



# GUIDE TO THE ISSUES

## Election 2016: Proposed Constitutional Amendments

### Introduction

On Election Day, the people of Alabama will have the chance to cast their votes for the next president of the United States, as well as for a number of other 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. The ballot language for each amendment is simply a summary—and that summary often does not give voters very much information about what the amendment actually says or does. Therefore, voters need to be armed with an understanding of each amendment when it is time to confront their ballots.

That is the purpose of this *Guide*: to succinctly explain, in plain language, the statewide constitutional amendments that will be on the ballot, to enable the people of Alabama to cast their votes with confidence.

#### How to Prepare to Vote

We recommend that you print out a sample ballot (see Appendix 2) and mark your selections directly on it as you read through this *Guide*. That way, you can take your sample ballot with you when you go to vote—which you are absolutely allowed to do,<sup>1</sup> and which we absolutely encourage you to do—saving time and safeguarding against lapses in memory (depending on your precinct, you could be voting on well over thirty different offices and amendments). Most importantly, by thinking through ballot decisions ahead of time, you will be ready to cast your votes confidently.

### Statewide Amendments

There will be fourteen statewide constitutional amendments on the ballot this election. Voters will be

#### SNAPSHOT

- Election Day is Tuesday, November 8, 2016.
- There will be fourteen statewide constitutional amendments on the ballot in Alabama, plus—in several counties—one or more county-specific constitutional amendments.
- 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 on Election Day.

asked to answer either YES or NO for whether each amendment should be added to the Alabama Constitution.

Below, the statewide amendments are explained in turn. For reference, the actual ballot language is quoted at the beginning of each explanation.

#### Proposed Statewide Amendment No. 1

*Proposing an amendment to the Constitution of Alabama of 1901, to establish procedures to ensure that no more than three of the members of the Auburn University Board of Trustees shall have terms that expire in the same calendar year and to add two additional at-large members to the board to enhance diversity on the board. (Proposed by Act 2015-217)*

This amendment affects the transition and selection of the members of the board of trustees of Auburn University.<sup>2</sup>

The board of trustees of Auburn University manages and controls the university.<sup>3</sup> Currently, the board has fourteen members: one trustee who is from Lee County,

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where the campus is located; nine trustees who are each from separate congressional districts of the state, as those districts were drawn in 1961; three trustees who are “at large,” meaning that they must simply reside in “the continental United States”; and one trustee who is the governor of Alabama.<sup>4</sup> Trustees hold their positions for terms of seven years, and are limited to two full terms.<sup>5</sup>

This amendment does two things. First, it sets up a process that prevents the terms of any more than three trustees from ending the same year.<sup>6</sup> This change is purportedly for the purpose of “ensuring that transitions in . . . membership occur in a stable manner.”<sup>7</sup> Second, it adds two new at-large members to the board, expanding its total membership from fourteen trustees to sixteen trustees.<sup>8</sup> In contrast to the three existing at-large trustees, the two new at-large trustees must reside in “the continental United States” and also “enhance the diversity of the board of trustees by reflecting the racial, gender, and economic diversity of the state.”<sup>9</sup>

Therefore, there are two reasons a voter might find this amendment favorable. First, a voter might support this amendment if he or she believes that a turnover of 30% or more of Auburn’s board of trustees causes intolerable instability.<sup>10</sup> Second, a voter might support this amendment if he or she believes that those who are entrusted with making the most important decisions for Auburn—a research university, one of the two flagships of higher learning in Alabama—should be selected based not solely on their merit, but on their race or sex or socioeconomic status.<sup>11</sup>

## Proposed Statewide Amendment No. 2

*Proposing an amendment to the Constitution of Alabama of 1901, to prohibit any monies from the State Parks Fund, the Parks Revolving Fund, or any fund receiving revenues currently deposited in the State Parks Fund or the Parks Revolving Fund, and any monies currently designated pursuant to statute for the use of the state parks system from being transferred for another purpose other than the support, upkeep, and maintenance of the state parks system.*

*Notwithstanding, in the event that guest revenues to the State Parks Revolving Fund exceed the threshold of \$50 million (as annually adjusted based on increases in the consumer price index) in a fiscal year, the sales and use and cigarette tax*

*revenue distributed to benefit the State Parks System shall be reduced in the following fiscal year. The amount of the reduction shall correspond to the amount of guest revenue to the State Parks Revolving Fund exceeding the threshold. The amount of tax revenue not distributed to benefit the State Parks System shall be distributed to the General Fund.*

*Proposing an amendment to Amendment 617 of the Constitution of Alabama of 1901, to allow the Department of Conservation and Natural Resources the option to provide for the operation and management, by non-state entities, of hotels, golf courses, and restaurants at any applicable state parks in Alabama. (Proposed by Act 2016-145)*

This amendment prevents funds generated by state parks from being used for purposes other than supporting state parks, and permits the operation and maintenance of state parks by entities other than the Alabama Department of Conservation and Natural Resources.<sup>12</sup>

The state park system of Alabama is predominantly funded by user fees that the parks collect.<sup>13</sup> In fact, over 80% of funding for state parks comes from user fees.<sup>14</sup> Last year, \$1 million of these user fees were transferred away from state parks to the State General Fund.<sup>15</sup>

This amendment aims to protect the funding of state parks by ensuring that money made by and meant for state parks is not diverted to other areas of government.<sup>16</sup> It stipulates that if the parks bring in user fees over \$50 million in a given year, then the parks’ tax-based revenue would be reduced the following year by the amount of the overage.<sup>17</sup>

This amendment would also permit those state parks with hotels, restaurants, or golf courses to be operated by an entity other than the Alabama Department of Conservation and Natural Resources.<sup>18</sup>

## Proposed Statewide Amendment No. 3

*Proposing an amendment to the Constitution of Alabama of 1901, to revise the procedure for adoption of local constitutional amendments to provide that a proposed constitutional amendment the Legislature determines without a dissenting vote applies to only one county or a political subdivision within one or more counties shall be adopted as a valid part of the constitution by a favorable vote of a majority of the qualified electors of the affected county or the political subdivision and county or counties in which the political subdivision is located, who vote on the amendment. (Proposed by Act 2015-44)*

