

VOTING RIGHTS AND ELECTION ADMINISTRATION IN ALABAMA

HEARING BEFORE THE SUBCOMMITTEE ON ELECTIONS COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION

MAY 13, 2019

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VOTING RIGHTS AND ELECTION ADMINISTRATION IN ALABAMA

MONDAY, MAY 13, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:00 p.m., at the Birmingham City Hall, 710 20th Street N, Birmingham, Alabama, Hon. Marcia L. Fudge (Chair of the Subcommittee) presiding.

Present: Representatives Marcia L. Fudge and G.K. Butterfield.
Also Present: Representative Terri Sewell.

Staff Present: Jamie Fleet, Majority Staff Director; Eddie Flaherty, Chief Clerk; Sean Jones, Legislative Clerk; David Tucker, Senior Counsel and Parliamentarian; Peter Whippy, Communications Director; Mannal Haddad, Press Secretary; and Joy Yunji-Lee, Minority Counsel.

Chairwoman FUDGE. Good afternoon. Thank you all so very much for being here.

I see we have been joined by the Mayor of this great city.

Mayor Woodfin, please join us for a moment and give us a few words of greeting.

Mr. WOODFIN. Good afternoon, everyone.

I will be brief because this room is packed and we are here for a very important topic.

Let me first start by thanking these strong black leaders you see seated before you.

Chairwoman FUDGE. Use one of these mics right here, please.

Mr. WOODFIN. Yes, ma'am. I am going to use the mic.

What about this, everybody?

Chairwoman FUDGE. All right.

Mr. WOODFIN. Let's try this again. Good afternoon. My name is Randall Woodfin, and I serve as the Mayor of the City of Birmingham. And we are happy that you all have chosen the city of Birmingham to have this very important discussion and hearing.

On behalf of the citizens of Birmingham, this is what I will say. For all the issues facing our country, for all the ways people are fighting, it is good to see some good folk fighting on our behalf.

Chairwoman FUDGE. Thank you.

Mr. WOODFIN. I am speaking to all Americans in this country about a very important topic that I feel is under assault, personally.

To my Congresswoman, I know the fact that you have personally taken on this, and I want to say thank you.

To Chairwoman Fudge and to Representative Butterfield, thank you all for being in our city.

Let me get out of the way. Thank you.

Chairwoman FUDGE. Well, thank you, Mr. Mayor. Thank you. Thank you for allowing us to be here in this chamber. We appreciate it.

Let me just give you all a couple housekeeping things before I open the hearing.

One is we are live-streaming this, so you may be on at any time. So just understand that it is possible you will be on the live stream, so nobody should be doing something silly and not realize you are being on television.

I do have some family here that—you know, since I am the Chair, I can just do this—I have some family here. Could they just stand up? My family is from Birmingham, so—I just want my family to stand up.

And, of course, there are a lot of women out here in red, my sorority sisters. If they would stand up, members of Delta Sigma Theta sorority.

Listen, Terri thinks I am going to—I am going to introduce her mother just because she didn't want to forget.

Ms. Sewell, please stand up.

This is Terri's mom.

I have a former colleague here, but Terri is going to introduce the elected officials so that I won't make a mistake.

The Subcommittee on Elections of the Committee on House Administration will come to order.

Let me thank the Members of the Subcommittee and my colleagues from the House who are with us today, as well as our witnesses and those in the audience for being here today.

I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and that any written statements be made part of the record.

Hearing no objection, so ordered.

I ask unanimous consent that Ms. Sewell be invited to sit on the dais for the Subcommittee hearing today.

Hearing no objection, so ordered.

Good afternoon. I want to give a special word of thanks to my distinguished colleague, Ms. Sewell, for her warm welcome to this district as we continue this important work. I want you to know that you have an outstanding Representative in Congress.

Today we are here to examine the state of voting rights and election administration in Alabama. As this Subcommittee travels the country, it became clear we needed to come to Alabama, the home of Selma, Montgomery, and Shelby County, the place that started it all.

The right to vote is fundamental to a strong, thriving democracy. And yet, in our travels around the country and here in Alabama, we have seen repeated attempts to suppress the vote, through overt tactics, such as those seen in North Dakota and North Carolina, to sometimes more covert tactics, such as constant election administration changing in places like my home State of Ohio.

The people of Alabama have marched and bled, gone to jail, and some even died for the fundamental right to vote, the right to participate in the democracy that governs their very lives.

Nearly 6 years after the Supreme Court decided *Shelby County v. Holder*, we know that voter suppression and discrimination still exist today. Administrative barriers that may have previously been denied by the DOJ disenfranchise voters through changes to polling places or voter ID laws that create new forms of poll taxes and other changes.

Alabama has closed polling places, enacted a strict voter ID law, been slow to restore the rights of previously incarcerated citizens, attempted to close DMV offices that issue the valid IDs in predominantly minority areas, and more.

The greatest democracy in the world must not regress. We must recognize our faults and continue to move forward. We must progress.

Supreme Court Chief Justice Roberts said himself, discrimination still exists. We must acknowledge this fact and do all we can to ensure that every American can exercise his or her right to vote. Overcoming barriers to increase voter turnout does not make those barriers right.

Today we will hear from experts, activists, plaintiffs, and litigators who have worked for years to ensure that every Alabamian can exercise his or her right to vote. Their testimony will help as Congress seeks to understand what needs to be done to safeguard every American's right to freely access the ballot.

I would now ask for opening statements from my colleague, Mr. Butterfield of North Carolina.

[The statement of Chairwoman Fudge follows:]

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VICE CHAIRPERSON

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JEN DAULBY, MINORITY STAFF DIRECTOR

Chairwoman Marcia L. Fudge Voting Rights and Election Administration in Alabama Opening Statement

Good morning. I want to thank my colleagues, our witnesses, and the people of Alabama for joining us here today. I want to thank my distinguished colleague, Ms. Sewell, for so warmly welcoming us to her district as we continue this important work. We are here to examine the state of voting rights and election administration in Alabama. As this Subcommittee travels the country, it was clear we needed to come to Alabama—the home of Selma, Montgomery, and Shelby County, the place that started it all.

The right to vote is fundamental to a strong, thriving democracy. And yet, in our travels around the country, and here in Alabama, we have seen repeated attempts to suppress the vote, through overt tactics such as those seen in North Dakota and North Carolina, to sometimes more covert tactics such as constant election administration changes in Ohio. The people of Alabama have marched and bled, gone to jail, and sometimes died, all for the fundamental right to vote. The right to participate in the democracy that governs their lives.

Nearly six years after the Supreme Court decided *Shelby County v. Holder*, we are this work because voter suppression and discrimination still exist. Administrative barriers that may have previously been denied by the DOJ disenfranchise voters through changes to polling places, or voter ID laws that create new forms of poll taxes, and other changes. Alabama has closed polling places, enacted a strict voter ID law, been slow to restore the rights of previously incarcerated citizens, attempted to close DMV offices that issue the valid IDs in predominately minority areas, and more.

The greatest democracy in the world must not regress. We must recognize our faults and continue moving forward. Chief Justice Roberts said himself, “discrimination still exists.” We must acknowledge this fact and do all we can to ensure every American can exercise his or her right to vote. Overcoming barriers to increase voter turnout does not make those barriers right. Today, we will hear from experts, activists, plaintiffs and litigators who have worked for years to ensure that every Alabamian can exercise his or her right to vote.

Their testimony will help as the Congress seeks to understand what needs to be done to safeguard every American's right to freely access the ballot.

Mr. BUTTERFIELD. Let me begin by thanking you, Chairwoman Fudge, for your leadership on this issue.

At the beginning of this Congress, House Speaker Nancy Pelosi looked among our Democratic Caucus and looked for one to lead this Subcommittee and it was no question that the one who was ready, willing, and able to serve in this important position was Congresswoman Marcia Fudge.

Marcia is the Chairwoman of the Elections Subcommittee. And there are, three Democrats and one Republican on the Subcommittee. We have been holding field hearings all across the Nation.

We started in Brownsville, Texas, several weeks ago and have just meandered our way across the country. And for some reason, every city that we go into, there is always a sea of red in the audience, except for North Dakota. I don't know what happened in North Dakota.

We started off in Brownsville, Texas, and went over to Atlanta and then down to North Carolina and over to Cleveland. Last week we were in Broward County, Florida, and today we are here in Birmingham, and it is our joy to be here.

I always make these comments at the beginning of each hearing, and that is to remind—of course, my colleagues certainly know it, but to remind those who are listening that this is not a political rally, this is not a political convening. This is an official Congressional hearing of the United States House of Representatives. We are engaged in a very serious process of collecting evidence that will either support or refute claims of voter suppression that are taking place across the country.

We all know about the 1965 Voting Rights Act. The Voting Rights Act was enacted several days after I finished high school in 1965. It was a very powerful piece of legislation, very powerful. I practiced as a voting rights attorney for some years, and even I did not realize the power of the Voting Rights Act until I got deep into the weeds in litigating these cases.

The first thing the act did was to eliminate the literacy test. And you certainly know all about the literacy test in Alabama.

The second thing it did was to give minority communities, regardless of where you are situated, the right to bring an action in Federal court if you feel that your vote is being diluted or that your community's vote is being diluted because of race. We call that Section 2. It is nationwide; it is not limited to any particular jurisdiction.

However, Section 5 is different. Section 5 was limited to several Southern States in their entirety, Alabama being one of those, my home of North Carolina. It was only limited to 40 States. Congress enacted a formula that determined which jurisdictions were in and which ones were not in coverage under Section 5. Southerners have been—many Southern elected officials and those in office, have resisted Section 5 for generations, but we have always come out on top every time there was a challenge to Section 5.

But, unfortunately, in 2013, in the *Shelby County* case that you know so well, we were dealt a severe blow by the U.S. Supreme Court. The Court told us that Section 5 is a constitutional provision of the act but that the formula that was used to determine which

jurisdictions are covered was an outdated formula and needed to be updated. Therefore, the Court has called on the Congress to update Section 4.

We cannot just flip a coin and decide which States and which counties are included under Sections 4 and 5. We have to collect evidence to support that. And that is why we are here today, to collect evidence, to build a Congressional record, so that we can reauthorize Section 4.

Congresswoman Terri Sewell has a very profound bill that is pending in the House, and hopefully it is going to be marked up and heard later in the year. We are going to decide how to enforce Section 5, and we need your help in building this record.

Thank you to the panelists for your testimony. I see them nodding their heads. They know exactly what I am talking about. This is just not a feel-good exercise today. This is building a Congressional record so that we can protect the right to vote in the United States of America.

Thank you very much.

[The statement of Mr. Butterfield follows:]

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Representative G.K. Butterfield Voting Rights and Election Administration in Alabama Opening Statement

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But we started off in Brownsville, Texas, and went over to Atlanta and then down to North Carolina and over to Cleveland. And last week we were in Broward County, Florida, and today we are here in Birmingham, and it is our joy to be here. I always make these comments at the beginning of each hearing, and that is to remind -- of course, my colleagues certainly know it, but to remind those who are listening that this is not a political rally, this is not a political

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Thank you very much.

Chairwoman FUDGE. I am going to ask you, if you would, please silence your phones.

As we know, if you look at television at all, if you read anything, you understand that we are under siege in this country, especially people of color, poor people, and immigrants. I want you to know that your Congresswoman fights every day to represent not only you but people like you all across this country.

I would now recognize my colleague from Alabama, Ms. Sewell.

Ms. SEWELL. Thank you so much, Chairwoman Marcia Fudge of Ohio.

I want to thank Chairwoman Fudge of Ohio and Congressman G.K. Butterfield of North Carolina and the Committee on House Administration Subcommittee on Elections for holding this field hearing right here in Birmingham, Alabama.

I want to thank Mayor Randall Woodfin and the Birmingham City Council for allowing us to host this field hearing right here in City Hall, in the council chamber.

Likewise, I would also like to thank all the witnesses. You have a very important role to play, as Congressman Butterfield has said.

I would also like to take a point of personal privilege to acknowledge in the room today is former Congressman Earl Hilliard, Sr. Will you please stand, sir?

He was the first African American since Reconstruction to represent the Seventh Congressional District.

We also have in the audience my mentor. I clerked for him. He was the first black Federal judge in the State of Alabama, Judge U.W. Clemon, who served on the Federal bench for over 30 years and to whom all of us owe a debt of gratitude for your service, sir, in the judiciary.

I would also like to acknowledge all the elected officials who have blessed us by being in this room.

Will you please stand?

We have elected officials on the State level, State representatives, and we also have local representatives who are here. If any of our city council members are here, I would like to recognize them as well.

I also would like to take a personal privilege and acknowledge my mother, who has already been welcomed warmly, but also the ladies of AKA as well as the ladies of Delta Sigma Theta from Birmingham, Alabama, and Tuscaloosa, Alabama, who have made their way here today.

I want to thank all of you for being here, because we know how important voting rights is in the State of Alabama. I think it is very befitting, Madam Chairwoman, that we are here in Alabama, befitting that this Subcommittee would come here to Alabama to hold one of its seven field hearings.

After all, it was the citizens of Alabama, many the city citizens of my Congressional district, that had the audacity to march, pray, and die for the sacred right to vote, which led to the passage of the Voting Rights Act of 1965.

And it was also in the State of Alabama, in *Shelby County*, that brought us the landmark decision of *Shelby County v. Holder* in 2013 that nullified Section 4 and gutted Section 5 preclearance provisions of the Voting Rights Act of 1965.

We are honored to have on our first panel Councilman Ernest Montgomery, who was one of the official plaintiffs in the *Shelby County v. Holder* decision and who has now taken his rightful place as a councilman for Calera, Alabama, after making sure that he and all of his constituents had the right to vote.

I just want to say in the closing of my opening statement how important it is that we create this record. Old battles have become new again. Many of us thought we had already fought the battle and won the battle for the equal right of all Americans who reach the age of 18 to vote in this Nation. And what we have seen with the Shelby decision is a rolling back—rolling back of protections that had been there.

It is incumbent upon Congress to come up with a modern-day formula. And I am proud to have as H.R. 4 the Voting Rights Advancement Act as my seminal piece of legislation that will put a modern-day formula.

This hearing as well as all of our field hearings are critically important, and you witnesses are critically important in providing that record. People need to know what is happening in States across this Nation since Shelby County. I think that the 2018 mid-term election is proof positive of the need for a stronger Voting Rights Act of 1965. And that is because we saw Alabama and 20 other States invoked more restrictive voting laws since the *Shelby County* decision.

It may sound innocuous that you have to just present a photo ID, but it used to be that those who were disabled could present a validly issued Federal ID called a Social Security card and vote in Alabama. That is no longer the case. It is unfortunate that we are making it harder for people to vote and not easier for people to vote.

I want to thank this Subcommittee for coming here. I want to thank all of our witnesses. I want to thank you, the audience, for your interest. But it is incumbent upon all of us to make sure that our voices are amplified at the injustices that we see in voting across America and especially in Alabama.

Thank you, Madam Chairwoman.

[The statement of Ms. Sewell follows:]

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Representative Terri Sewell Voting Rights and Election Administration in Alabama Opening Statement

Good morning, I want to thank everyone for participating in this important field hearing today in my home state of Alabama. I'd also like to thank all my colleagues, including Chairwoman Marcia Fudge for her leadership on the issue of voting rights as Chairwoman of the Subcommittee on Elections.

I am here today because this is personal for me. I grew up in Selma, where families fought, bled, and died for the enactment of the Voting Rights Act of 1965. I now represent Alabama's 7th district in Congress, which includes the stretch of highway they marched from Selma to Montgomery. *Shelby County v. Holder* was based on a Calera city council election in a county that neighbors my district. I am thrilled that Mr. Montgomery, the defendant in that case, could join us today to testify about his experience.

Nothing is more fundamental to the future of our democracy than our right to vote. Without the right to vote, our ability to impact policy is diminished. If we want more resources for our public schools, or we want our governors to expand Medicaid, or we want better public transportation, we must vote. So voter suppression is an effective tool for those who don't want to see those policies enacted. Generations of Americans have fought for our right to have a fair voice in our elections – but last year's findings by the United States Commission on Civil Rights show that our voting rights are under attack.

We are confronted with the reality that our opponents are using the *laws as they exist* to undermine the policies that we want and deserve. Many aren't breaking the law. So it's incumbent upon us to ensure that we change the law. The voter

suppression we saw in this past year's election makes it clear just how urgent it is that we restore voting rights. We need protections that stop discriminatory voter laws before they go into place and swing an election.

This is why I have introduced H.R. 4, the Voting Rights Advancement Act to restore the VRA. My bill takes into account what the Supreme Court ruled and updates the VRA pre-clearance provision to focus on states with a recent history of discrimination. The new Democratic majority has made passage of the Voting Rights Advancement Act a top legislative priority.

Chairwoman FUDGE. I want to introduce our first panel. Just a reminder, each of you will be recognized for 5 minutes. Your written statements, of course, will become a part of the record. You will have 5 days to add additional material, if you so wish.

James Blacksher, Esquire. Mr. Blacksher has been a civil rights lawyer in Alabama since 1971 and has been the counsel on record in numerous landmark voting rights cases. Mr. Blacksher is currently co-counsel with the Legal Defense Fund on a Section 2 case, *NAACP v. Pleasant Grove*, challenging the city's at-large method of election for city council.

Mr. Ernest Montgomery, council member—Calera?

Mr. MONTGOMERY. Calera.

Chairwoman FUDGE. Calera—Calera, Alabama, City Council. Mr. Montgomery has lived nearly his entire life in Calera, Alabama. Mr. Montgomery was the only African American member of the five-member city council when the city redrew its district lines, diluting the African American vote. The ensuing battle over the election became the basis for the eventual *Shelby County v. Holder* case.

Ms. Jenny Carroll, Professor of Law at the University of Alabama and Chair, Alabama State Advisory Committee to the U.S. Commission on Civil Rights. Ms. Carroll is the Wiggins, Childs, Quinn & Pantazis Professor of Law at The University of Alabama, where she joined the faculty in 2014. In addition to serving on the law school faculty, in 2016 Ms. Carroll was appointed chair of the Alabama State Advisory Committee to the U.S. Commission on Civil Rights.

Mr. Montgomery, you are recognized. You will see a light system in front of you. When the light turns green, you may begin. When it turns yellow, you have 1 minute left of your time. When it turns red, we would hope that you would start to wrap up.

You are recognized, sir.

STATEMENTS OF ERNEST MONTGOMERY, COUNCIL MEMBER, CALERA, ALABAMA; JAMES U. BLACKSHER, ATTORNEY AT LAW; AND JENNY CARROLL, PROFESSOR OF LAW, THE UNIVERSITY OF ALABAMA, AND CHAIR, ALABAMA STATE ADVISORY COMMITTEE TO THE USCCR

STATEMENT OF ERNEST MONTGOMERY

Mr. MONTGOMERY. Again, thank you, Madam Chairwoman, and to the other Members who are here. A little nervous about this here, but we are happy and thankful for the invitation you have given to us to come speak in this field hearing.

Again, my name is Ernest Montgomery. I am a City council member from the City of Calera, located in the southern part of Shelby County and since I was a resident in Shelby County in 2010, I became one of the intervenors in the *Shelby v. Holder* case.

Like many of my friends and associates, I knew very little about the Voting Rights Act prior to 2010 and had no knowledge, much, of the preclearance section of the Voting Rights Act. I am sure that it was not taught during in any of my civics or democracy classes. But, anyway, I was privileged to witness every step of the oral ar-

guments. I learned about the States and the jurisdiction that was under the covered provisions, and I learned why.

After sitting in and hearing the arguments in the district court and the appeals court and finally in the Supreme Court, keeping an open mind, I could clearly understand how, after Reconstruction, say, in the mid-1800s or the latter part of the 1800s, how it had disenfranchised such a large portion of our American population prior to the 1900s. I do understand now how important the power to vote is. I believe the greatest survivor to our democracy is the power to vote.

Our government must commit to assuring that every legal citizen be included; every barrier that prohibit be destroyed; every election, from our local schools all the way to our Federal elections, be fair.

I hope our elected leaders in Washington, D.C., can soon come up with some solution to protect every person's right to vote by some formula or preclearance. For we all know, as has been said, that one ounce of prevention is more valuable than a pound of cure.

Thank you.

[The statement of Mr. Montgomery follows:]

Hello, my name is Ernest Montgomery, and I am a city council member in the City of Calera located in Shelby, Alabama. In 2004, I was elected to represent district two (2), one of five districts in the city. Also, this district was one of the only minority, majority district in the city of Calera with a percentage ratio of 69 to 70. In 2007, our mayor informed us that our districting line had to be redrawn because of our population growth. After redrawing the line, my district was changed to about 29 percentage district.

After the submittal for pre-clearance, it was denied by the DOJ because they said those changes disenfranchise the minority community. Our mayor had the city attorney to resubmit and choose to go forward without clearance. In that election, I lost my re-election by a minimal number but learned that a lawsuit had been filed by DOJ disqualifying the election.

After the City of Calera followed the requirements under pre-clearance, a new election was held in 2009 in which I was able to win and regain that seat. The people which I represented was so happy and thankful for the oversight. I believe that without this protection, it will only be a matter of time before many will be eliminated from the voting process.

Respectfully Submitted
Ernest Montgomery

Chairwoman FUDGE. Thank you.
Mr. Blacksher.

STATEMENT OF JAMES U. BLACKSHER

Mr. BLACKSHER. Good afternoon, Chairwoman Fudge, Representative Sewell, Representative Butterfield. Thank you for inviting us. Thank you for coming.

I am James Blacksher. Yeah, I have been litigating voting rights cases for a lot of years.

Today, African Americans are the largest minority group in the State of Alabama. According to the most recent U.S. Census Bureau estimates, blacks constitute approximately 26.5 percent of the Alabama population and 26.2 percent of the voting-age population in Alabama. Latinos are about 4 percent now of the population and 1.7 percent of the voting-age population.

Alabama's motto is "We dare defend our rights." Throughout its history to the present, Alabama has invoked States' rights to preserve white supremacy and to subordinate its black citizens in the political, social, and economic role of a cheap labor force.

The most crucial component of this white supremacist policy has always been either denying or suppressing the right to vote of African Americans.

Ms. SEWELL. Can you speak into the microphone? Sorry. Bring it closer to you.

Mr. BLACKSHER. Oh, I need to bring it closer?

Ms. SEWELL. Yes. There you go. Thank you, sir.

Mr. BLACKSHER. When the Supreme Court in *Shelby County v. Holder* in 2013 held that things had improved in Alabama and in other previously covered States with respect to the suppression of the black vote, they pointed to data that were the product of the enforcement efforts of the Federal courts and the Department of Justice. The State of Alabama has never voluntarily taken any action to provide equal opportunity for its black citizens to vote or to have access to equal opportunity in the political process.

What the Supreme Court and Shelby County refused to acknowledge was that, even though these numbers are up, what remains is what I call the architecture of white supremacy. And that is embedded in Alabama's 1901 Constitution.

In 1985, in the case of *Hunter v. Underwood*, the Supreme Court of the United States, in a unanimous decision written by Chief Justice Rehnquist, said that the State acknowledged that, in adopting the 1901 Constitution, the purpose of the convention was to establish white supremacy in this State.

Today, in Federal court actions that I am involved in, the State of Alabama is taking as much advantage of Shelby County as it can to reclaim the benefits of this architecture of white supremacy.

In doing so, it is arguing that the equal sovereignty principle cited by Chief Justice Roberts in *Shelby County* is a call for the reassertion of States' rights and demanding that Federal courts presume that today's Alabama legislature is acting free of any racially discriminatory motives.

That is why I have devoted most of my written statement to demonstrating how that architecture is still there and given the opportunity, I would like to emphasize three recommendations that

I hope this Committee will take into serious consideration as it drafts remedial legislation for the future.

And I see my time is nearly up.

Chairwoman FUDGE. Go ahead.

Mr. BLACKSHER. Say again?

Chairwoman FUDGE. Give us your three recommendations.

Mr. BLACKSHER. You know how lawyers are.

Chairwoman FUDGE. There are three of us sitting right here, so we know.

Mr. BLACKSHER. Yes.

Well, the first recommendation, of course, is to restore Alabama and other States who practiced Jim Crow and suppressed the voting rights of its black citizens for years and years, to restore it to coverage under Section 4, Section 4(b), of the *Voting Rights Act*.

It is ironic that the Supreme Court in *Shelby County* did not cite any provision of the United States Constitution that the 2006 voting rights amendments violated. Instead, Chief Justice Roberts based his decision entirely on an extraconstitutional principle of equal sovereignty of the States. And that equal sovereignty principle can be traced back to its origins in an 1857 case called *Dred Scott v. Sandford*.

Chairwoman FUDGE. We are going to put a pin in that, and we are going to come back when we get into the questions to go into more detail with that, sir.

Mr. BLACKSHER. All right. But my first—well, I started to preach then—is to restore Alabama and other Southern States to coverage under Section 4.

My second—

Chairwoman FUDGE. Okay. Now, you have to give them to us quick. Just tell us what they are, and we will come back and get into—

Mr. BLACKSHER. Okay.

The second is to amend the language of both Section 2 and Section 5 to make it clear that State actions that discriminatorily deny or abridge the electoral power of protected minorities and their elected representatives after the election are also matters involving their voting rights and deserve protection.

Finally, my third recommendation—and I make this on behalf of my coauthor, Lani Guinier, who urged on us when we were writing our article for the Harvard Law and Policy Review to press Congress to use its power under Section 5 of the 14th Amendment to restore the right to vote in Section 1 of the 14th Amendment.

The Privileges or Immunities Clause was originally intended by the drafters of Section 1 to include a right to vote. What is the most important privilege or immunity of citizenship in the United States?

Chairwoman FUDGE. Thank you, Mr. Blacksher. Thank you so much.

[The statement of Mr. Blacksher follows:]

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Statement of James U. Blacksher
The Subcommittee on Elections of the Committee on House Administration
Field Hearing, Birmingham, AL, May 13, 2019
Voting Rights and Election Administration in Alabama

My name is James Blacksher. Thank you for inviting me to testify. I am a white native of Alabama and have been practicing law in Alabama since 1971, engaged primarily in representing African Americans in civil rights and voting rights litigation.

I argued – and lost – *City of Mobile v. Bolden* (1980) in the Supreme Court, but with the help of co-counsel we won on remand to the district court.

I testified in Congressional hearings leading to enactment of the 1982 Voting Rights Amendments. Four years later the Supreme Court in *Thornburg v. Gingles* (1986) cited and adopted the three-prong test proposed in my Hastings Law Review article for purposes of establishing a violation of Section 2 of the Voting Rights Act.

With Edward Still and Larry Menefee, I represented plaintiffs in the *Dillard v. Crenshaw County* class action, which changed the method of electing members of over 180 local governments in Alabama.

I have represented African Americans in litigation following redistricting of the Alabama House and Senate districts and Congressional districts in every decade since the 1980 census. Most recently, I represented the plaintiffs before the Supreme Court in *Alabama Legislative Black Caucus v. Alabama* (2015), which held that many of the Alabama House and Senate districts were racially gerrymandered.

Currently I am one of the lawyers representing African Americans in these

pending cases:

Lewis v. Alabama: challenging the 2016 state law that struck down Birmingham's minimum wage ordinance

Alabama State Conference of the NAACP v. Alabama: challenging the at-large election of members of the Alabama Supreme Court and Courts of Appeals

Thompson v. Merrill: challenging the disfranchisement of Alabama citizens with felony convictions

Alabama State Conference of the NAACP v. City of Pleasant Grove: challenging the at-large method of electing the city council

I am a co-author of an amici curiae brief for the Eleventh Circuit Court of Appeals supporting plaintiffs-appellants in *Greater Birmingham Ministries v. Merrill*, challenging Alabama's photo voter ID law

The Continuity of Alabama's Historical Policy of Political White Supremacy

Alabama's motto is "We dare defend our rights," and throughout its history to the present Alabama has invoked states' rights to preserve white supremacy and to subordinate its black citizens in the political, social, and economic role of a cheap labor force. The most crucial component of this white supremacist policy has always been either denying or suppressing the right to vote of African Americans.

In the several voting rights cases currently pending in federal trial and appellate courts the State of Alabama is arguing that its history of discrimination no longer matters, and that today's majority-white Legislature must be presumed to be acting free of any racial motives. But if racial motives are only occasionally expressed openly,¹ since *Shelby County v. Holder* (2013) Alabama has more

¹ E.g., see *United States v. McGregor*, 824 F.Supp.2d 1339, 1345 (M.D. Ala. 2011) (member of the Legislature "derisively referring to blacks as

aggressively taken advantage of what I call the architecture of white supremacy, embedded in its 1901 Constitution, further to restrict the right to vote, to deny its black citizens equal opportunity to elect candidates for statewide office, to segregate black representatives in the Legislature, and, perhaps most importantly, to suppress the powers of local governments elected by black majorities. These actions speak louder than words to demonstrate how Alabama's historical policy of white supremacy still dominates our political culture. Indeed, now there is even social science confirming the persistence of this racially discriminatory culture. "At its core, behavioral path dependence suggests that the political attitudes of a place or a region—such as the Black Belt—can persist across generations, nurtured by institutions, laws, families, and communities. This idea of path dependence in politics more broadly suggests that significant historical forces, and the attendant political economic and political incentives that they produce, can create patterns that pass down through generations over time—and these patterns can outlast the original institutions and incentives."² The following is a very abbreviated summary of the historical events that still shape the political culture of our state.

Before the Civil War, the Alabama Black Belt contained the wealthiest counties in the United States based on white per capita population. So Alabama invoked its state's rights to secede from the Union in order to preserve the legalized slavery that produced this wealth.

The enfranchisement of black men in the 1868 Reconstruction Constitution, controlled by Republicans, created a dire threat to white landowners in the Black Belt, whose majority-black electorates taxed land to raise revenues for schools and public services that benefitted the freedmen. White Conservative Democrats regained control of state government in 1874 by "drawing the color line," that is, making white solidarity a party issue. The 1875 Redeemer Constitution could not disfranchise the freedmen for fear of federal enforcement of the Fifteenth Amendment, ratified in 1870. So to protect whites in the majority-black counties

'Aborigines''').

² AVIDIT ACHARYA, MATTHEW BLACKWELL, AND MAYA SEN, *DEEP ROOTS* (Princeton Studies in Political Behavior) (pp. 11-12). Princeton University Press. Kindle Edition (2018).

the 1875 Constitution put numerous restrictions on home rule and gave the Governor and Legislature complete control over local governments.

From 1874 to 1901 whites in the Black Belt used economic retaliation and violent terrorism to make their black majorities a “captive” vote. Black votes were fraudulently cast by Black Belt whites to give them control over state government as well as their local officials.

White populists revolted in the 1890s against fraudulent rule by the partnership of Black Belt landowners and urban industrialists. This “Bourbon Aristocracy” preserved their power over state government by agreeing to the 1901 Constitution, which disfranchised blacks – and poor whites – with poll taxes, literacy tests, crimes aimed at blacks, and total discretion for voter registrars. By including disfranchised blacks in the apportionment of seats to each county, Black Belt whites ensured their continuing control of the Legislature. And the restrictions on home rule were preserved to guard against future re-enfranchisement of local black majorities. Writing for a unanimous Supreme Court, Justice Rehnquist acknowledged that Alabama’s 1901 Constitution established the state’s official policy of white supremacy. *Hunter v. Underwood* (1985). Alabama is still governed by its 1901 Constitution.

Political white supremacy required uniting almost all white voters behind one political party. There was – and still is – a prevailing fear that a white political faction might unite with even a few black voters to capture state offices. So the Democratic Party established the all-white primary in 1902. Even the few black Alabamians who managed to register were excluded from the only election that mattered. In the 1920s and 1930s the Conservatives who controlled the Democratic Party invoked white supremacy to repeal laws that gave white dissenters an opportunity to elect candidates of their choice, such as Senator Hugo Black. But President Truman’s 1948 executive order desegregating the military caused Conservative Democrats to bolt the national party. They held a Dixiecrat convention down the street at Boutwell Auditorium here in Birmingham, and its Presidential slate carried Alabama in 1948.

When the Supreme Court struck down the Texas white primary, *Smith v. Allwright* (1944), Alabama adopted the Boswell Amendment, which gave white voter registrars total discretion to administer a read-and-understand test. A federal

court declared the Boswell Amendment unconstitutional in 1949. *Davis v. Schnell*. But the Democratic primary remained the only election that mattered until well into the 1970s.

As a few more African Americans were able to register to vote, the Legislature passed the infamous Tuskegee gerrymander, which expelled all black residents from that Black Belt city. The U.S. Supreme Court ruled that the gerrymander violated the Fifteenth Amendment. *Gomillion v. Lightfoot* (1961). Black Belt whites' control of the Legislature was seriously threatened when Chief Justice Earl Warren announced the constitutional principle of one person, one vote and ordered reapportionment of the Alabama Legislature. *Reynolds v. Sims* (1964).

When President Lyndon Johnson procured passage of the 1964 Civil Rights Act, Sen. Barry Goldwater voted against it and won the Republican nomination for President. As a result, Goldwater carried Alabama in 1964, and Republican candidates won all five of the contested Alabama Congressional seats (two incumbent Democrats were unopposed). Following Bloody Sunday at the Edmund Pettus Bridge in Selma, the Voting Rights Act of 1965 struck down Alabama's literacy tests and other devices, and black voter registration rapidly increased. At the same time, urged on by Governor George Wallace's racist appeals, white voter registration also increased.

The Alabama Democratic Party did not remove "white supremacy" from its logo on the official state general election ballot until 1966. Thereafter it attempted to prevent white flight to the Republican Party by adopting a platform of states' rights and opposition to federal interference. George Wallace fiercely opposed federal courts' enforcement of civil rights and voting rights laws, but he did not switch parties, and that delayed the mass movement of white Alabamians to the Republican Party. During the transition of white voters from the Democratic to Republican Party, some white and black Democrats were able to use "stealth politics" to win a few statewide offices, including the Alabama Supreme Court. Oscar Adams and Ralph Cook became the only two African Americans to be elected to statewide office in the history of Alabama. The ability of black and white voters to form winning coalitions to elect the Governor and some members of the Legislature presented a direct threat to Alabama's historical, constitutionally based policy of political white supremacy.

But by 2000 the Republican “Southern Strategy” had successfully cued white voters, particularly through its anti-civil rights Presidential campaigns, and the mass movement of Alabama’s white voters to the Republican Party was nearly complete. Justice Cook was defeated in 2000, and today there are no African Americans serving in offices elected statewide. Now in Alabama the Republican Party is perceived as the party of whites, and the Democratic Party is perceived as the party of blacks. With rare exceptions the Republican primary is the only election that matters in races for Governor, Lieutenant Governor, Secretary of State, Supreme Court, and other statewide offices. In the Legislature, after the 2018 elections, there remain only two white Democrats, one in the House and one in the Senate, both of whom were elected from majority-black districts. All but one of the twenty-seven black House members and all seven black Senators are elected from majority-black districts.

The Voting Rights Act has had its greatest impact on local governments, where the number of African Americans elected to county and municipal offices increased dramatically after passage of the 1982 Voting Rights Amendments. See Jerome Gray and James U. Blacksher, *The Dillard Cases and Grassroots Black Political Power*, 46 CUMB. L. REV. 311 (2016). “By the year 2000, black elected officials had achieved close to representational parity on county commissions, county school boards, and city councils in Alabama, reflecting the black voting age population of 22.7% in the state. Alabama may be the only state in the nation today that can make that claim. By 2010, when the last *Dillard* cases were dismissed, there were 757 black local elected officials.” *Id.* at 312-13.

This increase in the number of blacks elected to local governments presents the threat to white supremacy that provoked the anti-home rule provisions in the 1875 Constitution and that continue today in the 1901 Constitution.³ Alabama

³ See Will Parker, *Still Afraid of “Negro Domination?”: Why County Home Rule Limitations in the Alabama Constitution of 1901 Are Unconstitutional*, 57 ALA. L. REV. 545 (2005); See also Wayne Flynt, *Alabama’s Shame: The Historical Origins of the 1901 Constitution*, 53 ALA. L. REV. 67, 68 (2001); Peyton McCrary et al., *Alabama* in QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965-1990, at 38, 42 (Chandler Davidson & Bernard Grofman eds. 1994); MALCOLM COOK McMILLAN, CONSTITUTIONAL DEVELOPMENT IN ALABAMA, 1798-1901: A STUDY IN POLITICS, THE NEGRO, AND

cited these “advances at the local level” in its amicus brief in *Shelby County v. Holder* (2013). But it failed to acknowledge that this and other examples of increased black participation in the political process – increased black voter registration and turnout and black representation in the Legislature – had been achieved through federal court litigation and U.S. Department of Justice enforcement of Section 5 of the Voting Rights Act. The State of Alabama has done virtually nothing voluntarily to provide its black citizens equal opportunity, and the architecture of its policy of white supremacy, embedded in the 1901 Constitution, remains fully in place. Chief Justice Roberts was correct when he wrote in *Shelby County* that “history did not end in 1965.” Alabama’s history of political white supremacy has never ended, has never been repudiated, and is continually being reinforced.

Immediately after *Shelby County v. Holder* was handed down Alabama proceeded to implement and enact new racially discriminatory restrictions on the ability of its citizens to register and vote, including a photo ID law, closure of driver license offices in the Black Belt, and a request for authorization to require proof of citizenship in the federal voter registration form. At least 66 polling places have been closed, and the City of Evergreen in Conecuh County has been bailed in under Section 3c of the VRA following litigation challenging a number of discriminatory voting practices.

See

<https://www.naacpldf.org/wp-content/uploads/State-local-responses-post-Shelby-4.3.2019.pdf>.

At the same time the State of Alabama is placing more racially discriminatory burdens on citizens’ right to vote, with filibuster-proof white Republican majorities in both the House and Senate the Legislature has resumed implementing Alabama’s historical practice of restricting majority-black local governments’ home rule powers.

There has been a particular focus on Birmingham, whose over \$400 million operating budget is by far the largest in the state controlled by a black majority. The House redistricting plan the Legislature passed in 2012 eliminated the nine

SECTIONALISM 222 n.28 (1955) (Alabama’s “very strong antebellum tradition” of democracy at the county level was “sacrificed to ‘white supremacy.’”).

majority-black and nine majority-white district balance in the Jefferson County House Delegation, which had provided black legislators the ability to block unwanted local bills, and replaced it with ten majority-white and only eight majority-black districts.

In 2015, over the objections of black members of Jefferson County's delegation, the Legislature passed a statute giving majority-white municipalities in Jefferson County and neighboring majority-white county governments power to appoint members to the Birmingham Water Works Board, which previously had been appointed solely by the Birmingham City Council. Ala.Code § 11-50-300 et seq. This diluted the political power of a majority-black electorate over one of the most profitable water systems in Alabama and a valuable asset for Birmingham's economic development.

In 2015 and 2016, the Birmingham City Council, a body composed of nine elected councilors, all but two of whom were African-American, took steps to address the low wages and poverty persistent in this predominantly African-American city. Despite a long history of racial discrimination in Alabama African-Americans have been able to build political power in urban areas where they are a majority of the population. Alabama's three largest cities are majority-African-American. Birmingham is Alabama's largest city and has a population that is 73% black. After pleading unsuccessfully with the Legislature for over a year to raise the minimum wage, on February 23, 2016, the Birmingham City Council unanimously passed and the Mayor signed an ordinance raising the minimum wage incrementally to \$10.10. Two days later, over the objections of every black member of the House and Senate, the Legislature passed and the Governor signed a statute that voided Birmingham's minimum wage ordinance and prohibited all municipalities from regulating minimum wages or any other matters involving employer-employee relationships in their cities. Black workers and voters in Birmingham challenged this preemption statute in federal court, citing violations of Section 2 of the Voting Rights Act and the U.S. Constitution, alleging that the Legislature was implementing Alabama's judicially acknowledged, white supremacist policy of suppressing local black majority governments. *Lewis v. Alabama*. The district court dismissed their complaint on grounds that the statute did not implicate voting and thus could not violate the VRA, and that the plaintiffs lacked standing to sue the State of Alabama, the Alabama Attorney General, and City of Birmingham. An Eleventh Circuit panel

upheld dismissal of the VRA claim, but reversed dismissal of the constitutional claim. However, the Court of Appeals granted en banc rehearing and has scheduled argument for the week of June 24.

In 2017 the Legislature enacted the Alabama Memorial Preservation Act. Ala. Code § 41-9-231 et seq. The Act provides that “[n]o architecturally significant building, memorial building, memorial street, or monument which is located on public property and has been so situated for 40 or more years may be relocated, removed, altered, renamed, or otherwise disturbed.” Ala. Code § 41-9-232(a). Most memorials to the Confederacy were erected in the periods during the first three decades of the Twentieth Century (coinciding with the passage of Jim Crow laws) and during the 1950s and 1960s (during resistance to the Civil Rights Movement) -- well within the time period protected by the Act, but no memorials on public property celebrating the Civil Rights Movement are 40 years old. After the Mayor of Birmingham ordered a black plywood shell to be placed around the base of a Confederate memorial at an entrance to Linn Park (the park between City Hall and the Jefferson County Courthouse), the Alabama Attorney General sued the City for a declaratory judgment that it had violated the Act plus a \$25,000/day fine. The Jefferson County Circuit Court ruled that the state law violated the First Amendment. The Attorney General has appealed to the Alabama Supreme Court.

A Call For Congressional Action

I ask this Committee to consider the following changes to the Voting Rights Act:

1. Restore Alabama to coverage under Section 5 of the VRA – along with other states with continuing histories of discrimination against racial and language minorities. Chief Justice Roberts’ majority opinion in *Shelby County v. Holder*, 540 U.S. 529 (2013), holding the coverage formula in Section 4(b) unconstitutional, is not based on any provision contained in the Constitution but on “our historic tradition that all the States enjoy equal sovereignty.” *Id.* at 540.⁴

⁴ See James Blacksher and Lani Guinier, *Free At Last: Rejecting Equal Sovereignty and Restoring the Constitutional Right To Vote*, *Shelby County v. Holder*, 8 HARV. L. & POL’Y REV. 39 (March 2014), which traces the origins of the

Alabama has interpreted this extra-constitutional declaration of equal sovereignty as an invitation to reassert its states' right to implement racially discriminatory policies that deny or abridge the right to vote and that submerge the electoral power of its black and Latino citizens, who now are forced to initiate civil actions on their own after the discriminatory policies have been implemented. The cases cited in this statement show how time-consuming and expensive litigation under Section 2 of the Voting Rights Act and the Constitution is, and how difficult it is to overcome the burdens of proof being placed on plaintiffs by the Supreme Court and lower courts, who continually narrow the scope of the VRA's protection.

