

Access to Voting in Alabama



A Summary of Testimony received by the
Alabama Advisory Committee to the United
States Commission on Civil Rights

June 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Alabama Advisory Committee to the
U.S. Commission on Civil Rights**

The Alabama Advisory Committee to the U.S. Commission on Civil Rights submits this summary of testimony detailing civil rights concerns associated with barriers to voting in Alabama. The Committee submits this summary as part of its responsibility to study and report on civil rights issues in the state of Alabama. The contents of this summary are based on testimony the Committee heard during a hearing held on February 22, 2018 in Montgomery, Alabama.

This summary documents civil rights concerns raised by panelists with respect to barriers to voting throughout the state of Alabama and discusses possible strategies for improving voter access in Alabama. Based on the findings of this summary, the Committee will ultimately offer to the Commission recommendations for addressing this issue of national importance. The Committee recognizes that the Commission has previously issued important studies about voting and civil rights nationwide and hopes that the information presented here aids the Commission in its continued work on this topic.

**Alabama State Advisory Committee to the
U.S. Commission on Civil Rights**

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Alabama Advisory Committee

Access to Voting Hearing – February 22, 2018, Montgomery, Alabama

Panelists

John Merrill - Alabama Secretary of State

On November 4, 2014, John was elected as Alabama's Secretary of State with 65% of the vote and carried 53 of Alabama's 67 counties. He was inaugurated as Alabama's 53rd Secretary of State on January 19, 2015. He is a member of the National Association of Secretaries of State and the Republican Association of Secretaries of State. He is the Co-Chair of the NASS Voter Participation Committee and serves as the NASS Representative to the Steering Committee of the National Voter Registration Day. He is also a member of the United States Election Assistance Commission Standards Board.

Kareem Crayton - Interim Director, Southern Coalition for Social Justice

Kareem Crayton is a widely cited and internationally respected scholar, expert and consultant whose work centers on the intersection of law, politics, and race. He is the only academic in the United States with formal training in law and political science whose primary work explores the relationship between race and politics in representative institutions. The insights and analyses from his research have distinguished him as a leading voice in the academy and key player in public policy debates. His commentary, insight, and analysis regularly appear both in highly-ranked academic publications along with major media outlets including The New York Times, PBS, and Fox News.

John J. Park, Jr. - Counsel at Strickland, Brockington, Lewis LLP

Jack Park is of counsel with Strickland Brockington Lewis LLP (SBL). He has been designated a Deputy Attorney General for the State of Alabama and is assisting the Alabama Attorney General's Office with the legal work associated with the process of redistricting that follows the 2010 Census. Before joining SBL, Jack was a Visiting Legal Fellow in the Center for Legal and Judicial Studies at the Heritage Foundation from October 2009 through October 2010. As a Visiting Legal Fellow, Jack participated in the Center's Supreme Court program and worked on the Center's overcriminalization, civil justice, and civil rights projects.

Brock Boone - Alabama Chapter of the American Civil Liberties Union

Brock graduated law school from Georgetown University, where he was Executive Editor of the *Georgetown Journal of Legal Ethics*. He also graduated from Spring Hill College with a degree in Political Science & Law, where he finished with the highest GPA in his major. Brock has previously worked as a public defender in Alabama.

Jennifer Holmes - NAACP Legal Defense Fund

Jennifer A. Holmes joined the NAACP LDF from Covington & Burling, LLP, where she worked as an associate. During her time at Covington & Burling, Jennifer represented primarily pharmaceutical companies and sports teams, while maintaining a robust pro bono portfolio that encompassed criminal defense, economic justice, and immigrants' rights. She is a member of the Leadership Counsel on Legal Diversity's Pathfinder program, which selects promising legal associates from diverse backgrounds for advanced professional development opportunities. A native of Washington, D.C., Jennifer received her J.D. from Stanford Law School, and attended Yale University as an undergraduate, earning a B.A. with distinction in Political Science.

Scott Douglas - Greater Birmingham Ministries

Before joining the staff of GBM, Scott served as Environmental Justice Organizer for the Sierra Club – Southeast, Executive Director of the Southern Organizing Committee for Economic and Social Justice and Southern Field Representative for the Partnership for Democracy Foundation. Scott serves on the boards of AIDS Alabama, the Alabama Poverty Project, The Gulf Coast Fund, the Progressive Technology Project, the Equal Justice Initiative of Alabama, and the Steering Committee of the Alabama Organizing Project. He formerly served on the boards of directors of The Needmor Fund and The New World Foundation, among many others. Scott has published articles on human rights, community organizing and social change in *Social Policy*, *Southern Exposure*, and the *Howard Law School Journal*. Scott is from Nashville and graduated from the University of Tennessee in Knoxville. He is married to Lynn Douglas; they have one son.

Jonathan Barry-Blocker - Southern Poverty Law Center

A graduate of Morehouse College in Atlanta, and the University of Florida's Fredric G. Levin College of Law, Jonathan is a staff attorney for the Southern Poverty Law Center's Criminal Justice Reform practice group where he engages in litigation and policy campaigns to correct disparities in Alabama's criminal justice system.

Charlotte Morrison - Equal Justice Initiative

Charlotte Morrison, Senior Attorney, has been with EJI since 2001. She clerked for Judge Rosemary Barkett on the United States Court of Appeals for the Eleventh Circuit, is a former Rhodes Scholar with degrees in Philosophy from Oxford University and the University of Montana and graduated from New York University School of Law in 2000.

Benard Simelton - President, Alabama Chapter of the NAACP

Benard H. Simelton Sr. was born in Tiplersville, MS and attended College at Mississippi Valley State University in Itta Bena, MS. He graduated with a B.S. degree in Sociology in 1976 and received a Master's in Public Administration from the University of North Dakota 1981. He is a life member of the NAACP and served as President of Limestone County for six years and is in his fifth year as President of Alabama State Conference of the NAACP. Since joining the NAACP in Alabama, he has received the Regional Medgar Evers, Regional Kelly M. Alexander, and Regional Director Award and numerous branch awards. Benard served 23 years in the Air Force and retired in 2000 as a Lieutenant Colonel.

Kenneth Glasglow - Pastor, The Ordinary People Society

No Show

Jaffee Pickett - Deputy Director, Alabama Legal Services

Jaffe S. Pickett became Deputy Director in 2018 and Director of Development of Legal Services Alabama in 2013. Prior to that, Pickett led various departments at Legal Services including Director of Training, Call Center Director and Director of Alabama's first Elder Law Helpline. Pickett is a graduate of Troy University, Cum Laude, and a graduate of Louisiana State University School of Law, where she received dual degrees in Civil Law Studies and a Juris Doctorate.

Callie Greer – Citizen Impact Statement

Callie lost her right to vote due to a felony conviction and shared her story of getting back the right to vote.

Also in Attendance:

The Office of Congresswoman Terri Sewell - Shanna King, Constituent Services Representative

The Office of U.S. Senator Doug Jones – Jose Perry, Jr., Regional Director

Introduction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These State Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

On September 5, 2017, the Alabama Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted to undertake a study focused on access to voting in the State of Alabama which may have a disparate impact on voters on the basis of race, color, national origin, disability status, or religion, or those that undermine the administration of justice. The objective of the study is to determine whether any changes in Federal law or policy are necessary to guarantee protected classes of individuals the right to vote.

