

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TREVA THOMPSON, et al.,

Plaintiffs,

v.

JOHN MERRILL, in his Official Capacity
as Secretary of State of Alabama, et al.,

Defendants.

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CIVIL ACTION NO.
2:16-cv-783-ECM-WMD

NOTICE OF EVIDENTIARY SUBMISSION

Attached herein are the exhibits in support of Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss. Note that Exhibits 16, 17, 18, 19, and 20 have been omitted and are not cited in Plaintiffs' Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 29, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record as listed below.

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EXHIBIT 11

**IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

RICHARD GOODEN, ANDREW JONES, and
EKEYESTO DOSS,

Plaintiffs,

v.

NANCY WORLEY, in her official capacity as
Alabama Secretary of State; NELL HUNTER,
in her official capacity as Jefferson County
Voter Registrar; and ANITA GIBSON,
WALTER LONG, and MOLLY MEADOWS in
their official capacities as Houston County
Voter Registrars,

Defendants.

Civil Action No. _____

COMPLAINT
THREE-JUDGE COURT REQUESTED

INTRODUCTION

This action is filed because, forty years after the passage of the Voting Rights Act of 1965, citizens of Alabama are being denied the right to vote by state officials in violation of state and federal law through the implementation of policies and procedures for voter registration that are required to be, but have not been, “precleared” pursuant to Section 5 of the Voting Rights Act.

1. This is an action to enjoin violations of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c that, if left unchecked, will permit state and local officials to deny the vote to citizens of Alabama in violation of the law.

PLAINTIFFS

2. RICHARD GOODEN is a 64-year-old African American of lawful voting age, a citizen of the United States and a lifetime resident of Birmingham, Alabama.

3. Though Mr. Gooden wanted to register to vote when he turned 18, he was not permitted to register to vote in the State of Alabama until his mid-20s due to Alabama's well-documented and systematic efforts to deny the right to vote to African-American citizens. It was not until the passage of the Voting Rights Act of 1965 that Mr. Gooden, like thousands of African Americans, was finally permitted to vote in his home state.

4. Mr. Gooden was registered to vote from the mid-1960s until 2000, when he was convicted of a felony — driving under the influence of alcohol (DUI) — and informed by the State of Alabama that his voting rights were revoked as a collateral consequence of his conviction.

5. ANDREW JONES is a 47-year-old African American of lawful voting age, a citizen of the United States and a resident of Birmingham, Alabama. Mr. Jones was registered to vote from the mid-1970s until the early 1990s, when he was convicted of felony possession of drugs, and informed by the State of Alabama that his voting rights were revoked as a collateral consequence of his conviction.

6. EKEYESTO DOSS is a 26-year-old African American of lawful voting age, a citizen of the United States and a resident of Dothan, Alabama. Mr. Doss was registered to vote from the late-1990s until early 2000, when he was convicted of felony possession of marijuana, and informed by the State of

Alabama that his voting rights were revoked as a collateral consequence of his conviction.

7. Hundreds of individuals from across the State of Alabama have been identified to Plaintiffs' counsel by the Alabama Board of Pardons and Paroles ("Board of Pardons" or "Board of Pardons and Paroles"), pursuant to The Public Writings Act of the State of Alabama, Ala. Code. § 36-12-40 *et seq.*, as Alabama citizens whose only felony convictions did not involve moral turpitude and who are presently eligible to register to vote.

DEFENDANTS

8. NANCY WORLEY is the Secretary of State of Alabama ("Secretary of State"), and, as such, is vested with the authority, as Alabama's "Chief Election Official," to execute and enforce the state laws related to the elective franchise to preserve public confidence in the democratic process and to facilitate voter participation in elections. She is sued in her official capacity in connection with actions taken under color of state law, including the promulgation of procedures for and the receipt and administration of applications for voter registration. *See* Ala. Code. § 17-4-136.

9. NELL HUNTER is the Jefferson County Voter Registrar ("Jefferson County Registrar"), and, as such, is vested with the authority to grant or refuse an individual's application to register to vote in Jefferson County in accordance with the directives of the Secretary of State. She is sued in her official capacity in connection with actions taken under color of state law, including the refusal by her office of the voter registration application of Plaintiff Gooden on September 21, 2005.

10. ANITA GIBSON, WALTER LONG, and MOLLY MEADOWS are the Houston County Voter Registrars (“Houston County Registrars”), and, as such, are vested with the authority to grant or refuse an individual’s application to register to vote in Houston County in accordance with the directives of the Secretary of State. Each is sued in his or her official capacity in connection with actions taken under color of state law, including the actions (or failure to act) by their office regarding the voter registration application of Plaintiff Doss.

JURISDICTION

11. Jurisdiction is based upon 28 U.S.C. § 1331 and upon 28 U.S.C. § 1343a(3) & (4) for causes of action arising under 42 U.S.C. § 1973c. Jurisdiction for Plaintiffs’ claim for declaratory relief is based upon 28 U.S.C. §§ 2201 & 2202. Jurisdiction for Plaintiffs’ claims for attorneys’ fees is based upon 42 U.S.C. § 1973l(e) & 1988. Venue is proper in this Court under 28 U.S.C. § 1391(b).

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS AND CASES

12. The Alabama Constitution, Article VIII, Section 177 (Recompiled, July 28, 1995), provides in pertinent part:

(a) Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence. The Legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting. The Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.

(b) No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability. (emphasis added).

13. The term “felony involving moral turpitude” has been defined by Alabama courts.

14. *Moore v. State*, 12 Ala. App. 243, 250, 67 So. 789 (1915), contains an early definition of crimes of “moral turpitude”:

A felony of moral turpitude is defined in Alabama as “anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.”

15. In *Williams v. State*, 55 Ala. App. 436, 437, 316 So.2d 362, 363 (Ala. Cr. App. 1975), the court stated:

A better summary of the meaning of moral turpitude can hardly be given than that found in McElroy, *Law of Evidence in Alabama*, Vol. I, s 145.01(7) as follows:

Moral turpitude signifies an inherent quality of baseness, vileness, depravity. *Gillman v. State*, 165 Ala. 135, 51 So. 722. Moral turpitude “implies something immoral itself, regardless of the fact whether it is punishable by law. The doing of the act, and not its prohibition by statute fixes the moral turpitude.” *Pippin v. State*, 197 Ala 613, 73 So. 340. Moral turpitude means ‘something immoral in itself. * * * It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself and not its prohibition by statute, fixes the moral turpitude. * * * It is the nature of the act itself, and not its legislative characterization or punishment which must be the test in determining whether or not it involves moral turpitude. *Ex Parte Marshall*, 207 Ala 566, 93 So. 451 (471).

16. In *Ex Parte McIntosh*, 443 So.2d 1283, 1284 (Ala. 1983), the Alabama Supreme Court favorably cited C. Gamble, *McElroy's Alabama Evidence*, § 145.01(7) (3d ed. 1977):

The Supreme Court of Alabama has defined the term “moral turpitude” on many occasions and the following are the most commonly found definitions. Moral turpitude signifies an inherent quality of baseness, vileness and depravity. It is immoral in itself, regardless of the fact that it is punished by law. Therefore, an offense for conviction of which a witness’ credibility is lessened must be *mala in se* and not *mala prohibitum*.

17. Ala. Code § 17-3-9 provides:

Any person possessing the qualifications of an elector set out in Article 8 of the Constitution of Alabama, as modified by federal law, and not laboring under any disqualification listed therein, shall be an elector, and shall be entitled to register and to vote at any election by the people.

18. Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, provides in relevant part:

Whenever a State . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General

has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made.

FACTS

19. From Reconstruction until the passage of the Voting Rights Act of 1965, Alabama employed virtually every state instrument of disfranchisement available to suppress the Black vote, including terror and violence, literacy tests, poll taxes, a “grandfather clause,” good character tests, and white-only primaries. As a result, only 19 percent of the Black voting-age population in Alabama was registered to vote in 1964, one of the lowest proportions in the South. By contrast, 69 percent of the white voting-age population was registered at that time.

20. As a result of its long history of discrimination against Blacks in voting, the entire State of Alabama is covered by Section 5 of the Voting Rights Act of 1965 pursuant to Section 4 of that statute and the designation by the Attorney General.

21. Following the 1982 renewal of Section 5 of the Voting Rights Act of 1965, the Supreme Court recognized in *Hunter v. Underwood*, 471 U.S. 222 (1985), that Alabama, in violation of the Equal Protection Clause of the Fourteenth Amendment, impermissibly used its felon disfranchisement law to intentionally disfranchise Blacks and to maintain and reinforce white supremacy.

22. In 1995-1996, the Alabama Legislature proposed, and the people ratified, Act 95-443 of the 1995 Regular Session of the Legislature of Alabama, which proposed a constitutional amendment to repeal Article VIII of the Constitution of Alabama of 1901 regarding voting, and replace it with Section 177 (the text of which is set out above).

23. Pursuant to Section 5 of the Voting Rights Act of 1965, the State of Alabama, on April 16, 1996, submitted Act No. 95-443 to the Attorney General of the United States for preclearance.

24. In a June 24, 1996 letter to Lynda Oswald, Alabama Assistant Attorney General, Assistant Attorney General for Civil Rights pursuant to Section 5 of the Voting Rights Act of 1965, interposed no objection to (“precleared”) Alabama’s revised voting law.

25. In the 2003 Second Special Session, the Alabama Legislature adopted Act 2003-415, *codified at* Ala. Code § 15-22-36.1, a law requiring members of the Board of Pardons to provide a procedure for the restoration of voting rights — by issuing a Certificate of Eligibility to Register to Vote (“Certificate of Eligibility”) — to individuals with felony convictions who satisfactorily complete each of the terms and conditions of their sentences.

26. On information and belief, in the course of attempting to discharge its statutory duties the Alabama Board of Pardons and Paroles determined that there was public confusion about the scope of the State of Alabama’s felon disfranchisement law, and/or that agents of the State, including the Secretary of State and Defendant Registrars, were misapplying Alabama’s law, thereby creating confusion and depriving eligible citizens of their right to register to vote and exercise the franchise.

27. To facilitate compliance with Ala. Code § 15-22-36.1, and to determine which felonies require the issuance of a Certificate of Eligibility as a prerequisite to registering to vote, William Segrest, Executive Director of the Board of Pardons and Paroles, requested that Troy King, Attorney General for the

State of Alabama, set forth which felonies do not involve moral turpitude under State law.

28. In response to Segrest's request, the Attorney General issued an Opinion which explained that "[i]f a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply [to the Board of Pardons] for a Certificate of Eligibility to Register to Vote." See Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.).

29. In the Opinion, the Attorney General did not "provide an exhaustive list of every felony involving moral turpitude," but listed a number of illustrative crimes that have been determined by Alabama courts not to involve moral turpitude, including "violation of liquor laws" and "driving under the influence." *Id.* at 2 (citing *Parker v. State*, 280 Ala. 685, 198 So. 2d 261 (1967); *Finley v. State*, 661 So. 2d 1321 (Ala. Crim. App. 1995)). Thus, if "a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote." *Id.* at 3.

30. Following the Attorney General's Opinion, the Board of Pardons and Paroles issued a press release on May 17, 2005 to inform the public and clarify the operation of Alabama's felon disenfranchisement law.

31. The May 17th press release noted that as the Board of Pardons attempted to implement Ala. Code § 15-22-36.1 it "discovered that many eligible voters [were] unaware" that they did not need a "certificate from this agency in order to register to vote." "Under the current law only felonies involving moral turpitude disqualify a person from voting. Convictions for other felonies do not

disqualify a person from voting. If individuals who are already eligible to vote do not ask us for certificates, we can process the other applications more promptly.” The press release stated unequivocally, *inter alia*, that “felony driving under the influence” and “felony possession of drugs” are offenses that do not involve moral turpitude.

32. On information and belief, notwithstanding the dictates of Alabama law, which reflect the express ratification of the people of Alabama, the aforementioned Attorney General’s Opinion, and the press release that was issued by the Board of Pardons and Paroles, within the last six months in the following twenty counties, registrars were directed by the Secretary of State not to register people with any felony conviction — whether or not the felony involved moral turpitude — without a Certificate of Eligibility: Bullock, Chilton, Choctaw, Dallas, Escambia, Greene, Houston, Jefferson, Lowndes, Macon, Madison, Marengo, Mobile, Montgomery, Pike, Randolph, St. Clair, Talladega, Tallapoosa and Tuscaloosa.

33. Registrars throughout Alabama, under the direction of the Secretary of State, are employing practices and procedures that are inconsistent with a Section 5 precleared Alabama law and have not themselves been submitted for preclearance, in violation of Section 5 of the Voting Rights Act.

34. The effect of these practices is to deny the vote to eligible citizens of Alabama.

35. The constitutional amendment that was duly enacted and precleared pursuant to Section 5 of the Voting Rights Act on June 24, 1996 is the law of Alabama with respect to felon disfranchisement in the State and constitutes the

benchmark for Section 5 purposes. Any voting practice or procedure that contradicts, enlarges or frustrates this law constitutes a voting change within the meaning of the Voting Rights Act that must be precleared pursuant to Section 5 before it may legally take effect.

Alabama's Denial of the Franchise to Plaintiff Gooden

36. On September 21, 2005 Plaintiff Gooden attempted to register with Defendant Jefferson County Registrar, but was informed that he was “not eligible” to register to vote because of his felony DUI conviction.

37. Notwithstanding the ratification — by the people of Alabama — of the constitutional amendment narrowing the scope of the State’s felon disfranchisement law to felons who have committed crimes of moral turpitude, the Attorney General’s Opinion, and the press release issued by the Board of Pardons, Plaintiff Gooden was instructed by Defendant Jefferson County Registrar to apply to the Board of Pardons and Paroles for a Certificate of Eligibility.

38. Plaintiff Gooden was informed later that day by an employee of the Board of Pardons and Paroles that because his felony DUI conviction did not involve moral turpitude, consistent with Alabama law and the related Attorney General’s Opinion, he need not apply for a Certificate of Eligibility since their voting rights were never forfeited.

39. Upon information and belief, an employee of the Board of Pardons telephoned Defendant Jefferson County Registrar on September 21, 2005, and explained that Plaintiff Gooden was not disqualified from voting since his felony conviction did not involve moral turpitude, and, therefore, that a Certificate of Eligibility was not necessary for him to register to vote.

40. Upon information and belief, the employee of the Board of Pardons also offered to fax Defendant Jefferson County Registrar a copy of the press release the Board of Pardons had issued to this effect.

41. Upon information and belief, notwithstanding its recognition that Plaintiff Gooden's felony DUI conviction did not involve moral turpitude, and that, in fact, his conviction was expressly identified under Alabama law and in the Attorney General's Opinion as non-disqualifying crime, Defendant Jefferson County Registrar informed the Board of Pardons that the Defendant Secretary of State had directed them not to register individuals with felony convictions who had not obtained a Certificate of Eligibility, without regard to whether or not such felony convictions involved moral turpitude.

42. Efforts to resolve this issue with the Secretary of State, as to Plaintiff Gooden and all similarly situated Alabamians, have been unsuccessful, and the Secretary of State continues to enforce voting practices and procedures that have not been precleared as required by Section 5 of the Voting Rights Act of 1965, which result in the deprivation of the right to vote.

Alabama's Denial of the Franchise to Plaintiff Jones

43. In a June 20, 2005 letter to Plaintiff Jones, the Board of Pardons explained that after reviewing his "application for a Certificate of Eligibility to Register to Vote, we have determined that you were convicted of possession of a controlled substance," which is a felony "that does not appear to this agency to involve moral turpitude." The Board of Pardons determined that, according to Amendment 579 of the Alabama Constitution, Mr. Jones' "conviction does not disqualify [him] from voting." The Board of Pardons, therefore, asserted that "we

are closing our file on your application, as you do not need a certificate in order to be eligible to register.”

44. Plaintiff Jones, after receiving the June 20, 2005 letter from the Board of Pardons, submitted a Voter Registration Form to Defendant Jefferson County Registrar.

45. Notwithstanding the Board of Pardon’s June 20, 2005 letter to the contrary, Defendant Jefferson County Registrar, in a June 30, 2005 letter to Plaintiff Jones, stated that his Voter Registration Form could not be processed because “a person convicted of a felony offense is barred from voting, unless there has been a reinstatement of voting rights.”

46. Defendant Jefferson County Registrar referred Plaintiff Jones to the Board of Pardons to “get [his] voting rights restored.” “If you have already done this,” the letter concluded, “mail a copy of your Certificate of Pardon or Certificate of Registration of Voter Rights to the Jefferson County Board of Registrars.”

47. Inexplicably, Plaintiff Jones was later mailed a Voter Registration Card, which permitted him to vote in “all elections — except municipal.”

Alabama’s Denial of the Franchise to Plaintiff Doss

48. On or about October 5, 2005, Plaintiff Doss attempted to register to vote with Defendant Houston County Registrar, but was informed that he was ineligible to register to vote because of his felony possession of marijuana conviction.

49. Notwithstanding Defendant Houston County Registrar’s recognition that Plaintiff Doss’s felony conviction did not involve moral turpitude,

and that, in fact, his conviction was expressly identified in Alabama law and the Attorney General's Opinion as a non-disqualifying crime, Defendant Houston County Registrar informed Plaintiff Doss that the Defendant Secretary of State had directed them not to register individuals with felony convictions who had not obtained a Certificate of Eligibility, without regard to whether or not such felony convictions involved moral turpitude.

50. Plaintiff Doss was instructed by Defendant Houston County Registrar to apply to the Board of Pardons for a Certificate of Eligibility.

Effect of Statewide Practices

51. Upon information and belief, a substantial but unspecified number of similarly situated citizens of Alabama are being denied the right to vote as result of the conduct described above on the part of the Secretary of State and Registrars.

52. The practices of the Secretary of State and Registrars described above are contrary to precleared practices and procedures affecting voting that are required to be, but have not been, submitted to the Attorney General of the United States of a District Court in the District of Columbia for preclearance.

CAUSE OF ACTION

53. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 52 above.

54. Defendant Secretary of State and Defendant Registrars have violated Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §

1973c, by administering voting practices and procedures that have not been precleared pursuant to Section 5 of the Voting Rights Act.

55. Specifically, Defendant Secretary of State, upon information and belief, directed Jefferson County Registrar, Houston County Registrars, and voter registrars in at least 18 other counties in Alabama, not to register people with felony convictions irrespective of whether or not such convictions involved moral turpitude, in violation of Section 5 of the Voting Rights Act of 1965.

56. This misrepresentation by the Secretary of State of the right of certain persons to register to vote has caused State Registrars in at least twenty counties to refuse to register eligible persons in the State of Alabama.

57. Plaintiffs are without an adequate remedy at law and will suffer irreparable damage unless the actions of the Defendants in violation of the Section 5 of the Voting Rights Act of 1965 are enjoined.

58. The gravity of the rights deprivation that would flow to Plaintiffs and other similarly situated individuals from resolving these critical issues on Defendant Secretary of State's timetable necessitates immediate action.

PRAYER FOR RELIEF

WHEREFORE, THE PREMISES CONSIDERED, the Plaintiffs respectfully request that the following relief be granted:

59. Plaintiffs request that their Section 5 enforcement claims be heard and determined by a court of three judges in accordance with 42 U.S.C. § 1973c and the provisions of 28 U.S.C. § 2284.

60. Plaintiffs request that the Court enter a declaratory judgment that Defendant Secretary of State and Defendant Registrars' actions violate Plaintiffs

rights secured by Section 5 of the Voting Rights Act of 1965. Plaintiffs request that this Court enter a declaratory judgment that Defendant Secretary of State and Defendant Registrars lack the authority, unless and until Defendants obtain preclearance for such practices and procedures after submitting those practices and procedures for preclearance, as required by Section 5 of the Voting Rights Act, to preclude individuals convicted of felonies not involving moral turpitude from registering to vote and voting under Alabama law.

61. Plaintiffs request the award of reasonable attorneys' fees, expenses, and costs under 42 U.S.C. §§ 1973l(e) and 1988.

62. Plaintiffs request such other, further, and different relief as the facts and circumstances may warrant.

Dated: Birmingham, Alabama
December 19, 2005

Submitted by,



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EXHIBIT 12

Exhibit 12

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TREVA THOMPSON, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	2:16-cv-783-ECM-SMD
	)	
JOHN H. MERRILL, in his official	)	
capacity as Secretary of State, <i>et al.</i> ,	)	
	)	
Defendants.	)	

DECLARATION OF DR. DANIEL A. SMITH

I. Background and Qualifications

1. My name is Daniel A. Smith. I am Professor and Chair of Political Science at the University of Florida (“UF”). I received my Ph.D. in Political Science from the University of Wisconsin-Madison in 1994. I served as the Director of UF’s Political Campaigning Program (2007-2011), which offers a Master of Arts degree in political science with a special emphasis on political campaigning and practical politics. I am also President of ElectionSmith, Inc., a consulting firm based in Gainesville, FL, specializing in empirical research on electoral processes in the American states.

2. For more than two decades, I have conducted research on electoral politics in the American states, focusing on the effect of political institutions on political

behavior. I am widely regarded as a leading expert on voting and elections in the American states. I have written extensively on electoral processes in the American states, including the effects of felony disenfranchisement laws, and have published more than 80 articles and book chapters, including many that have appeared in the discipline's top peer-reviewed journals. My research has been cited over 3,000 times by fellow scholars. I have published two academic books on electoral politics in the American states and I am the coauthor of a leading college textbook, *State and Local Politics: Institutions and Reform*, which includes a discussion of state voting laws related to people convicted of a felony as well as various issues related to Alabama politics. In addition, I have taught an array of undergraduate and graduate courses focusing on American political institutions and political behavior in the American states.

3. I have testified before the U.S. Senate and state legislatures on voting and election issues. A former Senior Fulbright Scholar, I have received numerous grants and awards for my work on campaigns and elections, including from the U.S. Department of State and the American Political Science Association ("APSA"), and am past-President of the State Politics and Policy Section of the APSA. In 2010, I was the lead author of the "Direct Democracy Scholars" *amicus* brief in *Doe v. Reed*, which was successfully argued by the Attorney General of the

state of Washington before the U.S. Supreme Court, and my scholarship has been cited in an opinion of the U.S. Supreme Court.

4. I have served as an expert in election-related litigation in several states, hired by both plaintiffs and defendants (including serving as an expert for the State of Florida and the State of California defending their election laws). Most recently, I provided written reports and testified at trial in *Jones v. Ron DeSantis, etc. et al.*, (Consolidated Case No. 4:19-cv-300, N.D. Fla.), where the court has cited my analysis of individuals convicted of a felony in Florida who are eligible, but for legal financial obligations, to have their voting rights restored, and *American Civil Rights Union v. Snipes* (Case No. 16-cv-61474, S.D. Fla.), where the court accepted my opinion in whole; and provided written reports for successful plaintiffs in *Fair Fight Action v. Crittenden* (Case No. 1:18-cv-05391, N.D. Ga.), *DNC Services Corporation et al. v. Lee et al.* (Case No. 4:18-cv-520 (RH/MJF, N.D. Fla.), *MOVE Texas Civic Fund, et. al. v. Whitley, et. al.* (Case No. 3:19-cv-00041, S.D. Tex.), for defendants in *Judicial Watch, Inc., Election Integrity Project California, Inc., et al. v. Dean C. Logan, et al.* (Case No. 2:17-cv-08948-R-SK, C.D. Cal.), for successful plaintiffs in *Rivera v. Detzner* (Case No. 1:18-cv-00152, N.D. Fla.), for plaintiffs in *Ohio A. Philip Randolph Institute, et al. v. Secretary of State, Jon Husted* (Case No. 2:16-cv-00303, S.D. Ohio), for successful plaintiff-intervenors in *Florida Democratic Party v. Scott* (Case No. 4:16-cv-

00626, N.D. Fla.), for successful plaintiffs in *Florida Democratic Party v. Detzner* (Case No. 4:16-cv-00607, N.D. Fla.), and for successful plaintiffs in *League of Women Voters of Florida v. Detzner* (Case No. 4:18-cv-00251, N.D. Fla.).

5. My curriculum vitae (including a list of cases in which I have served as an expert witness) is provided in Appendix A. I am being paid \$350 an hour for work in this case, plus any related expenses.

II. Data Utilized and Summary of Opinions Offered

6. I was retained by counsel for the Plaintiffs to analyze several data files and opine on issues relevant to the litigation, including but not limited to the discriminatory impact of Alabama's felony disenfranchisement scheme over time and the burden imposed by Alabama's requirement that legal financial obligations be satisfied before voting rights are restored to people with felony convictions.

7. As a preview of my findings, my analysis of these numerous data files provides consistent evidence of the discriminatory impact of Alabama's felony disenfranchisement scheme for poor and Black individuals residing in Alabama, both pre- and post-implementation of H.B. 282 (on August 1, 2017). My analysis reveals a consistent pattern across Alabama's 67 counties that Black individuals—who disproportionately have less household income and are more likely to live in poverty in Alabama compared to Black households and individuals nationally, as well as compared to White households and individuals residing in Alabama—are

disproportionately more likely to be convicted of, or plead guilty to, a felony that disqualifies them from exercising their right to vote because the felony falls under the classification of “moral turpitude.” This pattern existed at the time Alabama implemented H.B. 282, and it has remained true for new felony convictions after the implementation of H.B. 282. I find similar patterns regarding the decisions about what crimes of moral turpitude should be included (and excluded) that were made by Alabama Secretary of State John Merrill’s “Voter Disenfranchisement and Restoration of Voting Rights Exploratory Committee” in December 2015: that is, Black individuals are disproportionately more likely to have had a felony conviction for a crime of “moral turpitude” compared to White individuals, even when controlling for the disproportionate rate of felony convictions generally in the Black community. Finally, regardless of race, the prevalence of individuals with significant amounts of outstanding LFOs, combined with the lower economic status of individuals with felony convictions in Alabama, serve as a large barrier to voting rights restoration for Alabamians.

8. In formulating my opinions in this report, I use standard sources in political science analyses and I draw on data provided to me by counsel, as well as publicly available data downloaded from the United States Census Bureau. In my report I offer both individual-level and aggregate-level (county) analyses. My analysis draws on the following data files provided to me by counsel:

- a. “ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1/1/1983 THRU 5/1/2019,” a Microsoft Excel data file on felony convictions in Alabama furnished by the Alabama Office of Courts (AOC) dated July 14, 2019 that contains 696,583 rows;
- b. D200069, a Microsoft Excel file provided by the Board of Pardons and Paroles in July 2019 that is a result of a merge conducted by the Board and contains 2,618 rows from April 1, 2018 through June 25, 2019. This file can be appended to D005349, a Microsoft Excel file produced by the Board of Pardons and Paroles in May 2018 that contains 22,365 rows of data;¹
- c. “Disqualifying Key,” a data file provided by counsel detailing which felony offenses under H.B. 282 constitute the 46 disqualifying felonies (with 121 discrete crimes) under which voting rights are lost due to “moral turpitude” or not;

¹ According to a letter from Misty S. Fairbanks Messick, Assistant Attorney General, to Danielle Lang at the Campaign Legal Center, dated July 3, 2019, D005349 is the product of data from D005351 (pardon and CERV applications) that the Board of Pardons and Paroles merged with race/address/gender data “from a separate docket file” maintained by the Administrative Office of the Courts, that includes applicants from 2008 through May 2018. D00069 is the result of a similar merge conducted by the Board of Pardons and Paroles that includes applicants from April 1, 2018 through June 25, 2019. It is my understanding that earlier denied applications are overwritten in both databases. Merging on unique Alabama institutional serial (“AIS”) numbers, there are 416 rows in D005349 (corresponding to 410 unique individuals) who are also in D200069. The D005349 records for these individuals are dropped. In addition, all CERV applications that have a “vrstatus” field that includes “out of state” are dropped.

- d. “Alabama No CERV Conviction List,” a file provided by counsel detailing which felony offenses constitute the 15 disqualifying felonies (with 46 discrete crimes) under which voting rights would be lost due to “moral turpitude,” drawn from the “Voter Disenfranchisement and Restoration of Voting Rights Exploratory Committee” headed by Alabama Secretary of State John Merrill (hereafter referred to as the “Exploratory Committee”;
- e. D200071 (an update of D064502), a statewide Alabama voter list produced by the Secretary of State’s office in July 2019, containing 5,183,569 records of registered voters regardless of “registrant status.”
- f. By construction, D200071 includes all the data contained in D200070 (an update of D009606), a data file produced by the Secretary of State’s office in July 2019, of 82,554 registered voters whose registrant status at the time of the snapshot is “not eligible” or “disqualified”, and whose registration “status reason” is “Criminal Conviction/Moral Turpitude,” also referred to as “CRM”.²
- g. D064537 (an update of D014404), “Files on Disc,” a pdf created by the Secretary of State’s office with registrant status codes in the Alabama voter list;

² D200071 contains 82,555 individuals with a registrant reason of CRM, one more individual than contained in D200070, specifically an individual from Jefferson County who has a registrant reason status of CRM, but whose registrant status is listed as “active,” rather than “not eligible” or “disqualified.”

h. D200072 and D200073 (updates of D014404 and D064537, respectively), “Registrant reason codes,” contains codes of registrant status reason in the Alabama voter file;

i. “Exploratory Committee Notes 12.21.15,” a pdf provided by counsel with the Exploratory Committee Agenda from its December 21, 2015 meeting, and related materials.

9. In addition, my analysis relies on publicly available data from the United States Census Bureau, specifically Table B19013A (White alone) and Table B19013B (Black (or African American) alone) median household income, drawn from the 2014-2018 *American Community Survey 5-Year Estimates* (ACS), as well as ACS 5-Year Estimates for Citizen Voting Age by Race and Ethnicity (White alone and Black (or African American) alone) for Alabama and its counties.

10. My analysis of the number of persons in Alabama with felony convictions excludes all individuals with an out-of-state or federal felony conviction. As such, my findings are biased *against* inflating the number of persons with felony convictions who might be eligible to have their voting rights restored under H.B. 282.

III. Financial Barriers for People with Felony Convictions

11. An analysis of the literature on individuals who have been incarcerated for a felony conviction and income is clear: a high percentage of persons with a past

felony conviction will be unable to pay their outstanding LFOs. Why might this be? First, income is lower among people incarcerated, even before their incarceration.³ Second, after a conviction, there is a significant incarceration “wage penalty” estimated to range between 10–30% between those with a conviction and those without,⁴ with earnings decreases in the first year following release from incarceration.⁵ The unemployment rates among formerly incarcerated persons between the ages of 25-44 years old exceed 27%—over four times that of the general public (5.8%) and greater than the total U.S. unemployment rate during any historical period, including the Great Depression (24.9%).⁶ Homelessness rates are also higher for persons formerly incarcerated, as “2% of formerly incarcerated people were homeless in 2008 (the most recent year for which data are

³ See Prison Policy Initiative (2015), available at: <https://www.prisonpolicy.org/reports/income.html>, (“[I]ncarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages.”)

⁴ See, Sara Wakefield and Christopher Uggen, “Incarceration and Stratification,” *Annual Review of Sociology* 36 (2010): 387-406.

⁵ Adam Looney and Nicholas Turner, “Work and opportunity before and after incarceration,” The Brookings Institution, March 2018, available at: https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

⁶ See Prison Policy Initiative, “Out of Prison & Out of Work: Unemployment among formerly incarcerated people,” July 2018, available at: <https://www.prisonpolicy.org/reports/outofwork.html>.

available), a rate nearly 10 times higher than among the general public.”⁷ In short, it is clear that individuals face significant economic barriers as a result of a felony conviction. As such, formerly incarcerated individuals are usually unable to pay their assessed LFOs because they face significant economic barriers.

IV. Median Household Income and Levels of Poverty in Alabama

12. I begin my analysis by comparing Alabama’s overall poverty rate compared to the poverty rate for the entire nation, and also comparing Alabama’s median household income with the median household income for the entire nation.

13. The ratio of income to poverty for Alabama families, compared to families in the United States, is dramatic: Alabama has a disproportionate number of impoverished families as compared to families across the entire United States, and this gap has persisted for years. An “income-to-poverty ratio” can be used to measure the relative poverty level in a jurisdiction.⁸ Ratios below 100% of the poverty level indicate that those living in the jurisdiction fall below the official poverty level, with ratios below 50% of the poverty level (so, income is less than

⁷ Prison Policy Initiative, “Nowhere to Go: Homelessness among formerly incarcerated people,” August 2018, available at: <https://www.prisonpolicy.org/reports/housing.html>.

⁸ Alemayehu Bishaw and Brian Glassman, “Poverty: 2014-2015,” *American Community Survey Briefs*, U.S. Census Bureau, available at: <https://www.census.gov/content/dam/Census/library/publications/2016/acs/acsbr15-01.pdf>.

half the poverty threshold) indicating severe poverty, and ratios above 100% but below 125%, indicating near-poverty levels. According to the Census Bureau's *2014-2018 American Community Survey 5-Year Estimates*, specifically Table B17026, nearly 213,000 families in Alabama, or 17.3% of Alabama families, are classified by the Census Bureau as falling under the 1.25 income-to-poverty ratio; in contrast, 13.7% of the 78.7 million families in the United States fall under the 1.25 income-to-poverty ratio.⁹

14. Median household income is another useful indicator to reveal the financial challenges affecting Alabama households at a higher rate than households across the United States. The most recent available data indicates that median household income in Alabama is about \$14,000 less than national household income.

According to the Census Bureau's *2014-2018 American Community Survey 5-Year Estimates*, specifically Table B19019, the median yearly household income for a three-person household in Alabama was \$63,659 (with a margin of error of +/- \$926). In contrast, the median yearly household income for a three-person household in the United States was \$77,463 (with a margin of error of +/- \$275).¹⁰

⁹ Ibid.

¹⁰ Data from U.S. Census Bureau's "Median Household Income in the Past 12 Months (in 2018 Inflation-Adjusted Dollars) by Household Size" (Table B19019) available at:

V. Black and White Median Household Income and Levels of Poverty in Alabama

15. It is also possible to examine differences in Black median household income and White median household income within Alabama. Median household income in Alabama reveals a stark racial gap. According to the most recent available United States Census data, the median household income of Black individuals is substantially less than that of White individuals across all of Alabama's 67 counties. As such, it is possible to infer that there is a disproportionate burden imposed on Black individuals residing in Alabama by the state's requirement that legal financial obligations must be satisfied before the restoration of voting rights.

16. Within Alabama, there are stark differences in the median incomes of Black and White households. Again, I draw on the Census Bureau's *2014-2018 American Community Survey 5-Year Estimates*, specifically Tables B19013A and

https://data.census.gov/cedsci/table?q=United%20States&table=DP05&tid=ACSDT5Y2018.B19019&g=0100000US_0400000US01&lastDisplayedRow=29&vintage=2018&layer=state&cid=DP05_0001E&t=Income%20%28Households,%20Families,%20Individuals%29&d=ACS%205-Year%20Estimates%20Detailed%20Tables&y=2018.

Data from U.S. Census Bureau's "Ratio of Income to Poverty Level of Families in the Past 12 Months" (Table B17026) available at:

https://data.census.gov/cedsci/table?q=United%20States&table=DP05&tid=ACSDT5Y2018.B17026&g=0100000US_0400000US01&lastDisplayedRow=29&vintage=2018&layer=state&cid=DP05_0001E&t=Income%20%28Households,%20Families,%20Individuals%29%3AOfficial%20Poverty%20Measure&d=ACS%205-Year%20Estimates%20Detailed%20Tables&y=2018.

B19013B.¹¹ According to the Census Bureau’s latest 5-Year estimates, the median income for Black households in Alabama in 2018 inflation-adjusted dollars was \$32,188 (with a margin of error of +/- \$381). The median income for Black households nationally, for comparative purposes, was \$40,155 (with a +/- \$116 margin of error). In contrast, the median income for White households in Alabama according to the 2018 ACS was during the same period was \$55,265 (with a margin of error of +/- \$446), compared to \$63,917 (with a +/- margin of error of \$126) for White households, nationwide. In simplest terms, the median White household income in Alabama is nearly 72% higher than the median Black household income, which translates to more than \$21,000 annually in household income (2018 inflation-adjusted dollars).

¹¹ Data from U.S. Census Bureau’s “Median Household Income in the Past 12 Months (in 2018 inflation-adjusted dollars) (Black or African American Alone Householder)” (Table B19013B), *2014-2018 American Community Survey 5-Year Estimates*, available at: https://data.census.gov/cedsci/table?q=United%20States&table=DP05&tid=ACSDT5Y2018.B19013B&g=0100000US_0400000US01&lastDisplayedRow=29&vintage=2018&layer=state&cid=DP05_0001E&t=Income%20%28Households,%20Families,%20Individuals%29%3ARace%20and%20Ethnicity&d=ACS%205-Year%20Estimates%20Detailed%20Tables&y=2018, and the “Median Household Income in the Past 12 Months (in 2018 inflation-adjusted dollars) (White Alone Householder)” (Table B19013A), *2014-2018 American Community Survey 5-Year Estimates*, available at: https://data.census.gov/cedsci/table?q=United%20States&table=DP05&tid=ACSDT5Y2018.B19013A&g=0100000US_0400000US01&lastDisplayedRow=29&vintage=2018&layer=state&cid=DP05_0001E&t=Income%20%28Households,%20Families,%20Individuals%29%3ARace%20and%20Ethnicity&d=ACS%205-Year%20Estimates%20Detailed%20Tables&y=2018Black.

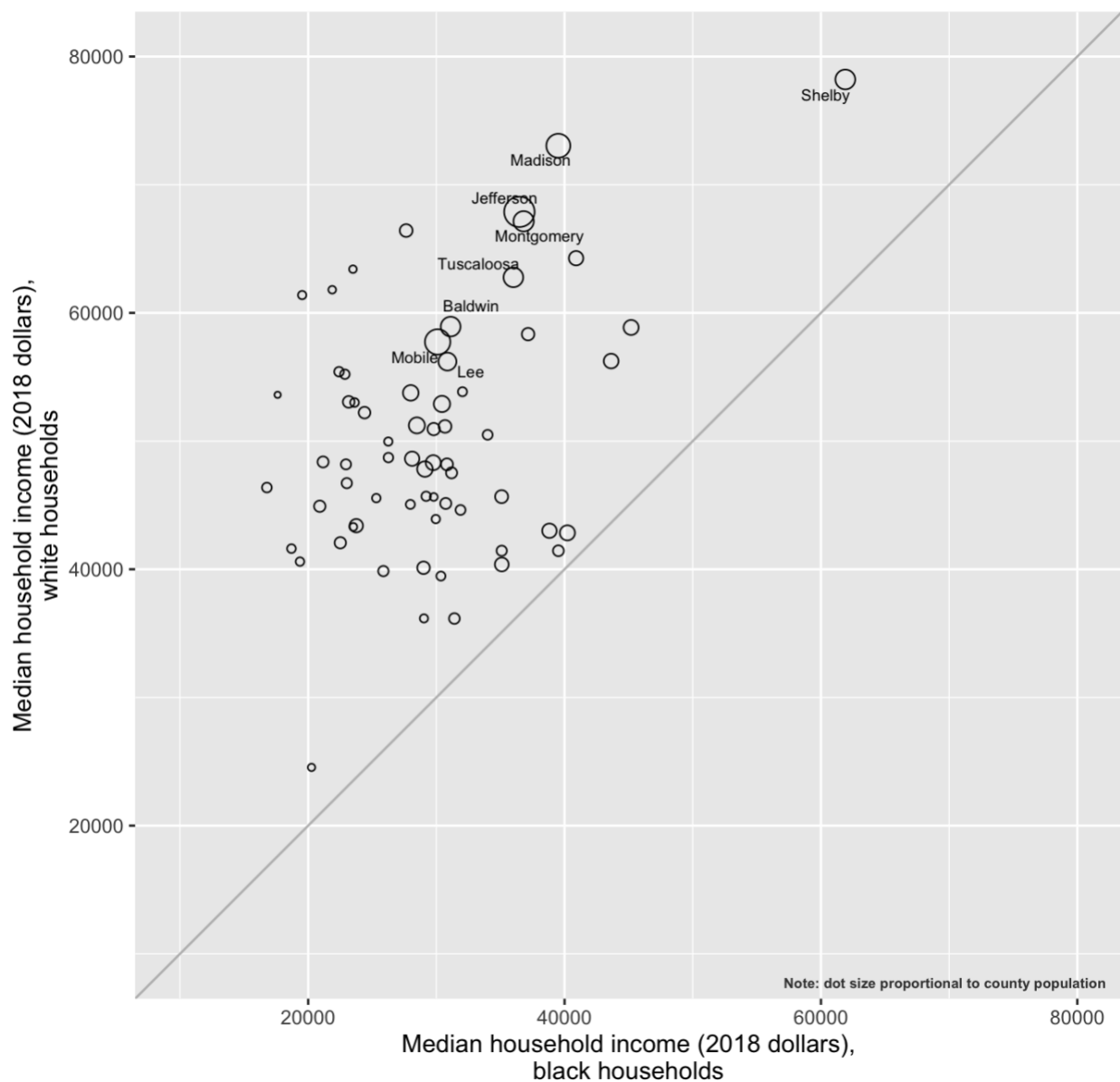
17. Figure 1 displays the disparity in Black and White median household incomes in Alabama. Figure 1 has a diagonal line fixed at a 45° angle. The X-axis (horizontal), labeled “Median household income (2018 dollars), Black households,” is the dollar amount (from \$0 to \$80,000) of Black household income; the Y-axis (vertical) is labeled “Median household income (2018 dollars), White households,” with the same range of dollar amounts. The diagonal 45° line allows us to easily visualize how across every one of Alabama’s 67 counties, Black household income is *lower* than White household income, according to the Census Bureau’s latest 2014-2018 5-Year estimates.¹² Every county circle is *above* the 45° line, indicating White household income is greater than Black household income.

18. In roughly one-third of Alabama’s counties, the difference in median household income for Black individuals and White individuals is greater than \$25,000 in 2018 inflation-adjusted dollars. For example, the Census Bureau estimates that the median income in Lee County for White households is \$56,201 (+/- \$2,852), whereas it is only \$30,862 (+/- \$2,608) for Black households, a difference of roughly \$25,000. Disparate White and Black household income is important when trying to understand the differential rates of individuals with a

¹² The 2014-2018 American Community Survey 5-Year Estimates does not provide estimates of Black median household income for Winston County.

felony conviction who are unable to pay outstanding debts to the Alabama court system.

Figure 1: Black and White Median Household Income (2018 dollars), by County



VI. Analysis of Alabama Administrative Office of Courts (AOC File) on “Felony Convictions and Guilty Pleas”

19. As mentioned previously, the data file, “ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1/1/1983 THRU 5/1/2019,” provided by the Alabama Administrative Office of Courts and which I refer to as the “AOC file”, has 696,583 rows and provides information about individuals convicted of a felony or who plead guilty to a felony. (For simplicity, throughout, I refer to both types of adjudications as a “felony conviction.”)

20. Because some rows contain multiple convictions, there are more convictions than rows in the AOC file. There are a total of 741,932 convictions in the AOC file. Each felony conviction includes a “court action” date, ranging from January 1, 1983 through May 1, 2019. Counsel informs me that not all of Alabama’s counties were using the state’s central database system until the early 1990s. As such, 97,356 observations with a court action date occurring prior to January 1, 1993, relying on the *DISPOSED_ON* date variable in the AOC file, are not included in the analysis. In addition, I did not include 37 of the 741,932 felony convictions from the analysis because they contain the word “copies” in the defendant “name” field, as it is indicative of an AOC data entry problem.

21. Unfortunately, the AOC file contains a limited amount of personal information about individuals in Alabama convicted of a felony. Although the

AOC file includes an individual's name, race, and the county¹³ in which the court action took place, the file has missing data in fields containing an individual's birthdate, an individual's six-digit AIS Number, and an individual's last four digits of a Social Security number.¹⁴ In addition, the file contains no information about an individual's gender or address. As such, because some individuals appear in the file more than once (i.e., an individual convicted of more than one felony may have more than one case number), and not all rows contain AIS numbers, it is not possible to definitively link all individuals in the file.¹⁵

¹³ In a few cases, the county field in the "ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1-1-1983 THRU 5-1-2019.xlsx" data file lists a city rather than a county. For Alex City, Bessemer, Eufaula, and Pell City, each case is grouped with its associated county. The exception is "Enterprise City," a municipality that straddles two counties (Coffee and Dale); all cases whose county field name is Enterprise City are excluded from any analyses that rely on Census data.

¹⁴ The "ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1-1-1983 THRU 5-1-2019.xlsx" data file has 696,583 rows. Of these rows, there are 8,849 rows with missing birth dates, 50,924 rows with missing last-four Social Security numbers, and 271,738 rows with missing AIS numbers. Because of these missing data issues, records within the AOC data file are linked with an exact match of name, birth date, and county.

¹⁵ Research by Marc Meredith and Michael Morse indicates that state corrections records maintained by the Alabama Department of Corrections include information about an individual's date of birth and that each individual in the state corrections system is provided a unique Alabama institutional serial (AIS) number. They write, "We also observe each applicant's full name, unique Alabama institutional serial (AIS) number, date of birth, date of application, and granted date if applicable." See Marc Meredith and Michael Morse, "Discretionary Disenfranchisement: The Case of Legal Financial Obligations," *The Journal of Legal Studies* 46 (2017): 309-338, p. 322.

22. Given the limited personal information contained in the AOC file that is complete (i.e., name, race, county), attempting to identify and then match unique individuals who might be listed multiple times within the data file—as well as linking unique individuals in the data file to other data files—may lead to “false positives (matches between files that in fact correspond to different individuals) and false negatives (failure to match records on two files that correspond to the same individual).”¹⁶ To mitigate these possible error types, a unique string of characters from the three available fields (name, race, and county) with near-complete data in the AOC file is concatenated into new field.¹⁷

23. Following these steps, even though the AOC file lacks a common identifier for many individuals, it is possible to distinguish the full name, race, and county of a person with a felony conviction. As constructed, grouping rows in the AOC file by the unique concatenated lower-case string of an individual’s name, race, and county creates an individual-level unit of analysis, yielding 363,511 unique individuals who have at least one felony conviction. Of these unique individuals with at least one felony conviction identified in the AOC file, 171,628 are Black

¹⁶ Stephen Ansolabehere and Eitan D. Hersh, “ADGN: An Algorithm for Record Linkage Using Address, Date of Birth, Gender, and Name,” *Statistics and Public Policy*, 4 (2017), 1–10. Available:

<https://doi.org/10.1080/2330443X.2017.1389620>. (Internal citation omitted).

¹⁷ For example, SMITH DANIEL A who resides in ALACHUA county and is WHITE would be concatenated into a string, “smithdanielaalachuaw”.

(47%) and 187,278 (52%) are White, and the remaining 4,605 (1%) are of other races/ethnicities. Thus, while Black individuals represent just over a quarter of the citizen voting age population, they represent nearly half of all felony convictions in Alabama. *See* Table 2, *infra*.

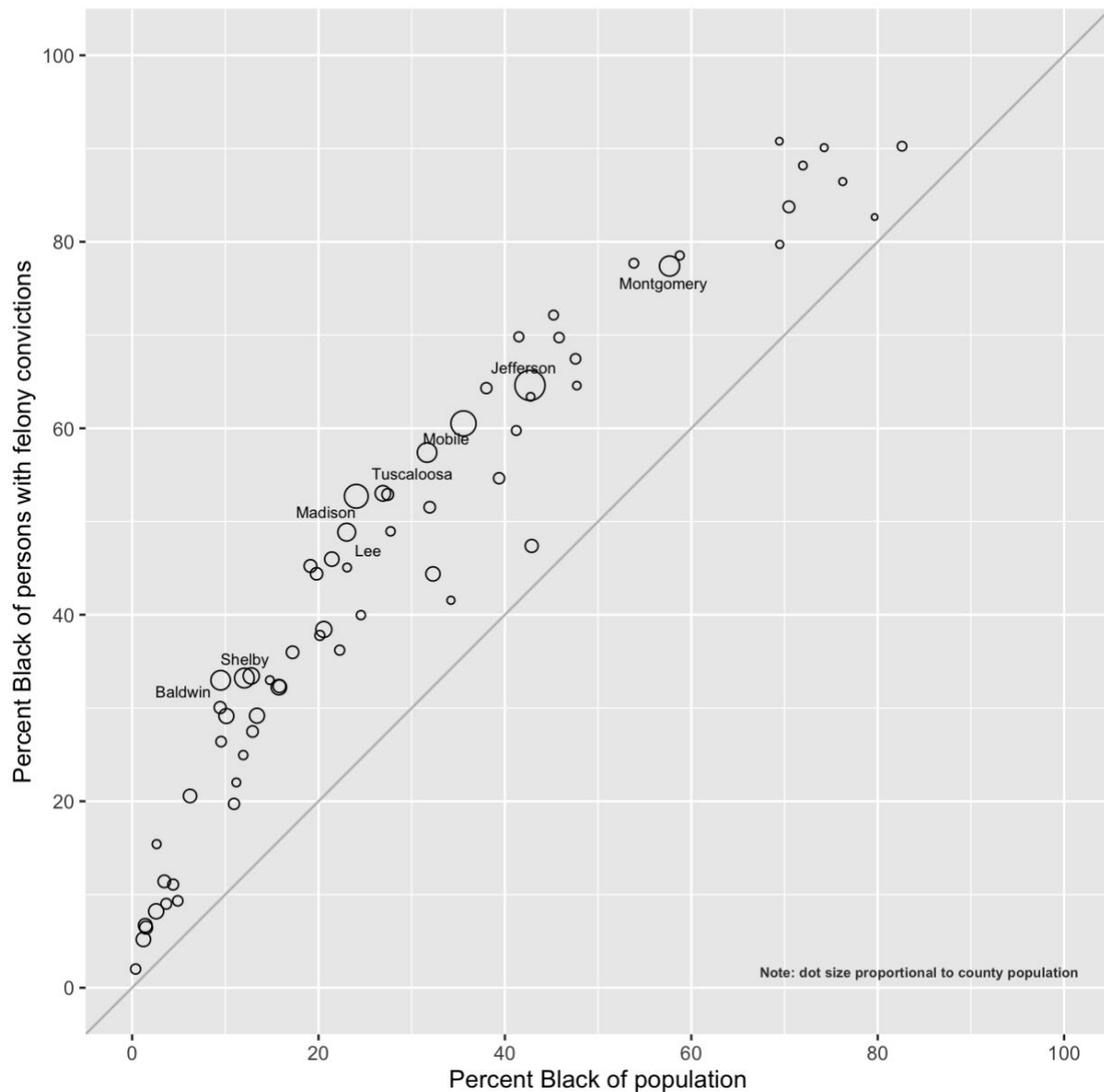
VII. Percent of Black Population Convicted of a Felony Conviction, by County

24. Drawing on the AOC file, following the steps outlined above, it is possible to compare the percentage of Black individuals residing in each county with the percentage of Black individuals with a felony conviction in each county. I begin, as shown in Figure 2, with a simple plot that provides clear evidence that the percentage of Black individuals with a felony conviction is consistently greater than the percentage of Black population across all 67 of the state's counties. Along the X-axis is the percentage of Black residents in each Alabama county (according to the Census Bureau's 2014-2018 ACS 5-year Estimates); along the Y-axis is the percentage of citizens with felony convictions who are Black in each county, according to the AOC file. Counties with at least 150,000 residents are labeled. Every Alabama county is above the diagonal 45° line, indicating that the share of Black individuals with a felony conviction (from data in the AOC file) is greater than the share of Black individuals (ACS data) residing in the county.

25. As should be clear from Figure 2, in several counties—including more populous counties of Tuscaloosa and Mobile—Black individuals make up less than

40% of the population but they account for over 50% of individuals in the county convicted of a felony. In Montgomery County, even though Black individuals make up less than 60% of the population, they comprise nearly 80% of those convicted of a felony.

Figure 2: Percent Black Population (2018 ACS) in a County and Percent of Individuals with a Felony Conviction who are Black (AOC File) in a County



26. Next, by using the felony “Disqualifying Key,” a data file provided by counsel detailing which felony offenses under H.B. 282 constitute the 46 felony categories (out of a total of 586 total felony offenses) that are disqualifying under H.B. 282, it is possible to determine which felony convictions in the AOC file fall under H.B. 282’s definition of felonies constituting moral turpitude for the limited purpose of disqualifying a person from exercising his or her right to vote.¹⁸ By using the race of an individual convicted of a felony in the AOC file, it is possible to determine the rate of those convicted of a felony that disqualifies voting rights, or does not disqualify voting rights, for both Black and White individuals across the state’s 67 counties. Using the methodology described above to identify unique individuals in the AOC file, it is possible to calculate the number of Black and White individuals with a felony conviction and to calculate the number of Black and White individuals with a felony conviction that constitute moral turpitude under H.B. 282.

27. Table 1 summarizes these calculations. As the first two columns of Table 1 reveal, Black individuals comprise 26.2% of Alabama’s Citizen Voting Age Population (CVAP), but they constitute 47.2% of all individuals in the state with a

¹⁸ The 46 felony convictions detailed in Alabama H.B. 282, §17-3-30.1(b)(2)(c.), translate into 121 discrete criminal codes in the AOC file.

felony conviction.¹⁹ White individuals, who comprise 69.4% of the state’s CVAP, account for just 51.5% of individuals convicted of a felony.

Table 1: Count (& Percent) of White and Black Citizen Voting Age Population, and Individuals with Felony Convictions, with H.B. 282 Felony Convictions, and with H.B. 282 Felony Convictions Pre- and Post-Implementation of H.B. 282

Race	Citizen Voting Age Pop. (CVAP) & Percent	Total Felony Convictions & Percent	H.B. 282 “Moral Turpitude” Felony Convictions & Percent	H.B. 282 “Moral Turpitude” Felony Convictions Pre-Implementation & Percent	H.B. 282 “Moral Turpitude” Felony Convictions Post-Implementation & Percent
White	2,548,850 (69.4%)	187,278 (51.5%)	65,409 (48.2%)	61,167 (48.5%)	4,242 (44.5%)
Black	960,075 (26.2%)	171,628 (47.2%)	68,428 (50.5%)	64,880 (51.5%)	3,548 (37.2%)
Total	3,671,110	363,511	135,579	126,047	9,532

28. As Table 1 shows, of the 363,511 individuals with a felony conviction according to the AOC file, 135,579 individuals—some 37%—have at least one felony conviction that constitutes a crime of moral turpitude under H.B. 282. It is notable that Black individuals, again who make up just over one-quarter of the state’s CVAP, account for over half of the 135,579 individuals with a felony

¹⁹ Percentages do not total 100% because there are other races/ethnicities not included in the table who make up the state’s CVAP and individuals with felony convictions.

conviction, who under H.B. 282 are disqualified from having their voting rights restored. Cut differently, of the 171,628 unique Black individuals identified with a felony conviction in the AOC data file, 68,428 (40%) have a felony conviction identified by H.B. 282. Of the 187,278 White individuals identified with a felony conviction in the AOC data file, only 65,409 (35%) have a felony conviction as identified under H.B. 282 that disqualifies them from voting.

29. In sum, not only are Black individuals in Alabama disproportionately more likely than White individuals to be convicted of a felony, they are more likely to have been convicted of a felony that *disqualified* them from exercising their right to vote under H.B. 282. So, not only does Alabama's population of people with felony convictions skew sharply by race, but H.B. 282 further skews the racial gap with respect to disenfranchisement by disproportionately impacting Black individuals.

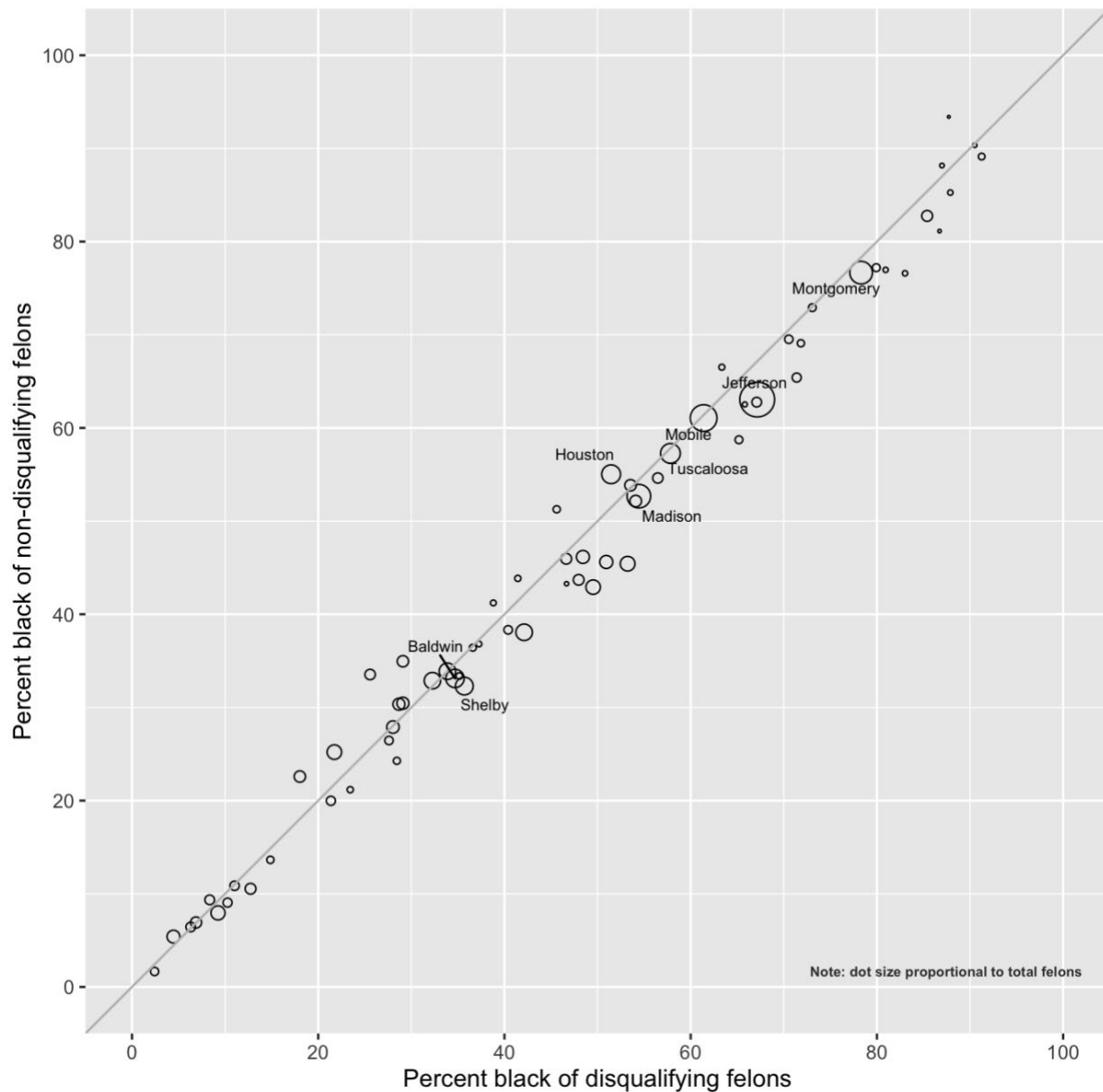
30. Figure 3 provides a visualization across Alabama's 67 counties of the percentage of Black individuals who had a disqualifying felony conviction and the percentage of Black individuals who had a non-disqualifying felony conviction for the period *prior* to the implementation of H.B. 282 (that is, January 1, 1993 through July 31, 2017). (See Table 1, second-to-last column.) Each circle in Figure 3 represents an Alabama county, and the size of the circle is proportional to the total number of individuals with a felony conviction in that county during the

time period.²⁰ The diagonal line is fixed at a 45° angle. The X-axis (horizontal), labeled “Percent Black of disqualifying felonies,” is the percentage (from 0% to 100%) of all Black individuals in a county convicted of a felony (from January 1, 1993 through July 31, 2017) disqualified from exercising their voting rights under H.B. 282. The Y-axis (vertical), labeled “Percent Black of non-disqualifying felonies,” is the percentage of all Black individuals in a county convicted of a felony (from January 1, 1993 through July 31, 2017) that does not disqualify them from exercising their voting rights.

31. The diagonal 45° line allows us to easily see—from January 1993 through July 2017—that across most of Alabama’s counties, Black individuals were *more* likely to be convicted of a felony that constitutes moral turpitude under H.B. 282 compared to Black individuals convicted of a felony that does not strip them of their voting rights. That is, more than two-thirds of the county circles fall *below* the 45° line, indicating that in these counties, Black individuals convicted of a felony are disproportionately more likely to have a felony conviction that disqualifies them of their voting rights under H.B. 282.

²⁰ For reference purposes, Figure 2 lists the counties with the largest felon populations: Baldwin, Houston, Jefferson, Madison, Mobile, Montgomery, Shelby, and Tuscaloosa.

Figure 3: *Pre-Implementation of H.B. 282, Percent Black of Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” January 1993-July 2017*



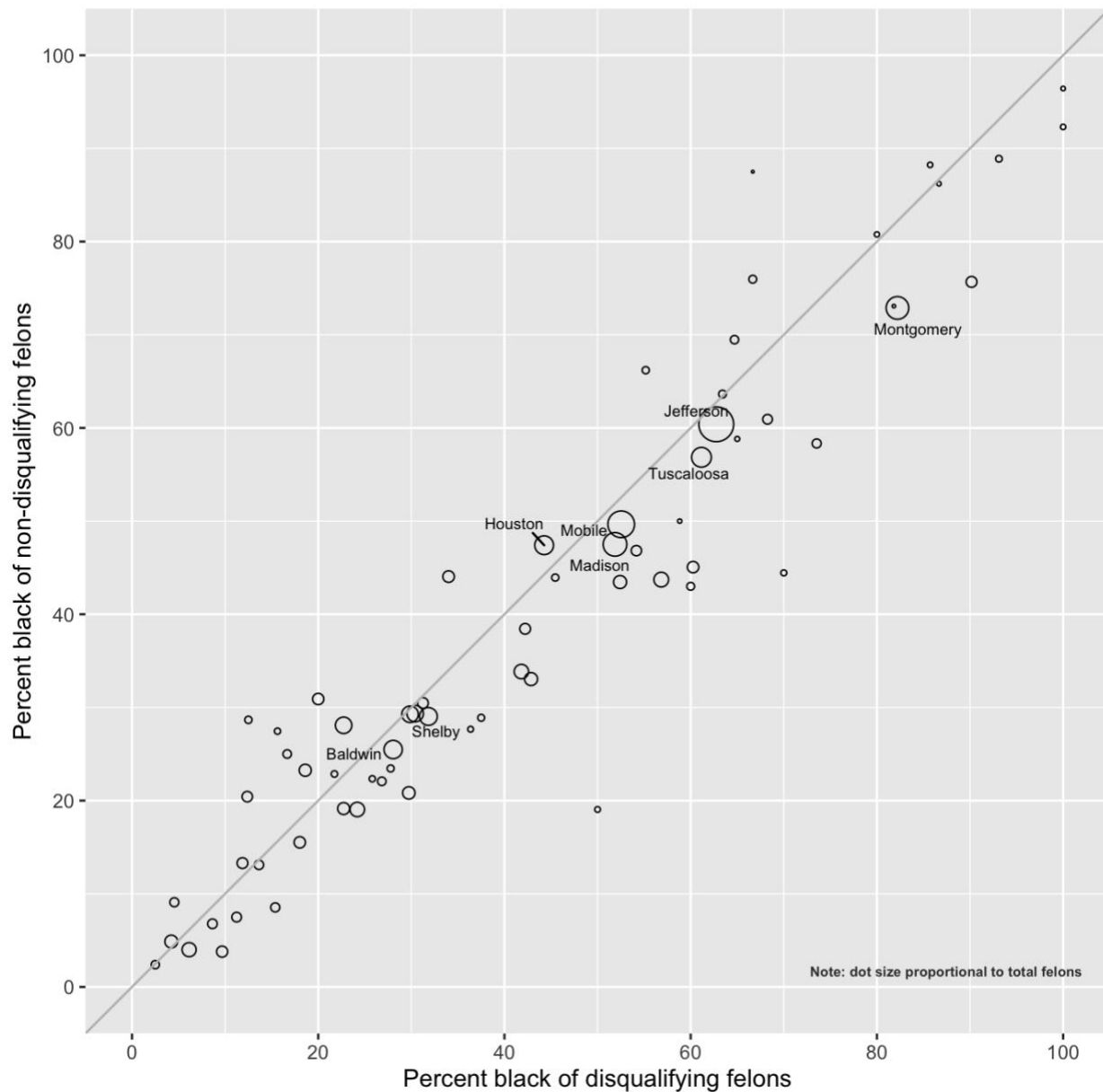
32. Figure 4 uses the same methodology, but for a more recent time period—plotting all Black individuals convicted of a felony *after* the implementation of

H.B. 282 on August 1, 2017.²¹ The figure provides circles representing each of the state's 67 counties, a diagonal 45° line, and the “percent Black of disqualifying felons” on the X-axis (horizontal) and the “percent Black of non-disqualifying felons” on the Y-axis (vertical) according to the definition of felonies constituting moral turpitude under H.B. 282.

33. There is considerably more variance in Figure 4 than in Figure 3, reflecting a lower number of total felony convictions of Black individuals between August 1, 2017 and May 1, 2019, as compared to between January 1, 1993 and July 31, 2017. (See final column of Table 1.) Still, Figure 4 looks remarkably similar to Figure 3: most of the counties fall below the 45° line. Since H.B. 282's implementation, across more than two-thirds of Alabama's 67 counties, according to data in the AOC file, Black individuals continue to be more likely to be convicted of a felony that disqualifies them of their voting rights. The evidence is clear that post-H.B. 282, Black individuals across the state are disproportionately more likely to be convicted of a felony that is classified as moral turpitude, thereby disqualifying them from voting.

²¹ For reference purposes, Figure 2 lists the counties with the largest felon populations: Baldwin, Houston, Jefferson, Madison, Mobile, Montgomery, Shelby, and Tuscaloosa.

Figure 4: *Post-Implementation of H.B. 282, Percent Black of Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” August 2017-May 2019*

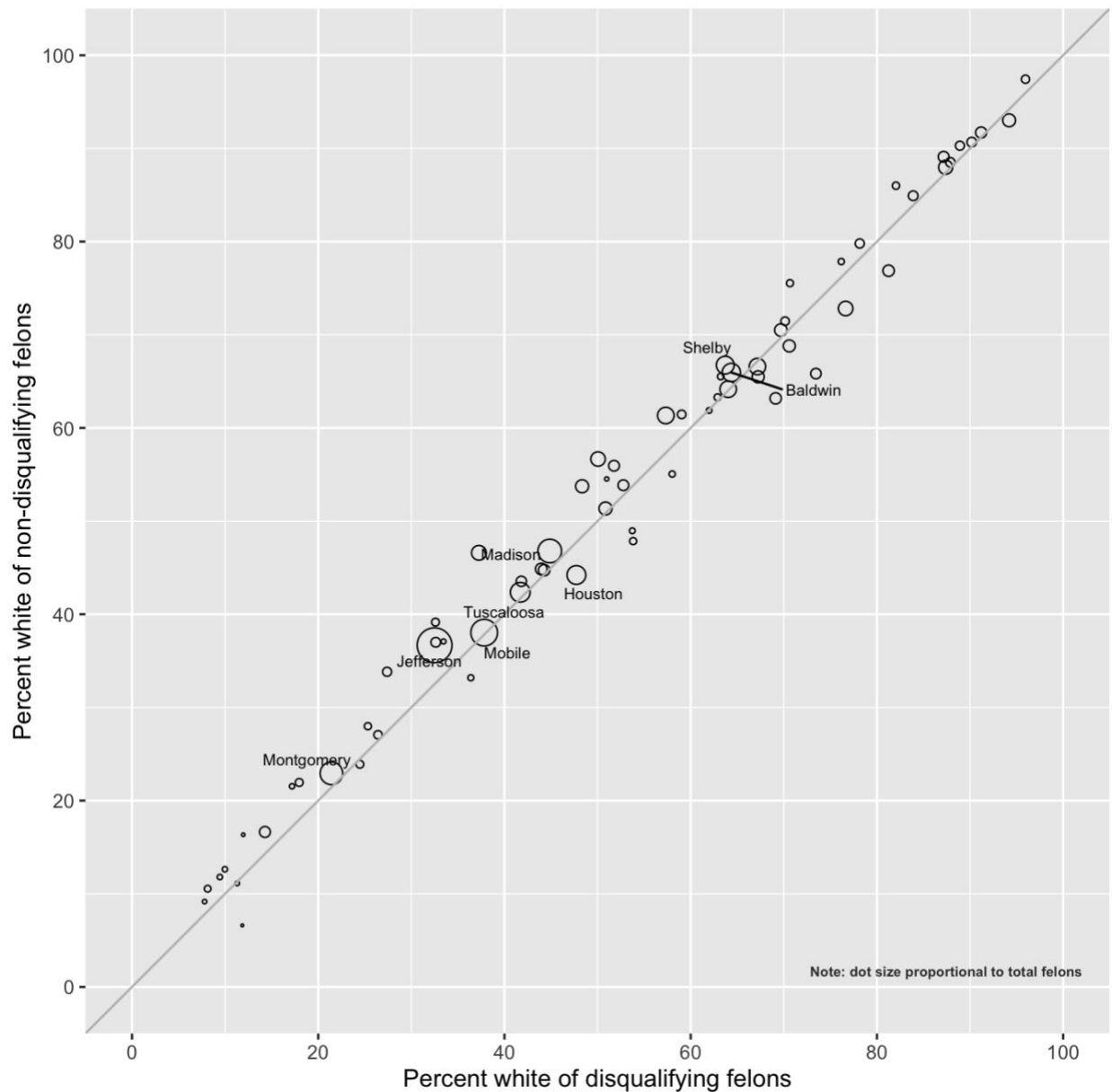


34. Using the AOC file, I conduct the same exercise for White individuals convicted of a felony, both pre- and post-implementation of H.B. 282, to determine which White individuals are disqualified and which are not disqualified of their voting rights under the statute.

35. Figure 5 provides a visualization for the period prior to the implementation of H.B. 282 (January 1, 1993 through July 31, 2017). Each circle in Figure 5 represents an Alabama county, and the size of the circle is proportional to the felon population in the county during the period. The diagonal line is fixed at a 45° angle. The X-axis (horizontal), labeled “Percent White of disqualifying felons,” is the percentage (from 0% to 100%) of all those in a county convicted of a felony (from January 1, 1993 through July 31, 2017) who are White and who are disqualified from exercising their voting rights under H.B. 282. The Y-axis (vertical), labeled “Percent White of non-disqualifying felons,” is the percentage of all those in a county convicted of a felony prior to August 1, 2017 who are White and who are *not* disqualified from exercising their voting rights under H.B. 282.

36. The diagonal 45° line serves as a visual reference. Prior to the implementation of H.B. 282, across most of Alabama’s counties White individuals with felony convictions were *less likely* to have been convicted of a felony that constitutes moral turpitude under H.B. 282. That is, more than two-thirds of the county circles are *above* the 45° line, indicating that in these counties, White individuals with felony convictions less likely to have a felony conviction that disqualifies them of their voting rights due to moral turpitude.

