

LEAGUE OF WOMEN VOTERS OF ALABAMA
April, 1976

CONSTITUTIONAL REVISION UPDATE

I. HISTORY

- A. FIVE YEARS OF GETTING READY
- B. AND FIVE MORE YEARS
 - Legislative Reform
 - Judicial Reform

II. CONSTITUTIONAL ISSUES AND LWV POSITIONS

- A. ISSUES OF FINANCE AND TAXATION
 - Constitutionally Fixed Tax Rates
 - "Home rule" in Taxing Power
 - Debt Structure
 - Earmarked Taxes
 - LWV Support Position
- B. ISSUES OF LOCAL GOVERNMENT
 - Lack of Local Authority
 - Multiplicity of Local Governing Units
 - Form of Local Government and Home Rule
 - LWV Support Position
- C. ISSUES OF THE LEGISLATIVE AND EXECUTIVE BRANCHES
 - Adequate Annual Salaries
 - Reapportionment
 - Selection of Legislative Leadership
 - Constitutional Power of the Governor
 - The Budgeting Process
 - LWV Support Position

* * * * *

PRESENT STATUS

III. NON-CONSTITUTIONAL ISSUES OF LEGISLATIVE REFORM

- LWV Support Position

CONSTITUTIONAL REVISION UPDATE

I. HISTORY

A. FIVE YEARS OF GETTING READY

Through the nineteen fifties to the mid sixties, the League of Women Voters of Alabama devoted diligent study to and sometimes frenzied action on such program issues as reform of election laws, abolition of the poll tax, legislative reapportionment, "home rule," an equitable tax structure and quality education for all. The cumulative effect of these experiences seems to have given the League a collective awareness that the state constitution had been and still was the root of much evil in state government. Thus it was with considerable excitement that the 1966 LWVA Convention adopted a new state Program item: A study of the Alabama Constitution with a view toward revision and in preparation for a constitutional convention.

Excitement soon turned to dismay. Ironically, up-to-date copies of the state constitution were very hard to come by. Apparently since each legislative session precipitated so many new amendments, printing costs for new copies for the general public had become prohibitive. Probably God and Marian Hawley alone know how the state committee finally obtained one copy of the constitution per local League.

With Alabama Constitution in hand at last, dismay only deepened. Although a number of problem areas were pragmatically identifiable, the complexity of the document and the size of the task the League had set were both far greater than had been anticipated. The study floundered for lack of a unified sense of direction. Also contributing to the early confusion was the difficulty in distinguishing constitutional power from political power.

Early in 1967 the state committee recommended a rewording of the item: CONSTITUTIONAL REVISION: Examination of the Alabama Constitution with a view towards a constitutional convention.

Council accepted the committee's recommendation and, thereafter,

the study moved forward consistently. The first consensus, reached in October, 1967, favored over-all revision and suggested a commission-convention combination as probably the most suitable vehicle.

Consensus, however, was accompanied by a mood of caution. Many League members expressed fear that an active push for revision at that time might put Alabama in worse constitutional shape than before. In order to be able to effectively watchdog revision efforts, the League needed greater understanding of and solid consensus positions on specific constitutional issues.

Accordingly, the 1968 Convention adopted the item: CONSTITUTIONAL REVISION: Support for constitutional revision with further study in the areas of local government and the executive, legislative and judicial articles. A review of the old Finance and Taxation study and support positions was also projected, in the light of desired constitutional changes.

Since the first Citizens' Conference on State Courts had been held in December of 1966, with League member-participants able to share their knowledge with their local Leagues, the judiciary segment of the League study was postponed until the last as a duplication.

Consensus was reached in the area of Finance & Taxation in April, 1969, and the League immediately began digging into the constitutional issues relative to local government.

By this time, Gov. Lurleen Wallace had died and former Lt. Gov. Albert Brewer held the gubernatorial spot. With Brewer's support, the legislature in its regular 1969 session established the twenty-one member Alabama Constitutional Commission. The commission approach to constitutional reform won approval probably because this method would ensure legislative control over reform measures to be submitted to the electorate.

