

Suffering from Past Evils: How Alabama's 1901 Constitution Played a Hand in the 2008 Presidential Election

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"The past half century did not wipe out the old politics. Rather, the political system 'morphed' into something new, something different but still bearing resemblance to what it was Clearly, the hand of the past has long reached into the present."¹

INTRODUCTION

Across the United States and throughout the world, countless people are inspired by what many argue is one of the most significant moments in modern history. Forty years after the assassination of civil rights leader Dr. Martin Luther King Jr., Americans have come together to elect the first African American to the presidency of the United States. Just fifty years ago such a victory would never have been possible, and even today a number of citizens admit that it was inconceivable.² Nevertheless, it is not the election of the first

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1. JAMES M. GLASER, *THE HAND OF THE PAST IN CONTEMPORARY SOUTHERN POLITICS* 2, 8 (2002).

2. According to Gallup polls, in 1958, only 37% of Americans said that they would vote for a qualified black presidential candidate. In 2007, this number rose to 94%. Editorial, *Voters on Tuesday Elected our First African-American President, Which Speaks to a Changing, Maturing Country in Which Color No Longer Disqualifies a Person from the Nation's Highest Office*, *BIRMINGHAM NEWS*, Nov. 5, 2008, available at <http://www.al.com/opinion/birminghamnews/editorials.ssf?base/opinion/12258766421812>. Moreover, one religious leader in Alabama remarked, "We've been very blessed to have been alive to see this. As a child in Montgomery, I never dreamed I'd live to see an African-American be elected president of the United States. It's unthinkable, but it did happen." Mike Marshall, *Blacks: Obama's Election Validates Past, Offers Hope*, *HUNTSVILLE TIMES*, Nov. 6, 2008, at A1 (quoting Dr. Homer McCall). Similarly, another citizen recalls, "I grew up in Birmingham in the '60s....I remember the colored and the white water fountains, sitting in the back of the bus. I never thought I'd live to see this day." *Id.* (quoting Glenn Pippen). Finally, the editor of

African-American president alone that will guarantee this election's rightful place in history; it is the overwhelming margin of victory, as well as the vast participation of the American electorate that makes the 2008 presidential election such a momentous occasion.³ Due to the unique circumstances of this presidential race, many contend that the election of President Barack Obama is evidence that issues of race in the United States have vastly improved.⁴ Whether that contention holds true or not, a number of citizens are wondering "what happened in Alabama?"⁵ Why is it that, despite the national trend of overwhelming support for Barack Obama, Alabama largely supported his competitor, producing the lowest number of white citizens who voted in favor of our new president?⁶

To properly address such an inquiry, there are a number of factors that must be examined. Among those factors lies the issue of racism, or rather white fear of electing a non-white president. Some argue that the racial divide remains so deep in Alabama that whites were reluctant to vote for President Obama due to persistent racially prejudiced attitudes towards African

Alabama's Decatur Daily remarks, "I can't think of a single moment, before this year, when I thought it was within the realm of remote possibility that a black man could be nominated for president by one of the major parties—let alone that he would go into Election Day with a better-than-even chance of winning It's not that I would have calculated the odds of an African-American being elected president and concluded that this was unlikely, [sic] it's that I wouldn't even have thought about such a thing." Eugene Robinson, Editorial, *Unlikely Candidacy Inspires Pride in Country*, DECATUR DAILY, Nov. 4, 2008, available at <http://decaturdaily.com/stories/21655.html>.

3. More than 136 million Americans voted in the 2008 presidential election. This is the highest percentage of voter turnout in the past one hundred years. Editorial, *Record Numbers of Voters Turn Out to Cast Ballots on Election Day, Making Long Lines the Norm at Some Places*, BIRMINGHAM NEWS, Nov. 6, 2008, available at <http://www.al.com/opinion/birminghamnews/editorials.ssf?/base/opinion/1225962141715>.

4. See, e.g., David Person, Editorial, *One Step to Destiny*, HUNTSVILLE TIMES, Nov. 6, 2008, at A8 (contending that "Obama's victory proves that every American is fully vested, regardless of race or ancestry").

