

TO: Committee on the Recompilation of the Constitution
FROM: Othni J. Lathram
DATE: August 27, 2021
RE: Background Information on the Removal of Racist Language

The purpose of this memo is to set forth the information necessary to inform our discussion on which provisions of the Alabama Constitution of 1901 are at issue as containing racist language. This memo and its attachments should provide the context necessary for that discussion.

Section 32

Slavery prohibited; involuntary servitude.

That no form of slavery shall exist in this state; and there shall not be any involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted.

The language at issue is “otherwise than for punishment of crime, of which the party shall have been duly convicted.” The language of Section 32 is very similar to that of Section 1 of the Thirteenth Amendment of the United State Constitution:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Additionally based on our research approximately 19 states included the same or similar language in their constitutions. Voters in Colorado voted to remove the language in 2018, Nebraska and Utah voted to remove identical language in 2020, and an amendment to do the same in Tennessee will be voted on in 2022.

The right to subject a person convicted of a crime to involuntary servitude has been under scrutiny for some time, particularly in the late 19th and early 20th century when persons were commonly incarcerated and leased to landowners for agricultural work.

Based on our research the removal of the phrase at issue would have no practical impact on our current incarceration practices nor punishment schemes.

Section 256

Section 256 represents Alabama’s core constitutional education policy statement. It has been the subject of much debate, controversy, and litigation. The first dilemma that must be confronted is a determination of what language even qualifies as the current operable provision.

Both the original language of 1901 and the language as amended by Amendment 111 are set forth in Attachment A to this memo.

The Code Commissioner's Note contained in the current statutory recompilation does as good a job as is possible succinctly summarizing the complex history and status of this provision:

The question of the status of Section 256 is complex and controversial.

Clearly the last sentence of the original Section 256 providing for racially segregated schools was unconstitutional under [Brown v. Board of Education, 347 U.S. 483 \(1954\)](#).

In response to Brown, Amendment 111 was adopted in 1956. Amendment 111 revised a number of separate provisions of the Constitution of Alabama of 1901, including an amendment of Section 256. The amended Section 256 eliminated the requirement of racially segregated schools, but at the same time eliminated the requirement of the original Section 256 that the Legislature "establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof." Instead, Section 256, as amended by Amendment 111, declared that nothing in the Alabama Constitution "shall be construed as creating or recognizing any right to education or training at public expense." In the so called "equity funding" litigation (Alabama Coalition for Equity, et al. v Hunt, CV-90-883; see [Opinion of the Justices No. 333, 624 So.2d 107 \(1993\)](#)), the trial court ruled that the racially discriminatory motivations underlying Amendment 111 made the amendment of Section 256 unconstitutional; and the requirement of original Section 256 that the Legislature "establish, organize and maintain a liberal system of public schools for the benefit of the children of the state" survived as a constitutional mandate on the state. While various issues arising in the litigation were appealed (see [Pinto Alabama Coalition for Equity, 662 So.2d 894 \(1993\)](#); [Opinion of the Justices No. 333, supra](#); [Ex parte James, 713 So.2d 869 \(1997\)](#); and [Ex parte James, 836 So.2d 813 \(2002\)](#)), there was no appeal of the liability portion of the decision of the trial court. Since the trial court is not a court of last resort for purposes of Section 29-7-9(a)(6), Section 256, as amended by Amendment 111, is set forth without change.

In both 2004 and 2012, the voters of Alabama failed to ratify amendments that would have substantially altered the text of Section 256. The full text of both of those proposed amendments is contained in Attachment B to this memo. The proposal adopted by passage of Act 2003-203 purported to amend both the 1901 and 1956 versions of Section 256 without any instruction on how or if those would be reconciled. The 2012 proposal adopted by Act 2011-535 would have struck the final paragraph of the 1956 version related to separation of schools by race.

The Constitutional Revision Commission formed pursuant to Act 2011-197 also reported a set of proposed revisions to the Education Article. That Commission took the approach of simplifying and substantially shorting Section 256. The portion of the Commission's report related to Section 256 is attached as Attachment C to this memo. The Commentary to that report contains additional information that is instructive to this conversation.