As one of the preclearance states under the Voting Rights Act of 1965¹, the Alabama Committee chose to examine the impact in the state of the *Shelby County v. Holder*² decision, as well as any subsequent proliferation of restrictions on voter access. The Committee hopes that such information will lead to a better understanding of the current state of access to the franchise, as well as to specific recommendations for addressing identified problems. The Committee proposes to advise the Commission by issuing a report with its findings and recommendations at the conclusion of this project. The report may include recommendations to the Commission for federal policy and statutory changes.

This Summary of the February 22, 2018 hearing held in Montgomery, Alabama is intended to provide testimony to the Commission in hopes of providing a boots-on-the-ground view of the current status of access to voting in the state of Alabama.

¹ 42 U.S.C. § 1973.

² 570 U.S. 2 (2013).

Background

For most of Alabama’s history, African Americans and other racial and ethnic minorities were systematically excluded from voting. Despite the promise of the Fifteenth Amendment³, which outlawed voting discrimination on the basis of race, color, or previous condition of servitude, state-sanctioned disenfranchisement denied the vote to African Americans. As evidenced by the opening remarks in the Alabama Constitutional Convention of 1901, protecting the “sanctity of the ballot” meant the exclusion of African-American voters:

I submit it to the intelligent judgment of this Convention that there is no higher duty resting upon us, as citizens, and as delegates, than that which requires us to embody in the fundamental law such provisions as will enable us to protect the sanctity of the ballot in every portion of the State. The justification for whatever manipulation of the ballot that has occurred in this State has been the menace of negro domination.

John B. Knox – President of the Alabama Constitutional Convention of 1901⁴

The failure of constitutional mechanisms to break apart discriminatory voting regimes resulted in barriers to the ballot box for African American and other minority voters. Only with the enactment of the Voting Rights Act of 1965⁵ (“Voting Rights Act” or “Act”), almost a century after the Fifteenth Amendment’s ratification, did the constitutional right to vote free from racial discrimination, start to become a reality.

Congress included a provision in the Act, Section 5,⁶ which required “preclearance” of voting changes in jurisdictions with the worst records of discrimination. Section 4(b) of the Act captured a coverage formula that was based on low political participation and the use of a voting test or device.⁷ This system was extremely effective as the Department of Justice issued more than 1,000 objection letters that blocked racially discriminatory voting changes from going into effect.⁸

On June 25, 2013, in *Shelby County, Alabama v. Holder*,⁹ the five-member conservative majority of the Supreme Court “immobilized”¹⁰ Section 5 by holding that the coverage formula was unconstitutional.¹¹

³ U.S. Const. amend. XV.

⁴ Alabama Constitutional Convention of 1901. Proceedings, Vol.1, Day 2, P10. (Statement of Convention President John B. Knox).

⁵ 42 U.S.C. § 1973 (2012).

⁶ *Id.*

⁷ *See* 42 U.S.C. § 1973c(a) (2012).

⁸ *See Voting Rights Act: Section 5 of the Act-History, Purpose, and Scope: Hearing Before Subcomm. On the Constitution of the H.Comm. on the Judiciary*, 109th Cong. 13 (2005) (statement of Bradley Schlozman, Ass’t Att’y Gen. for Civil Rights).

⁹ 570 U.S. 2 (2013).

¹⁰ *Id.* Chief Justice Roberts wrote the majority opinion on behalf of himself and Justices Kennedy, Scalia, Thomas, and Alito. Justice Ginsburg wrote a dissenting opinion on behalf of herself and Justices Breyer, Sotomayor, and Kagan.

¹¹ *Id.*

The Effects in Alabama of *Shelby County v. Holder*

Antecedents to Shelby

The Committee heard testimony regarding how the State of Alabama found itself under the preclearance regime to begin with. John Park, a former Deputy Attorney General for the State of Alabama, suggested a repeated pattern of evasion of court orders regarding African American voter registration and turnout led to the Voter Registration Act, “when federal courts told them to do something or they couldn't do something, the state legislature would change the law and, say, well --they'd end run the court rulings in an equally discriminatory way.”¹² Mr. Park also said the Act “put a stop to that” and stated the Act told the states “before you can change your laws to evade federal court rulings, you got to send them up to Washington or go up to D.C. to get them precleared.”¹³

Alabama and the other covered jurisdictions ended up under [Section 5] because when federal courts told them to do something...the state legislature would change the law...in an equally discriminatory way
- John Park, former Alabama Deputy Attorney General

Jennifer Holmes, an attorney with the NAACP Legal Defense Fund, said the main benefit of Section 5 “is that it comes before the actual voting change is put into effect...you can root out a problematic voting practice before it is actually implemented.”¹⁴ Ms. Holmes stated that the Section 5 preclearance regime was important, adding “Between 1969 and 2015, the Department of Justice objected to more than 90 proposed voting changes in Alabama under section five, and other proposed voting changes were withdrawn or altered after DOJ requested more information.”¹⁵

Dr. Kareem Crayton, director of the Southern Coalition for Social Justice, commented that the one thing Section 5 provided was an election system that was more or less predictable.¹⁶ If there were to be changes in the election laws or process, “most people understood...there would be a great deal of conversation, maybe even debate, before it could be adopted.”¹⁷

Post Shelby

Many panelists focused their testimony on the effects on access to voting in Alabama after the *Shelby* decision.

¹² John Park, testimony, *Hearing Before the Alabama Advisory Committee, Montgomery, AL*, Feb. 22, 2018, transcript, p. 97 (hereafter cited as *Montgomery Hearing*).

¹³ Park Testimony, *Montgomery Hearing*, p. 97.

¹⁴ Holmes Testimony, *Montgomery Hearing*, P. 192.

¹⁵ Homes Testimony, *Montgomery Hearing*, P. 165.

¹⁶ Crayton Testimony, *Montgomery Hearing*, P. 42

¹⁷ Id.

Kareem Crayton told the Committee the one issue most people tend to forget is “how quickly the State adopted laws after *Shelby County* was placed on the books that radically changed the way our election system worked.”¹⁸ The counties change precincts “if not arbitrarily, unexpectedly” and it may surprise voters to find when they show up at the registrar’s office their house which they thought was in precinct A is now in precinct B.¹⁹

Dr. Crayton also observed that *Shelby* “essentially rendered Section four of the Voting Rights Act null, it essentially removed a significant protection that most voters in this neck of the woods, in this region of the country had to assure that new

The one issue most people tend to forget is how quickly the State of Alabama adopted laws after Shelby County was placed on the books that radically changed the way that our election system worked.

- Dr. Kareem Crayton

laws on the books did not reduce the opportunity for people to cast a ballot.”²⁰ The difference was “since *Shelby County*, Alabama doesn’t have to submit changes in vote [sic] and the county commissions don’t have to submit changes in voting laws for preclearance.”²¹

Jennifer Holmes told the Committee that in the aftermath of *Shelby County*, formerly covered jurisdictions like Alabama were emboldened to act.²² She pointed out that the state legislature had passed a restrictive voter ID law in 2011. Within days of the *Shelby County* decision in 2013, the Secretary of State’s office “announced that it would now prepare to implement the law.”²³ She posited the State declined to submit the law for preclearance for two years because the sponsor of the law anticipated a lengthy court battle.²⁴

Scott Douglas, Executive Director of Greater Birmingham Ministries, told the Committee without the protection “of the guts” of the Voting Rights Act, the Alabama’s voter ID laws place a tremendous burden on already economically burdened black and Latino families.²⁵ Black voters are “three times more likely than white voters to live more than five miles from an ID-issuing office and to live in a -- in a household without a vehicle.”²⁶

The laws added post *Shelby* “added burden to low-income and rural families that now have to get to the nearest DMV for an ID.”²⁷ Transportation is a burden for low income people. If there is one car in the family, “it’s being used by the breadwinner who has to use the car to commute back and forth to work, often in a Black Belt neighboring county.”²⁸

¹⁸ Crayton Testimony, *Montgomery Hearing*, P. 41.

