

SENT VIA EMAIL & US MAIL

November 5, 2019

The Honorable John H. Merrill
Secretary of State
State Capitol Building - Suite S-105
600 Dexter Avenue
Montgomery, AL 36130

Re: Recent Statement on Felony Disenfranchisement in Alabama

Dear Secretary Merrill,

We are writing to express our disappointment to the erroneous and misleading description of Alabama's felony disenfranchisement laws in your press release from your office, dated October 3, 2019.¹ Your statement, coupled with your office's general inaction in educating voters about HB 282, threatens to confuse people with convictions further about their voting rights in Alabama. We respectfully request that you clarify your statement to the public so that it is consistent with the law.

On October 3, 2019, the statement your office released included the following section:

"[A recent op-ed stated that] 'no real effort to allow ex-inmates who have served their time [to] rejoin the voter rolls' had occurred. In reality, thanks to bipartisan legislation we wrote and shepherded through the legislative process in 2016, any voter who has met all of the terms of his or her sentence and has not committed a crime of moral turpitude is immediately re-entered into the rolls."

This statement fundamentally misstates the law in Alabama with respect to voting for people with convictions. It flips the state's "moral turpitude" limitation on its head. Your statement suggests that a felony moral turpitude conviction takes an individual out of the running for a Certificate of Eligibility to Register to Vote (CERV) when in fact those without moral turpitude convictions need not apply for a CERV (they never lose their right to vote) and people with moral turpitude convictions can and should use the CERV process to restore their voting rights. And, unfortunately for thousands of Alabamians, your assertion that Alabama has automatic re-enfranchisement – "immediately re-entered into the rolls" – is categorically false.

We lay out the errors in your statement more specifically here:

First, individuals who are not convicted of felonies of moral turpitude never lose the right to vote because of their convictions. They are not, as your statement implies, restored to voting rights only after completing their sentence. Taking your statement on its face would lead an individual who never lost the right to vote to believe that they would have to wait until they completes their sentence, including payment of legal financial obligations, before they can vote again. Their vote could be indefinitely suppressed because of your misinformation. Based on our estimates, there are up to 139,000 Alabamians who have felony convictions but no convictions for felonies of moral turpitude, and they retain their right to vote if otherwise eligible.²

¹ <https://www.sos.alabama.gov/newsroom/secretary-merrill-responds-inaccurate-alabama-political-reporter-op-ed>

² The Alabama Voting Rights Project analyzed a list over 70,000 Alabamians who had been removed from the voting rolls or had their voter registrations denied because of a felony conviction prior to the passage of the new law. Your office provided this list in response to a public records request under the National Voter Registration Act. We matched that list with criminal records in Alacourt. We used the resulting percentages to make state-wide estimates using 2016 estimates of disenfranchised people in Alabama from the Sentencing Project. (Six Million Lost Voters, available at <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>).

Once again, people who were not convicted of felonies of moral turpitude never lose the right to vote, even while incarcerated. You are aware of this as you recently added internal prison identification to the list of acceptable voter ID in Alabama.³ Currently, Alabama incarcerates more than 22,000 individuals in state prisons⁴ and over the course of the year will hold around 90,000 in jails.⁵ Many of these people are likely eligible to vote. You must clarify this incorrect statement of the law as soon as possible.

Second, Alabamians who have been convicted of felonies of moral turpitude can restore their right to vote after they have completed all terms of their sentence. Indeed, Alabamians with moral turpitude convictions are the only people who need to apply to restore their right to vote. Your statement, however, implies that they may not. A person convicted of a felony of moral turpitude is eligible to apply for a non-discretionary Certificate of Eligibility to Register to Vote (CERV) if they (a) have not been convicted of subset of very serious crimes; (b) have completed serving their sentence including probation and parole; (c) have paid off all fines, fees, and restitution imposed at the time of sentencing; and (d) have no felony charges pending. Anyone who meets those criteria is entitled to a CERV if they request one from the Board of Pardons and Paroles. We estimate that around 109,000 Alabamians have completed their sentence and have convictions for felonies of moral turpitude, but not one of the very serious disqualifying convictions. Depending on the status of their legal financial obligations, those individuals may be entitled to CERVs, if only they knew about the application process.

As Alabama's chief election official, your office should be spreading information about the restoration of voting rights and encouraging eligible individuals to apply for CERVs, not spreading misinformation.

Third, no one is simply "re-entered into the rolls." Alabama does not have automatic voter registration nor automatic voting rights restoration for people with convictions. For people with felony convictions who have lost their right to vote, voting rights restoration and re-registration are separate moments in the process of being able to vote again. For many, the moment of rights restoration came when the Definition of Moral Turpitude Act went into effect in July 2017. For others, that moment comes when the Board of Pardons and Paroles grants a Certificate of Eligibility to Register to Vote. Unfortunately, Alabama does not have automatic voter registration for anyone, so regardless of how an individual's right is restored, they will have to register to vote. Your statement would lead a people who do not have a conviction of moral turpitude or who have met the eligibility criteria for a CERV or who have received a CERV, to believe that they are automatically re-registered to vote. They would arrive at the polls only to be turned away.

We ask that you take down this misinformation from your website immediately and issue a correction.

Additionally, we would welcome your office to assume greater leadership for implementing HB 282, the law that you "wrote and shepherded" to passage. We recommend the following as a starting place:

- Update Alabama's voter registration form and the Election Assistance Commission's instructions for the federal voter registration form to explain the eligibility requirements after HB282, including a list of the felonies of moral turpitude;

³ <https://www.sos.alabama.gov/alabama-votes/voter/voter-id>

⁴ <https://www.al.com/news/2019/10/no-easy-free-fixes-for-alabama-prisons-study-group-told.html>

⁵ <https://www.al.com/news/2019/09/alabama-incarcerated-how-do-state-prisons-and-jails-compare-to-the-rest-of-the-nation.html>

- Place voters whose registration applications were denied or who were struck from the voter registration rolls in the last two years, and whose eligibility was affirmed by HB 282, back on the voter registration rolls and provide them with individual notice of their eligibility to vote;
- Provide mandatory training to registrars on HB 282 and the CERV process so they can provide accurate information to potential voters;
- Include information about the CERV process on any notices of denial of registration or removal because of a felony of moral turpitude;
- Engage in sustained public education campaign to include as many eligible voters in Alabama who have prior convictions in the democratic process; and
- Develop and provide guidance materials to the Alabama Department of Corrections on HB 282 so that corrections officers can allow incarcerated Alabamians without convictions of moral turpitude the opportunity to vote in upcoming elections.

Finally, we welcome the opportunity to meet with you and your staff to discuss common-sense election reforms like same-day registration or automatic voter registration, the latter of which would allow more eligible Alabama electors to be registered and prevent unnecessary barriers to the fundamental right to vote.

Respectfully,



Blair Bowie

Legal Counsel & Restore Your Vote Manager*
Campaign Legal Center

*licensed to practice in Washington, D.C.



John Paul Taylor

Voting Rights Field Director
Southern Poverty Law Center



Caren E. Short

Senior Staff Attorney, Voting Rights*
Southern Poverty Law Center

*licensed to practice in Alabama and California

