



## AlaFile E-Notice

03-CV-2024-901094.00

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JAIGREGORY CLARK ET AL V. WES ALLEN ET AL  
03-CV-2024-901094.00

The following alias summons was FILED on 7/18/2024 8:55:03 AM

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MONTGOMERY, AL, 36104

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**IN THE CIRCUIT COURT OF  
 MONTGOMERY COUNTY, ALABAMA**

JAIGREGORY CLARKE and ROBERT  
 CROWLEY,

*Plaintiffs,*

Case No. \_\_\_\_\_

v.

WES ALLEN, in his official capacity as  
 Alabama Secretary of State, CATHERN  
 HOLLEY in her official capacity as the  
 Chairwoman of the Blount County  
 Board of Registrars, BARRY  
 STEPHENSON in his official capacity  
 as Chairman of the Jefferson County  
 Board of Registrars, STEVE  
 MARSHALL, in his official capacity as  
 Alabama Attorney General, PAMELA  
 CASEY in her official capacity as  
 District Attorney for Blount County,  
 and DANNY CARR in his official  
 capacity as District Attorney for  
 Jefferson County,

*Defendants.*

**COMPLAINT**

**I. INTRODUCTION**

1. This is a civil rights action for declaratory and injunctive relief to prohibit Section 2 of Alabama House Bill 100 (2024) (“HB 100, § 2”) from being implemented until after the upcoming General Election on November 5, 2024 (the “2024 Election”), as discussed herein.

2. The Alabama Constitution states that “[n]o person convicted of a felony involving moral turpitude . . . shall be qualified to vote until restoration of civil and political rights.” Ala. Const. art. VIII, § 177(b).

3. On May 16, 2024, Governor Kay Ivey signed HB 100 into law. The law establishes (1) increased penalties for crimes committed against election officials, H.B. 100, Reg. Sess. § 1 (Ala. 2024), (2) that felonies committed against election officials are disenfranchising felonies involving moral turpitude, *id.*, (3) that convictions under six additional statutes are disenfranchising felonies involving moral turpitude,<sup>1</sup> *id.* at § 2, and (4) that convictions for attempts, solicitations, or conspiracies to commit felonies involving moral turpitude are also disenfranchising felonies involving moral turpitude. *Id.* By its terms, this law goes into effect on October 1, 2024. *Id.* at § 3.

4. The Alabama Constitution provides that “[t]he implementation date for any bill enacted by the Legislature in a calendar year in which a general election is to be held and relating to the conduct of the general election shall be at least six months before the general election.” Ala. Const. art. IV, § 111.08.

5. Because HB 100, § 2 relates to the “conduct of the general election” by altering who is eligible to vote in the 2024 Election and because its implementation date is October 1, 2024—which is less than six months before the November 5, 2024

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<sup>1</sup> These newly disenfranchising convictions are: (1) compelling streetgang membership, Ala. Code § 13A-6-26(d), (2) aggravated stalking, Ala. Code § 13A-6-91, (3) domestic violence in the first degree, Ala. Code § 13A-6-130, (4) domestic violence in the second degree, Ala. Code § 13A-6-131, (5) domestic violence by strangulation or suffocation, Ala. Code § 13A-6-138, and (6) elder abuse, Ala. Code § 38-9-7(b). H.B. 100, Reg. Sess. (Ala. 2024).

general election—HB 100, § 2’s implementation date violates Article IV, § 111.08 of the Alabama Constitution.

6. Through this Action, Plaintiffs seek an Order that: (1) finds and declares that HB 100, § 2’s implementation date of October 1, 2024 violates the Alabama Constitution; and (2) issues a preliminary and permanent injunction that enjoins Defendants and their agents, officers, employees, successors, and all persons acting in concert with each or any of them, from implementing HB 100, § 2 prior to November 6, 2024.

## **II. PARTIES**

### **Plaintiffs**

7. Plaintiff JaiGregory Clarke is a resident of Jefferson County, Alabama. In 2011, Plaintiff Clarke was convicted of attempted murder, which is one of the convictions that HB 100, § 2 adds to the list of felonies involving moral turpitude, the convictions that take away the right to vote in Alabama. Plaintiff Clarke has since completed all terms of his sentence and is currently seeking a pardon. Plaintiff Clarke is a community organizer who works to advance voting rights access and increase voter participation for eligible Alabamians, and who performs violence intervention work in Birmingham. Plaintiff Clarke is also a devoted father, employee, business owner, taxpayer, and voter. Plaintiff Clarke believes that voting is an important step in fully rejoining society as a productive citizen following a conviction. Plaintiff Clarke is already lawfully registered to vote, but he is not sure whether he can legally vote in the 2024 Election because of HB 100, § 2’s implementation date of October 1, 2024.

Once HB 100, § 2 goes into effect, Plaintiff Clarke will lose his right to vote. Therefore, because of HB 100, § 2's unconstitutional implementation date, Plaintiff Clarke will lose the right to vote in the 2024 Election.