¹⁹ *Id.* at P. 43.

²⁰ Crayton Testimony, *Montgomery Hearing*, P. 41.

²¹ Park Testimony, *Montgomery Hearing*, P. 93.

²² Holmes Testimony, *Montgomery Hearing*, P. 167.

²³ *Id.*

²⁴ Holmes Testimony, *Montgomery Hearing*, P. 167.

²⁵ Douglas Testimony, *Montgomery Hearing*, P. 207-208.

²⁶ Holmes Testimony, *Montgomery Hearing*, P. 169.

²⁷ Douglas Testimony, *Montgomery Hearing*, P. 207-208.

²⁸ *Id.*

In October 2015, “the governor made these travel burdens even worse when he took the drastic step of partially closing 31 driver's license issuing offices, most of which were located in – in Alabama's rural Black Belt.”²⁹

Additionally, even though the State offers “free state-issued photo IDs” there are costs involved to acquire the underlying “documents such as birth certificates” required to obtain the ID and transportation to and from agencies to retrieve the documents.³⁰

Voter Fraud

The testimony at the Montgomery Hearing indicated voter fraud was either a serious problem, or non-existent, depending on which panelist was speaking.

John Merrill, the Alabama Secretary of State, testified that since his election, “there have been six convictions of voter fraud, and we’ve had three elections that have been overturned.”³¹ That statement was furthered by John Park who told the Committee he knew of elections that have been overturned or subject to question in Phenix City, in Wetumpka, and in Guntersville “because of problems with voter registration or absentee ballot – voter fraud.”³²

A 2016 Gallup poll, taken before the party’s national convention, found that the United States ranked 90th out of 112 countries in in terms of their confidence in the honesty of their elections.

- John Park

Mr. Park informed the Committee that in the November 2017 election for District Two of the Phenix City Council, “at least 32 voters who registered used their business address in violation of Alabama law.”³³ The investigation, he said, turned up 82 voters who “registered using their business addresses in violation of law -- state law, as well as convicted felons who had not had their voting rights restored, included some dead people and some people from Georgia. People coming over from Columbus [Georgia] across the river.”³⁴

Mr. Park provided another example in the August 2016 election for Wetumpka City Council District Two, the “Circuit Court of Elmore County overturned the election results because 8 -- just 8 -- absentee ballots were found to be fraudulent -- illegally cast.”³⁵ The initial count declared one candidate to be the winner “by a count of 168 to 165.”³⁶ But “eight absentee ballots for the -- for the winner were thrown out because the ballot was not properly signed or witnessed as required by state law.”³⁷

²⁹ Holmes Testimony, *Montgomery Hearing*, P. 169.

³⁰ *Id.*

³¹ Merrill Testimony, *Montgomery Hearing*, P. 15.

³² Park Testimony, *Montgomery Hearing*, P. 95.

³³ *Id.*

³⁴ *Id.* at P. 96.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

To drive home the point that added security in elections is needed, Mr. Park shared with the Committee results of recent polls, such as “In August 2017, a Rasmussen Report National Telephone and Online Survey found that 54 percent of likely U.S. voters say voter fraud is at least a somewhat serious problem, and 27 percent say it’s a serious -- very serious problem.”³⁸ He also shared “A 2016 Rasmussen poll reported that only 41 percent of those polled believe that American elections are fair to voters”, and “2016 Washington Post-ABC poll found that 46 percent of those polled believed that voter fraud happens somewhat 16 or very often.”³⁹

Other panelists gave a different story. Brock Boone of the Alabama ACLU said, “in person voter fraud is virtually nonexistent across the country.”⁴⁰ Kareem Crayton echoed this sentiment in his testimony, adding “I think the important thing to see about voter fraud, it is --as you know, every study that has attempted to track this, nearly infinitesimal, if not, you know, negligible, zero.”⁴¹ Adding to the diversity of perceived threats to the franchise, a panelist said the safeguards that were in place were that “poll workers and registrars are monitored such that votes, once they are bundled, accurately reflect the votes that were cast.”⁴²

When the Secretary of State invested a lot of money to investigate [voter fraud] during the December primaries...he found that roughly 600 or so examples that he submitted to the local county registrars and they reported back that those were administrative errors.

-Dr. Kareem Crayton

The Secretary of State's office did choose to investigate a young person of color for voter fraud “based on an off-the-cuff remark he made during a newscast about people coming ‘from different parts of the country to pitch in and canvas for Doug Jones.’ Unsurprisingly, the investigation concluded that the man was a properly registered Alabama voter and that the allegations of any widespread voter fraud were a myth.”⁴³

To add an Historical perspective, Scott Douglas told the Committee “If you’re looking for vote fraud, the vote of -- on the 1901 constitution is the pinnacle or rather the pits of vote fraud, and it was implemented not by voters but by a conspiracy of state officials. That conspiracy was so well known, it was called at the time an open secret.”⁴⁴

³⁸ Park Testimony, *Montgomery Hearing*, P. 94.

³⁹ *Id.*

⁴⁰ Boone Testimony, *Montgomery Hearing*, P. 102.

⁴¹ Crayton Testimony, *Montgomery Hearing*, P63.

⁴² *Id.*

⁴³ Holmes Testimony, *Montgomery Hearing*, P. 173.

⁴⁴ Douglas Testimony, *Montgomery Hearing*, P. 206.

Regulations on Voting

Jennifer Holmes testified to the frustration shared by many Alabama voters regarding regulations or procedures. She related circumstances involving voter purging, that removed from the rolls eligible and active voters:

In January 2016 -- 2017, the Secretary of State's office sent postcards to all registered Alabama voters. Voters whose first card was returned undeliverable and who did not reply to a second card were designated as inactive. This had nothing to do with their voting record in the past four years. This error-prone process for identifying purported inactive voters resulted in widespread voter confusion. On election day, numerous voters were alarmed to discover, at the polls, that they were on this inactive list that they had never heard of, despite having voted in recent elections.⁴⁵

Ms. Holmes also reminded the Committee that “the Voting Rights Act sets only a floor. Alabama's legislature can also pass its own voting rights protections. “At a minimum, even under the current legal framework, state and local officials should promote voter access through increased poll hours and locations, better-trained poll workers, adequate machines and ballots, and more meaningful engagement with communities of color.”⁴⁶

When asked about the Alabama state law that requires proof of citizenship in order to vote (federal law does not), the Secretary said, “We've not enforced that law, even though in February of 2016 the Election Assistance Commission had indicated that we could ask that question” ‘And I said, I don't want to cause any confusion for anybody’.”⁴⁷

We've not enforced that law [proof of citizenship to vote] ...I don't want to cause confusion for anybody.