The same legislature established a Legislative Reform Study Committee, chaired by Sen. Richard Dominick of Jefferson County, to make recommendations for legislative changes.

Makeup of the Constitutional Commission included fourteen appointees of the Governor, the presiding officers of the House and Senate, two appointees of the Senate President and three of the Speaker of the House. Lawyers were most prominently represented on the Commission.

In January 28, 1970, the Commission held its organizational meeting, and Shelby County Probate Judge Conrad M. Fowler was unanimously selected Chairman and William H. McDermott of Mobile, Vice Chairman. Of the original twenty-one members and their successors, about sixteen were active continuously throughout the

life of the Commission.

Although the Commission emphasized its work would be conducted in public view, it attracted little attention. However, the League of Women Voters supported it from the beginning and as Chairman Fowler brought the full Commission into frequent Friday evening - Sunday afternoon working meetings, the League was usually represented by at least two observers.

Early expectations were that the Commission would rewrite only a few sections of the constitution and that it would be able to complete its work in time to make final recommendations to the legislature in 1971. As the Commission's work progressed, it became apparent to its members that the anticipated limited revision had snowballed into an essential redoing of the whole thing and that it would be impossible to finalize a report by 1971.

In the meantime, LWV had been proceeding on its prescribed course of study; a Local Government consensus had been reached in January, 1970, and on the Executive-Legislative branches, in November, 1970.

The Act creating the Constitutional Commission required that public hearings be held in at least the four cities of Mobile, Montgomery, Birmingham and Decatur. In the early months of 1971, the public hearings were scheduled as the Commission readied its preliminary report which would include a request for an extension of its life.

The public hearings were largely ignored by the general public. Less than twenty-five people attended in Mobile and Montgomery. About a hundred persons showed up for the meeting in Birmingham and approximately eighty in Decatur. None of the major interest groups headquartered in Montgomery, such as the Chamber of Commerce, the Associated Industries of Alabama, the Farm Bureau, the Alabama Education Association or the League of Municipalities, sent representatives to testify at the hearings. Only one legislator, Sen. Reland Cooper of Camden, appeared. William Stewart, bless his heart, reports that "One prestigious group which did give relevant testimony at the Commission hearings was the League of Women Voters of Alabama and local affiliates. League witnesses were well prepared and gave consistent and effective expression to the need for constitutional reform in Alabama."¹

The League had given five years of study to issues of constitutional revision. Now, at last, with the prospect of real action accompanying the Constitutional Commission's first recommendations to the legislature, there was a general consensus to hang up the thinking cap and put on the battle helmet. If there were a few pangs of guilt that we had never quite gotten around to making a judiciary study, they went unnoticed.

¹William H. Stewart, Jr., The Alabama Constitutional Commission, (University of Alabama Press, 1975) p. 21.

B. AND FIVE MORE YEARS

Legislative Reform

Two basic sources of weakness in the Alabama legislature, prevailing since the early decades of the twentieth century, had steadily worsened with increasing and shifting population and with the growing complexity of modern times. These weaknesses were malapportionment of the legislature which failed to provide adequate representation to all segments of the population² and the continuing procedure of regular legislative sessions every other year.

The 1901 constitution provides for reapportionment of legislative representation after each decennial census. However, ruled by legislators from rural counties, the legislature had simply ignored the provision. During the fifties reapportionment was supported by Gov. "Big Jim" Folsom and by several legislators from north Alabama, but they were unable to break the power of the rural legislative majority. The League of Women Voters of Alabama adopted a Reapportionment item in 1960.³

It remained for the federal courts to move on the issue in the sixties. A series of court decisions altering the basis of representation and the mode of election⁴, together with a series of court-ordered reapportionments, finally established the one man - one vote principle among single member districts in both House and Senate.

Thus by 1971, when the Constitutional Commission presented its interim report, reapportionment was no longer the critical problem it had previously been.

From the Commission's report, the 1971 legislature granted an extension of the life of the Commission for two more years and approved a constitutional amendment for annual legislative sessions to be voted on by the people in November of 1972. The amendment included a provision for a compensation commission to fix salaries for legislators.

