



HOW ALABAMA DEMOCRACY COMPARES



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This report is an installment of PARCA's yearlong series on the unfinished work of reforming Alabama's Constitution. This project is supported, in part, by the Alabama Citizens for Constitutional Reform (ACCR) Foundation.

Embracing Democracy in Alabama

Once upon a time, Alabama embraced a bold vision of citizen engagement and democratic participation. The state's *first* constitution, adopted in 1819 in the age of Jacksonian Democracy, established one of the most liberal definitions of who qualified to vote, listing none of the property, religious, or other requirements found in other state constitutions at the time.¹

Article III, Section 5 of Alabama's original constitution reads:

Every white male person of the age of twenty-one years, or upwards, who shall be a citizen of the United States, and shall have resided in this State one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector.

Of course, these words excluded Black people and women, but for its time, they were expansive.

And, of course, over the years, Alabama's thoughts changed. The 1901 constitution was explicit in its goal of disenfranchising Blacks and poor whites and centralizing power in the hands of the legislature.

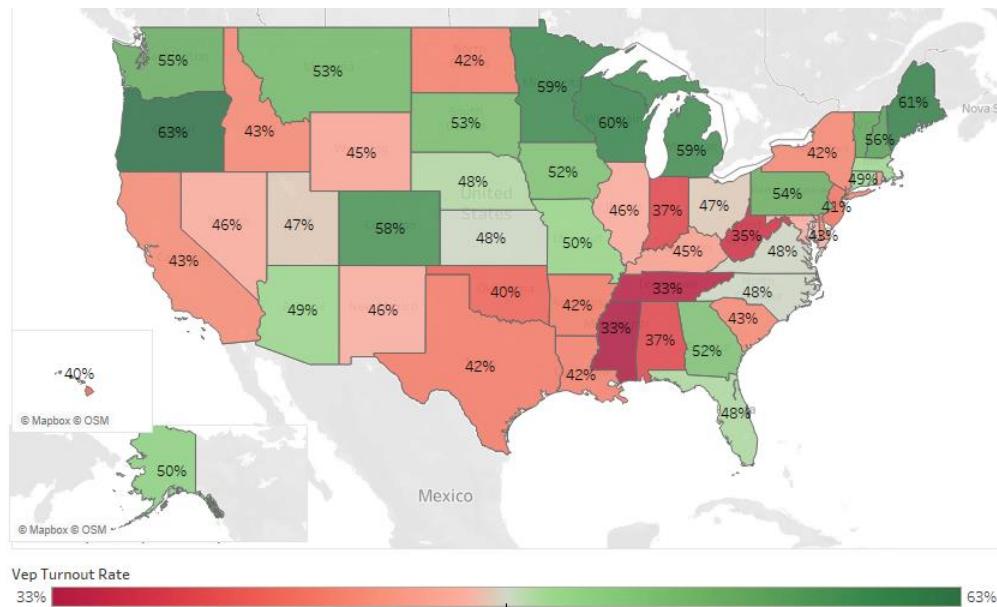
Over the years, court rulings and subsequent federal and state legislation nullified those various provisions, but only in 2022 did Alabama voters finally delete from the state constitution the last written relics of those voting restrictions. So, did we, with the adoption of the Alabama Constitution of 2022, finally and fully embrace democratic participation for all our citizens? Or is there work left to be done?

In the 2022 elections, Alabama ranked 46th in percentage of the voting-eligible population to cast a ballot, with only 37% of voters turning out for the general election.² Since 2012, Alabama has consistently ranked in the bottom 15 of states for voter participation.

¹ "Alabama Legislature," accessed April 3, 2024, <https://alison.legislature.state.al.us/constitution-of-1819-overview>.

² The University of Florida Election Lab calculates voting rates using turnout as the numerator and the voting-age population as the denominator. The lab uses the estimates of the voting age population in each state and subtracts ineligible populations, such as non-citizens and felons. This method allows comparison across states, all of which have different rates of calculating their own turnout based on voter registration in the state.

Figure 1. Eligible Voter Percentage Turnout in 2022 General Elections



In recent cycles, only about 60% of eligible voters participated during presidential election years. In off-year general elections, when the governor and other statewide offices are on the ballot, less than half the electorate turns out.

Meanwhile, Alabamians tend to believe they do not have a voice in Montgomery.

In PARCA’s most recent public opinion poll, 60% of respondents agreed or strongly agreed with the statement, “Officials in Montgomery do not care what people like me think.” This number has been above 50% since the survey began in 2007.

Likewise, 58% of respondents agreed or strongly agreed with the statement, “People like me have no say in what the government in Montgomery does.” This figure has been above 50% since 2009, the third year of the survey.³

If the Alabama Constitution no longer stands in the way of registration and voting, why are participation rates lower in Alabama than in most other states?

According to a PARCA review of state voting regulations and procedures, Alabama has not adopted several measures that tend to raise voter participation levels.

- Alabama is one of four states that does not allow early in-person voting.
- Alabama spells out a narrow set of circumstances in which a voter can request to vote absentee; 36 states do not require voters to provide an excuse for voting absentee.

³ *Alabama Public Opinion Survey, 2023*. <https://parcalabama.org/alabama-public-opinion-survey-2023/>

- 21 states allow election-day voter registration. Alabama requires that voters be registered by the 15th day prior to the election.
- 24 states plus the District of Columbia have automatic voter registration, triggered when someone applies for a government license or service; Alabama makes applications available but does not provide automatic registration.
- 8 states allow all elections to be conducted by mail, and 15 additional states allow election by mail for certain jurisdictions or certain elections. Alabama does not. Voting by mail tends to increase participation.
- Alabama has relatively few contested general elections due, at least in part, to district lines drawn by political partisans. Lack of competition decreases turnout.
- Alabama is one of seven states that allow straight-ticket voting, which decreases election competitiveness and tends to increase party polarization.
- Citizens in Alabama cannot demand a referendum on issues they care about; in 24 other states, state constitutions allow for citizen-led initiatives to be placed on the ballot, which can stir grassroots activism and greater participation. In Alabama, the Legislature controls what constitutional amendments make it to the ballot.

The following report compares Alabama's democratic practices with those of other states. It is meant to identify ways Alabama could encourage free and equal participation and government responsiveness to its citizens.

Can We Reduce the “High Cost of Voting” in Alabama?

What keeps people from participating in the electoral system? The U.S. Census Bureau surveyed voters after the 2022 election. Among the respondents who didn't vote, the top reasons cited for not voting:

- 27% said they didn't vote because they were “too busy, conflicting work or school schedule.”⁴
- 12.5% said “Illness or disability” prevented them from voting.
- 17.6% said they were “not interested, felt my vote wouldn't make a difference.”

Some states have adopted measures that address these concerns.

They've adopted procedures that better serve working people whose jobs make it hard to get to the polls on election day, to help rural people living in sparsely populated areas who have to drive longer distances to get to polling places, and for the ill, elderly, or disabled, whose health or mobility makes it a challenge to get to the polling place.

