

Submitted Testimony of Jenny E. Carroll
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My name is Jenny Carroll and I am the Chair of the Alabama State Advisory Committee to the U.S. Commission on Civil Rights. Thank you first for holding this hearing on “Voting Rights and Election Administration in Alabama.” Thank you also for the opportunity to share what the Alabama State Advisory Committee has learned about access to voting in Alabama following the Supreme Court’s decision *Shelby County vs. Holder* (hereafter “*Shelby County*”). On February 22, 2018, the Alabama State Advisory Committee held a hearing in Montgomery to entertain testimony on the topic of voting regulation in our state following the decision in *Shelby County*. As the summary of testimony (Attachment A, issued June, 2018) indicates, we were fortunate to hear from a diverse array of government officials, voting experts, activists, and citizens. Since that time our Committee has continued to gather information about impediments to voting access for our state’s citizens. We are in the process of completing our final report on our findings.

By way of background, since the *Shelby County* decision, Alabama, like many states, has passed and/or implemented a variety of regulations on voting. While these regulations are “facially neutral,” they raise real concerns about the opportunity for enfranchisement among the very populations the Voting Rights Act was created to protect. The days of a sheriff standing in the doorway to the polling place or the registrar’s office in Selma or Lowndes County may be a thing of the past, but current voting requirements may produce the same effect on minority and poor populations in our state. The method may be softer, more subtle, but the result of these post-*Shelby County* restrictions are the same.

Our forthcoming report will focus on several areas of concern, in my testimony I want to focus on those that are particularly troubling: voter identification requirements, voter registration and inactive voter lists policies, felon re-enfranchisement procedures, the lack of early voting in Alabama, limited absentee balloting procedures, poll hours, poll location changes, and a general lack of information about voting process. There are more we could discuss. The history and complexity of current voting regulations is long. I will, however, keep my focus on these but will happily entertain questions on others.

Voter Identification Laws

Following the *Shelby County* decision one of the first changes Alabama made to its voting laws was to institute a voter identification law. This law requires all voters to present one of eleven approved forms of identification or to be positively identified by two election officials. If the voter lacks the approved identification and cannot be positively identified by two election officials, the voter may cast a provisional ballot. In order for that provisional ballot to be counted, the voter must present “a proper form of photo identification to the Board of Registrars no later than 5:00 p.m. on the Friday following election day.” (See §17-10-1). The committee heard testimony that identification requirements were enacted to reduce individual

voter fraud by ensuring that the person casting the ballot is in fact the eligible voter listed on the voting rolls for a given polling place.

While Alabama accepts eleven different forms of identification for voting, Secretary of State John Merrill testified that the most common forms of voter identification are state issued identification cards – such as a driver’s license, a nondriver identification, or an Alabama Photo Voter ID card. These are procured through Department of Motor Vehicles (“DMV”) offices, the County Clerk’s office or, in some counties, a library or the Secretary of State’s mobile ID unit.

On its face, the voter identification law does not appear to have a discriminatory intent or purpose. It applies uniformly to all voters and seeks to ensure a common goal – voter integrity. Likewise, the state’s willingness to accept a variety of forms of identification procured from a variety of locations speaks to an effort to include and accommodate, rather than to exclude. I applaud both efforts to ensure voter integrity and to create multiple locations and means by which to obtain identification necessary to vote.

Such efforts, however, obscure the effect of the law. Our committee heard testimony that suggests that the reality is that Alabama’s voter identification law creates impediments for the poor and rural voters who may have limited access to locations that can issue identification, may lack the underlying documentation necessary to receive such identification, or have neither the time nor transportation to gain such identification. Further, the law seeks to address a problem – individual voter fraud – without any evidence that such a problem existed prior to the law’s passage. In short, the law, for all its good intentions, keeps people from realizing their right to vote for little reason other than their lack of ability to procure state sanctioned identification.

To realize the impact of this law on poor and rural populations, consider recent efforts to close or limit hours at DMV offices, courts, libraries, and other public places where voters might acquire the necessary identification to vote. In 2015, in response to a budget dispute, then Governor Robert Bentley closed thirty-one DMV offices in Alabama. In 2016, the Department of Transportation (“DOT”) conducted an investigation into these closures and concluded that they adversely affected counties with majority black and rural populations. Statistics from the Alabama Law Enforcement Agency (“ALEA”) and census data for the state show that of the eleven counties in Alabama that have a majority or near majority black population, eight suffered closure of DMV offices in their counties based on Gov. Bentley’s decision. The three counties that did not suffer such closures are home to Montgomery, Birmingham, and Selma – the state capital and two of the most populous cities.