Figure 5: *Pre-Implementation of H.B. 282, Percent White of Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” January 1993-July 2017*

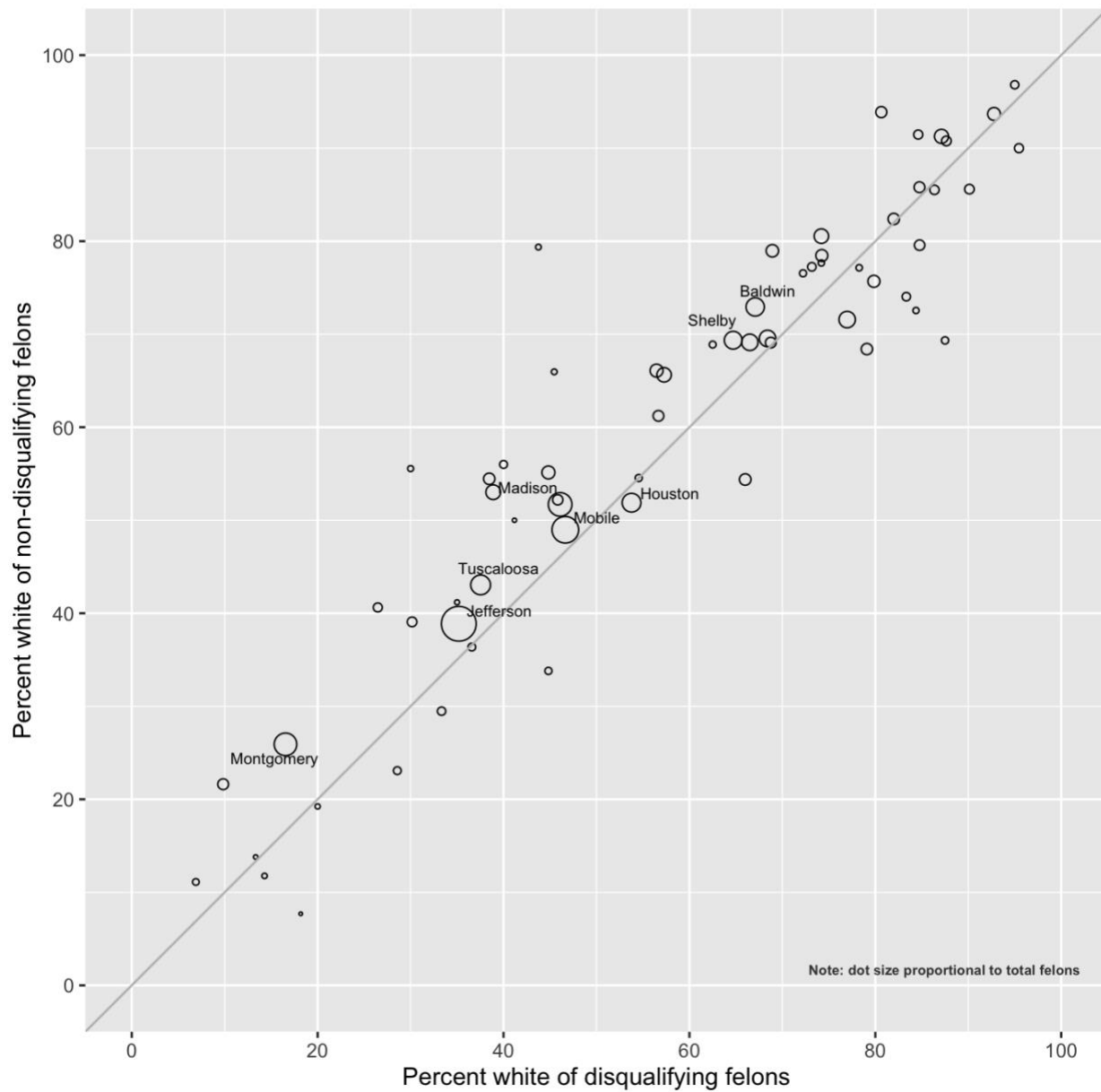


37. Figure 6 plots the rate of White individuals across Alabama’s counties who were convicted of a felony in the nearly two-year period since August 1, 2017, that either does or does not disqualify them of their voting rights. Even with the

increased variance due to the fewer number of cases through May 1, 2019, it is clear from Figure 6 that roughly two-thirds of the circles, each representing one of the state's 67 counties, are *above* the diagonal 45° line. This again indicates that White individuals are disproportionately more likely to be convicted of a felony that is not on H.B. 282's list disqualifying a person from voting. Figure 6 is remarkably similar to Figure 5, indicating that both pre- and post-implementation of H.B. 282, White individuals with a felony conviction in the AOC file are *less likely* to have been convicted of a felony that disqualifies them from voting.

38. In my opinion, based on my analysis of felony convictions for both White and Black individuals both *prior* to and *after* the implementation of H.B. 282, there is clear evidence that Black individuals are disproportionately more likely to be convicted of felonies, and that White individuals are disproportionately less likely to be convicted of felonies that, under H.B. 282, disqualify them of their voting rights because the felony constitutes moral turpitude.

Figure 6: *Post-Implementation of H.B. 282, Percent White of Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” August 2017-May 2019*



VIII. Analysis of Alabama Administrative Office of Courts (AOC) Data file on “Felony Convictions and Guilty Pleas” Considered by Exploratory Committee

39. Counsel also provided to me a list of 15 disqualifying felonies (with 46 discrete crimes) under which voting rights *would* have been lost due to “moral turpitude,” if a smaller, more narrow list of felonies constituting moral turpitude had been advanced out of Alabama Secretary of State John Merrill’s “Voter Disenfranchisement and Restoration of Voting Rights Exploratory Committee” (“Exploratory Committee”). I understand from counsel that this narrow list was the emerging consensus from the Exploratory Committee up until the final meeting when Secretary Merrill introduced his proposed list. The narrower list of these 15 disqualifying felonies, what I refer to as the “Alabama No CERV Conviction List,” can similarly be linked to the AOC file of felony convictions, particularly to a timeframe (January 1, 1993 to December 21, 2015) prior to the recommendations made by the “Exploratory Committee.” This raises an informative counterfactual question: What would the distribution of felony convictions by Black individuals and White individuals have looked like had the Exploratory Committee recommended to the legislature, and had the legislature adopted, its narrower list of felonies constituting moral turpitude?

40. I use the same methodology described above for the pre- and post-H.B. 282 analysis but under the Exploratory Committee’s narrower list of initial recommendations. Drawing on the AOC file, I am able to identify slightly more

than 15,000 individuals convicted of a felony between January 1, 1993 and December 21, 2015 who, under the Exploratory Committee's narrower recommended list, would be classified as having committed a felony constituting moral turpitude. Contrary to the findings discussed above regarding H.B. 282, Black individuals comprise only 46% (6,773) of those ineligible to vote under the Exploratory Committee's recommendations. In contrast, White individuals under the Exploratory Committee's narrower list of recommendations comprise 53% of those with a felony conviction constituting moral turpitude in the AOC file.

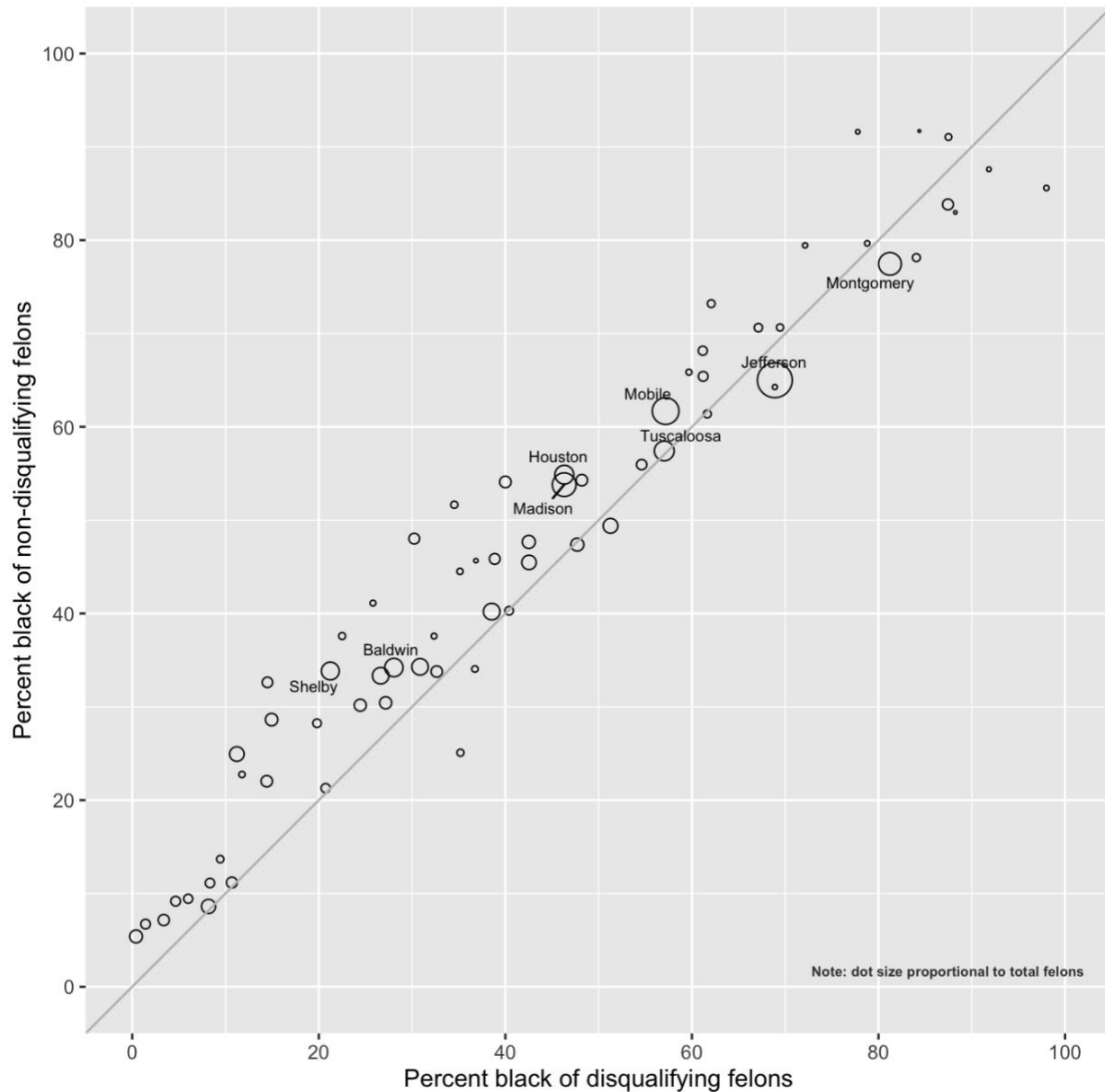
41. As such, had the Exploratory Committee's recommendations been adopted, it at least would not have exacerbated the already-existing overrepresentation of Black individuals with a felony conviction compared to the overall population. That is, the rate of Black individuals convicted of a felony conviction under the Exploratory Committee's list of felonies constituting moral turpitude would have been considerably *lower* (46%) than under the H.B. 282 statute ultimately adopted by the legislature (50.5%). In contrast, under the Exploratory Committee's narrower list, White individuals in the AOC file would have constituted a *higher* rate (53%) of all individuals convicted of a felony constituting moral turpitude, unlike their lower rate under H.B. 282 (48.2%).

42. Figure 7 and Figure 8 provide visualizations for Black individuals and White individuals, respectively, across Alabama's counties of such a hypothetical

exercise for the time period January 1, 1993 to December 21, 2015, *prior* to the legislature's decision to expand the list of felonies constituting moral turpitude. Again, each circle represents an Alabama county, and the size of the circle is proportional to the total number of felons in the county during the timeframe. The diagonal 45° line serves as a visual reference.

43. As Figure 7 shows, under the narrower set of felonies of moral turpitude considered by the Exploratory Committee but not ultimately advanced by Secretary Merrill, between January 1993 and December 21, 2015, Black individuals with felony convictions would have been less likely to have their voting rights disqualified under the committee's narrower definition of moral turpitude. Over three-quarters of the state's 67 counties are *above* the 45° line in Figure 7—the inverse of the observed values under H.B. 282, with the more expansive set of felonies of moral turpitude (see Figure 2). In short, had the Exploratory Committee's narrower set of 15 felonies constituting moral turpitude been recommended to and then adopted by the state legislature, a substantially greater share of Black individuals with a felony conviction would have been eligible to vote.

Figure 7: Exploratory Committee’s Narrow List of Moral Turpitude Felonies, Percent Black Individuals with Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” January 1993-December 2015

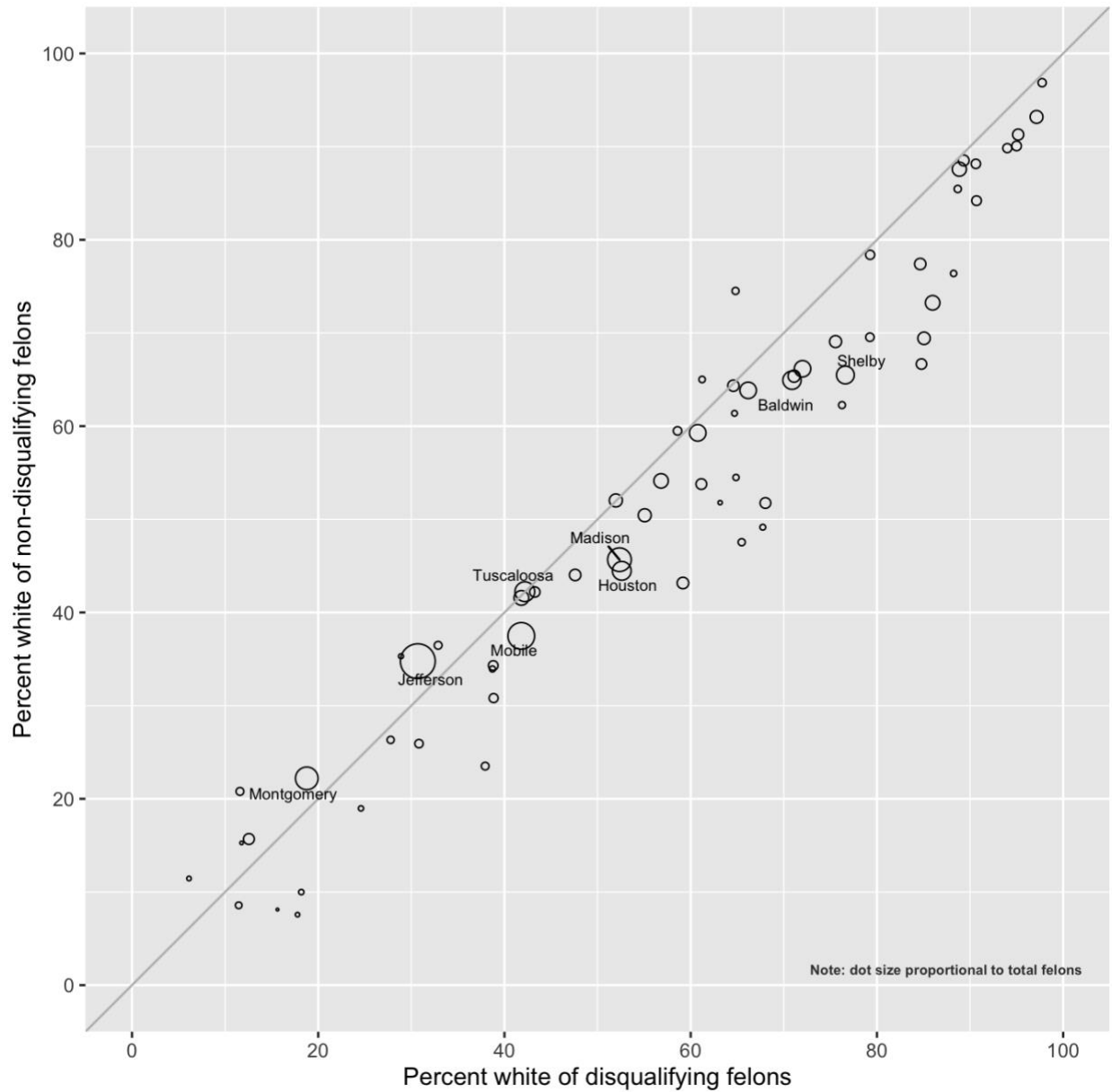


44. Figure 8 plots the same relationship for White individuals in the AOC file from January 1993 to December 21, 2015, again using the narrower set of felonies

of moral turpitude that was considered by the Exploratory Committee, but not advanced by Secretary Merrill in the final month of 2015. As Figure 8 shows, had the Exploratory Committee's narrower set of 15 felonies of moral turpitude been adopted, White individuals with felony convictions would be *more* likely to be disqualified from voting. Indeed, over three-fourths of the state's 67 counties fall *below* the 45° line.

45. In my opinion, it is clear that had the Exploratory Committee recommended, and the legislature adopted, the narrower set of 15 felonies constituting moral turpitude instead of the more expansive list under H.B. 282, Black individuals with would be much less likely to be convicted of a disqualifying felony, and thus more likely to be eligible to vote. Although their convictions and sentences would not have changed, a lower percentage of Black individuals with felony convictions across Alabama's 67 counties would have been disqualified from voting had the legislature adopted the Exploratory Committee's narrower list of felonies constituting moral turpitude.

Figure 8: Exploratory Committee’s Narrow List of Moral Turpitude Felonies, Percent White Individuals with Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” January 1993-December 2015



IX. Rates of Black and White Registered Voters who are Ineligible to Vote Due to “Criminal Conviction/Moral Turpitude”

46. As I have already documented, there is striking evidence that the percentage of Black individuals with a felony conviction who have lost their voting rights due to a crime of moral turpitude under H.B. 282 is consistently greater than the percent Black population across all 67 of the state’s counties. There is no clearer evidence of this than the Secretary of State’s own statewide voter registration database.

47. I begin by examining the status of Black and White registered voters in the statewide voter file, specifically, a “snapshot” of “Active” and “Inactive” registered voters as of July, 2019, and the rate of Black and White registrants as identified in the voter file who are “Not Eligible” or “Disqualified” due to a “Criminal Conviction/Moral Turpitude,” also referred to as “CRM,” across Alabama’s 67 counties. My analysis draws upon data from D200071 (an update of D064502), a statewide Alabama voter list produced by the Secretary of State’s office in July 2019.

48. Although D200071, a data file of more than 5 million registered voters, is static, that is, it is a snapshot in time of all individuals in Alabama’s statewide voter registration system, it offers useful individual-level information, specifically, the race and status of each individual who has registered in the state, including those who have been taken off the voter rolls. The data file D200071 contains

personal information for 82,554 individuals whose “registrant status” at the time of the snapshot is “not eligible” or “disqualified”, and whose registration “status reason” is CRM. The personal information included for each individual is typical for statewide voter registration databases: an individual’s first, middle, and last name (and any suffix to the name), gender and race, voter identification number, and address, including county of residence.²²

49. Of the 82,554 individuals in D200071 who have a “Registrant Status” of “Not Eligible” (“N”) or Disqualified (“R”), and a registrant reason status of CRM, I again draw on the July 2019 statewide voter list. There are 45,601 (55.2%) Black individuals and 34,290 (41.5%) White individuals. To put these figures into perspective, recall that according to the 2014-2018 ACS 5-Year Estimates, the Census Bureau estimates Alabama’s citizen voting age population (CVAP) to be 69.4% White alone, and 26.2% Black (or African American) alone.²³ As such, the percentage of Black individuals with a CRM status retained in the

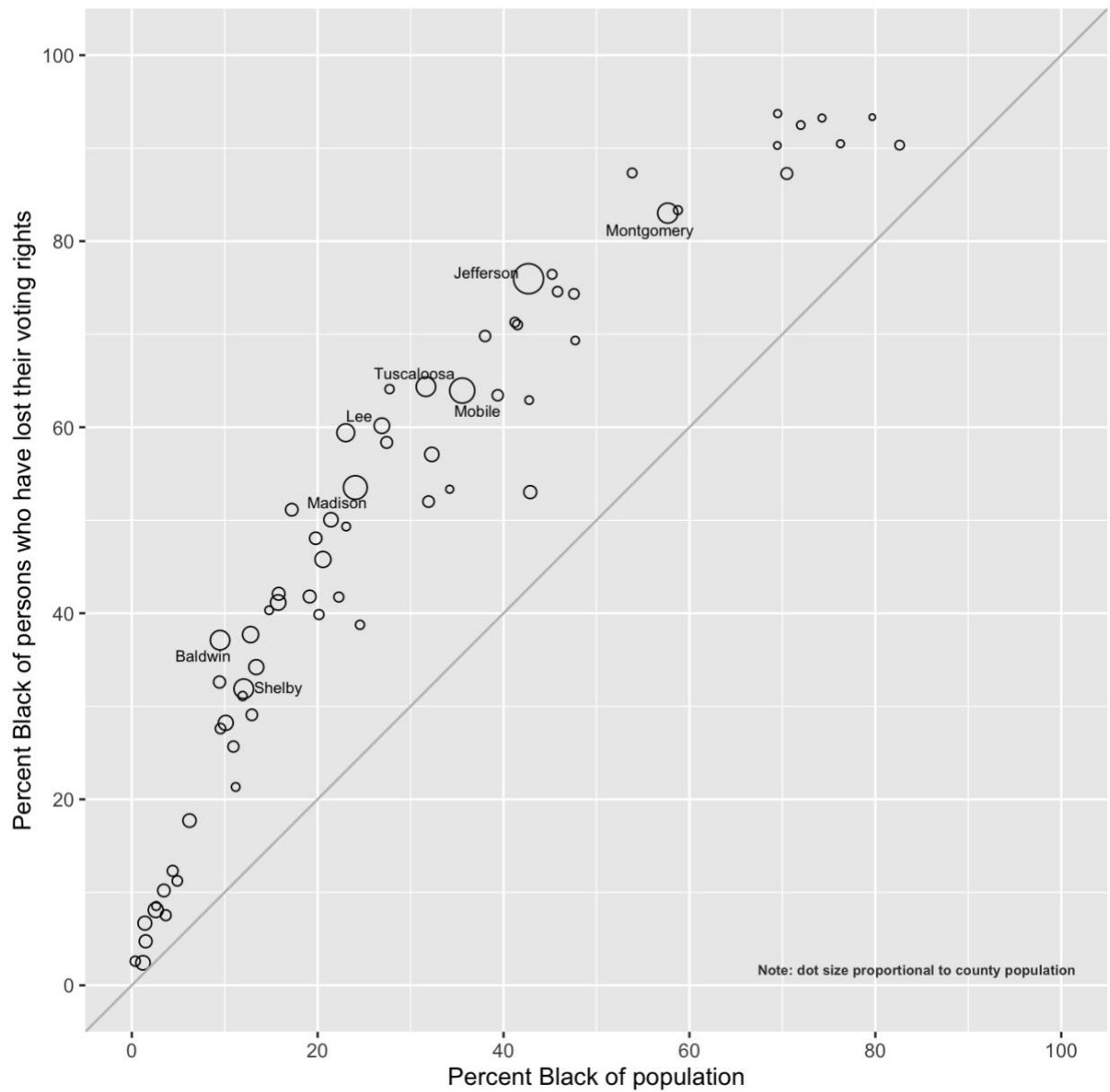
²² See, for example, Michael C. Herron and Daniel A. Smith. 2013. “House Bill 1355 and Voter Registration in Florida,” *State Politics and Policy Quarterly*, 13: 279-305; Enrijeta Shino and Daniel A. Smith. 2018. “Timing the Habit: Voter Registration and Turnout in the American States.” *Electoral Studies* 51: 72-82.

²³ Data from U.S. Census Bureau, “Citizen Voting Age by Race and Ethnicity, 2014-2018,” *American Community Survey 5-Year Estimates*, available for download, here: <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap/2014-2018-CVAP.html>.

July 2019 statewide voter file (D200071) is more than double the percentage of Alabama's Black CVAP, according to the 2014-2018 ACS 5-year Estimates.

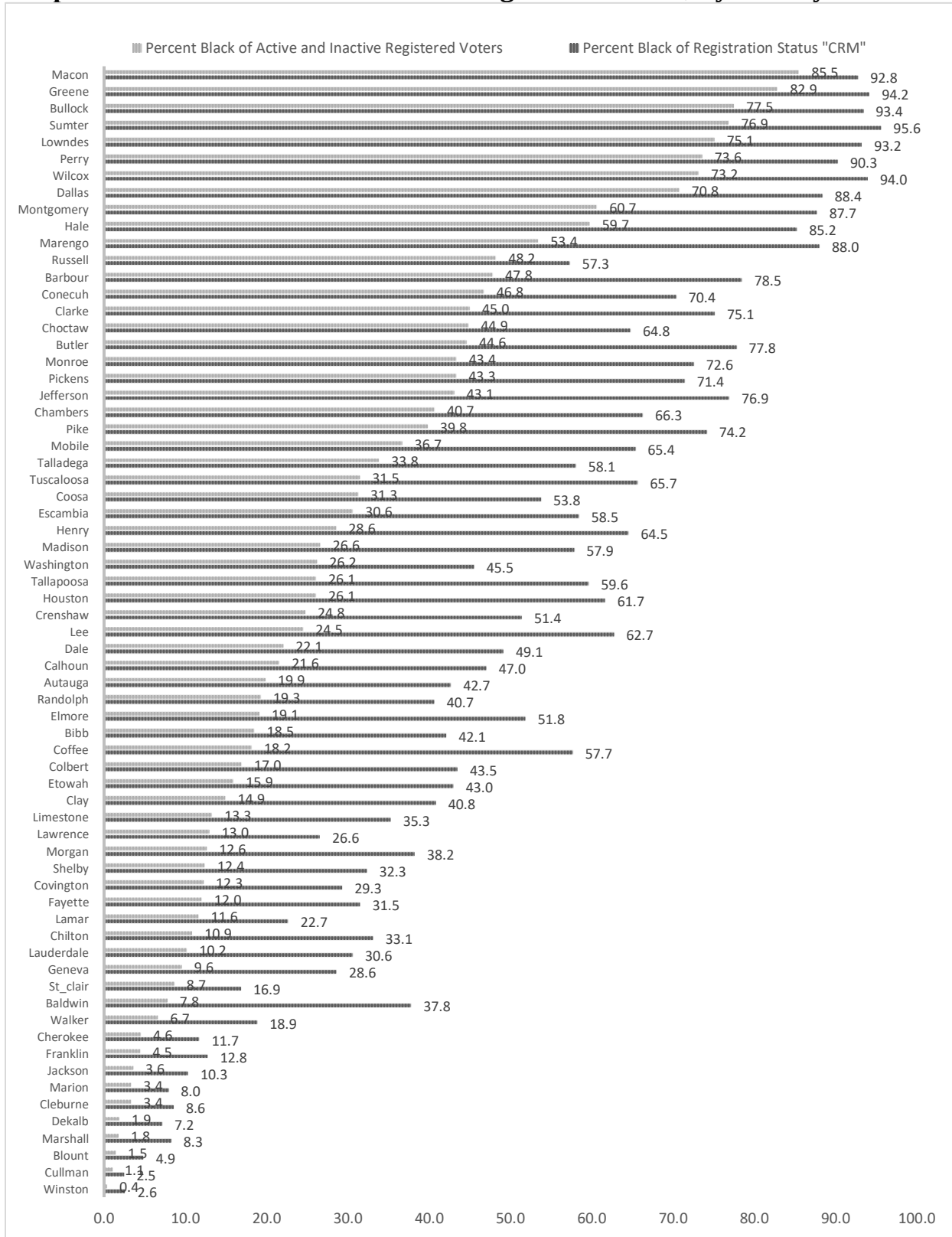
50. In Figure 9, I plot along the X-axis the percentage of the Black CVAP population in each Alabama county (using the 2014-2018 ACS 5-year Estimates), against the Y-axis that provides the percentage of individuals who are Black in each county (using D200071 file) who have been rejected or purged from the voter rolls due to a felony conviction. Counties with at least 150,000 residents are labeled. As is clear in Figure 9, every county in Alabama is above the diagonal 45° line, indicating that the share of Black individuals who are disqualified from voting due to a felony conviction is greater than the share of Black individuals (CVAP) residing in the county. From counties where over 70% of the CVAP is Black to those where the percentage of the population that is Black is under 5%, the rate of Black individuals disqualified by registrars due to felony conviction exceeds the percent of Black CVAP in the county.

Figure 9: Percent of Black CVAP in a County and the Percent of Individuals with a Felony Conviction who are Black in a County and have Lost their Voting Rights (CRM), (D200071)



51. I also compare across Alabama's 67 counties the percentage of Black individuals and White individuals registered to vote (active and inactive) in each county using the statewide voter file (D200071), and compare it to the percentage of Black individuals and White individuals in a county who were removed from the voting rolls due to a CRM felony conviction. Figure 10 shows the percentage of Black registered voters (out of Black and White, only) who are not eligible to vote in each county due to CRM status (as of July 2019) and the percentage of active and inactive Black registered voters (out of Black and White, only) in each county. The data are sorted by the percentage of registered voters in a county who are Black (high to low). The percentage in a county who are Black active and inactive voters is represented by a light grey bar. The percentage in a county who are Black and have been removed from the rolls due to a disqualifying CRM status is represented by a dark grey bar. For example, in Macon County, nearly 86% of all active and inactive registered voters are Black individuals, but nearly 93% of all voters removed from the rolls due to a CRM status are Black individuals. In contrast, in Winston County, less than 1% of all active and inactive registered voters are Black individuals, but nearly 3% of all removed voters due to CRM status are Black individuals.

Figure 10: Percent Black Registrants with “Criminal Conviction/Moral Turpitude” Status and Percent Black Registered Voters, by County



52. A clear pattern emerges in Figure 10, regardless of the percentage of Black registered voters who are active and inactive in a county: visually, every county's dark grey bar extends further than its accompanying light grey bar. That is because in every Alabama county, as of July 2019, the rate of Black individuals removed from the voting rolls because of a CRM status exceeds the rate of Black registered voters (active and inactive) in the county.

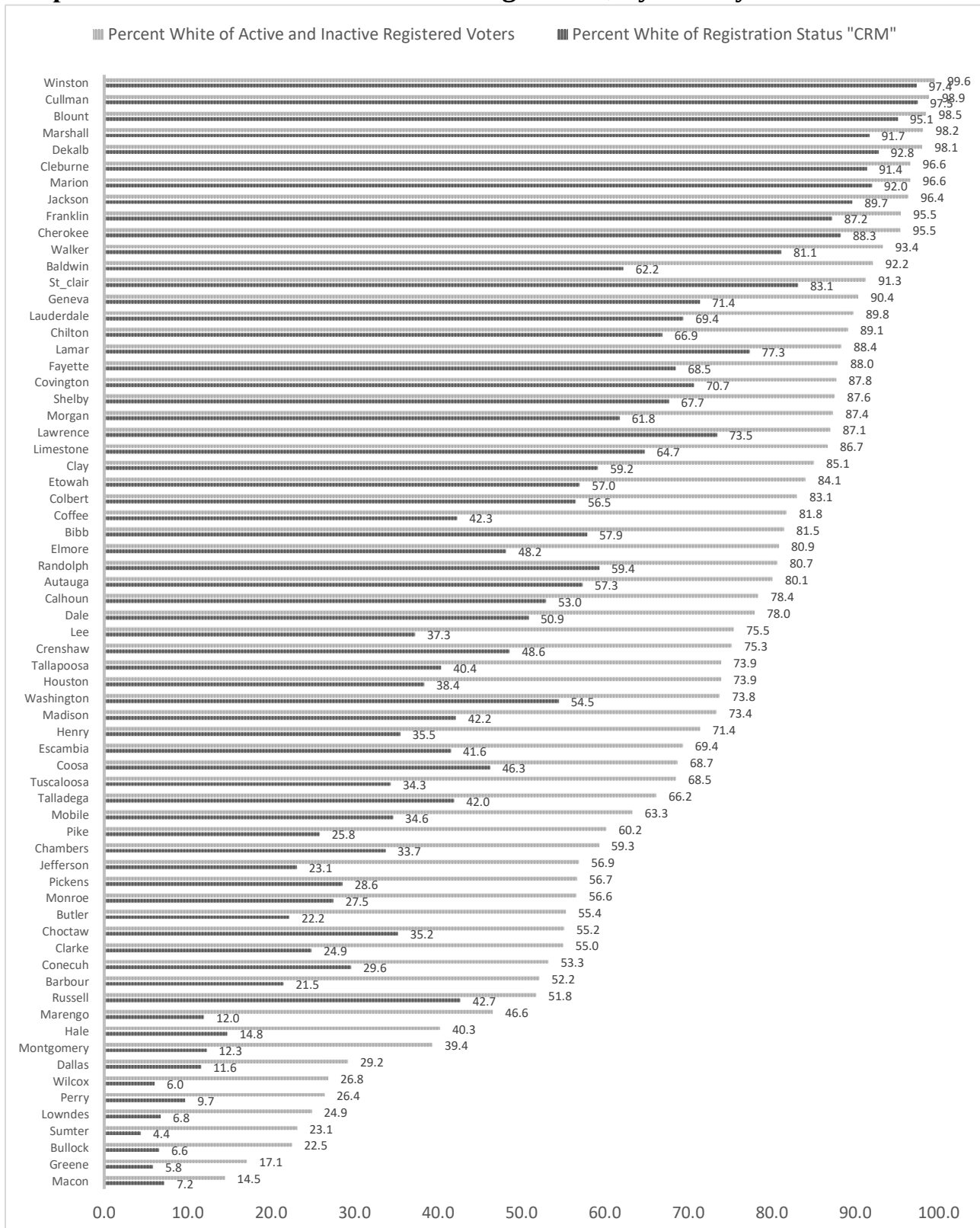
53. In some counties, the gap is sizeable. In Coffee County, for example, Black registrants make up 18% of active and inactive registered voters, but they comprise 58% of removed registered voters classified as CRM as of July 2019, a gap of nearly 40 percentage points. In Marengo County, as of July 2019, Black registrants make up 53% of active and inactive registered voters, but they comprise 88% of removed registrants with a status of CRM. This pattern holds for counties with both large and small percentages of active and inactive Black registered voters. In Sumter County, where 77% of active and inactive registered voters are Black individuals, 96% of those who were registered but deemed ineligible due to a CRM status are Black individuals. And in Baldwin County, where fewer than 8% of registered active and inactive voters are Black individuals, nearly 38% of formerly registered voters who are now ineligible because they have a criminal conviction of moral turpitude are Black individuals.

54. Figure 11 displays the same analysis for the percentage of White registered voters in Alabama in each county (high to low), as of July 2019. In doing so, it is easy to compare the percentage of White registered voters in each county who are no longer eligible to vote in each county due to their disqualifying CRM status (dark grey bars), with the percentage of active and inactive White registered voters in each county (light grey bars).

55. As Figure 11 reveals, as of July 2019, there is not a single Alabama county where the percentage of White active and inactive registered voters is lower than the percentage of White formerly registered voters who have a disqualifying CRM. For example, in Shelby County, where 88% of all active and inactive registered voters are White individuals, only 68% of all formerly registered voters with a CRM status are White individuals, roughly a 20-percentage-point gap. Even in counties with a much higher percentage of active and inactive Black registrants, White individuals in these counties who had been registered are disproportionately less likely to have a CRM status. In Green County, where just 17% of all active and inactive registered voters are White individuals, fewer than 6% of those removed from the rolls due Criminal Conviction/Moral Turpitude are White individuals. The county with the closest parity between the two rates is Cullman County, where 99% of active and inactive registrants are White individuals, and nearly 98% of registered voters with a CRM status are White individuals.

56. In sum, Figure 10 and Figure 11 clearly indicate that across Alabama's 67 counties, as of July 2019, Black registrants in the statewide voter file are disproportionately more likely than White registrants to be deemed *ineligible* to vote because they have a registrant status reason of CRM. That is, relative to their share of active and inactive registered voters, in every Alabama county active and inactive Black registrants are more likely than White registrants to be deemed "Not Eligible" or "Disqualified" from having the right to vote because of a disqualifying conviction.

Figure 11: Percent White Registrants with “Criminal Conviction/Moral Turpitude” Status and Percent White Registrants, by County



X. Black and White Voter Registration Rates Pre- and Post- H.B. 282: Active, Inactive, Not Eligible, Not Registered, Disqualified, and Suspense

57. Next, I use the statewide voter file (D200071) to assess whether there are differential rates of Black and White registered voters, circa July 2019, whose registration status is “active,” “inactive,” “not eligible,” “not registered,” “disqualified,” or “suspense.”

58. In order to assess the direct impact of H.B. 282 on voter registrations in Alabama, I limit my analysis to individuals in D200071 who are listed with a race code of either Black or White and who have a registration date on or before June 30, 2019. Overall, as of June 30, 2019, of the 5,013,246 Black registrants and White registrants on Alabama’s statewide voter list (D200071) with any status, 1,303,651 (26.0%) are Black registrants and 3,709,595 (74.0%) are White registrants. This includes Black registrants and White registrants with a registration status of “active,” “inactive,” “not eligible,” “not registered,” “disqualified,” or “suspense.”²⁴

59. In what follows, I further limit my analysis to Black individuals and White individuals listed in D200071 and who have registration dates during the 23-month period both before and after the implementation of H.B. 282, so as to compare the

²⁴ Of the 3,134,525 statewide Black registrants and White registrants (in D200071) who are listed as “active” in D200071, Black individuals account for 855,140, or 27.3%.

registration status of individuals by their race over comparable (nearly) two-year periods. Table 2 provides the “registrant status” (count and percent) of Black individuals and White individuals listed in the statewide voter list as of June 30, 2019, whose registration date is 23-months prior to, or 23-months following the implementation of H.B. 282.

60. As reported in Table 2, during the 23-month period immediately prior to the implementation of H.B. 282 (August 1, 2017), there are a total of 615,070 registrants with a “Date of Registration” from September 1, 2015, through July 31, 2017. Of these 615,070 registrants, 148,833 (24.2%) are Black individuals and 466,237 (75.8%) are White individuals.

61. Focusing on the 148,833 Black registrants who have a registration date during the 23-month period prior to the effective date of H.B. 282 and who remain on the voter rolls (any status) as of June 30, 2019, 82.6% are “Active.”

62. Of the remaining Black registrants who have a registration date during the 23-month period prior to the implementation of H.B. 282, 5.3% have an “Inactive” status, 2.3% are classified as “Not Eligible,” 0.1% are classified as “Not Registered,” 9.3% are classified as “Disqualified,” and 0.4% are classified as “Suspense.”

63. When comparing these rates of Black registrants during the 23-month period prior to August 1, 2017, with the rates of White registrants who have the same

range of registration dates, Black registrants are considerably more likely than Whites to be inactive (5.3% to 4.1%), not eligible (2.3% to 0.7%), disqualified (9.3% to 8.1%), or on the state’s suspense list (0.4% to 0.1%). In other words, during this 23-month period of voter registrations, Black registrants are three times more likely than Whites to be “Not Eligible,” four times more likely than Whites to be on the “Suspense” list, 30 percent more likely than Whites to be “Inactive,” and 15 percent more likely than Whites to be “Disqualified.”

Table 2: Registrant Status (Count and Percent) of Active and Inactive Black and White Registrants on the Alabama Statewide Voter List, June 30, 2019 (Who Registered during the 23-Month Pre- and Post-Implementation Periods)

	Pre-Implementation of H.B. 282			Post-Implementation of H.B. 282		
	Black	White	Subtotal	Black	White	Subtotal
Active	122,941	407,640	530,581	110,115	307,676	417,791
	82.6%	87.4%	86.3%	86.6%	89.4%	88.6%
Inactive	7,854	18,889	26,743	2,118	2,708	4,826
	5.3%	4.1%	4.4%	1.7%	0.8%	1.0%
Not Eligible	3,468	3,031	6,499	2,996	2,449	5,445
	2.3%	0.7%	1.1%	2.4%	0.7%	1.2%
Not Registered	97	290	387	88	136	224
	0.1%	0.1%	0.1%	0.1%	0.0%	0.1%
Disqualified	13,825	35,790	49,615	10,295	29,547	39,842
	9.3%	7.7%	8.1%	8.1%	8.6%	8.5%
Suspense	648	597	1,245	1,535	1,648	3,183
	0.4%	0.1%	0.2%	1.2%	0.5%	0.7%
Total	148,833	466,237	615,070	127,147	344,164	471,311

64. Contrast the figures during the 23-month pre-implementation period as reported in Table 2 with the 23-month period immediately following the August 1,

2017, implementation date of H.B. 282. According to the July 2019 voter file, 471,311 Black individuals and White individuals have a “date of registration” between August 1, 2017 and June 30, 2019. Of these, 127,147 (27.0%) of the registrants during this more recent period are Black registrants, and 344,164 (72.0%) are White registrants. It is notable that Black individuals comprise a higher percentage of voters with a registration date over this more recent 23-month period, compared to the rate of Black individuals who registered during the comparable 23-month period prior to the implementation of H.B. 282.

65. However, according to the “Registrant Status” field of the statewide voter file, the 127,147 Black individuals who have registration dates over the 23-month period following the implementation of H.B. 282 are still less likely to be “Active” voters than the 344,164 White individuals who registered over the same timeframe. Also, when compared to the previous 23-month period before H.B. 282 took effect, a higher percentage of Black registrants compared to White registrants are still more likely to be inactive, not eligible, not registered, and on the suspense list, indicating that Black individuals who registered to vote after the implementation of H.B. 282 *are still less likely to be eligible* to vote in Alabama. Most notably, of those who registered between August 1, 2017 and June 30, 2019, Black registrants are more than three-times as likely as Whites not to be eligible and over twice as likely as Whites to be on the suspense list.

66. The only exception to this durable pattern is that White registrants are only slightly more likely than Black registrants in the most recent period to be disqualified, according to the “Registrant Status” category. But as I discuss below, this anomaly is driven by the fact that White individuals with registration dates during this period of time and who had a “disqualified” registrant status were disproportionately more likely than Black individuals to have a “duplicate” registration, whereas during the early 23-month period, the duplicate registration rates of Black individuals and White individuals with a disqualified registrant status were similar.

67. Digging deeper into the reasons *why* a registered voter’s “Registrant Status” is coded as Active, Inactive, Not Eligible, Not Registered, Disqualified, or Suspense, I again draw on the July 2019 statewide voter list. Among other information, the statewide voter list (D200071) provides the Secretary of State’s codes for why individuals are not eligible (“N”) or are “disqualified” (“R”). According to the July 2019 statewide voter list, only 16,573 (0.33%) of the more than 5 million Black voters and White voters listed in D200071 have a registrant status of “N,” that is, they are coded as being “not eligible.”

68. There are numerous reasons why a registered voter might be coded as not eligible, including having an incomplete voter registration application or being classified as having a CRM status. According to the July 2019 voter list, of the

16,573 Black registrants and White registrants who are not eligible, 11,786 (71.1%) are unable able to vote due to CRM. Of these 11,786 registrants statewide who are not eligible to vote due to CRM, 7,009 (59.5%) are Black individuals and only 4,777 (40.5%) are White individuals.

69. I draw on the voter list to compare parallel 23-month periods—before and after the implementation of H.B. 282—to further determine if the rates of Black registrants and White registrants who were disqualified due to CRM substantially differ. Over this 46-month period, there were a total of 9,081 registrants (5,058 Black individuals and 4,023 White individuals) who had a status code of “N” (not eligible) and a registrant reason of CRM.

70. Among the 3,468 Black individuals with a registration date during the 23-month period prior to August 1, 2017, and who have a registrant status of not eligible, 79.7% have a registrant reason code of CRM. During this same 23-month timeframe, of the 3,031 White individuals with a registrant status of not eligible, 75.3% have a registrant reason code of CRM, 4.4 percentage points less than Black individuals.

71. Contrast these figures to the subsequent 23-month period *after* H.B. 282 was implemented. Some 76.6% of the 2,996 Black individuals with a registrant status of not eligible are coded as having a registrant reason code of CRM, just a 3.1 percentage point drop compared to the previous 23-month period. However, from

August 1, 2017 through June 30, 2019, only 71.1% of the 2,449 Whites with a registrant status of not eligible are coded as having registrant reason code of CRM, a 4.4 percentage point drop from the earlier 23-month period. However, the gap—5.5 percentage points between White and Black registrants *after* the implementation of H.B. 282—actually *increased* by more than a percentage point from the 4.4 percentage point gap between Whites and Black registrants that existed *prior* to the law taking effect.

72. In my opinion, these figures provide further evidence that the 46 felony convictions classified as moral turpitude under H.B. 282 has had a disproportionate effect on Black registrants. When comparing Black individuals and White individuals who applied to register to vote over the 23-months *after* the law went into effect on August 1, 2017, Black individuals were less likely to be eligible to vote because of a felony conviction classified as moral turpitude under H.B. 282.

73. According to the July 2019 statewide voter list (D200071), of the 5,013,546 Black registrants and White registrants on the statewide list, some 1,608,632 (32.1%) have a registrant status of “R,” that is, they are coded as being “disqualified.” There are numerous reasons why a registered voter might be disqualified, most commonly because they have died, moved outside of the county or state, or have been removed under a National Voter Registration Act (“NVRA”) compliant or confirmation mailing process purge. Registrants may also be

disqualified for CRM. According to the July 2019 statewide voter list, 68,105 Black individuals and White individuals on the complete statewide voter list are coded as being disqualified due to CRM. Of these 68,105 registrants who are disqualified as of July 2019 due to CRM, 38,592 (56.7%) are Black individuals and 29,513 (43.3%) are White individuals.

74. Using the complete July 2019 statewide voter list, I conduct the same pre- and post-implementation analysis as presented above with the “not eligible” subpopulation to determine the reason why an individual’s registrant status is coded as “disqualified.” Of the 13,825 Black individuals who have a registration date during the 23-month period prior to August 1, 2017, and who have a registrant status of disqualified, 31.4% have a registrant reason as CRM as of July 2019. During this same 23-month timeframe, of the 35,790 Whites who have a disqualified registrant status, only 12.0% are coded as having a registrant reason of CRM. This is nearly a 20-percentage-point gap between Black registrants and White registrants, with Black individuals being nearly three times as likely as White individuals to have a disqualifying CRM flag on the statewide voter rolls during the 23-month period leading up to the implementation of H.B. 282.

75. In the 23-month period *after* H.B. 282 was implemented, 24.7% of the 10,295 Black individuals with a registrant status of disqualified have a registrant reason code of CRM. In contrast, 8.2% of the 29,547 White individuals who

registered from August 1, 2017 through June 30, 2019 and who have a registrant status of disqualified have a registrant reason code of CRM.

76. Although the gap between Black and White individuals with a disqualified registration status due to a CRM status after the implementation of H.B. 282 has narrowed slightly by roughly 3 percentage points—from 19.4 percentage points to 16.5 percentage points—the racial gap still persists after the implementation of the law. In my opinion, it is clear that the 46 felony convictions classified by H.B. 282 have a disproportionate effect on the ability of Black individuals to register to vote in Alabama. Black applicants who have applied to register after H.B. 282 went into effect are more than three times as likely as White applicants to be disqualified because of a felony conviction that is classified as a crime of moral turpitude under H.B. 282. But equally importantly, after the implementation of H.B. 282, one in four Black individuals, and nearly one in 10 White individuals in Alabama, have a registrant reason code of CRM, disqualifying them from the voter rolls.

XI. Board of Pardons and Paroles Certificates of Eligibility to Register to Vote (CERV) and Legal Financial Obligations (Fees and Fines)

77. I was asked by counsel to examine court fines and fees assessed on Alabama felons. As other scholars have documented, court costs are not insubstantial in

Alabama.²⁵ My analysis again draws on data from the “ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1/1/1983 THRU 5/1/2019,” what I have referred to throughout this report as the AOC file, and from the D200069 and D005349 files, both Microsoft Excel files produced by the Board of Pardons and Paroles containing Certificates of Eligibility to Register to Vote (CERV) applications from 2008 forward.

78. Using the same methodology as described above to identify the 363,510 unique felons listed in the AOC file, I begin with a race-neutral analysis of the 135,579 individuals with at least one H.B. 282 disqualifying felony. Table 3 provides a breakdown of ranges of different amounts of grand total LFOs owed by the 135,579 individuals with felony convictions under H.B. 282, as identified in the AOC file.

²⁵ In article on the assessment of Legal Financial Obligations (LFOs) in Alabama, Claire Greenberg, Marc Meredith, and Michael Morse analyze a sample of cases from 1995, 2000, and 2005-2011 and find that the median amount of LFOs in cases with a felony conviction doubled from less than \$1,000 in 1995 to roughly \$2,000 ten years later. See Claire Greenberg, Claire, Marc Meredith, and Michael Morse, “The Growing and Broad Nature of Legal Financial Obligations: Evidence from Alabama Court Records,” *Connecticut Law Review* 48 (2016):1079–1120.

Table 3: “Grand Total” Balance Due for Individuals with H.B. 282 Felony Convictions, “Alabama Felony Convictions and Guilty Pleas,” 1993-2019

	Total	Total %	White	White %	Black	Black %
\$0	36,215	26.7	19,984	30.6	15,569	22.8
Up to \$100	2,033	1.5	933	1.4	1,071	1.6
Up to \$250	1,456	1.1	638	1.0	778	1.1
Up to \$500	5,905	4.4	2,287	3.5	3,531	5.2
Up to \$1,000	11,460	8.5	4,534	6.9	6,732	9.8
Up to \$5,000	41,852	30.9	18,849	28.8	22,545	32.9
Up to \$10,000	16,077	11.9	7,647	11.7	8,333	12.2
More than \$10,000	20,581	15.2	10,537	16.1	9,869	14.4
Total	135,579	100.0	65,409	100.0	68,428	100.0

79. Of these 135,579 individuals who are disqualified from gaining their voting rights under H.B. 282, only 36,215 (26.7%) do not owe any LFOs (zero dollar balance due). Very few individuals with outstanding LFOs owe small amounts. Only 7% of disqualified individuals have outstanding LFOs \$500 or under. Indeed, those with outstanding LFOs disproportionately owe more than \$1,000 in LFOs (58% of all individuals with a felony conviction covered by H.B. 282). Indeed, more individuals owe between \$1,000 and \$5,000 in LFOs than individuals who do not have any outstanding LFOs. Over 20,000 of the more than 135,000 identified individuals owe more than \$10,000 in LFOs, or 15% of all individuals with a felony conviction covered by H.B. 282.

80. Overall, from a race-neutral standpoint, my analysis of AOC data suggests that the vast majority of people with felony convictions covered by H.B. 282 have non-zero balances, and the majority have significant balances, that is, over

\$1,000.00. Given the level of household income in Alabama as discussed previously, and the income level of people with felony convictions in particular, the outstanding LFOs are likely to be a substantial barrier in the restoration of voting rights for these individuals. Most people who apply for CERVs but whose application is rejected are denied because of outstanding LFOs. My analysis suggests that outstanding LFOs are the largest barrier to voting rights restoration for Alabamians regardless of race.

81. This is not to say that race is not an important factor when considering outstanding LFOs for individuals with a felony conviction. I was asked by counsel to examine court fines and fees assessed on individuals with a felony conviction to determine whether Black individuals with a felony conviction owe more to the courts than comparable White individuals. Again, I draw on data from the AOC file and from the D200069 and D005349 files, and these racial breakdowns are also presented in Table 3.

82. Using the same methodology as described above, Table 3 also provides data for the grand total balance of LFOs due for 68,428 Black individuals and 65,409 White individuals with felony convictions who are disqualified from gaining their voting rights due to moral turpitude under H.B. 282. As should be clear, outstanding LFOs do not fall along racially neutral lines. The median amount owed by the 68,428 Black individuals with a disqualifying felony conviction, for

example, is \$1,687; the median amount owed by the 65,409 White individuals with a disqualifying felony conviction is \$1,551.

83. As Table 3 reveals, of the 68,428 Black individuals with a felony conviction under H.B. 282 are nearly 8 percentage points *less* likely to have no outstanding LFOs (\$0.00) than the 65,409 Whites with a felony conviction under H.B. 282. Indeed, a higher share of Black individuals, who under H.B. 282 are disqualified from voting due to a moral turpitude felony conviction, are more likely to owe LFOs compared to Whites, all the way up to \$10,000; only in the highest category of outstanding LFOs—more than \$10,000 owed—is the share of Whites greater than the share of Black individuals who owe LFOs.

84. Figure 12 plots, for each county in Alabama, the median LFO amount owed by Black individuals and White individuals who have at least one H.B. 282 disqualifying felony. Counties where the sum of Black individuals and White individuals convicted of a disqualifying felony is at least 5,000 are labeled. On the X-axis (horizontal) the median grand total balance due for Black individuals with felony convictions and guilty pleas, and on the Y-Axis (vertical), the median grand total balance due for White individuals with felony convictions and guilty pleas in each of the state's 67 counties. As Figure 12 reveals, the median grand total balance of LFOs due for Black individuals who have at least one H.B. 282 disqualifying felony in over two-thirds of the counties is greater than that of similar

White individuals with a felony conviction in these counties. For example, in Montgomery County, the median grand total balance due for Black individuals with a H.B. 282 disqualifying felony is nearly double that for similar White individuals. In Montgomery County, the median grand total balance due for Black individuals is \$1,825, compared to the median grand total balance due of \$956 for White individuals with a felony conviction in the county.

85. There is an even more sizeable gap between Black individuals and White individuals who do not owe any Legal Financial Obligations (LFOs), according to the AOC file. For each Alabama county, Figure 13 plots the percentage of black individuals (X-axis) and white individuals (Y-axis) with a felony conviction under H.B. 282 who have a grand total balance due of zero (\$0.00). It is clear from Figure 13 that in all but one county (Marion), the grand total balance due of zero (\$0.00) is higher for White individuals with at least one H.B. 282 disqualifying felony conviction than for comparable Black individuals.

Figure 12: Median Court Fees Owed by Black and White Individuals who have at Least One H.B. 282 Disqualifying Felony Conviction, “Alabama Felony Convictions and Guilty Pleas,” January 1, 1993-May 1, 2019

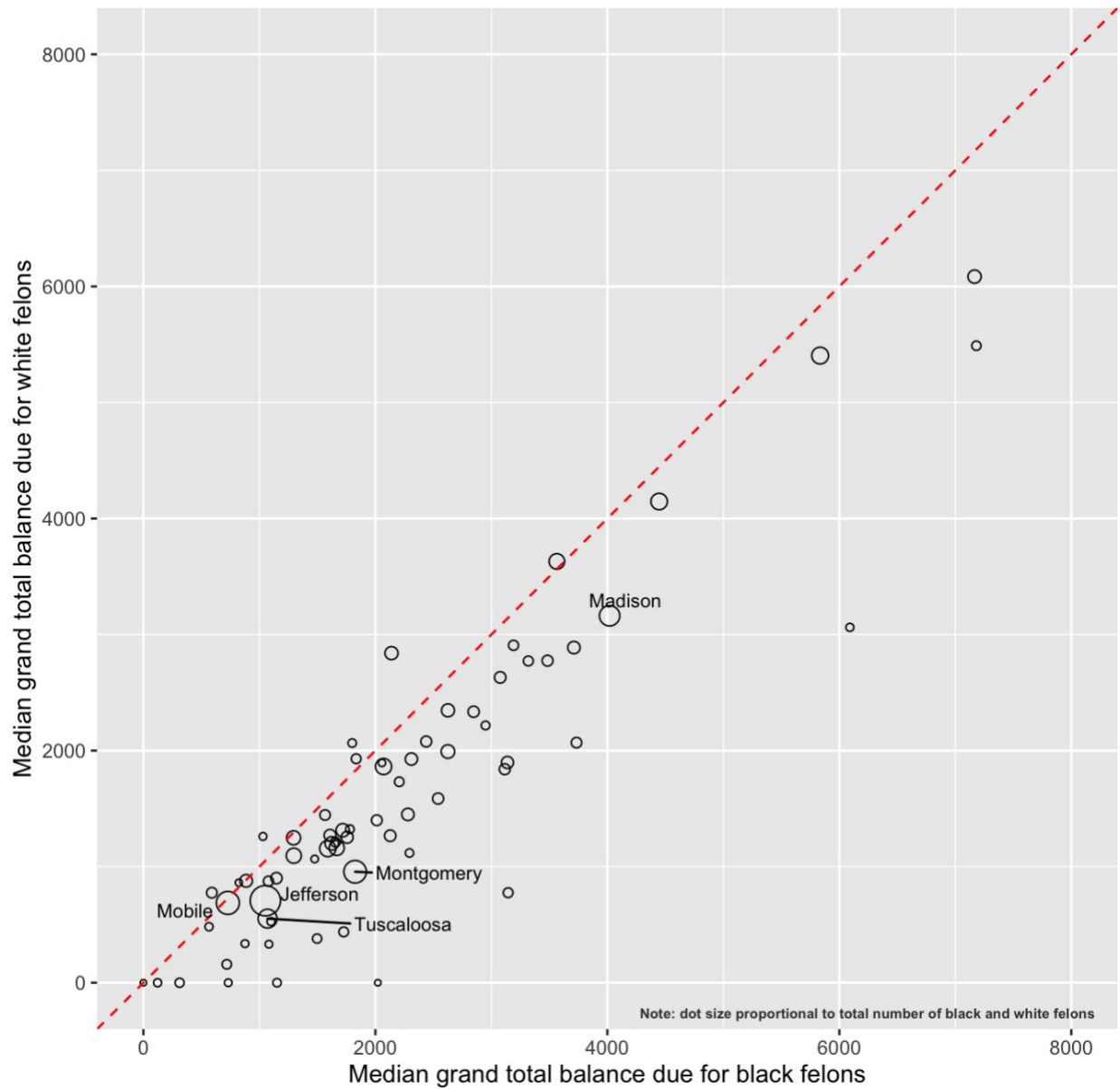
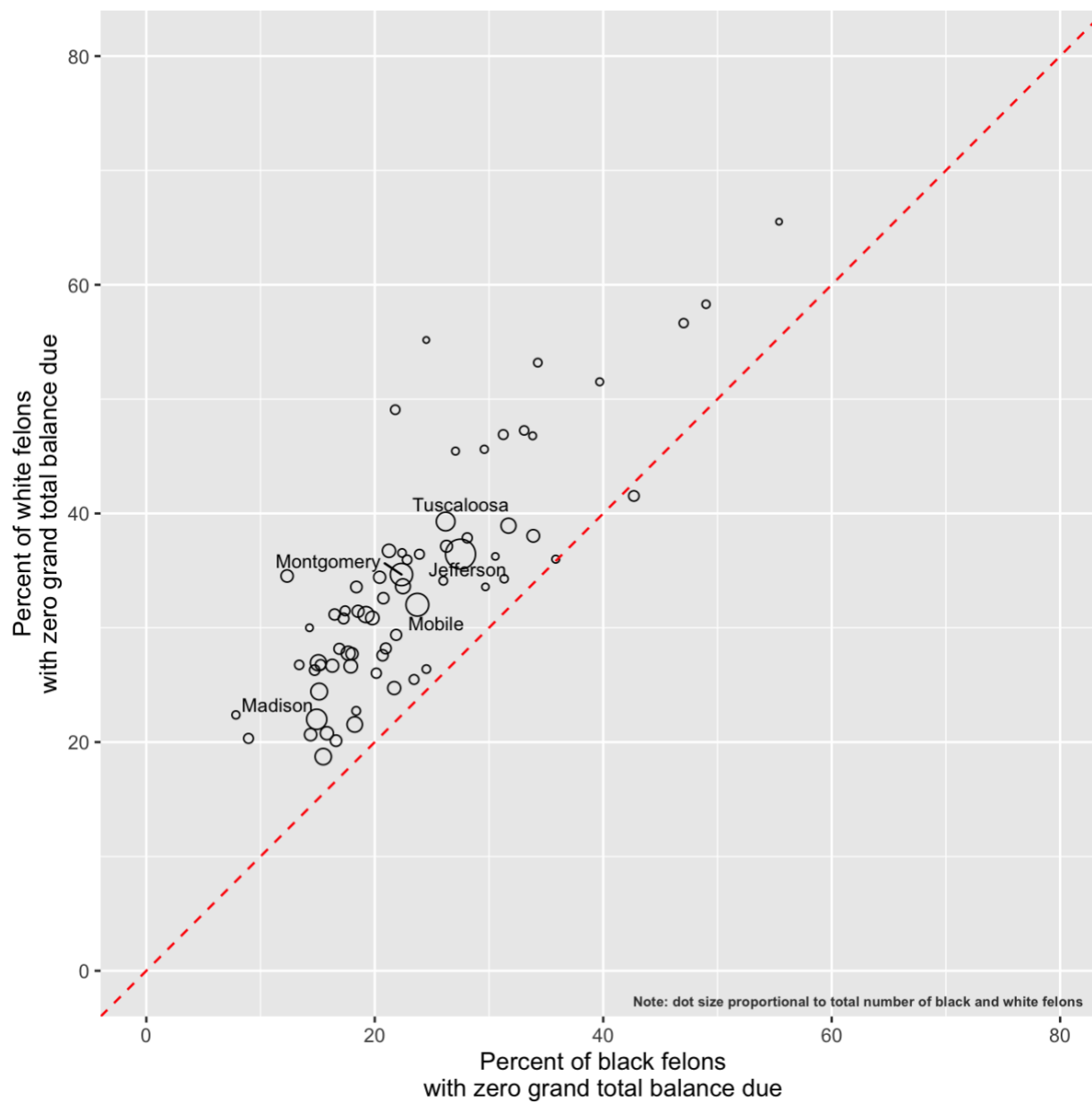


Figure 13: Percentage of Black and White Individuals in a County who have a Grand Total Balance Due of Zero (\$0.00), “Alabama Felony Convictions and Guilty Pleas,” January 1, 1993-May 1, 2019



86. Finally, given that the median court fees for Black individuals with disqualifying felony convictions is higher than for comparable White individuals across most Alabama counties, and that in nearly all of the 67 counties, Black individuals convicted of a felony that fall under H.B. 282 are less likely than White individuals convicted of a felony to not have any LFOs, it is clear that H.B. 282 disproportionately harms the ability of Black individuals to apply for Certificates of Eligibility to Register to Vote (CERV). It follows that White individuals will have a greater likelihood of success when applying for a CERV from the Alabama Board of Pardons and Paroles, although the prevalence of LFOs ensures that the likelihood of success for White individuals applying for a CERV is not high, either.

87. Analysis of data provided by the Alabama Board of Pardons and Paroles of CERV applicants provides additional evidence about the likely success of an individual with a felony conviction who applies to have their voting rights restored, which I refer to as “CERV Applications.” I draw on two data files containing information from the Alabama Board of Pardons and Paroles of CERV applicants from 2008 forward. By appending the 22,365 rows included in D005349 with the 2,618 rows included in the D200069 supplement (but retaining only the D200069 records for the 410 individuals in both files), I find that there are a total of 23,316 individuals who applied to have their voting rights restored, what I refer to as

“CERV Applications.” Among other information, the files include an individual’s first and last name, date of birth, race and sex, as well as an individual’s Alabama institutional serial (AIS) number, district supervisor, field office, and officer assigned, although some of this information is missing.

88. Utilizing the field “vrstatus” in the two data files (D005349 and D200069), it is possible to determine if Black or White individuals applying to the Alabama Board of Pardons and Paroles for a CERV are more or less likely to have their voting rights restored.²⁶ Of the 23,316 individuals in the CERV database, 20,451 are Black or White individuals who have applied to have their voting rights restored. Of these 20,451 individuals, 62.9% (12,872) had their voting rights restored. Unfortunately, given the inconsistencies in the coding convention found in the CERV database’s vrstatus field, the database provided makes it difficult to determine precisely the reasons why these individuals had their application restored or denied. I rely on a collection of terms to assess whether a CERV application was successful or not.²⁷

²⁶ Individuals in the two files who apply for a CERV but are determined to “owe” court fees and restitution, still have payments “due,” are deemed “ineligible,” or are “denied” a CERV by the Board are considered here to have been denied a CERV.

²⁷ CERV vrstatus codes include a variety of words and characters. I take the following terms to be related to a positive determination (restored, granted, no moral turpitude, no mor turpt, nmt, no mt, did not lose, did not loose, voting rights intact, already granted, misd), and the following terms to be related to a negative determination (owe, denied, due, and ineligible).

89. There is a sizeable racial disparity between White and Black individuals with felony convictions who have applied to have their voting rights restored. Of the 8,653 White applicants, 2,375 (27%) had their CERV denied. In contrast, of the 11,798 Black applicants, 5,204 (44%) had their CERV denied. Black individuals who applied to have their voting rights restored were more than 60% more likely than comparable White individuals to have their CERV denied by the Board. Irrespective of race, however, most individuals who apply for CERV are denied, and the reason many of those who are denied is because they “owe” LFOs or have amounts “due.” This suggests that financial barriers for Alabamians with felony convictions prevent many from having their rights restored, regardless of race.

XII. Conclusion

90. Based on my analysis of the data I have examined, Alabama’s felony disenfranchisement scheme has had a clear discriminatory impact on Black, but also White individuals with felony convictions. Regardless of race, the prevalence of individuals with significant amounts of outstanding LFOs, combined with the lower economic status of individuals with felony convictions in Alabama, serve as a large barrier to voting rights restoration for Alabamians.

I declare under penalty of perjury that the foregoing is true and correct. Executed
this 17 day of April 2020, at Alachua, Florida.

D. A. Smith

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Associate Professor (with tenure), Department of Political Science, 2003-2009

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COURSES TAUGHT

Intro to American Politics (Undergrad)
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 Direct Democracy (Grad & Undergrad)
 Politics of Reform (Grad)

State and Local Government (Grad & Undergrad)
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- 12) Jonathan Termin and Daniel A. Smith. 2002. "Media Matters: Evaluating the Role of the Media in Ghana's 2000 Elections." *African Affairs* 101: 585-605.
- 11) Daniel A. Smith. 2002. "Consolidating Democracy? The Structural Underpinnings of Ghana's 2000 Elections." *Journal of Modern African Studies* 40 (4): 1-30.

- 10) Daniel A. Smith. 2002. "Ghana's 2000 Elections: Consolidating Multi-Party Democracy." *Electoral Studies* 21 (3): 519-26.
- 9) Daniel A. Smith and Caroline Tolbert. 2001. "The Initiative to Party: Partisanship and Ballot Initiatives in California." *Party Politics* 7 (6): 781-99.
- 8) Caroline Tolbert, John Grummel, and Daniel A. Smith. 2001. "The Effect of Ballot Initiatives on Voter Turnout in the American States." *American Politics Research* 29 (6): 625-48.
- 7) Daniel A. Smith. 2001. "Homeward Bound? Micro-Level Legislative Responsiveness to Ballot Initiatives." *State Politics and Policy Quarterly* 1 (1): 50-61.
- 6) Daniel A. Smith and **Robert J. Herrington**. 2000. "The Process of Direct Democracy: Colorado's 1996 Parental Rights Amendment." *Social Science Journal* 37 (2): 179-94.
- 5) Daniel A. Smith. 1999. "Reevaluating the Causes of Proposition 13." *Social Science History* 23 (2): 173-210.
- 4) Daniel A. Smith and **Nathaniel Golich**. 1998. "Some Unintended Consequences of TABOR." *Comparative State Politics* 19 (6): 33-40.
- 3) Daniel A. Smith, Kevin M. Leyden, and Stephen A. Borrelli. 1998. "Predicting the Outcomes of Presidential Commissions: Evidence from the Johnson and Nixon Years." *Presidential Studies Quarterly* 28 (2): 269-85.
- 2) Daniel A. Smith. 1996. "Populist Entrepreneur: Douglas Bruce and the Tax and Government Limitation Moment in Colorado, 1986-1992." *Great Plains Research* 6 (2): 269-94.
- 1) Daniel A. Smith. 1993. "Removing the Pluralist Blinders: Labor-Management Councils and Industrial Policy in the American States." *Economic Development Quarterly* 7 (4): 373-89.

UNDER REVIEW (current PhD students **bold**; former PhD students *italics*; current undergrad students *italics*)

- 1) William D. Hicks, Seth C. McKee, and Daniel A. Smith, "Contemporary Views of Liberal Democracy and the 2016 Presidential Election." Submitted.
- 2) *Enrijeta Shino* and Daniel A. Smith, "Political Knowledge of Early Voters." Revise and Resubmit.
- 3) Daniel A. Smith, *Enrijeta Shino*, **Anna Baringer**, **Thomas J. Eichermuller**, **William Zelin**. "Election Administration and Public Records Responsiveness."

BOOK CHAPTERS (current PhD students **bold**; former PhD students *italics*; current undergrad students *italics*)

- 28) *Thessalia Merivaki* and Daniel A. Smith. 2019. "Challenges in Voter Registration," in *The Future of Election Administration*, Mitchell Brown, Kathleen Hale, and Bridgett A. King, eds. New York: Palgrave/Macmillan.
- 27) Seth C. McKee and Daniel A. Smith. 2019. "Trump Territory," in *Florida and the 2016 Election of Donald J. Trump*, Matthew Corrigan and Michael Binder, eds. Gainesville: University of Florida Press (49-75).
- 26) Daniel A. Smith, **Brian Amos**, Daniel Maxwell, and **Tyler Richards**. 2019. "Rigged? Assessing Election Administration in Florida's 2016 General Election," in *Florida and the 2016 Election of Donald J. Trump*, Matthew Corrigan and Michael Binder, eds. Gainesville: University of Florida Press (pp. 154-74).
- 25) Daniel A. Smith, **Dillon Boatner**, **Caitlin Ostroff**, **Pedro Otálora**, and **Laura Uribe**, "Early Bird Special: Convenience Voting in Florida's 2016 General Election," in *Florida and the 2016 Election of Donald J. Trump*, Matthew Corrigan and Michael Binder, eds. Gainesville: University of Florida Press (pp.134-53).
- 24) Michael C. Herron, Daniel A. Smith, **Wendy Serra**, and Joseph Bafumi. 2017. "Wait Times and Voter Confidence: A Study of the 2014 General Election in Miami-Dade County," in *The American Election 2014: Contexts and Consequences*, Tauna Sisco, Christopher Galdieri, and Jennifer Lucas, eds. Akron, OH: University of Akron Press (pp. 107-122).
- 23) **Joseph T. Eagleton** and Daniel A. Smith. 2015. "Drawing the Line: Public Support for Amendments 5 and 6," in *Jigsaw Puzzle Politics in the Sunshine State*, Seth C. McKee, ed. Gainesville, FL: University Press of Florida (pp. 109-25).
- 22) **Diana Forster** and Daniel A. Smith. 2014. "A Climate for Change? Environmental Ballot Measures," in *U.S. Climate Change Policy and Civic Society*, Yael Wolinsky-Nahmias, ed. Washington, DC: C.Q. Press.
- 21) Daniel A. Smith. 2014. "Direct Democracy," in *The Encyclopedia of Political Thought*, Michael T. Gibbons, ed. Oxford: Wiley-Blackwell.
- 20) **William Hicks** and Daniel A. Smith. 2013. "State Campaigns and Elections," in *The Oxford Handbook of State and Local Government*, Donald Haider-Markel, ed. New York: Oxford University Press.
- 19) Daniel A. Smith. 2012. "Direct Democracy: Regulating the 'Will of the People,'" in Matthew J. Streb, ed., *Law and Election Politics: The Rules of the Game*, 2nd ed. New York: Routledge.
- 18) Daniel A. Smith. 2011. "Direct Democracy in Colorado: A Historical Perspective," in Courtenay Daum, Robert Duffy, and John Straayer, eds., *State of Change: Colorado Politics in the Twenty-first Century*. Boulder: University of Colorado Press.
- 17) Daniel A. Smith. 2010. "Direct Democracy and Candidate Elections," in Stephen C. Craig and David Hill, *The Electoral Challenge: Theory Meets Practice*, 2nd edition. Washington, DC: CQ Press.
- 16) Daniel A. Smith. 2010. "Financing Ballot Measures in the U.S.," in Karin Gilland-Lutz and Simon Hug, eds., *Financing Referendum Campaigns*. New York: Palgrave.
- 15) Daniel A. Smith. 2008. "Direct Democracy and Campaigns," in Shaun Bowler and Amihai Glazer, eds., *Direct Democracy's Impact on American Political Institutions*. New York: Palgrave.

- 14) Todd Donovan and Daniel A. Smith. 2008. "Identifying and Preventing Signature Fraud on Ballot Measure Petitions," in Michael Alvarez, Thad E. Hall, and Susan D. Hyde, eds., *Election Fraud: Detecting and Deterring Electoral Manipulation*. Washington, DC: Brookings.
- 13) Daniel A. Smith. 2008. "Direct Democracy and Election and Ethics Laws," in Bruce Cain, Todd Donovan, and Caroline Tolbert, eds., *Democracy in the States: Experiments in Elections Reform*. Washington, DC: Brookings.
- 12) Daniel A. Smith. 2007. "Ballot Initiatives," in Gary Anderson and Kathryn Herr, eds., *Encyclopedia of Activism and Social Justice*. Thousand Oaks, CA: Sage Publications, Inc.
- 11) Raymond J. La Raja, **Susan E. Orr**, and Daniel A. Smith. 2006. "Surviving BCRA: State Party Finance in 2004," in John Green and Daniel Coffey, eds., *The State of the Parties* (5th edition). Lanham, MD: Rowman and Littlefield.
- 10) Daniel A. Smith. 2006. "Initiatives and Referendums: The Effects of Direct Democracy on Candidate Elections," in Steven Craig, ed., *The Electoral Challenge: Theory Meets Practice*. Washington, D.C.: CQ Press.
- 9) Daniel A. Smith (with **Sure Log**). 2005. "Orange Crush: Mobilization of Bias, Ballot Initiatives, and the Politics of Professional Sports Stadia," in David McCuan and Stephen Stambough, eds., *Initiative-Centered Politics*. Durham, NC: Carolina Academic Press.
- 8) Daniel A. Smith. 2005. "The Initiative to Party: The Role of Parties in State Ballot Initiatives," in David McCuan and Stephen Stambough, eds., *Initiative-Centered Politics*. Durham, NC: Carolina Academic Press.
- 7) Daniel A. Smith. 2004. "Strings Attached: Outside Money in Colorado's Seventh Congressional District," in David Magleby and Quin Monson, eds., *The Last Hurrah?* Washington, D.C.: Brookings.
- 6) Daniel A. Smith. 2002. "Direct Democracy and Its Critics," in Peter Woolley and Albert Papa, eds., *American Politics: Core Argument/Current Controversy*. 2nd ed. Englewood Cliffs, NJ: Prentice Hall.
- 5) Daniel A. Smith. 2001. "Campaign Financing of Ballot Initiatives in the American States," in Larry Sabato, Bruce Larson, and Howard Ernst, eds., *Dangerous Democracy? The Battle Over Ballot Initiatives in America*. Lanham, MD: Rowman and Littlefield.
- 4) Daniel A. Smith. 2001. "Special Interests and Direct Democracy: An Historical Glance," in M. Dane Waters, ed., *The Battle Over Citizen Lawmaking*. Durham, NC: Carolina Academic Press.
- 3) Daniel A. Smith and Jonathan Temin. 2001. "The Media and Ghana's 2000 Elections," in Joseph Ayee, ed., *Deepening Democracy in Ghana: Politics of the 2000 Elections*, Volume 1 (Thematic Studies). Accra: Freedom Publications.
- 2) Daniel A. Smith. 2001. "The Politics of Upper East and the 2000 Ghanaian Elections," in Joseph Ayee, ed., *Deepening Democracy in Ghana: Politics of the 2000 Elections*, Volume 2 (Constituency Studies). Accra: Freedom Publications.
- 1) Daniel A. Smith. 1998. "Unmasking the Tax Crusaders," in Bruce Stinebrickner, ed., *Annual Editions: State & Local Government*. 9th ed. Guilford, CT: Dushkin/McGraw-Hill, 83-85 [Reprinted].