LWV supported and worked hard for approval of the annual sessions amendment. However, a well-heeled and very misleading campaign was waged against it by a coalition of a "seven member

²This problem was common to state legislatures nationwide.

³Dropped in 1970.

⁴Reynolds v. Sims, 377 U.S. 533 (1964).
Wesberry v. Sanders, 376 U.S. 1 (1964).
Swann v. Adams, 385 U.S. 440 (1967).

citizen group"⁵ fronting for several powerful special interest groups. The League's efforts were ineffective against such opposition and the amendment was defeated. Undoubtedly the provision for the compensation commission contributed to its defeat.

In an early special legislative session in 1975, an annual sessions amendment was again approved to be voted on by the electorate in June, 1975. This time provision for a compensation commission was omitted. The League of Women Voters and a state committee headed by former Sen. Richard Dominick led the campaign to victory. Regular annual sessions at last became a reality.

The League's lengthy constitutional revision study had identified a number of constitutional sore spots but had also led to an awareness that many non-constitutional changes could be made to enhance legislative responsiveness to the needs of all the people. Sen. Dominick's interim Committee on Legislative Reform presented its report, Improving the Alabama Legislature, in 1970. The report contained three recommendations for constitutional amendments and more than fifty for other reform measures relative to rules and procedures, legislative staffing, the committee system, facilities and space, records and documents. Few of these recommendations were implemented.

The 1972 LWV Convention adopted a new program item as an outgrowth of the constitutional revision item: Alabama Legislature. Study and evaluate means of increasing the effectiveness of the Alabama Legislature.

Judicial Reform

1973 was the year of the Judicial Article. Prior to its adoption the 1901 constitution had vested the state judicial power in a supreme court, in circuit, chancery and probate courts, in "such [other] courts...as the legislature from time to time may establish" and in "such persons as may be by law invested with power of a judicial nature." It was provided that all judicial officers, within their respective jurisdictions, should be conservators of the peace.

These provisions and numerous others relative to jurisdictions, rules, procedures and restrictions had given Alabama a judicial hodgepodge of overlapping jurisdictions, confusing court names and poorly delineated authority and responsibility. Even with totally noble and dedicated judicial personnel, an efficient and fair system of justice would have been impossible within such a structure.

A unified system with an effective mechanism for management

⁵Stewart, p. 39.

was clearly a grave need.

Following the first Citizens' Conference on State Courts in 1966 and the election in 1968 of reform-minded Howell Heflin as Chief Justice of the Supreme Court, a number of improvements were made by the legislature including establishment of the Department of Court Management and a permanent study commission, and the authorization of rule-making power in civil matters to the Supreme Court. In addition two constitutional amendments were approved by the people in January, 1972; one established a judicial commission with authority to discipline, remove and retire judges, and the other abolished justices of the peace.

While the Alabama League's earliest constitutional revision consensus had noted the need for judicial reform, we had failed to refine positions on specific issues and thus could take no direct action in these developments. However, many individual members gave them active support.

The second Citizens' Conference was held in April 1973, again well-peopled by League members. Immediately afterward, the LWV State Board authorized shortcutting the usual study and consensus process, based on League familiarity with the work of the Citizens' Conferences, the Constitutional Commission and other state Leagues' studies in the area of judicial reform. Study materials were mailed to every member and consensus was obtained from individual members' responses by mail.

The consensus statement of July, 1973 follows:

"The League of Women Voters of Alabama supports a revised Judicial Article for the Constitution of Alabama which would provide for: 1. a unified court system; 2. a form of merit selection of judges with periodic approval by the voters as opposed to political election of judges; and 3. a compensation commission which would recommend salaries of judges to the legislature."

The Constitutional Commission submitted an entirely new constitution to the 1973 legislature, with each Article carefully drawn to be complete within itself. The Judicial Article was selected for the initial effort rather than attempting to gain approval for the whole package at once.

With the exception of selection of judges on merit, the League's new position conformed to the provisions of the new Article. Therefore we were able to add our support for the unified system and the compensation commission to the earlier support of many others favoring the Article. The legislature approved the Article with minor amendments.

