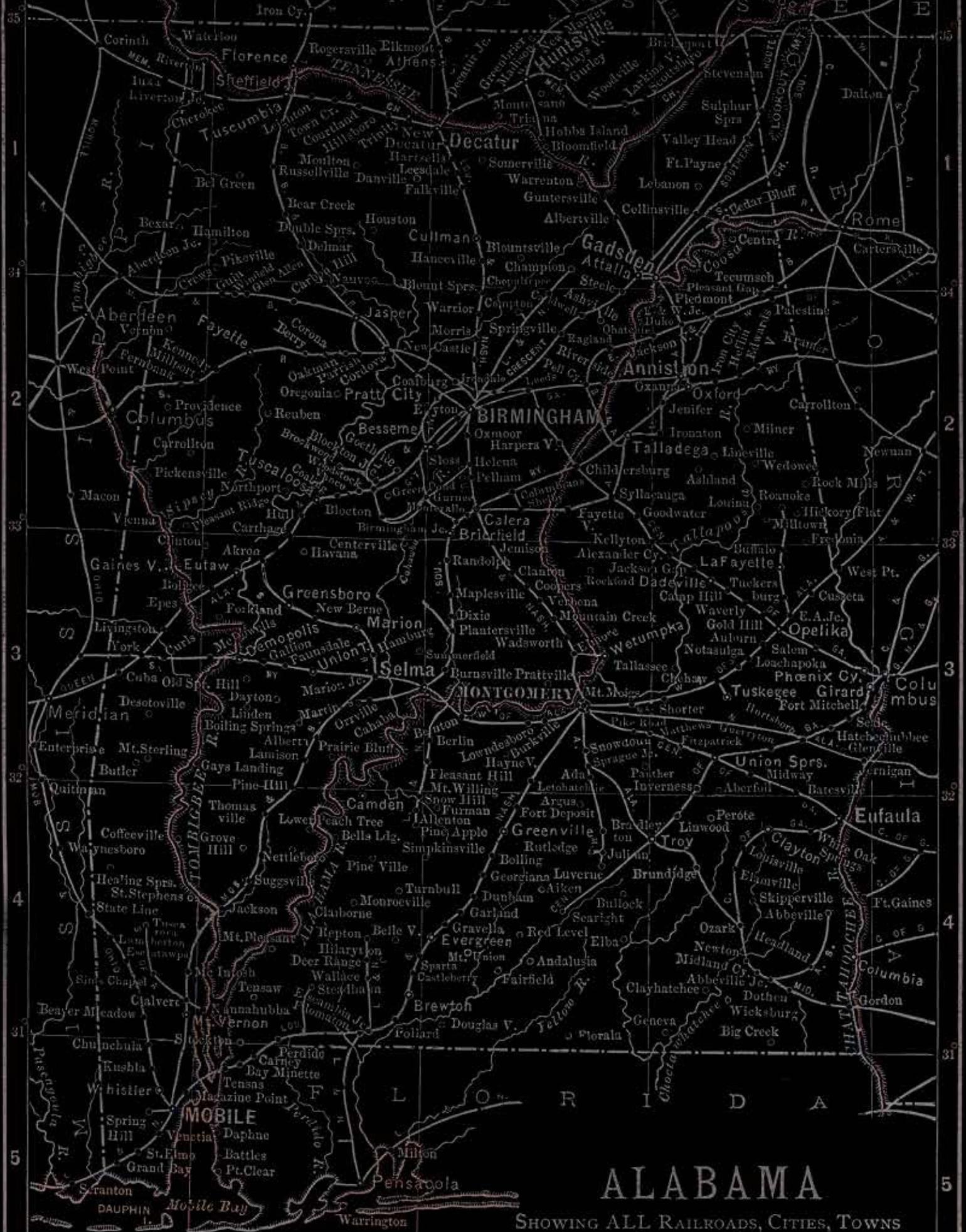


ALIVE AND WELL

VOTER SUPPRESSION AND
ELECTION MISMANAGEMENT
IN ALABAMA



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VOTER SUPPRESSION AND ELECTION MISMANAGEMENT IN ALABAMA



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EXECUTIVE SUMMARY

The battle for voting rights never ended in Alabama.

Despite being at the epicenter of the voting rights movement of the 1960s, the state remains one of the most difficult places in the nation for an eligible voter to register and successfully cast a ballot. As other states have expanded access to the ballot box with sound policies for early voting, voter registration and voting by mail, Alabama's policies, as this report shows, create and perpetuate obstacles, particularly for voters in marginalized communities.

This has especially been the case after the U.S. Supreme Court's 2013 decision in a lawsuit out of Alabama – *Shelby County v. Holder*. The high court's decision gutted Section 5 of the Voting Rights Act of 1965, a powerful piece of legislation under which the U.S. Justice Department blocked more than 100 proposed voting changes in the state that would have had a discriminatory impact on voters of color. In the wake of this decision, Alabama and local jurisdictions have implemented laws and policies that suppress the vote, including passing a voter ID law, closing polling places in predominately Black counties and purging hundreds of thousands of people from voter rolls.

Even when the state passed reform legislation in 2017 to clarify the crimes that disenfranchise people convicted of a felony, the legislation not only failed to alleviate confusion about Alabama's felony disenfranchisement law, but the secretary of state's office refused to take any serious steps to increase public education about the change. For example, there was no state-supported voter education effort for the Defining Moral Turpitude Act to help return people with felony convictions to the voter rolls. In fact, though half of all states have laws requiring disenfranchised people to be notified about the loss or reinstatement of their voting rights, it is not standard practice in Alabama.

Alabamians who have learned that they can have their voting rights restored find an unnecessarily complex application process that often requires an advocate well-versed in the law to navigate. Others have discovered that they must pay all their legal financial obligations, including court fines, fees and victim restitution, before they can register to vote – an impossible task for many low-income people, ultimately silencing their voices at polls.

Registered voters, too, also encounter obstacles in Alabama. Unlike other states, including those in the Southeast, Alabama lacks common practices that make it easier for registered voters to cast a ballot. The state, for example, only allows absentee voting,

or vote by mail, for voters who have an excuse. Voters with an excuse such as out-of-county travel, long work shifts, military service, or incarceration can request a ballot.

This is in stark contrast to the 28 states that offer no-excuse absentee voting and the growing number of states that hold elections entirely by mail. As the secretary of state's office has noted, Alabama's vote-by-mail policy is “long-outdated” and inconvenient. Nevertheless, Alabama voters cannot cast a ballot by mail unless their reason happens to be one of the few acceptable – and narrow – reasons designated by the state.

Alabama not only lags other states when it comes to voting by mail but fails to offer an even more common practice: in-person early voting. Thirty-nine states currently offer some form of early voting. What's more, the secretary of state's office is opposed to offering the practice. Early voting has been shown to be more than a convenience for voters who take advantage of it. A 2013 Brennan Center for Justice study found that it reduces stress on the voting infrastructure and results in shorter lines on Election Day. Poll workers also gain more experience, which helps provide better performance on Election Day. The additional time also provides opportunities to prevent and correct errors at polling sites.

Eliminating errors at polling sites should be a priority in Alabama. The state's fragmented election administration system makes it difficult to hold an official responsible for failures on Election Day. In Alabama, election duties are scattered across a confusing web of officials that includes the secretary of state, county probate judges, county board of registrars and poll workers.

The problems with Alabama's election systems are compounded by a lack of transparency. Government transparency can be a safeguard against election system errors, but few election administration bodies in the state have open meetings. The state's open records laws are among the weakest in the nation, as well. Obtaining a copy of the state's voter file is also out of the reach of many people and organizations because a copy costs approximately \$35,000 – a price tag rivaling that of a new car. Nearby states offer their voter files for free or at a much more reasonable fee.

Rather than focus on desperately needed reform, Alabama's political leaders have instead promoted the myth of voter fraud, particularly in-person voter fraud – despite numerous studies finding that such fraud is

virtually nonexistent. (One of the most comprehensive studies found one instance of fraud for every 32 million votes cast.) Nevertheless, Alabama officials continue to stoke voter fraud fears that are simply not supported by facts. Their claims do little beyond justifying policies that put the ballot box out of reach of many eligible voters, particularly those who are young, low-income or from communities of color.

As this report details, Alabama is in desperate need of reforms to improve voter access to the ballot. Those reforms include ensuring accountability and smooth operation of elections, increasing transparency by making the state's voter file truly a public document, and creating more opportunities for citizen participation in election administration, such as open meetings of election administration bodies. These necessary

reforms are not only in the best interest of voters but will also modernize and increase the integrity of Alabama's election system.

As we embark on a new decade, it is past time for Alabama to change its reputation from being one of the most difficult places for voters to engage in the political process to one of the most welcoming. The state has tremendous potential to be a true leader not only in the South, but in the nation, when it comes to protecting voting rights. The public, however, must continue to pressure elected and appointed officials to represent the best interests of all Alabamians, including the most vulnerable and politically marginalized among us.

ALABAMA'S HISTORY OF VOTER DISENFRANCHISEMENT

The framers of Alabama's 1901 constitution made no secret of their purpose: to formally enshrine white supremacy as the law and to deny Black people a voice in government.

"[W]hat is it we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State," declared Constitutional Convention Chair John M. Knox as the convention opened.¹

To accomplish this, the delegates adopted a series of voter registration provisions – including a poll tax, a literacy test, property requirements and disqualification for certain criminal convictions – meant to disenfranchise Black people, who made up 45 percent of the state's population and were threatening the white wealthy class' political dominance by aligning their votes with poor whites.