RESEARCH GRANTS, CONTRACTS, HONORS, AND AWARDS

- 38) University Scholars Program Grant (advising **Emily Boykin** and **Jenna Tngum**), University of Florida, "Spanish Language Materials, Administrative Compliance, and Hispanic Voting in Florida." Fall 2019/Spring 2020.
- 37) CLAS Scholars Program Grant (advising **William Zelin**), University of Florida, "The Effect of Natural Disasters on Voter Turnout." Fall 2019/Spring 2020.
- 36) Gill Foundation Grant, "LGBT Issues in Florida," Spring 2018 (Co-PI, Michael Martinez).
- 35) University of Florida Term Professorship, 2017-2019.
- 34) University Scholars Program Grant (advising **Pedro Otálora**), University of Florida, "Political Participation of Native-Born and Naturalized Citizens in Miami-Dade." Summer/Fall 2017.
- 33) Ruben Askew Scholar Award (advising Wendy Serra), Bob Graham Center, University of Florida, Summer 2016.
- 32) Emerging Scholars Program (advising **Anthony Rychkov**), University of Florida, "The Timing of Voter Registration and Turnout," Spring/Summer 2016.
- 31) University Scholars Program Grant (advising **Casey Ste. Claire**), University of Florida, College of Liberal Arts & Sciences, "Reprecincting and Voter Turnout," Fall 2015/Spring 2016.
- 30) University Scholars Program Grant (with Frances Chapman), University of Florida, College of Liberal Arts & Sciences, "Truing or Suppressing the Vote? Private Voter Challenges in Florida," Fall 2013/Spring 2014.
- 29) Best Paper Award presented in 2012 by the APSA Organized Section on State Politics and Policy: "Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355," 2013 (with Michael Herron).
- 28) University Scholars Program Grant (with Bryce Freeman), University of Florida, College of Liberal Arts & Sciences, "Impact of Voter Suppression on Political Participation," Spring 2013.
- 27) The William and Flora Hewlett Foundation, "Popular Support and Conditions for the Passage of Ballot Measures," June 2013.
- 26) Advancement Project, "Congestion at the Polls: A Study of Florida Precincts in the 2012 General Election," June 2013 (with Michael Herron).
- 25) Co-Principal Investigator, "Trans-Saharan Professionals Program," United States Department of State, Bureau of Educational and Cultural Affairs, S-ECAPPE-10-GR-231 (DT), September 2010-August 2012.
- 24) University of Florida Research Foundation (UFRF) Professor, 2010-2012 (annual salary supplement and research funding).
- 23) Co-Principal Investigator, *American Political Science Association* Workshop on Elections and Democracy, University of Ghana at Legon, Ghana, Summer 2009, funded by Mellon Foundation.

- 22) Best Paper Award presented in 2006 by the APSA Organized Section on State Politics and Policy: “Do State-Level Ballot Measures Affect Presidential Elections?” (with Caroline Tolbert and Todd Donovan).
- 21) Research Grant, “Did Gay Marriage Re-Elect George W. Bush?” University of Florida, College of Liberal Arts & Sciences, Summer 2005.
- 20) University Scholars Program Grant (with Kirsten Soltis), University of Florida, College of Liberal Arts & Sciences, “Money and the Member: An Analysis of Fundraising in Congressional Politics in the Post-Campaign Finance Reform Era,” Fall 2005.
- 19) Research Grant, “Mobilization Effects of Ballot Measures in Colorado, Florida, Ohio, and Nevada,” Ballot Initiative Strategy Center, Fall 2004.
- 18) Research Grant, “Mobilization Effects of Gay Marriage Ban in Ohio,” Ballot Initiative Strategy Center, Fall 2004.
- 17) Research and Travel Grant, *Pew Charitable Trusts*, “Veiled Political Actors,” Daniel Lowenstein, Kim Alexander, Robert Stern, Tracy Western, and Joseph Doherty, Principle Investigators, Fall 2003.
- 16) Travel Grant, *College of Liberal Arts and Sciences*, University of Florida, “Initiative and Referendum Campaigns,” Fall 2003.
- 15) Research Grant, *Pew Charitable Trusts*, “Outside Money: Colorado’s 7th Congressional District,” David Magleby, Principal Investigator, Fall 2002.
- 14) Faculty Research Fund, “Ballot Initiatives during the Progressive Era,” *University of Denver*, Fall 2002.
- 13) Research Grant, *American Political Science Association*, “Ballot Initiatives during the Progressive Era: Evidence from California, 1912-1920,” Summer 2002.
- 12) Research Grant, *Colorado Endowment for the Humanities*, “The ‘Golden Era’ of Direct Democracy? Colorado’s Election of 1912,” (R017-0300-010) (with Joseph Lubinski), Spring 2000.
- 11) Partners in Scholarship: 2000 Winter Quarter Project Proposal, “The ‘Golden Era’ of Direct Democracy? Evidence from the Colorado Election of 1912,” *University of Denver*, with Joseph Lubinski).
- 10) Rosenberry Fund, “Direct Democracy in Colorado,” *University of Denver*, Spring 1999.
- 9) Best Paper, Charles Redd Politics of the American West, “Howard Jarvis, Populist Entrepreneur: Reevaluating Causes of Proposition 13,” *Western Political Science Association*, Los Angeles, March 20, 1998.
- 8) Faculty Research Fund, “Ballot Warriors: Citizen Initiatives in the 1990s,” *University of Denver*, Fall 1997.
- 7) Partners in Scholarship: 1997 Winter Quarter Project Proposal, “The Process of Direct Democracy: Parental Rights Amendment,” *University of Denver*, with Robert Herrington, Winter 1997.
- 6) Faculty Research Fund, “*Faux* Populism: Populist Entrepreneurs and Populist Moments,” *University of Denver*, Fall 1996.
- 5) International Small Grants, “Election Monitor: Ghana Presidential and Parliamentary 1996 Elections,” Office of Internationalization, *University of Denver*, Fall 1996.
- 4) Faculty Research Fund, “Populist Prophets and the Mass Appeal of Direct Democracy,” Program Support Services, *University of Denver*, Spring 1995.
- 3) Research Grant, Institute for Public Affairs, *West Virginia University*, Summer 1994.
- 2) Senate Research Travel Grant, Faculty Development Fund, *West Virginia University*, Fall 1994.
- 1) Research Travel Grant, Robert LaFollette Institute of Public Affairs, *University of Wisconsin-Madison*, Fall 1992.

TECHNICAL REPORTS & OTHER SCHOLARLY PUBLICATIONS

- 27) Daniel A. Smith, “Audit of Assignment of Registered Voters to New, Court-Ordered House of Delegates Districts,” Virginia Secretary of State (with Michael P. McDonald), Spring 2019.
- 26) Daniel A. Smith, “Vote-by-Mail Ballots Cast in Florida,” A Report Commissioned by *ACLU Florida*, August 2018.
- 25) Michael C. Herron and Daniel A. Smith, “Congestion at the Polls: A Study of Florida Precincts in the 2012 General Election,” A Report Commissioned by Advancement Project, Washington, DC, June 24, 2013. Available: <http://www.advancementproject.org/news/entry/voters-of-color-faced-longest-wait-times-in-florida>.
- 24) Michael C. Herron and Daniel A. Smith, “Florida’s 2012 General Election under HB 1355: Early Voting, Provisional Ballots, and Absentee Ballots,” League of Women Voters Florida, January 2013.
- 23) Daniel A. Smith, “The Re-demarcation and Reapportionment of Parliamentary Constituencies in Ghana,” *Ghana Center for Democratic Development (CDD-GHANA)*, Vol. 10 (2): October, 2011. Available: <http://www.cddghana.org/documents/Vol.%2010,%20No.%202.pdf>
- 22) Daniel A. Smith. 2010. “Educative Effects of Direct Democracy: Evidence from the US States,” Memorandum requested by the British House of Lords, Constitution Committee, January 4. Available: <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldconst/99/99we14.htm>.
- 21) Daniel A. Smith. 2006. “Money Talks: Ballot Initiative Spending in 2004.” *Ballot Initiative Strategy Center*, June. Available: <http://ballot.org>.
- 20) Daniel A. Smith. 2006. “Ballot Initiatives, Tax Issues,” in Larry Sabato and Howard Ernst, eds., *Encyclopedia of American Political Parties and Elections*. New York: Facts on File.
- 19) Daniel A. Smith. 2004. “Direct Democracy,” in David Wishart, ed., *Encyclopedia of the Great Plains*. Lincoln: University of Nebraska Press.
- 18) Daniel A. Smith and Caroline J. Tolbert. 2003. “Educated by Initiative,” *Campaigns and Elections*, August, p. 31.
- 17) Elizabeth Garrett, and Daniel A. Smith. 2003. “Veiled Political Actors: The Real Threat to Campaign Disclosure Statutes” (July 22). USC Law and Public Policy Research Paper No. 03-13 <http://ssrn.com/abstract=424603>.

- 16) Daniel A. Smith. 2003. "Ballot Initiatives and the (Sub)Urban/Rural Divide in Colorado," in Daphne T. Greenwood, ed., *Colorado's Future: Meeting the Needs of a Changing State*. Colorado Springs: Center for Colorado Policy Studies.
- 15) Daniel A. Smith. 2003. "The Colorado 7th Congressional District," in David B. Magleby and Quin Monson, eds., *The Last Hurrah?* Provo, UT: Center for the Study of Elections and Democracy.
- 14) Stan Elofson, Daniel A. Smith, Jennifer Berg, and Joseph Lubinski. 2002. "A Listing of Statewide Initiated and Referred Ballot Proposals in Colorado, 1912-2001." Issue Brief No. 02-02. (March 5) *Colorado Legislative Council*, Colorado General Assembly, Denver. [Revised Edition].
- 13) Daniel A. Smith. 2001. "Howard Jarvis' Legacy? An Assessment of Antitax Initiatives in the American States." *State Tax Notes* 22: 10 (December): 753-764.
- 12) Daniel A. Smith. 2001. "The Structural Underpinnings of Ghana's December 2000 Elections." Critical Perspectives, No. 6. *Ghana Center for Democratic Development (CDD-Ghana)*, Accra, Ghana.
- 11) Daniel A. Smith, Jonathan Temin, and Kwaku Nuamah. 2001. "Media Coverage of the 2000 Election: A Report on the Media Coverage of Election 2000 (May 2000-January 2001)." Research Paper, No. 8. *Ghana Center for Democratic Development (CDD-Ghana)*, Accra, Ghana.
- 10) Daniel A. Smith. 2000. "Election 2000: Debating the Issues?" Briefing Paper, Volume 2, Number 4, *Ghana Center for Democratic Development (CDD-Ghana)*, Accra, Ghana.
- 9) Daniel A. Smith. 2000. "Growth and Transportation Ballot Measures in Colorado," in Floyd Ciruli, ed., *Moving Visions: Next Steps Toward Growing Smart*. Denver: Gates Family Foundation.
- 8) Stan Elofson, Daniel A. Smith, Jennifer Berg, and Joseph Lubinski. 2000. "A Listing of Statewide Initiated and Referred Ballot Proposals in Colorado, 1912-2000." Issue Brief No. 8. (December) *Colorado Legislative Council*, Colorado General Assembly, Denver. [updated 2002, 2004, 2006, 2008]
- 7) Daniel A. Smith. 2000. "Progressives and the Initiative Process: A Call to Arms." *Ballot Initiative Strategy Center (BISC)*.
- 6) Daniel A. Smith and Joseph Lubinski. 2000. "Sponsoring 'Counter-Majoritarian' Bills in Colorado." *Ag Journal*. (September): 12-13.
- 5) Daniel A. Smith. 1998. "Unmasking the Tax Crusaders." *State Government News*. 41:2 (March): 18-21.
- 4) Daniel A. Smith. 1997. "Howard Jarvis, Populist Entrepreneur," Working Paper, 97-8, Institute of Governmental Studies, *University of California - Berkeley*.
- 3) Daniel A. Smith. 1995. "The West Virginia Labor-Management Advisory Council," *The West Virginia Public Affairs Reporter*. 12:4 (Winter): 1-11.
- 2) Daniel A. Smith. 1992. "A Tale of Five Cities," *The La Follette Policy Report*. 5 (Fall): 18-21.
- 1) Daniel A. Smith. 1991. "Emerging Skill Needs in the Wisconsin Non-Automotive Engines Industry," Commissioned by the Wisconsin Board of Vocational, Technical, and Adult Education, Working Paper, *Center on Wisconsin Strategy*, University of Wisconsin-Madison.

OUTSIDE ACTIVITIES: BOARDS/EXPERT WITNESS/POLITICAL CONSULTANT/INVITED TESTIMONY/MISCELLANEOUS

President, ElectionSmith www.electionsmith.com (S-Corp) 2006-
 Board Member, Ballot Initiative Strategy Center (BISC) www.ballot.org 1999-2019.
 Board Member, Common Cause Florida <https://www.commoncause.org/florida/> 2014-
 Board President, 300 Club <https://300clubswimandtennis.com/> 2018-

Domestic Consulting

Expert (written declarations), *Gruver, et al. v. Barton, et al.* Case 1:19-cv-00121-MW-GRJ (US District Court for the Northern District of Florida). [Provided written reports and deposed for plaintiffs analyzing records on the impact of SB7066 on Florida residents with felony convictions and outstanding LFOs], 2019-.

Consultant, Andrew Goodman Foundation [Analysis of on-campus early voting in Florida], 2019.

Consultant, ACLU-Florida [Data analysis of Ex-Felons in Florida], 2019-.

Expert (written declaration), *DNC Services Corporation et al. v. Lee et al.* Case 4:18-cv-00524-MW-CAS (US District Court for the Northern District of Florida) [Provided written report for plaintiffs on Vote by Mail ballots in Florida], 2019-.

Expert (written declaration), *MOVE Texas Civic Fund, et al. v. Whitley, et al.* Case 3:19-cv-00041 (US District Court for the Southern District of Texas) [Provided written reports for plaintiffs on number of naturalized citizens in Texas], 2019.

Expert (written declarations), *Fair Fight Action v. Crittenden*, Case No. 1:18-cv-05391 (US District Court for the Northern District of Georgia) [Retained by plaintiffs to analyze data related to Georgia's election laws], 2018-.

Expert, *The Democratic Party of Georgia v. Crittenden*, Case No. 1:18-cv-05443 (US District Court for the Northern District of Georgia) [Retained by plaintiffs to analyze data related to the 2018 gubernatorial election], 2018.

Consultant, ACLU-Florida [Provided analysis of Vote by Mail ballots in Florida], 2018.

Expert, *Judicial Watch, Inc., Election Integrity Project California, Inc., et al. v. Dean C. Logan, et al.* Case No. 2:17-cv-08948-R-SK (US District Court for the Central District of California, Western Division). [Retained by defendants (California Department of Justice) to analyze data concerning inactive voters], 2018.

Expert (written declaration), *Rivera v. Detzner*, Case 1:18-cv-61474 (US District Court for the Northern District of Florida) [Provided written report for plaintiffs on Puerto Rican population and registered voters in Florida], 2018.

- Expert, *Thompson et al. v. Merrill*, Case No. 2: 16-cv-783 (US District Court for the Middle District of Alabama) [Retained by plaintiffs to analyze data related to the discriminatory impact of Alabama's felony disenfranchisement scheme over time], 2018-.
- Expert (written affidavit), *League of Women Voters of Florida, Inc., et al. v. Detzner*, Case No. 4:18-cv-00251-MW-CAS (US District Court for the Northern District of Florida) [Provided written report for plaintiffs (LWV) to extend early voting in Florida], 2018.
- Expert (written affidavit), *Ohio A. Philip Randolph Institute, et al. v. Secretary of State, Jon Husted*, Case 2:16-cv-00303 (US District Court for the Southern District of Ohio, Eastern Division) [Provided written report and deposed for plaintiffs (APRI, ACLU OH, Demos) to reinstate registered voters removed by Ohio's "Supplemental Process"], 2017. [Decision, *Husted v. APRI*, by SCOTUS, July 11, 2018].
- Expert (written affidavits), *Bellito & ACRU v. Snipes*, Case 4:16-cv-61474 (US District Court for the Southern District of Florida, Ft. Lauderdale Division) [Provided written expert reports and deposed for intervenors (SEIU, Project Vote, Demos) to defend NVRA compliance by Broward Supervisor of Elections, 2017; testified at trial].
- Consultant, ACLU, Georgia [Provided analysis of CVAP, VAP, and registered voters in Irwin County, Georgia], 2017.
- Consultant, ACLU, Georgia [Provided analysis of proposed redistricting changes to the Georgia House of Representatives by the Georgia state legislature], 2017.
- Expert (written affidavit), *Florida Democratic Party v. Scott*, Case 4:16-cv-00626 (US District Court for the Northern District of Florida) [Provided written expert report for plaintiff-intervenors (Mi Familia Vota Education Fund) to extend voter registration deadline in Florida due to Hurricane Matthew], 2016.
- Consultant, ACLU, Georgia [Provided analysis of registration deadline in Georgia due to Hurricane Matthew], 2016.
- Expert (written affidavit), *Florida Democratic Party v. Detzner*, Case 4:16-cv-00607 (US District Court for the Northern District of Florida) [Provided written empirical analysis for plaintiff on vote-by-mail ballots cast in Florida], 2016.
- Advisor, "Mad As Hell: Howard Jarvis and the Birth of the Tax Revolt," Documentary Film by Jason Cohn, Bread and Butter Films [Academic Advisor on Jarvis and antecedents of Prop. 13], 2011-16.
- Advisor, "Rigged," Documentary Film by Natasha del Torro, Fusion TV (Naked Truth), 2016. [Winner of the Robert F. Kennedy Journalism Award for Best Documentary]. Available: <http://tv.fusion.net/story/352548/naked-truth-rigged-elections-documentary/>.
- Advisor, "Voting: Last Week Tonight with John Oliver," HBO, February 14, 2016. Available: <https://www.youtube.com/watch?v=rHFOwlMCdto>.
- Expert (written affidavit), *Frank v. Walker*, Case 16-3003, 16-3052 (US Court of Appeals for the Seventh Circuit) [Provided written empirical analysis for plaintiffs (ACLU) on voter ID and turnout], 2015.
- Expert (consultant), *Greater Birmingham Ministries v. Alabama*, Case 2:15-cv-02193-LSC (US District Court for the Northern District of Alabama, Southern Division) [Provided oral empirical analysis for plaintiffs (NAACP LDEF) on use of absentee ballots], 2015.
- Consultant, America Votes [Provided demographic shift of registered voters analysis for state of Florida], 2015.
- Expert (written affidavits), *NAACP, et al. v. Husted, et al.*, 2:14 cv-00404 (US District Court for the Southern District of Ohio) [Provided written empirical analysis and deposed for plaintiffs (ACLU) on early in-person absentee voting in Ohio], 2014.
- Expert (written affidavit), *John Sullivan, et al. v. Marni Lin Saviki, et al.*, 2013-CA-003122 (20th Judicial Circuit (Lee County, FL) [Provided written empirical analysis and deposed on early, absentee, and Election Day vote totals in the November 5, 2013 Cape Coral mayoral election], 2014.
- Expert (written affidavit), *Gateway Retail Center, LLC v. City of Jacksonville, Florida*, 3:13-cv1040-J-TJC-JRK (US District Court for the Middle District of Florida) [Provided empirical analysis for Gateway Retail Center's attorneys of African American voting during early voting in Duval County in the 2012 General Election], 2013.
- Expert (written affidavits), *Arcia, et al. v. Detzner*, 1:12-cv-22282-WJZ (US District Court for the Southern District of Florida) [Provided empirical analysis for Arcia's attorneys of the Florida Department of State's various lists of "potential non-citizens"], 2012. [*Arcia, et al. v. Florida Secretary of State* (Defendant-Appellee) and *Garcia, et al.* (Intervenor Defendants), 12-15738 (Appealed in 11th Circuit, from the United States District Court for the Southern District of Florida), 2014.
- Elections Analyst, WUFT (TV and Radio), Election Night Coverage, November 6, 2012.
- Advisor, "Voters in America: Who Counts?" CNN Documentary Investigation, October 14, 2012. <http://cnnpressroom.blogs.cnn.com/2012/10/19/voters-in-america-who-counts-joejohnscnn-investigates-voter-suppression-voter-fraud/>
- Expert (written affidavit), *Brown v. Detzner* 3:12-cv-00852 (US District Court for the Middle District of Florida) [Provided empirical analysis for Brown's attorneys of minority early voting in Duval County during the 2008 and 2010 general elections and the 2011 Jacksonville mayoral race], 2012.
- Expert (written affidavits), *Romo v. Scott*, No. 2012-CA-000412 (Fla. Cir. Ct., Leon County). [Provided empirical analyses and deposed for Coalition's attorneys of new Congressional redistricting maps submitted and adopted by the Florida legislature as well as alternative maps submitted by the The League of Women Voters of Florida, the National Council of La Raza, and Common Cause Florida], 2012-14.

- Pro Bono* Consultant (written work product), *League of Women Voters of FL v. Browning*, N.D. Fla. (4:11-cv-00628). [Provided empirical analysis for LWV's attorneys (Brennan Center, New York University), assessing the impact of Florida's "third party organization" voter registration requirements], 2012.
- Pro Bono* Consultant (written work product), Hillsborough Hispanic Coalition, Tampa, Florida, 2012. [Provided empirical analysis of the likely racial/ethnic impact of the redistricting maps adopted by the Hillsborough County Commission, and provided alternative maps to be submitted by the Hillsborough Hispanic Coalition, in anticipation of federal litigation], 2012.
- Invited Testimony*, U.S. Senate, Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights, "New State Voting Laws II: Protecting the Right to Vote in the Sunshine State," January 2012.
- Expert (written affidavit), *Worley v. Detzner*, U.S. District Court, N.D. Fla. (4:10-cv-00423-RH-WCS). [Provided expert opinion to Florida Secretary of State to help defend Election code provisions concerning the reporting, registration, and disclosure requirements applicable to political committees (ballot issues)], 2010.
- Expert (written affidavit), *Citizens Against Slots v. PPE Casino*, 999 A.2nd 181 (2010) 415 Md. 117. [Provided empirical analysis of the validity rates of the signatures submitted by Citizens Against Slots for a county popular referendum], 2010.
- Expert (written affidavit), *The Independence Institute, et. al. v. Bernie Buescher* 1:2010-cv-00609. (US 10th Circuit) [Provided empirical analysis for the Office of the Colorado Attorney General to defend Secretary of State's enforcement of public disclosure laws for ballot issue committees], 2009-2010.
- Lead Author, "Direct Democracy Scholars" Amicus Brief, *Doe v. Reed*, 132 S. Ct. 449. [Provided empirical evidence that public disclosure of signatures on ballot measures serves sufficiently important governmental interests in order to prevent fraudulent signature gathering activities, to limit the deceptive solicitation of signatures, and to provide information to voters about ballot measures], 2010.
- Expert (written affidavit), *Dallman, et al. v. William Ritter and Rich L. Gonzales and Daniel Ritchie, et al* 09SA224 (Colorado Supreme Court) [Provided empirical analysis for Ritter, Gonzales, and Ritchie of analysis of campaign financing of ballot measures], 2009-10.
- Expert (written affidavit), *Sampson v. Buescher*, 08-1389, 08-1415 (US 10th Circuit) [Provided empirical analysis refuting claims of barriers to participation in ballot issue campaigns for Office of the Colorado Attorney General, defending Secretary of State's enforcement of disclosure laws], 2007-10.
- Consultant, *Trust the Voters*, Tallahassee, 2006.
- Consultant, *The Washington State Patrol Troopers Association* [Conducted empirical analysis for State Patrol Troopers of the validity of signatures collected on ballot issue campaign], 2006.
- Expert (written affidavit), *The City of Winter Springs, FL v. Seminole County*, City of Winter Springs, 2004.
- Expert (written affidavit), *California Pro-Life Council, Inc. v. Karen Getman, et al.* 328 F.3d 1088, 1101 (US 9th Cir) [Provided empirical analysis for the Office of the California Attorney General on veiled political actors in California ballot measure campaigns], 2004-05.
- Expert (written affidavit), *Colorado Right to Life Committee, Inc. v. Donetta Davidson* 395 F.Supp.2d 1001 (US 10th Circuit) [Provided empirical analysis of broadcasted television and direct mail ads in Colorado between 1999-2003 for the Office of the Colorado Attorney General], 2004-05.
- Invited Testimony*, Ballot Initiative Reform, Florida Legislature, 2002; 2003-05.
- Invited Testimony Witness*, Ballot Initiative Reform, Colorado Legislature, 1999-2000.
- Consultant (*pro bono*), *Ad Hoc Committee to Defend Heath Care*, Denver, CO, 1998-2000.

International Consulting

- Consultant, National Democratic Institute (NDI), Ghana, 2013.
- Invited Written Testimony*, *British House of Lords*, Constitution Committee (Direct Democracy), 2010.
- Consultant, *Institute of International Education (IIE)*, New York, 2002-04.
- Consultant, *Coalition of Domestic Elections Observers (CODEO)*, Accra, Ghana, 2000-01.
- Consultant, *International Foundation for Election Systems (IFES)*, Washington, DC, 1999-2001.
- Consultant, *International Student Exchange Program (ISEP)*, Washington, DC, 1995-97.

BOOK REVIEWS & REVIEW ESSAYS

- 9) Daniel A. Smith. 2008. Review of Dorothy Holland, Donald M. Nonini, Catherine Lutz, Lesley Bartlett, Marla Frederick-McGlathery, Thaddeus C. Guldbradsen, and Enrique G. Murillo, Jr., Local Democracy Under Siege: Activism, Public Interests, and Private Politics, *Perspectives on Politics* 6: 386-86.
- 8) Daniel A. Smith. 2006. Review of Stephen Nicholson, Voting the Agenda: Candidates, Elections, and Ballot Propositions, *Political Science Quarterly* 120: 695-697.
- 7) Daniel A. Smith. 2005. Review of John Matsusaka, For the Many or the Few? The Initiative, Public Policy, and American Democracy, *Perspectives on Politics* 3: 646-47.
- 6) Daniel A. Smith. 2000. Review of Shaun Bowler and Todd Donovan, Demanding Choices: Opinion, Voting, and Direct Democracy, *Social Science Quarterly* 81: 1104-1106.
- 5) Daniel A. Smith. 1999. Review of Shaun Bowler, Todd Donovan, Caroline Tolbert, eds., Citizens as Legislators, *American Political Science Review* 93: 446-447.
- 4) Daniel A. Smith. 1998. Review of David Ryden, Representation in Crisis, *Politics and Policy* 26: 514-515.

- 3) Daniel A. Smith. 1998. Review of Grant Reeher and Joseph Cammarano, eds., Education for Citizenship, *H-Pol*, *H-Net*. (February).
- 2) Daniel A. Smith. 1997. Review Essay of William S. K. Reno, Corruption and State Politics in Sierra Leone, and Sahr John Kpundeh, Politics and Corruption in Africa, *Africa Today* 44: 362-365.
- 1) Daniel A. Smith. 1996. Review of Stephen Lowe, The Kid on the Sandlot: Congress and Professional Sports, 1910-1992, *Sport History Review* 27: 90-92.

TEACHING GRANTS, HONORS, AND AWARDS

Anderson Scholar Award, College of Liberal Arts and Sciences, University of Florida, 2011; 2015; 2016; 2017
 Political Science Board of Advisors, "Outstanding Professor Award," *University of Florida*, Spring 2008.
 Center for Teaching and Learning Technology Grant, "Introduction to American Politics: Web-Based Interactive Learning," *University of Denver*, Spring, 1997.
 Faculty Appreciation Award, Learning Effectiveness Program, *University of Denver*, April 1997.
 Curriculum Diversity Grant, "A Theater History: The Racial and Class Politics of US Drama from Colonization Forward," *University of Denver*, Winter, 1997.
 CORE Development Grant, "Drama of Politics/Politics of Drama," *University of Denver*, Summer, 1996.
 International Small Grants, "Summer Student Study Abroad Program: University of Ghana at Legon," Office of Internationalization, *University of Denver*, Spring, 1995.
 International Small Grants, "Ghana Study Abroad Program," Office of Internationalization, *University of Denver*, Spring, 1995.

NEWSPAPER OP-EDS, INVITED BLOG POSTS & LETTERS TO THE EDITOR

Op-Ed, "Your voting habits may depend on when you registered to vote," *Salon*, September 24, 2019. [Originally appeared in *the Conversation*] https://www.salon.com/2019/09/24/your-voting-habits-may-depend-on-when-you-registered-to-vote_partner/ (with Enrijeta Shino).
 Invited Blog Post, "Who Votes Provisionally and Why? A Look at North Carolina's 2016 General Election," MIT Election Science Data Lab, May 2, 2018. <https://medium.com/mit-election-lab/who-votes-provisionally-and-why-4dd413c02fa9> (with Lia Merivaki).
 Op-Ed, "[Do we have a right not to vote? The Supreme Court suggests we don't](#)," *NY Daily News*, June 12, 2018 (with Michael C. Herron).
 Op-Ed, "[If more states start using Ohio's system, how many voters will be purged?](#)" *The Washington Post* (Monkey Cage), June 17, 2018 (with Michael C. Herron).
 Op-Ed, "2-to-1 Registration Advantage for Democrats Among 440K New Hispanic Voters In Florida," *Huffington Post*, October 7, 2016. http://www.huffingtonpost.com/latino-decisions/2-to-1-registration-advan_b_12385884.html.
 Op-Ed, "The Battle Over 'One Person, One Vote,' Has Just Begun," *The American Prospect*, April 18, 2016. (with Carl Klarner) Available: <http://prospect.org/article/one-person-one-vote-battle-just-starting>
 Invited Blog Post, "[Party competition is the primary driver of the recent increase in restrictive voter ID laws in the American states](#)," London School of Economics, U.S. Politics and Policy, November 12, 2014. <http://blogs.lse.ac.uk/usappblog/2014/11/12/party-competition-is-the-primary-driver-of-the-recent-increase-in-restrictive-voter-id-laws-in-the-american-states/>
 Op-Ed, "Rejected Ballots in Florida," *Florida Voices*, November 4, 2012 (with Michael Herron).
 Op-Ed, "High ballot rejection rates should worry Florida voters," *Tampa Bay Times*, October 28, 2012 (with Michael Herron).
 Op-Ed, "Voters need to push back against corporate cash," *St. Petersburg Times*, July 13, 2010.
 Op-Ed, "A chance for Floridians to redraw rigged districts," *St. Petersburg Times*, November 25, 2009.
 Op-Ed, "Lawmakers don't trust voters with the constitution," *Gainesville Sun*, October 21, 2006.
 Op-Ed, "Jeb Bush's secret-squirrel hunt? Rocky, that's just a bunch of Bullwinkle," *Orlando Sentinel*, February 23, 2006.
 Op-Ed, "Colorado: Independent of Whom?" Ballot Initiative Strategy Center, *Ballot Blog*, August 29, 2005.
 Op-Ed, "Stop Political Fund-Raising Arm," *Gainesville Sun*, April 25, 2004 (with Nicole M. James).
 Op-Ed, "Committees Hold the Secret to Campaign Financing," *St. Petersburg Times*, April 10, 2004 (with Nicole M. James).
 Letter, "Reform Ballot Initiative and Preserve the People's Power," *Miami Herald*, February 29, 2004.
 Op-Ed, "No: The Rich Have Taken Over," *Denver Post*, December 1, 2002.
 Op-Ed, "The Millionaire's Club: Why Leave Ballot Initiatives to the Rich?" *Denver Post*, August 18, 2002 .
 Op-Ed, "The Political Consequence of 'Praying for Peace,'" *The Crusading Guide* [Accra, Ghana], 12-18 October, 2000.
 Letter, "Book's [*Democracy Derailed* by David Broder] premise is problematic," *Denver Post*, May 28, 2000.
 Letter, "Initiative process ignores rural voices," *Denver Rocky Mountain News*, March 15, 2000.
 Op-Ed, "Progressives need to show initiative on ballot signatures," *Denver Post*, January 13, 2000.
 Op-Ed, "Colorado should put campaign finance data on the Internet," *Denver Post*, November 4, 1998 (with Richard Braunstein).
 Letter, "Follow the Money," *Washington Post*, October 12, 1998.
 Op-Ed, "Voters behind rule," *Denver Post*, June 21, 1998.

Op-Ed, “Founders crafted safeguards against popular excesses,” *Denver Post*, May 21, 1995.

CONFERENCE PAPER PRESENTATIONS

- “Voter Registration after Parkland and Early Voting on College Campuses,” American Political Science Association, Washington, DC, August 28-September 1, 2019 (with Enrijeta Shino).
- “Did Ballot Design Oust a US Senator? A Study of the 2018 Election in Florida,” American Political Science Association, Washington, DC, August 28-September 1, 2019 (with Michael C. Herron & Michael Martinez).
- “Barriers to Registering Returning Citizens in Florida,” American Political Science Association, Washington, DC, August 28-September 1, 2019.
- “Ballot Design, Voter Intentions, and Representation: A Study of the 2018 Midterm Election in Florida,” Election Sciences, Reform, and Administration, University of Pennsylvania, July 10-12, 201 (with Michael C. Herron & Michael Martinez).
- “Mobilizing the Youth Vote? Early Voting on College Campuses in Florida,” 19th State Politics and Policy Conference at the University of Maryland, May 30-June 1, 2019 (with Enrijeta Shino).
- “Did Ballot-Design Oust an Incumbent Senator? A Study of the 2018 Midterm Election in Florida,” Midwest Political Science Association Annual Meeting, April 4-7, 2019, Chicago (with Michael Herron and Michael Martinez).
- “Election Administration and Public Records Responsiveness,” Midwest Political Science Association Annual Meeting, April 4-7, 2019, Chicago (with Enrijeta Shino, Anna Baringer, Justin Eichermuller, and William Zelin).
- “Estimating the Differential Effects of Purging Inactive Registered Voters,” American Political Science Association, Boston MA, August 28-September 1, 2018 (with Michael C. Herron).
- “Estimating the Differential Effects of Purging Inactive Registered Voters,” Election Sciences, Reform, and Administration, University of Wisconsin-Madison, July 26-27, 2018 (with Michael C. Herron).
- “Exact-Match Voter List Verification and Turnout,” 18th State Politics and Policy Conference at Penn State, June 7-9, 2018 (with Michael P. McDonald, Pedro Otálora, and Enrijeta Shino).
- “Estimating the Differential Effects of Purging Inactive Registered Voters,” at the 18th State Politics and Policy Conference at Penn State, June 7-9, 2018 (with Michael C. Herron).
- “Who are Provisional Voters? Evidence from North Carolina,” Midwest Political Science Association Annual Meeting, April 5-8, 2018, Chicago (with Lia Merivaki).
- “A History and Analysis of Black Representation in Southern State Legislatures,” Symposium on Southern Politics, The Citadel, Charleston, South Carolina, March 1-2, 2018 (with Charles S. Bullock III, William D. Hicks, M. V. (Trey) Hood III, Seth C. McKee, and Adam Myers).
- “Who are Provisional Voters? Evidence from North Carolina,” Southern Political Science Association Annual Meeting, January 4-7, 2018, New Orleans (with Lia Merivaki).
- “Naturalizing the Party: Party Registration and Voter Turnout of Foreign-Born Citizens,” State of the Party: 2016 & Beyond, November 10, 2017, Ray C. Bliss Institute of Applied Politics, University of Akron, Ohio (with Lidia Kurganova).
- “The Erosion of Liberal Democracy: Dissensus and Ideology in America,” American Political Science Association, San Francisco, August 31-September 3, 2017 (with William D. Hicks and Seth C. McKee).
- “Early Voting Availability and Turnout in Florida and North Carolina,” American Political Science Association, San Francisco, August 31-September 3, 2017 (with David Cottrell and Michael C. Herron).
- “Determinants of County Level Voter Turnout, 1970-2016,” American Political Science Association, San Francisco, August 31-September 3, 2017 (with Carl Klarner, Brian Amos, and Michael P. McDonald).
- “Waiting to Vote: Using EViD Data to Assess the Electoral Consequences of Long Voting Lines,” Midwest Political Science Association annual meetings, April 6-9, 2017, Chicago (with David Cottrell and Michael C. Herron).
- “Timing the Habit: Voter Registration and Turnout in the American States,” American Political Science Association, Philadelphia, September 1-4, 2016 (with Enrijeta Shino).
- “Revisiting Majority-Minority Districts and Black Representation,” American Political Science Association, Philadelphia, September 1-4, 2016 (with Seth C. McKee, William D. Hicks; Carl E. Klarner).
- “Defending Democracy: How Political Scientists Are Engaging in the Fight over Voting Rights (and Why You and Your Dept. Should too),” APSA Roundtable with Theda Skocpol, Presented by the Scholars Strategy Network, American Political Science Association, Philadelphia, September 1-4, 2016.
- “Timing the Habit: Voter Registration and Turnout in the American States,” State Politics and Policy Conference, University of Texas at Dallas, May 19-21, 2016 (with Enrijeta Shino).
- “Revisiting Majority-Minority Districts and Descriptive Representation,” State Politics and Policy Conference, University of Texas at Dallas, May 19-21, 2016 (with Seth C. McKee, William D. Hicks; Carl E. Klarner).
- “Purging Participation? Eligibility Challenges, Psychological Reactance, and the Decision to Vote,” Midwest Political Science Association annual meetings, April 7-10, 2016, Chicago (with Daniel Biggers and Bryce Freeman).
- “Missing Black Men and Representation in American Political Institutions,” Midwest Political Science Association annual meetings, April 7-10, 2016, Chicago (with David Cottrell, Michael Herron, and Javier Rodriguez).
- “Early Voting Effects on Pre-Election Poll Estimates,” Southern Political Science Association, January 7-10, 2016, San Juan, Puerto Rico (with Michael P. McDonald, Michael D. Martinez, and Chris McCarty).
- “Your Ballot’s in the Mail: The Effects of Unsolicited Absentee Ballots,” American Political Science Association, San Francisco, September 1-4, 2015 (with Michael Martinez)

- “A Reassessment of the Turnout Effects in of Election Reforms in the United States,” American Political Science Association, San Francisco, September 1-4, 2015 (with Michael P. McDonald and Enrijeta Shino).
- “Reprecincting and Voting Behavior,” American Political Science Association, San Francisco, September 1-4, 2015 (with Brian Amos and Casey Ste. Claire)
- “Looks Can Be Deceiving: Explaining Support for Online Voter Registration in the American States,” State Politics and Policy Conference, California State University, Sacramento, May 28-30, 2015 (with William Hicks and Seth McKee).
- “Public Opinion on Statewide Ballot Measures,” State Politics and Policy Conference, California State University, Sacramento, May 28-30, 2015 (with Diana Forster).
- “Early Voting Effects on Pre-Election Poll Estimates,” American Association for Public Opinion Research Annual Conference, May 14-17, 2015, Hollywood, Florida (with Michael P. McDonald, Michael D. Martinez, and Chris McCarty).
- “Dumbing Down the Electorate? Assessing the Political Knowledge of Early Voters,” Midwest Political Science Association annual meetings, April 15-19, 2015, Chicago (with Enrijeta Shino).
- “Race, Shelby County, and the Voter Information Verification Act in North Carolina,” American Political Science Association, Washington, DC, August 27-31, 2014 (with Michael C. Herron).
- “Who Signs? Ballot Petition Signatures as Political Participation,” American Political Science Association, Washington, DC, August 27-31, 2014 (with Diana Forster and Brian Amos).
- “Race, Shelby County, and the Voter Information Verification Act in North Carolina,” State Politics and Policy Conference, Indiana University, Bloomington, IN, May 15-17, 2014 (with Michael C. Herron).
- “The Effects of Spatial Proximity on Voting,” State Politics and Policy Conference, Indiana University, Bloomington, IN, May 15-17, 2014 (with Kenton Ngo).
- “Race, Shelby County, and the Voter Information Verification Act in North Carolina,” Midwest Political Science Association Conference, Chicago, April 3-6, 2014 (with Michael C. Herron).
- “Beyond Regulatory Interpretation: The Demand and Supply of Provisional Ballots in Florida,” Symposium on Regulation in the U.S. States, DeVoe Center, Florida State University, Tallahassee, February 21, 2014 (with Lia Merivaki).
- “Evolution of an Issue: Voter ID Laws in the American States,” American Political Science Association Conference, Chicago, August 28-September 2, 2013 (with Seth McKee, William Hicks, and Mitch Sellers).
- “Closing the Door on Democracy”: Early Voting and Participation in Florida,” American Political Science Association Conference, Chicago, August 28-September 2, 2013 (with Michael Herron).
- “Evolution of an Issue: Voter ID Laws in the American States,” State Politics and Policy Quarterly 13th annual conference, University of Iowa, Iowa City, IA, May 23-25, 2013 (with Seth McKee, William Hicks, and Mitch Sellers).
- “Early Voting in Florida in the Aftermath of House Bill 1355,” State Politics and Policy Quarterly 13th annual conference, University of Iowa, Iowa City, IA, May 23-25, 2013 (with Michael Herron).
- “Racial Disparities in Provisional Ballot Rejection Rates,” Midwest Political Science Association Conference, Chicago, April 11-14, 2013 (with Michael Herron).
- “Who Registers? The Differential Impact of Florida’s House Bill 1355 on Voter Registration,” American Political Science Association Conference, New Orleans, August 30-September 2, 2012 (with Michael Herron).
- “The Effect of Polling Locations Upon Vote Choice: A Natural Experiment,” Southern Political Science Association Conference, Orlando, January 3-5, 2013 (with Charles Dahan).
- “Casting and Verifying Provisional Ballots in Florida,” Southern Political Science Association Conference, Orlando, January 3-5, 2013 (with Lia Merivaki).
- “Who Registers? The Differential Impact of Florida’s House Bill 1355 on Voter Registration,” American Political Science Association Conference, New Orleans, August 30-September 2, 2012 (with Michael Herron).
- “The Participatory Impact of Truncating Early Voting in Florida,” State Politics and Policy Quarterly 12th annual conference, Rice University, Houston, TX, February 16 – February 18, 2012 (with Michael Herron).
- “Engaging Potential Voters? The Collection of Valid Signatures on Ballot Petitions,” State Politics and Policy Quarterly 11th annual conference, Dartmouth University, June 4-6, 2011 (with Diana Forster).
- “Pledging Democracy: Congressional Support for a National Advisory Initiative and Referendum,” Southern Political Science Association, January 5-8, 2011, New Orleans (presented by Matthew Harrigan).
- “We Know What You Did Last Summer: The Impact of Petition Signing on Voter Turnout,” State Politics and Policy Quarterly 10th annual conference, University of Illinois, Springfield, June 5-6, 2010 (with Janine Parry and Shayne Henry).
- “Reassessing Direct Democracy and Civic Engagement: A Panel Study of the 2008 Election,” State Politics and Policy Quarterly 10th annual conference, University of Illinois, Springfield, June 5-6, 2010 (with Caroline J. Tolbert and Amanda Frost).
- “Generating Scholarship from Public Service: Media Work, Nonprofit Foundation Service, and Legal Expert Consulting,” State Politics and Policy Quarterly 10th annual conference, University of Illinois, Springfield, June 5-6, 2010.
- “Obama to Blame: Minority Surge Voters and the Ban on Same-Sex Marriage in Florida,” American Political Science Association Conference, Toronto, September 2-5, 2009 (with Stephanie Slade).

- “State Context and Support for a National Referendum in the U.S.” State Politics and Policy Quarterly 9th annual conference, UNC Chapel Hill/Duke University, May 22-23, 2009 (with Caroline J. Tolbert and Amanda Frost).
- “Direct Democracy, Opinion Formation, and Candidate Choice,” American Political Science Association Conference, Boston, August 2008 (with Caroline J. Tolbert).
- “The Legislative Regulation of the Initiative,” State Politics and Policy Quarterly 8th annual conference, Temple University, Philadelphia, PA, May 30-31, 2008.
- “The Initiative to Shirk? The Effects of Ballot Measures on Congressional Voting Behavior,” State Politics and Policy Quarterly 8th annual conference, Temple University, Philadelphia, PA, May 30-31, 2008 (with Josh Huder and Jordan Ragusa).
- “Participatory-Based Trust? Political Trust and Direct Democracy,” American Political Science Association Conference, Chicago, August 2007 (with Caroline J. Tolbert and Daniel Bowen).
- “Giving Power to the People: The Adoption of Direct Democracy in the American States,” Western Political Science Association Conference, Las Vegas, NV, March 7-9, 2007 (with Dustin Fridkin).
- “Mass Support for Redistricting Reform: District and Statewide Representational Winners and Losers,” State Politics and Policy Quarterly 7th annual conference, Austin, TX, February 22-24, 2007 (with Caroline J. Tolbert and John C. Green).
- “Mass Support for Redistricting Reform: Partisanship and Representational Winners and Losers,” American Political Science Association Conference, Philadelphia, August 2006 (with Caroline J. Tolbert and John C. Green).
- “Gaming the System: The Effect of BCRA on State Party Finance Activities.” *The State of the Parties: 2004 & Beyond*. Ray C. Bliss Institute for Applied Politics, Akron, OH, October 2005 (with Susan Orr).
- “Do State-Level Ballot Measures Affect Presidential Elections?” *American Political Science Association Conference*, Washington, D.C., September 1-4, 2005 (with Caroline Tolbert and Todd Donovan).
- “Did Gay Marriage Elect George W. Bush?” *Fifth Annual Conference on State Politics and Policy*, Michigan State University, East Lansing, MI, May 13-14, 2005 (with Todd Donovan, Caroline Tolbert, and Janine Parry).
- “Was Rove Right? Evangelicals and the Impact of Gay Marriage in the 2004 Election.” *Fifth Annual Conference on State Politics and Policy*, Michigan State University, East Lansing, MI, May 13-14, 2005 (with Matt DeSantis and Jason Kassel).
- “Partisanship, Direct Democracy, and Candidate Choice,” *Midwest Political Science Association Conference*, Chicago, IL, April 7-10, 2005 (with Caroline Tolbert and Todd Donovan).
- “Did Gay Marriage Elect the President? Mobilizing Effects of Ballot Measures in the 2004 Election,” *Western Political Science Association Conference*, Oakland, CA, March 17-19, 2005 (with Todd Donovan and Caroline Tolbert).
- “Initiatives and Referendums: The Effects of Direct Democracy on Candidate Elections,” *Conference on What We Know and Don't Know about Campaigns and Elections, Graduate Program in Political Campaigning*, University of Florida, Gainesville, FL, February 24-5, 2005.
- “Was Rove Right? The Partisan Wedge and Turnout Effects of Issue 1, Ohio's 2004 Ballot Initiative to Ban Gay Marriage,” *University of California Center for the Study of Democracy/USC-Caltech Center for the Study of Law and Politics/Initiative and Referendum Institute Conference*, Newport Beach, CA, January 14-15, 2005.
- “The Educative Effects of Direct Democracy on Voter Turnout,” *American Political Science Association Conference*, Chicago, IL, September 1-5, 2004 (with Caroline Tolbert).
- “Turning On and Turning Out: Assessing the Indirect Effects of Ballot Measures on Voter Participation,” *Fourth Annual Conference on State Politics and Policy*, Kent State University, Kent, OH, April 30-May 2, 2004 (with Todd Donovan).
- “Veiled Political Actors: The Real Threat to Campaign Finance Disclosure Statutes?” *Midwest Political Science Association Conference*, Chicago, April 14-18, 2004 (with Elizabeth Garrett).
- “Elephants, Umbrellas, and Quarrelling Cocks: Disaggregating Party Identification in Ghana's Fourth Republic,” *Western Political Science Association Conference*, Portland, OR, March 11-13, 2004 (with Kevin Fridy).
- “Gaming the System: State Party Finance Activities in Colorado and Florida,” Southern Political Science Association Conference, New Orleans, January 7-10, 2004.
- “The Educative Effects of Direct Democracy: Ballot Campaigns and Civic Engagement in the American States,” Società Italiana di Studi Elettorali (SISE) VIIIth International Conference on Electoral Campaigns (Initiative and Referendum), Venice, Italy, December 18-20, 2003.
- “In the Wake of Prop. 13,” *American Political Science Association Conference*, Philadelphia, PA, August 27-31, 2003.
- “Soft Money and Issue Advocacy in the 2002 Colorado 7th Congressional District Election,” *Western Political Science Association Conference*, Denver, CO, March 26-30, 2003.
- “Educated by Initiative: Direct Democracy and Civic Engagement in the American States,” *Third Annual Conference on State Politics and Policy*, University of Arizona, Tucson, AZ, March 14-15, 2003 (with Caroline Tolbert).
- “Ballot Initiatives and the (Sub)Urban/Rural Divide in Colorado,” *Colorado's Future: How Can We Meet the Needs of a Changing State?* University of Colorado at Colorado Springs, September 27, 2002.
- “Representation and the Spatial Dimension of Direct Democracy,” *American Political Science Association Conference*, Boston, MA, August 29-September 1, 2002.
- “Representation and the Spatial Bias of Direct Democracy,” *Second Annual Conference on State Politics and Policy*, University of Wisconsin-Milwaukee, Milwaukee, WI, May 24-25, 2002.

- “Minority Rights and the Spatial Bias of Direct Democracy,” *Southwestern Political Science Association Conference*, New Orleans, LA, March 27-30, 2002.
- “Representation and the Urban Bias of Direct Democracy,” *Western Political Science Association Conference*, Long Beach, CA, March 21-24 2002.
- “Ghost Busters: The Structural Underpinnings and Politics of Ghana’s 2000 Elections,” *African Studies Association Conference*, Houston, TX, November 15-18, 2001.
- “The Effect of Ballot Initiatives on Voter Turnout,” *American Political Science Association Conference*, Washington, DC, August 31-September 3, 2000 (with Caroline Tolbert and John Grummel).
- “Campaign Finance of Ballot Initiatives,” *National Direct Democracy Conference*, University of Virginia’s Center for Governmental Studies, Charlottesville, VA, June 8-9, 2000.
- “Meet the Authors Roundtable: Recent Books on Direct Democracy in the States,” *Midwest Political Science Association Conference*, Chicago, April 27-30, 2000.
- “Counter-Majoritarian Bills and Legislative Response of State Ballot Initiatives,” *Western Political Science Association Conference*, San Jose, March 24-26, 2000.
- “The Gun Behind the Door Fires Blanks,” *Pacific Northwest Political Science Association Conference*, Eugene, OR, October 14-16, 1999.
- “Orange Crush: Mobilization of Bias, Ballot Initiatives, and the Politics of Professional Sports Stadia,” *American Political Science Association Conference*, Atlanta, September 2-5, 1999 (with Sure Log).
- “Direct Democracy in Colorado: Limited Information, Tough Choices,” *A Century of Citizen Lawmaking: Initiative and Referendum in America*, *Initiative and Referendum Institute*, Washington, D.C., May 6-8, 1999.
- “The Initiative to Party: The Role of Political Parties in State Ballot Measures,” *Western Political Science Association Conference*, Seattle, March 25-28, 1999.
- “Direct Democracy in the Late 20th Century: The Legacy(ies) of Prop. 13,” Roundtable, *American Political Science Association Conference*, Boston, September 3-6, 1998.
- “The Legacy of Howard Jarvis and Proposition 13? Tax Limitation Initiatives in 1996,” *Western Political Science Association Conference*, Los Angeles, March 19-21, 1998.
- “Special Interests and the Initiative Process in Colorado: The Case of the Parental Rights Amendment” (with Robert Herrington), Poster Session, *American Political Science Association Conference*, Washington, D.C., August 28-31, 1997.
- “Howard Jarvis, Populist Entrepreneur: Reevaluating Causes of Proposition 13,” *Western Political Science Association Conference*, Tucson, March 13-15, 1997.
- “Guided Immersion: A Non-Traditional Study Abroad Program at the University of Ghana at Legon,” *Midwest Political Science Association Conference*, Chicago, April 10-12, 1997.
- “Exploring the Political Dimension of Privatization: A Tale of Two Cities” (with Kevin Leyden), *Midwest Political Science Association Conference*, Chicago, April 18-20, 1996.
- “Populist Entrepreneur: Douglas Bruce and the Tax Limitation Movement in Colorado,” *20th Annual Interdisciplinary Symposium of the Politics and Culture of the Great Plains*, Lincoln, April 11-13, 1996.
- “Faux Populism: Douglas Bruce and the Anti-Tax Moment in Colorado, 1986-1992,” *Western Political Science Association Conference*, San Francisco, March 14-16, 1996.
- “Insular Democracy: Advisory Councils and Task Forces in the American States,” *Western Political Science Association Conference*, Portland, March 1995.
- “Supporting Labor-Management Initiatives at the State Level: The Case of the West Virginia Labor-Management Advisory Council,” *Southern Industrial Relations and Human Resource Conference*, Morgantown, WV, October 1994.
- “State Autonomy, Capacity, and Coherence: Labor-Management Councils in the American States,” *Western Political Science Association Conference*, Albuquerque, March 1994.
- “Removing the Pluralist Blinders: Labor-Management Councils and Industrial Policy in the American States,” *American Political Science Association Conference*, Chicago, September 1992.
- “You Can’t Live with Them...The Emerging Role of Organized Labor in Industrial Policy in the American States,” *Midwest Political Science Association Conference*, Chicago, April 1992.
- “It Can Happen Here: Apprenticeship, Workplace-based Learning, and the Affirmative Role of Unions” (with Eric Parker), *Southwestern Political Science Association Conference*, Austin, TX, March 1992.
- “The Affirmative Role of U.S. Unions in Restructuring” (with Eric Parker), *American Sociological Association Conference*, Indianapolis, IN, August 1991.
- “Economic Development Strategy and the Problem of Skills: The Case of Wisconsin’s Advanced Metalworking Sector” (with Eric Parker), *American Society for Public Administration Conference*, Cleveland, OH, October 1990.

INVITED TALKS AND OTHER PROFESSIONAL PRESENTATIONS

- Keynote Speaker, “6 Things Every Democrat Should Know about Florida Elections,” Democratic Women’s Club of Florida, 63rd Annual Convention, Orlando, September 14, 2019.
- Invited Talk, “5 Things Every Floridian Should Know about Florida Elections,” *Stetson University*, April 25, 2019.
- Invited Talk, “The 2018 Mid-Term Elections,” Graham Center, University of Florida, Gainesville, Florida, November 13, 2018.

Invited Talk, "Is a Blue Wave Coming? The 2018 General Election," FedCon, National Association of Retired Federal Employees Association, Jacksonville, Florida, August 28, 2018.

Invited Talk, "Voting Rights Litigation," ACLU of Florida, 2018 Lawyers Conference, Delray Beach, Florida, September 7, 2018.

Invited Panelist, "The Black Vote: Is it being taken for Granted?" *Collaboratively Woke and The Virginia Leadership Institute*, Downtown Alachua Public Library, Gainesville, Florida, June 23, 2018.

Invited Talk, "Public Records Requests and Analyzing Elections in Florida," The Bob Graham Center for Public Service, University of Florida, Gainesville, Civic Scholar Lecture, February 14, 2018.

Invited Talk, "Voting in Florida," Voter Suppression Forum, The Bob Graham Center for Public Service, University of Florida, Gainesville, November 13, 2017.

Invited Talk, "Journalist-Scholar Big Data Partnerships," Investigative Reporters and Editors, The National Institute for Computer-Assisted Reporting, Annual Conference, Jacksonville, FL, March 2, 2016.

Invited Talk, "Florida's Constitutional Revision Commission and Game Theory," Future of Florida Summit, University of Florida, Gainesville, Florida, February 18, 2016.

Invited Talk, "Explaining Trump's Win in Florida: 10 Election Myths and Realities," Graham Center, University of Florida, Gainesville, Florida, November 14, 2016.

Invited Response, Michael Kang (Emory School of Law) "Law and Politics of Judging Election Cases," University of Florida School of Law, Gainesville, Florida, November 4, 2016.

Invited Talk, "Patterns of Political Participation in Florida," Women, Race, and the U.S. Presidency, The Center for The Study of Race and Race Relations & The Center for Gender, Sexualities, and Women's Studies Research, University of Florida, Gainesville, October 13, 2016.

Invited Talk, "The Structural Pathologies of the American Electoral System," US Fulbright Association (UF International Center), Gainesville, September 27, 2016.

Invited Talk, "Registered Voters and Turnout in Alachua County," Gainesville Area Chamber of Commerce's Leadership Gainesville 43 Government and Policy Day, September 8, 2016.

Invited Talk, "The Politics of Voter Suppression in Florida," Santa Fe College, American Democracy Project, February 9, 2016.

Invited Talk, "The Contributions and Conundrums of Technology: EAVS Data Reporting Consistency," at The Evolution of Election Administration since the VRA, Auburn University, September 15, 2015 (with Lia Merivaki).

Invited Talk, "2014 Election Wrap-Up," Graham Center, University of Florida, Gainesville, Florida, November 6, 2014.

Roundtable Participant, "I Am A Millennial: The Importance of the Youth and Minority Vote," Graham Center, University of Florida, October 23, 2014.

Invited Talk, "Voting Rights in North Carolina," Emory University, Atlanta, April 8, 2014.

Keynote Speaker, "Anticipating 2014: The State of Voting Rights in Florida," Gainesville Labor Council, Gainesville, Florida, December 9, 2013.

Invited Talk, "Design Fail: The Attack on Voting Rights in Florida," University of Florida Retired Faculty, Harn Museum, University of Florida, February 22, 2013.

Keynote Speaker, "The Attack on Voting Rights in Florida," Gainesville Labor Council, Gainesville, Florida, December 10, 2012.

"Moved by the Spirit? Atmospherics and Ballot Measure Vote Choice," Initiatives and Referendums in the Elections of 2012, University of Southern California, November 16, 2012 (with Charles Dahan).

Invited Talk, "Design #Fail: Voting Rights in Florida," Graham Center's Election Wrap Up: Decision 2012, University of Florida, Gainesville, Florida, November 13, 2012.

Invited Talk, "Consolidating Representation in Ghana? Parliamentary Malapportionment and Rejected Ballots," *Stability Amidst Chaos: Reflections on Two Decades of Ghanaian Democracy*, Program of African Studies, Northwestern University, Chicago, Illinois, October 12, 2012.

Keynote Speaker, "Curtailing Voting Rights in Florida," *Civic Dialogues and the 2012 Election in the United States*, College of Central Florida, Ocala, Florida, October 22, 2012.

Keynote Speaker, "The Return of Jim Crow? Voting Rights Under Florida's House Bill 1355," League of Women Voters, Annual Fall Luncheon, Gainesville, Florida, September 11, 2012.

Invited Talk, "Litigating Voting Rights in Florida," 8th Judicial Circuit Florida Bar Association, Continuing Legal Education, Gainesville, Florida, September 21, 2012.

Invited Presentation, "The Impact of HB 1355 on Florida's Hispanics," Gator Academic Outreach Symposium, co-hosted by Hispanic Alumni Association and Miami-Dade College, Miami, FL, May 11, 2012.

Invited Talk, "Voting and Elections in the United States," US Embassy, Accra, Ghana, live satellite talk to US Embassy, Ivory Coast, October 3, 2011.

Invited Public Lecture, "Ghana's National Electoral Commission and the 2012 Elections: The Malapportionment of Parliamentary Constituencies, Rejected Ballots, and Questions of Representation," Department of Political Science International Lecture Series, University of Ghana, Accra, Ghana, November 17, 2011. [Q&A followed by several media interviews, including RadioUniverse, Ghana Television Broadcasting and TV3].

Invited Public Lecture, "Assessing the Credibility of Public Opinion Polls," Ghana Center for Democratic Development (CDD-Ghana), Accra, Ghana, November 23, 2011. [Taped broadcast by TV3 and several FM stations].

Invited Talk, "Obama to Blame?" Penn State University, February 26, 2010.

Invited Talk, "Shirking the Initiative?" Rutgers University, November 6-7, 2008.

Invited Talk, "Granting Power to the People: The Adoption of Direct Democracy in the American States," Bose Series Lecturer, University of Iowa, Iowa City, November 7-10, 2007.

Invited Talk, "Instrumental Effects of the Initiative in the American States," The Voice of the Crowd—Colorado's Initiative, Byron R. White Center for the Study of American Constitutional Law, University of Colorado, Boulder, Old Supreme Court Chambers, Colorado State Capitol, Denver, January 26, 2007.

Invited Paper/Presentation, "Initiating Reform: The Effects of Ballot Measures on State Election and Ethics Policy," 2008 and Beyond: The Future of Election and Ethics Reform in the States, Ohio State Capital Building, Kent State University, January 16, 2007.

Invited Paper/Presentation, "Financing Ballot Measures in the American States," Financing Referendum Campaigns Conference, University of Zurich, Switzerland, October 27-29, 2006.

Invited Talk, "Pressure at the Polls/Ballot Initiatives," Capitol Beat Conference, Columbus, OH, August, 2006.

Invited Talk, "Turnout and Priming Effects of Ballot Initiatives," Ballot Initiative Strategy Center Spring Briefing, National Education Association, Washington, DC, May 11, 2006.

Invited Talk, "The People as Legislators: The Influence of Direct Democracy," Moritz College of Law, Ohio State University, Columbus, OH, March 3, 2006.

Invited Public Debate, "Initiative Reform in Florida," *Orlando Regional Chamber of Commerce*, Orlando, FL, February 23, 2006.

Invited Talk, "Direct Democracy: The Battle over Citizen Lawmaking," *Minnesota Council of Nonprofits, Public Policy Day 2006: Nonprofits as a Force for Change*, Minneapolis, MN, January 26, 2006.

Keynote Speaker, "Taking the Initiative in Florida," *National Conference of Editorial Writers* Regional Conference, University of Central Florida, Orlando, FL, October 16, 2005.

Panelist, "The Educative Effects of Direct Democracy," *Direct Democracy: Historical Roots and Political Realities*, The Bill Lane Center for the Study of the North American West, Stanford University, Stanford, CA, April 14-15, 2005.

Panelist, "The Initiative and Referendum Process," *The 2004 Election: What Does it Mean for Campaigns and Governance?* University of Southern California Law School, Los Angeles, CA, October 8, 2004.

Invited Talk, "Florida's Initiative Process," Oak Hammock, Gainesville, FL, October 21, 2004.

Invited Talk, "Educated by Initiative," Oak Hammock, Gainesville, FL, October 6, 2004.

Invited Talk, "Are Initiatives Good or Bad for Business," *National Chamber of Commerce Federation*, Boca Raton, FL, February 22, 2004.

Panelist, "Roundtable on Florida Politics," *UF-FSU Colloquium*, Gainesville, FL, November 10, 2003.

Panelist, "Initiatives and Referenda: Implications for Public Administration and Governance," *National Academy of Public Administration*, Washington, DC, October 22, 2003.

Panelist, "Initiatives and Referenda: Direct Democracy or Government for Sale?" *New York Bar Association*, New York City, May 8, 2003.

Keynote Speaker, "Direct Democracy in Colorado: The (Sub)Urban-Rural Divide," *Colorado Water Congress Annual Meeting*, Denver, November 8, 2002.

Invited Talk, "Prospects for a Universal Health Care Ballot Initiative in Florida," Alachua County Labor Party, Gainesville, FL, January 25, 2002.

Invited Talk, "The 2000 Ghana Elections: Lessons for the Future," The Center for African Studies, *University of Florida*, Gainesville, August 28, 2001.

Panelist, "Graduate Studies in Canada and U.S.," *University of Ghana at Legon*, Accra, Ghana, March 14, 2001.

Invited Talk, "Media Coverage of the 2000 [Ghanaian] Elections," *Ghana Center for Democratic Development (CDD-Ghana)*, Accra, Ghana, March 2, 2001.

Invited Talk, "Ghana's 2000 Elections: The 'Politics of Absence,'" *Ghana Center for Democratic Development (CDD-Ghana)*, Accra, Ghana, February, 20, 2001.

Panelist, "Special Forum on U.S. Presidential Elections 2000," *University of Ghana at Legon*, Accra, Ghana, November 21, 2000.

Invited Talk, "The Role of The Media in US Elections," *Public Affairs Section, United States Embassy*, Accra, Ghana, October 31, 2000.

Facilitator, "Three's A Crowd? The Fate of Third Parties in America," *Humanities Institute Salon*, Denver, May 4, 11, & 18, 2000.

Chair and Discussant, "Factors Affecting the Success of Initiatives," *Western Political Science Association Conference*, San Jose, March 24-26, 2000.

Invited Talk, "The Progressive Myth: Direct Democracy in Colorado, 1912," *Willamette University*, February 3, 2000.

Invited Talk, "The Initiative to Party: The Partisan - Ballot Initiative Nexus," *Willamette University*, February 3, 2000.

Invited Talk, "Taking the Initiative into the 21st Century," *Colorado Water Congress Annual Meeting*, Broomfield, January 27, 2000.

Invited Talk, "Foundations of the American Political System," *Zhejiang University*, Zhejiang, China, October 13, 1999.

Invited Talk, "Trade, Taiwan, Tiananmen, and Theft: Partisanship in US-China Relations," *Fudan University*, Shanghai, China, October 11, 1999.

Invited Talk, "Republicans, Democrats, and US-China Relations," *The People's University*, Beijing, China, October 9, 1999.

Invited Talk, "US-China Relations and the 2000 Presidential Election," *China Institute of Contemporary International Relations*, Beijing, China, October 7, 1999.

Invited Talk, "Taking the Initiative: The Role of Money in Ballot Initiatives in the US," *Aspen Community & Institute Committee*, Aspen, August 10, 1999.

Facilitator, "Taking the Initiative: The Politics of Direct Democracy in Colorado," *Humanities Institute Salon*, May 20, May 27, & June 3, 1999.

Invited Talk, "The State of Direct Democracy in Colorado," American Center Series, *University of Colorado at Boulder*, April 9, 1999.

Participant, "TABOR: Today & Tomorrow," Graduate School of Public Affairs, *University of Colorado at Denver*, January 20-21, 1999.

Keynote Speaker, *Colorado Water Congress Annual Meeting*, "The Initiative Process: What You Need to Know," November 10, 1998.

Invited Talk, "The Political Economy of the Bronco's New Stadium Proposal," George Washington High School, *Reach Out DU*, October 15, 1998.

Invited Talk, "The Political Economy of the Bronco's New Stadium Proposal," Cherry Creek High School, *Reach Out DU*, October 15, 1998.

Invited Talk, "Tax Crusaders and the Politics of Direct Democracy," Tattered Cover Bookstore, Denver, August 20, 1998.

Academic Session Leader, "The Politics of Building a New Broncos Stadium," West High School VIP Program, *University of Denver*, April 17, 1998.

Participant, "Proposition 13 and its Progeny: Is California Suffering from an Excess of Democracy?" Institute of Governmental Studies, *University of California, Berkeley*, April 1-2, 1998.

Moderator, "Politics 101," Student Forum, *University of Denver*, March 3, 1998.

Panelist, "Ways to use Technology in Teaching," Dean's Luncheon on Teaching and Learning, *University of Denver*, February 20, 1998.

Panelist, "The End of Empire in Ghana, 1957," The End of Empire: 50 Years of British Withdrawal, Center for Teaching International Relations, *University of Denver*, February 7, 1998.

Moderator, "1996 Candidate Forum," DU Programs Board, *University of Denver*, October 28, 1996.

Invited Talk, "Election 1996," KARIS Community, Denver, October 24, 1996.

Invited Talk, "Faux Populism: Douglas Bruce, Populist Entrepreneur, and the Anti-Tax Moment in Colorado," Humanities Institute, *University of Denver*, October 17, 1996.

Panelist, "The Federal Budget Battle," Sponsored by Omicron Delta Epsilon and Pi Sigma Alpha, *University of Denver*, October 2, 1995.

Invited Talk, "US Energy Policy," Highlands Ranch High School, *Reach Out DU*, November 10, 1995.

Panelist, "Study Abroad," Second Annual University Conference: Internationalization at the University of Denver, *University of Denver*, April, 1994.

Chair and Panelist, "African Studies," Second Annual University Conference: Internationalization at the University of Denver, *University of Denver*, April, 1994.

Panelist, "Public Policy and Work Force Participation: Making the School-to-Work Transition," Public Policy and Work Force Participation Seminar, *University of Pittsburgh*, September 15, 1993.

Rapporteur, "City\$Money Conference," The La Follette Institute for Public Affairs, *University of Wisconsin-Madison*, February 4-6, 1992.

EDITORIAL/ADVISORY BOARDS/REVIEWER

Review Board, *National Science Foundation*, 2016

Editorial Board, *State Politics and Policy*, 1999-2007; 2014-2016

Editorial Board, *Election Law Journal*, 2012-2016.

Review Board, *American Political Science Association (APSA) Small Research Grant Program*, 2004-05.

Review Board, *Fulbright/ American Political Science Association (APSA) Congressional Fellowship Program*, 2002-2005.

Academic Advisory Board, *Annual Editions, State & Local Government* (Brown & Benchmark), 1995-.

Sub-Field Editor, *State Politics, FirstResearch*, 1999-2001.

PROFESSIONAL MEMBERSHIPS

American Political Science Association, 1990-
State Politics and Policy Section, 2000-
President, 2013-2015
Executive Council, 2010-2012
Political Organizations and Parties Section, 2000-
Midwest Political Science Association, 1990-
Southern Political Science Association, 2001-
Western Political Science Association, 1994-
Local Co-Host, Annual Meeting (Denver), 2003
Chair, Committee on Membership, Attendance, and Registration, 1998-2000

Section Chair, State Politics and Policy, 1999 Annual Conference (Seattle)
 Member, Charles Redd Politics of the American West Award Committee, 1999
 Chair, Best Dissertation Award Committee, 1999-2001
 Florida Political Science Association (1994-)
 Section Chair, State Politics, 2004 Annual Conference (Gainesville)

PROFESSIONAL APPOINTMENTS

Research Associate, *Ghana Center for Democratic Development (CDD-Ghana)*, Accra, Ghana, 2011.
 Research Scholar, *Bill Lane Center for the Study of the American West*, Stanford University, 2007.
 Senior Research Scholar, *Ballot Initiative Strategy Center Foundation (BISCF)*, Nonprofit 501 (c)(3), Washington, DC, (www.ballot.org), 2006.
 Board of Directors, *Ballot Initiative Strategy Center Foundation (BISCF)*, Nonprofit 501 (c)(3), Washington, DC, 2000-2019.
 Board of Scholars, *Initiative & Referendum Institute*, USC Law School, University of Southern California, 2004-.
 Senior Research Fellow, *Initiative & Referendum Institute*, Washington, DC, 1998-2003.
 Research Associate, *Ghana Center for Democratic Development (CDD-Ghana)*, Accra, Ghana, 2000-01.
 President & Co-Founder, *Citizens Institute for Voter Information in Colorado (CIVIC)*, Denver, CO, 1998-2001.

