



**SPLC**  
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**Written Statement of the  
Southern Poverty Law Center**

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**“Voting Rights and Election Administration in Alabama”**

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

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

### ***Low Turnout & State Officials' Apathy***

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

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

### ***Photo Identification Laws***

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

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<sup>1</sup> FairVote.org, available at, [https://www.fairvote.org/voter\\_turnout#voter\\_turnout\\_101](https://www.fairvote.org/voter_turnout#voter_turnout_101) (last visited May 2019).

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

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

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

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

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

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

### ***Voter Registration***

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

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<sup>4</sup> *Id.*

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

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

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

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1274, 1280.

<sup>10</sup> *Id.* at 1281.

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

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

### **Voter Purges**

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

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

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

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

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

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

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

<sup>17</sup> *Voter suppression? Alabama black, white citizens voted at similar rates in 2018*, FOX10 News (2019), available at [https://www.fox10tv.com/news/alabama/voter-suppression-alabama-black-white-citizens-voted-at-similar-rates/article\\_d1082cdc-6ad1-11e9-9d83-fbb4b61be738.html](https://www.fox10tv.com/news/alabama/voter-suppression-alabama-black-white-citizens-voted-at-similar-rates/article_d1082cdc-6ad1-11e9-9d83-fbb4b61be738.html) (last visited May 2019).

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

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

### ***Opportunities for Reform***

Numerous pieces of legislation proposed in the state legislature this year would address the barriers to voting that I have outlined and help increase voter turnout. The policy team at the Southern Poverty Law Center helped draft and is working to pass many of these bills. For example, House Bill 174 would allow Alabamians with disabilities to register as “permanent” absentee voters, so they do not have to complete the absentee ballot application for every election.<sup>21</sup> House Bills 256<sup>22</sup> and 411<sup>23</sup> would establish modest early voting programs, giving Alabamians more opportunities to cast their ballots. House Bill 454 would streamline the confusing and needlessly bureaucratic rights restoration process for Alabamians who have a disqualifying felony conviction.<sup>24</sup> Finally, House Bill 501 would create an automatic voter registration system, allowing more Alabamians to get registered and improving the accuracy of our voter rolls.<sup>25</sup>

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

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

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

<sup>21</sup> H.B. 174, Reg. Sess. 2019 (Ala 2019).

<sup>22</sup> H.B. 256, Reg. Sess. 2019 (Ala 2019).

<sup>23</sup> H.B. 411, Reg. Sess. 2019 (Ala 2019).

<sup>24</sup> H.B. 454, Reg. Sess. 2019 (Ala 2019).

<sup>25</sup> H.B. 501, Reg. Sess. 2019 (Ala 2019)