Henry Fontaine Reese, a delegate from Selma, summed up the approach: "When you pay \$1.50 for a poll tax, in Dallas County, I believe you disenfranchise 10 Negroes. Give us this \$1.50 for educational purposes and for the disenfranchisement of a vicious and useless class."²

With its new constitution, which is still in use today, Alabama joined Mississippi, Louisiana and other Southern states that had already adopted Jim Crow-era constitutions with the same purpose and many of the same features.

Although Alabama was forced to accept the Civil War's political verdict, it did not approve of the war's social and legal implications. Following Reconstruction, it built a postbellum society that, in its customs and laws, rejected equal rights for Black people.

Black voter disenfranchisement was not a natural result of hatred between the races after the Civil War but stemmed rather from deliberate political action following Reconstruction, renowned historian C. Vann Woodward wrote in *The Strange Career of Jim Crow*, which Martin Luther King Jr. cited as "the historical Bible of the civil rights movement."³

In the years immediately following the war's end in 1865, after the Fifteenth Amendment was passed to prohibit denial of the right to vote based on race, color, or previous condition of servitude, Black men in Alabama (women still could not vote) enjoyed a brief but strong showing at the polls. Soon afterward, there was a backlash from white supremacists determined to turn back their political gains.

"In the earlier decades [Black people] still took an active, if modest, part in public life," Woodward wrote. "They held offices, served on the jury, sat on the bench, and were represented in local councils, state legislatures, and the national Congress. Later on these things were simply not so, and the last of the [Black people] disappeared from these forums."⁴

There was a strong economic incentive to disenfranchise the state's Black population. The Democratic Party wanted to keep the Southern masses divided, thereby maintaining political control and keeping Southern labor – Black and white – the cheapest in the country.

Toward the end of the 1800s, Southern Democratic Party chapters began holding white primaries (primaries in which only white people could vote) to maintain political power. Because of the party's dominance in Southern states, its primaries typically determined which candidate would win the general election.

Southern Democrats also resorted to violence, gerrymandering and outright election fraud. At the constitutional convention, Knox said it would be better to legalize the disenfranchisement of Black voters than to continue breaking the law as a means of maintaining white dominance. Facing the "menace of negro domination," white men had "used their greater intellect to overcome the greater number of their black opponents. ... But a people cannot always live in a state of revolution. The time comes, when ... they must return to a Constitutional form of government, where law and order prevail."⁵

The impact of disenfranchisement was immediate and severe. In 1900, more than 180,000 African Americans were eligible to vote. By 1903, fewer than 3,000 were able to register.⁶ Many thousands of poor whites found they also could not meet the voting requirements, reducing their political influence as well.

Although the ensuing years saw efforts to remove the racist voting barriers embedded within the law, legal challenges did not immediately bear fruit and continue to this day.

In 1944, after years of legal battles, the U.S. Supreme Court ultimately ruled that the exclusive white primary was unconstitutional.⁷ The decision came in a Texas case, *Smith v. Allwright*.⁸ In 1948, for the first time, a majority of Black voters identified as Democrats after President Harry Truman, a Democrat, issued orders to desegregate the armed forces and set up regulations against racial bias in federal employment.⁹

By 1960, Alabama was a major battleground in the civil rights movement. That year, Black citizens of Tuskegee sued the Alabama Legislature for racially gerrymandering the boundaries of the city.¹⁰ The shape of the city's map had been altered from a square to a 28-sided figure that eliminated all but about four or five of the city's 400 Black voters. Not one white voter was removed.¹¹ The Supreme Court ruled in *Gomillion v. Lightfoot* that this effectively deprived Black people of their right to vote in Tuskegee elections due to their race, in violation of the Fifteenth Amendment.¹²



Alabama has a long and infamous history of voter disenfranchisement. Framers of the state's current constitution sought to disenfranchise Black people and establish white supremacy as the law.

The following years saw Alabama become the epicenter of the nationwide movement for voting rights. In 1965, the murder of Jimmie Lee Jackson by a police officer at a nonviolent voting rights rally in Marion inspired the Selma-to-Montgomery voting rights marches, the first of which ended with state troopers attacking almost 600 protesters on the Edmund Pettus Bridge. Televised footage of what became known as “Bloody Sunday” sparked nationwide outrage that ultimately led President Lyndon B. Johnson to sign the Voting Rights Act of 1965 (VRA).

The VRA outlawed measures such as poll taxes and literacy tests that had prevented Black people in Alabama and throughout the South from voting. The most powerful provision in the VRA – and its most effective – was a requirement that states that had a history of voter discrimination, like Alabama, must get federal approval (“preclearance”) for *any* election or voting-related changes, as did all jurisdictions within those states. This provision – known as “Section 5” – was extremely effective at preventing voting discrimination. Between 1969 and 2015, the Department of Justice (DOJ) blocked more than 100 proposed voting changes in Alabama alone, and many others were voluntarily withdrawn or altered when the DOJ requested more information.¹³

But in 2013, the Supreme Court gutted the VRA by

“[W]hat is it we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State.”

**John M. Knox, Alabama 1901
Constitutional Convention chair**

dismantling preclearance in a case originating in Alabama: *Shelby County, Alabama v. Holder*.¹⁴ In the years since the *Shelby County* decision, Alabama – the state and its local jurisdictions – has implemented a number of voter suppression efforts that have disproportionately affected Black voters. They include, among others, a voter ID law, the closure of driver’s license offices in predominantly Black counties, the requirement of proof of citizenship to register to vote, the closure of dozens of polling places, the purging of voters from voter rolls, and failing to publicize a change in Alabama’s felony disenfranchisement law, which resulted in as many as 60,000 voters, who are disproportionately Black, not being aware of their eligibility to register to vote.



Despite voting rights victories, civil rights workers have often found vigilance is necessary to ensure access to the ballot box.

In light of these events, Justice Ruth Bader Ginsburg's dissent in the *Shelby County* decision seems prophetic: "The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. With that belief, and the argument

derived from it, history repeats itself."¹⁵

Indeed, almost 120 years after state legislators gathered in Montgomery to disenfranchise Black voters, Jim Crow continues to cast a long shadow on the ballot box in Alabama, diminishing the integrity of the state's electoral system.

THE IMPACT OF *SHELBY COUNTY V. HOLDER*: A CLOSER LOOK

As he signed the Voting Rights Act of 1965, President Lyndon B. Johnson declared the right to vote "the most powerful instrument ever devised by man for breaking down injustice."¹⁶

Indeed, this right is a cornerstone of our democracy, putting power in the hands of ordinary citizens and communities. Widespread political participation checks the power of government, holds political leaders accountable and ensures that government works for everyone.

With the passage of the VRA, following seven decades of Jim Crow segregation and oppression, Johnson hoped that "the last of the legal barriers" to voting was "tumbling."¹⁷

The VRA did change America, granting millions of racial minorities the ability to freely cast ballots and, with it, a degree of political influence and representation not seen since the days of Reconstruction.

But Johnson's hope for an end to voter discrimination has not been realized. Though the days of literacy tests and

grandfather clauses have passed, politicians in numerous states have devised and enforced new tactics to suppress and obstruct voting by people of color, low-income citizens, young voters and others. They create onerous voter



A 2013 U.S. Supreme Court opinion written by Chief Justice John Roberts left the heart of the Voting Rights Act unenforceable.



The Voting Rights Act of 1965 helped people of color to cast ballots, but new tactics suppress their vote today.

identification requirements, move and shutter polling places, purge millions of voter registrations, and more.

These attacks on the right to vote have become more frequent and aggressive since 2013, when the U.S. Supreme Court removed the heart of the Voting Rights Act – the preclearance provision of Section 5.¹⁸ In the *Shelby County* decision, the Supreme Court ruled that Congress could no longer use a history of discrimination in voting to determine which states and counties were covered by the preclearance provision. Writing for the majority, Chief Justice John Roberts said the VRA’s coverage formula was based on “decades old data and eradicated processes.” Congress would have to redesign the coverage formula so that “current burdens” were “justified by current needs.”¹⁹ In the six years since the decision, Congress has failed to update the preclearance coverage formula, leaving the heart of the Voting Rights Act – indeed, the most effective piece of civil rights legislation – unenforceable.²⁰

Even Justice Thomas in his concurrence (in which he argued for the more drastic outcome of nullifying Section 5 as well as its coverage formula) admitted that the VRA’s preclearance requirement was extremely effective at detecting and preventing discriminatory voting policies.²¹ Between the reauthorizations of the VRA in 1982 and 2006, the DOJ blocked more than 700 proposed

voting changes because of their discriminatory impact, and more than 100 changes in Alabama from 1969 to 2008.²² More than 800 additional proposed changes were altered or withdrawn voluntarily by covered jurisdictions after the DOJ requested additional information.²³

Today, without preclearance, it is nearly impossible to block discriminatory laws and policies before they are implemented, because litigation can only proceed after a law is passed or a policy is implemented. Further, jurisdictions previously covered under Section 5 are now under no obligation under federal law to provide notice of a proposed voting change, so voters and advocates have much less chance of organizing to defeat a change before it goes into effect. A discriminatory voting scheme may be in place for several election cycles before enough evidence is gathered to challenge it in court. Moreover, voting rights litigation is slow, onerous to prepare and expensive. Therefore, litigation alone is an insufficient remedy to widespread and often latent voter suppression, as advocates and affected communities have experienced firsthand over the past six years.