UNIVERSITY SERVICE

University of Florida

College/University

Appointed Member, Latin American Studies Search Committee (Latino Studies), 2014-15
 Appointed Member, Political Science/African Studies Search Committee, 2013-14
 Appointed Member, 20th Century American History Search Committee (History), 2008-09
 Appointed Member, Latino Studies Search Committee (LAS), 2006-07
 Departmental Representative, United Faculty of Florida, 2003-
 Alternate Senator, United Faculty of Florida, 2005-
 State Delegate, Florida Education Association, 2006-
 Elected Member, College of Arts and Sciences, Nominating Committee, 2004-06
 Appointed Member, University of Florida Fulbright Committee, 2003-07

Department

Chair, 2017-
 Graduate Coordinator, 2014-2016
 Associate Chair, 2013-2014
 Appointed Member, Informatics Search Committee (Departmental Representative), 2013-14
 Appointed Member, Promotion (Full) Review Committee (Service), Leonardo Villalon, 2011
 Appointed Member, Promotion (Full) Review Committee (Research), Badredine Arfi, 2010
 Elected Member, Chair's Advisory Committee, 2004-05; 2006-07 (Chair); 2007-08 (Chair); 2010-11; 2012-13
 Elected Member, Chair Search Committee, 2004; 2009
 Appointed Member, Tenure Review Committee (Research), Daniel O'Neill, 2008
 Appointed Faculty Mentor, State Senator Mike Haridopolos, 2008-09
 Appointed Member, Strategic Planning Committee, 2008-09
 Appointed Director, Graduate Program in Political Campaigning, 2007-11
 Appointed Member, Committee to establish Undergraduate Certificate in Political Campaigning, 2007
 Elected Member, Market Equity Committee, 2006-07 (Chair); 2007-08; 2008-09 (Chair)
 Appointed Internship Coordinator, 2005-
 Elected Member, Merit Committee, 2004-05; 2005-06; 2006-07 (Chair)
 Appointed Faculty Mentor, Marcus Hendershot, 2006-
 Appointed Faculty Mentor, Helena Rodriques, 2005-06
 Appointed Member, Ad-Hoc Graduate Teaching Committee, 2005-06
 Appointed Member (Chair), Latino Politics Search Committee, 2004-05
 Appointed Member, Tenure and Promotion Committee (Samuel Barkin), 2004.
 Appointed Member, Mid-Career and Mentoring Task Force, 2004-05
 Appointed Member, Speakers Committee (Chair), 2003-05.
 Appointed Member, Tenure and Promotion Committee (Richard Conley), 2003.
 Appointed Member, Political Science Best Undergraduate Paper Award Committee, 2003-04

University of Denver

Social Science Promotion and Tenure Committee, 1999-2000
 Joint Ph.D. Program in Religious and Theological Studies, (with *Illiff School of Theology*), 1999-2002
 AH/SOCS Grade Appeals Committee, 1999-2001
Phi Beta Kappa Selection Committee, *Gamma* of Colorado, 1998-2002
 Partners in Scholarship (PINS) Committee, 1997-2000

AH/SOCS Elected Faculty Committee, 1996-98
Post-Tenure Review Committee, 1996-98
SOAR (Summer Orientation), 1997-2000
Faculty Senate Representative, 1995-1996
Study Abroad Faculty Advisory Committee, 1995-2000
Study Abroad Travel Scholarships Committee, 1995-2000
Faculty Member, Culture and Critical Studies Program, 1995-2000
Faculty Mentor, 1995-2000
Reach-Out DU, 1995-2000
Advisor, Department of Political Science Honors Program, 1995-1996

MEDIA INTERVIEWS

Quoted more than 1,000 times by the media (newspaper, radio, television) on various political issues, including the *New York Times*, *Wall Street Journal*, *Washington Post*, *USA Today*, *Bloomberg*, *The Economist*, *Newsweek*, *Time*, *CNN*, *CBS News*, *Fox News*, *National Public Radio*, *Tampa Bay Times*, *Miami Herald*, *Florida Times-Union*, *San Francisco Chronicle*, *Los Angeles Times*, *Chicago Tribune*, *Boston Globe*, etc.

EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TREVA THOMPSON, *et al.*,

Plaintiffs,

V.

JOHN H. MERRILL, in his official
capacity as Secretary of State, *et al.*,

Defendants.

CIVIL ACTION NO.
2:16-cv-783-ECM-SMD

Expert Report of R. Volney Riser, Ph.D.

Professor of History
The University of West Alabama

**P.O. Box 1616
Livingston, Alabama 35470**

On behalf of Plaintiffs

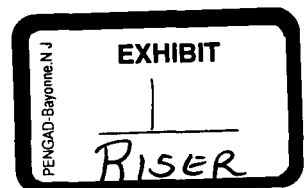


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I. INTRODUCTION AND QUALIFICATIONS

1. My name is R. Volney Riser, and my residence is Livingston, Alabama. I appear in this matter in a private expert capacity, and plaintiffs' attorneys have retained me to research and describe the origins of the "moral turpitude" clause in Section 182 of Alabama's 1901 Constitution, the reason(s) for its inclusion there, the general history of criminal disfranchisement in Alabama, the history and uses of advance voter registration in Alabama, and the origins and work of the Boards of Registrars created by Alabama's 1901 Constitution with particular attention given to the Registrars' extraordinary discretion over voter registration applications. The analysis following is based upon my experience as a historian and researcher. Should additional relevant material emerge, I will incorporate those into either a revised version of this report or a supplemental brief.

2. My methodological approach reflects standard professional norms for qualitative historical research. I derive my conclusions from close analysis and reading of documentary sources (manuscript, and archival as well as contemporary newspapers and news magazines), public documents (including legislative records and constitutional convention proceedings), and judicial opinions, all buttressed by a thorough background in relevant secondary literature. I am in this matter compensated at the rate of \$150 per hour, and my fee is not contingent upon either my opinions or the outcome of this matter.

3. I am a historian of U.S. political and constitutional history, and I am a Professor of History at the University of West Alabama ("UWA"). I have taught at UWA since 2005. From 2012–2017,

I was Editor-in-Chief of a historical journal, the *Alabama Review*, the official academic outlet of the Alabama Historical Association. I hold bachelor's degrees from Florida State University (1995 and 1998), and I hold an M.A. (2005) and a Ph.D. in American History (2005) from the University of Alabama. My formal historical training concentrated on U.S. Constitutional History and Southern History, and I completed both a master's thesis and doctoral dissertation that examined Alabama's 1901 Constitutional Convention. Regarding the latter, I was selected for the College of Arts & Sciences' "Outstanding Dissertation" award for 2005, and I was subsequently also announced as the university's "Outstanding Dissertation" award winner for that calendar year. At UWA, I teach or have taught courses in U.S. Constitutional History, African American History, the Gilded Age & Progressive Era, the Jazz Age and Great Depression, and the History of the American South.

4. I have published two books: *Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890–1908* (Louisiana State University Press, 2010; 2nd ed. 2013) and *A Goodly Heritage: Judges and Historically Significant Decisions of the U.S. District Court for the Middle District of Alabama* (Occasional Papers of the Bounds Law Library, University of Alabama School of Law, 2010). I have also published articles in the *Alabama Law Review*, the *American Journal of Legal History*, and *Southern Historian*.¹ I have additionally contributed numerous entries to reference volumes, including essays on disfranchisement and various

¹ R. Volney Riser, "Disfranchisement, the U.S. Constitution, and the Federal Courts: Alabama's 1901 Constitutional Convention Debates the Grandfather Clause," *American Journal of Legal History* 48, no. 3, 237–79 (Fall 2006) (evaluating the Alabama Constitution framers' concerns that their disfranchisement provisions might trigger judicial intervention or punitive congressional responses); Riser, "'The Milk in the Cocoanut': Booker T. Washington, Theodore Roosevelt, and the Fear of Conspiracy in Alabama's 1901 Constitutional Ratification Referendum," *Southern Historian* 26, 30–54 (Spring 2005) (discussing prominent conspiracy theories that helped drive ratification of Alabama's "disfranchising" constitution); Riser, "The Burdens of Being White: Empire and Disfranchisement," *Alabama Law Review* 53, no.1, 243–72 (Fall 2001) (addressing the concurrent public and policy-makers' debates over the relationship between disfranchisement and territorial expansion).

landmark episodes in U.S. legal, constitutional, and political history.² The unifying theme of my scholarship is the development and practical operation of political and constitutional systems in the Jim Crow-era South. I am frequently called upon as an expert reviewer, chiefly for work treating southern states' legal and constitutional histories, and for work assessing broader national legal and constitutional developments as related to the American South.

5. I have provided expert witness services in one other case within the past four years—*McLemore v. Hosemann*, 3:2019-CV-00383 (S. D. Miss, 2019). Though I am a scholar of, and write extensively about, constitutional and legal matters, I am not an attorney. I am providing my curriculum vitae along with this report.

II. SUMMARY OF CONCLUSIONS

6. Alabama's 1901 Constitution concluded a decade-long effort to strip African American citizens of their voting rights, and it was constructed atop an eighty-year foundation of voter registration and elections management procedures, shifting standards for criminal disfranchisement, and subjective standards for voter qualification. There is no debate among historians as to either the convention's broad goals or the 1901 Constitution suffrage article's practical effect: it is properly understood as having established numerous pretexts for

² Riser, "Disfranchisement," in *The World of Jim Crow America: A Daily Life Encyclopedia* (ABC-Clio, July 2019); Riser, "NAACP" and "*Powell v. Alabama*," in the *Encyclopedia of the Supreme Court of the United States* (Gale Group, 2008); Riser, "Convict Leasing" in the *Encyclopedia of Anti-Slavery and Abolition* (Greenwood Press, 2007); Riser, "Joseph Philo Bradley," "William Rufus Day," and "Sanford Ballard Dole" in the *Historical Dictionary of the Gilded Age* (M. E. Sharpe Publishers, 2003); Riser, "*Saenz v. Roe*," "*U.S. v. Butler*," "*Missouri v. Holland*," "*Craig v. Boren*," "Balanced Budget Amendment," "*American Tobacco Case*," "*Granger Cases*," "*Ex parte Garland*," and "*Collector v. Day*" in the *Dictionary of American History* (Scribner's, 2002).

disfranchising African Americans.³ The 1901 delegates constructed the suffrage article to capitalize upon marked social and political racial disparities, not to mention state and county penal systems that were colored by race, which gave rise to the most durable element of their disfranchisement scheme, the “moral turpitude” exclusion that survives in the Alabama Constitution to this day.

7. Section 182, a catalog of offenses carefully chosen to deny voting rights to as many African American men as possible, broke sharply from past precedent in terms of its scope. Yet, it was consistent with a thirty-five-year trend of using penal laws to disfranchise African American men. In the Civil War’s immediate aftermath, the penal code was weaponized against Emancipation. After a temporary reprieve during Congressional Reconstruction, in the Redemption period, lawmakers and constitution-drafters reworked the state’s election code and voter disqualifications to take advantage of a penal system designed to primarily control and police African Americans’ lives and labors.

8. Though “moral turpitude” appeared in Alabama judicial records from the statehood period onward, its reach expanded dramatically in the late-nineteenth century. It combined to powerful effect with petty crimes such as larceny and then with the notorious convict lease system. Most notably, county governments exacted higher monthly lease prices for convicts convicted of moral turpitude. Moral turpitude thus operated to enrich the public treasury at African

³ For an overview of the movement to disfranchise African American voters around the time of Alabama’s 1901 Constitution, see, e.g., R. Volney Riser, *Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890–1908* (Baton Rouge: Louisiana State University Press, 2010); Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888–1908* (Chapel Hill: University of North Carolina Press, 2001); J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880–1910* (New Haven: Yale University Press, 1972); Sheldon Hackney, *Populism to Progressivism in Alabama* (Princeton: Princeton University Press, 1969); C. Vann Woodward, *Origins of the New South, 1877–1913* (Baton Rouge: Louisiana State University Press, 1951); V. O. Key, *Southern Politics in State and Nation* (New York: Vintage, 1949).

Americans' expense, a powerful incentive for county courts to target African American for arrest, indictment, and prosecution. It also operated as an additional mechanism for disfranchising African American voters. An African American man who met every other standard under Alabama's 1901 Constitution, if he had any minor criminal offense in his past, could not be sure his county board of registrars would not resurrect some youthful indiscretion as an excuse to deny him the vote.

9. The boards of registrars created by the 1901 Constitution are key to understanding how Alabama effected disfranchisement, and the framers delegated to them extraordinary discretion to judge prospective voters' knowledge of civic affairs, community standing, and moral character. The new constitution then imposed vague standards that the registrars could use to enfranchise whites while disfranchising African Americans. It carved out a loophole in the registration requirements for those men who "understood" the "privileges and duties of citizenship" but said nothing of what might attest to such an "understanding." It made allowances for good character, but it said nothing of what amounted to good character. It included prohibitions for men guilty of "infamous crimes" involving "moral turpitude," but they said nothing of what amounted either to infamy or moral turpitude. These were neither oversights nor unintended ambiguities: they were carefully hollowed-out to afford the registrars pretexts to register as many white applicants as possible while disqualifying virtually all African American voter applicants

10. Disfranchisement was not a precise moment or necessarily even one specific instrument. It was a legal and administrative machine. Contemporary observers understood disfranchisement as a negotiated process, one designed to intimidate, frighten, and confuse, rather than merely a list of fixed prohibitions. The basic machinery owed its design to Mississippi's 1890 constitution,

later imported to other Southern states which imposed a procedural gauntlet of complicated standards designed to trip African American voter registration applicants when they were not simply frightened from making the attempt. “It was . . . clearly through the anticipated inability of the negro to meet the requirements of the registration laws,” R. Burnham Moffat told the American Social Science Association in 1904, describing that process, “that it was believed his disfranchisement would be accomplished.”⁴ Alabama’s registrars made that system run, and the process afforded to them a number of tools, including the notorious moral turpitude clause.

III. VOTER REGISTRATION IN NINETEENTH CENTURY ALABAMA

11. The creation of a system of registrars—state officers vested with authority to control voter registration—as well as formalized advance voter registration itself, were among significant reform measures introduced into nineteenth century American politics.⁵ Voice votes gave way to secret ballots; Australian ballots regulated ballots’ physical form and distribution; and advance voter registration regulated polling place conduct. These all can serve entirely appropriate functions. An official registrar can professionalize elections administration; secret ballots can free voters’ consciences; Australian ballots can eliminate frauds and manipulation; advance registration is an effective way to maintain ballot security in densely populated and rapidly

⁴ (Emphasis added by publisher) R. Burnham Moffat, “The Disfranchisement of the Negro, from a Lawyer’s Standpoint,” paper delivered before the American Social Science Association, published in *Journal of Social Science* 42 (September 1904]: 31–62; 40.

⁵ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000) 151–69. To understand electoral reforms introduced in the nineteenth century United States as well as the conduct of American polling places, see, e.g.: Jon Grinspan, *The Virgin Vote: How Young Americans Made Democracy Social, Politics Personal, and Voting Popular in the Nineteenth Century* (Chapel Hill: University of North Carolina Press, 2016); Chilton Williamson, *American Suffrage: From Property to Democracy, 1760–1860* (Princeton: Princeton University Press, 1960); Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century* (New York: Cambridge University Press, 2004); Mark Wahlgren Summers, *Party Games: Getting, Keeping, and Using Power in Gilded Age Politics* (Chapel Hill: University of North Carolina Press, 2004).

growing cities. Yet, these innovations could be (and quickly were in the South) put to ill-purpose. Secret, anonymous ballots were easily destroyed, or replaced; Australian balloting can easily be abused to confuse voters⁶; advance voter registration can be made as inconvenient as possible.⁷ The last of these was the least messy for nineteenth century Alabama elected officials. If they could guarantee elections outcomes through altering registration lists rather than the work of electoral persuasion, they could save the expense and stress of arranging Election Day frauds. Further, by pruning the electorate well before election day, party officials would have fewer voters on-site who “needed” to be persuaded, frightened, or bribed. Advance voter registration is not inherently discriminatory. Yet, in nineteenth century Alabama, it offered a convenient tool for socio-political control. Most importantly, for Alabama’s disfranchisers and those elsewhere, the combination of advance registration with specially selected partisan registrars allowed for mechanically-precise disfranchisement, thus regulating the scope and imperative for potential ballot frauds and allowing them to claim they had “purified” the state’s elections.⁸

12. Alabama in the antebellum period kept lists of who had voted at each election, but this is not the same thing as advance registration. Those antebellum lists were produced at each election, with elections officials recording the name of each man who voted, and after the election, those officers would compile a master roll—a “true list” of all those who voted—which anyone could

⁶ For example, Australian ballots, which first appeared there in 1856, were exported first to England and then to the United States. Louisville, Kentucky was the first American jurisdiction to use them in 1888. As Keyssar notes, they were an “indirect and limited means of promoting a literate electorate.” They are popularly misunderstood today to be synonymous with secret ballot. Australian ballots indeed are cast secretly, but they are also officially prescribed (when they are not produced directly by state electoral officials). Their “democratic virtues,” Keyssar finds, are self-evident, but they nonetheless sometimes were an “obstacle to participation by many illiterate foreign-born voters in the North, as well as uneducated black voters in the South.” Keyssar, *supra* note 5 at 142–43.

⁷ Keyssar, *supra* note 5 at 158, speaking of advance voter registration requirements: “The impact of these laws was highly variable and depended not only on the details of the laws themselves but also on the ability and determination of political parties to get their own voters registered. Quantifying such as impact [is difficult], but it can be said with certainty that registration laws reduced fraudulent voting and that they kept large numbers (probably millions) of eligible voters from the polls.”

⁸ Riser, *supra* note 3 at 74–75, 138–53.

examine.⁹ The antebellum voter lists and postbellum advance registration do share similarities, namely, that voters' names are recorded and made public. Still, the differences are greater. In the former, a man's name would appear on a list of those who had come to the election and voted, and then any party with ground to do so could challenge that man's ballot. It was not practicable in antebellum Alabama (or most anywhere in the antebellum United States) to effectively conduct an advance registration. The population was growing too fast, lurching upward each time another tribe was stripped of its lands and new waves of white settlers swooped in. Men moved into and around the state rapidly, and once here, they were generally spread too far apart.¹⁰ The United States did not see widespread advance voter registration until the 1860s and 1870s. Regardless, even if it had been available, it would have been in the antebellum context wildly impractical, for it depends upon a scale of state-run bureaucracy unthinkable in that period.¹¹ Antebellum Alabama, the whole of the antebellum United States, was an intensely personal society, and the voter list system was predicated upon community members recognizing and policing one another. Voters presented themselves to their peers; an unknown man or a disreputable man, then, would be turned away by the recognized freeholders of the place. Under an advance registration system, ballot challenges are still available, based upon allegations that a man voted illegally on account of residence or bribery or some other prohibition. But in a

⁹ See, e.g., the December 24, 1812 "An Act to Amend and Reduce into One, the Several Acts Regulating Elections," § 8 and § 11, *Alabama Law Digest*, 1823, 262–63.

¹⁰ For a broad overview of antebellum Alabama history from widespread white settlement after the Revolution through the Civil War era, see, e.g., J. Mills Thornton, *Politics and Power in a Slave Society: Alabama, 1800–1860* (Baton Rouge: Louisiana State University Press, 1978); Herbert James Lewis, *Clearing the Thickets: A History of Antebellum Alabama* (New Orleans: Quid Pro Quo Books, 2013); Thomas Perkins Abernethy, *The Formative Period in Alabama, 1815–1828*, 1965 ed. (Tuscaloosa: University of Alabama Press, 1965).

¹¹ To gain an understand of how the United States acquired the accoutrements of the modern nation-state, begin with (to name only five) Robert H. Wiebe, *The Search for Order, 1877–1920* (New York: Hill and Wang, 1966); Morton Keller, *Affairs of State: Public Life in Nineteenth Century America* (Cambridge: Harvard University Press, 1977); Nell Irvin Painter, *Standing at Armageddon: The United States, 1877–1919* (New York: W. W. Norton, 1987); Jackson Lears, *Rebirth of a Nation: The Making of Modern America, 1877–1920* (New York: HarperCollins, 2009); Richard White, *The Republic for Which it Stands: The United States during Reconstruction and the Gilded Age, 1865–1896* (New York: Oxford University Press, 2017).

modern context, but you can go much further and simply foreclose the possibility of a man or woman ever casting a vote.

13. When historians and political scientists explain late-nineteenth century disfranchisement, we speak of stages that culminated with elaborate and discriminatory advance voter registration procedures. First, there are discriminations that occurred in election-day polling place conduct, we then next look to how various states used statutes to effect wholesale exclusions of African American voters, and we look last at how the movement climaxed state-by-state with constitutional conventions and constitutional amendment campaigns.¹² The first to reach that end stage was Mississippi in 1890, where the Democratic establishment achieved the mass disfranchisement of black voters with varying iterations of notoriously exclusionary mechanisms: understanding clauses, character tests, grandfather clauses, cumulative poll taxes, and criminal disfranchisement based upon marked expansions of misdemeanor and felony exclusions.¹³ We correctly describe as tricks or loopholes those instruments, and they could only operate so effectively, on so broad a scale, because they did so in connection with advance voter registration. And registration itself was controlled by a select few partisans who managed and scheduled in such a manner as to be as inconvenient as possible—unless you were a man the registrars *wanted* to see registered.¹⁴

¹² Riser, *supra* note 3; Perman, *supra* note 3; Kousser, *supra* note 3; Hackney, *supra* note 3; Woodward, *supra* note 3; Key, *supra* note 3; James Beeby, *Revolt of the Tar Heels: The North Carolina Populist Movement, 1890–1901* (Jackson: University Press of Mississippi, 2008); Dorothy Pratt, *Sowing the Wind: The Mississippi Constitutional Convention of 1890* (Jackson: University Press of Mississippi, 2017).

¹³ Pratt, *supra* note 12; Albert Kirwan, *Revolt of the Rednecks: Mississippi Politics, 1876–1925* (Lexington: University of Kentucky Press, 1951); Vernon Lane Wharton, *The Negro in Mississippi, 1865–1900* (Chapel Hill: University of North Carolina Press, 1947); Stephen Cresswell, *Rednecks, Redeemers, and Race: Mississippi Politics after Reconstruction, 1877–1917* (Jackson: University Press of Mississippi, 2006). See also, e.g., Perman, *supra*, note 3 at 70–90; and Riser, *supra* note 3 at 46–73.

¹⁴ Riser, *supra* note 3 at 74–75, 138–53.

14. Alabama first saw anything like formal advance voter registration in 1867, when U.S. military authorities oversaw a Congressionally-mandated canvass of voting age men, and the 1868 Alabama Constitution built upon that and reframed it as a civilian institution, empowering the legislature to “provide, from time to time, for the registration of all electors...”¹⁵ The 1875 Constitution continued the practice: “...The general assembly may, when necessary, provide by law for the registration of electors throughout the state, or in any incorporated city or town thereof, and when it is so provided, no person shall vote at any election unless he shall have registered as required by law.”¹⁶ From 1875 onward, Code of Alabama, Title VI, Chapter I, Article II—“Registration of Electors”—governed the new process, and for present purposes, understand it was an essentially locally-managed effort.¹⁷ The Secretary of State was granted jurisdiction over elections and voter registration.¹⁸ The Secretary appointed one registrar for each county, each county registrar appointed one deputy registrar per precinct or ward, and each precinct-level deputy was charged with conducting as soon as “practicably possible” a registration canvass of their ward or precinct.¹⁹ Deputy registrars were prescribed a uniform manner for registration, and they were to record specific details for each voter, namely, race, residence, employment status, and for those who were not self-employed, the name and address of their employers.²⁰ Registration ceased twenty days prior to an election,²¹ but election day registration was possible for men who had not been able to register during the prior canvass.²² Prospective voters swore to uphold the Constitution, that they were qualified, and that they were

¹⁵ Alabama Constitution of 1868, VII, § 3; Michael Fitzgerald, *Reconstruction in Alabama: From Civil War to Redemption in the Cotton South* (Baton Rouge: Louisiana State University Press, 2017) 148–50.

¹⁶ Alabama Constitution of 1875, in Article VII, § 5.

¹⁷ 1876 Code of Alabama, Title VI, Chapter I, Article II—“Registration of Electors.”

¹⁸ *Id.*, § 227.

¹⁹ *Id.*, § 228.

²⁰ *Id.*, § 232.

²¹ *Id.*, § 236.

²² *Id.*, § 233 & § 236.

not disqualified—that they had not “been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary” and that they were not “idiots or insane.”²³

15. Registrars operating under the 1875 Constitution and the Code provisions following from it were expected to police voters, not simply participate in a ministerial enterprise, and the process itself exploited African Americans’ precarious legal and economic situation. In terms of the text, the 1875 Constitution revived a category of offense where African Americans were disproportionately targeted: larceny. In terms of the broader statutory and applied backdrop, larceny prosecutions were a primary tool for policing African Americans’ lives and for circumscribing their social and political universe.²⁴ Second, the registration process inquired into residence and employment status, which, again, was primarily a tool for physically controlling African Americans in the Reconstruction era and which also exceeded any traditional property qualification.²⁵ In 1875 Alabama, very few African Americans owned land or could have, and they remained primarily employed as tenants, bound (literally) by annual contracts restricting

²³ *Id.*, § 238.

²⁴ Pippa Holloway, *Living in Infamy: Felon Disfranchisement and the History of American Citizenship* (New York: Oxford University Press, 2014) 54–72; Wharton, *supra* note 13 at 234–42.

²⁵ The 1875 Constitution did not require employment, but it did have a residence requirement (Article VIII, §1, §§ 2). The employment inquiry ostensibly thus had to do with residence. The 1876 Code of Alabama employment requirement for voter registration operated as follows:

§ 232. *Number and date of registration, residence, employment, color of elector, and name of employer.*— The assistant registrars shall write opposite to the name of each elector, under the appropriate head [sic] in such form, the number and date of registration, his place of residence, whether white or colored, his employment, and if he is in the employment of another, the name of such employer, and if the elector resides in any town or city, the street and number, or other mark or description, by which his place of residence may be identified.

Prospective voters had to provide this information under oath (§ 238). The physical arrangement of the § 232 form was displayed in § 238. For further information on white Southerners’ felt imperative to control and document African Americans’ working lives, see, e.g., Roger L. Ransom and Richard Sutch, *One Kind of Freedom: The Economic Consequences of Emancipation*, 2nd Ed. (New York: Cambridge University Press, 2001); William Cohen, *At Freedom’s Edge: Black Mobility and the Southern White Quest for Racial Control, 1861–1915* (Baton Rouge: Louisiana State University Press, 1991; Holloway, *supra* note 24).

their residence and labor.²⁶ Then there was the additional Code requirement that voters could only be registered by the deputy registrar for their home precinct who, “when they have no personal knowledge of the identity or residence of an elector, shall examine him under oath touching the same, which oath shall be administered by the assistant registrars.” Again, this might appear superficially to rhyme with past practice, but it did not. Alabama law and custom presumed previously that men were who they said they were. Now, registrars made that determination, and they were given power to judge whether a man lived and worked where and for whom he said. Further, as historian Michael Fitzgerald notes, leery, physically afraid African American voters “normally massed for safety in central locations where their votes were likely to be counted.” Alabama Democrats’ knew this, and their undeniable purpose in drafting the new elections code was to flush African Americans into the open if they were to vote at all, effectively thus dissuading them. “The new law, Fitzgerald concluded, “opened the doors wide to intimidation and fraud in rural areas.”²⁷

16. A dramatic shift occurred in the late 1880s and early 1890s, when the rising threat of agrarian activists and then the People’s Party threatened to subsume Bourbon Democrats.²⁸ Though black men’s votes were manipulated routinely through the 1870s and 1880s, Democrats had as yet made no sustained effort to actually take them away. The Fifteenth Amendment and the threat of congressional intervention (e.g. the Lodge Elections Bill) weighed too heavily upon their minds, number one, and two, they did not need to take away black men’s ballots to ensure they took

²⁶ Ransom & Sutch, *supra* note 25; Cohen, *supra* note 25.

²⁷ 1876 Code of Alabama, Title VI, Chapter I, Article II § 241; Fitzgerald, *supra* note 15 at 320–21.

²⁸ William Warren Rogers, Sr., *The One-Gallused Rebellion: Agrarianism in Alabama, 1865–1896* (Baton Rouge: Louisiana State University Press, 1970); Allen Johnston Going, *Bourbon Democracy in Alabama, 1874–1890* (Tuscaloosa: University of Alabama Press, 1951) 92–108; Hackney, *supra* note 3 at 1–107; Glenn Feldman, *The Disfranchisement Myth: Poor Whites and Suffrage Restriction in Alabama* (Athens: University of Georgia Press, 2004): 15–42; Samuel L. Webb, *Two Party Politics in the One-Party South: Alabama’s Hill Country, 1874–1920* (Tuscaloosa: University of Alabama Press, 1997) 59–130.

elections, for prior to the 1890s, black men's reliably Republican votes posed no real threat to the ruling Democratic Party.²⁹ Agrarian and Populist unrest dramatically altered that, and in close contests between Democratic and People's Party campaigners or, even more terrifying for Democrats, in hypothetical races against People's Party–Republican Party joint tickets, African American men's votes could easily swing contests, portending doom for Democratic hegemony.³⁰ So, in late 1892 and early 1893, Democratic Party leaders moved against the threat.

17. The Alabama Democratic Party effectively cheated death in the 1890 and 1892 gubernatorial contests against the renegade Reuben Kolb. So, in 1893, they changed the election laws to improve their chances for 1894.³¹ Mortally afraid for their prospects in 1894, party legislative leaders coalesced around the 1893 Sayre Elections Bill, named for its sponsor, State Representative Anthony D. Sayre.³² The Sayre Law was much akin to restrictions already adopted in Arkansas and Tennessee, the latter involving the notorious “Dortch Act.”³³ The new law's overarching accomplishment was to eliminate local discretion over registration and elections, placing them directly in the hands of Governor Thomas Goode Jones. In a paper published later that same year, Jones justified the suppression of the Democratic Party's

²⁹ Riser, *supra* note 3, at 112–37; Hackney, *supra* note 3 at 147–208.

³⁰ This was not simply a make-believe nightmare: it had happened in North Carolina in 1896, where white Democrats responded with the Wilmington Riot, which was nothing more than a murderous coup. See, e.g., David Zucchino, *Wilmington's Lie: The Murderous Coup of 1898 and the Rise of White Supremacy* (New York: Atlantic Monthly Press, 2020); Riser, *supra* note 3 at 74–111;

³¹ Reuben F. Kolb, the state's former Agriculture Commissioner, made his first bid for the governorship in 1890, and attracted intense support from the party rank-and-file, and, in a literal backroom deal, the Executive Committee of the Alabama Democratic Party arranged to instead nominate Thomas Goode Jones. (For an account of the 1890 episode, see Rogers, *supra* note 28 at 167–85). He tried again in 1892, this time as the nominee of a breakaway group, the “Jeffersonian Democrats.” (Rogers, *supra* note 28 at 217–35). He made his third, final, and most successful race in 1894, as the joint nominee of the Jeffersonian Democrats and the People's Party against U.S. Representative William C. Oates. It is apparent to historians that Kolb actually won that contest but was counted out through the extraordinary efforts of Governor Jones, the entire Democratic Party establishment, courtesy of the Sayre Election Law, *infra*. (Rogers, *supra* note 28 at 271–92).

³² David Ashley Bagwell, “The ‘Magical Process’: The Sayre Election Law of 1893.” *Alabama Review* 25, no. 2 (April 1972): 83–104; Hackney, *supra* note 3 at 37; Rogers, *supra* note 28 at 236–48

³³ See, e.g., John William Graves, “Negro Disfranchisement in Arkansas,” *Arkansas Historical Quarterly* 26, no. 3 (Autumn 1967): 199–225; J. Morgan Kousser, “Post-Reconstruction Suffrage Restriction in Tennessee: A New Look at the V. O. Key Thesis,” *Political Science Quarterly* 88, no. 4 (December 1973): 655–83.

opponents. Alabama's government, he wrote, "is securely in the hands of the intelligent, the conservative and the frugal among her people." The "intelligent," Jones continued (and here he is referring to conservative white Democrats), "have resisted every encroachment of that element, which exists in every State, that nurses 'fads' and 'isms,' and that acts unthinking of the real purposes and limitations of political power."³⁴

18. The 1893 Sayre Law, formally styled as "An Act to Further Regulate Elections in the State of Alabama," gave Governor Thomas Goode Jones unprecedented control of elections by, among other things, granting him power to appoint and remove county-level registrars.³⁵ Alabama's registration procedures had since 1875 been complicated, but now they verged closer to byzantine. The governor would now appoint registrars, who would then appoint their deputies.³⁶ Deputy registrars still conducted advance registration, but rather than close the books twenty days prior to the election, registrations were now only conducted over the first eighteen days of May (thirty days in cities), which closed registration some six weeks in advance of state elections—during prime late-spring planting season, which made it extremely difficult for small-scale tenant farmers or sharecroppers to attend.³⁷ Election day registration was restricted to men who reached age twenty-one after May and before election day.³⁸ The act retained the basic affidavit form as the one used in the 1875 procedure, and the registrars' discretion to try a man's worthiness. It abandoned the prior requirement that all parties have representatives present as polling inspectors. The registration process, which is of great interest here, is not the most

³⁴ *Proceedings of the Conference of Southern Governors, held in the City of Richmond, Virginia, on April 12th and 13th, 1893* (Richmond: C. W. Williams, Printers, 1893) 33, 36. See also, e.g., Brent J. Aucoin, *Thomas Goode Jones, Race, Politics, and Justice in the New South* (Tuscaloosa: University of Alabama Press, 2016) 70–74; Paul M. Pruitt, Jr., *Taming Alabama: Lawyers and Reformers, 1804–1929* (Tuscaloosa: University of Alabama Press, 2010) 70–72.

³⁵ "An Act to Further Regulate Elections in the State of Alabama," *Acts of Alabama*, 1892–93, no. 377.

³⁶ *Id.*, § 2.

³⁷ *Id.*, § 4.

³⁸ *Id.*, § 5.

famous aspect of the Sayre Law. That distinction attaches to how it managed and manipulated ballots and the act of voting itself. Alabama's electorate was substantially illiterate, something the Sayre Bill exploited. It introduced an Australian ballot, secret voting, and barred any but a select few partisan "inspectors" from aiding illiterates and the blind. Previously, inspectors came from across the political spectrum, but not now: the inspectors all would be conservative Bourbon Democrats. The effect was dramatic, and it allowed the Democratic Party to effectively steal one more governor's race.³⁹ One final important and instructive consideration attaches to the Sayre Law: it was only ever used in one gubernatorial race (1894), by one governor (Jones), against one candidate (Kolb), which speaks to just how perverse it was. 1896, the election code was moderated in several respects, most notably here with a mandate that all parties have an opportunity to post in each precinct their own elections inspectors.⁴⁰

IV. CRIMINAL DISFRANCHISEMENT IN ALABAMA, 1819–1903

19. The Sayre Bill is regarded as Alabama's official entry into the Disfranchisement Era, even if the Sayre Bill did not actually take away any man's ballot. Actual disfranchisement in Alabama resulted from the 1901 Constitution, and Section 182's moral turpitude clause has proven to be its most durable provision.⁴¹ Section 182 did not introduce to the state the idea of disfranchisement on account of crime, an idea that had been codified since statehood in 1819, what the 1901 Constitution introduced was a complex, carefully curated list of offenses that

³⁹ Rogers, *supra* note 28 at 236–48; Hackney, *supra* note 3 at 14–22, 67–71,

⁴⁰ Alabama Code of 1897 § 1588; Hackney, *supra* note 3 at 142–43; Bagwell, *supra* note 32;

⁴¹ Per Amendment 579, Article VIII, §177 (b) provides: "No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability."

primarily targeted African Americans, and that included the curious and poorly defined category of “moral turpitude,” *infra* Part V.

20. The dramatic nineteenth century shift in how Alabama approached criminal disfranchisement must be seen to be understood, beginning with the 1819 state constitution.⁴² The 1819 Constitution, two separate provisions addressed suffrage:

1819 Alabama Constitution

Article III, § 5: Every white male person of the age of twenty-one years, or upwards, who shall be a citizen of the United States, and shall have resided in this State one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector: Provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote at any election in this State; and provided, also, that no elector shall be entitled to vote except in the county, city, or town, (entitled to separate representation,) in which he may reside at the time of the election.

Article VI, § 5: Laws shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper conduct.

In November 1819, with an official statehood vote some two weeks away, the legislature added to state statutes a codified version of the new constitution’s disqualifications for “bribery, perjury, forgery, or any other high crime or misdemeanor.”⁴³ These criminal exclusions were fleshed out by the 1827 legislature, which codified them as excluding from voting, juries, testimony, and office any man convicted of “bribery, forgery, perjury, larceny, subornation of

⁴² The foremost study of Alabama constitutional history is Malcolm Cook McMillan’s *Constitutional Development in Alabama, 1798–1901: A Study in Politics, Sectionalism, and the Negro* (Chapel Hill: University of North Carolina Press, 1951). See pp. 30–46 for his broad treatment of the 1819 Constitution.

⁴³ *Acts of Alabama, 1819*, 67; *Alabama Law Digest, 1823*, 230.

perjury, receiving stolen goods, knowing to be stolen, or shall be convicted of stealing or altering or defacing any record, with intent to defraud.”⁴⁴ The 1827 statute remained in effect through the 1840s.⁴⁵

21. The 1840s saw a significant change to Alabama criminal disfranchisement, namely, the introduction of the penitentiary. Alabama had no penitentiary until 1841, following an 1839 legislative enactment.⁴⁶ That original institution, the Wetumpka State Penitentiary (colloquially referred to as “The Walls” a reference to its twenty-five foot tall brick walls) was the product of protracted reformist “Whig” efforts in the Jacksonian era.⁴⁷ Operating a penitentiary required adopting a proper penal code for the state, which the legislature updated in 1840.⁴⁸ The Walls received its first inmate in 1842, and through the antebellum period, ninety-nine percent of inmates were white men, most of whom appear to have been recent immigrants to the state.⁴⁹ Enslaved men—and virtually all African American Alabamians lived under the lash—were effectively ineligible for the penitentiary as they were punished by their owners or local officials.⁵⁰ The 1840 penal code, and the penitentiary, in turn, reshaped significantly the state’s restrictions upon voting, jury service, and office-holding, reflected in Alabama’s first proper statutory code, the Code of Alabama of 1852.

⁴⁴ *Acts of Alabama, 1827*, 32; *Alabama Law Digest, 1836*, 129. It is significant that the 1827 exclusions expressly did not apply retrospectively, as indicated by the phrase “from and after the passage of this act...”

⁴⁵ See, e.g., *Alabama Law Digest, 1843*, 169.

⁴⁶ “History of the Alabama Department of Corrections (adapted from DOC Employee Handbook).” <http://www.doc.state.al.us/History> (accessed April 12, 2020).

⁴⁷ Robert David Ward and William Warren Rogers, Sr., *Alabama’s Response to the Penitentiary Movement, 1829–1965* (Gainesville: University Press of Florida, 2003); William Warren Rogers, Sr. & Robert David Ward, *Convicts, Coal, and the Banner Mine Tragedy* (Tuscaloosa: University of Alabama Press, 1987) 26–50; Keri Leigh Merritt, *Masterless Men: Poor Whites and Slavery in the Antebellum South* (New York: Cambridge University Press, 2017) 179–250; Edward L. Ayers, *Vengeance & Justice: Crime and Punishment in the Nineteenth Century American South* (New York: Oxford University Press, 1986) 34–72. See also, e.g., Pruitt, *supra* note 34 at 14–31; Lewis, *supra* note 10; “History of the Alabama Department of Corrections,” *supra* note 46.

⁴⁸ “Penal Code,” *Acts of Alabama, 1840*, 103–92.

⁴⁹ By which is meant arrivals from foreign countries as well as other of the United States.

⁵⁰ There was a separate sub-provision for African Americans, this being Alabama’s Slave Code: “Chapter Fifteenth: Of Slaves, and Free Negroes,” *Acts of Alabama, 1840*, 188–92.

22. A penitentiary sentence required a statutory shift with respect to “high crimes and misdemeanors,” and that may be seen in the Code of Alabama of 1852. The 1852 Code inaugurated an instructive twenty-five year-long arc of Alabama criminal disfranchisement. The Code provision was straightforward:

Code of Alabama of 1852, Title 6, Chapter I

§171. No person must vote at any election in this state:

1. Who has been convicted of bribery, or the offer to bribe, larceny, or any other offense, (except manslaughter,) punishable by confinement in the penitentiary, by the laws of this state, unless he has been pardoned, and restored by such pardon to all the rights of citizenship.
2. Who is a soldier, seaman, or marine, in the regular army, or navy of the United States.⁵¹

The provisions applied only to white men as only “free white [men] of the age of twenty-one years” could vote in Alabama per Article III, § 5 of the 1819 Constitution. The 1861 Constitution, adopted to mark Alabama’s entry into the Confederate States of America, essentially reproduced verbatim the 1819’s suffrage-related provisions (minus the reference to U.S. soldiers and sailors). As was the case with the 1852 Code provision, the 1861 criminal disfranchisement could only apply to white men:

1861 Alabama Constitution

Article III, § 5. Every male white person of the age of twenty-one years, or upwards, who shall be a citizen of this State, and shall have resided therein one year next preceding an election, and the last three months within a county, city, or town, in which he offers to vote, shall be deemed a qualified elector, but no elector shall be entitled to vote except in the county, city, or town, (entitled to separate representation) in which he may reside at the time of the election.

Article VI, § 5. Laws shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage

⁵¹ Code of Alabama of 1852, §171. The misplaced commas are from the original text. The manslaughter exception may have had to do with dueling, though dueling was its own category of offense, and it was per the 1852 Code murder in the second degree. A likelier explanation is the availability of positive defenses to homicide that reflected the realities of life and survival in a raw, incorrigibly violent frontier society.

shall be supported by laws regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult, or improper conduct.

The 1865 Constitution brought forward in consolidated form the 1819 requirements, though now its effect would be markedly different:

1865 Alabama Constitution

Article VIII, § 1: Every white male person, of the age of twenty-one years and upwards, who shall be a citizen of the United States, and shall have resided in this State one year next preceding the election, and the last three months thereof in the county in which he offers to vote, shall be deemed a qualified elector. Provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, and no person who shall have been convicted of bribery, forgery, perjury, or other high crime or misdemeanor which may be by law declared to disqualify him, shall be entitled to vote at any election in this State.

23. A new variable wholly changed the situation: Emancipation. That Alabama's 1819 Constitution limited suffrage to free white men was not exceptional. Suffrage then throughout the Union was limited to white men. What was notable about the 1819 instrument is that being white was the *only* threshold requirement.⁵² And given that the C.S.A. was founded upon white supremacy and existed primarily to preserve and defend the institution of human chattel slavery, it is not the least surprising the 1861 framers would bring forward the 1819 requirements. Further, and in light of the preceding, there can be no surprise in knowing that the 1865 framers, defeated and desperate, would refashion the same old provisions limiting suffrage to white men who had not committed any relatively small number of misdemeanors, who had not impeached themselves through bribery, forgery, or perjury, and who had not been sentenced to the penitentiary.

⁵²McMillan, *supra* note 42 at 35–36. McMillan published separately in 1951 an article-length version of his work on the 1819 Constitution. See, McMillan, "Alabama Constitution of 1819: A Study of Constitution-Making on the Frontier." *Alabama Lawyer* 12, no. 1 (January 1951): 74–91; Edwin C. Bridges, *Alabama: The Making of an American State* (Tuscaloosa: University of Alabama Press, 2016) 61–64.

The salient fact, though, is that the 1865 Constitution was adopted into an Alabama where black men were free.

24. The 1865 Constitution intended to nullify black men's freedom, indeed that was the overarching socio-political aim of the short-lived "Self-Reconstruction" period in the South.⁵³ Reconstruction unfolded in distinct phases. There were early versions such as President Lincoln's "Ten-Percent Plan," then there followed so-called "Self-Reconstruction" from 1865 through late 1866, and only in 1867 do we arrive at Congressional Reconstruction.⁵⁴ Congressional Reconstruction addressed directly the abuses and failure of Self-Reconstruction, and invalidated President Andrew Johnson's efforts to readmit Alabama and other states. For present purposes, understand that guaranteeing African American suffrage was arguably *the* fundamental aim of Congressional Reconstruction,⁵⁵ thus the suffrage restrictions in Alabama's 1865 Constitution stood to be abolished.

25. Alabama in 1819 restricted voting to free white men when it was a distinction with little difference, and Alabama in 1865 restricted suffrage to free white men when the distinction suddenly mattered a great deal. By then, there were almost twice as many free men in Alabama, almost half of whom were black, per the 1870 U.S. Census, Alabama's population was 47.69 percent African American.⁵⁶ Relative to other former C.S.A. states,

⁵³ See, e.g., Dan T. Carter, *When the War Was Over: The Failure of Self-Reconstruction in the South* (Baton Rouge: Louisiana Press, 1985).

⁵⁴ *Id.*

⁵⁵ See, e.g., Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W.W. Norton, 2019); Wang Xi, *Trial of Democracy: Black Suffrage and Northern Republicans, 1865–1910* (Athens: University of Georgia Press, 1997).

⁵⁶ "Table I. Aggregate Population at Each Census," "Table II. White Population at Each Census," "Table III. Colored Population at Each Census," and "Table VII. True Population of the United States," *A Compendium of the Ninth Census, Jun 1, 1875, Compiled Pursuant to a Concurrent Resolution of Congress, under the Direction of the Secretary of the Interior*. (Washington: Government Printing Office, 1872) 8–13, 20–21.

Alabama's treatment of freedmen was almost tame. The state did not adopt one of the cruel and vindictive "Black Codes" that blighted other states' statute books.⁵⁷ However, Alabama had been every bit as aggressive as other states in restricting the lives and labors of freedmen.⁵⁸ Indeed, the 1865 Constitution mandated that it "shall be the duty of the General Assembly, at its next session, and from time to time thereafter, to enact such laws as will protect the freedmen of this State in the full enjoyment of all their rights of person and property, *and guard them and the State against any evils that may arise from their sudden emancipation.* (emphasis added)⁵⁹

26. African Americans in Alabama were no longer enslaved, but as of 1866, they certainly were not free, as would be borne out in statistical reports derived from the 1870 U.S. Census.⁶⁰ Southern states' took a distinctly light approach toward policing the white population, and the enslaved population was managed by the slaveholding class. In the aftermath of war, however, the instruments of state power were focused primarily on controlling the African American population.⁶¹ The penal laws were the state's tool, and it is no small coincidence that Alabama in 1866 adopted a new stand-alone penal code—the Alabama Penal Code of 1866. It is this penal code which used the power of the jail to compel labor and opened to African Americans the very real prospect of either a prison

⁵⁷ Fitzgerald, *supra* note 15 at 89–90.

⁵⁸ They achieved this through enticement and emigrant-agent statutes, debt peonage, convict leasing, and the like. See, e.g., Cohen, *supra* note 25 at 201–47.

⁵⁹ Alabama Constitution of 1865, Article IV, § 36.

⁶⁰ Reconstruction historiography is something of a minefield, as nearly all studies of it before the mid-twentieth century are now wholly discredited, consumed as they were by the white supremacist dictates of so-called "Dunning School" historians. W.E.B. Du Bois offered a corrective in the 1930's, and his and Eric Foner's are now regarded as the official standbys for the subject. See, e.g., W.E.B. Du Bois, *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860–1880* (New York: Harcourt, Brace, and Howe, 1935) and Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877*, (New York: Harper & Row, 1988).

⁶¹ Ayers, *supra* note 47 at 179–82.

or penitentiary sentence.⁶² Under the criminal disfranchisement provisions of the 1819 and 1861 Constitutions, the enabling statutes from 1819 and 1827, and the 1852 Code had operated to punish a relatively infinitesimal number of men. By contrast, the 1865 Constitution, the 1866 Penal Code, and the revised 1867 Code of Alabama worked hand-in-glove specifically and extremely effectively to diminish African American voting and economic strength. At the 1850 Census, for the calendar year ending June 1, 1850, Alabama, with a total population of 771,623, reported to census-takers 122 criminal convictions and an entirely white prison population of 70: 69 native U.S. citizens and 1 foreign-born.⁶³ At the 1860 Census, for the calendar year ending June 1, 1860, Alabama, with a total population of 964,201, reported to census-takers 179 criminal convictions and an entirely-white prison population of 226: 183 native U.S. citizens and 43 foreign born.⁶⁴ After a decade of tumult, which saw Alabama's net population remain nearly static, growing by only 32,791, or 3.4 percent, to 996,992 (as compared to a 24.9 percent increase from 1850 to 1860), for the calendar year ending June 1, 1870, Alabama reported to census-takers a more than five-fold raw increase in that year's total reported criminal convictions, rising from 226 to 1,269, and a total prison population of 593, or a more than 250 percent increase from 1860's reported total. As of June 1, 1870, there were in Alabama 8 foreign born, 149 white, and 436 African American prisoners.⁶⁵ So, 73.5 percent of Alabama convicts in 1870 were African American, and this was *before* Redemption, when white Democrats regained control of state government and visited

⁶²Rogers & Ward, *Convicts and Coal*, *supra* note 47 at 29–30.

⁶³ “Table XLV. Pauperism and Crime, with Population by States and Territories—1850,” in *Compendium of the Ninth Census*, *supra* note 56 at 535.

⁶⁴ “Table XLIV. Pauperism and Crime, with Population by States and Territories—1860” in *Compendium of the Ninth Census*, *supra* note 56 at 532–33.

⁶⁵ “Table XLIII. Pauperism and Crime, with Population by States and Territories—1870” in *Compendium of the Ninth Census*, *supra* note 56 at 531–32.

upon African American citizens the oppressive weight of their ambitions.⁶⁶ It rapidly worsened. For the year 1880, Alabama reported to census takers a total prison population of 1,398, of which 84 percent, or 1,177, were African American.⁶⁷ The state's own records bore out this dramatic increase, and by 1890, African Americans made up ninety-one percent of the state penitentiary population.⁶⁸

27. Alabama staged a new Constitutional Convention in late 1867, one that generated what eventually became the Alabama Constitution of 1868. Alabama was required by the Congressional Act to ratify the pending Fourteenth Amendment as well as guarantee voting rights for African American men. The former would have effectively indicted the explicit racial discriminations of the 1866 Penal Code and the 1867 Code. Per the latter, the 1867 framers (almost all Republican and many African American) omitted the racial pretext for voting. They retained the penitentiary disqualification but importantly dropped larceny, which, along with vagrancy and enticement statutes, had rapidly become effective tools for harassing African Americans⁶⁹:

1868 Alabama Constitution

Article VII, § 3: It shall be the duty of the General Assembly to provide, from time to time, for the registration of all electors; but the following classes of persons shall not be permitted to register, vote or hold office:

1st, Those, who, during the late rebellion, inflicted, or caused to be inflicted, any cruel or unusual punishment upon any soldier, sailor, marine, employee or citizen of the United States, or who, in any other way, violated the rules of civilized warfare.

⁶⁶ *Id.*

⁶⁷ "Table XI—Total Prisoners by Sex, Nativity, and Race: 1880," in *Statistics of the Population of the United States at the Twelfth Census, June 1, 1880, Embracing Extended Tables of the Population of States, Counties, and Minor Civil Divisions, with Distinction of Race, Sex, Age, Nativity, and Occupations; together with Summary Tables, Derived from Other Census Reports, Relating to Newspapers and Periodicals; Public Schools and Illiteracy; the Dependent, Defective, and Delinquent Classes, etc., Compiled and Published Pursuant to Acts of Congress Approved March 3, 1879, April 20, 1880, and August 7, 1882.* (Washington: Government Printing Office, 1883) 929

⁶⁸ Going, *supra* note 28 at 176.

⁶⁹ Cohen, *supra* note 25 at 222.

2d, Those who may be disqualified from holding office by the proposed amendment to the Constitution of the United States, known as “Article XIV,” and those who have been disqualified from registering to vote for delegates to the Convention to frame a Constitution for the State of Alabama, under the act of Congress, “to provide for the more efficient government of the rebel States,” passed by Congress March 2, 1867, and the acts supplementary thereto, except such persons as aided in the reconstruction proposed by Congress, and accept the political equality of all men before the law: Provided, That the General Assembly shall have power to remove the disabilities incurred under this clause.

3d, Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, crime punishable by law with imprisonment in the penitentiary, or bribery.

4th. Those who are idiots or insane.

28. Redemption returned white Democrats to power, and they wasted little time reviving larceny as grounds for criminal disfranchisement.⁷⁰ But there was a twist: where the 1852 Code provision reflected the disfranchisement of a white criminal population, the 1875 Constitution was the first to address “penitentiary crimes” in the context of racial disparities in sentencing, and we know that after 1875, African Americans were disproportionately incarcerated (par. 26, *supra*) and at an astonishing rate.⁷¹ And they specifically revived larceny, a category of crime that before 1890 arguably had greater “disfranchising” effect than any other registration requirement, electoral device, or voter disqualification:⁷²

⁷⁰ Alabama Constitution of 1875, *infra*. See also, e.g., on the aims of Redemption, Going, *supra* note 28; G. Ward Hubbs, *Searching for Freedom after the Civil War: Klansman, Carpetbagger, Scalawag, and Freedman* (Tuscaloosa: University of Alabama Press, 2015); Fitzgerald, *supra* note 15 at 285–337; Richard Bailey, *Neither Carpetbaggers nor Scalawags: Black Officeholders During the Reconstruction of Alabama, 1867–1878* (Montgomery: New South Books, 2010); Sarah Woolfolk Wiggins, *The Scalawag in Alabama Politics, 1865–1881* (Tuscaloosa: University of Alabama Press, 1977); Nicolas Lemann, *Redemption: The Last Battle of the Civil War* (New York: Farrar, Strauss, and Giroux, 2007); Michael Perman, *The Road to Redemption Southern Politics, 1869–1879* (Chapel Hill: University of North Carolina Press, 1985); William Warren Rogers, Sr., Robert David Ward, Wayne Flynt, and Leah Rawls Atkins, *Alabama: History of a Deep South State* (Tuscaloosa: University of Alabama Press, 1994) 225–58.

⁷¹ “History of the Alabama Department of Corrections,” *supra* note 46; R. H. Dawson, “The Convict Lease System of Alabama: As It Was and As It Is,” extract from Saffold Berney’s *Hand-Book of Alabama* (Birmingham: Roberts and Son, Printers, 1892).

⁷² Holloway, *supra* note 24 at 54–72; Wharton, *supra* note 13 at 235–38; Going, *supra* note 28 at 34–35.

1875 Alabama Constitution

Article VIII, § 3: The following classes shall not be permitted to register, vote, or hold office:

First—Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary.

Second—Those who are idiots or insane.

The Code of Alabama of 1876 effected these provisions, and they very clearly reflected the broader social forces that provided legislators' their pretext:

§224. *Qualifications of electors.*—Every male citizen of the United States, and every male person of foreign birth, who has been naturalized, or who may have legally declared his intention of becoming a citizen of the United States, before he offers to vote, who is twenty-one years old or upwards, who shall have resided in this state one year, three months in the county, and thirty days in the precinct or ward next immediately preceding the election at which he offers to vote, is, unless within the disabilities imposed by the provisions of this chapter, a qualified elector, and may vote in the precinct or ward of his actual residence, and not elsewhere, for all officers elected by the people; but electors qualified as aforesaid, who have resided in any incorporated city in this state, having a population of more than twenty thousand inhabitants, for thirty days immediately preceding any election, and have within such thirty days, removed their residences from one ward to another in the same city or town, shall, after a residence therein of one day, be entitled to vote in the ward in which they reside at the time of the election, but each of such electors must first deposit with the inspectors of election in said ward the certificate of the judge of probate that said elector is duly registered in the ward from which he has removed; and the name of each of such electors shall be erased, or caused to be erased, by the judge of probate, from the registration list immediately upon the issuance of the certificate, and the name of the elector shall be entered upon the registration list of the ward to which he shall have removed his residence, any law of the state to the contrary notwithstanding.

§225. *Disqualifications of electors.*—Those who have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary, and idiots or lunatics, shall not be permitted to vote in this state at any election by the people.

The 1876 Code provisions were carried forward into the Code of 1887.⁷³

⁷³ *Code of Alabama of 1887*, §319 and §320.

29. By the time of Alabama's 1901 constitutional convention, the state's voter registration procedures had for twenty-six years grown increasingly complicated. Yet, there had not been since 1875, any effort to reshape either the qualifications or disqualifications, and the 1875, disqualifications were facially more or less analogous to the antebellum ones. In an applied sense, of course, considering the dramatic social and political changes emanating from Emancipation (paragraphs 25–27, *supra*), they were not at all the same thing. Regardless, there was no precedent in Alabama history, custom, and law for the catalog of offenses included in Section 182 of the 1901 Alabama Constitution:

1901 Alabama Constitution

Article VIII, § 182: The following persons shall be disqualified both from registering, and from voting, namely:

All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector.

The scope of it is astonishing; in the registrars' hands, it could be a cudgel.

V. MORAL TURPITUDE IN ALABAMA LAW, 1819–1915

30. The phrase “moral turpitude” was rare in nineteenth century Alabama officialdom. Legislators rarely ever used it or adopted it into legislative Acts or the state’s Civil and Penal Codes, and judges and appellate courts did not frequently use it in interpreting the same. Though a relatively uncommon concept in public acts and public law, that does not mean it was unknown, and it generally surfaced in connection with one of five broad categories: impeaching witness testimony, larceny prosecutions, defamation and libel claims, the removal of public officials, and the convict lease system. The latter of these is arguably the most significant, for moral turpitude combined with larceny and other petty crimes to shore up the state budget, county governments’ fine and forfeiture funds, and fuel mining concerns’ and heavy industry’s insatiable appetite for cheap, malleable labor. As of 1901 (*infra*, section VI), it also gained pride of place in the state constitution’s criminal disfranchisement clause.

V. (1). MORAL TURPITUDE: IMPEACHING WITNESS TESTIMONY

31. In 1985, U.S. Chief Justice Rehnquist, in the *Hunter v. Underwood* decision which effectively struck down much of Section 182 of the 1901 Constitution, there described moral turpitude’s inclusion as “a catchall provision,” and for clarification, he looked to the Alabama Supreme Court’s 1916 *Pippin v. State* decision.⁷⁴ Looking afield to an Arkansas case, the Alabama justices agreed that moral turpitude implied “something immoral in itself, regardless of the fact whether it is punishable by law. The doing of the act itself, and not its prohibition by

⁷⁴ *Hunter v. Underwood*, 471 U.S. 226.

statutes, fixes the moral turpitude.”⁷⁵ *Pippin* examined witness testimony, and it was not an unusual case. Alabama courts prior to 1901 and after routinely considered, usually as a secondary matter, whether witnesses had through moral turpitude impeached themselves. 1853’s broad-ranging *Campbell v. State* touched upon the question of whether an out-of-state conviction could impeach witnesses in Alabama proceedings.⁷⁶ 1878’s *Taylor et al v. State* asked whether grand larceny and burglary bore alike the stain of moral turpitude.⁷⁷ 1877’s *Moses v. State* inquired whether it was properly left to a jury to determine whether to accept accomplice testimony given that the offense was merely illegal and did not involve moral turpitude.⁷⁸ There are many more such examples, both to pre- and post-date the 1901 convention.⁷⁹ They establish clearly that moral turpitude was an acceptable means to impeach witnesses, and that moral turpitude was inherently bad, but they do not clarify what it meant or whether that meaning had or could change over time.

V.(2). MORAL TURPITUDE: LARCENY

32. Of the four categories of moral turpitude-related court opinions, larceny cases are probably the fewest in number, yet they very clearly speak to the individualized nature of these inquiries, and they reinforce the point that moral turpitude was never a stable standard. Take *Bailey v. State*, which speaks to consciousness. A Mr. Fuller owed Mr. Bailey two dollars, paid Bailey

⁷⁵ *Pippin v. State*, 197 Ala. 613, 616, 73 So. 340 (1916); *Fort Brinkley v. Arkansas*, 87 Ark. 400, 112 S.W. 1084.

⁷⁶ *Campbell v State*, 23 Ala. 44, 56 (1853).

⁷⁷ *Taylor et al v. State*, 62 Ala. 164, 165.

⁷⁸ *Moses v. State*, 58 Ala. 117, 120 (1877).

⁷⁹ See, e.g., for a selection of opinions where there arose mentions of “moral turpitude”: *Cheatham v. State*, 59 Ala. 40 (1877); *Gillman v. State*, 165 Ala. 135, 51 So. 722 (1910); *Snead v. Jones*, 169 Ala. 143, 53 So. 188 (1910); *McGuire v. State*, 2 Ala. App. 218, 57 So. 57 (1911); *Collins v. State*, 3 Ala. App. 64, 58 So. 80 (1912); *Swope v. State*, 4 Ala. App. 83, 58 So. 809 (1912); *Thornton v Esco et al*, 181 Ala. 241, 61 So. 255 (1913) *Moton v. State*, 13 Ala. App. 43, 69 So. 235 (1915);

with two bills, and only the next day realized he mistakenly had paid eleven dollars. Bailey kept the errant ten-dollar bill. Tallapoosa County successfully prosecuted him for larceny, and on appeal, the Alabama Supreme Court reversed and remanded. Bailey could not be prosecuted thus if he did not at the time realize Fuller's error, and thus he could not have designed deceit. As the headnote characterized the holding: "Whatever may be the moral turpitude connected with defendant's conduct, it evidently falls short of larceny."⁸⁰ *Washington v. State*, an appeal of a conviction for illegal voting, also raised the question of moral turpitude as applied to larceny.⁸¹ Washington had been in 1871 convicted of larceny, and the 1868 Constitution did not class that as a disfranchising offense. So, he continued to vote until his conviction for the same, and in the 1884 appeal, the Court was asked to determine whether the disqualification for larceny in the 1875 Constitution could or should operate ex post facto. Not incidentally, the Court in three other 1880s cases examined questions of larceny convictions and voting, effectively establishing that larceny was the state's primary tool to effect criminal disfranchisement.⁸² The Court had in 1882's *Anderson v. State* elided the distinction between grand and petty larceny, and in *Washington*, it gained the power to travel through time. The Court's opinion explained:

"The presumption is, that one rendered infamous by conviction of felony, *or other base offense indicative of great moral turpitude*, is unfit to exercise the privilege of suffrage, or to hold office, upon terms of equality with freemen who are clothed by the State with the toga of political citizenship." (emphasis added)⁸³

The Court had not "defined" or enumerated moral turpitude, but he affirmed its detachment from felony, and by employing it to uphold Washington's illegal voting conviction, he tied it to the state's notoriously racially discriminatory application of larceny statutes which, again, were

⁸⁰ *Bailey v. State*, 58 Ala. 414 (1877).

⁸¹ *Washington v. State*, 75 Ala. 582 (1884).

⁸² *Anderson v. State*, 72 Ala. 187 (1882); *Gandy v. State*, 82 Ala. 61 (1886); and *Gandy v. State* 86 Ala. 20 (1888).

⁸³ *Washington v. State*, 75 Ala. 585.

predicated upon the 1875 effort to reclassify as felonies crimes that had traditionally been classed as misdemeanors.⁸⁴

V.(3). MORAL TURPITUDE: DEFAMATION

33. The earliest and most frequent references in Alabama appeals to moral turpitude arise in connection with defamation claims. The accusation or imputation that one party had committed some grave act involving moral turpitude could, and frequently did, open the other to a civil claim or even a criminal libel prosecution. The 1901 convention delegates, given that most of them were lawyers, would have known this, and they would have known what the Code of Alabama of 1897 had to say about the matter:

§5065. Defamation.—Any person, who writes, prints, or speaks of and concerning any woman, falsely and maliciously imputing to her a want of chastity; and any person who speaks, writes, or prints of and concerning another any accusation falsely and maliciously importing the commission by such person of a felony, or any other indictable offense involving moral turpitude, must, on conviction, be punished by fine not exceeding five hundred dollars, and imprisonment in the county jail, or sentenced to hard labor for the county, not exceeding six months; one or both, at the discretion of the jury.

In 1822’s *Coburn v. Harwood*, an action arising from the allegation of an unspecified “crime against nature,” the Court determined that as Alabama statute neither noted the act nor affixed to it an “infamous” punishment, the claim must be set aside.⁸⁵ *Hillhouse v. Peck*, from 1832, asked whether an accusation that a party had “broken open and read a letter” amounted to the actionable moral turpitude standard, which the Court in that opinion equated to infamous

⁸⁴ Holloway, *supra* note 24 at 58; Going, *supra* note 28 at 34–35, noting the electorally important conflation of grand and petty larceny. See also, e.g., James J. Mayfield, *Constitutions of 1875 and 1901: Paralleled, Annotated, and Indexed* (Nashville: Marshall & Bruce, 1904) 96.

⁸⁵ *Coburn v. Harwood*, 1 Minor 93 (1822).

offenses.⁸⁶ 1857's *Smith v. Gaffard* asked whether one woman could be held to libel for suggesting another had (1) conceived out of wedlock and (2) had terminated that pregnancy by consuming an abortifacient.⁸⁷ Claims alleging a "moral turpitude" offense were actionable, the Court explained in *Iron Age Publishing Co. v. Crudup*, that engendered "public hatred, contempt or ridicule, or [that charged] an act odious and disgraceful in society."⁸⁸ The "general definition," the opinion continued, "may be said to include whatever tends to injure the character of an individual, or blacken his reputation, or imputes fraud, dishonesty, or other moral turpitude, or reflects shame, or tends to put him without the pale of social intercourse."⁸⁹ These are but four from a host of examples. Over and again, Alabama courts recognized that moral turpitude claims were actionable, and stated that moral turpitude arose from ignominious human impulses, yet, they never established what those were.⁹⁰

V.(4). MORAL TURPITUDE: IMPEACHING PUBLIC OFFICIALS

34. Alabama courts recognized that plaintiffs could pursue libel claims if there was some allegation of moral turpitude, and per that standard, *Wofford v. Meeks et al* asked in 1900 whether a county commissioner could sue a newspaper over the public charge he had misappropriated public monies.⁹¹ Additionally (and to be clear, this was not raised in the Court's

⁸⁶ *Hillhouse v. Peck*, 2 Stew. & P. 395 (1832).

⁸⁷ *Smith v. Gaffard*, 31 Ala. 45 (1857).

⁸⁸ *Iron Age Publishing Co. v. Crudup*, 85 Ala. 519, 520 (1888)

⁸⁹ *Id.*, 520, 521.

⁹⁰ As with witness testimony impeachments, there are numerous other examples of defamation claims where there arose mention or discussion of the precise phrase "moral turpitude." See, e.g., *Thirman v. Matthews*, 1 Stew. 384 (1828); *Hogg v. Dorrah*, 2 Port. 212 (1835); *Jeter v. Jeter*, 36 Ala. 391 (1860); *Heath v. Devaughn*, 37 Ala. 677 (1861); *Berdeaux v. Davis*, 58 Ala. 611 (1877); *Long v. Musgrove*, 75 Ala. 158 (1883); *Trimble v. Anderson*, 79 Ala. 514 (1885); *Miles v. State*, 94 Ala. 106 (1891); *Ivey v. Pioneer Savings & Loan Co.*, 113 Ala. 349 (1896); *Johnson v. Turner*, 159 Ala. 356, 47 So. 570 (1908); *Dungan v. State*, 2 Ala. App. 235, 57 So. 117 (1911).

⁹¹ *Wofford v. Meeks*, 129 Ala. 349 (1900).

opinion) Wofford, an Etowah county commissioner, had not merely been imputed to fraud, he was effectively accused of an impeachable offense—public corruption—per the impeachments article of the Alabama Constitution of 1875, which included a moral turpitude clause:

Article VII, § 1. The governor, secretary of state, auditor, treasurer, attorney-general, superintendent of education, and judges of the supreme court may be removed from office for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, *or any offense involving moral turpitude while in office*, or committed under color thereof, or connected therewith, by the senate, sitting as a court for that purpose, under oath or affirmation, on articles or charges preferred by the House of Representatives. (emphasis added)

Though impeachments certainly were not unheard of in nineteenth through early-twentieth century Alabama, neither were they common. Impeachments involving moral turpitude are thus doubly rare. One of those few examples, *Nelson et al, Jury Comms. v. State ex rel Blackwell*, came before the Alabama Supreme Court in early 1913.⁹² The 1901 Constitution carried forward the 1875 impeachments clause, *supra*, and in 1913, Justice Anthony Sayre (author of the Sayre Election Law), while attempting to define “willful neglect,” visited the application of “moral turpitude.” An official could not be impeached for a misdemeanor, he wrote, “unless the misdemeanor involves moral turpitude, and it is perfectly clear that not all misdemeanors, particularly statutory misdemeanors, involve any moral turpitude.”⁹³ Moral turpitude inhered in certain bad acts, and it was a standard that operated beyond simple questions of crime. “Nor,” he continued, “does the Constitution any more in terms authorize impeachment for felonious offenses unless they involve intrinsic moral turpitude, or unless the Legislature by denouncing as a felony an act inherently lacking in moral quality thereby changes and

⁹² *Nelson et al, Jury Comms. v. State ex rel Blackwell*, 182 Ala. 449, 62 So. 189 (1913).

⁹³ *Id.* at 458.

fixes its moral character for the worse.”⁹⁴ Sayre importantly discounted the legislature’s ability to *make* some criminal matter a question of moral turpitude: “The power to do that may be doubted.”⁹⁵ Still, if Sayre was given to wonder whether the legislature could even do so, it raises the question of why they ever would.

V.5. MORAL TURPITUDE: CONVICT LEASING

35. Convict leasing substantially financed Alabama state and local governments from the mid-nineteenth through the early-twentieth centuries, and moral turpitude from the early 1880s helped feed the state’s mining and heavy industry sector feed its appetite for cheap, malleable labor.⁹⁶ We can see this through statutory and code provisions concerning prison camp housing. It is important to remember that in the antebellum period, only white men could go to jail or the penitentiary. It is only with Emancipation that African Americans were in large numbers subject to penal confinement. We would not expect to and cannot see before then provisions such as that from the 1882–1883 legislative session, which required that any party who leased convicts must separately chain, house, or confine felons and misdemeanants, or black and white convicts:

Sec. 5. *Be in further enacted*, That it shall be unlawful for the hirers of convicts to work together or confine in the same room or apartment any convict who has been sentenced for the commission of a misdemeanor with a convict or convicts

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Ed Ayers has described postbellum convict leasing as “a sort of mutual aid society for the new breed of capitalists and politicians of the white Democratic regimes of the New South.” Ayers, *supra* note 47 at 195. Rogers & Ward, *Convicts & Coal*, *supra* note 47 at 26–50; Going, *supra* note 28 at 167–71; Riser, “Convict Leasing,” *supra* note 2 at 193–95; Mary Ellen Curtin, *Black Prisoners and their World: Alabama, 1865–1900* (Charlottesville: University of Virginia Press, 2000) 62–80. For a regional overview of the lease system, see, e.g., Ayers, *supra* note 47 at 185–222; Cohen, *supra* note 25 at 221–32; Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996); Matthew Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866–1928* (Columbia: University of South Carolina Press, 1996).

sentenced for the commission of a felony; that white convicts and colored convicts shall not be chained together; nor shall they be allowed to sleep together, nor be confined together in the same room or apartment, when not at work...⁹⁷

It is a truism worth repeating that there could be no racial segregation when only white men were free.⁹⁸ By the 1880s in Alabama, segregation had become an imperative for the white population, so much so they would not have seen the irony of sparing white prisoners the shame and horror of cohabiting with African Americans. This, in a day and time when the incarcerated population was nearly all black.

36. By then, Alabama's prison population, and thus the leased convict population, was largely African American. Larceny, a category classed among those involving moral turpitude and whose misapplication is well-established, sent more black men to prison than any other, and to sentence them to prison was to sentence them to a lease. The 1884–1885 legislature worried not only that black and white convicts might be chained, housed, or confined together, but also that non-moral turpitude offenders be kept separate from convicts laboring under felonies and misdemeanor moral turpitude sentences:

Sec. 19. *Be in further enacted*, That it shall be unlawful to work together or to confine in the same room or apartment any convict or convicts who have been sentenced to hard labor for the commission of a misdemeanor not involving moral turpitude with a convict or convicts sentenced for the commission of a felony. It shall also be unlawful for white convicts, whether State or county convicts, and colored convicts to be chained together or to be allowed to sleep together, or to be confined in the same room or apartment, when not at work...⁹⁹

⁹⁷ *Acts of Alabama*, 1882–1883, 134; Code of Alabama of 1887, § 4658.

⁹⁸ For a broad overview, see, e.g., C. Vann Woodward, *Origins of the New South*, *supra* note 3; Woodward, *Strange Career of Jim Crow* (New York: Oxford University Press, 1951); Henry Louis Gates, Jr., *Stony the Road: Reconstruction, White Supremacy, and the Rise of Jim Crow* (New York: Penguin, 2019); Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W. W. Norton & Co., 2019); Leon F. Litwack, *Been in the Storm So Long: The Aftermath of Slavery* (New York, Alfred A. Knopf, 1979); Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Alfred A. Knopf, 1998); Edward Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992); Howard K. Rabinowitz, *Race Relations in the Urban South, 1865–1900* (New York: Oxford University Press, 1978).

⁹⁹ *Acts of Alabama*, 1884–1885, 187; Code of Alabama of 1887, § 4658.