Section 259

Section 259 provides that all poll taxes collected in Alabama shall be applied to the support of the public schools in the respective counties where collected. Alabama no longer imposes a poll tax. All other constitutional provisions related to poll taxes were contained in the Suffrage Article and repealed by Amendment 579 that was ratified in June of 1996. The only reason this provision was not also addressed was the adherence to an Article by Article approach to Constitutional Reform.

Attachment

A

SECTION 32

Slavery prohibited; involuntary servitude.

That no form of slavery shall exist in this state; and there shall not be any involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted.

SECTION 256

Duty of legislature to establish and maintain public school system; apportionment of public school fund; separate schools for white and colored children.

(Amended by Amendment 111)

The legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years. The public school fund shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall be so apportioned to the schools in the districts or townships in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.

SECTION 259

Use of poll taxes for support of public schools.

(Amended by Amendment 111)

All poll taxes collected in this state shall be applied to the support of the public schools in the respective counties where collected.

AMENDMENT 111 (Ratified August 28, 1956)

Amendment of Sections 137, 139, 256, 258, 259, 260, 269, 270.

Amendment of Sections 137, 139, 256, 258, 259, 260, 269, 270.

Sec. 137. Duties generally and restrictions on receipt of fees, etc., by attorney general, state auditor, secretary of state, state treasurer, superintendent of education and commissioner of agriculture and industries; annual reports by state treasurer and state auditor; attorney general may be required to defend suits against state, political subdivisions, officers, etc.

The attorney general, state auditor, secretary of state, state treasurer, superintendent of education, and commissioner of agriculture and industries shall perform such duties as

may be prescribed by law. The state treasurer and state auditor shall, every year, at a time fixed by the legislature, make a full and complete report to the governor, showing the receipts and disbursements of every character, all claims audited and paid out, by items, and all taxes and revenues collected and paid into the treasury, and the sources thereof. They shall make reports oftener upon any matters pertaining to their offices, if required by the governor or the legislature. The attorney general, state auditor, secretary of state, state treasurer, and commissioner of agriculture and industries shall not receive to their use any fees, costs, perquisites of office or other compensation than the salaries prescribed by law, and all fees that may be payable for any services performed by such officers shall be at once paid into the state treasury. The legislature may require the attorney general to defend any or all suits brought against the state, or any subdivision thereof, or against any state school board or state board of education, or against any county or city school board or board of education, or against like boards or commissions by whatever name designated, or against any members, officers or employees of any such boards, or against any school official or employee throughout Alabama.

Sec. 139. Vesting of judicial power; minimum standards for establishment of courts of general jurisdiction in counties; authority of legislature to constitute members of state, county and city school boards as judicial officers.

The judicial power of the state shall be vested in the senate sitting as a court of impeachment, a supreme court, circuit courts, chancery courts, courts of probate, such courts of law and equity inferior to the supreme court, and to consist of not more than five members, as the legislature from time to time may establish, and such persons as may be by law invested with powers of a judicial nature; but no court of general jurisdiction, at law or in equity, or both, shall hereafter be established in and for any one county having a population of less than twenty thousand, according to the next preceding federal census, and property assessed for taxation at a less valuation than three million five hundred thousand dollars. The legislature shall also have authority to constitute as judicial officers any or all of the members of state school boards, state boards of education, county school boards, city school boards, and like boards or commissions by whatever name designated, and all superintendents of schools and school officials and employees throughout Alabama, and to provide that all action taken by them, or any of them, requiring the exercise of discretion or judgment in connection with school matters be judicial action.

Sec. 256. Educational policy of the state; authority of legislature to provide for or authorize establishment and operation of schools by persons, municipalities, etc.; grant, donation, sale or lease of funds and property for educational purposes; election of certain schools for attendance by parents of minors.

It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature, in furthering or providing for education, to require or impose conditions or procedures deemed necessary to the preservation of peace and order.

The legislature may by law provide for or authorize the establishment and operation of schools by such persons, agencies or municipalities, at such places, and upon such conditions as it may prescribe, and for the grant or loan of public funds and the lease, sale or donation of real or personal property to or for the benefit of citizens of the state for educational purposes under such circumstances and upon such conditions as it shall prescribe. Real property owned by the state or any municipality shall not be donated for educational purposes except to nonprofit charitable or eleemosynary corporations or associations organized under the laws of the state.

To avoid confusion and disorder and to promote effective and economical planning for education, the legislature may authorize the parents or guardians of minors, who desire that such minors shall attend schools provided for their own race, to make election to that end, such election to be effective for such period and to such extent as the legislature may provide.