For decades, Section 5 of the Voting Rights Act effectively protected voters from the worst impulses of politicians and local officials. In the post-*Shelby* era, previously covered jurisdictions have moved quickly, passing dozens of new voting restrictions. Alabama is no exception. County governments have closed polling places and more than a million voters have been purged from the voter rolls.²⁴ Its voter ID law is one of the most restrictive in the nation; it has no option for voting without a photo ID unless two elections officials can identify the voter.²⁵ Moreover, after the voter ID law was passed, the state announced plans to close dozens of driver’s license offices in rural counties where the photo IDs otherwise could have been obtained.²⁶

As a result, many Alabama voters find it increasingly difficult to cast a ballot in one of the oldest democracies in the world.



Tim Lanier speaks at a Montgomery news conference in 2019 about felony disenfranchisement in Alabama. Advocacy groups, citizens and some state lawmakers are helping people with felony convictions navigate Alabama's difficult process to restore their voting rights.

RIGHTS RESTORATION

Like other Southern states, one of the ways the framers of Alabama's 1901 constitution sought to disenfranchise Black voters was through a provision that stripped voting rights, for life, from anyone convicted of certain crimes. The provision, Section 182, included a long list of disqualifying convictions – from serious crimes like treason to “crimes” such as miscegenation and “living in adultery.” In fact, it included all crimes punishable by incarceration in the penitentiary, ensuring that virtually anyone convicted of a felony would no longer be able to vote. But the provision also included any “crime involving moral turpitude.”²⁷ This term was never defined, so county registrars decided whether crimes not otherwise covered by Section 182 involved “moral turpitude.”

The law stood throughout the Jim Crow era. However, in the early 1980s, two voters – both disqualified after being convicted of misdemeanor charges for trying to cash bad checks – challenged Section 182 as unconstitutional because it was adopted to intentionally disenfranchise Black voters on account of race and the law did, in fact, have that effect.²⁸ Although a federal district court initially upheld the law, on appeal to the 11th U.S. Circuit Court of Appeals, the law was struck down. The U.S. Supreme Court later affirmed the 11th Circuit's ruling. Writing

for the majority, Justice William Rehnquist noted that Section 182 “was motivated by a desire to discriminate against blacks on account of race, and the section continues to this day to have that effect.”²⁹

In 1996, however, Amendment 579 was added to the state constitution, restoring the “moral turpitude” clause. Unlike Section 182, it did not list the individual felonies that would disqualify voters but simply barred voting by any “person convicted of a felony involving moral turpitude” unless that person's rights were later restored.³⁰ Once again, because the state never defined the term “moral turpitude,” each county registrar had the discretion to decide which crimes involved moral turpitude.

The moral turpitude standard was inconsistently applied and disproportionately disenfranchised Black Alabamians.³¹ By 2017, about 280,000 Alabamians had lost their right to vote because of a prior felony conviction. Seven percent of Alabama's voting age population – and 15 percent of Black voters in the state – had been stripped of their voting rights.³²

In May 2017, facing a federal lawsuit challenging the moral turpitude standard, the Legislature passed a bill enumerating 47 specific felonies that constitute crimes of moral turpitude for the purposes of disenfranchisement.³³

Unfortunately, the Defining Moral Turpitude Act did not fully alleviate the confusion and arbitrary enforcement of the felony disenfranchisement law. In fact, the secretary of state's office refused to take any steps toward ensuring the thousands of people affected by the law actually knew about it.³⁴

Many people who are now eligible to vote remain unaware that the law has changed because there was no state-supported voter education effort. Those who have heard about the change can apply to have their voting rights restored, but the application process is unnecessarily complex. Moreover, individuals must have paid all their legal financial obligations to the court before they can register – an impossible task for many low-income people.³⁵

Although the Defining Moral Turpitude Act brought greater clarity about who could and could not vote due to a felony conviction, the law still disenfranchises tens of thousands of Alabamians who have already served their time, and it still has a disparate impact on people of color. In September 2016, the Campaign Legal Center filed *Thompson v. Alabama*, which argues that the state's felony disenfranchisement law violates the U.S. Constitution and the Voting Rights Act of 1965. The lawsuit argues that Alabama's use of the term "moral turpitude" in Amendment 579 is intentionally racially discriminatory and that it leads to arbitrary and unconstitutional disenfranchisement of citizens.³⁶

EDUCATING VOTERS AFTER THE DEFINING MORAL TURPITUDE ACT

Alabama's inconsistent policy on felony voting rights before 2017 caused real and recent harms. Corrections officers and county registrars spent decades telling thousands of Alabamians they would never vote again. In some counties, registrars barred all people convicted of a felony from registering and voting. They did not bother to determine whether the conviction was for a disqualifying crime.³⁷ Now that the Legislature has defined "moral turpitude," there has been no statewide attempt to educate the public on the change. Thousands of Alabamians have been re-enfranchised (or never lost the right to vote in the first place), but many have no idea they now can register to vote.

Nonprofit organizations across the state are attempting to educate affected voters. For example, the Southern Poverty Law Center and the Campaign Legal Center formed the Alabama Voting Rights Project (AVRP) in 2018, hiring fellows to educate returning citizens and the broader community about the change and guide them through the rights restoration process.³⁸

In one year, the three AVRP fellows helped more than 2,500 people with convictions restore their voting rights and register to vote. Additionally, fellows trained more than 2,600 community members on how to educate and

guide others through the restoration and registration process. The state, however, which has better and more direct access to accurate data and the impacted community, has not invested significant resources in such an effort.

Despite half of all states having laws requiring criminally disenfranchised people to be notified about the loss or reinstatement of their voting rights, Alabama does not have such a standard practice.³⁹ Alabama, especially the secretary of state's office, the Board of Pardons and Paroles, the Department of Corrections, and the boards of registrars, must do more to reach out to affected voters, educate them on their rights, and register them to vote.

APPLYING FOR A CERV

The process for restoring one's voting rights in Alabama can be long and difficult. Under the current law, Alabamians convicted of a crime of moral turpitude must have completed prison, probation and/or parole, and paid all fines, fees and restitution related to their conviction before their voting rights may be restored.⁴⁰ Once they have satisfied all those requirements, they must apply for a Certificate of Eligibility to Register to Vote or "CERV." On its face, acquiring a CERV appears simple. It requires filling out a form and submitting it to the Board of Pardons and Paroles for approval.⁴¹ In practice though, the process is too difficult for the average person to maneuver without an advocate.

To fill out a CERV, you must know the exact offense for which you were convicted, which many individuals do not know because, oftentimes, people are convicted of a crime that is different than the one for which they were initially charged. This is especially common for people who accepted plea agreements. Small differences in convictions affect the rights restoration process. For example, first- and second-degree burglary are disqualifying, but third-degree burglary is not. Some people might know that they were convicted for burglary, but if they do not know in which degree, then they will not know whether they need a CERV. Moreover, only someone with access to the statewide court records database, Alacourt, which requires a payment, can retrieve this information. Barriers like the ones described here are often overlooked and require assistance in navigating.

What's more, the state is prone to making errors – clerical and otherwise – that can result in disenfranchisement if voters do not have access to an advocate. The story of Gregory Butler illustrates this problem well. Butler had a federal drug trafficking conviction, but because his conviction was federal it was unclear whether it was disqualifying. Alabama has a list of state crimes that are disqualifying but not federal ones. After researching the issue, the AVRP legal team determined Butler's conviction was not disqualifying; he did not need to apply for a CERV to vote. He registered and was placed on the Jefferson County voter roll in 2018.

Then in March 2019, the Jefferson County Board of Registrars tried to kick Butler off the roll again. They sent a letter informing him that he was not eligible to vote due to his felony conviction, but the board had its facts wrong. Butler reached out to AVRVP, which was able to correct the error. Without an advocate, Butler would have been forced to go through a lengthy appeals process that may not have ended with his voting rights being restored.

Butler can vote today because he had an advocate who knew the law well. But most returning citizens navigate the rights restoration process alone. They are not experts in the details of rights restoration legislation and procedure. Because of their experiences in jail and prison or with the criminal justice system, they often do not trust government officials and feel unsafe in courthouses and government offices. The Alabama Voting Rights Project corrected many problems such as the one encountered by Butler, but advocates like those at the AVRVP cannot reach all those who need assistance navigating Alabama's rights restoration process.

Numerous states restore voting rights automatically without requiring a separate application of any kind. Eligible electors in those states with criminal convictions can simply register to vote like any other citizen. The CERV process, however, creates additional work for the Board of Probation and Paroles, which has to process and approve every CERV application that is filed within 45 days. This system also unnecessarily burdens the limited resources of community groups that have had to step in to do the state's job of assisting newly enfranchised voters. Overall, a CERV is unnecessary and onerous.

LEGAL FINANCIAL OBLIGATIONS

Alabama requires people convicted of a disqualifying felony to have paid all fines, fees and restitution ("legal financial obligations" or "court debt") related to the disqualifying conviction before they may apply for a CERV and register to vote. This is an insurmountable barrier to voting for many. Legal financial obligations imposed on people with convictions have exploded in recent decades as local jurisdictions fund their criminal justice system on the backs of low-income people. A 2014 survey conducted by the University of Alabama at Birmingham found that previously incarcerated people in Alabama, on average, owed \$7,800 in legal financial obligations, but their average annual income was only \$10,894.⁴² Many of the people surveyed expected they would never be able to repay the court debt they owed.⁴³

Anecdotally, the AVRVP found that about half of the people it worked with have outstanding legal financial obligations leaving them effectively disenfranchised because of their economic status. The AVRVP helped dozens of people apply to have their court debt waived which would allow them to register to vote. Unfortunately, the Board of Pardons and Paroles has not waived the legal financial

obligations of a single person working with the AVRVP. They all remain ineligible to vote because they are too poor to pay off their court debt.

