

IN THE ALABAMA STATE CIRCUIT COURT
FOR JEFFERSON COUNTY, ALABAMA
BESSEMER DIVISION

JUSTIN PRICE, CHARLES D. JAMES,)
COLONEL STONE JOHNSON,)
JAMES ARMSTRONG, GEORGIA)
GRAY HAMPTON, WALTER BROWN, JR.,)
TOMMIE LEE HOUSTON, FREDERICK D.)
RICHARDSON, JR., AND KENNETH P. MARSHALL)
INDIVIDUALLY AND FOR A CLASS OF PERSONS)
LIKEWISE SITUATED,)

Plaintiffs,)

THE HONORABLE TROY KING, IN HIS OFFICIAL)
CAPACITY AS ATTORNEY GENERAL OF)
ALABAMA; THE HONORABLE JIM FOLSOM,)
JR., IN HIS OFFICIAL CAPACITY AS)
LIEUTENANT GOVERNOR OF ALABAMA AND)
PRESIDING OFFICER OF THE ALABAMA STATE)
SENATE; THE HONORABLE HINTON MITCHEM,)
IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO)
TEMPORE OF THE ALABAMA STATE SENATE;)
THE HONORABLE SETH HAMMET, IN HIS)
OFFICIAL CAPACITY AS SPEAKER OF THE)
ALABAMA STATE HOUSE; AND THE)
HONORABLE BETH CHAPMAN, IN HER)
OFFICIAL CAPACITY AS ALABAMA SECRETARY)
OF STATE,)

Defendants,)

CIVIL ACTION
NO.: CV 2009-139

EARL M. MITCHEM, JR.
 CLERK OF COURT

09 FEB -4 AM 0:41

FILED IN DIVISION
 BESSEMER DIVISION

COMPLAINT UNDER § 1983 FOR PROSPECTIVE RELIEF

COME NOW, Justin Price, Charles D. James, Colonel Stone Johnson, James Armstrong,
Georgia Gray Hampton, Walter Brown, Jr., Tommie Lee Houston Frederick D. Richardson, Jr., and

Kenneth P. Marshall, (hereinafter "Plaintiffs"), individually and on behalf of those similarly situated, by and through undersigned counsel, and show unto the Court the following:

I.
INTRODUCTION

This is a Class Action for prospective relief only against officials of the State of Alabama in their official capacity with respect to the document which the Defendants claim to be the valid State Constitution of 1901 (the "Constitution of 1901" or the "Invalid Constitution" or the "Invalid Constitution of 1901").

Submitted in Exhibit A is the affidavit of the Honorable Wayne Flynt, an established historian of the State of Alabama, which concludes that the Invalid Constitution was never passed by the people of Alabama because votes were not properly counted, due to voter fraud and other voter wrongdoing. The Defendants, collectively and in their official capacities, and under color of state law, have failed to ensure that the 1901 Constitution was ever passed by the people, proximately causing injury to the Plaintiffs and the Class, who are living registered voters of the State of Alabama, by depriving them of the protected right to vote under the Fifteenth Amendment and procedural due process rights under the Fourteenth Amendment, Plaintiffs herein request the prospective relief under 42 U.S.C. 1983 of either having an election on the 1901 Constitution or replacing it with a new one approved by the People.

State judicial remedies need not be exhausted in order to bring this 1983 claim as the Federal 1983 remedy is supplementary to the State remedy if it exists.

As indicated in the affidavit in Exhibit A, the failure of the Defendants, in their respective official capacities, to effect a vote upon or a replacement of the 1901 Constitution violates clearly

established Constitutional rights to vote under the Fifteenth Amendment and procedural due process rights under the Fourteenth Amendment which a reasonable person would have known.

The harm resulting to Plaintiffs from Alabama's purporting to operate under the Invalid Constitution is experienced by each new generation of voters, especially Plaintiff, Price, who reached age 18 and became able to vote less than two years ago, with each generation realizing new damages, as a de novo manifest injury, with a cause of action thereby accruing anew, satisfying the Statute of Limitations principles of the Griffith Case, 990 So. 2d 291 at 294 (Ala. 2008).

II. PARTIES TO THE COMPLAINT

1. Plaintiff, Justin Price, is an individual resident citizen of Bessemer, Jefferson County, Alabama, and a registered Alabama voter, and is subject to the jurisdiction of this Court. He is 18 years old and registered to vote shortly before the November 2008 Elections.

2. Plaintiff, Charles D. James, is an individual resident citizen of Birmingham, Jefferson County, Alabama, and a registered Alabama voter, and is subject to the jurisdiction of this Court.

3. Plaintiff, Colonel Stone Johnson, is an individual resident citizen of Birmingham, Jefferson County, Alabama, and a registered Alabama voter, and is subject to the jurisdiction of this Court.

4. Plaintiff, James Armstrong, is an individual resident citizen of Birmingham, Jefferson County, Alabama, and a registered Alabama voter, and is subject to the jurisdiction of this Court.

5. Plaintiff, Georgia Gray Hampton, is an individual resident citizen of Hueytown, Jefferson County, Alabama, and a registered Alabama voter, and is subject to the jurisdiction of this Court.

6 Plaintiff, Walter Brown, Jr., is an individual resident citizen of Birmingham, Jefferson County, Alabama, and a registered Alabama voter, and is subject to the jurisdiction of this Court.

7 Plaintiff, Tommie Lee Houston, is an individual resident citizen of Birmingham, Jefferson County, Alabama, and a registered Alabama voter, and is subject to the jurisdiction of this Court.

8. Plaintiff, Frederick D. Richardson, Jr., is an individual resident citizen of Mobile, Mobile County, Alabama, and is subject to the jurisdiction of this Court.