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This amendment alters the process by which “local amendments” can be added to the Alabama Constitution.<sup>19</sup>

The Alabama Constitution lays out a process by which amendments that are local in nature are adopted.<sup>20</sup> This amendment slightly revises that process. The Alabama Legislature would still need to approve a proposed local amendment by a three-fifths majority vote in order for it to appear on the ballot.<sup>21</sup> However, as the House of Representatives and Senate voted on whether to approve the proposed local amendment, each would also take a separate vote on whether the amendment is truly local—that is, whether it affects only one county (or political subdivision).<sup>22</sup> If each body is unanimous in determining that the proposed amendment is local, then the amendment would only be on the ballot in the affected county (or political subdivision).<sup>23</sup> If there is one or more dissenting votes, in the House of Representatives or in the Senate, on the question of whether the proposed amendment is local, then it will go to a statewide vote.<sup>24</sup> Even if a majority of state voters approve a proposed local amendment, the voters of the affected county must also approve the amendment in order for it to be added to the Alabama Constitution.<sup>25</sup>

The aim of this revised process is to have more local constitutional amendments voted on at the local level, instead of at the state level. While, under current law, a dissenting vote as to the *substance* of a proposed local amendment can send it to a statewide vote, under the revised process, only a dissenting vote as to the *local nature* of a proposed local amendment can send it to a statewide vote.

## Proposed Statewide Amendment No. 4

*Proposing an amendment to the Constitution of Alabama of 1901, to authorize each county commission in the state to establish, subject to certain limitations, certain programs related to the administration of the affairs of the county. (Proposed by Act 2015-220)*

This amendment grants certain limited powers to local governments, which could exercise those powers without first getting approval from the Alabama Legislature.<sup>26</sup>

The Alabama Constitution centralizes power in Montgomery, meaning that the state government makes most decisions for local governments—except where local governments have been given the authority to make decisions for themselves.<sup>27</sup>

This amendment gives county commissions more ability to govern their own internal affairs, allowing them to establish programs, policies, and procedures with regard to the following areas: county personnel, offices, and property; roadways; public transportation; dangerous animals; and emergency assistance.<sup>28</sup> It would *not* allow county commissions to impose any new taxes or fees; increase any existing taxes or fees; or infringe on citizens’ or businesses’ private-property rights.<sup>29</sup>

In short, the amendment is another step toward more self-governance at the local level.<sup>30</sup>

## Proposed Statewide Amendment No. 5

*Proposing an amendment to the Constitution of Alabama of 1901, to repeal and restate the provisions of Article III of the Constitution of Alabama of 1901 relating to separation of powers to modernize the language without making any substantive change, effective January 1, 2017. (Proposed by Act 2015-200)*

This amendment rewords the sections of the Alabama Constitution that establish the state’s three branches of government—the legislative, the executive, and the judicial—and their separation of powers.<sup>31</sup>

Currently, article III of the Alabama Constitution contains three sections: sections 42, 43, and 43.01.<sup>32</sup> This amendment combines those sections, without changing their substance, into two sections: sections 42 and 43.<sup>33</sup> We will quote a representative sample of the current language and the revised language to give voters a good idea of the changes made by the amendment.

Here is the current language of section 42:

The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are

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executive, to another; and those which are judicial, to another.<sup>34</sup>

Here is the current language of section 43:

In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.<sup>35</sup>

Here is the revised language of section 42:

- (a) The powers of the government of the State of Alabama are legislative, executive, and judicial.
- (b) The government of the State of Alabama shall be divided into three distinct branches: legislative, executive, and judicial.
- (c) To the end that the government of the State of Alabama may be a government of laws and not of individuals, and except as expressly directed or permitted in this constitution, the legislative branch may not exercise the executive or judicial power, the executive branch may not exercise the legislative or judicial power, and the judicial branch may not exercise the legislative or executive power.<sup>36</sup>

As can be seen above, the changes made by this amendment are stylistic, not substantive. For those wishing to fully compare the current language with the revised language, see endnote 31.

## Proposed Statewide Amendment No. 6

*Proposing an amendment to the Constitution of Alabama of 1901, to become operative January 1, 2017, to repeal and replace Article VII, Impeachments. (Proposed by Act 2015-199)*

This amendment makes several minor changes, and one major change, to the sections of the Alabama

Constitution that deal with the impeachment of public officials, including the governor.<sup>37</sup>

The impeachment process for public officials consists of two stages in the Alabama Legislature: (1) the House of Representatives decides whether to impeach the official; and (2) the Senate decides whether to remove the impeached official from office.<sup>38</sup>

The most important—and contentious—change made by the amendment is the insertion of the requirement that, for the second stage of the impeachment process, “two-thirds of the [Senators] present” must vote to remove an impeached official from office.<sup>39</sup> Currently, the Alabama Constitution does not specify the kind of majority vote required to remove an impeached official from office—that is, the Constitution does not say whether the vote must be a simple majority, a supermajority (as in the amendment), or something else—and the issue has been heavily debated.<sup>40</sup> The impeachment process is being pursued for Governor Robert Bentley; and, although there is no doubt that the amendment was not intended to have this effect,<sup>41</sup> it has been argued that the amendment, regardless of the reason it was drafted and passed, will serve as a “Bentley Get Out of Impeachment Free Card” because it requires one of the most difficult kinds of majority votes (a two-thirds supermajority of the Senate).<sup>42</sup>

The other changes made by the amendment are largely stylistic, with the goal of revising “provisions which are antiquated, unnecessary, or duplicative of other provisions.”<sup>43</sup> Unfortunately, these changes include mistakes—including one that affects the reasons a public official can be impeached<sup>44</sup>—with the result being that the amendment would add clarification, but also confusion, to the existing constitutional language.