2. Amend the language of both Section 2 and Section 5 of the VRA explicitly to prohibit state actions that discriminatorily deny or abridge the electoral power of protected minorities and their elected representatives after the elections have been held. In *Hardy v. Wallace*, 603 F.Supp. 174, 176 (N.D. Ala. 1985) (three-judge court), Section 5 was invoked to prevent the Alabama Legislature from shifting power to appoint the racing commission in majority-black Greene County from the newly-elected black local legislative delegation to Governor George Wallace. But subsequently *Presley v. Etowah County Commission*, 502 U.S. 491 (1992), held that “[c]hanges which affect only the distribution of power among officials are not subject to § 5 because such changes have no direct relation to, or impact on, voting.” *Id.* at 506. That holding has led lower federal courts to conclude that statutes like the one in *Hardy v. Wallace* and in the Birmingham minimum wage case are no longer actionable even under Section 2 of the VRA. This is a perverse result in light of the fact that submerging the powers of majority-black county governments was the very reason anti-home rule policies were placed in the 1875 Redeemer Constitution of Alabama and have been maintained since in the 1901 Constitution. Indeed, fear of local black electoral majorities was a main reason the white supremacist 1901 Constitution disfranchised African Americans. Congress needs to restore the ability of protected minorities to challenge under the VRA racially discriminatory suppression of their local elected officials' power to implement policies governing their counties and cities.

3. Exercise Congress' enforcement powers under Section 5 of the Fourteenth Amendment to declare that each citizen of the United States has a

“equal sovereignty” doctrine to *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

fundamental right to vote under the Constitution, relying in particular on the Privileges or Immunities Clause in Section 1 of the Fourteenth Amendment. Currently, even though some decisions of the Supreme Court under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment have said voting is a fundamental right, because it is not expressly enumerated in the Constitution the Court has not given it the protection other fundamental rights receive. Instead of subjecting state actions burdening the right to vote to strict scrutiny, unless a voting restriction is either too “severe” or proven to be racially discriminatory, federal courts apply a more deferential standard that balances the state’s interests against the citizen’s right to vote.⁵

Most Americans don’t realize there is no explicit right to vote in the Constitution. The Fifteenth, Nineteenth, and Twenty-sixth Amendments only prohibit states from administering voting practices that discriminate on the basis of race, gender, or age. Only after plaintiff citizens have succeeded in the difficult task of proving invidious discrimination does the state voting restriction get subjected to strict scrutiny, which requires the state to justify the restriction as narrowly tailored to further a compelling state interest.

But read Section 1 of the Fourteenth Amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. *No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States....*” (Emphasis added). Today, what do Americans regard as the most important “privilege” of U.S. citizenship? Most would say the right to vote. And that’s what the 1866 Radical Republicans who drafted the Fourteenth Amendment intended at first. Then they realized the Fourteenth Amendment would not be ratified by many northern states, who were refusing to include black suffrage in their state constitutions. (Ironically, in order to regain admission to Congress, the former Confederate states were required to draft constitutions providing black men the right to vote.) So the drafters conceded that Congress could not *at that time* interpret the Privileges or Immunities Clause to provide the right to vote as a fundamental right of U.S. citizenship. Instead they included in Section 2 of the Fourteenth Amendment a penalty of reduced representation in the House if states denied suffrage “to any of the male inhabitants of such state....” Then they passed and obtained ratification of the Fifteenth Amendment. In 1874

⁵ E.g., see Armand Derfner and J. Gerald Hebert, *Voting Is Speech*, 34 YALE L. & POL’Y REV. 471 (2016).

the Supreme Court held, in a case brought by women suffragists, that these circumstances meant the Privileges or Immunities Clause did not include the right to vote. *Minor v. Happersett*. But Congress today has the power under Section 5 of the Fourteenth Amendment to repudiate the racial discrimination that burdened the Privileges or Immunities Clause during Reconstruction and declare affirmatively that the right to vote is a privilege of citizenship in the United States.

I urge this Committee to consider this option seriously. There is a right to vote already in the Constitution, and Congress has the power to require states to justify any impediments to the right to vote under standards of strict scrutiny. See James Blacksher and Lani Guinier, *Free At Last: Rejecting Equal Sovereignty and Restoring the Constitutional Right To Vote*, *Shelby County v. Holder*, 8 HARV. L. & POL'Y REV. 39 (2014).

Chairwoman FUDGE. Ms. Carroll.

STATEMENT OF JENNY CARROLL

Ms. CARROLL. Thank you.

Since the *Shelby County* decision, Alabama has passed and implemented a variety of regulations on voting. While these regulations are facially neutral, they raise real concerns about the opportunity of enfranchisement among the very population that the Voting Rights Act was designed to protect.

The days of a sheriff standing in the doorway of the polling place may be a thing of the past, but current voting regulations may produce the same effect on minority and poor populations in our State. The method may be softer and more subtle, but the results are exactly the same.

Now, today, I want to provide a general overview of impediments to voting in Alabama, and then I want to focus on one such impediment, felon disenfranchisement. There are more we could certainly talk about. The history and complexity of current voting regulations is long, but my time to testify is short. I will happily entertain any questions about any other area.

From voter identification laws to curtailed polling places, to limited polling hours, to lack of early voting, to no no-excuse absentee balloting, Alabama election laws disproportionately affect the voters in our State even as they claim to improve election integrity.

Such laws create barriers to voting in their reliance either on a one-size-fits-all notion of Alabama voters, in which every citizen interested in casting a ballot has access to the required identification and documentation, transportation, and the resources necessary to realize the right to vote, or they rely on the notion that small impediments to voting are tolerable.

Such perceptions and their harms are not justified by purported needs to ensure voter integrity. In fact, testimony received at the February 22nd hearing before the State Advisory Committee revealed that this was an illusory risk, that, in fact, after the passage—or prior to the passage, rather, of the voter ID law, there was no evidence of individual voter fraud in the State.

Further, the State's position, that until individual voters appear and complain that they cannot register, the government will maintain their position that all who want to register can. This not only mischaracterizes the true threat to Alabama's elections, but it adopts a position of willful blindness to the impact of such neutral laws on the very people these laws should work hardest to protect.

Finally, widespread confusion over election law and voter requirements and inconsistent implementation of laws across and within counties exacerbates this impact.

Consider felon disenfranchisement in Alabama. The 1901 Alabama Constitution permits disenfranchisement of those convicted of felonies of moral turpitude. The Definition of Moral Turpitude Act of 2017 served to decrease inconsistent application of the felony disenfranchisement rule by defining disqualifying crimes.

Now, despite the standardization and limitation of such crimes, 7.62 percent of the State's voting-age population remain disenfranchised, and the road to restoration is not smooth in Alabama. Confusion persists over whether or not those convicted of

nondisqualifying crimes may vote while serving their sentences. The short answer is they can; they have never lost their right to vote under Alabama's law. And yet their road to realizing that right to vote even while incarcerated remains complicated.

Now, for those convicted of disqualifying crimes, they must apply to the Board of Pardons and Paroles for a certificate of restoration of eligibility to vote or a CERV (Certificate of Eligibility to Register to Vote) to have their voting rights restored. CERV applications are neither routinely provided or available, and misinformation persists regarding the process for eligibility, in no small part because the Secretary of State's office that governs elections in our State has done little to disseminate information or to make such applications available.

Finally, the requirement that CERV applicants have paid all fines, costs, and fees ordered at the time of sentencing on disqualifying cases in full creates a significant impediment to voting, particularly when coupled with the 30-percent collection fee tacked on to all such fines and fees, and it is imposed 90 days after the sentence has been imposed.

Now, the Attorney General has issued an opinion that the collection of this fee must be paid in total before you can begin attacking the underlying debt. What this means is, for those unable to make complete payment immediately, they will not be able to realize their right to vote.

So, once again, what is the result? The poor, who are already disproportionately impacted by the criminal justice system, face a barrier to realizing their right to vote.

In conclusion, I cannot do justice to the myriad of barriers that the most vulnerable voters of Alabama face in 5 minutes. What I can tell you is that, in my efforts to ascertain the lay of the land in regard to voting access in my State, I met with confusion, inconsistency, and frustration. I also met with the willingness of State officials and private actors to respond to inquiries in candor about the failures of the system and the law.

Now, this gives me hope, but hope is not enough. Voting is a citizen's fundamental right. It is not earned; it is not given. It belongs to each of us. That some of us are able to realize this more completely than others should appall us all. And all of us should push to realize a system where the default is enfranchisement and not a series of hurdles that must be cleared to vote.

I have one more paragraph, I promise.

If ongoing debates in the current State General Assembly have taught me anything, it is that in a State, like Alabama, controlled almost entirely by one party, there is little incentive to change at the State level. Until consistent and comprehensive Federal policy is implemented, I fear that the inequity of the past will persist.

Thank you.

[The statement of Ms. Carroll follows:]

Submitted Testimony of Jenny E. Carroll
Chair of the Alabama State Advisory Committee to the USCCR
May 10, 2019

My name is Jenny Carroll and I am the Chair of the Alabama State Advisory Committee to the U.S. Commission on Civil Rights. Thank you first for holding this hearing on "Voting Rights and Election Administration in Alabama." Thank you also for the opportunity to share what the Alabama State Advisory Committee has learned about access to voting in Alabama following the Supreme Court's decision *Shelby County vs. Holder* (hereafter "*Shelby County*"). On February 22, 2018, the Alabama State Advisory Committee held a hearing in Montgomery to entertain testimony on the topic of voting regulation in our state following the decision in *Shelby County*. As the summary of testimony (Attachment A, issued June, 2018) indicates, we were fortunate to hear from a diverse array of government officials, voting experts, activists, and citizens. Since that time our Committee has continued to gather information about impediments to voting access for our state's citizens. We are in the process of completing our final report on our findings.

By way of background, since the *Shelby County* decision, Alabama, like many states, has passed and/or implemented a variety of regulations on voting. While these regulations are "facially neutral," they raise real concerns about the opportunity for enfranchisement among the very populations the Voting Rights Act was created to protect. The days of a sheriff standing in the doorway to the polling place or the registrar's office in Selma or Lowndes County may be a thing of the past, but current voting requirements may produce the same effect on minority and poor populations in our state. The method may be softer, more subtle, but the result of these post-*Shelby County* restrictions are the same.

Our forthcoming report will focus on several areas of concern, in my testimony I want to focus on those that are particularly troubling: voter identification requirements, voter registration and inactive voter lists policies, felon re-enfranchisement procedures, the lack of early voting in Alabama, limited absentee balloting procedures, poll hours, poll location changes, and a general lack of information about voting process. There are more we could discuss. The history and complexity of current voting regulations is long. I will, however, keep my focus on these but will happily entertain questions on others.

Voter Identification Laws

Following the *Shelby County* decision one of the first changes Alabama made to its voting laws was to institute a voter identification law. This law requires all voters to present one of eleven approved forms of identification or to be positively identified by two election officials. If the voter lacks the approved identification and cannot be positively identified by two election officials, the voter may cast a provisional ballot. In order for that provisional ballot to be counted, the voter must present "a proper form of photo identification to the Board of Registrars no later than 5:00 p.m. on the Friday following election day." (See §17-10-1). The committee heard testimony that identification requirements were enacted to reduce individual

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voter fraud by ensuring that the person casting the ballot is in fact the eligible voter listed on the voting rolls for a given polling place.

While Alabama accepts eleven different forms of identification for voting, Secretary of State John Merrill testified that the most common forms of voter identification are state issued identification cards – such as a driver’s license, a nondriver identification, or an Alabama Photo Voter ID card. These are procured through Department of Motor Vehicles (“DMV”) offices, the County Clerk’s office or, in some counties, a library or the Secretary of State’s mobile ID unit.

On its face, the voter identification law does not appear to have a discriminatory intent or purpose. It applies uniformly to all voters and seeks to ensure a common goal – voter integrity. Likewise, the state’s willingness to accept a variety of forms of identification procured from a variety of locations speaks to an effort to include and accommodate, rather than to exclude. I applaud both efforts to ensure voter integrity and to create multiple locations and means by which to obtain identification necessary to vote.

Such efforts, however, obscure the effect of the law. Our committee heard testimony that suggests that the reality is that Alabama’s voter identification law creates impediments for the poor and rural voters who may have limited access to locations that can issue identification, may lack the underlying documentation necessary to receive such identification, or have neither the time nor transportation to gain such identification. Further, the law seeks to address a problem – individual voter fraud – without any evidence that such a problem existed prior to the law’s passage. In short, the law, for all its good intentions, keeps people from realizing their right to vote for little reason other than their lack of ability to procure state sanctioned identification.

To realize the impact of this law on poor and rural populations, consider recent efforts to close or limit hours at DMV offices, courts, libraries, and other public places where voters might acquire the necessary identification to vote. In 2015, in response to a budget dispute, then Governor Robert Bentley closed thirty-one DMV offices in Alabama. In 2016, the Department of Transportation (“DOT”) conducted an investigation into these closures and concluded that they adversely affected counties with majority black and rural populations. Statistics from the Alabama Law Enforcement Agency (“ALEA”) and census data for the state show that of the eleven counties in Alabama that have a majority or near majority black population, eight suffered closure of DMV offices in their counties based on Gov. Bentley’s decision. The three counties that did not suffer such closures are home to Montgomery, Birmingham, and Selma – the state capital and two of the most populous cities.

In response to the DOT’s findings, the state re-opened offices in some of the affected counties with limited hours. Consider Wilcox and Bullock Counties. Both are rural, poor, predominantly

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black counties. Wilcox County, according to the 2010 census, is 72.5% black and 26.8% white. The median family income is a little over \$22,000. Trying to learn the hours of the Wilcox County DMV office this week was an act in frustration. The single location listed online offered no website that might reveal its hours and no one answered the phone regardless of when I called. There was no recorded message to offer hours of operation. A call to the Wilcox County clerk's office produced a suggestion that I travel to another county to obtain a driver's license. Similar efforts to gather information about the DMV office in Bullock County met with similar frustration. Like Wilcox County, Bullock County is majority-minority according to the 2010 census – 70.2% black and 23.0% white – and is poor (the median family income in Bullock County was just under \$24,000). Also, like Wilcox County, efforts to learn the DMV hours for Bullock County's one DMV office was challenging. The Bullock County DMV office has no website. No one answered the phone regardless of when I called and there was no voice mail or recorded information. A call to the Bullock County's Clerk of Court's office revealed that the DMV office was open one day a week, though the individual I spoke to did not know what day the office was open or who I could speak to find out. She suggested I drive to the office to find out. She was sure the office would not be open on the weekend.

For citizens in these predominately black, predominately poor, and predominantly rural counties, like those in other similar counties, the DMV office is an illusory source of voting identification. To the extent that DMV offices continue to exist in Wilcox and Bullock Counties, they can hardly be described as easily accessible. This is not meant as an indictment of the men and women who work at the DMV offices, but it is meant to highlight the challenges that poor and rural citizens have to accessing the ballot.

Compare these counties to two urban, predominantly white counties. According to the 2010 census, Shelby County has an 83% white and 10.6% black population. Its median family income of over \$68,000. Shelby County has three DMV offices open five days a week from 8:00 a.m. to 4:30 p.m. Tuscaloosa County, who according to the 2010 census had a 66.3% white population (29.6% black population) and a median family income over \$58,000, has a DMV office open five days a week from 8:30 a.m. to 5:00 p.m. Both Shelby and Tuscaloosa County's DMV offices have convenient websites that not only provide basic information such as the location of the offices and their hours of operations, but also permit you to fill out forms prior to arrival at the office and to set appointments to obtain identification. I can find no such conveniences in Wilcox and Bullock Counties.

Arguably this comparison is unfair. Offices in counties like Shelby or Tuscaloosa County provide services to larger populations and therefore must be more numerous and provide more service hours. But the fact that there are sparse populations in the counties where the DMV offices were closed or suffered curtailed hours does not mean that there is no need for a DMV office in these counties. According to ALEA statistics in 2014 (prior to the closures) the thirty-one closed

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DMV locations issued 3,149 drivers' licenses and over 5,000 learner's permits. Under the new reduced hours, these offices issued less than 1,000 drivers' licenses in 2016 and 2017.

Counties such as Choctaw, Sumter, Hale, Greene, Perry, Wilcox, Lowndes, Butler, Crenshaw, Macon, and Bullock are all poor (in fact some are some of the poorest counties in our nation), are all primarily black (some with black populations as high as 82%) and all lack a single full time DMV office. In the end, budget figures available on AL.gov show that closures of the thirty-one DMV offices saved the state an estimated \$200,000-300,000 out of a general budget that exceeded \$100 million. The amount of money saved was small, but the impact on marginal voters was large.

Why do DMV closures and offices with limited hours matter? The DMV, after all, is not the only source of acceptable voter identification, though it is the most common source in Alabama. Clerk's offices can issue such IDs, and to Secretary of State John Merrill's credit, he has created a mobile identification unit that will travel to potential voters to generate ID. These solutions, however, are not a panacea. Turning first to alternative ID locations such as clerk's offices. These offices, like DMV offices, are not open on weekends and are usually open eight hours during the day, with some taking breaks for lunch. For working men and women, dependent on a job and its paycheck, standing in line during work hours to acquire identification to vote creates a financial burden. For some in rural counties, such offices, like DMV offices are located at county seats which may be a great distance from the potential voter's home or work, creating an additional burden. This burden is compounded if the clerk's office keeps irregular and/or poorly posted hours of operation. For those with private transportation, traveling to an alternative identification location may be a lesser inconvenience; but for those without private transportation, they must depend on either someone else's willingness to transport them or near non-existent public transportation.

The mobile unit, while enjoying the benefit of being open on weekends, has made limited appearances. I take Secretary of State Merrill at his word that he is willing to take the mobile identification unit throughout the state, but logistically this solution has limited value if locations are poorly advertised, and it assumes that potential voters have equal transportation opportunities and available free time to access the mobile unit. In addition, as discussed below, the committee heard testimony that the same underlying documents required for DMV issued identification are required for the mobile identification unit. This means that even if the identification unit comes to the voter, the same impediments to acquiring the identification persists for marginal voters. Beyond this, the closures of DMV offices matter because, like the voter identification law itself, these closures send a strong message that it will be harder to qualify to vote in Alabama if you are poor and live in a rural county.

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DMV closures, however, are not the only challenge to those seeking necessary identification to vote. For those in rural areas, or those that lack housing security, acquiring the necessary proof of identity to obtain a driver's license or other form of acceptable identification poses additional challenges. While I applaud the state's effort to ensure that free identification is available, proof of identity is not free for those who must acquire it. For those born at home, or those who do not have ready access to a copy of their birth certificates, documentation of identity must be purchased from state agencies. Depending on where a person was born the costs of acquiring a birth certificate can range from \$50 to over \$100.

Proof of residency may prove equally challenging. Marginalized people often do not have common proof of residency such as a formal lease, a utility or cable bill, or deed to property. As will be discussed later, such proof of residency is required not only to acquire the identification necessary to vote but also to register to vote in the first place.

At the polling place, a voter must present his or her identification in order to vote. Despite the Secretary of State's effort to provide a clear list of acceptable identifications, voters in recent election reported confusion among poll workers over what constituted proper identification. Identifications such as passports, student identifications, Tribal identifications, and Military identifications all met with challenges including concerns that photos were outdated and addresses were not listed on the identification. While these objections to the identification are incorrect as a matter of law, they highlight yet another concern over an identification requirement.

A voter without proper identification who cannot be identified by election workers at the polling place must cast a provisional ballot. This provisional ballot will only be counted if the voter presents the proper ID to the Board of Registrars no later than 5:00 p.m. on the Friday following the election day. Again, those without transportation, time, access to an ID location, or the requisite supporting documents to support the ID, may find themselves disenfranchised, even if they are registered to vote, because they cannot produce ID at the polling place or within the time frame permitted following the election as required under Alabama's voter ID law.

In the end, the real lived experience of the poor, rural, and working people I have met in my state is that acquiring the ID required by the state to vote poses significant logistical challenges. That it is possible in theory does not mitigate that challenge. The law imagines a world in which all people have the ability and the means to acquire an ID. Yet for many in my state that world is not their reality. For these citizens, the voter ID law is an impediment as insurmountable as a sheriff in the doorway. The effect is the same. For residents on the margins in Alabama, voting is long and difficult journey.

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Weigh these challenges against the harm the voter identification law allegedly was implemented to prevent: individual voter fraud. Secretary of State Merrill acknowledged in his testimony that prior to the passage of the voter identification law there were no reported or investigated incidents of voter impersonation. This is consistent with Prof. Justin Levitt's testimony before the North Carolina State Advisory Committee, which shows that in fourteen years there have been thirty-one credible cases of voter fraud by impersonation out of more than 1 billion ballots cast during that period. As Director Kareem Crayton testified before the Alabama State Advisory Committee, such fraud is "infinitesimal." It is simply not the way elections are stolen.

There is little to no evidence that the state ID law keeps our elections safe from fraud. Instead the law serves create barriers for the most marginalized of Alabama's voters. To require an identification prior to voting is one way to ensure that only those with time and resources may vote in Alabama.

Voter Registration, Inactive Voter Lists, and Voter Purging

Similar concerns arise around inactive voter policies. Like all states, voters in Alabama must register to vote. In many ways, Alabama has done a good job of streamlining this process, offering multiple means and methods to register. This, however, does not diminish the complex nature of the registration process, which often results either in failed registration or in an inactive voter designation.

The primary access to registration is through the driver's license acquisition at the DMV. At the time the driver's license is issued, the elector is given a card to return to voter registrar's office via mail or in person. Once this card is submitted, the registrar's office must confirm the voter's listed residence through mailed card. If the first card is returned as undeliverable, a second is sent. If the second is returned, registration fails. Voters may also register in person at the Board of Registrar's office (though registration must still be confirmed through mailing process). While this confirmation of registration depends on having an address to receive mail, it is worthwhile to note that Alabama voting law does not require a person remain at a particular address. The only residency requirements require the voter to: 1. Live in the state and 2. Vote in the precinct in which he/she lives. Despite this, the registration confirmation process has added an additional residency requirement that favors sufficiently permanent residency to receive the registrar's mail. Given that this process of confirmation of residency continues well after initial confirmation, as discussed below, this residency requirement contemplates a more permanent address than a cursory examination of the regulation might suggest.

Like the voter identification law, this multi-step process of registration—though facially neutral—creates barriers for marginalized populations in Alabama. Those with housing

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insecurity may lack the ability to receive mail at a designated address. Even though the individual may have properly registered, if they do not retain a single residency or leave their residency for prolonged periods for work, the registration confirmation cards may be returned as undeliverable.

The 2018 mid-term election revealed additional problems with the registration process. Those who attempted to register in person at the Board of Registrar's Office were told they were required to bring additional documentation not actually required by the state to register. For example, a group of Latinx voters were told at one Registrar's Office that they must provide proof of U.S. citizenship. While Secretary of State John Merrill was responsive to this problem when alerted to it, how often do such irregularities occur without coming to official notice? How often are people disenfranchised over confusion about registration processes – confusion created by the very offices charged with the registration of voters.

The 2018 mid-term elections also witnessed a statewide computer failure at DMV offices. This failure was brief – approximately 45 minutes – but it occurred during the last week to register to vote, and during the period of the failure the DMV was unable to produce any documents or identifications. Again, for those with limited time and resources, such a failure – even a very brief one like this – may create a barrier to gaining the materials necessary to register. The fact that alternative locations might exist that could provide identification or registration forms may offer little comfort to those unable to travel to alternative locations.

Secretary of State John Merrill has acknowledged the challenges to initial registration, and has created a registration application that allows voters to register through the app. This tool may be of limited utility for rural and poor voters. First, the app requires internet access – a challenge I have witnessed firsthand in some rural counties. Second, it requires access to a smartphone and/or possibly a computer (it remains unclear whether the app functions on computers or only on smartphones and tablets). This level of technology is not always accessible for marginalized citizens. Beyond this, lingering questions remain regarding the app. The Secretary of State's office did not respond to the State Advisory Committee's inquiries regarding the app's platform, how it processes information, who has access to this information (such as a law enforcement agency), whether the app engages in data collection, and whether or not it can be used on any smartphone or other equivalent technology. Finally, the app may only be used if a person has already acquired the requisite identification. This means that, for those with difficulties obtaining identification required to vote, the registration app will provide no assistance.

Assuming the voter is able to register, staying registered as an active voter is another story. Inactive voter policies may negate many of the advances made in the area of registration. Inactive voters are designated on separate voting lists and must update their voter registration

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record before being permitted to vote. (§17-4-9) Such update forms are available at the polling place, as per Alabama Administrative Rule 820-2.2-.13(2). If the voter completes the update form, he or she may vote and may not be required to vote a provisional ballot.

If the person's name is not on the list of registered voters, either as a registered voter or as an inactive voter, he/she must provide proof of registration, i.e. a certificate from the board of registrars. (§17-10-3). As per the Alabama Election Handbook, "the certificate issued to voters when they originally register is not collected when people change their residence or otherwise become ineligible, so it is good practice to check with board of registrars or the judge of probate if a person presents an old certificate. It is recommended that the certificate be taken up and kept with the list of registered voters so that it cannot be used twice in a single election and so that it will be available in the event of a contest." (Alabama Election Handbook, Eighteenth Edition, 2017-2018, at 137). Once acceptable proof is presented, the person may be added to the list of registered voters and should be allowed to vote.

Any qualified voter residing in the precinct or voting district who cannot provide proof of registration may vote a provisional ballot if their name is not on the official list. In order for the provisional ballot to be counted, the voter must present proof to the Board of Registrars no later than 5:00 p.m. on the Friday following election day that he/she is an eligible voter in the precinct in question. If the voter has not voted in the proper precinct, the provisional ballot will not be counted.

A voter may be removed from polling lists for three reasons under §§ 17-4-3 and 4: disqualification; continuous purging; and when the voter has failed to provide address verification. Disqualification occurs when the voter has died, is mentally incompetent, or has been convicted for a disqualifying offense, or when the Board of Registrars has received at least one of two types of written notification that the registrant has moved outside the jurisdiction.

A voter who has been convicted of a disqualifying offense may be restored under felon restoration procedures described later. These present significant challenges which will also be discussed later.

The mental incompetence provision creates additional challenges, as misinformation seems to plague both election officials, judicial officials, and the disability community in Alabama. Reports of voters with developmental delays being told by election officials, often at the polling place, that they cannot vote because of mental incompetence are common. Likewise, a communal belief persists that those with subnormal or low IQ or who have been given accommodations under individual education plans for developmental delay are not eligible to vote under the mental incompetence provision. This belief, while not necessarily promulgated by the state, is also not disputed explicitly by the state and likely effects voter registration.

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Finally, judges considering guardianship applications for adults with developmental delays and low IQ frequently include a rote finding of mental incompetency that precludes voter registration. This finding is often made without any evidentiary record to support its use or without specific consideration of the long-term effect of the finding on voter eligibility.

Finally, evidence that a voter has left the jurisdiction is developed through address verification procedures. Voters are mailed non-forwardable postcards to verify address (§17-4-30(a)). Successful delivery of the postcard to registrant within 90 days from mailing indicates a valid address on file for the registrant and no other change needs to be made (§17-4-30(b)). Registration and/or verification of address is then complete and the voter remains on the voting rolls as an active voter. If, however, the postcard is returned as undeliverable a second forwardable notice is sent. This provides notice of the need to update the voter's registration information and provides a postage-paid confirmation card (§17-4-30 (c)). If the second forwardable address confirmation card is returned as undeliverable, or if the voter does not return the address confirmation card within 90 days of the second mailout, the registrant's name is placed on the inactive list and in a suspended file. If a voter whose name is in the suspended file does not vote in an election conducted during the next two federal election cycles or does not provide updated information of his or her address, his or her name is purged from the voter rolls.

If a voter whose name appears on the inactive list appears on election day, he/she must be allowed to reidentify and vote a regular ballot. (§17-4-9). Reidentification procedures are set by the Secretary of State and pre-date the *Shelby County* decision, i.e. they were pre-cleared by the Department of Justice. (§§17-4-9, 17-1-2(5) and 17-9-15). Official lists of qualified voters in a county are then compiled and furnished to the election manager by the judge of probate at least 55 days before the election and in the case of municipal elections at least 35 days prior to the election (§17-11-5(b)).

In addition to the concerns surrounding these purging processes discussed above and later, the process of updating and address verification raises concern for their effect on marginalized populations. Updated forms take time to complete. Working voters often appear at polling places during limited windows – statistics suggest prior to work, lunchtimes, and after work time slots are more commonly used in Alabama. For workers casting ballots during these times, polling places are often crowded and the process of voting is time-consuming. Filling out an update form takes additional time a voter may or may not be able to sacrifice. Simply put, a voter may have to choose between completing the required form and getting to work on time or picking up a child or caring for a family member. Such a voter may cast a provisional ballot, but in order to have that ballot counted, he or she will have to provide the required documentation prior to 5:00 p.m. on the Friday following the election. For working men and

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women without flexible work schedules, caregivers, or those without ready access to transportation this may be an insurmountable burden. Address verification raises its own set of concerns. Voting regulations in Alabama permit voting if a voter maintains residency in a precinct even if they have moved from the original address of registration. A voter therefore could have moved, still be eligible to vote within a precinct, but not have received direct mailings to confirm residence or have voted in last two federal election cycles (statistically some elections simply do not draw large voting populations). In short, despite their compliance with Alabama's voting requirements, their lack of address confirmation will render them inactive and eventually purged from election rolls. Such a method also assumes that a voter, even one that remains at a particular address, may receive mail and be able to return a card in a designated time – a requirement not indicated in any Alabama statute as a requisite to vote. Those with housing insecurity are most likely to face this dilemma. The fact that they may undergo procedures to reinstate their voting status does not mitigate the effect of such regulations or lessen the persistent message that voting is easier for some populations than others.

In addition, voters often do not realize they have been purged and polling officials do not appear to always understand regulations that permit a vote as opposed to a provisional ballot. This potentially creates confusion when a voter is told he or she is not on the rolls, as well as frustration when the voter is told he or she may not vote or must vote provisionally. Further confusion seems to persist among members of the public about what happens to provisional ballots and when they are counted and when they are not. Lack of information about this process and conflicting recitations of how this process works creates not only confusion but a sense that voter purging methods are designed to disenfranchise. Even if this is not the case, the perception is significant as it erodes faith in the democratic and electoral process.

Construction of voter rolls themselves presents a problem in our state. Under Alabama law, the deadline to register to vote is 14 days prior to elections, but official lists of voters are furnished well in advance of this deadline (55 or 35 days depending on the election). These different time frames – between registration deadlines and the issuance of voter rolls -- creates confusion at polling places and has the potential either to force some voters to cast provisional ballots who should not have to or to cause some voters not to vote at all – in short, a type of de facto purging. I have yet to be able to track down an explanation of why these timeframes are not coordinated.

In sum, voter registration methods and inactive voter and purged voter lists present potential barriers to marginalized voters in our state.

Felon disenfranchisement

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Finally, felon disenfranchisement in Alabama raises major concerns – particularly given the disparate impact of the criminal justice system on the poor and people of color. The 1901 Alabama Constitution permits disenfranchisement of those convicted of felonies of moral turpitude. In 2016, in response in part to unequal enforcement of this constitutional provision across counties, Alabama amended its statute so that only designated crimes of moral turpitude produce disenfranchisement. (Definition of Moral Turpitude Act, 2017). Despite this standardization (and limitation) of disenfranchising crimes, studies suggest 286,266 people or 7.62 percent of the state’s voting age population are disenfranchised.

Those convicted of offenses not listed in the Definition of Moral Turpitude Act, or those adjudicated guilty under Alabama’s Youthful Offender procedure, have not lost their right to vote. People who have not been disenfranchised who are incarcerated may register to vote under Alabama’s law and request an absentee ballot to vote by mail. Absentee ballots must be separately requested for each eligible voter and for each election.

Those convicted of disqualifying crimes may apply to the Board of Pardons and Paroles for restoration of their voting rights or a Certification of Restoration of Eligibility to Vote (CERV) provided they have no pending felony charges, they have paid all fines, court ordered costs, fees and restitution ordered at the time of sentencing on disqualifying cases in full, their sentence is complete, and they have successfully completed probation or parole. These requirements create significant impediments to voting.

First, while the lists of such offenses are available (an admitted improvement over the county-by-county determination of what counted as moral turpitude that preceded the 2017 law), it is clear that confusion and inconsistencies around the process of restoration persists. The state’s failure to widely publicize or offer education around designated crimes or the restoration process have furthered such confusion. During his testimony, Secretary of State Merrill noted that he did not assist, provide applications, or even publicize the process of restoration (known as a CERV). This seems to be a true missed opportunity for a Secretary of State that self-identifies a mission of registering all eligible voters. Instead, Secretary of State Merrill’s office takes the position that the CERV process is governed entirely by the Board of Pardons and Paroles and is distinct from eligible voter registration. While this is accurate, it also seems to be a distinction without a difference.

To further complicate matters, the Board of Pardons and Paroles often denies CERV’s to eligible voters or fails to make re-enfranchisement applications available at the time of either conviction, sentencing, or release. Potential voters have reported challenges in acquiring such applications. Further, because the statute on restoration requires payment of all fines and fees attached to the original sentence of the disqualifying case, individuals must pay any collection

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fee attached to such fines and fees in order to clear the original debt. This collection fee, which attaches when the debt is 90 days old and has been referred to the district attorney's office for non-payment, is 30% of the original debt. For an individual ordered to pay \$1000 in fines, for example, the addition of the collection fee renders the total debt due \$1300. In addition, efforts to contact different counties regarding how the collection fee is calculated – a one-time fee, annually, or in some other method – produced inconsistent results.

To further complicate matters, while the payment of the collection fee itself is not required to be CERV eligible (only fines, court ordered costs, fees and restitution ordered at the time of sentencing on disqualifying cases must be paid in full), under Attorney General Opinion 2011-049 issued March 30, 2011, the collection fee may be collected first prior to the collection of any underlying debt. The result is that the collection fee must be paid in order for the fines, court ordered costs, fees and restitution ordered at the time of sentencing on disqualifying cases to be paid. The individual who owes \$1000 plus the \$300 collection fee will therefore have to pay the full \$1300 before he or she may apply for CERV. Thus, while Secretary of State Merrill has indicated that payment of the collection fee is not required to obtain CERV, one cannot in fact pay the required fees, costs, and fines, without first paying off the collection fee. The purported distinction between payment of this additional collection fee and payment of the original fines and fees is therefore a distinction without a difference and serves to only compound confusion and restrict access to the ballot.

The imposition of this extraordinarily high collection fee (in other contexts a 30% state-imposed interest rate would seem unconscionable) and the requirement that it be paid first, as opposed to last or on a pro rata basis, not only seems to defeat whatever purpose such court imposed fines and fees might serve, but also disproportionately disadvantages the poor who lack the resources to pay the imposed debt prior to the 90-day deadline. The criminal justice scholar in me would also be remiss if I did not note that such fines and fees are often set, mandatory amounts, unconnected in any way to the facts of the case or the harms the defendant inflicted with his or her crime. To link other rights to them therefore seems to serve little purpose but to ensure that those without economic resources remain ineligible to vote.

Polling Closures

Testimony received at the February 22, 2018, hearing also revealed that the closing of polling places and confusion regarding new polling locations persists in Alabama. Again to Secretary of State Merrill's credit, up-to-date polling location information is available through the Secretary of State's website. The existence of such information permits voters to learn of polling place closures quickly and efficiently. Concerns persist that those without access to the internet may have difficulty accessing information about closures in a timely fashion, particularly when such closures occur for the first time or with short notice.

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In addition, any notice regarding closure will not mitigate the devastating effect of polling place closures among marginalized communities. Alabama §§17-6-3 and 17-6-4 requires the county commission to select at least one polling place for each precinct. “In an effort to reduce costs for elections some counties have moved to voting centers. Voting centers combine voters from two or more precincts and allow them to vote in a centralized location.” (Alabama Election Handbook, Eighteenth Edition 2017-2018, at 240)

The decision to create voting centers, in the process closing neighborhood polling places in predominantly low-income locations and in black belt and rural areas where public transport is scarce, has created logistical challenges for voters in Alabama. Testimony from the Secretary of State, Mr. Parks, and representatives from the NAACP, ACLU, and the Equal Justice Initiative (EJI) highlight how contested the effect of such closures are on voting populations. At a minimum, the state should conduct a study to determine the effect. Our state should not accept that a promise of notice of a polling place closure will somehow render all who might seek to vote either aware of the closure or able to travel to a new location. Again, for those with limited time, resources, and transportation access, such changes may result in choosing between life necessities and casting a ballot.

Voting in the Wrong Polling Place

Under Alabama’s voting regulations, if a person not listed on the voter rolls at a precinct seeks to vote he or she may cast a provisional ballot. If, however, this provisional ballot is cast in the wrong polling place or precinct then it may not be counted. Ideally, if the person is at the wrong precinct, he or she should be directed to the correct polling place. The voter must then travel to the new polling place and seek to cast a ballot within the provided poll hours. This ideal system, however, depends on members of the Board of Registrars offices actually being able to speak to poll officials to confirm where the voter should vote and/or the voter being able to travel to a new location to vote. This may be challenging during peak voting hours or if the voter has limited time, resources, or access to transportation. It is not clear that such communication is always occurring. Reports from the 2018 mid-term elections suggested that poll officials were not always able to determine where a voter should cast a ballot. As a result, some voters were given provisional ballots despite the fact that they in fact were voting in the wrong precinct. A voter’s failure to appear at the correct precinct may be attributable to a variety of factors – poll location change, voter error or misinformation – but a failure to provide the voter with the correct information about the appropriate location to vote is problematic and attributable entirely to the state.

Poll Hours

Jenny E. Carroll
 Submitted Testimony
 Subcommittee on Elections Field Hearing
 Birmingham, AL
 May 10, 2019

Under Alabama §§17-9-6 and 11-46-28(a), polls in state and county elections must remain open between the hours of 7 a.m. and 7 p.m. Anyone within the polling place at the closing time who has not had an opportunity to vote must be permitted to do so. (§17-12-1). If, however, a voter leaves the line to vote, he or she may not return after the polls have closed to cast a ballot. (§17-12-1). He or she must remain in line to vote. A federal or state court order may extend polling times beyond 7 p.m., but anyone who votes during the extended period must cast a provisional ballot under §17-10-2(4).

At first glance a twelve-hour voting window appears to accommodate those who work or have caregiver obligations, but this first impression is deceiving. Given increasingly long commute times and irregular work hours, a 7-7 polling window effectively places voting within working and child care hours. Given that peak voting times (mornings and evenings after 5:00 p.m.) coincide with work and familial obligations and that Alabama provides no “state holiday” for voting, long lines at polling places may discourage or prevent some voters from ultimately casting a ballot. This problem is exacerbated by the closure and combining of polling places, which have increased the voting population at particular locations.

Absentee Balloting

Alabama permits limited absentee balloting. (§17-11-3) A voter who will be out of country or state, has physical illness or infirmity which prevents attendance, works a 10 hour shift that coincides with polling hours, is an enrolled student outside of the county of personal residence, is a member of the armed forces or spouse or dependent of such a member, is an election official or poll worker, or is a jailed but not convicted person may vote under Alabama’s absentee ballot provisions. To do so, the voter must apply for an absentee ballot at least 5 days prior to election. The voter may apply by handwritten application, but all applications must contain sufficient information to identify the applicant as a registered voter. Each voter’s application must be separate and a voter must apply for each election he or she seeks to vote absentee in. A voter may receive an emergency absentee ballot upon proof of emergency treatment by a licensed physician within the five-day deadline for absentee ballots. (§17-11-3). If the voter is summoned out of the county on an unforeseen business trip, he or she may apply for an emergency absentee ballot any time before the close of business the day before the election, but must sign an affidavit swearing that the voter was unaware of the trip prior to the five-day deadline. (§17-11-3(d)) Any voter casting an absentee ballot must provide a copy of their identification with the absentee ballot. (§17-11-3). Military absentee ballots are covered by the Uniformed and Overseas Citizens Absentee Voting Act and the Military and Overseas Voter Empowerment Act, under which the voter must send an application for a local absentee ballot at least 30 days prior to election. Voters under the act are not required to produce identification prior to voting. (§§17-9-20(d) and 17-17-28).

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While Alabama does offer absentee ballot provisions as described above, the state does not offer “no excuse” absentee balloting. Voters who face the logistical challenges to voting at particular locations or during particular hours may not qualify under the articulated categories for absentee ballots. Further, the requirement to provide copy of identification imposes complication and costs on voters, particularly on those without access to copying machines. Finally, despite the fact that the voter is not obligated to remain at a single address but is eligible to vote if residing in precinct, if a voter requests an absentee ballot with a different address than that on the voter list, the ballot is mailed to the address shown on the voter list as per Attorney General Opinions s2000-156 and 2000-193. This policy increases the probability that the voter may not receive the requested absentee ballot.

Absentee ballots offer an opportunity for those unable to attend traditional voting poll places to vote. Such ballots serve to ensure efficient vote calculation (they can be counted early) and reduce congestion at polling places. Finally, absentee ballots can be a cost-efficient mechanism for the state to conduct elections. Some jurisdictions, recognizing this fact, permit no excuse absentee balloting or conduct mail-in elections in which any citizen can mail a ballot. Despite these benefits Alabama has opted to take a restrictive stance on absentee balloting. And once again, those most affected by this decision are likely to be those with the fewest resources in our community.

Conclusion

In sum, I have tried to offer a brief snapshot of regulation in Alabama. The picture that emerges concerns me not because I believe the laws and procedures I have described here rise to the level of intimidation and hostility of past episodes in my state or because I believe that such regulations carry in their body an intent to discriminate against poor and minority populations, but because I believe that effect of these regulations, whatever their intent or aim, is the same. Simply put, the road to the ballot box is harder and longer for the poor and minority populations of Alabama. And so the same men and women who have the least in my state often lose one more right – their right to vote and hold their government accountable to them.