9. Plaintiff, Kenneth P. Marshall, is an individual resident citizen of Montgomery, Montgomery County, Alabama, and is subject to the jurisdiction of this Court.

10. The Class which the Plaintiffs seek to represent is more particularly described hereinafter, and consists of individuals who are the living registered voters of the State of Alabama, which has a purported Government under the 1901 Constitution (the "Class").

11. The Defendants, in their official capacities, and their predecessors who have so served in such official capacities since the Fall of 1901, when the Invalid Constitution was purportedly ratified by the then members of the Class, have purported to run and defend a State Government based on such Invalid Constitution, which is in violation of the Ku Klux Klan Act, also called 42 U.S.C. Section 1983 and the Fourteenth and Fifteenth Amendments to the United States Constitution in not satisfying the Class' right to vote and procedural due process. During said Defendants' tenure in office, they have taken no measures to investigate whether the Invalid Constitution was ever passed or to remediate any illegal or invalid conduct in connection with the Invalid Constitution, or to have the Invalid Constitution ratified by the people in a subsequent valid election or to replace the Invalid Constitution with a valid Constitution. Said officials are expected to know that such

conduct violates the Class' rights, creating a cause of action under §1983. By not exercising such investigative functions, the Attorney General and Secretary of State are not entitled to immunity. And, by not taking corrective measures with respect to this specific issue as opposed to generalizations, the foregoing official representatives of the Alabama Legislature consisting of the Senate and House, are, likewise, not entitled to immunity.

12. Defendant, Troy King, is a resident citizen of Montgomery, Montgomery County, Alabama, serves in the official capacity of Attorney General for the State of Alabama, and is subject to the jurisdiction of this Court.

13. Defendant, Jim Folsom, Jr., is a resident citizen of Cullman, Cullman County, Alabama, serves in the official capacity of Lieutenant Governor of the State of Alabama, and is subject to the jurisdiction of this Court.

14. Defendant, Hinton Mitchem, is a resident citizen of Huntsville, Madison County, Alabama, serves in the official capacity of President Pro Tempore of the Alabama State Senate, and is subject to the jurisdiction of this Court.

15. Defendant, Seth Hammett, is a resident citizen of Andalusia, Covington County, Alabama, serves in the official capacity of Speaker of the Alabama House, and is subject to the jurisdiction of this Court.

16. Defendant, Beth Chapman, is a resident citizen of Montgomery, Montgomery County, Alabama, serves in the official capacity of Alabama Secretary of State, and is subject to the jurisdiction of this Court.

17. The damages suffered by the Plaintiffs and those likewise situated as a result of the Defendants' wrongdoing exceeds \$10,000 per Plaintiff, as the deprivation of an individual's political

and social rights involves sufficient damages to achieve threshold jurisdiction in this Court. Giles v. Harris, 189 U. S. 475, at 479 (U.S. Sup. Ct. 1903).

III. FACTS

18. The salient facts of this case are summarized in the Affidavit of Professor Wayne Flynt, in Exhibit A, which is incorporated herein by reference. The Invalid Constitution of 1901 was never ratified and approved by the voters of Alabama. In the Fall of 1901, following its passage at a Constitutional Convention, the Invalid Constitution was submitted to the voters of Alabama for a vote. Statewide, it was said by the predecessors of the Defendants in their official capacities to have passed with a 108,613 “yes” vote and a 81,734 “no” vote.

19. Delivering the claimed victory were twelve Black Belt Counties of Alabama, which had a Negro population of more than two-thirds and a heavy majority of black registered voters at the time, and were claimed by the predecessors of the Defendants in their official capacities to have voted 36,224 “yes” and 5,471 “no” for the Invalid Constitution.

20. The Invalid Constitution was designed to disenfranchise voters of Alabama who are black. John B. Knox, the President of the Invalid Constitutional Convention, stated:

“And what is it that we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State.”

Likewise, Convention Delegate Frank White stated:

“We have disenfranchised the African in the past by doubtful methods; but in the future we will disenfranchise him by law.”

This disenfranchisement was accomplished, by the \$1.50 per year poll tax and by requiring property ownership to vote, in the Invalid Constitution. See Affidavit in Exhibit A.

As previously recognized as undisputed facts by the United States Supreme Court, under the 1901 Constitution, “This refusal to register blacks was part of a general scheme to disenfranchise them, to which the (predecessors of the) Defendants and the State itself were Parties... The part taken by the State, that of the white population which formed the Constitution, consisted in shaping that instrument so as to give opportunity with effect to the wholesale fraud which has been practiced.” Giles, supra, at 466.

21. Thus, according to the predecessors of the Defendants in their official capacities, black voters of Alabama in the Black Belt voted overwhelmingly to disenfranchise themselves, which never happened. Cotton Tom Heflin of Randolph County explained the cause of this result:

“We have an over patriotic set of managers, and probably all the Negroes will vote for the Constitution”.

In fact, voting fraud was so rampant that seventeen Alabama Counties (16 of them in the Black Belt) had more votes than the then voters in those Counties.

22. Booker T. Washington, pled for fairness in such Constitution-making:

“The Negro does ask ... that since he is taxed, works the roads, is punished for crime, is called upon to defend his country, that he have some humble share in choosing those who shall rule over him.”

But, these requests were not honored by the Defendant in the official capacity, and has not been hampered by the Defendants in their official capacities.