The segregated and moral turpitude-based standard for chaining, housing, and confinement survived the leasing reforms of the 1890s, and it remained in full force at the time of the 1901 Constitutional Convention.¹⁰⁰

37. Alabama's convict lease system for a time featured an additional moral turpitude standard that *did* conspicuously and importantly change between 1880s and 1890s. It was a separate provision of the 1885 act:

Sec. 35. *Be it further enacted*, That it shall be unlawful to work upon railroads or in mines, convicts who have been convicted of an offense not involving moral turpitude.¹⁰¹

Section 35 was repealed by the 1892–1893 lease system overhaul.¹⁰² That 1893 bill did not in terms send into the mines offenders without a moral turpitude conviction. The act made special provisions for mine work, namely, provisions that addressed mine work performed by county convicts.¹⁰³

38. A handful of Alabama Supreme Court cases suggest why Section 35, the mandate protecting non-moral turpitude offenders from mine and railroad work, was instituted and then repealed, and they also indicate why the legislature sought generally to address mine work by county convicts. There is the 1885 matter of *Ex parte Crews*, concerning an inmate convicted in Barbour County of assault and battery, which was not considered a moral turpitude offense in Alabama in 1885. Per Section 35, the Court agreed, Crews's labor could not be put on offer to a mine operator.¹⁰⁴ *Ex parte Small*, from 1886, affirmed that under a hard labor sentence from the county, persons with non-moral turpitude convictions could still be leased outside the county.¹⁰⁵

¹⁰⁰ Code of Alabama of 1897, § 4493.

¹⁰¹ *Acts of Alabama*, 1884–1885, § 35.

¹⁰² *Acts of Alabama*, 1892–1893, § 35.

¹⁰³ *Id.* at § 41, § 57, and § 60.

¹⁰⁴ *Ex parte Crews*, 78 Ala. 457 (1885).

¹⁰⁵ *Ex parte Small*, 81 Ala. 85 (1886).

And there was 1887's *Ex parte Buckalew*, an escaped convict bid unsuccessfully to void his original assault and battery sentence on grounds that his confinement alongside those guilty of crimes of moral turpitude had violated Section 35.¹⁰⁶

39. *Crews, Small, and Buckalew* addressed the existence of, but not the reason for, those statutory guarantees that only moral turpitude offenders would suffer the grinding horror of the pit. Others offer clarification, including an 1891 contract dispute which involved Buckalew's, jailer, Robert J. Trammell, *supra*.¹⁰⁷ Trammell had secured through competitive bid a convict lease with Lee County whereby he agreed to pay eight dollars monthly for persons sentenced to hard labor for fewer than six months and ten dollars monthly for those sentenced to longer terms.¹⁰⁸ Trammell did not pay. In exhibits quoted in the Supreme Court opinion, it emerged not only that the county profited more from prisoners with longer sentences (which could plausibly have to do with a security risk), but that the county expressly reserved the right to "assign convicts of higher degree of crime, involving moral turpitude, to other contractors."¹⁰⁹ This was the rub: a hard labor sentence for a moral turpitude offense meant the county profited by the conviction. Historian Ed Ayers found that chain gangs and convict leases "changed the punishment of crime from a heavy expense for the county to a source of public revenue." Before the Civil War, a "county stood to lose money by prosecuting a minor criminal, but after the adoption of the chain gang all the incentives ran in the other direction... Crime, to a certain extent, became an asset to the county." Ayers quoting an Alabama penitentiary inspector, observed that "[e]ven a misdemeanor could be turned to economic advantage: 'a defendant, convicted of a misdemeanor, may be, and frequently is, sentenced to ten days hard labor for his

¹⁰⁶ *Ex parte Buckalew*, 84 Ala. 460 (1887).

¹⁰⁷ *Trammell v. Lee County*, 94 Ala. 194 (1891).

¹⁰⁸ *Id.* at 195.

¹⁰⁹ *Id.* at 196–97.

crime, and to three, six, or eight months, for costs.... In such cases, his poverty seems to be punished more severely than his offense against the law.”¹¹⁰

40. Moral turpitude determinations effectively were balanced by the same county authorities who had to balance the public accounts, and that manifested through the convict lease. Counties did this through hard labor sentences, a device that in the postbellum period dated to Reconstruction, when the Penal Code of 1866 authorized the “letting of such convicts to hire to some other person, or corporation, to labor any where [sic] within the State, as may be determined by the court of county commissioners.”¹¹¹ Lee County was not unique, as is revealed by Allison White’s habeas corpus petition.¹¹² White was in January 1887 convicted in Hale County of “playing cards in a public place” and sentenced to hard labor. One month prior, the county had signed a contract with a mine operator:

“The Coalburg Coal and Coke Company agrees to pay for the hire of each and every person convicted of crimes involving moral turpitude and who are physically able to perform hard labor in the coal mines at Coalburg, Alabama, at the rate of eleven dollars (\$11.00) per month. The Coalburg Coal and Coke Company, also, agrees to pay for the hire of all persons, convicted of crimes not involving moral turpitude and who are physically able to perform hard labor about the mines at Coalburg, Alabama, at the rate of eight dollars (\$8.00) per month.”¹¹³

White was not put to work *in* the mine, he worked *about* the mine, and for that and other reasons, the Court was satisfied by Hale County’s contract. They denied the application.¹¹⁴

41. Section 35, again, survived for only seven years, but hard labor for the county—and the counties’ profitable hard labor sentences for moral turpitude—continued well into the twentieth century. The county lease system is generally conflated with the state system originating from

¹¹⁰ Ayers, *supra* note 47 at 177–78.

¹¹¹ Alabama Penal Code of 1866, § 218.

¹¹² *Ex parte White*, 81 Ala. 80 (1886).

¹¹³ *Id.* at 81, 82.

¹¹⁴ *Id.* at 84.

The Walls at Wetumpka, and, for practical purposes, if a man was sentenced on a moral turpitude offense, be that petty larceny or some crime against nature, it effectively mattered little whether he was sentenced by a state circuit court or a county magistrate. Addressing in 1892 the county convict lease system, R. H. Dawson, president of the state inspection board, neatly put it: “it is not so good as the State system, and its only object is to make money to keep up the fine and forfeiture in the several counties.”¹¹⁵

42. Moral turpitude remained by 1901 elusively ill-defined, and it presented a confusing mix of inconsistencies, cross-purposes, and dubious attempts to fill the public purse. Men and women both for eighty years successfully prosecuted damage claims attendant to allegations of various grave acts reflecting moral turpitude, and witnesses and public officials could be (and apparently were) impeached for the same. In these instances, the Alabama Supreme Court made clear that the moral turpitude classification connoted only the basest, most indecent human impulses. Yet, for a white supremacist society that criminalized African American life, it had been, beginning from 1875, attached rather conveniently to petty crimes for which desperate, starving, and landless African Americans were most often prosecuted, namely, to petty and grand larceny¹¹⁶ Just as conveniently, it did apply to other crimes of similar grade, to assault and battery, for one. As the state penitentiary population and county jails moved toward a 90:10 African American to white ratio, convict leasing expanded dramatically. Fees from mine operators and industry solidified the state’s precarious finances, and county governments heavily relied upon fines and fees to fund their law enforcement and road operations, namely, those collected through convict leases.¹¹⁷ Further, with respect to voting, moral turpitude was left to operate through time,

¹¹⁵ R. H. Dawson, “The Convict System of Alabama: As It Was and As It Is” (extract from Saffold Berney’s *Hand Book of Alabama*) (Birmingham: Roberts and Son, Printers) 12–13.

¹¹⁶ Holloway, *supra* note 24 at 58.

¹¹⁷ Curtin, *supra* note 96 at 62–63.

irrespective of the relative gradation of misdemeanors and felonies, and irrespective of whether a man had previously served a misdemeanor sentence and resumed the exercise of his citizenship rights. Moral turpitude was a phrase, it was a common law concept, and by 1901 in Alabama, it was a force.

VI. MORAL TURPITUDE IN THE 1901 CONVENTION

43. The 1901 Alabama Constitutional Convention was notable at the time for its decision to maintain and publish a daily verbatim transcript of its deliberations.¹¹⁸ This was a significant technical feat for that day and time, but it also laid down a uniquely thorough record of what the delegates said, did, and by extension, thought. It runs thousands of pages long: they talked themselves nearly to death. In places, what they did not say speaks volumes. One such example is the moral turpitude clause in Section 182. Yet, it is not the only instance where we must take seriously what the delegates did not say, for there are, in fact, four moral turpitude clauses in Alabama’s 1901 Constitution.

- (1) **Article IV, § 104, no. 30:** The legislature is prohibited from adopting special or local legislation that would affect “restoring the right to vote to persons convicted of infamous crimes, or crimes involving moral turpitude.”
- (2) **Article V, § 124:** Governors have the pardon power, subject to certain restrictions, including that “pardons in cases of felony and other offenses involving moral turpitude shall not relieve from civil and political disabilities, unless approved by the board of pardons and specifically expressed in the pardon.”

¹¹⁸ Each day’s proceedings were published in the next morning’s *Montgomery Advertiser*. The *Advertiser* sold copies of a consolidated volume in 1901, and in 1940, they were reprinted in the four hardcover volumes to which scholars now refer. See, e.g., Riser, *supra* note 3 at 112–14; *Official Proceedings of the Constitutional Convention of the State of Alabama: May 21st, 1901, to September 3rd, 1901* (Wetumpka, Ala.: Wetumpka Printing Company, 1940).

- (3) **Article VII, § 173:** State judges and elected officials may be impeached for corruption, neglect, incompetence, drunkenness, or for committing “any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith.”
- (4) **Article VIII, § 182:** Men were disfranchised for committing one of a handful of elections-related offences, any one of twenty-four specific crimes of all grades, any crime prescribed a penitentiary sentence, and, of course, “any infamous crime or crime involving moral turpitude.”

The latter of these, U.S. Chief Justice William Rehnquist determined in the unanimous *Hunter v. Underwood* opinion, *supra*, that effectively struck down part of Section 182, was but a “catchall provision.”¹¹⁹ It is implausible the framers added the phrase in four separate places without having some idea of how they intended it to operate, when, and upon whom.

44. The framers left us but one discussion of moral turpitude in their stenographic record. It came when delegates were considering the proposed Article V, § 124 (the governor’s pardon power), which in the original Committee on the Executive proposal referred to “crimen falsi,” not “moral turpitude.” There was a motion on the floor to adopt the section, but Butler County delegate John Lee Long objected, and a negotiation ensued that involved him, William Fitts, Tennant Lomax, Thomas Goode Jones, and convention president John Barnett Knox:

MR. FITTS-I move the adoption of that section as reported by the Committee.

MR. LONG (Butler)-Mr. President, I object to that. I have an amendment that I wish to offer to that.

THE PRESIDENT-Will the gentleman withdraw for the purpose of considering the amendment?

MR. FITTS-Yes, I withdraw in order to allow that amendment with the understanding that my motion may be renewed.

Amendment by Mr. Long (Butler): Amend by striking out the words “crimen falsi” where they appear in line fourteen of section 12, and insert the words “criminal offense.”

¹¹⁹ *Hunter v. Underwood*, 471 U.S. 222 (1985) at 226.

MR. LONG (Butler)-Now, Mr. President, the only reason that I have for asking for that amendment is that I want plain English language put in this Constitution, so that everybody can understand what it means. I do not think we should have any foreign language in this Constitution. I state to you here and now that a Populite¹²⁰ in my County would go down to some of the beats there, and use the words “crimen falsi” and carry every vote in the beat, (Laughter) and make the biggest bugaboo out of those words possible, and if the Committee does not like the words criminal offense, why they can get the definition of the words “crimen falsi” and put in what they think is proper.

MR. WALKER-Will the gentleman allow an interruption?

MR. LONG (Butler)-Yes.

MR. WALKER-Would not this answer your purpose. Strike out the words “crimen falsi” in line fourteen and insert in lieu thereof the words “moral turpitude.”

MR. LONG (Butler)-I will accept it if you say “moral turpitude or criminal offense.”

MR. FITTS-We have no objection.

MR. JONES (Montgomery)-We will accept that.

MR. LONG (Butler)-I will accept it with “moral turpitude.”

MR. LOMAX-But the gentlemen from Butler attaches a condition to his acceptance of the substitute-

THE PRESIDENT-He withdrew his condition.

MR. WALKER-I offer that as a substitute, or amendment to the amendment.

MR. LOMAX-The substitute is entirely agreeable to the Committee.

MR. LONG (Butler)-I do not want to delay the Convention. All I want to do is to get the plain English what [sic] we want in the Constitution, and I will withdraw that “criminal offense,” if they want to call it moral turpitude.

THE PRESIDENT-The gentleman from Butler accepts the suggestion of the gentleman from Madison, and the Committee accepts the amendment.

Upon a vote the amendment was adopted.¹²¹

¹²⁰ “Populite” is how a Democrat would deride Populists, members of the People’s Party.

¹²¹ *Official Proceedings*, *supra* note 118 at 612–13.

That was the sum of the 1901 Constitutional Convention's public discussions of moral turpitude.

45. From a historical perspective, the inquiry does not end there, for, number one, the convention had not actually defined moral turpitude. Two, the *crimen falsi*/moral turpitude substitute came in a discussion of the pardon power rather than of suffrage. Third, and tellingly, with respect to the power of the moral turpitude "catchall" in Section 182, there is the curious matter of Article IV, § 104, number 30, prohibiting the legislature from considering local legislation "restoring the right to vote to persons convicted of infamous crimes, or crimes involving moral turpitude."¹²² This has a deeply unsettling explanation owing to the convict lease cases, *supra*, and the obvious incentive for counties to continue to target African Americans for petty crime prosecutions, thereby replenishing the fine and forfeiture fund. More broadly, though, moral turpitude was a variable prohibition, as was made clear in the *Washington v. State* decision, with the power to reach back in time to disfranchise a man. Past scholars of disfranchisement have suggested criminal disfranchisement provisions from the 1890s and early 1900s were akin to failsafe provisions¹²³, and an effective contingency plan to guard against some African American man's future voter registration application requires flexibility. Moral turpitude, and the similarly notorious companion "infamy" fit the bill. Moral turpitude was no afterthought for Alabama's 1901 constitutional framers. The fact of its inclusion suggests the framers were aware of the creative and electoral power they entrusted to the boards of registrars.

¹²² Alabama Constitution of 1901, Article IV, § 104, no. 30.

¹²³ Kousser, *supra* note 3 at 36; Keyssar, *supra* note 5 at 111–12; Holloway, *supra* note 24 at 55–56.

VII. THE BOARDS OF REGISTRARS

46. The 1901 Alabama constitutional convention had as its primary aim the wholesale elimination of African American voters, and the crux of their plan was the breathtaking latitude afforded the boards of registrars.¹²⁴ That latitude that took the form of character affidavits, the understanding clause, and opaque exclusions for things like “moral turpitude.” When the suffrage article was first revealed to the convention, the *Eufaula Times and News* (owned by then newly installed Alabama governor William Dorsey Jelks) advised readers the registrars were “the milk in the cocoanut” of the plan.¹²⁵

47. The 1901 Constitution directed the legislature to establish a statutory process to conduct said registrations from January 1, 1903 onward, but it is important to remember the legislature had no discretion over the 1902 canvass, for which the Constitution prescribed explicitly the method and manner of conducting voter registration. This inoculated the 1902 canvass and the lifetime voting registry it would produce from the shifting nature of popular opinion. The registrars were presented a powerful set of instruments to shape the state’s voting rolls nearly at-will. What the 1901 constitution did not do, however, was describe in terms *who* would or would not be registered. The reason was simple: to record the drafters’ intent in plain text would have amounted to an open violation of the Fifteenth Amendment. Their solution was a targeted set of supervisors (boards of registrars) who were empowered to conduct registration within their home counties.

¹²⁴ fn. 3, *supra*.

¹²⁵ *Eufaula Times and News*, 1 July 1901. See also, e.g. *Montgomery Journal*, 1 July 1901.

48. The Boards of Registrars could have derailed the entire movement, depending upon how they construed the temporary plan's vagaries. Disfranchisement in Alabama depended upon the outcomes of a series of contests: the April 1901 referendum on whether to hold a convention, the convention's suffrage debate in July and August, the resulting constitutional ratification referendum, the selection of registrars in late 1901, and then the actual registration of voters. Every voting-age man in Alabama would have to present himself for registration, and at every turn the new constitution's opponents warned voters thus. "When the new constitution is ratified every voter in the state will be disfranchised," Shelby County's *Columbiana People's Advocate*, a People's Party organ, had advised during the referendum campaign, and then the "registrars will have the liberties of the people in their hands."¹²⁶ What the *People's Advocate* overlooked, perhaps understandably, was that yes, the registrars were all-powerful, but they only had that power so they could register all white men. The convention could not if it had wanted (and it did) to declare "none but white men may vote." The solution was to hand the registrars broad enough discretion that they could enroll every white man. This was what the understanding clause, the character affidavits, the moral turpitude exclusion, etc. were designed to do.

49. Registrars could choose to use the understanding tests for one man and not the next; registrars could, if they wished, draft separate examinations for separate voter registration applicants; registrars could, and were expected to, decide for themselves what "understanding" citizenship, "good character," and, apparently, moral turpitude meant.¹²⁷ None of these was prescribed a fixed meaning in the 1901 Constitution. Crime had at least since Emancipation served as white supremacist state officials' primary tool for manipulating and controlling the

¹²⁶ *Columbiana (Ala.) People's Advocate*, 17 October 1901.

¹²⁷ For a review of what black applicants faced generally, and for specific examples of how the character affidavits and understanding tests operated, see Riser, *supra* note 3 at 143–47.

state's African American population. Larceny, of any degree, was arguably the most effective of these, and the 1901 Constitution unsurprisingly included larceny among its carefully curated list of criminal exclusions. But the registrars' expansive new discretion to judge the relative gravity of petty crimes and small-scale thefts was a conspicuous feature, and it did not go unnoticed outside the state. The 1901 Alabama Constitutional Convention attracted heavy, sustained national interest, and reviewing the proposed Article VIII, the editor of Connecticut's *Hartford Daily Courant*, most certainly a white American of his time, drew from his culture's vast store of racist tropes when he surmised the new boards of registrars could soon could be counted upon to decide "whether the unlawful appropriation of a chicken or a ripe watermelon is an infamous crime involving moral turpitude."¹²⁸

50. Registrars in the initial registration would operate apart from the legislative and executive branches, and, in both their form and practical application, they were essentially beyond state judicial review. The framers understood the likelihood of court challenges, but any outcome that imperiled the 1902 registration under the temporary plan would largely undo the work of disfranchisement. Activists had already dragged the Mississippi and South Carolina constitutions into court, challenges were underway to Louisiana's, and North Carolina's constitution, too, seemed destined for the federal courts.¹²⁹ The Alabama framers recognized that not including an appeals mechanism only invited scrutiny, so they established one to ensure court challenges would be difficult, rushed, and expensive. Rather than wait for litigants to enter state courts through regular civil litigation procedures, appeals had to be filed before the temporary window closed on December 31, 1902, and they would take the form of circuit court jury trials.¹³⁰ An

¹²⁸ *Hartford (Conn.) Daily Courant*, 1 July 1901.

¹²⁹ Riser, *supra* note 3 at 12–73, 99–111, 154–59.

¹³⁰ Alabama Constitution of 1901, Article VIII, § 186, §§ 6.

unsuccessful circuit trial could be appealed to the state supreme court. It was effectively impossible to complete the process before the temporary plan expired. This was the only officially prescribed route whereby a man disfranchised on account of “moral turpitude” or any other mechanism in the 1901 Constitution might fight to preserve his voting rights.¹³¹

51. The 1901 Constitution’s prescribed appeals process under the temporary plan was little more than a “pretended right of appeal,” as one attorney at the time noted.¹³² Only one such appeal ever happened, that of Peter Crenshaw of Limestone County. Crenshaw, an African American veteran of the United States Army in the Civil War and a leader in his local Grand Army of the Republic chapter, was the beneficiary of an apparent show trial orchestrated by local Democratic officials who needed to lose the case to maintain the illusion of legality.¹³³ Crenshaw’s voter registration application was rejected, and he took it into Limestone County Circuit Court, where a jury ordered him registered.¹³⁴ The state appealed, but the Alabama Supreme Court ultimately sustained Crenshaw’s registration.¹³⁵ Again, as with everything else concerning the board of registrars, nothing is as meets the eye, and nothing was an oversight. This was no genuine right of appeal; it was but a sham. The process was too short and too expensive for any man to ever use it, and the logistics were nearly impossible to pull off. Registrars need never fear their decisions would be reviewed by circuit courts, for effectively no one could ever get them into

¹³¹ South Carolina’s Ben Tillman unsuccessfully attempted to insert such a provision into his state’s 1895 constitution, and there he’d insisted such a provision was necessary to ensure disfranchisement had the superficial gloss of legality and constitutionality in the federal sense. (George Brown Tindall, “The South Carolina Constitutional Convention of 1895” [M.A. thesis, University of North Carolina-Chapel Hill, 1948] 132–33).

¹³² Riser, *supra* note 3 at 162, 184

¹³³ Riser, *supra* note 3 at 183–87.

¹³⁴ *Peter Crenshaw v. State of Alabama*, Docket #825, Limestone County Circuit Court, January term, 1903, Records of the Limestone County Circuit Court Clerk, Final Record, 1902–1907, vol. 16, Limestone County Archives, Athens, Ala.

¹³⁵ *State v. Crenshaw*, 138 Ala. 506 (1903), 35 So. 456 (1903)

court. Crenshaw's appeal was the only one initiated before the temporary plan's brief window closed.¹³⁶

52. When the proposed state constitution went before the state's voters in late 1901, it deeply troubled Alabama's electorate. Opposition outlets like the *People's Advocate* had warned of the danger to white men's liberties.¹³⁷ They hammered away at the understanding tests and the descendants clause, and they warned broadly of the registrars. Pro-ratification speakers were forced to try and reassure white voters they had nothing to fear, offering rhetorical winks and nods and inside jokes, the punchlines always suggesting that only African Americans needed to worry about what would happen before the registration boards. Addressing a group of Bibb County voters on the eve of the ratification referendum, Convention President John Barnett Knox predicted African American men would doubtless face a gauntlet: "there may be some questions asked. I do not know, but I would not be surprised if there should be!"¹³⁸ The state Democratic Party Executive Committee, the body which oversaw the pro-ratification campaign, promised that no white man should fear disfranchisement, something reiterated throughout its *Address of the Democratic State Campaign Committee to the People of Alabama*. White men need not fear disfranchisement, the pamphlet made clear, and all African American men *should*, and on the off chance some white man was disfranchised, there would always be an appeal to state Circuit Courts. The loopholes, the tests—those would do most of the work. Overseeing it all would be the Boards of Registrars. Under the heading REGISTRARS WILL OBSERVE THE PARTY'S PLEDGE, the Party maintained:

¹³⁶ Riser, *supra* note 3 at 186–87.

¹³⁷ fn. 116, *supra*.

¹³⁸ John Barnett Knox, *Speech of Hon. John B. Knox, of Calhoun County, President of the Late Constitutional Convention of Alabama, in Closing the Campaign in Favor of Ratification, at Centreville, in Bibb County, Alabama, Nov. 9th, 1901* (n.p.: 1901) 18.

“White men insist upon their rights and will not submit to disfranchisement by any registrars . . . The registrars will know this and will not refuse to register them, except for good cause. Besides this, it must be presumed that the registrars who will be appointed by high officials in the party that has always stood for white man’s supremacy will be in sympathy with the best methods yet devised to secure it.”¹³⁹

The message was clear: The Boards of Registrars would be immensely powerful, but no white man had anything to fear from them.

53. After ratification, potential registrars petitioned the State Board of Appointment to testify to their Democratic bona fides, and there was only one way to provide fidelity: explicit oaths that they would reject virtually all African American applicants and approve as many white applicants as they possibly could. No sooner had the polls closed for the November 11, 1901 constitutional ratification referendum than attention turned to the registrars. Nothing less important than “the future” depended on the “honest execution” of the new constitution, Alabama U.S. Representative George Taylor reminded State Auditor Thomas Sowell, and “this work must necessarily be left to the Registrars.”¹⁴⁰ Governor Jelks, together with State Auditor Sowell and Commissioner of Agriculture Robert Ransom Poole, comprised a three-member Board of Appointment which would select the registrars (the Board of Appointments survives to the present day).¹⁴¹ The 1901 Alabama Constitution required that this board of appointment select “reputable and suitable persons” for the Boards of Registrars. The appointments were to be made “within sixty days after the ratification of this Constitution.”¹⁴² The registrars would hold office until 1906, when they would be subject to re-appointment. The Board of Appointment,

¹³⁹ Alabama Democratic Party State Campaign Committee, *Address of the Democratic State Campaign Committee to the People of Alabama* (Birmingham, Ala.: n.p., 1900) 6.

¹⁴⁰ George Taylor to Thomas Sowell, 6 December 1901, Alabama State Auditor, Administrative Correspondence, 1821–, container SG21864, ADAH (hereafter “Sowell Papers”).

¹⁴¹ Code of Alabama, § 17-3-2.

¹⁴² Alabama Constitution of 1901, Article VIII, § 186.

Jelks later explained to U.S. Senator John Tyler Morgan, devoted thirty days to selecting registrars, “and we were assured positively that the appointees would carry out the spirit of the Constitution, which looks to the registration of all white men not convicted of crime, and only a few negroes.”¹⁴³

54. Throughout the vetting process, applicants and citizens sought to impress Jelks, Sowell, and Poole with theirs and their favorite candidates’ Democratic and white supremacist zeal.

Tuscaloosa’s Francis Purifoy was among a legion who promised Sowell that he was not “weak-kneed,” and he guaranteed he would “perform my duties as intended by the makers of the constitution—to disfranchise no white man.”¹⁴⁴ B. H. Sargent of Russellville, writing after he’d already been appointed as a Colbert County registrar, wanted to make sure that his colleagues were the “right” men. “Men,” Sargent wrote, “who will not flinch nor be bulldozed but who will not register the negro.”¹⁴⁵ By way of recommending three men for Blount County, Circuit Court Clerk John Kelton assured Jelks, Sowell, and Poole “these men will register every white man that applies for registration.”¹⁴⁶ Roscoe Brindley, a University of Alabama law student, wrote Jasper attorney John Hollis Bankhead Jr., son of U.S. Representative John Hollis Bankhead, Sr., to assure him his brother Euclid, who hoped to sit on Cherokee County’s board, was “a true blue: he voted for both the call [to hold the convention] and for ratification and he can be depended on to carry out the pledges of the party—in other words to register powerful few niggers. But all white men.” Bankhead obliged by forwarding the letter to the board of appointment.¹⁴⁷

¹⁴³ Jelks to Morgan, 10 January 1902, as cited in Louis R. Harlan, *Booker T. Washington: The Wizard of Tuskegee* (New York: Oxford University Press, 1983) 245 at note 26.

¹⁴⁴ Francis Purifoy to Thomas Sowell, (no date), (filed in Gov. Jelks’ papers), Jelks Papers, container SG23691, folder 34.

¹⁴⁵ B. H. Sargent to Sowell, 7 December 1901, Sowell Papers, container SG28164.

¹⁴⁶ John F. Kelton to Sowell, 3 December 1901, Sowell Papers, container SG28164.

¹⁴⁷ (emphasis added by Brindley) John Hollis Bankhead Jr. to Sowell, 27 November 1901, enclosing Roscoe Brindley to Bankhead, 25 November 1901, Sowell Papers, container SG28164.

55. As bracing to read as these prospective registrars' white supremacist oaths are, the records from border counties and the Black Belt do a far better job of illustrating the stakes involved in the appointment process. One misstep, by which is meant honoring both the word and spirit of the U.S. Constitution, could doom the entire enterprise. This fear had surfaced as soon as the convention received the original proposed suffrage article. An African American GOP activist from Greensboro, Addison Wimbs, suggested to Booker T. Washington that "the professional ballot box thief will be loath to rob himself of all power." He suggested those thieves would secure appointments as registrars, once appointed they'd pad the voting rolls with African Americans, "and then after we get them registered we can then join with those of the citizens who want honest elections and force honest counts."¹⁴⁸ Washington ignored Wimbs's hare-brained scheme, but Wimbs wasn't the only Alabamian who thought along those lines. Writing to the *Montgomery Journal* in early July, the pseudonymous "Rufus" of "Turkeytown" (whose creator had little talent for dialectic parody) warned white county voters the whole plan was but a plot: the smallest and whitest county in the state, Winston, "has more white folks than Dallas, but Dallas has sixteen dellergaters as Winston have too. Foreteen of them Dallas dellergaters don't represent no white folks—only niggers; and yet everybody tole us we was guine to have white supremacy."¹⁴⁹

56. The concern the registrars would register too many black voters, which, again, reflects the broader reality about the registrars' discretionary power, is reflected in the letters and telegrams that streamed into the offices of the Agriculture Commissioner, State Auditor, and Governor. Warning against the respective candidacies of Jasper Hodo and Thomas Young for the Pickens

¹⁴⁸ Addison to Wimbs to Booker T. Washington, 6 July 1901, in Louis R. Harlan, ed., *The Papers of Booker T. Washington, Volume 6: 1901–02* (Champaign: University of Illinois Press, 1977) 166–68.

¹⁴⁹ *Montgomery Journal*, 13 July 1901.

County board, both known as political moderates, Christopher C. Nesmith, a delegate in the late constitutional convention, advised Governor Jelks that the pair sympathized with the “element...which is opposed to the organized democracy.” Specifically, Nesmith feared that “if either of them were appointed . . . negroes would be registered.”¹⁵⁰ Correspondents like Samuel Blackwell warned of conspiracies to “misapply” the new constitution, hatched by persons “who would like to see a class of men made Registrars who would make our Plan fail.”¹⁵¹ U.S. Representative Charles Thompson subscribed to those fears, and he warned Auditor Sowell that just such an effort was afoot in his hometown of Tuskegee. “The opposing faction,” he warned, “are inclined to register the negroes, and that will never do.”¹⁵² L. A. Collier, himself a prospective Lowndes County registrar, sent warnings about another Lowndes County candidate, E. D. Scarborough. Scarborough, he alleged, had been “rampant” against the new constitution. Scarborough and his cronies were charlatans, Collier insisted: “they pretend they want the Negroes disfranchised, but I heard one of the leading ones say he could take the negro vote and the [Antis] and defeat any one in favor.”¹⁵³ Jelks, Sowell, and Poole did not need to be warned about disfranchisement’s fragility. “It behooves us,” Poole had assured Mr. Blackwell in reply, “that we make no mistakes and redeem every pledge made to the people.”¹⁵⁴

¹⁵⁰ C. C. Nesmith to Jelks, 25 November 1901, Jelks Papers, container SG23691, folder 30.

¹⁵¹ Samuel Blackwell to Poole, 20 November 1901, Poole Papers, SG6460.

¹⁵² Charles Thompson to Sowell, 10 December 1901, Sowell Papers, container SG21864.

¹⁵³ L. A. Collier to Thomas Sowell, 18 November 1901 (filed in Gov. Jelks’ papers), Jelks Papers, container SG23691, folder 34.

¹⁵⁴ Poole to Samuel Blackwell, 22 November 1901, Poole Papers, container SG6460.

VIII. THE 1902 REGISTRATION CANVASS

57. The 1901 Constitution required in 1902 the re-registration of every man in Alabama. Men registered in 1902 would be registered for life; men registered beginning January 1, 1903 would have to regularly renew their voter registration. And there were special loopholes available for registration applicants in 1902 that would not be available to those who registered in 1903 or thereafter; namely, the soldiers' clause (which automatically admitted to suffrage any military veteran), and Alabama's version of the infamous grandfather clause—the so-called descendants' clause which allowed veterans' descendants onto the voting rolls.

58. The 1901 Constitution invalidated all prior voter registrations. Throughout 1902, three-member boards made a precinct-level canvas of each of Alabama's sixty-six counties. The state's newspapers tracked closely their every movement, and utmost care was dedicated to updating the registrars' exclusion of African American applicants. Registrars statewide openly boasted of how few black men had registered. If anything, newspaper editors were concerned it was all working too well and that too few white men had registered. Voter registration under the 1901 Constitution, it is clear, frightened substantial proportion of Alabama's voting age white men. Newspaper reports and editorials through spring and early summer 1902 prodded and pleaded with white men to only appear before the boards. In Montgomery County, the registrars told the *Montgomery Advertiser* they hoped "indifferent electors will come forward . . . and attend to this important duty." White men had nothing to fear, they insisted, and "would not be asked embarrassing questions." They were "anxious to issue certificates to the white voters of the county."¹⁵⁵

¹⁵⁵*Montgomery Advertiser*, 29 June 1902.

59. The Constitution granted registrars latitude to enfranchise or disfranchise whomever they wished, however they wished, but that could only happen to or for men who appeared before their local boards. Board appearances needed to be neither convenient nor simple. The bulk of them were scheduled for the spring planting season. And even if farmers were willing to forego pressing concerns to appear, the times and availability of registrars were tightly regulated and fleeting. So, if the registrars appeared in your precinct, and if you could get there that day, you might secure your registration. Voter registrations completed in 1902 were for life, and applicants in 1902 had the benefit of loopholes, i.e. a grandfather clause, an understanding test, and good character exceptions; men registering after 1903 would be subject to continuing literacy tests, employment-status questions, and property and income requirements. Prospective voters under both the temporary and permanent registration requirement faced the same exclusions for enumerated crimes and the undefined crimes that involved “moral turpitude.”

60. Upon arriving at the registration appointment in 1902, a prospective voter had to complete an official application form where he swore under oath he met the new constitution’s qualifications and that he suffered none of its disqualifications.¹⁵⁶ These qualifications and disqualifications, including a full reprint of Section 182, were spelled out on the form itself. So, having signed his oath, a man then had to demonstrate to the registrars that he (1) was a veteran, (2) was the descendant of a veteran, or (3) he was a man of “good character and who understands the duties and obligations of citizenship under a Republican form of government.” This was all happening in a public meeting, where, surrounded by his neighbors, any disfavored applicant (invariably African American) would be examined and judged by the registrars, and the registrars had the specific power to compel under oath testimony from the prospective voters.¹⁵⁷ From at least

¹⁵⁶ See, e.g., the sample registration form in the *Birmingham News*, February 18, 1902, p 1.

¹⁵⁷ Alabama Constitution of 1901, § 186.

1875 up until this point, Alabama had depended upon precinct-level deputy or assistant registrars to make a registration canvass, where they would enroll as voters men known to them. The 1901 Constitution eliminated any remaining soft element of human familiarity, so men typically stood before a panel of officials they likely did not know, and who would and could demand that they account for their residency, identity, their civic education, and most opaque of all, “good character.” Here, again, the registrars enjoyed particular discretion with respect to criminal exclusions, for while it was easy enough to determine whether a man had completed a sentence or received a pardon, it might still be for the registrars to decide whether some petty crime from his past rose to the level of “moral turpitude.” The Alabama Constitution’s vague proscriptions were a veritable Pandora’s Box. The “good character” and “moral turpitude” determinations left in the registrars’ discretion were not simply ill-defined, they were *flexible*, and as such, they were lethal to African American voting rights.

61. The registrars kept scant records of their work. Men either had their names enrolled on the permanent registration books, or their names did not appear. Unsuccessful applications were not retained, ones who either abandoned the process when confronted with the printed disqualifications as well as those rejected for, say, a criminal conviction that involved moral turpitude. Further, the registrars did not record how, exactly, a man registered. They asked for name, age, race, etc., but they maintained no record to distinguish between a grandfather clause registrant, one who passed an understanding test, or one who was admitted based on personal character.¹⁵⁸ This was ostensibly to spare them potential embarrassment but doubtless also to obstruct future inquiries into application of the controversial and constitutionally dubious grandfather clause

¹⁵⁸ Riser, *supra* note 3 at 155–56.

62. At least two Alabama registrars were newspaper editors, in Cherokee County and Winston County, respectively—Thomas Shropshire of Centre’s *Coosa River News* and B. J. Cowart of the Double Springs *New Era*—and each memorialized the process in contemporary reports. Shropshire was the more thorough, and from March 1902 through autumn, he used his editorial column to update readers on the registrars’ progress. As of April 11, he and his colleagues had admitted 1,710 voters, only twenty of whom were “sons of Ham,” using a casually racist expression of the day.¹⁵⁹ As of April 18, Shropshire announced they’d registered twenty-five African Americans out of 2,100 total; as of April 25, he reported there had been registered only twenty-seven African American voters out of a countywide total of 2,800.¹⁶⁰ Walker County’s Cowart, though never as detailed with particulars as Shropshire, essentially mirrored his reports. Noting in a May 2, 1902 editorial that Walker County’s *Jasper Mountain Eagle* reported no black voters had registered there, Cowart offered, succinctly: “Winston sends you like news, sister Walker.”¹⁶¹ Noting similar reports two weeks later from Clay County, Cowart gleefully announced that his colleagues there had issued 1,674 registration certificates: “Of this number 1,674 went to white men, and 0,000 to negroes.”¹⁶² At the end of May, a *Mountain Eagle* headline celebrated: ROUND OVER AND NO NIGGER YET.¹⁶³

¹⁵⁹ *Centre Coosa River News*, 11 April 1902.

¹⁶⁰ *Centre Coosa River News*, 18 April 1902; *Centre Coosa River News*, 25 April 1902.

¹⁶¹ *Double Springs New Era*, 2 May 1902.

¹⁶² *Double Springs New Era*, 16 May 1902.

¹⁶³ *Jasper Mountain Eagle*, 28 May 1902.

VIX. CONCLUSIONS

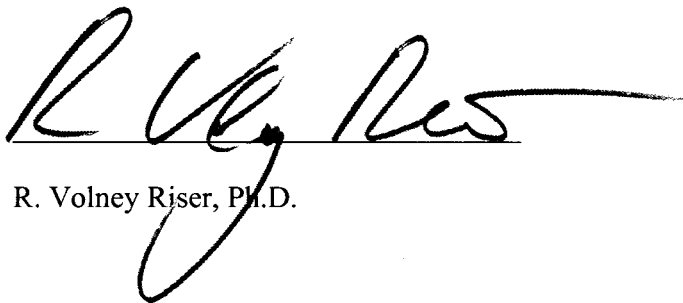
63. The 1901 Constitution empowered boards of registrars, an institutional creature of the United States' postbellum expansion of elections administration, to do the dirty work of disfranchisement. Abandoning the antebellum customaries for elections conduct, Alabama after the Civil War embraced a wholly new system for voter registration and elections conduct, one that worked in concert with penal and economic restrictions to circumscribe Emancipation's promise.

64. The postbellum tightening of criminal disfranchisement in Alabama effectively turned upon the vague concept of "moral turpitude." Moral turpitude had a lengthy, if attenuated, history in Alabama law and custom, but it played a particularly harmful role in penal laws. Alabama lawmakers from Redemption through 1901 classed as "moral turpitude" offenses crimes which previously had been petty matters of relatively little moral concern, namely, larceny. In turn, the state and its counties escalated larceny and other petty crime prosecutions, which in turn fueled the convict lease system. They most often prosecuted African American men.

65. Certain of the devices Alabama's disfranchisers adopted—poll taxes, good character tests, the grandfather clause, etc.—have attracted significant attention and scorn, but the boards of registrars were disfranchisement's beating heart. The 1901 constitutional convention feared creating any explicit violation of the Fourteenth and Fifteenth Amendments. So, with an effective wink-and-a-nod, they tasked registrars with the real work of disfranchisement. And those registrars won their appointments through explicit oaths to nullify the Fourteenth and Fifteenth Amendments to the U.S. Constitution: they vowed to disfranchise no white man and to exclude as many African American men as they could.

66. Alabama's boards of registrars *could* exclude a black man for poor character, just because they wanted to; they *could* decide some black man's misdemeanor sentence to six months' hard labor for the county reflected "moral turpitude"; they *could* decide that a white man's felony conviction to the state penitentiary did not. The 1901 Alabama constitutional convention gave the boards of registrars a great many "coulds" along with the "shalls." These all were included to allow registrars as many pretexts as possible to eliminate as many African American voters as possible.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of April 2020, at Livingston, Alabama.

A handwritten signature in black ink, appearing to read "R. Volney Riser", written over a horizontal line.

R. Volney Riser, Ph.D.

R. VOLNEY RISER

CURRENT POSITION

Professor of History ■ Department of History & Social Sciences
The University of West Alabama ■ UWA Station 22
Livingston, Alabama 35470 ■ riser@uwa.edu ■ www.rvolneyriser.com

TEACHING & PROFESSIONAL EXPERIENCE

Professor of History, August 2019-
The University of West Alabama

Associate Professor of History, 2014–2019
The University of West Alabama

Assistant Professor of History, 2007–2014
The University of West Alabama

Lecturer in History, 2005–2007
The University of West Alabama

Editor-in-Chief, 2012–2017
The Alabama Review

TEACHING, RESEARCH, & ADVISING INTERESTS

U.S. Constitutional History
American Legal History
Voting Rights and Elections

African American History
Gilded Age & Progressive Era
Southern History

PUBLICATIONS

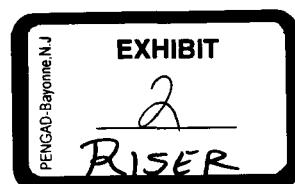
Published Books

Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890–1908
(Louisiana State University Press, May 2010; paperback edition, January 2013).

A Goodly Heritage: Judges and Historically Significant Decisions of the United States Court for the Middle District of Alabama, 1804–1955 (Bounds Library Occasional Papers Series, no. 7, University of Alabama School of Law, May 2010).

Published Peer-reviewed Articles

(co-authored with Tony A. Freyer and Paul M. Pruitt, Jr.) “Clement Clay Torbert and Alabama Law Reform.” *Alabama Law Review* 63, no. 4 (2012): 867–94.



"Disfranchisement, the U.S. Constitution, and the Courts: Alabama's 1901 Constitutional Convention Debates the Grandfather Clause." *American Journal of Legal History* 48, no. 3 (2006): 237-79.

"'The Milk in the Coconut': Booker T. Washington, Theodore Roosevelt, and the Fear of Conspiracy in Alabama's 1901 Constitutional Ratification Referendum." *Southern Historian* 26 (Spring 2005): 30-54.

"The Burdens of Being White: Empire and Disfranchisement." *Alabama Law Review* 53, no. 1 (Fall 2001): 243-72.

PRESENTATIONS

Selected Academic Presentations

"Jim Crow's Unexpected Influence upon Hawaii: Southern Disfranchisement, Northern Imperialists, and the 1900 Hawaiian Organic Act." Policy History Association Biennial Meeting, Nashville, June 1-3, 2016.

"The Genius of Wilford Smith." Association of the Study of African American Life and History Annual Meeting, Jacksonville, Florida, October 2-6, 2013 (delivered in absentia).

"Introducing Wilford H. Smith." American Historical Association Annual Meeting, New Orleans, January 3-6, 2013.

"The 'Fightin' Granddaddy' Clause: Voting, and Military Service as Proxies for Race in the Disfranchisement Era." American Historical Association, Boston, January 6-9, 2011.

"Whence Came *Williams*: Voting Rights Activism in 1890s Mississippi." Centennial Celebration of Civil Rights Conference, University of Southern Mississippi, Hattiesburg, October 21-23, 2010.

"The Lost Promise of Collaboration: Booker T. Washington, W. E. B. Du Bois, and the Implications of Their (Failed) Joint Fight Against Jim Crow." Southern Historical Association Annual Meeting, Louisville, November 5-8, 2009.

"How Long was the Long Civil Rights Movement?: The Example of African American Voting Rights Claims in the Disfranchisement Era." San Francisco State University Rights Conference, San Francisco State University, September 17-18, 2009.

"Who Was Henry Williams?: Disfranchisement, Black Protest, and the Case of *Williams v. Mississippi*." Race and Place in the American South Conference, The University of Alabama, Tuscaloosa, 2008.

"Black Voting Rights Activism in Disfranchisement Era Alabama." Southern Historical Association Annual Meeting, Birmingham, 2006.

"The Cases of Jackson Giles: Black Voting Rights Activism in the Progressive Era." Social Science History Association Annual Meeting, Minneapolis, November 2–5, 2006.

"The Anti-Disfranchisement Cases of 1890–1915." Association for the Study of African American Life and History Annual Meeting, Atlanta, September 27–30, 2006.

AWARDS, FELLOWSHIPS & GRANTS

- 2019 Loraine McIlwain Bell Trust Professor Award, University of West Alabama
- U.S.-Norway Fulbright Foundation, Fulbright Roving Scholars Program 2019–2020 (Alternate).
- National Science Foundation EPSCOR RII grant, "Bamboo: An Integrated Model Using Natural and Human Systems Sustainability for Adoption." Social Science Team Co-PI. (unfunded)
- University Research Grant, University of West Alabama, 2011–2012
- University Research Grant, University of West Alabama, 2007–2008
- University Research Grant, University of West Alabama, 2006–2007
- Phi Kappa Phi
- Phi Theta Kappa
- University of Alabama Outstanding Dissertation Award, 2005
- University of Alabama, College of Arts and Sciences Outstanding Dissertation Award, 2005
- Charles G. Summersell "Best Article" Prize, 2005, *Southern Historian*
- Artemas Killian Callahan Sr. Scholarship, 2004–2005, University of Alabama School of Law
- Judge Henry H. Mize Scholarship, 2004–2005, University of Alabama School of Law
- History Department Dissertation Fellowship, Fall 2003, University of Alabama
- Graduate Council Dissertation Fellowship, 2002–2003, University of Alabama Graduate Council

UNIVERSITY & DEPARTMENTAL SERVICE

- Chair, Department of History and Social Sciences, 2008–14
- Adviser-at-Large and Academic Credentials Coordinator, UWA International Programs, 2014–
- Team Academic Adviser, Varsity Men's & Women's Soccer, 2013–
- Program Director, *UWA in Ireland*, 2017–
- Faculty Mentor, UWA Athletic Department, 2011–
- Tutwiler Scholars Committee, 2016–
- Tenure & Promotion College Review Group, College of Liberal Arts, 2008–14
- Tenure & Promotion College Review Group, College of Education, 2014–15
- Tenure & Promotion College Review Group, College of Natural Sciences and Mathematics, 2016–
- Ed.D. in Rural Education, Advisory Group, 2017–
- University Charter School, Curriculum Committee, 2017–
- Academic Integrity Committee, 2011–15
- University Athletic Committee, 2010–
- University Honors Program Committee, 2008–
- University Honors Council, 2011–
- University Academic Council, 2008–
- University Graduate Council, 2008–
- University Council on Teacher Education, 2008–

- Campus Parking and Transportation Committee, 2010–
- SACS Accreditation Team, Editorial Committee, 2011–
- SACS Response Special Committee, 2014
- Search Committee, Assistant Director of International Programs, 2019
- Search Committee, Assistant Professor of Political Science, 2017-18
- Search Committee, Assistant Professor Psychology, 2014
- Search Committee, Director of Admissions, 2011
- Search Committee, Archival Records Management Coordinator, Center for the Study of the Black
- Search Committee, UWA Campus School Director, 2010
- Search Committee, Assistant Professor of Educational Research, 2009-10
- UWA Constitution Day Committee, 2005–
- History Department Curriculum Review Committee, 2009–
- Judge, Alabama History Day, 2019
- Judge, Behavioral Sciences Division, West Alabama Regional Science Fair, 2010–
- Judge, Humanities Division, Alabama Junior Academy of Science, 2009
- College of Liberal Arts Representative, Academic Integrity Committee, 2008-14
- College of Liberal Arts Representative, Faculty Information Committee, 2008–13
- Co-chair, College of Liberal Arts Homecoming Planning Committee, 2008
- Search Committee Chair, Assistant Professor of U.S. History, 2008–2009
- Search Committee, Director of Educational Programming and Assistant Professor of Anthropology,
- Search Committee, Assistant Professor of Inorganic Chemistry, 2008
- Focus Group on Town-Gown Relations, 2008–
- Search Committee, Director of the Center for the Study of the Black Belt
and Assistant Professor of History, 2007–2008
- University Research Grants Committee, 2007–2008
- UWA Constitution Day Committee, 2006-13
- Succunoochee Review Authors' Reading, Reception Committee, 2006
- UWA Constitution Day Speaker, 2005

SERVICE TO THE PROFESSION

Editorial

Editor-in-Chief, *The Alabama Review*, 2012–17
Assistant Editor, *Southern Historian*, 2001–02

Expert Witness Testimony/Litigation Support

Expert witness in *McLemore v. Hoseman*, 2019-, No. 3:19-cv-00383, U.S. District Court for the Southern District of Mississippi.

Expert witness in *Thompson v. Merrill*, 2018-, No. 2:16-cv-00783, U.S. District Court for the Middle District of Alabama.

Public Commissions

Fort Tombeché Advisory Commission, 2008–
State of Alabama WWI Advisory Commission, 2015–

Manuscript Referee

Oxford University Press
McGraw-Hill Higher Education
The University of Alabama Press
Louisiana State University Press
Journal of the Abraham Lincoln Association
Journal of the Georgia Association of Historians
Journal of Southern History
Agricultural History
Florida Historical Quarterly
Southern Studies
Southern Historian

Panel Chair/Commenter

Panel Chair and Commenter, “Government, Work, and Murder.” University of Alabama Graduate Student Conference on Power and Struggle. Tuscaloosa, October 10, 2019.

Panel Chair, “Integration in the United States, Broadly Considered.” University of Alabama “Where We Stand” Conference Commemorating the Fiftieth Anniversary of the “Stand in the Schoolhouse Door.” Tuscaloosa, April 5, 2013.

Panel Chair and Commentator, “The Legacies of the World War I Era: Race, Reunification, and Women’s Rights.” University of Alabama Graduate History Students Association Conference on Power and Struggle, Tuscaloosa, February 24–25, 2012.

Panel Chair, “The Science of Food: The Transformation of American Foodways Through Science and Technology, 1880–1920.” Organization of American Historians, Houston, March 17–20, 2011.

Panel Chair and Commentator, “Segregated Rights.” San Francisco State University Rights Conference, San Francisco, September 17–18, 2009 (commentary offered in absentia due to illness).

Panel Chair, “Alabama’s Path to Modernity: Reconsidering the New South Perspective on Global and Regional Industrial Expansion.” Alabama Association of Historians Annual Meeting, the University of West Alabama, Livingston, February 6–7, 2009.

Selected Book Reviews

Stephen Budiansky, *Oliver Wendell Holmes: A Life in War, Law, and Ideas*. (forthcoming, *Journal of Southern History*, 2020.

Edward O. Frantz, *The Door of Hope: Republican Presidents and the First Southern Strategy, 1877–1913*. (*Register of the Kentucky Historical Society* 113, no. 1 [Winter 2015]: 126–27).

Kermit L. Hall and Melvin I. Urofsky, *New York Times v. Sullivan: Civil Rights, Libel Law, and the Free Press*. (*Journal of Southern History* 79, no. 1 [February 2013]: 227).

Bernie D. Jones, *Fathers of Conscience: Mixed-Race Inheritance in the Antebellum South*. (*Journal of Mississippi History*, forthcoming).

James Savage, *Jim Garrison's Bourbon Street Brawl: The Making of a First Amendment Milestone*. (*Journal of Southern History* 78, no. 1 [February 2012]: 232–33).

Daniel R. Biddle and Murray Dubin, *Tasting Freedom: Octavius Catto and the Battle for Equality in Civil War America*. (*American Historical Review* 116, no. 3 [June 2011]: 805–06).

Susan Reverby, *Examining Tuskegee: The Infamous Syphilis Study and its Legacy*. (*Alabama Review* 64, no. 3 [July 2011]: 242–44).

Michael A. Ross, *Justice of Shattered Dreams: Samuel Freeman Miller and the Supreme Court During the Civil War Era*. (*Southern Historian* 25 [Spring 2004]: 109–10).

David W. Blight, *Race and Reunion: The Civil War in American Memory*. (*Southern Historian* 25 [Spring 2004]: 107–08).

Charles B. Dew, *Apostles of Disunion: Southern Secession Commissioners and the Causes of the Civil War*. (*Southern Historian* 24 [Spring 2003]: 65–66).

Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888–1908*. (*Southern Historian* 23 [Spring 2002]: 127–29).

Dictionary & Encyclopedia Entries

“Disfranchisement,” in *The World of Jim Crow America: A Daily Life Encyclopedia* (forthcoming, ABC-Clio, 2019)

“NAACP” and “*Powell v. Alabama*,” in the *Encyclopedia of the Supreme Court of the United States* (Gale Group, 2008)

“Convict Leasing” in the *Encyclopedia of Anti-Slavery and Abolition* (Greenwood Press, 2007)

“Trilateral Commission” in *Conspiracy Theories in American History: An Encyclopedia* (ABC-Clio, 2004)

“Joseph Philo Bradley,” “William Rufus Day,” and “Sanford Ballard Dole” in the *Historical Dictionary of the Gilded Age* (M. E. Sharpe Publishers, 2003)

“*Saenz v. Roe*,” “*U.S. v. Butler*,” “*Missouri v. Holland*,” “*Craig v. Boren*,” “Balanced Budget Amendment,” “*American Tobacco Case*,” “*Granger Cases*,” “*Ex parte Garland*,” and “*Collector v. Day*” in the *Dictionary of American History* (Scribner's, 2002).

EXHIBIT 14

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TREVA THOMPSON, et. al.,

Plaintiffs,

V.

STATE OF ALABAMA, et. al.,

Defendants.

CIVIL ACTION NO.
2:16-cv-783-WKW

Declaration of Dr. Peyton McCrary

Pursuant to 28 U.S.C. § 1746, I, Peyton McCrary, make the following declaration:

1. My name is Peyton McCrary, and I reside in Arlington, Virginia. I have been asked by attorneys for the plaintiffs in this litigation to assist the court in assessing the intent underlying the adoption and maintenance of the constitutional provision disfranchising persons convicted of crimes of “moral turpitude” set forth in Section 182 of the 1901 Alabama Constitution – revised in 1996 as Section 177 – and the implementation of these constitutional requirements by the state. I am an historian by training and taught history at the university level from 1969 until 1990, the last dozen years at the University of South Alabama. During the 1980s I served as an expert witness in numerous voting rights cases in the South. Beginning in August 1990, I served as a social science analyst in the Voting Section, Civil Rights Division, of the Department of Justice, until my retirement in 2016. My responsibilities in the Civil Rights Division included the planning, direction, coordination, and performance of historical research and empirical analysis for voting rights litigation, including the identification of appropriate expert witnesses to appear for the government at trial. Since retiring from government service, I have begun serving once again as a testifying expert.



Qualifications

2. I received B.A. and M.A. degrees from the University of Virginia in 1965 and 1966, respectively, and obtained my Ph.D. from Princeton University in 1972. My primary training was in the history of the United States, with a specialization in the history of the South during the 19th and 20th centuries. For 20 years I taught courses in my specialization at the University of Minnesota, Vanderbilt University, and the University of South Alabama, before joining the staff of the Civil Rights Division. In 1998-99 I took leave without pay from the Department of Justice to serve as the Eugene Lang Professor in the Department of Political Science at Swarthmore College. For the last twelve years I have co-taught a course on voting rights law as an adjunct professor at the George Washington University Law School.

3. I have published a prize-winning book, *Abraham Lincoln and Reconstruction: The Louisiana Experiment* (Princeton, N.J., Princeton University Press, 1978), six law review articles, seven articles in refereed journals, and seven chapters in refereed books. Over the last three decades my published work has focused on the history of discriminatory election laws in the South, evidence concerning discriminatory intent or racially polarized voting presented in the context of voting rights litigation, and the impact of the Voting Rights Act in the South. Over the last four decades I have published numerous reviews of books in my areas of specialization and served as a scholarly referee for numerous journals and university presses. I continued to publish scholarly work in my areas of expertise while employed by the Department of Justice and expect to continue my scholarly writing now that I have retired from government service. A detailed record of my professional qualifications is set forth in the attached curriculum vitae, which I prepared and know to be accurate. My current hourly rate for service as a consultant or expert witness is \$300.00.

4. My publications most relevant to the issues discussed in this declaration include: “Minority Representation in Alabama: The Pivotal Case of *Dillard v. Crenshaw County*,” in Raymond Arsenault and Orville Vernon Burton (eds.), *Dixie Redux: Essays in Honor of Sheldon Hackney* (Montgomery, AL, New South Books, 2013), 403-22; “The End of Preclearance as We Knew It: How the Supreme Court Transformed Section 5 of the Voting Rights Act,” 11 *Mich. J. Race & L.* 275 (2006) (co-authored with Christopher Seaman and Richard Valelly), *reprinted in Voting Rights Act: Section 5 Preclearance and Standards: Hearings Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 96-181 (2005); “Bringing Equality to Power: How the Federal Courts Transformed the Electoral Structure of Southern Politics, 1960-1990,” 5 *U. Pa. J. Const. L.* 665 (2003); “Alabama,” co-authored with Jerome A. Gray, Edward Still, and Huey Perry, in Chandler Davidson and Bernard Grofman (eds.), *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton, N.J., Princeton University Press, 1994), 38-66, 397-409; “Racially Polarized Voting in the South: Quantitative Evidence from the Courtroom,” *Social Science History*, 14 (Winter 1990), 507-31; “Discriminatory Intent: The Continuing Relevance of ‘Purpose’ Evidence in Vote-Dilution Lawsuits,” 28 *How. L.J.* 463 (1985); and “History in the Courts: The Significance of *City of Mobile v. Bolden*,” in Chandler Davidson (ed.), *Minority Vote Dilution* (Washington, D.C., Howard University Press, 1984), 47-65.

5. I presented courtroom testimony as an expert witness in 14 voting rights cases before joining the staff of the Civil Rights Division. After beginning my government service, I testified on behalf of the United States as amicus curiae in one case in 1991. I have presented sworn written testimony in twelve cases, including six during my employment by the Department of Justice. My testimony has often dealt with legislative intent in adopting or maintaining at-large elections,

numbered place or majority vote requirements, and methods of appointing local governing bodies, as well as with the history of racial discrimination affecting registration and voting. As enumerated in the attached curriculum vitae, during the past four years I have provided expert declarations in four cases and trial testimony in two cases.

6. The cases in which I testified at trial that are most relevant to this declaration include: *Dillard v. Crenshaw County*, 640 F. Supp. 1347 (M.D. Ala. 1986); *Harris v. Graddick*, 593 F. Supp. 128 (M.D. Ala. 1984); *Brown v. Board of School Commissioners of Mobile County*, 542 F. Supp. 1078 (S.D. Ala. 1982), *aff'd*, 706 F.2d 1103 (11th Cir. 1983); and *Bolden v. City of Mobile*, 542 F. Supp. 1050 (S.D. Ala. 1982). In each of these cases I testified as an expert witness for minority plaintiffs; in each the court's decision relied in part on my testimony. The trial court decided the two Mobile cases before the 1982 revision of Section 2 of the Voting Rights Act and thus under the intent standard applied in constitutional challenges after *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

Preliminary Observations

7. My understanding of the proper role of an expert witness, based on my 39 years of experience in voting rights litigation, is that an expert is merely to assist the court by providing research and analysis. Such research and analysis must be based on the scholar's training and skill in applying the methodology generally employed in his or her field of expertise. In this declaration, therefore, as in all my previous expert testimony and scholarly publications, I have employed the standard methodology used by historians and other social scientists in investigating the intent underlying the adoption, operations, and maintenance of election laws. When analyzing political decision-making, we examine the circumstantial evidence regarding the political, institutional, and social context in which a decision is made, as well as direct evidence of the reasons asserted for

the decision. We examine relevant scholarly studies, newspaper coverage of events, reports of local, state or federal governments, relevant court decisions, and the record in court cases, including expert reports, deposition and trial testimony, and statistical data.

8. In this case much relevant evidence regarding the intent underlying the adoption and operation of Section 182 has already been set forth in previous court decisions, based in part on the testimony of expert historians and in part on citations to evidence in learned treatises by historians. For the convenience of the court in this case I have cross-referenced prior judicial findings to place in context the new historical evidence I provide here. Of course, the findings of fact in federal court decisions often provide valuable evidence for social scientists as well. I routinely utilize the factual evidence provided by court decisions in my scholarly writing, as in my written and oral testimony. As I observed in a recent journal article: “The factual evidence presented in court proceedings – in voting rights cases key evidence often comes in through expert witness testimony by political scientists or historians – is an invaluable resource for historical and social science research.”¹

Overview

9. After providing key new evidence regarding the background of the operation of criminal disfranchisement between 1875 and 1901, I turn to the 1985 decision in which the United States Supreme Court found Section 182 unconstitutional, *Hunter v. Underwood*.² However, the plaintiffs only challenged Section 182 “as it applies to those convicted of crimes of moral turpitude *not punishable by imprisonment in the penitentiary*” – misdemeanors known in Alabama as “petty

¹ Peyton McCrary, “The Interaction of Policy and Law: How the Courts Came to Treat Annexations under the Voting Rights Act,” *Journal of Policy History*, 26 (No. 4, 2014), 429-58 (quoted sentence at p. 431).

² *Hunter v. Underwood*, 471 U.S. 222 (1985).

crimes.”³ Consequently, when the Supreme Court ruled unanimously that Section 182’s “original enactment was motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect,”⁴ the remedy enforced by the federal courts did *not* apply to *felonies* involving moral turpitude – the crimes at issue in the current case.

10. As a result of the Supreme Court’s decision, beginning in 1985 the state no longer disfranchised persons convicted of those *misdemeanors* previously treated as crimes of moral turpitude. In 1995, however, the Alabama legislature adopted Act No. 95-443, providing for a constitutional amendment (Amendment 579) to repeal and replace Article VIII of the 1901 Constitution – which was ratified by the voters in 1996. The portion of that constitutional amendment relevant here, Article VIII, Section 177(b), applied the concept of moral turpitude to the implementation of felony disfranchisement in Alabama: “No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.”⁵

11. The continued use of moral turpitude in the 1996 Amendment ensured a continuation of the confusion about just what constituted a crime of “moral turpitude” that had prevailed since its adoption in 1901. Under the 1996 amendment, the law of felony disfranchisement continued to maximize the discretion of local registrars as well – and registrar discretion had often facilitated racial discrimination throughout the history of voter registration in Alabama.

³ *Underwood v. Hunter*, 730 F.2d 614 (11th Cir. 1984).

⁴ 471 U.S. 222, 233 (1985).

⁵ Alabama Act No. 95-443 (1995), at 938. This was one of four amendments voted on by the state’s voters on June 4, 1996 (Amendment 1), and was duly ratified (297,261 in favor, 95,612 opposed), becoming Section 177 of the Alabama Code. Certification of Results, Primary Election June 4, 1996, Constitutional Amendments (June 19, 1996), Proclamation Register No. 8, p. 1291.

What the Federal Courts Found Regarding the 1901 Constitution

12. There is no dispute among historians who have written about the disfranchising provisions adopted by the 1901 Alabama Constitutional Convention: all agree that the suffrage provisions were adopted with a racially discriminatory intent that was frequently expressed openly by delegates.⁶ When the federal courts addressed the intent underlying Article VIII, Section 182, of the 1901 Constitution in the 1980s, they relied in part on the scholarly studies of Alabama disfranchisement published at that point – together with the sworn testimony of expert historians for both the plaintiffs and the defendants.⁷ An expert report in the current litigation by R. Volney Riser,⁸ adds specific new evidence regarding the Convention’s formulation of Section 182 which expands what we can learn from the pathbreaking decisions of the Eleventh Circuit Court of Appeals and the Supreme Court.

13. Riser’s report is based both on his own research and on the body of scholarly studies of disfranchisement. He provides new evidence about: 1) how Alabama’s criminal justice system operated before 1901; 2) the legal context in which the terms “crimes punishable in the penitentiary” and crimes of “moral turpitude” were used before 1901; and 3) the role assigned to county registrars and deputy registrars prior to 1901 and by the 1901 Constitution.

⁶ See, e.g., Malcom C. McMillan, *Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism* (Chapel Hill, University of North Carolina Press, 1955), 283-309; Sheldon Hackney, *Populism to Progressivism in Alabama* (Princeton, N.J., Princeton University Press, 1969), 190-94, 206; Peyton McCrary, Jerome A. Gray, Edward Still, and Huey Perry, “Alabama,” in Chandler Davidson and Bernard Grofman (eds.), *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton, N.J., Princeton University Press, 1994), 38-66, 397-409.

⁷ *Underwood v. Hunter*, 730 F.2d 614, 617 (11th Cir. 1984), *aff’d sub. nom. Hunter v. Underwood*, 471 U.S. 222 (1985).

⁸ Expert Report of R. Volney Riser, *Thompson v. Merrill*, 2:16-cv-783-ECM-SMD (M.D. Ala.), April 17, 2020 (hereafter Riser Report). Riser’s analysis, though it adds new evidence, is consistent with the findings of earlier historians, including my own.

14. The 1875 Constitution –the constitution under which Alabama operated at the time a new convention assembled to revise the Alabama Constitution in 1901 – was adopted the year after Democrats regained control of state government at the end of Reconstruction. Among the crimes that disfranchised citizens under the 1875 Constitution was the broad category of “other crime punishable by imprisonment in the penitentiary.”⁹ This provision had a distinctly racial effect. Before the Civil War – when African American slaves were disciplined by their owners rather than the courts – Alabama’s prison population was almost entirely made up of white persons.¹⁰ This had changed by 1875. According to the 1870 decennial census, 73.5 percent of Alabama’s prison population was African American; by 1880 that figure was 84 percent, and by 1890, Riser reports, the state’s prisons were 91 percent African American.¹¹ The 1875 Constitution also revived *larceny* – not necessarily punished by “imprisonment in the penitentiary” – as a disfranchising crime, which Riser indicates had greater disfranchising effect (before 1890) than “any other registration requirement.”¹²

15. The 1901 convention added to Section 182 a large number of specific crimes – but a key revision was a new category: “crime involving moral turpitude.”¹³ “The phrase ‘moral turpitude’ was rare in nineteenth century Alabama,” Riser notes, “rarely if ever” adopted in legislation or the civil or criminal codes, or addressed in court decisions.¹⁴ It was perhaps most

⁹ Id., 25. Article VIII, Section 3.

¹⁰ Riser Report, 17.

¹¹ Id., 23-24.

¹² Id., 24-25. Criminal disfranchisement was the fate of those “convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary.” Article VIII, Section 3.

¹³ Id., 26, quoting the language of Article VIII, Section 182.

¹⁴ Id., 27. “It generally surfaced in one of five broad categories: impeaching witness testimony, larceny prosecutions, defamation and libel claims, the removal of public officials, and the convict lease system.”

significant, Riser maintains, in the operation of the convict lease system, where “moral turpitude combined with larceny and other petty crimes to shore up the state budget [as well as] county governments’ fine and forfeiture funds.”¹⁵

16. The convict lease system “substantially financed Alabama state and local governments” in this period, Riser explains.¹⁶ “Larceny, a category classed among those involving moral turpitude,” he adds, “sent more black men to prison than any other, and to sentence them to prison was to sentence them to a lease.”¹⁷ In the mid-1880s the Alabama legislature adopted a law requiring that “non-moral turpitude offenders be kept separate from convicts laboring under [both] felony and misdemeanor moral turpitude sentences.”¹⁸ The reason for this, Riser gathers from evidence in a state court case in the 1890s, is that contractors would pay counties more for prisoners with longer sentences and those convicted of crimes of moral turpitude.¹⁹ In another county, Riser notes, a coal mining company agreed “to pay for the hire of each and every person convicted of crimes involving moral turpitude and who are physically able to perform hard labor” at a higher rate to the county than persons “convicted of crimes not involving moral turpitude.”²⁰ Thus when the 1901 Constitutional Convention set out to create the most effective criminal disfranchisement device for African Americans, delegates knew that concept of moral turpitude – however infrequently used in past legislative or legal actions –had a practical (and racially discriminatory)

¹⁵ Id., 27.

¹⁶ Id., 34 (“moral turpitude from the early 1880s helped feed the state’s mining and heavy industry sector feed its appetite for cheap, malleable labor”).

¹⁷ Id.

¹⁸ Id., 33-34. Riser notes here that the legislature was also intent on maintaining racial segregation in the housing and work assignments of prisoners.

¹⁹ Id., 35-36. In this case “the county expressly reserved the right to ‘assign convicts of higher degrees of crime, involving moral turpitude, to other contractors.’”

²⁰ Id., 37.

role in the criminal justice system as practiced since the end of Reconstruction.²¹ On the other hand, Riser points out: “Moral turpitude remained by 1901 elusively ill-defined.”²²

17. For the 1901 architects of disfranchisement, Riser demonstrates, “the crux of their plan was the breathtaking latitude afforded [county] boards of registrars.”²³ Under the 1875 Constitution the Secretary of State appointed one registrar for each county and the county registrar appointed a deputy registrar for each precinct or ward.²⁴ In 1893 the Sayre Election Law – among several other changes – gave the governor the power to appoint and remove county-level registrars.²⁵ This system was only used for the 1894 election.²⁶ The 1901 Constitution “prescribed explicitly the method and manner of conducting voter registration” in the election to ratify the new constitution, Riser points out.²⁷ Thereafter, assuming the 1901 Constitution was ratified, the legislature would enact a new method of selecting local registrars.²⁸ The new system placed the selection process in the hands of a Board of Appointment comprised of the governor, the state auditor, and the commissioner of agriculture.²⁹ It was these local registrars who were to decide how to interpret the restrictions put into place in the 1901 Constitution.

18. The facts set forth in the Riser report in the current litigation help clarify what the federal courts concluded about the work of the 1901 Convention. In 1984, the Eleventh Circuit

²¹ Id. 38. Yet “it had been, beginning in 1875, attached rather conveniently to petty crimes for which desperate, starving, and landless African Americans were most prosecuted, namely, to petty and grand larceny.”

²² Id., 38.

²³ Id., 43

²⁴ Riser Report, 10, citing 1876 Code of Alabama, Title VI, Article II – Registration of Electors, Sections 227, 228.

²⁵ Id., 14, citing *Acts of Alabama*, No. 377, Section 2. The registrars whom the governor appointed would then appoint the deputy registrars, as before.

²⁶ Id., 15, citing Alabama Code of 1897, Section 1588.

²⁷ Id., 43.

²⁸ Id.

²⁹ Id., 48.

reversed the trial court's decision in *Underwood* in favor of the defendants – because it found the lower court clearly erroneous as to both facts and law.³⁰ The court of appeals then set out a detailed analysis of the evidence, which was echoed more briefly in the Supreme Court opinion.³¹ Because the plaintiffs' case focused on the intent of the state's constitutional convention in 1901, the key evidence was necessarily historical and depended on the expert testimony of historians. The plaintiffs put on the testimony of J. Morgan Kousser, a professor at Caltech, and the defendants used J. Mills Thornton of the University of Michigan.³² The testimony of the defendants' very able expert was helpful to the plaintiffs – not the defendants. The state was willing to proffer Thornton's testimony, perhaps, because the state's curious legal defense *conceded* that Section 182 was intentionally discriminatory toward African Americans – but stressed that the state *also* intended to discriminate against poor whites!³³

19. The appeals court began by quoting the language of Section 182, as adopted in 1901, regarding the persons disqualified from registering and from voting “by reason of conviction of crime.”³⁴ The crimes that led to disfranchisement were: “treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature” – and most pertinent for purposes of this case – “or any crime punishable by imprisonment in the penitentiary” or of any infamous crime or crime involving moral turpitude.”³⁵ As the court noted,

³⁰ *Underwood v. Hunter*, 730 F.2d 614, 617 (11th Cir. 1984).

³¹ 730 F.2d 614 (11th Cir. 1984), *aff'd. sub. nom. Hunter v. Underwood*, 471 U.S. 222 (1985).

³² The two experts had each been undergraduates at Princeton and students of Professor C. Vann Woodward at Yale University, and both were respected scholars in the field of Southern history.

³³ 730 F.2d at 620 n.12.

³⁴ Section 182 also disqualified: “All idiots and insane persons,” who were not convicted of crimes.

³⁵ 730 F.2d at 615 n. 1.

however, the reference to crimes of “moral turpitude” was followed by a list of “other enumerated misdemeanors and felonies” – which were also disfranchising.³⁶ The additional crimes listed were: “any person who shall be convicted as a vagrant or tramp, or of or of selling or offering to sell his vote or the vote of another, or of buying of offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election . . . or of suborning any witness or registrar to secure the registration of any person as an elector.”³⁷

20. The two plaintiffs in the case – one white and one black – were “disfranchised for presenting worthless checks, a misdemeanor which the registrars classify as a crime of moral turpitude.”³⁸ As the appeals court notes, in “determining whether an offense is a crime of moral turpitude” – speaking of the current era (not 1901) – “the registrars follow Alabama case law and, in the absence of judicial decision, opinions of the state attorney general” (in the case of both plaintiffs, the registrars based their decision on attorney general’s opinions).³⁹ Interpreting the law regarding this ambiguous and undefined concept was, of course, quite a challenge for local

³⁶ *Id.*, at 615.

³⁷ *Id.*, at 615 n. 1. As the court of appeals noted: “The crimes selected by the suffrage committee had their origin in an ordinance drafted and submitted by John Fielding Burns, a Black Belt planter” who had served for years as a justice of the peace in a district where most of his cases involved blacks, according to a respected historical study. 730 F.2d at 619, citing the official proceedings of the 1901 convention and quoting Malcolm C. McMillan, *Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism* (Chapel Hill, University of North Carolina Press, 1955), 275, n. 76 (pointing out as well that “nearly all” the cases Burns had before him “involved Negroes”). McMillan observes (p. 275) that 23 complete plans for regulating the suffrage were presented to the convention. “Most of the proposals disqualified persons committing any one of a long list of petty as well as more serious crimes [believed to be crimes] which the Negro, and to a lesser extent the poor whites, most often committed.” He adds (p. 276) that such regulations might “also disfranchise poor whites,” but that “lax or partial administration in their favor was always possible.”