Sec. 258. Property donated or appropriated for educational purposes and estates of persons dying without will or heirs to be applied to furtherance of education.

All lands or other property given by individuals, or appropriated by the state for educational purposes, and all estates of deceased persons who die without leaving a will or heir, shall be used or applied to the furtherance of education.

Sec. 259. Use of poll taxes for support and furtherance of education.

All poll taxes collected in this state shall be applied to the support and furtherance of education in the respective counties where collected.

Sec. 260. Certain income to be applied to support and furtherance of education; special annual tax for education; maximum annual levy on taxable property; priority for payment of bonded indebtedness of state; proceeds of certain taxes to be used for support and furtherance of education.

The income arising from the sixteenth section trust fund, the surplus revenue fund, until it is called for by the United States government, and the funds enumerated in sections 257 and 258 of this Constitution, together with a special annual tax of thirty cents on each one hundred dollars of taxable property in this state, which the legislature shall levy, shall be applied to the support and furtherance of education, and it shall be the duty of the legislature to increase the educational fund from time to time as the necessity therefor and the condition of the treasury and the resources of the state may justify; provided, that nothing herein contained shall be so construed as to authorize the legislature to levy in any one year a greater rate of state taxation for all purposes, including schools, than sixty-five cents on each one hundred dollars' worth of taxable property; and provided further, that nothing herein contained shall prevent the legislature from first providing for the payment of the bonded indebtedness of the state and interest thereon out of all the revenue of the state.

Except as they may be specifically set aside in trust funds or otherwise applied to the payment of indebtedness, all proceeds of income or other taxes levied by the state, and of all special ad valorem or other taxes levied by counties and other municipalities, or school districts, pursuant to the Constitution as heretofore amended, for public school purposes, shall be applied to the support and furtherance of education pursuant to section 256 of the Constitution, as amended.

Sec. 269. Special county educational taxes.

The several counties in this state shall have power to levy and collect a special tax not exceeding ten cents on each one hundred dollars of taxable property in such counties, for the support and furtherance of education in such manner as may be authorized by the legislature; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, state and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges, and the payment of debts existing at the ratification of the Constitution of eighteen hundred and seventy-five.

Sec. 270. Applicability of article to Mobile county.

The provisions of this article and of any act of the legislature passed in pursuance thereof for educational purposes, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw the portions of the funds to which said county shall be entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature.

Attachment B

Act 2003-203 Proposal

(a) Section 256 of the Constitution of Alabama of 1901, is amended to read as follows:

Section 256. The legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years. The public school fund shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall be so apportioned to the schools in the districts or townships in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. ~~Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.~~

(b) Section 256 of the Constitution of Alabama of 1901, as amended by Amendment 111, is amended to read as follows:

Section 256. It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student. ~~, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature, in furthering or providing for education, to~~

~~require or impose conditions or procedures deemed necessary to the preservation of peace and order.~~

The legislature may by law provide for or authorize the establishment and operation of schools by such persons, agencies or municipalities, at such places, and upon such conditions as it may prescribe, and for the grant or loan of public funds and the lease, sale or donation of real or personal property to or for the benefit of citizens of the state for educational purposes under such circumstances and upon such conditions as it shall prescribe. Real property owned by the state or any municipality shall not be donated for educational purposes except to nonprofit charitable or eleemosynary corporations or associations organized under the laws of the state.

~~To avoid confusion and disorder and to promote effective and economical planning for education, the legislature may authorize the parents or guardians of minors, who desire that such minors shall attend schools provided for their own race, to make election to that end, such election to be effective for such period and to such extent as the legislature may provide.~~

Act 2011-353 Proposal

Section 256. It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature, in furthering or providing for education, to require or impose conditions or procedures deemed necessary to the preservation of peace and order.

The legislature may by law provide for or authorize the establishment and operation of schools by such persons, agencies or municipalities, at such places, and upon such conditions as it may prescribe, and for the grant or loan of public funds and the lease, sale or donation of real or personal property to or for the benefit of citizens of the state for educational purposes under such circumstances and upon such conditions as it shall prescribe. Real property owned by the state or any municipality shall not be donated for educational purposes except to nonprofit charitable or eleemosynary corporations or associations organized under the laws of the state.