5. See generally Equal Justice Initiative, *Election Analysis Shows Only 10% of Whites in Alabama Voted for Obama*, Nov. 17, 2008, <http://eji.org/eji/node/236> (reporting that only 10% of white Alabamians voted for President Obama); Adam Nossiter, *For South, A Waning Hold on National Politics*, N.Y. TIMES, Nov. 11, 2008, available at http://www.nytimes.com/2008/11/11/us/politics/11south.html?_r=1&sq=alabama obama (questioning the low level of voter support for President Obama in Alabama); Tom Gordan, *U.S. Rep. Artur Davis Says Obama's Total in Alabama Doesn't Mean a Black Candidate Cannot Win Statewide Race*, BIRMINGHAM NEWS, Nov. 6, 2008, available at <http://www.al.com/news/birminghamnews/statebriefs.ssf?/base/news/1225962826171550> (questioning whether black candidates can win state elections following low voter support for President Obama); Charles Franklin, *White Vote for Obama in the States, Part Two*, Nov. 15, 2008, available at <http://eji.org/eji/node/235> (evidencing that Alabama ranked among the top three states with the lowest support for Obama among white voters).

6. Equal Justice Initiative, *Election Analysis Shows Only 10% of Whites in Alabama Voted for Obama*, Nov. 17, 2008, <http://eji.org/eji/node/236>; Charles Franklin, *White Vote for Obama in the States, Part Two*, Nov. 15, 2008, available at <http://eji.org/eji/node/235>.

Americans.⁷ While there is convincing support to affirm such a position, an even greater concern demands our attention. The concern of which I speak is felon disfranchisement.

Embedded in Alabama's 1901 Constitution, the law that strips felons of their rights to vote prevented one-quarter of a million Alabamians from casting ballots in the 2008 presidential election.⁸ Many of these individuals were denied the right to vote despite the fact that they were legally entitled to do so. Due to immense confusion and debate surrounding Alabama's felon voting laws, thousands of eligible voters were deprived of the opportunity to register. Not surprisingly, most of these voters were poor, black, and more likely to vote for Democrats like Obama.⁹ As such, the denial of these citizens' rights raises

7. See Kim Chandler & Charles J. Dean, *Democrats Make Gains but Deep Racial Divides Exist in Alabama*, BIRMINGHAM NEWS, Nov. 7, 2008, available at <http://www.al.com/news/birminghamnews/statebriefs.ssf?/base/news/1225962919171550> (claiming that "an analysis of statewide voting showed the state still faces a significant racial divide"); Nossiter, *supra* note 5 (reporting that "Alabama analysts pointed to the persistence of traditional white Southern attitudes on race as the deciding factor in Mr. McCain's strong margin"; quoting University of Alabama at Birmingham historian Glenn Feldman as stating, "Race continues to play a major role in the state Alabama, unfortunately, continues to remain shackled to the bonds of yesterday"; and explaining how white residents in Lamar County admitted that "over 50 percent [of residents] voted against Obama for racial reasons," because they were bothered by the idea of having a black man "over" them); Tom Gordon, Editorial, *U.S. Rep. Artur Davis Says Obama's Total in Alabama Doesn't Mean a Black Candidate Cannot Win Statewide Race*, BIRMINGHAM NEWS, Nov. 6, 2008, available at <http://www.al.com/news/birminghamnews/statebriefs.ssf?/base/news/1225962926171550.xml&coll=2> (quoting University of Virginia's southern politics expert Larry Sabato as saying, "Obama's win may make race less important in the future, but I'm not sure that will be true in Alabama for a long time"); Cynthia Tucker, Editorial, *America's Landscape Has Changed*, HUNTSVILLE TIMES, Nov. 6, 2008, at A8 ("Still, my generation (and my mother's) cannot escape the pull of categorization by skin color."); and Person, *supra* note 4 ("It absolutely would not be correct to assume that opposition to Obama equals racism. But there's no doubt that some who voted against him did so precisely because of his race or culture.").