23. Since the Fall of 1901, the predecessors of the Defendants in their official capacities and the Defendants in their official capacities have never purported to conduct another election so as to attempt to have the voters of Alabama ratify the Invalid Constitution, which remains unratified by the voters of Alabama to this date, and is therefore not the ratified or valid Constitution of Alabama. In doing so, the Defendants have trampled upon the voting rights of the Plaintiffs and the Class: “[t]he right to vote ... is fundamental; and one source of its fundamental nature lies in the equal dignity owed to each voter.” Bush v. Gore, 531 U.S. 98, at 105 (U.S. Sup. Ct. 2000).

24. So as to allow the Defendants in their official capacities to continue to function after the Invalid Constitution is declared in violation of Section 1983 and therefore unconstitutional, Plaintiffs, on behalf of the Class, will request the remedy of prospective overruling, under which the Invalid Constitution is due to be declared null and void as of a future date certain, so as to allow the Defense in their official capacities to correct the infirmity of the Invalid Constitution never having been ratified by the Class; either by (i) calling a Constitutional Convention; or (ii) holding a Class ratification election respecting the Invalid Constitution; or (iii) through other legal means.

25. There is no Statute of Limitations in Section 1983. According to Owens v Okure, 488 U.S. 235 (1989), the Statute of Limitations for a § 1983 case should embrace that of a personal injury action in the State. It is submitted that the most appropriate personal injury Statute of Limitations in this case is the one enunciated in Griffith, supra, with respect to toxic torts. Much as the Invalid Constitution, toxic substances may survive in Alabama for generations, causing personal injury to each new generation of individuals, who might not have even been born when the toxic substance was dispersed in the State. Likewise, the 1901 Constitution, not having been passed, continues to violate the Fourteenth and Fifteenth Amendment Rights of each generation of voters

of Alabama, including the current voters of Alabama comprising the Class, by perpetuating a Government never approved by the people in the exercise of their Fifteenth Amendment right to vote and to procedural due process.

IV. THE PLAINTIFFS

26. Plaintiffs are all resident citizens of the State of Alabama and are living registered voters. Plaintiffs, much as the other Class Members, who are living Alabama voters, have suffered from the Defendants' attempt to have a Government operated through a purportedly valid 1901 Constitution, which is not of, by and for the People, never having been passed by the Class or the voters of Alabama.

27. Plaintiffs and the Class, as a result, have been deprived of the right to vote on their form of State Government in violation of the Fifteenth Amendment, and have been deprived of their Fourteenth Amendment procedural due process rights in never being allowed to effectively vote on the Invalid Constitution, and are due relief under Section 1983 to protect their rights under the United States Constitution.

V. PLAINTIFFS' CLASS ALLEGATIONS

28. The Class, which the named Plaintiffs seek to represent, consists of: All living individuals who are registered voters in the State of Alabama, through the date of the filing of this Complaint, inclusive, and exclusive of Class Counsel.

29. The members of the Class are so numerous that joinder of all members is impracticable.

30. As of this time, the exact number in the Class is unknown, but is more than one million.

31. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel who are competent and experienced in Class Action Litigation. Plaintiffs have no interests that are adverse to or antagonistic to the Class.

32. A Class Action is superior to all other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation makes it virtually impossible for the Class members individually to seek the prospective relief requested for the wrongful conduct alleged.

33. Common questions of law and fact exist as to all members of the Class, and predominate over any questions affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- a. Whether the Constitution of 1901 was ratified by the Voters of Alabama,
- b. Whether the predecessors of the Defendants and the Defendants' in their official capacity failure to have the Constitution of 1901 ratified by the Class prior to using it as the law of Alabama, is in violation of the Fifteenth Amendment of the United States Constitution,
- c. Whether the failure of predecessors of the Defendants and of the Defendants in their official capacities to have the Constitution of 1901 ratified by the Class violates the Fifteenth Amendment of the United States Constitution or the due process clause of the United States Constitution, Amendment Fourteen.

34. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a Class Action. The data concerning the Class members is, upon information and belief, largely computerized by the Defendants in their official capacities.

35. Notice can be provided to the Class members via First Class U.S. Mail, publication or other appropriate means as may be directed by the Court.

VI.
COUNTS

COUNT I

DEFENDANT'S PURPORTED ENFORCEMENT OF THE 1901 CONSTITUTION IS UNCONSTITUTIONAL UNDER THE FIFTEENTH AMENDMENT

36. The above and foregoing paragraphs numbered 1 through 35 are incorporated herein by reference and made a part hereof.

37. The Fifteenth Amendment, as enforced by Section 1983, guarantees each Member of the Class the right to vote. The Defendants, in their official capacities, in not having the Invalid Constitution voted on by the Class when the Invalid Constitution was never validated by the voters of Alabama deprives the Class of its voting rights under the Fifteenth Amendment.

38. As a result, for over 107 years, the Class and its predecessor deceased Alabama voters, have suffered under an illegal State Government under the Invalid Constitution, causing damage to life, liberty and property to Members of the Class.

39. The 1901 Constitution is therefore due to be declared invalid as being in violation of the Fifteenth Amendment in never being passed or ratified by the Class.

COUNT II

DEFENDANTS' PURPORTED ENFORCEMENT OF THE 1901 CONSTITUTION IS DEPRIVING THE CLASS OF PROCEDURAL DUE PROCESS

40 The above and foregoing paragraphs 1 through 39 are incorporated herein by reference and made a part hereof.

41. The Defendants, in purporting to carry out their duties in their official capacities for the State of Alabama, are purporting to enforce the 1901 Constitution against the Class, without its ever being ratified by the Class or its predecessor deceased voters of Alabama, constituting an illegal taking of life, liberty and property of the Plaintiffs and the Class without notice or opportunity to be heard and without an adequate remedy of recovery concerning the life, liberty and property so appropriated by the Alabama Government.