This, frankly, baffles me. Voting is not only a critical component to our democracy, but it is a fundamental right. I appreciate efforts to ensure voter integrity, but such efforts must not and cannot come at the cost of impeding this fundamental right for the most vulnerable among us. Restrictions on voting access must be linked to legitimate government concerns and not phantom concerns of voter fraud. Voter identification requirements, registration verification processes, restrictive absentee balloting, and limited polling locations and hours all serve to hinder voter access and exclude eligible voters. Requirements of payment of significant collection fees and lack of reliable information about restoration exclude still others. The

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pervasive confusion over everything from the hours (or even existence) of DMV offices in rural areas to provisional ballot or CERV procedures and beyond all create a climate in which voters may be excluded from realizing their right to vote and may view the process as fundamentally stacked against them. The fact that I spent literally weeks trying to track down and wade through complex policies and multiple individuals before I could find answers (often unsuccessfully) to the most basic questions suggests to me that the process is extraordinarily difficult to navigate. I am therefore not surprised when I speak to members of my community who report the challenges they faced in trying to figure out how to register to vote or how to cast their ballot. I find this to be frustrating, saddening and inexplicable.

To be clear, the officials in Alabama have been cooperative and responsive to my inquiries, but often they simply tell me they do not know how to answer my questions. I have been told, as I suspect others have, to bring voters affected by the policies described in this testimony to these officials before they will question the validity or impact of the policies. Sometimes that is possible, but sometimes it is, to paraphrase the physicist Carl Sagan, like opening my door, waiting for a lobster to appear, and when none appears concluding there are no lobsters in the world. The onus should not be on the citizen to prove that the process rendered him or her unable or unwilling to register or to vote. The onus should be on the state to show that those we trust with the most sacred obligation to run our government in our names have taken every step to ensure that our right to vote is preserved and maintained.

Alabama is a proud state. Even as I summarize this information to you, I think of the men and women I have met and come to know in my home. When I think of these voting regulations, I do not think of abstract voting theory or spectral concerns of fraud or illusory differences between a fine and its interest. I think of their faces, their stories, and their lives, and I know we can and must do more.

Chairwoman FUDGE. Thank you all.

We are going to start our questioning.

I would just say that, last week, the Secretary of State of Alabama came before our Committee, and he said everything was wonderful here.

I would now yield 5 minutes to Mr. Butterfield.

Mr. BUTTERFIELD. Thank you very much, Madam Chairwoman.

Let me just, since it is the most recent thing on my minority, Ms. Carroll, let me get back to you, if I can, very quickly. Are you saying that, in order for a convicted felon to register to vote, they must completely satisfy their monetary obligation to the court? Is that right?

Ms. CARROLL. That is correct. And they not only have to satisfy their monetary obligations—and, again, these are only for felonies that fall within the disqualified felony category—

Mr. BUTTERFIELD. Such as?

Ms. CARROLL. There is a long list. I am happy to provide it in a supplement.

Mr. BUTTERFIELD. Drugs? Property crimes?

Ms. CARROLL. Distribution of drugs; some property crimes, not all; crimes of sexual assault; some additional crimes involving personal injury—

Mr. BUTTERFIELD. If you sell cocaine, you go to prison for four years. You get out of prison. You are a convicted felon. The court ordered you to pay restitution, costs, fines, and all of that. In order to register to vote, they served their four years, plus they have to pay this money in order to register to vote.

Ms. CARROLL. Yes. And keep in mind—and I want to make this really clear—that not only do you have to pay those fines and fees, but during the time you are incarcerated, once that 90-day period elapsed, regardless of whether or not you are incarcerated, a 30-percent fee is tacked on to that.

So you not only have to pay whatever those fines and fees are that have been ordered by the court, you also have to pay that 30-percent collection fee. And this is where it gets really challenging for poor people in—

Mr. BUTTERFIELD. Do you have any data that shows whether this disproportionately affects African Americans?

Ms. CARROLL. I can certainly look up data for that for you, sir, but I will tell you that—

Mr. BUTTERFIELD. If you could get that to this Subcommittee—

Ms. CARROLL. Okay.

Mr. BUTTERFIELD [continuing]. It would be very helpful. Yes.

Ms. CARROLL. Well, and keep in mind, the 30-percent fee has to be paid before you can attack any of the debt too. So, in terms of what can people expect their money to go towards, it goes to that collection fee first.

Mr. BUTTERFIELD. Talk to me about voter purging in Alabama. And then I am going to get to you, Mr. Blacksher, and if I have time, I will get over to Mr. Montgomery.

Talk to me about voter purging. We have heard about this in other States. Is that an ongoing problem in Alabama?

Ms. CARROLL. It is. As I indicated in my written testimony, as well as we heard testimony at the February 22nd hearing, it is an ongoing problem.

There are two aspects to it. There is purging from the rolls. There is also designation as an inactive voter. If you have been designated as an inactive voter, you aren't purged, but you have to complete additional paperwork before you can cast a ballot even though you are entitled to vote—

Mr. BUTTERFIELD. I don't understand the public interest in purging an inactive voter. An inactive voter has the constitutional right not to vote as well as she does to vote. I don't—if they are present in the community. Yes.

Ms. CARROLL. And I think that gets to the point that the default is not enfranchisement. The default is that you have to prove that you are eligible and deserve to vote. And that is taking away a right that is fundamentally the right of the citizen.

Mr. BUTTERFIELD. Mr. Blacksher, let me get over to you, if I can. Thank you for all the work that you have done in the voting rights space. As I said, in my younger days, I also did the work that you are doing. In fact, Lani Guinier and I were co-counsel on many cases in North Carolina, and I have such fond memories of her, and I am sure you do as well.

What is the average cost of Section 2 litigation?

Let me build upon that just a little bit. Let me start with a small case. Let's say that the Board of Elections moves three polling place locations out of the African American community into another community that is not considered to be a voter-friendly community—let's put it that way—and the African American community feels that this move is discriminatory. There is no Section 5 preclearance that would give DOJ an opportunity to take a look at it before its done. So it seems to me that the only remedy is either to accept it or to litigate under Section 2.

How much would litigation cost a private plaintiff? Let's say if 10 people in this audience lived in Precinct 23 and they wanted to challenge the moving of their polling location, how much would it cost them to litigate in Federal court, on average? Over a million dollars?

Mr. BLACKSHER. Well, when it came to polling place changes, it would certainly cost at least hundreds of thousands of dollars, if it was successful.

And let me just say, Representative Butterfield, that back in 1982 I testified before a House committee regarding the Voting Rights Act and pointed out how expensive it was in the Mobile case to have to go back and prove intentional discrimination in order to get relief. That was one of the reasons Section 2 was amended to provide a result standing—

Mr. BUTTERFIELD. I was in the audience. Senator Hatch and Senator Kennedy were front and center that day.

Mr. BLACKSHER. That is correct.

Mr. BUTTERFIELD. Let me finally ask you this. Let's take a bigger case. Let's say you take a Census here in 2020, right, and you are going to redraw the lines. Terri, in 2021, your district is going to be reconstructed. Let's say the African American community is dissatisfied with the way that—what is your district number?

Ms. SEWELL. Seven.

Mr. BUTTERFIELD [continuing]. District 7 is reconfigured, and some private citizens want to litigate a redistricting case under section 2. Wouldn't that cost millions of dollars?

Mr. BLACKSHER. Well, it certainly cost us millions of dollars in the last go-around of redistricting the house and senate of Alabama.

Mr. BUTTERFIELD. But, by contrast, if we had section 5, wouldn't the burden just be on the State to present this map to the Department of Justice for a preclearance?

Mr. BLACKSHER. Well, in fact, today, it is impossible for private counsel like me to bring one of these lawsuits without substantial assistance, financial and legal, from big law firms.

I mean, I have four cases going on right now where I am local counsel for the NAACP Legal Defense Fund, who is challenging photo ID; for the Campaign Legal Center, who is challenging the felon disenfranchisement; for the Lawyers' Committee for Civil Rights, who is challenging the at-large election of the Alabama Supreme Court; and the SEIU, Service Employees International Union, is challenging the minimum wage preemption standard—those organizations are needed to bring the resources just to get the case started.

Mr. BUTTERFIELD. I needed that in the record. Thank you very much. I yield back.

Ms. FUDGE. Thank you.

Ms. Sewell, you are recognized for five minutes.

Ms. SEWELL. For the record, I just want to ask some questions just to make sure that the record accurately reflects what is going on in Alabama. And a lot has been said and not said, and you did provide a lot of materials written, but I think that it is important for us to state the current status of voting rights in Alabama.

Are there any African American elected officials, statewide elected officials, in the State of Alabama?

Mr. Blacksher, yes or no?

Mr. BLACKSHER. There have only been two in the history of Alabama, Oscar Adams and Ralph Cook.

Ms. SEWELL. Secondly, Ms. Carroll, you said that Alabama's current State legislature, predominantly dominated by one party, the one-party system, has not fared well for the poor and for vulnerable communities. That is what you testified to.

Can you elaborate a little bit about that in the space particularly about voter IDs? Can you talk a little bit about the most popular form of ID, which is the DMV's, and what happened in October of 2017?

Ms. CARROLL. Sure. In October 2017, Governor Bentley made a decision—Republican Governor Bentley—and that is the one party that controls politics in the State of Alabama—at the statewide level, made a decision to close a series of DMVs, 31 offices, in predominantly black and poor counties throughout our State.

As I indicated in the written testimony I provided, ALEA, the Alabama Law Enforcement Association, and DOT, the Department of Transportation, conducted a study and concluded that that was going to disparately impact citizens who were predominantly poor, as you noted, and predominantly black.

Ms. SEWELL. And so what happened to that? Were full hours of operation reinstated, or what is the current state?

Ms. CARROLL. No, in fact, they were not. Not only were they not reinstated, but I, myself, found it very difficult to locate exactly what times offices were open in Wilcox County and in other counties that are predominantly African American.

Now, you contrast that with predominantly white counties, like Jefferson County or Shelby County, they have three DMV offices that are open 8 days a week—or, I am sorry, eight hours a day—

Ms. SEWELL. Eight hours a day.

Ms. CARROLL [continuing]. Five days a week. Feels like eight days a week sometimes.

Ms. SEWELL. Yeah.

Ms. CARROLL. Bottom line is, you are much more likely to be able to go to a DMV office, the most common source of these IDs, according to Secretary of State Merrill, and get an ID if you live in one of these much more affluent, white-populated counties.

Ms. SEWELL. Okay.

So more restrictive photo ID laws, would you say yes or no, in the State of Alabama?

Ms. CARROLL. Yes. We have among the most restrictive of any State.

Ms. SEWELL. Talk to me about transportation. Is it easy to get to polling locations, to get to these voter ID—I mean the voter registrar offices where you can get your photo ID?

Ms. CARROLL. Not at all. Not only is it difficult to ascertain information about when they are open, what their locations are, but there is a lack of public transportation in Alabama, particularly in rural areas. And I say this as someone who grew up in rural south Texas, where you all just visited, down by Brownsville. It is hard to travel if you do not have access to transportation.

And I have heard from voters who tell me that they waited, they were unable to get rides, or they were able to procure a ride and once they got there the DMV office was either closed or the line was so long they could not get their identification.

Ms. SEWELL. Okay.

Can you also talk to me a little bit about what has been happening in the State of Alabama since *Shelby v. Holder*?

One of the big things that was said in the dissent, it was that—well, let's talk about the majority. The majority opinion by Chief Justice Roberts said that States like Alabama were being penalized for what happened in the 1960s and the 1970s.

So we have to produce a modern-day record of what is going on right now. Have there been any States or counties in Alabama that have been opted in to having to be precleared, particularly Conecuh County? Can you talk a little bit about that?

Mr. BLACKSHER. Conecuh—

Ms. SEWELL. Mr.—yes?

Mr. BLACKSHER. Conecuh County, as far as I know, is the only—well, it is not Conecuh County. It was the city of Evergreen in Conecuh County who, as part of a settlement disclosure, was bailed in for what we call pocket preclearance.

Ms. SEWELL. So they currently have to be precleared. So even though we gutted—*Shelby v. Holder* gutted, there is a city in Ala-

bama, Evergreen, Alabama, that must have every voting law that happens precleared.

Mr. BLACKSHER. Yeah. And we can thank Jerome Gray for that. That is his hometown. And but for Jerome Gray——

Ms. SEWELL. I have a few minutes.

Mr. BLACKSHER. Yeah.

Ms. SEWELL. Okay. I just want to say in closing, can you give me one sentence that just sums up what the state of play is in the State of Alabama and what you, if you were sitting where we are, would do about it?

Ms. CARROLL. Well, it is going to have to be two sentences.

Ms. SEWELL. Okay, two sentences.

Ms. CARROLL. So, first of all, if you are poor, if you are a person of color in the State of Alabama, it is a longer, harder road to the ballot box.

Ms. SEWELL. Even today?

Ms. CARROLL. Even today. And, I would say, increasingly so.

We have an attorney general's office that is consistently handing down opinions that makes it more difficult for people to exercise their right to vote.

We are seeing budget cuts at the State level which makes it not only difficult to travel, in terms of transport, it makes it more costly to get the documentation necessary for ID, and it means that these DMV offices are going to continue to be closed during hours where working folks may be able to——

Ms. SEWELL. What do we need to do?

Ms. CARROLL. What do we need to do? We need a comprehensive Federal law that will deal with this.

Ms. SEWELL. Federal oversight?

Ms. CARROLL. Yes.

Ms. SEWELL. Thank you.

Chairwoman FUDGE. Thank you.

I am going to prepare to close this panel, but I just have one question, Mr. Montgomery. Do you think things are better or worse today than before Shelby?

Mr. MONTGOMERY. I think they are possibly—probably worse since that time. I mean, I don't see much of that just, say, in the Calera and Shelby County area that I know of. Around the State, I have learned a more—it has been a little bit more challenging in other places. Maybe because the spotlight is still on Shelby County, maybe because everybody is watching Shelby County to see what happens.

But, again, the preclearance section is definitely, definitely the way to go.

Chairwoman FUDGE. Well, it is like my granny would say: The more things change, the more they stay the same.

And what I am hearing from you today—even, Ms. Carroll, you were saying that the days of having a sheriff at the door are gone. No, they are not gone. When we were in Brownsville, Texas, they were telling us about having a polling place that was in a police station. Those days are not gone.

We talk about felon disenfranchisement. When we were in Florida last week, the State of Florida last year voted by almost 65 percent to reinstate full voting rights to all felons who had served

their time. Self-executing. But the legislature, last week, said they had to pay all their fees and fines or they could not vote. So they put a poll tax on these people that was not a part of the original amendment that passed by 65 percent of the voters.

The more things change, the more they stay the same.

I can only say to you that, at some point, people of goodwill have to say something. People who are left out need to vote just out of spite so that these people will stop treating you the way that they do. Because it is not going to stop until we do something about it.

I am going to close this panel and just say to you all, keep up what you are doing. The fight is worth fighting. And there are so many people who feel left out, who don't feel they have a voice, but your vote is your voice. That is the only time in this country that every single one of us is equal, is on election day.

So I thank all so very, very much for being here. I thank you for your testimony.

And know that we are going to continue to try to pull together the data that the Supreme Court has said that we need to pull together. Chief Justice Roberts did not deny that there was still discrimination in this country. What he said was that, I can't continue to punish States like Alabama, because, you know, you have old data, and maybe they should not be under preclearance.

Chief Justice Roberts, if you are listening, they should always be under preclearance.

I thank this panel. We will bring our new panel, our second panel up. Thank you all so very, very much.

[Recess.]

Chairwoman FUDGE. Thank goodness we have so many people here. There are too many people here. So if you would take your seats.

But all the staff, whether they be our staff, city staff, et cetera, they are going to put you in a holding room where you can watch. So if you could help us do that, then the fire marshal wouldn't have to do it for us. So thank you so much.

Okay. Our second panel: Nancy Abudu, Deputy Legal Director of voting rights, Southern Poverty Law Center. Ms. Abudu leads a team of legal and technical experts dedicated to ensuring the voting rights of minority communities and other politically vulnerable populations primarily in the deep South.

Isabel Rubio, Executive Director, Hispanic Interest Coalition of Alabama. HICA is a community development and advocacy organization that champions economic equality, civic engagement, and social justice for Latino families in Alabama.

Mr. Simelton, Sr., President, Alabama State Conference of the NAACP. Mr. Simelton—

Ms. SEWELL. Simelton.

Ms. FUDGE [continuing]. Simelton is a life member of the NAACP and has served as President of the Alabama State Conference of the NAACP since 2009. The Alabama NAACP is the oldest and one of the most significant civil rights organizations in Alabama.

And last but not least, Mr. Douglas, Executive Director of Greater Birmingham Ministries. Greater Birmingham Ministries was founded in 1969 in response to urgent human rights and justice

needs of residents of greater Birmingham. The central goal of GBM is the pursuit of social justice in the governance of Alabama.

Welcome to each of you.

Ms. Abudu, you are recognized for five minutes.

STATEMENTS OF NANCY ABUDU, DEPUTY LEGAL DIRECTOR OF VOTING RIGHTS, SOUTHERN POVERTY LAW CENTER; ISABEL RUBIO, EXECUTIVE DIRECTOR, HISPANIC INTEREST COALITION OF ALABAMA; BENARD SIMELTON, SR., PRESIDENT, ALABAMA STATE CONFERENCE OF THE NAACP; AND SCOTT DOUGLAS, EXECUTIVE DIRECTOR, GREATER BIRMINGHAM MINISTRIES

STATEMENT OF NANCY ABUDU

Ms. ABUDU. Thank you. Thank you, and good afternoon, Congresswoman Fudge and this esteemed panel.

I am so honored by this invitation to share with you the travesties that the Southern Poverty Law Center and our partners have witnessed with respect to the dismantling of the franchise in Alabama and the disparate impact that Alabama's voting laws have on racial minorities, low-income people, and those living in more rural areas.

SPLC did submit written testimony that provides more detail and citations to support the facts and figures we presented, but I remain more than happy to supplement that testimony based on the panel's inquiries today.

So, with my five minutes, however, I will present a condensed version of a few of the major voting rights issues that the SPLC staff has witnessed and investigated across the State and show how these problems are directly linked to the actions and inactions of State officials who see voting as a privilege to be earned rather than a fundamental right to safeguard.

As we all know, Alabama has long been ground zero in the fight for voting rights, and it remains so today, unfortunately. The infamous *Shelby County v. Holder* case, which gutted the preclearance provisions of the Voting Rights Act, originated just down the road in Shelby County, Alabama.

In the years since that devastating decision, Alabama lawmakers have enacted a bevy of laws that make it harder for citizens to access the ballot box while simultaneously declining to implement reforms like no-excuse absentee or early voting that are now commonplace across the Nation.

I am going to talk a little bit about voter turnout. Voter turnout in Alabama is regularly below the national average. In the 2018 midterm election, only 47.5 percent of eligible voters cast a ballot in Alabama despite historic turnout nationally.

Alabama's top election officials have plainly expressed their view that casting a ballot should be a challenge. In 2016, Alabama Secretary of State John Merrill told a documentary film crew, and I quote, "If you are too sorry or lazy to get up off your rear and to go register to vote, then you don't deserve that privilege. As long as I am Secretary of State of Alabama, you are going to have to show some initiative to become a registered voter in this State."

He also expressed hostility to early voting on multiple occasions, saying—and, again, I quote—“There is no future for early voting as long as I am Secretary of State.”

So this means that the man in charge of administering Alabama’s elections freely admits that he does not see voting as a fundamental right that he is charged with safeguarding but, instead, as a privilege reserved only for those with the time and resources to navigate the outdated and archaic system he continues to oversee.

You talked a little bit about photo ID laws. You are going to have an opportunity, of course, to hear from Mr. Simelton and Mr. Douglas. I am very honored that I had an opportunity to represent the NAACP years ago in the Shelby County case as intervenors and actually litigated or have been investigating issues in Alabama for about 15 years in terms of, again, the needs that remain here.

So we talked, again, about Alabama’s photo ID. This was a law that was enacted initially in 2011 but not enforced until after the Shelby County decision, most likely because the State knew that if it had to go through Section 5 preclearance it would be denied.

The NAACP and the ministries that Mr. Douglas represents filed a lawsuit challenging the law as discriminatory based on their estimate that over 100,000 people, registered voters in Alabama lacked the necessary ID. You are talking about almost 5 percent of the registered voters in the State who, simply because of this photo ID law, essentially are losing their right to vote.

One of the main State senators who worked for over a decade, as far as we can tell, to pass this voter ID law was also quoted in media outlets as saying that his photo ID law would undermine Alabama’s black power structure—that is a quote—and that the absence of a voter ID law—and, again, this is a quote—benefits black elected officials.

And as many of these legislators who voted in favor of the photo ID law knew full well, everyone does not have the same opportunity to obtain one of these photo IDs. As you mentioned in the earlier panel, the closures of the DMVs quickly after the Shelby County decision and enactment of this law. And so we see that the real consequence is that, as a result of this voter ID law, people continue to be disparately impacted. And those individuals, by coincidence, happen to be voters of color and low-income individuals, which results in depressing voter participation in the State.

Wow, my five minutes went by fast.

So I just want to touch quickly also about voter registration. You all talked about voter registration and voter purges. Secretary Merrill is presenting confusing and misleading numbers when it comes to his voter registration rates. We have 3.6 million people who are of voting-age population in Alabama, according to the Census form, but John Merrill presents that only 350,000-some-odd people are not registered. He cannot present any evidence to support that low number. And if indeed that were the case, then Alabama would have one of the highest voter registration numbers in the country, not just in the South.

And so our research is showing that he is playing around with the inactive voter list. What he is doing, again, based on our research, is he is removing individuals from the voter rolls as inac-

tive, and then if and when they actually reach out to the State to correct that information, he then adds them to the list as if they are new registrants, which, in fact, they should have never been removed in the first place, and then is claiming that his voter registration numbers are higher.

We are showing that since 2015 he has removed over 780,000 voters from the voter rolls. We are asking Congress to investigate what is going on with those numbers.

I will also just quickly close, in that, even though they are a minority right now, there are progressive-minded people in the State legislature. There have been a number of bills that have been presented to address some of the issues that you all are focused on today.

House Bill 174 would allow, for example, those with disabilities to be permanent absentee voters. You have two other bills that would streamline the rights restoration process. You have two bills that would help to at least present some kind of modest early-voting proposal in Alabama.

So, again, it is not that the State is lacking in ideas. We are lacking in political will to make these things a reality.

Thank you so much.

[The statement of Mr. Abudu follows:]



**Written Statement of the
Southern Poverty Law Center
Nancy G. Abudu
Deputy Legal Director
Before U.S. House of Representatives
Committee on House Administration
Subcommittee on Elections
Congressional Field Hearing Testimony
“Voting Rights and Election Administration in Alabama”**

Birmingham, Alabama

May 13, 2019

Alabama has long been ground zero in the fight for voting rights, and it remains so today. The infamous *Shelby County v. Holder* case, which gutted the pre-clearance provisions of the Voting Rights Act, originated just down the road in Shelby County, Alabama. In the years since that debilitating case, Alabama lawmakers have enacted a bevy of laws that make it harder for citizens to access the ballot box while simultaneously declining to implement reforms like early voting that are now commonplace across the nation. Alabama regularly ranks near the bottom in voter registration, voter engagement, and voter turnout, but state officials have shown little interest making any reforms that might increase political engagement across the state. Instead, they have prioritized addressing the virtually non-existent specter of voter fraud, removing hundreds of thousands of Alabamians from the voter rolls, and spreading misleading information about voter registration rates in the state.

Today I will outline a few of the major voting rights issues that the Southern Poverty Law Center staff has seen across the state and show how these problems are directly linked to the actions and inactions of state officials who see voting as a privilege to be earned rather than a fundamental right to safeguard.

Low Turnout & State Officials' Apathy

Voter turnout in Alabama is regularly below the national average. In the 2018 midterm election, only 47.5% of eligible voters cast a ballot in Alabama despite historic turnout nationally.¹ This lack of engagement can be traced directly to bad state policies. Alabama has failed to adopt popular, effective programs that increase participation such as no-excuse absentee voting and early voting. State government has shown little to no interest in addressing Alabama's bottom of the pack voter turnout.

Alabama's top election officials have plainly expressed their view that casting a ballot *should* be a challenge. In 2016, Secretary of State John Merrill told a documentary film crew, "if you're too sorry or lazy to get up off of your rear and to go register to vote...then you don't deserve that privilege. As long as I'm Secretary of State of Alabama, you're going to have to show some initiative to become a registered voter in this state."² He has expressed hostility to early voting on multiple occasions saying, "there is no future for early voting as long as I'm Secretary of State."³ The man in charge of administering Alabama's elections freely admits that he does not see voting as a fundamental right that he is charged with safeguarding. Instead, he sees voting as a privilege reserved only for those with the time and resources to navigate the outdated and archaic system he oversees.

Photo Identification Laws

In 2011, the Alabama state legislature passed a voter ID law that requires voters to show an approved form of photo identification in order to vote. The state did not attempt to enforce this law until after *Shelby County v. Holder*, which conveniently meant officials did not have to seek preclearance

¹ FairVote.org, available at, https://www.fairvote.org/voter_turnout#voter_turnout_101 (last visited May 2019).

² Mark Joseph Stern, *Alabama Secretary of State: Helping More People Vote Would "Cheapen the Work" of Civil Rights Heroes*, Slate Magazine (2016), available at <https://slate.com/news-and-politics/2016/11/alabama-secretary-of-state-says-more-voting-would-cheapen-the-work-of-civil-rights-heroes.html> (last visited May 2019).

³ John Sharp, *After Midterms, Will Alabama Reform the Way You Vote?*, al.com (2018), available at <https://www.al.com/election/2018/11/after-midterms-will-alabama-reform-the-way-you-vote.html> (last visited May 2019).

and establish the law would not have a discriminatory or disparate impact on racial and language minorities. The bill's proponents in the state legislature had long been explicitly clear about the racist intent behind the legislation. A state senator who worked for over a decade to pass this voter ID bill told *The Huntsville Times* that his photo ID law would undermine Alabama's "black power structure," and that the absence of a voter ID law "benefits black elected officials."⁴

The state senator was correct; voter ID laws do have a disparate impact on communities of color. Black and Latinx voters are about twice as likely as white voters to lack an acceptable form of identification.⁵ The NAACP Legal Defense Fund estimated that 118,000 registered voters in Alabama lack the necessary identification to vote.⁶ That's almost 5% of registered voters in the state.

The Greater Birmingham Ministries and the Alabama State Conference of the NAACP sued to block the state's enforcement of the photo ID law as a violation of the U.S. Constitution and Section 2 of the Voting Rights Act given the lower levels at which racial minorities possess a photo ID and, in some cases, the underlying documents to secure one.⁷ The plaintiffs also challenged a provision which allows a voter without acceptable ID to still vote if two election officials present at the polling place "positively identify" the voter and sign a sworn statement to that effect.⁸ Even though the court acknowledged that white voters were more likely to have acceptable ID, it ruled that the law does not deny minority voters the ability to get a photo ID "assuming they want one."⁹ In the judge's view, "[m]inorities do not have less opportunity to vote under Alabama's Photo ID law, because everyone has the same opportunity to obtain an ID. Black, Hispanic, and white voters are equally able to sign a voter registration form or registration form update."¹⁰

Unfortunately, everyone does not have the same opportunity to obtain an ID in Alabama. Immediately after the passage of this law, then Governor Robert Bentley closed 31 driver's license offices including offices in every majority black county. Public pressure forced the state to partially reverse these closures, but it remains more difficult for voters of color to access photo identification. Black and Latinx voters are less likely to own a car and have reliable access to transportation. They are less likely to have easy access to the documentation needed to acquire an ID such as a birth certificate. Thus, Alabama's voter ID law continues to disproportionately impact voters of color and to depress voter participation in the state.

Voter Registration

In SPLC's research on voter participation in Alabama, we have found that the Secretary of State's office promulgates confusing and misleading narratives about voter registration in the state. The state

⁴ *Id.*

⁵ Debbie Elliott, *Judge Throws Out Challenge to Alabama Voter ID Law*, NPR (2018), available at <https://www.npr.org/sections/thetwo-way/2018/01/10/576868379/judge-throws-out-challenge-to-alabama-voter-id-law> (last visited May 2019).

⁶ German Lopez, *Voter suppression in Alabama: What's True and What's Not*, Vox (2017), available at <https://www.vox.com/policy-and-politics/2017/12/12/16767426/alabama-voter-suppression-senate-moore-jones> (last visited May 2019).

⁷ *Greater Birmingham Ministries v. Merrill*, 284 F.Supp.3d 1253 (N.D. Ala. 2018).

⁸ *Id.*

⁹ *Id.* at 1274, 1280.

¹⁰ *Id.* at 1281.

regularly claims that 94% of eligible Alabamians are registered to vote and that 96% of eligible Black voters are registered. According to Secretary Merrill, “there’s less than 350,000 people in the state of Alabama that are not registered to vote, period.”¹¹ If these claims were accurate, Alabama would have the highest voter registration rate in America by more than ten percentage points. Yet, this claim is not corroborated by any reputable sources. The Census Bureau estimates that 69% of eligible Alabamians and 67% of eligible Black voters were registered at the time of the 2018 election.¹² The Kaiser Family Foundation’s numbers match the Census Bureau’s almost exactly.¹³ Still, Secretary Merrill continues to spread this false narrative about voter registration in Alabama widely: on talk radio shows, social media, and in newspaper interviews.¹⁴

Where is the Secretary of State’s office getting these astronomically high registration numbers? They are including voters the state has declared “inactive” in their data. As of March 2019, the Secretary of State’s office had labelled 262,133 voters as “inactive,” meaning they will be purged if they do not contact the Secretary of State’s office.¹⁵ Merrill is counting registrants that his own office has declared “inactive” in his voter registration calculations in order to artificially inflate registration statistics. He uses this misleading data to bolster the claim that voter suppression has “never happened anytime in Alabama in any of our 67 counties or in any one of our 2,499 voting jurisdictions.”¹⁶

Voter Purges

Numerous states nationwide have recently begun using the National Voter Registration Act’s language about voter roll maintenance as justification for removing hundreds of thousands of voters from the rolls. Alabama is no exception. Since taking office in 2015, Secretary of State John Merrill has purged 780,000 voters from the state’s voter rolls, a fact he is “very proud” of.¹⁷ In 2017, more than 340,000 additional voters were listed as inactive, a precursor to removal from the rolls.¹⁸ Alabama law allows voters placed on the inactive list to update their voter registration and cast a regular ballot even

¹¹ State Advisory Committees to the U.S. Commission on Civil Rights, A Summary of Testimony Received by the Alabama Advisory Committee to the United States Commission on Civil Rights, 2–27, available at <https://www.usccr.gov/press/2018/SAC%20Voting%20Rights%20Compendium.pdf> (last visited May 2019).

¹² US Census Bureau, Voting and Registration in the Election of November 2018, available at <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html> (last visited May 2019).

¹³ *Number of Voters and Voter Registration as a Share of the Voter Population*, The Henry J. Kaiser Family Foundation (2018), available at <https://www.kff.org/other/state-indicator/number-of-voters-and-voter-registration-in-thousands-as-a-share-of-the-voter/> (last visited May 2019).

¹⁴ Dale Jackson, *Alabama SoS John Merrill refutes Doug Jones’ ‘unrealistic’ claims of voter suppression*, Yellowhammer News (2019), available at <https://yellowhammernews.com/alabama-sos-john-merrill-refutes-doug-jones-unrealistic-claims-of-voter-suppression/> (last visited May 2019).

¹⁵ Elections Data Downloads, Alabama Secretary of State, available at <https://www.sos.alabama.gov/alabama-votes/voter/election-data> (last visited May 2019).

¹⁶ Secretary of State John Merrill in Studio, Matt & Aunie (2019), <https://audioboom.com/posts/7247559-4-30-secretary-of-state-john-merrill-in-studio> (last visited May 2019).

¹⁷ *Voter suppression? Alabama black, white citizens voted at similar rates in 2018*, FOX10 News (2019), available at https://www.fox10tv.com/news/alabama/voter-suppression-alabama-black-white-citizens-voted-at-similar-rates/article_d1082cdc-6ad1-11e9-9d83-fbb4b61be738.html (last visited May 2019).

¹⁸ Maggie Astor, *Seven Ways Alabama Has Made It Harder to Vote*, The New York Times (2018), available at <https://www.nytimes.com/2018/06/23/us/politics/voting-rights-alabama.html> (last visited May 2019).

on the day of the election.¹⁹ However, numerous organizations reported that this was not the case on the ground in the 2017 special election or in the 2018 midterms. Voters labeled as inactive were turned away, forced to cast provisional ballots, or asked to answer irrelevant questions by poll workers.²⁰ In the 2018 midterm elections, SPLC employees on the ground as part of the Alabama Voting Rights Project, a collaboration with the Campaign Legal Center, spoke to dozens of voters who were forced to cast provisional ballots because of their “inactive” status. It remains unclear why voters who have recently registered would end up with an inactive status, but it seems unlikely this would have happened if Alabama were properly following state and federal laws related to maintaining its voter rolls. Uneven enforcement of state regulations around voter roll maintenance creates confusion for voters and harms citizens’ trust in the effectiveness of our election infrastructure. This is yet another way that state policy depresses voter engagement and turnout.

Opportunities for Reform

Numerous pieces of legislation proposed in the state legislature this year would address the barriers to voting that I have outlined and help increase voter turnout. The policy team at the Southern Poverty Law Center helped draft and is working to pass many of these bills. For example, House Bill 174 would allow Alabamians with disabilities to register as “permanent” absentee voters, so they do not have to complete the absentee ballot application for every election.²¹ House Bills 256²² and 411²³ would establish modest early voting programs, giving Alabamians more opportunities to cast their ballots. House Bill 454 would streamline the confusing and needlessly bureaucratic rights restoration process for Alabamians who have a disqualifying felony conviction.²⁴ Finally, House Bill 501 would create an automatic voter registration system, allowing more Alabamians to get registered and improving the accuracy of our voter rolls.²⁵

Alabama is not short on ideas to increase access to the polls. What it lacks is political will. As long as our elected officials choose to see voting as a privilege reserved for the few, we will continue to see lackluster voter turnout and engagement in this state.

¹⁹Ala. Code § 17-4-9 (2018), available at <https://law.justia.com/codes/alabama/2018/title-17/chapter-4/article-1/section-17-4-9/>

²⁰ Sherrilyn Ifill, *Issues Concerning the Special Election*, NAACP Legal Defense Fund (2017), available at <https://www.naacpldf.org/files/about-us/2017%2012%2014%20LDF%20Letter%20re%20Issues%20Concerning%20the%20Special%20Election.pdf> (last visited May 2019).

²¹ H.B. 174, Reg. Sess. 2019 (Ala 2019).

²² H.B. 256, Reg. Sess. 2019 (Ala 2019).

²³ H.B. 411, Reg. Sess. 2019 (Ala 2019).

²⁴ H.B. 454, Reg. Sess. 2019 (Ala 2019).

²⁵ H.B. 501, Reg. Sess. 2019 (Ala 2019)

Chairwoman FUDGE. Ms. Rubio, you are recognized for five minutes.

STATEMENT OF ISABEL RUBIO

Ms. RUBIO. Good afternoon. It is a real honor to be here with you. Thank you so much for your interest in Alabama and coming here to hear our stories. As you heard, I work with the immigrant and Latino community here in Alabama. I have been doing that for the past 20 years. I can't really talk about voter suppression without talking about the relationship it has to immigration. And although immigration is a Federal issue, you might know that Alabama, in 2011, passed the harshest immigration bill in the country, called H.B. 56, which was basically to make life for immigrants in Alabama so awful that they would self-deport. That was the explicit—from the sponsor of the bill, that said that.

In that bill, we have talked—you have heard today—about the architecture of white supremacy in the State of Alabama. That bill, H.B. 56, was one more step in making sure that that architecture stayed in place. As part of H.B. 56, there was a provision that said that you must now require proof of citizenship in order to vote. It hasn't been enacted, but we know that placing that burden on families, on naturalized citizens is just one more chilling effect that is taking place.

We have—we also know that, you know, the physical attributes, our last names, the way that we speak, make it difficult—well, I am from Mississippi, but at any rate—make it very uncomfortable for people in this State who might be naturalized citizens to take that step. Additionally, Alabama does have a fairly small immigrant, or Hispanic population, at this moment. We are hopeful with our 2020 Census that we are doing a whole lot of work around to make sure that we count everybody. That we can show the country that we are really actually more than 4 percent. Some of us being natural born citizens of the U.S., others of us eligible to naturalize.

A big piece of the work that we do at the Hispanic Interest Coalition of Alabama is help teach people about their rights and responsibilities. One of their responsibilities being if they are eligible to become a citizen, that is something we need to help them along the pathway, and then clearly, help them understand how important it is for them to register to vote and to get out there and actually do it.

It is not lost on me. A woman born in Pike County, Mississippi, in 1965, three weeks before Bloody Sunday, the importance of going out there and casting your vote, because you are right, we are all equal on that day.

We do know, however, anecdotal stories that we have heard that people are jeered at, made fun of when they go to the polling place because they look Hispanic, or they have an Hispanic last name. So that real environment that we live in in our State here, and in our country, doesn't help the efforts that community-based organizations like ours do in order to help people make sure that they take seriously the responsibility they have to get out there and cast their vote.

So at this point, I just, again, want to say thank you. This is a very serious issue in Alabama as it relates to immigrants, because

the legislation that we have seen, the attitudes and the environment here, is explicitly geared at continuing to oppress, marginalize, and further alienate people who want to be included in our community, and to make very important contributions every day. Thank you.

[Applause.]

[The statement of Ms. Rubio follows:]

TESTIMONY

to the

House of Representatives Committee on House Administration,

Subcommittee on Elections

Field Hearing on Voting Rights and Election Administration in Alabama

City Council Chambers

Birmingham City Hall

Birmingham, Alabama

13 May 2019

Good afternoon and thank you for the opportunity to speak to you regarding Voting Rights and Election Administration in Alabama. I am Isabel Rubio and I am the Executive Director of the Hispanic Interest Coalition of Alabama. We were founded 20 years ago to increase opportunities for Hispanics in Alabama to achieve their dreams and aspirations. Our work is directly tied to the work of the foot soldiers of the 1960's and the ongoing struggle for equality, equity and social justice for all people.

On March 7, 1965 in Selma, Alabama, hundreds of people set out marching to Montgomery in a public peaceful demonstration to exercise their constitutional right to vote. As they descended the eastbound side of the Edmund Pettus Bridge, they were met with state troopers armed with billy clubs and tear gas who attacked the unarmed marchers. Many were beaten bloody - the picture of Amelia Boynton lying bloody and unconscious at the foot of the bridge - were circulated worldwide. The march was successfully completed 2 days later and this victory led to the passage of the Voting Rights Act of 1965.

The years following the passage of the Act saw many formerly disenfranchised persons vote for the first time and saw the make up of elected bodies shift to become more inclusive as Alabama was required to first seek advance federal approval before changing voting laws. The provision led the Department of Justice to block more than 80 proposed voting changes in Alabama. I am

able to stand here before you today and make this testimony in front of my Congresswoman, Terri Sewell, because of the Voting Rights Act of 1965.

The last decade in Alabama, however, has been an increase in the barriers for people who wish to exercise their right to vote - barriers that overwhelmingly affect impoverished folks and communities of color. These efforts include the closing of polling places, purging voter rolls, and gerrymandering and harken back to Alabama's long history of making voting difficult for many of its residents. In 2011, the state enacted a voter ID law, which made it illegal to vote without a government-issued photo ID and then subsequently challenged the federal government with a lawsuit to overturn key parts of the Voting Rights Act in *Shelby County v. Holder* - specifically Section 5 as it was in direct violation of federal law. Alabama emerged victorious in the legal battle when, in 2013, the Supreme Court struck down what is considered to be the heart of the Act and removed this requirement for 9 states, mostly in the South and including Alabama. As soon as the ruling was announced, Alabama moved forward to enact its voter ID legislation.

In 2015, Governor Bentley closed 31 driver's license offices. According to AL.com, in the ten counties with the highest proportion of minorities, the state closed offices in eight. This left many residents of color unable to obtain an identification in their own county, particularly impacting the Black Belt. Although this decision was ultimately reversed, it demonstrates the efforts by Alabama lawmakers to disenfranchise minority and poor voters.

In 2017, NAACP Legal Defense Fund found that about 118,000 registered voters -- disproportionately poor, black, or Latino -- wouldn't have the necessary documentation to vote under the voter ID law. According to their research, 3% of whites, 5.5% of black voters and 6.1% of Latino voters did not have valid identification that would allow them to vote.

Another issue impacting elections is that Alabama disenfranchises persons with felony convictions. In 2016, there were 286,000 eligible voters who would be unable to vote, nearly 8% of the voting population and 15% of the black voting population. There has been some headway

made here as Governor Ivey restored the rights of thousands of felons in 2017. Unfortunately, the State Attorney General has refused to deploy state resources to educate potential voters, even if they qualify.

Alabama is also one of four states that have passed legislation to require proof of citizenship in order to register to vote. While the law has not yet been implemented, there is concern as nationally, 7% of the voting population does not have ready access to their citizenship documents. This requirement would make the criteria to vote in Alabama local and state elections more strict than federal elections, where proof of citizenship is not required. This is especially of concern for the Hispanic community as we believe that because of physical attributes, names and how we speak English, we are more likely to be profiled as non-citizens. This provision to require proof of citizenship was included in HB 56, the harshest anti-immigrant law in the nation that passed in 2011.

Anti-immigrant legislation and voter ID efforts go hand in hand and are part of an overall effort to disenfranchise communities of color. Kris Kobach, the architect of anti-immigrant legislation efforts across the country including HB 56, is also closely associated with drafting legislation that supports voter suppression efforts.

While we currently have little specific information on the lack of persons being turned away at the polls because of citizenship, we have many anecdotes of Hispanics who have gone to cast their vote who report hostility from poll workers and jeers from other voters. These behaviours, and the general environment have a chilling effect on New American voters.

Thank you for your interest in this issue and its effect on the impacted communities in Alabama. We are hopeful that your efforts will increase the opportunities for justice to prevail for all.

Chairwoman FUDGE. Thank you. Mr. Simelton, you are recognized for five minutes.

STATEMENT OF BENARD SIMELTON, SR.

Mr. SIMELTON. Good afternoon. My name is Benard Simelton. I am the president of the Alabama State Conference of the National Association for the Advancement of Colored People. To the Honorable Chairwoman Fudge, G.K. Butterfield, and our own Terri Sewell, it is an honor for me to be here today to share with you some of the experiences the NAACP has when it comes to registering people to vote and getting people out to the polls to vote.

I was at the NAACP National Convention in 2006 when NAACP'ers from that convention marched to the Hill to convince our legislators that they need to extend a portion of the Voting Rights Act of 1965 for another 25 years. And I must say that we were successful in getting our legislature to vote in favor of that.