8. See *infra* Part II.

9. In Alabama, the general population is approximately 26% African American and 71% White. See State and County QuickFacts, <http://www.quickfacts.census.gov/qfd> (last visited Mar. 29, 2008). Nevertheless, while African Americans make up less than one-third of the state population, nearly two-thirds of state prisoners are black. Latasha McCrary, *Grassroots Drug Court Policies Have Significant Impact on Rural Blacks: Alabama's Ongoing Concern for Equal Protection Under the Law*, 5 INT'L J. PUNISHMENT & SENT'G 50 (vol. 2, 2009). Such data suggests that a large majority of Alabama's disenfranchised are African American. This holds great importance with regard to the 2008 presidential election, because statistics show that a large percentage of African Americans in Alabama voted for President Obama. See Kim Chandler & Charles J. Dean, *Democrats Make Gains but Deep Racial Divides Exist in Alabama*, BIRMINGHAM NEWS, Nov. 7, 2008, available at <http://www.al.com/news/birminghamnews/statebriefs.ssf?/base/news/1225962919171550>; Challen Stephens, *Vote Splits Tight Inside Huntsville*, HUNTSVILLE TIMES, Nov. 6, 2008, at A1. See also SPENCER OVERTON, *STEALING DEMOCRACY: THE NEW POLITICS OF VOTER SUPPRESSION* 71 (2006) (contending that minorities are more likely to vote for candidates of their race). In addition to Alabama's disenfranchised being mostly African American, many of these citizens are poor as well. In 2000, the Alabama Poverty Project found that approximately 31% of black Alabamians lived below the poverty level in contrast to just 11% of whites. ALA. POVERTY

serious constitutional and civil rights concerns for Alabama.

This article argues that Alabama's felon disfranchisement practices are extremely problematic, exposing the state to numerous civil rights challenges. The article explores how Alabama's felon voting restrictions played a significant role in preventing thousands of eligible citizens from voting in the 2008 elections and discusses why failures in policy necessitate a movement towards reform. Part I reviews the origins of Alabama's felon disfranchisement law under the 1901 Constitution. Part II examines current problems with the state's disfranchisement laws. Part III looks at recent and future challenges arising from felon voting practices, and Part IV calls for a movement towards constitutional and criminal justice reform.

I. THE ORIGIN OF ALABAMA'S FELON DISFRANCHISEMENT LAW

The origin of Alabama's felon disfranchisement law can be traced to the intent of Alabama's wealthy to deprive African Americans and poor whites of their rights to vote. In 1901, the most recent Alabama constitution¹⁰ was drafted largely in response to the discontent of Alabama's white elite. When the constitution was drafted, white southerners were disgruntled about the emancipation of black slaves and the recent adoption of the Fourteenth and Fifteenth Amendments to the U.S. Constitution.¹¹ As explained by one black activist, "We were liberated not only empty-handed but left in the power of a people who resented our emancipation as an act of unjust punishment to them. They were therefore armed with a motive for doing everything in their power to render our freedom a curse rather than a blessing."¹² Dissatisfied with the freedom and emerging power of newly freed slaves, Alabama's leading whites joined together to create a document that would effectively divest African Americans of political power for years to come.¹³

PROJECT, THE PICTURE OF POVERTY 6 (2005). Such data suggests a high probability that the overwhelming numbers of disenfranchised African Americans are also among Alabama's poorest citizens. This is consistent with the assertions of criminal justice scholars, some of whom maintain that the majority of felons are from lower economic classes. Jeffrey Reiman, *Liberal and Republican Arguments Against the Disenfranchisement of Felons*, 24 CRIM. JUST. ETHICS 5 (2005) ("The same ethnic and economic factors that make one a more likely subject of criminal justice sanctions make one more likely to vote Democratic."). Thus, these economic disparities also become important in the context of the 2008 election, in which the democratic candidate was President Barack Obama.

10. Alabama's constitution is among the oldest and most extensive constitutions in the United States. See WAYNE FLYNT, *ALABAMA IN THE TWENTIETH CENTURY* 3, 24 (2004).

11. See generally *id.* at 4-14.

12. Ida B. Wells, *Class Legislation, in THE REASON WHY THE COLORED AMERICAN IS NOT IN THE WORLD'S COLUMBIAN EXPOSITION: THE AFRO-AMERICAN'S CONTRIBUTION TO COLUMBIAN LITERATURE* ch. II (Robert W. Rydell ed., Urbana & Chicago: Univ. of Ill. Press 1999) (1893), available at <http://digital.library.upenn.edu/women/wells/exposition/exposition.html>.

