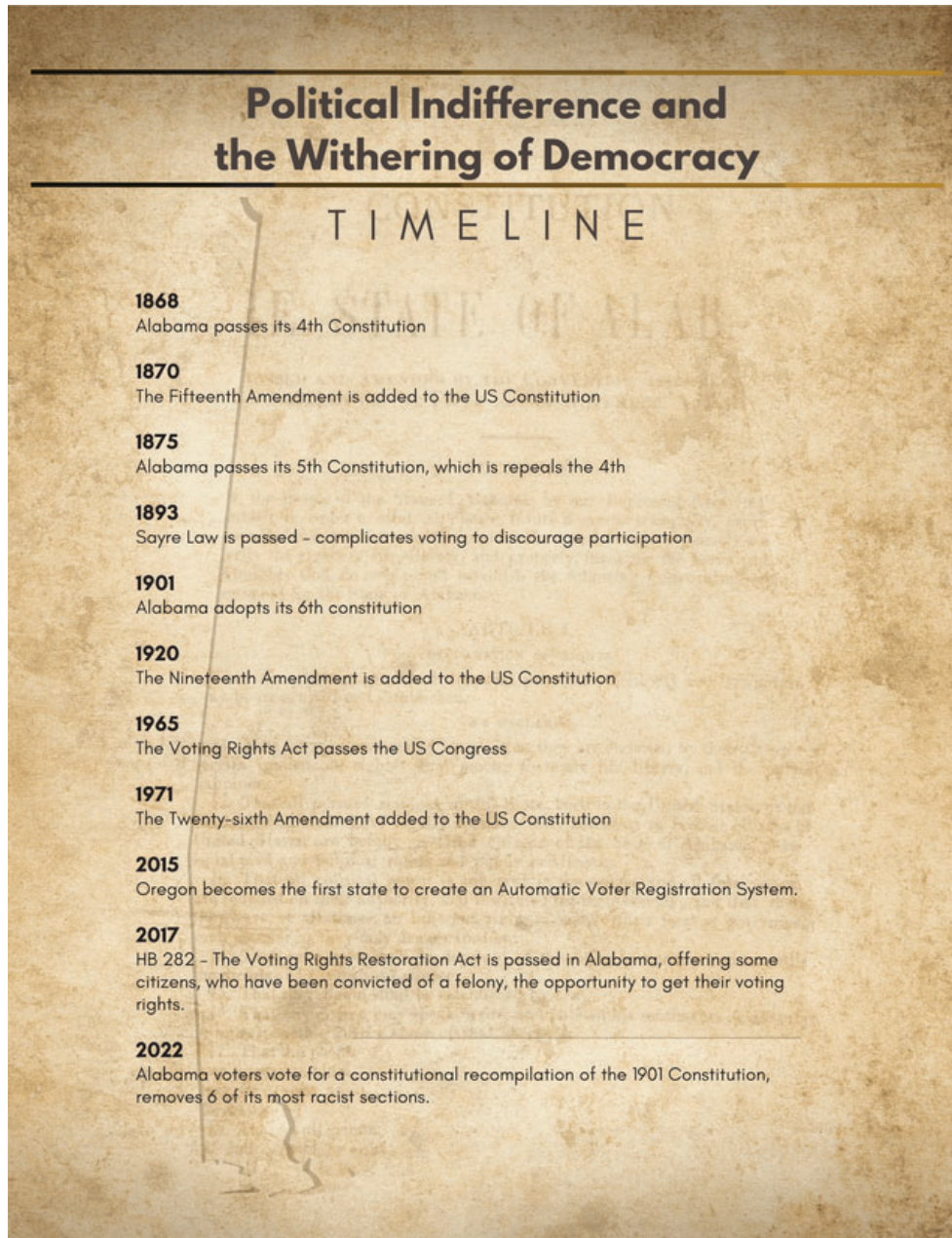
# Political Indifference and the Withering of Democracy in Alabama

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Abstract

Alabama's 1901 Constitution was drafted to codify white supremacy by removing African Americans from the voter rolls. Alabama did not invent voter suppression, nor does it have a monopoly on policies that deny African Americans, minorities, and poor people the right to vote. This chapter provides examples of how and to what effect disenfranchisement has been used in Alabama and other communities throughout the United States. This chapter also chronicles Alabama's unique constitutional feature that centralizes policymaking in the capitol – further suppressing democracy at the local level to the advantage of affluent interest groups entrenched in Montgomery. Consolidating policymaking at the Capitol has fostered antipathy and disaffection among Alabamians. Further, the voice of the few over the voice of the many has become a feature in contemporary American politics, as states gerrymander their legislative districts, creating legislative bodies that are not representative of the broader public. The framers of Alabama's 1901 Constitution created an enduring document whose spirit lives on – despite the 2022 recompilation. The Alabama Constitution has cultivated a political culture where voters are skeptical of substantive constitutional reform because Alabamians have learned that the state government should not be trusted and does not deserve more power.