## Proposed Statewide Amendment No. 7

*Relating to Etowah County, proposing an amendment to the Constitution of Alabama of 1901, to provide that the employees of the Office of Sheriff of Etowah County, except for the chief deputy, chief of detention, chief of administration, chief of investigation, director of communications, and food service manager, shall be under the authority of the of the Personnel Board of the Office of the Sheriff of Etowah County. (Proposed*



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*by Act 2015-97)*

This amendment only affects Etowah County.<sup>45</sup> For reasons explained in Appendix 1, we recommend not voting on this amendment unless you live in Etowah County.

## **Proposed Statewide Amendment No. 8**

*Proposing an amendment to the Constitution of Alabama of 1901, to declare that it is the public policy of Alabama that the right of persons to work may not be denied or abridged on account of membership or nonmembership in a labor union or labor organization; to prohibit an agreement to deny the right to work, or place conditions on prospective employment, on account of membership or nonmembership in a labor union or labor organization; to prohibit an employer from requiring its employees to abstain from union membership as a condition of employment; and to provide that an employer may not require a person, as a condition of employment or continuation of employment, to pay dues, fees, or other charges of any kind to any labor union or labor organization. (Proposed by Act 2016-86)*

This amendment enshrines the state's existing right-to-work law in the Alabama Constitution, giving it the added protection it rightly deserves.<sup>46</sup>

Alabama's right-to-work law has a very straightforward, but a very important, function: it prevents citizens from having to join (or *not* join) a union or pay union dues as a condition of employment.<sup>47</sup> That is, it ensures that citizens have a "right to work" regardless of whether they decide to join a union or not.<sup>48</sup>

Of course, the fact that labor unions—which continue to have a right to operate in the state<sup>49</sup>—can no longer force citizens, against their will, to pay them dues is not a happy fact for Big Labor (or the politicians whom it funds).<sup>50</sup> As a result, state right-to-work laws are under constant attack.<sup>51</sup>

Right now, Alabama's right-to-work law—and the freedom and liberty it secures for citizens—could be repealed by a simple legislative act.<sup>52</sup> This amendment wisely protects against that.<sup>53</sup>

## **Proposed Statewide Amendment No. 9**

*Relating to Pickens County, proposing an amendment to the Constitution of Alabama of 1901, to provide that a person who is not over the age of 75 at the time of qualifying for election or*

*at the time of his or her appointment may be elected or appointed to the office of Judge of Probate of Pickens County (Proposed by Act 2016-120)*

This amendment only affects Pickens County.<sup>54</sup> For reasons explained in Appendix 1, we recommend not voting on this amendment unless you live in Pickens County.

## **Proposed Statewide Amendment No. 10**

*Relating to Calhoun County, proposing an amendment to the Constitution of Alabama of 1901, to provide that any territory located in the county would be subject only to the police jurisdiction and planning jurisdiction of a municipality located wholly or partially in the county. (Proposed by Act 2016-144)*

This amendment only affects Calhoun County.<sup>55</sup> For reasons explained in Appendix 1, we recommend not voting on this amendment unless you live in Calhoun County.

## **Proposed Statewide Amendment No. 11**

*Proposing an amendment to the Constitution of Alabama of 1901, as amended, to permit cities and counties, notwithstanding any existing constitutional restrictions, to utilize tax increment district revenues collected within a Major 21st Century Manufacturing Zone and other moneys to incentivize the establishment and improve various types of manufacturing facilities located or to be located in such Zone, and to validate and confirm the Major 21st Century Manufacturing Zone Act, Act No. 2013-51. (Proposed by Act 2016-267)*

This amendment addresses a constitutional limitation of the Alabama law, passed in 2013, that enables local governments to incentivize economic development through a practice known as "tax-increment financing."<sup>56</sup>

Tax-increment financing (TIF) is a means used by cities and counties to fund commercial or industrial development by borrowing money, based on the assumption that the economic activity generated by the new development will produce enough tax revenue to pay back that borrowed money.<sup>57</sup> In short, TIF pays for itself—at least in theory.<sup>58</sup>

One way that TIF is used by local governments is to purchase property and develop (or redevelop) it so that it is attractive to commercial or industrial interests. For example, the city of Huntsville used TIF to make \$5.3

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million in improvements to the North Huntsville Industrial Park to lure Toyota to the area.<sup>59</sup>

For local governments to sell TIF property to private buyers, the Alabama Constitution requires that the price be at least the fair market value.<sup>60</sup> This amendment exempts TIF property from this requirement, allowing local governments to set their own selling price, even if it is less than the fair market price.<sup>61</sup>

## Proposed Statewide Amendment No. 12

*Relating to municipalities in Baldwin County; proposing an amendment to the Constitution of Alabama of 1901, to authorize the Legislature by general or local law to provide for any municipalities in the county to incorporate a toll road and bridge authority as a public corporation in the municipality for the construction and operation of toll roads and bridges in the municipality and to authorize the authority to issue revenue bonds to finance the projects. (Proposed by Act 2016-274)*

This amendment only affects Baldwin County.<sup>62</sup> For reasons explained in Appendix 1, we recommend not voting on this amendment unless you live in Baldwin County.

## Proposed Statewide Amendment No. 13

*Proposing an amendment to the Constitution of Alabama of 1901, to repeal any existing age restriction on the appointment, election, or service of an appointed or elected official, with the exception of persons elected or appointed to a judicial office, and to prohibit the Legislature from enacting any law imposing a maximum age limitation on the appointment, election, or service of any appointed or elected official. (Proposed by Act 2016-429)*

This amendment eliminates all existing maximum-age limits for elected and appointed officials, with the exception of judges; and prohibits any new maximum-age limits for elected and appointed officials, without an exception for judges.<sup>63</sup>

In a case involving a maximum-age limit for judges, the United States Supreme Court noted that “it is an unfortunate fact of life that physical and mental capacity . . . diminish with age,”<sup>64</sup> and found the following to be compelling reasons for such a policy:

The [maximum-age limit] draws a line at a certain age which attempts to uphold the high competency for judicial posts and which fulfills a

societal demand for the highest caliber of judges in the system; the statute . . . draws a legitimate line to avoid the tedious and often perplexing decisions to determine which judges after a certain age are physically and mentally qualified and those who are not; [the maximum-age limit] increases the opportunity for qualified persons . . . to share in the judiciary and permits an orderly attrition through retirement.<sup>65</sup>

In short, as another court put it: “Citizens are entitled to a judicial system of the highest caliber and to judges with the highest possible mental and physical qualifications.”<sup>66</sup> The same sentiment would seem to apply to a political system and to elected and appointed officials.