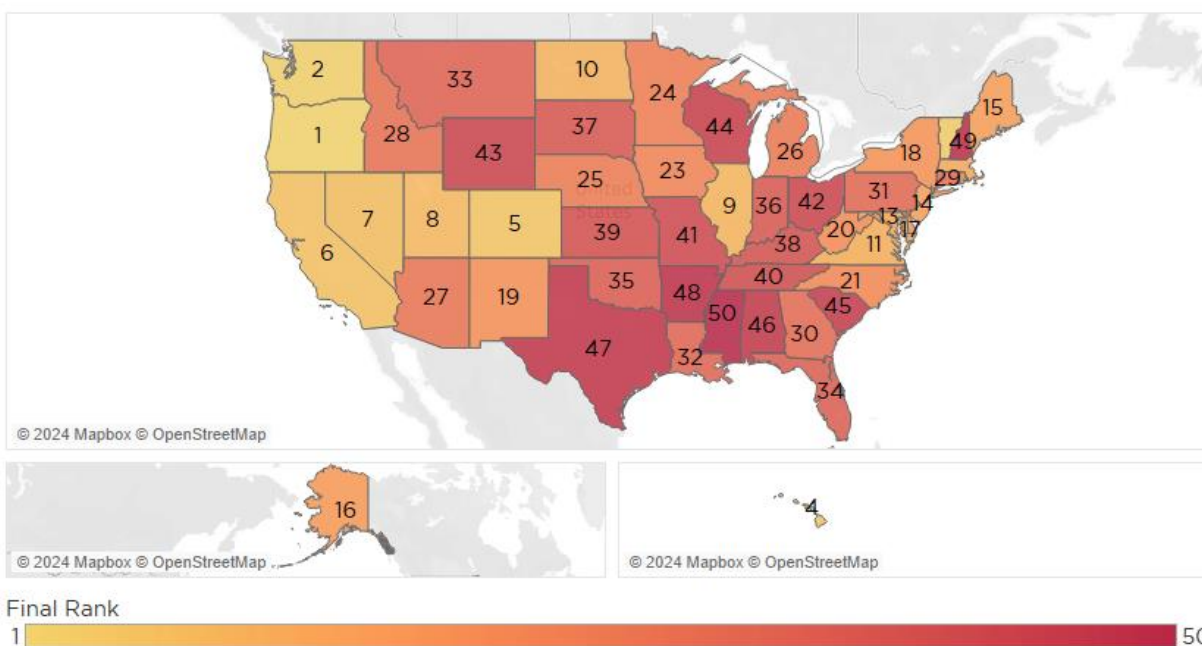
According to that same Census survey, in the 2022 election, almost half of the nation's voters (47.1%) voted early by mail or in person. Alabama had the lowest rate of early and mail-in voting (3.6%).

Writing in the *Election Law Journal*, political science professors Scot Schraufnagel, Michael J. Pomante II, and Quan Li weighed the voting regulations and procedures in the various states and developed what they called the Cost of Voting Index.⁵ The index allows a comparison of the states in terms of the ease or restrictiveness of their election system. According to their evaluation of the 50 states, Alabama ranked No. 46, meaning Alabama's electoral regulations and procedures impose among the highest costs to citizens who wish to participate in democracy.

⁴ US Census Bureau, “Voter Registration in 2022 Highest in 20 Years for Congressional Elections,” census.gov, accessed May 1, 2024, <https://www.census.gov/library/stories/2023/05/high-registration-and-early-voting-in-2022-midterm-elections.html>.

⁵ Scot Schraufnagel, Michael J. Pomante II, and Quan Li, “Cost of Voting in the American States: 2020,” *Election Law Journal: Rules, Politics, and Policy* 19, no. 4 (December 1, 2020): 503–9, <https://doi.org/10.1089/elj.2020.0666>.

Figure 2. Cost of Voting Index, Rank of States in 2022.



Alabama can look to other states for measures that increase participation, such as:

- easing or automating voter registration
- easing access to ballots
- making it more convenient to vote.

Other states have also taken steps to encourage competitive elections by taking the task of drawing electoral districts out of the hands of political partisans.

Finally, Alabama might look to other states where voters have a more direct say in their government through voter-driven initiatives and referendums.

Alabama, throughout its history, has been central to the national struggle for voting rights and electoral participation. The state has the opportunity to lead in creating a more vibrant democracy.

In recent years, a false dichotomy has developed that pits concerns about election security against innovations in voting. Both are important. Ironically, before 2020, rural voters and older voters most often used early and mail-in balloting. Those groups tend to support Republicans.

Further, Black Alabamians register and vote at higher rates than Blacks in the rest of the country, whereas Alabama Whites have lower registration and voting rates than Whites elsewhere. Thus, measures to increase participation and convenience should benefit democracy broadly, not a particular party or racial group.

Can We Increase Voter Registration?

According to the most recent U.S. Census Bureau's Current Population Survey, about 70% of citizens of voting age are registered to vote. In Alabama, 67% are registered.⁶

The voter registration rate among Blacks (64.1%) in Alabama exceeds the national average for Blacks (63.6%). Across the U.S., a higher percentage of Whites (70.9%) are registered to vote than the registration percentage for Whites in Alabama (69.5%). Just under 50% of Hispanic citizens in Alabama are registered compared to a national average registration rate of 58% among Hispanic citizens.

In recent years, Alabama has made voter registration much more accessible than it once was, but it has not gone as far as other states.

A federal law, The National Voter Registration Act (NVRA) of 1993, prodded states to adopt expanded opportunities for registering. In Alabama, compliance took a while.

In 2015, after the U.S. Department of Justice Civil Rights Division found widespread noncompliance with the NVRA, Alabama agreed to implement further measures to make voting registration available through state and local offices and agencies.⁷

In addition to traditional voter registration with the clerk at the county courthouse, eligible voters can now register online. They can also fill out an online form or download the form, print it out, and send it in by mail. Voter registration forms are available at driver's license offices, some public libraries, and various government agencies. Voters can verify registration status at their polling place and online at the Secretary of State's website.

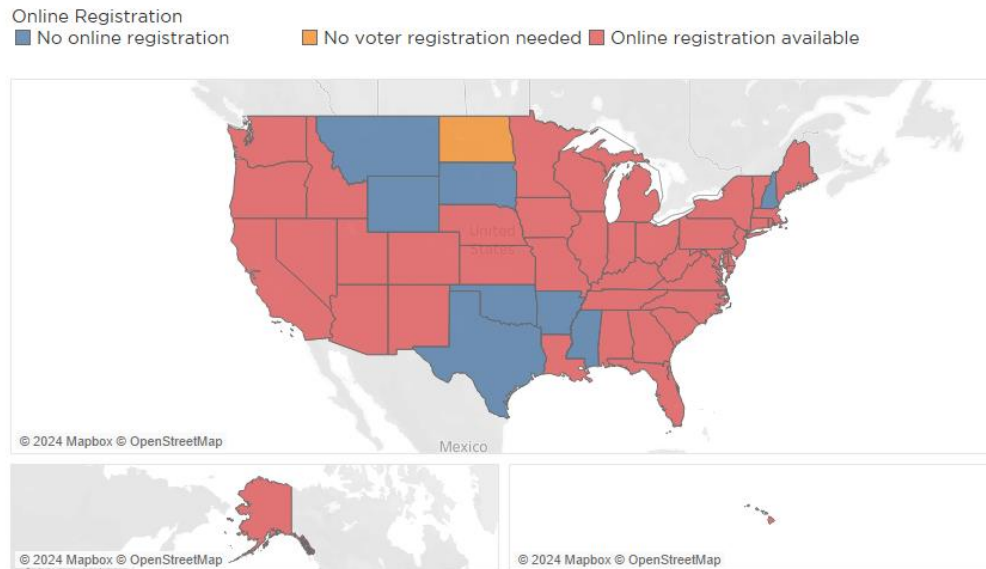
Alabama is among the majority of states that offer online access to registration, even though some of our Southeastern neighbors, like Mississippi and Arkansas, do not.⁸

⁶ Bureau, "Voter Registration in 2022 Highest in 20 Years for Congressional Elections."

⁷ "Office of Public Affairs | State of Alabama Agrees to Resolve Claims of National Voter Registration Act Violations | United States Department of Justice," November 13, 2015, <https://www.justice.gov/opa/pr/state-alabama-agrees-resolve-claims-national-voter-registration-act-violations>.