LWV now moved into the forefront of activity. All local Leagues gave a high degree of commitment to the campaign for

ratification of the new Article, which was approved on December 18, 1973, and to lobbying for its implementation by the legislature in the regular 1975 session. The implementing legislation was passed in the final hours of the last day.

Chief Justice Heflin said it couldn't have been done without us -- and we believe him!

II. CONSTITUTIONAL ISSUES AND LWV POSITIONS

The Constitutional Convention that met in Philadelphia in 1787 drafted a model of simplicity and clarity, envisioning a federal system of sovereign states, each creatively responding to the changing needs of their own people. The only requirement of the federal constitution over state governments was that they should be republican in form. All power was reserved to the states except that which was delegated to the federal government under the U. S. Constitution or which was prohibited to them by their own constitutions.

Nineteenth century state constitution writers across the country, fearful of the misuse of power, saw the role of state constitutions as restrictors of power and drafted their documents accordingly.

In time, thoughtful people recognized that these self-imposed state constitutional restrictions had so inhibited state and local governments that they had become increasingly ineffective in meeting the problems and challenges of change. A reform movement thus began and to date, constitutional revision efforts have been made in many states with varying degrees of success.

A constitution should provide only a skeletal framework of government; after protecting the people in the exercise of their civil liberties, it should broadly define authorities, responsibilities and relationships. Ideally, it should be silent thereafter, maintaining a flexibility to meet changing conditions and needs.

Except for its shiny new Judicial Article and its recent provision for annual legislative sessions,⁶ Alabama's 1901 constitution is among the worst in the nation. The enormous mass of restrictive detail necessitates continual amendment and invites unhealthy circumvention.

The LWVA consensus of October, 1967 states:

"The League of Women Voters of Alabama emphatically favors a new constitution for the State of Alabama. The many objections to the present document can be summed up by: (1) The multitude of amendments with accompanying expense for special elections to approve same; (2) emphasis on statutory rather than fundamental law; and (3) obsolete unconstitutional aspects.

"The majority of Leagues would favor a commission-convention combination for the purpose of revision, but would not oppose any

⁶Another change that should be noted is that since 1968, the governor and certain other elected constitutional officers may succeed themselves for a second term.

vehicle which would truly attempt constitutional reform.

"The Leagues feel that the following areas are most critical: (a) lack of Home Rule, (b) tax structure (sources of revenue, debt limitations and earmarked funds), (c) election laws, (d) reapportionment, (e) restrictive provisions in education article, (f) judiciary reform, and (g) elected officials and agencies."

Constitutional revision cannot ensure good government, for only an alert, active and informed citizenry can accomplish that. But, constructive revision will, at least, permit good government.

In rewriting a state constitution, innumerable issues, both large and small, must be considered. In its Constitutional Revision study, the League made no attempt to deal with all the questions involved, but focused on those which seemed most critical. Neither did the League reach consensus on all the issues it considered.

The following discussions are, for the most part, confined to the issues on which we have support positions.

A. ISSUES OF FINANCE AND TAXATION

Finance and taxation had been on the Current Agenda of the Alabama LWV from 1958 until 1966, when the item was moved to the list of Continuing Responsibilities.⁷ The study had focused successively on the basic tax structure, the ad valorem tax, earmarked taxes, the income tax and the state debt structure.

The old support position, reached in two stages, follows:

"A. The League of Women Voters of Alabama supports a broad, equitable tax system, including both regressive taxes and those based on ability to pay, with decreasing emphasis on the regressive taxes."⁸

⁷Under old LWV terminology, Current Agenda was the listing of active study items. When support positions were established and no further study was anticipated, the item was transferred to Continuing Responsibilities to await appropriate action.

⁸Progressive taxes are based on ability to pay; regressive taxes hit poorer people with greater impact, e.g. graduated income taxes are progressive; sales taxes are regressive.