13. The 1901 Constitutional Convention was dominated primarily by two groups—planters

The idea for a new state constitution began to materialize during the late nineteenth century. Fearing that Populists were seizing control of state government, and politically empowering blacks and poor whites during the process, many wealthy whites agreed that “something must be done.”¹⁴ To address this fear, U.S. Senator John Tyler Morgan of Alabama began to call for a disenfranchisement convention to rewrite the state constitution. After Morgan won the U.S. senatorial race in 1900, the Alabama legislature initiated a poll to determine whether citizens supported Senator Morgan’s idea of a new constitution that would disenfranchise African Americans.¹⁵ The poll demonstrated that a majority of voters in the state—sixty percent—supported such a convention. As a result, 155 delegates, all white males, were selected to draft a new constitution that would reestablish and maintain white dominance throughout the state.¹⁶

The racist intent of the 1901 convention was evident from the start. In his opening address, John B. Knox, the president of the Convention stated, “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.”¹⁷ Thus, with this intent to maintain white supremacy, the authors of the 1901 Constitution

and Big Mules. These groups were comprised of large landowners and representatives from state banks, railroads, industry, and the industrialized Birmingham district. FLYNT, *supra* note 10, at 7-8.

14. Populists were gaining political prominence in Alabama by appealing to black and white voters on the basis of class rather than race. *Id.* at 6.

15. *Id.* at 7. Although the new constitution was also aimed at disenfranchising poor whites, the primary and clear purpose was to discriminate against all blacks. In *Hunter v. Underwood*, an expert testified regarding the drafters’ obvious intent to disenfranchise blacks, while subtly disempowering poor whites as well:

Q. The aim of the 1901 Constitution Convention was to prevent the resurgence of Populism by disenfranchising practically all of the blacks and a large number of whites; is that not correct?...A. Yes, sir, that is true. Repeatedly through the debates, the delegates say that they are interested in disfranchising blacks and not interested in disfranchising whites. And in fact, they go out of their way to make that point But the point that I am trying to make is that this is really speaking to the galleries, that it is attempting to say to the white electorate that must ratify this constitution what it is necessary for that white electorate to be convinced of in order to get them to vote for it, and not merely echoing what a great many delegates say [In] general, the delegates aggressively say that they are not interested in disfranchising any whites. I think falsely, but that’s what they say.

Hunter v. Underwood, 471 U.S. 222, 230-31 (1985).

16. *Id.*

17. See FLYNT, *supra* note 10, at 7. In addition to Knox, other fathers of the 1901 Constitution boasted about their efforts to legally establish white dominance. In a 1902 letter to his granddaughter, Dabney Palmer wrote: “I wrote my name to our new Constitution in September 1901....This will never be forgotten: we have virtually disfranchised the negro, reduced the taxes, and largely increased the school fund. So keep the pen as a souvenir, remembering your Grand Pa wrote his name as a member of the convention that drew up said Constitution.” *Id.* at 3 (emphasis added).

constructed a number of obstacles to stifle black progress.¹⁸ The most prevalent barriers included efforts to legally strip blacks of their franchise. To disenfranchise blacks, drafters designed discriminatory voting restrictions such as the grandfather clause, poll taxes, and literacy tests.¹⁹ Drafters also crafted a criminal disfranchisement provision “intended to provide states with ‘insurance if courts struck down more blatantly unconstitutional clauses.’”²⁰

The 1901 Constitution was not the first Alabama constitution to deny voting rights to criminal offenders. Although it was the first disfranchising instrument of its kind, its predecessor also contained a section that barred offenders from voting.²¹ The earlier provision specifically targeted persons convicted of felony offenses. The 1901 Constitution, on the other hand, was devised to permanently disenfranchise all persons convicted of “any crime . . . involving moral turpitude.”²² The result was that individuals would lose their franchise regardless of whether the act committed was a felony or punishable by law. Rather than serving as a principled consequence for citizens’ violation of their social contract, new voting restrictions were intended above all to disenfranchise blacks.²³ As such, drafters concentrated their efforts on crimes that they believed were more frequently committed by blacks.²⁴ For example, the new law would deny the right to vote to persons who committed the offense of wife-beating. According to the provision’s author, the anticipated effect was that “the crime of wife-beating alone would disqualify sixty percent of Negroes” from casting ballots.²⁵ Unfortunately, such predictions proved to be true. Within two years of the constitution’s ratification, criminal voting restrictions disenfranchised nearly ten times as many blacks as whites and, from 1901 until now, the law presumably has disenfranchised countless more.²⁶

18. *See id.* at 9 (discussing restrictions on blacks’ “social freedoms”); *id.* at 16 (discussing how the constitution eliminated critical services needed by many blacks); and *id.* at 319 (discussing the constitutional prohibition against interracial marriages and its mandate for separate schools).