42. This illegal taking is accomplished under color of state law and is violative of Section 1983, and the due process clause of the United States Constitution, Fourteenth Amendment.

43. As a result of this illegal conduct of the predecessors of the Defendants in their official capacities and the Defendants in their official capacities, the Plaintiffs and the Class are deprived of their life, liberty and property without due process of law, in violation of 42 U.S.C. Section 1983.

COUNT III

DECLARATORY JUDGMENT

44. The above and foregoing paragraphs numbered 1 through 44 are incorporated herein by reference and made a part hereof.

45. There is no rational basis for the predecessors of the Defendants in their official capacities and the Defendants in their official capacities, to seek to enforce and utilize the Constitution of 1901, when it was never ratified by the Class.

46. Plaintiffs pray that the Court will declare the attempted enforcement by the predecessors of the Defendants in their official capacities and the Defendants in their official capacities of the 1901 Constitution and the Defendants' holding the Constitution of 1901 out as the true Constitution of Alabama to be unconstitutional as being in violation of 42 U.S.C. § 1983, as well as the Fifteenth Amendment and the due process clause of the Fourteenth Amendment.

COUNT IV

INJUNCTIVE RELIEF

47. The above and foregoing paragraphs numbered 1 through 46 are incorporated herein by reference and made a part hereof.

48. The attempted enforcement of the 1901 Constitution by predecessors of the Defendants in their official capacities and by the Defendants in their official capacities, and the Defendant's holding the Constitution of 1901 out as the true Constitution of Alabama has caused and will continue to cause irreparable injury and damages to these Plaintiffs and the Class, including other persons who in the future will become registered Alabama voters subject to a Constitution of 1901 that was never ratified by the People. There is no adequate remedy at law to prevent this ongoing injury.

49. In the absence of a permanent injunction enjoining in perpetuity this illegal and confiscatory procedure by the predecessors of the Defendants in their official capacities and the Defendants in their official capacities, to enforce a Constitution of 1901 never ratified by the People, the Class is, and will continue to be, deprived of an adequate remedy to assert its voting rights and to live under a Constitution ratified by the People.

50. It is necessary and proper for this Court to issue a permanent injunction enjoining the Defendants in their official capacity from continuing to enforce the Invalid Constitution of 1901, as of a date certain.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that this Court take jurisdiction of this cause, and upon final hearing, to take the following action against the Defendants in their official capacities:

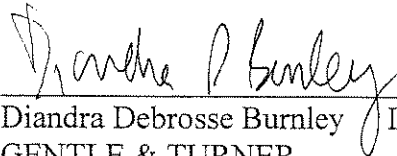
- (a) Certify this matter as a proper Class Action maintainable under Rule 23 of the Alabama Rules of Civil Procedure;
- (b) Declare that the Constitution of 1901 is void as being unconstitutional, as of a future date certain, with this requested prospective overruling remedy to provide Defendants, in their official capacities, the State of Alabama, adequate time to correct the infirmity of an Invalid State Constitution either (a) by ratifying the 1901 Constitution by vote of the living Class Members at a duly called election; or (b) by creating a new Constitution that is validly ratified by the living Members of the Class; or (c) through other legal means (the “Constitutional Corrective Process”);
- (c) Award to the Plaintiffs and Class reasonable fees and costs in bringing this action, including a reasonable attorneys’ fee under 42 U.S.C. § 1988;
- (d) Issue a permanent injunction, to be effective as of the completion of the Constitutional Corrective Process, preventing the future enforcement of the 1901 Constitution or to assert that it as the valid Constitution of Alabama; and
- (e) Award to the Plaintiffs and the Class members such other, further and more general relief as the Court may deem appropriate under the circumstances.

RESPECTFULLY SUBMITTED, THIS 4TH DAY OF FEBRUARY, 2009.



Edgar C. Gentle, III

GEN001



Diandra Debrosse Burnley DED011

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The Honorable Jim Folsom, Jr., Lieutenant Governor
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11 S. Union St
Montgomery, Alabama 36130-6050

The Honorable Hinton Mitchem, President Pro Tempore
Alabama State Senate
7th Floor
State House
11 S. Union St.
Montgomery, Alabama 35130

The Honorable Seth Hammet, Speaker of the
Alabama State House
State House
11 S. Union Street
Montgomery, Alabama 36130

The Honorable Beth Chapman, Secretary of State
State Capitol
600 Dexter Avenue
P.O. Box 5616
Montgomery, Alabama 36103-6050

STATE OF ALABAMA)
COUNTY OF LEE)

AFFIDAVIT OF PROFESSOR WAYNE FLYNT

BEFORE ME, the undersigned Notary Public in and for said County and State, personally appeared Professor Wayne Flynt, who, after first being duly sworn, states the following based upon his knowledge, information and belief:

1. My name is Professor Wayne Flynt. I live at 1225 Penny Lane, Auburn, Alabama 36830. I am History Professor Emeritus of Auburn University. My resume is in Exhibit I. I have been teaching history at Auburn University for 28 years. During the course of my studying history and teaching it, I have become familiar with the primary documents pertaining to the drafting and voting upon the Alabama Constitution of 1901.

2. The primary sources I have examined in connection with this topic include the detailed minutes and other documentation of the Constitutional Convention of 1901, which led to the drafting of the 1901 Constitution, records in the Alabama Archives pertaining to the vote on calling a Constitutional Convention, records in the Alabama Archives concerning the subsequent drafting of the Constitution and the vote thereon, related newspaper articles, and letters from delegates.