## Proposed Statewide Amendment No. 14

*Proposing an amendment to the Constitution of Alabama of 1901, to amend Amendment 448 to the Constitution of Alabama of 1901, now appearing as Section 71.01 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, to ratify, approve, validate, and confirm the application of any budget isolation resolution relating to a bill proposing a local law adopted by the Legislature before November 8, 2016, that conformed to the rules of either body of the Legislature at the time it was adopted. (Proposed by Act 2016-430)*

This amendment attempts to provide a sweeping, after-the-fact correction to hundreds of local laws that the Alabama Legislature passed unconstitutionally, due to a legal misinterpretation, during past legislative sessions.<sup>67</sup>

The Alabama Constitution states that it is the legislature’s “paramount” duty to make basic, annual appropriations during its regular session.<sup>68</sup> Often, before a budget is ready to be voted on, the legislature desires to take up legislation unrelated to the state budget. This can be done through a procedural mechanism known as a “budget isolation resolution” (known as a “BIR” in legislative parlance),<sup>69</sup> which requires a three-fifths vote of the body’s “quorum present” to proceed to non-budget-related bills.<sup>70</sup>

In December 2015, Judge Michael Graffeo of the

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Circuit Court of Jefferson County invalidated a sales-tax measure on the grounds that the proper procedure for adopting the necessary budget isolation resolution had not been followed by the Alabama Legislature.<sup>71</sup> Specifically, the opinion noted that the Alabama Constitution requires “three-fifths of a quorum present” to pass a budget isolation resolution, not a “three-fifths majority of the members present and voting.”<sup>72</sup> Because the House of Representatives, under its own rules, had been interpreting the constitutional provision to require only the latter, there has been concern that Judge Graffeo’s ruling could have a widespread impact on any bill passed under the House’s (apparently) incorrect interpretation.<sup>73</sup>

This amendment would add language to the Alabama Constitution prescribing that any bill passed by way of a budget isolation resolution that “conformed to the rules of either body at the time it was adopted” should be rendered effective, if the bill was adopted before November 8, 2016.<sup>74</sup>

## County-Specific Amendments

There will also be one or more county-specific constitutional amendments on the ballot in the following counties of Alabama this election: Autauga County,<sup>75</sup> Baldwin County,<sup>76</sup> DeKalb County,<sup>77</sup> Fayette County,<sup>78</sup> Henry County,<sup>79</sup> Houston County,<sup>80</sup> Jefferson County,<sup>81</sup> Lamar County,<sup>82</sup> Lauderdale County,<sup>83</sup> Madison County,<sup>84</sup> Marion County,<sup>85</sup> Monroe County,<sup>86</sup> Montgomery County,<sup>87</sup> Shelby County,<sup>88</sup> Winston County.<sup>89</sup> Voters will be asked to answer either YES or NO for whether each amendment should be added to the Alabama Constitution.

Although explanations of county-specific amendments are not provided in this *Guide*, primary sources for them are: their enacting legislation can be found by viewing the endnotes appended to the counties listed above; and their ballot language can be found by viewing the sample ballots (see Appendix 2) for the counties list above.

## APPENDIX 1:

### A Note on Local Amendments on Statewide Ballots

We are confident that those who live in the affected counties know best about how to vote on the proposed local constitutional amendments that will be on the ballot this election. In nearly every scenario, the government closest to the people is best situated to make decisions that are responsive to the people. Likewise, the residents of a county are almost always best situated to make decisions with regard to their own county. Our recommendation is simple: as a general rule, abstain from voting on local constitutional amendments that do not affect you or your county.<sup>90</sup>

## APPENDIX 2:

### Sample Ballots

The sample ballots for all sixty-seven counties in Alabama are available below.<sup>91</sup> As we said in the Introduction, we recommend that you print out a sample ballot and mark your selections directly on it before you vote, especially as you read through this *Guide*. That way, you can take your sample ballot with you when you go to vote—which you are absolutely allowed to do,<sup>92</sup> and which we absolutely encourage you to do—saving time and safeguarding against lapses in memory (depending on your precinct, you could be voting on well over thirty different offices and amendments). Most importantly, by thinking through ballot decisions ahead of time, you will be ready to cast your votes confidently.

To download your sample ballot, simply find the county where you are registered to vote and follow the link.

#### Autauga County

<http://www.alabamapolicy.org/wp-content/uploads/autauga-a-county-sample-ballot-election-2016.pdf>

#### Baldwin County

<http://www.alabamapolicy.org/wp-content/uploads/baldwin-a-county-sample-ballot-election-2016.pdf>

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## **Barbour County**

<http://www.alabamapolicy.org/wp-content/uploads/barbour-county-sample-ballot-election-2016.pdf>

## **Bibb County**

<http://www.alabamapolicy.org/wp-content/uploads/bibb-county-sample-ballot-election-2016.pdf>