8. Plaintiff Robert Crowley is a resident of Blount County, Alabama. In 1997, Plaintiff Crowley was convicted of attempted murder, which is one of the convictions that HB 100, § 2 adds to the list of felonies involving moral turpitude, the convictions that take away the right to vote in Alabama. At age eighteen, Plaintiff Crowley enlisted in the United States Army. He later studied to become a computer programmer, which he was for ten years, and he now volunteers with the Paralyzed Veterans of America as the Mid-South Chapter Representative. Plaintiff Crowley is a devoted father, grandfather, and great grandfather. Plaintiff Crowley is not currently registered to vote in the state of Alabama but wishes to register so that he can vote in the 2024 Election. Because of HB 100, § 2's implementation date of October 1, 2024, Plaintiff Crowley is not sure whether he can legally register to vote and vote in the 2024 Election. After HB 100, § 2 goes into effect, Plaintiff Crowley will lose the right to register and vote. Therefore, because of HB 100, § 2's unconstitutional implementation date, Plaintiff Crowley will lose the right to vote in the 2024 Election.

### **Defendants**

9. Defendant Wes Allen is the Secretary of State of Alabama and the chief elections official in Alabama. *See* Ala. Code § 17-1-3. As such, Defendant Allen and his office are responsible for “provid[ing] uniform guidance for election activities” to

all state and county election officials, including guidance with respect to voter eligibility, registration, and removal practices. *Id.* Whenever HB 100, § 2 is implemented, these same state and county election officials will be responsible for determining voters' eligibility under the law. Thus, Defendant Allen has the authority and obligation to instruct other state and county election officials how to implement election laws governing voter eligibility, like HB 100, § 2. Defendant Allen is sued in his official capacity.

10. Defendants Alabama Board of Registrars Chairpersons (the "Defendant Registrars") are the Chairpersons of the Board of Registrars for the following Alabama counties: Cathern Holley for Blount County and Barry Stephenson for Jefferson County. In their capacity as registrars, the Defendant Registrars are vested with the authority to grant or refuse Plaintiffs' applications to register to vote in their respective counties. Ala. Code § 17-3-1, *et seq.* Defendant Registrars are also responsible for removing people from the voter rolls if they become ineligible. Ala. Code § 17-4-3; *see also* § 17-17-6 (imposing misdemeanor liability on registrars who neglect or willfully refuse to perform the duties imposed by § 17-4-3). As such, Defendant Registrars would be responsible for removing any Plaintiffs already registered to vote from the voter rolls if Plaintiffs become ineligible under HB 100, § 2. *Id.* Defendant Registrars are sued in their official capacities.

11. Defendant Steve Marshall is the Attorney General of Alabama. Under Alabama law, the Attorney General may "at any time he [] deems proper, . . . superintend and direct the prosecution of any criminal case in the courts of the state,"

Ala. Code § 36-15-14, and “direct any district attorney to aid and assist in the investigation of any case in which the state is interested,” *id.* § 36-15-15. As such, Defendant Marshall is responsible for criminal enforcement of any violations of law that may result due to confusion over HB 100, § 2’s unconstitutional implementation date. *See id.* §§ 17-17-36 - 17-17-37 (criminalizing fraudulent voting when ineligible), 17-17-46 (criminalizing providing false voter registration information).<sup>2</sup> Defendant Marshall is sued in his official capacity.

12. Defendants Alabama District Attorneys (the “Defendant District Attorneys”) are the District Attorneys for the following Alabama counties: Pamela Casey for Blount County and Danny Carr for Jefferson County. District Attorneys have the power to “draw up all indictments and to prosecute all indictable offenses” within their jurisdiction. Ala. Code § 12-17-184(2). As such, the Defendant District Attorneys are responsible for criminal enforcement in their respective Alabama counties of violations of Alabama law that may occur due to confusion over HB 100, § 2’s unconstitutional implementation date. *See id.* §§ 13A-10-101-103, 17-17-36-37, 17-17-46. If Defendant District Attorneys believe that Plaintiffs registered to vote or voted while ineligible, they could initiate criminal prosecutions against Plaintiffs. The Defendant District Attorneys are sued in their official capacities.

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<sup>2</sup> The Alabama Voter Registration Application’s voter declaration also warns of criminal prosecution for perjury if a person registers to vote when they are “barred from voting by reason of a disqualifying felony conviction.” Alabama Secretary of State’s Office, *State of Alabama Voter Registration Application*, <https://perma.cc/MM45-XZUN> (“If you falsely sign this statement, you can be convicted and imprisoned for up to five years.”); *see also* Ala. Code §§ 13A-10-101-103 (criminalizing perjury).

### **III. JURISDICTION AND VENUE**

13. This Court has jurisdiction under Alabama Code §§ 12-11-30; 12-11-31; 12-12-30 and Rule 81 of the Alabama Rules of Civil Procedure.

14. The Court may grant declaratory relief under the Declaratory Judgment Act, §§ 6-6-220 through 6-6-232 of the Alabama Code and Rule 57 of the Alabama Rules of Civil Procedure.

15. The Court may grant injunctive relief under § 6-6-500 of the Alabama Code and Rule 65 of the Alabama Rules of Civil Procedure.

16. Venue is proper in Montgomery County under § 6-3-2 of the Alabama Code. This action involves the breach of official duties of officers of the State of Alabama who reside in Montgomery County, and the acts and omissions giving rise to Plaintiffs' claims occurred in Montgomery County. Ala. Code §§ 6-3-2(a)(3), 2(b)(3).

