

## MEMORANDUM

FROM: Kristine Jones  
RE: Alabama Initiative Implementation

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### *Executive Summary*

The following memorandum includes all aspects of policy implementation for the Alabama initiative implementation process. The problem in Alabama regarding citizen involvement in state policy is defined as Alabama citizens needing a way to initiate changes in the Alabama Constitution and state law. The importance of the issue is explained through citizen dissatisfaction with legislative outcomes both in regards to what the legislature enacts and when it chooses to do so, the size of government, and low voter participation. Causes for lack of prior initiative implementation are addressed that include lack of citizen demand, which results in lack of interest from top elected officials. The prognosis of Alabama's legislative future is determined to be citizen dissatisfaction with their government. Policy goals and criteria are stated as being related to citizens influencing state policy, increasing voter turn out, increasing confidence in the political process, creating another check on state government, creating and opening policy windows, and creating a constitutionally sound process. Discussion of three possible policy alternatives— status quo, indirect initiative, and direct initiative— along with the selected policy (indirect initiative) are described and discussed in depth. The political and economic realities of the chosen solution are determined and explained. Finally, the brighter prognosis of Alabama's legislative future, should the indirect initiative be adopted, is set forth.

### *Definition of Problem*

The area of interest is the state of Alabama. The issue is Alabama needing a way for residents of the state to initiate desired changes in the Alabama Constitution and Alabama state law.

### *Importance*

An initiative is a way to adopt laws or to amend a state constitution. The initiative movement became popular in the 1890s when the Populist Party included initiatives as a necessary political reform. Nebraska became the first state to allow cities to place initiatives in charters. South Dakota soon followed by adding initiatives to the South Dakota Constitution a year later. Oregon, Montana, Oklahoma, Maine, Michigan, and California added initiatives to their state constitutions between 1898 and 1918. In 1959, 1972, and 1992, the states of Alaska, Florida, and Mississippi, respectively, became the last three states to adopt the initiative process statewide. A total of twenty-four states have a form of initiative process.

A poll conducted by Portrait of America in 2000 found that 57% of Alabamians wanted the initiative process, while 18% said they did not. Ten years later, Pulse Opinion Research concludes 71% of likely voters favor adding the initiative process while only 11% say they are not in favor.

Alabama's first major supporter of the initiative process was Governor Fob James, Jr. during his second term; however, nothing materialized for the initiative process. In 2010, then candidate for Lieutenant Governor, Kay Ivey, supports the initiative process. In 2012, Representative Mike Ball sponsored HB 263; yet, this Bill does not survive. Since 2005, there have been at least three bills regarding the initiative process in the Alabama legislature.

Recent years have shown Alabamians do not always agree with laws the state legislature passes. In 2007, the State Legislature increased its pay by 61%. The issue of such a large pay raise is revisited at least once each year. This is around the time when automatic cost-of-living pay increases take effect. In 2011 Alabama passed HB 56. This Bill addressed illegal immigration. To date, this Bill remains very controversial. Having a balanced budget in the state is a third point of contention. Recently, out of the Alabama state Constitution, Campaign Finance, Ethics, and Elections Committee, SB 61 will require the state legislature to pass a balanced budget at the beginning of the legislative session instead of at the end. The three examples above indicate issues that Alabamians either continue to take issue with or have lobbied the state legislature to implement. The initiative process will make it possible for citizens to adopt laws and constitutional amendments they believe will make a difference in the state. Likewise, if citizens believe they are in disagreement with a law is passed by the legislature, the initiative process will allow them the opportunity to change it. In many ways, citizens of the state believe government decisions like those stated above are representations of a state government that is too large has become unresponsive to the needs of those living in the state. Alabamians believe their government needs to allow a further check on the State Legislature and the initiative process can provide that check.

Beyond disagreeing with laws enacted by the State Legislature, through the initiative process, Alabamians would not need to wait on the State Legislature to make changes to the Alabama State Constitution. It was not until the year 2000 that the State Legislature decided to remove the prohibition on interracial marriage. Perhaps with the initiative process in place, this and other antiquated language could be removed.