In response to the DOT’s findings, the state re-opened offices in some of the affected counties with limited hours. Consider Wilcox and Bullock Counties. Both are rural, poor, predominantly

black counties. Wilcox County, according to the 2010 census, is 72.5% black and 26.8% white. The median family income is a little over \$22,000. Trying to learn the hours of the Wilcox County DMV office this week was an act in frustration. The single location listed online offered no website that might reveal its hours and no one answered the phone regardless of when I called. There was no recorded message to offer hours of operation. A call to the Wilcox County clerk's office produced a suggestion that I travel to another county to obtain a driver's license. Similar efforts to gather information about the DMV office in Bullock County met with similar frustration. Like Wilcox County, Bullock County is majority-minority according to the 2010 census – 70.2% black and 23.0% white – and is poor (the median family income in Bullock County was just under \$24,000). Also, like Wilcox County, efforts to learn the DMV hours for Bullock County's one DMV office was challenging. The Bullock County DMV office has no website. No one answered the phone regardless of when I called and there was no voice mail or recorded information. A call to the Bullock County's Clerk of Court's office revealed that the DMV office was open one day a week, though the individual I spoke to did not know what day the office was open or who I could speak to find out. She suggested I drive to the office to find out. She was sure the office would not be open on the weekend.

For citizens in these predominately black, predominately poor, and predominantly rural counties, like those in other similar counties, the DMV office is an illusory source of voting identification. To the extent that DMV offices continue to exist in Wilcox and Bullock Counties, they can hardly be described as easily accessible. This is not meant as an indictment of the men and women who work at the DMV offices, but it is meant to highlight the challenges that poor and rural citizens have to accessing the ballot.

Compare these counties to two urban, predominantly white counties. According to the 2010 census, Shelby County has an 83% white and 10.6% black population. Its median family income of over \$68,000. Shelby County has three DMV offices open five days a week from 8:00 a.m. to 4:30 p.m. Tuscaloosa County, who according to the 2010 census had a 66.3% white population (29.6% black population) and a median family income over \$58,000, has a DMV office open five days a week from 8:30 a.m. to 5:00 p.m. Both Shelby and Tuscaloosa County's DMV offices have convenient websites that not only provide basic information such as the location of the offices and their hours of operations, but also permit you to fill out forms prior to arrival at the office and to set appointments to obtain identification. I can find no such conveniences in Wilcox and Bullock Counties.

Arguably this comparison is unfair. Offices in counties like Shelby or Tuscaloosa County provide services to larger populations and therefore must be more numerous and provide more service hours. But the fact that there are sparse populations in the counties where the DMV offices were closed or suffered curtailed hours does not mean that there is no need for a DMV office in these counties. According to ALEA statistics in 2014 (prior to the closures) the thirty-one closed

DMV locations issued 3,149 drivers' licenses and over 5,000 learner's permits. Under the new reduced hours, these offices issued less than 1,000 drivers' licenses in 2016 and 2017.

Counties such as Choctaw, Sumter, Hale, Greene, Perry, Wilcox, Lowndes, Butler, Crenshaw, Macon, and Bullock are all poor (in fact some are some of the poorest counties in our nation), are all primarily black (some with black populations as high as 82%) and all lack a single full time DMV office. In the end, budget figures available on AL.gov show that closures of the thirty-one DMV offices saved the state an estimated \$200,000-300,000 out of a general budget that exceeded \$100 million. The amount of money saved was small, but the impact on marginal voters was large.

Why do DMV closures and offices with limited hours matter? The DMV, after all, is not the only source of acceptable voter identification, though it is the most common source in Alabama. Clerk's offices can issue such IDs, and to Secretary of State John Merrill's credit, he has created a mobile identification unit that will travel to potential voters to generate ID. These solutions, however, are not a panacea. Turning first to alternative ID locations such as clerk's offices. These offices, like DMV offices, are not open on weekends and are usually open eight hours during the day, with some taking breaks for lunch. For working men and women, dependent on a job and its paycheck, standing in line during work hours to acquire identification to vote creates a financial burden. For some in rural counties, such offices, like DMV offices are located at county seats which may be a great distance from the potential voter's home or work, creating an additional burden. This burden is compounded if the clerk's office keeps irregular and/or poorly posted hours of operation. For those with private transportation, traveling to an alternative identification location may be a lesser inconvenience; but for those without private transportation, they must depend on either someone else's willingness to transport them or near non-existent public transportation.