### **IV. FACTUAL ALLEGATIONS**

#### **Alabama Felony Disenfranchisement Background**

17. The fundamental right to vote is protected by the Due Process Clause of Article I, § 6 of the Alabama Constitution, as well as by Alabama Code §§ 17-2-4, 17-2-21, 17-2-23, and 17-2-25.

18. Since 1901, Alabama has disenfranchised its citizens who were convicted of any "felony involving moral turpitude." Ala. Const. art. VIII, § 177(b). However, until recently, the State did not define which convictions fell into that category. In 2017, Alabama passed the Felony Voter Disqualification Act ("HB 282"), which created a definitive and authoritative list of convictions that take away an



Alabamian’s right to vote.<sup>3</sup> After HB 282, only convictions under the enumerated Alabama statutes and their federal or out-of-state analogs can take away a person’s right to vote. Ala. Code §§ 17-3-30.1(c)(1)-(48). If an Alabamian has been convicted of a felony that is not a felony involving moral turpitude, she never loses the right to vote and can register and cast her ballot like any other voter. *C.f.* Ala. Code § 17-3-30.1(e).

19. If an Alabamian has been convicted of a felony involving moral turpitude, however, she loses the right to vote. In that case, the right to vote can only be restored by a pardon or a Certificate of Eligibility to Register to Vote (“CERV”). An Alabamian is eligible to apply for and be issued a CERV from the Alabama Bureau of Pardons and Paroles (“ABPP”) if she: (1) has not been convicted of certain enumerated offenses;<sup>4</sup> (2) does not have felony charges pending against her; (3) does not owe any fines, court costs, fees, or restitution ordered by the sentencing court on any felony involving moral turpitude; and (4) has fully completed her sentence, including probation and parole, on any felony involving moral turpitude. Ala. Code § 15-22-36.1(a).

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<sup>3</sup> Ala. Code § 17-3-30.1(b)(2) (“The purposes of this section are: . . . b. To ensure that no one is wrongly excluded from the electoral franchise. c. To provide a comprehensive list of acts that constitute moral turpitude for the limited purpose of disqualifying a person from exercising his or her right to vote.”)

<sup>4</sup> *See* Ala. Code § 15-22-36.1(g) (“A person who has lost his or her right to vote by reason of conviction in a state or federal court for any of the following will not be eligible to apply for a Certificate of Eligibility to Register to Vote under this section: Impeachment, 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, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason.”); *see also id.* § 15-22-36(a) (providing that an Alabamian is not eligible to receive a pardon if she has been convicted of treason, impeachment, or if a death sentence has been imposed and not commuted).

20. Once an Alabamian meets these eligibility criteria, she may request and “*shall* be granted” a CERV. Ala. Code § 15-22-36.1(b) (emphasis added). The ABPP must issue a CERV within 44 days of receiving an Alabamian’s CERV application if all eligibility criteria are met. Ala. Code §§ 15-22-36.1(c)-1(e). The ABPP may not issue CERVs to Alabamians who have not been convicted of felonies involving moral turpitude, as such individuals have never lost the right to vote. *See* Ala. Code § 15-22-36.1(a)(1) (requiring that the CERV applicant “has lost his or her right to vote by reason of conviction” in order for the ABPP to issue a CERV); *see also* Ala. Op. Atty. Gen. No. 2005-092, 2005 WL 1121853 (Ala. A.G. March 18, 2005) (“If a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply [to the Alabama Bureau of Pardons and Paroles] for a Certificate of Eligibility to Register to Vote.”).

21. Based on the clarity and assurance that HB 282 provided to all Alabamians, many Alabamians with past felony convictions, including those now made disqualifying by HB 100, § 2, have lawfully received CERVs and/or registered to vote.

#### **Alabama Constitutional Amendment 4 (2022)**

22. In 2021, Alabama State Representative Jim Carns introduced House Bill 388 (“HB 388”), which proposed to amend the Alabama Constitution to prevent laws “relating to the conduct of the general election” from going into effect within the six months leading up to a general election. H.B. 388, Reg. Sess. (Ala. 2021).

23. Representative Carns explained that HB 388 was intended to ensure that “[a]ny bill passed within six months of a general election cannot affect this election.” Brandon Moseley, *House OKs amendment banning election law changes six months before elections*, ALA. POLITICAL REPORTER (Apr. 7, 2021), <https://perma.cc/GY6N-DGKS>.

24. HB 388 passed with over 60 percent support in the Alabama House of Representatives and the Alabama Senate, *Alabama House Bill 388*, LEGISCAN, <https://perma.cc/D9FG-HJ7E> (last visited July 16, 2024), as is required by the Alabama Constitution before a proposed constitutional amendment can be placed on the ballot. *See* Ala. Const. art. XVIII, § 284.

25. On November 8, 2022, HB 388 appeared on the ballot as Amendment 4. The voters of Alabama passed the amendment with approximately 80 percent support.<sup>5</sup>

26. The passage of Amendment 4 in 2022 enshrined the following in the Alabama Constitution:

The implementation date for any bill enacted by the Legislature in a calendar year in which a general election is to be held and relating to the conduct of the general election shall be at least six months before the general election.