## **Blount County**

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## **Bullock County**

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## **Butler County**

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## **Calhoun County**

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## **Chambers County**

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## **Cherokee County**

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## **Chilton County**

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## **Choctaw County**

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## **Clarke County**

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## **Clay County**

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## **Cleburne County**

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## **Coffee County**

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## **Colbert County**

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## **Conecuh County**

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## **Coosa County**

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## **Covington County**

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## **Crenshaw County**

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## **Cullman County**

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## **Dale County**

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## **Dallas County**

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## **DeKalb County**

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## **Elmore County**

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## **Escambia County**

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## **Etowah County**

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## **Fayette County**

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## **Franklin County**

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## **Geneva County**

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## **Greene County**

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## **Hale County**

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## **Henry County**

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## **Houston County**

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## **Jackson County**

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## **Jefferson County**

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## **Lamar County**

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## **Lauderdale County**

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<sup>1</sup> See "Frequently Asked Questions," AlabamaVotes.gov, <http://www.alabamavotes.gov/FAQ.aspx?m=Voters> [<http://perma.cc/CMY4-V9UX>] (last visited Oct. 26, 2016) (answering "Yes" to the question "Can I carry a sample ballot into the voting booth?"). AlabamaVotes.gov is an official governmental website created by Alabama Secretary of State John H. Merrill and proclaimed "The State of Alabama's Official Election Center." AlabamaVotes.gov, <http://www.alabamavotes.gov> [<http://perma.cc/DQ5T-FC6L>] (last visited Oct. 26, 2016).

<sup>2</sup> Compare Ala. Const. art. XIV, § 266 (establishing the board of trustees of Auburn University), with H.R. 551, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-217, May 26, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010851.pdf> [<http://perma.cc/9VDT-6F35>] (amending the same).

<sup>3</sup> Ala. Const. art. XIV, § 266 ("Auburn University shall be under the management and control of a board of trustees.").

<sup>4</sup> *Id.* By "the continental United States," "the conterminous United States" is presumably—if incorrectly—meant, meaning that people residing in both Hawaii and Alaska (which is part of the North American continent) are discriminated against. See Bryan A. Garner, *Garner's Modern English Usage* 214 (4th ed. 2016). This discrimination is also included in the amendment. See H.R. 551, *supra* note 2.

<sup>5</sup> Ala. Const. art. XIV, § 266.

<sup>6</sup> H.R. 551, *supra* note 2.

<sup>7</sup> *Id.* We take a textualist approach to explaining the amendment, and leave it to others to speculate as to any extratextual intent. See, e.g., David Kumbroch, "Amendment Guide: Breakdown of the 14 Constitutional Amendments on Alabama's November Ballot," WHNT News 19 (Oct. 19, 2016), <http://whnt.com/2016/10/19/amendment-guide-breakdown-of-the-14-constitutional-amendments-on-alabamas-november-ballot/> [<http://perma.cc/JJW6-LNMX>] (quoting Dr. Jess Brown, a professor of political science at Athens State University, as saying, "There is some concern [t]hat the trustee who will benefit from this . . . the individual who will get a little bit more time on the board as a result of this amendment is a very powerful and affluent individual"); see also Maria McLwain, "November Ballots Will Include Amendment on Auburn's Trustee Board," *Anniston Star* (July 1, 2016), [http://www.annistonstar.com/news/state/november-ballots-will-include-amendment-on-auburn-s-trustee-board/article\\_442f2232-3fc5-11e6-8072-2f29a6d19325.html](http://www.annistonstar.com/news/state/november-ballots-will-include-amendment-on-auburn-s-trustee-board/article_442f2232-3fc5-11e6-8072-2f29a6d19325.html) [<http://perma.cc/VD8N-PJ6X>] (discussing the trustees whose terms are set to expire in the years ahead and the thinking of some legislators).

<sup>8</sup> H.R. 551, *supra* note 2.

<sup>9</sup> *Id.* Regarding "the continental United States," see *supra* note 4.

<sup>10</sup> This number, based on the current total membership of the board of trustees of Auburn University (four trustees equals approximately 29% of fourteen trustees), would be lower if it were based on the proposed total membership of the board of trustees of Auburn University (four trustees equals exactly 25% of sixteen total trustees). See H.R. 551, *supra* note 2.

<sup>11</sup> See *id.* This will be more of a philosophical than an empirical question for most voters, but for the empiricists, the membership is profiled on Auburn's website. See "Trustee Profiles," Auburn University (Oct. 19, 2016), <http://www.auburn.edu/administration/trustees/members.html> [<http://perma.cc/UYT7-KAAA>].

<sup>12</sup> See S. 260, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-145, Apr. 21, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011352.pdf> [<http://perma.cc/8YHJ-8GNX>]. This amendment actually proposes two separate amendments (both regarding the state park system, the second of which amends Ala. Const. art. XI, § 213.32 (providing that "all state park system land and facilities . . . shall . . . be exclusively and solely operated and maintained by the Department of Conservation and Natural Resources").

<sup>13</sup> The budget for the state park system of Alabama has two main components: the "state park fund" (consisting of "[a]ll moneys received from gifts or bequests or from county, municipal[,] or federal appropriations[,] or moneys appropriated by the state of Alabama") and the "state park revolving fund" (consisting of "all moneys received for admissions charged or rentals, sales of goods or services[,] and such other miscellaneous charges collected . . . in the operation of . . . state parks, monuments, historical sites[,] and other facilities"). Ala. Code §§ 9-2-106 to -107.

<sup>14</sup> In fiscal year 2015, the total of both funds was \$44.7 million, with the "state park fund" accounting for \$8.9 million (19.82%) and the "state park revolving fund" accounting for \$35.9 million (80.18%). See Executive Budget Office, Alabama Department of Finance, *Executive Budget, Fiscal Year 2017*, at 66 (2016), <http://budget.alabama.gov/pdf/buddoc/BudDoc2017.pdf> [<http://perma.cc/S2Z6-ZJQJ>].

<sup>15</sup> Fiscal Note for S. 260, 2016 Leg., Reg. Sess. (Ala. 2016) (as passed by Senate, Mar. 22, 2016), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/FiscalNotes/FN-35282.htm> [<http://perma.cc/L2UJ-6MQ4>].

<sup>16</sup> S. 260, *supra* note 12.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Compare Ala. Const. art. XVIII, § 284.01 (providing for the adoption of local amendments), with S. 30, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-44, Apr. 14, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010676.pdf> [<http://perma.cc/9A3W-H24S>] (amending the same).