The mobile unit, while enjoying the benefit of being open on weekends, has made limited appearances. I take Secretary of State Merrill at his word that he is willing to take the mobile identification unit throughout the state, but logistically this solution has limited value if locations are poorly advertised, and it assumes that potential voters have equal transportation opportunities and available free time to access the mobile unit. In addition, as discussed below, the committee heard testimony that the same underlying documents required for DMV issued identification are required for the mobile identification unit. This means that even if the identification unit comes to the voter, the same impediments to acquiring the identification persists for marginal voters. Beyond this, the closures of DMV offices matter because, like the voter identification law itself, these closures send a strong message that it will be harder to qualify to vote in Alabama if you are poor and live in a rural county.

DMV closures, however, are not the only challenge to those seeking necessary identification to vote. For those in rural areas, or those that lack housing security, acquiring the necessary proof of identity to obtain a driver's license or other form of acceptable identification poses additional challenges. While I applaud the state's effort to ensure that free identification is available, proof of identity is not free for those who must acquire it. For those born at home, or those who do not have ready access to a copy of their birth certificates, documentation of identity must be purchased from state agencies. Depending on where a person was born the costs of acquiring a birth certificate can range from \$50 to over \$100.

Proof of residency may prove equally challenging. Marginalized people often do not have common proof of residency such as a formal lease, a utility or cable bill, or deed to property. As will be discussed later, such proof of residency is required not only to acquire the identification necessary to vote but also to register to vote in the first place.

At the polling place, a voter must present his or her identification in order to vote. Despite the Secretary of State's effort to provide a clear list of acceptable identifications, voters in recent election reported confusion among poll workers over what constituted proper identification. Identifications such as passports, student identifications, Tribal identifications, and Military identifications all met with challenges including concerns that photos were outdated and addresses were not listed on the identification. While these objections to the identification are incorrect as a matter of law, they highlight yet another concern over an identification requirement.

A voter without proper identification who cannot be identified by election workers at the polling place must cast a provisional ballot. This provisional ballot will only be counted if the voter presents the proper ID to the Board of Registrars no later than 5:00 p.m. on the Friday following the election day. Again, those without transportation, time, access to an ID location, or the requisite supporting documents to support the ID, may find themselves disenfranchised, even if they are registered to vote, because they cannot produce ID at the polling place or within the time frame permitted following the election as required under Alabama's voter ID law.

In the end, the real lived experience of the poor, rural, and working people I have met in my state is that acquiring the ID required by the state to vote poses significant logistical challenges. That it is possible in theory does not mitigate that challenge. The law imagines a world in which all people have the ability and the means to acquire an ID. Yet for many in my state that world is not their reality. For these citizens, the voter ID law is an impediment as insurmountable as a sheriff in the doorway. The effect is the same. For residents on the margins in Alabama, voting is long and difficult journey.

Weigh these challenges against the harm the voter identification law allegedly was implemented to prevent: individual voter fraud. Secretary of State Merrill acknowledged in his testimony that prior to the passage of the voter identification law there were no reported or investigated incidents of voter impersonation. This is consistent with Prof. Justin Levitt's testimony before the North Carolina State Advisory Committee, which shows that in fourteen years there have been thirty-one credible cases of voter fraud by impersonation out of more than 1 billion ballots cast during that period. As Director Kareem Crayton testified before the Alabama State Advisory Committee, such fraud is "infinitesimal." It is simply not the way elections are stolen.

There is little to no evidence that the state ID law keeps our elections safe from fraud. Instead the law serves create barriers for the most marginalized of Alabama's voters. To require an identification prior to voting is one way to ensure that only those with time and resources may vote in Alabama.

Voter Registration, Inactive Voter Lists, and Voter Purging

Similar concerns arise around inactive voter policies. Like all states, voters in Alabama must register to vote. In many ways, Alabama has done a good job of streamlining this process, offering multiple means and methods to register. This, however, does not diminish the complex nature of the registration process, which often results either in failed registration or in an inactive voter designation.

The primary access to registration is through the driver's license acquisition at the DMV. At the time the driver's license is issued, the elector is given a card to return to voter registrar's office via mail or in person. Once this card is submitted, the registrar's office must confirm the voter's listed residence through mailed card. If the first card is returned as undeliverable, a second is sent. If the second is returned, registration fails. Voters may also register in person at the Board of Registrar's office (though registration must still be confirmed through mailing process). While this confirmation of registration depends on having an address to receive mail, it is worthwhile to note that Alabama voting law does not require a person remain at a particular address. The only residency requirements require the voter to: 1. Live in the state and 2. Vote in the precinct in which he/she lives. Despite this, the registration confirmation process has added an additional residency requirement that favors sufficiently permanent residency to receive the registrar's mail. Given that this process of confirmation of residency continues well after initial confirmation, as discussed below, this residency requirement contemplates a more permanent address than a cursory examination of the regulation might suggest.