Ala Const. art. IV, § 111.08.

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<sup>5</sup> *Canvass of Results of General Election November 8, 2022* at 327, STATE OF ALABAMA (Nov. 28, 2022) <https://perma.cc/NK87-Y4EN>.

## HB 100 Background and Unconstitutional Implementation Date

27. On February 5, 2024, Alabama State Representative Adline Clarke introduced HB 100, which had the stated purpose “to establish increased penalties for a crime committed against an election official” and “to establish that a felony committed against an election official . . . is a crime of moral turpitude.” H.B. 100, Reg. Sess. (Ala. 2024).

28. On April 16, 2024, Alabama State Representative Jim Hill introduced an amendment to HB 100, which added six enumerated convictions to the list of felonies involving moral turpitude. The amendment also added to the list of felonies involving moral turpitude any convictions for attempts, solicitations, or conspiracies relating to any of the enumerated felonies involving moral turpitude:

“(d) Any attempt as defined in Section 13A-4-2, conspiracy as defined in Sections 13A-4-3 and 13A-4-4, or solicitation as defined in Section 13A-4-1 to commit a crime of moral turpitude shall be considered a crime of moral turpitude for purposes of this section.”

Act No. 2024-341, amending § 17-3-30.1 of the Alabama Code.

29. Representative Hill’s addition of these attempt, solicitation, and conspiracy convictions (“inchoate convictions”) to HB 100, § 2 effectively adds over 120 new disenfranchising state convictions to the list of felonies involving moral turpitude. Before HB 100, that list included only approximately 40 disenfranchising state felonies. *See* Ala. Code § 17-3-30.1.

30. The Alabama Legislature passed HB 100 as amended, and Governor Kay Ivey signed HB 100 into law on May 16, 2024. As drafted and enacted, the

implementation date for HB 100 is October 1, 2024, which is just 35 days before the November 5, 2024 general election.

31. Voting for the 2024 Election will have already begun by HB 100's implementation date of October 1, 2024. Absentee voting for the general election begins on September 11, 2024. ALA. SEC'Y OF STATE, VOTER GUIDE 2024, at 13 (2024), <https://perma.cc/W5UN-6EEM>.

32. It is unclear whether individuals with newly disqualifying convictions under HB 100, § 2 can register to vote right now, when they are currently eligible to vote but will not be as of October 1, 2024.

33. It is unclear whether individuals with newly disqualifying convictions under HB 100, § 2 may cast absentee ballots in-person or by mail while they are eligible to vote during the absentee voting period, even if they will not be eligible as of October 1, 2024.

34. It is unclear whether individuals with newly disqualifying convictions under HB 100, § 2 could face criminal prosecution for violations of law that may result due to confusion over HB 100, § 2's unconstitutional implementation date.

35. For registrars, it is unclear whether they can accept voter registration applications from people with newly disqualifying convictions under HB 100, § 2, who are currently eligible to vote but will not be as of October 1, 2024. If these individuals can register or were already registered voters, it remains unclear how their ballots will be treated after October 1, 2024. Since absentee voting will begin on September

11, 2024, it is unclear whether those who cast ballots before October 1st, but will become ineligible on October 1st, will have their ballots counted.

36. Preventing confusion around such crucial, unanswered questions in the months preceding a general election is precisely why approximately 80 percent of Alabama voters passed Amendment 4, enshrining in the Alabama Constitution a prohibition on election bills taking effect within six months of a general election.

### **Plaintiffs Do Not Have Other Avenues of Relief**

#### ***CERV Applications Will Not Suffice***

37. The ABPP may not issue CERVs to Alabamians who have not been convicted of felonies involving moral turpitude. *See* Ala. Code § 15-22-36.1(a)(1); *see also* Ala. Op. Atty. Gen. No. 2005-092, 2005 WL 1121853 (Ala. A.G. March 18, 2005).

38. Because HB 100, § 2 does not go into effect until October 1, 2024, Alabamians impacted by the bill will not lose their right to vote until that date.

39. Only people who have lost the right to vote are eligible for a CERV, meaning that Alabamians impacted by HB 100, § 2, like Plaintiffs, are not eligible to request or be issued CERVs prior to October 1, 2024.

40. Because the ABPP has 44 days to respond to CERV applications, it is not required to issue CERVs to eligible Alabamians who apply for CERVs on October 1, 2024 until November 14, 2024. *See* Ala. Code §§ 15-22-36.1(c), 15-22-36.1(e).

41. November 14, 2024 is nine days after the November 5, 2024 general election. Therefore, Plaintiffs will likely be denied the right to vote in the 2024

Election if they have no recourse but to rely on CERV applications, which they cannot submit until at least October 1, 2024.

42. Further, some individuals who need to vote absentee—for example, due to a disability—may be deprived of their right to vote because of absentee ballot request deadlines, even *if* they receive a CERV that would allow them to vote in-person on Election Day. Absentee ballot applications must be delivered to the Absentee Election Manager by October 29, if delivered by mail, or October 31, if delivered in person. ALA. SEC’Y OF STATE, VOTER GUIDE 2024, at 1, 13 (2024), <https://perma.cc/W5UN-6EEM>.