"Specifically we support:

1. Measures which will bring about equalization of the ad valorem⁹ tax emphasizing the following points:
 - (a) the promotion of efficiency in administration of the tax.
 - (b) greater emphasis on compliance with the tax law as interpreted by the State Department of Revenue.
2. Eventual elimination of present exemptions to the sales tax. (If an additional sales tax should be necessary, we favor exemptions only on basic necessities such as food, drugs, clothing.)
3. Measures which will provide local governments more taxing power to enable them to finance local services locally.

"B. We suggest simplification of the present debt structure so that the State of Alabama can borrow in its own name. This would decrease the percentage of the more costly indirect debts incurred in the name of agencies of the State, and debts serviced through complicated systems of dedicated revenues.

"C. We recommend establishment of a review committee, with competent professional advice to assess Alabama's financial structure and make reports to the legislature at regular intervals."

Since most of the support position had a constitutional basis, the old study was reviewed under the Constitutional Revision item to place the position in its constitutional context.

⁹Ad valorem taxes are property taxes. In theory, they are taxes on all property whether real, personal or intangible. For practical purposes, ad valorem taxes are collected only on real property because of the difficulties inherent in the enforcement for personal and intangible properties. The ad valorem tax has traditionally been considered a progressive tax form since the greatest wealth used to be in the land. With industrialization, this is no longer true. There are some people who are beginning to think of ad valorem as a regressive tax.

In either case, the League position is still valid. Poor people and rich people of one county should be treated the same as the poor people and rich people of another county.

Estimates have been made that all 67 Alabama counties will have completed ad valorem tax reassessments by January, 1977 in compliance with a 1971 court order requiring uniform tax assessments statewide.

Constitutionally Fixed Tax Rates

The League's complaints relative to the ad valorem tax under the old study were a consequence of the inequitable practices prevalent in assessing real property, rather than with constitutionally fixed tax rates. At the time ca 1963, the constitution fixed a state ad valorem tax limitation of .65 of 1 percent ($6\frac{1}{2}$ mills) on the assessed value of property. The 1901 document also fixed a county and city limit of $\frac{1}{2}$ of 1 percent (5 mills), although the latter provision had been amended innumerable times. Another amendment, approved in 1972, has since established different classifications of real property for tax purposes and provides for a single tax rate limit of $1\frac{1}{2}$ percent (15 mills) of fair market value for combined state, county and city taxing.

The constitution also fixes a maximum tax of 5 percent on net income.

It is especially unfortunate, as is the case in Alabama, when constitutional restrictions are placed on more progressive tax forms while no such limitations exist for regressive taxes. Fixed tax rates thereby not only hamper the state's ability to provide needed services, but also perpetuate an already inequitable tax structure.

"Home rule" in Taxing Power

Of the approximately 350 amendments to the Alabama Constitution, about one-third provide for local tax increases for schools, hospitals, public buildings and other local purposes.

It is simply illogical for a state constitution to be so restrictive to local authority that expensive statewide amendment referenda are required in matters of purely local concern.

Debt Structure

"Simplification of the debt structure" implies removal of existing constitutional restrictions on the state to incur indebtedness. These restrictions are: (1) a prohibition of engaging in "works of internal improvement" and (2) a totally unrealistic debt ceiling of \$300,000.00. Thus when capital improvements are needed, the state cannot issue general obligation bonds, pledging the full faith and credit of the state, except by constitutional amendment.

In order to avoid the route of constitutional amendment, the tendency of the legislature has been increasingly to approve revenue bonds which are issued in the name of some state agency.

This indirect method of obtaining needed capital is quicker and surer than through general obligation bonds by constitutional amendment, but revenue bonds carry a higher interest rate than do general obligation bonds. This method also contributes to the accumulation of political power by the governor since he is usually very influential in appointment of members of the agency in whose name the bonds are issued.

The debt of revenue bonds is usually serviced by dedicated revenues (earmarked taxes).

Earmarked Taxes

Ninety percent of Alabama's revenues are earmarked for special purposes. For example, Amendment 61 restricts a portion of the income tax to homestead exemptions and to the special education trust fund, and Amendment 93 earmarks vehicle and gasoline taxes for highway expenditures.

These and other existing earmarkings severely limit the flexibility of the legislature and the executive in formulating budgets to most effectively use revenues to meet financial obligations and the needs of the state.