Like the voter identification law, this multi-step process of registration—though facially neutral—creates barriers for marginalized populations in Alabama. Those with housing

insecurity may lack the ability to receive mail at a designated address. Even though the individual may have properly registered, if they do not retain a single residency or leave their residency for prolonged periods for work, the registration confirmation cards may be returned as undeliverable.

The 2018 mid-term election revealed additional problems with the registration process. Those who attempted to register in person at the Board of Registrar's Office were told they were required to bring additional documentation not actually required by the state to register. For example, a group of Latinx voters were told at one Registrar's Office that they must provide proof of U.S. citizenship. While Secretary of State John Merrill was responsive to this problem when alerted to it, how often do such irregularities occur without coming to official notice? How often are people disenfranchised over confusion about registration processes – confusion created by the very offices charged with the registration of voters.

The 2018 mid-term elections also witnessed a statewide computer failure at DMV offices. This failure was brief – approximately 45 minutes – but it occurred during the last week to register to vote, and during the period of the failure the DMV was unable to produce any documents or identifications. Again, for those with limited time and resources, such a failure – even a very brief one like this – may create a barrier to gaining the materials necessary to register. The fact that alternative locations might exist that could provide identification or registration forms may offer little comfort to those unable to travel to alternative locations.

Secretary of State John Merrill has acknowledged the challenges to initial registration, and has created a registration application that allows voters to register through the app. This tool may be of limited utility for rural and poor voters. First, the app requires internet access – a challenge I have witnessed firsthand in some rural counties. Second, it requires access to a smartphone and/or possibly a computer (it remains unclear whether the app functions on computers or only on smartphones and tablets). This level of technology is not always accessible for marginalized citizens. Beyond this, lingering questions remain regarding the app. The Secretary of State's office did not respond to the State Advisory Committee's inquiries regarding the app's platform, how it processes information, who has access to this information (such as a law enforcement agency), whether the app engages in data collection, and whether or not it can be used on any smartphone or other equivalent technology. Finally, the app may only be used if a person has already acquired the requisite identification. This means that, for those with difficulties obtaining identification required to vote, the registration app will provide no assistance.

Assuming the voter is able to register, staying registered as an active voter is another story. Inactive voter policies may negate many of the advances made in the area of registration. Inactive voters are designated on separate voting lists and must update their voter registration

record before being permitted to vote. (§17-4-9) Such update forms are available at the polling place, as per Alabama Administrative Rule 820-2.2-.13(2). If the voter completes the update form, he or she may vote and may not be required to vote a provisional ballot.

If the person's name is not on the list of registered voters, either as a registered voter or as an inactive voter, he/she must provide proof of registration, i.e. a certificate from the board of registrars. (§17-10-3). As per the Alabama Election Handbook, "the certificate issued to voters when they originally register is not collected when people change their residence or otherwise become ineligible, so it is good practice to check with board of registrars or the judge of probate if a person presents an old certificate. It is recommended that the certificate be taken up and kept with the list of registered voters so that it cannot be used twice in a single election and so that it will be available in the event of a contest." (Alabama Election Handbook, Eighteenth Edition, 2017-2018, at 137). Once acceptable proof is presented, the person may be added to the list of registered voters and should be allowed to vote.

Any qualified voter residing in the precinct or voting district who cannot provide proof of registration may vote a provisional ballot if their name is not on the official list. In order for the provisional ballot to be counted, the voter must present proof to the Board of Registrars no later than 5:00 p.m. on the Friday following election day that he/she is an eligible voter in the precinct in question. If the voter has not voted in the proper precinct, the provisional ballot will not be counted.

A voter may be removed from polling lists for three reasons under §§ 17-4-3 and 4: disqualification; continuous purging; and when the voter has failed to provide address verification. Disqualification occurs when the voter has died, is mentally incompetent, or has been convicted for a disqualifying offense, or when the Board of Registrars has received at least one of two types of written notification that the registrant has moved outside the jurisdiction.

A voter who has been convicted of a disqualifying offense may be restored under felon restoration procedures described later. These present significant challenges which will also be discussed later.