3. Based upon my review of these documents, I make the following conclusions.

4. On April 23, 1901, the voters of Alabama apparently voted by 70,500 to 45,500 for a Constitutional Convention. The President of the subsequent Constitutional Convention was Mr. John Knox of Anniston, a corporate attorney. 155 delegates were elected to the Convention, 141 being regular Democrats, 7 Populists, 6 Republicans, and 1 Independent Democrat. There were no Negroes or women. Some delegates offered a provision to allow women to participate, which was overwhelmingly defeated. Cotton Tom Heflin called the proposal "the work of a few cranks". 96 of the 155 delegates were lawyers, and 12 were bankers. Most were over 40 years old and 38 were Civil War veterans. According to Mr. Knox, in a presentation to the Convention, the goals of the Convention were to clear the state of the political corruption seen in the 1890s, and to disenfranchise poor whites and blacks.

The Birmingham Age Herald, editorialized in 1901, that the best of men, even "ministers of the Gospel", will vote to maintain "white supremacy". The Selma Times stated in 1895 that, "The Times is one of those papers that does not believe it is a harm to rob or appropriate the votes of an illiterate Negro. We do not believe they ought ever to have had the privilege of voting."

EXHIBIT A

5. The Central Committee of the Convention was the Committee on Suffrage and Elections. Its goal was to figure out how to end political corruption and to guarantee white supremacy, the avowed purpose of the Convention itself. But, to disenfranchise only blacks, whose votes in the Blackbelt counties were essential to Blackbelt planter control of the State politic, would have shifted power to the white Counties. The Committee therefore had to sacrifice poor whites in the balance.

At the time of the Convention, there were 233,000 white males of voting age in Alabama (females could not vote yet), 32,000 of whom were illiterate. There were 181,000 black males in Alabama of voting age, 73,000 of whom were illiterate.

The Committee's Majority Report, which was incorporated into the new Constitution, contained the following conditions to having the right to vote:

- (a) The voter had to reside in the State for two years, and in his County for one year.
- (b) Voters had to pay a poll tax of \$1.50 per year.
- (c) Voters had to be literate in English.
- (d) Voters had to have real or personal property valued at \$300 or more than 40 acres of land with taxes being paid.
- (e) Voters could not be guilty of various crimes such as bigamy, adultery, sodomy, vagrancy, miscegenation or "crimes against nature."
- (f) There was a grandfather clause, so that a male over 21 could register prior to January 1, 1903, if he met the residence, age, and poll tax requirements and was a soldier or sailor in the War of 1812, the Mexican War, the Civil War, the Spanish American War, or the Indian Wars, or was a descendant of such a person, of good moral character and understood the duties of citizenship.

After the Constitutional Convention approved the proposed Constitution, it was submitted to a vote of the People on November 11, 1901.

On November 5, 1901, the Montgomery Advertiser opined that, "All white people who have studied it and who are not carried away by prejudice, will vote for it."

On November 7, 1901, the Montgomery Advertiser further stated that, "Few Negroes care one way or the other and will not even vote on ratification. They have concluded that the ballot has been of no great advantage to them. They are resolved to allow whites to settle issues among themselves."

Likewise, the Birmingham Age Herald suggested that the best way to end political corruption was to ratify the new Constitution:

What was this political corruption? White control by voter fraud. With the new Constitution, which would disenfranchise blacks, what was previously done in secret could be done in the open. Hence, no "corruption."

The Birmingham Age Herald advocated passing the resulting work product of the Convention:

"Vote then for a white supremacy that does not involve dishonest elections. Vote for the new Constitution." November 5, 1901.

The Herald further observed on November 6, 1901 that white supremacy is essential to all other reforms: "What is most wanted for the general good is assured white supremacy."

The Choctaw Advocate, had a similar sentiment on November 6, 1901: "This is the time when all white men should stand together. The new Constitution was made by white men, for white men."

The November 3, 1901 Mobile Daily Register stated that one good reason to ratify the new Constitution is the resulting disenfranchisement of Negroes. The newspaper noted that in Montgomery, only 168 Negroes in the County (living outside the city) would own enough property to vote under the terms of the new Constitution, requiring 40 acres or \$300 in personal property. There would be even fewer Negroes in other Counties.

6. The black disenfranchisement provisions of the new Constitution coupled with the implementation of a popular vote by those still on the register with respect to bond issues, taxes and so on, make much of Alabama government an exclusively white decision.

As discussed by the ^{Madison McMillan} ~~Miller~~ in Constitutional Development in Alabama, at page 342, the Ratification Campaign Committee formed to further approval of the Constitution sponsored a "campaign of education" during September, October, and early November 1901, promising: "There will be no personalities indulged in and our slogan will be "white supremacy! Honest elections! And the New Constitution! One and inseparable."

Moreover, "Advocates of ratification asked approval of the new Constitution because of additional support for education, a reduced constitutional tax limit, the provisions of a popular vote on bond issues and the election of solicitors, restrictions on local and private legislation, quadrennial sessions of the Legislature, and easier amending process, and the abolition of unnecessary elections and useless Courts." McMillan, supra page 344.

The provisions for a popular vote on bond issues, coupled with disenfranchisement of blacks, made referenda about taxes, bonds, etc., resulted virtually in an exclusively white government.

The Mobile Register (February 15, 2003) discussed the role of railroad interests in ratification: "The railroads through their representatives and spokesmen in Alabama, rallied solidly for a call for the constitutional convention. They did the same for ratification." McMillan, supra, Page 351.

Bill Stewart in Bailey Thompson's celebrated work, A Century of Controversy, concerning the 1901 Constitution, echos this analysis." Under the terms of the new Constitution, power over taxes and bond issues for educational and economic development was transferred virtually to all whites, with the issues of equality and adequacy for black education to be decided by a white supremacy majority with resulting injustice to blacks. Page 50.