President Obama—well, then he was Senator Obama, said, “Despite the progress these States have made in upholding the right to vote, it is clear the problem still exists,” and I would carry that forward to today. And if we fast-forward 13 years to 2018, and 54 years after the Voting Rights Act was signed, we see and ask ourselves: Is voting rights equal for everyone? Is there equality in voting here in the United States and in the State of Alabama? And I think the answer is an absolute no. But we have made some progress, but the playing field is still not level.

In 2013, I was at the Supreme Court of the United States when—and heard the argument for and against the constitutionality of the Voting Rights Act of 1965. And I heard then-Justice Antonin Scalia say something to the effect that, those arguing in favor of the Voting Rights Act must think that it is some kind of racial entitlement. And that was gut-wrenching. It disrespected the members and pain of those who marched from Selma to Montgomery to demand the right to vote.

We have experienced various forms of voter suppression here in the State of Alabama, especially since the Supreme Court's decision in 2013. When the the Supreme Court, handed down the decision in the *Shelby v. Holder* case, Alabama legislators worked extremely hard to ensure that it is more difficult to vote and register to vote.

First and foremost, Alabama implemented the photo ID law. That ID law prohibited lots of individuals from being able to vote. It is estimated that at that particular time, there was approximately 118,000 people who were immediately disenfranchised because they didn't have the photo ID required.

In October 2015, Alabama closed numerous DMV, mostly in the Black Belt area. They closed those saying that there was a budget crisis, and that they were going to save money by closing these DMV offices. However, if we look at the offices, where they were located, most of those were in places that was donated to them, so there was no rent costs to them, and the officers who were managing these places, they were still on payroll. So there were no loss in income—I mean, no loss to the State budget because of them closing these DMVs. And I don't mean to say no loss, but there were no budget cuts.

We also received a complaint from an individual who showed up for the polls to vote. When he presented his ID, they told him that he could not vote because he was on the felony—a felon. He said, I am not a felon. Lo and behold, he went to the office because he was not getting anywhere with the poll workers, and so he went to the voter—I mean, to the registrar’s office, and when he went there, after going around and around with the registrar, he eventually convinced them that they were looking for another person, and not him, that was not eligible to vote because of a felony. Even though he presented his ID and the person they had had a different date of birth. And by the time he was able to get it all cleared up, the polls had closed and he was not able to vote during that timeframe.

We are currently engaged in a Federal lawsuit on the Voting Rights Act against the Secretary of State in Alabama for implementing the photo ID law, and the lawsuit is currently pending before the Federal Court of Appeals. In addition, the NAACP became aware in 2012 that Alabama was not in compliance with the National Voter Registration Act of 1993, it is also known as the Motor Voter Law, that requires agencies such as the Department of Human Resource, Medicaid, Department of Motor Vehicles, to offer individuals the opportunity to register to vote when you come before them.

Our own Secretary of State has said that he knew that Alabama was not in compliance with this law, but had taken no action to put us into compliance until we brought this to their attention, and they offered to register people—offer registration to people who visited their office. And they presented the data on a quarterly basis of how many people they registered, and how many people visited their office, so we could see how many people they were actually registering.

The NAACP and others entered into agreement with various Alabama State agencies for them to take active measures to offer their customers the opportunity to vote by putting up signs and things like that, making sure that people knew that they could vote, they are registered to vote at these places.

Just a couple more I want to share with you. Escambia County voters experienced a significant number of voters whose names were mysteriously discovered absent from the roster during the midterm election in 2018, as well as the Presidential election in 2016. And during the midterm election in 2018, at least four students from Alabama A&M University were somehow—were not registered to vote after turning in their registration forms. And one of these students had registered online, and the others had registered through a voter—on-campus voter registration effort.

Finally, I would like to say on behalf of the Alabama State Conference of the NAACP, I appreciate you all listening to us and other participants this afternoon, and I hope our testimonies will provide you with the ammunition you need to convince Congress to act to putting voting at the top of the agenda.

We are ready, here in the State of Alabama, to take our turn—turn this around, but we look to our esteemed legislators in leading us through this effort. Thank you very much.

[Applause.]

[The statement of Mr. Simelton follows:]

Congressional Testimony of Benard Simelton, President of Alabama NAACP
May 13, 2019

Good Afternoon, to The Honorable Chairwoman Fudge, our very own Honorable Terri Sewell, and other distinguished members. I am Benard Simelton, President of the Alabama State Conference of the National Association for the Advancement of Colored People, (Alabama NAACP). It is my honor today to provide you with a testimony of the experiences the Alabama NAACP has had regarding Civic Engagement activities in Alabama as it relates to voter suppression, and voter disenfranchisement.

I have been President of the Alabama NAACP since 2009 and have witnessed changes to voting in Alabama, most notable the Photo ID requirement and redistricting.

The mission of the NAACP is to ensure the **POLITICAL**, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. For this testimony, I will underscore the **POLITICAL**.

I testified before the Congressional Black Caucus in September 2016, The State Battle for Voter Protection in 2016, sponsored by the Congressional Black Caucus Foundation. During this testimony, I spoke about Alabama being the center stage for the Voting Rights Act of 1965 because of its repressive laws that prevented Blacks from registering to vote.

I was at the NAACP's National Convention in Washington, DC in 2006 when NAACPers marched to our Legislators' Offices and asked them to vote to extend provisions of the Voting Rights Act (VRA) for another 25 years. That year, lawmakers of both parties agreed that Federal supervision was still required to protect the rights of racial minorities to cast ballots in some regions of the country. As then-Senator Barack Obama said, "Despite the progress these states have made in upholding the right to vote, it is clear the problem still exists."

Fast forward 13 years later to 2019, and 54 years after the original passage of the VRA, and we ask ourselves: Have we really made significant progress in equality in voting? I think the answer is that we have made some progress but the playing field is still not level.

In 2013, I was in the Supreme Court of the United States (SCOTUS) and heard the arguments concerning the constitutionality of the Voting Rights Act of 1965. To hear Justice Antonin Scalia say something to the effect that those arguing in favor of the Voting Rights Act must think that it is some kind of **RACIAL ENTITLEMENT** was gut wrenching. It disrespected the memories of the pain and suffering that those marchers on the Edmund Pettus Bridge in 1965 experienced when the Alabama State Troopers brutality

attacked, beat, and tramped on them with horses for trying to exercise their **FUNDAMENTAL RIGHT** to vote.

We have experienced various forms of Voter Suppression, especially since the Supreme Court rendered a decision that struck down various parts of the 1965 Voting Rights Act and I am here to share some of the more egregious examples.

When the SCOTUS handed down its decision in 2013 in the Shelby County v. Holder case, Alabama Legislators worked extremely hard to ensure that it is more difficult to vote and register to vote. First and foremost, Alabama implemented the photo ID law immediately after the SCOTUS's decision and experts from our lawsuit challenging the photo ID law estimated that 118,000 registered voters in Alabama were immediately disenfranchised.

Once again Alabama gained national attention and this time for disenfranchising citizens who had voted for years with a water bill or other utility bill or social security card. Voters like Willie Mims, a 93 year old veteran of Escambia County who was turned away because he did not have the photo ID required to vote.

In 2014, the Alabama NAACP wrote a letter to our Secretary of State's office expressing our concern over the voter photo ID Law. This law is especially disconcerting since Alabama has only ever prosecuted one case of in-person voter impersonation fraud. Our Secretary of State says he wants to make it easy to vote and difficult to cheat, but it is not even clear that the photo ID law would have prevented or caught this one instance of fraud.

In October 2015, Alabama closed numerous DMV offices in majority Black counties. In Alabama, people can apply to register to vote and for driver's licenses (photo ID for voting) at DMV offices. The purported reason for the closures was because of budget cuts. However, most of the office space for these DMV offices was donated to the DMV, and the officers who worked those locations remained on payroll, so the budget cut argument did not hold water. Additionally, most of these locations were in the Black Belt area of Alabama which is poor and rural areas, so people had to drive further to obtain the photo ID or renew their drivers' license in order to continue to vote. The majority of the people in the affected areas were Black. After the November 2016 elections and a ruling by the federal Department of Transportation that the DMV closures violated the Civil Rights Act, these DMV offices were reopened.

Alabama also has a provision in the Photo ID Law that allows two individuals who are working the polls on Election Day to sign an affidavit verifying an individual's identity if he or she does not have the proper ID. The Alabama NAACP received a complaint from an individual, Joshua Wahl, where the polls workers would not verify the identity of the

individual even though the workers knew him personally. Needless to say, he was not able to vote. Our experts in the photo ID litigation found that although most whites without a driver's license know their poll workers, few Black voters without a license know their poll workers.

We received a complaint from an individual who showed up to the polls to vote and when he presented his ID the poll workers said he was not eligible to vote because he had a felony conviction and after his challenge to the poll workers did not get anywhere, he went to the registrar and by the time he was able to clear up matter, the polls had closed and he was not able to vote. The situation was that there was another individual with the same name, but different date of birth who had the felony.

We are currently engaged in a federal lawsuit under the VRA against the Secretary of State for implementing the Photo ID Law. That lawsuit is currently pending before the federal Court of Appeals.

In addition, the NAACP became aware in 2012 that Alabama was not in compliance with the National Voter Registration Act of 1993, also known as the "Motor Voter Law," that requires agencies, such as the Department of Health Records (DHR), Medicaid, Department of Motor Vehicles (DMV), and others, to offer customers that they serve the opportunity to register to vote during a visit to their offices. Alabama agreed and knew that they were out of compliance, but took no steps to try to come into compliance until they were called out this blatant failure. In an article published in local newspapers, "Secretary of State John Merrill acknowledged that the state was not in compliance with the law, he said, 'It's like being pregnant,'" Merrill told The Anniston Star. "'Either you're fully in compliance with the law or you're not in compliance and we've never been compliant.'"

The NAACP and others entered into an agreement with various Alabama State agencies for them to take active measures to offer their customers the opportunity to vote, by putting up signs and asking them if they would like to register to vote. During the implementation of the agreement, these agencies were required to report the number of clients served and the number of clients they registered to vote on a quarterly basis and the data was compiled and sent to Demos, the organization providing legal representation to the Alabama NAACP in this matter.

The Alabama NAACP's efforts to enforce the Motor Voter Law is a large part of the reason that thousands of new Alabamians have become registered to vote in the last seven years.

We have also seen many issues with polling places. For example, during the last Mayoral Election in Mobile, the polling location at Mae Eanes Middle School was moved and voters showed up there to cast their vote as they had done in previous elections—but this time the polling place had moved. After some searching back and forth and using the internet, some of the voters were able to locate their new polling location, but others gave up and were not able to vote.

In the town of Wilton, in southwest Shelby County, their polling location was removed about a month before the special Senate Election in 2017. Several individuals called the Shelby County NAACP President, Reverend Kenneth Dukes, which prompted him to seek a response from the County Manager, but President Dukes never received an explanation.

Also in Shelby County, after the Shelby County v. Holder decision was rendered, Shelby County redrew their district lines just like many others in the Nation, and the new lines reduce the chances of having a majority-minority district.

The Alabama NAACP is currently in litigation with the State of Alabama challenging the at-large election of state appellate judges and the City of Pleasant Grove to change their method of electing City Council members from an at large voting system to voting by district. Even though Pleasant Grove is approximately 45+ percent African American, they have no African American on the city council. We have also sent letters to Madison County and Morgan County challenging the at-large aspects of their election systems under the Voting Rights Act.

Escambia County voters experienced a significant number of voters whose names were mysteriously absent from the roster during the last Midterm Election in 2018 as well as the Presidential Election in 2016.

During the Midterm Election in 2018 at least four students who attend college at Alabama A&M University registered to vote in Madison County because A&M is located in Madison County, but were not permitted to cast a regular ballot when they showed up to the polls to vote. One of the students registered to vote online and the other students registered to vote during an on campus registration event.

During each election, the NAACP receives complaints about machines malfunctioning and voters having to leave their ballots in hopes that they will be sent through the machine; not enough ballots at polling locations; and poll workers not trained properly to handle voters who understandably become frustrated with the system. Some poll workers are not trained that they need to provide a provisional ballot to anyone that demands one who has not cast a regular ballot. Like clockwork, during and after each federal election in particular, we also

receive several complaints about individual's names being removed from the registrar without them being notified. Often times individuals are running trying to get to work, trying to get back to work, or trying to get home from work, and when they face these obstacles, it becomes harder not to give up and go to one's responsibilities at home or to work.

During the November 14, 2017 special election to replace the late Rev Dr. Johnnie Robinson, Jr. as the District 2 City Councilman, Phenix City NAACP became aware of individuals voting in Phoenix City but did not live in those districts. They voted where they worked and not where they lived. The NAACP asked the DA and AG Marshall to look into this matter and despite repeated inquiries, ---nothing has happened on the complaint. The majority, if not all these individuals were white.

The Alabama NAACP in each of the counties where we have a Branch, spend numerous hours each during the election cycle, which is about every year educating voters, handing out information, hosting rallies, candidates forum, press conference, TV, radio, Facebook, phone banking, tweeting, and using other social media to get the word out, but we need additional help in educating our voters on how important it is register to vote, check their registration periodically, and finally voting. And we need enough trained people who work the polls and resources at polling sites so that we can make sure things run smoothly. But most importantly, we need to address the obstacles that stand in people's way even when they are doing everything right.

On behalf of the Alabama State Conference of the NAACP, I appreciate you all listening to me and other participants this afternoon and I hope our testimonies will provide you with the ammunition you need to convince congress to act to put voting at the top of the agenda. We are ready to do what it takes to turn this around, but we look to our esteemed Legislators in leading us through this effort.

Chairwoman FUDGE. Thank you. I will make sure I tell Mr. Johnson how well you did today. Mr. Douglas, you are recognized for five minutes.

STATEMENT OF SCOTT DOUGLAS

Mr. DOUGLAS. Well, thank you, and welcome. And thank you for holding hearings in the State whose struggles and sacrifices gave the Nation the Voting Rights Act of 1965. Greater Birmingham Ministries is a 50-year-old interfaith organization where Jews, Christians, Muslims, black, white, and brown, unite and provide emergency assistance to low-income families and working together to improve those systems of private and corporate practices, and public policies that affect the poor unjustly.

Our work addresses housing systems, healthcare systems, transportation systems, the criminal justice system, and, most importantly, the voting system that impacts them all.

For decades, we have conducted voter registration among the families we serve each year in terms of needs of coming for assistance for utilities, food, clothing, housing, disaster assistance, and other emergency assistance.

And since 2017, we have expended our voter registration drives by going into low income neighborhoods, hospital waiting rooms, the central bus station, Jefferson County Jail, and even the Magic City Classic. For GBM, our fundamental principle is that no one should be denied access to housing, education, healthcare, transportation, or justice. This principle is embedded in the Holy text, not the least important verse of which is Proverbs 31 of Verse 9, which proclaims, Yes, speak up for the poor and helpless, and see that they get justice, because access to these in affordable housing, quality healthcare, reliable transportation, and increases in the minimum wage are determined by public policies made by elected officials. GBM believes that access to the vote for poor people is fundamental in deciding who gets to make public policies and how those public policies take shape.

When the voices of the poor are diminished, public policies reflect the absence of those voices—of the voices of the poor, there are often dire consequences for their quality of life and the quality of life of us all. Without the protection of the guts of the Voting Rights Act, the preclearance provision, the changes in Alabama's voter ID laws place a tremendous burden on already economically and socially burdened black and Latino and other poor families.

The poll tax was established to suppress voting. So money is a burden. In Alabama, even obtaining the so-called free State-issued photo ID requires people to draw on scarce funds to compile the underlying documents. The list of accepted documents required to obtain a voter ID card is limited and includes, for example, a birth certificate, hospital record, Census record, military record, Medicare or Medicaid document, Social Security document, certificate of citizenship, or official school record or transcript. Many of these must be requested from a government agency and may include a fee.

Transportation is a burden for low-income people that is not so obvious to any of us who have reliable transportation. If you are poor and live in urban areas, you can't rely upon public transpor-

tation to get you to the polling place before work or home after work. But the added burden of first having to get to the nearest driver's license office in urban areas to procure the proper ID to vote.

In many Black Belt counties, if there is a car in the family, it is being used by the breadwinner who has to use the car to get back and forth to work, often in the neighboring county. GBM has direct experience with low income people burdened by Alabama's photo ID laws.

Through litigation, we became aware of Elizabeth Ware. She is an African American woman who regularly voted before the photo ID law was passed. However, her nondriver photo ID was lost, and she did not have any of the other forms required to vote. And due to her fixed income, lack of reliable transportation, and limited mobility, the law prevented her from voting.

Ms. Ware's income was solely Social Security disability as a result of serious maladies. She does not drive and has limited transportation options. The bus stop is five blocks away from her house, and walking that distance takes over an hour and causes pain, and rides by car are unreliable. The nearest license commission where she could have gone to get an ID was not in walking distance, and a ride cost 20 bucks, a significant amount for somebody on her income.

She was finally able to get a ride to the Board of Registrars, where she attempted to get a free voter ID card. However, she was wrongly denied the ID by a staff member who had been improperly trained and told her that she had had an ID in the past. That because she had an ID in the past, she was ineligible for the voter ID card, despite her current circumstances.

Finally, after becoming a plaintiff in the case challenging the photo ID law, Ms. Ware's attorneys arranged for the Secretary of State's office mobile unit to visit her home during her deposition. She had never heard of the existence of a mobile unit prior to litigation. And about those mobile units, they would take them sometimes in rural areas and park them in front of a library or the county courthouse where you could also get your voter ID. We thought it would be like a bookmobile circulating; no, they parked where you were already.

Anyway, finally, the unit's process—the mobile unit's process was deeply flawed and faced many technical issues. Ultimately, it took over an hour to issue Ms. Ware a temporary ID, and she had to wait for a permanent ID to be mailed to her. This process clearly cannot be replicated for thousands of people in Alabama who do not have ID, or reliable transportation to get to a Board of Registrars.

Had Mrs. Ware not been a plaintiff in a lawsuit, it is unlikely that she would have ever been able to obtain the required ID. Alabama's photo ID law is the new poll tax, but the reason for its existence is the same as the original one. Thank you.

[Applause.]

[The statement of Mr. Douglas follows:]

May 9, 2019

**Written Testimony of Scott Douglas, Executive Director of Greater
Birmingham Ministries to the Subcommittee**

Greater Birmingham Ministries (GBM) is a 50-year-old interfaith organization serving metropolitan Birmingham and the State of Alabama. We are Jews, Christians, and Muslims; black, white, and brown, united in providing emergency assistance to low-income families and working together over the years to improve those systems of private and corporate practices and public policies that affect the poor unjustly. Our work has addressed housing systems, health care systems, transportation systems, the criminal justice system and, importantly, the voting system that impacts them all.

For decades, GBM has conducted voter registration among the 2,000+ families we serve each year in need of utility, food, housing, clothing and other emergency assistance. Since 2007, we have expanded our voter registration drives by going into low-income neighborhoods, hospital waiting rooms, central bus station and our city to reach potential voters.

For GBM, our fundamental principle is that no one should be denied access to housing, education, health care, transportation, or justice. This principle is embedded in Holy text, not the least clear verse of which is “Proverbs 31:9, which proclaims, “Yes, speak up for the poor and helpless, and see that they get justice.”

Because access to decent and affordable housing, quality healthcare, reliable transportation and increases in the minimum wage are determined by public policies made by elected officials, GBM believes that access to the vote for poor people is fundamental in deciding who gets to make public policies and how those public policies take shape. When the voices of the poor are diminished – or silenced – public policies reflect the absence of the voices of the poor with often dire consequences for their quality of life.

In Alabama, seeking justice for the poor through the franchise has always been a difficult venture. Our current State Constitution, conceived in infamy and perpetrated by massive fraud, passed in 1901 to disfranchise all Black voters and seriously reduce the vote of all poor people. Black disfranchisement was the stated goal of the 1901 Constitutional Convention—as the Convention President John Knox proudly proclaimed at the time was what he wanted was to “establish white supremacy by law” in Alabama. During the vote on the 1901 Constitution, thousands upon thousands of votes cast by Black men in Alabama’s Black Belt were counted by white vote counters as votes for the new constitution. If you’re looking for vote fraud, the vote on the 1901 Constitution is the pinnacle, or the pits, of vote fraud and it was implemented not by voters, but by a conspiracy of state officials at a time when all state officials were white.

It was only decades later that the Voting Rights Act, won through blood and struggle, persistence, and clarity of vision of the famous and the unnamed, began to right the wrong.

Fast forward to Alabama's Photo ID law (HB-19 law), enacted in 2011 along with Alabama's anti-immigrant law (HB-56) that itself has a voter-suppressive "Proof of Citizenship" clause – the two together comprise a people of color voter suppression combo. The Photo ID law was written to not come into effect until the 2014 elections. But by that time, *Shelby v. Holder* had been decided, and it effectively eliminating the pre-clearance process under the Voting Rights Act that might have blocked the Photo ID Law.

Without the protection of the "guts" of the Voting Rights Act, Section 5, the Pre-clearance provision, the changes in Alabama's voter ID laws placed a tremendous burden on already economically and socially burdened Black and Latino families.

Money is obviously a burden, by definition, for low-income people. Even obtaining the "free" state-issued photo ID requires people to draw on scarce funds to compile the underlying documents. The list of accepted documents required to obtain a voter ID card is limited, and includes, for example, a birth certificate, hospital record, census record, military record, Medicare or Medicaid document, social security document, certificate of citizenship, or official school record or transcript. Many of these must be requested from a government agency and may include a fee.

Transportation is also a burden for low-income people that is not so obvious to those of us who have reliable transportation. If you're poor and happen to live in urban areas, you can't rely upon public transportation to get you to the polling place before work or after work. That's a pre-existing burden. But the added burden is first having to get to the nearest driver's license office in the urban areas to procure the proper ID to vote. And in many Black-Belt counties, if there is a car in the family, it's being used by the bread-winner who has to use the car to get back and forth to work, often in a neighboring county.

GBM has had direct experience with low-income people burdened by Alabama's Photo ID law.

For example, through litigation, GBM became aware of Elizabeth Ware. She is an African-American who voted before HB 19. However, her non-driver photo ID was lost in 2014 and she did not have any of the other forms of required ID to vote. Due to Ms. Ware's fixed income, lack of reliable transportation, and limited mobility, HB 19 prevented her from voting.

Ms. Ware's income consisted solely of social security disability as a result of a number of serious maladies including bullet fragments in her back. She does not drive and has

limited transportation options. The bus stop is four to five blocks from Ms. Ware's house, and walking that distance takes her over an hour and causes immense pain. Rides by car are unreliable for Ms. Ware.

The nearest License Commission—where Ms. Ware would have gone to get an ID—was not in walking distance of her home, and a ride can cost \$20—a significant amount for someone with Ms. Ware's fixed income. Ms. Ware was finally able to get a ride to the Board of Registrars where she attempted to get the free voter ID card. However, she was wrongly denied the ID by a staff member who had been improperly trained and told her that because she had an ID in the past, she was *ineligible* for the voter ID card despite her current circumstances.

Finally, after becoming a plaintiff with GBM in the litigation challenging HB-19, Ms. Ware's attorneys arranged for the Secretary of State office's mobile unit to visit her home during her deposition. She had never heard of the mobile ID unit prior to the litigation.

The unit's process was deeply flawed and faced many technical issues when attempting to issue Ms. Ware an ID. Ultimately, it took over an hour to issue Ms. Ware a temporary ID, and she had to wait for the permanent ID to be mailed to her. This process clearly cannot be replicated for the thousands of people in Alabama who do not have ID or reliable transportation to get to a Board of Registrars. Had Ms. Ware not been a plaintiff in the lawsuit, it is unlikely she would have ever been able to obtain the required ID.

The late Debra Silvers was an African-American registered voter and another plaintiff who was unable to replace her photo ID after a house fire destroyed both her ID and the underlying documents because she would need to replace it.

To begin replacing the documents lost in the fire, Ms. Silvers had to pay for rides to various government agencies, each trip costing her \$15 to \$20. Ms. Silvers paid over \$100 in costs and transportation before getting a temporary non-driver ID. These costs were especially substantial given Ms. Silvers had just lost everything in the fire and was in the process of rebuilding her entire life. Ms. Silvers was in such dire straits that she required the Red Cross to house herself and her children.

Once Ms. Silvers had obtained a temporary non-driver ID, she attempted to vote in March 2016 but was turned away because the poll worker could not see the picture on the temporary ID. HB 19 directly prevented Ms. Silvers from exercising the franchise.

Alabama's Photo-ID Law is the new poll tax, but the reason for its existence is the same as the old one.

Chairwoman FUDGE. Thank you. Mr. Butterfield, you are recognized for five minutes.

Mr. BUTTERFIELD. Thank you very much, again, Madam Chairwoman. Again, I thank the four of you for your testimonies today, they will be very helpful in our work. Let's talk about 2021, and I will go to the deputy legal director, since I can't pronounce your last name, I will do it that way.

You are going to have a Census in 2020, and the legislature is going to take that data, and in 2021 they are going to draw a congressional map, they are going to draw some legislative maps in the State of Alabama. Am I correct?

Ms. ABUDU. That is correct.

Mr. BUTTERFIELD. When they did that 10 years ago after the map was prepared, wasn't the map submitted to the Justice Department for preclearance?

Ms. ABUDU. That is correct.

Mr. BUTTERFIELD. Now, in 2021, they will not be required to submit the map for preclearance?

Ms. ABUDU. That is correct.

Mr. BUTTERFIELD. Which suggests to me, and you correct me if I am wrong, it suggests to me that the legislature counter has unfettered ability now to manipulate the maps, unlike they have been able to do in the past?

Ms. ABUDU. Absolutely. You are correct.

Mr. BUTTERFIELD. Now, with seven congressional districts, it appears to me that, perhaps, Alabama may be entitled to pick up an extra majority minority district, if the lines are drawn appropriately and fairly.

Ms. ABUDU. That is very possible.

Mr. BUTTERFIELD. Because, Ms. Sewell, I believe, has about 65 percent African American percentage in her district. And I believe that—if I remember correctly, when Mr. Hilliard was first elected some years ago, just like my State of North Carolina, the way we got these majority minority districts was through section 5. Once the State prepared the map, they sent it to DOJ and DOJ said, We don't like the maps, do it again. And the States had to redo the maps. And that is how Mr. Hilliard was elected. That is how Eva Clayton in North Carolina was elected. But now the State of Alabama won't have to do that. So Alabama can just implement some maps. They can pack black voters into the 7th District or they can crack the black communities. We call it cracking. That is not an obscene word, that is a legal word. They can crack African American communities and spread them in different directions so that minority communities won't have any influence anywhere. And if you don't like that, you cannot resort to Section 5, you have to resort to Section 2, which is a multi-million dollar exercise.

In terms of redistricting, you can believe it will be many millions of dollars to litigate such a claim. Have I said anything that is incorrect thus far?

Ms. ABUDU. No. Everything you said is unfortunate, very sad, but absolutely correct.

Mr. BUTTERFIELD. And if private citizens, these good people in the audience today, wanted to bring a Section 2 lawsuit challenging 2021 redistricting, wouldn't it cost millions of dollars to do that?

Ms. ABUDU. It would absolutely cost millions of dollars to bring today. It forces us into not only spending that much money, but also into a venue through the Federal courts, unfortunately, that are becoming more and more hostile. As this panel knows, the U.S. Supreme Court recently heard two redistricting-related cases, one involving partisan gerrymandering, and one dealing directly with the Census, and the counting or the requirement that people state their citizenship. And this falls right in line with what Ms. Rubio does.

Mr. BUTTERFIELD. Let me go to Mr. Simelton. Thank you very much for all the work that you do. Simelton—here in Alabama. Reverend Barber is my son, not really my son, but he is my son, he is my constituent and friend, and I have mentored him since he was a very young man. And I am sure you know him very well.

Mr. SIMELTON. Yes.

Mr. BUTTERFIELD. In Alabama—

Mr. SIMELTON. Yes, sir.

Mr. BUTTERFIELD [continuing]. Across the State, are there municipalities and counties that still have at-large election systems?

Mr. SIMELTON. Yes. And I am glad you brought that up because we are currently involved in a situation over in Pleasant Grove where they have some—it is probably about 45-plus percent African American, and they have no black on the City Council, and so we are involved in a situation there to try to get them to get to districts—

Mr. BUTTERFIELD. You just opened the door to my question. Okay. You have got a 45 percent African American city, no African Americans on the City Council. Okay. That tells me there is racially polarized voting in that municipality, which means whites don't vote for African Americans, at election time.

Mr. SIMELTON. Right.

Mr. BUTTERFIELD. Now, in any time there are annexations—you still have annexations in Alabama, I suppose. Any time you annex areas that are high rent, high cost, into a municipality, that suggests that more white families will be moving into the city, which dilutes further the African American—the effect of the African American vote. That is how we used to use Section 5.

If a city wanted to annex areas into a city, they would simply send the annexation up, get it approved or disapproved. And once in a while, DOJ would say, Well, no, we are not going to approve it unless you go from at-large elections to district elections, and then you can have your annexations approved.

In the city of Rocky Mount, North Carolina, which is in my district, years ago, same thing. We had a 45 percent African American city, no African Americans on the City Council. The city wanted to annex 19 areas in the city that were going to be white. Section 5 came in, and said, you can't do it. If you go to districts, you can do it. The city went to district, and now we have four African Americans on City Council and three whites on the City Council. That was the power of Section 5 then, and it can be the power of Section 5 now.

Thank you, Madam Chairwoman. I yield back.

Chairwoman FUDGE. Ms. Sewell.

Ms. SEWELL. Madam chair, in my five minutes I want to make three appeals: First, I want to appeal to my colleagues. I want to thank you for coming to the State of Alabama, and I want to remind you of our job. Our job was stated very clearly by Chief Justice Roberts in this *Shelby v. Holder* opinion. He said: A statute for Congress to establish a new coverage test, a statute's current burden must be justified by current need. And any disparate geographical coverage must be sufficiently tailored to meet the problem at hand. To my colleagues, we need Federal oversight here in the State of Alabama.

[Applause.]

Ms. SEWELL. I understand that we have States' rights, and I fight vehemently for our State's right, but when our State is not exercising that right on behalf of all of its citizens, we need Federal oversight.

[Applause.]

Ms. SEWELL. So my appeal to you is to remember the five things that you've learned today. You have learned today that the State of Alabama has more restrictive voter ID laws now than it did before the *Shelby v. Holder* decision. You learned today that the problem disproportionately affects minorities, rural communities, the elderly, and the disabled. That there is a cost associated with these photo IDs. The price of freedom, we know, is never free. It is paid by those who have fought—fought for this right that we have and fought for us to sit where we sit in Congress to do the right thing.

The third thing we learn is that we have limited access in Alabama. Closing DMVs in majority black counties limits the ability of black voters to get the most common use of an ID, which is the driver's license.

Thirdly, you have heard from our Hispanic population, our Latinos, that the attempts to require proof of citizenship for voter registration is just a modern-day form of intimidation. It is not right. It is not fair.

The fourth thing you learned is that we have, in Alabama, aggressive voter purging laws. A nationwide study by the Brennan Center found that between 2014 and 2016, States removed almost 16 million voters, and the State—and they found out in the State of Alabama, our Secretary of State says 658,000 voters have been purged from the rolls since 2015, in a State that only has 3.3 million registered voters. That is 658,000, he personally said, in a State that has 3.3 million voters.

And lastly, you have heard about closing polling locations and moving polling locations without notice. All of those are modern day facts of things that are going on in the State of Alabama that show a burden. And I am here to tell you that there is a need for Federal oversight, and we must do our job. I believe our job is to pass a new law that will require and put the guts back into the Voting Rights Act of 1965 by giving these modern-day formulas.

Okay. My second plea is to our witnesses. To our witnesses, continue to do the good fight in your organizations, but we must document, document, document. We must make sure that we have evidence, factual evidence of voter suppression. We know it happens. We hear about the anecdotal evidence, but we must have factual evidence, and we must submit that to Congress. Please do that.

And lastly, my plea is to the audience. We are the people. If you see something, say something. And most importantly, do something. Everyone should go to the poll with another person. No one exercises our rights but us. We have got to do our part and go to the polls and vote. Because what Republicans will continue to say is that as long as we have voter registration drives, as long as we have voter turnout, then there is no need for the Voting Rights Act of 1965.

What they fail to realize, and it is disingenuous on their part, is that just because you can go and register to vote, just because you can turn out to vote, doesn't mean that their laws don't cause voter suppression. They are not mutually exclusive. And so what we have to do in this audience, my plea is to the people. We need to go out and vote in numbers that we have never seen before, in every election, Federal, State, and local elections, because that is the only way that we are going to turn it around.

And I would be remiss if I didn't acknowledge the foot soldiers that are in the audience. I saw some foot soldiers in the audience. Stand up.

[Applause.]

Ms. SEWELL. We stand on their shoulders, but it is time to get off their shoulders and do our own work. We have to do our own work.

I invite all of you to come to a reception to meet my colleagues after this hearing. But I want to say to my colleagues, thank you for coming to Alabama. We need help. We need Federal oversight in the State of Alabama.

[Applause.]

Chairwoman FUDGE. All right. We hear you.

Ms. SEWELL. All right.

Chairwoman FUDGE. I am only going to disagree with one thing you said. I don't fight for States' rights because whenever I hear States' rights, I think slavery. That is what kept us in slavery. That is what is trying to enslave us again today is States' rights. That is the only thing you said that I disagree with.

Now, I think it was Langston Hughes who penned the words: I too sing America. This is my country and I am a patriot. I have been sworn to uphold the Constitution of the United States, and I do that every day. But I need everybody else to uphold the Constitution of the United States as well. The Constitution says that every single citizen has the right to vote, an unfettered, unabridged, right to vote, which means that I believe it is unconstitutional to take away rights for those who have been incarcerated. We don't take their citizenship. They are still citizens of this country.

People who are naturalized citizens are still citizens of this country. The Constitution says to us that you have a right to vote. It doesn't say if you don't vote in one election or two that you are purged from the rolls. It is unconstitutional. It doesn't say that because it is not a use it or lose it, it says you have the right to vote, the unfettered, unabridged right to vote. And we have to start to talk in those kinds of terms because they would make us think that we don't know the law. That we don't know what the Constitution says. I know my rights. And we have to start to exercise our rights.

You know, people think that as we listen to rhetoric today about making America great, let me say a couple things about greatness. One is that America is great because Americans are good. That is what makes this Nation great. And what makes this Nation great in the words of Alexis de Tocqueville, is that we have the ability as a country to repair our faults.

What has happened to us over the last 13 years is a huge stain on this Nation. And so, what we are doing here as a body is trying to repair our faults. We are going to fix this. We are going to give them the data. Whether they choose to accept it or not, we are going to say to them, be careful what you ask for.

There is as much voter discrimination and suppression today as there was in 1965. Schools are more segregated today than they were in 1968. Neighborhoods are more segregated today than they were in 1968. The more things change, the more they stay the same. We are going to tell the truth. We are going to give Terri the formula to put into her bill so that we can create a new formula, so that we can fully reinstate the Voting Rights Act, Section 4, as well as some changes that probably need to be made to Section 5.

I want to thank you for being here to give us the ammunition that we need to go back to Washington and to continue to do our jobs. I thank you all so very much. I want to thank the witnesses for their testimony, the Members for their questions. I want to thank the staff and all of those who made this happen, the people here at City Hall. Again, to witnesses, we may have some other questions, we would ask that you respond in writing. All my colleagues, all the people of Alabama, thank you so very, very much, and this Subcommittee, without objection, stands adjourned without objection.

[Whereupon, at 3:33 p.m., the Subcommittee was adjourned.]



Statement on Voting in Alabama

Presented to the Congressional Field Hearing on Voting Rights and Elections Administration

Birmingham, Alabama

May 13, 2019

The League of Women Voters, a nonpartisan political organization, has fought since 1920 to improve our systems of government and impact public policies through education and advocacy. The League of Women Voters is strictly nonpartisan; it neither supports nor opposes political parties or candidates for office at any level of government. At the same time, the League is wholeheartedly political and works to influence policy through advocacy. Since its founding, the League has been very active in registering voters and educating them about their rights as voters.

The League of Women Voters of Alabama works with eight local leagues (Baldwin County, Birmingham, East Alabama, Greater Tuscaloosa, Mobile, Montgomery, Tennessee Valley, and The Shoals) which contain over 400 members. Our current emphasis is in “making democracy work” – protecting fair and free elections and transparency in government. Our 19th century founders knew how important voting is and we work to carry the banner of voting rights into the 21st century. We have advocated for this important right by testifying at legislative hearings, contacting public officials and participating in litigation. The removal of some of the provisions of the Voting Rights Act which require extra scrutiny of the electoral process concerns us. We are writing to express some of our specific concerns with the access to voting and administration of elections in Alabama.

Since the Voting Rights Act was adopted in 1965, Alabama has made progress in the way it conducts its elections. Unfortunately, barriers to voting and to fair elections still remain. More challengingly, these barriers are subtle and consequently are difficult to measure. League members have learned of these barriers in their work of registering voters throughout the state.

Registering and qualifying to vote can be problematic in Alabama. Prior to 2017, persons convicted of “crimes of moral turpitude” could not vote. The determination of which crime constituted a “crime of moral turpitude” was left up to each probate judge, creating inconsistency and uncertainty. When the Moral Turpitude Definition Act was passed, specifying which crimes disqualified a person from voting, there was little public information provided about who could then vote and the confusion continued. Confusion about who qualifies to vote becomes a disincentive to registering to vote. In addition to felony convictions, unpaid fines present barriers to qualifying to vote – and such fines often proportionally fall heavily on low-income persons and persons of color. While there are some instances in which court costs and fines may be remitted, there is not much public information available on how to make this work. Much of the outreach done to attempt to re-integrate former felons into the ranks of voters is done by volunteer groups.

Another barrier to voting among a vulnerable class of low-income and/or rural and/or people of color is the requirement to have a government-issued photo voter ID in order to cast a ballot. This requirement and a requirement for first-time voters to produce proof of citizenship were both enacted by the Alabama legislature before the decision in Shelby v Holder was announced. These requirements were not immediately implemented because of the preclearance requirement of the Voting Rights Act. The photo ID requirement went into effect in the 2016 election cycle (after Shelby's preclearance provisions were dropped). The proof of citizenship requirement remains on hold pending the outcome of litigation. Some challenges for the ID requirement are the poorly implemented attempts to enact remedial measures. There was little attempt, for example, to help prospective voters acquire the appropriate documentation at a reasonable price. In addition, the places for low-income voters to receive their free ID were closed or reduced in operating hours. This barrier is difficult to quantify; even though records of registrations are available, the numbers of persons inhibited from voting by the quieting effect of a voter ID requirement is difficult to obtain.

Once voters are registered, voting itself can be difficult. Precinct lines and district lines have been adjusted without much public notice. Polling places are also changed without much notice, especially since increasing security concerns make some public facilities unwilling to be used as polling places. These changes result in confusion and longer wait-times at polling places as poll workers struggle to assist voters; some voters are sent to other polling places or told to cast a provisional ballot. In order to maintain accurate voter rolls as required by the Voting Rights Act, some voters are placed on an "inactive voter list" but notifying them of this designation, explaining what "inactive" means, and helping them cast the ballot to which they are entitled has not been done in a systematic fashion.

The League of Women Voters has observed that confusion in all these circumstances has resulted in increasing distrust in the integrity of the electoral system and further discourages voter participation. After studying elections and the electoral process in the state, we are convinced that election laws need to be uniform and uniformly enforced. We believe that oversight like the preclearance provisions of the Voting Rights Act can help enforce and ensure uniformity of policies and procedures for voter registration and election administration. It can make sure that election workers receive appropriate training and that the public is adequately notified of changes in the electoral process. Good oversight can also provide recourse for injustice. Most importantly, it can improve our civic life by restoring trust in our political system. The League of Women Voters urges Congress, therefore, to redesign and re-institute scrutiny and oversight of voting practices in accordance with the considerations laid out by the Supreme Court.

Written Testimony of the Alabama Voting Rights Project
Before the U.S. House of Representatives
Committee on Administration
Subcommittee on Elections
May 13, 2019

Executive Summary:

For the last year, the Alabama Voting Rights Project (AVRP) has been working across the state to provide direct rights restoration services to Alabamians with felony convictions, train community leaders on the new law and the rights restoration process, and use public education to debunk the widely accepted myth that a felony conviction always means you cannot vote. We submit this testimony to tell the stories of the individuals we have assisted and shed light on the problems we have encountered. We encourage Congress to revive the Voting Rights Act's preclearance formula and ask that it use its powers under the 14th and 15th Amendments to end felony disenfranchisement in Alabama.

I. Alabama's New "Definition of Moral Turpitude Law" Should Have Been Reviewed Under Preclearance.

- A. Alabama's felony disenfranchisement law is rooted in its long history of racism.**
- B. Felony disenfranchisement continues to have a disparate impact on communities of color.**
- C. Alabama should not be trusted to pick and choose which crimes disenfranchise and which do not without oversight.**

II. Alabama is not making a good faith effort to implement of HB 282, as a result:

- A. Tens of thousands of re-enfranchised Alabamians do not know that the law has changed.**
- B. State officials improperly apply the law in many cases, resulting in further disenfranchisement.**

III. Alabama's rights restoration process through the Certificate of Eligibility to Register to Vote is problematic because:

- A. It requires unnecessary additional steps from citizens who have a statutory right to restoration.**
- B. State officials regularly make mistakes and create unnecessary delays in processing CERV's.**
- C. The requirement of payment of legal financial obligations is a modern-day poll tax.**

D. The sentence completion requirement disenfranchises some for life even when they have not been convicted of a permanently disenfranchising crime.

IV. Recommendations:

A. Congress must revitalize the Voting Rights Act by updating Section 4's coverage formula.

B. Congress can and should end felony disenfranchisement in states with a history of discrimination based on race.

Birmingham, Alabama
Dear Members of the Subcommittee,

A colleague of ours likes to say that the right to vote was born in Alabama. The right to vote really was born in Alabama, but here it is still in its adolescence. A fully realized right would be respected under state law. A fully realized right would have the backing of a functional and helpful administrative system. A fully realized right would allow communities to exercise their political power to open doors to the resources and opportunities they have long been denied.

Instead, we have state government officials who are at best negligent towards and at worst willfully undermining the franchise. Nowhere is this more apparent than in Alabama's cruel, byzantine, and feckless felony disenfranchisement scheme.

We write on behalf of the Alabama Voting Rights Project, an initiative of Campaign Legal Center and Southern Poverty Law Center, to share the lessons we have learned from personally assisting more than 2,500 Alabamians with past convictions in their quest to regain their right to vote.