The mental incompetence provision creates additional challenges, as misinformation seems to plague both election officials, judicial officials, and the disability community in Alabama. Reports of voters with developmental delays being told by election officials, often at the polling place, that they cannot vote because of mental incompetence are common. Likewise, a communal belief persists that those with subnormal or low IQ or who have been given accommodations under individual education plans for developmental delay are not eligible to vote under the mental incompetence provision. This belief, while not necessarily promulgated by the state, is also not disputed explicitly by the state and likely effects voter registration.

Finally, judges considering guardianship applications for adults with developmental delays and low IQ frequently include a rote finding of mental incompetency that precludes voter registration. This finding is often made without any evidentiary record to support its use or without specific consideration of the long-term effect of the finding on voter eligibility.

Finally, evidence that a voter has left the jurisdiction is developed through address verification procedures. Voters are mailed non-forwardable postcards to verify address (§17-4-30(a)). Successful delivery of the postcard to registrant within 90 days from mailing indicates a valid address on file for the registrant and no other change needs to be made (§17-4-30(b)). Registration and/or verification of address is then complete and the voter remains on the voting rolls as an active voter. If, however, the postcard is returned as undeliverable a second forwardable notice is sent. This provides notice of the need to update the voter's registration information and provides a postage-paid confirmation card (§17-4-30 (c)). If the second forwardable address confirmation card is returned as undeliverable, or if the voter does not return the address confirmation card within 90 days of the second mailout, the registrant's name is placed on the inactive list and in a suspended file. If a voter whose name is in the suspended file does not vote in an election conducted during the next two federal election cycles or does not provide updated information of his or her address, his or her name is purged from the voter rolls.

If a voter whose name appears on the inactive list appears on election day, he/she must be allowed to reidentify and vote a regular ballot. (§17-4-9). Reidentification procedures are set by the Secretary of State and pre-date the *Shelby County* decision, i.e. they were pre-cleared by the Department of Justice. (§§17-4-9, 17-1-2(5) and 17-9-15). Official lists of qualified voters in a county are then compiled and furnished to the election manager by the judge of probate at least 55 days before the election and in the case of municipal elections at least 35 days prior to the election (§17-11-5(b)).

In addition to the concerns surrounding these purging processes discussed above and later, the process of updating and address verification raises concern for their effect on marginalized populations. Updated forms take time to complete. Working voters often appear at polling places during limited windows – statistics suggest prior to work, lunchtimes, and after work time slots are more commonly used in Alabama. For workers casting ballots during these times, polling places are often crowded and the process of voting is time-consuming. Filling out an update form takes additional time a voter may or may not be able to sacrifice. Simply put, a voter may have to choose between completing the required form and getting to work on time or picking up a child or caring for a family member. Such a voter may cast a provisional ballot, but in order to have that ballot counted, he or she will have to provide the required documentation prior to 5:00 p.m. on the Friday following the election. For working men and

women without flexible work schedules, caregivers, or those without ready access to transportation this may be an insurmountable burden.

Address verification raises its own set of concerns. Voting regulations in Alabama permit voting if a voter maintains residency in a precinct even if they have moved from the original address of registration. A voter therefore could have moved, still be eligible to vote within a precinct, but not have received direct mailings to confirm residence or have voted in last two federal election cycles (statistically some elections simply do not draw large voting populations). In short, despite their compliance with Alabama's voting requirements, their lack of address confirmation will render them inactive and eventually purged from election rolls. Such a method also assumes that a voter, even one that remains at a particular address, may receive mail and be able to return a card in a designated time – a requirement not indicated in any Alabama statute as a requisite to vote. Those with housing insecurity are most likely to face this dilemma. The fact that they may undergo procedures to reinstate their voting status does not mitigate the effect of such regulations or lessen the persistent message that voting is easier for some populations than others.

In addition, voters often do not realize they have been purged and polling officials do not appear to always understand regulations that permit a vote as opposed to a provisional ballot. This potentially creates confusion when a voter is told he or she is not on the rolls, as well as frustration when the voter is told he or she may not vote or must vote provisionally. Further confusion seems to persist among members of the public about what happens to provisional ballots and when they are counted and when they are not. Lack of information about this process and conflicting recitations of how this process works creates not only confusion but a sense that voter purging methods are designed to disenfranchise. Even if this is not the case, the perception is significant as it erodes faith in the democratic and electoral process.

Construction of voter rolls themselves presents a problem in our state. Under Alabama law, the deadline to register to vote is 14 days prior to elections, but official lists of voters are furnished well in advance of this deadline (55 or 35 days depending on the election). These different time frames – between registration deadlines and the issuance of voter rolls -- creates confusion at polling places and has the potential either to force some voters to cast provisional ballots who should not have to or to cause some voters not to vote at all – in short, a type of de facto purging. I have yet to be able to track down an explanation of why these timeframes are not coordinated.