Another positive outcome of having the initiative process would be increased voter participation. In 2010, a study by Virginia Gray, Russell L. Hanson, and Thad Kousser on voter turnout was done for all fifty states using data from the U.S. Census Bureau and the United States Election Project. Comparing the Gray, Hanson, and Kousser study with states that have a form of initiative, a vast majority of those states have a higher rate of voter turnout. Several reasons for increased voter turnout are possible. However, voters who feel more empowered and part of the

governmental process due to an initiative being on the ballot is a plausible explanation for an increase in votes.

Despite the many benefits of having an initiative process, there are a few downsides. First, it has been the case in many states that special interest groups have the potential to utilize the initiative process as a way to bypass state legislatures. For example, Richard R. Hawkins, a policy researcher from Georgia State University, argues that in Florida the initiative process has been hijacked by personal injury attorneys and physicians. Instead of lobbying the Florida State Legislature for more favorable laws, these two interest groups decided to use the initiative process to create amendments that are now part of the Florida State Constitution. In this regard, the initiative process gives special interest groups another tool to influence state policy. Second, initiatives regarding state fiscal policy have been known to cause disastrous outcomes for state budgets. Both the states of Oregon and Florida have been adversely affected by initiatives related to fiscal policies. Third, California has a long history of initiatives being funded by people and corporations from out-of-state. If the goal of the initiative process is to have the citizens within a state decide on state law, then what has occurred in California should be a cautionary tale for Alabama. Fourth, the ability for small grassroots organizations to get an initiative on the ballot could be prohibitively expensive. Depending on the amount of signatures collected, time it takes to collect those signatures, and whether those collecting signatures are being paid minimum wage or per signature collected, the costs could be thousands of dollars. As a result, the initiative process could not be used by all groups, but only those groups who have the financial capabilities to do so. Fifth, while having a direct democracy sounds nice, it was not what the Founding Fathers intended. In fact, Article IV, Section 4 of the U.S. Constitution guarantees to each state a Republican form of government—not a Democratic one. It can be argued that if the Founding Fathers wanted to create a Democracy, then they would have created it. However, they did not.

The state of Georgia does not have an initiative process; however, it does allow for all home rule cities the opportunity for citizens to propose and approve ordinances and charter amendments by the initiative. Tennessee allows for initiatives at the city level in Chattanooga, Jackson, and Knoxville. South Carolina allows citizens of all municipalities the ability to initiate and approve ordinances. Virginia has a long history of attempts to make the initiative process a statewide reality, yet it does not have any form of initiative. Louisiana has municipal initiatives and the ability to recall statewide elected officers. In 1999, the state had a strong push for initiatives by Governor Bush, but it failed to pass in the state legislature. Texas has a long history of supporting the initiative movement, but it has yet to create a statewide initiative process. While the policy window may not be fully open in these states or Alabama, there is a long history of attempts to make the initiative dream a reality.

### ***Groups Affected***

The group directly affected by the initiative process is the citizens of Alabama. Indirectly, citizens of neighboring states may be affected because people in those states may view Alabama's initiative process better than their own. Furthermore, citizens in surrounding states that do not have an initiative process will use Alabama as the most current, progressive example as to how to implement the initiative process in their state.

This issue has been brought to attention by a coalition group containing members of various political factions such as: the Libertarian Party, the Republican Party, and the Tea Party. In addition to political supporters, members of not-for-profit groups including, but not limited to Citizens in Charge, the Initiative and Referendum Institute, and the Initiative and Referendum Reform Task Force are included in this coalition.