The legal financial obligations requirement also creates additional space for bureaucratic errors that leave citizens effectively disenfranchised. For example, Alfonso Tucker had a disqualifying conviction and applied for a CERV but was denied because he still owed \$135 in legal financial obligations. The AVRVP reviewed his case and found that the Board of Pardons and Paroles had made a mistake; Tucker owed only \$4 on the fine assessed at the time of conviction. The state imposed the remaining \$131 after conviction, and post-conviction fees do not affect voting eligibility. Because Tucker's advocate had access to Alabama's court database, understood the state's complicated fees codes, and was an expert on rights restoration regulations, they were able to catch the Board of Pardons and Paroles' mistake. They held the BPP to its own policy of not including post-conviction fees in its determination of voting eligibility. Tucker is now a registered voter in Tuscaloosa.

Tucker's case is another example of an advocate being the deciding factor in whether an individual has their rights restored. The current process is too complex and the government too prone to error. There are too many opportunities for mistakes to be made in this system, and that is unacceptable when the fundamental right to vote is at stake.

In tying voting rights to a citizen's ability to pay court debt, Alabama imposes a modern-day poll tax on low-income Alabamians with past convictions. Those who are unable to pay this debt are otherwise eligible to vote. Their financial status is the only reason they are barred from voting.

Wealthy citizens are no more qualified or deserving of a voice in government than middle- or low-income people. By disenfranchising citizens based on their financial status, Alabama is telling the public that voting should be restricted to those who can afford to pay.

BAD POLICY, INDIFFERENCE PUT BALLOT BOX OUT OF REACH

The deck is clearly stacked against those with criminal convictions attempting to restore their voting rights. Alabama has made little effort to correct the harm from more than a century of discriminatory voting rights policy and misinformation. During the 2019 legislative session, several bills that would have corrected these problems were proposed, but not a single one made it out of committee.

As a result, many Alabamians continue to face a complicated restoration process on their own and financial obligations continue to disenfranchise those with limited financial means. A combination of bad policy and government indifference continues to keep the ballot out of reach for tens of thousands.

DECENTRALIZED ELECTIONS AND FAILURES IN ELECTION ADMINISTRATION

Many people assume the federal government plays a large role in managing elections. But election administration in the United States is extremely decentralized and largely the responsibility of state governments which, in turn, grant county officials wide authority to implement their own policies and procedures.

In Alabama, within each county, responsibility is further fragmented among numerous officials. The secretary of state's office, probate judges, the board of registrars, and circuit clerks all play a key role in administering elections. Probate judges serve as the chief election officials, while an appointed board of registrars maintains the voter rolls and records.⁴⁴ Another official serves as the absentee election manager who is often, but not always, the county's circuit clerk.⁴⁵ Each county divides responsibilities among these officials in slightly different ways, leading to a lack of uniformity across the state.

A decentralized election administration system has some benefits. It gives county officials more latitude to tailor election infrastructure to suit the needs of their constituents, and it makes it more difficult for bad actors, such as computer hackers, to interfere with elections systems on a large scale. Decentralization, however, creates a system with limited oversight, lack of accountability and little uniformity from county to county. This fragmentation is confusing for voters and government officials alike. It also makes it difficult to hold anyone responsible for errors. Overall, the absence of accountability and consistency in Alabama's elections infrastructure hurts the state's voters and makes casting a ballot an overly bureaucratic process.

Here's a closer look at the role of election officials in Alabama.

SECRETARY OF STATE

Alabama's chief election official is the elected secretary of state. Alabama law gives the secretary of state more than 1,000 duties, some of which have nothing to do with elections. The secretary of state is primarily responsible for processing, filing and maintaining documents that are public record.⁴⁶ As chief election official, the secretary of state is responsible for recording vote totals, certifying ballots and monitoring campaign finance filings. He or she also provides uniform guidance for election activities and has rulemaking authority for the implementation of election laws.⁴⁷

The secretary of state is also charged with ensuring compliance with major federal elections legislation such as the Help America Vote Act (HAVA), the National Voter

Registration Act (NVRA), and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). For example, the secretary of state is responsible for maintaining the statewide voter registration database required by HAVA.⁴⁸

As explained below, a great deal of election administration work is done at the county level by probate judges, boards of registrars and poll workers.

PROBATE JUDGES

Probate judges are the chief election official in each county. They are elected officials who serve six-year terms with no term limit.⁴⁹ Though the position carries the title of judge, probate judges are not required to have any legal experience.⁵⁰ In fact, Alabama is one of only four states that allow individuals without a legal degree to serve as probate judges.⁵¹ Anyone who is a registered voter, resides in the district for at least one year, and is under 70 years old can run for probate judge.

The Alabama Election Code outlines only a few specific responsibilities for probate judges as chief election official. They serve on the appointing board that names poll workers for each precinct, and must preserve official records, such as election results and reports from campaign committees.⁵² They also provide "necessary election supplies," including a complete list of qualified voters in each precinct, to the county sheriff before an election.⁵³

Probate judges are not explicitly charged with ensuring elections run smoothly or with ensuring registrars are properly trained. They have no explicit supervisory responsibilities whatsoever. The degree to which probate judges are effective elections supervisors is largely dependent on the individual personality, preferences and work ethic of each probate judge. Some do an excellent job of ensuring elections run smoothly in their county, while others do only the minimum required by state law.

BOARD OF REGISTRARS

Each county has a board of registrars composed of three members appointed by the governor, agriculture commissioner, and state auditor.⁵⁴ Registrars serve four-year terms with no term limits. To serve, a person must be qualified to vote, live in the county, have graduated high school, and "possess the minimum computer and map reading skills necessary to function in the office."⁵⁵ What constitutes a minimum level of competency is not defined.

The board of registrars' main responsibility is to maintain the voter rolls. They process voter registration forms, decide whether to accept or reject voter registration applications, assign voters to precincts and maintain records.



Poll workers are arguably the most important election officials. Some Alabama counties offer detailed training for poll workers while others do far less.

They are also responsible for removing voters who are no longer qualified to vote because they moved, died, or were convicted of a disqualifying crime.

POLL WORKERS

Poll workers are arguably the most important election officials; voting sites could not operate without them. However, they are not year-round government employees. Poll workers are county citizens who are appointed to their position by the county probate judge, sheriff and clerk of the circuit court.⁵⁶ This appointing board selects poll workers from a list of nominations by political parties and a list of citizens who have attended poll worker trainings.⁵⁷

Poll workers must be qualified electors, at least 18 years of age and residents of the county they will work in as a poll worker.⁵⁸ Alabama state law requires poll workers to attend a poll worker training before they can serve. The responsibility for hosting this training, according to state law, falls to “the authority charged with holding the election” – typically, the probate judge.⁵⁹

Poll workers are compensated for their work by the state and county. The amount varies slightly depending on the type of election and the role of the poll worker, but it’s usually about \$75 per day.⁶⁰

A poll worker’s responsibilities include verifying photo identification, distributing ballots, monitoring the voting equipment, explaining how to mark a ballot, and generally maintaining an organized, efficient polling place.⁶¹

Every voter who casts a ballot in person interacts with a poll worker. Their role is vital and can make or break the voting experience for citizens. The training for this indispensable role is largely left to individual counties. The secretary of state’s office sends probate judges a state-produced poll worker guide and entrusts county officials with ensuring poll workers know the rules.⁶² Some counties hold excellent, detailed trainings for poll workers while others do not go much beyond ensuring poll workers can operate the voting machines.

FRAGMENTED AUTHORITY: FAILURES OF TRAINING AND ACCOUNTABILITY

The diffuse organizational structure of Alabama’s elections makes it difficult to hold any one office responsible for failures in training and election administration. Because state law is often vague or silent on who is responsible for training and supervising elections officials, registrars and poll workers often do not receive the resources and guidance they need to do their jobs well. In addition, the secretary of state’s office, boards of registrars, probate judges, sheriffs and circuit clerks are all responsible for discreet pieces of election infrastructure. State law does not clearly define where one office’s responsibility ends and another’s begins. Without an office having ultimate authority, officials can easily shift blame when errors occur, making it difficult for Alabamians and the courts to hold them responsible.

For example, Alabama law is imprecise as to how boards

of registrars should be trained and supervised. As appointed officials, registrars are not directly accountable to voters in their county. The statewide officials that appoint new registrars – the governor, commissioner of agriculture and state auditor – are not elections experts. The secretary of state’s office provides “direction and computer support,” supplies, copies of the *Alabama Elections Handbook* and information on compliance with federal legislation like the National Voter Registration Act but does not act as the registrars’ supervisor.⁶³

Boards of registrars are largely appointed and then left to their own devices with no entity specifically charged with overseeing their work. Training for new registrars – especially practical, on-the-job training – is often lacking.⁶⁴ Typically, experienced registrars do their best to train new appointees with minimal support from the state.

Though the secretary of state’s office does not supervise boards of registrars, it can remove a registrar from office for cause. In July 2019, a registrar in Russell County was removed for advising voters that they could register and vote using a business address. An Auburn resident and witness for the state testified that the registrar who was removed – as well as a former registrar – told him that it was “perfectly legal” to register to vote where you work as long as you do not register and vote at multiple addresses.⁶⁵

Registering to vote at a nonresidential address, however, is a clear violation of Alabama law. The state’s voter registration form even asks voters to list the “address where you live.”⁶⁶ It is troubling – but not surprising – that several registrars were ignorant of such a basic provision of Alabama election law given the lack of standardized training and supervision.