In sum, voter registration methods and inactive voter and purged voter lists present potential barriers to marginalized voters in our state.

Felon disenfranchisement

Finally, felon disenfranchisement in Alabama raises major concerns – particularly given the disparate impact of the criminal justice system on the poor and people of color. The 1901 Alabama Constitution permits disenfranchisement of those convicted of felonies of moral turpitude. In 2016, in response in part to unequal enforcement of this constitutional provision across counties, Alabama amended its statute so that only designated crimes of moral turpitude produce disenfranchisement. (Definition of Moral Turpitude Act, 2017). Despite this standardization (and limitation) of disenfranchising crimes, studies suggest 286,266 people or 7.62 percent of the state’s voting age population are disenfranchised.

Those convicted of offenses not listed in the Definition of Moral Turpitude Act, or those adjudicated guilty under Alabama’s Youthful Offender procedure, have not lost their right to vote. People who have not been disenfranchised who are incarcerated may register to vote under Alabama’s law and request an absentee ballot to vote by mail. Absentee ballots must be separately requested for each eligible voter and for each election.

Those convicted of disqualifying crimes may apply to the Board of Pardons and Paroles for restoration of their voting rights or a Certification of Restoration of Eligibility to Vote (CERV) provided they have no pending felony charges, they have paid all fines, court ordered costs, fees and restitution ordered at the time of sentencing on disqualifying cases in full, their sentence is complete, and they have successfully completed probation or parole. These requirements create significant impediments to voting.

First, while the lists of such offenses are available (an admitted improvement over the county-by-county determination of what counted as moral turpitude that preceded the 2017 law), it is clear that confusion and inconsistencies around the process of restoration persists. The state’s failure to widely publicize or offer education around designated crimes or the restoration process have furthered such confusion. During his testimony, Secretary of State Merrill noted that he did not assist, provide applications, or even publicize the process of restoration (known as a CERV). This seems to be a true missed opportunity for a Secretary of State that self-identifies a mission of registering all eligible voters. Instead, Secretary of State Merrill’s office takes the position that the CERV process is governed entirely by the Board of Pardons and Paroles and is distinct from eligible voter registration. While this is accurate, it also seems to be a distinction without a difference.

To further complicate matters, the Board of Pardons and Paroles often denies CERV’s to eligible voters or fails to make re-enfranchisement applications available at the time of either conviction, sentencing, or release. Potential voters have reported challenges in acquiring such applications. Further, because the statute on restoration requires payment of all fines and fees attached to the original sentence of the disqualifying case, individuals must pay any collection

fee attached to such fines and fees in order to clear the original debt. This collection fee, which attaches when the debt is 90 days old and has been referred to the district attorney's office for non-payment, is 30% of the original debt. For an individual ordered to pay \$1000 in fines, for example, the addition of the collection fee renders the total debt due \$1300. In addition, efforts to contact different counties regarding how the collection fee is calculated – a one-time fee, annually, or in some other method – produced inconsistent results.

To further complicate matters, while the payment of the collection fee itself is not required to be CERV eligible (only fines, court ordered costs, fees and restitution ordered at the time of sentencing on disqualifying cases must be paid in full), under Attorney General Opinion 2011-049 issued March 30, 2011, the collection fee may be collected first prior to the collection of any underlying debt. The result is that the collection fee must be paid in order for the fines, court ordered costs, fees and restitution ordered at the time of sentencing on disqualifying cases to be paid. The individual who owes \$1000 plus the \$300 collection fee will therefore have to pay the full \$1300 before he or she may apply for CERV. Thus, while Secretary of State Merrill has indicated that payment of the collection fee is not required to obtain CERV, one cannot in fact pay the required fees, costs, and fines, without first paying off the collection fee. The purported distinction between payment of this additional collection fee and payment of the original fines and fees is therefore a distinction without a difference and serves to only compound confusion and restrict access to the ballot.

The imposition of this extraordinarily high collection fee (in other contexts a 30% state-imposed interest rate would seem unconscionable) and the requirement that it be paid first, as opposed to last or on a pro rata basis, not only seems to defeat whatever purpose such court imposed fines and fees might serve, but also disproportionately disadvantages the poor who lack the resources to pay the imposed debt prior to the 90-day deadline. The criminal justice scholar in me would also be remiss if I did not note that such fines and fees are often set, mandatory amounts, unconnected in any way to the facts of the case or the harms the defendant inflicted with his or her crime. To link other rights to them therefore seems to serve little purpose but to ensure that those without economic resources remain ineligible to vote.