### ***Causes for lack of Initiative Implementation***

The best explanation for why Alabama specifically has not had success with implementing the initiative process is because, as State Representative Mike Ball stated: "It [initiative] will not pass until the public demands it." Congressman Mo Brooks also agrees with Representative Ball saying, "In my view, no version of initiative will pass absent a strong grassroots effort or elevation of the issue by a Governor, Lt. Governor, Speaker of the House, or President of the Senate. . . .If successful, everything else will follow." It is very difficult for those with power to cede it to others. As a result, Alabama does not have the initiative process because the State Legislature does not view it as beneficial to (re)election. Nor has it been made a high priority policy issue in the state by the voters or a top elected official.

### ***Prognosis***

If the situation continues with Alabamians not being able to initiate change in the state, the result will be more of the same. People will continue to be dissatisfied with the outcomes of state legislative sessions. Alabama will continue to have low voter turn out because people are not empowered and feel disconnected from the political process. Special interest groups will remain in control in Montgomery without fear of reprisal from the citizens. Alabamians will continue to not be allowed to have greater input as to what is placed on the legislative agenda. Alabamians will not have the opportunity to change the political conversations in this state in terms of policies and issues they want addressed by state government.

### ***Policy Goals***

There are six goals to be obtained by implementing the following policy alternatives. The first goal is for Alabamians to influence state policy. The second goal is to increase voter turn out. Goal three is to increase confidence in the political process. Goal four is to create another check on state government. The fifth goal is to create and open policy windows that would otherwise remain closed. The final goal is to create a constitutionally sound process.

## *Policy Criteria*

The policy criteria to apply when considering the policy alternatives are four fold. First, increased voter turn out. Second, is to have initiatives created and to maintain an accurate record of whom and/or what groups created an initiative. Third, issues addressed that failed to pass but were then taken up in the next legislative session. Finally, initiatives successfully passed by Alabamians.

## *Discussion of Alternatives*

### *Option 1*

Several possible policy solutions exist for the State of Alabama and the initiative process. The first alternative is to maintain the status quo. In other words, the current legislative process remains in place without implementing any form of an initiative option.

Even though many surrounding states like Florida and Mississippi managed to generate enough support to implement the initiative process, Alabama has not been able to do so. As Alabama State Representative Mike Ball and Congressman Mo Brooks stated, the initiative process will not pass until the public demands it. This is illustrated by the fact that while Alabamians support the initiative by 71%, perhaps the enthusiasm is not being expressed to the State Legislature in the right way. That is to say, the 71% of people are not emailing, calling, and writing their State Legislator, Governor, or Speaker of the House enough to open this policy window.

### *Option 2*

The second policy alternative is to implement an initiative process. More specifically, implement an indirect initiative process. An indirect initiative requires the potential constitutional amendment or statute to be submitted for approval by the Alabama State Legislature in a regular legislative session. The proposed option would be much like the state of Missouri process. Missouri's plan modified for Alabama would be 8% of votes cast for Governor are required for state constitutional amendments. Signature requirements for statutes are 5% of votes cast for Governor. The geographic distribution would be 5% in five of the seven Congressional Districts. The deadline for signatures to be submitted to the Secretary of State is six months prior to election. The circulation period is sixteen months.

Adoption of this form of initiative allows for a check on an ever growing government. Not only can citizens have the ability to enact statutes and amend the state constitution, but merely having an initiative process in place can change how legislators behave. Even though legislators would still need to approve statutes and amendments before the citizens vote on them, this still allows citizens to strongly encourage the legislature to be more attentive to policies citizens believe are important. Policy windows, if not opened fully, are opened to some degree because of the attention and awareness raised by the mere threat of a new statute or amendment.

Another reason for enacting an indirect initiative process is a way for the people to feel empowered and connected to the political process without subverting the legislative method altogether. In this way, the state legislature still has the ability to reject, modify, or accept the proposed statute or constitutional change before it goes to a vote by the citizens. In other words, this method provides a way for citizens to formulate potential policy changes when they believe issues should be addressed while still attaining approval by the state legislature before moving forward to a vote by the people.