³⁸ 730 F.2d at 615-16.

³⁹ *Id.*, n. 2.

registrars, virtually none of whom through the years have been attorneys – or even in earlier decades, college graduates.

21. In addition, however, the opinion in *Underwood v. Hunter* – and the Supreme Court’s affirmance – credit evidence that Section 182 *in its entirety* had a racial purpose and effect.⁴⁰ Both courts cite, in addition to several learned treatises by historians and the testimony of the two experts in the case, the opening remarks of the 1901 convention’s president: “And what is it that we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State.”⁴¹ The experts for *both* parties, whose testimony the courts credited, agreed on the racial purpose of Section 182. Both Kousser, the plaintiffs’ expert historian, and Thornton, the defendants’ expert, agreed that “the evident racial animus of section 182 was used to induce delegates representing poor whites to vote for other provisions in the suffrage article, such as the poll tax, that were contrary to their interests.”⁴² As to the immediate *effect* of Section 182, the courts credited Thornton’s estimate that “by January 1903 section 182 had disfranchised approximately ten times as many blacks as whites,” and added (based on other evidence on the record) that the provision’s “disparate effect persists today.”⁴³

22. It is not clear just which felonies qualified as crimes “involving moral turpitude” in 1901. The Alabama Constitution of 1875, adopted by the virtually all white Democratic majority following the end of Reconstruction,⁴⁴ denied the right to vote by persons convicted of crimes

⁴⁰ 730 F.2d at 620 (“discriminatory intent was a motivating factor in the adoption of section 182”); 471 U.S. at 233 (saying of Section 182 that “its original enactment was motivated by a desire to discriminate against blacks on account of race”).

⁴¹ Quoted in both 730 F.2d 614, 619 (11th Cir. 1984) and 471 U.S. 222, 229 (1985).

⁴² 730 F.2d at 620.

⁴³ 730 F.2d 614, 620 (11th Cir. 1984); 471 U.S. 222, 227 (1985). The effects evidence to which the courts referred was specific data regarding racial disparity in convictions for those crimes of moral turpitude that were *not* felonies.

⁴⁴ McCrary, et.al., “Alabama,” 42; McMillan, *Constitutional Development in Alabama*, 175.

“largely” punishable by imprisonment in the penitentiary, but its list included grand and petit larceny (and petit larceny was not a felony).⁴⁵ In adopting Section 182, the 1901 convention “added a new catchall provision covering ‘any . . . crime involving moral turpitude.’”⁴⁶ The Supreme Court added that “[t]his latter phrase is not defined,”⁴⁷ but was applied in Section 182 to include crimes “believed by the delegates to be more frequently committed by blacks.”⁴⁸

23. The lack of a clear definition of “crimes of moral turpitude” in Section 182 – which maximized the discretion of local registrars – was the key to the state’s disfranchisement of African Americans. The state’s failure to identify the specific crimes that fall within the scope of the term – which was intended by the framers of the 1901 Constitution – continued from 1901 to the filing of this lawsuit.

Section 182 As It Operated During the Jim Crow Era, 1901-1965

24. Most African Americans were effectively disfranchised by the literacy test and the cumulative poll tax adopted in 1901, together with a requirement adopted a few years later that only whites could participate in the Democratic primary – the only elections that mattered in Alabama during the early decades of the twentieth century.⁴⁹ The role of Section 182, in conjunction with other tests and devices used by the state to prevent most African Americans from registration and voting, increased in importance after 1944, when the Supreme Court found the use of a white primary in Texas unconstitutional in *Smith v. Allwright*.⁵⁰ In the subsequent phase of Alabama politics – when African Americans would finally be able to vote in the Democratic

⁴⁵ See *Anderson v. State*, 72 Ala. 187 (1882), finding that the 1875 Constitution made petit larceny (as well as grand larceny) a disfranchising crime.

⁴⁶ 471 U.S. at 226.

⁴⁷ *Id.*

⁴⁸ *Id.*, at 227.

⁴⁹ McCrary, et.al., “Alabama,” 44.

⁵⁰ See *Smith v. Allwright*, 321 U.S. 649 (1944).

primary – disfranchisement for crimes of moral turpitude served, along with the literacy requirement and other tests or devices, to give registrars ample tools (and discretion) to limit the registration of persons of color.

25. Following the end of the white primary African Americans in Mobile, Birmingham, and the college town of Tuskegee began to register in larger numbers and to vote in the Democratic primary. The state then adopted a constitutional amendment, drafted by Representative E.C. Boswell, that was ratified by the voters in 1901 after a campaign in which supporters openly emphasized the racial motive behind the amendment.⁵¹ The “Boswell Amendment,” as it was known, required new registrants to “understand and explain,” as well as to read and write, any article of the U.S. Constitution.⁵² The wording of the amendment was suggested by Gessner T. McCorvey, a Mobile attorney who chaired the State Democratic Executive Committee for many years. In his remarks before the Interim Committee on Constitution and Legislative Procedure, McCorvey saw his proposed “understanding” clause as a way of preserving the intent of the 1901 disfranchising provisions: “Let’s stick by the laws given to us by that great group of Alabamians who wrote the Alabama Constitution of 1901.”⁵³ An understanding clause, McCorvey told the committee, would give “discretion to the Board of Registrars and enable them to prevent from registering those elements in our community which have not yet fitted themselves for self-government.”⁵⁴

⁵¹ McCrary, et.al., “Alabama,” 45; Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (New York, Columbia University Press, 1976), 90-93; Scotty E. Kirkland, “Mobile and the Boswell Amendment,” *Alabama Review*, 65 (July 2012), 205-19.

⁵² Donald S. Strong, *Registration of Voters in Alabama* (Bureau of Public Administration, University of Alabama, 1956), 22.

⁵³ Kirkland, “Mobile and the Boswell Amendment,” 219.

⁵⁴ Quoted in Lawson, *Black Ballots*, 90.

26. The “discretion” given to local registrars by the Boswell Amendment – as a result of the vagueness and ambiguity in the phrase “understand and explain” – was the key feature on which a three-judge court focused in deciding a challenge brought by African American citizens of Mobile, finding the Boswell Amendment racially discriminatory and thus unconstitutional in *Davis v. Schnell*.⁵⁵ The court’s characterization of the language of the Boswell Amendment – and its description of how that language was used to carry out racially discriminatory denials of registration to African Americans – provides guidance in understanding the subsequent use of the language of Section 182 in Alabama’s registration process.

27. The court asked whether “the words ‘understand and explain’ as used in the Boswell Amendment furnish a reasonable standard” for determining whether a prospective registrant is qualified to be added to the rolls, or whether the words were “so ambiguous, uncertain, and indefinite in meaning that they confer upon said boards arbitrary power to register or refuse to register whomever they please.”⁵⁶ It concluded that the words “understand and explain” did *not*, in fact, provide a reasonable standard for determining whether citizens are eligible for registration; instead the ambiguity of the standard provided local registrars “a naked and arbitrary power to give or withhold consent.”⁵⁷ The court added that the local registrars to whom this arbitrary power was entrusted are not required to be lawyers and “it is fair to assume that many members of these boards do not have a good or correct understanding of the various articles of the Constitution, and that they might not be able to give any explanation of many of them.”⁵⁸

⁵⁵ 81 F. Supp. 872 (S.D. Ala. 1949).

⁵⁶ 81 F. Supp. at 877.

⁵⁷ *Id.*, at 878 (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 366 (1886)).

⁵⁸ *Id.*, at 877; *see also id.* at 878 (“[A] careful consideration of the legislative and other history of the adoption of this Amendment to the Constitution of Alabama discloses that the ambiguity inherent in the phrase ‘understand and explain’ cannot be resolved, but, on the contrary, was purposeful and used with a view of meeting the decision of the Supreme Court of the United States

28. The political leaders who had supported the Boswell Amendment succeeded two years later in securing passage of a new Voter Qualification Amendment, which was ratified by the voters in the fall of 1951. This amendment removed the offending words “understand and explain” on which the court had focused in *Davis v. Schnell* but instead added a literacy test with teeth.⁵⁹ The amendment charged the Alabama Supreme Court with the task of devising a questionnaire to be administered to all prospective registrants. The justices drew up 21 questions for the voters to answer; some called for routine information about the individual applicant while others were complex indeed.⁶⁰

29. Donald Strong, a respected political scientist at the University of Alabama, undertook a careful study of the voter registration process under the Voter Qualification Amendment, which he observed, “was designed to be discriminatory.”⁶¹ According to the 1950 Census, Strong observed, the median number of years of schooling achieved by Alabama residents aged 25 years or older was 7.9 years.⁶² There was, he noted, a racial disparity in educational attainment. “Some 44.6 per cent of Negroes twenty-five years old and over had received four years or less of schooling; for whites twenty-five and over, the figure is 13.4 per cent.” Thus, even an “honestly designed educational test” – which Strong clearly did not think would be very common – would continue “to bar the ballot to the great mass of uneducated Negroes.”⁶³

30. The registrars who were to administer the Voter Qualification Amendment were profiled in Strong’s study, based on a sample of 20 counties. “Only people free to work at odd

in *Smitth v. Alwright*. . .”).

⁵⁹ Strong, *Registration of Voters in Alabama*, 27.

⁶⁰ *Id.*, at 30-33.

⁶¹ *Id.*, at 122.

⁶² *Id.*, at 34.

⁶³ *Id.*, at 120.

intervals can be registrars,” he noted, and as a result most were “retired men, housewives, and the self-employed,” such as farmers, insurance agents, or retail storeowners.⁶⁴ Seats on the board of registrars were patronage jobs and Strong thought this contributed to the high turnover he observed among board members.⁶⁵ There was of course no one to interfere with the enormous discretion of the local registrars in administering the state’s literacy test, he added: “Each board operates as a law unto itself,” as intended by the drafters of Section 182 in 1901.⁶⁶

31. The Educational Interpretation Service at the Alabama Polytechnic Institute (now Auburn University) examined the questionnaire, Strong reported, and found that the justices’ questionnaire “could be read only by people with an eighth-grade education or better.” Strong interpreted that to mean that “only the upper 48 per cent, educationally considered, are able to read material as difficult as that contained in the questionnaire.”⁶⁷ Yet the “average grade school graduate is expected to know the meaning of *bona fide* in questions 5 and 21.”⁶⁸ He also characterized several other questions as “capable of more than one interpretation.”⁶⁹

32. “Still more perplexing,” Strong found, was the twelfth question – a question critical to understanding the role of the state’s felony disfranchisement provision in the discriminatory operation of the literacy test. “Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude?” If the answer was yes, the prospective registrant was instructed to “give the facts” in the space provided.⁷⁰ In Strong’s view, “[n]o reasonable layman may be expected to know what offenses do or do not involve moral turpitude.” In fact, he wrote,

⁶⁴ *Id.*, at 1-2, 9.

⁶⁵ *Id.*, at 11.

⁶⁶ *Id.*, at 12-14.

⁶⁷ *Id.*, at 34-35. In his report Strong reproduced the entire questionnaire.

⁶⁸ *Id.*, at 34.

⁶⁹ *Id.*

⁷⁰ *Id.*, at 32, 34.

“the courts are not in agreement on the definition of the term.”⁷¹ In short, the language of Section 182 – like the literacy test in general – was intended to serve as a major barrier to voter registration for ordinary citizens seeking to pass the new test, recalling especially that few county registrars had legal training sufficient to support fair implementation of the question about moral turpitude (even if they wished to be fair to African Americans, which many did not).⁷²

33. The application form and questionnaire that included the inquiry as to crimes involving moral turpitude served as important tools to restrict African American voter registration after 1952 and remained in use in Alabama “until suspended by the Voting Rights Act of 1965.”⁷³ The Alabama Supreme Court revised the questionnaire in 1964. The Court reported that its 1964 revision was made in response to Act No. 92 of 1961, “which provides for the filing of twelve sets of questions so that a different questionnaire may be used each month.”⁷⁴ Use of the monthly inserts that were part of the new questionnaire was restricted in five counties by federal court orders enjoining registrars from rejecting applicants for failing to answer correctly the questions on these inserts.⁷⁵ Adoption of the Voting Rights Act ended use of Alabama’s literacy test – a literacy test whose discriminatory operation had included questions about crimes of moral turpitude – but Section 182 in its entirety remained good law in Alabama until 1985.

⁷¹ *Id.*, at 34-35.

⁷² *United States v. Penton*, 212 F. Supp. 193, 205-08 (M.D. Ala. 1962), reproduces the questionnaire as Appendix B. Judge Frank Johnson notes (p. 196) that the questionnaire “is prescribed by the Supreme Court of Alabama and was used without any variation for practically all the period involved in this case.”

⁷³ Note, “Federal Protection of Negro Voting Rights,” 51 *Va. L. Rev.* 1051, 1092-93 (1965).

⁷⁴ Brian K. Landsberg, *Free at Last to Vote: The Alabama Origins of the 1965 Voting Rights Act* (Lawrence, Kansas, University Press of Kansas, 2007), 196 n. 51, citing Supplemental Order of the Supreme Court of Alabama, In Re: Application for Registration Questionnaire and Oath, Jan. 14, 1964.

⁷⁵ *Id.*, at 193.

Disfranchisement for Crimes of Moral Turpitude, 1965-1996

34. The operation of Section 182 remained unchanged until the Supreme Court decision in *Hunter v. Underwood* in 1985, when the disfranchisement of persons convicted of *misdemeanors* identified as crimes of moral turpitude was found unconstitutional.⁷⁶ The political context in which Section 182 operated, however, had changed significantly in two decades. By 1985 the implementation of the 1965 Voting Rights Act had brought substantial incremental growth in black voter registration and turnout rates. By 1968 over 56 percent of Alabama's black voting-age population was registered, with over 57 percent registered in 1980 and 74 percent by 1984.⁷⁷ As African American voting strength increased significantly – although there were still racial disparities in voter registration and turnout rates – the importance of criminal disfranchisement as an obstacle to voter registration was necessarily enhanced for those who sought to minimize the political strength of African Americans.

35. The state's interpretation of criminal disfranchisement in the late 1970s is set forth in an Attorney General's Opinion provided to Jenny C. Knight, a member of the Morgan County Board of Registrars.⁷⁸ The Morgan County registrar sought an opinion from the Attorney General's office concerning "the disenfranchisement of voters for the conviction of certain offenses. I am especially interested in those crimes involving moral turpitude."⁷⁹ She believed that some of the offenses listed in section 182 "may no longer be disqualifying due to recent federal

⁷⁶ 471 U.S. 222, 233 (1985).

⁷⁷ Harold W. Stanley, *Voter Mobilization and the Politics of Race: The South and Universal Suffrage, 1952-1984* (New York, Praeger, 1987), 97 (Table 15).

⁷⁸ Charles A. Graddick to Jenny C. Knight, August 10, 1979. Of course, opinions of the Attorney General's office are not authoritative. Unless the legislature changes the law, local registrars – who were asking for guidance – still had absolute discretion to decide how to apply the law in regard to authorizing registration applications.

⁷⁹ *Id.*, at 1.

or state court judgments.” She added that it was “difficult and confusing to determine those crimes involving moral turpitude which might keep some from voting.”⁸⁰ For that reason, she asked the Attorney General’s office to “provide me with some form of updated list.”⁸¹

36. After reproducing the language of Section 182, as adopted in 1901, the Attorney General’s office conceded that some of the offenses listed “have specifically been deleted from the list of disqualifying offenses by case law” (and cited a few decisions).⁸² In addition its opinion noted that Section 182 included “all crimes punishable by imprisonment in the penitentiary and all crimes involving moral turpitude.”⁸³ “We then reach the complicated question of which crimes are crimes involving moral turpitude.”⁸⁴

37. “This question cannot be dispositively answered,” confessed the Attorney General’s office: “the determination of what constitutes a ‘crime involving moral turpitude’ has been addressed by the Alabama courts on a case by case basis, and often in a context other than the eligibility to vote.”⁸⁵ The opinion goes on to list numerous state court decisions identifying “crimes involving moral turpitude in Alabama” – and decisions which found specific crimes that did *not* involve moral turpitude.⁸⁶ Finally, the office noted that “a restoration of civil and political

⁸⁰ *Id.*, at 2. The registrar cited a specific example of concern: “Would those persons convicted in district court of issuing worthless checks be disqualified from voting?”

⁸¹ *Id.*, at 1.

⁸² *Id.*, at 2-3.

⁸³ *Id.*, at 3.

⁸⁴ *Id.*, at 3.

⁸⁵ *Id.*

⁸⁶ *Id.*, at 4-7. The list of crimes which *did* involve moral turpitude included: murder, buying and concealing stolen property, burglary, forgery, malicious shooting, assault with intent to murder, larceny (“includes grand and petite”), desertion from military duty in time of war, sale of marijuana, manslaughter in the first degree, income tax evasion, transporting stolen cars across state lines, obtaining money by worthless check, and carnal knowledge. Crimes which had been held *not* to involve moral turpitude included assault and battery, bootlegging, violating prohibition laws, doing business without a license, trespass to land, vagrancy, using abusive and obscene language, public drunkenness, driving while intoxicated, violations of liquor laws, aiding a

rights granted by the Alabama Board of Pardons and Parole will restore the right to vote to a person convicted of one of the disqualifying crimes.”⁸⁷

38. This Morgan County registrar may well have been fair-minded in registering African American applicants – although the history of voter registration in Alabama by local registrars undermines such an assumption. Even fair-minded registrars, however, had to sort through this complicated answer and determine – when given evidence of a criminal conviction – how to handle each individual voter registration decision. Further complicating the issue, a 1983 opinion from the Attorney General’s office to the circuit clerk in Crenshaw County revised the list of crimes cited in the 1979 opinion and identified those crimes that had been renamed in the 1980 Criminal Code.⁸⁸ Assault with intent to murder had become assault in the first degree, larceny had become theft of property in the third degree, obtaining money by worthless check had become negotiating a worthless negotiable instrument, and carnal knowledge had become rape.⁸⁹ Nor was it likely clarifying to read the Attorney General’s opinion that: “Of course, this list is not exhaustive and a crime may be one involving moral turpitude if it meets the definition, even though it has not been declared one by the courts.”⁹⁰ The Attorney General’s office did not, however, provide a definition registrars could use.

39. In short, because Alabama state law charged county boards of registration to make the determination regarding whether any crime was a “disqualifying offense,” even local registrars who intended to treat African American and white citizens equally faced a complicated choice in

prisoner to escape, and speeding.

⁸⁷ *Id.*, at 7.

⁸⁸ Charles A. Graddick to Ann W. Tate, July 5, 1983.

⁸⁹ *Id.*, at 2. Two of the crimes listed in the 1979 opinion, malicious shooting and desertion from military duty during time of war, had been deleted from the 1980 code.

⁹⁰ *Id.*, at 1.

enforcing a thoroughly ambiguous constitutional provision. If on the other hand the registrar reflected the racial attitudes that had long prevailed in Alabama, the confusing state of the law – coupled with the absolute discretion of registrars to decide whether a person convicted of a crime retained the right to register and vote – continued as in the past to make possible a racially discriminatory decision. As for individual citizens convicted of a crime – who likely had far less understanding of Alabama law than most registrars – discovering whether they were still registered to vote after serving their time must have seemed just as complicated as political scientist Donald Strong observed of prospective voters in the 1950s.⁹¹ The difficulty each person convicted of a crime faced in understanding whether he or she had committed a crime of moral turpitude – and the potential legal penalty of getting the sworn answer wrong on a form – was likely to deter their effort to regain the right to vote.

The Development and Passage of Amendment 579

40. To understand the language proposed in Amendment 579 in 1996, one must look at its history. In 1969, Governor Albert Brewer created a constitutional commission to propose amendments to the 1901 Constitution.⁹² When George C. Wallace defeated Brewer's bid for re-election, neither he nor the legislature displayed Brewer's enthusiasm for constitutional reform – so nothing came of the commission's recommended changes. The Commission did, however, offer a final report in May 1973.⁹³ The amendment it proposed for Section 182 – had it been adopted – simplified the provision's language but retained "moral turpitude" from the 1901 Constitution and applied it to felonies: "No person convicted of a felony involving moral turpitude,

⁹¹ See above, Paragraph 28.

⁹² William H. Stewart, "The Tortured History of Efforts to Revise the Alabama Constitution of 1901," 53 *Ala.L.Rev.* 295, 305 (2001-2002).

⁹³ *Id.*, at 308.

or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.”⁹⁴ None of the materials I have reviewed from the 1973 commission provide any debate, rationale, or explanation for the retention of the “moral turpitude” language beyond borrowing from the 1901 Constitution.

41. A proposal to change Section 182 arose again in 1979 during newly elected Governor Fob James’ unsuccessful effort to secure a major revision of the 1901 Constitution. The state senate did, in fact, pass (after amending) the proposed new constitution drafted by the Governor’s working group (enumerated S. 40). That left Representative Jack Venable, who chaired the House Committee on Constitutions and Elections, to shepherd the bill to final passage.⁹⁵ The new version of Article VIII, Section 182, would now be Article VII, Section 7.02: “No person convicted of *a felony involving moral turpitude*, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.”⁹⁶ This was the same language from the 1973 report. Indeed, Michael Waters, who helped lead the 1979 effort, testified that the 1979 language “essentially came from the 1973 constitutional commission draft.”⁹⁷

42. During the 1979 hearings on these revisions, the “moral turpitude” language was repeatedly objected to by both community advocates and legislators that warned of its nebulous and pliable meaning.⁹⁸ Ultimately, Representative Mary Zoghby, a white Democrat from Mobile, secured an amendment to S. 40 that would have removed altogether the category of “crimes of

⁹⁴ Alabama Constitutional Commission, *Report on Proposed Constitution of Alabama* (May 1, 1973), at 110.

⁹⁵ “Constitutional Proposals Due Monday,” *Montgomery Advertiser*, January 29, 1979, pp. 1-2.

⁹⁶ “Constitutional Draft Considered,” *Montgomery Advertiser*, January 30, 1979, pp. 10-12 (emphasis added).

⁹⁷ Deposition of Michael Waters (“Waters Dep.”) at 38:13-14.

⁹⁸ See Ex. 15 to Waters Dep. (Feb. 7, 1979 hearing) (Representative Tony Harrison, a Black representative, objected to “moral turpitude” as “nebulous” and “subject to a wide variety of interpretation”); see also Exs. 16 and 17 to Waters Dep.

moral turpitude” from the crimes that disqualified persons from registering and voting. Her substitute was favorably reported by the committee with the following language: “No person convicted of a felony or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.”⁹⁹ The substitute bill – including the Zoghby amendment removing any reference to crimes of moral turpitude – was passed by the House by a vote of 88-0.¹⁰⁰ Had Zoghby’s amendment become law, the concept of a crime of moral turpitude would have been eliminated for *both* misdemeanors and felonies. However, the proposed replacement of the 1901 Constitution did not win passage.¹⁰¹

43. In 1995, under the leadership of Representative Jack Venable – the Democrat who had tried unsuccessfully to shepherd a proposed revision of the 1901 Constitution through the legislature in 1979 – the legislature adopted Amendment 579 to the 1901 Constitution.¹⁰² This amendment to Article VIII of the 1901 Constitution (“Suffrage and Elections,”) was to be submitted for ratification by the voters in 1996. The proposed amendment applied to several aspects of registration and voting, but the only provision that addressed felony disfranchisement was the following – echoing the language approved by the Senate (but *not* the language in the House substitute that passed unanimously but died at the end of the session) – in the unsuccessful 1979 effort to revise the 1901 constitution: “No person convicted of a felony involving moral turpitude or who is mentally incompetent, shall be qualified to vote until restoration of civil and

⁹⁹ Alabama House Journal (1979), p. 2324. Now the section was enumerated as: Article VIII, Section 8.02. This change was also noted in a news report: “School Budget Bypassed,” *Alabama Journal*, January 28, 1979, pp. 1-2.

¹⁰⁰ Alabama House Journal (1979), p. 2325.

¹⁰¹ Stewart, “Tortured History,” 313.

¹⁰² Alabama Act No. 95-443 (1995), at 938, revising the language of Article VIII, Section 182 (1901).

political rights or removal of disability.”¹⁰³ This was the first of four constitutional amendments ratified by the state’s voters on June 4, 1996.¹⁰⁴

44. Reviewing the official legislative history of HB 38, which became Act No. 95-443, does not illuminate either the purpose or the likely effect of this constitutional amendment on the state’s policy.¹⁰⁵ Representative Venable, who in 1979 had chaired the state house committee considering Governor James’ effort to revise the 1901 Constitution, merely characterized the amendment in his public comments as a “housekeeping” measure – reflecting “the voting requirements of the state today, rather than in 1901 when the constitution was written” – and eliminating provisions already struck down by court orders in recent decades.¹⁰⁶ There were no explanations during the legislative process of how the term moral turpitude should be defined.¹⁰⁷

45. The amendment would disqualify only those persons convicted of felonies constituting crimes of moral turpitude – *continuing to use* the language in former Section 182 that the Supreme Court had found intentionally discriminatory in *Hunter v. Underwood*.¹⁰⁸ Persons convicted of

¹⁰³ Id.

¹⁰⁴ Certification of Results, Primary Election June 4, 1996, Constitutional Amendments (June 19, 1996). The vote on Amendment 1 was 297,261 in favor and 95,612 opposed. The revised Section 182 is now Amendment VIII, Section 177.

¹⁰⁵ See the legislative history of Amendment 579 provided by Karen M. Smith, a legislative analyst in the state’s Legislative Reference Service, to Representative John Knight, February 16, 2016 (hereafter Smith to Knight, February 16, 2016), attaching (among other documents) the pages of the 1995 House and Senate Journals detailing the progression of H.B. 38 through the legislative process, the text of Act 95-443 (1995 Regular Session, and Section 177, Official Recompile of the Constitution of Alabama of 1901, as amended.

¹⁰⁶ Venable is quoted in “Amendment Would Bring State’s Voter Rules Up to Date,” *Huntsville Times*, May 31, 1996, p. 5B. See also “Alabama Statewide Amendments,” *Mobile Press-Register*, May 29, 1996, p. 12F (quoting Venable: “All we are doing is replacing one article of the constitution with modern language.”), as well as “Four Statewide Amendments, 16 Local on June Ballot,” *Birmingham News*, May 12, 1996, pp. 13-14A; “Voting Law Revision on Ballot,” *Montgomery Advertiser*, June 2, 1996.

¹⁰⁷ See Smith to Knight, February 16, 2016.

¹⁰⁸ 471 U.S. at 233: “Without deciding whether Sec. 182 would be valid today without any impermissible motivation, we simply observe that its original enactment was motivated by a desire

felonies *not* classified as moral turpitude would apparently benefit by easier restoration of their voting rights. On the other hand, expanding the concept of moral turpitude to felonies *increased* the complexity of determining whether persons were qualified to register and vote (or not) after completing their sentences – which would continue to be interpreted at the discretion of local registrars, barring new legislation to eliminate that discretion – and registrar discretion had long been a problem for minority voters.¹⁰⁹

46. A decade later Griffin Sikes, the Director of the Legal Division of the state's Administrative Office of Courts (AOC), astutely observed that "it is difficult to understand the decision made in the mid-1990s to introduce, via Amendment 579 to the Alabama Constitution, the phrase 'involving moral turpitude' as a basis for *again* disqualifying or disenfranchising Alabama Citizens of their right to vote."¹¹⁰ In *Hunter v. Underwood*, Sikes pointed out, the Supreme Court held that "this phrase, 'crime involving moral turpitude,' in section 182 of the 1901 Alabama Constitution was 'motivated by a desire to discriminate against blacks on account of race'."¹¹¹ Moreover the phrase "involving moral turpitude," he added, "is ambiguous, elastic, and subjective." As a result, the language of the 1996 amendment "can cover virtually any criminal

to discriminate against blacks on account of race and the section continues to this day to have that effect. As such, it violates equal protection under *Arlington Heights*."

¹⁰⁹ When submitting Act No. 95-443 for preclearance review by the Department of Justice, the office of Attorney General Jeff Sessions merely indicated that: "The present Article VIII is antiquated and has been overruled and rendered ineffective by the passage of federal laws and by court decisions." Submission Letter, Office of Attorney General Jeff Sessions, April 16, 1996, at 1. The submission letter made no mention of *Hunter v. Underwood*, nor of the fact that the 1995 law would apply the concept of crimes of moral turpitude, which the Court had said was adopted with discriminatory intent, to felonies for the first time. Nor did the Section 5 submission proffer any legitimate state interest in maintaining the disfranchisement of persons convicted of crimes of moral turpitude.

¹¹⁰ Griffin Sikes to Kenneth D. Wallis, II, November 8, 2007, p. 2 n. 1 (emphasis added). Wallis was Chief Legal Counsel to Governor Bob Riley.

¹¹¹ *Id.*, citing 471 U.S. 222, 224 (1985).

offense that a person employing this vague and imprecise standard wants it to cover.”¹¹² Griffin Sikes was correct: the language in the 1996 amendment regarding crimes of moral turpitude applied a standard for disfranchising voters that was adopted in 1901 for a racially discriminatory purpose. The standard’s ambiguity provided no rational basis for deciding which crimes actually *were* crimes of moral turpitude; and it thus left in the hands of local registrars with minimal legal training the sort of discretion that had long been problematic in Alabama’s voter registration process. Thus, the amendment ratified in 1996 perpetuated the criminal disfranchisement of crimes of moral turpitude adopted in 1901 with a racially discriminatory purpose.

Conclusion

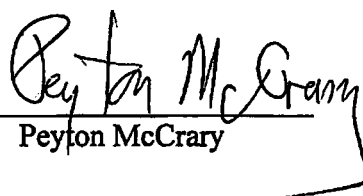
47. This Declaration provides a detailed account of the adoption of the Alabama constitutional provision requiring disfranchisement of persons convicted of crimes of moral turpitude in 1901, and its maintenance through the amendment of the constitutional provision in 1996, which kept in place the disfranchisement of crimes of moral turpitude found by the federal courts to be racially discriminatory in purpose.

48. The evidence presented above expands on the factual findings of the federal courts in *Hunter v. Underwood*, utilizing the facts provided by another expert in the current litigation, whose analysis I find persuasive. The Supreme Court found that Section 182 of the 1901 Constitution was adopted with racial intent and had both an immediate and a long-term racially discriminatory effect. I then examined the way in which Section 182 functioned in conjunction with Alabama’s racially discriminatory tests and devices eliminated by the 1965 Voting Rights Act. Section 182 was not identified as a test or device in 1965, however, and continued to place a barrier to minority voter registration and voting until struck down by the Supreme Court’s 1985 decision.

¹¹² *Id.*, p. 2.

49. In 1995, the Alabama legislature adopted a constitutional amendment replacing Section 182 with a revised provision, Section 177, that retained the language disfranchising felons convicted of crimes of moral turpitude from the 1901 Constitution. That new provision left decisions about whether the crimes for which persons convicted of felonies and seeking restoration of their right to vote qualified as crimes of moral turpitude to the discretion of local registrars – a key mechanism by which Section 182 was designed to be a tool for disfranchising African American citizens by the framers of the 1901 Constitution. Thus, the new Section 177 perpetuated the racially discriminatory operation of old Section 182, which was adopted with a racially discriminatory purpose.

I declare under penalty of perjury that the foregoing is true and correct. Executed this
24th day of April 2020.


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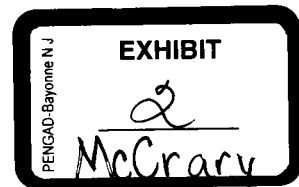
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BOOK:

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(Plaintiffs), *Hall v. Holder*, M.D.Ga. (Macon), December 1989.
[Challenge to the sole commissioner form of government in Bleckley County, Georgia]

(Plaintiffs), *Irby v. Fitzhugh*, E.D.Va. (Richmond), June 1988.
[Challenge to the appointment of all school boards in the Commonwealth of Virginia]

(Plaintiffs), *Whitfield v. Clinton*, E.D.Ark. (Helena), March 1988. [Challenge to the use of the statewide majority vote requirement in Phillips County, Arkansas]

(Plaintiffs), *Dent v. Culpepper*, M.D.Ga. (Macon), Preliminary Injunction Hearing, November 1987.
[Challenge to the at-large election of the City Commission in Cordele, Georgia]

(Plaintiffs), *Jackson v. Edgefield County, School District*, D.S.C. (Columbia), April 1986. [Challenge to the at-large election of the Edgefield County School Board]

(Plaintiffs), *Dillard v. Crenshaw County, et.al.*, M.D.Ala. (Montgomery), Preliminary Injunction Hearing, March 1986. [Challenge to the at-large election of public officials in more than 180 Alabama counties, municipalities, and school boards]

(Plaintiffs), *Harris v. Graddick*, M.D.Ala. (Montgomery), February 1985. [Challenge to the procedures by which election officials are selected and elections conducted in Alabama]

(Plaintiffs), *Woods v. Florence*, N.D.Ala. (Birmingham), August 1984. [Challenge to the method of appointing the Jefferson County Personnel Board]

(Plaintiffs), *Collins v. City of Norfolk*, E.D.Va. (Norfolk), May 1984. [Challenge to the at-large election of the Norfolk City Council]

(United States), *County Council of Sumter County, S.C. v. U.S.*, D.D.C., February 1983. [Defense of Section 5 Objection to the at-large election of the Sumter County Council]

(United States), *U.S. v. Dallas County Commission*, S.D.Ala. (Selma), October 1981. [Challenge to the at-large election of the Dallas County Commission]

(Plaintiffs), *Bolden v. City of Mobile*, S.D.Ala. (Mobile), May 1981. [Challenge to the at-large election of the Mobile City Commission]

(Plaintiffs), *Brown v. Board of School Commissioners of Mobile County*, S.D.Ala. (Mobile), April 1981.
[Challenge to the at-large election of the Mobile County School Board]

SWORN WRITTEN TESTIMONY AS AN EXPERT WITNESS:

(Plaintiffs) March 8 and May 6, 2019, *Chestnut v. Merrill*, C.A. No. 2:18-CV-907 (N.D. Ala.) [Challenge to congressional redistricting plan in Alabama]

(Plaintiffs) December 22, 2017, and February 12, 2018, *Georgia State Conference NAACP v. State of Georgia*, C.A. No. 1:17-cv-01247 (N.D. Ga.) [Challenge to the re-redistricting of state house districts in 2015]

(Plaintiffs) November 20, 2017, *Alabama State Conference NAACP v. State of Alabama*, C.A. No. 2:16-cv-731, M.D. Ala. [Challenge to the method of electing appellate judges in Alabama]

(Plaintiffs) July 24, 2017, *Thompson v. State of Alabama*, C.A. No. 16-cv-783-WKW, M.D. Ala. [. [Challenge to felon disfranchisement provisions in Alabama]

(United States) June 25, 2012, and July 20, 2012, *State of Florida v. United States*, C.A. No. 1:11-cv-01428, D.D.C. [Defense of the constitutionality of Section 5 of the Voting Rights Act]

(United States) August 1, 2011, *Laroque v. Holder*, C.A. No. 1:10-0561, D.D.C. [Defense of the constitutionality of Section 5 of the Voting Rights Act]

(United States) November 15, 2010, and February 16, 2011, *Shelby County, Alabama, v. Holder*, C.A. No. 1:10-cv-00651, D.D.C. [Defense of the constitutionality of Section 5 of the Voting Rights Act]

(United States as Defendant-Intervenor) July 31, 1996, *Cook v. Marshall County, Mississippi, and United States*, C.A. No. 3:95 CV 155-D-A, N.D. Miss. [Defense of Marshall County's redistricting plan]

(United States as Defendant-Intervenor) July 19, 1994, *Hays v. State of Louisiana*, C.A. No. 92-1522S, W.D. La. (Shreveport). [Defense of Louisiana's congressional redistricting plan]

(United States) March 25, 1991, *State of Georgia v. Thornburg*, C.A. No. 90-2065, D.D.C. [Defense of Section 5 objection to the method of electing certain superior court judges in Georgia]

(Plaintiffs) January 20, 1988, *Irby v. Fitzhugh*, C.A. No. 87-0633-R, E.D.Va. (Richmond). [Challenge to the appointment of all school boards in the Commonwealth of Virginia]

(United States) June 25, 1984, *U.S. v. Halifax County, N.C.*, C.A. No. 83-88-CIV-8, E.D.N.C. (Wilson). [Challenge to the at-large election of the Halifax County Commission]

(Plaintiffs) April 22, 1983, *Wilson v. Powell*, C.A. No. 383-14, S.D.Ga. (Dublin). [Challenge to the appointment of the Johnson County School Board by the county grand jury]

(United States) September 28, 1982, *County Council of Sumter County, S.C. v. U.S.*, C.A. No. 82-0912, D.D.C. [Defense of Section 5 Objection to the at-large election of the Sumter County Council]

CONGRESSIONAL TESTIMONY:

"Written Testimony of Dr. Peyton McCrary Before the United States House Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties," [accompanied by live testimony] March 12, 2019.

"Testimony Before the Subcommittee of National Parks and Public Lands, Committee on the Interior, U.S. House of Representatives, June 14, 1988.

"Written Testimony of Dr. Peyton McCrary," in *Extension of the Voting Rights Act: Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, U.S. House of Representatives*, 97th Cong., 1st Sess., Serial No. 24 (3 vols., Washington, D.C., G.P.O., 1982), III, 2749-76.

OTHER PUBLIC TESTIMONY:

Testimony Before the United States Commission on Civil Rights, "An Assessment of Minority Voting Rights Access in the United States, Raleigh, North Carolina, February 2, 2018.

CONFERENCE PAPERS:

"The Deep South Fights Back: Constitutional Challenges to Section 5 of the Voting Rights Act, 1966-1980." Southern Historical Association, November 2012.

"From *Gomillion v. Lightfoot* to *City of Pleasant Grove v. United States*: Annexations, De-annexations, and the Voting Rights Act." Constitution Day Conference, San Francisco State University, September 2010.

"Two Kinds of Vote Dilution: From *Baker v. Carr* to *White v. Regester*." Organization of American Historians, April 2010.

"How the Voting Rights Act Works: Implementation of a Civil Rights Policy, 1965-2005," University of South Carolina School of Law, October 2005; [revised version, Southern Historical Association, November 2005].

"Bringing Equality to Power: Federal Courts and the Transformation of Southern Electoral Politics, 1960-2000." Organization of American Historians, April 2002.

"Why the Voting Rights Act Worked: A Judicial Model of Policy Implementation." Social Science History Association, October 1997; [revised version, Association of Public Policy Analysis and Management, November 1997].

"Yes, But What Have They Done to Black People Lately? The Role of Historical Evidence in the Virginia School Board Case." Southern Historical Association, November 1992.

"The Impact of the Voting Rights Act in Alabama," co-authored with Jerome Gray, Edward Still, and Huey Perry. American Political Science Association, 1989 [revised version presented at a Conference on the Impact of the Voting Rights Act, Rice University, Houston, Texas, May 1990].

"Taking History to Court: The Issue of Discriminatory Intent in Southern Voting Rights Cases." Joint Center for Political and Economic Studies, Washington, D.C., June 13, 1988.

"Keeping the Courts Honest: Expert Witnesses in Voting Rights and School Desegregation Cases," co-authored with J. Gerald Hebert. Southern Historical Association, November 1986.

"Discriminatory Intent: The Continuing Relevance of 'Purpose' Evidence in Vote-Dilution Lawsuits." Conference on Voting Rights Law, Howard University School of Law, Washington, D.C., January 1985.

"The Subtle Gerrymander: Discriminatory Purposes of At-large Elections in the South, 1865-1982." Organization of American Historians, April 1983.

"The Party of Revolution: Republican Ideas About Politics and Social Change, 1861-1868." Southern Historical Association, November 1980.

"After the Revolution: American Reconstruction in Comparative Perspective." American Historical Association, December 1979.

"The Civil War Party System, 1854-1876: Toward a New Behavioral Synthesis?" Southern Historical Association, November 1976.

CHAIRPERSON, PANELIST, OR COMMENTATOR:

Alabama Association of Historians, 1983.
Alabama Department of Archives and History, 1988.
American Historical Association, 2017.
American Political Science Association, 1987, 2003.
Brookings Institution, 1990.
National Association of Secretaries of State, 1983.
Organization of American Historians, 1979, 1995.
Social Science History Association, 1981, 1987, 1996, 1997, 1999.
Southern Historical Association, 1973, 1985.
University of Alabama, 1983.
University of Utah, 2007.
United States Commission on Civil Rights, 2018.

ACADEMIC REFEREE:

Book-length manuscripts: Princeton University Press, University of North Carolina Press, University of Tennessee Press, University of Alabama Press, Louisiana State University Press, University of Georgia Press.
Article-length manuscripts: Journal of American History, American Historical Review, Sociological Spectrum, Gulf Coast Historical Review, Social Science History.

CONSULTANT:

Archival: Re-organization of Section 5 Objection Files, Civil Rights Division/Voting Section, U.S. Department of Justice, Washington, D.C., January to July 1989.
Litigation Research: Civil Rights Division/Voting Section, U.S. Department of Justice, Washington, D.C., August 1989 to August 1990.

FELLOWSHIPS AND GRANTS:

John D. and Catherine T. MacArthur Foundation, 1987-1988: Distinguished Scholar, Joint Center for Political and Economic Studies, Washington, D.C.
American Philosophical Society, 1983: Research Travel Grant.
Rockefeller Foundation, 1982-1983: Research Fellowship.
Carnegie Corporation of New York, 1982-1983: Research Fellowship.
National Endowment for the Humanities, 1980: Summer Research Stipend.
University of South Alabama, 1978-1987: Faculty Research Grants; Research Council Grant.
Vanderbilt University, 1976-1978: Manuscript Preparation Grant.
University of Minnesota, 1969-1976: Faculty Research Grants.
Princeton University, 1966-69: University Fellow; Herbert Osgood Fellow; NDEA Fellow.
University of Virginia, 1961-1966: Echols Scholar; Du Pont Scholar; Ford Foundation Fellow.

File # 229

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

OPINION MODIFIED	
Date:	June 5, 1985
To:	Allen Tapley
File:	85-DD37

LEE L. HALE
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

AUG 10 1979

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205), 834-8150

79-00268

Mrs. Jenny C. Knight
Member
Morgan County Board of Registrars
P. O. Box 668
Decatur, Alabama 35602

Registrars-Elections-Voter
Registration

Discussion of which crimes
will disqualify an Alabama
citizen from voting.

Dear Mrs. Knight:

This is in answer to your request for an opinion
from this office of June 8, 1979, which reads as follows:

"I would like to request an opinion
from your office concerning the dis-
enfranchisement of voters for the
conviction of certain offenses. I
am especially interested in those
crimes involving moral turpitude.

"The disqualifying offenses are listed
in Article 8, Section 182 of the 1901
Constitution. I feel certain that
some of these offenses may no longer
be disqualifying due to recent federal
or state court judgments. I am in
hopes that your office might provide
me with some form of an updated list.

PENGAD-Bayonne N.J.

EXHIBIT

3

McCrory

Mrs. Jenny C. Knight
Page Two

"It has always been difficult and confusing to determine those crimes involving moral turpitude which might keep someone from voting. I would especially appreciate any help or some form of a list of these crimes.

"One question in particular deals with issuing worthless checks. Would those persons convicted in district court of issuing worthless checks be disqualified from voting?"

As you note in your opinion, Article 8, Section 182 (Constitution of Alabama 1901) lists the offenses which will disqualify a person from voting. That section reads:

"The following persons shall be disqualified both from registering, and from voting, namely:

"All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted

Mrs. Jenny C. Knight
Page Three

as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector."

Several of the offenses listed have specifically been deleted from the list of disqualifying offenses by case law. These include assault and battery on the wife; Hobson v. Pow, 434 F. Supp. 362 (N.D. Ala. 1977); vagrancy; Bryan v. State, 18 Ala. App. 199, 89 So. 894 and miscegenation; Doving v. Virginia, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967); United States v. Brittian, 319 F. Supp. 1058 (N.D. Ala. 1970).

In addition to the crimes specifically listed, the statute provides that the disqualifying crimes include all crimes punishable by imprisonment in the penitentiary and all crimes involving moral turpitude. We then reach the complicated question of which crimes are crimes involving moral turpitude. This question cannot be positively answered, inasmuch as the determination of what constitutes a "crime involving moral turpitude" has been addressed by the Alabama courts on a case by case basis, and often in a context other than the eligibility to vote.

There are a number of definitions of the term. In Irvin v. State, 44 Ala. App. 101 (1967), the Alabama Court of Criminal Appeals cited a definition given by Mr. Justice Traynor in In Re Hallinan, 43 Cal. 2d 243, 272 P. 2d 768, which reads:

"Although the problem of defining moral turpitude is not without difficulty, * * it is settled that whatever else it may mean, it includes fraud and that a crime in which an intent to defraud is an

Mrs. Jenny C. Knight
Page Four

essential element is a crime involving moral turpitude. * * *
It is also settled that the related group of offenses involving intentional dishonesty for purposes of personal gain are crimes involving moral turpitude. * * * The fraudulent acquisition of another's property is but another form of theft in this state. * * *

Moral turpitude also has been defined as: "anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes his fellow man, or to society in general, contrary to the accepted and customary." The term also implies something immoral in itself, regardless of whether it is punishable by law. Nelson v. State, 35 Ala. App. 179, 44 So. 2d 802 (1950). It is also the doing of the act itself, and not its prohibition by statute, that fixes the moral turpitude. Pippin v. State, 197 Ala. 613, 73 So. 340 (1916); Gillman v. State, 165 Ala. 135, 51 So. 722 (1910). The offense must be malum in se and not malum prohibitum. Sims v. Callahan, 269 Ala. 216, 112 So. 2d 776 (1959).

As I have indicated, any list that is compiled of crimes involving moral turpitude is not necessarily exhaustive. However, I have attempted to collect the existing cases on this subject and to present a list of crimes that have been held to involve moral turpitude and a list of crimes that do not involve moral turpitude.

The following is a list of crimes involving moral turpitude in Alabama:

Murder - Vaughn v. State, 235 Ala. 80,
177 So. 553.

Buying and concealing stolen property -
Orr v. State, 225 Ala. 642, 144 So.
867.

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Page Five

Burglary - Wynne v. State, 155 Ala. 99,
46 So. 459; Martin v. State, 18
Ala. App. 303, 92 So. 37.

Forgery - Moton v. State, 13 Ala. App.
43, 69 So. 235 (1915).

Malicious shooting- Smith v. State, 40
Ala. App. 393, 114 So. 2d 295 (1959).

Assault with intent to murder - Mathews
v. State, 51 Ala. App. 417, 286 So.
2d 91 (1973); Harris v. State, 343
So. 2d 567 (Ala. Crim. App. 1977).

Larceny - (includes grand and petite) -
Mathews v. State, infra.

Desertion from military duty during time
of war - Nelson v. State, 35 Ala. App.
179, 44 So. 2d 802 (1950).

Sale of marijuana - Gholston v. State,
338 So. 2d 454 (Ala. Crim. App.
1978).

Manslaughter in the First Degree - Johnson
v. State, 357 So. 2d 162 (Ala. Crim.
App. 1978).

Income tax evasion - Meriwether v. Crown
Investment Corp., 289 Ala. 504, 268
So. 2d 780 (1972). This offense is
also grounds for disciplinary action
against attorney as involving moral
turpitude. Annot., 63 A.L.R. 3d
465 (1975).

Violating Dyer Act (transporting stolen
cars across state lines) - Mathews
v. State, infra.

Mrs. Jenny C. Knight
Page Six

Obtaining money by worthless check -
Irvin v. State, 44 Ala. App. 101,
203 So. 2d 283 (1967).

Carnal knowledge - Powell v. State, 297
So. 2d 163, 53 Ala. App. 30 (1974).

The following are crimes which have been held not
to involve moral turpitude:

Assault and battery - Gillman v. State,
165 Ala. 135, 51 So. 722; Collins
v. State, 3 Ala. App. 64, 58 So.
80; Johnson v. State, 15 Ala. App.
298, 73 So. 210; Craven v. State,
22 Ala. App. 39, 111 So. 767;
Bedsole v. State, 274 Ala. 603,
150 So. 2d 696 (1963).

Bootlegging - Wiggins v. State, 27 Ala.
App. 451, 173 So. 890.

Distilling, or otherwise violating pro-
hibition laws - Lakey v. State, 206
Ala. 180, 89 So. 605; Ex parte
Marshall, 207 Ala. 566, 93 So. 471;
Baugh v. State, 215 Ala. 619, 112
So. 159.

Doing business without license - Craven
v. State, 22 Ala. App. 39, 111 So.
767.

Trespass to land - U. S. Lbr. & Cotton
Co. v. Cole, 202 Ala. 688; 81 So.
664.

Vagrancy - Bryan v. State, 18 Ala. App.
199, 89 So. 894.

Mrs. Jenny C. Knight
Page Seven

Using Abusive & Obscene Language - Craven
v. State, 22 Ala. App. 39, 111 So.
767.

Public Drunkenness - Crammer v. State,
196 So. 268; Craven v. State, supra.

Driving while Intoxicated - Diamond v.
State, 49 Ala. App. 68, 268 So. 2d
850.

Violations of liquor laws - Whitman v.
State, 41 Ala. App. 124, 124 So. 2d
275 (1960); Parker v. State, 280
Ala. 685, 198 So. 2d 261 (1967).

Aiding prisoner to escape - McGovern v.
State, 44 Ala. App. 197, 205 So.
2d 247 (1967).

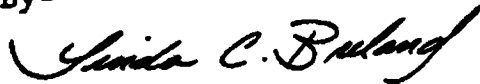
Speeding - Dean v. Johnston, 281 Ala. 602,
206 So. 2d 610 (1968).

Of course, I am sure you are aware that a restoration of civil and political rights granted by the Alabama Board of Pardons and Parole will restore the right to vote to a person convicted of one of the disqualifying crimes.

I hope that I have answered your questions sufficiently.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



LINDA C. BRELAND
Assistant Attorney General

LCB:bb

83-00371

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

JUL 5 1983

OPINION MODIFIED	
Date:	<u>June 5, 1985</u>
To:	<u>Allen Tapley</u>
File:	<u>85-00371</u>

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

Ms. Ann W. Tate
Circuit Clerk
Crenshaw County
P. O. Box 167
Luverne, Alabama 36049-0167

Elections - Voters - Moral Turpitude

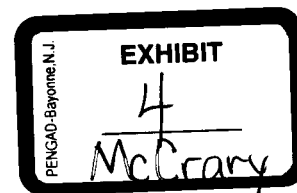
Discussion of which crimes under the
1980 Criminal Code will disqualify
an Alabama citizen from voting.

Dear Ms. Tate:

I am responding to your request for an opinion as to what criminal offenses under the new Criminal Code constitute crimes of moral turpitude which would disqualify an Alabama citizen from voting.

As you are probably aware, an opinion was issued by this office to the Morgan County Board of Registrars on August 10, 1979 which discussed and listed those crimes of moral turpitude which would disqualify a resident of Alabama from voting. A copy of that opinion is attached. The opinion cites several definitions of "moral turpitude" and lists those crimes which have specifically been held by the courts to be crimes of moral turpitude.

Of course, this list is not exhaustive and a crime may be one involving moral turpitude if it meets the definition, even though it has not been declared one by the courts.



Ms. Ann W. Tate
Page 2

Although the new Code changes the names of several of these crimes (larceny, for example, is now 3rd degree theft of property), the crimes involving moral turpitude basically remain the same. Also, the underlying element of moral turpitude remains the same. For your convenience, I am including a list of the crimes involving moral turpitude under the 1979 opinion, along with any name changes, and the new Code sections under which they are found.

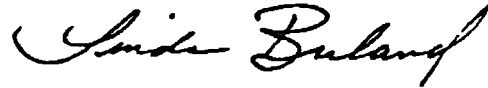
Murder	§§13A-6-2
Receiving Stolen Property	§§13A-8-16 through 19
Burglary	§§13A-7-5 through 7
Forgery	§§13A-9-2 through 4
Malicious Shooting	Deleted from new Code
Assault with intent to murder (Assault in 1st degree)	§13A-6-20
Larceny(Theft of Property 3rd degree)	§13A-8-5
Desertion from Military duty during time of war	Deleted from new Code
Sale of Marijuana	§20-2-70
Manslaughter	§13A-6-3
Income Tax Evasion	§40-18-80
Bringing Stolen Property into this state	§13A-8-20
Obtaining Money by Worthless check (Negotiating a worthless Negotiable Instrument)	§13A-9-13.1
Carnal knowledge (Rape)	§§13A-6-61 and 62

Mrs. Ann W. Tate
Page 3

If you have any further questions on this question,
please let me know.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-

A handwritten signature in cursive script, appearing to read "Linda Breland".

LINDA C. BRELAND
Assistant Attorney General

LCB/mi

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

AUG 10 1979

OPINION MODIFIED

Date: June 5, 1985
To: Allen Tapley
File: 85-00371

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 634-5130

LEE L. HALE
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

Mrs. Jenny C. Knight
Member
Morgan County Board of Registrars
P. O. Box 668
Decatur, Alabama 35602

Registrars-Elections-Voter
Registration

Discussion of which crimes
will disqualify an Alabama
citizen from voting.

Dear Mrs. Knight:

This is in answer to your request for an opinion
from this office of June 8, 1979, which reads as follows:

"I would like to request an opinion
from your office concerning the dis-
enfranchisement of voters for the
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am especially interested in those
crimes involving moral turpitude.

"The disqualifying offenses are listed
in Article 8, Section 182 of the 1901
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some of these offenses may no longer
be disqualifying due to recent federal
or state court judgments. I am in
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me with some form of an updated list.

Mrs. Jenny C. Knight
Page Two

"It has always been difficult and confusing to determine those crimes involving moral turpitude which might keep someone from voting. I would especially appreciate any help or some form of a list of these crimes.

"One question in particular deals with issuing worthless checks. Would those persons convicted in district court of issuing worthless checks be disqualified from voting?"

As you note in your opinion, Article 8, Section 182 (Constitution of Alabama 1901) lists the offenses which will disqualify a person from voting. That section reads:

"The following persons shall be disqualified both from registering, and from voting, namely:

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Mrs. Jenny C. Knight
Page Three

as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector."

Several of the offenses listed have specifically been deleted from the list of disqualifying offenses by case law. These include assault and battery on the wife; Hobson v. Pow, 434 F. Supp. 362 (N.D. Ala. 1977); vagrancy; Bryan v. State, 18 Ala. App. 199, 89 So. 894 and miscegenation; Doving v. Virginia, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967); United States v. Brittian, 319 F. Supp. 1058 (N.D. Ala. 1970).

In addition to the crimes specifically listed, the statute provides that the disqualifying crimes include all crimes punishable by imprisonment in the penitentiary and all crimes involving moral turpitude. We then reach the complicated question of which crimes are crimes involving moral turpitude. This question cannot be positively answered, inasmuch as the determination of what constitutes a "crime involving moral turpitude" has been addressed by the Alabama courts on a case by case basis, and often in a context other than the eligibility to vote.

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Mrs. Jenny C. Knight
Page Four

essential element is a crime involving moral turpitude. * * *
It is also settled that the related group of offenses involving intentional dishonesty for purposes of personal gain are crimes involving moral turpitude. * * * The fraudulent acquisition of another's property is but another form of theft in this state. * * *

Moral turpitude also has been defined as: "anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes his fellow man, or to society in general, contrary to the accepted and customary." The term also implies something immoral in itself, regardless of whether it is punishable by law. Nelson v. State, 35 Ala. App. 179, 44 So. 2d 802 (1950). It is also the doing of the act itself, and not its prohibition by statute, that fixes the moral turpitude. Pippin v. State, 197 Ala. 613, 73 So. 340 (1916); Gillman v. State, 165 Ala. 135, 51 So. 722 (1910). The offense must be malum in se and not malum prohibitum. Sims v. Callahan, 269 Ala. 216, 112 So. 2d 776 (1959).

As I have indicated, any list that is compiled of crimes involving moral turpitude is not necessarily exhaustive. However, I have attempted to collect the existing cases on this subject and to present a list of crimes that have been held to involve moral turpitude and a list of crimes that do not involve moral turpitude.

The following is a list of crimes involving moral turpitude in Alabama:

Murder - Vaughn v. State, 235 Ala. 80,
177 So. 553.

Buying and concealing stolen property -
Orr v. State, 225 Ala. 642, 144 So.
867.

Mrs. Jenny C. Knight
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Burglary - Wynne v. State, 155 Ala. 99,
46 So. 459; Martin v. State, 18
Ala. App. 303, 92 So. 37.

Forgery - Moton v. State, 13 Ala. App.
43, 69 So. 235 (1915).

Malicious shooting- Smith v. State, 40
Ala. App. 393, 114 So. 2d 295 (1959).

Assault with intent to murder - Mathews
v. State, 51 Ala. App. 417, 286 So.
2d 91 (1973); Harris v. State, 343
So. 2d 567 (Ala. Crim. App. 1977).

Larceny - (includes grand and petite) -
Mathews v. State, infra.

Desertion from military duty during time
of war - Nelson v. State, 35 Ala. App.
179, 44 So. 2d 802 (1950).

Sale of marijuana - Gholston v. State,
338 So. 2d 454 (Ala. Crim. App.
1978).

Manslaughter in the First Degree - Johnson
v. State, 357 So. 2d 162 (Ala. Crim.
App. 1978).

Income tax evasion - Meriwether v. Crown
Investment Corp., 289 Ala. 504, 268
So. 2d 780 (1972). This offense is
also grounds for disciplinary action
against attorney as involving moral
turpitude. Annot., 63 A.L.R. 3d
465 (1975).

Violating Dyer Act (transporting stolen
cars across state lines) - Mathews
v. State, infra.

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Obtaining money by worthless check -
Irvin v. State, 44 Ala. App. 101,
203 So. 2d 283 (1967).

Carnal knowledge - Powell v. State, 297
So. 2d 163, 53 Ala. App. 30 (1974).

The following are crimes which have been held not
to involve moral turpitude:

Assault and battery - Gillman v. State,
165 Ala. 135, 51 So. 722; Collins
v. State, 3 Ala. App. 64, 58 So.
80; Johnson v. State, 15 Ala. App.
298, 73 So. 210; Craven v. State,
22 Ala. App. 39, 111 So. 767;
Bedsole v. State, 274 Ala. 603,
150 So. 2d 696 (1963).

Bootlegging - Wiggins v. State, 27 Ala.
App. 451, 173 So. 890.

Distilling, or otherwise violating pro-
hibition laws - Lakey v. State, 206
Ala. 180, 89 So. 605; Ex parte
Marshall, 207 Ala. 566, 93 So. 471;
Baugh v. State, 215 Ala. 619, 112
So. 159. .

Doing business without license - Craven
v. State, 22 Ala. App. 39, 111 So.
767.

Trespass to land - U. S. Lbr. & Cotton
Co. v. Cole, 202 Ala. 688; 81 So.
664.

Vagrancy - Bryan v. State, 18 Ala. App.
199, 89 So. 894.

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Using Abusive & Obscene Language - Craven
v. State, 22 Ala. App. 39, 111 So.
767.

Public Drunkenness - Crammer v. State,
196 So. 268; Craven v. State, supra.

Driving while Intoxicated - Diamond v.
State, 49 Ala. App. 68, 268 So. 2d
850.

Violations of liquor laws - Whitman v.
State, 41 Ala. App. 124, 124 So. 2d
275 (1960); Parker v. State, 280
Ala. 685, 198 So. 2d 261 (1967).

Aiding prisoner to escape - McGovern v.
State, 44 Ala. App. 197, 205 So.
2d 247 (1967).

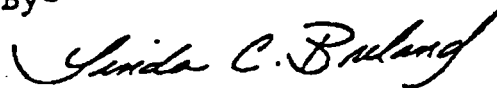
Speeding - Dean v. Johnston, 281 Ala. 602,
206 So. 2d 610 (1968).

Of course, I am sure you are aware that a restoration of civil and political rights granted by the Alabama Board of Pardons and Parole will restore the right to vote to a person convicted of one of the disqualifying crimes.

I hope that I have answered your questions sufficiently.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



LINDA C. BRELAND
Assistant Attorney General

LCB:bb

212 F.Supp. 193
United States District Court, M.D. Alabama, Northern Division.

UNITED STATES of America, Plaintiff,
v.
George PENTON, Mrs. Samuella P. Willis, Registrars of Voters of
Montgomery County, Alabama, and State of Alabama, Defendants.

Civ. A. No. 1741-N.

|
Nov. 20, 19 2.

Synopsis

Action by the Attorney General in the name of the United States under the Civil Rights Act for injunctive relief against certain acts and practices of the defendant depriving citizens of United States residing in Montgomery County, Alabama, of the right to register to vote without discrimination because of race or color. The United States District Court for the Middle District of Alabama, Northern Division, Johnson, United States District Judge, held that evidence that the registrars of Montgomery County and the State of Alabama and its agents had deliberately engaged in practices favoring white applicants and discriminated against Negro applicants seeking to become registered voters, established a violation of the Fourteenth and Fifteenth Amendments and the Civil Rights Act.

Decree in accordance with the opinion.

Attorneys and Law Firms

*195 John Doar, David L. Norman and Arvid A. Sather, Dept. of Justice, Washington, D.C., for plaintiff.

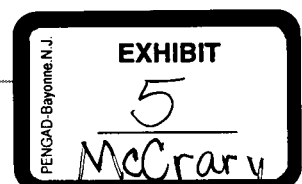
William F. Thetford, Sol., Fifteenth Judicial Circuit, Montgomery, Ala., and Maury D. Smith and James J. Carter, Montgomery, Alabama, for the members of the Board of Registrars of Montgomery County, Alabama; and MacDonald Gallion, Atty. Gen., Willard W. Livingston, Leslie Hall, Gordon Madison, John Tyson, III, Asst. Attys. Gen., Montgomery, Ala., for defendant State of Alabama.

Opinion

JOHNSON, District Judge.

This action was instituted on August 3, 1961, by the Attorney General in the name of the United States pursuant to the provisions of Part IV of the Civil Rights Act of 1957 (42 U.S.C.A. 1971, 71 Stat. 637), as amended by the Civil Rights Act of 1960 (74 Stat. 90). The State of Alabama is joined as a party defendant pursuant to 601(b) of the Civil Rights Act of 1960; the individual defendants are joined as members of the Board of Registrars of Montgomery County, Alabama. The plaintiff seeks to have this Court grant injunctive relief against certain acts and practices that have since January 1, 1956, deprived citizens of the United States residing in Montgomery County, Alabama, of the right to register to vote without discrimination because of race or color. The plaintiff seeks to have this Court issue such additional orders as will insure the fair, equal and nondiscriminatory administration of voting registration procedures and standards in Montgomery County, Alabama.

The cause was submitted to the Court, sitting without a jury, on the issues made up by the pleadings and proof. Upon consideration of the credible evidence¹ (consisting of the oral testimony of over 175 witnesses, together with approximately 13,000 exhibits), the stipulations of the parties, the several interrogatories and responses thereto, and the briefs and arguments,



this Court now proceeds to make and enter the appropriate findings of fact and conclusions of law, and, as authorized by Rule 52, Federal Rules of Civil Procedure, incorporates those findings and conclusions in this memorandum opinion.

***196** The right to vote in Alabama is governed by both constitutional and statutory provisions.² This litigation does not involve the constitutionality of any of those laws.

Under the Constitution of Alabama, 178, registration is a prerequisite to voting in any election. The registration of voters is to be conducted in each county, separately, by a board of registrars appointed by the Governor, Auditor, and Commissioner of Agriculture and Industries. Title 17, 21, Code of Alabama 1940, Recompiled. Section 21 of the same title states that each board is to have three members, and 34 authorizes the functions to be carried out by a majority. In addition to qualifications such as citizenship, age and residence, applicants for registration must be able to read and write, must be of good character, and must embrace the 'duties and obligations of citizenship.' Title 17, 32.

A registration questionnaire is authorized by statute, the purpose of the questionnaire being to aid the registrars in determining whether the applicant possesses the requisite qualifications. The questionnaire is to be filled out 'in the presence of the board without assistance' (Title 17, 31), and is to be subscribed by the applicant (186, Constitution of Alabama). The oath to support and defend the Constitution of the United States and the Constitution of the State of Alabama is to be a part of the questionnaire, with the Code providing:

'The * * * oath shall be duly signed and sworn to by the applicant before a member of the board.' Title 17, 31, Code of Alabama.

The questionnaire is prescribed by the Supreme Court of Alabama and was used without any variation for practically all the period involved in this case.³

In May 1960, the United States filed a 'records examination' demand pursuant to Title III of the Civil Rights Act of 1960. This demand was predicated upon the allegation that the Attorney General of the United States had information tending to show discrimination on the basis of race or color which had been made with respect to registration and voting in Montgomery County, Alabama. This Court ordered a production and examination of these registration records in August 1960. This production was over the objections of the defendants. See *State of Alabama, etc. v. William P. Rogers, etc. et al.*, and *In re Crum Dinkins* (consolidated), 187 F.Supp. 848 (M.D.Ala., 1960); affirmed, 5th Cir., 1961, 285 F.2d 430. On June 16, 1961, the Attorney General of the United States notified the defendants of specific charges of racial discrimination in the voter registration practices in Montgomery County, Alabama. On August 3, 1961, this case was filed.

Montgomery County, Alabama, has a voting-age population of 95,967, of which 62,911 are white persons and 33,056 are Negroes. As of December 15, 1961, 33,846 white persons and 3,766 Negroes were registered to vote. From January 1, 1956 until June 16, 1961, approximately 13,390 applications for registration were filed with the Montgomery County Board to Registrars, of which approximately 8,868 were by white persons and 4,522 were by Negroes. The defendants registered over 96 per cent of the white applicants and rejected for registration over 75 per cent of the Negro applicants—including 710 Negro applicants who had 12 years or more of formal education. Of these rejected Negroes, 6 had master's degrees; ***197** 152 had four years of college training, and 222 had some college education. This group of rejected Negroes included 108 Negro public school teachers.⁴

Although the Montgomery County Board of Registrars had a long-established rule that the questionnaire was to be filled out completely and without assistance, this rule was not uniformly followed by the Board during the period January 1, 1956 through November 14, 1961, according to the sworn testimony of one of the registrars, Mrs. Samuella P. Willis. For instance, the Board filled out Question 5 completely for white applicants, but not for Negroes. There were other admitted exceptions, such as Questions 1 and 3 on the Supplemental Oath, the Application on page one, and Question 19. Commencing in February 1961 (after the production and examination of the records), the Board raised the standard to require a perfect application.⁵

The evidence in this case (particularly the originals of the questionnaires themselves) overwhelmingly reflects that from January 1, 1956 until at least June 1960, the registrars of Montgomery County, Alabama, and the defendant State and its agents, have

deliberately and consistently engaged in procedures and practices which have favored white applicants and discriminated against Negro applicants who were seeking to become registered voters. This discrimination was in violation of the Fourteenth and Fifteenth Amendments to the Constitution of the United States and the Civil Rights Act, *supra*, in that it involved procedures and practices designed to deny (and which were effective in denying) the rights of citizens to vote without distinction of race or color. *United States v. Raines*, 362 U.S. 17, 80 S.Ct. 519, 4 L.Ed.2d 524; *United States v. Thomas*, 362 U.S. 58, 80 S.Ct. 612, 4 L.Ed.2d 535; and *198 *United States v. State of Alabama*, 192 F.Supp. 677 (M.D.Ala., 1961), 304 F.2d 583 (5th Cir., 1962); affirmed by the Supreme Court of the United States, 83 S.Ct. 145 (1962).

As to Negro applicants, the defendants used the questionnaire to obtain substantive information regarding the applicants' qualifications for registering and also as a tricky examination or test. If a Negro applicant failed to meet the standard required of him, he was denied registration regardless of whether the error or omission on the form was formal, technical, or inconsequential. With respect to white applicants, the defendants used the questionnaire merely as a method to obtain substantive information concerning the applicants' qualifications. For white applicants, the questionnaire was not used as an examination or test.⁶

Prior to June 1, 1960, the Board registered only 54 Negro applicants who had technical errors appearing in their questionnaires; up until the same time, the Board rejected only 74 whites for the same type errors. The rejection of whites subsequent to June 1960 (and particularly since June 1961, when it became apparent that this case was to be filed)⁷ impresses this Court as being nothing more than a sham and an attempt on the part of the Board to disguise their past discriminatory practices. The rejection of these white applicants approached the ridiculous when the Board rejected the law partner of one of the defense attorneys, a retired general and graduate of West Point, and the college graduate son of one of the State's attorneys general. Such evidence has little or no probative value.

This Court has made a careful study and analysis of both the white accepted and Negro rejected applicants whose applications were processed by the Board during the period involved in this case. One thousand and seventy white applicants whose applications contained technical errors were accepted by the Board during the period January 1, 1956 to June 14, 1961. This is in startling contrast to the Board's grading of the Negro applicants' questionnaires. This discrimination in grading was further aggravated by the defendants' assisting, when necessary, white applicants in completing the application form by explaining questions on the form and the answers required, or filling out part of the form for white applicants.⁸ Such discriminatory practices are further reflected by the undisputed testimony (and sharply reflected by the original questionnaires) that the Board in most instances completed the difficult question (number 5) for white applicants, but failed to give this assistance to Negro applicants.

In 1958 the defendants adopted a policy of rejecting all applicants who failed to sign the oath on page three of the application form. During the period from January 1958 to June 1960, the defendants have disapproved approximately 600 applications of Negro applicants who failed to sign the oath, although the oath was administered to them orally. In these instances, even though the oath was to be signed in the *199 official's presence, the registrar would permit the Negro applicants to walk from the office without calling the omission to their attention. Such a practice on the part of the registrars evidences bad faith; it leads to the inevitable conclusion that such a device was used by them for deception. Wholesale discrimination resulted by the contrasting practice of the registrars in handling the 'oath' part of the questionnaire for white applicants. The several thousand applications (particularly the originals) on file as exhibits in this case reflect X's, check marks, dashes and dots on literally hundreds of applications of whites at the 'oath' place on the application form. This Court would be naive to the point of absurdity if this evidence (such as the marks themselves, the contrasting shades of ink used in making them, the places where they occur, the fact that no marks appear on applications of Negroes, and the oral testimony concerning the marks) did not compel the conclusion that they were made by the registrars and made for the purpose of showing the white applicants where to sign.

The only witness offered by the defendants in an attempt to explain these marks was a clerk in the office of the Judge of Probate. Her explanation—which is totally inadequate—was that some marks were placed on the applications when they were processed by the office of the Judge of Probate. The marks which this witness demonstrated that she used are totally different from those

made to indicate where the oath should be signed. This is aside from the fact that applications of Negroes were processed by the same office and no such marks appear on any of them— only on applications of whites.

During the entire period involved in this case, the Montgomery County Board of Registrars followed the practice of not notifying the rejected applicants as to the action of the Board. Such a failure to notify the persons denied left such persons in a position of not knowing when their thirty-day period to appeal (35, Title 17, Code of Alabama 1940, Recompiled) had commenced to run.

Under the Civil Rights Act of 1957, as amended in 1960, *supra*, where a finding of discrimination— such as the evidence in this case compels— has been made and such discrimination results in a deprivation of voting rights pursuant to a pattern and practice, the Negro applicants who have thus been deprived of their right to vote may apply to the federal court to be registered. In determining whether such applicants are qualified the Court must apply the same standards used by the Board of Registrars in qualifying white applicants during the period within which the pattern of discrimination is found to exist. Accordingly, it is necessary in this case to determine what those standards were.

The evidence in this case shows that during the period involved in this case the qualifications used by the Montgomery County Board of Registrars in registering white persons were:

1. That the applicant be a citizen and be over 21 years of age.
2. That the applicant reside in the State two years, in the county one year, and in the precinct three months.
3. That the applicant be able to read and write by filling in the application form such as has been designated herein as Appendix B to this opinion.
4. That the applicant embrace the duties and obligations of citizenship and demonstrate his willingness to sign the oath and answer the questions on the form relating to loyalty.
5. That the applicant be not possessed of some disqualification by reason of bad character, a conviction of a disqualifying crime, insanity or idiocy.

The evidence offered on the trial of this case, including an examination and study of each of the questionnaires *200 filed by the rejected Negroes and an application of the above-enumerated standards, compels a specific finding by this Court that certain Negro applicants were denied registration solely on account of their race or color, and, further, that each was at the time of his application qualified to register to vote under the Alabama law and under the practice and procedures followed by the Board of Registrars of Montgomery County as to white applicants. Therefore, this Court now specifically finds that each of the Negro applicants listed in Appendix E, attached hereto, was so qualified at the time of the filing of his application and that each such applicant is to be registered unless he has been subsequently registered, has become deceased, or possessed with some disqualification to register to vote since the date of his application.