-Secretary John Merrill

Another law passed in 2017 that made crossover voting illegal, meaning that “someone voting in one party's primary could face fines and jail time if they voted in the other primary's runoff. People who voted in the runoff had also voted in a democratic primary and recommended that they be prosecuted to the full extent of the law and given up to five years in prison for voting.”⁴⁸ Eventually, “it came out that it was mostly administrative error, but the damage was already done with many individuals worried that maybe making a mistake while voting might land them in prison.”⁴⁹

⁴⁵ Holmes Testimony, Montgomery Hearing, P. 172.

⁴⁶ Holmes Testimony, Montgomery Hearing, PP. 175 and 200.

⁴⁷ Merrill Testimony, Montgomery Hearing, P. 18.

⁴⁸ Boone Testimony, Montgomery Hearing, P. 107.

⁴⁹ Id.

Redistricting

In recent litigation, the Supreme Court found that districts drawn by the Alabama state legislature at the state legislative level violated the 14th Amendment of the Constitution, which forbids racial gerrymandering.⁵⁰ In solving that problem – “in trying to solve that problem last session, the legislature created a new plan that organized districts in yet another way. And what was not quite apparent, and still isn't apparent to a lot of people, is where those lines actually match up to these precincts which, again, have been sort of unexpectedly changed county by county.”⁵¹

One of the challenges discussed by panelists is “when you show up for elections and you find out that either you're not in the right place or that there's some confusion at the polls about whether or not you are in the right place or perhaps even the person in front of you is in the right place.”⁵² So there's a difference between the example of “the person at the polling place telling you, oh, no, I don't like you, you can't vote, and the example where there's this administrative confusion.”⁵³ The outcome in both cases though is that lines are longer, and it takes a longer time for the average person to cast a ballot.

In many cases redistricting makes it harder to vote, and “that's not the State explicitly telling you, we don't like you, you can't cast a ballot. But if you work an hourly job, if you only have an hour available to cast a ballot, then you may actually effectively be cut out of the opportunity to cast a ballot, and that's of concern.”⁵⁴

Registration

The State of Alabama has developed and introduced a phone application that enables first time voters to register via the app if they have a valid Alabama driver's license.⁵⁵ The Secretary said, “We've had more than 350,000 people that have used that system today, and we're very excited about that.”⁵⁶ He added, “Since January the 19th, 2015, we've registered 914,697 new voters. We now have 3,347,398 registered voters in Alabama. Both those numbers are unprecedented and unparalleled in the history of the state. I'm really excited about that.”⁵⁷ “There's less than 350,000 people in the state of Alabama that are not registered to vote, period.”⁵⁸

Other panelists saw the numbers in a different light. Dr. Kareem Crayton said, “Registration is an important part of the process. I'd be really excited [about the numbers the Secretary shared], to be frank about it, if this were 1966 or 1982.”⁵⁹ We don't have automatic registration in this state, and

⁵⁰ Crayton Testimony, *Montgomery Hearing*, P. 44.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Merrill Testimony, *Montgomery Hearing*, P. 10.

⁵⁶ *Id.* at P. 11.

⁵⁷ *Id.* at P.16.

⁵⁸ *Id.* at P. 31.

⁵⁹ Crayton Testimony, *Montgomery Hearing*, P. 45.

we should,” He added, “The measure that the Secretary of State mentioned was registration, and, again, there have been a number of people that have been put on the rolls. But in terms of voting, I’m sad to tell you, the State of Alabama is, at best, in the middle of the pack compared to other states in terms of turnout.”⁶⁰ Dr. Crayton added, “it strikes me that citizenship, if it really is going to include voting as a right, does impose upon the State some obligation. And I think the State should do some work to make certain that as many people want to vote can vote.”⁶¹

Some felons are ineligible to register to vote. Brock Boone said, “in the moral turpitude law, the State did not repeal the provision that requires fees and fines to be paid off to vote again. This means that the State directly discriminates against the poor. Many poor people cannot vote simply because they are poor.”⁶²

One panelist said there is a history of disparate impact in Alabama, “I think *Hunter v. Underwood*, 471 U.S. 222 (1985) showed that the registrars in Alabama denied higher ratios of black citizens the right to vote based on their criminal histories. It appeared to be indiscriminate, whether it was a felony or a misdemeanor, partially because there was no firm policy at the time. That was back in the 1980s.”⁶³

Benard Simelton, of the Alabama NAACP, said his organization “received several complaints [in 2017] by individuals whose names were removed from the rolls but had voted previously in the primary election in 2017. All of a sudden, their names were removed from the rolls.”⁶⁴

Felony Disenfranchisement

Moral Turpitude Laws

The Alabama Constitution disenfranchises individuals convicted of felonies involving moral turpitude. Until 2017, Alabama did not define which crimes involve “moral turpitude,” leaving the standard for disenfranchisement open to the interpretation of individual registrars.

When people are being qualified for discharge in the location where they’re being held, they have to be told what their rights are, they have to be provided with information to register to vote, they have to have the opportunity to register to vote.

- Secretary John Merrill

The Secretary of State told the Committee that as he was campaigning for office, he heard from people in the community that had been denied the opportunity to vote after being convicted of crimes of moral turpitude.⁶⁵ He discovered that the moral turpitude laws were being interpreted in different ways throughout the

⁶⁰ Crayton Testimony, *Montgomery Hearing*, P. 45.

⁶¹ Crayton Testimony, *Montgomery Hearing*, P. 40.

⁶² Boone Testimony, *Montgomery Hearing*, P. 106.

⁶³ Blocker Testimony, *Montgomery Hearing*, P. 177.

⁶⁴ Simelton Testimony, *Montgomery Hearing*, P.254.

⁶⁵ Merrill Testimony, *Montgomery Hearing*, P. 19.

state.⁶⁶ He brought forth legislation to ensure that the moral turpitude law was only going to be interpreted and enforced in one way.⁶⁷ The legislation passed in 2017 and now “only people who have been convicted of crimes of moral turpitude have lost their opportunity to vote and are not allowed to vote.”⁶⁸

In 2016 the SOS submitted legislation to create a law for restitution and restoration of voting rights. This is where the law stands today: “If someone has paid --served all their time associated with their original sentence and paid all their fees and fines associated with their original sentence, their voting rights are automatically restored.”⁶⁹

According to the Secretary, the procedure has been expedited. “When people are being qualified for discharge in the location where they’re being held, they have to be told what their rights are, they have to be provided with information to register to vote, they have to have the opportunity to register to vote.”⁷⁰ “That’s a part of their packet. We want to make sure that that is being communicated and that is being done.”⁷¹

The Committee asked the Secretary why there are no Certificates of Eligibility [a form needed for the formerly incarcerated to get their rights restored] at these registration events, the Secretary replied “we don’t coordinate the event... We just were a participant in those events. And in the ones that I participated in, Pardons and Paroles have provided that information.”⁷² Brock Boone of the ACLU said, “Secretary Merrill claimed it was not his responsibility to notify those voters that they are eligible to vote again. So largely, that task has been left to nonprofit entities without the same resources.”⁷³

While the Secretary of State presented the new law as a benefit for Alabamians, other panelists felt otherwise. One panelist said, “Alabama does almost very, very little for people leaving prison. And I do think this is one area where the voting rights could be impacted by requiring the Department of Corrections actually issue the necessary paperwork.”⁷⁴ Dr. Crayton said “people who have some relationship with the correction system is another example of where I think there’s a difference between the State saying we made something available and the State taking an effort to make sure that people who are citizens have

If the State decided, for example, to make it easy to determine whether you’ve entered a particular phase of supervision, or you’ve ended it, and we make sure that you’re automatically put on the rolls, that might make things more simple from the user’s perspective.