Dates covered in this chapter

## INTRODUCTION

Developed after the Civil War, Alabama's 1868 constitution was drafted by a biracial convention and was devoted to raising additional revenue, providing universal education, expanding state services, enlarging the size and scope of state government, and encouraging business and industry (Flynt, 2001, p. 67). This constitution, Alabama's fourth, did not mention legal segregation, did not provide separate schools for white and Black Alabamians, and did not prohibit interracial marriage. It also expanded the

franchise to include Black men. The Radical Republicans' ambitions for effective governance in Alabama were short-lived, and their most relevant accomplishment was that they united their adversaries – the conservative Democrats (Fitzgerald, 1988). As federal Reconstruction ended, the support for the 1868 constitution waned along with the power of the Radical Republicans. Alabama's "native whites" begrudged the 1868 constitution as an imposition that was forced on them by federal Reconstruction policies (Stewart, 2011). Once the commitment to federal Reconstruction had subsided, Alabama's white elites mobilized to prevent their opponents from ever governing the state (Stewart, 2011, p. 10). By 1875, Alabama had a new constitution, which served as the first step toward codifying white supremacy in the state. The 1875 Constitution "was a reactionary document designed to overcome what whites perceived as the excesses of radical Republicans" (Flynt, 2001, p. 68). It was the polar opposite of the progressive 1868 constitution. It reduced the size of government and services it provided, lowered taxes, and constrained the political power of African Americans (p. 68). Although the 1875 framers were adamant about institutionalizing white supremacy, they withheld from disenfranchising Black voters so soon after the passage of the Fifteenth Amendment (ratified in 1870). They were concerned that doing so would invite federal action, which Alabama's ruling class wanted to avoid (Jackson, 2002). To accomplish that task, Alabama's ruling class held yet another constitutional convention and passed yet another constitution that attempted to rid the voter rolls of poor and Black Alabamians altogether.

Voting is the most common form of political participation (Aldrich, 1993). It is the mechanism that allows people to hold lawmakers and the government accountable. Citizens can choose to vote if the expected benefits of voting are greater than the expected costs; otherwise, they choose not to participate (Blais, 2000). Voting can be considered an exchange (Riker & Ordeshook, 1968). If citizens decide to vote, they can vote for candidates who promise to pass laws that benefit voters personally, such as cutting taxes or protecting programs that make up the social safety net, like Social Security, Medicaid, and Medicare. Citizens also vote as a form of political expression – as partisans or as responsible citizens who vote out of a sense of duty (Fiorina, 1976). Additionally, voting has systemic benefits, as democracy legitimizes government actions (Buchanan, 2002). Mass participation provides the legitimacy the government needs to do what it is supposed to do – provide safety and security, regulate commerce, and collect the taxes that pay for the services that voters demand. In the United States, the authority of the government to make laws is derived from "the people" – at least in theory. It is within this context that meaningful representative democracy can exist. In 1901, the economic and political elites in Alabama understood that their grip on power depended on the electorate's makeup. If the legitimacy of the governing regime rested on the outcome of elections, they sought to redefine the terms of who could cast ballots and vote in the state. They crafted a constitution that excluded voters they thought unlikely to vote for them. They did this to guarantee their enduring electoral success at the cost of meaningful democracy.

The promise of American democracy is that government will be accountable to the people. However, democracy in practice in the United States is more consistent with Alabama's – a system defined by those in power rewriting laws and redesigning and reforming institutions to prolong their hold on power. This chapter argues that Alabama's 1901 Constitution has fostered a culture of non-participation in Alabama. Passive citizenship cultivated by the 1901 Constitution is an extension of its anemic capacity to govern. The 1901 Constitution has reinforced voter cynicism and distrust of governing institutions in the electorate. Today, Alabama voters have little confidence in Alabama's government, and calls for substantive constitutional reform fall on deaf ears. Voters have little faith that reformers and policymakers in the state could be trusted with *more* power. To make this argument, I offer some background on the lead-up to the 1901 constitutional convention and provide a broader context by illustrating how the ruling classes in other states and cities have sought to undermine democracy. With growing concern over the current global erosion of democracies, it is all the more relevant to reflect on previous efforts to subvert democracy in the United States.

## THE POPULIST REVOLT AND THE CALL FOR CONSTITUTIONAL REFORM IN 1901

The U.S. Constitution leaves questions of voting to the states. Amendments to the Constitution expanded the franchise by prohibiting states from denying the right to vote based on race (Fifteenth Amendment ratified in 1870) and sex (Nineteenth Amendment ratified in 1920). The Twenty-sixth Amendment extended the right to vote to eighteen-year-old citizens in 1971. However, there was little political will to enforce the Fifteenth Amendment, and for the next century, many states systematically denied African Americans the right to vote. It was not until the passage of the Voting Rights Act of 1965 that the federal government appropriated resources and enforcement mechanisms to protect voting rights for African Americans.