For the last year, the Alabama Voting Rights Project has been working across the state to provide direct rights restoration services to Alabamians with felony convictions, train community leaders on the new law and the rights restoration process, and use public education to debunk the widely accept myth that a felony conviction always means you cannot vote.

We have encountered many individuals who are now eligible to vote under the 2017 state law but have no idea because Alabama has done nothing to promote or explain the change in law. That's wrong. Alabama has an obligation to inform individuals who had previously been denied the right to vote that they are now eligible. Many others who are eligible for rights restoration would not have been able to navigate Alabama's disjointed rights restoration process without our assistance. That's wrong. Alabama has a responsibility to provide simple information and assistance to those who are entitled to restore their rights. We give this testimony to tell the stories of some of these Alabamians and to emphasize to this Committee that Alabama needs strong and uniform federal rules to counteract our state's apathy and malevolence towards the right to vote.

I. The Definition of Moral Turpitude Act Should Have Been Reviewed Under Preclearance.

Unlike many of the post-*Shelby* changes in voting laws that you will learn about through these hearings, the Alabama legislature's 2017 "definition of moral turpitude act" did undeniably improve the state's felony disenfranchisement scheme, opening the door for tens of thousands more Alabamians to vote. However, the state of Alabama has shown that it cannot be trusted to pick and choose who can and cannot vote. The people of this state would have benefited from a preclearance review of this law to ascertain the racial impact.

A. Alabama's criminal disenfranchisement is inextricably intertwined with Alabama's long history of denying black citizens the right to vote.

Alabama's history of denying the franchise to black citizens is well-established and documented. In addition to Alabama's constitutional protection of slavery and restriction of the right to vote to white males until forced by Civil War to abandon those practices, Alabama's history of racial discrimination in voting includes among other things, the use of terror and violence, economic intimidation, all-white primaries, bans on single-shot voting, at-large elections, literacy tests, poll taxes, "grandfather" clauses, and good character tests, all with the aim of excluding black people from the franchise.¹

Felony disenfranchisement, across the country and particularly in the South, carries a sordid history inextricably intertwined with the racist practice of convict leasing and the South's intractable opposition to granting black people the right to vote. During Reconstruction, after the passage of the Fourteenth and Fifteenth Amendments, Southern states employed felon disenfranchisement as a back door to the wholesale disenfranchisement of black people. States expanded their lists of disenfranchising offense—which were previously closely cabined—to include a broad set of minor offenses, tailored their lists based on racial theories of crimes black people were "prone" to commit, and then prosecuted petty crimes against black people as a means to both push them into the pipeline of convict leasing and disenfranchise them permanently.²

In 1901, Alabama held an all-white Constitutional Convention. The 1901 Convention was "part of a movement that swept the post-Reconstruction South to disenfranchise blacks."³ The explicit purpose of the 1901 Convention, as expressed by the Convention president John Knox in his opening address, was to "establish white supremacy" in Alabama.⁴ Specifically, the drafters of the 1901 Alabama Constitution sought to impose voter qualifications "that would subvert the guarantees of the fourteenth and fifteenth amendments without directly provoking a legal challenge."⁵

To this end, the drafters expanded Alabama's criminal disenfranchisement provision, adopting Section 182 of the 1901 Constitution, which provided:

¹ See, e.g., *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (detailing Alabama's "unrelenting historical agenda, spanning from the late 1800's to the 1980's, to keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave").

² Pippa Holloway, *Living in Infamy* 80 (2014).

³ *Hunter v. Underwood*, 471 U.S. 222, 229 (1985).

⁴ *Id.*

⁵ *Underwood v. Hunter*, 730 F.2d 614, 619 (11th Cir. 1984), *aff'd* 471 U.S. 222 (1985).

[T]hose who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector.

The purpose of this provision was, once again, to disenfranchise black people. John Fielding Burns, who introduced the provision, boasted “the crime of wife-beating alone would disqualify sixty percent of Negroes.”

The provision was framed specifically to disenfranchise black people: “In addition to the general catchall phrase ‘crimes involving moral turpitude’ the suffrage committee selected such crimes as vagrancy, living in adultery, and wife beating that were thought to be more commonly committed by blacks.”⁶

To justify the disenfranchisement of black people through this mechanism and others in the 1901 Convention, Knox, the Convention president, specifically invoked the prevalent view of the moral superiority of Anglos over black people: “The justification for whatever manipulation of the ballot that has occurred in this State has been the menace of negro domination. . . . These provisions are justified in law and in morals, because it is said that the negro is not discriminated against on account of his race, but on account of his intellectual and moral condition.”

At the same time that Alabama sought to use the criminal system to disenfranchise black voters, it was also utilizing the criminal system to reimpose involuntary servitude of black people in the aftermath of the Civil War and the passage of the 13th Amendment. After the end of the Civil War, many Southern states utilized the exception to the 13th Amendment’s prohibition on involuntary servitude for criminal punishment to create a massive convict leasing system—wherein states and counties could sweep black communities for petty crimes and violations of the “Black Codes” and then lease those prisoners to private entities for forced labor—to replace slave labor.⁷

Alabama was the worst offender. Alabama created the largest convict leasing system in the South—providing large companies like Tennessee Coal and then U.S. Steel with nearly unlimited labor—and was the last to outlaw the practice. While exact numbers of victims of this system are not possible given shoddy record-keeping, historians estimate that well over 100,000 Alabamian prisoners were “leased” during the sixty-year period that this system prevailed. The

⁶ Hunter, 471 U.S. at 232.

⁷ See generally Douglas Blackmon, *Slavery by Another Name* (2008).

mortality rate of these prisoners was extraordinarily high, between 3 and 25 percent.⁸ These leased prisoners, like the slaves that preceded them, were nearly exclusively black. According to the record, in an average year, 97 percent of Alabama's county convicts (those convicted of minor crimes) were "colored."⁹

Thus, the Black Codes, the convict leasing system, and the 1901 criminal disenfranchisement provision all worked together to enforce white supremacy in Alabama. The State convicted black citizens of petty crimes and Black Code violations in the tens of thousands, leased them out to private entities for forced labor with extraordinary financial rewards for the State, and then excluded them permanently from the political franchise on the basis of those convictions.

In 1969, a Constitutional Commission was appointed by the Governor with the purpose of updating and revising the 1901 Constitution. The Commission released its proposed Constitution in 1973. With respect to criminal disenfranchisement, the Commission recommended the following simplification of Section 182: "No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability." The commentary to the Commission's drafts of the 1973 proposed Constitution explains the purpose of this simplified provision. The Commission noted that the long list of specific crimes might become "a matter of constitutional interpretation or constitutional amendment."¹⁰ Thus, the Commission sought to "describe such disqualifications in general terms, thus overcoming these objections and eliminating a long, scattered, and redundant list of disqualifying crimes." *Id.* The commentary includes no discussion of alternative motives for criminal disenfranchisement that differed in kind from Section 182 of the 1901 Constitution.

The 1973 proposal appears to have taken the "including moral turpitude" clause directly from Section 182 of the 1901 Constitution. The only alternative models cited in the commentary to the 1973 proposal did not include that language. The 1973 Commission sought to simplify the felon disenfranchisement provision, as compared to the lengthy 1901 clause, but there is no evidence that it sought to overhaul its racially discriminatory intent and effect. Indeed, in 1973 in Alabama, George Wallace was Governor of Alabama and there was little political appetite for meaningful change through the Commission. Accordingly, the Commission sought to limit its recommendations to modest proposals intended to streamline the lengthy and unmanageable prior Constitution.¹¹ The Commission's proposed constitutional reforms were not adopted.

In the 1980s, a group of citizens sued to challenge Section 182 as intentionally racially discriminatory. The challenge focused specifically on the provision disenfranchising those convicted of the enumerated misdemeanors and "crime[s] involving moral turpitude." In 1984, the Eleventh Circuit found "as a matter of law that discriminatory intent motivated Section 182"

⁸ See Douglas Blackmon, *From Alabama's Past, Capitalism Teamed With Racism to Create Cruel Partnership*, Wall St. J. (July 16, 2001), <http://www.wsj.com/articles/SB995228253461746936>.

⁹ David M. Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (1996).

¹⁰ First Draft of Proposed Alabama Constitution at 8 (Oct. 23, 1970).

¹¹ See William H. Stewart, *The Tortured History of Efforts to Revise the Alabama Constitution of 1901*, 53 Ala. L. Rev. 295 (2001).

and enjoined the portions challenged by the Plaintiffs, including the “crime involving moral turpitude” provision. With respect to “moral turpitude,” the Eleventh Circuit wrote: “The attorney general in opinion has acknowledged that the classification of presently unaddressed offenses ‘will turn upon the moral standards of the judges who decide the question.’ Thus does the serpent of uncertainty crawl into the Eden of trial administration.”¹² The Eleventh Circuit held that it was “unable to discern any evidence that [Section 182] was actually intended to serve” the valid “state interest in denying the franchise to those convicted of violating its laws.”¹³

The Supreme Court affirmed the Eleventh Circuit and held that Section 182, including the provision disenfranchising citizens convicted of crime involving moral turpitude, was motivated by racial animus.¹⁴

In this climate, Alabama adopted Amendment 579 to the 1901 Constitution in 1996. Amendment 579’s criminal disenfranchisement provision is a word-for-word adoption of the 1973 proposed revision of Section 182. Amendment 579 added Section 177(b) to the Constitution which now provides, in relevant part, that “No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.” Amendment 579 was proposed by the Legislature in 1995, submitted at the June 4, 1996 election, and proclaimed ratified on June 19, 1996.

The sponsor of the bill that became Amendment 579 represented to the Legislature and to the press that it would make no substantive changes to the 1901 Constitution and was intended merely to simplify the language governing voting.

Just one year earlier, Alabama’s governor had revived the chain gang, a powerful symbol of Alabama’s racist convict leasing system.¹⁵ At that time, roughly 70% of Alabamians in prison were black.¹⁶

This is the legacy of disenfranchisement on the basis of “moral turpitude” in Alabama.

B. Before 2017, Alabama’s Disenfranchisement Law Disproportionately Impacted Black Alabamians.

By 2017, when the Definition of Moral Turpitude Act was passed the state prison population in Alabama was nearly three times the size it was in the mid-1980s. The number of incarcerated persons per 100,000 people had more than doubled. The incarceration rate presents stark racial disparities. Based on recent estimates, black residents are incarcerated at a rate over three times that of white residents. From 1985, when *Hunter* was decided, the rate of incarceration had risen from approximately 300 per 100,000 to nearly 500 per 100,000. According to a 2016 study by the Sentencing Project, approximately 8% of the voting age population in Alabama was disenfranchised.

¹² 730 F.2d at 616, n.2 (internal quotation marks and citations omitted).

¹³ *Id.* at 620.

¹⁴ *Hunter*, 471 U.S. at 232.

¹⁵ Nancy A. Ozimek, *Reinstitution of the Chain Gang: A Historical and Constitutional Analysis*, 6 B.U. Pub. Int. L.J. 753, 758-59 (1997).

¹⁶ Anne Hull, *Chained to a New Kind of Justice*, St. Petersburg Times, June 25, 1995, at A1.

Because Alabama prosecutes and convicts its black citizens at substantially higher rates than its white citizens, the rates of disenfranchisement do not fall evenly on the state's black and white populations. According to the same study, approximately 15% of the black voting age population in Alabama is disenfranchised by Section 177(b) while less than 5% of the white voting age population in Alabama is similarly disenfranchised. In other words, black Alabamians are three times more likely to be disenfranchised by Section 177(b) than whites. Black people comprise well over half of all individuals disenfranchised on the basis of convictions while comprising only approximately one quarter of the total voting age population. Alabama disenfranchises black people on the basis of convictions at nearly double the nationwide rate.

C. The Definition of Moral Turpitude Act Should Have Been Reviewed Under Preclearance.

It is against this backdrop that in 2017 Alabama passed the Definition of Moral Turpitude Act (HB 282). HB 282 was a step forward because it finally put a definition on the empty category of "moral turpitude," that was more narrow than all felony convictions, thereby limiting the number of disenfranchising crimes. Whereas under previous law the decision of what was and was not a crime of moral turpitude was up to the county registrars, now they cannot depart from the enumerated list. This creates uniformity from county to county, ensures that certain convictions going forward will not strip individuals of the right to vote, and it means that Alabamians with only non-disqualifying convictions (a conviction not on the moral turpitude list) never should have lost their right to vote and has it back going forward. This may have re-enfranchised tens of thousands of Alabamians.

Because of its long history of racist voter suppression, when the Voting Rights Act was passed in 1965, Alabama was almost immediately declared covered under Section 4(b).¹⁷ Since 1965, the federal government has had to regularly intervene in Alabama's unconstitutional voter suppression activities.¹⁸ Even after *Shelby County v. Holder* cleared out the list of covered jurisdictions, in January 2014, the City of Evergreen in Conecuh County was quickly bailed back in for preclearance under Section 3(c) of the Voting Rights Act.

¹⁷ See *South Carolina v. Katzenbach*, 383 U.S. 301, 312 (1966) ("Discriminatory administration of voting qualifications has been found in all eight Alabama cases.")

¹⁸ See, e.g., *Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options after LULAC v. Perry*: Hearing Before the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Committee on the Judiciary, 109th Cong. 365-402 (July 13, 2006) (compiling evidence of Alabama's sustained record of racial discrimination); *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015) (redistricting); *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987) (selective annexations); *Hunter v. Underwood*, 471 U.S. 222 (1985) (felon disenfranchisement); U.S. Dep't of Justice, *Alabama Voting Determination Letters*, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=al (last visited Dec. 1, 2015) (listing all objections imposed against Alabama under Section 5 of the Voting Rights Act, including 24 objections from 1990 to 2008, as well as pre-1990 objections to voter re-identification and literacy requirements).

Absent the Supreme Court's decision in *Shelby County v. Holder*, HB 282 would have been reviewed under Section 5 of the Voting Rights Act.¹⁹ Despite the improvements, Alabama's new disenfranchisement continues to have a discriminatory impact on people of color.

HB 282 clarified Section 177(b)'s vague standard of "moral turpitude" by limiting it to a list of about forty-enumerated crimes. But the list defies common sense and the legislature offered no rationale behind why certain crimes were selected or left off. The list is primarily composed of the offenses that Alabama had already deemed ineligible for Certificates of Eligibility to Register to Vote (murder, rape, etc.), acts of terrorism, and what might commonly be considered "street crimes" (theft of property, burglary, drug trafficking etc.). The list does not include what are commonly termed "white collar crimes." It also does not include crimes against the public trust, like abuse of office, embezzlement of public funds, criminal campaign finance violations, tax evasion, or even voter fraud. Notably, during the course of debate on and the passage of HB 282, the Alabama Speaker of the House, Mike Hubbard, was convicted of felony ethics violations, and sentenced to time in prison. He did not lose his right to vote for this violation of the public trust.

Compare that with Joseph Rohe, now 59 years old, who has not been able to register to vote since he stole a cow at 18 years old. In Alabama, theft of livestock is automatically theft of property 2, a disqualifying conviction. Over forty years later, Mr. Rohe still cannot simply register to vote; without the assistance of our South Alabama Fellow, Mr. Rohe would likely never have known that he needed to apply for the Certificate of Eligibility to Register to Vote prior to getting registered.

Consider also Robert Peoples, who was also convicted of theft of property 2 in 1996. Mr. Peoples is disabled and does not have any extra money after spending it on living expenses. At the rate that Mr. Peoples is able to pay off the restitution on this conviction, it will take him years in order to gain his right to vote back.

Certainly, based on the history of intentional racial discrimination in Alabama, it is appropriate to question the motives and judgments made by lawmakers to include or exclude certain crimes in HB 282. Certainly, the cultural zeitgeist around the "street crimes" included versus the "white collar crimes" excluded smacks of the same racist and cynical sentiment expressed by the framers of Section 177(b) when they openly and explicitly attempted to include crimes they believed would capture large numbers of black Alabamians. Then, they could ensure that this would be the case by writing the criminal code and guaranteeing that white supremacist systems dominated the criminal justice mechanisms of the state. Though the framers of HB 282 did not shout their intentions the way the 1901 constitutional conveners did, a thorough preclearance investigation could have given us a perspective into their thinking.

Moreover, a preclearance review could have ensured that the list of crimes of moral turpitude would not continue to disproportionately disenfranchise African American Alabamians.

¹⁹ *Allen v. State Board of Elections*, 393 U.S. 544 (1969) (holding that all changes to election laws affecting voting in covered jurisdictions must be submitted for pre-clearance).

Thorough study should still be made on the impact of this list of crimes. However, only preclearance could have stopped the potential disparate impact of HB 282 in advance.

II. Alabama Officials Have Not Made a Good Faith Effort to Implement HB 282, Resulting in Continued Unlawful Disenfranchisement for Thousands of Alabamians.

Some re-enfranchisement is better than no re-enfranchisement. Policy-wise, HB 282 is undoubtedly a step in the right direction, even if it is tainted by racial animus and disparate impact. However, the promise of the Definition of Moral Turpitude Act still has not been realized, in large part because of a willful lack of engagement by the state or administrative incompetence. Because “crimes of moral turpitude” were a previously undefined, vague category, HB 282’s list applies retroactively in violation of the U.S. Constitution’s *Ex Post Facto* clause. This means that tens of thousands of people who were previously told by the state that they could not vote, actually are eligible. Yet the Secretary of State has openly refused to provide notice to those individuals²⁰ or, better yet, to simply reinstate them on the voting rolls.

HB 282 replaced an unconstitutionally vague law that provided inadequate notice of what convictions would and would not affect the right to vote, placed improper discretion over fundamental rights in the hands of low-level county employees, and denied due process to challenge their decision-making. Under this system, hundreds of thousands of Alabamians were systematically stripped of their right to vote. In 2016, a Sentencing Project Report estimated that 286,000 Alabamians could not vote because of a felony conviction – under a system that was ostensibly unconstitutional. HB 282 remedied some of these vagueness and discretion concerns, yet the state was able to have its cake and eat it too by refusing to inform those whose rights had been restored that they could now vote. Moreover, the state could have simply reinstated the registrations of tens of thousands voters who it had cancelled from the rolls.

But, rather than choose to remedy years of problematic disenfranchisement, Alabama’s Secretary of State instead fought a preliminary injunction seeking to effectuate the law and publicly pledged to spend no state resources giving notice to re-enfranchised citizens.²¹ As a result, thousands, if not tens of thousands of eligible Alabamians believe that they cannot vote, many because they have been told that by a state official. Additionally, our experience has shown us that the officials who are charged with administering the felony disenfranchisement and rights restoration scheme are inadequately equipped to provide information and assistance, and many greet the individuals we have been serving with misinformation and sometimes disdain.

A. Many Alabamians who are eligible to vote under HB 282 still believe that they are disenfranchised.

In 2016, under the authority of the National Voter Registration Act, Campaign Legal Center requested a list of all Alabamians whose registrations had been cancelled or rejected because of a felony. The State of Alabama furnished a list of over 70,000 individuals. With the assistance of

²⁰ Pema Levy, “The Republican Overseeing the Alabama Election Doesn’t Think Voting Should Be Easy,” *Mother Jones* (Dec. 11, 2017) available at <https://www.motherjones.com/politics/2017/12/the-republican-overseeing-the-alabama-election-doesnt-think-voting-should-be-easy/>.

²¹ *Id.*

the data team at Southern Poverty Law Center, the Alabama Voting Rights Project compared that list with publicly available information²² on the Alabama Criminal Records Database (“Alacourt”). We found that, of the Secretary of State’s list of 70,000, between 29,000 and 36,000 individuals who had been kicked off the voting rolls or denied registration are eligible to register to vote under HB 282 because they do not have a disqualifying conviction. Presumably all of these individuals have received notice from the state that they are ineligible to vote. It would be relatively easy for the Secretary of State to notify them of their right to vote and to reinstate them to the voter rolls. Moreover, those tens of thousands of people only are only a subset of those who previously attempted to register to vote, there are likely many more individuals who have been re-enfranchised under HB282 who have never tried to register to vote but that the state has the ability to contact. We cannot confirm that total number, but the state could identify them.

Since the state does not have the will to do this, we have been attempting to fill that gap by contacting as many of these re-enfranchised Alabamians as possible. We consistently find that people whose right to vote has been restored in 2017 do not know that they can vote again. A 2017 survey by Alabama Appleseed uncovered similar results in a survey of people who owed court fines and fees. Appleseed found that 72% of individuals not registered to vote had not heard that Alabama’s law had changed, much less did they understand whether it restored their right to vote or not.²³

When we began the Alabama Voting Rights Project in June 2017, there were very few resources where a person with a conviction could turn to understand their right to vote. Even organizations that have been deeply involved in voter registration and re-entry were not offered adequate training or resources by the Secretary of State to help disseminate information on the new law. In our 11 months, we have trained more than 2,400 community leaders who are part of countless civic organizations. Yet every single day we still encounter Alabama citizens who wrongly believe that they are unable to vote and the state still does little to nothing to remedy that misconception.

These are people like Christopher Pugh of Mobile. Mr. Pugh thought that he could not vote due to a 1999 Burglary 3 conviction. Mr. Pugh, now 45 years old, has not been voting since this conviction at age 26. Since he thought he had put this conviction behind him, he tried to register to vote in 2016 but the registrar denied his registration application. When we met Mr. Pugh last summer, he did not know that the law changed. He was understandably incredulous when we informed him that under the new law, his conviction was not disqualifying and that he could vote since he had been denied that right less than a year earlier. Still, armed with this new information, he went down to the registrar and spoke to the same woman that denied him the right to vote in 2016. He advocated for himself and showed her that burglary 3 was not disqualifying. This same registrar acknowledged that he was correct, and registered him to vote. He was pleasantly shocked and said he will be a lifelong voter.

²² Available to the public but by subscription.

²³ “Under Pressure,” Alabama Appleseed, et. al. (2017) available at <http://www.alabamaappleseed.org/underpressure/>.

Luke White is resident of Uniontown, Alabama. When we met him in early 2018, he believed, because he had been told by the state, that he could not vote because of his possession of a controlled substance conviction. He was pleased to learn that he could register to vote and immediately worked to procure his free voter ID. Luke now works with the Alabama Voting Rights Project through the Black Belt Citizens Fighting for Health and Justice to identify people with convictions and assist them through the voting rights process all across the Black Belt.

Richard Williams was living in Huntsville with a non-disqualifying felony conviction for almost twenty years. The change in the 2017 law gave Mr. Williams the right to vote. He contacted the AVRPP and we were able to assist him with restoring his voting rights. Mr. Williams voted for the first time in his life when he cast his ballot in the 2018 mid-term elections. Mr. Williams speaks passionately about how regaining his voting rights has empowered him and how he wants his experience to empower others.

The Alabama Voting Rights Project, our allies, and our volunteers have worked hard to spread the word about the change in the law but there are still so many people who are disenfranchised by a plain lack of information. The Secretary of State's unwillingness to take simple, inexpensive steps to remedy this problem is emblematic of the reasons why Alabama officials should not be left unsupervised when handling the franchise.

B. Registrars and Other Election Officials Have Not Been Adequately Educated about the New Law and Regularly Misapply It.

We frequently encounter Alabamians who are denied their right to vote even though they have been re-enfranchised under HB 282. The confusion seems to frequently stem from years of not having a defined list of crimes of moral turpitude. As a result, some registrars have been improperly denying registrations even after the law went into effect.

This past summer and fall we registered hundreds of individuals with past convictions who had become eligible to vote under HB 282 in Mobile County. Most of those registrations went through, but forty-six people who according to public records should have been eligible were not on the rolls in Mobile County for the 2018 election. We sent the registrars this list and twice requested information on why their registrations were denied. We received no response and still have no information explaining why these individuals were not allowed to vote in the 2018 elections. At least one person on that list whose registration was originally submitted in July 2018 was able to successfully register to vote when she tried again *after* the 2018 midterm election. Nothing had changed about her conviction status. From our understanding she was improperly denied the right to vote. The Mobile Registrars have still not explained why she and the other forty-five people we identified could not vote.

Another area of frequent confusion is around which out-of-state or federal convictions disenfranchise a person. HB 282 makes clear that only out-of-state or federal convictions that are equivalent to the crime of moral turpitude will strip an Alabama citizen of the right to vote. Yet we have seen instances where individuals are denied registrations for convictions that are not parallel to the crimes of moral turpitude. For example, federal a trafficking conviction is significantly broader than the only drug conviction included in HB282, state-level trafficking.

The federal crime includes possession of a drug in any amount, whereas the state-level conviction is only triggered by crossing a weight threshold. Therefore federal trafficking should not be disqualifying under HB 282.

Gregory Butler of Birmingham was convicted of federal trafficking and has completed his sentence. In September of 2018, thinking his federal conviction was disqualifying, Mr. Butler applied for a Certificate of Eligibility to Register to Vote with the Board of Pardons and Paroles (BPP). The BPP sent Mr. Butler a letter stating that even though his convictions were felonies none of them were disqualifying for voting. Mr. Butler registered to vote and was initially placed on the voter rolls in Jefferson County. However, on March 26th Mr. Butler received a certified letter from the Jefferson County Board of Registrars informing him that will be removed from the voter roll due to a crime of moral turpitude. They did not specify which crime the Board of Registrars considered disqualifying. He had 30 days to appeal.

Our North Alabama fellow and Mr. Butler visited the Board of Registrars together to inquire about which crime disqualified him. The Board of Registrars told us that the county's attorney determined that his possession of controlled substance charge in 2009 disqualified him. Possession of a controlled substance is not a crime of moral turpitude under HB 282. Moreover, Mr. Butler was never actually convicted of possession of a controlled substance; his court records show that the prosecution dropped the charges. After Mr. Butler pointed out both of these facts to the Board of Registrars, he and our North Alabama Fellow were able to meet with the county attorney and ensure that he could register to vote.

The situation brought to light both that the Board of Registrars and county attorney were not using the crimes of moral turpitude list under HB 282 and that they were not properly checking the disposition of criminal charges to be sure that they ended in convictions before disqualifying someone from voting.

Without an advocate in their corner, or at least adequate information on the law, people who are improperly denied may simply give up – disenfranchised by misinformation. Registrars must be adequately trained on the law and held accountable for errors by oversight and quality checks.

III. Alabama's Rights Restoration Process Through the Certificate of Eligibility to Register to Vote is Unnecessarily Burdensome and Leaves Many Alabamians Unfairly Disenfranchised.

Many Alabamians who did not have their rights restored in 2017 because their crimes were deemed to involve "moral turpitude" could restore their right to vote through a Certificate of Eligibility to Register to Vote (CERV) but few know about that process and the state has made little effort to inform eligible citizens. Moreover, we have encountered several problems in administering the CERVs that would be insurmountable for many without an advocate.

A. The CERV Process Requires Unnecessary Additional Steps From Citizens Who Have a Statutory Right to Restoration.

Under Alabama law, a person with a disqualifying conviction may restore her right to vote by a requesting a CERV if she: 1) has completed her sentence, including probation and parole; 2) has

paid off all legal financial obligations; 3) does not have one of a handful of very serious convictions (rape, murder, etc.); and 4) has no felony convictions pending. If a person meets these criteria and requests the CERV, the state must grant it within 44 days; the process is non-discretionary. Yet few people who are eligible for CERVs know anything about the process. Prior to the work of the Alabama Voting Rights Project, there was also no standardly accepted form for requesting the CERVs. Many states automatically restore voting rights to people who meet similar criteria, yet Alabama has created an unnecessary additional hurdle that burdens both the individuals who have to apply and the Board of Pardons and Paroles that has to process the requests.

The Alabama Voting Rights project regularly encounters people who are eligible for the CERV but do not know about it. Even more often, we encounter people who do not know whether or not they are eligible because they are unaware of whether they continue to owe legal financial obligations on their convictions. We can determine this by looking up their records through a subscription to the state criminal records database – Alacourt. But you should not need access to a subscription service to know if you can vote or not. At minimum, the state should notify people when they have met the CERV eligibility.

We also understand that the Board of Pardons and Paroles has had to hire additional staff to handle the increased volume that our project and allies have created in last year. This is a waste of state resources – the legislature should simply repeal the requirement that individuals request a CERV and instead automatically restore voting rights to individuals who have met the criteria.

B. State Officials Regularly Make Mistakes and Create Unnecessary Delays in Processing CERVs.

We have seen a variety of mistakes made by government officials in the CERV process, making the navigation of the process hazardous for a person lacking a trained and experienced advocate. In many cases, these mistakes and delays have cost people the opportunity to vote in Alabama's elections.

Anna Reynolds of Dothan was convicted of theft of property in 1997. While this is a disqualifying conviction under the new law, Ms. Reynolds was eligible to restore her voting rights by applying for a CERV. Ms. Reynolds applied for her CERV in May 2017 but she was nearly denied the right to vote in the 2017 Special Senate election, which was held nearly six months after the state's deadline for issuing her CERV.

First, her application was rejected for a lack of a "wet" signature, which has never been an explicit requirement for these applications. Next, she was erroneously notified that she did not need a CERV because of her type of conviction. This was incorrect. Ms. Reynolds did need the CERV to register to vote. Finally, Ms. Reynolds' new application for a CERV was received on July 28. Under Alabama law, her CERV should have been issued by Sept. 10, 2017. But 80 days later on November 29, her signed CERV was sitting on a desk at the Board of Pardons and Paroles, waiting to be mailed. The deadline to register to vote for the December 12 election had passed two days earlier.

Ms. Reynolds' story shows how the Alabama government's bureaucratic backups and failure to meet statutory deadlines can thwart the right to vote. CLC was able to negotiate with the state to ensure that Ms. Reynolds could vote in the Senate Special Election, but we have reason to believe that dozens of other CERVs were held up before the special election.

This is not the first time that we have heard of CERVs being delayed or denied. When the ACLU and Alabama Legal Services first began submitting requests for CERVs on behalf of citizens it was assisting, an extremely high percentage were denied for immaterial errors or omissions.

In another example, Mr. O D Gilbert Jr. filled out a CERV form September of 2018. He supplied all necessary information on the form. Mr. Gilbert sent in form to BPP but never received a reply. Upon follow up to Mr. Gilbert's CERV form it was uncovered that all disqualifying convictions had not been detailed on the form, though of course the BPP has access to this information in its own files. A letter was sent to Mr. Gilbert but he was confused by the letter and resulted in him simply filling out a registration form instead of adding the necessary information to the CERV form. Though eligible for a CERV, he was not able to vote in the 2018 midterm elections.

In other instances, information provided by the state and the criminal records database has been incorrect and individuals are disenfranchised as a result.

Willie Mack of Tuscaloosa contacted the AVRPP because his registration was denied. We checked his record and it showed that he had a trafficking conviction in 1990, which is disqualifying. We told him that the trafficking conviction was disqualifying and that he would need to get a Certificate of Eligibility to Register to Vote. But he insisted that his conviction had been reduced to possession with intent to distribute, a non-disqualifying conviction. We did some digging but couldn't find any proof of that in the Alabama criminal record database. We asked Mr. Mack if he could provide documentation of the reduction in his conviction. A few days later he faxed us the court minutes of his case showing that his conviction had, in fact, been reduced, several years post-sentence. Our North Alabama Fellow and Mr. Mack then went to the registrar in Tuscaloosa with that record in hand. Together, they advocated for Mr. Mack's rights and Mr. Mack was able to register to vote - for the first time in his life.

Maurio Moseley of Mobile also had incorrect Alacourt records. His Alacourt record showed a conviction for Robbery 1 which is disqualifying, so he submitted a request for a CERV in late October. The BPP responded to his request on November 14 saying that his conviction for receiving stolen property was not disqualifying so he could vote. He then submitted a voter registration form but the Mobile registrars denied the registration, citing a conviction of moral turpitude. Our Southern Fellow and Mr. Moseley contacted the director of the BPP to ask why he was stuck. We checked Alacourt again, finding that he only had a conviction for receipt of stolen property (non-disqualifying) but that the case file had actually been changed that morning. BPP Director Jones wrote back explaining that the Administrative Office of Courts had incorrectly entered his file, making it look like he had a disqualifying conviction. That error prevented him from voting in the 2018 election. Without assistance and our direct line to the BPP, Mr. Moseley

may have never been able to vote, remaining stuck between two state agencies with conflicting information.

Alfonzo Tucker Jr. of Tuscaloosa remembers how excited he was to cast his ballot in the 2008 and 2012 elections. But in 2012, he received a letter from the state saying he had been purged from the voter rolls because of a disqualifying conviction from 1992. He had been assessed \$1,515 in fines and fees on that conviction, which he had started paying off immediately. He had paid \$1,511 on his assault 2 but a late fee brought the total owed to \$1,646.10. Last summer, he sought a Certificate of Eligibility to Register to Vote but was sent a letter back saying he needed to pay the balance of his fines and fees: \$135. That was incorrect. He, in fact, only needed to pay \$4 to be able to restore his right to vote. Under the law, late fees should not prevent a person from restoring his or her right to vote. He was not able to come up with \$135 at that time, but could have paid \$4. He has since paid off his fines and fees, received his CERV, and registered to vote, but he was not able to do so in time to vote in the 2018 midterm elections.

C. The Requirement of Payment of Legal Financial Obligations is a Modern-Day Poll Tax.

In order to qualify for the Certificate of Eligibility to Register to Vote a person must have paid off all of her legal financial obligations on the disqualifying convictions. This is an absolute barrier for many Alabamians and a modern-day poll tax. Alabama has notoriously punitive fines and fees, so high that for many there is no hope of ever being able to pay them off. When voting rights depends on an ability to pay, it is a poll tax.

Treva Thompson is a resident of Huntsville. In 2005, she got in the only legal trouble she has ever faced in her life. She had a single count of a theft crime. She called and confessed to her supervisor, so she never served time in prison. Nonetheless, Ms. Thompson cannot vote because she doesn't have the money to buy her right to vote back. She owes \$44,000 in restitution. She is now making \$10 an hour and can afford to pay \$50 a month. It would take her 74 years to pay off her restitution and be able to vote again.

Ms. Thompson has grandchildren, nieces, and nephews, and wants to be able to have a say in our electoral process to speak for their interests. She believes that it is wrong for her to be denied the right to vote simply because she cannot pay. She is the lead plaintiff in a lawsuit against the state of Alabama challenging this requirement.²⁴

Rayven Jeselink is a resident of Baldwin County. Her ex-boyfriend used to come and go from her residence, and she did not realize that she has to report his income on her SNAP application. She was apparently supposed to have been reporting the dates that he came and left, so they could adjust her SNAP amount accordingly. Her lawyer encouraged her to plea guilty to two counts of Theft of Property 1 for this issue, and she now owes the State of Alabama \$16,813 on one case and \$2,392.90 on the other.

²⁴ Thompson v. Merrill, No. 2:16-cv-783-WKW (M.D. Ala.).

Ms. Jeselink did not set out to steal from the State of Alabama. Her accidental misreporting of income on the SNAP application has cost her greatly, as she now owes the State \$19,205.90 and is finding it difficult to obtain employment with a theft conviction on her record. The part that hurts the most, Ms. Jeselink said, was receiving the letter from the Baldwin County Board of Registrars taking her off the voting rolls for a “crime of moral turpitude.” She will now have to pay off that \$19,205.90 so she can buy her right to vote back.

Additionally, the legal financial obligations requirement is supposedly to only include fines, fees, and restitution *imposed at sentencing*. However, prior to the work of the Alabama Voting Rights Project this requirement misapplied and the Board of Pardons and Paroles was requiring people to pay off the late fees, up to 33%, imposed after sentencing before issuing a CERV.

Rosalind Martin was convicted in 1997 of Manslaughter. She completed her sentence requirements. She had to pay restitution, fees and fines totaling \$8972.00. She paid a total of \$7956.00 thinking she had paid the total in full. However, she was informed she still owed money and could not register to vote. Upon reviewing her situation and looking at the fines and fees codes, our North Alabama fellow discovered she had indeed paid in-full the total amount of restitution and fines originally assessed upon her conviction totaling \$7956.00. The remaining amount of \$1056.00 owed was for a late fee, added on after her conviction. She had no knowledge of this fee being assessed to her monies owed. The AVRPP had previously held a meeting with the Board of Pardons and Paroles in which we challenged this policy. Ms. Martin filled out a CERV form and we submitted it to the BPP with documentation of how the monies were applied. Ms. Martin received her CERV and can register to vote, but only because of not having access to an advocate who understood the law and how to read her record.

There is no logic to a scheme that allows a rich person who committed a crime of moral turpitude to cast a ballot but will permanently disenfranchise a poor person who was convicted of the same crime. In a democracy, the size of your wallet should not determine the volume of your voice.

D. The sentence completion requirement disenfranchises some for life even when they have been convicted of a permanently disenfranchising crime.

Under Alabama law, a person is only entitled to a Certificate of Eligibility to Register to Vote once they have completed their sentence, including probation and parole. But many Alabamians, particularly those with very old convictions, are under lifetime supervision, even for crimes that are relatively minor.

Carl Winchester was convicted of Robbery 2 in 1988. His life sentence for this unarmed robbery conviction was commuted to life on parole. He has paid off the restitution for this conviction in full and has been an upstanding citizen for the past 30 years. Because his conviction is a “crime of moral turpitude,” however, Mr. Winchester will never be allowed to gain his right to vote back (without a pardon).

For anyone else with a robbery 2 conviction, serving your sentence, paying off fines and fees, and not having a pending felony conviction would merit your right to vote back. Mr. Winchester, however, is ineligible for this voting rights restoration process because he will never be done with his sentence. He is currently serving a life on parole for a thirty-year-old conviction. Mr.

Winchester would need a pardon in order to restore his right to vote, but his pardon applications from 2012 and 2015 have not moved forward.

Alabama has enumerated certain convictions that require a pardon, robbery 2 is not one of them. Yet, Mr. Winchester and others will never be able to restore their voting rights absent a pardon. Louisiana recently passed a law that restores voting rights to anyone with a conviction, even if they are still on parole or probation, as long as they have not been re-incarcerated for five years. Alabama should consider doing the same.

IV. Congress Must Act to End Discrimination in Alabama's Election System.

We hope that the above testimony has given some texture to the claims that Alabama's elections are in need of Federal oversight. Alabama's deep history of racist state action to suppress the vote, particularly in the felony disenfranchisement context, gives Congress the rationale it needs to invoke its powers under the 14th and 15th Amendments. Congress has a responsibility to use its powers to realize the promises of the Reconstruction Amendments.

Accordingly, we recommend that Congress reauthorize and revitalize Section 4 of the Voting Rights Act. Congress should use the findings of discrimination here and across the country to design a new formula for which jurisdictions should fall under preclearance. Certainly, that formula must include an analysis of the history of racist laws in a state and the current impact of election policies. Undoubtedly, Alabama should be brought back under preclearance.

We also hope that this testimony has shown the ways that election related laws can harm voters not just by unfair or discriminatory actions, but also by inaction. By not making a good faith effort to implement and educate voters about HB 282, Alabama continues to suppress the vote. We hope that Congress will consider ways that a new Voting Rights Act could address this negligence.

Finally, we firmly believe that Alabama's disenfranchisement scheme violates the promise of the 14th and 15th Amendments. It is rotten with racist intent and outcomes from root to leaf. Alabama is not alone. Congress should exercise its enforcement power under the 14th and 15th Amendment to end felony disenfranchisement in all states with a history of using the criminal justice system to strip people of color of the right to vote.

Respectfully Submitted,

Blair Bowie, Skadden Fellow, Campaign Legal Center
Founder and Campaign Director of the Alabama Voting Rights Project

John Paul Taylor, Outreach Fellow, Southern Poverty Law Center
North Alabama Re-enfranchisement Fellow for the Alabama Voting Rights Project

Jason Barnes, Outreach Fellow, Southern Poverty Law Center
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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVEN T. MARSHALL
ATTORNEY GENERAL

May 17, 2019

Via email
Counsel, Committee on House Administration (GOP)

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Committee on House Administration
Subcommittee on Elections
1309 Longworth House Office Building
Washington, DC 20515

Ranking Member Rodney Davis
Committee on House Administration
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*Re: Birmingham Field Hearing, May 13, 2019 –
“Voting Rights and Election Administration in Alabama”*

Dear Chairman Fudge and Ranking Member Davis:

On May 13, 2019, the Subcommittee on Elections held a hearing in Birmingham, Alabama entitled “Voting Rights and Election Administration in Alabama.” The Subcommittee Hearing was chaired by Chairman Marcia Fudge (OH-11) and attended by Rep. G. K. Butterfield (NC-1). By unanimous consent, Rep. Terri Sewell (AL-7) was invited to sit on the dais. The three Members heard unsworn testimony from seven witnesses, divided into two panels.¹ Some of the testimony was inaccurate and some of it was incomplete. All of it was one-sided. The bottom line impression that the testimony – and comments of the Members – created was that there were major problems in Alabama and federal oversight was needed. By the time the Subcommittee Hearing had ended, one or more of the

¹ Each witness also submitted written testimony.

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Members had openly acknowledged that the purpose of the Hearing was to gather information in order to re-impose preclearance requirements on the State of Alabama. The Subcommittee is misguided both in its goal and in its approach

When the Voting Rights Act of 1965 was enacted, it imposed a preclearance requirement on the State of Alabama to freeze election standards, practices, and procedures as a means of ending gamesmanship that was then prevalent. The point was not that the 1965 benchmarks were desirable or worthy of protection. The freeze was extraordinary, and it was originally limited in both time and scope. Over time, however, the preclearance regime was expanded in various ways. It was extended repeatedly, most recently in 2006 for a quarter of a century. It was broadened to additional jurisdictions and practices, and the substantive expectations for a preclearance submission were increased. Thus, as the country moved further in time from the extraordinary circumstances that justified the extraordinary remedy of preclearance in 1965, the burdens of administrative preclearance became greater and greater. It was the failure of the Congress and the U.S. Department of Justice to acknowledge progress, pull back, and tailor preclearance requirements to actual needs that led to the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013). It is remarkable that in the face of this history and of the tremendously changed circumstances, the Members heard testimony encouraging not only the revitalization of the preclearance regime but even extension of the regime into grounds not previously covered, *cf. Presley v. Etowah County Commission*, 502 U.S. 491 (1992).