Polling Closures

Testimony received at the February 22, 2018, hearing also revealed that the closing of polling places and confusion regarding new polling locations persists in Alabama. Again to Secretary of State Merrill's credit, up-to-date polling location information is available through the Secretary of State's website. The existence of such information permits voters to learn of polling place closures quickly and efficiently. Concerns persist that those without access to the internet may have difficulty accessing information about closures in a timely fashion, particularly when such closures occur for the first time or with short notice.

In addition, any notice regarding closure will not mitigate the devastating effect of polling place closures among marginalized communities. Alabama §§17-6-3 and 17-6-4 requires the county commission to select at least one polling place for each precinct. “In an effort to reduce costs for elections some counties have moved to voting centers. Voting centers combine voters from two or more precincts and allow them to vote in a centralized location.” (Alabama Election Handbook, Eighteenth Edition 2017-2018, at 240)

The decision to create voting centers, in the process closing neighborhood polling places in predominantly low-income locations and in black belt and rural areas where public transport is scarce, has created logistical challenges for voters in Alabama. Testimony from the Secretary of State, Mr. Parks, and representatives from the NAACP, ACLU, and the Equal Justice Initiative (EJI) highlight how contested the effect of such closures are on voting populations. At a minimum, the state should conduct a study to determine the effect. Our state should not accept that a promise of notice of a polling place closure will somehow render all who might seek to vote either aware of the closure or able to travel to a new location. Again, for those with limited time, resources, and transportation access, such changes may result in choosing between life necessities and casting a ballot.

Voting in the Wrong Polling Place

Under Alabama’s voting regulations, if a person not listed on the voter rolls at a precinct seeks to vote he or she may cast a provisional ballot. If, however, this provisional ballot is cast in the wrong polling place or precinct then it may not be counted. Ideally, if the person is at the wrong precinct, he or she should be directed to the correct polling place. The voter must then travel to the new polling place and seek to cast a ballot within the provided poll hours. This ideal system, however, depends on members of the Board of Registrars offices actually being able to speak to poll officials to confirm where the voter should vote and/or the voter being able to travel to a new location to vote. This may be challenging during peak voting hours or if the voter has limited time, resources, or access to transportation. It is not clear that such communication is always occurring. Reports from the 2018 mid-term elections suggested that poll officials were not always able to determine where a voter should cast a ballot. As a result, some voters were given provisional ballots despite the fact that they in fact were voting in the wrong precinct. A voter’s failure to appear at the correct precinct may be attributable to a variety of factors – poll location change, voter error or misinformation – but a failure to provide the voter with the correct information about the appropriate location to vote is problematic and attributable entirely to the state.

Poll Hours

Under Alabama §§17-9-6 and 11-46-28(a), polls in state and county elections must remain open between the hours of 7 a.m. and 7 p.m. Anyone within the polling place at the closing time who has not had an opportunity to vote must be permitted to do so. (§17-12-1). If, however, a voter leaves the line to vote, he or she may not return after the polls have closed to cast a ballot. (§17-12-1). He or she must remain in line to vote. A federal or state court order may extend polling times beyond 7 p.m., but anyone who votes during the extended period must cast a provisional ballot under §17-10-2(4).

At first glance a twelve-hour voting window appears to accommodate those who work or have caregiver obligations, but this first impression is deceiving. Given increasingly long commute times and irregular work hours, a 7-7 polling window effectively places voting within working and child care hours. Given that peak voting times (mornings and evenings after 5:00 p.m.) coincide with work and familial obligations and that Alabama provides no “state holiday” for voting, long lines at polling places may discourage or prevent some voters from ultimately casting a ballot. This problem is exacerbated by the closure and combining of polling places, which have increased the voting population at particular locations.

Absentee Balloting

Alabama permits limited absentee balloting. (§17-11-3) A voter who will be out of country or state, has physical illness or infirmity which prevents attendance, works a 10 hour shift that coincides with polling hours, is an enrolled student outside of the county of personal residence, is a member of the armed forces or spouse or dependent of such a member, is an election official or poll worker, or is a jailed but not convicted person may vote under Alabama’s absentee ballot provisions. To do so, the voter must apply for an absentee ballot at least 5 days prior to election. The voter may apply by handwritten application, but all applications must contain sufficient information to identify the applicant as a registered voter. Each voter’s application must be separate and a voter must apply for each election he or she seeks to vote absentee in. A voter may receive an emergency absentee ballot upon proof of emergency treatment by a licensed physician within the five-day deadline for absentee ballots. (§17-11-3). If the voter is summoned out of the county on an unforeseen business trip, he or she may apply for an emergency absentee ballot any time before the close of business the day before the election, but must sign an affidavit swearing that the voter was unaware of the trip prior to the five-day deadline. (§17-11-3(d)) Any voter casting an absentee ballot must provide a copy of their identification with the absentee ballot. (§17-11-3). Military absentee ballots are covered by the Uniformed and Overseas Citizens Absentee Voting Act and the Military and Overseas Voter Empowerment Act, under which the voter must send an application for a local absentee ballot at least 30 days prior to election. Voters under the act are not required to produce identification prior to voting. (§§17-9-20(d) and 17-17-28).