Alabama has had seven constitutions. The 1875 constitution, its fifth, was designed to undo the 1868 constitution and limit government by placing caps on state and local property tax, segregating schools, and prohibiting “the state from loaning money or extending credit to internal improvements” (Flynt, 2004, p. 5). Only the fear of federal intervention prevented the 1875 framers from explicitly disenfranchising Black voters. The near electoral success of a coalition comprised of poor white and Black farmers in 1890s Alabama set the stage for adopting the 1901 Constitution (Webb, 2002). Alabama's coalition of poor farmers campaigned on populist policies that sought better prices for cotton and other goods they produced. They wanted reasonable terms for credit to ease the burden on farmers and more government regulation of monopolistic corporations like banks and railroads. Proposed reforms were a threat to the powerful men who dominated the state's economic and political system – merchants, landlords, plantation owners, directors of railroads, corporate lawyers, and leaders of Alabama's

growing iron and steel industry (Webb, 2002, p. 5). These moneyed interests are often referred to as the Big Mules, or Bourbons, and they dominated the Alabama Democratic Party. The Populist Party, which had emerged from the Farmers Alliance, had an egalitarian philosophy:

The principle of “equal rights for all and special privilege to none” ... Protection against elites’ privileges lay in the ballot box, and “campaigns for the abolition of all property qualifications for voting and officeholding” (Webb, 2002, p. 9).

The populist reformers’ efforts came close to fruition in the 1892 state election – too close for Alabama’s establishment politicians. The short-run solution was to pass new legislation that made it more difficult for African Americans and poor whites to vote. The Bourbons

gerrymandered town limits to reduce the number of enfranchised Black voters; they made state and local offices appointive rather than elective, especially in areas of majority Black population; they complicated election laws (the 1893 Sayre Election Law arranged candidates on the ballot alphabetically under the office they ran for without listing party, required voters to produce a certificate of identity, and only registered new voters during May) (Flynt, 2004, p. 5).

In 1901, the *Mobile Register* quoted a leading state senator saying that the Sayre Election Law was “the best and cheapest method of swindling that the white people have ever devised for the maintenance of white supremacy” (Webb, 2002, p. 19).

Instead of changing their platform and policies to appeal to a broader constituency, the Bourbons changed the rules by making voting more difficult. To solve the problem of competitive elections, the ruling party pursued a new constitution that made it easier for Alabama’s Democratic Party to neutralize political threats. They wanted to win elections, keep the government small, and centralize their hold on power. The 1901 framers first sought to remove African Americans from Alabama politics (Stewart, 2016). The Alabama Democratic Campaign Committee urged party members to ratify the new constitution with the motto “White Supremacy, Honest Elections, and the New Constitution, One and Inseparable” (Flynt, 2002, p. 36). The convention’s presidential address was clear as to what the agenda for the new constitution should be:

...to establish white supremacy in this State. This is *our* problem, and we should be permitted to deal with it, unobstructed by outside influences. But if we would have white supremacy, we must establish it by law—not by force or fraud.

-John B. Knox, President of the 1901 Alabama Constitutional Convention

The 1901 Constitution reshaped the electorate by adding institutional barriers to voting, including poll taxes, literacy tests, disqualifications for “*idiocy*, insanity,” criminal convictions, and property and residency requirements. These measures

disenfranchised a broad swath of poor Alabama voters, Black and white. An additional push for disenfranchisement came from the Constitution’s oddly precise language in the registration of voters. In the Jim Crow Era, it was extremely tedious to register to vote in Alabama. “Those who wished to sign up had to take a twenty-page test on the US and Alabama constitutions and the structure of state and local government” (Stewart, 2016, p. 140). But the Alabama Constitution also offered voter registrars broad discretion in terms of who they could allow to vote. For instance, the Grandfather Clause allowed someone to vote if their grandfather voted, and provisions like the “fighting” Grandfather Clause allowed a person to qualify to vote automatically if their grandfather was a Civil War or War of 1812 veteran. The poll tax also prohibited voting for many Alabamians. The poll tax was \$1.50 a year and would accumulate in cost if not paid yearly; it would be double the next year, and so on. Literacy tests were also used to keep citizens from exercising their right to vote and were seen as a means of producing a competent electorate (Rodriguez, 2008). In practice, literacy tests were strictly enforced against Black registrants who would fail “for misspellings and the like” (Rodriguez, 2008, p. 1143). Literacy and poll taxes were important tools in the disenfranchisement of voters. The 1901 Alabama Constitution allowed county voter registrars the ability to use these tools to keep Black and poor Alabamians from voting. The new Constitution’s effects on the electorate were almost immediate. It had a crippling effect on participation.

**TABLE 1: EFFECTS OF THE 1901 CONSTITUTION ON VOTING**

	Voters in 1900, under the 1875 Constitution	Voters in 1903, under the 1901 Constitution
African Americans	~181,000	2,890
Black Belt African Americans (southern Alabama)	79,311	1,081
Whites	232,800	191,500
Gubernatorial election turnout	155,300 in 1900	94,700 in 1906