The state’s confusing election standards also make it difficult to enforce existing law. In 2012, the U.S. Department of Justice filed a lawsuit against Alabama for failing to deliver absentee ballots to citizens living overseas, including service members and their families, at least 45 days before Election Day as required by the Uniformed and Overseas Citizens Absentee Voting Act.⁶⁷ Both UOCAVA itself and Alabama state law charge the secretary of state with ensuring compliance with this law; however, the secretary of state has no clear mechanism for enforcing it.⁶⁸

In response to the complaint, the state argued that county officials were responsible for transmitting absentee ballots and that the secretary of state “has no authority to compel the action of a local official.”⁶⁹ Indeed, the secretary of state’s office cannot perform registrars’ duties for them, force them to fulfill their duties on a timely basis, or fire them if they do not.⁷⁰ Similarly, the secretary of state cannot remove elected probate judges or absentee elections managers from office.

The secretary of state can, however, improve the process to ensure ballots reach overseas voters on time. In fact, the Department of Justice’s lawsuit led to the state agreeing to alter the runoff election calendar to allow

more time for ballots to arrive, to develop a system for electronic ballot submission, and to offer significantly more training to absentee election managers, among other remedies.⁷¹ As this case demonstrates, the lack of clearly outlined duties and responsibilities in Alabama’s election system not only creates problems but enables finger-pointing and a culture of complacency.

DECENTRALIZATION CREATES INCONSISTENCIES AND ERRORS

The lack of state oversight and the delegation of authority to the state’s 67 counties also breeds inconsistency in election administration. This means there are 67 different processes for election administration in Alabama. The result is an elections bureaucracy that is difficult for both voters and the secretary of state’s office to understand – and, ultimately, a recipe for errors.

For example, in 2017 Alabama passed a “crossover voting” law, which made it illegal to vote in one party’s primary election and later “crossover” to vote in another party’s primary runoff. After the 2017 special election primary runoff for the U.S. Senate seat vacated by Jeff Sessions, the secretary of state’s office announced that 674 people had violated the new law and advocated for their incarceration and a stiff financial penalty.⁷²

Once the list of crossover voters was submitted to county officials for verification, it became clear that the list of crossover voters was seriously overinflated.⁷³ Every county had its own system for tracking who had voted in a particular primary and was eligible to vote in that party’s runoff. The secretary of state’s office did not understand all these systems and misinterpreted data from some of Alabama’s largest counties.

In Jefferson County, for example, local officials crossed out names on the voter file to indicate they had voted in the Democratic primary and were not allowed to vote in the GOP runoff.⁷⁴ The secretary of state’s office incorrectly assumed the names were crossed out to indicate that person had voted in the Republican runoff. As a result, more than 300 Jefferson County residents were wrongly identified as illegal crossover voters.

In Mobile County, registrars and poll workers made clerical errors during the primary that caused confusion during the runoff. Some voters were improperly recorded as voting in the Democratic primary and were subsequently forced to cast provisional ballots in the runoff. Others were allowed to cast regular ballots but were later erroneously classified as crossover voters.⁷⁵

Though Mobile and Jefferson counties were the source of many of the errors, other counties had false information on crossover voters because of scanning errors and poor record keeping. After a full review, the state determined only 140 voters had cast crossover ballots – not 674. No probate judge recommended further investigation, much less prosecution of a voter.⁷⁶

THE SOLUTION: INCREASED STANDARDIZATION

Alabama's current election administration system is chaotic, inefficient, and totally lacking in uniformity. There is too little oversight or support from the state in executing this extremely important function. When problems inevitably arise, it is too easy for state and county officials to pass the blame. Democracy cannot function without

a well-organized, effective electoral system. Alabama needs robust training programs for officials, standardized election administration policies, and a clear system of accountability to ensure no one is wrongly deprived of the right to vote.

LACK OF TRANSPARENCY IN ELECTIONS MANAGEMENT

The problems with Alabama's election systems are compounded by the state's lack of transparency with the public. Government transparency can be a safeguard against election system errors. Alabama's open records laws, however, are among the weakest in the nation, few election administration bodies in the state have open meetings, and the cost of the voter file is exorbitant.

Overall, Alabama has one of the least accessible election systems in the nation, lagging behind other Deep South states. Greater transparency would add clarity and accountability to Alabama's election administration system, both of which are sorely lacking, to the detriment of the state's voters.

ALABAMA'S INEFFECTIVE OPEN RECORDS ACT

The Alabama Open Records Act states that "every citizen has a right to inspect and take a copy of any public writing of this state."⁷⁷ In practice, though, it is difficult to access government records. Unlike many states, Alabama's open records law does not require government officials to respond within a specific timeframe. Public officials can take as long as they want to respond.

If officials do not respond within a reasonable time, people have no recourse except to sue even though the average person cannot afford to hire an attorney to launch a costly lawsuit that will slowly wind its way through the courts. Recently, an Alabama health care provider spent \$70,000 on a records request lawsuit that went all the way to the Alabama Supreme Court.⁷⁸ Public officials know if they simply delay a records request, odds are the person will give up rather than file litigation.

Clearly, an open records act with no timeline or enforcement mechanism is not a check on government power. In the 2019 legislative session, a bill was introduced that would have required officials to respond to requests within five days, to only charge fees for the actual cost of copies, and to give an explanation for denying records. The legislation also created an affordable appeals process when denied records and established fines for public officials refusing to provide public records.

The bill died in the Senate Judiciary Committee.⁷⁹

It met opposition from lobbyists for municipalities, who argued it would create too much work for public employees.⁸⁰ The bill, however, will be carried into the 2020 legislative session.

ALABAMA'S LACK OF PUBLIC MEETINGS

Alabama's open meetings policies, like its open records law, trail its peers when it comes to transparency and openness. State and local government officials – regardless of the office they hold – host few public meetings and rarely publish agendas or meeting minutes. In many Southern states, open meetings are standard practice. Georgia, North Carolina, Virginia and South Carolina have election commissions and boards that meet publicly and post meeting notices, agendas and minutes.⁸¹ North Carolina's board of elections even provides a dial-in option to listen to their meetings.

In Alabama, the lack of transparency is exacerbated by the absence of a statewide election administration committee that could meet regularly and encourage participation. As for other elections-related bodies, there's the Alabama Board of Registrars Legislation Task Force, which has not posted minutes since February 2017.⁸² There's also the Alabama Voter Registration Advisory Committee, which does hold public meetings and posts minutes and correspondence.⁸³

At the county level, decisions regarding election matters occur almost exclusively behind closed doors. Probate judges and boards of registrars are not required to hold any public meetings, post regular updates about their work or invite public feedback. County commission meetings are a notable exception. These meetings are open to the public and sometimes include discussion of election issues, such as moving or closing polling locations. These public meetings provide people the opportunity to organize, attend and express concerns *before* a decision is made – and without resorting to costly litigation.

A more open and inclusive election administration structure where officials actively seek out and consider feedback from their constituents would greatly benefit public officials and Alabamians alike. Government officials

are supposed to work on behalf of local communities. They should welcome and seek public input.

THE EXORBITANT COST OF THE STATE VOTER FILE

The cost of obtaining Alabama's voter file is prohibitively expensive. This list of every voter in the state costs 1 cent per name. At that rate, it would cost \$35,008.94 to purchase a copy of the file, which had more than 3.5 million voters as of July 25, 2019. A digital copy is even more expensive due to the state levying a 2.5 percent charge for it.⁸⁴

When one considers that the median income in Alabama is \$46,472, it is clear that the voter file is a public record in name only.⁸⁵ This price tag, which rivals the price of a new car, also puts the list out of the reach of many news organizations, nonprofits and researchers.

The list, which is maintained by county registrars and the secretary of state's office, is significant since state and local governments use the file to calculate voter registration statistics, choose where to place polling sites, and much more. Access to the data allows citizens and nonprofits to guard against negligent or discriminatory practices by state officials. As states have begun to aggressively purge voters from the file, access to the information is more important than ever.

Alabama's exorbitant price tag for the voter file is an outlier. Some Southern states offer their lists completely

free of charge. Others levy a more reasonable fee. North Carolina allows anyone to access voter data for free. Florida provides CDs of the voter file and voter history data, which is updated monthly, free of charge and even mails the data directly to anyone who requests a copy.⁸⁶

Georgia charges a flat fee of \$250 for a statewide voter list and \$50 for a county list.⁸⁷ South Carolina charges \$160 for the data on a CD and \$75 for a printed list.⁸⁸ Mississippi appears to charge \$1,000 for a statewide list plus a \$100 setup fee.⁸⁹ Like Alabama, Louisiana charges 1 cent per name, but it caps the total cost at \$5,000.⁹⁰

Arizona once charged 1 cent per voter like Alabama. However, in 2017, the state was sued for charging "excessive, discriminatory, and illegal fees for access to public election records."⁹¹ The litigation spurred the Arizona Legislature to pass a law limiting the amount counties could charge for the voter file and the lawsuit was settled.⁹²

In Alabama, the cost of the voter file could be reduced without legislative action. Under state law, the secretary of state's office has the power to set the cost of the file, requiring only that it be a "reasonable" and uniform charge.⁹³ In other words, to ensure this public record is truly public, the office could unilaterally cut the cost of this vital public record at any time.