7. Following the November 11, 1901 vote on the Constitution, the Montgomery Advertiser, which had predicted a small black vote, analyzed the election returns and reported that virtually all blacks had voted against ratification, there being a large black vote against the Constitution in the City of Montgomery.

The November 12, 1901 Mobile Daily Register stated that, in Opelika, only 85 of the 912 anti-ratification votes were cast by whites.

Mobile County narrowly voted against ratification because of the heavy black vote against it and the light white vote for it. The Negro vote statewide was much heavier than predicted, and "the Negroes voted solidly against." Mobile Daily Register, November 12, 1901.

It appears beyond dispute that where the vote was not repressed or fraudulent, blacks voted overwhelmingly against ratification of the Constitution.

The statewide ratification vote was recorded as 109,000 "yes" to 82,000 "no". Twenty-four mainly white counties voted "no". Seventeen counties cast more votes for ratification than there were registered white voters, indicating rampant fraud. All but one of the 17 was in the Black Belt.

The margin of victory for the Constitution came in the twelve Blackbelt Counties, where it was said to carry by a 32,000 "yes" to a 5,000 "no" vote. In the other fifty-four Counties, which are located North, Southwest, South and in the Wiregrass, ratification was defeated by a vote of 76,000 to 72,000. Careful analysis of votes in the portions of those Counties where registered blacks far outnumbered whites reveals that more than half the vote were in favor of the new Constitution, which would disenfranchise the very blacks who supposedly were casting their votes for it, assuming that every white registered voter and voted to ratify the Constitution. Were this the case, it is impossible to reconcile this result with statewide returns which, according to contemporary newspaper sources, reported overwhelming black opposition to ratification. McMillan agrees, supra at Page 352.

For example, in Lowndes County, there were 5,600 registered black votes, 1,000 registered white votes, and 5,326 votes were for ratification, with only 336 against. The Black Belt counties of Dallas, Hale, and Wilcox cast 17,475 votes for ratification and only 508 against, or 12,360 more votes than the total potential white voting population of 5,623. Outside the Blackbelt, black voters overwhelmingly voted against ratification, but in the Blackbelt, it was their "votes" that resulted in ratification. These 12 Black Belt counties also reported their returns late.

8. McMillian, supra at pages 351 to 352, echoes this analysis:

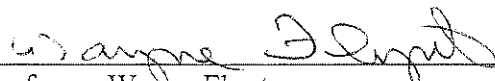
"Although one cannot prove that the large Negro vote in the black counties in favor of the Constitution was fictitious, a study of the election returns, contemporary sources, and Black Belt voting practices has convinced the author that in some counties almost every eligible Negro was 'voted' although thousands never appeared at the polls. In other cases the Negro appeared at the polls and either voluntarily or involuntarily voted away an interest so fundamental to his as the franchise. Figures prove that the Constitution was adopted by the majorities of the black counties, whether the vote was fictitious or real."

9. Following the vote upon the Constitution of 1901, it was adopted by the State of Alabama as if it had passed. Its voting restrictions were enforced. The results were astounding: Of the 181,000 Negro males of voting age in 1901, 100,000 were registered. In 1903, that figure had fallen to about 3,000 to 4,000.

10. In the first election held after the 1901 Constitution was voted upon, voter turnout declined by 38%, with white turnout declining by 19% and black turnout by an amazing 96%.

11. Based upon the foregoing facts, I conclude that the Constitution of 1901 was not passed.

FURTHER THE AFFLIANT SAYETH NOT.


Professor Wayne Flynt

Sworn to and Subscribed Before Me
This 30 Day of January, 2009.


NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Sept 15, 2016
~~BONDED THRU NOTARY PUBLIC UNDERWRITERS~~

[NOTARIAL SEAL]

Curriculum Vitae
J. WAYNE FLYNT
Distinguished University Professor
Emeritus Professor, Auburn University
flyntjw@auburn.edu

Statistical Data:

Born in Pontotoc, Mississippi, October 4, 1940. Graduated Anniston High School, Anniston, Alabama, 1958. Married Dorothy A. Smith, 1961. Two sons: David, born 1965, Sean, 1969.

Degrees:

A.B., magna cum laude, Samford University, 1961; M.S., Ph.D., Florida State University, 1962, 1965.

Books:

Alabama in the Twentieth Century (Tuscaloosa: University of Alabama Press, 2004).

Alabama Baptists: Southern Baptists in the Heart of Dixie (Tuscaloosa: University of Alabama Press, 1998).

Taking Christianity to China: Alabama Missionaries in the Middle Kingdom, 1850-1950, with co-author Gerald W. Berkley (Tuscaloosa: University of Alabama Press, 1997).

Alabama: The History of a Deep South State, with co-authors Leah Rawls Atkins, William W. Rogers, David Ward (Tuscaloosa: University of Alabama Press, 1994).

Poor But Proud: Alabama's Poor Whites (Tuscaloosa: University of Alabama Press, 1989).

Mine, Mill and Microchip: A Chronicle of Alabama Enterprise (Woodland Hills, California: Windsor Publishers, 1987).

Southern Poor Whites: An Annotated Bibliography with Dorothy S. Flynt (New York: Garland Publishers, 1981).

Montgomery: An Illustrated History (Woodland Hills, California: Windsor Publishers, 1980).

Dixie's Forgotten People: The South's Poor Whites (Bloomington: Indiana University Press, 1979). Reprinted with revised introduction and bibliography, 2004.

Cracker Messiah: Governor Sidney J. Catts of Florida (Baton Rouge: Louisiana State University Press, Southern Biography Series, Spring, 1977).

Duncan Upshaw Fletcher: Dixie's Reluctant Progressive (Tallahassee: Florida State University Press, 1971).

