

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 CERVs.**
- 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 Alabaman 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 Alabamans 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 117(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 CERV 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 CERV. 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 CERV.

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 submitted 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 fill 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 an having access to an advocate who understood the law and how to read her record.

There is no logic to 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
Central Alabama Re-enfranchisement Fellow for the Alabama Voting Rights Project

Ellen Boettcher, Outreach Fellow, Southern Poverty Law Center
South Alabama Re-enfranchisement Fellow for the Alabama Voting Rights Project