One recurring criticism of Alabama at the Subcommittee Hearing concerned the State's requirement to present a photo ID to vote, which my office has been called upon to defend in federal court. The requirement was passed in 2011 as Ala. Act No. 2011-673 and subsequently codified as Ala. Code § 17-9-30. Though the law was enacted in 2011, it provided that it would take effect for the first time with the "first statewide primary for 2014." At the time that the law was enacted, preclearance was required before the law could be implemented. My office did not immediately seek preclearance given the delayed implementation, the press of other business, *e.g.*, the BP oil spill litigation, and the likelihood that it would be necessary to seek judicial preclearance in Washington D.C. That last statement is not an admission that there is anything wrong with the photo ID law; it is a recognition of the real problems then existing with the preclearance regime. *Shelby County* was decided in 2013, and Alabama's photo ID law thereafter went into effect with the June 2014 Primary Election, as scheduled.

At the Subcommittee Hearing, Jenny Carroll described Alabama's photo ID law as "among the most restrictive of any State." In fact, the law is generous.

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Certain elderly and/or handicapped voters as well as UOCAVA² voters are exempt from the photo ID law's requirements when voting absentee. Ala. Code § 17-9-30(c). For those who must comply, any of seven categories of photo IDs may be used: drivers' licenses and non-driver IDs issued by the Alabama Law Enforcement Agency³; passports; government employee photo IDs; student and employee photo IDs from all colleges and universities in Alabama and from public colleges and universities in the other States; military IDs; tribal IDs; and, any other photo ID issued by any State or the United States. Ala. Code § 17-9-30(a). Other States have been criticized for not accepting some of the photo IDs that Alabama does accept. The acceptable forms of photo ID are posted on walls in polling places and listed on the Secretary of State's website at <https://www.sos.alabama.gov/alabama-votes/photo-voter-id/valid-ids>

Alabama law also specifically authorized the Secretary of State to issue an Alabama photo voter ID card at no cost to the voter. Ala. Code § 17-9-30(f). That authorization has been implemented by issuing these free photo IDs at the Secretary of State's office, at the offices of the Boards of Registrars (located in every county, *see* <https://www.sos.alabama.gov/alabama-votes/board-of-registrars-all-counties>), and through a mobile unit that has visited each county of the State each year starting in 2014 (*see* <https://www.sos.alabama.gov/alabama-votes/photo-voter-id/mobile-id-locations> for upcoming mobile ID unit locations).

Voters who arrive at the polling place without a photo ID have two options to cast a ballot that may nonetheless be counted. They may cast a provisional ballot that may be cured by bringing a photo ID to the county Board of Registrars' office by the Friday following Election Day. Ala. Code § 17-9-30(d); Ala. Code § 17-10-1; Ala. Code § 17-10-2. The Registrars' offices are open on Election Day and the following days, including the Friday when the photo ID would be due. And, as noted above, the Registrars can in fact issue a free photo ID to any voter who needs one. Alternatively, a voter who arrived at the polls without an acceptable photo ID may still vote a regular ballot if he or she is positively identified by two elections officials. Ala. Code § 17-9-30(e). This last provision is a holdover from the prior voter ID (non-photo) law. It is intended to make it easier for persons to vote, and it does so.

There was criticism at the Subcommittee Hearing (and in the written testimony of Scott Douglas) about the cost of gathering documents necessary to get an acceptable photo ID. Various non-photo ID documents may be used to support an application for a free photo ID. *See*

² Uniformed and Overseas Citizens Absentee Voting Act, as amended by the Military and Overseas Voter Empowerment Act, codified at 52 U.S.C.A. § 20301 *et seq.*

³ Alabama does not have a "DMV" or "Department of Motor Vehicles."

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<https://www.sos.alabama.gov/alabama-votes/photo-voter-id/obtain-free-photo-voter-id> In sworn interrogatory answers, the Secretary of State's office represented that free photo IDs have been issued on the basis of a variety of documents, including: expired driver's licenses and non-driver IDs, arrest records, a Birmingham Housing Authority ID, court documents, hospital records, pay stubs, and Sam's Club cards. *Greater Birmingham Ministries v. Merrill*, Case No. 2:15-cv-02193-LSC, doc. 224-11 at 19-24 (N.D. Ala.). Moreover, the Secretary of State has determined that the ID can also be issued on the basis of a voter registration form or voter update form which is signed, under penalty of perjury, in front of the issuing official.⁴ Thus, no underlying documents must be secured from another government agency and no associated fee need be paid.⁵

There was also criticism at the Subcommittee Hearing about the mobile unit being sent to unhelpful locations. The Secretary of State's office has, in fact, sent the mobile unit to a wide variety of locations and events, including the Chilton County Peach Festival in Clanton, the Watermelon Festival in Russellville, the National Shrimp Festival in Gulf Shores, and the Magic City Bowl in Birmingham.⁶ The office has solicited suggestions on locations from both Members of the Alabama Legislature and from local officials. *GBM*, Case No. 2:15-cv-02193-LSC, doc. 231-22 (decl. of Clay Helms). The office has also solicited suggestions from, among others: the Hispanic Interest Coalition of Alabama; NAACP Branches; sororities and fraternities; political parties (including the Democratic Party); the League of Women Voters of Alabama; the Alabama New South Coalition; the ACLU of Alabama; Save OurSelves (SOS);

⁴ For instance, in an email produced in the litigation and dated April 17, 2014, Ed Packard emailed all the Boards of Registrars as follows: "For a person who registers to vote and applies for the free Alabama Photo Voter ID card at the same time, the voter registration application is a document that contains the person's full legal name and date of birth. Thus, this document is acceptable for purposes of obtaining the free Photo Voter ID card once the person has been deemed qualified to register to vote by the Board of Registrars." Bates No. DEF_00059417.

⁵ In her written testimony, Jenny Carroll said that documentary proof is also needed of residency in order to register to vote. That is not true, and, in fact, her description of how registration works is not accurate.

⁶ The Secretary of State's sworn interrogatory responses included a chart that set out the mobile ID unit locations through May 2017. The listed locations included: the Municipal Complex in Tuskegee; the Selma Public Library; the Hayneville City Hall; the Union Springs City Hall; the West Blockton Library; the Moundville City Hall; the Marion Train Depot; the Myrtlewood Community Center; the Brighton Senior Services Center; the Dixons Mills Fire Department; the Pine Hall City Hall in Wilcox County; and, the York City Hall in Sumter County. *GBM*, Case No. 2:15-cv-02193-LSC, doc. 224-11 at 46-70. Libraries and city halls are not places where free photo IDs are usually available.

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and, the Southern Poverty Law Center. The mobile unit is, of course, limited in potential locations in some areas of the State, for instance in small towns where the only place to send the mobile unit is near the Board of Registrars' office. It should also be noted that the Secretary of State's office accepts requests for mobile unit visits. See <https://www.sos.alabama.gov/alabama-votes/voter/request-mobile-unit>

The Members heard testimony about Elizabeth Ware, a plaintiff in the federal court litigation. Scott Douglas' testimony was to the effect that her counsel arranged for a mobile unit visit to her house during her deposition, that the visit did not go smoothly, that she never would have received such a visit if she were not a plaintiff in the case, and that she had been improperly denied a free photo ID at the Board of Registrar's office previously. In fact, it was my lawyers who, during the course of Ms. Ware's deposition, offered the mobile unit visit and she accepted. Because Ms. Ware was represented by counsel, the visit was coordinated through her counsel. The subsequent visit did involve some technical difficulties, but they were overcome. A temporary photo ID was issued, and Ms. Ware's information was transmitted to the vendor to produce and mail to her a permanent free photo ID. Two employees of the Alabama Secretary of State's office drove approximately 300 miles to reach Ms. Ware and return to their home base in Montgomery. *GBM*, Case No. 2:15-cv-02193-LSC, doc. 232-8 (decl. of Ed Packard). Additionally, the Secretary of State's office notified Ms. Ware's Board of Registrars and every other Board in the State that they could not deny a free photo ID on the basis that the applicant had previously held an acceptable ID, as had allegedly happened to Ms. Ware.⁷ That is, the Secretary took steps to rectify the problem and to seek to ensure it would not repeat. This is *not* the stuff of voter suppression.⁸

Ms. Ware is not the only one for whom Secretary Merrill took extraordinary steps. The idea of mobile unit visits to personal homes originated with a request from a disabled voter who wanted the free photo voter ID, even though he was eligible to vote without a photo ID. That voter received the first home visit in the Fall of 2015. Additionally, a witness in the photo ID litigation, Jewel

⁷ By email to all the Boards of Registrars dated March 14, 2017, Clay Helms said, inter alia, "If a voter once possessed a valid ID, but lost the ID, the ID was stolen, or any other reason in which the voter now claims that he/she no longer possesses a valid ID, he/she is entitled to receive the AL Free Photo Voter ID assuming he/she is otherwise qualified." (emphasis omitted).

⁸ Ms. Ware was a plaintiff in the federal court litigation and her deposition was in the record before the court. *GBM*, Case No. 2:15-cv-02193-LSC, doc. 230-28. Similarly, Ms. Silvers, who is addressed in Mr. Douglas' written testimony, was a plaintiff in the lawsuit before she passed away, and her deposition too was in the record before the court. *GBM*, Case No. 2:15-cv-02193-LSC, doc. 230-3.

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Castopheny, alleged that she had been improperly denied a free photo ID when the mobile unit visited tiny Vredenburg in Monroe County⁹. The mobile unit was scheduled to be back in Vredenburg for Ms. Castopheny's deposition and at the same location as the deposition. Ms. Castopheny testified during that deposition that she did not, in fact, want the free photo ID for voting, but for other purposes. She testified that she routinely votes using the positively identify provision. *GBM*, Case No. 2:15-cv-02193-LSC, doc. 250-2. She can continue to do so as long as the photo ID plaintiffs are not successful in having that helpful provision struck down; they allege it is a voucher, forbidden by the Voting Rights Act.¹⁰

The record in the photo ID litigation also demonstrated that more than 13,000 free photo IDs had been produced by June 2017. *GBM*, Case No. 2:15-cv-02193-LSC, doc. 232-9 (decl. of Madeleine Raiford-Holland). The free photo IDs continue to be available to anyone who needs one. Those free photo IDs and the many other forms of photo ID that are acceptable under Alabama's photo ID law also undermine the allegations, repeated at the Subcommittee Hearing, concerning the "closure" of certain part-time ALEA offices in the Fall of 2015.

Benard Simelton was wrong to say there were no cost savings associated with those "closures" because the space was made freely available and the staff would be on the payroll anyway. The ALEA staff who manned these pop-up offices on a part-time basis spent hours getting to those offices, setting them up, waiting for customers, breaking them down, and returning to their home base. By moving that staff to larger offices closer to their home bases, there were increased efficiencies. The whole issue was overblown through misrepresentations about the impact the changes had. Among other counter-points, it should be noted that duplicate and renewal driver's licenses and non-driver IDs remained available in every county from the Judge of Probate's office or another county office, and ALEA had recently instituted on-line renewals.

⁹ The 2010 Census data showed a population of 312, and about 25% of them were too young to register to vote.

¹⁰ In his written testimony, Benard Simelton discusses Joshua Wahl, who complained that poll workers who knew him would not verify his identity. Someone reading that testimony might assume Wahl is black. In fact, he is white. Additionally, Wahl lacks a photo ID for religious reasons and not because he is unable to obtain one. Secretary Merrill was personally involved in resolving this situation. *GBM*, Case No. 2:15-cv-02193-LSC, doc. 230-27. According to the records of the Secretary of State, Mr. Wahl has recently voted in the Primary, Primary Runoff and General Election to fill a vacancy in the U.S. Senate in 2017 as well as the Primary, Primary Runoff, and General Elections in 2018.

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The so-called “closures” were also short-lived, and ALEA has, in fact, recently expanded its hours and even added Saturday hours in Birmingham, Mobile, and Opelika. See <https://www.alea.gov/dps/driver-license?PLH1=plhALRenewal>. A now-outdated stipulation regarding ALEA’s office hours is available at *GBM*, Case No. 2:15-cv-02193-LSC, doc. 226-14. And, while Professor Carroll said she found it difficult to ascertain the hours for ALEA offices, the information is available at <http://algeohub.maps.arcgis.com/apps/webappviewer/index.html?id=9227dc7d497b42cb9bd690dc95cc9ba2>, by calling 334.242.4400 or 334.353.1470, or by emailing driverlicenseinfo@alea.gov. Additionally, it is worth noting that, if the preclearance regime had been in place, it would not have required Alabama to seek preclearance of changes to the driver’s license office hours. At most, those hours might have impacted the photo ID law preclearance.

The Members also heard testimony about former Alabama State Senator Larry Dixon saying that “The way the absentee ballot situation is now and the fact that you don’t have to show an ID is very beneficial to the black power structure and the rest of the Democrats.” As my team demonstrated in the litigation, that statement was made in 1996 – fifteen years before the 2011 photo ID law was passed, and Sen. Dixon was not even in the Alabama Legislature in 2011.

The statement by Sen. Dixon may be understood to refer to the absentee vote fraud that has occurred throughout the State, but predominately in the Black Belt. During the photo ID litigation, my team developed substantial evidence of the existence of that fraud and more limited evidence of actual in-person fraud¹¹. For instance, the declarations of Pam Montgomery¹² and Glenn Murdock¹³ address the voter fraud they learned about and resolved to fight in the 1990s, all of which helped lead to the passage of Alabama’s voter ID requirement in 2003. The testimony of Perry Beasley¹⁴ and Faye Cochran¹⁵ addressed their concerns about voter fraud, and their efforts to enact Alabama’s *photo* ID requirement years later.

¹¹ See e.g., *GBM*, Case No. 2:15-cv-02193-LSC, doc. 257-12 (Investigative Report Form from my office concerning an interview with a Greensboro, Alabama resident who said, among other things, that she saw three people vote at the same polling place three times each on the same day in 2004).

¹² *GBM*, Case No. 2:15-cv-02193-LSC, docs. 231-29, 231-30 & 231-31.

¹³ *GBM*, Case No. 2:15-cv-02193-LSC, docs. 232-1, 232-2, 232-3, 232-4, 232-5 & 232-6.

¹⁴ *GBM*, Case No. 2:15-cv-02193-LSC, docs. 227-11, 227-12, 227-13 & 227-14.

¹⁵ *GBM*, Case No. 2:15-cv-02193-LSC, docs. 228-1, 228-2, 228-3, 228-4, 228-5, 228-6, 228-7, 231-13 & 231-14.

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The testimony of former Attorney General investigators George Barrows¹⁶, Ken Murphy¹⁷, and Larry Linder¹⁸ addressed voter fraud, as did the testimony of former prosecutor Greg Biggs¹⁹ and Dr. Richard Roper²⁰, who was a handwriting expert in criminal prosecutions and civil election contests. Some of these witnesses heard about voter impersonation at the polls, and Mr. Barrows explained why that kind of election fraud is hard to prosecute. Captain Rafferty²¹ of the Houston County Sheriff's Office testified about convictions in Dothan, and about the then ongoing investigation in Gordon. There was also testimony from local election officials about their experiences with absentee voter fraud.²² Because Alabama's photo ID law applies to absentee ballots, the absentee ballot fraud is relevant in explaining the need for the law.

Finally with respect to Alabama's photo ID law, I would be remiss if I did not mention – as the witnesses did not – that the photo ID law was *upheld* by the federal district court. *Greater Birmingham Ministries v. Merrill*, 284 F.Supp.3d 1253 (N.D. Ala. 2018). While Plaintiffs have appealed and that appeal remains pending in the Eleventh Circuit, I am confident that the law will be upheld. The extensive record that my office built in the litigation (only some of which I have referenced here), as well as the district court's decision in our favor, should give the Members pause before criticizing Alabama's photo ID law. It was implemented to fight fraud and modernize elections, and it has had that effect. Further, it was drafted to embrace many forms of ID and has been implemented in a voter-friendly manner that seeks to minimize any burdens while still meeting the State's important interests in regulating elections to ensure that they are fair.

Moving to the topic of purging voter rolls, it is curious that the Members did not seem to understand that a State would want to remove from its voter rolls those who have moved away, died, or otherwise become ineligible to vote. *Cf.* 52 U.S.C. A. § 20501(b)(3) & (4) (recognizing the purposes of the National Voter Registration Act to include “protect[ing] the integrity of the electoral process” and “ensur[ing] that accurate and current voter registration rolls are maintained”). A comment was made about inactive voters that suggested that the Member did not understand Alabama's process, which involves moving voters to inactive status when they cannot be located by mailings sent in compliance with the

¹⁶ *GBM*, Case No. 2:15-cv-02193-LSC, doc. 227-10.

¹⁷ *GBM*, Case No. 2:15-cv-02193-LSC, doc. 232-7.

¹⁸ *GBM*, Case No. 2:15-cv-02193-LSC, doc. 231-27.

¹⁹ *GBM*, Case No. 2:15-cv-02193-LSC, doc. 231-10.

²⁰ *GBM*, Case No. 2:15-cv-02193-LSC, doc. 232-12.

²¹ *GBM*, Case No. 2:15-cv-02193-LSC, doc. 229-27.

²² *GBM*, Case No. 2:15-cv-02193-LSC, docs. 230-1, 230-2, 231-1 & 231-2.

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NVRA, 52 U.S.C.A. § 20501 *et seq.* See Ala. Code § 17-4-30. The process has been in place since January 1997 and was precleared in October 1995. Inactive voters can, in fact, vote so long as they update their voter registration information which is apparently stale since the mailings did not reach them. Moreover, that update is quick and easy and can be accomplished at the polls. Only if, after not being reached by the NVRA mails, the voter fails to reidentify for the next two federal General Election cycles – that is, four years – is the voter’s name published, and then, should she still not reidentify, removed from the rolls. Alabama’s purge process is conducted pursuant to the NVRA, which balanced both easy registration for voters and maintenance of voter rolls that are accurate, see 52 U.S.C.A. § 20501(b).

The ability of felons to vote was also a recurring topic at the Subcommittee Hearing and is also the subject of federal court litigation in which plaintiffs are trying to control issues of policy through court decrees. *Thompson et al., v. Secretary of State Merrill et al.*, Case No. 2:16-CV-783-ECM-GMB (M.D. Ala. pending). The United States Constitution expressly approves of the right of a State to disenfranchise felons. *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974). Sovereigns have exercised this prerogative dating back to ancient times.

Alabama’s 1868 and 1875 Constitutions disenfranchised all felons and those convicted of a few additional crimes. In 1901, Alabama held a constitutional convention at which the “zeal for white supremacy ran rampant.” *Hunter v. Underwood*, 471 U.S. 222, 229 (1985).²³ The resulting Constitution disenfranchised all felons and those who committed a laundry list of other crimes. *Id.* at 223 n. **. Some of those other crimes were selected on the theory that they were more likely to be committed by blacks and poor whites. *Id.* at 229-33. Over the years, portions of the 1901 provision were stricken. *E.g., id.* at 225 (holding the provision unconstitutional insofar as applied to misdemeanants); *Hobson v. Pow*, 434 F.Supp. 362, 367 (N.D. Ala. 1977) (holding that the “assault and battery on the wife” clause violates Equal Protection). Still, at a minimum, all felonies remained disenfranchising until the State affirmatively acted to change it.

In 1996, Alabama voters repealed the 1901 Suffrage and Elections Article and replaced it with one that, *inter alia*, provided that only felonies involving moral turpitude are disenfranchising. Ala. Const. Art. VIII, § 177. They did so after years of efforts by Alabama leaders to rewrite the State’s entire Constitution and not pursuant to any federal law or lawsuit.

²³ In his written testimony, Jim Blacksher notes that Alabama is still governed by the 1901 Constitution. While true, the Constitution has been amended more than 900 times. Some of the changes are minor or local, others are more substantive. For instance, in 1973, Alabama voters re-wrote its entire Judicial Article.

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In 2017, Alabama enacted a statute defining (and limiting) which felonies involve moral turpitude for voting purposes. Ala. Act No. 2017-378; *see also* Ala. Code § 17-3-30.1. Again, the legislation was undertaken on the State's own initiative. This time it was because Secretary of State Merrill became committed to this reform after discussions with Registrars throughout the State while he was campaigning for office in 2014. The enfranchising nature of the 2017 list is evident both in the response of groups like the ACLU and the Southern Poverty Law Center in moving to register more people, and in the fact that two of the *Thompson* plaintiffs are no longer disenfranchised. Additionally, the written testimony of Isabel Rubio states that the 2017 law "restored the rights of thousands of felons."

In addition to reducing the number of disenfranchising felonies, Alabama has also taken steps to enhance the restoration of voting rights of those who have been disenfranchised by felony convictions, though it is under absolutely no obligation to do so. In 2003, Alabama created the Certificate of Eligibility to Register to Vote, which made it possible for some felons to get their voting rights back without going through the lengthy pardon process. Ala. Act No. 2003-415. Recently, Alabama revised the CERV process with an eye toward making it easier and faster. Ala. Act No. 2016-387; *see also* Ala. Code § 15-22-36.1.

As it stands now, and as pertinent here, to be eligible for a CERV, the felon must have "paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases." Ala. Code § 15-22-36.1(a)(3)²⁴. Prior to 2016, all court-ordered monies on all crimes had to be paid in order for a disenfranchised felon to be eligible for the CERV process.

Earlier this year, in recognition of the change in State law, the Administrative Office of Courts published a form to make it easier, under certain conditions, for felons to request that any money they pay be applied to "fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing in disqualifying cases." The form is available in the Criminal Forms section of the AOC E-Forms website at <http://eforms.alacourt.gov/Criminal%20Forms/Request%20to%20Reprioritize%20Costs%20-%201-2019.pdf>

That form was created to address the very issue of whether a felon's payments would be applied to collection fees, which can be added subsequent to sentencing, rather than to the fines, court costs, fees, and restitution ordered on the disqualifying felonies at the time of sentencing. Before the form, the felon always had the option to ask the court to reprioritize the order in which his

²⁴ Fines are, of course, part of the sentence while restitution is paid to the victim(s) of one's felonious actions.

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payments would be applied. Failing that, the payments could be applied to the collection fees first, pursuant to an opinion of my office that was issued five years before the CERV process was revised in 2016. Opinion to Honorable Randall I. Hillman, Executive Director, Office of Prosecution Services, dated March 30, 2011, A.G. No. 2011-049.

Jenny Carroll testified that the collection fees are routinely assessed 90 days after sentencing. While I cannot speak to the practices in every county and the situation in every case, I do know that a plaintiff in the *Thompson* case with a \$50,000 trafficking fine had years to pay off his debt before the collection fee was applied. Darius Gamble entered a felony plea agreement in February 2008 in which he agreed to pay the trafficking fine and other fees no later than February 2016 or face the collection fee 90 days after that. *State of Alabama v. Darius Labrelle Gamble*, Case No. 58-CC-06-001468.00 (Shelby Co., Feb. 2008). Gamble testified in deposition that he was released from incarceration in the Summer of 2009. The State court system's online records show that Gamble started paying the collection fee nearly seven years later in May 2016. Further, Gamble's testimony reflected that he was spending more in United Way contributions than on paying his court-ordered fine.

Another issue that got attention at the Subcommittee Hearing, and seemed to cause concern in the audience, involved some students at Alabama A&M University who tried to register to vote for the November 2018 General Election. Bernard Simelton testified that at least four students were unable to register, including one online. He did not mention that a federal lawsuit was filed. *Jackson et al., v. Madison County Board of Registrars et al.*, Case No. 5:18-cv-01855 (N.D. Ala. 2018).

The four plaintiffs moved for emergency relief and were denied because they could not demonstrate that the voter registration forms they had completed ever reached the Board of Registrars. Paper forms had been handed to third-party voter drive organizations and it was unclear what website the online registrant had used. The testimony from the defendants was that the Board did not receive the paper voter registration forms from the voter drive, and that the Secretary of State's online system showed no record of the online registrant. The students were registered – too late for the November 2018 election – based on the voter registration forms they filled out at the polls as part of the provisional voting process.

That is, though the plaintiffs had assumed they were not registered on the basis of race – a terrible accusation to hurl at 2019 Alabama – they were promptly registered (or updated to Madison County) once their applications actually reached the appropriate local election officials. Ultimately, the plaintiffs

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voluntarily dismissed their case. *Jackson et al. v. Madison County Board of Registrars et al.*, Case No. 5:18-cv-01855, doc. 30 (N.D. Ala. 2018).

The Subcommittee Hearing also featured discussions suggesting that preclearance was critical, at least in part because private plaintiffs could not bear the costs of litigation. In fact, preclearance amounted to a sort of martial law that uprooted the traditional system of plaintiffs having to first prove their case to achieve any relief; a return to the traditional system was long past due. And while the Members suggested Alabama would be unrestrained in drawing its new lines following the 2020 Census without preclearance, the facts are that the post-2010 Census plans for the Alabama House and Senate and for Alabama's seats in the U.S. House of Representatives were all precleared before they were challenged in court. And the costs of those challenges? For the House and Senate plans, the plaintiffs partially prevailed and the State paid \$3.5 million. *Ala. Legislative Black Caucus v. State of Alabama*, Case No. 2:12-cv-00691-WKW-MHT-WHP, doc. 378 (M.D. Ala. 2017). The litigation concerning the Congressional plan is still pending, but plaintiffs, who are represented by Perkins Coie, have sought fees should they prevail. *Chestnut et al. v. Secretary of State Merrill*, Case No. 2:18-cv-00907-KOB (N.D. Ala. pending).

We are also defending a challenge to Alabama's system of electing her appellate judges statewide – which was put in place in 1868 for non-racist reasons. *Alabama State Conference of the NAACP v. Secretary of State Merrill*, 2:16-cv-00731-WKW (M.D. Ala., pending). Because the system predates 1965, it was never subject to the preclearance requirement. On the first day of the six-day trial last November, ten lawyers appeared for the plaintiffs, many from Crowell & Moring. Again, should the plaintiffs prevail, they will demand the State pay substantial fees. I would be shocked if the lawyers expected the named plaintiffs to pay if they did not prevail.

To understand the current situation, it is necessary to also mention the photo ID litigation. If preclearance had been required to implement the law, my office likely would have sought it in court in Washington D.C., rather than through the Department of Justice. It is highly likely that the NAACP LDF and others would have moved to intervene in that litigation, and it would have become a substantial lawsuit. As things actually progressed, more than two dozen lawyers appeared for the plaintiffs at various times in the Northern District of Alabama case. Should plaintiffs ultimately prevail, there is no doubt they would want us to pay in excess of a million dollars in fees and expenses. When we prevailed in the trial court, we asked for just over \$37,000 in costs. *GBM*, Case No. 2:15-cv-02193-LSC, doc. 274. Our ability to get fees and expenses is extremely limited.

We are also defending Alabama's felon voting rules, which have only eased over the years including post-*Shelby County*, and thus would have been precleared

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(if preclearance were required). In fact, the 1996 Amendment was precleared. Still, a team of nearly a dozen lawyers represents the plaintiffs, and they will expect the State to pay if they prevail.

Given these facts, there is no reason to believe preclearance is critical for avoiding litigation or that litigation that should be filed will not be. On the importance of preclearance, I note that the City of Evergreen was recently bailed in pursuant to Section 3 of the Voting Rights Act, a fact that was highlighted at the Subcommittee Hearing. What went unmentioned is that the last preclearance objection against the State of Alabama was in 2007 and it was withdrawn. The objection concerned the filling of a vacancy on the Mobile County Commission. See <https://www.justice.gov/crt/voting-determination-letters-alabama>. The Department of Justice website does not reflect it, but that objection was withdrawn by letter dated July 23, 2008 in light of our success in *Riley v. Kennedy*, 553 U.S. 406 (2008). Before the 2007 objection, the last statewide objection against Alabama was 25 years ago in 1994. I do not dispute that the existence of the preclearance requirement may have influenced in some instances the nature of the changes made, but litigation can have the same effect given the continuous manner in which Alabama is sued over election matters.

It is important to recognize too the stifling nature of preclearance. Again, it freezes practices in place – both good and bad. As discussed above, absentee ballot fraud is a problem in Alabama. If the State were nonetheless determined to experiment with no-excuse absentee voting, the existence of a preclearance scheme could counsel against that. Once a move was made to no-excuse absentee balloting, it would be difficult, if not impossible, to show it would not be retrogressive to undo the experiment. Along these same lines, Alabama has previously noted that the preclearance regime would stand in the way of the State moving to an appointment system for judges, similar to the one employed by the federal government. Brief of the Honorable Bob Riley, Governor of the State of Alabama, as *Amicus Curiae* in Support of Neither Party, *Northwest Austin Municipal Utility District Number One v. Holder*, Case No. 08-322 (U.S. Supreme Court), [available at https://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_07_08_08_322_NeutralAmCuGovRiley.pdf](https://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_07_08_08_322_NeutralAmCuGovRiley.pdf). That brief explains well the changes that Alabama has seen over the years and the burden preclearance had become pre-*Shelby County*.

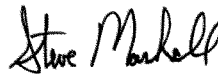
In 1965, preclearance was needed. Alabama does not deny that. But things have changed, and Alabama's historical focus on white supremacy has been repudiated. At the Subcommittee Hearing, the Members refused to see that; they only saw what they chose to see – as evidenced by the one-sided testimony they received and their acknowledged goal of acquiring evidence supporting the re-imposition of preclearance. Preclearance is not needed and cannot be justified in

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2019 Alabama. The testimony this week did not establish otherwise, and some of it was not even directed at issues preclearance could possibly cure. Any attempt to re-impose preclearance will meet with defeat, if not in Congress or the White House than in the courts – where all the facts are heard. At the same time, I personally will not stand for any violation of voting rights on the basis of race.

Given the brief time allowed me to respond to Monday's Subcommittee Hearing, my response is necessarily limited. As you proceed, please feel free to reach out to Assistant Attorney General Misty S. Fairbanks Messick at my office if you have questions or need copies of any of the publicly filed evidence. She can be reached at 334.353.8674 or mmessick@ago.state.al.us. I, of course, also stand ready to assist the Subcommittee in any way I can.

Sincerely,

A handwritten signature in black ink that reads "Steve Marshall". The signature is written in a cursive, slightly stylized font.

Steve Marshall
Attorney General

cc: Misty S. Fairbanks Messick, Assistant Attorney General



June 5, 2019

Hon. Congresswoman Marcia Fudge
Committee on House Administration
Chair, Subcommittee on Elections
1309 Longworth House Office Building
Washington, DC 20515

Re: Response to Alabama Attorney General Steven Marshall's Statement
Before Subcommittee on Elections

Dear Congresswoman Fudge:

This letter is in response to Alabama Attorney General Steven Marshall's statement regarding testimony given during the voting rights field hearing the Subcommittee on Elections conducted in Birmingham on May 13, 2019. At the hearing, SPLC, the Alabama NAACP, Greater Birmingham Ministries and others representing public interest organizations, grassroots community groups, and voters testified about the obstacles that racial minorities, low-income people, and other vulnerable populations continue to experience with respect to voting in Alabama.

In his statement, Attorney General Marshall describes Alabama as a place where white supremacy and racial discrimination in voting no longer exist, and he characterizes instances of racism and voter suppression as issues confined to a distant past rather than present-day challenges. He also responds to criticism against Alabama's voter photo ID requirement by, in part, minimizing the historical relevance of public statements by former State Senator Larry Dixon, widely recognized as the architect behind the photo ID law.

Larry Dixon served seven terms in the Alabama state legislature from 1982-2010. He served four years in the House of Representatives before being elected to the State Senate.¹ Throughout his time in the legislature, members of his own party saw him as a leader on voter ID and photo ID issues, which were hotly debated in the state legislature for well over a decade.² The effort to pass voter ID legislation began in 1995, and legislators debated voter ID bills in every session from 1995 until its passage in 2003.³ Once they succeeded in passing voter identification requirements in 2003, they moved on to photo identification. Senator Dixon was

¹ The Associated Press, Alabama state Sen. Larry Dixon retiring after 7 terms AL.com (2010), http://blog.al.com/spotnews/2010/01/alabama_state_sen_larry_dixon.html (last visited May 31, 2019).

² *Id.*

³ *Greater Birmingham Ministries v. State*, Pls' Mot. in Opp'n to Def.'s Mot. for Summ. J., available at https://www.naacpldf.org/files/about-us/255%20CORRECTED%20Pls%20Opp%20MSJ_GBMvAL.pdf

often the lead sponsor on those voter ID bills. His comment connecting passing voter ID legislation to harming the “black power structure” in Alabama was made in 1996, but the debate around voter identification legislation was in no way confined to that year. It was an ongoing battle in the legislature over which Sen. Dixon maintained influence.

The Alabama NAACP and Greater Birmingham Ministries challenged Alabama’s 2011 photo ID law as a violation of the Voting Rights Act, the Fourteenth Amendment, and the Fifteenth Amendment given its disproportionate and discriminatory impact on Black voters.⁴ In the plaintiffs’ opposition to the state’s motion for summary judgment, they presented evidence showing that as the debate over voter identification continued throughout the late 90s and 2000s, Sen. Dixon repeatedly made racist statements about voter identification and Black voter turnout. For example, in 2001, five years after the original “black power structure” comment, Sen. Dixon said publicly that voting without photo identification “benefits black elected leaders and that’s why they’re opposed to it.”⁵ In 2010, fourteen years after the quote included in SPLC’s testimony, the FBI recorded Sen. Dixon and other state legislators planning to defeat a gambling referendum because they believed its presence on the ballot would increase Black voter turnout. Sen. Dixon reportedly said, “if we have a referendum in the state every black in this state will be bused to the polls.”⁶ He then added, “every black, every illiterate” would be “based on HUD financed buses.”⁷ Finally, he predicted that coach buses “will meet at the gambling casino to get free certificates for blacks.”⁸

Sen. Dixon’s 1996 comment about voter photo ID is only one example in a long history of racist statements that spans his entire career in the state legislature. Moreover, his racist statements have time and time again been made in explicit connection to his efforts to suppress Black voter turnout. Therefore, the Attorney General is incorrect in his attempt to dismiss Sen. Dixon’s comments as artifacts of a bygone era or as immaterial to current debates over identification at the polls. In fact, the legislative history behind Alabama’s photo ID law demonstrates why the preclearance requirement in Section 5 of the Voting Rights Act remains necessary and perhaps even more critical.

In his statement, Attorney General Marshall also repeatedly attempted to characterize voter suppression and racism as issues that are not relevant in “2019 Alabama.” He writes, “in 1965, preclearance was needed...but things have changed, and Alabama’s historical focus on white supremacy has been repudiated.”⁹ He argues that the Supreme Court declared the preclearance formula unconstitutional because Congress and the Department of Justice failed to “acknowledge progress” and the “tremendously changed circumstances” in Alabama.¹⁰ The Attorney General’s depiction of Alabama as no longer needing Section 5 is simply untrue. In SPLC’s work on voting

⁴ *Greater Birmingham Ministries v. State*, 161 F. Supp. 3d 1104 (N.D. Ala. 2016).

⁵ *Greater Birmingham Ministries v. State*, Pls’ Mot. in Opp’n to Def.’s Mot. for Summ. J., at 56, available at https://www.naacpldf.org/files/about-us/255%20CORRECTED%20Pls%20Opp%20MSJ_GBMvAL.pdf

⁶ *Id.* at 40-41.

⁷ *Id.* at 41.

⁸ *Id.*

⁹ Letter from Attorney General Steven T Marshall to Congresswoman Marcia Fudge, Re Birmingham Field Hearing, May 13, 2019 - “Voting Rights and Election Administration in Alabama” (May 2019).

¹⁰ *Id.*

rights, not to mention our tracking of hate groups¹¹ and advocacy for criminal justice, immigration reform, and children's rights, exposes how white supremacist ideology remains strong in Alabama and continues to do immense harm to communities of color in the state.

Discrimination in voting also directly impacts electoral politics and policy in the state. Alabama has never elected a Black person to statewide office¹² and, in 2004, voters rejected a constitutional amendment that would have removed racist language from the state constitution.¹³ Ongoing efforts to remove this language since the 2004 referendum have also failed. In 2017, a state legislator forwarded an email to 91 colleagues comparing unspecified state legislators to monkeys fighting over a banana. This led to what the Montgomery Advertiser described as longstanding "racial tensions" exploding on the House floor. The House had to recess for two days in a row because of the incident.¹⁴

SPLC's Intelligence Project is also currently tracking twenty-two active white supremacist hate groups operating in Alabama, including Neo-Nazi organizations, multiple Ku Klux Klan chapters, and neo-confederate groups.¹⁵ Alabama has one of the highest rates of hate groups per capita in the nation.¹⁶ There are currently 1,841 monuments honoring the Confederacy in Alabama.¹⁷ A thousand of these monuments were built after 1920; 200 were constructed during the Civil Rights Movement; and 100 have been erected since 2007.¹⁸ These are only a few examples of the ways racism and white supremacy continue to be a strong presence and force in Alabama.

SPLC's staff work on numerous issues in Alabama and across the Deep South. We see how white supremacy and racism harm our communities every day. We appreciate Attorney General Marshall's pledge that he "personally will not stand for any violation of voting rights on the basis of race."¹⁹ However, Alabamians need more than words. We need a strong, effective, and enforced Voting Rights Act in order to fully realize the state's professed commitment to protecting voting rights for all people.

¹¹ Hate Map: Alabama, Southern Poverty Law Center, <https://www.splcenter.org/states/alabama> (last visited Jun 5, 2019).

¹² Summer Ballentine, *Analysis: 10 States Still Haven't Elected Minority Statewide*, AP NEWS (2016), <https://apnews.com/6d70082a5f854109aee7874e915c6631> (last visited May 31, 2019).

¹³ Debbie Elliott, Ala. Racist Language Measure Draws Unexpected Foes NPR (2012), <https://www.npr.org/2012/11/02/164107184/ala-racist-language-measure-draws-unexpected-foes> (last visited May 31, 2019).

¹⁴ Andrew Yawn, *House Promises Culture Change After Racial Tensions Boil Over*, The Montgomery Advertiser (2017), <https://www.montgomeryadvertiser.com/story/news/2017/05/19/monkey-email-stops-house-second-day/331679001/> (last visited May 31, 2019).

¹⁵ Hate Map: Alabama, Southern Poverty Law Center, <https://www.splcenter.org/states/alabama> (last visited Jun 5, 2019).

¹⁶ *Id.*

¹⁷ Iconography | Equal Justice Initiative, Segregation in America, <https://segregationinamerica.eji.org/iconography> (last visited May 31, 2019).

¹⁸ *Id.*

¹⁹ Letter from Attorney General Steven T Marshall to Congresswoman Marcia Fudge, Re Birmingham Field Hearing, May 13, 2019 - "Voting Rights and Election Administration in Alabama" (May 2019).

Sincerely,

/s/ Nancy G. Abudu

Nancy G. Abudu
Deputy Director



The Alabama Advisory Committee to the U.S. Commission on Civil Rights
 230 S Dearborn Street, Suite 2120, Chicago, IL 60604

Via email:

May 31, 2019

Chairwoman Marcia Fudge
 Committee on House Administration
 Subcommittee on Elections
 1309 Longworth House Office Building
 Washington, DC 20515

Dear Chairwoman Fudge,

Last week I was provided with a copy of a letter sent to the Subcommittee on Elections by Alabama Attorney General Steve Marshall dated May 17, 2019 (hereafter "the Attorney General's letter"). In his letter, Attorney General Marshall responds to testimony given and received during the May 13, 2019 hearing entitled "Voting Rights and Election Administration in Alabama." The Attorney General also corrected some information I used in my written testimony to describe the voter registration process in Alabama. I appreciate the Attorney General's willingness to provide more accurate information so that the record in this matter can be corrected. This letter both updates my original testimony and reiterates concerns over impediments to voting in Alabama that the Attorney General's letter minimizes or fails to address altogether. This letter does not address the Attorney General's claims line by line. Rather, it speaks to some global concerns and addresses some particular concerns raised in the Attorney General's letter. As always, the views expressed in this letter represent my views as Chair of the Alabama State Advisory Committee to the U.S. Commission on Civil Rights. These views do not necessarily represent the views of the U.S. Commission on Civil Rights.

Correction to Previously Submitted Written Testimony

On page 4, footnote 5, the Attorney General notes that in my written testimony I provided an inaccurate description of voter registration requirements in Alabama. He is correct. It was not my intent to provide inaccurate information to this Subcommittee and so in the interest of accuracy I want to acknowledge that my description of registration requirements included references to purging procedures that were described in the same section of my testimony. The mailing of cards to confirm residency is part of the voter purging procedure and is not a prerequisite to registration. I appreciate the Attorney General pointing out this error and I am hope that this correction facilitates the Subcommittee's fact-finding efforts.

In the interest of a complete record, I do want to note that purging procedures do rely on the mailing of cards as described in my written testimony, and the above correction is not meant to suggest that residency in the state is not a requirement for registration and voting. It is. Further, in response to an inquiry as to whether or not certain residents may register to vote in a particular county, the Attorney General's Office noted in a 2010 Opinion that "residency is a factor to be determined by the board of Registrars. This determination is based upon many factors, such as where the person pays property taxes, where he or she owns a home, where the person has a driver's license, and where he or she works." *See Attorney General Opinion 2010-100, Aug. 24, 2010*. Thus, while the registration process may not require documentation of residency, it is apparent that the Board of Registrars has discretion to require proof of residency prior to permitting registration. In speaking to

staff in various Board of Registrar's Offices, I had been told that in an effort to confirm residency in a county a variety of methods may be employed, including mailed cards. Since receiving a copy of the Attorney General's letter, I have followed up with those Registrar's Offices from whom I had received this information, and they have confirmed that these mailings are only relied upon when there is a question regarding residency. Mailing cards is not a routine requirement for registration.

Concerns with the Attorney General's Letter

With this correction in place, I would now like to take a moment to address some global and specific concerns I have with the Attorney General's response. While I do not intend to engage in a line by line analysis of the letter, nothing in the letter itself alleviates the concerns I expressed to this Subcommittee in my written testimony and in my oral testimony before you on May 13. I want to begin by noting that I agree with the Attorney General's assessment that whatever impediments to voting that exist in Alabama today are not of the same scope or magnitude as those in place at the time of the passage of the Voting Rights Act of 1965. Further, as I noted in my written and oral testimony, in the limited time I have spent researching impediments to voting in my role as the Chair of the Alabama State Advisory Committee, I have found a variety of state actors and citizens willing to share their knowledge and experiences with regard to voting regulation in the state. While I do at times criticize his office, I have in the past and want to continue to note that Secretary of State John Merrill's Office has always demonstrated a willingness to discuss these issues and has been responsive to concerns raised by myself and others. Prior to testifying before you all, I spoke with Hugh Evans in the Secretary of State's Office, who helped clarify questions I had regarding felon re-enfranchisement regulations. I appreciated his candor in that conversation and the spirit of cooperation he showed.