⁸ "Online Voter Registration," accessed May 13, 2024, <https://www.ncsl.org/elections-and-campaigns/online-voter-registration>.

Figure 3. Online Access to Voter Registration; Source: National Conference of State Legislatures

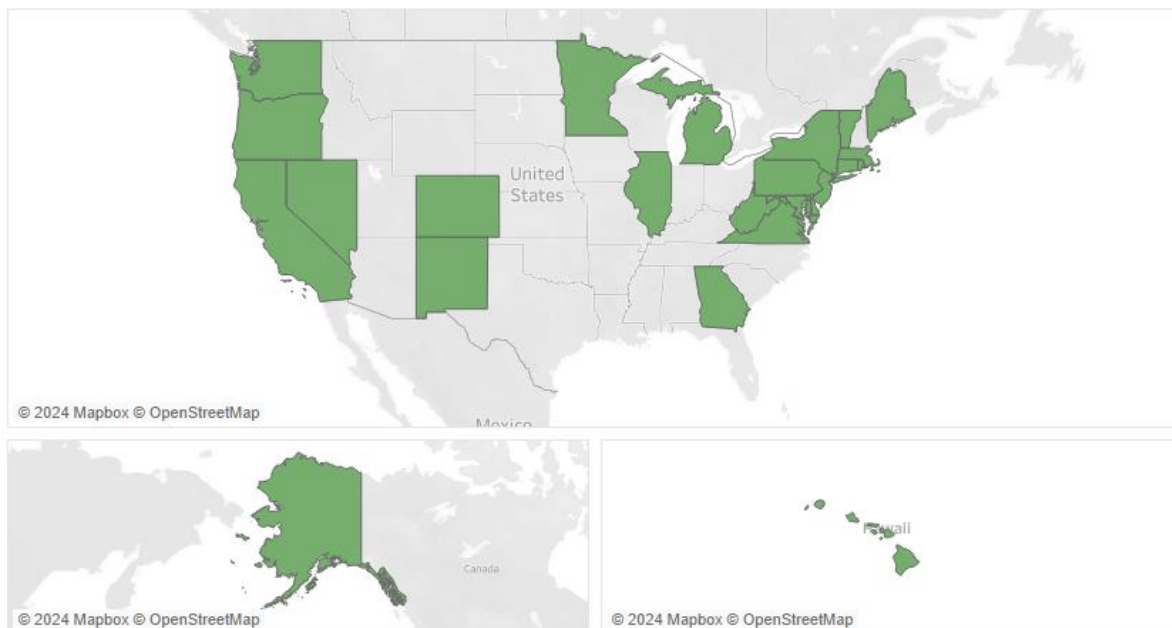


However, registration through these other means is not automatic; it is not built into the process as it is in other states.

Automatic Registration

The National Conference of State Legislatures (NCSL) lists 24 states, plus the District of Columbia, as having automatic voter registration integrated into various state agencies' processes.

Figure 4. States With Automatic Voter Registration; Source NCSL



Supporters of automatic voter registration say it removes barriers to registration and increases voter participation. It also helps keep registrations up-to-date when addresses change, which can reduce confusion and the need for casting provisional ballots.⁹

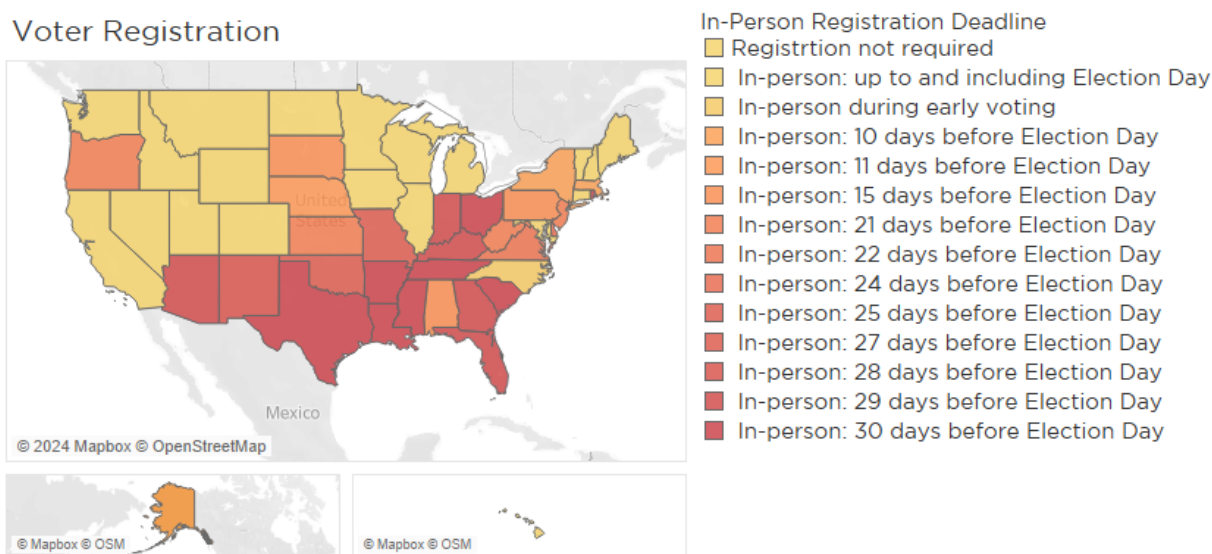
Opponents of automatic voter registration say the government should not compel citizens to register to vote, though, in many of the automatic registration states, applicants can opt out of registering or updating their information.

Voter Registration Deadlines

Alabama requires voters to complete their registration 15 days before an election, which is closer to the election than most other Southeastern states.

However, 20 states allow voters to register up to and including the day of the election. North Dakota does not require voters to register. North Carolina allows day-of voter registration during in-person early voting, which is generally available up until the Saturday before a Tuesday election.

Figure 5. Voter Registration Deadlines, Source: NCSL



⁹ “Automatic Voter Registration,” accessed May 13, 2024, <https://www.ncsl.org/elections-and-campaigns/automatic-voter-registration>.

Can We Make Voting Easier?

Alabama does not make casting a ballot easy compared to other states.

States with more generous voter registration and voting practices, such as early voting or mail-in ballots, tend to have higher voter participation. In recent years, Alabama's voter turnout has lagged behind other states.

In 2022, low turnout was particularly noteworthy among Alabama Whites and Hispanics, whose voter participation rate was ten percentage points lower than the U.S. average for those groups.

Table 1. Voter Registration and Participation, 2022 Source: U.S. Census Bureau

Geography	Percent registered (Citizen)				Percent voted (Citizen)			
	Hispanic (any race)	Black alone	White alone	Total	Hispanic (any race)	Black alone	White alone	Total
ALABAMA	50%	64%	70%	67%	27%	47%	45%	45%
UNITED STATES	58%	64%	71%	69%	38%	45%	55%	52%

Early Voting by Mail

Most states have taken steps to make voting in advance of election day easier in an effort to increase participation.

Eight states—California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, Washington, plus the District of Columbia—allow all elections to be conducted entirely by mail and send ballots to voters.¹⁰

Twenty-eight states offer no-excuse absentee voting and send voters ballots at their request. So, a total of 36 states allow people to vote early by mail if they so choose.

¹⁰ "Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options," accessed March 27, 2024, <https://www.ncsl.org/elections-and-campaigns/voting-outside-the-polling-place>.

Absentee Voting Requirement

■ Excuse needed ■ Mail ballots by default ■ No-excuse absentee voting

United States

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While other states have liberalized options for voting early by mail, Alabama has remained restrictive about the allowable reasons for casting an absentee ballot. Alabama is one of 14 states that require voters to have one of a specific set of excuses to vote absentee.