Teaching Awards:

Auburn University—College of Liberal Arts Hall of Honor; Robert Reid Outstanding Professor Award (chosen by History graduate students) 1986-87, 1996-97, and 2004-05; Outstanding Faculty Member Award, Cardinal Key Talons Chapter, Spring 1992 and Spring 2005; College of Liberal Arts Academy of Teaching and Outstanding Teachers, 2003; Honors Society Professor of the Year for 2003; Mortar Board National Honor Society Favorite Educator, Fall 2001; Teaching Effectiveness Award in the Humanities, College of Liberal Arts, 2000; Outstanding Professor, Panhellenic Council, 1995-96 and Fall 1998; Certificate of Merit for University Extension Education, 1989; Mortar Board Award as Outstanding Teacher in School of Arts and Sciences, Winter, 1981 and Spring, 1989.

Samford University—John H. Buchanan Award for Excellence in Classroom Teaching (based on vote of senior class), 1968; Rotaract Award for Outstanding Teacher in Howard College of Arts and Sciences, 1977

Other—Professor of the Year for Alabama, Council for Advancement and Support of Education, Washington, D.C. 1990-91; finalist in Harbison Competition for twelve best teachers in an American college or university, sponsored by Danforth Foundation, 1971.

Academic Awards:

Academic Freedom Award, Auburn University Chapter, American Association of University Professors, 1998; Ford Foundation Post-Doctoral Fellowship for study of East Asian history, 1965; Woodrow Wilson Dissertation Fellowship for research in Washington, D. C., and Hyde Park, New York, 1964-65; Woodrow Wilson Fellowship, 1961; NDEA Fellowship, 1961.

Exhibit 1

Writing Awards:

Clarence E. Cason Award for Nonfiction (for entire career), The University of Alabama, 2002

Alabama in the Twentieth Century

- Anne and James McMillan Prize for best 2004 manuscript in History, University of Alabama Press
- James F. Sulzby, Jr. Book Award for book published in 2003-04

Alabama Baptists: Southern Baptists in the Heart of Dixie

- Anne and James McMillan Prize for best 1998 manuscript in History, University of Alabama Press
- Outstanding 1999 Academic Book, American Library Association publication *Choice*
- Alabama Library Association Award for Non-Fiction for the year 2000

Taking Christianity to China: Alabama Missionaries in the Middle Kingdom, 1850-1950

- Anne & James McMillan Prize for best 1995 manuscript on Southern History, University of Alabama Press

Alabama: The History of a Deep South State

- James F. Sulzby, Jr. Book Award for book published in 1994 that made the most significant contribution to a greater knowledge and appreciation of Alabama history
- Special commendation by Alabama Association of Historians, February 1995
- Certificate of Commendation, the American Association for State & Local History, July 1995
- Nominated for Pulitzer Prize for History, 1994

Poor But Proud: Alabama's Poor Whites

- Lillian Smith Award for Non-Fiction, the Southern Regional Council (oldest regional book award in the South), 1990
- Alabama Library Association Award for Non-Fiction for the years 1988-1990, 1991
- James F. Sulzby, Jr. Award for best book on Alabama History published for the years 1989-1990, by Alabama Historical Association, 1991
- Outstanding Academic Book for 1990-1991 by American Library Association publication *Choice*, chosen for exhibit at the American Library Association meeting, Atlanta, 1991
- Nominated for Pulitzer Prize for History, 1989
- Selected for participation in Southern Book Festival, Nashville, Tennessee, 1991

Dixie's Forgotten People: The South's Poor Whites

- Book of the Year, Mississippi Council of Christian Social Action, 1981

“Southern Baptists: Rural to Urban Transition”

- Norman W. Cox Award from the Southern Baptist Historical Commission for the best article on southern Baptists published during 1981

“The Cry of the Children: Alabama Baptists and Child Labor, 1900-1920”

- Winner, Alabama Baptist Sesquicentennial History Writing Contest, 1973

Duncan Upshaw Fletcher: Dixie's Reluctant Progressive

- Rembert W. Patrick Award for best book in Florida history, Florida Historical Society, 1972
- Award of Merit from the American Association for State and Local History, 1972

Honors:

Leadership Alabama Lifetime Achievement Award, 2007; Judson-Rice Award by BAPTISTS TODAY national magazine for leadership and integrity among U.S. Baptists, 2007; Inducted into Alabama Academy of Honor (limited to 100 living Alabamians), 2006;

Inducted into University of Alabama Communication Hall of Fame, 2005; Virginia V. Hamilton Award (for publicizing Alabama history to the public), Alabama Historical Association, 2005; Hugo Black Award for Service to Alabama and the Nation (highest award given by the University of Alabama), 2003; Good Citizen Award, Auburn Rotary Club 2000; named Paul Harris Fellow of Rotary International; Child Advocacy Award, Alabama Chapter, American Academy of Pediatrics, 2000; Doctor of Humane Letters (honorary degree), Samford University, 2000; Phyllis Rea Award for Community Service, Auburn League of Women Voters, 2000; Distinguished Historian Award, Alabama Baptist Historical Commission, 1999; Good Shepherd Award for Humanitarian Service, St. Andrew's Episcopal Church, 1999; Distinguished Service Award, Southern Baptist Historical Society; Academic Freedom Award, Auburn University Chapter, American Association of University Professors, 1997-98; Algernon Sydney Sullivan Award 1995-96, Judson College, May, 1996; Selected by L.Q.C. Lamar Society as one of sixty “Emerging Southern Leaders,” Conference at Wilmington, N.C., March 30-April 1, 1995; Humanitarian of the Year 1994, Alabama Arthritis Foundation; Friend of the Children Award, The Children's Hospital of Alabama, March 1994; Birmingham Mayor Richard Arrington proclaimed April 12, 1993 Wayne Flynt Day; “The Gospel According to Flynt,” 30-minute Educational Television program produced on life and reform message, 1993; Algernon Sydney Sullivan Award for 1992-93, Auburn University, May, 1993; National Association of Social Workers, Montgomery Unit, Public Citizen of the Year 1993; and Alabama Chapter, Public Citizen of the Year 1993; John Ramsay Award of Merit for 1992, Alabama Association of Historians; first Alabamian of the Year

