



# THE GOAT HILL INTELLIGENCER

*A Research Publication of the  
Alabama Policy Institute*



## The November 2020 Constitutional Amendments

### Introduction

On Election Day, the people of Alabama will have the chance to cast their votes for a number of federal and state officials. In addition, voters will decide whether several proposed amendments should be added to the Alabama Constitution.

Proposed constitutional amendments can be confusing. Voters need an understanding of each amendment to confidently cast their ballots.

The purpose of this guide is to explain the statewide constitutional amendments in plain language to help voters make informed decisions.

As a 501(C)(3), the Alabama Policy Institute is allowed limited direct influence on ballot issues. As such, the leadership of API is very selective about which issues to directly support or not to support. Any ballot initiative listed herein that does not expressly state a position should not create the inference of non-support but rather that the leadership of API did not view that particular initiative as having a direct impact on issues the organization is engaged on.

### How to Prepare to Vote

We recommend that you print out a sample ballot (available at the Secretary of State's website - <https://www.sos.alabama.gov/alabama-votes/voter/general-election-sample-ballots>) and mark your selections directly on it as you read through this guide. You can take your sample ballot with you when you go to vote—this is absolutely allowed, and we highly encourage you to do so—saving time and safeguarding against lapses in memory (depending on your precinct, you could be voting on many different offices and amendments). Most importantly, by thinking through ballot decisions ahead of time, you will be ready to cast your votes with confidence.

There will be six statewide constitutional amendments on the

### ISSUE SNAPSHOT

- Election Day is Tuesday, November 3rd, 2020.
- There will be six statewide constitutional amendments on the ballot in Alabama.
- The ballot language for these constitutional amendments can be confusing.
- Through the explanations and information provided in this guide, the people of Alabama will be able to confidently cast their votes on the constitutional amendments.

ballot this election. Voters will be asked to answer either YES or NO for whether each amendment should be added to the Alabama Constitution.

In this edition of the Goat Hill Intelligencer, each statewide amendment is explained. For reference, the actual ballot language is quoted at the beginning of each explanation.



## Proposed Constitutional Amendment No. 1

*Proposing an amendment to the Constitution of Alabama of 1901, to amend Article VIII of the Constitution of Alabama of 1901, now appearing as Section 177 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, to provide that only a citizen of the United States has the right to vote (Proposed by Act No. 2019-330).*

Currently, the Alabama Constitution reads that every U.S. citizen who meets the state's voting requirements has the right to vote. This amendment, if passed, would exchange the word "every" for "only" so that the Alabama Constitution would read, "Only a citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence."<sup>1</sup>

Amendment 1 does not affect any of Alabama's voting laws and federal voting requirements already require voters to be citizens of the United States. The amendment's original sponsor, Senator Del Marsh (R-Anniston), acknowledges that non-citizens voting is not currently a problem in Alabama. He sees the change, instead, as a "message to Washington."<sup>2</sup>

Opponents of the amendment, however, argue that it "has no practical purpose and...opens the door to mischief." Specifically, opponents argue, removing the state constitutional right to vote for all United States citizens, which the amendment does by eliminating the word "every", the state legislature would be allowed by the Alabama Constitution to increase limits on voting based on political whims.<sup>3</sup>

The United States Constitution, which protects the right of U.S. citizens to vote, however, supercedes the Constitution of the State of Alabama. The impact of this amendment, therefore, is extremely limited.

**API Recommendation: 'Yes'**

## Proposed Constitutional Amendment No. 2

*Proposing an amendment to the Constitution of Alabama of 1901, to increase the membership of the Judicial Inquiry Commission and further provide for the appointment of the additional members; further provide for the membership of the Court of the Judiciary and further provide for the appointment of the additional members; further provide for the process of disqualifying an active judge; repeal provisions providing for the impeachment of Supreme Court Justices and appellate judges and the removal for cause of the judges of the district and circuit courts, judges of the probate courts, and judges of certain other courts by the Supreme Court; delete the authority of the Chief Justice of the Supreme Court to appoint an Administrative Director Courts; provide the Supreme Court of Alabama with authority to appoint an Administrative Director of Courts; require the Legislature to establish procedures for the appointment of the Administrative Director of Courts; delete the requirement that a district court hold court in each incorporated municipality with a population of 1,000 or more where there is no municipal court; provide that the procedure for the filling of vacancies in the office of a judge may be changed by local constitutional amendment; delete certain language relating to the position of constable holding more than one state office; delete a provision providing for the temporary maintenance of the prior judicial system; repeal the office of circuit solicitor; and make certain nonsubstantive stylistic changes (Proposed by Act No. 2019-187).*

This amendment deals with the state's court system, most significantly perhaps with the administrator of the courts and how that person is selected. Currently, the Chief Justice of the Supreme Court chooses the Director of Courts, who oversees the \$450 million and 2,500 employee state court system. Since 2010, there have been five different Chief Justices and therefore five different Directors of Courts. If approved, Amendment Two would allow for the entire Supreme Court to make an appointment out of three candidates brought to them by a nominating board of judges, a clerk, and a lawyer. Instead of changing every time the Court's makeup changes, this appointment would last for ten years.

Arthur Orr (R-Decatur), the amendment's original sponsor, offered the amendment because "new chief justices have come and gone, every six years, and they bring their



own director with them. And that's created a revolving door," that doesn't encourage continuity or good financial planning.<sup>4</sup>

The amendment also includes five other major provisions:

First, district courts would no longer have to hold court in municipalities that have less than 1,000 people. Instead, cases that would otherwise be held in that city would be held in the county seat. This is largely a practical change.