While I believe this dialog between and among state officials and various stakeholders in the state is important, I do not believe it alone can produce full access to voting in Alabama, primarily because of a fundamental divergence in viewpoint regarding the nature of the right to vote itself, the necessity of some of the voting regulations Alabama has implemented, and the effect such voting regulations have on marginal populations in our state. Requirements of a photo identification, felon disenfranchisement procedures, or purging methods that rely on mailed cards are described in the Attorney General's letter as if they are minor inconveniences to the voter that promote election integrity. This description, as well as the Attorney General's failure to address curtailed polling locations, limited voting hours, lack of early voting, failure of notice to non-disenfranchised convicts, and restrictive absentee balloting procedures to name a few, not only fails to account for the disproportionate impact such policies have on poor and rural voters in our community, but also overstates the risk of voter fraud upon which the Attorney General and other state officials rest the justification for these policies. I will discuss these further below, but here I want to note that the Attorney General's efforts to minimize the effect of these requirements by noting high registration rates do not justify or demonstrate the de minimis impact of such regulations as the Attorney General would suggest. Rather, those registration rates are a testament to Alabama citizens' commitment to their right to vote.

Simply put, my concern is that the Attorney General, like other state officials, not only underestimates the impact of these regulations, but fundamentally mischaracterizes of the right at stake: enfranchisement. At its core, the right to vote belongs to the citizen. It is not given by the government or earned by some citizen effort. Fundamentally, it belongs to each of us. In reading the Attorney General's letter I am struck with a sense that he does not share this view. Instead, he seems to take the position that the right to vote must be meted out to the citizen by the government only after the citizen proves his or her worth. That a barrier to voting is now a required photo ID or payment of a fee or proof of residency for those listed as inactive voters or travel to few and further-between polling places during designated hours, as opposed to a sheriff literally blocking the doorway to a polling place may suggest, as the Attorney General has, that impediments to voting are small or not as bad as they once were. Voter registration rates may suggest, as the Attorney General has, that registration is no longer impossible for black and brown voters in our state. But the role of government is not to justify the barriers it places between the citizen and his or her right by noting that the citizen overcame that

barrier, or that those who did not or cannot overcome the barrier did not complain. The role of government is to enable, not to stifle, voting. If I leave you with no other thought from this response, it is a heartfelt plea that for our democracy to survive and for citizens to have faith in their government, the right to vote must be free. The burden to justify the limitation of that right must fall to those who erect barriers to the citizen's right, and the state of Alabama must be held to that burden in a meaningful way.

Although the Attorney General is correct that since the Court's decision in *Shelby County v. Holder*, litigation has challenged Alabama's various voting regulations with mixed success, he is incorrect in suggesting that access to the courts or the failure of a particular case alone justifies doing away with preclearance requirements. First, such a characterization ignores the cost of litigation that parties must bear. Even in cases in which attorneys' fees are awarded, these fees are repayment for expenses already incurred. This means that the party, or their lawyers, must first bear the expenses of the litigation and then hope for reimbursement upon settlement or a court ruling. This not only imposes a financial burden on those seeking to defend their rights, but it may also discourage potential litigants from pursuing action out of fear of that financial burden. Second, the Attorney General's description also overlooks the burden that is shifted from the state to the citizen when preclearance requirements are removed. Under preclearance, the state must justify its policies; in the absence of preclearance, the burden is on the citizen to show disparate impact. Coupled with the lack of federal investigatory resources that accompany preclearance procedures, citizens are less capable of bringing and proving claims under the post-*Shelby County* regime. The fact that prior to the *Shelby County* decision Alabama was able to shepherd voting restrictions through the preclearance process successfully is a testament to the value of the process. Prior to *Shelby County*, in considering and implementing voting policies, by the Attorney General's own admission in his letter, Alabama was thoughtful and careful to consider the potential impact of such policies on minority and marginalized citizens for fear that these policies would fail preclearance scrutiny. This thoughtfulness and caution that was a product of preclearance should be celebrated as protecting the citizen's right, not as an impediment to the state's power as the Attorney General would suggest.

From these global concerns I do want to turn to some specific issues raised in the Attorney General's letter: the photo ID law and the process of felon re-enfranchisement. In turning to these specific issues, I do not mean to suggest that his other critiques do not warrant response or raise concern, but I believe these to require the most urgent response. Turning first to Alabama's photo ID law, on page 2, last paragraph, of his letter, Attorney General Marshall notes that I described Alabama's photo ID law a "among the most restrictive of any state." Marshall counters that the Alabama's photo ID law is in fact generous and proceeds to list both exemptions to the law for "[c]ertain elderly and/or handicapped voters as well as UOCAVA voters" and a variety of accepted IDs. Marshall also notes that Alabama provides free ID available at the Secretary of State's office, the offices of the Board of Registrars and through the Secretary of State's mobile voter ID unit. In addition, voters who arrive at polling places without photo ID under Alabama's law may either seek positive identification by two election officials or may cast a provisional ballot and subsequently provide ID at the appropriate Registrars' office by the Friday following the election. To be clear, I do not contest the procedures described by Marshall – in fact, such procedures are described in the written testimony I provided to this Subcommittee. In addition, I applaud both Alabama's decision to provide free identification and Secretary of State Merrill's willingness to create the mobile ID unit, to publicize its schedule, and to allow individuals to request the mobile ID unit through the Secretary of State's website. I also commend the Secretary of State for his decision not to enforce Alabama's proof of citizenship requirement, which would create dual criteria for voting for state and local and federal elections. I would agree with Attorney General Marshall that such decisions and actions open access to the ballot. That said, I would also stand by my original assertion that Alabama's phot ID law is among the most restrictive in the country and express concern that, in his letter, Marshall glosses over the impact of this ID law.

First, consider that only 17 states require some form of photo identification to vote. In contrast, 14 states have no ID requirements and 19 states accept non-photo IDs. This places Alabama's photo ID law among the 17 most restrictive laws. Second, while the Attorney General's letter correctly notes that the Secretary of State's

Office has created a mobile ID unit that has travelled to a variety of locations (schedule available at: <https://www.sos.alabama.gov/alabama-votes/photo-voter-id/mobile-id-locations>), the letter acknowledges that in rural communities the mobile ID unit may be located near the very locations where free identification are already available, such as the Registrar's Office. While this does seem to limit the utility of the mobile ID unit and may raise questions about whether that is indeed "the only place to send the mobile unit" as the Attorney General writes, I do think it is important to acknowledge that according to the published schedule, the mobile ID unit has traveled to rural counties to provide free identification when the Board of Registrar's office may be closed either on weekends, state holidays or outside of normal business hours. This is clearly one of the advantages of the mobile ID unit, and Secretary of State Merrill has repeatedly expressed his commitment to being thoughtful about the timing as well as the location of mobile ID unit's appearances. Beyond this, the mobile ID unit is valuable not only because it signifies the willingness of the state to make good on its promise to make IDs available to all who want one, but because it actually creates an opportunity for folks to get those IDs. In short, I do not think that anyone contests that the mobile ID unit, and John Merrill's commitment to making the unit available, is valuable.

This is not to say, however, that the use of the mobile ID unit does not raise concerns or should not be subject to criticism. I remain concerned that this mobile ID unit is not reaching those most in need of its services because of its limited appearances in limited locations, by the Attorney General's own admission in his letter. I also have concerns I have expressed to Secretary of State Merrill in the past that the mobile ID unit operates, according to its own posted schedule, for only two to three hours at each location.¹ I am heartened by the efforts described in the Attorney General's letter regarding efforts to procure an ID for Ms. Ware, but I suspect such efforts are extraordinary. For folks unable to attend the Chilton County Peach Festival, the Watermelon Festival, the National Shrimp Festival, the Magic City Bowl or any of the other events listed on the mobile ID unit's schedule for any of a variety of reasons, the question raised in my written and oral testimony lingers: why require a photo ID to vote at all? Indeed, the Attorney General's letter ignores that Alabama passed its voter ID law to thwart individual voter fraud despite the fact that no evidence exists that such voter fraud plagued Alabama elections prior to the passage of the photo ID requirement according to Secretary of State Merrill's testimony at the February 22, 2018 hearing in Montgomery. Further, according to Merrill, since his election as Secretary of State there have been six prosecutions for voter fraud and three elections overturned. I do not mean to minimize concerns about the integrity of the vote, which I will discuss further below. I do, however, mean to raise concern that the possibility of voter fraud is being used by the state to justify a photo identification requirement that, for a variety of reasons described in prior testimony, disproportionately impacts poor, rural and minority voters despite the fact that little evidence has been presented that such fraud occurs on a wide scale. In fact, studies suggest just the contrary: that it is a rare and ineffective way to disrupt an election.

The Attorney General also disputes the impact of driver license office closures on the voting rights. Before delving into this discussion, I want to note that the Attorney General is correct that Alabama issues driver's licenses under the auspice of the Motor Vehicle Division or MVD not the Department of Motor Vehicles or DMV. Use of the term DMV or Department of Motor Vehicles was incorrect in my written testimony, although some counties do identify the location at which one might acquire a driver's license as the DMV (consider for example, Shelby County's Pelham DMV). This misidentification of the office title, however, does not mitigate the underlying facts that in 2015 the state sought to close 31 Motor Vehicle Division Offices – despite the fact that such offices served as one of the primary sources of identification required for voting in our state. The Attorney General also neglects to mention in his letter that it was only after an investigation by the United States Department of Transportation found that such closings caused a "disparate and adverse impact on the basis of race" that the offices were reopened with limited hours of operation. See https://www.al.com/news/montgomery/2016/12/feds_alabama_to_expand_drivers.html.

¹ There are exceptions to this two to three-hour limit, for example on June 15 the mobile ID unit will be available at the Juneteenth Festival in Birmingham, AL from 10:00 a.m.- 2:00 p.m. and on October 5 the mobile ID unit will be available at the Face in the Window Fest in Carrollton, AL from 9:00 a.m. – 1:00 p.m.

While the hours of operation of such offices are available on ALEA's website, the Attorney General also overlooks the fact that I was repeatedly unable to get ahold of anyone in the individual county offices in two different rural counties during their listed hours of operation by phone. For potential voters with limited windows and long distances to travel to obtain identification from such offices (and perhaps little access to the internet) it seems odd that such offices would not at a minimum offer information telephonically regarding their location and hours of operation. It also does not engender confidence that such offices are in fact operational if efforts to contact them during office hours results in an unanswered telephone. The Attorney General's letter helpfully offered the additional suggestion that I, or any voter, could rely on a statewide website (algeohub) to obtain information. Unfortunately, when I typed a variety of iterations of Wilcox County or Bullock County and drivers license (or identification) office into the search bar on the webpage, I received a response that nothing matching my criteria could be found. Finally, the Attorney General's letter suggested contacting two numbers which he provided. When I attempted to take his suggestion, however, the first number simply referred me back to the ALEA website for hours of operation at particular offices, and the second number went straight to voicemail, where despite leaving messages requesting information, I have yet to receive a returned call. This experience, following the Attorney General's suggestions, has therefore not alleviated my concerns that actually getting to speak to someone to confirm the hours of operation at a supposedly open driver's license office is a time consuming and ultimately, perhaps, futile task.

Setting aside concerns about the ability to track down employees of driver license offices or the curtailed hours of such locations, the fundamental question remains: why require a photo identification in the first place? As noted above, the requirement of a photo ID to vote is not a common requirement. In fact, the majority of states have no such requirement and no federal law requires such a form of identification to vote. The requirement of a photo ID is entirely of Alabama's own making. Attorney General Marshall offers in his letter what he characterizes as "substantial evidence of the existence of ... fraud and more limited evidence of actual in-person fraud." (page 7-8, FNs 11-22). The evidence he presents, which is consistent with that of Secretary of State Merrill and that of John Park (who also testified at the February 22 hearing), is wholly inadequate to justify the voter ID requirement. In addition, the Attorney General notes in his letter that evidence of individual voter fraud is often hard to gather and cases are difficult to prosecute. His suggestion seems to be that this accounts for a relatively small number of prosecutions in the face of a larger possibility of individual voter fraud occurring. Although this is theoretically possible, a study Professor Justin Levitt—who has conducted extensive research into the occurrence of individual voter fraud over a fourteen-year period and is a nationally recognized expert on the topic—indicates that he has found 31 cases of voter fraud by impersonation out of more than 1 billion ballots cast. Further, another voting rights expert, Dr. Kareem Crayton, testified that such individual voter fraud is "infinitesimal."

I do not quibble with anyone who expresses a concern about individual voter fraud. In fact, I have always agreed and have testified that voter integrity is critical to a functioning democracy. I remain, however, puzzled by the repeated assertion that individual voter fraud poses the greatest risk to Alabama's elections such that photo ID laws and curtailed absentee balloting are necessary. In fact, Mr. Park and Dr. Crayton both described instances of systematic fraud – in which election officials destroyed or miscounted ballots – as having a far greater effect on election outcomes given the number of ballots in question. Yet this type of vote fraud is not addressed by an ID requirement, limited absentee balloting or denial of early voting. My concern, one that remains unaddressed by the Attorney General's letter, is that Alabama is seeking to prevent what appears to be a limited and poorly documented fraud concern and in the process is creating hurdles for legitimate voters to access their rightful ballots. This would seem to be an odd goal of government and a perversion of the duty of those officials charged with protecting the ballot.

Finally, I want to address the Attorney General's characterization of felon disenfranchisement and the process of restoration in Alabama. As I indicated in written and oral testimony, the 2017 Definition of Moral Turpitude Act significantly improved Alabama's felon disenfranchisement procedures by defining and limiting disqualifying offenses. In addition, Secretary of State Merrill's work in publicizing this list serves to ensure

that the law is applied consistently throughout the state. I agree with Attorney General Marshall that this provision has served to reduce felon disenfranchisement and has benefitted the people of our state.

Despite this improvement, the road toward restoration has been challenging in Alabama. As noted in prior testimony, the Secretary of State's office has not provided notice of re-enfranchisement to citizens who had been convicted of offenses no longer categorized as crimes of moral turpitude following the passage of the 2017 Act. Further, the Secretary of State's office has failed to provide information regarding the restoration process, indicating that this is the sole obligation of the Board of Pardons and Paroles. For its part, the Board of Pardons and Paroles has indicated that it strives to provide proper information, but that budgetary limitations and lack of personnel have rendered the Board unable to provide mass notice to those disenfranchised prior to 2017 who should now be automatically re-enfranchised because their offense is not categorized as a disqualifying offense, or to those who have completed all requirements for restoration and are now eligible to apply for a CERV. Third, as acknowledged in Attorney General Marshall's letter, it is only recently that a uniform application for restoration has been widely available. The state has relied on private actors such as the Equal Justice Initiative (EJI), the American Civil Liberties Union (ACLU), and the Southern Poverty Law Center (SPLC) to publicize this process and to distribute applications for a CERV. While the state may have worked to regularize its definition of disqualifying felonies and so to re-enfranchise some felons, it did so only as a technicality as those without notice that they never lost their right to vote or without access to a CERV application suffer de facto disenfranchisement. The state's failure to take even the most basic steps of informing effected citizens of their rights or offering them a meaningful path to realize those rights creates a difference without distinction in terms of their ability to realize the right to vote.

In addition, the existence of the 30% collection fee tacked on to imposed fines and fees has complicated CERV eligibility for Alabama's convicted poor. As per Alabama §12-17-225.4, this collection fee may be imposed on fines, costs, and fees that remain unpaid 90 days after their court-appointed due date. While the Attorney General is correct that a felon may petition to have payments reprioritized, the default, as established by an opinion from the Attorney General's office, is that the 30% collection fee may be collected first. In speaking to court clerks throughout Alabama I was told that this is the common practice. Beyond this, I was also told that the fee was commonly imposed 90 days after the court-appointed due day (which was consistently described to me as either at time of sentencing or some period after that). Further, I was consistently told that this imposition of the fee at the 90-day mark was near automatic. I am certainly heartened to hear of the two examples the Attorney General was able to provide on page 11 of his letter, but my conversations with court clerks across the state suggest that the majority of those facing court fines, costs, and fees in Alabama are paying a near automatically imposed 30% collection fee if they are unable to pay off all imposed fines, costs, and fees within 90 days of the court imposed due date.

Conclusion

In the end, Attorney General Marshall argues in his letter that preclearance harms the state. His argument rests on the dubious premise that because the barriers currently imposed on voters in Alabama do not rise to the extreme of violence or racism of those of 1965 and that voters in Alabama may be more readily able to overcome these barriers than those of the past, these modern barriers are not troubling and do not warrant imposition of preclearance. This perception of the right to vote and the government's role in preserving it strikes me as fundamentally wrong. It is premised on the notion that the right to vote is the government's to distribute and the citizen's to earn. In fact, the right to vote is fundamentally the citizen's. The government's role is not to erect barriers, but to facilitate that right. In 1965 the federal government implemented preclearance requirements not only because the barriers erected to voting for minority voters were extreme, but because it recognized that in a state like Alabama, where one party controls government, there is little incentive at the state-wide level to bring about meaningful change. Admittedly the types of barriers to voting described in this response and elsewhere by myself and others do not rise to the magnitude of those faced by citizens in 1965, but the political resistance to change at the state level remains the same. As a result, barriers to voting are implemented and the citizen is left to overcome the barrier, to privately defend his or her right

through costly lawsuits, or to accept his or her loss of enfranchisement. In such a circumstance, federalism becomes necessary to preserve and protect minority and marginal voices in the community.

I have been privileged to live in this state and to come to know a variety of good people who make their home here. Some find the barriers to voting erected by the state to be the mere trifles that the Attorney General's letter suggests they are. These folks already have driver's licenses, stable homes, and private transportation. For these folks, voting poses little challenge. When I read the Attorney General's letter or consider Alabama's various voting regulations, however, I tend not to think of these folks. Instead I think of a single mother I met who described the challenges of going to work via public transport, picking up a child at daycare on time, and still casting a ballot within the designated polling hours. I think of the elderly couple I met at the end of a rural route in Cullman when I went to pick strawberries last spring who described their frustration in renewing their licenses without access to the internet or cellphone service in their home. I think of the black man I spoke to Lowndes County who told me he has given up trying to vote because every time he appears there is always something wrong with his registration. To these citizens in my state, the barriers to voting enforced by the state are not small or manageable. They are fatal to their enfranchisement. As you consider the necessity of preclearance, I urge you to think of them and to stand for them as a force that will continue to encourage the state of Alabama to be thoughtful and careful as it regulates one of the most fundamental rights of its citizens.

Sincerely,

Jenny E. Carroll
Chair
Alabama State Advisory Committee to the U.S. Commission on Civil Rights



The Alabama Advisory Committee to the U.S. Commission on Civil Rights
230 S Dearborn Street, Suite 2120, Chicago, IL 60604

Via email:

May 17, 2019

Dear Chairwoman Fudge, Rep. Butterfield, and Rep. Sewell,

I am writing in response to Rep. Butterfield's questions raised at the Subcommittee on Elections field hearing entitled "Voting Rights and Election Administration in Alabama" in Birmingham, Alabama on Monday, May 13, 2019. In response to oral testimony, Rep. Butterfield asked:

1. What types of crimes produce disenfranchisement in Alabama following passage of the 2017 Definition of Moral Turpitude Act?
2. Is there demographic data supporting testimony that Alabama's felony disenfranchisement clause and statutes disproportionately affect minority populations in the state?

At the field hearing, I indicated that I would provide supplemental information to answer those questions. This letter provides this information. The views contained in this letter represent my views as Chair of the Alabama State Advisory Committee to the U.S. Commission on Civil Rights. These views do not necessarily represent the views of the U.S. Commission on Civil Rights.

Defining Crimes of Moral Turpitude

Section 177 of Article VIII of the Official Compilation of the Constitution of Alabama of 1901, as amended (hereafter "Section 177 of Article VIII"), provides that only those convicted of a felony involving moral turpitude shall lose their right to vote in Alabama. In 2017 Alabama implemented the Definition of Moral Turpitude Act (HB 282) also known as the Felony Disqualification Act (section 17-3-30.1). This Act defines which felony convictions qualify as crimes of moral turpitude and so produce disenfranchisement under the felony disenfranchisement clause of the Alabama Constitution. The Act lists over forty crimes that will result in disenfranchisement. Under the Act and §15-22-36.1(g) those convicted of two offenses (treason and impeachment) are permanently disenfranchised. Under §15-22-36.1(g) those convicted of murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, being a parent or guardian who permitted a child to engage in obscene matter, possession of obscene matter, or possession with intent to distribute child pornography may only have their voting right restored through the pardon process. Those convicted of any of the other listed offenses (manslaughter; 1st or 2nd degree assault; 1st or 2nd degree kidnapping; 1st or 2nd degree human trafficking; terrorism; soliciting or providing support for terrorism; hindering prosecution of terrorism; endangering the water supply; possession, manufacture, transport, or distribution of a destructive device or biological weapon; selling, furnishing or giving away a destructive device or biological weapon; possession, manufacture, transport or distribution of a detonator, explosive, poison or hoax device; possession or distribution of a hoax device represented as a destructive device or weapon; attempt to commit an explosives or destructive device or bacteriological or biological weapons crime; conspiracy to commit an explosives or destructive device or bacteriological or biological weapons crime; hinderance or obstruction during detection, disarming, or destruction of a destructive device or weapon; possession or distribution of a destructive device or weapon intended to cause injury or destruction; trafficking in cannabis, cocaine, amphetamines, methamphetamines or other illegal drugs; bigamy, torture or willful maltreatment of a child under the age of 18; aggravated child abuse; prohibited acts in the offer, sale, or purchase of securities; 1st or 2nd degree burglary; 1st or 2nd degree theft of property or lost property; 1st, 2nd or 3rd degree robbery; or 1st or 2nd degree forgery or the equivalent of such offenses in any state or federal court) may apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote ("CERV") provided they: (1) have no pending criminal charges, (2) have completed their full sentence, parole or probation term, or have been pardoned, and (3) have paid all fines, fees, and restitution ordered at the time of the sentence on the disqualifying felony as per §15-22-26.1 (2-4). Those convicted of an offense other than those listed above have not been convicted of a crime

of moral turpitude and therefore never lost their right to vote. Such individuals may vote even during their sentence or period of incarceration. The process to vote for incarcerated but not disenfranchised individuals is described in detail in my previously submitted written testimony, but in short, those individuals must apply for and cast an absentee ballot. This imposes a financial burden on inmates who must apply for an absentee ballot for each election in which the inmate seeks to vote and must mail absentee requests individually and so pay for postage for each absentee ballot he or she seeks to cast. Beyond this financial burden, given timing requirements on absentee ballots, inmates face potential logistical challenges in obtaining absentee ballots. Under Alabama's prison administration policies, inmates who have little to no control over their housing during periods of incarceration. In practical terms this means that an inmate must not only expend resources to request an absentee ballot but may be moved by the Department of Corrections to a different facility before he can receive this ballot. Thus, while an inmate who has not been convicted of a disqualifying offense may remain enfranchised, realize this right may be a difficult and costly proposition.

The Effects of Felon Disenfranchisement in Alabama

According to a 2016 study by The Sentencing Project, approximately 8% of the voting age population in Alabama was disenfranchised as a result of a felony conviction under Section 177(b) of Article VIII. This study estimated that this 8% represented approximately 15% of the black and 5% of the white voting age population. In other words, Section 177 disenfranchises black voters at a rate of 3 to 1 compared to white voters. Further, according to this study, Alabama's black citizens comprise over half of all those disenfranchised on the basis of conviction while comprising only one quarter of the total voting age population. Finally, according to The Alabama Voting Rights Project, Alabama disenfranchises black people on the basis of convictions at nearly double the national rate.

In addition, §15-22-26.1 (3)'s requirement that those applying for a CERV must have "paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases" disproportionately impacts those with the fewest resources in the state. Such fines, costs, and fees can pose a significant challenge for marginal citizens. This challenge is compounded by the imposition of a 30% collection fee under §12-17-225.4 on all such fines, costs, and fees that remain unpaid 90 days after their court-appointed due date. As noted in my previously submitted testimony, according to the Office of the Alabama Attorney General, jurisdictions may require this collection fee to be satisfied before a citizen can begin to pay down the lingering debt. Thus, despite the fact that this collection fee was not ordered at the time of the sentence on the disqualifying felony, this fee, once imposed, must be paid before a person may apply for a CERV.

Now consider that according to the 2010 Census, 16.9% of Alabama's residents live below the federal poverty line. The 2018 Poverty Data Sheet for Alabama estimates that nearly 800,000 or 17.2% Alabamians live below the federal poverty line, with 19 counties—including 12 out of 15 counties in Alabama's black belt—reporting poverty rates over 25%. The national average is 14% of the total population. These numbers suggest not only that there is a clear link between race and poverty in Alabama, but that for Alabama's poorest citizens such fines and the 30% collection fee that accompany them may render restoration of voting rights following a conviction for a crime of moral turpitude an illusory promise. For such citizens, the requirement of payment of court-imposed fines, costs, and fees in order to apply for a CERV creates a financial burden that prevents otherwise eligible voters from ever achieving restoration of their rights. This reality is confirmed by a 2017 study published in the *Journal of Legal Studies* that concluded "a majority of all ex-felons in Alabama - white, black, or otherwise - cannot vote because of a debt they owe to the state." See Marc Meredith & Michael Morse, *Discretionary Disenfranchisement: The Case of Legal Financial Obligations*, 46 J. LEG. STUDIES 309, 333 (2017).

Finally, a series of acts by the government of the state of Alabama has ensured that, despite the passage of the Felon Disqualification Act, confusion around the process of restoration persists. First, the Secretary of State refused to provide notice of re-enfranchisement to citizens who had been convicted of offenses no longer categorized as crimes of moral turpitude. Second, the Secretary of State has failed to provide information regarding the restoration process. For its part, the Board of Pardons and Paroles has indicated that it strives to provide proper information. However, budgetary limitations and lack of personnel have rendered the Board unable to provide mass notice to those disenfranchised prior to 2017 who should now be automatically re-enfranchised because their offense is not categorized as a disqualifying offense, or to those who have completed all requirements for restoration. Third, it is only recently that a uniform application for restoration has been widely available. The state has relied on private actors such as the Equal Justice Initiative (EJI), the American Civil Liberties Union (ACLU), and the Southern Poverty Law Center (SPLC) to publicize this process and to distribute applications for a CERV.

Conclusion

In sum, there is a strong need to require federal oversight in the form of required preclearance under Section 5 of the Voting Rights Act in Alabama. Since the Supreme Court's decision in *Shelby County v. Holder*, the state has passed or implemented a series of laws that create serious impediments to enfranchisement for Alabama's most vulnerable citizens. Without the preclearance requirements, not only is the state able to implement voting regulations, often with little notice to the public and/or close to election times, but the citizen must raise the alarm about such regulations and so bear both the burden of proof with regard to their effect and the burden of the cost of litigation. In contrast, Section 5's preclearance requirement blocks implementation of laws prior to approval and shifts the burden to the state to demonstrate that the law will not disproportionately impact the men and women least able to expend resources to challenge the law.

In a state like Alabama, in which the state legislature is controlled by a single party and the minority vote is diluted by careful construction of precincts, the incentive to empower, or even protect, minority voters is small if it exists at all. Such protection must come from federal protection and oversight. It was not so long ago that men and women died in efforts to realize the right to vote in Alabama. Today's barriers to access the vote may be more subtle, but their results remain insidious – they disproportionately curtail the minority vote in our state. Without federal protection, this curtailment will persist and grow. Voting is the citizen's fundamental right. It is not earned or granted, as some state officials have suggested. It belongs to the citizens of this state and it deserves federal protection.

Thank you again for allowing me to provide information to your subcommittee. Please do not hesitate to let me know if you require additional information.

Sincerely,

Jenny E. Carroll
Chair
Alabama State Advisory Committee to the U.S. Commission on Civil Rights

Barriers to Voting in Alabama



A Summary of Testimony received by the
Alabama Advisory Committee to the United
States Commission on Civil Rights

June 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Alabama Advisory Committee to the
U.S. Commission on Civil Rights**

The Alabama Advisory Committee to the U.S. Commission on Civil Rights submits this summary of testimony detailing civil rights concerns associated with barriers to voting in Alabama. The Committee submits this summary as part of its responsibility to study and report on civil rights issues in the state of Alabama. The contents of this summary are based on testimony the Committee heard during a hearing held on February 22, 2018 in Montgomery, Alabama.

This summary documents civil rights concerns raised by panelists with respect to barriers to voting throughout the state of Alabama and discusses possible strategies for improving voter access in Alabama. Based on the findings of this summary, the Committee will ultimately offer to the Commission recommendations for addressing this issue of national importance. The Committee recognizes that the Commission has previously issued important studies about voting and civil rights nationwide and hopes that the information presented here aids the Commission in its continued work on this topic.

**Alabama State Advisory Committee to the
U.S. Commission on Civil Rights**

Jenny Carroll, Chair, Alabama Advisory Committee

Marc Ayers
Craig Hymowitz
Michael Innis-Jimenez
Peter Jones
Angela Lewis
Raphael Maharaj
Isabel Rubio

Martha Shearer
Maurice Shevin
Cameron Smith
David Smolin
Daiquiri Steele
Tari Williams

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Alabama Advisory Committee
Access to Voting Hearing – February 22, 2018, Montgomery, Alabama

Panelists

John Merrill - Alabama Secretary of State

On November 4, 2014, John was elected as Alabama's Secretary of State with 65% of the vote and carried 53 of Alabama's 67 counties. He was inaugurated as Alabama's 53rd Secretary of State on January 19, 2015. He is a member of the National Association of Secretaries of State and the Republican Association of Secretaries of State. He is the Co-Chair of the NASS Voter Participation Committee and serves as the NASS Representative to the Steering Committee of the National Voter Registration Day. He is also a member of the United States Election Assistance Commission Standards Board.

Kareem Crayton - Interim Director, Southern Coalition for Social Justice

Kareem Crayton is a widely cited and internationally respected scholar, expert and consultant whose work centers on the intersection of law, politics, and race. He is the only academic in the United States with formal training in law and political science whose primary work explores the relationship between race and politics in representative institutions. The insights and analyses from his research have distinguished him as a leading voice in the academy and key player in public policy debates. His commentary, insight, and analysis regularly appear both in highly-ranked academic publications along with major media outlets including The New York Times, PBS, and Fox News.

John J. Park, Jr. - Counsel at Strickland, Brockington, Lewis LLP

Jack Park is of counsel with Strickland Brockington Lewis LLP (SBL). He has been designated a Deputy Attorney General for the State of Alabama and is assisting the Alabama Attorney General's Office with the legal work associated with the process of redistricting that follows the 2010 Census. Before joining SBL, Jack was a Visiting Legal Fellow in the Center for Legal and Judicial Studies at the Heritage Foundation from October 2009 through October 2010. As a Visiting Legal Fellow, Jack participated in the Center's Supreme Court program and worked on the Center's overcriminalization, civil justice, and civil rights projects.

Brock Boone - Alabama Chapter of the American Civil Liberties Union

Brock graduated law school from Georgetown University, where he was Executive Editor of the *Georgetown Journal of Legal Ethics*. He also graduated from Spring Hill College with a degree in Political Science & Law, where he finished with the highest GPA in his major. Brock has previously worked as a public defender in Alabama.

Jennifer Holmes - NAACP Legal Defense Fund

Jennifer A. Holmes joined the NAACP LDF from Covington & Burling, LLP, where she worked as an associate. During her time at Covington & Burling, Jennifer represented primarily pharmaceutical companies and sports teams, while maintaining a robust pro bono portfolio that encompassed criminal defense, economic justice, and immigrants' rights. She is a member of the Leadership Counsel on Legal Diversity's Pathfinder program, which selects promising legal associates from diverse backgrounds for advanced professional development opportunities. A native of Washington, D.C., Jennifer received her J.D. from Stanford Law School, and attended Yale University as an undergraduate, earning a B.A. with distinction in Political Science.

Scott Douglas - Greater Birmingham Ministries

Before joining the staff of GBM, Scott served as Environmental Justice Organizer for the Sierra Club – Southeast, Executive Director of the Southern Organizing Committee for Economic and Social Justice and Southern Field Representative for the Partnership for Democracy Foundation. Scott serves on the boards of AIDS Alabama, the Alabama Poverty Project, The Gulf Coast Fund, the Progressive Technology Project, the Equal Justice Initiative of Alabama, and the Steering Committee of the Alabama Organizing Project. He formerly served on the boards of directors of The Needmor Fund and The New World Foundation, among many others. Scott has published articles on human rights, community organizing and social change in *Social Policy*, *Southern Exposure*, and the *Howard Law School Journal*. Scott is from Nashville and graduated from the University of Tennessee in Knoxville. He is married to Lynn Douglas; they have one son.

Jonathan Barry-Blocker - Southern Poverty Law Center

A graduate of Morehouse College in Atlanta, and the University of Florida's Fredric G. Levin College of Law, Jonathan is a staff attorney for the Southern Poverty Law Center's Criminal Justice Reform practice group where he engages in litigation and policy campaigns to correct disparities in Alabama's criminal justice system.

Charlotte Morrison - Equal Justice Initiative

Charlotte Morrison, Senior Attorney, has been with EJI since 2001. She clerked for Judge Rosemary Barkett on the United States Court of Appeals for the Eleventh Circuit, is a former Rhodes Scholar with degrees in Philosophy from Oxford University and the University of Montana and graduated from New York University School of Law in 2000.

Benard Simelton - President, Alabama Chapter of the NAACP

Benard H. Simelton Sr. was born in Tiptersville, MS and attended College at Mississippi Valley State University in Itta Bena, MS. He graduated with a B.S. degree in Sociology in 1976 and received a Master's in Public Administration from the University of North Dakota 1981. He is a life member of the NAACP and served as President of Limestone County for six years and is in his fifth year as President of Alabama State Conference of the NAACP. Since joining the NAACP in Alabama, he has received the Regional Medgar Evers, Regional Kelly M. Alexander, and Regional Director Award and numerous branch awards. Benard served 23 years in the Air Force and retired in 2000 as a Lieutenant Colonel.

Kenneth Glasglow - Pastor, The Ordinary People Society

No Show

Jaffee Pickett - Deputy Director, Alabama Legal Services

Jaffe S. Pickett became Deputy Director in 2018 and Director of Development of Legal Services Alabama in 2013. Prior to that, Pickett led various departments at Legal Services including Director of Training, Call Center Director and Director of Alabama's first Elder Law Helpline. Pickett is a graduate of Troy University, Cum Laude, and a graduate of Louisiana State University School of Law, where she received dual degrees in Civil Law Studies and a Juris Doctorate.

Callie Greer – Citizen Impact Statement

Callie lost her right to vote due to a felony conviction and shared her story of getting back the right to vote.

Also in Attendance:

The Office of Congresswoman Terri Sewell - Shanna King, Constituent Services Representative

The Office of U.S. Senator Doug Jones – Jose Perry, Jr., Regional Director

Introduction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These State Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

On September 5, 2017, the Alabama Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted to undertake a study focused on access to voting in the State of Alabama which may have a disparate impact on voters on the basis of race, color, national origin, disability status, or religion, or those that undermine the administration of justice. The objective of the study is to determine whether any changes in Federal law or policy are necessary to guarantee protected classes of individuals the right to vote.

As one of the preclearance states under the Voting Rights Act of 1965¹, the Alabama Committee chose to examine the impact in the state of the *Shelby County v. Holder*² decision, as well as any subsequent proliferation of restrictions on voter access. The Committee hopes that such information will lead to a better understanding of the current state of access to the franchise, as well as to specific recommendations for addressing identified problems. The Committee proposes to advise the Commission by issuing a report with its findings and recommendations at the conclusion of this project. The report may include recommendations to the Commission for federal policy and statutory changes.

This Summary of the February 22, 2018 hearing held in Montgomery, Alabama is intended to provide testimony to the Commission in hopes of providing a boots-on-the-ground view of the current status of access to voting in the state of Alabama.

¹ 42 U.S.C. § 1973.

² 570 U.S. 2 (2013).

Background

For most of Alabama's history, African Americans and other racial and ethnic minorities were systematically excluded from voting. Despite the promise of the Fifteenth Amendment³, which outlawed voting discrimination on the basis of race, color, or previous condition of servitude, state-sanctioned disenfranchisement denied the vote to African Americans. As evidenced by the opening remarks in the Alabama Constitutional Convention of 1901, protecting the "sanctity of the ballot" meant the exclusion of African-American voters:

I submit it to the intelligent judgment of this Convention that there is no higher duty resting upon us, as citizens, and as delegates, than that which requires us to embody in the fundamental law such provisions as will enable us to protect the sanctity of the ballot in every portion of the State. The justification for whatever manipulation of the ballot that has occurred in this State has been the menace of negro domination.

John B. Knox – President of the Alabama Constitutional Convention of 1901⁴

The failure of constitutional mechanisms to break apart discriminatory voting regimes resulted in barriers to the ballot box for African American and other minority voters. Only with the enactment of the Voting Rights Act of 1965⁵ ("Voting Rights Act" or "Act"), almost a century after the Fifteenth Amendment's ratification, did the constitutional right to vote free from racial discrimination, start to become a reality.

Congress included a provision in the Act, Section 5,⁶ which required "preclearance" of voting changes in jurisdictions with the worst records of discrimination. Section 4(b) of the Act captured a coverage formula that was based on low political participation and the use of a voting test or device.⁷ This system was extremely effective as the Department of Justice issued more than 1,000 objection letters that blocked racially discriminatory voting changes from going into effect.⁸

On June 25, 2013, in *Shelby County, Alabama v. Holder*,⁹ the five-member conservative majority of the Supreme Court "immobilized"¹⁰ Section 5 by holding that the coverage formula was unconstitutional.¹¹

³ U.S. Const. amend. XV.

⁴ Alabama Constitutional Convention of 1901. Proceedings, Vol.1, Day 2, P10. (Statement of Convention President John B. Knox).

⁵ 42 U.S.C. § 1973 (2012).

⁶ *Id.*

⁷ See 42 U.S.C. § 1973c(a) (2012).

⁸ See *Voting Rights Act: Section 5 of the Act-History, Purpose, and Scope: Hearing Before Subcomm. On the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 13 (2005) (statement of Bradley Schlozman, Ass't Att'y Gen. for Civil Rights).

⁹ 570 U.S. 2 (2013).

¹⁰ *Id.* Chief Justice Roberts wrote the majority opinion on behalf of himself and Justices Kennedy, Scalia, Thomas, and Alito. Justice Ginsburg wrote a dissenting opinion on behalf of herself and Justices Breyer, Sotomayor, and Kagan.

¹¹ *Id.*

The Effects in Alabama of *Shelby County v. Holder*

Antecedents to Shelby

The Committee heard testimony regarding how the State of Alabama found itself under the preclearance regime to begin with. John Park, a former Deputy Attorney General for the State of Alabama, suggested a repeated pattern of evasion of court orders regarding African American voter registration and turnout led to the Voter Registration Act, “when federal courts told them to do something or they couldn’t do something, the state legislature would change the law and, say, well --they’d end run the court rulings in an equally discriminatory way.”¹² Mr. Park also said the Act “put a stop to that” and stated the Act told the states “before you can change your laws to evade federal court rulings, you got to send them up to Washington or go up to D.C. to get them precleared.”¹³

Alabama and the other covered jurisdictions ended up under [Section 5] because when federal courts told them to do something...the state legislature would change the law...in an equally discriminatory way
 - John Park, former Alabama Deputy Attorney General

Jennifer Holmes, an attorney with the NAACP Legal Defense Fund, said the main benefit of Section 5 “is that it comes before the actual voting change is put into effect...you can root out a problematic voting practice before it is actually implemented.”¹⁴ Ms. Holmes stated that the Section 5 preclearance regime was important, adding “Between 1969 and 2015, the Department of Justice objected to more than 90 proposed voting changes in Alabama under section five, and other proposed voting changes were withdrawn or altered after DOJ requested more information.”¹⁵

Dr. Kareem Crayton, director of the Southern Coalition for Social Justice, commented that the one thing Section 5 provided was an election system that was more or less predictable.¹⁶ If there were to be changes in the election laws or process, “most people understood...there would be a great deal of conversation, maybe even debate, before it could be adopted.”¹⁷

Post Shelby

Many panelists focused their testimony on the effects on access to voting in Alabama after the *Shelby* decision.

¹² John Park, testimony, *Hearing Before the Alabama Advisory Committee, Montgomery, AL*, Feb. 22, 2018, transcript, p. 97 (hereafter cited as *Montgomery Hearing*).

¹³ Park Testimony, *Montgomery Hearing*, p. 97.

¹⁴ Holmes Testimony, *Montgomery Hearing*, P. 192.

¹⁵ Homes Testimony, *Montgomery Hearing*, P. 165.

¹⁶ Crayton Testimony, *Montgomery Hearing*, P. 42

¹⁷ *Id.*

Kareem Crayton told the Committee the one issue most people tend to forget is “how quickly the State adopted laws after *Shelby County* was placed on the books that radically changed the way our election system worked.”¹⁸ The counties change precincts “if not arbitrarily, unexpectedly” and it may surprise voters to find when they show up at the registrar’s office their house which they thought was in precinct A is now in precinct B.¹⁹

Dr. Crayton also observed that *Shelby* “essentially rendered Section four of the Voting Rights Act null, it essentially removed a significant protection that most voters in this neck of the woods, in this region of the country had to assure that new

The one issue most people tend to forget is how quickly the State of Alabama adopted laws after Shelby County was placed on the books that radically changed the way that our election system worked.

- Dr. Kareem Crayton

laws on the books did not reduce the opportunity for people to cast a ballot.”²⁰ The difference was “since *Shelby County*, Alabama doesn’t have to submit changes in vote [sic] and the county commissions don’t have to submit changes in voting laws for preclearance.”²¹

Jennifer Holmes told the Committee that in the aftermath of *Shelby County*, formerly covered jurisdictions like Alabama were emboldened to act.²² She pointed out that the state legislature had passed a restrictive voter ID law in 2011. Within days of the *Shelby County* decision in 2013, the Secretary of State’s office “announced that it would now prepare to implement the law.”²³ She posited the State declined to submit the law for preclearance for two years because the sponsor of the law anticipated a lengthy court battle.²⁴

Scott Douglas, Executive Director of Greater Birmingham Ministries, told the Committee without the protection “of the guts” of the Voting Rights Act, the Alabama’s voter ID laws place a tremendous burden on already economically burdened black and Latino families.²⁵ Black voters are “three times more likely than white voters to live more than five miles from an ID-issuing office and to live in a -- in a household without a vehicle.”²⁶

The laws added post *Shelby* “added burden to low-income and rural families that now have to get to the nearest DMV for an ID.”²⁷ Transportation is a burden for low income people. If there is one car in the family, “it’s being used by the breadwinner who has to use the car to commute back and forth to work, often in a Black Belt neighboring county.”²⁸

¹⁸ Crayton Testimony, *Montgomery Hearing*, P. 41.