<sup>20</sup> Ala. Const. art. XVIII, § 284.01.

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<sup>21</sup> S. 30, *supra* note 19.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See H.R. 193, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-220, May 26, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010854.pdf> [<http://perma.cc/FVH7-3MHV>].

<sup>27</sup> See Ala. Const. art. IV, § 44 (“The legislative power of this state shall be vested in a legislature . . . .”); *id.* §§ 89, 96, 104, 105–06, 107, 110–11 (limiting the power of the legislature to pass, repeal, or modify local laws in certain cases). A good overview of “home rule”—that is, the allocation of autonomy (by the state government) to local governments—in Alabama is given by Susan Pace Hamill, “A Tale of Two Alabamas,” 58 *Alabama Law Review* 1103 (2007) (book review):

In 1907, the legislature granted home rule power to municipalities. The legislature was unwilling to extend home rule to the counties, securing a series of constitutional amendments that effectively increased its power over most local county issues. However, there is some indication that the legislature is backing off and allowing some counties limited home rule powers. [The Alabama Limited Self-Governance Act, Ala. Code §§ 11-3A-1 to -7] gives counties the ability to “pass laws regulating nuisances such as weeds, animals, litter, junkyards, noise, sewage or pollution,” but only after residents of the county adopt this in a referendum. Though the legislature proposes to give more power to the county governments, the power conceded is very limited. For example, though the county can pass laws “regulating nuisances,” the legislature has “set limits on the fines and penalties for violators of the laws the [l]egislature is allowing [county governments] to pass.” The Alabama Limited Self-Governance Act “is a small step toward more counties in Alabama being able to govern themselves, rather than go begging to the [l]egislature.” Sonny Brasfield, the Association of County Commissioners of Alabama’s assistant executive director, describes this prospect of limited “home rule” as better than nothing. Actually, it’s “pretty good when you consider it’s taken us more than 100 years for us to get here,” referring “to the time that has passed since the writing of the 1901 [c]onstitution.” This taste of home rule has been described not as home rule but “foyer and living room rule” due to its limited scope. . . . “Fourteen counties now have limited home rule, joining a handful of mostly urban counties over the years that have won some form of self-government.” Besides limited home rule, legislators and Alabama voters have given county governments some authority in the area of economic development, despite the fact that the 1901 constitution originally limited economic development activities at the local level.

*Id.* at 1150 n. 288 (citations omitted).

<sup>28</sup> H.R. 193, *supra* note 26.

<sup>29</sup> *Id.*

<sup>30</sup> For previous steps in this direction, see *supra* note 27.

<sup>31</sup> Compare Ala. Const. art. III (establishing the state’s three branches of government and their separation of powers), with S. 25, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-200, May 21, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010834.pdf> [<http://perma.cc/CLS3-VNJG>] (amending the same).

<sup>32</sup> See Ala. Const. art. III.

<sup>33</sup> See S. 25, *supra* note 31.

<sup>34</sup> Ala. Const. art. III, § 42.

<sup>35</sup> *Id.* § 43.

<sup>36</sup> S. 25, *supra* note 31.

<sup>37</sup> Compare Ala. Const. art. VII (enumerating the impeachment process), with H.R. 336, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-199, May 21, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010833.pdf> [<http://perma.cc/CJ5C-CAM7>] (amending the same).

<sup>38</sup> See Ala. Const. art. VII, § 174 (enumerating the impeachment process for the governor, lieutenant governor, attorney general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries, and justices of the supreme court). There are separate impeachment processes, which do not take place in the Alabama Legislature, for other public officials. See *id.* art. VII, §§ 174, 175.

<sup>39</sup> H.R. 336, *supra* note 37.

<sup>40</sup> See Brian Lyman, “Vague Laws Slow Bentley’s Removal,” *Montgomery Advertiser*, Apr. 11, 2016, at A2.

<sup>41</sup> The Alabama Legislature passed the bill approving the amendment in May 2015. See Mike Cason, “State Auditor Jim Zeigler Urges Voters to Reject Impeachment Amendment,” *AL.com* (Oct. 18, 2016), [http://www.al.com/news/index.ssf/2016/10/state\\_auditor\\_jim\\_zeigler\\_urge.html](http://www.al.com/news/index.ssf/2016/10/state_auditor_jim_zeigler_urge.html) [<http://perma.cc/A5KF-WLH3>]. The Alabama Legislature did not begin pursuing the impeachment of Governor Bentley until more than a year after that. See Campbell Robertson & Alan Blinder, “Lawmaker Takes First Step in an Effort to Impeach Alabama’s Governor,” *New York Times*, Apr. 6, 2016, at A12.

<sup>42</sup> Brandon Moseley, “Zeigler to Oppose Amendment Six, Claims It Will Weaken Chances of Impeaching Bentley,” *Alabama Political Reporter* (Oct. 18, 2016), <http://www.alreporter.com/zeigler-to-oppose-amendment-six-claims-it-will-weaken-chances-of-impeaching-bentley/> [<http://perma.cc/RP64-5JZX>] (quoting State Auditor Jim Zeigler).

<sup>43</sup> Act of Apr. 28, 2011, No. 2011-197, 2011 Ala. Acts 374 (establishing the Constitutional Revision Commission); see also Act of Mar. 20, 2013, No. 2013-70, 2013 Ala. Acts 146 (expanding the Constitutional Revision Commission).

<sup>44</sup> The current language provides that public officials can be impeached and removed from office for

willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such *duties*, or for any offense involving moral turpitude while in office . . . .

Ala. Const. art. VII, § 173 (emphasis added). The revised language deletes the important comma and disjunctive conjunction following “duties” in the text that has been italicized in the above quotation. It provides that public officials can be impeached and removed from office for

willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such *duties for any offense involving moral turpitude while in office . . . .*

H.R. 336, *supra* note 37 (emphasis added). Although a court will almost certainly not see this apparent scrivener’s error as a serious problem for the purposes of legal interpretation, it is nevertheless extremely unfortunate.