19. FLYNT, *supra* note 10, at 9, 12.

20. ELIZABETH A. HULL, THE DISENFRANCHISEMENT OF EX-FELONS 20 (2006) [hereinafter HULL, THE DISENFRANCHISEMENT OF EX-FELONS]; Elizabeth Hull, *Disenfranchising Ex-Felons: What’s the Point?* SOC. POL’Y 47 (2003) [hereinafter Hull, *Disenfranchising Ex-Felons*].

21. *See* *Hunter v. Underwood*, 471 U.S. 222, 226 (1985).

22. *Id.* at 223. Disenfranchising individuals for committing crimes of moral turpitude was a strategy first used to disenfranchise blacks in Mississippi. Other states that used the practice include South Carolina, Louisiana, and Virginia. William Arp III & Berlisha Morton, *A Political History and Analysis of Disenfranchisement and Restoration of the Black Vote in Louisiana*, 29 W.J. BLACK STUD. 632 (2005); Reiman, *supra* note 9, at 5.

23. *Hunter*, 471 U.S. at 229.

24. *Id.* at 227.

25. Marc Mauer, *Disenfranchisement of Felons: The Modern-day Voting Rights Challenge*, 6 C.R. J. 40, 41 (2002), available at <http://www.usccr.gov/pubs/crj/wint2002/wint02.pdf>; Arp & Morton, *supra* note 22, at 632.

26. *Hunter*, 471 U.S. at 226, 228; Mauer, *supra* note 25; and FLYNT, *supra* note 10, at 14 (explaining that by 1903, the black vote declined from 181,000 to less than 3,000 in contrast to the

After nearly ninety years as the ruling source of law, Alabama's disfranchisement law was exposed and invalidated for its discriminatory intent in the 1985 case of *Hunter v. Underwood*. In *Hunter*, the U.S. Supreme Court struck down Alabama's disfranchisement provision with regard to misdemeanors involving moral turpitude.²⁷ The Court ruled that there was sufficient evidence to show that the law's "original enactment was motivated by a desire to discriminate against blacks on account of race and [that] the section continues to this day to have that effect. As such, it violates equal protection."²⁸

Given the Supreme Court's ruling in *Hunter*, Alabama's constitution was amended to eliminate voting restrictions for individuals convicted of *misdemeanors* involving moral turpitude. The provision, however, continues to disenfranchise individuals convicted of *felonies* involving moral turpitude.²⁹ The result is that ex-offenders, both felons and misdemeanants, continue to face ambiguous obstacles when trying to exercise their rights to vote.

II. ALABAMA'S CURRENT DISFRANCHISEMENT PROBLEM

While the 1901 Constitution's disfranchisement provision has been amended and directed towards felons only, Alabama has continued to face problems with the disfranchisement of ex-felons and non-felons. The dilemmas surrounding the disfranchisement of these former offenders can be traced primarily to three critical issues—the struggle to understand the law, delays in the restoration process, and the severity of the law.

The Struggle to Understand the Law

Currently, under Alabama's 1901 Constitution, "[n]o person convicted of a felony involving moral turpitude . . . shall be qualified to vote until restoration of civil and political rights or removal of disability."³⁰ While this law may appear straightforward, the problem is that no one has a clear understanding of what is a "felony involving moral turpitude." The Constitution itself gives no definition or guidance for understanding the term, and its silence has resulted in major controversies regarding which ex-offenders have the right to vote.

In addition to this confusion concerning the definition of a "felony involving moral turpitude," there has been procedural confusion over which branch of government has the right to define it. In the absence of a

white vote, which only declined from 232,800 to 191,500 during the same time period).

27. *Hunter*, 471 U.S. at 229.

28. *Id.* at 233.

29. See *Chapman v. Gooden*, 974 So. 2d 972, 976 (Ala. 2007).

30. ALA. CONST. art. VIII, § 177(b).

constitutionally based definition, various state governmental arms created lists of disfranchising crimes involving moral turpitude.³¹ The problem with such an approach is that no two lists are exactly the same. The Legislature lists fifteen felonies involving moral turpitude; the Attorney General lists twenty-eight crimes; the Administrative Office of Courts lists seventy; and the Governor's Office lists nearly five hundred.³²

Unfortunately, these lists produced a serious dilemma for officials in 2008. With uncertainty surrounding which list to use, registrars across the state relied on different sources for voter registration.³³ The disturbing consequence is that several registrars wrongfully denied registration to thousands of eligible voters. In some counties, registrars turned individuals with previous drug convictions away, despite the fact that the Secretary of State's office issued an opinion stating that such individuals would be allowed to vote.³⁴ In other counties, persons with misdemeanor convictions were advised that they were ineligible to vote, even though Alabama law does not bar such individuals from voting.³⁵ And, statewide, several thousand voters were sent inaccurate letters stating that they had been removed from voting rolls and were, therefore,