The indirect initiative would allow for the vision for the type of state government the Framers' of the U.S. Constitution provided for the nation. Unlike the more direct democracy approach of having the direct initiative process, the indirect initiative process adheres to the concept that all states in the union should have a republican form of government.

### *Option 3*

The Third policy alternative is to implement a direct initiative process. A direct initiative process is where statutes and amendments proposed by citizens are directly placed on the ballot and then submitted to the citizens to be adopted or rejected. The suggested direct initiative process is one that provides reasonable restrictions to ballot access, but not too much restriction as to make the initiative process ineffective. Data collected from a 2010 study by Gray, Hanson, and Kousser shows a direct correlation between the ease of access in Oregon and the almost no access in Wyoming. Since Oregon adopted the initiative process in 1902, 355 initiatives have been adopted. Conversely, Wyoming readopted the initiative process in 1968 and has had six initiatives adopted. Thus, a plausible medium must exist between the two extremes.

Implementing a direct initiative process much like the one Arizona utilizes would allow for 15% of votes cast for Governor to count for signature requirements for state constitutional amendments and 10% of votes cast for Governor regarding statute signature requirements. Also, the geographic distribution limitation would be 5% in five of the seven Congressional Districts. Deadline for signature submission to be verified by the Secretary of State's Office would be six months prior to election. Those seeking to use the direct initiative would have eighteen months to circulate it. The direct initiative process allows for citizens to have a more direct way to influence state policy without it needing to be approved by the State Legislature. This can be an important tool for citizens when the State Legislature grants themselves raises, increases taxes beyond the citizens' willingness to pay, or refuses to set term limits.

According to authors Caroline Tolbert, Daniel Lowenstein, and Daniel Smith in "Election Law and Rules for Using Initiatives," voters in states with direct initiatives frequently pass measures that amend the political process itself. For example, states have adopted policies that enact term limits, require supermajorities for tax increases, expenditure limitations, and campaign finance reform. All of these policy changes run counter to the tendencies of a self-interested state legislator, which if left for State Legislature approval, would most likely fail and never be voted

on by the people. In addition, if Alabama State Legislators know there is the potential for new statutes and amendments to pass, then the legislators might have a greater incentive to pass some version of it themselves in order to maintain control over the final version of the policy. In this way, direct initiatives send a clear message to legislators about citizens' view on certain policies. In other words, direct initiatives forcefully open policy windows that would otherwise remain closed.

### ***Discussion of Selected Policy Alternative***

The second policy option, implement the indirect initiative, is the recommended policy solution. This policy is the only option that meets all policy goals and satisfies all evaluative criteria. The goal of influencing state policy is attained through the establishment and utilization of the initiative process by Alabamians. Voter turn out will increase due to Alabamians being more empowered to participate in the political process. Since more Alabamians will participate in the political process, an increase in the overall confidence in the political process will become evident. Allowing the citizens to have another check on state government will quell concerns that the state government is growing too large. In addition, Alabamians will have the ability to change the way legislators behave because legislators are more reactive to constituents in states with the initiative process. Policy windows will be created and opened because Alabamians will have the ability to raise awareness of issues important to them instead of waiting on the state legislature to determine when to address policy concerns. Utilizing the indirect initiative is the best way to implement an initiative that would be accepted by the United States Constitution. The indirect initiative does not subvert the legislative process by bypassing the Alabama State Legislature.

This policy alternative is not as easy to implement as option one, but it is easier than option three. Option one is maintaining the status quo, which is the most obvious and easiest option. Option three would be more difficult to implement because it takes the most power away from the Alabama State Legislature. As a result, the second policy alternative is the moderate and more appropriate option because it is moderately easier to implement and the most appropriate among the policy alternatives since it best meets the policy goals and criteria.

The political reality of implementing this policy option is possible. For the State Legislature to cede any amount of legislative power to the citizens of Alabama would be monumental. However, while it is difficult for those with power to give any of it away, it has been done before in other states. With that being said, Alabamians would need to demand they be given the indirect initiative process by the State Legislature in order to place enough electoral pressure on state senators and state legislators to force the issue.