Second, the Judicial Inquiry Commission, which evaluates ethics complaints about judges, would be expanded from a nine person body to one that has eleven members.

Third, the amendment exchanges a position on the Court of the Judiciary, which hears the complaints brought to them by the Judicial Inquiry Commission, that was previously appointed by the Lieutenant Governor to one appointed by the Governor. Language elsewhere has already caused this shift to happen in practice. The amendment would simply clarify it in the Alabama Constitution.

Fourth, judges would no longer be automatically disqualified from holding office when the Judicial Inquiry Commission files a complaint against them with the Court of the Judiciary.

In the final major provision, the amendment requires that judges be removed from office only by the Court of the Judiciary and not by any other body. Previously, the state legislature had a hand in the impeachment of state judges.

Current provisions within the Alabama Constitution regarding the court system were deemed confusing and contradictory enough to drive legislators, judges, and lawyers to spend 19 months studying how to better Alabama's judiciary. The result of that deliberation is this amendment.

## Proposed Constitutional Amendment No. 3

*Proposing an amendment to the Constitution of Alabama of 1901, to provide that a judge, other than a judge of probate, appointed to fill a vacancy would serve an initial term until the first Monday after the second Tuesday in January following the next general election after the judge has completed two years in office (Proposed by Act No. 2019-346).*

Currently, when a judge in the Alabama court system resigns, passes away, retires, or is otherwise removed from office, the term length of the judge appointed to fill that vacancy is inconsistent. Specifically, the judge's term lasts "until the first Monday after the second Tuesday in January following the next general election held after the person has completed one year in office or the remainder of the original term of the judge elected to the office which is vacant, whichever is longer."

This has allowed the terms to be very different in length depending on how close a general election is to the original vacancy. Amendment No. 3 would make the term last "until the first Monday after the second Tuesday in January following the next general election held after the person has completed two years in office."

In short, this amendment would make the terms of appointed judges more standard than they are now.

## Proposed Constitutional Amendment No. 4

*Proposing an amendment to the Constitution of Alabama of 1901, to authorize the Legislature to recompile the Alabama Constitution and submit it during the 2022 Regular Session, and provide a process for its ratification by the voters of this state (Proposed by Act No. 2019-271).*

Alabama's constitution contains segregationist and racist language and has sections that are repeated or do not currently apply. If approved, Amendment No. 4 would allow the state legislature to rearrange the constitution and remove racist or repeated language.



This amendment does not, however, call for a constitutional convention and a full rewrite of the Alabama Constitution. The changes would be limited, according to the Fair Ballot Commission, to “(1) remov[ing] racist language, (2) remov[ing] language that is repeated or no longer applies, (3) combin[ing] language related to economic development, and (4) combin[ing] language that relates to the same county.”<sup>5</sup>

Once rearranged and edited, the amended version of the Constitution would have to be approved by a majority of voters in another statewide ballot.

**API Recommendation: ‘Yes’**

## Proposed Constitutional Amendments No. 5 and 6

*Relating to Franklin County, proposing an amendment to the Constitution of Alabama of 1901, to provide that a person is not liable for using deadly physical force in self-defense or in the defense of another person on the premises of a church under certain conditions (Proposed by Act No. 2019-194).*

*Relating to Lauderdale County, proposing an amendment to the Constitution of Alabama of 1901, to provide that a person is not liable for using deadly physical force in self-defense or in the defense of another person on the premises of a church under certain conditions (Proposed by Act No. 2019-346).*

The amendments are identical other than the county to which they apply. Both would put into the Alabama Constitution a version of the state’s already-existing “stand your ground” law that applies to the use of deadly force in churches.

Unless the statewide “stand your ground” law changes, these amendments will have little practical effect.

For them to be approved and added to the Alabama Constitution, each amendment must be supported by both a majority of statewide voters and a majority of voters in Franklin and Lauderdale counties, respectively.

Though the state’s current laws regard these amendments repetitive, Alabama’s “stand your ground” provisions are not

immune to legislative change. If approved, these amendments would subject future legislatures to the superceding Alabama Constitution, which would, regardless of the legislature’s desire, protect “stand your ground” provisions in Franklin and Lauderdale counties.

API supports any effort to support the 2nd Amendment but we recognize that these amendments are local in nature and otherwise already established in Alabama law.



## Endnotes

- 1 2019 Regular Session of the Alabama Legislature. Senate Bill 313. <https://trackbill.com/bill/alabama-senate-bill-313-constitution-of-alabama-of-1901-right-to-vote-limited-to-citizens-of-the-united-states-const-amend/1742081/>
- 2 Sell, Mary. “6 Statewide Constitutional Amendments on Nov. 3 Ballot.” <https://www.wbrc.com>. August 28, 2020. Accessed October 07, 2020. <https://www.wbrc.com/2020/08/28/statewide-constitutional-amendments-nov-ballot/>
- 3 Christie, Chris. “Opinion: On the Nov. 3 Ballot, Vote “no” on Proposed Amendment 1.” Alabama Political Reporter. September 23, 2020. Accessed October 15, 2020. <https://www.alreporter.com/2020/09/22/opinion-on-the-nov-3-ballot-vote-no-on-proposed-amendment-1/>.
- 4 Ibid.
- 5 Fair Ballot Commission. 2020 Statewide November 3, 2020 General Election Constitutional Amendment Ballot Statements. <https://www.sos.alabama.gov/alabama-votes/voter/ballot-measures/statewide>