-Dr. Kareem Crayton

⁶⁶ *Id.* at 20.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at P. 21.

⁷⁰ Merrill Testimony, *Montgomery Hearing*, P. 21.

⁷¹ *Id.*

⁷² *Id.* at P. 27.

⁷³ Boone Testimony, *Montgomery Hearing*, P. 106.

⁷⁴ Morrison Testimony, *Montgomery Hearing*, P.226.

their entitled right to cast a ballot. It is very confusing.”⁷⁵ He added, “The administrative process of just corrections itself is terribly confusing to know what your sentence is. To know when you're no longer under supervision is itself a complex process. To know when you cast a ballot is an even more complicated process, that is, when you are eligible once again.”⁷⁶

Callie Greer, providing an impact statement to the Committee said, “You're not thinking about voting or becoming a legal citizen or any of that stuff when you're straight out of prison. You know, you're thinking about where I'm going to sleep, where I'm going to eat, how the hell I'm going to get rid of these ugly clothes.”⁷⁷ Another panelist added, “your application is controlled by your PO -- it's your parole officer. Depending on what kind of parole officer you have, they may or may not be interested in facilitating you getting your voting rights back.”⁷⁸

Johnathan Barry-Blocker, of the Southern Poverty Law Center, added, “the legislature passed an amendment getting the definition of moral turpitude *back in as a functioning policy of the law*. Currently, in *Thompson v. Alabama*,⁷⁹ the Campaign Legal Center has filed a lawsuit challenging...the moral turpitude provision and policy, and currently they are actionable claims that have survived dismissal, focused on intentional discrimination under the 14th and 15th Amendments.”⁸⁰

The Committee heard testimony about the approximately 40 crimes that are considered crimes of “moral turpitude.” One panelist commented, “upon closer review is that most of these crimes are street-level crimes, meaning crimes they expect poor or black people to commit. What you will find missing are ethics crimes. You will find public corruption crimes missing and tax evasion. Most frauds missing. Basically, your white-collar crimes are nowhere in there.”⁸¹

Mr. Barry-Blocker told the Committee that “approximately 15.1 percent of Alabama's black citizens [formerly incarcerated] cannot vote as of a 2016 report by The Sentencing Project, and based on population data from the census, that was about 196,808 citizens.”⁸² He also said there's been a “recent heavy disenfranchisement in counties with notable black populations.”⁸³ The largest number of voters purged for felonies were in “Mobile, Montgomery, Houston, and Jefferson Counties.”⁸⁴ And respectfully, “Mobile had 1,245 people purged for felonies, Montgomery had 782, Houston County had 481, and Jefferson had 453. That was as of a 2016 Election Administration & Voting Survey report issued by the government.”⁸⁵

⁷⁵ Crayton Testimony, *Montgomery Hearing*, P. 46.

⁷⁶ *Id.*

⁷⁷ Greer Testimony, *Montgomery Hearing*, P. 240.

⁷⁸ Morrison Testimony, *Montgomery Hearing*, P.221.

⁷⁹ No. 2:16-CV-783, 2017 U.S. Dist. LEXIS 118606 (M.D. Ala. July 28, 2017). (Plaintiffs challenged the “moral turpitude” standard on due process, racial discrimination, and void for vagueness grounds, among others.)

⁸⁰ Blocker Testimony, *Montgomery Hearing*, P. 178.

⁸¹ Blocker Testimony, *Montgomery Hearing*, P. 180.

⁸² Blocker Testimony, *Montgomery Hearing*, P. 178.

⁸³ *Id.* at 179.

⁸⁴ *Id.*

⁸⁵ *Id.*

In contrast to the Secretary's claim that the restoration process is now a speedy one, Mr. Barry-Blocker said "according to The Sentencing Project in their 2016 report, only 16,000 restorations happened from 2005 to 2015. Now, I want you to compare this number with the fact that – they estimate 250,000 citizens were disenfranchised as of 2016. So there is a delay in processing claims."⁸⁶

Additionally, one panelist said, "the vast majority of people in Alabama's prisons are serving a sentence for a conviction considered by law to be one of moral turpitude. These citizens are, therefore, subject to permanent disenfranchisement. They must go through the voter restoration process, either by applying for a certificate of eligibility to vote or a pardon."⁸⁷

Charlotte Morrison told the Committee Alabama's disenfranchisement scheme and moral turpitude test did not evolve in a vacuum. "Alabama amended its constitution" she said, "to expand disenfranchisement to all crimes involving moral turpitude, which apply to misdemeanors and noncriminal acts after the president of the constitutional convention argued that the state needed to avert the, "menace of negro domination." Alabama's long and violent history of erecting insurmountable obstacles for African-American voters and the undisputed evidence that felony disenfranchisement laws have a racially disparate impact should disqualify Alabama from using convictions and fines as mechanisms to deny citizens the right to vote."⁸⁸

Fines and Fees

Charlotte Morrison, senior attorney with the Equal Justice Initiative, told the Committee "Alabama is one of only ten states where a person with a felony conviction may lose the right to vote permanently unless restoration is sought, and all fines are paid."⁸⁹ "This requirement that all fines be paid" she added, "acts as a permanent bar to voter restoration for tens of thousands of people in Alabama."⁹⁰ She added, "Certificates of eligibility to vote, or the CERV, will not be issued to anyone who owes fines or is on parole supervision. This means that the vast majority of people leaving Alabama's prisons cannot apply for a CERV. They are ineligible for a CERV."⁹¹

While fines and fees are assessed to persons regardless of race and are "generally assessed similar amounts of court debt... blacks were less able to pay back due to the systemic wealth gap"⁹² Mr. Barry-Blocker discussed "a study called Discretionary Disenfranchisement, The Case of Legal Financial Obligations 46 -- volume 46 of the Journal of Legal Studies starting at page 309 that look at the burden of court debt on citizens trying to reclaim their right to vote. They found in their 2017 published study that one-third of CERV applications were denied due to court debt, that the median court debt for Alabama citizens is \$3,956, whereas they estimate the average annual income of formerly incarcerated people is about \$9,000."⁹³

⁸⁶ Blocker Testimony, *Montgomery Hearing*, P. 185.

⁸⁷ Morrison Testimony, *Montgomery Hearing*, P.212.

⁸⁸ Morrison Testimony, *Montgomery Hearing*, P. 215-216.

⁸⁹ Morrison Testimony, *Montgomery Hearing*, P. 211.

⁹⁰ *Id.* at P. 213.

⁹¹ Morrison Testimony, *Montgomery Hearing*, P. 212.

⁹² Blocker Testimony, *Montgomery Hearing*, P. 188.

⁹³ Blocker Testimony, *Montgomery Hearing*, P. 187.