LWVA Support Position

The April, 1969, Constitutional Revision consensus, relative to Finance and Taxation, states:

"At each regular session the governor should submit to the legislature a budget along with appropriation and revenue bills. There should be no constitutionally fixed tax rates. No specific monetary debt ceiling should be stated in the constitution. However, we would favor a constitutionally specified debt limit which is a percentage of a reasonable measure of the state's wealth. For sound fiscal planning there should be less earmarking of taxes. However, the constitution should neither provide for nor prohibit earmarked taxes."

B. ISSUES OF LOCAL GOVERNMENT

The present constitution has no Local Government Article per se.

Lack of Local Authority

Since counties and cities are created by the state, they have no power of their own except that which is specifically delegated to them by the state. This principle, known as Dillon's rule, has been consistently upheld by court decisions.

In early rural days, states created the political subdivisions of counties to serve as agents of the state in the conduct of civil matters and the administration of justice. Therefore

county boundaries were established by the state. The constitution provides for a number of county officials under state departments, e.g., sheriffs, justices of the peace,¹⁰ and probate judges. Counties generally continue in a very limited role.

Municipalities, initiated by the people, are incorporated under state laws. Municipalities' corporate charters grant general powers of government to meet the specific needs for which they were created. However, these grants of authority are usually inadequate to meet the problems of changing needs and conditions.

Resulting from lack of local authority and from other specific constitutional restrictions, a large majority of Alabama's constitutional amendments are of local application only, e.g., #28 re fees and salaries in Mobile Co., #36 re a jail in Morgan Co., #104 re powers of Haleyville and Double Springs in Winston Co., #195 re a tax for hospital purposes in Mobile Co., and #248, an amendment of #195.

Although less than a third of our constitutional amendments have statewide significance, all amendments passed by the legislature must be approved by the statewide electorate. Amendment referenda are so common they usually attract only a 10-15% voter turnout.

Implicit in the large number of local amendments is the need for expanded authority of local governing units.

Multiplicity of Local Governing Units

Urbanization brings a proliferation of municipalities within counties and the creation of special districts to meet specific needs. In Alabama there are approximately 750 different local governing units of counties, municipalities, separate school systems and other special districts.¹¹

Most public problems have common themes throughout the country, e.g., housing, schools, transit and traffic systems, crime, pollution, land use etc. In heavily populated areas an inevitable unit overlapping of geography, responsibilities and revenue sources impose a local inadequacy to solve complex problems, either community or areawide.

¹⁰ Abolished in Alabama in January, 1972 by Amendment #323.

¹¹ At least, Alabama omits the extra layer of townships!

If local self-government is to survive in urban areas, a restructuring of local units will be required in most cases for a revitalization of adequacy to meet urgent present and potential needs.

Form of Local Government and Home Rule

Although nationally prevalent, public problems all have their own local characteristics thus demanding different approaches to structural solution in different localities. The most effective solutions will be tailored to local conditions and formulated at the level where the conditions are most familiar. Yet experience has taught that small local governing units, even in the midst of governmentally chaotic metropolitan areas, are often the staunchest supporters of the status quo.

The basic challenge in establishing constitutional home rule is to define state-local relationships wherein a legal division of powers will at once permit optimum local control of organization while maintaining state responsibility for organizational adequacy.

The constitution should underscore the fundamental political right of the people to self-determination. The present constitution accomplishes this in Section 2 of Article I when it declares that "all political power is inherent in the people...and that...they have (the) right to change their form of government in such manner as they may deem expedient."

LWVA Support Position

Reached in January, 1970, the LWV position states:

"The state constitution should provide a broad grant of authority to local governing units to enable them to attempt to meet their own local problems independently of the state legislature and/or of the state electorate. It should provide guarantees that the choice of form of local government should be determined by the local electorate and it should promote maximum inter-governmental cooperation in seeking solutions to problems that cross the boundaries of political subdivisions."