*Source: Flynt (2002, 2004)*

In sum, the framers of the 1901 Constitution understood the threat posed by the coalition of poor white and Black farmers to the Alabama Democratic Party’s control of the government in the 1890s. The populist coalition demanded public investment in roads and other methods of getting their products to market; they wanted to renegotiate bank debts and expand “the power of government to enlarge opportunities for ordinary citizens” (Flynt, 2004, p. 6). After the populists lost in a tumultuous and violent election in 1892 (Webb, 2002), the economic and political elites saw constitutional reform as a means of controlling who voted, who was elected, and what

laws were passed by the state government (Jackson, 2002). The framers understood that controlling access to the ballot box was important in reaffirming control over who gets what, when, and how (Laswell, 1950). Their intuition on the importance of this power was not wrong. Research has shown a marked difference in policy preferences between poor, people of color, who tend to vote less regularly, and people of means – who tend to regularly vote (Hajnal & Trounstein, 2013, p. 63). Poor people and minorities favor redistributive policies, including public housing, health care, education, and other social services. “Whites and the middle class are especially concerned about attracting business and other aspects of development, reducing taxes, and improving their quality of life through better parks and recreation and easier transportation” (Hajnal & Trounstein, 2013, pp. 63-64). In an analysis of voter turnout in local elections, Hajnal and Trounstein (2013) found that lower voter turnout affected how those cities allocated their funds. Local elections with low turnout resulted in less spending on redistributive policies and more spending on parks, police protection, lower taxes, and less government debt.

## WHO VOTES MATTERS: STATE POLICIES CAN PROMOTE OR UNDERMINE ELECTORAL PARTICIPATION

Elections are mechanisms for democratic accountability. Elections allow ordinary people to hold lawmakers accountable and thereby control the direction of government. Political science research has documented that elected officials have several priorities, the first of which is reelection (Mayhew, 1974). Elected officials are responsive to voter demands because they want to get elected to office, then they want to get reelected. Political scientists have also established that “politicians are under no compulsion to pay much heed to classes and groups of citizens that do not vote” (Key, 1984, p. 99). The desire of economic and political elites to stay in power is not unique to Alabama. In a federal government, where states are semi-autonomous, states implement policies that shape the electorate. The U.S. Constitution provides that citizens over 18 can vote regardless of race or sex and prohibits poll taxes. Aside from those individual protections in the U.S. Constitution’s Amendments, state governments can institute measures that can simplify and make it easier to vote, thus increasing turnout. Likewise, state governments can also institute barriers that can make voting less convenient. In 1901, Alabama’s ruling class sought to limit democracy by making it more difficult for Black and poor people to vote. Alabama was not the first to use voter suppression measures – nor was it the last.

One method used by Alabama’s 1901 framers was the disenfranchisement of felons, a practice that dates back to Ancient Greece and Rome (Manza & Uggen, 2004). People convicted of felonies, despite having paid their debt to society, are barred from voting in many states. Fourteen states deny the right to vote to inmates, parolees, and some or all ex-felons. “In some states, 15 percent of adult African American men were



disfranchised” (Keyssar, 2013, p. 41) because of African Americans’ overrepresentation behind bars. States with a larger proportion of non-white prison population were more likely to have policies for the disenfranchisement of felons (Manza & Uggen, 2004, p. 493). The partisan and ideological dimension of felon disenfranchisement falls into a predictable pattern. Since prisoners are disproportionately from working-class backgrounds, Black and/or Latino, it is assumed that former prisoners will vote for the liberal or Democratic Party (Uggen & Manza, 2002). Conservatives, “reluctant to support legislation that could hurt their own electoral fortunes” (Keyssar, 2013, p. 42), are not typically supportive of extending the franchise to people who have served time in prison (Yoshinaka & Grose, 2005). Likewise, the 1901 Alabama Constitution disqualifies people who commit “crimes of moral turpitude” from voting. The ACLU of Alabama estimates that in 2017, approximately 250,000 Alabamians were disenfranchised because they had a felony conviction. That is, those convicted of any felony lost their right to vote in Alabama, as all felonies were considered crimes of moral turpitude. A 2017 Alabama law, HB282, provides a list of specific felonies<sup>2</sup> that define “crimes of moral turpitude.” This specification allows for the restoration of voting rights to many who have felony convictions for crimes such as theft of property, burglary, and robbery.<sup>3</sup> There are no current figures of how many people who have served time for a felony conviction are now voters because of this law, and the process to restore voting rights requires applicants to file for a Certificate of Eligibility to Register to Vote (CERV) with the Alabama Bureau of Pardons and Paroles.

The United States stands out as being less voter-friendly when compared to other Western democracies (Theiss-Morse & Wagner, 2023, p. 74). In 2023, most states required that voters register, making voting in the U.S. a two-step process by which “the burden of registration is on the individual” (Theiss-Morse & Wagner, 2023, p. 74). According to the National Conference of State Legislatures (2023), 22 states “have implemented same-day registration, which allows any qualified resident of the state to register to vote and cast a ballot at the same time.” And “since Oregon became the first state to create an Automatic Voter Registration (AVR) system in 2015, there are now more than a dozen states that register people to vote when they interact with the Department of Motor Vehicles, or in some cases other agencies” (Smith & Greenblatt, 2020, p. 107). Alabama voters, on the other hand, must register 15 days before the election in which they intend to vote. Research indicates that same-day registration “increases turnout among individuals aged 18-24 (an effect between 3.1 and 7.3 percentage points)” (Grumbach & Hill, 2022, p. 405).