Award, Mobile Press Register editors, 1990; Distinguished Graduate Faculty Lecturer Auburn University, 1992; Distinguished Service Award, the Alabama Historical Commission, September, 1992; Alabama Humanities Foundation Award, major contributions to the Humanities, 1991; Golden Eagle Educator Award, Alabama Senior Citizens Hall of Fame, 1990; chosen for first class of Leadership Alabama, 1990-1991; Samford University Alumnus of the Year, 1985; inducted into Alabama Academy of Distinguished Authors, 1983; Faculty Award for Achievement in the Humanities, Auburn University, 1982-1983; Samford University History Alumnus of the Year, 1981.

Major Named Lectureships:

Catherine Prescott Lecturer, Florida Historical Society, 2008;

David Nelson Duke Undergraduate Colloquium Day Lectures, William Jewell College, 2002; Bays Blackwell Lectureship, Emory and Henry College, 1999; Pruitt Memorial Lecture, Baylor University, 1998; Clifford Judkins Durr Lectures, Auburn University at Montgomery, 1998; William R. Snell Annual Lecture, Lee University, 1998; Draughton Lectures in Southern History, Auburn University, 1997-1998; Portier Lectures, Spring Hill College, 1993; Eudora Welty Lecture, Millsaps College, 1994; Ken Kelley Honors Lectures, Davidson College, 1993; Carlyle Marney Lecture, Carson-Newman College, 1993; Birkett Williams Lectures, Ouachita Baptist University, 1993, Arkadelphia, Arkansas; the Edward N. Akin Lectures, Mississippi College, 1991; Bradford Dean Dixon Lectures, The Children's Hospital of Alabama and the University of Alabama in Birmingham, 1991; Dotson M. Nelson Lectures, Samford University, 1988; Chancellor's Symposium on Southern History, University of Mississippi, 1983 and 1984.

Academic Positions/Visiting Lectureships:

Distinguished University Professor, 1990-2005 (the position recognizes no more than one percent of Auburn faculty as distinguished professors; presently only seven of Auburn's 900 faculty are designated); Eudora Welty Visiting Scholar in Southern Studies, Fall Semester, Millsaps College, Jackson, Mississippi, 1994; Visiting Lecturer, University of Sichuan, People's Republic of China, Fall 1992; Visiting Scholar, Hong Kong Baptist College, Fall 1992; Hollifield Professor of Southern History, 1982-1990; Head, History Department, Auburn University, 1977-1985; History Department, Samford University, Birmingham, Alabama, 1965-1977.

Public Service:

Editor-in-chief, online *Encyclopedia of Alabama*; Alabama Poverty Project, founder and director; one of founders of Sowing Seeds of Hope, a 30 year effort to address poverty in one of America's 100 poorest counties; Mary Reynolds Babcock Foundation, board of directors; Alabama Citizens for Constitutional Reform, board of directors chair and tax reform steering committee, 2003; Rhodes Selection Committee for Alabama, member 1999-2002; selected by Gov. James E. Folsom, Jr. and Circuit Judge Eugene Reese to facilitate litigants, defendants, and Governor's Task Force on Educational Reform, Equity Funding lawsuit, 1993-1994; Auburn Race Relations Group, Inc., member and steering committee; "A+" (Education Reform Coalition of Alabama), board of directors; Voices for Alabama Children and Kids Count, member and steering committee; American Cancer Society, member of National Advisory Committee on Cancer in the Socioeconomically Disadvantaged, and task force member on Public Policy and the Socioeconomically Disadvantaged ad hoc committee to draft policy on National Health Insurance.

Consulting:

"Rebels in the Pulpit," University of Alabama Center for Public Television; many documentaries for Alabama Public Television, Public Broadcasting System, and independent film makers, including PBS's "Scottsboro," nominated for 2000 Academy Award for documentaries; interviewed as expert on poverty, southern culture, Alabama politics, southern religion, education reform, by the American Cancer Society, *The New York Times*, *Washington Post*, *The Wall Street Journal*, *USA Today*, *Time*, and *Newsweek*, *The Economist* (London), CBS and ABC News, 20/20 (ABC television), HBO, C-SPAN, ESPN, CNN, the *Christian Science Monitor*, *Chronicle of Higher Education*, *Mother Jones* magazine, the Associated Press, Alabama Public Television, Alabama Department of Human Resources, Voice of America, *Atlanta Journal*, *Atlanta Constitution*, *Houston Post* (TX), *Birmingham News*, *Birmingham Post-Herald*, *Montgomery Advertiser*, *Montgomery Journal*, *Huntsville News*, *Mobile Register*, *Columbus Ledger-Enquirer* (GA), *Arizona Republican*, Newhouse News Service, [while in India: *India Express*, *The Hindu*, and *Frontline* (Madras)].

Other:

Twenty-one essays published as chapters in refereed anthologies;
Thirty-two essays in reference works, encyclopedias, introductions to books, pamphlets;
Thirty articles published in refereed historical journals;
One hundred twenty-one published book reviews;
Directed 42 M.A. theses, 23 doctoral dissertations to completion.