The Committee heard testimony about an Alabama law⁹⁴ that allows the district attorney, after 90 days, to pursue and levy a 30 percent interest on outstanding court debt. One panelist related a story of a formerly incarcerated person he assisted after that person had been released. “He had a minimum of \$50,000 fine. I think his total debt was looking at about a little closer to 60. He got out of prison. He was paying it consistently... had started making headway... knocked off about 10,000, all of a sudden, that 30 percent hit. Last I spoke with him, he owed closed to \$60,000, and he had just pretty much stopped trying to make major payments.”⁹⁵ This individual, the panelist said, cannot “reclaim his right to vote because under the current law, you must be paid up on your court debt. drug trafficking convictions will function as a permanent bar to voting in Alabama because the cost of the fine is so prohibitive.”⁹⁶

There was some uncertainty among the panelists as to whether the 30 percent collection fee was mandatory or optional, the Chair of the Committee said, “I’ve got the statute in front of me, and it actually indicates that you *shall* assess a collection fee of 30 percent. So, it is not discretionary. 75 percent of the collection fee is distributed to the attorney’s office that is -- that is collecting that fee.”⁹⁷

Charlotte Morrison shared the story of Stanley Washington, “who was originally sentenced to life imprisonment without the possibility of parole for possession of cocaine in 1995. He was also fined \$50,000. The Alabama Supreme Court unanimously decided to allow judges to reconsider sentences of life without parole for nonviolent offenders. In 2008, Mr. Washington was paroled. He was released in January of 2009. in 2011. His application was denied because he had not paid the \$50,000 fine. It did not matter that Mr. Washington was 63 years old, that he was on SSI. It did not matter that he had paid his parole fees, \$40 a month, consistently for six years.”⁹⁸

Crimes in Other Jurisdictions

Jonathan Barry-Blocker told the Committee that, “It’s also worth noting that the Board of Pardon and Parole will take into account your convictions in other jurisdictions.”⁹⁹ “They’re [Board of Pardons and Paroles] going to say” he added, “you need to go get your pardon from that other jurisdiction before you can get your pardon here in Alabama.”¹⁰⁰ He related a case of an Alabama resident convicted in Georgia, where that state said, “we’re not really bothered about whether or not we’re going to pardon you so we’re not going to. He had done everything he needed to [to get his rights restored] in Alabama. Because he could not take care of Georgia, he could not take care of Alabama.”¹⁰¹

Absentee Ballots

Secretary Merrill commented on providing absentee ballots to those persons who are incarcerated, but who have not lost their right to vote. He said, “we made it very clear to all the sheriffs and all the other penal authorities throughout [Alabama] and the Department of Corrections, there are a number of

⁹⁴ § 12-7-225.4.

⁹⁵ Blocker Testimony, *Montgomery Hearing*, P. 182-183.

⁹⁶ *Id.*

⁹⁷ Chair’s Comment, *Montgomery Hearing*, P. 202.

⁹⁸ Morrison Testimony, *Montgomery Hearing*, P. 213-214.

⁹⁹ Blocker Testimony, *Montgomery Hearing*, P. 189.

¹⁰⁰ *Id.* at P. 190.

¹⁰¹ *Id.*

people in our state who are incarcerated but have not lost their voting rights. And so if someone wants to vote and they're incarcerated, then they need to have the opportunity to do so and made sure they've got access to absentee applications.”¹⁰²

One panelist, positing on absentee voting in general, told the Committee “why is it that we don't allow early voting or Sunday voting or more reasonable opportunities to cast an absentee ballot?”¹⁰³ He told the Committee “[Alabama has] one of the more limited opportunities in this state to cast a ballot by absentee. There are states out there that have -- that give opportunities to people who cast an absentee ballot on a regular basis. So, you can be a consistent absentee ballot voter. That's not readily available in this state. [Alabama should be] opening up the absentee ballot process.”¹⁰⁴

Voter ID Law

The Secretary of State his remarks on the efforts his office has made to make ID's available by stating “we want to ensure that each and every eligible U.S. citizen that's a resident of the State of Alabama is registered to vote and has a photo ID.”¹⁰⁵ Of his mobile registration drive, he said he “reached out to the 140 members of the Alabama legislature and asked, ‘we just want to know where you'd like us to go.’”¹⁰⁶ He then “reached out to the Probate judges and asked for ‘can't miss festival events or activities in your community where you'd like us to go to conduct a voter registration photo ID drive.’”¹⁰⁷

Secretary Merrill told the Committee in an effort to ensure he was reaching people statewide, solicited the help of celebrities to help promote voter registration photo ID. Mr. Merrill identified Alabama head football coach Nick Saban, Auburn coach Gus Malzahan, heavyweight boxing champ Deontay Wilder, Basketball star Charles Barkley, Miss Alabama Jessica Procter, and Dr. Mae Jemison who's one of the first African-American astronauts.¹⁰⁸

The Secretary said his office has made “414 unique visits to the 67 counties in 2016 to promote voter registration photo ID.”¹⁰⁹ He mentioned cases of homebound individuals or those without transportation, “We have gone to those people's homes and we have given them photo ID's and we have made sure they were registered to vote.”¹¹⁰

When asked why his office takes such measures, the Secretary said, “I cannot, in good conscience, sit here in Montgomery, Alabama and tell you I'm going to do whatever it takes to ensure that each and every eligible U.S. citizen that's a resident of our state, is registered to vote, and has a photo ID unless I'll do whatever it takes to make it happen.”¹¹¹

¹⁰² Merrill Testimony, *Montgomery Hearing*, Pp. 21-22.

¹⁰³ Crayton Testimony, *Montgomery Hearing*, P46.

¹⁰⁴ Crayton Testimony, *Montgomery Hearing*, P. 56-58.

¹⁰⁵ Merrill Testimony, *Montgomery Hearing*, P.

¹⁰⁶ Merrill Testimony, *Montgomery Hearing*, P. 7

¹⁰⁷ *Id.*

¹⁰⁸ Merrill Testimony, *Montgomery Hearing*, P. 8-9.

¹⁰⁹ Merrill Testimony, *Montgomery Hearing*, P. 11.

¹¹⁰ *Id.* at P.12.

¹¹¹ *Id.* at pp. 12-13.

The Secretary told the Committee, “you don't have a photo ID, you can be identified by two polling officials and you, at that point, are able to vote by them signing an affidavit and you signing the statement that would indicate that they know who you are. So, you don't have to have an ID to even vote, and you could vote a provisional ballot and then bring your ID by that Friday after the election and have it confirmed as well.”¹¹² He added, “Not one instance has been reported since we passed the voter photo ID law where an individual has gone to the poll and been denied access to participation.”¹¹³

Some panelists said the voter registration mobile outreach was lacking. Benard Simelton, of the Alabama NAACP said, “The problem is where they located these mobile systems most of the time were near or at the same place you could go to register in the --kind of center of town off of -- I mean, of the county. Say for instance, the county seat of Montgomery County is Montgomery, and they were located somewhere near Montgomery. Where I live in Limestone County, it came to Athens. Now, that did not help the people in rural areas to get closer to getting the -- getting to the location where they could obtain or get the photo ID. So I think that was -- it was good to say that in -- in theory, but it didn't work that well in practice.”¹¹⁴

Other panelists took issue with the Voter ID law in general. Brock Boone of the ACLU said, “Voter identification laws are part of an ongoing strategy to roll back decades of progress on voting rights.”¹¹⁵ “Voter ID laws are a solution in search of a problem.”¹¹⁶ He added, “Over 20,000 black registered voters in Alabama have no valid photo ID that is accepted under the photo ID law.”¹¹⁷

Benard Simelton said, “The photo ID has a disproportionately [sic] impact on African-American voters because African-American voters are less likely to have the credentials required to obtain the photo ID, such thing as the birth certificates.”¹¹⁸

Jennifer Holmes told the Committee, “According to our expert in the litigation [*Greater Birmingham Ministries* – a lawsuit that alleges the law has discriminatory effect on black and Latino voters and that the legislature enacted the law for the purpose of discriminating against people of color], more than 118,000 registered voters lack a photo ID that can be used to vote under the law, and black and Latino voters are twice as likely than white voters to lack such an ID. This figure breaks down as 50,000 registered voters who lack any acceptable ID and 68,000 registered voters who, although they have an ID, have discrepancies in the name on the ID or other information on the ID that would prevent them from using it to vote.”¹¹⁹

Ms. Holmes also told the Committee “the Secretary of State's expert in the litigation does acknowledge that black and Latino voters are twice as likely to lack an ID as white voters. Black

¹¹² Merrill Testimony, *Montgomery Hearing*, P. 28.