***The Secretary of State Has Not Issued Guidance, Nor Would It Suffice***

43. Following the passage of HB 100, Defendant Allen’s office apparently told one news outlet that HB 100 could not go into effect until November 6, 2024, to comply with Article IV, § 111.08 of the Alabama Constitution.<sup>6</sup>

44. However, neither Defendant Allen nor anyone from his office has issued a press release, rule, or other formal statement assuring voters that HB 100, § 2 will not take effect until at least November 6, 2024.

45. Plaintiffs cannot rely on reporting in one news article that HB 100 will not go into effect until November 6, 2024<sup>7</sup> as a legally binding position of Defendant Allen that renders this controversy moot, as such a statement does not have the force

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<sup>6</sup> Mike Cason, *Alabama will disqualify more felons from voting under new law aimed at protecting election workers*, AL.COM (May 30, 2024), <https://www.al.com/news/2024/05/alabama-will-disqualify-more-felons-from-voting-under-new-law-aimed-at-protecting-election-workers.html> (“[HB 100] will take effect Nov. 6, one day after the general election, according to the secretary of state’s office. That’s because of a constitutional amendment Alabama voters approved in 2022 that says laws affecting elections cannot change within six months of an election.”).

<sup>7</sup> *See id.*

of law. A party's "own statement" pledging to discontinue allegedly illegal conduct cannot on its own "satisfy the heavy burden of persuasion" that must be met to establish that a controversy is moot. *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968). Governmental entities and officials are granted greater leeway in the presumption that they are unlikely to resume illegal activity, but a "sparse declaration" by a governmental official falls short of demonstrating that there is no reasonable expectation of the government repeating its past illegal action. *Federal Bureau of Investigation v. Fikre*, 601 U.S. 234, 242 (2024).

46. As the chief elections official under Ala. Code § 17-1-3(a), Defendant Allen "is granted rule making authority for the implementation" of Alabama's election laws but does not possess the authority to alter or negate such laws, since such authority is solely vested in the Alabama legislature. *See* Ala. Const. art. III, § 42 ("the executive branch may not exercise the legislative . . . power"); Ala. Const. art. IV, § 44 ("[t]he legislative power of this state shall be vested in a legislature"). Thus, even if Defendant Allen released formal guidance stating that HB 100, § 2 would not go into effect until at least November 6, 2024, Plaintiffs cannot rely on such guidance as having the force of law, given that it would clearly contradict the plain language of the statute as enacted by the Alabama legislature.

***The Attorney General Has Not Issued Guidance, Nor Would It Suffice***

47. Likewise, Defendant Marshall has not issued any Attorney General opinion or other formal statement assuring voters that HB 100, § 2 will not take effect until at least November 6, 2024.



48. While various public officials and governmental entities, including the Secretary of State, may request the Alabama Attorney General’s “opinion in writing, or otherwise, on any question of law connected with the interests of the state or with the duties of any of the department,” regular citizens such as Plaintiffs may not request Attorney General opinions. Ala. Code § 36-15-1(1)(a)-(c); *see also Requesting an Opinion*, Alabama Attorney General’s Office, <https://perma.cc/6QYU-D2HN> (last visited July 15, 2024).

49. Opinions pertaining to “questions that are subject to ongoing litigation” may not be requested. Ala. Code § 36-15-1(1)(d). The Attorney General’s Office likewise confirms that “[t]he Attorney General does not address issues concerning matters currently in litigation.” *See Requesting an Opinion*, Alabama Attorney General’s Office, <https://perma.cc/6QYU-D2HN> (last visited July 15, 2024).

50. Prior to filing this lawsuit, Plaintiffs’ counsel sent a letter to Secretary Allen on June 27, 2024, requesting that Secretary Allen seek an Attorney General opinion on the constitutionality of HB 100, § 2’s implementation date. *See Exhibit A*.

51. Plaintiffs’ counsel requested that Secretary Allen seek, and that Attorney General Marshall issue, an opinion on the matter by July 12, 2024—approximately two weeks after Plaintiffs’ counsel sent their letter.

52. To date, Plaintiffs have not received a response from Secretary Allen to their request, and Attorney General Marshall has not issued an opinion on the matter.

53. Even if Defendant Marshall were to issue an Attorney General opinion finding that HB 100, § 2's implementation date is unconstitutional and unenforceable—which he has not done—Plaintiffs and other impacted Alabamians could not rely on that opinion as having the force of law because opinions from the Attorney General are “not binding”. *Farmer v. Hypo Holdings, Inc.*, 675 So. 2d 387, 390 (Ala. 1996). They are “only advisory” in nature and “do[] not have the effect of law.” *Id.*; see also *Reform Party of Ala. v. Bennett*, 18 F. Supp. 2d 1342, 1354 (M.D. Ala. 1998) (“Attorney General’s opinions are merely advisory in nature and do not have the effect of law”) (citing *Farmer*, 675 So. 2d at 390); *Alabama-Tennessee Nat. Gas Co. v. S. Nat. Gas Co.*, 694 So. 2d 1344, 1346 (Ala. 1997) (“an opinion of the attorney general is not binding”). Indeed, any contention that “an Attorney General’s opinion in any way ‘define[s] the election laws contained in the Code of Alabama’ or [i]s binding on any state official [is] completely erroneous.” *Reform Party of Ala.*, 18 F. Supp. 2d at 1354.