Voter identification laws have also become popular among state lawmakers who claim that the policies are needed to protect the ballot box from fraud. Research indicates, though, that such fraud is rare, and when it does occur, it is minuscule and inconsequential (Keyssar, 2013). Opponents of Voter ID laws claim that the laws are passed as a means to suppress the turnout of the poor and people of color. Democratic Party officials strongly oppose strict photo ID laws (Highton, 2017, p. 150), and the

rhetoric of state-level Republican lawmakers gives credence to the claims that they are trying to suppress turnout and deliver an electorate that is more likely to vote for Republican candidates (e.g., Blake, 2021; Wines, 2016). While some studies have concluded that these policies “are partisan tools, designed with the marginalized fringe of the Democratic party in mind, to shape the electorate primarily in favor of state Republican legislatures facing competitive elections” (Barreto et al., 2019, p. 246), others have argued that these laws are more benign and that Voter ID does not affect aggregate voter turnout (Mycoff et al., 2009; Grimer et al., 2018). One explanation of this null effect may be that groups that oppose Voter ID laws effectively mobilize voters to obtain acceptable forms of identification and, in the process, intensify their get-out-the-vote efforts. Nonetheless, evidence indicates that Voter ID laws disproportionately affect minorities and alter the makeup of the voting population (Kuk et al., 2022, p. 132), with other studies finding that whites were more likely to possess a valid form of ID than people from different racial groups (Barreto, 2019). The null effect conclusion fails to consider that the resources spent by pro-participation advocates can be otherwise spent on other efforts.

Alabama’s history is not unusual. It is one that is shared with many other states, where those with economic and political power seek to create a system that protects their dominance by preserving the status quo. They crafted rules that limited the scope of government. They locked in low taxes, and they limited democracy so that poor and people of color would not vote and thus not have a voice in who governs them. These types of policies are not limited to states or the Deep South. Throughout the United States, local governments have pursued similar strategies. For instance, economic and political elites in Austin, Dallas, Galveston, San Antonio, San Jose, San Diego, Albuquerque, and Phoenix pursued policies similar to those of the Alabama 1901 Constitution’s framers. Policymakers in these cities redesigned institutions to promote growth, keep taxes low, and undermine their political opposition, all while using the rhetoric of good government through non-partisanship and professional administration (Bridges, 1997). Elites in these cities pursued policies that stimulated industry growth in their cities. They kept taxes low to cater to middle-class and affluent voters while excluding poor people of color from civic life (Bridges, 1997). The governing institutions in these cities were heavily influenced by property developers who chose city boundaries that captured affluent white voters. The ruling coalitions insulated municipal government from the demands of poor residents by creating voting districts that diluted the voices of poor people in local elections and ensured their concerns about unacceptable municipal services went unheeded. When elites included poor residents in the city’s governance, elites opted to change the structure of elections and adopted at-large elections, which diluted the voices of poor and minority residents. In at-large election systems, “if there are five city council seats, each seat is elected separately by all voters in the city” (Donovan et al., 2010, p. 67). At-large elections were sold as ‘good government’ reform, in part for their ability to get working-class whites, Blacks, and socialists off of the city councils (Donovan et al., 2010, p. 63). District elections, on the

other hand, divide the city into regions that can take race, partisanship, and geography into consideration. Most cities have areas of town that have a concentration of poor, affluent, mostly Black, mostly Asian, or Latino residents. District elections give candidates from minority communities a better chance of getting elected to office (Donovan et al., 2010, pp. 63-64).

Policymakers in these cities also adopted nonpartisan elections. At face value, the move to nonpartisan elections seems wholesome. Lawmakers representing affluent interests argued that nonpartisan elections took the politics out of local government. After all, there is not a Republican or Democratic way of fixing a pothole in a street or collecting the trash. But political party labels serve as invaluable shorthand for voters. A candidate's party affiliation allows voters to make informed decisions with limited or no information about the individual candidate on the ballot. Non-partisan elections require voters to possess a level of information about the candidates that many people do not have. The time required to make an informed choice ultimately discourages people from voting (Schaffner et al., 2001). To further obfuscate accountability, policymakers in cities adopted and promoted professional city management and the council-manager form of government. That is, "by weakening the powers of the mayor and shifting more power into the hands of an unelected city manager, this structural change may have reduced the direct influence of voters and decreased the incentive for local residents to vote" (Hajnal & Lewis, 2003, p. 647). Undemocratic reforms at the municipal level was not limited to the South and Southwest. The Great Migration of Black Americans out of Jim Crow states "led Northern cities to switch to city manager systems" (Grumbach et al., 2023, p. 1). City elites reacted to the influx of Black Americans in their cities by insulating policymaking from increasingly diverse electorates (Grumbach et al., 2023).

Institutional structures can be used to undermine political participation. Policymakers throughout the United States instituted measures that increase the costs of voting to reduce turnout. As discussed, lawmakers have kept those convicted of felonies from exercising the right to vote despite serving their debt to society. Many states require citizens to register to vote, which makes voting a two-step process, and voters must re-register if they change residences. States have also passed Voter ID laws that mandate that voters present forms of identification to vote. Cities throughout the United States have utilized similar strategies to limit the participation of voters that might compel municipal governments to spend money on programs inconsistent with the pro-growth, low-tax agenda that affluent developers and business owners support. Many cities adopted at-large, non-partisan elections, and the council-manager form of government to insulate institutions from voters' demands. The policies adopted by elites in municipal governments and by legislators who sought policies that increased the costs of voting were analogous to those adopted by the drafters of Alabama's 1901 Constitution. Like the legislators that passed the Sayre Election Laws (1893), which were designed to suppress the turnout of poor people and people of color in Alabama, policymakers,

generally, have understood that the makeup of the electorate is an important determinant of the outcome of elections, which go on to determine the government's priorities.