¹¹³ Merrill Testimony, *Montgomery Hearing*, P. 14.

¹¹⁴ Simelton Testimony, *Montgomery Hearing*, P.252.

¹¹⁵ Boone Testimony, *Montgomery Hearing*, P. 101.

¹¹⁶ *Id.*

¹¹⁷ Boone Testimony, *Montgomery Hearing*, P.103.

¹¹⁸ Simelton Testimony, *Montgomery Hearing*, P251.

¹¹⁹ Holmes Testimony, *Montgomery Hearing*, P.168.

and Latino voters without a photo ID are also much more likely than their white counterparts to lack access to vehicles, to live in poverty, and to face other barriers to obtaining an ID.”¹²⁰

Dr. Crayton suggested more IDs should be allowed. “if our goal is to make more people have access, how many IDs can we reasonably say fit the category? And if we're going to allow passports -- which, again, I'm in favor of if you're going to have an ID system, then we should be more expansive than that for places where we can find IDs that have your photo and some indication or means of verifying where you happen to live, that you're in the state.”¹²¹ He added, “Student ID's and federal IDs [should qualify.] If we establish the minimum standards that open up our access for any person that has an ID, that has a photo, and is issued by some state agency that has some sense of verification, that ought to qualify.”¹²²

Some panelists pointed out that the problem, as they perceive it, isn't just with the law itself, it is exacerbated by state action. Brock Boone said, “Not only does Alabama enact voter ID laws, but then the State of Alabama made it more difficult to obtain a photo ID, in particular a driver's license, by closing 31 county driver's license offices, including every county in which 70 percent or more of the population is black.”¹²³

Jennifer Homes stated in her testimony “The governor closed driver's license offices in eight of the ten counties with the highest proportion of black voters. These important offices were opened only one day a month for the entire 2016 election season, making it more difficult for black voters in these poor and rural communities to obtain the required photo ID.”¹²⁴ She added, “The governor only agreed to reopen these offices in December 2016 after the presidential election and after an investigation by the U.S. Department of Transportation that found that Alabama's partial closure of the offices had a discriminatory effect on black voters in violation of title six of the Civil Rights Act.”¹²⁵

Benard Simelton shared complaints received by his organization from voters at the polls, stating “The Alabama NAACP has received several complaints from individuals who did not have the photo ID and, therefore, were not able to vote. One individual who went to the polls where he had voted prior to the photo ID being required was turned away, even though poll workers recognized him. Another elderly gentleman was not able to vote because he had not obtained the photo ID. And another gentleman was not able to use his military ID in order to vote.”¹²⁶

Scott Douglas, of Greater Birmingham Ministries, gave testimonials about low-income people burdened by Alabama's photo ID laws. He first spoke of Ms. Elizabeth Ware, “Due to Ms. Ware's fixed income, lack of reliable transportation, and limited mobility, HB 19 [Alabama Voter ID Law] substantially burdens Ms. Ware's ability to vote. Ms. Ware's income consists solely – consisted solely of Social Security Disability as a result of a number of serious maladies, including bullet

¹²⁰ Holmes Testimony, *Montgomery Hearing*, P.168-169.

¹²¹ Crayton Testimony, *Montgomery Hearing*, P. 53.

¹²² Crayton Testimony, *Montgomery Hearing*, P.52.

¹²³ Boone Testimony, *Montgomery Hearing*, P. 101.

¹²⁴ Holmes Testimony, *Montgomery Hearing*, P.169.

¹²⁵ *Id.*

¹²⁶ Simelton Testimony, *Montgomery Hearing*, P. 253.

fragments in her back. Ms. Ware does not drive and has limited transportation options. The bus stop is four to five blocks from her house and walking that distance takes her over an hour and causes her pain, and rides by car are unreliable for Ms. Ware. The nearest place to get a license where Ms. Ware will go get an ID is not in walking distance of her home, and a ride can cost 20 bucks -- \$20, a significant amount for someone with a fixed income. She -- she attempted to get the free voter ID card; however, she was wrongly denied the card by the -- the ID by the staff member who had been improperly trained who told her that because she had an ID in the past, she was now ineligible for the free voter ID card now, despite her circumstances. Finally, after becoming a plaintiff in our lawsuit, Ms. Ware's attorneys aware -- arranged for the Secretary of State's office mobile unit to visit her home during her deposition, and she had never heard of the mobile ID unit prior to litigation. The unit's process was deeply flawed and faced many technical issues when attempting to issue Ms. Ware an ID. Ultimately, it took over an hour to issue Ms. Ware a temporary ID, and she had to wait for the permanent ID to be mailed to her. This process clearly cannot be replicated for the thousands and thousands of other people in Alabama who do not have an ID, a personal home visit by a mobile unit.”¹²⁷

Mr. Douglas then shared a story of Debra Silvers, “who was unable to replace her photo ID after a house fire destroyed both her ID and the underlying documents that she would need to replace it. To begin replacing the documents lost in her fire, Ms. Silvers had to pay for a ride to various government agencies. Each trip costed her \$15 to \$20. Ms. Silvers paid over \$100 in cost of transportation before getting a temporary nondriver ID. These costs were especially substantial given that Ms. Silvers had just lost everything in the fire and was in the process of rebuilding her entire life. Ms. Silvers was in such dire straits that she had required the Red Cross to house herself and her children. Once Ms. Silvers had obtained a temporary nondriver ID, she attempted to vote in March 2016, but she was turned away because the poll worker could not see the picture on the temporary ID and that old ID had expired. HB 19 directly prohibited Ms. Silvers from participating in the franchise.”¹²⁸

Provisional Ballots

The Committee heard testimony about provisional ballots. John Park said, “with respect to provisional voting, if you go to the wrong precinct, one of the things you need to understand is they're not going to have your ballot. They're going to have the ballot for that precinct. Now, there may be common races -- common elections, but you'll only be able to vote -- the only votes that you can conceivably count are the ones for those common ones.”¹²⁹

Even if you get to the right precinct, if there is confusion and “a pollster says -- and I think with no ill intent -- ‘oh, just cast a provisional ballot. You'll get your ballot counted and, you know, it'll be fine.’ But they want to keep the line moving. But that has an effect on the person who casts a

¹²⁷ Douglas Testimony, *Montgomery Hearing*, P. 209.

¹²⁸ *Id.* at P. 210.