54. Although the Attorney General may also provide District Attorneys with “opinion, instruction or advice necessary or proper to aid them in the proper discharge of their duties, either by circular or personal letter,” doing so “shall not abridge any authority which may have been or which may be vested in the Chief Justice of the Supreme Court.” Ala. Code § 36-15-15.

55. Accordingly, were the Attorney General to provide guidance to District Attorneys finding HB 100, § 2's implementation date unconstitutional and unenforceable—which he has not done—Plaintiffs could not rely on that guidance

either as having the force of law.<sup>8</sup> An order of this Court is thus necessary to ensure a binding ruling on the constitutionality of HB 100, § 2's implementation date.

### **Imminent Injury**

56. Plaintiffs face imminent injury to their fundamental right to vote because of HB 100, § 2's unconstitutional implementation date.

57. If HB 100, § 2 goes into effect on October 1, 2024, in violation of Article IV, § 111.08 of the Alabama Constitution, Plaintiffs will no longer be eligible to vote and thus will be unable to cast a ballot in the November 5, 2024 general election.

58. Plaintiffs could likewise face criminal prosecution for illegal registration or voting if they did attempt to exercise their right to vote prior to HB 100, § 2's implementation date.

## **V. CLAIM**

### **COUNT I: VIOLATION OF ALABAMA CONSTITUTION**

*(Seeking declaratory and injunctive relief against all Defendants)*

59. Plaintiffs incorporate and reallege all paragraphs in this Complaint.

60. HB 100, § 2's October 1, 2024 implementation date violates the Alabama Constitution, which prohibits legislatively-enacted election changes affecting "the conduct of the general election" from going into effect within the six months leading up to a general election. Ala Const. art. IV, § 111.08.

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<sup>8</sup> Regardless, because Plaintiffs have filed this complaint, Attorney General Marshall will not issue an opinion on the matter. See Ala. Code § 36-15-1(1)(d); *Requesting an Opinion*, Alabama Attorney General's Office, <https://perma.cc/6QYU-D2HN>.

61. HB 100, § 2 affects “the conduct of the general election” in several ways. Ala. Const. art. IV, §111.08. First, HB 100, § 2 affects “the conduct of the general election” by changing eligibility requirements for voting. HB 100, § 2 thus alters registrars’ responsibilities for determining who is eligible to register and vote in the 2024 Election. If implemented on October 1, 2024, HB 100, § 2 will likewise impact voters, rendering some individuals with felony convictions who are *already registered to vote* or currently eligible to register abruptly ineligible. This will confuse impacted voters and election workers alike, just one month before the 2024 Election. HB 100, § 2 also affects “the conduct of the general election” because it increases the number of individuals who are no longer eligible to cast a ballot in the November 5, 2024 general election. Additionally, HB 100, § 2 impacts the “conduct of the general election” because absentee ballots will have already been cast by the October 1, 2024 implementation date. These two changes will create an administrative nightmare for election workers, who will be tasked with removing newly ineligible Alabamians from the voter rolls, approving or denying voter registrations, approving or denying absentee ballot requests, and counting ballots cast in the election by voters with HB 100’s newly disqualifying convictions.

62. Because HB 100, § 2’s implementation date of October 1, 2024 is fewer than six months before the November 5, 2024 general election, HB 100, § 2 cannot lawfully take effect until after the 2024 Election, i.e., until at least November 6, 2024.

63. If HB 100, § 2 is implemented prior to November 6, 2024, it will violate the rights of Alabamians by rendering many of them—including Plaintiffs—unable

to cast a ballot in the 2024 Election, even though HB 100, § 2 plainly violates the Alabama Constitution.

64. Because the ABPP will not be required to provide CERVs to Plaintiffs in time for them to vote on Election Day and because any opinion from the Attorney General or statement from the Secretary of State—were it issued—would not carry the force of law, there are no other avenues of relief open to Plaintiffs apart from litigation. An order of this Court is thus necessary to ensure a binding ruling on the constitutionality of HB 100, § 2's implementation date.

65. The Court has the authority pursuant to the Declaratory Judgment Act, §§ 6-6-220 through 6-6-232 of the Alabama Code, and Rule 57 of the Alabama Rules of Civil Procedure to issue an Order declaring it unconstitutional for HB 100, § 2 to go into effect prior to November 6, 2024.

66. The Court likewise has the authority pursuant to § 6-6-500 of the Alabama Code and Rule 65 of the Alabama Rules of Civil Procedure to issue Preliminary and Permanent Injunctions, enjoining the implementation and enforcement of HB 100, § 2 prior to November 6, 2024.

67. Plaintiffs ask this Court to: (1) declare that HB 100, § 2's implementation date of October 1, 2024, is unconstitutional and that HB 100, § 2 cannot go into effect prior to November 6, 2024; and (2) enjoin Defendants and their agents, officers, employees, successors, and all persons acting in concert with each or any of them, from implementing HB 100, § 2 prior to November 6, 2024.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter an Order finding and declaring that the implementation date of HB 100, § 2 violates the Alabama Constitution and therefore shall not take effect prior to November 6, 2024.