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~~race, to make election to that end, such election to be
effective for such period and to such extent as the legislature
may provide.~~

Attachment C

**Article XIV
Education**

Sec. 256 1. Educational policy of state; authority of legislature to provide for or authorize establishment and operation of schools by persons, municipalities, etc.; grant, donation, sale or lease of funds and property for educational purposes; election of certain schools for attendance by parents of minors.

Current	Proposed
<p>It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature, in furthering or providing for education, to require or impose conditions or procedures deemed necessary to the preservation of peace and order.</p> <p>The legislature may by law provide for or authorize the establishment and operation of schools by such persons, agencies or municipalities, at such places, and upon such conditions as it may prescribe, and for the grant or loan of public funds and the lease, sale or donation of real or personal property to or for the benefit of citizens of the state for educational purposes under such circumstances and upon such conditions as it shall prescribe. Real property owned by the state or any municipality shall not be donated for educational purposes except to nonprofit charitable or eleemosynary corporations or associations organized under the laws of the state.</p> <p>To avoid confusion and disorder and to promote effective and economical planning for education, the legislature may authorize the parents or guardians of minors, who desire that such minors shall attend schools provided for their own race, to make election to that end, such election to be effective for such period</p>	<p><u>The legislature shall establish, organize, and maintain a system of public schools throughout the state for the benefit of the children thereof. Nothing in this section shall create any judicially enforceable right or obligation, nor shall it any way limit the effect of Amendment 582 to this Constitution.</u></p>

and to such extent as the legislature may provide.

Comments: The first sentence of the revised language was the final proposal of the subcommittee on the Education Article. The second sentence was added during the deliberations of the full commission.

The Alabama Supreme Court addressed the issue of the term “Public school” and concluded the term only includes this to be elementary and secondary schools for the benefit of children between the ages of 7 and 21 years. Adults are not a part of the “constitutional “public schools” *State Tax Commission v. County Board of Education*, 235 Ala. 388, 179 So. 197 (1938) cited in *Opinion of the Justices No. 323*, 512 So.2d 72 (Ala. 1987)

Notes on the historical wording of the section:

1819: “Schools, and the means of education, shall forever be encouraged in this state; and the general assembly shall take measures to preserve, from unnecessary waste and damage, such lands as are or hereafter granted by the United States for the use of schools within each township in this state, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The general assembly shall take like measures for the improvement of such lands as have been or may be hereafter granted by the United States to this state, for the support of seminary of learning, and the moneys which may be raised from such lands by rent, lease, or sale, or from any other quarter for the purpose aforesaid, shall be and remain a fund for exclusive support of state university, for the promotion of the arts, literature, and the sciences; and it shall be the duty of the general assembly, as early as may be to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.”

Note: The Constitutions of 1819, 1861 and 1865, only declared generally that schools and the means of education “shall forever be encourage.”

1901: “The legislature shall establish, organize and maintain a liberal system of public schools throughout the State for the benefit of the children thereof between the ages of seven and twenty-one years. The public school fund shall be apportioned to the several counties in proportion to the number of children of school age therein, and shall be so apportioned to the schools in the districts or townships in the county as to provide, as nearly as practicable, school terms of equal duration in such school districts and townships. Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.”

Amendment 111 as it pertains to Section 256:

Sec. 256. Educational policy of the state; authority of legislature to provide for or authorize establishment and operation of schools by persons, municipalities, etc.; grant, donation, sale or lease of funds and property for educational purposes; election of certain schools for attendance

by parents of minors.

It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature, in furthering or providing for education, to require or impose conditions or procedures deemed necessary to the preservation of peace and order.

The legislature may by law provide for or authorize the establishment and operation of schools by such persons, agencies or municipalities, at such places, and upon such conditions as it may prescribe, and for the grant or loan of public funds and the lease, sale or donation of real or personal property to or for the benefit of citizens of the state for educational purposes under such circumstances and upon such conditions as it shall prescribe. Real property owned by the state or any municipality shall not be donated for educational purposes except to nonprofit charitable or eleemosynary corporations or associations organized under the laws of the state.

To avoid confusion and disorder and to promote effective and economical planning for education, the legislature may authorize the parents or guardians of minors, who desire that such minors shall attend schools provided for their own race, to make election to that end, such election to be effective for such period and to such extent as the legislature may provide.