Alabama is one of six states that does not automatically allow voters 65 or older to request an absentee ballot. In Alabama, valid excuses include being out of the county on the day of the vote, being ill or disabled, or if a voter “expect(s) to work a required workplace shift which has at least 10 hours which coincide with the polling hours at my regular polling place.”¹¹

To request an absentee ballot, voters must write to the designated county election officials and have a ballot mailed to them or fill out an application online, print the form, and mail it, along with a copy of a photo ID. Or a voter may apply in person at the county registrar's office.

After receiving and filling out a ballot, the voter is required to sign and seal the ballot in an envelope. Alabama is one of 12 states that require the signature of a witness swearing the voter in question filled out the ballot. Alabama, like six other states,

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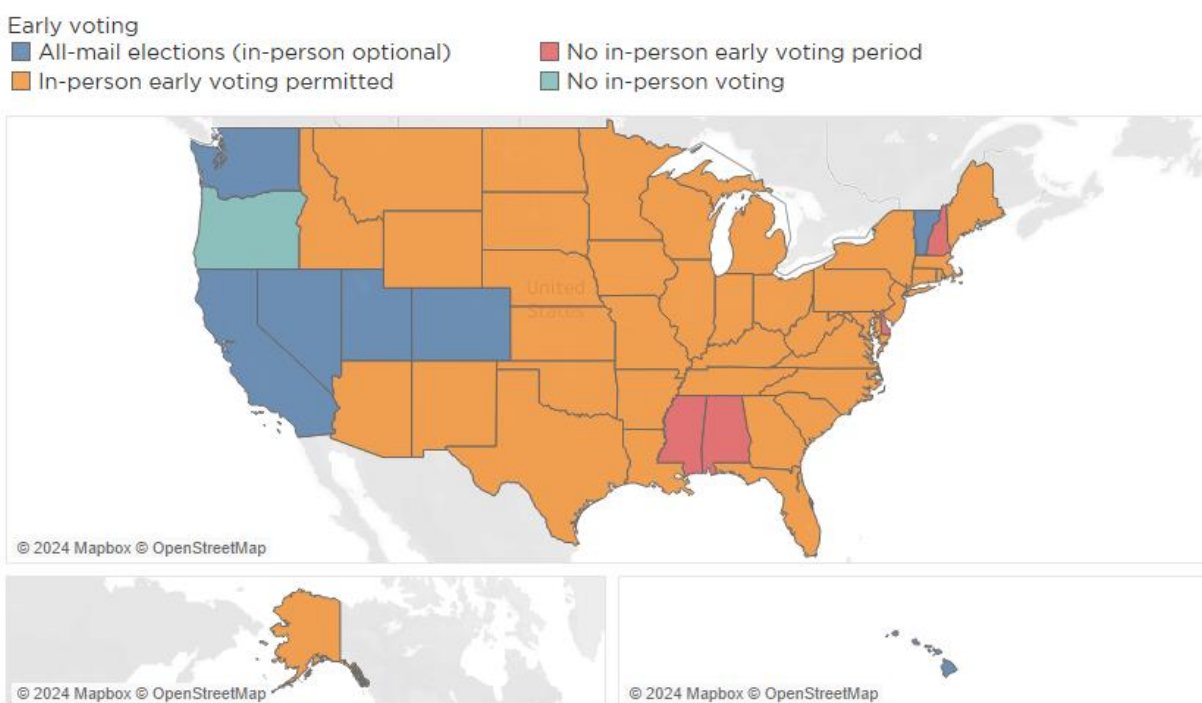
primarily Southern ones, requires not only the voter's sworn signature but also the signature of *two* witnesses or the signature of a notary public.

Early Voting in Person

As of March 2024, 46 states offer early in-person voting to all voters. In most cases, voters can cast their vote at an office in a county courthouse. In some states, additional locations are available in the period preceding the election.¹²

Alabama is one of four states—Alabama, Delaware, Mississippi, and New Hampshire—that does not allow voters to cast a ballot in person in advance.

Figure 7. Is In-Person Early Voting Allowed? Source: NCSL

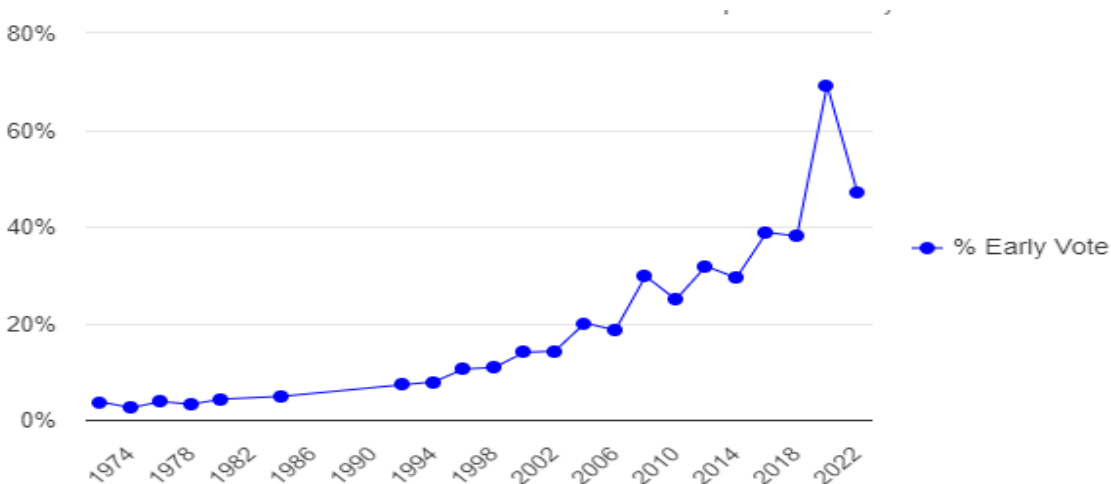


The availability of early voting options, whether through the mail or in person, has led to an increase in the percentage of voters voting before election day.

Using data from the U.S. Census Bureau's Current Population Survey, the University of Florida Election Lab estimates that the percentage of votes cast before election day exceeded 60% in 2020, in the throes of the COVID-19 pandemic. Returning to more normal circumstances during the 2022 General Election, the lab estimates the use of early voting declined but continued its previous upward trajectory, with more than 40% of ballots cast before election day.

¹² "Early In-Person Voting," accessed May 13, 2024, <https://www.ncsl.org/elections-and-campaigns/early-in-person-voting>.