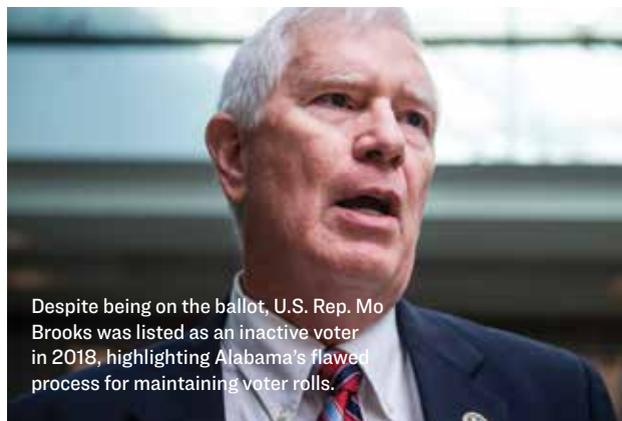
VOTER REGISTRATION AND VOTER LIST MAINTENANCE

On Election Day 2018, two prominent elected officials discovered firsthand that Alabama's process for maintaining its voter list can be deeply flawed.

Then-state Rep. Patricia Todd, a Democrat, and U.S. Rep. Mo Brooks, a Republican, were listed as inactive voters by the state.⁹⁴ Brooks' name was even on the ballot as his party's nominee for Congress, but to the state the congressman was still an inactive voter. The U.S. Postal Service had apparently failed to deliver postcards asking the lawmakers to confirm their status for the voter rolls.⁹⁵

Alabama removed 69,545 voters from the voter file between the 2016 and 2018 voter registration deadlines because of their failure to respond to confirmation notices.⁹⁶ This method was responsible for 29.27 percent of all voters removed during that period. In fact, more voters were removed for failing to respond to mailed cards than were removed because they moved or were convicted of a disqualifying felony. The number purged by this method is concerning given its flaws and the prospect of such purges affecting the outcomes of elections.

The National Voter Registration Act requires voter roll maintenance, but unfortunately, the methods used



Despite being on the ballot, U.S. Rep. Mo Brooks was listed as an inactive voter in 2018, highlighting Alabama's flawed process for maintaining voter rolls.

to identify and remove ineligible voters too often lead to the cancellation of legitimate registrations, removing eligible voters from the rolls without adequate notice. This has become a nationwide issue and Alabama is one of many states with a troublesome voter purge protocol.⁹⁷

The National Voter Registration Act gives states



Demonstrators lie on the Edmund Pettus Bridge in Selma to spotlight voting rights and commemorate the “Bloody Sunday” attack on voting rights marchers there in 1965.

guidelines on how to fairly maintain the voter file. It prevents states from removing voters from the rolls unless they fail to respond to a mailed card inquiring about a change of address and do not vote in two general election cycles following failure to respond to the mailed card.⁹⁸ The act also forbids states from removing anyone from the voter file within 90 days of a federal election. Though these protections help prevent states from cancelling legitimate voter registrations, they have not proven sufficient in Alabama and many other states.

Alabama has a two-step mailing process to verify voter registration records.⁹⁹ First, a non-forwardable postcard is sent to every registered voter in Alabama. This card asks the recipient to review their voter registration information and to retain the card if the information is correct. If the information is incorrect or if the voter no longer lives at the address, the recipient marks “return to sender” and mails it to the county board of registrars where it will be recorded as returned.

A second postcard is then sent out to only the registered

voters whose card was returned. Unlike the first postcard, the second one is forwardable. These postcards inform voters that the initial mailing was returned and advises them to update their voter registration information or to contact the registrar and have their name removed if they have moved. If a voter fails to respond to this second mailing, they will be marked as “inactive” in the voter file. Inactive voters should be able to vote on Election Day, but will be asked to update their registration at the polls. Inactive voters failing to vote in the next two federal elections are removed or “purged” from the voter file.

There are numerous problems with Alabama’s voter roll maintenance protocols. Mailings, for example, are not the most effective way to communicate with a 21st century citizenry. According to the U.S. Election Administration Commission, Alabama sent 416,632 confirmation notices to voters between 2016 and 2018. Fifty-five percent of those notices (229,407) were returned as undeliverable.¹⁰⁰ Another 138,830 notices were reported as “status unknown.”

Ultimately, only 5,984 out of the 416,632 voters contacted

were confirmed as valid, eligible voters as a result of the mailings. That's less than 2 percent of all voters contacted.¹⁰¹

Many of these confirmation cards were returned as undeliverable or were "status unknown" because a non-forwardable card is unlikely to reach voters who move often. Low-income people, apartment dwellers, renters and college students are less likely to have a current address on their voter registration record. Small record-keeping mistakes can also prevent these cards from being delivered. A missing apartment number or "Northeast" on a street name will prevent an eligible voter from receiving their confirmation card, triggering the first steps of the voter purge process.

In the 2018 midterm election, hundreds of Alabama A&M students were marked as inactive because of a quirk in their college mail system. In Alabama, every newly registered voter is sent an information card once their registration is processed. At Alabama A&M, however, if students do not pick up their mail from the student center quickly enough, it is returned to the sender. Students who did not check their mail regularly had their voter information cards sent back to the board of registrars. The board then marked these students as inactive voters despite their recent registration.¹⁰²

As of November 2019, there were 246,467 voters listed as inactive on Alabama's voter roll.¹⁰³ If these voters do not attempt to cast a ballot in the next two general election cycles, their voter registrations will be cancelled. It is impossible to know how many of these voters might be caught in a flawed voter purge process that has demonstrated it can even entangle elected officials. Alabama, like other states, must develop better methods for refreshing the voter rolls or they risk cancelling the valid voter registrations for countless Alabamians.

VOTER ROLLS AND MISLEADING VOTER REGISTRATION NUMBERS

In July 2019, the secretary of state's office issued a statement claiming that more than 3.5 million Alabamians – or 94 percent of all eligible Alabama voters – were registered to vote and that more than 1.3 million "new voters" had registered since January 2015.¹⁰⁴ The unsubstantiated statistics were described as "unprecedented and unparalleled in the history of the state" and the secretary of state's office claimed that "per capita no state in the Union has done as much."

If 94 percent of eligible Alabamians were truly registered to vote, it would be a historic achievement that no state, even those with far friendlier voter registration policies, has accomplished. Yet, no other reputable authority supports the claim. The U.S. Census Bureau, which produces the most accurate and widely accepted voter registration statistics in the nation, estimates that about 69 percent of eligible Alabamians are registered to vote. That's about 2.4 million registered voters – more

than 1 million fewer than claimed by the secretary of state's office.¹⁰⁵

The Census Bureau also estimates that 67.4 percent of eligible Black voters are registered, and 71.3 percent of eligible white voters are registered – estimates far lower than the secretary of state publishes.

The claim that more than 1.3 million new voters have been registered within the last four years also appears to be an overestimation. An SPLC analysis of the voter file found that only 768,093 people currently listed on the voter rolls were registered on or after January 2015.¹⁰⁶ Of those new registrants, 32,062 people are already marked as inactive voters. Thus, it is unclear where the state is getting the 1,301,012 "new voters" number despite repeated requests.

What is clear is that if a voter moves, they need to update their address in the voter file. If voters moved from the city of Birmingham to the suburbs in north Shelby County, for example, they would update their voter registration and be removed from the Jefferson County voter roll and added to the Shelby County voter roll. These voters are not new voters; they were previously registered in another county. If the state is counting such voters as "new" voters because they have been added to the Shelby County rolls for the first time, this is false and misleading.

The secretary of state's office seems to be calculating its unsubstantiated voter registration statistics using the number of people listed on the voter file and the state's citizen voting age population. This is a misleading method because the voter file always contains old, invalid voter registrations. It is immensely difficult to maintain an accurate list of all registered voters in a state.

As discussed earlier, the voter roll maintenance process laid out in the National Voter Registration Act and in Alabama state law is lengthy. It makes it difficult to remove people from the voter file as a safeguard against cancelling valid registrations by mistake. As a result, the voter file *never* accurately reflects the number of registered voters in a state. It always overestimates. That is why experts do not use the voter file to calculate voter registration numbers. Doing so is disingenuous as it will always count voter registrations that are no longer valid.

If one uses voter file data to calculate registration rates, many states appear to have more registered voters than they have citizens of voting age. Using the voter file method, Alaska has a voter registration rate of 117.5 percent. Washington, D.C., has a registration rate of 120 percent. Kentucky has a registration rate of 101.6 percent.¹⁰⁷ The U.S. Election Administration Commission recommends that registration rates calculated in this manner "be used with caution" precisely because they overestimate the number of registrants.¹⁰⁸ Simply put, it is not an accurate method for calculating voter registration rates.