2. Enter a preliminary and permanent injunction Order enjoining Defendants and their agents, officers, employees, successors, and all persons acting in concert with each or any of them, from implementing HB 100, § 2 prior to November 6, 2024.

3. Enter an Order directing the Secretary of State to instruct state and local election officials and absentee election managers that HB 100, § 2 will not be in effect until at least November 6, 2024, and therefore may not be implemented for the 2024 Election. Pursuant to his duties as the chief election official of Alabama, *see* Ala. Code § 17-1-3, the Secretary of State provides guidance to state and county election officials who are in turn responsible for determining individuals' eligibility to vote under the law.

4. Enter an Order directing the Attorney General to instruct District Attorneys not to prosecute currently eligible individuals who register or vote prior to November 6, 2024, but whose convictions will be made disenfranchising once HB 100 goes into effect. The Attorney General may provide "instruction" to District Attorneys in order to "aid them in the proper discharge of their duties." Ala. Code § 36-15-15.

5. Retain jurisdiction to ensure Defendants' ongoing compliance with the foregoing Orders.

6. Grant Plaintiffs other relief as the Court deems just and proper.

Dated: July 18, 2024

Respectfully submitted,

/s/ J Mitch McGuire  
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# EXHIBIT A





June 27, 2024

Wes Allen  
Alabama Secretary of State  
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*Via email*

**Re: House Bill 100's Implementation Date is Unconstitutional**

Dear Secretary Allen,

We write to notify you that the implementation date of House Bill 100 (“HB 100”)—which adds over 120 new crimes to the list of felonies involving moral turpitude, the convictions that take away the right to vote in Alabama—is unconstitutional.

HB 100’s implementation date of October 1, 2024,<sup>1</sup> contravenes the Alabama Constitution, which prohibits the implementation of any bill governing the “conduct of the general election” in the six months leading up to that election. Ala. Const. art. IV, § 111.08. HB 100, by its terms, takes effect just over one month before this year’s general election—scheduled for November 5, 2024—such that it would govern conduct related to that election. This is a clear-cut constitutional violation that must be remedied.

There has been some public reporting that HB 100, despite its terms, “will take effect Nov[ember] 6, one day after the general election, according to the secretary of state’s office.”<sup>2</sup> However, your office has issued no press release or formal public statement to that effect. Similarly, the Attorney General, the State’s chief law enforcement officer responsible for enforcing HB 100, Ala. Code §§ 36-15-14—36-15-15, has issued no formal public statement or opinion on HB 100’s implementation date. Accordingly, Alabamians need clarity about who can and cannot vote in this November’s general election.

To ensure such clarity, we ask that you request an opinion from the Attorney General pursuant to Ala. Code § 36-15-1(1)(a), confirming that HB 100 will not take effect until at least November 6, 2024.<sup>3</sup> There is a pressing need for clarity on HB 100’s implementation date because impacted voters, organizations conducting voter registration, and election officials need to know who is eligible to vote in the November election and who is not. Because of the urgent nature of this question, we ask that you request that the Attorney General issue an opinion on this matter by July 12, 2024.

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<sup>1</sup> H.B. 100, Reg. Sess. § 3 (Ala. 2024).

<sup>2</sup> Mike Cason, *Alabama will disqualify more felons from voting under new law aimed at protecting election workers*, AL.COM (May 30, 2024), <https://www.al.com/news/2024/05/alabama-will-disqualify-more-felons-from-voting-under-new-law-aimed-at-protecting-election-workers.html>.

<sup>3</sup> This is a “question of law connected with the interests of the state” and “with the duties of [your] department[],” as required to request an advisory opinion pursuant to Alabama Code § 36-15-1(1)(a). As Alabama’s chief elections official, You and Your office are responsible for “provid[ing] uniform guidance for election activities” to all state and county election officials, including guidance about voter eligibility, registration, and removal practices. *See* Ala. Code § 17-1-3. Whenever HB 100 is implemented, these same state and county election officials will be responsible for determining voters’ eligibility under the law. Clarity around HB 100’s implementation date is thus critical for Your office to be able to provide uniform guidance to other election officials—and voters alike—about who can and cannot vote in the November general election. Establishing with uniformity who is eligible to vote in November likewise is important to the state’s interest in the integrity of its elections.

## I. HB 100’s Implementation Date is Unconstitutional

In 2022, the voters of Alabama passed Amendment 4, which enshrined the following in the Alabama Constitution:

The implementation date for any bill enacted by the Legislature in a calendar year in which a general election is to be held and relating to the conduct of the general election shall be at least six months before the general election.

Ala Const. art. IV, § 111.08.

The Alabama Constitution thus prohibits election-related legislation from being implemented within six months preceding a general election. Given that there is a general election set to take place on November 5, 2024, this year’s pre-election implementation deadline under article IV, section 111.08 was May 5, 2024. HB 100’s October 1, 2024, implementation date is clearly unconstitutional.<sup>4</sup>

## II. HB 100’s Implementation Date is Unmanageable

Implementing HB 100 just over one month before the November general election is not only unconstitutional, it will also cause significant confusion and difficulty for voters, voting advocates, and election officials alike.