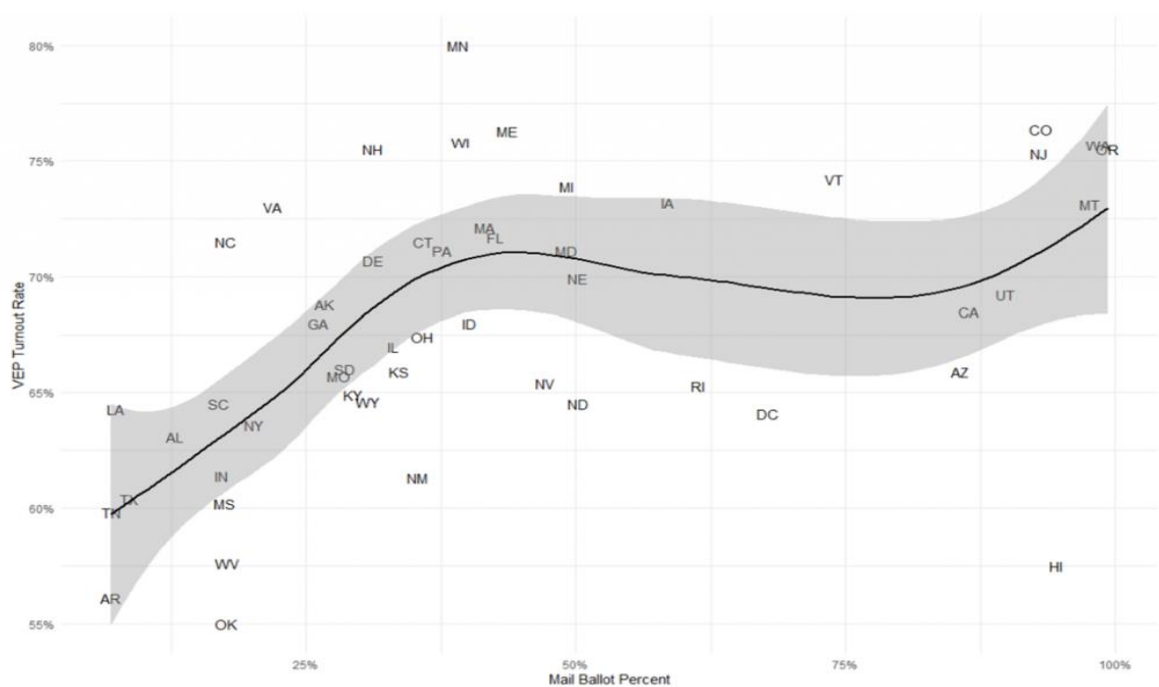
Figure 8. Estimated percentage of votes cast early, Source: UF Election Lab¹³



The UF Election Lab also finds a correlation between the greater use of mail ballots (both through vote by mail and absentee ballots submitted by mail) and higher rates of voter participation. Figure 9. compares the voting-eligible turnout rate of each state with the percentage of ballots in that state that were submitted by mail. In states where a higher percentage of ballots were cast by mail, voter turnout was higher. States with more restrictions on mail ballots or fewer circumstances where absentee voting is allowed tend to have lower voter participation rates. Alabama had a low percentage of ballots submitted by mail and lower turnout than most states.

¹³ “Early Vote UF Election Lab,” accessed April 18, 2024, <https://election.lab.ufl.edu/early-vote>.

Figure 9. Mail ballot usage versus turnout rate in the 2020 General Election¹⁴

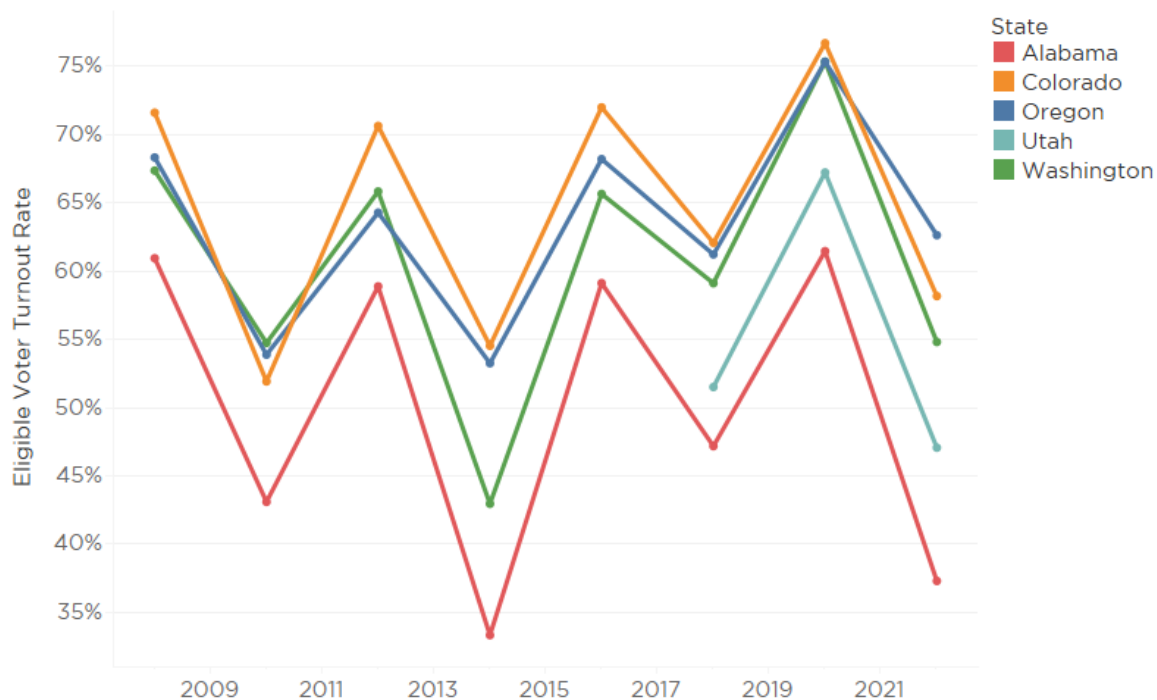


According to survey data from the Census, in 2022, Alabama had the lowest percentage of ballots cast early among all states.

Figure 10 compares Alabama voter turnout with turnout in a cluster of Western states that conduct elections by mail. Those states have consistently higher turnout among the voting-eligible population.

¹⁴ "Early Vote UF Election Lab," accessed April 18, 2024, <https://election.lab.ufl.edu/early-vote>.

Figure 10. Alabama eligible Voter turnout rate compared to states where elections are predominately conducted by mail; Source NCSL and UF Election Lab



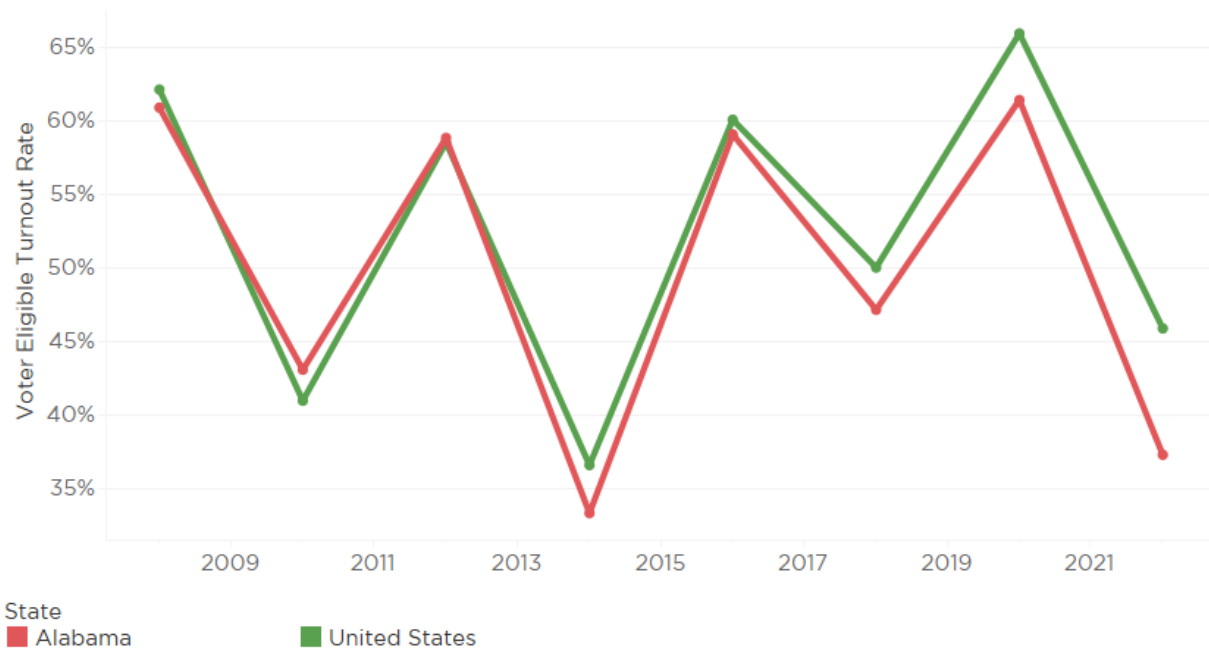
Should We Work Toward More Competitive Elections?