THE VOTER FRAUD MYTH

In recent years, lawmakers, commentators and secretaries of state have spent massive amounts of time, energy and resources warning people of “voter fraud,” a virtually nonexistent problem. President Trump’s claim that “millions of people” voted “illegally” in the 2016 election is perhaps the most well-known instance, but such claims are being made nationwide and at all levels of government.¹⁰⁹

In Alabama, the secretary of state’s office has joined the chorus, noting that its voter ID law is merely an attempt to “make it easy to vote and hard to cheat.”¹¹⁰

One of the most comprehensive studies of in-person voter fraud, however, found that out of 1 billion votes cast between 2000 and 2014, there were only 31 credible instances of voter fraud.¹¹¹ The findings translate to approximately one instance of fraud for every 32 million votes cast. A separate analysis of news reports searching for “demonstrated cases of absentee or in-person voter fraud” yielded similar results, finding one case of voter fraud for every 34 million votes cast.¹¹² Additionally, a five-year investigation by the George W. Bush administration found “scant evidence” of voter fraud.¹¹³

The Trump White House and others promote the fear of voter fraud, particularly in-person voter fraud, not because there is any credible evidence that it is a threat to the integrity of elections, but because they want the public to *believe* it is. This supposed “threat” of voter fraud is used as a pretense to take actions and pass laws that suppress voting by people of color and others who are more likely to vote for the opponents of officeholders promoting the myth.

Former Republican Florida Gov. Charlie Crist, for example, described the response among state GOP members when he extended early voting hours in the state in 2008 – a move seen as benefiting low-income and minority voters. “I heard from Republicans around the state who were bold enough to share it with me that, ‘You just gave the election to Barack Obama,’” he told *The Palm Beach Post*.¹¹⁴

After Crist left office, a law that reduced early voting was signed by the new Republican governor. The law, enacted ostensibly to combat voter fraud and save money, was blamed for creating long lines at polling places and causing people to give up on casting a ballot.¹¹⁵

In another example, a federal appeals court struck down a North Carolina voter ID law in 2016, noting that the Legislature enacted the law with “discriminatory intent,” noting that it would “target African Americans with almost surgical precision.”¹¹⁶

In Alabama, public officials have stoked voter fraud fears that are simply not supported by facts. The following section examines some of the more common claims made

about voter fraud. As explained below, these claims are often misleading and do little beyond promoting efforts that threaten to put the ballot box out of reach of many eligible voters, particularly those who are young, low-income or from communities of color.

ALABAMA ELECTION FAIRNESS PROJECT

In early 2015, the secretary of state’s office launched the “Alabama Election Fairness Project” because as the secretary of state said, there was “no process for documenting voter fraud reports.”¹¹⁷ The project includes a webpage that allows anyone to report suspected voter fraud.¹¹⁸ The form asks for basic contact information and then gives the complainant 4,000 characters to “explain the basis for your complaint.”¹¹⁹ The complainants do not need to verify their identity or provide any evidence to support their claim beyond stating what election law they believe was violated. Anyone can click a link, write a paragraph or so about their concern and submit.

The secretary of state’s office regularly uses these unsubstantiated claims as evidence that voter fraud exists. In July 2019, the secretary of state told *Yellowhammer News* that 928 instances of “alleged voter fraud” had been “introduced” to the office. The story refers to these reports as “cases,” noting that 925 “of these cases have been fully investigated and closed,” providing a veneer of legitimacy to these “reports” that is simply not there.¹²⁰

In other words, there have not been 928 credible reports of voter fraud turned over to the secretary of state’s office. Rather, a web page with an online form received 928 submissions. And only six submissions out of more than 900 resulted in convictions – a mere 0.65 percent, hardly evidence of widespread voter fraud.

SIX VOTER FRAUD CONVICTIONS, OVERTURNED ELECTIONS

The secretary of state’s office frequently uses the same few examples as proof of widespread voter fraud – six voter fraud convictions and two to three recent elections overturned.¹²¹ These few examples, however, do more to underscore the rarity of voter fraud than endorse so-called anti-fraud measures that disenfranchise voters.

Additional detail is almost never given about these voter fraud convictions and overturned elections, though the secretary of state once said that five of the convictions were in Houston County and one was in Henry County.¹²² As for the overturned elections, the secretary of state’s office initially cited three elections but has more recently cited only two overturned elections. It is unclear why this talking point has changed.

The three elections appear to be contested municipal elections in Brighton, Wetumpka and Gordon, which, like other municipal elections in the state, were not overseen or supervised by the secretary of state's office. Each of these elections was small with less than 700 total votes cast. In elections of this size, just a few improperly cast ballots can affect the outcome. Yet these examples are used to raise the specter of widespread voter fraud and to imply that voter fraud threatens the outcome of elections at all levels of government.

In light of the secretary of state's voter fraud examples, it's worth noting that in the 2016 presidential election, 2.1

million votes were cast in Alabama.¹²³ In the 2018 midterm elections, 1.7 million votes were cast.¹²⁴ Thousands and thousands of additional votes have been cast in special and municipal elections across the state since the secretary of state began his first term in 2015. Out of these millions of votes, six voter-fraud convictions and two to three small-town elections are the only voter fraud examples provided by the office – hardly enough evidence to justify laws and policies that create significant obstacles to voting for thousands of Alabamians.

A CLOSER LOOK AT THE 'OVERTURNED' ELECTIONS

The secretary of state's office has frequently cited two to three overturned municipal elections as evidence of voter fraud and justification for laws such as voter I.D. that discriminate against and disenfranchise voters.

Few details beyond the number of overturned elections have ever been given. Even the number of overturned elections has shifted from three to two. Here is a closer look at the three municipal elections from 2016 that the secretary of state's office is likely citing – elections that are not proof of a vast threat to the outcome of elections at all levels of government.

BRIGHTON MAYORAL ELECTION

In the Brighton mayoral race between Brandon Dean and Eddie Cooper, Dean was initially declared the winner with 376 votes to Cooper's 330 after votes were cast in this town of 3,000 people in metro Birmingham.¹²⁵

When Cooper challenged the results, a judge found that 46 *absentee ballots* had been incorrectly cast and must be tossed out. Twenty-one of those ballots were not properly signed by the voter, 22 were sent to the candidate's address instead of the voter's home address, and two ballots were submitted by voters who were not actually out of the county on Election Day.¹²⁶ Without those 46 ballots, Dean did not have enough votes to avoid a runoff election, so the judge ordered that he vacate his office pending a runoff election.

GORDON MAYORAL ELECTION

In the 2016 election, Mayor Elbert Melton ran against challenger Priscilla Wilson and won by a 16-vote margin in this small town of 332 people in the Dothan metro area.¹²⁷

An investigation found that Melton had illegally notarized two absentee ballots, and he was convicted of two counts of absentee voter fraud. Though the two invalidated

ballots were not enough to change the result of the election, Melton was removed from office at the time of his conviction.¹²⁸ The town council appointed an interim mayor and called for a new election.

The shift by the secretary of state's office from citing three overturned elections to two overturned elections may be due to a better understanding of the Gordon mayoral election. The number of fraudulent ballots cast in Gordon was not enough to affect the outcome of the election and lead to the result being overturned. Rather, the mayor's conviction resulted in his removal from office.

WETUMPKA CITY COUNCIL ELECTION

When Percy Gill ran against Wetumpka City Councilor Lewis Washington Sr. for the District 2 seat, Gill was initially declared the winner in a close race, earning 168 votes to Washington's 165.¹²⁹

Washington sued, claiming that some votes were illegally cast. An investigation found that eight absentee votes had been improperly cast because the signatures on the absentee ballot application did not match the signatures of the voters or because the witnesses were not present at the signing of the absentee affidavit.¹³⁰ With eight ballots thrown out, Washington was declared the new winner with a final vote tally of 165-160.

As other states offer early voting and various measures to increase access to the ballot box, Alabama has moved in the opposite direction.



VOTING REFORM AND THE STATE LEGISLATURE

State governments across the nation are developing new, innovative ways to bring citizens into the voting process. Some have instituted small but effective reforms such as expanded early voting opportunities or same-day voter registration. Others have pioneered systematic reforms such as Colorado's vote-by-mail system.

Alabama, however, is moving in the opposite direction, choosing to erect new bureaucratic hurdles and declining to pass popular, commonsense reforms. In 2019, the Legislature passed a bill requiring voters to submit a copy of a photo identification with their absentee ballots, complicating the already cumbersome absentee voting process.¹³¹ Meanwhile, the secretary of state's office focused its energies on an unpopular bill that would give it more authority over the voter purge process. The bill did not pass.

Some lawmakers did introduce bills designed to bring more citizens into the voting process. Yet, none were passed, and very few were even considered in committee. Voting reform simply was not a priority in the 2019 session. The following is a look at the status of two popular voting reforms within the Alabama Legislature.

VOTE BY MAIL

Alabama only allows absentee voting, or vote by mail, for voters who have a specific excuse. Voters must expect to be away from their county on Election Day, have a physical disability or be scheduled to work a shift of 10 or more

hours on Election Day to request an absentee ballot.¹³²

These requirements are unnecessary. The secretary of state agrees that Alabama's excuse requirements are bad policy, calling the provision "long-outdated" and inconvenient.¹³³ Twenty-eight states offer no-excuse absentee voting.¹³⁴ And three states – Colorado, Oregon and Washington – hold their elections entirely by mail. Utah, California and Hawaii are poised to have statewide all-mail voting soon.¹³⁵

Alabama has made some progress on expanding absentee ballot access. In the 2019 legislative session, the Legislature added two new excuses for an absentee ballot.¹³⁶ Alabamians who are incarcerated in prison or jail but have not been convicted of a crime of moral turpitude may now request absentee ballots. Additionally, individuals who are caregivers to family members confined to their home may vote absentee.¹³⁷

These additions are a victory for Alabamians. The provision allowing people who are incarcerated to request an absentee ballot is particularly progressive. In most states, citizens are completely barred from voting while incarcerated. Only two states – Vermont and Maine – allow all incarcerated citizens to vote.¹³⁸

Alabama, however, must continue expanding access to absentee ballots. Completely removing the excuse requirement is the simplest solution, but legislation has failed to gain traction in the Legislature. In the 2019 session,

Rep. Prince Chestnut sponsored HB502, which would have removed the requirement.¹³⁹ The bill failed to pass out of committee. The Senate passed similar legislation a year earlier.¹⁴⁰ But the legislation died in the House after senior Republican leadership opposed having a Democratic lawmaker as the bill's chief sponsor.¹⁴¹

It is impossible for state government to develop a comprehensive list of every legitimate excuse a voter may have for casting an absentee ballot. The Legislature should remove the excuse requirement and allow Alabamians to decide for themselves whether to cast a vote by mail ballot.