## ANEMIC ALABAMA GOVERNMENT AND ITS EFFECT ON ITS CITIZENS

In addition to limiting access to the ballot, Alabama's 1901 Constitution also centralized power in Montgomery and limited the state government's capacity to solve problems at the local level. The white supremacists that drafted the 1901 Constitution knew that if majority Black counties allowed Black Alabamians to vote, they would control local political institutions. To ensure that Black residents would not be able to govern their communities, the 1901 Constitution gave the state legislature "vast authority over local matters, rather than allowing local governments to make decisions on purely local issues... This allowed legislators to impose unsought and undesired decisions on local governments" (Stewart, 2016, p. 76). By centralizing policymaking in Montgomery, economic and political elites exerted control over local matters without being present in any of Alabama's sixty-seven counties. This continuing feature compels local leaders to have a good working relationship with their state legislators. "Alabama has been identified as one of two states with county governments that lack substantial home rule and are therefore dependent on advance state legislative approval for many county initiatives" (Stewart, 2016, p. 160). The 1901 Constitution outlines in detail what local governments cannot do (Sumners, 2002, p. 70). Because of this provision, minor policy changes in city and county governments require amendments to the state constitution. Prior to the 2022 recompilation, the Alabama Constitution had been amended over 977 times. In 2002, one analysis found that approximately 75% of the amendments in the Alabama Constitution applied to only one county (Sumners, 2002, p. 76). The 2022 recompilation did little to change this problem, as the local amendments have been resorted into the "new" constitution by county and topic. The 2022 recompilation did not address the fundamental issues associated with the 1901 Constitution but did remove the most racist, defunct parts and reorganized it into a more navigable document. Alabama's constitution is still three times longer than the next longest state constitution (Swetlik, 2022)

The 1901 Constitution also limited taxation for the general welfare and prohibited state aid for internal improvements (Jackson, 2002, p. 17). The 1901 Constitution's taxing provisions, notably its restriction on property taxes, established a state government incapable of addressing the state's needs. The Alabama state government continues to have problems raising the capital needed for roads, public education, aid to the poor, and healthcare. The underperformance of state services fosters a political culture of distrust and cynicism among Alabama voters. The legacy of institutions designed to protect the power of the affluent has ultimately created a traditionalistic political culture

(Elazar, 1984). “States with traditionalistic cultures seek to preserve the status quo and maintain benefits of the politically powerful, or wealthy elite” (Rinfret et al., 2023, p. 68). Traditionalistic states tend to have depressed turnout in elections, as voters have “tuned out,” a result of the belief that elections are a foregone conclusion. That definition describes Alabama voters conditioned to stay away from the polls as one vote does not seem to matter. Voter disengagement is all the more concerning as research has shown that disaffected, dissatisfied citizens will withdraw and stop participating altogether – putting democracy in peril (Lerman, 2019).

In sum, the controversy over voting rights, controlling who can and cannot vote, is a story about tensions between haves and have-nots. In Alabama and various communities throughout the United States, economic and political elites redesigned political institutions to protect and preserve their privilege from the electoral challenges of poor people of color. Research has demonstrated that socioeconomic status, education and wealth, are correlated with participation rates. Affluent and well-educated people are more likely to vote when compared to poor, less-educated people (Theiss-Morse & Wagner, 2023). Typically, Black, Latino, and young voters are less likely to turn out when compared to older white voters (Theiss-Morse & Wagner, 2023). Research indicates that increasing the cost of voting through institutional barriers will decrease turnout among disadvantaged groups (Juelich & Coll, 2020).

Making politics more inclusive, participatory, and democratic is one of the advances made in American politics. But the values of democracy are constantly challenged by those who are threatened by the changing electorate. A more inclusive electorate means diversity in terms of ethnicities and race, in the values of new constituencies, and of the priorities new groups might set for government. An inclusive electorate might translate into new policies and new taxes. History illustrates how the economic and political elite have used the political system and government for their interests. Alabama is not an outlier, as other states and communities have sought institutional structures that insulate government from voters’ demands. They have changed the rules of institutions to maintain their hold on power.

## DEMOCRATIC BACKSLIDING AND ALABAMA

In *Federalist #10*, James Madison wrote about the threat of majority factions and their capacity to oppress minorities. Contemporary politics has realized the opposite of what Madison warned – the rise in the *tyranny of the minority*. For instance, in an unprecedented move, the Speaker of the House, Kevin McCarthy (R-Calif.), was deposed by eight members of his political party in October 2023. That is, eight Republican members of the House, who represent less than 2% of the U.S. population, were able to disrupt the operation of the U.S. House of Representatives. It took three weeks to replace McCarthy. In another example, U.S. Senator Tommy Tuberville (R-