Nothing draws voters to the polls like competitive elections. States with competition between the parties are also states that draw attention and investment from campaigns. Thus, turnout in these swing states tends to be higher.

In Alabama, the increasing dominance of a single party at the state or local level has coincided with a decline in the turnout in general elections.

In 2010 and 2012, Alabama's turnout exceeded the national voting-eligible turnout. Since then, Alabama's general election turnout has lagged behind the national turnout, and the gap between Alabama's voting-eligible turnout rate and the national average continues to grow.

Figure 11. Trends in Voting-Eligible Turnout Since 2008, Alabama vs. U.S. Source: UF Election Lab



Alabama has a long-standing tendency to be a one-party state, politically polarized along racial lines. However, this is not necessarily a natural set of affairs.

For most of the 20th century, living under the 1901 Constitution, Alabama's electoral system deliberately excluded Blacks and poor Whites through poll taxes, literacy tests, and other measures. If they had been able to vote, those groups of voters could have united to challenge the status quo.

The Civil Rights Movement, the courts, and Congress, through the Voting Rights Act, brought an end to the monopoly power of the Alabama Democratic Party, which was at the time expressly supportive of white supremacy. In the wake of the Voting Rights Act and considering the National Democratic Party's leadership on Civil Rights, Blacks in Alabama joined the Democratic Party. For the ensuing decades, Alabama operated as a two-party state.

However, eventually, most White Alabama voters moved into the Republican Party. And, when Republicans won the majority of seats in the Legislature in 2010, the party accelerated and solidified the shift by drawing electoral district maps that helped increase the Republican majority to a supermajority in subsequent elections.

This practice, commonly known as gerrymandering, is a permissible use of political power in the American electoral system and has a long history of use by all political parties. Thanks to political momentum and sophisticated redistricting, White Democrats largely disappeared from state-level elective office, replaced by White Republicans.

Because the legislative districts aren't politically competitive between the parties, the eventual officeholder is almost always selected in the party primary, making the general election, in most cases, an afterthought. That trickles down to the local level as well.

In counties where Democrats hold a majority—Jefferson, Montgomery, and the counties in the Black Belt—the winner of the Democratic primary is highly likely to be elected to countywide office in the general election.

Straight-Ticket Voting

Another characteristic of Alabama elections that tends to decrease electoral competitiveness is the availability of straight-ticket voting. Alabama is one of seven states that allow straight-ticket voting.¹⁵ That option allows a voter to make a single selection indicating they want to vote for a party's nominee in every one of the races on the ballot. It's one of the reasons that those primary elections are decisive: partisans are more likely to vote for the party nominee, not necessarily the individual running for office in the general election.

Since 1994, 15 states that had straight-ticket voting have eliminated it. Critics of the practice say it makes it almost impossible for independent or third-party candidates to compete, as the straight ticket vote makes up a huge share of the vote. It also discourages researching the candidates offered by the parties in individual races. Straight-ticket voting shifts more importance to the party primaries, where turnout is lower and is generally limited to voters with an allegiance to one party or the other. Party activists hold greater sway in those party primaries, which, some argue, leads to polarization.

On the other hand, supporters of straight-ticket voting say that it increases convenience for voters and decreases opportunities for error. Besides, proponents argue that the vast majority of voters choose to vote for the same party's candidate up and down the ballot, whether or not straight-ticket voting is an option. A survey by Pew Research found that 78 to 80% vote for candidates from the same party up and down the ballot.¹⁶

In the 2022 Alabama General Election, 67% of all the ballots cast were straight-ticket.

What Do Other States Do to Encourage Competitive Elections and Citizen Participation?

Novel Approaches to Redistricting

¹⁵ "Straight Ticket Voting," accessed March 27, 2024, <https://www.ncsl.org/elections-and-campaigns/-straight-ticket-voting>.

¹⁶ Sara Atske, "Large Shares of Voters Plan To Vote a Straight Party Ticket for President, Senate and House," *Pew Research Center* (blog), October 21, 2020, <https://www.pewresearch.org/politics/2020/10/21/large-shares-of-voters-plan-to-vote-a-straight-party-ticket-for-president-senate-and-house/>.

Citizens in some other states have identified partisan redistricting as a problem. According to the National Conference of State Legislatures, 15 states have given independent or politically-appointed commissions the primary responsibility for drawing legislative district lines rather than leaving it to the state legislature. In ten states, commissions have primary responsibility for drawing congressional lines.¹⁷

Some states, such as Arizona, California, Colorado, and Michigan, have instituted independent commissions to draw their electoral district maps. The commissioners are not selected by legislative bodies and are instructed to draw districts without regard to political party. Instead, other priorities are weighed. Geographies and communities of interest are to be kept united and districts compact. The commissions are barred by law from drawing districts based on the address or in the interest of current officeholders.

Other states, including Hawaii, Idaho, Montana, New Jersey, Virginia, and Washington, have politically appointed commissions that draft the maps. The structure attempts to inject bipartisanship and nonpartisan representation into the districting process.

In 26 states, the legislatures draw the maps and pass them on a wholly or mostly party-line basis.¹⁸ Six states have only one representative and do not need to draw congressional maps.

In eight states, the most recent congressional redistricting process ended with a state court drawing the map: Connecticut, Minnesota, North Carolina, New Hampshire, New York, Pennsylvania, Virginia, and Wisconsin.

The federal courts drew Alabama's most recent congressional maps as a result of the U.S. Supreme Court decision in *Milligan v. Allen* that the Republican-drawn maps likely violated the Voting Rights Act. In the wake of the Alabama case, additional cases have been filed in Alabama and throughout the country based on the ruling.

Alternatives to Traditional Party Primaries

Some states have taken more innovative steps to open the voting system further.¹⁹ California and Washington hold "top two" elections, in which all candidates run on the same ballot. The top two vote-getters then face off in the runoff.

Nebraska has a nonpartisan, unicameral Legislature, so candidates appear on that ballot without party affiliation listed. The top two candidates advance to a runoff.

¹⁷ "Creation of Redistricting Commissions," accessed May 14, 2024, <https://www.ncsl.org/redistricting-and-census/creation-of-redistricting-commissions>.

¹⁸ 9365, "Who Controlled Redistricting in Every State | Brennan Center for Justice," September 19, 2022, <https://www.brennancenter.org/our-work/research-reports/who-controlled-redistricting-every-state>.

¹⁹ "State Primary Election Types," accessed March 28, 2024, <https://www.ncsl.org/elections-and-campaigns/state-primary-election-types>.

Louisiana uses a similar system for state legislative races and some other offices: All candidates from all parties appear on the same ballot. If one candidate gets over 50% of the vote for an office, that candidate is declared the winner. Otherwise, the top two vote-getters face off in a runoff.