While Alabama does offer absentee ballot provisions as described above, the state does not offer “no excuse” absentee balloting. Voters who face the logistical challenges to voting at particular locations or during particular hours may not qualify under the articulated categories for absentee ballots. Further, the requirement to provide copy of identification imposes complication and costs on voters, particularly on those without access to copying machines. Finally, despite the fact that the voter is not obligated to remain at a single address but is eligible to vote if residing in precinct, if a voter requests an absentee ballot with a different address than that on the voter list, the ballot is mailed to the address shown on the voter list as per Attorney General Opinions s2000-156 and 2000-193. This policy increases the probability that the voter may not receive the requested absentee ballot.

Absentee ballots offer an opportunity for those unable to attend traditional voting poll places to vote. Such ballots serve to ensure efficient vote calculation (they can be counted early) and reduce congestion at polling places. Finally, absentee ballots can be a cost-efficient mechanism for the state to conduct elections. Some jurisdictions, recognizing this fact, permit no excuse absentee balloting or conduct mail-in elections in which any citizen can mail a ballot. Despite these benefits Alabama has opted to take a restrictive stance on absentee balloting. And once again, those most affected by this decision are likely to be those with the fewest resources in our community.

Conclusion

In sum, I have tried to offer a brief snapshot of regulation in Alabama. The picture that emerges concerns me not because I believe the laws and procedures I have described here rise to the level of intimidation and hostility of past episodes in my state or because I believe that such regulations carry in their body an intent to discriminate against poor and minority populations, but because I believe that effect of these regulations, whatever their intent or aim, is the same. Simply put, the road to the ballot box is harder and longer for the poor and minority populations of Alabama. And so the same men and women who have the least in my state often lose one more right – their right to vote and hold their government accountable to them.

This, frankly, baffles me. Voting is not only a critical component to our democracy, but it is a fundamental right. I appreciate efforts to ensure voter integrity, but such efforts must not and cannot come at the cost of impeding this fundamental right for the most vulnerable among us. Restrictions on voting access must be linked to legitimate government concerns and not phantom concerns of voter fraud. Voter identification requirements, registration verification processes, restrictive absentee balloting, and limited polling locations and hours all serve to hinder voter access and exclude eligible voters. Requirements of payment of significant collection fees and lack of reliable information about restoration exclude still others. The

pervasive confusion over everything from the hours (or even existence) of DMV offices in rural areas to provisional ballot or CERV procedures and beyond all create a climate in which voters may be excluded from realizing their right to vote and may view the process as fundamentally stacked against them. The fact that I spent literally weeks trying to track down and wade through complex policies and multiple individuals before I could find answers (often unsuccessfully) to the most basic questions suggests to me that the process is extraordinarily difficult to navigate. I am therefore not surprised when I speak to members of my community who report the challenges they faced in trying to figure out how to register to vote or how to cast their ballot. I find this to be frustrating, saddening and inexplicable.

To be clear, the officials in Alabama have been cooperative and responsive to my inquiries, but often they simply tell me they do not know how to answer my questions. I have been told, as I suspect others have, to bring voters affected by the policies described in this testimony to these officials before they will question the validity or impact of the policies. Sometimes that is possible, but sometimes it is, to paraphrase the physicist Carl Sagan, like opening my door, waiting for a lobster to appear, and when none appears concluding there are no lobsters in the world. The onus should not be on the citizen to prove that the process rendered him or her unable or unwilling to register or to vote. The onus should be on the state to show that those we trust with the most sacred obligation to run our government in our names have taken every step to ensure that our right to vote is preserved and maintained.

Alabama is a proud state. Even as I summarize this information to you, I think of the men and women I have met and come to know in my home. When I think of these voting regulations, I do not think of abstract voting theory or spectral concerns of fraud or illusory differences between a fine and its interest. I think of their faces, their stories, and their lives, and I know we can and must do more.