C. ISSUES OF THE LEGISLATIVE AND EXECUTIVE BRANCHES

Public debate on separation or distribution of powers of government in America has occurred since as long ago as colonial

days¹² through war years and depressions right on down to Watergate and the LWVUS studies of Congress and the Presidency. Students of government and thoughtful citizens alike seem to agree that while a distinct separation of administrative and policy-making powers between branches of government is neither possible nor desirable, there should be an effective constitutional system of checks and balances.

Alabama's government for many years has been characterized by a marked imbalance between the executive and legislative branches, even to the extent that the legislature has often appeared to be only an arm of the executive.

Early in the Constitutional Revision study, the Alabama League was cautioned to recognize two different kinds of power: constitutional, lawful power which is too frequently too little, and political power which in itself is not unlawful but is susceptible to misuse. The weaknesses of the legislature have contributed to the potential of an elected governor to amass an enormous amount of political power.

Approval of annual legislative sessions should relieve the executive-legislative imbalance to some extent but several other constitutional inadequacies, as well as procedural reform, still await remedy.

Adequate Annual Salaries

Legislators are presently paid \$300.00 per month plus \$50.00 per day while in session. In view of the poor performance of the legislature in 1975 and with the current public discussion of extra pay for interim committee work (or lack of it), there may be those who feel that salaries are now more than adequate. However, the constitutional problems relative to legislators' salaries remain unresolved.

Reapportionment

As noted in the earlier section on Legislative Reform, reapportionment is not a current problem. In fact, the elections

¹²During the Revolutionary War most of the thirteen States adopted constitutions to replace their colonial charters. These all provided for governments of three separate departments - executive, legislative and judicial - although there was considerable diversity in assignment of specific administrative, policy-making and judicial powers to the three departments.

A proper distribution of powers among the branches of the federal government was given much attention in the Federalist Papers of 1787, especially The Federalist #47 by Madison.

of 1974 gave Alabama its first truly representative legislature since the state joined the Union in 1819. The constitutional structure which led to the malapportionment of the past remains unchanged however. Unless we are willing to accept the necessity of repeatedly resorting to the courts, some kind of constitutional machinery will have to be adopted to guarantee adequate representation for all the people in the future.

Selection of Legislative Leadership

The 1901 constitution provides that legislative officers (speaker of the house and president pro tempore of the senate)¹³ shall be elected by members of each house viva voce. Over a period of many years, a tradition has developed that these elections are merely formalities with the governor's choices getting the jobs. Committee chairmen and membership are appointed by the presiding officers of the two houses.

This system has usually led to a legislative process dominated by the political influence of the governor.¹⁴

Constitutional Power of the Governor

In spite of his potential for political power, the governor is in a fairly weak constitutional position as an administrative official.

Several constitutional executive officers are themselves elected by the state electorate which removes them from direct responsibility to the chief executive. The policy-making officers are the governor, lieutenant governor and attorney general.¹⁵ They are elected at the same time as are the non-policy making officers which include the state auditor, secretary of state, state treasurer and commissioner of agriculture and industries.¹⁶

¹³The lieutenant governor, who presides over the senate, is elected by the state electorate. The president pro tem presides in the absence of the lieutenant governor.

¹⁴Ongoing disagreement between the governor and the lieutenant governor is a relatively recent phenomenon. In the past, lieutenant governors seemed bent on pleasing governors, perhaps because the governor could not succeed himself until 1968.

¹⁵The superintendant of education was included in this group until amendments of 1969 provided for his appointment by an elected board of education.

¹⁶Sheriffs of each county are also constitutional officers of the executive department.

Further fragmenting the governor's authority is that only 30 - 50 percent of the officials of various executive boards and agencies are appointees of the governor. These, however, are of non-constitutional offices.

The Budgeting Process

With the advice of various administrative officials, the governor prepares budgets for the education and general funds which he submits to the legislature for approval. It is the duty of the legislature to pass appropriation bills to implement the budgets. Governmental chaos has become the norm for this process.