Alaska conducts one primary, and the top four vote-getters advance. In the general election, voters use ranked-choice voting to indicate their preferences. If no candidate gets more than 50% of the first-place votes, then a second round of counting occurs. The candidate with the least first-place votes is eliminated, and the election officials award those voters' votes to their second choice. The process continues until a candidate exceeds 50%.²⁰

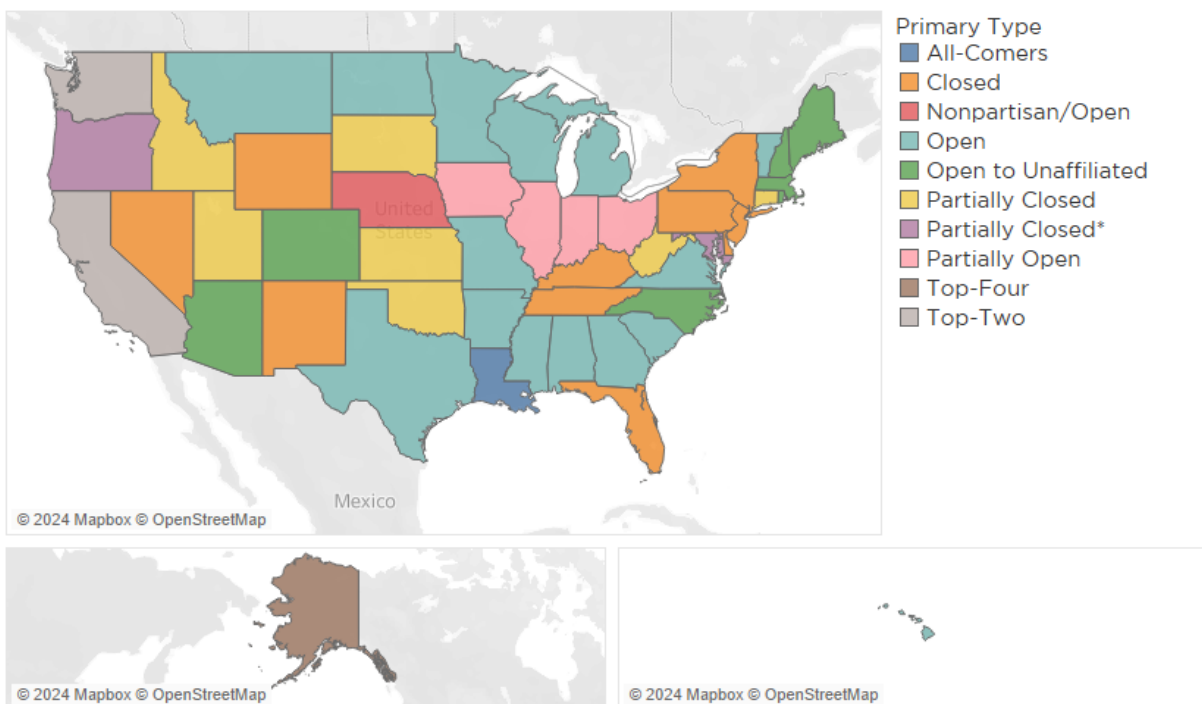
Advocates say that ranked-choice voting eliminates the need for a runoff and gives voters who didn't favor the first-choice candidate some say in the outcome. Supporters say that beyond the savings in cost and administration, these alternative primary structures encourage candidates to appeal to the larger middle of voters rather than cater to the activist extremes of either party. They also provide opportunities for third-party candidates to run, providing additional choices.

Opponents say the system leads to long, complicated, and confusing ballots. Advocates for political parties say that the party screening process allows the most informed voters to examine the candidates closely. As a result, the nominated candidates are more likely to be ideologically predictable. That helps voters who do not necessarily familiarize themselves with all candidates running for all offices. Thus, a candidate's selection by a party provides meaningful information to voters.

In a signal of opposition to the potential spread of Alaska's approach, the Alabama Legislature preemptively banned ranked choice voting in the 2024 legislative session.

²⁰ "Election Information – Alaska Division of Elections," accessed April 24, 2024, <https://www.elections.alaska.gov/election-information/#RankedChoice>.

Figure 12. Primary types, by state. Source: NCSL.



Would More Power in the Hands of the People Increase Participation?

Regarding democratic participation, there is a final feature of Alabama's Constitution of 2022 that endures as a legacy of the Constitution of 1901: the Alabama Legislature's monopoly power on the fundamental law of the state: any proposal to change the constitution has to first pass the Legislature before being voted on by the people.

At the time, when Alabama was restricting democratic participation with its 1901 Constitution, Western states, influenced by the Progressive movement, were adding ways for citizens to spark change directly.

Among those innovations were the initiative and referendum, mechanisms allowing voters to force a vote of the public on an issue. Citizens, by collecting signatures on petitions, could cause proposals to be placed directly on ballots or could compel the legislature to address the issue.

- **Legalize Marijuana:** In 13 states and D.C., the ballot initiative process was used to legalize marijuana. In two more states, the legislature referred a measure to the ballot for voter approval.²²
- **Expand Medicaid:** Seven states approved Medicaid expansion through initiative. In many of those states, Republicans held legislative majorities and had declined to expand.
- **Abortion:** Since the U.S. Supreme Court's Dobbs decision, which gave states the authority to regulate abortion access, six states—California, Kansas, Kentucky, Michigan, Vermont, and Ohio—have held statewide votes on abortion-related constitutional amendments. In all of those cases, voters supported protecting access to abortion.

Initiative and referendum are considered a fundamentally important process of government in the states that have it, a process that encourages direct citizen involvement. But it is also a process that can lead to problems and abuse. In some states, initiatives have come to clutter the ballot with complex, confusing, and sometimes contradictory proposals. High-dollar campaigns, which include paid workers gathering signatures, can lead to fraud and can undermine the democratic spirit the initiative process is supposed to represent.²³

In reaction to some recent victories, there are efforts underway in some states to make it harder to bring initiatives to the ballot or to pass them. Arizona and North Dakota voters will vote on initiatives to limit initiatives by raising the number of signatures needed or by changing the voting results needed for passage. Missouri Republicans are attempting to put a similar measure on that state's ballot to raise requirements for the passage of initiatives.²⁴

Alabama's Lack of Direct Democracy

Because of Alabama's current constitutional system, voters will not get to vote directly on big questions that the people in other states have decided.

For many, the Legislature's gatekeeping authority is appropriate and desirable, a check against the will of the masses.

However, more often than not, the Legislature refuses to decide or refuses to allow the people of Alabama to decide.

²² Arizona, Arkansas, Colorado, Florida, Iowa, Maine, Maryland, Missouri, Montana, Nebraska, Nevada, Pennsylvania, and South Dakota.

²³ The promise and problems of the initiative process are thoroughly discussed in *Initiative and Referendum in the 21st Century*, published in 2002 by the National Conference of State Legislatures.

²⁴ "States Look to Rein in Ballot Initiatives with More Ballot Initiatives," Route Fifty, February 16, 2024, <https://www.route-fifty.com/management/2024/02/states-look-rein-ballot-initiatives-more-ballot-initiatives/394254/>.

Proponents of Medicaid expansion can point to polls showing more than 70% of Alabamians support expansion, but the Alabama Legislature has not acted or put the question to voters. Voters in other states have forced the issue through referendum.

The Legislature is unlikely to allow a statewide public vote on the legal status of marijuana or abortion, issues that have gone to the people in other states.

And once again, in its 2024 session, the Legislature failed to authorize a public vote on whether to allow a state lottery or various forms of gambling. The complex proposal for a constitutional amendment fell one vote short of passage.

It is assumed that the public would support the establishment of a lottery if that were the only question on the ballot. All surrounding states have one, as do all but five states. However, the issue never gets to the people.

The lack of initiative and referendum also means voters cannot demand an independent or bipartisan commission to draw electoral district lines. Meanwhile, the Legislature hasn't proved up to the task. Instead, the federal courts have created Alabama's current Congressional district map.

The Legislature's Struggles with Redistricting

In an echo of the past, it took federal intervention to adopt a Congressional District Map that, in the opinion of the courts, complies with the Voting Rights Act.