Ala.) blocked nearly 400 upper-level military commissions for ten months in 2023. Senator Tuberville's block of the military commissions was over the Whitehouse's policy that allowed servicemembers reimbursement for travel costs related to getting abortions.<sup>4</sup> Another example of how political minorities are imposing policies that are not reflective of the preferences of the broader electorate is that of gerrymandering at the state level. The U.S. Constitution requires that a census be taken every ten years and congressional seats be reapportioned. Accordingly, state legislatures are compelled to redraw electoral/legislative district lines. Within a state, voting districts should have equal populations (*Reynolds v. Sims*, 1964). Gerrymandering—drawing electoral districts for partisan advantage—traces its origins to the early republic. Majority political parties in state legislatures use this process to draw electoral districts that allow them to press their advantage (McGhee, 2020). State legislators draw electoral districts that are overwhelmingly made up of the majority party's voters and make it very difficult for their opponents to win an election. Using sophisticated data about voter's geographical distribution (i.e., where voters live) and their party affiliation, the state's legislative majority can draw a district that *packs* all of their opponents into one district, making every other district more secure for the majority. The other option is to *crack* the voters of the minority opposing party so that their numbers are scattered among districts consisting of the majority party. One effect of gerrymandering is lower turnout. Gerrymandering takes the competition out of elections and ensures that the party that controls the legislature will win in the next election. The cumulative effect of gerrymandering, cracking and packing, is to “waste” a larger part of the other party's votes, either in support of losing candidates or through excessive support for winning candidates (Engstrom, 2020, p. 23). Put another way, gerrymandering undermines participation because voters are less inclined to vote in noncompetitive elections (Baumgartner & Francia, 2019). Heather Cox Richardson (2023) provides an example of withering democratic norms caused by partisan redistricting:

In Wisconsin, the electoral districts are so gerrymandered that although the state's population is nearly evenly divided between Democrats and Republicans, Republicans control nearly two-thirds of the seats in the legislature and it is virtually impossible for Democrats ever to win control of the state legislature.

Gerrymandering insulates lawmakers from democratic accountability by affording them the luxury of electoral safety. In a representative democracy, politicians should be concerned about appeasing their constituents and getting reelected (Mayhew, 2004), and voters should be able to voice their concerns to their representatives. Gerrymandering effectively takes the competition out of the election and suppresses turnout (Anderson, 2018; Jones et al., 2023). If democracy requires free, fair, and competitive elections, gerrymandering constitutes a severe distortion of democracy.

In 2023, the U.S. Supreme Court upheld a judgement of a federal three-judge panel finding that the Alabama legislature had created a congressional map that violated the

Voting Rights Act. Alabama's congressional map centered on the demographic makeup of the second district, which, as drawn by the legislature, had a population that was 40% African American. The court order would require Alabama to have two districts with a near-majority Black population. The Alabama legislature responded to the court by offering a map that continued to violate the court order. Governor Kay Ivey responded by echoing John B. Knox: "The Legislature knows *our* state, *our* people and *our* districts better than the federal courts or activist groups." 5 The federal court's three-judge panel, made up of two Trump and one Reagan appointee, responded:

We are disturbed by the evidence that the State delayed remedial proceedings but ultimately did not even nurture the ambition to provide the required remedy... We are not aware of any other case in which a state legislature — faced with a federal court order declaring that its electoral plan unlawfully dilutes minority votes and requiring a plan that provides an additional opportunity district — responded with a plan that the state concedes does not provide that district... The law requires the creation of an additional district that affords Black Alabamians, like everyone else, a fair and reasonable opportunity to elect candidates of their choice (Greenberg, 2023).

Madison's warning of the tyranny of the majority has been turned on its head. In contemporary politics, small privileged groups have an outsized influence in political institutions. The influence of the few over the voice of the many has manifested in national institutions (Dahl 2003). In states, partisan lawmakers (the few) choose their voters (the many) through the gerrymandering process. This is not how it should be - voters are supposed to choose lawmakers, not the other way around. Ultimately, the result is less voter participation, as people feel they cannot influence the elections because they live in noncompetitive districts. As a callback to an earlier point, the centralization of policymaking in Montgomery is another example of how interest groups, who represent the few, have an outsized influence in the Alabama legislature because of the features of the state constitution. Few voters can afford to camp out in Montgomery and compete with interest groups and professional lobbyists for the duration of the legislative session.

The framers of the 1901 Constitution understood that elections have consequences and that the results of elections determine who represents the public's interest in governing institutions. American history has shown that those with power will go to great lengths to keep their place of privilege and influence. In states like Alabama and cities throughout the United States, politically entrenched groups that are economically and politically powerful have used their policymaking authority to "reform" the voting rules and redesign institutions to maintain the status quo.

## CONCLUSION

The United States Constitution is limited in its ability to preserve the participatory aspects of American democracy. It prohibits states from denying the ballot based on gender and race. The Twenty-Fourth Amendment (1964) abolished the poll tax. The Twenty-Sixth Amendment (1971) extended the right to vote to those over 18. Federal legislation has prohibited literacy tests. Nevertheless, states can still disqualify voters for being convicted of a felony and immorality. The rights established by the U.S. Constitution are insufficient because the amendments that protect individual voting rights require congressional legislation. The Fifteenth, Nineteenth, Twenty-Fourth and Twenty-Sixth Amendments include that “Congress shall have the power to enforce this article by appropriate legislation.” Congressional action is needed to give these amendments the force of law to enable the appropriate government agencies authority and the resources needed to police the behavior of state and local governments regarding voting rights. Consider that the Fifteenth Amendment was ratified on February 3, 1870, but was not meaningfully implemented until the Voting Rights Act of 1965 was passed 95 years later.