EARLY VOTING

In-person early voting is even more common nationwide than no-excuse absentee voting. Thirty-nine states currently offer some sort of early voting.¹⁴² And voters are responding to early voting opportunities. In 2018, more than 40 percent of voters nationwide cast their ballot before Election Day. In Texas, more citizens voted early (4.8 million people) than voted at all in the 2014 midterms.¹⁴³

Alabamians do not have such an opportunity. And it does not appear in-person early voting is a possibility

in the near future, according to Secretary of State John Merrill. "There is no future for early voting as long as I'm secretary of state," he has said.¹⁴⁴ The secretary of state cited a lack of studies showing increased turnout as result of early voting. He also noted the cost of early voting and additional workload for county elections officials.

A 2013 study by the Brennan Center for Justice, however, found benefits that can improve elections and overcome these concerns. Despite the secretary of state's office's concern over increased workload, the study found that early in-person voting reduced stress on the voting infrastructure and resulted in shorter lines on Election Day. What's more, the study notes that the longer voting period helps improve poll worker performance by providing more experience before Election Day. The additional time provided opportunities to prevent and correct errors at polling sites, whether it was through ensuring voting equipment was operating properly or correcting a voter registration error, which could have prevented a voter from casting a ballot on Election Day. Unsurprisingly, the study cited greater voter satisfaction as a benefit of early in-person voting.¹⁴⁵



Throughout the country, the fight for voting rights has frequently required public protest. One year after the U.S. Supreme Court gutted the Voting Rights Act of 1965, these protestors rallied in Washington, D.C.

RECOMMENDATIONS

Alabama has failed to ensure that the ballot box is available to all voters.

Other Southern states have implemented common-sense reforms that have increased accessibility and are standard practice nationwide. No-excuse absentee voting is offered in states such as Florida, Georgia and North Carolina. And more than 10 days of early voting are offered by Arkansas, Texas, Louisiana, North Carolina, Tennessee, Georgia and Florida.¹⁴⁶

Alabama's failure to pass such reforms has only perpetuated obstacles encountered by low-income people, rural communities, Black Alabamians, the elderly, people with disabilities and language minorities. These voters frequently find that to cast a ballot they have to travel farther, wait in longer lines and jump through more bureaucratic hoops than their white counterparts in middle-class and wealthy communities. When it comes to these marginalized groups, it is clear that Alabama's election system was not designed for them.

The reforms described here are desperately needed to ensure all Alabama voters have an opportunity to make their voice heard at the ballot box.

RIGHTS RESTORATION

- Automatically restore voting rights to citizens convicted of crimes of moral turpitude once they have completed their prison sentence. They should not be required to apply for a Certificate of Eligibility to Register to Vote.
- End the requirement that citizens convicted of crimes of moral turpitude pay all fines, fees and restitution before they can regain their right to vote. The current requirement imposes a modern-day poll tax on low-income Alabamians with past convictions.
- End the requirement that citizens convicted of crimes of moral turpitude finish probation and/or parole before their voting rights are restored.

ELECTION ADMINISTRATION

- Provide more training for registrars, especially new registrars, including on-the-job training.

Currently, new registrars are appointed in the last quarter of the year before a presidential election, giving them very little time to learn their job responsibilities before election season. Instead, registrars

should be appointed in the first quarter of the year before a presidential election, so they can have a full year of on-the-job experience before a federal election year.

- Standardize training protocols for poll workers, registrars and other election officials across the state.
- As the chief election official in the state, the secretary of state's office should be given explicit oversight responsibilities over county election officials. The secretary of state's office should hold officials responsible when they fail to carry out their job responsibilities, and the secretary of state's office should be held accountable for providing county officials with sufficient training and on-the-job support.
- Probate judges should be licensed attorneys in the state of Alabama. They handle complicated and critical legal matters that often have an enormous impact on individuals and families, thus making professional legal training essential.
- The secretary of state's office should publicly release, without charge, lists of voters who are going to be purged from the voter rolls at least 30 days before removal.

This has been done recently by secretaries of state in Ohio and Georgia and has allowed advocates to conduct outreach to affected voters and to identify errors in these lists.

TRANSPARENCY IN THE ELECTION PROCESS

- Bring Alabama in line with other states by charging a reasonable fee for a copy of the state's voter file.
- Strengthen Alabama's public records laws by requiring officials to respond to requests within five days and provide an explanation when requests are denied. Limit fees to the actual cost of copies.

Establish an affordable appeals process for the public and impose fines when officials refuse to turn over public records.

- Create more opportunities for citizen participation in election administration by providing public meetings and other opportunities for public comment on the election process.

INCREASING VOTER ACCESS

- Allow all voters to cast a ballot by mail without requiring an excuse.
- Institute an early voting program with at least 10 days of early voting that includes a weekend day.
- Improve the voter registration process by allowing same-day registration and automatic voter registration when an Alabamian applies for a driver's license or updates it.
- Make Election Day a state holiday to increase access to the polls for working Alabamians.
- Remove the current photo ID requirement or allow citizens without an ID to vote if they sign a voter affidavit affirming their identity as is done in Louisiana and other Southern states.

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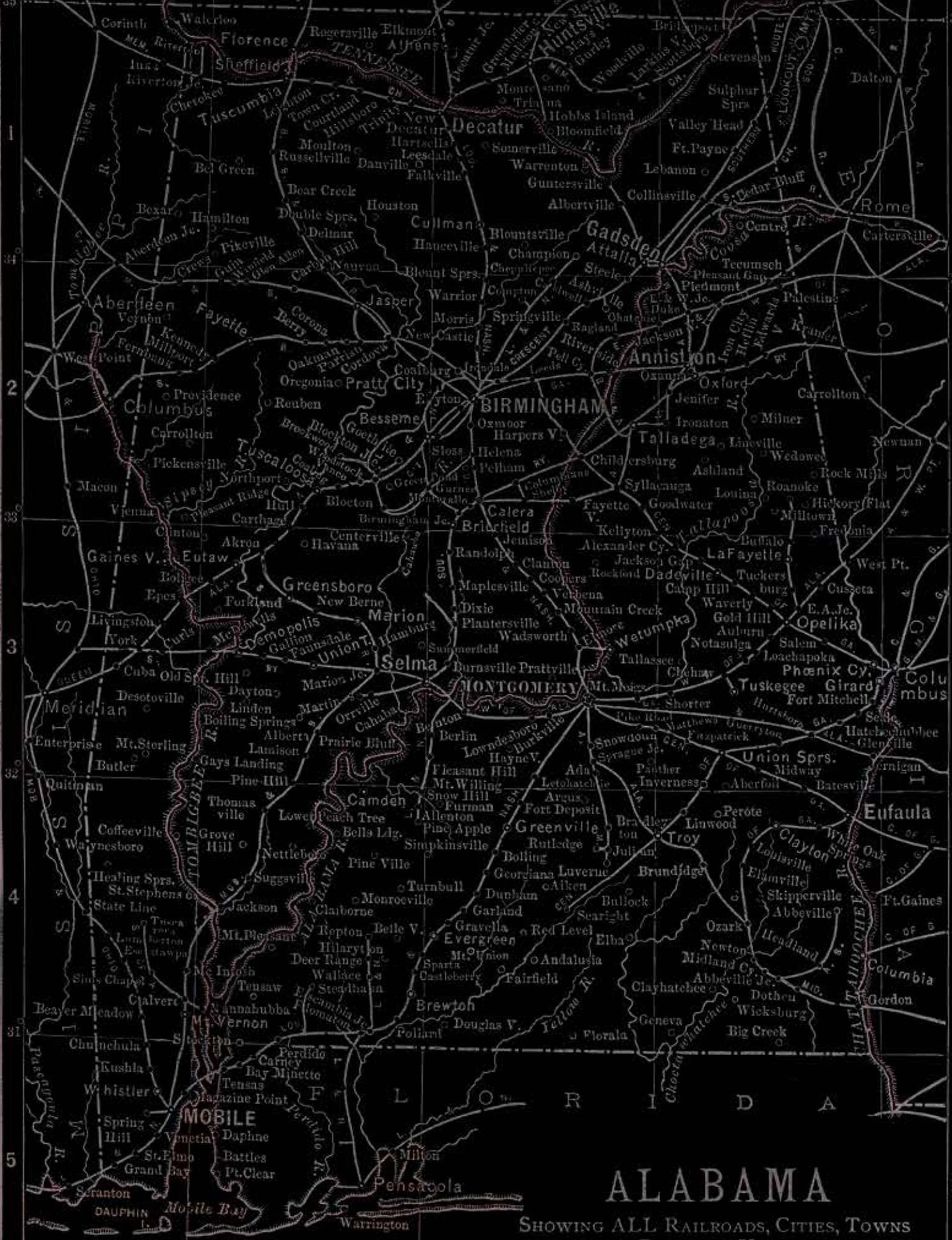
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