¹²⁹ Park Testimony, *Montgomery Hearing*, P. 90.

ballot. And usually, that person doesn't know that those ballots don't get counted.”¹³⁰ Dr. Crayton informed the Committee that “there's no obligation for the State to count those provisional ballots unless the outcome of the election is likely swayed by the number of provisional ballots that are cast.”¹³¹ “When you're denied access,” he said, “you may cast a ballot, but getting that ballot counted is another affair, particularly when you get slotted toward provisional ballots.”¹³²

Voter Turnout

The Secretary of State told the Commission the voters in Alabama have been turning out in record numbers, “March 1st, 2016, broke every record in the history of the state for voter participation. 1.25 million went to the polls and voted. November 8, 2016, broke every record for voter participation in the history of the state, more than 2.1 million went to the polls.”¹³³

The Secretary added, “The SOS said his office has also tried to make it easier for people when they go to the polls. Polling places now have “electronic poll book in place where people can go and they can participate in a faster environment, a faster setting, and with more efficiency through the check-in procedure where people are able to go and be processed a lot quicker. That reduces the wait time some 60 to 75 percent, depending on the voter and depending on the poll worker.”¹³⁴

Dr. Kareem Crayton said voter registration was a significant part of the process, but it wasn't the only factor, “I applaud the Secretary of State to have so much emphasis placed on registration...I think you have to take account of whether people who are registered actually show up to vote, and I think that the State has an obligation to do all that it can to encourage that.”¹³⁵

Other panelists discussed the difficulties some voters face at the polls. Jennifer Holmes, of the NAACP Legal Defense Fund, said “Unfortunately, we observed or received reports of many systemic voting -- voting-related problems on election day, including long lines at predominantly black precincts, lack of or malfunctioning voting machines, insufficient numbers of ballots, and law enforcement officials conducting warrant checks at polling places. In particular, we heard from frustrated voters whose attempts to cast a ballot were stymied by the photo ID law or Alabama's inactive voter procedures.”¹³⁶

Brock Boone, of the Alabama ACLU, said, “for the individuals in Mobile, we heard that many just left when they were told by the election officials that their address doesn't match.”¹³⁷ The reason was, “They have to get back to work or they only had a certain amount of time, not to mention the lines. Some of them stayed and they were told to get into the line for a provisional ballot, but that

¹³⁰ Crayton Testimony, *Montgomery Hearing*, P. 67.

¹³¹ Crayton Testimony, *Montgomery Hearing*, P.66.

¹³² *Id.* at P. 67.

¹³³ Merrill Testimony, *Montgomery Hearing*, P. 14.

¹³⁴ *Id.* at P. 15

¹³⁵ Crayton Testimony, *Montgomery Hearing*, P. 39.

¹³⁶ Holmes Testimony, *Montgomery Hearing*, P. 171.

¹³⁷ Boone Testimony, *Montgomery Hearing*, P. 104-105.

line was long. For some people, it was like an hour and a half up to two hours. We have heard that this particular probate judge in Mobile County has been doing this for years, which is troublesome.”¹³⁸

Mr. Boone also shared with the Committee that, “almost a dozen called us [that were turned away at the polls because address on ID did not match rolls] they were standing there basically telling us everyone that’s leaving in the lines...it could be up to 100 or more.”¹³⁹ He also said, “There were instances of police intimidation or individuals who felt like it was police intimidation where cops are right outside the voting precincts like when you come into the door...that discriminates against people who might have something on their record or they’re worried about what the police might stop them and question them or if a police officer is standing behind where they’re giving their information to -- or showing their ID.”¹⁴⁰

Mr. Boone added, “The ACLU of Alabama, my organization, set up a hotline to report difficulties in voting on election day for the special senate election here this past December, the one where Senator Jones won, and we received complaints all day on our hotline. On election day in particular, we got word of dozens and dozens of people prohibited from voting in Mobile County because the address on their driver's license does not match the address on the registration rolls. That is not a requirement.”¹⁴¹

Training

To address inconsistency and problems at the polls, Jonathan Barry-Blocker said, “I’m not -- not overly focused on trying to convince government agencies, because they’re already overwhelmed, to make sure training is happening.” He said, “My focus was always holding a clinic, training people, and then just speaking with people who need the assistance by any means necessary, to get them to start asking questions, to start making phone calls.”¹⁴² He added, “I just want to stress, there is a lot of confusion. There will need to be a lot of public education. We were helping people at our clinics who were --because of confusion, thought their conviction solely in another state was blocking them for 40 years from being able to register here in the State of Alabama.”¹⁴³

Jaffee Pickett told the Committee her organization “found that people who have never lost their rights didn’t know [they are eligible to vote]. They don’t vote because they don’t know they have the right. So, it really is about educating citizens.”¹⁴⁴

¹³⁸ *Id.*

¹³⁹ Boone Testimony, *Montgomery Hearing*, P. 118.

¹⁴⁰ Boone Testimony, *Montgomery Hearing*, P. 134.

¹⁴¹ Boone Testimony, *Montgomery Hearing*, P. 104.

¹⁴² Blocker Testimony, *Montgomery Hearing*, P. 194.

¹⁴³ Blocker Testimony, *Montgomery Hearing*, P. 190.

¹⁴⁴ Pickett Testimony, *Montgomery Hearing*, P. 271.

The Committee heard testimony on how a lack of training of poll workers denied citizens the opportunity to vote. Jennifer Holmes shared the example of “poll workers in Mobile County barred people from voting or improperly forced voters to cast provisional ballots when they presented an ID with an address that did not match the address on their registration record, even though the photo ID law does not require a voter to present an ID with an address at all.”¹⁴⁵

Ms. Holmes pointed out, “This misapplication of the voter ID – of the photo ID law is more likely to affect voters who do not have an alternate form of ID or cannot take additional time off from their workday to contest a poll worker's decision or to retrieve an alternate ID.”¹⁴⁶ She added, “Even when applied as intended, Alabama's photo ID law and its inactive voter list procedures disproportionately burden poor, rural, and transient voters who are often black or Latino. The erroneous application of these laws only magnifies this effect.”¹⁴⁷

Mr. Boone of the ACLU said in his experience, “the election manual contains the information that would provide clarity at the polls in terms of what ID's are accepted. It seems like the manual should be handy if you are -- if there's questions at the polls.”¹⁴⁸

Although inactive voters should have been permitted to cast a regular ballot “as long as they updated their registration information at the polls,” Jennifer Holmes said the “LDF received many reports that poll workers were turning away inactive voters or improperly requiring them to cast provisional ballots or answer immaterial and illegal questions, such as the county of their birth, before allowing them to cast a vote.”¹⁴⁹

¹⁴⁵ Holmes Testimony, *Montgomery Hearing*, P. 171.

¹⁴⁶ *Id.*

¹⁴⁷ Holmes Testimony, *Montgomery Hearing*, P. 173

¹⁴⁸ Boone Testimony, *Montgomery Hearing*, P. 159.

¹⁴⁹ Holmes Testimony, *Montgomery Hearing*, P. 172-173.

Appendix

- I. [Transcript of the Hearing Before the Alabama Advisory Committee, Montgomery Alabama, February 22, 201.](#)
- II. [Alabama Photo ID Law.](#)
- III. [Alabama Final Voter ID Rules.](#)
- IV. [Alabama Voter Registration Application.](#)
- V. [Alabama Moral Turpitude Crimes.](#)

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