Popular sovereignty means that the people govern – they make laws that can affect one’s life, liberty, and property. Elections serve as the means by which voters/citizens legitimate government and its laws. “It is often asserted that the greater the participation, the more legitimate the democracy, which is said to be a prerequisite for stability” (Bennet & Resnick, 1990, p. 773). The lack of meaningful democracy and low turnout in elections is symptomatic of systemic disorder that can allow anti-democratic forces to take over (Bennet & Resnick, 1990, p. 773). Participation in the electoral system is an inherent good, enabling the individual to become a fuller and more competent citizen. Low levels of voter participation mean that poor citizens will turn out in elections at lower rates, exacerbating inequality (Lijphart, 1998). Low levels of political participation indicate that nonvoters are less knowledgeable about political issues and are, therefore, less likely to be engaged in the larger community. As Robert Putnam warned over twenty years ago, “Like a fever, electoral abstention is even more important as a sign of deeper trouble in the body politic than as a malady itself” (2000, p. 35).

The framers of Alabama’s 1901 Constitution drafted a document that undermined the ability of their opponents to challenge the power of entrenched political and economic elites. By limiting the electorate, they guaranteed their success at the ballot box. They also disempowered the government so that it could not solve collective problems for the people of Alabama. They accomplished this by strangling democracy and the government’s capacity to raise funds for improvements to roads, schools, and other essential services for Alabamians. Alabama’s roads and bridges remain wanting – the American Society of Civil Engineers awarded Alabama infrastructure with a score of C- in 2022. According to US News, Alabama ranked 47<sup>th</sup> in education and 45<sup>th</sup> in



healthcare. The long-term consequence of restrictive voting, enfeebled local democracy, and limited government capacity to govern has translated into a political culture defined by paternalism whereby government elites use their power to maintain the existing social order (Elazar, 1984). The consequence of the 1901 Constitution's effects on democracy in Alabama is that it also created a political culture that is hesitant to replace it with a capable government. Most Alabamians would be loath to give the state more power as most are disaffected by its government. In 2017, 63% of Alabamians said that they "have no say in what the government in Montgomery does," 61% claimed the same in 2021 – with 58% of Democrats and 66% of Republicans agreeing with the statement (Town, 2021). The 2022 midterm elections in Alabama had the lowest turnout in 36 years. Unfortunately, the common reaction to bad government is not to reform and change it for the better but to withdraw (Lerman, 2019). The Alabama Constitution has created an ineffective government that few Alabamians trust (Horn, 2019). And that was the entire point of its creation. Constitutional reform and effective governance would be anathema to Alabamians, as they have learned over time that the government should not be trusted and does not deserve more power.

## KEY TERMS

**At-large elections** – Often used to dilute the influence of minority voters, these types of elections allow candidates to run citywide.

**Disenfranchise (or disfranchise)** – To take the right to vote away.

**District elections** — Often used to allow minority groups to get elected, district elections subdivide a city (or state) into several jurisdictions. Districts can consider geography and natural boundaries.

**Franchise** – The right to vote.

**Gerrymander** – The drawing of district lines for partisan purposes.

**Home rule** – The ability of cities and counties to have autonomy from the state government to make policies that solve local problems.

**Literacy tests** – Civics tests administered to would-be voters, often used to deny minorities the right to vote. The Voting Rights Act of 1965 outlawed the use of literacy tests.

**Poll tax** – Fee charged by the state to would-be voters. The Twenty-Fourth Amendment, passed in 1962, prohibits the collection of a poll tax for federal offices.

### DISCUSSION QUESTIONS

1. What were the goals of the 1868 Alabama Constitution?
2. Why did the 1875 fail to disenfranchise Black Alabamians totally?
3. How did the Sayre Election Law affect turnout in Alabama elections?
4. What did Alabama's populist party campaign on in the 1892 election? What did they want?
5. What were the primary goals of the rewritten 1901 Alabama constitution?
6. What are notable ways by which other governments, state and local, made it more difficult to vote?
7. The author makes the case that making it more difficult to vote in the US has become more common. What are some examples from contemporary bills and laws in state legislatures that make it more difficult for people to vote? What are examples of legislatures and lawmakers acting undemocratically? Are there also examples of other states implementing policies that enhance democracy?

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## NOTES

1. It is important to note that the ruling Democratic Party from the end of the Civil War to c. 1960 was very different from the contemporary Democratic Party. Likewise, the Radical Republicans, who dominated national politics after the Civil War, were ideologically opposite the contemporary Republican Party.
2. See <https://www.aclualabama.org/en/voting-rights-restoration>
3. See <https://www.aclualabama.org/en/how-to/restore-your-voting-rights>
4. See <https://www.nbcnews.com/politics/congress/sen-tommy-tuberville-drops-hold-hundreds-military-nominees-rcna128138>
5. Emphasis mine.
6. Fukuyama (2013) and Putnam (2000) make this claim implicitly and explicitly.