Contributing to the difficulties of the budget process is the high percentage of revenues earmarked for special purposes. Another significant factor is the inadequacy of accurate fiscal information available to the legislature. With total state annual budgets now in excess of a billion dollars, comprehensive budgeting demands professional fiscal analysis to assist legislators in reaching decisions.¹⁷

LWVA Support Position

The October, 1970 Constitutional Revision consensus, relative to the Legislative-Executive branches, states:

The League of Women Voters supports the strengthening of the legislature so that it may more effectively function within the traditional framework of checks and balances among the three co-equal branches of government. We recommend that the legislature meet annually and that the legislators receive an adequate annual salary. We believe that a constitutional mandate for the legislature to select its own leadership is necessary to insure greater independence of the legislative branch and that there should be constitutional guarantees of adequate representation for all citizens. We support the reorganization of the executive branch to facilitate the administrative duties of the governor and to achieve maximum efficiency and economy. This should include formulation of a comprehensive budget by the executive, subject to legislative approval."¹⁸

¹⁷Section C of the League's old Finance & Taxation position called for a "review committee with competent professional advice...to make reports to the legislature."

¹⁸Although a "review committee with competent professional advice" or, put another way, a Fiscal Office, should not itself have constitutional status, its necessity should be implicit in a constitutional provision for comprehensive budgeting.

* * * * *

PRESENT STATUS

The entire new Alabama constitution (excepting the Judicial Article), as proposed by the Alabama Constitutional Commission was introduced in the house and senate in the regular 1975 legislative session. It was given lengthy and favorable consideration by the joint House and Senate Constitution and Elections Committee. The session ended, however, without its consideration by the full houses.

We anticipate that the whole package will be reintroduced in the next regular session.

III. NON-CONSTITUTIONAL ISSUES OF LEGISLATIVE REFORM

"The one big problem" (standing in the way of legislative reform), declared then Sen. Richard Dominick of Jefferson County to the Montgomery LWV in January, 1973, "is that Alabama seems (sic) to have an inborn, inordinate fear of change."¹⁹

Senator Dominick had first-hand knowledge of legislative problems for he had headed the 1969 study committee on legislative reform whose comprehensive report, Improving the Alabama Legislature, had been submitted to the legislature in 1970.

As reported earlier, the Alabama League of Women Voters adopted an Alabama Legislature study item in 1972 as an outgrowth of the Constitutional Revision item. The objectives of the new item were first, an evaluation of legislative performance and second, to identify specific needed changes or improvements. The study approach was patterned, in part, after the LWVUS study of Congress undertaken the previous year.

Dominick's committee report was one of the principal resource materials for the LWV study. Numerous other materials were used as well, among them three publications of the Citizens' Committee on State Government and The Sometimes Governments.

The Citizens' Committee on State Government was a statewide group of concerned citizens who, during their committee's short life, thoroughly researched and dealt fairly with the troubles in the legislature. Their three 1972 publications included: To Build a Better Alabama -- Every Year!, Restoring the Power of the Purse: the Case for a Legislative Fiscal Bureau and The Committee System -- Key to an Effective Legislature.

¹⁹Don Wasson, Montgomery Advertiser, Jan. 28, 1973. Titled: "Grassroots GOP asks Leadership - Not Status Quo."

The Sometimes Governments by the Citizens' Conference on State Legislatures is a critical study of the fifty state legislatures published in 1971. Also known as the Margolis Report, the study rated legislatures by groupings. It is a devastating indictment of Alabama's legislature, ranking it at the bottom of each group: functional, 48; accountable, 50; informed, 49; independent, 50 and representative, 41.

The LWV established four criteria to evaluate the degree of responsiveness of the legislature including accountability, representativeness, decision-making capability and effective performance. Rating on all four was "poor."

League next turned its attention to refining specific measures for improving the legislature and reached toh following consensus in April, 1973:

"In order to improve the independence of the Alabama legislature and to increase its effectiveness, the LWV of Alabama recommends:

- a. the election of the speaker of the house by secret ballot
- b. the election of the committee chairman by the committee
- c. the reduction of the number of standing committees and
- d. the establishment of a strong and permanent fiscal office responsible to the legislature.

"In order to increase the responsiveness of the legislature, the LWV of Alabama further recommends easier access for the public to votes and records."