The economic realities of implementing the indirect initiative process are not prohibitive enough on the state to stop it from allowing the indirect initiative process to move forward. The Secretary of State's Office would most likely be the office charged with the task of verifying the

accuracy of signatures and number of signatures required for an amendment or statute to be submitted for approval by the Alabama State Legislature. While the Secretary of State's Office already has a number of people employed, it is possible current employees would either be reassigned to a Ballot Access Department or new employees would be hired to perform this task. Another option would be for the state to contract out the signature counting and verification process. Either way, it would be an additional cost to the state. Another type of economic reality to be concerned with are initiatives with possible negative externalities associated with them; for example, Florida's Mullet Net Ban. This was proposed and Florida's State Constitution was amended with virtually no thought given to the effect this ban would have on mullet fishermen. As a result, those who made their livelihood catching mullet were put out of business and unable to become gainfully employed for a period of time. This Mullet Net Ban caused horrible economic consequences for the fishermen and the communities associated with it. This type of economic reality needs to be particularly guarded against when implementing the indirect initiative process.

### ***Policy Implementation Prognosis***

Should the indirect initiative process be implemented for the state of Alabama, then all of the policy goals and criteria will be met. That is to say, the citizens of the state will have the ability to influence state policy. Alabama will have an increase in voter turn out. The citizens of Alabama will have an increased confidence in the state political process. Another check on Alabama state government will be provided. Having the indirect initiative process will allow citizens the opportunity to create and open policy windows that would have otherwise remained closed. Finally, the state will have a constitutionally sound process. This can all be possible if the citizens of the state of Alabama demand the indirect initiative process be implemented.

### ***Conclusion***

The problem in the state of Alabama is there is no way for residents of the state to initiate changes in the Alabama Constitution and Alabama state law. This is important for several reasons. First, in 2007, the State Legislature increased its pay. Second, in 2011, the controversial immigration law passed. Third, in this legislative session, SB 61 will require the passage of a balanced budget at the beginning of the session instead of at the end. Having the initiative process will allow citizens to adopt laws and constitutional amendments in a timely manner that they believe will make a difference in the state. In other words, Alabamians would not need to wait on the State Legislature to initiate policy changes. Fourth, the initiative process will provide a further check on the State Legislature that citizens believe needs to be put in place. Finally, voter turn out has been shown to increase in states that have an initiative process. Downsides of the initiative process include special interest groups potentially hijacking the process. The initiative process may be used irresponsibly to enact poor fiscal policy. Many states have problems with initiatives being funded by out-of-state people or corporations. Small



organizations may have difficulty securing enough funds to have an initiative placed on the ballot. The goals to be obtained by implementing the policy alternative is for Alabamians to influence state policy, increase voter turnout, increase confidence in the political process, create another check on state government, create and open policy windows, and create a constitutionally sound process. The first policy alternative is option one; maintain the status quo. This option allows the current legislative process to remain in place without any changes. The second policy alternative is to implement the indirect initiative process. This will require the potential constitutional amendments or statutes to be submitted for approval by the Alabama State Legislature in a regular session. This option achieves all policy goals and meets all evaluative criteria. The final option is to implement the direct initiative. This option allows for amendments and statutes to by-pass legislative approval and be placed directly on the ballot to either be adopted or rejected by the citizens. The selected policy alternative is option two; implement the indirect initiative. This is the best option because it is the only option that meets all policy goals and satisfies all evaluative criteria. This option is not as easy as option one to implement, but it is much easier than option three. This option represents a step toward the citizens of Alabama having an ability to influence state policy without being given carte blanche to enact policies that might not be in the long term best interest of the state politically, financially, or otherwise. The outcome of selecting this policy option will be that citizens of Alabama have the ability to influence state policy, increase voter turnout, increase confidence in the political process, another check on state government, create and open policy windows, and have a constitutionally sound process.