In the future, in order to apply these standards consistent with past practices and without discrimination, the Montgomery County Board of Registrars and the defendant State of Alabama must observe the following procedures and rules:

1. If the applicant has not been convicted of a felony, a crime involving moral turpitude or a disqualifying crime as defined by the Alabama Constitution, and if he is neither a dope addict nor a habitual drunkard, he shall be deemed to be of good moral character.
2. The Board shall orally determine whether the applicant meets the residence requirements. If the Board is satisfied as to the applicant's residence, it shall fill in Question 5 (the question dealing with length of residence in the State, county and precinct) for the applicant, as it did before 1960 for white applicants.

3. An applicant may not be rejected on the ground that he has failed to sign the Oath, the Supplemental Oath, or the spaces for the applicant's name in the Supplemental Application. the registrars are under a duty to have the applicant sign in the appropriate places unless he refuses to do so.

4. An applicant may not be rejected or denied for technical or inconsequential errors or omissions made by him in filling out the application. Such errors and omissions were not used as a basis for rejecting the applications of white applicants prior to June 1960.

5. An applicant whose application is rejected or denied must be notified of that fact within ten days from the date of his application. The notice must contain the specific reasons for the rejection or denial.

This Court must conclude, as a matter of law, that the foregoing acts and practices on the part of the defendant registrars were in violation of 42 U.S.C.A. 1971(a) and were the acts and practices of the defendant State of Alabama under the Civil Rights Act of 1960, 601(b).

This Court further concludes that the several discriminatory acts and practices as herein set forth constituted deprivations of rights secured by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and by Title 42 U.S.C.A. 1971(a), namely, the right to register to vote and to vote without distinction of race or color. These deprivations have been and are pursuant to a pattern and practice of racial discrimination within the meaning of Title 42 U.S.C.A. 1971(e).

Under 42 U.S.C.A. 1971(d) and because of the circumstances reflected by the evidence in this case, this Court now concludes that it is necessary and proper to order the Board of Registrars of Montgomery County, Alabama, and the defendant State of Alabama, its officers and employees, to register those *201 Negro applicants who were possessed of all the qualifications and none of the disqualifications to register to vote at the time they applied for and were deprived registration by the defendants. Those Negro citizens of Montgomery County listed in Appendix E, attached hereto, were so qualified by law to be registered to vote. The denial of such citizens by the defendants was and is in violation of 42 U.S.C.A. 1971(a) and is therefore null, void and ineffective.

Such affirmative relief, as the foregoing paragraph provides, is available in such cases by reason of the broad remedial purposes of the Civil Rights Act and through the exercise of the equity powers of the Court. *United States v. McElveen*, D.C., 180 F.Supp. 10; *United States v. Thomas*, 362 U.S. 58, 80 S.Ct. 612, 4 L.Ed.2d 535; *United States v. State of Alabama*, 192 F.Supp. 677 (M.D.Ala., March, 1961), 304 F.2d 583 (5th Cir., 1962); affirmed by the Supreme Court of the United States, 82 S.Ct. 145 (1962).

This Court further concludes that the failure and refusal by the defendants to notify rejected applicants, and/or the arbitrary rejection by the defendants of Negro applicants on technical, insubstantial, and inconsequential grounds, constitute a denial of due process of law and an abridgment of privileges and immunities of citizens under the Constitution of the United States.

The decree to be issued pursuant to this opinion will be designed to accomplish three purposes:

1. To partially correct and recitify the effects of the Board's past discriminatory practices by placing on the registration rolls immediately the Negro citizens who were rejected solely on account of their race;
2. To forbid the continuation of such discriminatory practices;
3. To establish the actual 'qualification standards' under which the Board of Registrars has accepted white applicants in the past and to set forth the rules and standards which the Board is to follow in determining whether applicants are qualified to register to vote in Montgomery County, Alabama. Such a decree will facilitate registration under the federal referee provisions of the Civil Rights Act if future conduct by the defendants makes this course necessary.

This is the third voting rights case this Court has been required to adjudicate within the past two years.⁹ In each of these cases, the findings, conclusions and decrees issued thereon emphasized the legal principle that although the particular qualifications

one must possess in order to exercise this right to vote are left to the states—as long as that exercise is within the constitutional framework—the power to protect citizens who are qualified to vote but not allowed to vote solely because of their color is confided in the United States Government. This Court has demonstrated by its decrees in these cases that such protection would be afforded in this district.

In spite of these prior judicial declarations, the evidence in this case makes it clear that the defendant State of Alabama, through some of its officers who are under a sworn duty to support and defend the Constitution of the United States ‘and the laws * * * which shall be made in pursuance thereof * * *,¹⁰ continues in the belief that *202 some contrivance may be successfully adopted and practiced for the purpose of ‘thwarting equality in the enjoyment of the right to vote by citizens of the United States * * *.’ See *Lane v. Wilson*, 307 U.S. 268, 59 S.Ct. 872, 83 L.Ed. 1281. Such an attitude ignores the principle that the only true basis of a representative government is equality in the right to select those representatives. No such equality can exist when a class of our citizens is deprived of its right to vote because of its color. This right to vote is a personal right that is vested in qualified individuals by virtue of their citizenship. It is not a privilege to be granted or denied at the whim or caprice of state officers or state governments.

A decree will be issued accordingly; however, this Court reserves jurisdiction of this case for the purpose of enforcing or implementing the decree to be issued.

APPENDIX A

PROVISIONS OF ALABAMA LAW

(1) Article VIII, Section 177 of the 1901 Constitution:

‘Section 177. Every male citizen of this state who is a citizen of the United States, and every male resident of foreign birth, who, before the ratification of this Constitution, shall have legally declared his intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people; provided, that all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens.’

(2) Amendment XCVI, amendment to Article VIII, Section 178 of the 1901 Constitution:

‘Section 178. To entitle a person to vote at any election by the people, he shall have resided in the state at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the two calendar years next preceding. Provided, that any elector who, within three months next preceding the date of the election at which he offers to vote has removed from one precinct or ward to another precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal.’

(3) Amendment XCI, amendment to Article VIII, Section 181 Constitution of 1901:

‘Section 181. The following persons and no others who, if they are citizens of the United States over the age of twenty-one years and have the qualifications as to residence prescribed in section 178 of this article, shall be qualified to register as electors provided they shall not be disqualified under section 182 of this Constitution: Those who can read and write any article of the Constitution of the United States in the English language which may be submitted to them by the board of registrars, provided, however, that no persons shall be entitled to register as electors except those who are of good character and who embrace the duties and obligations of citizenship under the Constitution of the *203 United States and under the Constitution of the state of Alabama, and provided, further, that in order to aid the members of the boards of registrars, who are hereby constituted

and declared to be judicial officers, to judicially determine if applicants to register have the qualifications hereinabove set out, each applicant shall be furnished by the board of registrars a written questionnaire, which shall be uniform in all cases with no discrimination as between applicants, the form and contents of which questionnaire shall be prescribed by the supreme court of Alabama and be filed by such court with the secretary of state of the state of Alabama, which questionnaire shall be so worded that the answers thereto will place before the boards of registrars information necessary or proper to aid them to pass upon the qualification of each applicant. Such questionnaire shall be answered in writing by the applicant, in the presence of the board without assistance, and there shall be incorporated in such answer an oath to support and defend the Constitution of the United States and the Constitution of the state of Alabama and a statement in such oath by the applicant disavowing belief in or affiliation at any time with any group or party which advocated the overthrow of the government of the United States or the state of Alabama by unlawful means, which answers and oath shall be duly signed and sworn to by the applicant before a member of the county board of registrars. Such questionnaire and the written answers of the applicant thereto shall be filed with the records of the respective boards of registrars. The board may receive information respecting the applicant and the truthfulness of any information furnished by him. Those persons who have registered as electors under the Alabama Constitution of 1901 shall not be required to register again. Provided, further, that if solely because of physical handicaps the applicant is unable to read or write, then he shall be exempt from the above stated requirements which he is unable to meet because of such physical handicap, and in such cases a member of the board of registrars shall read to the applicant the questionnaire and oaths herein provided for and the applicant's answers thereto shall be written down by such board member, and the applicant shall be registered as a voter if he meets all other requirements herein set out.'

(4) Title 17, Section 30(1), Code of Alabama 1940, Recompiled:

'Time and place of meeting of board in certain counties; supplementary qualified voting lists.— In all counties in this state which now have or may hereafter have a population of not less than 100,000 nor more than 140,000 according to the last federal census or any succeeding federal census, the board of registrars shall meet at the courthouse on the second Monday in June of each year and hold daily sessions for the purpose of registering voters, and continue in session through the third Saturday in October, Sundays and legal holidays excepted. The board of registrars shall meet at the courthouse on the second Monday in November of each year and remain in session through the succeeding January, Sundays, legal holidays, and the time or times for purging the registration or poll lists excepted, holding daily sessions for the purpose of registering voters. Any voter who may become qualified after a qualified voting list has been made and published as now provided for by law during even numbered years may be added to the list of qualified voters by a supplementary list or lists without making a complete new list of qualified voters. Said sessions of the *204 board of registrars in all such counties shall be in lieu of all other sessions now authorized by law for registering voters.'

(5) Title 17, Section 31, Code of Alabama 1940, Recompiled:

'Examination and oath of applicants to register.— The board of registrars shall have power to examine, under oath or affirmation, all applicants for registration, and to take testimony touching the qualifications of such applicants. In order to aid the registrars to judicially determine if applicants to register have the qualifications to register to vote, each applicant shall be furnished by the board a written questionnaire, which shall be uniform in all cases with no discrimination as between applicants, the form and contents of which questionnaire shall be prescribed by the supreme court of Alabama and be filed by such court with the secretary of state of the state of Alabama. The questionnaire shall be so worded that the answers thereto will place before the registrars information necessary or proper to aid them to pass upon the qualifications of each applicant. The questionnaire shall be answered in writing by the applicant, in the presence of the board without assistance. There shall be incorporated in such answer an oath to support and defend the constitution of the United States and the constitution of the state of Alabama and a statement in such oath by the applicant disavowing belief in or affiliation at any time with any group or party which advocated the overthrow of the government of the United States or the state of Alabama by unlawful means. The answers and oath shall be duly signed and sworn to by the applicant before a member of the board. Such questionnaire and the written answers of the applicant thereto shall be filed with the records of the board of registrars. If solely because of physical handicaps the applicant is unable to read or write, then he shall be exempt from the above stated requirements which he is unable to meet because of such physical handicap, and in such cases a member of the board shall read to the applicant the questionnaire and oaths

U.S. v. Penton, 212 F.Supp. 193 (1962)

herein provided for and the applicant's answers thereto shall be written down by such board member; and the applicant shall be registered as a voter if he meets all other requirements herein set out. Each member of the board is authorized to administer the oaths to be taken by the applicant and witnesses.'

(6) Title 17, Section 53, Code of Alabama 1940, Recompiled:

'Rules and regulations by registrars.— The board of registrars may make such rules and regulations as it deems proper for the receipt of applications for registration and the accomplishing in as expedient a manner as possible the registration of those entitled to register, but no person shall be registered until a majority of the board of registrars has passed favorably upon such person's qualifications.'

***205 APPENDIX B**

APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATH

I, _____ do hereby apply to the Board of Registrars of _____ County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama, and do herewith submit answers to the interrogatories propounded to me by said Board.

Name of Applicant

QUESTIONNAIRE

1. State your name, the date and place of your birth, and your present address: _____

2. Are you married or single: _____ (a) If married, give name, residence and place of birth of your husband or wife, as the case may be: _____

3. Give the names of the places, respectively, where you have lived during the last five years; and the name or names by which you have been known during the last five years: _____

4. If you are self-employed, state the nature of your business: _____

(a) If you have been employed by another during the last five years state the nature of your employment and the name or names of such employer or employers and his or their addresses: _____

5. If you claim that you are a bona fide resident of the State of Alabama, give the date on which you claim to have become such bona fide resident: _____ (a) When did you become a bona fide resident of _____

County: _____ (b) When did you become a bona fide resident of _____ Ward or precinct _____

6. If you intend to change your place of residence prior to the next general election, state the facts: _____

7. Have you previously applied for and been denied registration as a voter: _____ (a) If so, give the facts: _____

8. Has your name been previously stricken from the list of persons registered: _____

9. Are you now or have you ever been a dope addict or an habitual drunkard: _____ (a) If you are or have been a dope addict or an habitual drunkard, explain as fully as you can: _____

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10. Have you ever been legally declared insane? _____ (a) If so, give details: _____
11. Give a brief statement of the extent of your education and business experience: _____

12. Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude? _____ (a) If so, give the facts: _____

13. Have you ever served in the Armed Forces of the United States Government? _____ (a) If so, state when and for approximately how long: _____
14. Have you ever been expelled or dishonorably discharged from any school or college or from any branch of the Armed Forces of the United States, or of any other country? _____ (a) If so, state the facts: _____

15. Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama? _____
16. Are you now or have you ever been affiliated with any group or organization which advocated the overthrow of the United States Government or the government of any State of the United States by unlawful means? _____ (a) If so, state the facts: _____

17. Will you bear arms for your country when called upon by it to do so? _____ (a) If you answer no, give reasons: _____

18. Do you believe in free elections and rule by the majority? _____
19. Will you give aid and comfort to the enemies of the United States Government or the government of the State of Alabama? _____

20. Name some of the duties and obligations of citizenship: _____

- (a) Do you regard those duties and obligations as having priority over the duties and obligations you owe to any other secular organization when they are in conflict? _____
21. Give the names and post office addresses of two persons who have present knowledge of your present bona fide residence at the place as stated by you: _____

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OATH

STATE OF ALABAMA _____ COUNTY _____

Before me, _____, a registrar in and for said county and state, personally appeared

_____, an applicant for registration as an elector, who being by me first duly sworn deposes and says: I do solemnly swear (or affirm) that the foregoing answers to the interrogatories are true and correct to the best of my knowledge, information and belief. I do further solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama; that I do not believe in nor am I affiliated with, nor have I been in the past affiliated with any group or party which advocated or advocates the overthrow of the government of the United States or of the State of Alabama by unlawful means.

Sworn to and subscribed before me in the presence of the Board of Registrars this the _____ day of _____, 19____.

 Member of the Board of Registrars for _____ County

SUPPLEMENTAL APPLICATION FOR REGISTRATION, AND OATH

STATE OF ALABAMA _____ COUNTY _____

Before the Board of Registrars in and for said State and County, personally appeared

_____, an applicant for registration who being by me,

(Full name of applicant)

_____, a member of said Board, first duly sworn as follows: "I do solemnly

(Any member present may administer oath)

swear (or affirm) that in the matter of the application of _____ for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God," testified as follows:

My name is _____, and I have heretofore executed the "Application for Registration, Questionnaire and Oath" submitted to me by the above-named Board of Registrars.

In addition to the information given on said "Application for Registration, Questionnaire and Oath," I depose and state as follows:

1. I was previously registered in the following State and County in the years named _____

(If applicant has never been registered in Alabama or any other state, he should so indicate.)

2. I have never been convicted of any offense disqualifying me from registering.

(Board should call applicant's attention to Section 162, Constitution, and Title 17, Section 21, Code of Alabama 1940. If applicant cannot make foregoing statement, facts shall be ascertained and registration refused, unless fully pardoned and right to vote restored.)

3. My present place of employment is _____

4. I know of nothing that would disqualify me from being registered at this time.

REMARKS

(Signed) _____
 (Name of Applicant)

Sworn to and subscribed before me this the _____ day of _____, 19____.

 (Member of County Board of Registrars)

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ACTION OF THE BOARD

STATE OF ALABAMA _____ COUNTY

Before the Board of Registrars in session in and for said State and County personally appeared _____
(Name of Applicant)

who executed the foregoing application in the manner and form therein stated. The Board having further examined said applicant under oath, touching his qualifications under Section 113, Constitution of Alabama, 1901, as amended, and having fully considered the foregoing Application for Registration, Questionnaire, and Oath, and Supplemental Application for Registration, and Oath as executed, adjudge said applicant entitled to be registered and he was duly registered on this the _____ day of _____, 19____, in _____ precinct (or ward) in said county.

(Signed) _____
Chairman(Signed) _____
Member(Signed) _____
Member

Note: The act of actually determining an applicant entitled to be registered is judicial. A majority of the Board must concur. A majority must be present. The power cannot be delegated. Each member present must vote on each application. Not until this is done may a certificate be issued the applicant.

EXAMINATION OF SUPPORTING WITNESS

STATE OF ALABAMA _____ COUNTY

Before the County Board of Registrars in and for said State and County personally appeared

_____,
(Name of Witness)
who being first duly sworn as follows: "I solemnly swear (or affirm) that in the matter of the application of _____ for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God," testifies as follows:

My name is _____, My occupation is _____, I reside at _____
My place of business or employment is at _____
The name of my employer is _____ I am a duly registered, qualified elector in _____
precinct (or ward) in _____ County in the State of Alabama. I have known the applicant _____
(Give Applicant's name) for _____ years (or months). He is a bona fide resident at _____
and to my knowledge has resided thereat for the past _____ years (or months). I know of no reason why he is disqualified from registering under the Constitution and laws of Alabama enacted in pursuance thereof.

Space for further remarks

(Signed) _____

Sworn to and subscribed before me in the presence of the Board of Registrars this the _____ day of _____, 19____.

(Signed) _____
(Member of the Board)

Note: This application blank, when duly executed on the final preparation of the "Form" of persons registered, must be delivered by the Board of Registrars to the Probate Judge of the County, whose duty it is to safely preserve it and all accompanying papers. See Title 41, Section 142, Code of Alabama, 1940.

*209 APPENDIX C

TRANSCRIPT OF PORTION OF TESTIMONY OF MRS. SAMUELLA P. WILLIS, GIVEN JANUARY 9, 1962

'THE COURT: Now, that— that is what I am interested in, right there. Sometime from 1956 to 1960, you testified awhile ago, you became 'more particular.'

'WITNESS: Yes, sir.

'THE COURT: And in what respects did you become 'more particular,' Mrs. Willis?

'WITNESS: Well, some of these things that we have testified about; for instance, number one in the Supplemental Oath, which asked if a person has been registered before, and if they have did they say so.

'THE COURT: Did you start— sometimes during this time did you start to grading more strictly?

'WITNESS: Yes, and that was applied to both, the same thing about this name at the top of the page, and under name of applicant.

'THE COURT: (Nodded to indicate affirmative reply)

'WITNESS: We have accepted many, many applications from both white and Negro that had no name at the top.

'THE COURT: Would you say, then, insofar as grading more strictly, sometime between '56 and '60 you raised your standards to that extent?

'WITNESS: Yes, in several ways

(BY MR. THETFORD):

'Q Mrs. Willis, I am not interrupting you, but those two particular things were done, I believe you testified, while you were off the Board?

'A Yes.

'Q When you left the Board, I am trying to establish a time.

'A Uh, huh.

'Q You left the Board when?

'THE COURT: That is the heart of this case.

'WITNESS: Uh, huh.

'THE COURT: That is the reason I want to question her about it.

'A '59; well, about the last of November of '59.

'Q And the last of November of '59, for example, you were not requiring—

'THE COURT: Let me be fair with you, Mr. Thetford; here, as I understand the Government's case, they come in and say that an overwhelming number of the white people in Montgomery County have been registered; a small percentage of the Negro people have been registered; the Negro people are attempting to register now, and the Board has raised their standards, and that— that is the basic complaint, as I understand it, in this whole lawsuit, and that is the reason I want this— this witness questioned about it.

'Q When— now, when did you return to the Board?

'A In February of 1961.

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'Q February of 1961?

'A '61.

'Q And the old standards had been raised?

'A During the time I was off.

'Q And I believe you also testified that you did not disqualify for failing to sign the oath until when?

'A I think you will find there were a good many in '57.

'Q So you set that date at sometime in '57?

'A At sometime in '57; I might even go a little further; I wouldn't know the date, but in the investigation that was conducted in the fall of '56 there were certain applications that were investigated, and in '57 when it was resolved, that case was resolved, I— I believe that from that time, that about dates the time that we no longer accepted any that had not signed the oath. You will find during—

'Q Your— your testimony, I believe, is that the only changes that you have made in your standards—

*210 'A (Nodded to indicate affirmative reply)

'Q— only changes that you have testified here is that you now require them to put the name of the applicant—

'A Uh, huh.

'Q— you now require them to sign the oath—

'A (Nodded to indicate affirmative reply)

'Q— and you now require them to answer— make an answer to question— is question number one in the supplement?

'A Yes.

'Q And those are the increases in your standards since—

'A I think those are the main increases.

'Q Since 1956?

'A There is another practice that we have discontinued, and that is the writing in of what in the old application was question five.

'Q You have quit writing— quit writing that in?

'A We do not do that any more.

'Q You weren't doing that, except for the precinct number, you weren't doing that for Negroes anyway?

'A Not at that time, no; that was done, and the applicant actually— I doubt that they realized it, because we did that at the time we asked when they were— became a resident of Alabama, when they became a resident of Montgomery, and when they became a resident of the precinct, and we wrote it down at that time, and I suppose the applicants thought it was routine; that was done for all who registered during that time.

'RE CROSS EXAMINATION:

'BY MR. DOAR:

'Q Mrs. Willis—

'A Yes, sir.

'Q— you have also raised your standards about any little error now—

'A Yes, sir.

'Q— on the form so that if there is any date or place of residence, or is any incorrect information or omission in the form it is a ground for rejection?

'A Well, there are some things that we— I don't believe we could register if we didn't have a birth date.

'Q No, but— I know, but I am saying now, your standard now, the standard is—is a perfect application without assistance?

'A That is true.

'Q Right?

'A Yes, sir.

'Q That is true; that includes the information, question one or question two, question four—

'A (Nodded to indicate affirmative reply)

'Q— or the name in question three, and the information—

'A Uh, huh.

'Q— on question three, the Supplemental Oath—

'A (Nodded to indicate affirmative reply)

'Q— all those things now—

'A With the exception of the housewife.

'Q— have to be answered correctly? Pardon?

'A We have not been too strict about a housewife who has never been employed.

'Q I see; that is the only exception?

'A That I know of.

'Q Your answer was yes?

'A Yes, sir.'

APPENDIX D

EXCERPTS FROM TESTIMONY OF WHITE APPLICANT-WITNESSES

Sam Henry Schuffert, a white applicant, testified:

'Q How much education do you have?

'A I didn't finish first grade.

*211 'Q Have you ever tried to register in Montgomery County?

'A Yes, sir.

'Q And how many times?

'A Two different times.

'Q Would you tell me about when the first time was?

'A It has been seven or eight years; I don't recollect.

'Q Just in your own words, tell the court what happened when you went down to register at that time?

'A Well, I— I went in and got a form to fill out, and I tried filling it out for an hour or two, and I couldn't do it, and I turned it back to the desk.

'Q You weren't registered?

'A No, sir.'

'Q And did you go back to the Board of Registrars again and apply to register?

'A Later; yes, sir.

'Q And you remember where that was?

'A Down on Dexter Avenue.

'Q And tell the court in your own words what happened that time when you went to register?

'A My best knowledge I went to Judge Jones' office, and lady went down and got a form and done the writing for me, and I answered the questions.'

'Q And you say she went and got the form for you?

'A Yes, sir.

'Q And she filled out the form for you?

'A Yes, sir.'

Arthur Skelton, white testified:

'Q And what is your education?

'A Went to the seventh grade, promoted out of the seventh into the eighth.

'Q Did you have an occasion to go down and apply to register to vote in the year 1960 in Montgomery County?

'A. Beg your pardon?

'Q Did you go down to register to vote in Montgomery County in 1960?

'A I did.'

'Q You remember how many times you went down?

'A One time.

'Q And you remember— recall whether or not you were registered as a result of your application?

'A Yes, sir; they mailed me a certificate showing it.'

'Q Let me ask you this; after you signed the form and started to go out, tell me whether or not the registrar called you back?

'A He did.

'Q And what did he say to you at that time?

'A He told me to sign that paper if I wanted it to be any good.

'Q And you had, then, not signed in all the places he wanted you to sign?

'A I lacked one place, and that was it.

'Q You remember what place that was at?

'A No, I do not.

'Q Now, Mr. Skelton, I want to show you Exhibit C-5900, and I would like you to look at that, and directing your question— your attention to question five, is any of the handwriting in question five in your handwriting?

'A Yes, sir.

'Q This date, 'August 28, 1925,' that is your handwriting?

'A I don't believe that is.

'Q Just speak up a little louder?

'A Don't look like it.

'Q And the 'May 19, 1958'?

'A That is not mine.

'Q And do you recall whether or not the man there asked you any questions about how long you had lived in the county before you started filling out the form?

***212** 'A No, sir.

'Q Do you know that writing got on there?

'A No, sir.

'Q Is that— how long had you lived in the county?

'A Ever since '54.

'Q Then this statement here, August 28— no, excuse me; you had lived in the county since 1954; is that right?

'A Something like that.

'Q Do you know how the date, 'May 19, 1958,' got on there, when you became a resident of Montgomery County?

'A No, sir.

'Q Does that date, 'May 19, '58,' mean anything to you?

'A No, sir.

'Q And it doesn't look like your handwriting?

'A Sure don't.

'Q Now, down here on questions seven, eight, and nine; are those— is that in your handwriting?

'A Don't look like it.

'Q did you receive any help or instructions how to fill out the form?

'A No.

'Q Did you leave some of the answers blank?

'A I don't remember.

'Q You don't remember whether you did or not?

'A (Shook head to indicate negative reply)

'Q Let me ask you, this on question twenty (a), directing your— to the answer there; is that your writing?

'A I wouldn't say.

'Q You don't know whether it is or not?

'A (Shook head to indicate negative reply)'

Cecil David Boyd, white, testified:

'Q And after you finished with the application, what did you do?

'A I put it in a box there that they had just for those papers.

'Q And did you hear anything further from the board after that?

'A Yes, I did.

'Q What did you hear?

'A I heard that I was to come back and see, there was an error or two in the application that I had filled out.

'Q And did you go back to the Board?

'A I did.

'Q And did you make any corrections on it, on the application?

'A I didn't, myself; no.

'Q Did anyone else?

'A Well, I— there was some man there with a pencil, and showed me one or two places that wasn't filled out correctly.

'Q And did he correct those places?

'A Well, I didn't see him if he— whether he marked them out or not.'

'Q Uh, huh; how about on question thirteen; is that your handwriting?

'A No; no, that is not it.

'Q That is not your handwriting?

'A No.

'Q How about on question twenty (a), that 'Yes' there, is that in your handwriting?

'A Don't think so.

'Q You don't think that is in your—

'A No.

'Q— that is in your handwriting? How about this question on the Supplemental Oath, one, 'I was previously registered in the following state and county. Crenshaw, 1932'?

'A No.

'Q That is not in your hand writing?

'A Not in my handwriting.'

Elmer Rogers, white, testified:

'Q And how many times did you apply to register?

'A Once.

*213 'Q And when you— at the time you applied, the day you applied, did you receive your certificate on that day?

'A Yes, sir.

'Q And prior to the time that you received the certificate, did the Board look over your application?

'A Yes, sir.

'Q And what did they say to you after they looked it over?

'A They told me to— that I would have to sign it.

'Q They looked over the application and then told you?

'A After I— after I finished it.

'Q Then they pointed out to you where you should sign it?

'A Yes, sir.'

Andrew A. Jackson, white, testified:

'Q Now, in filling out this application, did anyone tell you where to sign it?

'A No, sir; nothing except just like going to a bank and making a— they made a little X.

'Q Made a little X?

'A Little teenincey X.

'Q Who did that?

'A Whoever was waiting on me there in the registration office.

'Q The registrar, that was before she signed it, she made a little tiny X where you were supposed to sign?

'A She just made a mark where— a little X where you sign, just like you go in the bank abd borrow money and sign a note, and she handed me the blank, told me, 'There is a table.' I sat down and filled it out, signed it, and handed it back to her.'

William Leroy Ragland, white, testified:

'Q What is your education? How much education have you had?

'A Seventh grade.

'Q What is your present job?

'A Welder.

'Q Did you get any help in finish— filling out this application?

'A No.

'Q Did you— after you filled it, did you take it up to the registrar and hand it to her?

'A Well, she asked me was I through, and I handed it to her, and she didn't—wasn't any office, you know, it was out in the place where there was a bunch of us was registering.

'Q After you handed it to her, did you have any talk with her about the application?

'A (Shook head to indicate negative reply)

'Q Did she— tell me whether or not she looked it over and then told you to go back and do some more on it?

'A Well, I didn't answer all the questions; she said she wouldn't accept it like that, so I finished it.'

Jack McCord, white, testified:

'Q Are you registered to vote?

'A Yes, sir.

'Q How many times did you apply to register?

'A I went only once.

'Q And did you become registered after you applied?

'A Sir?

'Q Did you get registered after the first time?

'A Well, I disrecall just what kind of a— any— any transaction I went through, but I know that I went up to the court house to get—to get registered, and then I got a reply of where I would vote at.

'Q Do you remember filling out an application form?

'A Yes, sir.

'Q When you went in? And did you get an application form from a lady in the room there?

'A Yes, sir.

'Q And did she give you any instructions as to how to fill out the form?

'A Well, I believe that I just taken it, and I might have got some information, but I—I just taken it and sat down, and I filled it in my own handwriting.

*214 'Q Did she explain the questions to you?

'A I asked her a couple of questions.

'Q Did she explain the questions?

'A. She— she answered them; yes, sir.'

1 This Court finds it necessary to reject the oral testimony, in whole or in part, of some of the witnesses, their testimony being in direct conflict and unreconcilable with the truth of the matters concerned— this truth being reflected by the real evidence and the preponderance of the oral evidence from the credible witnesses.

2 The provisions of Alabama law pertinent to this litigation are set out in Appendix A to this opinion.

3 A copy of this questionnaire is attached to this opinion as Appendix B. A revision of this questionnaire was made in 1960; the revised form, however, is identical with the original except the order of the questions is changed.

4 A year-by-year statistical breakdown is as follows:

**ACCEPTED AND REJECTED APPLICATIONS
OF WHITE AND NEGRO APPLICANTS**

January 1, 1956, through May, 1961

	Total Applied		Accepted		Rejected		Per Cent Rejected	
	W	N	W	N	W	N	W	N
Jan. 1, 1956, through	W	1169		1137		32	2.6	

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May, 1956	N	328	90	238	72.6
June, 1956, through	W	1255	1237	18	1.4
May, 1957	N	751	200	551	73.4
June, 1957, through	W	2159	2137	22	1.0
May, 1958	N	977	185	792	81.0
June, 1958, through	W	1533	1482	51	3.3
May, 1959	N	892	189	703	78.8
June, 1959, through	W	1352	1293	59	4.4
June 24, 1960	N	907	225	682	75.2
June 25, 1960 through	W	1400	1282	118	8.4
June 16, 1961	N	667	225	442	66.3
TOTAL.....	W	8868	8568	300	3.4
	N	4522	1114	3408	75.4

- 5 A transcript of a portion of Mrs. Willis's testimony which relates to this point and as given on January 9, 1962, is attached hereto as Appendix C.
- 6 An examination of Appendix B will show that the questionnaire contains 21 questions and statements, some of which require a response to a specific question and some require the filling in of blanks within the question itself. There are at least four questions which require multiple answers, but are in no way subdivided into parts. There are nine places where the name of the applicant is to be filled in—one of which is 'hidden' (Question 3). Certain questions are phrased in legalistic terms (Question 5 which was filed in for whites by the Board), and others (such as Question 19) are grammatically confusing.
- 7 Practically all the defendants' white witnesses (also 14 applications of white applicants not testifying) who were rejected by the Board were rejected after June 1960. Thirty-one out of 34 of these applications were after June 1, 1960.
- 8 Instances of such practice are set out in the form of verbatim testimony of white witnesses. See Appendix D.
- 9 (1) The Macon County case reported as *United States v. State of Alabama*, D.C., 188 F.Supp. 759, and as *United States v. State of Alabama*, 192 F.Supp. 677, 304 F.2d 583 (5th Cir., 1962); affirmed by the Supreme Court of the United States, 80 S.Ct. 145 (1962); and (2) the Bullock County case, Civil Action No. 1677-N, unreported.
- 10 Article VI, Constitution of the United States.

All Citations

212 F.Supp. 193

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EXHIBIT 21

submitted, the legislature has not taken final action approving, disapproving or amending the recommendations of the commission, both houses of the legislature shall as the first order of business on the eleventh legislative day cause a vote to be taken on whether the recommendations of the commission shall be approved, disapproved, or amended. If approved, or amended, the recommendations shall become law as approved or amended. The compensation of a judge shall not be diminished during his official term.

5. Amend section 6.17 (b) of Article VI of the Constitution of 1901, as amended, as follows:

(b) The commission shall be convened permanently with authority to conduct investigations, receive or initiate complaints concerning any judge of a court of the judicial system of this state, excluding judges who are elected on a state-wide basis. The commission shall file a complaint with the court of the judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any canon of judicial ethics, misconduct in office, failure to perform his duties, or (2) to charge that the judge is physically or mentally unable to perform his duties. All proceedings of the commission shall be confidential except the filing of a complaint with the court of the judiciary. The commission shall prosecute the complaints.

6. Article 18 of the Constitution of Alabama of 1901 as amended, is hereby further amended by adding a new section thereto, as follows:

Amendments to this constitution which apply to any political subdivision or subdivisions of the state less than the whole shall be proposed and voted upon in the legislature, and the election on such amendments shall be conducted and the result proclaimed, in all respects, in the manner provided by Section 284 of this constitution, except that in the bill or resolution submitting any such amendment the legislature may direct that the election to be held thereon shall be by the qualified electors of the political subdivision or subdivisions named therein, and that the notice of the election on such amendment shall be published only in the counties or municipalities affected thereby.

Section 2. All officers filling any office by election or appointment under Article 5 of the Constitution of 1901 shall continue the duties thereof, until their offices shall have been abolished or their successors elected and qualified in accordance with this amendment, or law authorized by this amendment. No provision of this amendment, or law authorized by this amendment, shall shorten the term of any person elected to state office prior to the date on which this amendment shall become effective.

Section 3. Except to the extent inconsistent with the provisions of this amendment, all provisions of law and rules of court in force on the effective date of this amendment shall continue in effect until superceded in the manner authorized by the constitution.

Section 4. An election upon the proposed amendment is to be held on the first special, primary or general election after the expiration of three months from final adjournment of the current session of the legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama of 1901, as amended, and Section 17-3-7 of the Code of Alabama, 1975.

Section 5. Notice of the election and of the proposed amendments shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the state. If a newspaper is not published in a county, a copy of the notice shall be posted at the courthouse and at three other places in the county.

And the substitute was adopted.

Yeas 80; Nays 0.

Yeas:

Mr. Speaker, Adams (C), Adams (H), Albright, Amari, Barton, Bedsole, Bennett, Biddle, Cabaniss, Campbell, Carothers, Carter, Cates, Cheatwood, Clark, Cobb, Cooley, Cosby, Daniels, Dixon, Drinkard, Edwards, Ford, Gafford, Gilmer, Goodwin, Greer, Gregg, Grouby, Hall, Hammett, Harper (O), Harper (T), Harrison, Harvey, Hilliard, Hines, Holley, Horn, Howard, Johnson (R. G.), Johnson (Roy), Kelley, Kennedy (C), Kennedy (Y), Laird, Langford, McKee, McMillan, Manley, Minus, Mitchell, Moore, Olive, Owens, Parker, Pegues, Penry, Ray, Reed, Riddick, Sasser, Seibels, Shavers, Smith (C), Smith (J), Smith (M), Starkey, Stewart, Stout, Trammell, Turnham, Venable, Waggoner, Ward, Warren, Whatley, Willis and Wyatt.

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SUBSTITUTE OFFERED

Rep. Zoghby offered the following substitute to the bill, S. 40 as amended and with pending amendments:

A BILL TO BE ENTITLED AN ACT

To amend the Constitution of 1901 by replacing the article on the Executive, Article 5, by replacing the article on Impeachment, Article 7, by replacing the article on Suffrage and Elections, Article 8, by amending Article 6, and by proposing an amendment to eliminate state-wide votes on local issues.

Be It Enacted by the Legislature of Alabama:

Section 1. The following amendment, which replaces articles, 5, 7 and 8 of the Constitution of 1901 and which amends certain other portions of the constitution is proposed and shall become valid as a part of the constitution when approved and proclaimed as prescribed by law.

CONSTITUTIONAL AMENDMENT

1. Article 5, Sections 112 through 138, inclusive, of the Constitution of Alabama of 1901, including amendments 38 and 282 thereto, and all other provisions of the Constitution of 1901 and amendments thereto that conflict with the following article are hereby repealed and in lieu thereof the following article shall be adopted:

ARTICLE V

EXECUTIVE DEPARTMENT

Section 5.01. Executive Power and the Executive Department.

The principal executive power of the state shall be vested in a governor. The executive department shall include a governor, a lieutenant governor,

an attorney general, a state auditor, a secretary of state, a state treasurer, a commissioner of agriculture and industries, and a sheriff for each county.

Section 5.02. Election and Term of Office of Executive Officers.

The governor, lieutenant governor, attorney general, state auditor, secretary of state, state treasurer, and commissioner of agriculture and industries shall be elected by the electors of the state at the same time and places appointed for the election of members of the legislature. They shall hold their respective offices for a term of four years, commencing at twelve o'clock noon on the first Monday after the second Tuesday in January succeeding their election and until their successors shall be elected and qualified. All officers shall be eligible to succeed themselves in office, but no persons elected to any offices enumerated above shall be eligible to succeed themselves for more than one additional elective term.

Section 5.03. Election Returns.

The returns of every election for governor, lieutenant governor, attorney general, state auditor, secretary of state, state treasurer, and commissioner of agriculture and industries shall be sealed and transmitted by the returning officers to the seat of government and directed to the speaker of the house of representatives, who shall open and publish the votes in the manner prescribed by law. The person having the highest number of votes for any one of said offices shall be declared elected; but if two or more shall have the highest and an equal number of votes, the legislature by a majority vote of the total number of the two houses meeting in joint session, shall choose one of said persons without delay. Contested elections shall be determined by both houses in the manner prescribed by law.

Section 5.04. Qualifications of Governor and Lieutenant Governor.

The governor and lieutenant governor shall be at least thirty years of age when elected and shall have been qualified voters and resident citizens in this state for seven years prior to their election.

Section 5.05. Compensation and Place of Residence of Executive Officers.

The governor, lieutenant governor, attorney general, state auditor, secretary of state, state treasurer, and commissioner of agriculture and industries, shall receive compensation to be fixed by law, which shall not be increased or diminished during the term for which they shall have been elected, and shall, except the lieutenant governor, reside in the county of the location of the state capital during the time they continue in office. The compensation of the lieutenant governor shall be the same as that received by the speaker of the house, except while serving as governor, during which time the lieutenant governor's compensation will be the same as that allowed the governor.

Section 5.06. Legislative Responsibilities of Governor.

(a) Special Sessions. The governor may by proclamation on extraordinary occasions convene the legislature at the seat of government or at a different place if the seat of government shall become dangerous, and shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

(b) Messages to the Legislature. The governor shall from time to time give to the legislature information on the state of the government. The governor shall transmit to the legislature a budget setting forth a financial program for the fiscal year which will have begun before the next regular session as prescribed by law. The governor shall also account to the legislature, as may be prescribed by law, for all money received and paid out by the governor or by the governor's order; and at the commencement of each regular session shall present to the legislature estimates of the amount of money required to be raised by taxation for all purposes.

(c) Veto. Every bill passed by the legislature shall before it becomes a law be presented to the governor unless otherwise provided by this constitution. If the legislature is in session, the bill shall become law if the governor signs or fails to veto it within seven calendar days of presentation. If the legislature is prevented from returning by recess, such bill must be returned to the house in which it originated on the first legislative day after the reassembling, otherwise, it shall become law. If the legislature adjourns sine die before presentation or during such seven day period, the bill shall become law only if the governor signs it within twenty calendar days of presentation. When the governor vetoes a bill, the governor shall within seven calendar days of presentation, return it to the secretary or clerk of the house in which the bill originated, unless the legislature shall, by final adjournment, prevent such return. If the bill is returned, it shall be reconsidered, and if a majority of the members elected to each house vote for the passage of the bill, it shall become law.

(d) Executive Amendments. The governor may, within seven calendar days after a bill has been presented to the governor for signature, return such bill to the house in which it originated with recommendations for its amendment; but when return is prevented by recess such bill must be returned to the house in which it originated on the first legislative day after the reassembling, otherwise, it shall become a law. Both houses may adopt but cannot amend such amendment. If both houses approve such amendment, the bill as amended shall become law. If either house refuses to approve such amendment, then either house may reconsider the original bill and repass it by a majority vote. If both houses repass the original bill, it shall become law without the governor's signature. In all cases above set forth; the governor's objections, the names of the members voting for or against the bill, or amendments thereto, shall be entered on the journal.

(e) Appropriation Bills. The governor shall have power to approve or disapprove any item or items of any appropriation bill embracing distinct items, and the part or parts of the bills approved shall be the law, and the item or the items disapproved shall be void, unless the item or items disapproved shall be repassed according to the rules and limitations prescribed for the passage of bills over the executive veto. The governor shall in writing state specifically the item or items disapproved of, setting the same out in full in his message, but in such case the enrolled bill shall not be returned with the governor's objection.

Section 5.07. Executive and Administrative Powers of the Governor.

(a) Execution of Laws. The governor shall be responsible for the faithful execution of the laws.

(b) Information. The governor may require information in writing, under oath, from the officers of the executive department, and all officers and

managers of state institutions, on any subject relating to the duties of their respective offices or the condition, management and expenses of their respective departments or institutions. Any such officer or manager who willfully makes a false report or fails without sufficient excuse to make a required report on demand is guilty of an offense for which he may be removed.

(c) **Executive Reorganization.** Except for organizational arrangements specified in this constitution, the governor may make such changes in the organization of the executive department or in the assignment of functions among its units as he considers necessary for efficient administration. If such changes affect existing statutory law, they shall be set forth in executive orders, which must be submitted to the legislature during a regular or special session, where they may be amended, approved or disapproved, and shall become effective, and shall have the force of law, if approved or amended and approved by a majority of each house. No executive reorganization that changes or applies to statutory law shall be effected until final approval by the enactment of a bill into law. The governor shall not, however, make changes which would become effective later than one hundred and eighty days before the end of such governor's administration. For the purpose of this subsection the term "executive department" shall not include any other constitutional office or any departments, bureaus, and agencies whose director or head is appointed by any other constitutional officer or serves at the governor's pleasure.

(d) **Commander in Chief.** The governor shall be commander in chief of the armed forces of this state, except when they are called into the service of the United States, and may call them out to execute the laws, to preserve order, to provide assistance in the event of public disaster, to suppress insurrection or to repel invasion.

(e) **Power to Fill Vacancies.** The governor shall have power to fill vacancies in all offices of the state for the filling of which the constitution or laws make no other provision. The writ of election shall be called in the manner provided by law.

Section 5.08. Executive Clemency.

The governor shall have the power to grant reprieves and commutations to persons under sentence of death. The legislature may provide for and regulate the administration of pardons, paroles, remission of fines and forfeitures, and may authorize the courts having criminal jurisdiction to suspend sentence and to order probation. A pardon shall relieve from civil and political disabilities unless specifically provided otherwise therein.

Section 5.09. Succession to the Office of Governor.

(a) **Removal, Death or Resignation of Governor.** In case of the governor's removal from office, death, or resignation the lieutenant governor shall become governor.

(b) **Removal, Death or Resignation of Governor and Lieutenant Governor.** If both the governor and the lieutenant governor be removed from office, die or resign, the unexpired terms of the governor and lieutenant governor shall be filled by a special election, except when such unexpired terms are less than one year, in which case a new governor and lieutenant governor shall not be elected until the next regular gubernatorial election. In the event of such vacancy, the office of governor shall be held and administered by the speaker of the house of representatives, the president pro tempore of the senate, attorney general, state auditor, secretary of state or state treasurer, in that order, until the new governor is elected and qualified.

(c) **Vacancies due to Disability or Absence.** When the governor is unable to discharge the duties of his office by reason of physical or mental disability, or when the duties are not being discharged by reason of the governor's absence from the state for twenty successive days, the power and authority of the office shall, until the governor returns to the state or regains mental competence, or relieved from other disability, devolve in the order herein named upon the lieutenant governor, the speaker of the house of representatives, the president pro tempore of the senate, attorney general, state auditor, secretary of state, or state treasurer. If any of the officers in the line of succession be under any of the disabilities herein specified, the office of the governor shall be administered in the order named by such of these officers as may be free from such disability. If the governor's disability or absence does not terminate within ninety successive days, the office of governor shall be vacant as if the governor had died.

(d) **Failure of Governor to Qualify.** If the governor-elect fails to qualify, the lieutenant governor-elect shall qualify and exercise the duties of governor until the governor-elect qualifies. In the event that both the governor-elect and the lieutenant governor-elect fail to qualify, the speaker of the house, the president pro tempore of the senate, the attorney general, state auditor, secretary of state, and state treasurer shall, in the order named, administer the office until the governor-elect or the lieutenant governor-elect qualifies, or until the office of governor has been filled by an election and the newly elected governor has qualified. If both the governor-elect and the lieutenant governor-elect fail to qualify within six months of the beginning of their terms of office, the unexpired term of the governor-elect and the lieutenant governor-elect shall be filled by a special election.

Section 5.10. Procedure for Determination of Incapacity of Governor.

(a) If the governor or acting governor shall appear to be unable to perform the duties of the office because of physical or mental disability or absence from the state, it shall be the duty of the supreme court upon the request in writing by the attorney general, the speaker of the house, the president pro tempore of the senate, or any one of them, not next in succession to the office of governor, to ascertain the truth of the charges. If the governor is adjudged to be unable to perform the duties of the office because of physical or mental disability, or absence from the state, it shall be the duty of the officer next in succession to perform the duties of the office until the disability is removed or until the governor returns to the state. If the incumbent denies that the disability of the governor or other person entitled to administer the office has been removed, the supreme court shall ascertain the truth concerning the same. If the disability has not continued for more than ninety successive days and has been removed, the court shall so decree, and the office shall be restored to such governor. The supreme court shall prescribe the method of taking testimony and the rules of practice in such proceedings.

(b) The physical disability of the governor to perform the duties of the office may also be established by the governor's written declaration to that effect transmitted to the officer next in line of succession and to the attorney general. If the physical disability is removed within ninety successive days, the governor may resume the office by notifying the acting governor and the attorney general. Any question concerning the governor's ability to resume the office shall be decided by the supreme court.

Section 5.11. Compensation of Acting Governor.

The lieutenant governor, speaker of the house, president pro tempore of the senate, attorney general, state auditor, secretary of state or state treasurer, while administering the office of governor, shall receive from the state the same compensation as that prescribed by law for the governor and no other.

Section 5.12. Lieutenant Governor, Attorney General, and Other Officers.

(a) Duties of the Lieutenant Governor. The lieutenant governor shall be ex officio president of the senate but shall have no right to vote except in the case of a tie.

(b) Qualifications of Attorney General. The attorney general shall be at least thirty years of age. Such person shall have been a qualified voter of the state of Alabama, and licensed to practice law for three years in this state, and a resident citizen thereof, for five years prior to election.

(c) The Secretary of State. The secretary of state shall be the custodian of the great seal of the state, and shall authenticate therewith all official acts of the governor, except the governor's approval of laws, resolutions, appointments to office, and administrative orders. The Secretary of State shall keep a register of the official acts of the governor, and when necessary, shall attest them, and lay copies of same together with copies of all papers relative thereto, before either house of the legislature, when required to do so, and shall perform such other duties as may be prescribed by law.

(d) State Treasurer and Auditor. The state treasurer and state auditor shall, every year, at a time fixed by the legislature make a full and complete report to the governor, showing the receipts and disbursements of every character, all claims audited and paid out, by items, and all taxes and revenues collected and paid into the treasury, and the sources thereof. They shall make reports upon any matters pertaining to their offices if required by the governor or the legislature.

(e) Removal for Insanity or Incapacity to Perform Duties. In case the lieutenant governor, attorney general, secretary of state, state auditor, state treasurer, or commissioner of agriculture and industries shall appear to be unable to perform the duties of the offices they hold because of physical or mental disability, such inability to perform such duties shall be ascertained by the supreme court upon suggestion of the governor, and if found to be insane or unable to perform such duties because of physical disability, the office shall be vacant.

Section 5.13. Election and Term of Office of Sheriffs; Sheriff Eligible to Succeed self; Impeachment of Sheriff; Effect of Impeachment of Sheriff.

A sheriff shall be elected in each county by the qualified electors thereof who shall hold office for a term of four years unless sooner removed, and shall be eligible to hold such office for successive terms. Whenever any prisoner is taken from jail, or from the custody of any sheriff or deputy, and put to death, or suffers, grievous bodily harm, owing to the neglect, connivance, cowardice, or other grave fault of the sheriff, such sheriff may be impeached, under this constitution. If the sheriff be impeached, and thereupon convicted, such person shall not be eligible to hold any office in this state during the time for which such person had been elected or appointed to serve as sheriff.

Section 5.14. State Seal.

There shall be a seal of the state, which shall be used officially by the governor, and the seal now in use shall continue to be used until another shall have been adopted by the legislature. The seal shall be called, "The Great Seal of the State of Alabama".

2. Article 7, Sections 173 through 176 inclusive, of the Constitution of Alabama of 1901, and all provisions of the Constitution of 1901 and amendments thereto that conflict with the following article are hereby repealed and in lieu thereof the following article shall be adopted.:

ARTICLE VII

IMPEACHMENTS

Section 7.01. Impeachment of State Officers.

(a) The governor, or acting governor, and all state officers, and judges, who are elected on a statewide basis, shall be subject to impeachment by the house of representatives for willful neglect of duty, corruption in office, or the commission of any felony offense while in office.

(b) Unless otherwise provided by law, impeachment by the house of representatives shall be tried by the senate; sitting as a court of impeachment. When sitting as a court of impeachment, the senate shall have such judicial power reasonably necessary to carry out this purpose, including the power of subpoena. No person shall be convicted by the senate without the concurrence of at least two-thirds of the members present.

(c) When the governor, lieutenant governor, or acting governor is impeached, the chief justice, or one of the associate justices of the supreme court, to be selected by it, shall preside over the senate when sitting to try an impeached officer.

(d) If at any time when the legislature is not in session, a majority of all the members elected to the house of representatives shall certify in writing to the speaker of the house their desire to meet to consider the impeachment of the governor or acting governor, it shall be the duty of the speaker of the house to summon the members of the house to assemble at the capitol to consider the impeachment of the governor or acting governor. If the house of representatives prefers articles of impeachment, the lieutenant governor or president pro tempore of the senate, if the lieutenant governor has been impeached by the house, shall summon the members of the senate to assemble at the capitol for the purpose of trying the impeached officer.

(e) An officer impeached by the house of representatives shall be disqualified from performing any official duties and receiving any compensation until such officer has been tried and acquitted; and shall be removed from office upon conviction.

Section 7.02. District Attorneys and sheriffs.

District attorneys and sheriffs may be removed from office by the supreme court for any of the causes specified in Section 7.01 (a), under such regulations as may be prescribed by law.

Section 7.03. County and City Officers.

All county officers and officers of incorporated cities and towns may be removed from office for any of the causes specified in section 7.01 (a) of this article by a court having jurisdiction to try felony cases in the county or

district in which such officers hold their office. The legislature shall provide by law the method of proceeding under this section, provided that the right of trial by jury and appeal in such cases shall be secured. This section shall not apply to the judge of any court who may be removed by procedures provided by the judicial article.

Section 7.04. Penalties Upon Conviction.

Any person convicted in cases arising under the three preceding sections shall be removed from office and shall be disqualified from holding any office under the state during the term for which such person was elected or appointed. But the person convicted, or acquitted, shall be subject to criminal punishment according to law.

3. Article 8, Sections 177 through 196, inclusive, of the Constitution of Alabama of 1901, and all other provisions of the Constitution of 1901 and amendments thereto, that conflict with the following article are hereby repealed and in lieu thereof the following article shall be adopted:

ARTICLE VIII

SUFFRAGE AND ELECTIONS

Sections 8.01. Qualifications for Voting.

Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of residence.

Section 8.02. Disqualifications.

No person convicted of a felony or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

Section 8.03. Regulation of Elections.

The legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.

4. Amend section 6.09 (d) of Article VI of the Constitution of 1901, as amended, as follows:

(d) The commission may submit a report to the legislature at any time within the first five calendar days of any session. If before the end of the tenth legislative day of the session to which the report is submitted, the legislature has not taken final action approving, disapproving or amending the recommendation of the commission, both houses of the legislature shall as the first order of business on the eleventh legislative day cause a vote to be taken on whether the recommendations of the commission shall be approved, disapproved, or amended. If approved, or amended, the recommendations shall become law as approved or amended. The compensation of a judge shall not be diminished during the judge's term.

5. Amend section 6.17 (b) of Article VI of the Constitution of 1901, as amended, as follows:

(b) The commission shall be convened permanently with authority to conduct investigations, receive or initiate complaints concerning any judge of a court of the judicial system of this state, excluding judges who are elected on

a state-wide basis. The commission shall file a complaint with the court of the judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any canon of judicial ethics, misconduct in office, failure to perform duties, or (2) to charge that the judge is physically or mentally unable to perform the duties of said office. All proceedings of the commission shall be confidential, except the filing of a complaint with the court of the judiciary. The commission shall prosecute the complaints.

6. Article 18 of the Constitution of Alabama of 1901 as amended, is hereby further amended by adding a new section thereto, as follows:

Amendments to this constitution which apply to any political subdivision or subdivisions of the state less than the whole shall be proposed and voted upon in the legislature, and the election on such amendments shall be conducted and the result proclaimed, in all respects, in the manner provided by Section 284 of this constitution, except that in the bill or resolution submitting any such amendment the legislature may direct that the election to be held thereon shall be by the qualified electors of the political subdivision or subdivisions named therein, and that the notice of the election on such amendment shall be published only in the counties or municipalities affected thereby.

Section 2. All officers filling any office by election or appointment under Article 5 of the Constitution of 1901 shall continue the duties thereof, until their offices shall have been abolished or their successors elected and qualified in accordance with this amendment, or law authorized by this amendment. No provision of this amendment, or law authorized by this amendment, shall shorten the term of any person elected to state office prior to the date on which this amendment shall become effective.

Section 3. Except to the extent inconsistent with the provisions of this amendment, all provisions of law and rules of court in force on the effective date of this amendment shall continue in effect until superceded in the manner authorized by the constitution.

Section 4. An election upon the proposed amendment is to be held on the first special, primary or general election after the expiration of three months from final adjournment of the current session of the legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama of 1901, as amended, and Section 17-3-7 of the Code of Alabama, 1975.

Section 5. Notice of the election and of the proposed amendments shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the state. If a newspaper is not published in a county, a copy of the notice shall be posted at the courthouse and at three other places in the county.

SUBSTITUTE ADOPTED

And the substitute was adopted.

Yeas 88; Nays 0.

Yeas:

Mr. Speaker, Adams (H), Amari, Barton, Bedsole, Bennett, Biddle, Blake, Bowling, Brakefield, Buskey, Cabaniss, Campbell, Carothers, Carter, Cates, Cheatwood, Cobb, Coburn, Cooley, Crow, Dial, Dixon, Drinkard, Edwards,

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JOURNAL OF THE HOUSE, 1979
30th Day

Ford, Gafford, Gilmer, Goodwin, Greer, Gregg, Grouby, Hall, Hammett, Harper (O), Harrison, Harvey, Hilliard, Hines, Holley, Horn, Howard, Jackson, Johnson (R. G.), Johnson (Roy), Kelley, Kennedy (C), Laird, Langford, Letson, McKee, McMillan, Manley, Minus, Mitchell, Moore, Naramore, Olive, Owens, Parker, Patton, Payne Pegues, Penry, Ray, Reed, Riddick, Sasser, Seibels, Shavers, Shoemaker, Smith (C), Smith (J), Starkey, Stewart, Stout, Trammell, Tucker, Turner, Turnham, Venable, Waggoner, Ward, Warren, Whatley, Williams, Willis and Wyatt.

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MESSAGE FROM THE SENATE

Mr. Speaker:

The Senate has concurred in and adopted the following House Joint Resolution and returns same herewith to the House:

H. J. R. 315. ESTABLISHING JOINT INTERIM COMMITTEE ON ELECTRICITY.

McDOWELL LEE,
Secretary.

MESSAGE FROM THE SENATE

Mr. Speaker:

The Senate has concurred in and adopted the Report of the Committee on Conference appointed to reconcile the disagreement of the two Houses on the Senate amendment to the Bill:

H. 753. To provide for two clerks in the office of the tax assessor of Bullock County, Alabama; and to fix the method and basis of their employment and compensation.

And said Bill, H. B. 753, together with the Conference Report, is herewith returned to the House.

McDOWELL LEE,
Secretary.

MESSAGE FROM THE SENATE

Mr. Speaker:

The Senate has concurred in and adopted the House amendment to the following Senate Bills:

S. 557. To provide for the crime of sexual abuse in the first degree; and to provide penalties.

Also:

S. 45. To amend Sections 2-15-40, 2-15-60 and 2-15-130, Code of Alabama 1975 so as to further define the term "livestock."

Also:

S. 41. Relating to cotton gins and the regulations thereof. To amend Section 2-19-61 of Title 2 of the Code of Alabama 1975 relating to the annual permit fee required for the operation of a cotton gin and prescribing the amount of such permit fee.

McDOWELL LEE,
Secretary.

REGULAR SESSION
30th Day

2327

MESSAGE FROM THE SENATE

Mr. Speaker:

The Senate has concurred in and adopted the Executive amendment to the Bill:

H. 3. To amend Section 37-1-3, Code of Alabama 1975, so as to provide that the members of the Public Service Commission shall take office the day after the general election at which they were elected.

by a majority of the whole number elected to the Senate, said vote being Yeas 29, Nays 0.

And said Bill, H. B. 3, together with the Executive amendment, is herewith returned to the House.

McDOWELL LEE,
Secretary.

MESSAGE FROM THE SENATE

Mr. Speaker:

The Senate has acceded to the request of the House for a Committee on Conference on the disagreement of the two Houses on the Senate amendment to the House Bill:

H. 378. To amend the Code of Alabama 1975, § 9-11-53, subsection (a) so as to increase the cost of resident fishing licenses, and restricting the hook and line license to the county in which the licensee resides.

And the President and Presiding Officer of the Senate has appointed as Committee on part of the Senate Messrs. Kirkland, Mitchem, and Miller.

McDOWELL LEE,
Secretary.

S. 40 RESUMED

AMENDMENT OFFERED

Rep. Cates offered the following amendment No. 1 to the bill, S. 40 as amended:

Amend Substitute to S. B. 40 as follows:

On page six, Section 5.07 (d), in line one, after the word "called" add the words: or ordered

AMENDMENT ADOPTED

And the amendment was adopted.

Yeas 83; Nays 0.

Yeas:

Mr. Speaker, Adams (C), Adams (H), Amari, Barton, Bennett, Biddle, Blake, Bowling, Brakefield, Buskey, Cabaniss, Campbell, Carothers, Carter, Cates, Cheatwood, Cobb, Coburn, Cosby, Crow, Daniels, Dial, Dixon, Edwards, Gafford, Goodwin, Greer, Gregg, Grimsley, Grouby, Hall, Hammett, Harper (O), Harvey, Hines, Holley, Horn, Howard, Johnson (R. G.),

EXHIBIT 22

P 063 841 232

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

THE ATTORNEY GENERAL



JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

April 16, 1996

ision

stice

20035-6128

RE: Submission under
Section 5 of the
Voting Rights Act of
1965

Dear Sirs:

As required by Section 5 of the Voting Rights Act of 1965, I am enclosing for the approval of the Justice Department Act No. 95-443 of the 1995 Regular Session of the Legislature of Alabama. Act No. 95-443 provides for a proposed constitutional amendment to repeal and replace Article VIII of the Constitution of Alabama 1901 regarding voting and suffrage. It was enacted into law on July 28, 1995.

In compliance with Section 51:27 of the Procedures For Submission under Section 5 of the Voting Rights Act, the following information is submitted:

- a. A copy of Act No. 95-443 is enclosed (Exhibit A).
- b. Act No. 95-443 proposes a constitutional amendment to repeal and replace the present Article VIII of the State Constitution. (Exhibit B) The present Article VIII is antiquated and has been overruled and rendered ineffective by the passage of federal laws and by court decisions. The proposed amendment sets out procedures already in place by federal law. It authorizes the State Legislature to provide procedures for voting and voter registration. The proposed amendment will be voted on and adopted as other proposed statewide amendments.

PS Form 3800, June 1985

Postmark or Date
Oct 95-443

Civil Rights Division
Voting Section
Page 2

- c. Person making the submission - Lynda Knight Oswald, Assistant Attorney General, State of Alabama, Alabama State House, 11 South Union Street, Montgomery, AL 36130, telephone 334/242-7300; also contact Honorable Jack B. Venable, Member, House of Representatives, District 31, P. O. Box 736, Tallassee, Ala. 36078, telephone 334/283-6568 or 334/242-7770.
- d. Submitting Authority - Attorney General, State of Alabama. Jurisdiction responsible for change - state.
- e. Submitting authority is located in Montgomery, Alabama.
- f. Body responsible for change - State Legislature. Mode of change - proposed constitutional amendment.
- g. State legislature provides for the proposed constitutional amendments and election and voting procedures.
- h. Date adopted - July 28, 1995.
- i. Effective upon approval by the voters and approval by the Justice Department.
- j. Change has not been enforced.
- k. Change affects the entire State of Alabama.
- l. Change was made because the present Article VIII of the Constitution is ineffective and out-of-date.
- m. Effect on minority groups - None.
- n. Past or pending litigation - None.
- o. Not applicable.

Civil Rights Division
Voting Section
Page 3

- p. Minority contacts: None provided.
Representative Venable stated that he did not recall any negative votes when the amendment was proposed in the Legislature.

For further information, contact Representative Venable.

Sincerely,

JEFF SESSIONS
Attorney General
By:

LYNDA K. OSWALD
Assistant Attorney General

JS/LKO/jho

cc: Honorable Jack B. Venable

Enclosures
J/OW

EXHIBIT A

1

Each Probate Judge, Sheriff, District Court Clerk, the Clerk and Register of the Circuit Court, County Commission Chairman and Municipal Clerk is required by law to preserve this slip or pamphlet in a book kept in his office until the Act is published in permanent form.

ALABAMA LAW

(Regular Session, 1995)

Act No. 95-443

H. 38 - Rep. Venable

AN ACT

To replace the language in Article VIII of the Constitution of Alabama of 1901 by repealing the existing Article VIII and proposing a new Article VIII; to provide eligibility requirements for voting; and to provide that the Legislature would, by statute, provide for registration to vote, secrecy in voting, the administration of elections, and the nomination of candidates.

Be It Enacted by the Legislature of Alabama:

Section 1. The following amendment to the Constitution of Alabama of 1901, as amended, is proposed and shall become valid as a part thereof when approved by a majority of the qualified electors voting thereon and in accordance with Sections 284, 285, and 287 of the Constitution of Alabama of 1901, as amended:

PROPOSED AMENDMENT

Article VIII of the Constitution of Alabama of 1901 is hereby repealed and in lieu thereof the following article shall be adopted.

ARTICLE VIII

Suffrage and Elections

(a) Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence. The Legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting. The Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.

(b) No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

(c) The Legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.

Section 2. An election upon the proposed amendment shall be held in accordance with Sections 284 and 285 of the Constitution of Alabama of 1901, as amended, and the general election laws of this state.

Section 3. The appropriate election official shall assign a ballot number for the proposed constitutional amendment on the election ballot and shall set forth the following description of the substance or subject matter of the proposed constitutional amendment:

"Proposing an amendment of the Constitution of Alabama of 1901, repealing Article VIII, relating to suffrage and elections. The amendment would repeal the existing Article VIII, and provide that, in accordance with constitutional requirements, suffrage would extend to residents who are citizens, 18 years of age or older who have not been convicted of a felony involving moral turpitude. This amendment would further provide that the Legislature would provide for certain voting procedures by statute.

(Proposed by Act _____)"

This description shall be followed by the following language:

"Yes () No ()."

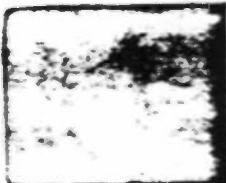
Passed the House May 4, 1995

Passed the Senate July 26, 1995

I hereby certify that the foregoing copy of an Act of the Legislature of Alabama has been compared with the enrolled Act and it is a true and correct copy thereof.

Given under my hand this 28th day of July, 1995.

GREG PAPPAS
Clerk of the House



Art. VII, § 175

SUFFRAGE AND ELECTIONS

Art. VIII, § 177

Collateral references. — 16A C.J.S., 63 Am. Jur. 2d, Public Officers and Constitutional Law, § 612. 48 C.J.S., Judges, Employees, §§ 171-176. §§ 27, 42, 63, 67 C.J.S., Officers, § 68.

Sec. 176. Limitation on impeachment penalties; accused person liable to indictment and punishment.

The penalties in cases arising under the three preceding sections shall not extend beyond removal from office, and disqualifications from holding office, under the authority of this state, for the term for which the officer was elected or appointed; but the accused shall be liable to indictment and punishment as prescribed by law.

Judicial construction of this section held approved by readoption of section. State ex rel. Knight v. DeGraffenried, 226 Ala. 169, 146 So. 531 (1933).

Impeachment proceeding is criminal prosecution in which defendant has certain constitutional rights. State ex rel. Knight v. DeGraffenried, 226 Ala. 169, 146 So. 531 (1933).

Statute punishing misconduct of officers cumulative. — In view of this section, § 36-10-14 punishing misconduct of public officers, is cumulative to impeachment under § 175. State v. Human, 38 Ala. App. 642, 92 So. 2d 51 (1957).

Collateral references. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 171-176.

ARTICLE VIII.

SUFFRAGE AND ELECTIONS.

Sec. 177. Age and citizenship qualifications of electors.

Every male citizen of this state who is a citizen of the United States, and every male resident of foreign birth, who, before the ratification of this Constitution, shall have legally declared his intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people; provided, that all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens.

Cross references. — As to registration of certain electors by mail, see Amendment Nos. 285 and 322. As to constitutional protection of suffrage, see § 33.

Former provision. — Under the Constitution of 1819 every white male person over the age of 21 years, who was a citizen of the United States and who had resided in the state one year before the election, and three months within the county or town, was a qualified elector. State ex rel. Porter v. Crook, 126 Ala. 600, 28 So. 745 (1900).

Women may now vote by virtue of nineteenth amendment. — The nineteenth amendment to the U.S. Constitution, by its own

force and effect, strikes from this section the word "male," as used in defining who are or may become electors, as well as where used in other parts of our organic or statutory laws when used in connection with the right and qualification to vote, and also strikes therefrom the use of the masculine pronoun wherever it appears, so as to make the same include and applicable to both sexes. Graves v. Eubank, 205 Ala. 174, 87 So. 587 (1921).

Election laws apply only to general elections. — General election laws do not apply to elections other than for election of officers, not to elections to change county seats, etc.

Art. VIII, § 178

CONSTITUTION OF ALABAMA OF 1901

Art. VIII, § 178

Leigh v. State, 69 Ala. 261 (1881); *Gandy v. State*, 82 Ala. 61, 2 So. 465 (1887); *State ex rel. Porter v. Crook*, 126 Ala. 600, 28 So. 745 (1900).

Special election valid if no constitutional inhibition. — An election may be a legal one under a special law, if there is no constitutional inhibition against it, although it is not such an election as is contemplated in the Constitution. *State ex rel. Porter v. Crook*, 126 Ala. 600, 28 So. 745 (1900).

Provision for referendum is valid. — The legislature may pass a law to become valid only after an approval by a majority of the people ratifying it. *Ex parte Hill*, 40 Ala. 121 (1866); *State ex rel. Porter v. Crook*, 126 Ala. 600, 28 So. 745 (1900).

Method of voting approved. — An act providing for amendment to Constitution, making the failure of voter to erase printed matter on ticket an affirmative vote for the amendment is valid. *May & Thomas Hdwe. Co. v. Mayor, etc., of Birmingham*, 123 Ala. 306, 26 So. 537 (1899).

Sec. 178. Residency, registration and poll tax requirements for electors.

To entitle a person to vote at any election by the people, he shall have resided in the state at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the year nineteen hundred and one, and for each subsequent year; provided, that any elector who, within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal.

Amendment. — This section has been amended by Amendment Nos. 96 and 207.

Cross references. — See the notes under § 177.

As to amount, levy and collection of poll tax, see § 194. As to exemptions from poll tax, see Amendment Nos. 7, 10, 14, 49, 90, 109. As to registration of certain electors by mail, see Amendment Nos. 285 and 322.

Since nineteenth amendment, women may vote. — The nineteenth amendment to the U.S. Constitution prohibits a discrimination against women by this section and § 194 of our Constitution, and has the same effect upon these provisions as to the elimination of the female sex as when used in § 177 and other provisions. *Graves v. Eubank*, 205 Ala. 174, 87 So. 587 (1921).

Cited in *United States v. Alabama*, 192 F. Supp. 677 (M.D. Ala. 1961), vacated and remanded, 362 U.S. 602, 80 S. Ct. 924, 4 L. Ed. 2d 982 (1960); *United States v. Penton*, 212 F. Supp. 193 (M.D. Ala. 1962); *White v. Frink*, 274 Ala. 49, 145 So. 2d 435 (1962); *United States v. Atkins*, 323 F.2d 733 (5th Cir. 1963); *United States v. Parker*, 236 F. Supp. 511 (M.D. Ala. 1964); *United States v. Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966).

Collateral references. — 29 C.J.S., Elections, §§ 9-12.

25 Am. Jur. 2d, Elections, §§ 52-115.

Constitutionality of statutes in relation to registration before voting at election or primary. 91 ALR 349.

Governing law as to existence or character of offense for which one has been convicted in a federal court, or court of another state, as bearing upon the disqualification to vote. 175 ALR 784.

This section is mandatory and any vote cast by one not qualified hereunder is an illegal vote. *Ex parte Bullen*, 236 Ala. 56, 181 So. 498 (1938).

Except as to duties of election officials. — The rule that mandatory provisions of election law are generally to be construed as only directory, in proceedings attacking the election after it is held, is applicable to provisions relating to the duties and acts of election officials, but not to the qualifications of electors. *Ex parte Bullen*, 236 Ala. 56, 181 So. 498 (1938).

A voter must be domiciled in state, county and precinct. — Under this section the requirements that: "He shall have resided in the state at least two years [now one year], in the county one year [now six months], and in the

Art. VIII,

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Art. VIII, § 178

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Art. VIII, § 179

precinct or ward three months, immediately
 preceding the election at which he offers to
 vote," are used in the sense that he must be a
 domiciliary of the state, county and precinct or
 ward, at the time he offers to vote, except as
 provided in this section. Ex parte Bullen, 236
 Ala. 56, 181 So. 498 (1938).

**And right to vote is forfeited by change of
 domicile.** — A voter who has acquired a legal
 residence, has been duly registered as a voter of
 the county and precinct or ward, may retain such
 residence, for election purposes, until he has
 abandoned and removed therefrom with intent
 to become a resident elsewhere. Wilkerson v.
 Lee, 236 Ala. 104, 181 So. 296 (1938).

But not by temporary absence. — Temporary
 absence from one's residence for purposes of his
 employment and the like, without intent to
 abandon the home town and acquire a domicile
 elsewhere permanently, or for an indefinite
 time, does not forfeit one's right to vote at place
 of residence. Wilkerson v. Lee, 236 Ala. 104, 181
 So. 296 (1938).

**School teacher was entitled to vote in
 Columbia.** — A public school teacher who
 moved his family into Columbia, taught there
 two years, registered as a voter and paid poll
 tax, went to another town for vacation
 employment, then took employment as teacher
 in another county, removing his family there a
 few weeks before municipal election in
 Columbia, with no manifestation of intent to
 become an established resident in the town to
 which he removed, did not forfeit his right to
 claim Columbia as his residence and cast his vote
 in the election. Wilkerson v. Lee, 236 Ala. 104,
 181 So. 296 (1938).

Husband's domicile is domicile of wife. —
 When a woman marries and enters into the
 family relation at the domicile of the husband,
 husband's domicile becomes domicile of the wife,
 as respects wife's voting rights, and the rule is
 not altered by the federal constitutional
 amendment giving women right of suffrage.
 Wilkerson v. Lee, 236 Ala. 104, 181 So. 296
 (1938).

**Unless at time of marriage, the husband has
 merely a temporary abode in the county where
 spouses live, and is a resident and qualified
 voter of another county, and spouses establish
 no family residence facto et animo at place of
 temporary abode prior to date of election in place
 of wife's former domicile, wife would still be a**

Sec. 179. Method of voting.

All elections by the people shall be by ballot, and all elections by persons in
 a representative capacity shall be viva voce.