31. See David Person, Editorial, *Voting Rights Problems Are with Us Yet*, HUNTSVILLE TIMES, Oct. 10, 2008, available at <http://www.al.com/huntsvilletimes/stories/index.ssf?/base/opinion/1223630133155370.x>; Editorial, *The Governor's List*, ANNISTON STAR, Oct. 9, 2008, available at <http://www.annistonstar.com/opinion/2008/as-editorials-1009-editorial-8j08s3141.htm> [hereinafter *The Governor's List*]; Kim Chandler, *Confusion Reigns in Alabama Over Ex-felons Ability to Vote*, BIRMINGHAM NEWS, Oct. 6, 2008, available at <http://www.al.com.news/birminghamnews/statebriefs.ssf?/base/news/122328095073410.xml&col1=2&thispage=1>; John Ehinger, Editorial, *Voter Issues Heat Up*, HUNTSVILLE TIMES, Oct. 3, 2008, available at <http://www.al.com/opinion/huntsvilletimes/editorials.ssf?/base/opinion/1223025365285319.xml&col1=1&thispage=2>.

32. See ALA. CODE § 15-22-36.1(g) (1975). Att'y Gen. Op. No. 2005-092, 2005 WL 1121853 (2005). Ehinger, *supra* note 31. E-News for ACLU-AL Friends, *ACLU-AL's Felon Voting Rights Case Dismissed by Judge; Confusion Remains*, available at http://www.aclualabama.org/News/E-News/e-news_oct08.html [hereinafter ACLU-AL Friends].

33. Olivia Turner, Letter to the Editor, *ACLU Hopes State's Convicted Felons Regain Voting Rights*, PRESS-REGISTER, Nov. 2, 2008, available at <http://www.al.com/opinion/press-register/insight.ssf?/base/opinion/1225620959176580.xml&col1=3> (explaining that in addition to the four lists, some registrars relied on local attorneys and their own research to determine voter eligibility).

34. Editorial, *State Should Allow Former Drug Convicts Right to Vote*, OPELIKA & AUBURN NEWS, Oct. 7, 2008, available at http://www.oanow.com/oan/news/opinion/editorials/article/state_should_allow_former_drug_convicts_right_to_vote/39953/.

35. In Cullman County, registrars disqualified voters based on a list in which more than a third of the persons named had only been convicted of misdemeanors. ACLU-AL Friends, *supra* note 32. According to media sources, misdemeanor applicants were placed back on voting rolls after the mistakes were discovered. However, individuals were never notified by the Board of Registrars that a mistake had been made and that they were in fact eligible to vote. *Id.* Person, *supra* note 4.

unable to cast a ballot.³⁶

In addition to confusion among officials, felons were uncertain about their rights. Upon registering to vote, felons in Alabama are given a form that requires them to certify that they are “not barred from voting by reason of a disqualifying felony conviction.”³⁷ The form, however, does not tell individuals which felonies are “disqualifying” nor does it advise applicants as to how they can determine whether they have committed such a crime.³⁸ The result is that many felons are unsure about their rights to vote and therefore effectively disenfranchised.³⁹

Under Alabama’s current system, ex-felons have no place to turn for direction on their rights to vote. The Constitution does not provide a definition to explain whether the crime committed results in the loss of voting rights. State law only addresses felonies that result in permanent disenfranchisement.⁴⁰ As a result, ex-felons are powerless in the face of officials who erroneously decide their voting eligibility. Where election officials rely on improper lists and sources to deny eligible citizens the right to vote, citizens have no immediate or reasonable alternative means for authenticating their rights to vote.

A vast amount of confusion surrounding ex-felons’ right to vote can be traced to Governor Bob Riley’s administration. After employing a private firm to develop a list of disenfranchising felonies, the Governor’s Office generated and distributed lists naming individuals that were allegedly ineligible to vote.⁴¹ Despite errors, these lists were shared with registrars across the state.⁴² The result was that computer systems erroneously flagged eligible voters as

36. ACLU-AL Friends, *supra* note 32.

37. ACLU, VOTING WITH A CRIMINAL RECORD: HOW REGISTRATION FORMS FRUSTRATE DEMOCRACY 6 (2008) [hereinafter ACLU]; *Chapman v. Gooden*, 974 So. 2d 972, 980 (Ala. 2007).