Since 1901, Alabama has disenfranchised its citizens convicted of any crime “involving moral turpitude” but, until recently, the State did not define which convictions fell into that category. Ala. Const. art. VII, § 182.<sup>5</sup> In 2017, Alabama passed the Felony Voter Disqualification Act (“HB 282”), which finally created a list

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<sup>4</sup> HB 100’s unconstitutional implementation date also flouts the legislative intent of the bill that placed Amendment 4 on the ballot: House Bill 388 (2021) (“HB 388”). As HB 388’s sponsor Representative Jim Carns (R-Vestavia) explained, HB 388 was intended to ensure that “[a]ny bill passed within six months of a general election cannot affect this election.” Brandon Moseley, *House OKs amendment banning election law changes six months before elections*, ALA. POLITICAL REPORTER (Apr. 7, 2021), <https://www.alreporter.com/2021/04/07/house-oks-amendment-banning-election-law-changes-six-months-before-elections/>; *see also* Capitol Journal (APT Broadcast June 7, 2024), <https://video.aptv.org/video/june-7-2024-iwjiz1/> (interview with Secretary of State, Wes Allen, at 15:48-16:13) (discussing Amendment 4 (2022): “if you remember back during COVID, there were a bunch of other states that . . . changed the rules . . . close to the election. And so we wanted to make sure that never happened in Alabama.”).

<sup>5</sup> Ala. Code § 17-3-30.1(b)(1) (“Under general law, there is no comprehensive list of felonies that involve moral turpitude which disqualify a person from exercising his or her right to vote. Neither individuals with felony convictions nor election officials have a comprehensive, authoritative source for determining if a felony conviction involves moral turpitude and is therefore a disqualifying felony.”)

of crimes that take away an Alabamian’s right to vote.<sup>6</sup> Based on the clarity and assurance that HB 282 provided to all Alabamians, tens of thousands of Alabamians with past felony convictions have lawfully registered to vote since 2017.

Now, HB 100 adds over 120 new convictions to the list of those that are disqualifying, changing the rules around who can and cannot participate in Alabama’s elections. *See* Ala. Code § 17-3-30.1. We believe that thousands of Alabamians with newly disqualifying convictions are already lawfully registered to vote and have been voting under the promise that they have that right. HB 100’s implementation date will cause widespread confusion about voter eligibility immediately before a general election—exactly what article IV, section 111.08 is designed to prevent.

Implementing HB 100 just over one month before the November general election poses other serious problems. For example, HB 100’s implementation date is almost three weeks *after* absentee voting in Alabama begins on September 11, 2024.<sup>7</sup> This means that voters with newly disqualifying convictions under HB 100 could cast their ballots as lawfully eligible voters during the first three weeks of absentee voting, but then become ineligible before their ballots are ready to be counted.

This, and HB 100’s implementation date more generally, raise numerous questions that remain unanswered. Is it illegal for individuals with newly disqualifying convictions under HB 100 to register to vote right now, when they are currently eligible to vote but will not be as of October 1? Should Registrars accept voter registration applications from such individuals? If they can register, will their vote count come November? And what will happen to those voters with newly disqualifying convictions under HB 100 who are *already* lawfully registered to vote; will it be illegal for them to vote in November? Will they be purged from the voter rolls; if so, when? Will they receive notice that they are no longer eligible to vote and, if yes, will they be afforded any appeals process by which to dispute that eligibility determination?

Preventing confusion around such crucial, unanswered questions in the months preceding a general election is precisely why approximately 80 percent of Alabama voters passed Amendment 4, enshrining in the Alabama Constitution a

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<sup>6</sup> *Id.* § 17-3-30.1(b)(2) (“The purposes of this section are: . . . b. To ensure that no one is wrongly excluded from the electoral franchise. c. To provide a comprehensive list of acts that constitute moral turpitude for the limited purpose of disqualifying a person from exercising his or her right to vote.”)

<sup>7</sup> ALA. SEC’Y OF STATE, VOTER GUIDE 2024, at 13 (2024), <https://www.sos.alabama.gov/sites/default/files/2024%20Voter%20Guide.pdf>.

prohibition on bills taking effect within six months of a general election.<sup>8</sup> HB 100's implementation date of October 1, 2024, violates this constitutional mandate.

### III. Conclusion

For the foregoing reasons, we ask that, pursuant to Ala. Code § 36-15-1(1)(a), you request an opinion from the Attorney General confirming that HB 100 will not take effect until at least November 6, 2024. Because of the urgent need for clarity on this question, we ask that you request that the Attorney General issue an opinion by July 12, 2024.

Sincerely,

*Blair Bowie*

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<sup>8</sup> STATE OF ALABAMA, CANVASS OF RESULTS OF GENERAL ELECTION NOVEMBER 8, 2022, at 328 (Nov. 28, 2022), <https://www.sos.alabama.gov/sites/default/files/election-data/2022-11/Final%20Canvass%20of%20Results%20%28canvassed%20by%20state%20canvassing%20board%2011-28-2022%29.pdf>.