¹⁹ *Id.* at P. 43.

²⁰ Crayton Testimony, *Montgomery Hearing*, P. 41.

²¹ Park Testimony, *Montgomery Hearing*, P. 93.

²² Holmes Testimony, *Montgomery Hearing*, P. 167.

²³ *Id.*

²⁴ Holmes Testimony, *Montgomery Hearing*, P. 167.

²⁵ Douglas Testimony, *Montgomery Hearing*, P. 207-208.

²⁶ Holmes Testimony, *Montgomery Hearing*, P. 169.

²⁷ Douglas Testimony, *Montgomery Hearing*, P. 207-208.

²⁸ *Id.*

In October 2015, “the governor made these travel burdens even worse when he took the drastic step of partially closing 31 driver’s license issuing offices, most of which were located in — in Alabama’s rural Black Belt.”²⁹

Additionally, even though the State offers “free state-issued photo IDs” there are costs involved to acquire the underlying “documents such as birth certificates” required to obtain the ID and transportation to and from agencies to retrieve the documents.³⁰

Voter Fraud

The testimony at the Montgomery Hearing indicated voter fraud was either a serious problem, or non-existent, depending on which panelist was speaking.

John Merrill, the Alabama Secretary of State, testified that since his election, “there have been six convictions of voter fraud, and we’ve had three elections that have been overturned.”³¹ That statement was furthered by John Park who told the Committee he knew of elections that have been overturned or subject to question in Phenix City, in Wetumpka, and in Guntersville “because of problems with voter registration or absentee ballot — voter fraud.”³²

A 2016 Gallup poll, taken before the party’s national convention, found that the United States ranked 90th out of 112 countries in in terms of their confidence in the honesty of their elections.

- John Park

Mr. Park informed the Committee that in the November 2017 election for District Two of the Phenix City Council, “at least 32 voters who registered used their business address in violation of Alabama law.”³³ The investigation, he said, turned up 82 voters who “registered using their business addresses in violation of law — state law, as well as convicted felons who had not had their voting rights restored, included some dead people and some people from Georgia. People coming over from Columbus [Georgia] across the river.”³⁴

Mr. Park provided another example in the August 2016 election for Wetumpka City Council District Two, the “Circuit Court of Elmore County overturned the election results because 8 — just 8 — absentee ballots were found to be fraudulent — illegally cast.”³⁵ The initial count declared one candidate to be the winner “by a count of 168 to 165.”³⁶ But “eight absentee ballots for the — for the winner were thrown out because the ballot was not properly signed or witnessed as required by state law.”³⁷

²⁹ Holmes Testimony, *Montgomery Hearing*, P. 169.

³⁰ *Id.*

³¹ Merrill Testimony, *Montgomery Hearing*, P. 15.

³² Park Testimony, *Montgomery Hearing*, P. 95.

³³ *Id.*

³⁴ *Id.* at P. 96.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

To drive home the point that added security in elections is needed, Mr. Park shared with the Committee results of recent polls, such as “In August 2017, a Rasmussen Report National Telephone and Online Survey found that 54 percent of likely U.S. voters say voter fraud is at least a somewhat serious problem, and 27 percent say it’s a serious -- very serious problem.”³⁸ He also shared “A 2016 Rasmussen poll reported that only 41 percent of those polled believe that American elections are fair to voters”, and “2016 Washington Post-ABC poll found that 46 percent of those polled believed that voter fraud happens somewhat 16 or very often.”³⁹

Other panelists gave a different story. Brock Boone of the Alabama ACLU said, “in person voter fraud is virtually nonexistent across the country.”⁴⁰ Kareem Crayton echoed this sentiment in his testimony, adding “I think the important thing to see about voter fraud, it is --as you know, every study that has attempted to track this, nearly infinitesimal, if not, you know, negligible, zero.”⁴¹ Adding to the diversity of perceived threats to the franchise, a panelist said the safeguards that were in place were that “poll workers and registrars are monitored such that votes, once they are bundled, accurately reflect the votes that were cast.”⁴²

When the Secretary of State invested a lot of money to investigate [voter fraud] during the December primaries...he found that roughly 600 or so examples that he submitted to the local county registrars and they reported back that those were administrative errors.

-Dr. Kareem Crayton

The Secretary of State’s office did choose to investigate a young person of color for voter fraud “based on an off-the-cuff remark he made during a newscast about people coming ‘from different parts of the country to pitch in and canvas for Doug Jones.’ Unsurprisingly, the investigation concluded that the man was a properly registered Alabama voter and that the allegations of any widespread voter fraud were a myth.”⁴³

To add an Historical perspective, Scott Douglas told the Committee “If you’re looking for vote fraud, the vote of -- on the 1901 constitution is the pinnacle or rather the pits of vote fraud, and it was implemented not by voters but by a conspiracy of state officials. That conspiracy was so well known, it was called at the time an open secret.”⁴⁴

³⁸ Park Testimony, *Montgomery Hearing*, P. 94.

³⁹ *Id.*

⁴⁰ Boone Testimony, *Montgomery Hearing*, P. 102.

⁴¹ Crayton Testimony, *Montgomery Hearing*, P63.

⁴² *Id.*

⁴³ Holmes Testimony, *Montgomery Hearing*, P. 173.

⁴⁴ Douglas Testimony, *Montgomery Hearing*, P. 206.

Regulations on Voting

Jennifer Holmes testified to the frustration shared by many Alabama voters regarding regulations or procedures. She related circumstances involving voter purging, that removed from the rolls eligible and active voters:

In January 2016 -- 2017, the Secretary of State's office sent postcards to all registered Alabama voters. Voters whose first card was returned undeliverable and who did not reply to a second card were designated as inactive. This had nothing to do with their voting record in the past four years. This error-prone process for identifying purported inactive voters resulted in widespread voter confusion. On election day, numerous voters were alarmed to discover, at the polls, that they were on this inactive list that they had never heard of, despite having voted in recent elections.⁴⁵

Ms. Holmes also reminded the Committee that “the Voting Rights Act sets only a floor. Alabama’s legislature can also pass its own voting rights protections. “At a minimum, even under the current legal framework, state and local officials should promote voter access through increased poll hours and locations, better-trained poll workers, adequate machines and ballots, and more meaningful engagement with communities of color.”⁴⁶

When asked about the Alabama state law that requires proof of citizenship in order to vote (federal law does not), the Secretary said, “We’ve not enforced that law, even though in February of 2016 the Election Assistance Commission had indicated that we could ask that question” ‘And I said, I don’t want to cause any confusion for anybody’.”⁴⁷

We’ve not enforced that law [proof of citizenship to vote] ...I don’t want to cause confusion for anybody.
-Secretary John Merrill

Another law passed in 2017 that made crossover voting illegal, meaning that “someone voting in one party’s primary could face fines and jail time if they voted in the other primary’s runoff. People who voted in the runoff had also voted in a democratic primary and recommended that they be prosecuted to the full extent of the law and given up to five years in prison for voting.”⁴⁸ Eventually, “it came out that it was mostly administrative error, but the damage was already done with many individuals worried that maybe making a mistake while voting might land them in prison.”⁴⁹

⁴⁵ Holmes Testimony, Montgomery Hearing, P. 172.

⁴⁶ Holmes Testimony, Montgomery Hearing, PP. 175 and 200.

⁴⁷ Merrill Testimony, Montgomery Hearing, P. 18.

⁴⁸ Boone Testimony, Montgomery Hearing, P. 107.

⁴⁹ Id.

Redistricting

In recent litigation, the Supreme Court found that districts drawn by the Alabama state legislature at the state legislative level violated the 14th Amendment of the Constitution, which forbids racial gerrymandering.⁵⁰ In solving that problem – “in trying to solve that problem last session, the legislature created a new plan that organized districts in yet another way. And what was not quite apparent, and still isn't apparent to a lot of people, is where those lines actually match up to these precincts which, again, have been sort of unexpectedly changed county by county.”⁵¹

One of the challenges discussed by panelists is “when you show up for elections and you find out that either you're not in the right place or that there's some confusion at the polls about whether or not you are in the right place or perhaps even the person in front of you is in the right place.”⁵² So there's a difference between the example of “the person at the polling place telling you, oh, no, I don't like you, you can't vote, and the example where there's this administrative confusion.”⁵³ The outcome in both cases though is that lines are longer, and it takes a longer time for the average person to cast a ballot.

In many cases redistricting makes it harder to vote, and “that's not the State explicitly telling you, we don't like you, you can't cast a ballot. But if you work an hourly job, if you only have an hour available to cast a ballot, then you may actually effectively be cut out of the opportunity to cast a ballot, and that's of concern.”⁵⁴

Registration

The State of Alabama has developed and introduced a phone application that enables first time voters to register via the app if they have a valid Alabama driver's license.⁵⁵ The Secretary said, “We've had more than 350,000 people that have used that system today, and we're very excited about that.”⁵⁶ He added, “Since January the 19th, 2015, we've registered 914,697 new voters. We now have 3,347,398 registered voters in Alabama. Both those numbers are unprecedented and unparalleled in the history of the state. I'm really excited about that.”⁵⁷ “There's less than 350,000 people in the state of Alabama that are not registered to vote, period.”⁵⁸

Other panelists saw the numbers in a different light. Dr. Kareem Crayton said, “Registration is an important part of the process. I'd be really excited [about the numbers the Secretary shared], to be frank about it, if this were 1966 or 1982.”⁵⁹ We don't have automatic registration in this state, and

⁵⁰ Crayton Testimony, *Montgomery Hearing*, P. 44.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Merrill Testimony, *Montgomery Hearing*, P. 10.

⁵⁶ *Id.* at P. 11.

⁵⁷ *Id.* at P. 16.

⁵⁸ *Id.* at P. 31.

⁵⁹ Crayton Testimony, *Montgomery Hearing*, P. 45.

we should,” He added, “The measure that the Secretary of State mentioned was registration, and, again, there have been a number of people that have been put on the rolls. But in terms of voting, I’m sad to tell you, the State of Alabama is, at best, in the middle of the pack compared to other states in terms of turnout.”⁶⁰ Dr. Crayton added, “it strikes me that citizenship, if it really is going to include voting as a right, does impose upon the State some obligation. And I think the State should do some work to make certain that as many people want to vote can vote.”⁶¹

Some felons are ineligible to register to vote. Brock Boone said, “in the moral turpitude law, the State did not repeal the provision that requires fees and fines to be paid off to vote again. This means that the State directly discriminates against the poor. Many poor people cannot vote simply because they are poor.”⁶²

One panelist said there is a history of disparate impact in Alabama, “I think *Hunter v. Underwood*, 471 U.S. 222 (1985) showed that the registrars in Alabama denied higher ratios of black citizens the right to vote based on their criminal histories. It appeared to be indiscriminate, whether it was a felony or a misdemeanor, partially because there was no firm policy at the time. That was back in the 1980s.”⁶³

Benard Simelton, of the Alabama NAACP, said his organization “received several complaints [in 2017] by individuals whose names were removed from the rolls but had voted previously in the primary election in 2017. All of a sudden, their names were removed from the rolls.”⁶⁴

Felony Disenfranchisement

Moral Turpitude Laws

The Alabama Constitution disenfranchises individuals convicted of felonies involving moral turpitude. Until 2017, Alabama did not define which crimes involve “moral turpitude,” leaving the standard for disenfranchisement open to the interpretation of individual registrars.

When people are being qualified for discharge in the location where they're being held, they have to be told what their rights are, they have to be provided with information to register to vote, they have to have the opportunity to register to vote.
 - Secretary John Merrill

The Secretary of State told the Committee that as he was campaigning for office, he heard from people in the community that had been denied the opportunity to vote after being convicted of crimes of moral turpitude.⁶⁵ He discovered that the moral turpitude laws were being interpreted in different ways throughout the

⁶⁰ Crayton Testimony, *Montgomery Hearing*, P. 45.

⁶¹ Crayton Testimony, *Montgomery Hearing*, P. 40.

⁶² Boone Testimony, *Montgomery Hearing*, P. 106.

⁶³ Blocker Testimony, *Montgomery Hearing*, P. 177.

⁶⁴ Simelton Testimony, *Montgomery Hearing*, P.254.

⁶⁵ Merrill Testimony, *Montgomery Hearing*, P. 19.

state.⁶⁶ He brought forth legislation to ensure that the moral turpitude law was only going to be interpreted and enforced in one way.⁶⁷ The legislation passed in 2017 and now “only people who have been convicted of crimes of moral turpitude have lost their opportunity to vote and are not allowed to vote.”⁶⁸

In 2016 the SOS submitted legislation to create a law for restitution and restoration of voting rights. This is where the law stands today: “If someone has paid --served all their time associated with their original sentence and paid all their fees and fines associated with their original sentence, their voting rights are automatically restored.”⁶⁹

According to the Secretary, the procedure has been expedited. “When people are being qualified for discharge in the location where they’re being held, they have to be told what their rights are, they have to be provided with information to register to vote, they have to have the opportunity to register to vote.”⁷⁰ “That’s a part of their packet. We want to make sure that that is being communicated and that is being done.”⁷¹

The Committee asked the Secretary why there are no Certificates of Eligibility [a form needed for the formerly incarcerated to get their rights restored] at these registration events, the Secretary replied “we don’t coordinate the event...We just were a participant in those events. And in the ones that I participated in, Pardons and Paroles have provided that information.”⁷² Brock Boone of the ACLU said, “Secretary Merrill claimed it was not his responsibility to notify those voters that they are eligible to vote again. So largely, that task has been left to nonprofit entities without the same resources.”⁷³

While the Secretary of State presented the new law as a benefit for Alabamians, other panelists felt otherwise. One panelist said, “Alabama does almost very, very little for people leaving prison. And I do think this is one area where the voting rights could be impacted by requiring the Department of Corrections actually issue the necessary paperwork.”⁷⁴ Dr. Crayton said “people who have some relationship with the correction system is another example of where I think there’s a difference between the State saying we made something available and the State taking an effort to make sure that people who are citizens have

If the State decided, for example, to make it easy to determine whether you’ve entered a particular phase of supervision, or you’ve ended it, and we make sure that you’re automatically put on the rolls, that might make things more simple from the user’s perspective.

-Dr. Kareem Crayton

⁶⁶ *Id.* at 20.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at P. 21.

⁷⁰ Merrill Testimony, *Montgomery Hearing*, P. 21.

⁷¹ *Id.*

⁷² *Id.* at P. 27.

⁷³ Boone Testimony, *Montgomery Hearing*, P. 106.

⁷⁴ Morrison Testimony, *Montgomery Hearing*, P.226.

their entitled right to cast a ballot. It is very confusing.”⁷⁵ He added, “The administrative process of just corrections itself is terribly confusing to know what your sentence is. To know when you’re no longer under supervision is itself a complex process. To know when you cast a ballot is an even more complicated process, that is, when you are eligible once again.”⁷⁶

Callie Greer, providing an impact statement to the Committee said, “You’re not thinking about voting or becoming a legal citizen or any of that stuff when you’re straight out of prison. You know, you’re thinking about where I’m going to sleep, where I’m going to eat, how the hell I’m going to get rid of these ugly clothes.”⁷⁷ Another panelist added, “your application is controlled by your PO -- it’s your parole officer. Depending on what kind of parole officer you have, they may or may not be interested in facilitating you getting your voting rights back.”⁷⁸

Johnathan Barry-Blocker, of the Southern Poverty Law Center, added, “the legislature passed an amendment getting the definition of moral turpitude *back in as a functioning policy of the law*. Currently, in *Thompson v. Alabama*,⁷⁹ the Campaign Legal Center has filed a lawsuit challenging...the moral turpitude provision and policy, and currently they are actionable claims that have survived dismissal, focused on intentional discrimination under the 14th and 15th Amendments.”⁸⁰

The Committee heard testimony about the approximately 40 crimes that are considered crimes of “moral turpitude.” One panelist commented, “upon closer review is that most of these crimes are street-level crimes, meaning crimes they expect poor or black people to commit. What you will find missing are ethics crimes. You will find public corruption crimes missing and tax evasion. Most frauds missing. Basically, your white-collar crimes are nowhere in there.”⁸¹

Mr. Barry-Blocker told the Committee that “approximately 15.1 percent of Alabama’s black citizens [formerly incarcerated] cannot vote as of a 2016 report by The Sentencing Project, and based on population data from the census, that was about 196,808 citizens.”⁸² He also said there’s been a “recent heavy disenfranchisement in counties with notable black populations.”⁸³ The largest number of voters purged for felonies were in “Mobile, Montgomery, Houston, and Jefferson Counties.”⁸⁴ And respectfully, “Mobile had 1,245 people purged for felonies, Montgomery had 782, Houston County had 481, and Jefferson had 453. That was as of a 2016 Election Administration & Voting Survey report issued by the government.”⁸⁵

⁷⁵ Crayton Testimony, *Montgomery Hearing*, P. 46.

⁷⁶ *Id.*

⁷⁷ Greer Testimony, *Montgomery Hearing*, P. 240.

⁷⁸ Morrison Testimony, *Montgomery Hearing*, P.221.

⁷⁹ No. 2:16-CV-783, 2017 U.S. Dist. LEXIS 118606 (M.D. Ala. July 28, 2017). (Plaintiffs challenged the “moral turpitude” standard on due process, racial discrimination, and void for vagueness grounds, among others.)

⁸⁰ Blocker Testimony, *Montgomery Hearing*, P. 178.

⁸¹ Blocker Testimony, *Montgomery Hearing*, P. 180.

⁸² Blocker Testimony, *Montgomery Hearing*, P. 178.

⁸³ *Id.* at 179.

⁸⁴ *Id.*

⁸⁵ *Id.*

In contrast to the Secretary's claim that the restoration process is now a speedy one, Mr. Barry-Blocker said "according to The Sentencing Project in their 2016 report, only 16,000 restorations happened from 2005 to 2015. Now, I want you to compare this number with the fact that – they estimate 250,000 citizens were disenfranchised as of 2016. So there is a delay in processing claims."⁸⁶

Additionally, one panelist said, "the vast majority of people in Alabama's prisons are serving a sentence for a conviction considered by law to be one of moral turpitude. These citizens are, therefore, subject to permanent disenfranchisement. They must go through the voter restoration process, either by applying for a certificate of eligibility to vote or a pardon."⁸⁷

Charlotte Morrison told the Committee Alabama's disenfranchisement scheme and moral turpitude test did not evolve in a vacuum. "Alabama amended its constitution" she said, "to expand disenfranchisement to all crimes involving moral turpitude, which apply to misdemeanors and noncriminal acts after the president of the constitutional convention argued that the state needed to avert the, "menace of negro domination." Alabama's long and violent history of erecting insurmountable obstacles for African-American voters and the undisputed evidence that felony disenfranchisement laws have a racially disparate impact should disqualify Alabama from using convictions and fines as mechanisms to deny citizens the right to vote."⁸⁸

Fines and Fees

Charlotte Morrison, senior attorney with the Equal Justice Initiative, told the Committee "Alabama is one of only ten states where a person with a felony conviction may lose the right to vote permanently unless restoration is sought, and all fines are paid."⁸⁹ "This requirement that all fines be paid" she added, "acts as a permanent bar to voter restoration for tens of thousands of people in Alabama."⁹⁰ She added, "Certificates of eligibility to vote, or the CERV, will not be issued to anyone who owes fines or is on parole supervision. This means that the vast majority of people leaving Alabama's prisons cannot apply for a CERV. They are ineligible for a CERV."⁹¹

While fines and fees are assessed to persons regardless of race and are "generally assessed similar amounts of court debt... blacks were less able to pay back due to the systemic wealth gap"⁹² Mr. Barry-Blocker discussed "a study called Discretionary Disenfranchisement, The Case of Legal Financial Obligations 46 -- volume 46 of the Journal of Legal Studies starting at page 309 that look at the burden of court debt on citizens trying to reclaim their right to vote. They found in their 2017 published study that one-third of CERV applications were denied due to court debt, that the median court debt for Alabama citizens is \$3,956, whereas they estimate the average annual income of formerly incarcerated people is about \$9,000."⁹³

⁸⁶ Blocker Testimony, *Montgomery Hearing*, P. 185.

⁸⁷ Morrison Testimony, *Montgomery Hearing*, P.212.

⁸⁸ Morrison Testimony, *Montgomery Hearing*, P. 215-216.

⁸⁹ Morrison Testimony, *Montgomery Hearing*, P. 211.

⁹⁰ *Id.* at P. 213.

⁹¹ Morrison Testimony, *Montgomery Hearing*, P. 212.

⁹² Blocker Testimony, *Montgomery Hearing*, P. 188.

⁹³ Blocker Testimony, *Montgomery Hearing*, P. 187.

The Committee heard testimony about an Alabama law⁹⁴ that allows the district attorney, after 90 days, to pursue and levy a 30 percent interest on outstanding court debt. One panelist related a story of a formerly incarcerated person he assisted after that person had been released. “He had a minimum of \$50,000 fine. I think his total debt was looking at about a little closer to 60. He got out of prison. He was paying it consistently.... had started making headway... knocked off about 10,000, all of a sudden, that 30 percent hit. Last I spoke with him, he owed closed to \$60,000, and he had just pretty much stopped trying to make major payments.”⁹⁵ This individual, the panelist said, cannot “reclaim his right to vote because under the current law, you must be paid up on your court debt. drug trafficking convictions will function as a permanent bar to voting in Alabama because the cost of the fine is so prohibitive.”⁹⁶

There was some uncertainty among the panelists as to whether the 30 percent collection fee was mandatory or optional, the Chair of the Committee said, “I’ve got the statute in front of me, and it actually indicates that you *shall* assess a collection fee of 30 percent. So, it is not discretionary. 75 percent of the collection fee is distributed to the attorney’s office that is -- that is collecting that fee.”⁹⁷

Charlotte Morrison shared the story of Stanley Washington, “who was originally sentenced to life imprisonment without the possibility of parole for possession of cocaine in 1995. He was also fined \$50,000. The Alabama Supreme Court unanimously decided to allow judges to reconsider sentences of life without parole for nonviolent offenders. In 2008, Mr. Washington was paroled. He was released in January of 2009. In 2011, His application was denied because he had not paid the \$50,000 fine. It did not matter that Mr. Washington was 63 years old, that he was on SSI. It did not matter that he had paid his parole fees, \$40 a month, consistently for six years.”⁹⁸

Crimes in Other Jurisdictions

Jonathan Barry-Blocker told the Committee that, “It’s also worth noting that the Board of Pardon and Parole will take into account your convictions in other jurisdictions.”⁹⁹ “They’re [Board of Pardons and Paroles] going to say” he added, “you need to go get your pardon from that other jurisdiction before you can get your pardon here in Alabama.”¹⁰⁰ He related a case of an Alabama resident convicted in Georgia, where that state said, “we’re not really bothered about whether or not we’re going to pardon you so we’re not going to. He had done everything he needed to [to get his rights restored] in Alabama. Because he could not take care of Georgia, he could not take care of Alabama.”¹⁰¹

Absentee Ballots

Secretary Merrill commented on providing absentee ballots to those persons who are incarcerated, but who have not lost their right to vote. He said, “we made it very clear to all the sheriffs and all the other penal authorities throughout [Alabama] and the Department of Corrections, there are a number of

⁹⁴ § 12-7-225.4.

⁹⁵ Blocker Testimony, *Montgomery Hearing*, P. 182-183.

⁹⁶ *Id.*

⁹⁷ Chair’s Comment, *Montgomery Hearing*, P. 202.

⁹⁸ Morrison Testimony, *Montgomery Hearing*, P. 213-214.

⁹⁹ Blocker Testimony, *Montgomery Hearing*, P. 189.

¹⁰⁰ *Id.* at P. 190.

¹⁰¹ *Id.*

people in our state who are incarcerated but have not lost their voting rights. And so if someone wants to vote and they're incarcerated, then they need to have the opportunity to do so and made sure they've got access to absentee applications."¹⁰²

One panelist, positing on absentee voting in general, told the Committee "why is it that we don't allow early voting or Sunday voting or more reasonable opportunities to cast an absentee ballot?"¹⁰³ He told the Committee "[Alabama has] one of the more limited opportunities in this state to cast a ballot by absentee. There are states out there that have -- that give opportunities to people who cast an absentee ballot on a regular basis. So, you can be a consistent absentee ballot voter. That's not readily available in this state. [Alabama should be] opening up the absentee ballot process."¹⁰⁴

Voter ID Law

The Secretary of State his remarks on the efforts his office has made to make ID's available by stating "we want to ensure that each and every eligible U.S. citizen that's a resident of the State of Alabama is registered to vote and has a photo ID."¹⁰⁵ Of his mobile registration drive, he said he "reached out to the 140 members of the Alabama legislature and asked, 'we just want to know where you'd like us to go.'"¹⁰⁶ He then "reached out to the Probate judges and asked for 'can't miss festival events or activities in your community where you'd like us to go to conduct a voter registration photo ID drive.'"¹⁰⁷

Secretary Merrill told the Committee in an effort to ensure he was reaching people statewide, solicited the help of celebrities to help promote voter registration photo ID. Mr. Merrill identified Alabama head football coach Nick Saban, Auburn coach Gus Malzahan, heavyweight boxing champ Deontay Wilder, Basketball star Charles Barkley, Miss Alabama Jessica Procter, and Dr. Mae Jemison who's one of the first African-American astronauts.¹⁰⁸

The Secretary said his office has made "414 unique visits to the 67 counties in 2016 to promote voter registration photo ID."¹⁰⁹ He mentioned cases of homebound individuals or those without transportation, "We have gone to those people's homes and we have given them photo ID's and we have made sure they were registered to vote."¹¹⁰

When asked why his office takes such measures, the Secretary said, "I cannot, in good conscience, sit here in Montgomery, Alabama and tell you I'm going to do whatever it takes to ensure that each and every eligible U.S. citizen that's a resident of our state, is registered to vote, and has a photo ID unless I'll do whatever it takes to make it happen."¹¹¹

¹⁰² Merrill Testimony, *Montgomery Hearing*, Pp. 21-22.

¹⁰³ Crayton Testimony, *Montgomery Hearing*, P46.

¹⁰⁴ Crayton Testimony, *Montgomery Hearing*, P. 56-58.

¹⁰⁵ Merrill Testimony, *Montgomery Hearing*, P.

¹⁰⁶ Merrill Testimony, *Montgomery Hearing*, P. 7

¹⁰⁷ *Id.*

¹⁰⁸ Merrill Testimony, *Montgomery Hearing*, P. 8-9.

¹⁰⁹ Merrill Testimony, *Montgomery Hearing*, P. 11.

¹¹⁰ *Id.* at P.12.

¹¹¹ *Id.* at pp. 12-13.

The Secretary told the Committee, “you don’t have a photo ID, you can be identified by two polling officials and you, at that point, are able to vote by them signing an affidavit and you signing the statement that would indicate that they know who you are. So, you don’t have to have an ID to even vote, and you could vote a provisional ballot and then bring your ID by that Friday after the election and have it confirmed as well.”¹¹² He added, “Not one instance has been reported since we passed the voter photo ID law where an individual has gone to the poll and been denied access to participation.”¹¹³

Some panelists said the voter registration mobile outreach was lacking. Benard Simelton, of the Alabama NAACP said, “The problem is where they located these mobile systems most of the time were near or at the same place you could go to register in the --kind of center of town off of -- I mean, of the county. Say for instance, the county seat of Montgomery County is Montgomery, and they were located somewhere near Montgomery. Where I live in Limestone County, it came to Athens. Now, that did not help the people in rural areas to get closer to getting the -- getting to the location where they could obtain or get the photo ID. So I think that was -- it was good to say that in -- in theory, but it didn’t work that well in practice.”¹¹⁴

Other panelists took issue with the Voter ID law in general. Brock Boone of the ACLU said, “Voter identification laws are part of an ongoing strategy to roll back decades of progress on voting rights.”¹¹⁵ “Voter ID laws are a solution in search of a problem.”¹¹⁶ He added, “Over 20,000 black registered voters in Alabama have no valid photo ID that is accepted under the photo ID law.”¹¹⁷

Benard Simelton said, “The photo ID has a disproportionately [sic] impact on African-American voters because African-American voters are less likely to have the credentials required to obtain the photo ID, such thing as the birth certificates.”¹¹⁸

Jennifer Holmes told the Committee, “According to our expert in the litigation [*Greater Birmingham Ministries* – a lawsuit that alleges the law has discriminatory effect on black and Latino voters and that the legislature enacted the law for the purpose of discriminating against people of color], more than 118,000 registered voters lack a photo ID that can be used to vote under the law, and black and Latino voters are twice as likely than white voters to lack such an ID. This figure breaks down as 50,000 registered voters who lack any acceptable ID and 68,000 registered voters who, although they have an ID, have discrepancies in the name on the ID or other information on the ID that would prevent them from using it to vote.”¹¹⁹

Ms. Holmes also told the Committee “the Secretary of State’s expert in the litigation does acknowledge that black and Latino voters are twice as likely to lack an ID as white voters. Black

¹¹² Merrill Testimony, *Montgomery Hearing*, P. 28.

¹¹³ Merrill Testimony, *Montgomery Hearing*, P. 14.

¹¹⁴ Simelton Testimony, *Montgomery Hearing*, P.252.

¹¹⁵ Boone Testimony, *Montgomery Hearing*, P. 101.

¹¹⁶ *Id.*

¹¹⁷ Boone Testimony, *Montgomery Hearing*, P.103.

¹¹⁸ Simelton Testimony, *Montgomery Hearing*, P.251.

¹¹⁹ Holmes Testimony, *Montgomery Hearing*, P.168.

and Latino voters without a photo ID are also much more likely than their white counterparts to lack access to vehicles, to live in poverty, and to face other barriers to obtaining an ID.”¹²⁰

Dr. Crayton suggested more IDs should be allowed. “if our goal is to make more people have access, how many IDs can we reasonably say fit the category? And if we're going to allow passports -- which, again, I'm in favor of if you're going to have an ID system, then we should be more expansive than that for places where we can find IDs that have your photo and some indication or means of verifying where you happen to live, that you're in the state.”¹²¹ He added, “Student ID's and federal IDs [should qualify.] If we establish the minimum standards that open up our access for any person that has an ID, that has a photo, and is issued by some state agency that has some sense of verification, that ought to qualify.”¹²²

Some panelists pointed out that the problem, as they perceive it, isn't just with the law itself, it is exacerbated by state action. Brock Boone said, “Not only does Alabama enact voter ID laws, but then the State of Alabama made it more difficult to obtain a photo ID, in particular a driver's license, by closing 31 county driver's license offices, including every county in which 70 percent or more of the population is black.”¹²³

Jennifer Holmes stated in her testimony “The governor closed driver's license offices in eight of the ten counties with the highest proportion of black voters. These important offices were opened only one day a month for the entire 2016 election season, making it more difficult for black voters in these poor and rural communities to obtain the required photo ID.”¹²⁴ She added, “The governor only agreed to reopen these offices in December 2016 after the presidential election and after an investigation by the U.S. Department of Transportation that found that Alabama's partial closure of the offices had a discriminatory effect on black voters in violation of title six of the Civil Rights Act.”¹²⁵

Benard Simelton shared complaints received by his organization from voters at the polls, stating “The Alabama NAACP has received several complaints from individuals who did not have the photo ID and, therefore, were not able to vote. One individual who went to the polls where he had voted prior to the photo ID being required was turned away, even though poll workers recognized him. Another elderly gentleman was not able to vote because he had not obtained the photo ID. And another gentleman was not able to use his military ID in order to vote.”¹²⁶

Scott Douglas, of Greater Birmingham Ministries, gave testimonials about low-income people burdened by Alabama's photo ID laws. He first spoke of Ms. Elizabeth Ware, “Due to Ms. Ware's fixed income, lack of reliable transportation, and limited mobility, HB19 [Alabama Voter ID Law] substantially burdens Ms. Ware's ability to vote. Ms. Ware's income consists solely – consisted solely of Social Security Disability as a result of a number of serious maladies, including bullet

¹²⁰ Holmes Testimony, *Montgomery Hearing*, P.168-169.

¹²¹ Crayton Testimony, *Montgomery Hearing*, P. 53.

¹²² Crayton Testimony, *Montgomery Hearing*, P.52.

¹²³ Boone Testimony, *Montgomery Hearing*, P. 101.

¹²⁴ Holmes Testimony, *Montgomery Hearing*, P.169.

¹²⁵ *Id.*

¹²⁶ Simelton Testimony, *Montgomery Hearing*, P. 253.

fragments in her back. Ms. Ware does not drive and has limited transportation options. The bus stop is four to five blocks from her house and walking that distance takes her over an hour and causes her pain, and rides by car are unreliable for Ms. Ware. The nearest place to get a license where Ms. Ware will go get an ID is not in walking distance of her home, and a ride can cost 20 bucks -- \$20, a significant amount for someone with a fixed income. She -- she attempted to get the free voter ID card; however, she was wrongly denied the card by the -- the ID by the staff member who had been improperly trained who told her that because she had an ID in the past, she was now ineligible for the free voter ID card now, despite her circumstances. Finally, after becoming a plaintiff in our lawsuit, Ms. Ware's attorneys aware -- arranged for the Secretary of State's office mobile unit to visit her home during her deposition, and she had never heard of the mobile ID unit prior to litigation. The unit's process was deeply flawed and faced many technical issues when attempting to issue Ms. Ware an ID. Ultimately, it took over an hour to issue Ms. Ware a temporary ID, and she had to wait for the permanent ID to be mailed to her. This process clearly cannot be replicated for the thousands and thousands of other people in Alabama who do not have an ID, a personal home visit by a mobile unit."¹²⁷

Mr. Douglas then shared a story of Debra Silvers, "who was unable to replace her photo ID after a house fire destroyed both her ID and the underlying documents that she would need to replace it. To begin replacing the documents lost in her fire, Ms. Silvers had to pay for a ride to various government agencies. Each trip costed her \$15 to \$20. Ms. Silvers paid over \$100 in cost of transportation before getting a temporary nondriver ID. These costs were especially substantial given that Ms. Silvers had just lost everything in the fire and was in the process of rebuilding her entire life. Ms. Silvers was in such dire straits that she had required the Red Cross to house herself and her children. Once Ms. Silvers had obtained a temporary nondriver ID, she attempted to vote in March 2016, but she was turned away because the poll worker could not see the picture on the temporary ID and that old ID had expired. HB19 directly prohibited Ms. Silvers from participating in the franchise."¹²⁸

Provisional Ballots

The Committee heard testimony about provisional ballots. John Park said, "with respect to provisional voting, if you go to the wrong precinct, one of the things you need to understand is they're not going to have your ballot. They're going to have the ballot for that precinct. Now, there may be common races -- common elections, but you'll only be able to vote -- the only votes that you can conceivably count are the ones for those common ones."¹²⁹

Even if you get to the right precinct, if there is confusion and "a pollster says -- and I think with no ill intent -- 'oh, just cast a provisional ballot. You'll get your ballot counted and, you know, it'll be fine.' But they want to keep the line moving. But that has an effect on the person who casts a

¹²⁷ Douglas Testimony, *Montgomery Hearing*, P. 209.

¹²⁸ *Id.* at P. 210.

¹²⁹ Park Testimony, *Montgomery Hearing*, P. 90.

ballot. And usually, that person doesn't know that those ballots don't get counted.”¹³⁰ Dr. Crayton informed the Committee that “there's no obligation for the State to count those provisional ballots unless the outcome of the election is likely swayed by the number of provisional ballots that are cast.”¹³¹ “When you're denied access,” he said, “you may cast a ballot, but getting that ballot counted is another affair, particularly when you get slotted toward provisional ballots.”¹³²

Voter Turnout

The Secretary of State told the Commission the voters in Alabama have been turning out in record numbers, “March 1st, 2016, broke every record in the history of the state for voter participation. 1.25 million went to the polls and voted. November 8, 2016, broke every record for voter participation in the history of the state, more than 2.1 million went to the polls.”¹³³

The Secretary added, “The SOS said his office has also tried to make it easier for people when they go to the polls. Polling places now have “electronic poll book in place where people can go and they can participate in a faster environment, a faster setting, and with more efficiency through the check-in procedure where people are able to go and be processed a lot quicker. That reduces the wait time some 60 to 75 percent, depending on the voter and depending on the poll worker.”¹³⁴

Dr. Kareem Crayton said voter registration was a significant part of the process, but it wasn't the only factor, “I applaud the Secretary of State to have so much emphasis placed on registration...I think you have to take account of whether people who are registered actually show up to vote, and I think that the State has an obligation to do all that it can to encourage that.”¹³⁵

Other panelists discussed the difficulties some voters face at the polls. Jennifer Holmes, of the NAACP Legal Defense Fund, said “Unfortunately, we observed or received reports of many systemic voting -- voting-related problems on election day, including long lines at predominantly black precincts, lack of or malfunctioning voting machines, insufficient numbers of ballots, and law enforcement officials conducting warrant checks at polling places. In particular, we heard from frustrated voters whose attempts to cast a ballot were stymied by the photo ID law or Alabama's inactive voter procedures.”¹³⁶

Brock Boone, of the Alabama ACLU, said, “for the individuals in Mobile, we heard that many just left when they were told by the election officials that their address doesn't match.”¹³⁷ The reason was, “They have to get back to work or they only had a certain amount of time, not to mention the lines. Some of them stayed and they were told to get into the line for a provisional ballot, but that

¹³⁰ Crayton Testimony, *Montgomery Hearing*, P. 67.

¹³¹ Crayton Testimony, *Montgomery Hearing*, P.66.

¹³² *Id.* at P. 67.

¹³³ Merrill Testimony, *Montgomery Hearing*, P. 14.

¹³⁴ *Id.* at P. 15

¹³⁵ Crayton Testimony, *Montgomery Hearing*, P. 39.

¹³⁶ Holmes Testimony, *Montgomery Hearing*, P. 171.

¹³⁷ Boone Testimony, *Montgomery Hearing*, P. 104-105.

line was long. For some people, it was like an hour and a half up to two hours. We have heard that this particular probate judge in Mobile County has been doing this for years, which is troublesome.”¹³⁸

Mr. Boone also shared with the Committee that, “almost a dozen called us [that were turned away at the polls because address on ID did not match rolls] they were standing there basically telling us everyone that’s leaving in the lines...it could be up to 100 or more.”¹³⁹ He also said, “There were instances of police intimidation or individuals who felt like it was police intimidation where cops are right outside the voting precincts like when you come into the door...that discriminates against people who might have something on their record or they’re worried about what the police might stop them and question them or if a police officer is standing behind where they’re giving their information to -- or showing their ID.”¹⁴⁰

Mr. Boone added, “The ACLU of Alabama, my organization, set up a hotline to report difficulties in voting on election day for the special senate election here this past December, the one where Senator Jones won, and we received complaints all day on our hotline. On election day in particular, we got word of dozens and dozens of people prohibited from voting in Mobile County because the address on their driver’s license does not match the address on the registration rolls. That is not a requirement.”¹⁴¹

Training

To address inconsistency and problems at the polls, Jonathan Barry-Blocker said, “I’m not -- not overly focused on trying to convince government agencies, because they’re already overwhelmed, to make sure training is happening.” He said, “My focus was always holding a clinic, training people, and then just speaking with people who need the assistance by any means necessary, to get them to start asking questions, to start making phone calls.”¹⁴² He added, “I just want to stress, there is a lot of confusion. There will need to be a lot of public education. We were helping people at our clinics who were --because of confusion, thought their conviction solely in another state was blocking them for 40 years from being able to register here in the State of Alabama.”¹⁴³

Jaffee Pickett told the Committee her organization “found that people who have never lost their rights didn’t know [they are eligible to vote]. They don’t vote because they don’t know they have the right. So, it really is about educating citizens.”¹⁴⁴

¹³⁸ *Id.*

¹³⁹ Boone Testimony, *Montgomery Hearing*, P. 118.

¹⁴⁰ Boone Testimony, *Montgomery Hearing*, P. 134.

¹⁴¹ Boone Testimony, *Montgomery Hearing*, P. 104.

¹⁴² Blocker Testimony, *Montgomery Hearing*, P. 194.

¹⁴³ Blocker Testimony, *Montgomery Hearing*, P. 190.

¹⁴⁴ Pickett Testimony, *Montgomery Hearing*, P. 271.

The Committee heard testimony on how a lack of training of poll workers denied citizens the opportunity to vote. Jennifer Holmes shared the example of “poll workers in Mobile County barred people from voting or improperly forced voters to cast provisional ballots when they presented an ID with an address that did not match the address on their registration record, even though the photo ID law does not require a voter to present an ID with an address at all.”¹⁴⁵

Ms. Holmes pointed out, “This misapplication of the voter ID – of the photo ID law is more likely to affect voters who do not have an alternate form of ID or cannot take additional time off from their workday to contest a poll worker’s decision or to retrieve an alternate ID.”¹⁴⁶ She added, “Even when applied as intended, Alabama’s photo ID law and its inactive voter list procedures disproportionately burden poor, rural, and transient voters who are often black or Latino. The erroneous application of these laws only magnifies this effect.”¹⁴⁷

Mr. Boone of the ACLU said in his experience, “the election manual contains the information that would provide clarity at the polls in terms of what ID’s are accepted. It seems like the manual should be handy if you are -- if there’s questions at the polls.”¹⁴⁸

Although inactive voters should have been permitted to cast a regular ballot “as long as they updated their registration information at the polls,” Jennifer Holmes said the “LDF received many reports that poll workers were turning away inactive voters or improperly requiring them to cast provisional ballots or answer immaterial and illegal questions, such as the county of their birth, before allowing them to cast a vote.”¹⁴⁹

¹⁴⁵ Holmes Testimony, *Montgomery Hearing*, P. 171.

¹⁴⁶ *Id.*

¹⁴⁷ Holmes Testimony, *Montgomery Hearing*, P. 173

¹⁴⁸ Boone Testimony, *Montgomery Hearing*, P. 159.

¹⁴⁹ Holmes Testimony, *Montgomery Hearing*, P. 172-173.

Appendix

- I. [Transcript of the Hearing Before the Alabama Advisory Committee, Montgomery Alabama, February 22, 201.](#)
- II. [Alabama Photo ID Law.](#)
- III. [Alabama Final Voter ID Rules.](#)
- IV. [Alabama Voter Registration Application.](#)
- V. [Alabama Moral Turpitude Crimes.](#)

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