38. See ACLU, *supra* note 37, at 6 (“Even if a voter were aware that ‘disqualifying’ felonies are those that involve ‘moral turpitude,’ s/he would be unlikely to know what crimes fall under that category. In addition, this language does nothing to let voters know that, even if they are convicted of ‘disqualifying felonies,’ they may still be able to regain their voting rights.”) and *id.* at 3 (declaring that “accurate registration forms are critical to ensuring this fundamental right [to vote]”).

39. See *id.* at 3 (explaining that “many people with past criminal records mistakenly believe they are ineligible to vote” and are often discouraged from completing unclear registration forms because they are afraid that they will violate voting laws).

40. In ALA. CODE § 15-22-36.1(g) (1975), the state legislature only lists felonies that result in permanent disenfranchisement. See the following Part for more information on the restoration process for disenfranchised felons.

41. ACLU-AL Friends, *supra* note 32; *The Governor’s List*, *supra* note 31; Ehinger, *supra* note 31; Kim Chandler, *State Courts Say Alabama Wrongly Bars People from Voting*, BIRMINGHAM NEWS, Oct. 2, 2008, available at <http://www.al.com/news/birminghamnews/statebriefs.ssf?/base/news/122293535320900.xml&coll=2>.

42. ACLU-AL Friends, *supra* note 32.

ineligible for nearly a year.⁴³ The errors, however, were not enough for the Governor's Office to initiate corrections; rather than correct its mistakes, for months the Governor's Office denied its involvement.⁴⁴ The Governor's Office assured the Administrative Office of Courts (AOC) that registrars were only barring registration for felons convicted of the seventy crimes listed by the AOC.⁴⁵ Despite such assurance, the AOC informed county probate judges, sheriffs, and circuit clerks that individuals had been wrongfully denied registration based on a list from the Governor's Office.⁴⁶ In response, the Governor's Office asserted that it had done nothing wrong.⁴⁷ Later, the Governor's Office confessed that it allowed registrars to use its list in error, but denied that its actions were "part of some conspiracy to prevent people from voting."⁴⁸ Instead, the Governor's Office claimed that accurate lists were not substituted for improper lists due to financial costs.⁴⁹

Negligent conduct by government officials is problematic in any state; but, in Alabama, the conduct of the Governor's Office raised additional concerns of racism and malicious intent. In Alabama, two-thirds of all state prisoners are black.⁵⁰ Therefore, when officials incorrectly deny voting rights to eligible ex-offenders, the individual being denied his or her right is in all probability black. As a result, the burden of Alabama's confusion surrounding felon disfranchisement falls heavily on the black population. Coupled with the history of racism in Alabama, the conduct of the Governor's Office raised questions in regard to the genuineness of officials' "mistakes," especially since the 2008 elections included the first black candidate for the presidency of the United States.

Whether or not its actions were malicious, the refusal of the Governor's Office to take responsibility for its mistakes made it more difficult for the Secretary of State to assess the extent of harm and potential for corrective measures in the weeks remaining before the election.⁵¹ When the Governor's Office finally confessed its error, officials and party leaders were left with only three weeks to identify every individual who had been wrongfully disenfranchised and subsequently get them back to county offices to re-

43. Chandler, *supra* note 31. Individuals who were flagged by the computer were allegedly told they had the right to appeal the county registrar's decision. *Id.*

44. *The Governor's List*, *supra* note 31.

45. Chandler, *supra* note 31.

46. Chandler, *supra* note 31. The memo from the AOC stated, "The AOC's approach to this issue was and is that unless there is affirmative legal authority for disqualifying a voter or voter registrant, every citizen has the right to vote." *Id.*

47. *Id.* Ehinger, *supra* note 31.

48. *The Governor's List*, *supra* note 31 (reporting on the Governor's Office's response to accusations that its actions were a tactic to prevent people from voting).

49. Chandler, *supra* note 31.

50. See ALA. DEP'T OF CORR., MARCH 2008 MONTHLY STATISTICAL REPORT 7 (2008), available at <http://www.doc.state.al.us/docs/MonthlyRpts/2008-3.pdf>.