SUFFRAGE AND ELECTIONS

Art. VIII, § 179

legal voter in her former domicile. Wilkerson v.
 Lee, 236 Ala. 104, 181 So. 296 (1938).

Woman was entitled to vote in Columbia. —
 Where a woman who was domiciled, registered,
 and paid poll tax in town of Columbia for year
 of municipal election was married a few months
 before election and thereafter lived with
 husband in another county temporarily, such
 other county not being husband's domicile,
 woman was entitled to vote in municipal election
 of Columbia. Wilkerson v. Lee, 236 Ala. 104, 181
 So. 296 (1938).

This section applies to municipal elections.
 — It must be noted that this section deals with
 the right to vote in any election and recognizes
 a distinction between "wards and precincts,"
 thus applying to municipal as well as other
 elections. Huey v. Etheridge, 234 Ala. 264, 175
 So. 268 (1937).

**And is applicable to elections for city
 commissioners.** — This section and statutory
 provisions governing residence of electors and
 place of voting do not conflict with statutes
 governing commission form of city government,
 and hence are applicable to elections of city
 commissioners. Ex parte Bullen, 236 Ala. 56, 181
 So. 498 (1938).

**One not residing within corporate limits of
 town for three months next preceding his
 election as mayor thereof was ineligible for
 such office.** Huey v. Etheridge, 234 Ala. 264, 175
 So. 268 (1937).

Cited in Frost v. State ex rel. Clements, 153
 Ala. 654, 45 So. 203 (1907); Mitchell v. Kinney,
 242 Ala. 196, 5 So. 2d 788 (1942); Davis v. Schnell,
 81 F. Supp. 872 (S.D. Ala.), aff'd, 336 U.S. 933,
 69 S. Ct. 749, 93 L. Ed. 1093 (1949).

Collateral references. — 29 C.J.S., Elections,
 §§ 14-35.

25 Am. Jur. 2d, Elections, §§ 52-115.
**Constitutionality of statutes in relation to
 registration before voting at election or primary.**
 91 ALR 349.

**Constitutionality, construction, and
 application of constitutional or statutory
 provision which makes payment of poll tax
 condition of right to vote.** 139 ALR 561.

**State voting rights of residents of military
 establishments.** 34 ALR2d 1193.

**Residence or domicile of student or teacher for
 purpose of voting.** 98 ALR2d 488.

Residence of students for voting purposes. 44
 ALR3d 797.

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Cross references. — As to use of voting machines, see Amendment No. 41. As to authority of counties to issue bonds for purpose providing voting machines, see Amendment No. 200.

This section is inapplicable to juvenile court commission's proceedings in appointing judge of such court. *State ex rel. Coffin v. Hamilton*, 225 Ala. 79, 142 So. 71 (1932).

Cited in *Ex parte Johnson*, 203 Ala. 579, 84 So. 803 (1919).

Collateral references. — 29 C.J.S., Elections, §§ 149-189.

26 Am. Jur. 2d, Elections, §§ 202-224, 234-276.

Sec. 180. Persons qualified to register as electors — Prior to December 20, 1902.

The following male citizens of this state, who are citizens of the United States, and every male resident of foreign birth who, before the ratification of this Constitution, shall have legally declared his intention to become a citizen of the United States, and who shall not have had an opportunity to perfect his citizenship prior to the twentieth day of December, nineteen hundred and two, twenty-one years old or upwards, who, if their place of residence shall remain unchanged, will have, at the date of the next general election the qualifications as to residence prescribed in section 178 of this Constitution, and who are not disqualified under section 182 of this Constitution, shall, upon application, be entitled to register as electors prior to the twentieth day of December, nineteen hundred and two, namely:

First. — All who have honorably served in the land or naval forces of the United States in the war of 1812, or in the war with Mexico, or in any war with the Indians, or in the war between the states, or in the war with Spain, or who honorably served in the land or naval forces of the Confederate States, or of the State of Alabama in the war between the states; or,

Second. — The lawful descendants of persons who honorably served in the land or naval forces of the United States in the war of the American Revolution, or in the war of 1812, or in the war with Mexico, or in any war with the Indians, or in the war between the states, or in the land or naval forces of the Confederate States, or of the State of Alabama in the war between the states; or,

Third. — All persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government.

Cross references. — See notes under § 177. As to present provisions as to qualifications and registration of electors, see Amendment No. 223.

Registrars have wide discretion. — It is apparent that the third subdivision of this section, permitting the registration of electors before 1903, of "all persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government," opened a wide door to the exercise of discretionary power by the registrars. *Giles v. Teasley*, 193 U.S. 146, 24 S. Ct. 359, 48 L. Ed. 655 (1904).

Thus, a circuit court of the United States in Alabama has not jurisdiction of an action brought by a colored man, resident in Alabama, on behalf of himself and other negroes to compel the board of registrars to enroll their names upon the voting lists of the county in which they reside, wherein §§ 180-186 of this article were alleged to be contrary to the Constitution of the United States. *Giles v. Harris*, 189 U.S. 475, 23 S. Ct. 639, 47 L. Ed. 909 (1903).

Collateral references. — 25 Am. Jur. 2d, Elections, §§ 52-115.

Art. VII

Sec. 18

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Art. VIII, § 180

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Art. VIII, § 181

SUFFRAGE AND ELECTIONS

Art. VIII, § 182

Sec. 181. Same—After January 1, 1903.

After the first day of January, nineteen hundred and three, the following persons, and no others, who, if their place of residence shall remain unchanged, will have, at the date of the next general election, the qualifications as to residence prescribed in section 178 of this article, shall be qualified to register as electors; provided, they shall not be disqualified under section 182 of this Constitution.

First.—Those who can read and write any article of the Constitution of the United States in the English language, and who are physically unable to work; and those who can read and write any article of the Constitution of the United States in the English language, and who have worked or been regularly engaged in some lawful employment, business, or occupation, trade or calling, for the greater part of the twelve months next preceding the time they offer to register; and those who are unable to read and write, if such inability is due solely to physical disability; or,

Second.—The owner in good faith in his own right, or the husband of a woman who is the owner in good faith, in her own right, of forty acres of land situate in this state, upon which they reside; or the owner in good faith in his own right, or the husband of any woman who is the owner in good faith, in her own right, of real estate situate in this state, assessed for taxation at the value of three hundred dollars or more, or the owner in good faith, in his own right, or the husband of a woman who is the owner in good faith, in her own right, of personal property in this state assessed for taxation at three hundred dollars or more; provided, that the taxes due upon such real or personal property for the year next preceding the year in which he offers to register shall have been paid, unless the assessment shall have been legally contested and is undetermined.

Repeal. — This section has been repealed by Amendment No. 223. Prior to its repeal, it was amended by Amendment Nos. 55 and 91. For present provisions as to qualifications and registration of electors, see Amendment No. 223.

Cross reference. — As to registration of certain electors by mail, see Amendment Nos. 285 and 322.

Sec. 182. Certain persons disqualified from registering and voting.

The following persons shall be disqualified both from registering, and from voting, namely:

All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any

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Art. VIII, § 182

infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector.

This section is not a violation of federal Constitution. — This provision, requiring a conviction in the due course of judicial proceedings before disfranchisement, is neither an ex post facto law, nor a provision in the nature of a bill of attainder, within the meaning of the federal Constitution. *Washington v. State*, 75 Ala. 582 (1884).

It includes both grand and petit larceny. — The grade of larceny, whether grand or petit, is immaterial, as this section has been construed to embrace both classes of the offense, a conviction of either operating as a disfranchisement and disqualification of every voter coming within its provisions. *Anderson v. State*, 72 Ala. 187 (1882); *Washington v. State*, 75 Ala. 582 (1884).

And it is no defense to the charge of illegal voting that the defendant had forgotten the facts of his conviction of petit larceny, which disqualified him to exercise the right of an elector, or that he may have been advised by friends or legal counsel that there was no record of the conviction upon the court dockets, and that he voted under this advice, honestly believing that he had a lawful right to vote. *Gandy v. State*, 82 Ala. 61, 2 So. 465 (1887); *Gandy v. State*, 86 Ala. 20, 5 So. 420 (1889).

Suffrage is a privilege not a right. — It may be laid down as a sound proposition, that "participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of general policy, the prevailing view being that it should be as general as possible, consistent with the public safety." *Washington v. State*, 75 Ala. 582 (1884).

And subject to state regulation. — There can be practically no such thing as universal suffrage, and it is believed that no such theory is recognized among any people. Some are necessarily excluded on the ground of infancy, and the privilege is infinitely varied among others, either upon the ground of public policy, or for reasons that seem arbitrary. No one can lawfully vote under any government of laws except those who are expressly authorized by law. It is well settled, therefore, under our form of government, that the right is one conferred by Constitutions and statutes, and is the subject of exclusive regulation by the state, limited only by the provisions of the fifteenth amendment to

the federal Constitution, which prohibits any discrimination on account of "race, color, or previous condition of servitude." *Washington v. State*, 75 Ala. 582 (1884).

Exclusion of suffrage is not always a punishment. — The right is also denied almost universally to idiots, insane persons, and minors, upon the ground that they lack the requisite judgment and discretion which fit them for its exercise. It has never been considered that any of these disqualifications were imposed as a punishment, and no one has thought to view them as even in the nature of a penalty. *Washington v. State*, 75 Ala. 582 (1884).

In an action alleging discriminatory registration practices on the part of a county registration board, a federal court ordered that if the applicant has not been convicted of a felony, a crime involving moral turpitude, or a disqualifying crime as defined by the Constitution, and if he is neither a dope addict nor a habitual drunkard, he shall be deemed to be of good moral character. *United States v. Penton*, 212 F. Supp. 193 (M.D. Ala. 1962).

Conviction of a city commissioner on a plea of *nolo contendere* to evasion of federal income taxes did not disqualify him to hold that office under the provisions of this section, § 60 of the Constitution, §§ 17-3-3 and 36-2-1. *State ex rel. Woods v. Thrower*, 272 Ala. 344, 131 So. 2d 420 (1961).

Cited in *Board of Registrars v. Mathews*, 274 Ala. 73, 145 So. 2d 799 (1962); *United States v. Atkins*, 323 F.2d 733 (5th Cir. 1963); *May v. Lingo*, 277 Ala. 92, 167 So. 2d 267 (1964).

Collateral references. — 29 C.J.S., Elections, §§ 14-35.

25 Am. Jur. 2d, Elections, §§ 52-115.

Governing law as to existence or character of offense for which one has been convicted in a federal court, or court or another state, as bearing upon the disqualification to vote. 175 ALR 784.

What constitutes "conviction" within constitutional or statutory provision disfranchising one convicted of crime. 36 ALR2d 1238.

Effect of conviction under federal law, or law of another state or country, or right to vote or hold public office. 39 ALR3d 303.

Art. VIII, § 1

Sec. 183. Q

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Sec. 184. A

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Art. VIII, § 182

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Sec. 183. Qualifications as elector required to participate in primary elections, party conventions, mass meetings or other methods of political party action.

No person shall be qualified to vote, or participate in any primary election, party convention, mass meeting, or other method of party action of any political party or faction, who shall not possess the qualifications prescribed in this article for an elector, or who shall be disqualified from voting under the provisions of this article.

Sec. 184. Applicability of article as to elections held after 1902 general election.

No person, not registered and qualified as an elector under the provisions of this article, shall vote at the general election in nineteen hundred and two, or at any subsequent state, county, or municipal election, general, local, or special; but the provisions of this article shall not apply to any election held prior to the general election in the year nineteen hundred and two.

Cited in Freeman v. City of Jasper, 263 Ala.
407, 82 So. 2d 798 (1955); United States v. Atkins,
323 F.2d 733 (5th Cir. 1963).

Sec. 185. Oath or affirmation when vote challenged; false oath or affirmation constitutes perjury.

Any elector whose right to vote shall be challenged for any legal cause before an election officer, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received, and anyone who willfully swears or affirms falsely thereto, shall be guilty of perjury, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than five years.

Collateral references. — 29 C.J.S., Elections,
§ 209.

Sec. 186. Legislature to provide for registration procedure after January 1, 1903; procedure for registration prior to January 1, 1903.

The legislature shall provide by law for the registration, after the first day of January, nineteen hundred and three, of all qualified electors. Until the first day of January, nineteen hundred and three, all electors shall be registered under and in accordance with the requirements of this section, as follows:

First—Registration shall be conducted in each county by a board of three reputable and suitable persons resident in the county, who shall not hold any elective office during their term, to be appointed, within sixty days after the ratification of this Constitution, by the governor, auditor, and commissioner of agriculture and industries, or by a majority of them acting as a board of appointment. If one or more of the persons appointed on such a board of registration shall refuse, neglect, or be unable to qualify or serve, or if a vacancy or vacancies occur in the membership of the board of registrars from any cause,

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the governor, auditor, and commissioner of agriculture and industries, or a majority of them, acting as a board of appointment, shall make other appointments to fill such board. Each registrar shall receive two dollars per day, to be paid by the state, and disbursed by the several judges of probate, for each entire day's attendance upon the session of the board. Before entering upon the performance of the duties of his office, each registrar shall take the same oath required of the judicial officers of the state, which oath may be administered by any person authorized by law to administer oaths. The oath shall be in writing and subscribed by the registrar, and filed in the office of the judge of probate of the county.

Second—Prior to the first day of August, nineteen hundred and two, the board of registrars in each county shall visit each precinct at least once, and oftener if necessary, to make a complete registration of all persons entitled to register, and shall remain there at least one day from eight o'clock in the morning until sunset. They shall give at least twenty days' notice of the time when, and the place in the precinct where, they will attend to register applicants for registration, by bills posted at five or more public places in each election precinct, and by advertisement once a week for three successive weeks in a newspaper, if there be one published in the county. Upon failure to give such notice, or to attend any appointment made by them in any precinct, they shall, after like notice, fill new appointments therein; but the time consumed by the board in completing such registration shall not exceed sixty working days in any county, except that in counties of more than nine hundred square miles in area, such board may consume seventy-five working days in completing the registration, and except that in counties in which there is any city of eight thousand or more inhabitants, the board may remain in session, in addition to the time hereinbefore prescribed, for not more than three successive weeks in each of such cities; and thereafter the board may sit from time to time in each of such cities not more than one week in each month, and except that in the county of Jefferson the board may hold an additional session of not exceeding five consecutive days' duration for each session, in each town or city of more than one thousand and less than eight thousand inhabitants. No person shall be registered except at the county site or in the precinct in which he resides. The registrars shall issue to each person registered a certificate of registration.

Third—The board of registrars shall not register any person between the first day of August, nineteen hundred and two, and the Friday next preceding the day of election in November, nineteen hundred and two. On Friday and Saturday next preceding the day of election in November, nineteen hundred and two, they shall sit in the courthouse of each county during such days, and shall register all applicants having the qualifications prescribed by section 180 of this Constitution and not disqualified under section 182, who shall have reached the age of twenty-one years after the first day of August, nineteen hundred and two, or who shall prove to the reasonable satisfaction of the board that, by reason of physical disability or unavoidable absence from the county, they had no opportunity to register prior to the first day of August, nineteen hundred and two, and they shall not on such days register any other persons. When there

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are two or more courthouses in a county, the registrars may sit during such two days at the courthouse they may select, but shall give ten days' notice, by bills posted at each of the courthouses, designating the courthouse at which they will sit.

Fourth—The board of registrars shall hold sessions at the courthouse of their respective counties during the entire third week in November, nineteen hundred and two, and for six working days next prior to the twentieth day of December, nineteen hundred and two, during which sessions they shall register all persons applying who possess the qualifications prescribed in section 180 of this Constitution, and who shall not be disqualified under section 182. In counties where there are two or more courthouses the board of registrars shall divide the time equally between them. The board of registrars shall give notice of the time and place of such sessions by posting notices at each courthouse in their respective counties, and at each voting place and at three other public places in the county, and by publication once a week for two consecutive weeks in a newspaper, if one be published in the county; such notices to be posted and such publications to be commenced as early as practicable in the first week of November, nineteen hundred and two. Failure on the part of the registrars to conform to the provisions of this article as to the giving of the required notices shall not invalidate any registration made by them.

Fifth—The board of registrars shall have power to examine, under oath or affirmation, all applicants for registration, and to take testimony touching the qualifications of such applicants. Each member of such board is authorized to administer the oath to be taken by the applicants and witnesses, which shall be in the following form, and subscribed by the person making it, and preserved by the board, namely: "I solemnly swear (or affirm) that in the matter of the application of for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God." Any person who upon such examination makes any willfully false statement in reference to any material matter touching the qualification of any applicant for registration shall be guilty of perjury, and upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than five years.

Sixth—The action of the majority of the board of registrars shall be the action of the board, and a majority of the board shall constitute a quorum for the transaction of all business. Any person to whom registration is denied shall have the right of appeal, without giving security for costs, within thirty days after such denial, by filing a petition in the circuit court or court of like jurisdiction held for the county in which he seeks to register, to have his qualifications as an elector determined. Upon the filing of the petition the clerk of the court shall give notice thereof to any solicitor authorized to represent the state in said county, whose duty it shall be to appear and defend against the petition on behalf of the state. Upon such trial the court shall charge the jury only as to what constituted the qualifications that entitled the applicant to become an elector at the time he applied for registration, and the jury shall determine the weight and effect of the evidence and return a verdict. From the judgment rendered an appeal will lie to the supreme court in favor of the petitioner, to be taken within

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thirty days. Final judgment in favor of the petitioner shall entitle him to registration as of the date of his application to the registrars.

Seventh—The secretary of state shall, at the expense of the state, have prepared and shall furnish to the registrars and judges of probate of the several counties, a sufficient number of registration books and of blank forms of the oath, certificates of registration and notices required to be given by the registrars. The cost of the publication in newspapers of the notices required to be given by the registrars shall be paid by the state, the bills therefor to be rendered to the secretary of state and approved by him.

Eighth—Any person who registers for another, or who registers more than once, and any registrar who enters the name of any person on the list of registered voters, without such person having made application in person under oath on a form provided for that purpose, or who knowingly registers any person more than once, or who knowingly enters a name upon the registration list as the name of a voter, without any one of that name applying to register, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than five years.

Cross reference. — As to registration of electors by mail, see Amendment Nos. 285 and 322.

Registration in Alabama is provided for in this section and § 17-4-40. *United States v. Alabama*, 171 F. Supp. 720 (M.D. Ala. 1959).

The purpose of this section is to provide in the county a correct list of persons qualified to vote in such county in all state and county and municipal elections held under authority of state laws. *Garner v. McCall*, 235 Ala. 187, 178 So. 210 (1938).

A board of registrars is an independent agency of the state for a statewide purpose rather than a county authority, and its appointment of one of its members as a clerk thereof is not subject to the requirements of the civil service board having jurisdiction over employees of the county. *Garner v. McCall*, 235 Ala. 187, 178 So. 210 (1938).

And its powers are discretionary. — The question as to whether this section violates the fourteenth and fifteenth amendments to the

U.S. Constitution will not be determined by the court in an action against the registrars for refusing to register the plaintiff. Since if the section is void the registrars had no authority to register him and if valid the matter rests in their discretion. *Giles v. Teasley*, 136 Ala. 228, 33 So. 820 (1903).

Right of appeal from denial of registration. — See § 17-4-11 and notes thereto.

Registrars engaging in discriminatory practices. — See *United States v. Penton*, 212 F. Supp. 193 (M.D. Ala. 1962); *United States v. Atkins*, 323 F.2d 733 (5th Cir. 1963).

Cited in *Abramson v. Hard*, 229 Ala. 2, 155 So. 590 (1934); *Williams v. Wright*, 249 Ala. 9, 29 So. 2d 295 (1947); *Opinion of the Justices*, 252 Ala. 351, 40 So. 2d 849 (1949); *United States v. Penton*, 212 F. Supp. 193 (M.D. Ala. 1962); *United States v. Atkins*, 323 F.2d 733 (5th Cir. 1963).

Collateral references. — 29 C.J.S., Elections, §§ 36-52.
25 Am. Jur. 2d, Elections, §§ 95-115.

Sec. 187. County board of registrars to furnish list of registered voters to judges of probate by February 1, 1903; judges of probate to file list with secretary of state by March 1, 1903; term for which registration valid; certificate of registration to be furnished elector when place of residence changed.

The board of registrars in each county shall, on or before the first day of February, nineteen hundred and three, or as soon thereafter as practicable, file in the office of the judge of probate in their county, a complete list sworn to

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by them of all persons registered in their county, showing the age of such persons so registered, with the precinct or ward in which each of such persons resides set opposite the name of such persons, and shall also file a like list in the office of the secretary of state. The judge of probate shall, on or before the first day of March, nineteen hundred and three, or as soon thereafter as practicable, cause to be made from such list in duplicate, in the books furnished by the secretary of state, an alphabetical list by precincts of the persons shown by the list of the registrars to have been registered in the county, and shall file one of such alphabetical lists in the office of the secretary of state; for which services by the judges of probate compensation shall be provided by the legislature. The judges of probate shall keep both the original list filed by the registrars and the alphabetical list made therefrom as records in the office of the judge of probate of the county. Unless he shall become disqualified under the provisions of this article, any one who shall register prior to the first day of January, nineteen hundred and three, shall remain an elector during life, and shall not be required to register again unless he changes his residence, in which event he may register again on production of his certificate. The certificate of the registrars or of the judge of probate or of the secretary of state shall be sufficient evidence to establish the fact of such life registration. Such certificate shall be issued free of charge to the elector, and the legislature shall provide by law for the renewal of such certificate when lost, mutilated, or destroyed.

Moving to another county requires registration therein. — Under this section and § 17-4-12 of the Code, a registered voter, who changes his legal residence from one county to

another must register in the county of his new residence in order to be entitled to vote therein. *Shepherd v. Sartain*, 185 Ala. 439, 64 So. 57 (1913).

Sec. 188. Certain information to be furnished prior to registration.

From and after the first day of January, nineteen hundred and three, any applicant for registration may be required to state under oath, to be administered by the registrar or by any person authorized by law to administer oaths, where he lived during the five years next preceding the time at which he applies to register, and the name or names by which he was known during that period, and the name of his employer or employers, if any, during such period. Any applicant for registration who refuses to state such facts, or any of them, shall not be entitled to register, and any person so offering to register, who willfully makes a false statement in regard to such matters or any of them, shall be guilty of perjury, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than five years.

Sec. 189. Testimony may be required of any person other than defendant in trials of contested elections, proceedings to investigate elections and criminal prosecutions under election laws; immunity from prosecution due to testimony given.

In the trial of any contested election, and in proceedings to investigate any election and in criminal prosecutions for violations of the election laws, no person

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other than a defendant in such criminal prosecutions shall be allowed to withhold his testimony on the ground that he may criminate himself or subject himself to public infamy; but such person shall not be prosecuted for any offense arising out of the transactions concerning which he testified, but may be prosecuted for perjury committed on such examination.

Cited in *Ex parte Bullen*, 236 Ala. 56, 181 So. 498 (1938).

Collateral references. — 29 C.J.S., Elections, §§ 245-322.

26 Am. Jur. 2d, Elections, §§ 316-364.

Sec. 190. Duty of legislature to pass laws regulating elections, primary elections and purging of registration lists.

The legislature shall pass laws not inconsistent with this Constitution to regulate and govern elections and all such laws shall be uniform throughout the state; and shall provide by law for the manner of holding elections and of ascertaining the result of the same, and shall provide general registration laws not inconsistent with the provisions of this article for the registration of all qualified electors from and after the first day of January, nineteen hundred and three. The legislature shall also make provision by law, not inconsistent with this article, for the regulation of primary elections, and for punishing frauds at the same, but shall not make primary elections compulsory. The legislature shall by law provide for purging the registration list of the names of those who die, become insane, or convicted of crime, or otherwise disqualified as electors under the provisions of this Constitution, and of any names which may have been fraudulently entered on such list by the registrars; provided, that a trial by jury may be had on the demand of any person whose name is proposed to be stricken from the list.

Amendment. — This section has been amended by Amendment No. 41.

Election laws must be uniform. — It is manifest that all laws to be enacted by the legislature governing or relating to elections, shall be uniform throughout the state. *McCall v. Automatic Voting Mach. Corp.*, 236 Ala. 10, 180 So. 695 (1938).

In order for an act to conform to this section it must govern and have uniform application throughout the state eo instante and not leave it to the will of some governing board to put it into operation in a single or part of the counties. *McCall v. Automatic Voting Mach. Corp.*, 236 Ala. 10, 180 So. 695 (1938).

The act providing for use of voting machines in any county on adoption thereof by county commissioners or board of revenue was

unconstitutional as enabling single county to destroy required uniformity of laws relating to manner of holding and ascertaining results of elections "throughout" state. *McCall v. Automatic Voting Mach. Corp.*, 236 Ala. 10, 180 So. 695 (1938), decided prior to ratification of amendment 41. See note under that amendment.

And the words, "shall provide by law, etc." are not excepted. — The words, "shall provide by law for the manner of holding elections and of ascertaining the result of the same," added to constitutional provision requiring legislature to pass election laws uniform throughout state by framers of new Constitution, were not intended as exception to rule that uniformity applies only to substantive matters, not minor

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details, but were in nature of constitutional definition and substantive requirement of uniformity as to manner of holding and ascertaining results of elections. McCall v. Automatic Voting Mach. Corp., 236 Ala. 10, 180 So. 695 (1938).

But mere irregularity will not defeat uniformity. — While uniformity is demanded under this section, the lack of uniformity that is not more than a mere irregularity as relating to a special election under a local act, and which does not prevent a fair and unrestricted expression of electoral franchise under the legislation in question, does not render it void. State ex rel. Austin v. Black, 224 Ala. 200, 139 So. 431 (1932).

A provision in local law that judge of probate shall call and designate day for holding special election of county superintendent of education is not a violation of the uniformity provisions of this section, because the calling of the election and the fixing of the day for holding it is not the equivalent of "the manner of holding [such] elections," and of

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"ascertaining the result of the same," which must be uniform. State ex rel. Austin v. Black, 224 Ala. 200, 139 So. 431 (1932).

And uniformity is not required as to the building or structures in which elections are held. McCall v. Automatic Voting Mach. Corp., 236 Ala. 10, 180 So. 695 (1938), on rehearing.

Primaries are not compulsory. — This section, while demanding regulatory statutes as to primary elections, expressly provides against any compulsory primary. Smith v. McQueen, 232 Ala. 90, 166 So. 788 (1936).

Ballots need not be numbered. — The statutory provision requiring ballots to be numbered is not mandatory; and they may be counted though not numbered. Montgomery v. Henry, 144 Ala. 629, 39 So. 507 (1905).

This provision does not apply to elections for removal of courthouse. State ex rel. Porter v. Crook, 126 Ala. 600, 28 So. 745 (1900).

Collateral references. — 29 C.J.S., Elections, § 112.

25 Am. Jur. 2d. Elections, §§ 147-163.

Sec. 191. Protection against evils of intoxicating liquors at elections.

It shall be the duty of the legislature to pass adequate laws giving protection against the evils arising from the use of intoxicating liquors at all elections.

Collateral references. — 29 C.J.S., Elections, § 216(4).

Sec. 192. Electors immune from arrest going to, attending and returning from elections.

Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, or while going to or returning therefrom.

Sec. 193. Returns of elections for certain officials to be made to secretary of state.

Returns of elections for members of the legislature and for all civil officers who are to be commissioned by the governor, except the attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, and commissioner of agriculture and industries, shall be made to the secretary of state.

Amendment. — Amendment No. 284 provides for the appointment of the superintendent of education by the state board of education.

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Collateral references. — 29 C.J.S., Elections, §§ 221-240.
26 Am. Jur. 2d, Elections, §§ 296-303.

Sec. 194. Poll tax—Amount; maximum age for payment; when due and payable; when delinquent; returns of collections to be separate from other collections.

The poll tax mentioned in this article shall be one dollar and fifty cents upon each male inhabitant of the state, over the age of twenty-one years, and under the age of forty-five years, who would not now be exempt by law; but the legislature is authorized to increase the maximum age fixed in this section to not more than sixty years. Such poll tax shall become due and payable on the first day of October in each year, and become delinquent on the first day of the next succeeding February, but no legal process, nor any fee or commission shall be allowed for the collection thereof. The tax collector shall make returns of poll tax collections separate from other collections.

Cross references. — As to disposition of funds derived from poll tax, see § 259. As to exemptions from poll tax, see Amendment Nos. 7, 10, 14, 49, 90 and 109.

History of poll tax requirement. — See *United States v. Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966).

The Alabama poll tax violates the fifteenth amendment to the U.S. Constitution. The poll tax is therefore invalid. *United States v. Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966).

Because it bars large numbers of blacks from polls. — Successive amendments to this section have created broad exemptions relieving from payment veterans of World War I, World War II and the Korean War; those presently serving in the Alabama naval or national guard or those who were members for 21 years; and those citizens of Alabama who are blind or deaf. While these amendments are ameliorative, they

are not curative. The poll tax remains one of the last great pillars of racial discrimination. In effect, the tax still bars a large number of negroes from the polls, and thus violates the fifteenth amendment. *United States v. Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966).

The poll tax as a license tax on voting is violative of the due process clause of the fourteenth amendment and is therefore constitutionally invalid. *United States v. Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966) (concurring opinion).

Collateral references. — 16 C.J.S., Constitutional Law, § 199. 16A C.J.S., Constitutional Law, § 494.

25 Am. Jur. 2d, Elections, §§ 81-87.

Constitutionality, construction, and application of constitutional or statutory provisions which make payment of poll tax condition of right to vote. 139 ALR 561.

Sec. 195. Same—Payment of tax of another; advance of money for payment in order to influence vote.

Any person who shall pay the poll tax of another, or advance him money for that purpose in order to influence his vote, shall be guilty of bribery, and upon conviction therefor shall be imprisoned in the penitentiary for not less than one nor more than five years.

Collateral references. — 29 C.J.S., Elections, § 334(2).
26 Am. Jur. 2d, Elections, § 282.

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Sec. 196. Severability of article.

If any section or subdivision of this article shall, for any reason, be or be held by any court of competent jurisdiction and of final resort to be invalid, inoperative, or void, the residue of this article shall not be thereby invalidated or affected.

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Sec. 197. Ratio of senators to representatives.

The whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives.

Legislative bodies' size discretionary with state. — Determining the size of its legislative bodies is of course a matter within the discretion of each individual state. *Sims v. Baggett*, 247 F. Supp. 96 (M.D. Ala. 1965).

Number of districts and senators must coincide. — Number of senatorial districts must be the same as number of senators in legislature. In re Opinions of the Justices, 222 Ala. 355, 132 So. 457 (1931).

And must not exceed one-third number of representatives. — Legislature under

reapportionment could not increase number of senators beyond 35, since additional senator would increase number of excess of one-third number of representatives, who numbered 106. In re Opinions of the Justices, 222 Ala. 355, 132 So. 457 (1931).

Bill proposing repeal of section held constitutional. — See Opinion of the Justices, 263 Ala. 158, 81 So. 2d 881 (1955).

Collateral references. — 25 Am. Jur. 2d, Elections, §§ 12-38.

Sec. 198. Maximum number of members of house of representatives; apportionment of house based on decennial census of United States.

The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken.

Cross references. — See notes to § 199. As to requirement that representation in the legislature be based on population and prohibition against change of such basis of representation, see § 284.

Purpose and intent of section. — The proviso in § 199 and its companion, this section, are

intended to insure that each of the counties as a political unit of the state have separate representation in the house. It is apparent that the framers of the Constitution had at least two purposes in mind: First, to prevent gerrymandering, and, second, to insure compact geographic districts with legislators attuned to

EXHIBIT 23

Alabama elections chief calls losing the right to vote a 'minor disability'

In an interview, Secretary of State John Merrill also undermined his state's legal argument for its felon disenfranchisement law.

Apr 10, 2018, 12:28 pm

In a legal filing over Alabama's policy of permanently banning people with certain felony convictions from voting, the state's elections chief claimed that disenfranchisement is "only a minor disability."

The Campaign Legal Center, a Washington, D.C.-based voting group, claimed in a lawsuit it filed in 2016 that Alabama's felon disenfranchisement law, which blocks roughly 15 percent of Alabama's black population from voting, is racially discriminatory and unconstitutional. In a [motion to dismiss](#) last month, Alabama Secretary of State John Merrill (R) argued that the law is neither punitive nor criminal.

"Felon disenfranchisement is not imposed to punish an offender," Merrill's attorneys argued in the motion. "Instead, felon disenfranchisement is akin to laws that prohibit voting by children and the insane — it is about ensuring that voters are fit to cast a ballot."

But in an interview with ThinkProgress, Merrill said that courts often decide to punish individuals who commit crimes by revoking their voting rights. After he declined to comment on the ongoing litigation, ThinkProgress asked him if he sees revoking the right to vote as a punishment.



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CNN's planning a 2020 LGBTQ forum. Here are some issues advocates say the candidates should address.



Merrill: Sometimes that's the direction the court goes. Sometimes the

court decides that, based on legislation that's been passed, that individuals for whatever reason have forfeited their rights to participate and they are no longer eligible.

ThinkProgress: So then the court punishes them by revoking their rights?

Merrill: They have done that before. I'm sure they will do that again. If you've been convicted of certain crimes, then you have the potential to lose your right to vote, as an eligibility standard.

In the motion to dismiss the lawsuit, Merrill also argued that disenfranchisement is not as harsh as other penalties imposed on people with criminal records.

"Felon disenfranchisement imposes only a minor disability," Merrill's attorneys wrote. "It imposes 'no physical restraint, and so does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint.'"

In a [reply brief](#), the Campaign Legal Center questioned the argument, claiming "the right to vote is the most important right of citizenship."

Last year, Alabama's legislature passed and the [governor signed](#) the Definition of Moral Turpitude Act, which officially defined a list of crimes that are severe enough to revoke an individual's voting rights. Previously, individual counties and elections officials had discretion in deciding which crimes were disqualifying and which were not, allowing a large number of Alabamians to be permanently disenfranchised because of nonviolent, low-level crimes.

The Campaign Legal Center [estimates that because of the law, tens of](#)

[thousands](#) of ex-felons were able to register and vote for the first time during the December 2017 special Senate election.

"I finally got a chance to vote for the first time, and it feels awesome, man," 23-year-old Dothan, Alabama resident Kameron McGlown [told ThinkProgress](#) after he cast his first ballot on Election Day.

[These Alabamians voting for the first time is pure joy](#)

["My eyes just burning. Ain't nobody crying."](#)

This legal filing isn't the first time that Merrill, who has served as Alabama secretary of state since 2015, has made comments showing how little he values the voting rights of Alabamians. In August, he told ThinkProgress that he won't spend state resources to inform people with felony convictions that the new law was signed granting many of them the right to vote.

"You're assuming they even want to vote," he said. "I don't know if they do and you don't either."

In May 2017, he [explained to ThinkProgress](#) that he's not worried that the bill doesn't go far enough to restore rights because voting is like getting free ice cream.

"If we had a stand in Anytown, U.S.A. and in that stand on Main Street we're giving out ice cream. Anybody can come," Merrill said. "They can only get one cone and it's vanilla. There's going to be some people who are gonna cry because they can't get but one scoop, and there's gonna be some people who are gonna cry because we don't have chocolate. I don't worry about the people who want two scoops, and I don't worry about the people who want a different flavor."

He has also [claimed that automatic voter registration](#) would “cheapen” civil rights leaders’ work, calling that method of registration the “sorry and lazy way out.” Last week, [Maryland became the tenth](#) on a growing list of states passing laws to automatically register people who visit DMVs or other government offices, which would make it easier for them to vote.

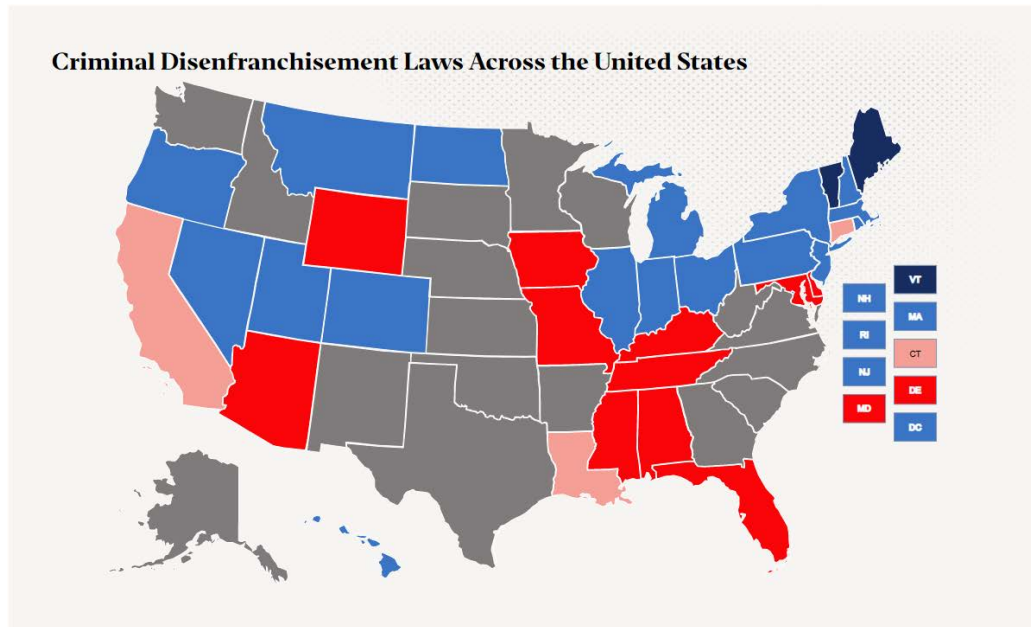
The Campaign Legal Center’s lawsuit over Alabama’s felon disenfranchisement law — which is [scheduled to go to trial](#) in May 2019 — claims that the policy is racially discriminatory, cruel and unusual punishment, and a violation of the Voting Rights Act.

Alabama remains [one of ten states](#) that permanently disenfranchise all or some people convicted of felonies. Only Florida, Kentucky, and Iowa have harsher restrictions that ban anyone convicted of any felony unless the government approves an individual’s rights restoration. In Florida, voters will have the opportunity this November to [vote on a ballot amendment](#) that, if passed with 60 percent support, would automatically restore rights to most people after they have completed their sentences.

EXHIBIT 24

BRENNAN CENTER FOR JUSTICE

Criminal Disenfranchisement Laws Across the United States¹



Permanent disenfranchisement for at least some people with criminal convictions, unless government approves restoration: AL, AZ, DE, FL, IA, KY, MD, MO, MS, TN, WY



Voting rights restored automatically after release from prison and discharge from parole (people on probation may vote): CA, CT, LA



Voting rights restored upon completion of sentence, including prison, parole, and probation: AK, AR, GA, ID, KS, MN, NE, NM, NC, OK, SC, SD, TX, VA, WA, WV, WI



No disenfranchisement for people with criminal convictions: ME, VT



Voting rights restored automatically after release from prison: CO, DC*, HI, IL, IN, MA, MI, MT, NV, NH, NJ, ND, NY, OH, OR, PA, RI, UT

Last updated *August 5, 2020*

*Pending permanent legislation, see below details

State-by-State Breakdown



Permanent disenfranchisement for at least some people with criminal convictions, unless government approves restoration:

Alabama: People with certain felony convictions involving moral turpitude can apply to have their voting rights restored upon completion of sentence and payment of fines and fees; people convicted of some specific crimes - including murder, rape, treason, and crimes involving children - are permanently barred from voting.

Arizona: People convicted of one felony can have their voting rights restored upon completion of sentence, including all prison, parole, and probation terms and payment of all restitution. People convicted of two or more felonies are permanently barred from voting unless pardoned or restored by a judge.

Delaware: People with most felony convictions have their voting rights restored automatically after completion of sentence, including prison, parole, and probation. People who are convicted of certain disqualifying felonies - including murder, bribery, and sexual offenses - are permanently disenfranchised. People convicted of election offenses are disenfranchised for 10 years following their sentences.

Florida: Florida voters approved a November 2018 constitutional amendment which automatically restores the right to vote to 1.4 million individuals with felony convictions in their past. The amendment restores the right to vote for people with felony convictions, except individuals convicted of murder or felony sexual offenses, once they have completed the terms of their sentence, including probation and parole.

Iowa: Iowa is one of three states whose constitution permanently disenfranchises citizens with past felony convictions, but grants the state's governor the authority to restore voting rights. On August 5, 2020, Governor Reynolds signed an executive order to automatically and prospectively restore the right to vote to tens of thousands of Iowans with past convictions, except individuals convicted of felony homicide offenses, once they have completed their terms of incarceration, probation, parole, or special sentence.

Kentucky: Kentucky is one of three states whose constitution permanently disenfranchises citizens with past felony convictions, but grants the state's governor the authority to restore voting rights. On December 12, 2019, Governor Beshear signed an executive order to automatically restore the right to vote to more than 140,000 Kentuckians with past convictions for non-violent offenses if they have completed incarceration, probation, and parole. The order is both retrospective and prospective.

Maryland: As of March 10, 2016, voting rights are restored automatically after release from court-ordered sentence of imprisonment. People who are convicted of buying or selling votes are permanently disenfranchised.

Mississippi: People who are convicted of specified disqualifying offenses are permanently disenfranchised unless pardoned by the governor or their right to vote is restored by a two-thirds vote of both houses of the legislature.

Missouri: People with most felony convictions have their voting rights restored automatically after completion of sentence, including prison, parole, and probation. People who are convicted of election-related offenses are permanently disenfranchised.

Tennessee: Tennessee has one of the most complex disenfranchisement policies in the country. People completing sentences for some felony convictions, who have paid all restitution and court costs, and are current with child support payments may apply for rights restoration. Individuals with certain types of convictions, including rape, murder, and bribery, among others, are permanently disenfranchised.

Wyoming: Voting rights automatically restored after five years to people who complete sentences for first-time, non-violent felony convictions in 2016 or after. Applications are required from people who completed sentences for first-time, non-violent felony convictions before 2016, and from people convicted outside Wyoming, or under federal law. People with violent convictions or with multiple felony convictions are permanently disenfranchised, unless pardoned by the governor.



Voting rights restored upon completion of sentence, including prison, parole, and probation:

Alaska

Arkansas

Georgia

Idaho

Kansas

Minnesota

Nebraska: In Nebraska, voting rights are restored two years after the completion of sentence. Nebraska disenfranchises persons with treason convictions until they have their civil rights individually restored

New Mexico

North Carolina

Oklahoma: In Oklahoma, citizens are disenfranchised for the time period set out in their original sentence. Voting rights are restored once this time period has elapsed.

South Carolina

South Dakota

Texas

Virginia: Virginia is one of three states whose constitution permanently disenfranchises citizens with past felony convictions but grants the state's governor the authority to restore voting rights. After a July 2016 Virginia Supreme Court decision invalidated an executive order restoring voting rights to over 200,000 citizens, the state's governor now issues individual restorations for citizens who have completed the terms of their sentence, including probation and parole.

Washington

West Virginia

Wisconsin



Voting rights restored automatically after release from prison and discharge from parole (people on probation may vote):

California

Connecticut

Louisiana: Voting rights are restored for those on probation or parole who have not been incarcerated during the last five years. Practically speaking, this means many if not most people on probation are eligible to vote and a small number of people on parole for more than five years are eligible



Voting rights restored automatically after release from prison:

Colorado

Hawaii

Illinois

Indiana

Massachusetts

Michigan

Montana

Nevada

New Hampshire

New Jersey

North Dakota

New York: On April 18, 2018, Governor Cuomo announced that he would restore the right to vote to New Yorkers on state parole through executive order. Since then, he has restored voting rights to over 24,000 New Yorkers living and working in their communities. Prior to this announcement, New Yorkers were disenfranchised until the completion of incarceration and parole.

Ohio: Persons who have been twice convicted of a violation of Ohio's elections law are permanently disenfranchised.

Oregon

Pennsylvania

Rhode Island

Utah

Washington, D.C.: On July 22, 2020, the D.C. Mayor signed emergency legislation into effect that eliminates criminal disenfranchisement even for those in prison. However, we continue to classify D.C. as restoring voting rights upon release from prison because that emergency legislation will expire on October 20, 2020, prior to the general election. The City Council has expressed an intention to enact permanent legislation, but has not yet done so.



No disenfranchisement for people with criminal convictions:

Maine

Vermont

¹ Even with these general categories, there are variations in when states restore voting rights, including differing policies regarding whether citizens with pending legal financial obligations (LFOs) relating to their conviction are eligible to vote, how long citizens must wait after incarceration for restoration, and whether and in what circumstances misdemeanors are disenfranchising.

EXHIBIT 25

Felony Disenfranchisement: A Primer

As of 2016, 6.1 million Americans were prohibited from voting due to laws that disenfranchise citizens convicted of felony offenses.¹ Felony disenfranchisement rates vary by state, which institute a wide range of disenfranchisement policies.

Table 1. Summary of Felony Disenfranchisement Restrictions in 2019²

No restriction (2)	Prison (18)	Prison & parole (3)	Prison, parole & probation (17)	Prison, parole, probation & post-sentence – some or all (11)
Maine Vermont	Colorado District of Columbia Hawaii Illinois Indiana Maryland Massachusetts Michigan Montana Nevada New Hampshire New Jersey North Dakota Ohio Oregon Pennsylvania Rhode Island Utah	California Connecticut New York ^a	Alaska Arkansas Georgia Idaho Kansas Louisiana ^b Minnesota Missouri New Mexico North Carolina Oklahoma South Carolina South Dakota Texas Washington West Virginia Wisconsin	Alabama ^c Arizona ^d Delaware ^e Florida ^f Iowa Kentucky ^g Mississippi ^h Nebraska ⁱ Tennessee ^j Virginia ^k Wyoming ^l

^a In 2018, Governor Andrew Cuomo used his clemency power to restore voting rights to approximately 35,000 New Yorkers under parole supervision, and vowed to continue this practice as new residents with felony convictions enter the parole system each month.

^b In 2018, Louisiana authorized rights restoration for residents on probation or on parole if they have not been in prison for five years; policy excludes residents convicted of felonies for election fraud or other election offenses.

^c In 2017, state lawmakers clarified the longstanding provision that disenfranchised persons convicted of crimes of “moral turpitude” by establishing a list of 50 specific felonies considered to involve moral turpitude. Previously all felonies were interpreted to be crimes of moral turpitude.

^d Arizona permanently disenfranchises individuals with two or more felony convictions.

^e In 2013, Delaware removed its five-year waiting period, allowing those convicted of most offenses to vote upon completion of sentence and supervision. People who are convicted of disqualifying felonies (murder, bribery, sexual offenses) are permanently disenfranchised.

^f In 2018, Florida voters passed Amendment 4, expanding voting rights to as many as 1.4 million people convicted of most felony convictions upon completion all terms of their sentence. For those convicted of murder or felony sexual offenses, the state requires a five-year waiting period before individuals can apply for rights restoration.

^g In 2019, Kentucky Governor Andy Beshear issued an executive order restoring voting rights to 140,000 people with nonviolent felony conviction who had completed their sentences.

^h Mississippi permanently disenfranchises individuals convicted of certain offenses.

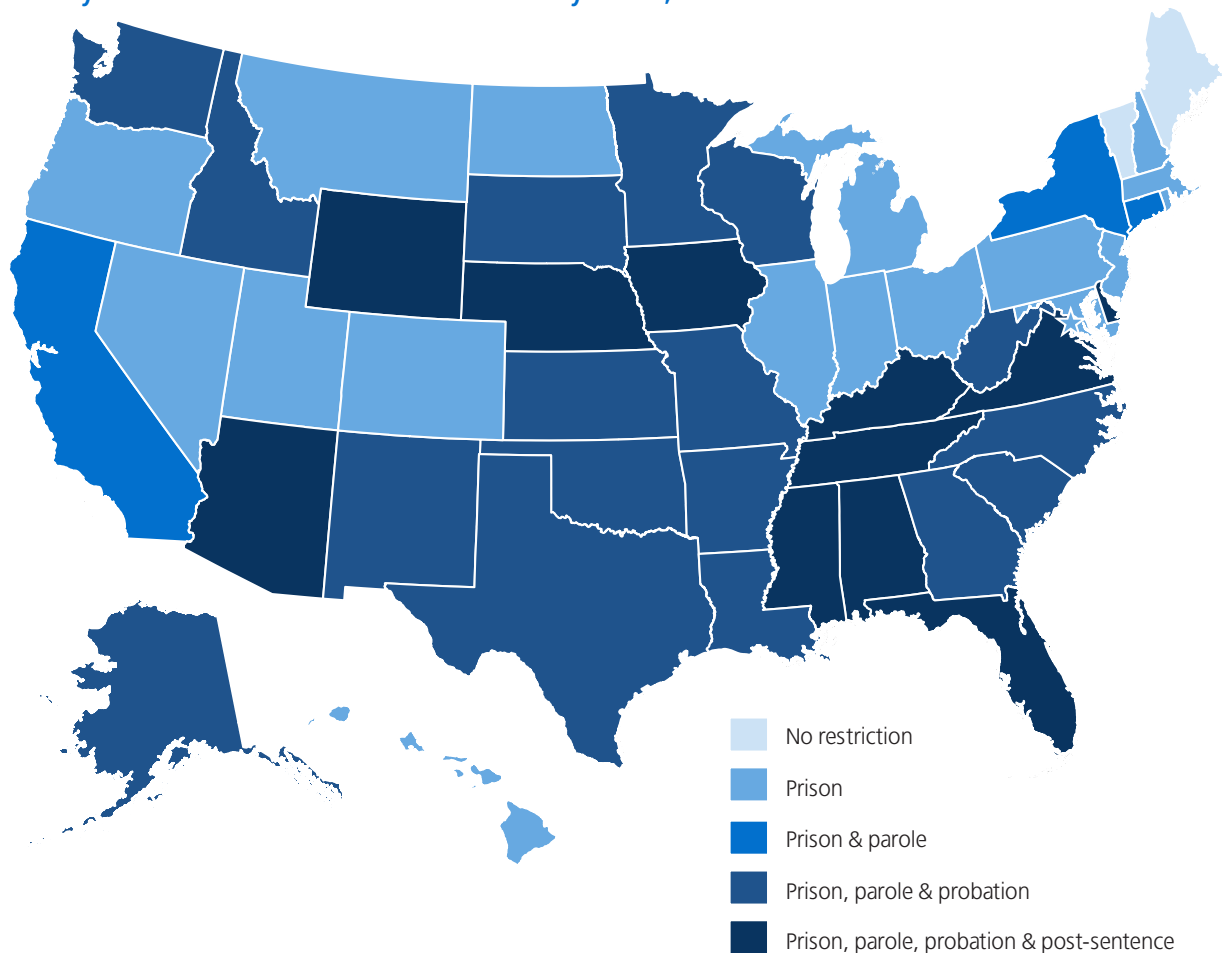
ⁱ Nebraska reduced its indefinite ban on voting to a two-year post-supervision waiting period in 2005.

^j Tennessee disenfranchises those convicted of felonies since 1981, in addition to those convicted of select offenses prior to 1973.

^k Between 2016 and 2018, Governor Terry McAuliffe used his clemency power to individually restore voting rights to 173,000 people who had completed their sentence.

^l In 2017, Wyoming authorized automatic rights restoration for individuals with first time non-violent felony convictions after they complete their supervision. For other convictions, the state requires a five- or seven-year waiting period depending on the offense before individuals can apply for rights restoration.

Figure A. Felony Disenfranchisement Restrictions by State, 2019



The 11 most extreme states restrict voting rights for some or all individuals even after they have served their prison sentence and are no longer on probation or parole; such individuals in those states make up over 50 percent of the entire disenfranchised population.³ Only two states, Maine and Vermont, do not restrict the voting rights of anyone with a felony conviction, including those in prison.

Persons currently in prison or jail represent a minority of the total disenfranchised population. In fact, 77 percent of disenfranchised voters live in their communities, either under probation or parole supervision or having completed their sentence.⁴ An estimated 3.1 million people are disenfranchised due to state laws that restrict voting rights even after completion of sentences.

Rights restoration practices vary widely across states and are subject to the turns of political climate and leadership, which has led some states to vacillate between reform and regression. In Florida, the clem-

ency board voted in 2007 to automatically restore voting rights for many persons with non-violent felony convictions. This decision was reversed in 2011, and individuals must now wait at least five years after completing their sentence to apply for rights restoration. In Iowa, then-Governor Vilsack issued an executive order in 2005 automatically restoring the voting rights of all persons who had completed their sentences, but this order was rescinded in 2011 by Governor Branstad.

Felony disenfranchisement policies have a disproportionate impact on communities of color. Black Americans of voting age are more than four times as likely to lose their voting rights than the rest of the adult population, with one of every 13 black adults disenfranchised nationally. As of 2016, in four states – Florida (21 percent), Kentucky (26 percent), Tennessee (21 percent), and Virginia (22 percent) – more than one in five black adults was disenfranchised. In total, 2.2 million black citizens are banned from voting.⁵



HISTORY OF FELONY DISENFRANCHISEMENT IN THE UNITED STATES

English colonists brought to North America the common law practice of “civil death,” a set of criminal penalties that included the revocation of voting rights. Early colonial laws limited the penalty of disenfranchisement to certain offenses related to voting or considered “egregious violations of the moral code.”⁶ After the American Revolution, states began codifying disenfranchisement provisions and expanding the penalty to all felony offenses.⁷ Many states instituted felony disenfranchisement policies in the wake of the Civil War, and by 1869, 29 states had enacted such laws.⁸ Ward Elliot argues that the elimination of the property test as a voting qualification may help to explain the popularity of felony disenfranchisement policies, as they served as an alternate means for wealthy elites to constrict the political power of the lower classes.⁹

In the post-Reconstruction period, several Southern states tailored their disenfranchisement laws in order to bar black male voters, targeting those offenses believed to be committed most frequently by the black population.¹⁰ For example, party leaders in Mississippi called for disenfranchisement for offenses such as burglary, theft, and arson, but not for robbery or murder.¹¹ The author of Alabama’s disenfranchisement provision “estimated the crime of wife-beating alone would disqualify sixty percent of the Negroes,” resulting in a policy that would disenfranchise a man for beating his wife, but not for killing her.¹² Such policies would endure for over a century. While it is debatable whether felony disenfranchisement laws today are intended to reduce the political clout of communities of color, this is their undeniable effect.

LEGAL STATUS

Disenfranchisement policies have met occasional legal challenges in the last century. In *Richardson v. Ramirez* 418 U.S. 24 (1974), three men from California who had served time for felony convictions sued for their right to vote, arguing that the state’s felony disenfranchisement policies denied them the right to equal protection

of the laws under the U.S. Constitution. Under Section 1 of the Fourteenth Amendment, a state cannot restrict voting rights unless it shows a compelling state interest. Nevertheless, the U.S. Supreme Court upheld California’s felony disenfranchisement policies as constitutional, finding that Section 2 of the Fourteenth Amendment allows the denial of voting rights “for participation in rebellion, or other crime.” In the majority opinion, Justice Rehnquist found that Section 2 – which was arguably intended to protect the voting rights of freed slaves by sanctioning states that disenfranchised them – exempts from sanction disenfranchisement based on a felony conviction. By this logic, the Equal Protection Clause in the previous section could not have been intended to prohibit such disenfranchisement policies.

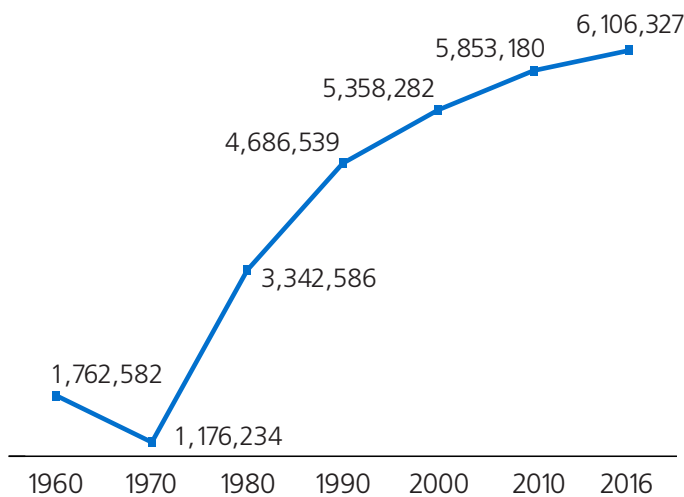
Critics argue that the language of the Fourteenth Amendment does not indicate that the exemptions established in Section 2 should prohibit the application of the Equal Protection Clause to voting rights cases.¹³ Moreover, some contend that the Court’s interpretation of the Equal Protection Clause in *Richardson* is inconsistent with its previous decisions on citizenship and voting rights, in which the Court has found that the scope of the Equal Protection Clause “is not bound to the political theories of a particular era but draws much of its substance from changing social norms and evolving conceptions of equality.”¹⁴ Therefore, even if the framers of the Fourteenth Amendment seemingly accepted felony disenfranchisement, our interpretation of the Equal Protection Clause today should allow for the ways in which our concept of equality may have evolved since 1868.

GROWTH OF THE DISENFRANCHISED POPULATION

As states began expanding voting rights in the civil rights era, the disenfranchisement rate dropped between 1960 and 1976. Although reform efforts have been substantial in recent years, the overall disenfranchisement rate has increased dramatically in conjunction with the growing U.S. prison population, rising from 1.17 million in 1976 to 6.1 million by 2016.



Figure B. Disenfranchised Population, 1960-2016¹⁵



POLICY REFORMS IN RECENT YEARS

Public opinion surveys report that eight in ten U.S. residents support voting rights for citizens who have completed their sentence, and nearly two-thirds support voting rights for those on probation or parole.¹⁶ In recent years, heightened public awareness of felony disenfranchisement has resulted in successful state-level reform efforts, from legislative changes expanding voting rights to grassroots voter registration initiatives targeting individuals with felony convictions. Since 1997, 25 states have modified felony disenfranchisement provisions to expand voter eligibility and/or inform persons with felony convictions of their voting rights either through legislative or executive action.¹⁷ Among these:

- Ten states either repealed or amended lifetime disenfranchisement laws
- Eight states expanded voting rights to some or all persons on probation and/or parole
- Thirteen states eased the restoration process for persons seeking to have their right to vote restored after the completion of their sentence
- Three states improved data and information sharing

As a result of successful reform efforts from 1997 to 2016, an estimated 840,000 citizens have regained the right to vote.

DISENFRANCHISEMENT IN AN INTERNATIONAL CONTEXT

Although they are rooted in the “civil death” tradition of medieval Europe, disenfranchisement policies in the United States today are exceptional in their severity and the restriction of the voting rights of people who have completed their prison terms or were never incarcerated at all.¹⁸ While only two states (Maine and Vermont) in the United States allow citizens to vote from prison, the European Court of Human Rights determined in 2005 that a blanket ban on voting from prison violates the European Convention on Human Rights, which guarantees the right to free and fair elections.¹⁹ Indeed, almost half of European countries allow all incarcerated individuals to vote, facilitating voting within the prison or by absentee ballot.²⁰ In Canada, Israel, and South Africa, constitutional courts have ruled that any conviction-based restriction of voting rights is unconstitutional.

IMPACT OF FELONY DISENFRANCHISEMENT

The political impact of the unprecedented disenfranchisement rate in recent years is not insignificant. One study found that disenfranchisement policies likely affected the results of seven U.S. Senate races from 1970 to 1998 as well as the hotly contested 2000 Bush-Gore presidential election.²¹ Even if disenfranchised voters in Florida alone had been permitted to vote, Bush’s narrow victory “would almost certainly have been reversed.”²²

Furthermore, restoring the vote to persons leaving prison could aid their transition back into community life. The revocation of voting rights compounds the isolation of formerly incarcerated individuals from their communities, and civic participation has been linked with lower recidivism rates. In one study, among individuals who had been arrested previously, 27 percent of non-voters were rearrested, compared with 12 percent of voters.²³ Although the limitations of the data available preclude proof of direct causation, it is clear that “voting appears to be part of a package of pro-social behavior that is linked to desistance from crime.”²⁴



Table 2. Felony Disenfranchisement Policy Changes, 1997-2019

State	Change
Alabama	Streamlined restoration for most persons upon completion of sentence (2003); codified list of felony offenses that result in disenfranchisement (2017)
Arizona	Removed requirement to pay outstanding fines before rights are automatically restored for people convicted of first-time felony offenses (2019)
California	Restored voting rights to people convicted of a felony offense housed in jail, but not in prison (2016)
Colorado	Restored voting rights to persons on parole (2019)
Connecticut	Restored voting rights to persons on probation (2001); repealed requirement to present proof of restoration in order to register (2006)
Delaware	Repealed lifetime disenfranchisement, replaced with five-year waiting period for persons convicted of most offenses (2000); repealed five-year waiting period for most offenses (2013)
Florida	Simplified clemency process (2004, 2007); adopted requirement for county jail officials to assist with restoration (2006); reversed modification in clemency process (2011); Restored voting rights to most residents after sentence completed (2018)
Hawaii	Codified data sharing procedures for removal and restoration process (2006)
Iowa	Restored voting rights post-sentence via executive order (2005); rescinded executive order (2011); simplified application process (2012)
Kentucky	Simplified restoration process (2001, 2008); restricted restoration process (2004, amended in 2008); restored voting rights post-sentence for non-violent felony convictions via executive order (2015); rescinded executive order (2015); restored voting rights post-sentence for non-violent felony convictions via executive order (2019)
Louisiana ²⁵	Required Department of Public Safety and Corrections to provide notification of rights restoration process (2008); Authorized voting for residents who have not been incarcerated for five years including persons on felony probation or parole (2018)
Maryland	Repealed lifetime disenfranchisement (2007); restored voting rights to persons on probation and parole (2016)
Nebraska	Repealed lifetime disenfranchisement, replaced with two-year waiting period (2005)
Nevada	Repealed five-year waiting period (2001); restored voting rights to persons convicted of first-time non-violent offenses (2003); Restored voting rights to persons on probation and parole (2019)
New Jersey	Established procedures requiring state criminal justice agencies to notify persons of their voting rights when released (2010); restored voting rights to persons on probation and parole (2019)
New Mexico	Repealed lifetime disenfranchisement (2001); codified data sharing procedures, certificate of completion provided after sentence (2005)
New York	Required criminal justice agencies to provide voting rights information to persons who are again eligible to vote after a felony conviction (2010); restored voting rights to persons on parole via executive order (2018)
North Carolina	Required state agencies to establish a process whereby individuals will be notified of their rights (2007)
Rhode Island	Restored voting rights to persons on probation and parole (2006)
South Dakota ²⁶	Established new procedures to provide training and develop voter education curriculum to protect the voting rights of citizens with certain felony convictions (2010); revoked voting rights for persons on felony probation (2012)
Tennessee	Streamlined restoration process for most persons upon completion of sentence (2006)
Texas	Repealed two-year waiting period to restore rights (1997)
Utah	Clarified state law pertaining to federal and out-of-state convictions (2006)
Virginia	Required notification of rights and restoration process by Department of Corrections (2000); streamlined restoration process (2002); decreased waiting period for non-violent offenses from three years to two years and established a 60-day deadline to process voting rights restoration applications (2010); eliminated waiting period and application for non-violent offenses (2013); restored voting rights post-sentence via executive order (2016)
Washington	Restored voting rights for persons who exit the criminal justice system but still have outstanding financial obligations (2009)
Wyoming	Restored voting rights to persons convicted of first-time non-violent offenses (2003); authorized automatic rights restoration for persons convicted of first-time non-violent felony offenses who apply and receive a certificate of voting rights restoration (2015); removed application process and automatically restored voting rights to persons convicted of first-time non-violent felony offenses who have completed their community supervision (2017)

CONCLUSION

The dramatic growth of the U.S. prison population in the last 40 years has led to record levels of disenfranchisement, with an estimated 6.1 million voters banned from the polls today. Disenfranchisement policies vary widely by state, ranging from no restrictions on voting to a lifetime ban upon conviction. Felony disenfranchisement has potentially affected the outcomes of U.S. elections, particularly as disenfranchisement policies disproportionately impact people of color. Nationwide, as of 2016 one in every 13 black adults could not vote as the result of a felony conviction, and in four

states – Florida, Kentucky, Tennessee, and Virginia – more than one in five black adults was disenfranchised.

Denying the right to vote to an entire class of citizens is deeply problematic to a democratic society and counterproductive to effective reentry. Fortunately, many states are reconsidering their archaic disenfranchisement policies, with 25 states enacting reforms since 1997, but there is still much to be done before the United States will resemble comparable nations in allowing the full democratic participation of its citizens.

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- 21 Uggen, C. & Manza, J. (2002). Democratic contraction? Political consequences of felon disenfranchisement in the United States. *American Sociological Review*, 67 (6), 777-803.
- 22 Ibid.
- 23 Uggen, C. & Manza, J. (2004). Voting and subsequent crime and arrest: Evidence from a community sample. *Columbia Human Rights Law Review*, 36 (1), 193-215.
- 24 Ibid.
- 25 Louisiana Legislature. House Bill 265 (2018). 2018 Session – House Bill 265 History.
- 26 South Dakota Legislature. (2013). 2012 Session - Bill History. Retrieved from <http://legis.state.sd.us/sessions/2012/Bill.aspx?Bill=1247>

EXHIBIT 15



July 7, 2020

Chairwoman Adonis Bailey
Morgan County Board of Registrars
Morgan County Courthouse, 1st Floor
302 Lee St. N.E.
Decatur, AL 35601

Cc: Clay Helms, Assistant Director of Elections; Misty Messick, Assistant Attorney General

By Email to kaustin@co.morgan.al.us and Morgan@vote.alabama.gov;
cc: clay.helms@sos.alabama.gov; Misty.Messick@AlabamaAG.gov

RE: Improper Voter Registration Rejection

Dear Chairwoman Bailey,

We write on behalf of a Morgan County resident, Julie Ann Coleman, whose voter registration request was incorrectly denied by your office, citing her status as a “convicted felon” as the cause for the denial. Ms. Coleman does not have any disqualifying felony convictions for the purpose of voting and should not have been denied the right to vote.

While Ms. Coleman has been convicted of unlawful distribution and possession of controlled substances felony convictions under her maiden name, Julie Ann Leverett, those convictions do not constitute Crimes of Moral Turpitude. Alabama Act 2017-378. Another member of your community, a League of Women Voters of Alabama (“the League”) volunteer, determined as much while assisting Ms. Coleman in determining her voting eligibility. Your office, however, sent Ms. Coleman a letter on June 3, 2020 stating that she was ineligible to vote because she was a “convicted felon.” See attached “BOR Letter.”

After receiving this letter, Ms. Coleman contacted your office to understand what she needed to provide in order to become registered. She was informed that she no longer had an open case and needed to provide your office with a letter proving that her rights had been restored.

While the League volunteer believed this to be incorrect, she assisted Ms. Coleman in sending a Certificate of Eligibility to Register to Vote ("CERV") request to the Alabama Board of Pardons and Paroles ("BPP"). The BPP field office in Cullman quickly and correctly informed Ms. Coleman, née Leverett, on June 18, 2020 that her convictions did not disqualify her from voting and that she did not need a CERV in order to register. See attached, "BPP Letter."

Your letter stated that Ms. Coleman could not vote without proof of rights restoration because she was a "convicted felon." This language suggests that all felony convictions disqualify a person from voting and that all persons convicted of felonies must provide evidentiary proof of rights restoration. Neither statement is correct. Only certain, disqualifying felony convictions, or "Crimes of Moral Turpitude," affect an individual's right to vote. See, Alabama Secretary of State, "Crimes Involving Moral Turpitude Include," available at sos.alabama.gov/mtfelonies (please note that the title of this list may be misleading; "crimes of moral turpitude" do not simply "include" this list – rather this list is inclusive of *all* crimes of moral turpitude). A person who has a felony conviction not on the list of crimes of moral turpitude may register to vote like any other Alabamian.

Because your office incorrectly rejected Ms. Coleman's voter registration request, we fear others may have also received this incorrect information. Placing the burden of proof of rights restoration on an individual who never, in fact, lost the right to vote has potentially deterred many from seeking such "proof" and, thus, prevented them from becoming registered. While Ms. Coleman had the assistance of various advocates throughout her attempts to register to vote, many do not have access to such assistance. Nor should they need it.

Your office's denial of Ms. Coleman's voter registration for a felony conviction was improper under Alabama law and we request that you swiftly place her on the Morgan County voter rolls. We also ask that you make an effort to educate all members of your staff on the voter registration qualifications for Alabamians with past felony convictions.

Sincerely,

/s/ Blair Bowie

Blair Bowie

Legal Counsel

Campaign Legal Center

BBowie@campaignlegalcenter.org

(202) 736-2201

Barbara Caddell

Barbara Caddell

President

League of Women Voters of Alabama

admin@lwval.org

205-871-8194

Attachment 1 - "BOR Letter"

June 3, 2020

Julie Ann Coleman

520094545

Falkville, Alabama 35622

Dear Ms. Coleman,

We cannot process the "Voter Registration" form you recently submitted to our office because our system shows that you are a convicted felon. We must have a letter from the Pardons and Parole office showing that your rights have been restored or that your case is currently on appeal in order to register you to vote.

FYI - if you do not already have your rights restored, the paper work could take up to 30 days to process in that office.

You are not a registered voter until we get this information. Please provide this information to us as soon as possible if you wish to vote. If you have any questions, feel free to call the Board of Registrars at (256) 351-4662 or the Pardons and Parole Office at (256) 351-4830.

Thank you for your cooperation.

Sincerely,


Morgan Coleman, Board of Registrars

Attachment 2 - BPP Letter



STATE OF ALABAMA
BUREAU OF PARDONS AND PAROLES
100 Capitol Commerce Blvd.
P. O. Box 302405
Montgomery, Alabama 361173
(334) 242-8700
www.pardons.state.al.us



June 18, 2020

Julie Ann Leverett

[REDACTED]
Falkville, AL 35622

Dear Ms. Leverett,

In reviewing your application for a Certificate of Eligibility to Register to Vote, we have determined that you were convicted of Unlawful Distribution of Controlled Substance, Unlawful Distribution of Controlled Substance and Unlawful Possession of Controlled Substance. Although these are felony convictions, they do not constitute crimes of Moral Turpitude. According to Act 2017-378 of the Alabama Constitution, these convictions do not disqualify you from exercising your right to vote.

You do not need a certificate in order to be eligible to register to vote. Therefore, interest in your voting rights case has been closed at this time.

If you have any questions, please contact me at 256-775-4873.

Respectfully,

Linda Walker
Probations and Paroles Specialist
Cullman Field Office
Cc: Pardon Unit

RE: [EXTERNAL EMAIL]Improper Voter Registration Rejection

Adonis Bailey <ABailey@co.morgan.al.us>

Wed 7/8/2020 5:21 PM

To: Blair Bowie <BBowie@campaignlegalcenter.org>

Ms. Bowie

You are welcome.

The right to vote is a civil liberty that I wish every eligible citizen would exercise. I am glad to have a job that gives me the ability to help people exercise their right.

I am not an attorney, but it is my understanding that if ,at the time the crime was committed, it was a crime of moral turpitude and the voter was struck, a letter is necessary from Pardon's and Parole to reinstate the Voter's Rights.

Adonis Bailey

From: Blair Bowie <BBowie@campaignlegalcenter.org>

Sent: Tuesday, July 7, 2020 5:16 PM

To: Adonis Bailey <ABailey@co.morgan.al.us>

Cc: Barbara Caddell <barbara.caddell@gmail.com>; Kathy Jones <kathy.u.jones@gmail.com>

Subject: Re: [EXTERNAL EMAIL]Improper Voter Registration Rejection

Thank you very much for the quick response, Chairwoman Bailey. I'm glad to hear that Ms. Coleman's situation has been resolved. Does Morgan County always require a letter from Pardons and Parole before a person with a felony conviction can register?

Best,
Blair

From: Adonis Bailey <ABailey@co.morgan.al.us>

Sent: Tuesday, July 7, 2020 5:31 PM

To: Blair Bowie <BBowie@campaignlegalcenter.org>

Subject: RE: [EXTERNAL EMAIL]Improper Voter Registration Rejection

Ms Bowie this matter has been handled and Mrs. Coleman is now active in our system. We received the letter from Pardons and Parole from Mrs. Coleman and she was made active June 26, 2020. A card was mailed to her to tell her where to vote.

From: Blair Bowie <BBowie@campaignlegalcenter.org>

Sent: Tuesday, July 7, 2020 3:25 PM

To: kaustin@co.morgan.al.us; morgan@vote.alabama.gov

Cc: Barbara Caddell <barbara.caddell@gmail.com>; Kathy Jones <kathy.u.jones@gmail.com>

Subject: [EXTERNAL EMAIL]Improper Voter Registration Rejection

Dear Chairwoman Bailey,

Please see the attached letter from Campaign Legal Center and the League of Women Voters of Alabama regarding Julie Ann Coleman's voter registration. We appreciate your attention to this matter and are available to discuss it by phone or email.

Best,

Blair Bowie

Legal Counsel & Restore Your Vote Manager

Campaign Legal Center

202-736-2201

bbowie@campaignlegal.org