<sup>45</sup> See H.R. 459, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-97, Apr. 30, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010730.pdf> [<http://perma.cc/2MK7-YU4A>].

<sup>46</sup> Compare Ala. Code §§ 25-7-30 to -36 (codifying, as part of the state code, the right to work), with H.R. 37, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-86, Mar. 17, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011291.pdf> [<http://perma.cc/QV9H-PYWV>] (codifying, as part of the state constitution, the same).

<sup>47</sup> See Ala. Code §§ 25-7-32 to -34.

<sup>48</sup> For more information, see generally “Right-to-Work Resources,” National Conference of State Legislatures, <http://www.ncsl.org/research/labor-and-employment/right-to-work-laws-and-bills.aspx> [<http://perma.cc/UTJ7-ETTT>] (last visited Oct. 23, 2016).

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- <sup>49</sup> *Id.*
- <sup>50</sup> See, e.g., Editorial, "Unions Sue to Maintain Forced Unionization," *Charleston Gazette-Mail* (S.C.), June 29, 2016, at 5A.
- <sup>51</sup> See, e.g., Phil Kabler, "Labor Unions File Lawsuits Challenging 'Right-to-Work,'" *Charleston Gazette-Mail* (S.C.), June 28, 2016, at 1C.
- <sup>52</sup> See generally Ala. Const. art. IV (providing for the "Legislative Department").
- <sup>53</sup> See generally *id.* art. XVIII (providing for the "Mode of Amending the Constitution").
- <sup>54</sup> See S. 225, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-120, Apr. 7, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011327.pdf> [<http://perma.cc/7M9W-AM4M>].
- <sup>55</sup> See H.R. 339, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-144, Apr. 20, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011351.pdf> [<http://perma.cc/628K-QZSS>].
- <sup>56</sup> See H.R. 311, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-267), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011475.pdf> [<http://perma.cc/VWS6-EGU2>]. This amendment "validate[s] and confirm[s]" the Major 21st Century Manufacturing Zone Act, Ala. Code §§ 11-99-1 to -11. *Id.* For a serious issue created by that Act, yet not corrected by this amendment, see Ilya Somin, "Don't Believe the Denials—Alabama Really Did Undermine Its Post-Kelo Eminent Domain Reform Law," *Volokh Conspiracy* (Apr. 7, 2013, 11:50 AM), <http://volokh.com/2013/04/07/dont-believe-the-denials-alabama-really-did-undermine-its-post-kelo-eminant-domain-reform-law/> [<http://perma.cc/3DSM-Z3NC>].
- <sup>57</sup> Nicholas Greifer, Government Finance Officers Association, *An Elected Official's Guide to Tax Increment Financing* 5, 11 (2005), <http://www.gfoa.org/sites/default/files/EOGTIF.pdf> [<http://perma.cc/3YBP-U6TP>]. Originally, the primary aim of TIF was urban renewal and the elimination of "blight." See generally Richard Briffault, "The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government," 77 *University of Chicago Law Review* 65, 69–74 (2010) (chronicling the history of TIF). This is evident in the TIF law of Alabama, which was enacted in its original form in 1987. See, e.g., Ala. Code § 11-99-1 (mentioning "blight" five times in the legislative declaration).
- <sup>58</sup> See David Schleicher, "City Unplanning," 122 *Yale Law Journal* 1670, 1726 (2013). The pays-for-itself argument is one frequently used by proponents of the amendment. See, e.g., Tommy Battle, Opinion, "Voting 'Yes' on Amendment 11 Will Bring New Jobs to Alabama," *Huntsville Times*, Oct. 2, 2016, at E2 ("In a nutshell—the industry pays for its own incentives over time, without sacrificing current tax revenues generated for roads, schools, and public safety. It's a win-win for taxpayers, citizens, and industry."); "What It Does," Vote Yes on 11, <http://voteyeson11alabama.com/what-it-does/> [<http://perma.cc/E6JK-W7YH>] (last visited Oct. 26, 2016); "How It Works," Vote Yes on 11, <http://voteyeson11alabama.com/how-it-works/> [<http://perma.cc/4PJ9-T5JJ>] (last visited Oct. 26, 2016). For dissenting views, see generally, for example, Randal O'Toole, Cato Institute, *Crony Capitalism and Social Engineering: The Case Against Tax-Increment Financing* (2011), <http://object.cato.org/sites/cato.org/files/pubs/pdf/PA676.pdf> [<http://perma.cc/45XL-9ECD>]; Daniel McGraw, "Giving Away the Store to Get a Store," *Reason*, Jan. 2006, at 34; Scott Beyer, "The Redevelopment Racket," American Enterprise Institute (Oct. 8, 2014), <http://www.aei.org/publication/redevelopment-racket/> [<http://perma.cc/2W36-UR5Q>]. For a balanced discussion of the advantages and disadvantages of tax-increment financing, see Greifer, *supra* note 57, at 23–26.
- <sup>59</sup> John Peck, "TIF Tax Take Runs Ahead of Projections," *Huntsville Times*, Jan. 29, 2006, at 1A; see also "Looking Year by Year at Decade's Top Stories," *Huntsville Times*, Jan. 3, 2010, at 3A.
- <sup>60</sup> Ala. Const. art. IV, § 94.02. If a local government were to sell TIF property to a private buyer at a price below the fair market value, the local government would be unconstitutionally invested in private enterprise. See Ala. Const. art. IV, §§ 93, 94.
- <sup>61</sup> See H.R. 311, *supra* note 56.
- <sup>62</sup> See H.R. 510, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-274, May 4, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011482.pdf> [<http://perma.cc/ZB63-FFHA>].
- <sup>63</sup> See H.R. 31, 2016 Leg., 1st Spec. Sess. (Ala. 2016) (as assigned Act No. 2016-429, Aug. 24, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011645.pdf> [<http://perma.cc/9H9T-AG77>].
- <sup>64</sup> Gregory v. Ashcroft, 501 U.S. 452, 472 (1991). We have elided the qualifier "sometimes" in the quote, because physical and mental capacity do not *sometimes* diminish with age—they *always* diminish with age. See Richard A. Posner, *Aging and Old Age* 19–20 (1995).
- <sup>65</sup> *Id.* at 471–72 (internal quotation marks omitted) (quoting O'Neil v. Baine, 568 S.W.2d 761, 766–67 (Mo. 1978) (en banc)).
- <sup>66</sup> O'Neil, 568 S.W.2d at 766.
- <sup>67</sup> Compare Ala. Const. art. IV, § 71.01 (enumerating the legislature's duty to make basic appropriations at regular sessions, with S. 7, 2016 Leg., 1st Special Sess. (Ala. 2016) (as assigned Act No. 2016-430, Aug. 26, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011646.pdf> [<http://perma.cc/9LWU-A644>] (amending the same).
- <sup>68</sup> Ala. Const., art. IV, § 71.01(C).
- <sup>69</sup> Jesse Brown, "Alabama's Legislative Article: Content, Comparison, and Prescription," 33 *Cumberland Law Review* 575, 581 (2002).
- <sup>70</sup> Ala. Const., art. IV, § 71.01(C).
- <sup>71</sup> Jefferson Cty. v. Taxpayers & Citizens of Jefferson Cty., No. CV 15-903133-MGG, at 16–17 (Ala. Cir. Ct. Jefferson Cty. Dec. 14, 2015), available at <http://scribd.com/document/329135016/> [<http://perma.cc/S39A-LF98>].
- <sup>72</sup> *Id.* at 5–6.
- <sup>73</sup> See *id.* at 6–7, 15.
- <sup>74</sup> S. 7, *supra* note 67.
- <sup>75</sup> See S. 469, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-218, May 26, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010852.pdf> [<http://perma.cc/9VMP-KMFQ>].
- <sup>76</sup> See H.R. 136, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-126, May 7, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010759.pdf> [<http://perma.cc/5CAQ-GYVM>]; H.R. 31, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-338, June 4, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010975.pdf> [<http://perma.cc/2HXL-KHK3>]; H.R. 396, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-270, May 4, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011478.pdf> [<http://perma.cc/8ZQ8-3QGB>]; H.R. 456, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-271, May 4, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011479.pdf> [<http://perma.cc/8X8T-8RGU>]; H.R. 476, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-273, May 4, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011481.pdf> [<http://perma.cc/ERZ3-7BEM>].
- <sup>77</sup> See S. 28, 2015 Leg., 1st Spec. Sess. (Ala. 2015) (as assigned Act No. 2015-500, Aug. 7, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011139.pdf> [<http://perma.cc/F6S4-87RG>]; H.R. 12, 2015 Leg., 1st Spec. Sess. (Ala. 2015) (as assigned Act No. 2015-501, Aug. 10, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011140.pdf> [<http://perma.cc/8W2N-WAYL>].
- <sup>78</sup> See H.R. 449, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-148, Apr. 21, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011355.pdf> [<http://perma.cc/9632-2RWF>].
- <sup>79</sup> See H.R. 358, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-128, May 7, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010761.pdf> [<http://perma.cc/4VVX-HZFK>].
- <sup>80</sup> See H.R. 51, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-46, Apr. 16, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010678.pdf> [<http://perma.cc/7RR3-BUCL>].