After the 2020 Census, the Alabama Legislature was tasked with revising the geographic boundaries of the state's seven districts to reflect changes in the distribution of the population in the state. The Republican majority of the Alabama Legislature adopted maps for the districts that closely resembled the districts that had been in place, maps that included only one Congressional district with a Black majority.

Since 1992, those district boundaries have consistently produced the same result: one Black and six White representatives from Alabama in the U.S. House. Thus, the state's Congressional delegation has been only 14% Black for 30 years. That's despite the fact Blacks make up more than 25% of the state's population.

Several Alabama voters, Greater Birmingham Ministries, and the Alabama State Conference of the NAACP sued, arguing that Republican maps packed Black voters in one district and diluted other concentrations of Black voters across multiple districts. The plaintiffs submitted example maps that included a second majority-Black district, districts that were as compact and cohesive as the map adopted by Republican lawmakers. The alternative maps would give Black citizens an opportunity to elect representatives of their choice in two districts rather than being packed in one.

The U.S. Supreme Court upheld a lower court ruling that the map drawn by Republicans in the Alabama Legislature likely violated the Voting Rights Act. Under federal court supervision, the state was compelled to adopt a new map.

That new map has spawned a competitive race in the reconfigured Second Congressional District that now includes parts of Mobile and Montgomery County, the Black Belt, and the Wiregrass. In its previous configuration, the Second District had elected a White Republican in every election since 1964.

The race in the newly competitive Second Congressional District drew 11 candidates for the Democratic nomination, and nine candidates sought the Republican nomination.

Each party primary drew about 57,000 voters, a total of 115,000 voting. In the primary runoff, almost 36,000 Democrats voted to decide between the top two candidates from the first round. More than 25,000 Republicans voted in that party's runoff.

By contrast, in the 2022 primary, the incumbent, U.S. Rep. Barry Moore, was unopposed in the Republican primary. Fewer than 25,000 people voted in the contest between two candidates to pick a Democratic challenger to Moore.

After two competitive primaries and runoff elections, the Second District contest between the Democrat Shomari Figures and the Republican nominee Caroleene Dobson is expected to draw great interest and voter participation.

Conclusion

In 2022, Alabamians adopted a new Constitution and deleted the last references to the unconstitutional provisions from the 1901 Constitution. Have we, as a state, embraced democracy?

The 1901 constitution was explicitly designed to disenfranchise Blacks and poor Whites and to prevent representative democracy. That was made clear in the convention's opening address by presiding officer John Knox of Anniston: "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?"²⁵

The Constitution of 1901 instituted literacy tests, poll taxes, employment requirements, land ownership, and an expansive and flexible definition of the crimes that disqualified voters. In time, those provisions would disenfranchise many poor Whites as well. But the ratification campaign called for racial solidarity under the slogan: "White Supremacy! Honest Elections! And the New Constitution. One and Inseparable."²⁶

The Alabama Constitution of 1901 froze in place power dynamics and attitudes toward democracy for the next half-century.

By the 1960s, the U.S. Supreme Court began chipping away at Alabama's anti-democratic practices. In *Gomillion v. Lightfoot* (1960), the court ruled that the Legislature had violated the Constitution when it restored the City of Tuskegee's White majority by redrawing the city limits to exclude Black neighborhoods.

In 1964's *Reynolds v. Sims* ruling, the court found that the Legislature failed to ensure equal representation by refusing to reapportion state legislative districts. In 1960, political representation in the Alabama Legislature was still based on the population distribution of 1900, failing to reflect the dramatic movement from rural counties to cities. For instance, Jefferson County, with more than 600,000 people, had only one senator, while Lowndes County, with a 1960 population of only 15,417, also had one senator.

Even after those landmark decisions, Alabama resisted allowing fair access to the ballot. Voting rights efforts in the Black Belt and the violent state resistance to protests led to the Selma to Montgomery Voting Rights March in 1965. The march inspired the U.S. Congress to pass the Voting Rights Act in 1965, which outlawed provisions such as the poll tax and literacy tests that had been used to disqualify Black voters.

²⁵ "Proceedings of the Alabama Constitutional Convention of 1901 (Volume 1). - Alabama Constitutions - Alabama Department of Archives and History," accessed April 15, 2024, <https://digital.archives.alabama.gov/digital/collection/constitutions/id/115/rec/1>.

²⁶ William Warren Rogers, ed., *Alabama: The History of a Deep South State* (Tuscaloosa: University of Alabama Press, 1994).

“No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color,” the act reads.²⁷

Court decisions and the Voting Rights Act voided Alabama’s unconstitutional provisions and practices. Still, it wasn’t until 1996 that Alabama voters approved an amendment that officially repealed unconstitutional provisions and declared that “every citizen,” if of age and registered, has the right to vote.

But it wasn’t long before that language made some nervous. In 2020, Amendment 949 changed the language again. Concerned that the Alabama Constitution wasn’t clear enough that non-citizens weren’t allowed to vote, lawmakers proposed, and voters approved an amendment replacing “every citizen” with “only a citizen.”

That’s the language found in Alabama’s current Constitution adopted in 2022. Though the simple change in 2020 had no legal impact, it does change the tone. The language around voting still seems haunted, hesitant to embrace “free and equal” voting rights like most U.S. state constitutions do.²⁸

Section 33 of the Constitution of 2022 describes voting not as a right but as a “privilege” that “shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.”

Section 177 does not begin with an embrace of the wide availability of voting rights; instead, it cuts straight to restrictions and election regulation by the Legislature:

Only a citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence. The Legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting. The Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.

While the regulatory language found in Alabama’s constitution is not uncommon, Alabama’s lacks the embrace of voting rights found in other states’ constitutions, like this example from Arkansas:

Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage;

²⁷ “Voting Rights Act (1965) | National Archives,” accessed April 17, 2024, <https://www.archives.gov/milestone-documents/voting-rights-act>.

²⁸ “Free and Equal Election Clauses in State Constitutions,” accessed March 28, 2024, <https://www.ncsl.org/redistricting-and-census/free-and-equal-election-clauses-in-state-constitutions>.

nor shall any law be enacted whereby such right shall be impaired or forfeited, except for the commission of a felony, upon lawful conviction thereof.

Could Alabama amend its constitution to endorse free elections, equal representation, and convenient access to voting? Such an expansive attitude would hearken back to Alabama's original Constitution, which embraced suffrage for the common man and contained no property, religious, or other requirements found in other state constitutions at the time.²⁹

²⁹ "Alabama Legislature," accessed April 3, 2024, <https://alison.legislature.state.al.us/constitution-of-1819-overview>.



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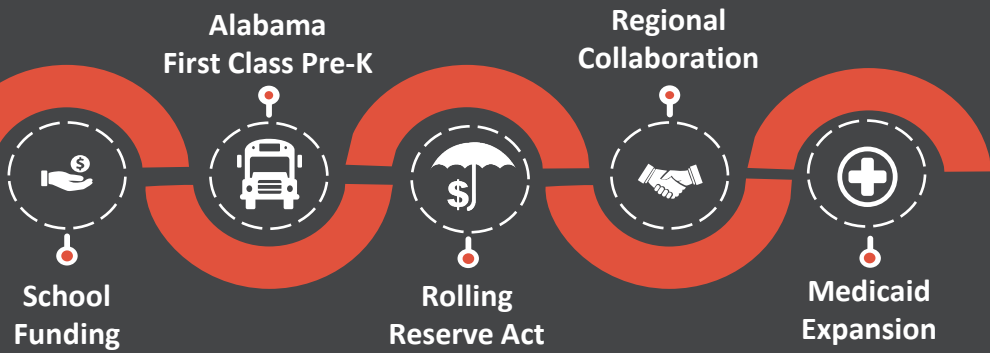


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