# GUIDE TO THE ISSUES

<sup>81</sup> See H.R. 602, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-339, June 4, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010976.pdf> [<http://perma.cc/U757-TMG6>].

<sup>82</sup> See S. 35, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-26, Mar. 31, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010658.pdf> [<http://perma.cc/X42G-7X8K>].

<sup>83</sup> See H.R. 490, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-200, Apr. 28, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011407.pdf> [<http://perma.cc/JAM2-VEH9>].

<sup>84</sup> See H.R. 472, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-272, May 4, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011480.pdf> [<http://perma.cc/Q9NX-ZXVJ>].

<sup>85</sup> See H.R. 517, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-275, May 4, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011484.pdf> [<http://perma.cc/696H-25VL>].

<sup>86</sup> See H.R. 184, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-127, May 7, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010760.pdf> [<http://perma.cc/8A8V-U69X>].

<sup>87</sup> See H.R. 33, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-147, Apr. 21, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011354.pdf> [<http://perma.cc/L9HK-ZVC6>].

<sup>88</sup> See S. 70, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-198, May 19, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010832.pdf> [<http://perma.cc/4AXH-8KSE>]; H.R. 312, 2016 Leg., Reg. Sess. (Ala. 2016) (as assigned Act No. 2016-269, May 4, 2016), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0011477.pdf> [<http://perma.cc/664S-E339>].

<sup>89</sup> See H.R. 594, 2015 Leg., Reg. Sess. (Ala. 2015) (as assigned Act No. 2015-219, May 26, 2015), <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0010853.pdf> [<http://perma.cc/KB6Z-GTEB>].

<sup>90</sup> For an example of a principled exception, see Jay-Anne B. Casuga & Michael Rose, “Are State Workplace Preemption Laws on the Rise?,” *Bloomberg BNA* (July 19, 2016), <http://www.bna.com/state-workplace-preemption-n73014444995/> [<http://perma.cc/6ASE-QM5J>] (quoting Andrew A. Yerbey, senior policy counsel at the Alabama Policy Institute, on a state law that preempted a city ordinance which would have increased the city’s minimum wage).

<sup>91</sup> These sample ballots were provided by Alabama Secretary of State John H. Merrill. See “2016 November General Election Sample Ballots,” *AlabamaVotes.gov*, <http://www.alabamavotes.gov/ElectionInfo/2016SampleBallots.aspx?a=voters> [<http://perma.cc/UK66-JWQF>] (last visited Oct. 26, 2016). As provided, most of the sample ballots were rotated to the wrong orientation—making for difficult reading on electronic devices—but this issue has been corrected in the versions available in Appendix 2.

<sup>92</sup> See *supra* note 1.