51. Ala. Code § 17-3-31 (1975).

register.⁵²

Delays in the Restoration Process

Not all felonies in Alabama result in permanent disenfranchisement. In 2003, the state enacted a law that allows certain ex-felons to have their voting rights restored. Under Alabama Code Section 17-3-31:

[A]ny person who has been granted a Certificate of Eligibility to Register to Vote by the Board of Pardons and Paroles pursuant to Section 15-22-36.1, shall be permitted to register or reregister as an elector upon submission of a copy of the certificate to the board of registers of the county of his or her residence.⁵³

Under Alabama Code Section 15-22-36.1, a person may apply for a Certificate of Eligibility to Register to Vote (CERV) if they meet four requirements. First, the person must not be convicted of a crime that results in permanent loss of voting rights.⁵⁴ Second, the person must not have a state or federal charge pending. Third, the person must have “paid all fines, court costs, fees, and victim restitution.” And, finally, the person must have been released upon completion of sentence, pardoned, or released upon successful completion of probation or parole.⁵⁵ If all these requirements are met, a CERV should be granted and the applicant should be eligible to vote.⁵⁶

While the CERV process appears straightforward, the process is cumbersome and inefficient in practice. When a person submits a CERV application, if the Board of Pardons and Paroles determines that the application meets statutory requirements, the Board has fifty days to issue the CERV or refer the application for hearing.⁵⁷ If the Board determines that statutory requirements have not been met, they have forty-five days to notify the applicant and explain the denial.⁵⁸ However, the Board of Pardons and Paroles rarely provides a response to applications within the time limits prescribed by law. In a study conducted by Alabama Alliance to Restore the Vote, research showed that “of the 4,226 applications filed from December 2003 to October 2005, 82% were not processed within the legal time frame and had been

52. Chandler, *supra* note 31.

53. ALA. CODE § 17-3-31 (1975).

54. See ALA. CODE § 15-22-36.1(g) (1975) for crimes that permanently disqualify persons from voting.

55. ALA. CODE § 15-22-36.1(a) (1975).

56. ALA. CODE § 15-22-36.1(b) (1975).

57. ALA. ALLIANCE TO RESTORE THE VOTE & THE SENTENCING PROJECT, WHO IS NOT VOTING IN NOVEMBER: AN ANALYSIS OF FELONY DISENFRANCHISEMENT IN ALABAMA 4 (2006) [hereinafter ALA. ALLIANCE].

58. *Id.*

delayed by months or years.”⁵⁹ In other cases, “applicants received no response at all from the Board.”⁶⁰

Delays in the CERV process are often related to unclear laws and registrars’ lack of knowledge. When felons register to vote, they are frequently denied registration and directed to the Board of Pardons and Paroles to apply for a CERV.⁶¹ This process creates delays because most of these individuals never lost their right to vote and therefore do not need a CERV prior to voting. Approximately 192 CERV applications are filed each month.⁶² Of these applications, many are filed in error, causing time to be wasted. In a press release, the Board of Pardons and Paroles explained that “[u]nder the current law only felonies involving moral turpitude 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.”⁶³ The reality, nonetheless, is that registrars continue to misdirect applicants to the Board of Pardons and Paroles. The consequence is that the “existing process cannot absorb the load,” and, thus, numerous citizens face delays that prevent them from participating in elections in which they are rightfully entitled to vote.⁶⁴

The Severity of the Law

Felon voting restrictions produce severe consequences for Alabama’s ex-offenders. While Alabama is not the only state to disenfranchise felons, Alabama’s policies have a far greater impact than most states.⁶⁵ Nationwide, there are approximately 5.3 million citizens who cannot vote due to convictions.⁶⁶ Of these citizens, one-quarter of a million reside in Alabama.⁶⁷

59. *Id.*

60. *Id.*

61. See *Chapman v. Gooden*, 974 So. 2d 972, 978 (Ala. 2007).

62. ALA. ALLIANCE, *supra* note 57, at 4.

63. See *Chapman*, 974 So. 2d at 978.

64. ALA. ALLIANCE, *supra* note 57, at 4, 17. In addition, Alabama’s restoration process has a disproportionate impact on the poor. In Alabama, a felon who otherwise meets the requirements for voting restoration will not have his/her voting right restored unless s/he is capable of paying all legal financial obligations. ALA. CODE § 15-22-36.1(a) (1975). For an individual who lacks wealth, this is a difficult requirement to fulfill. The result is that Alabama’s law prevents the state’s poorest individuals from regaining their rights to vote. In Alabama, “more than half” of CERV applicants “are denied reinstatement of voting rights due to outstanding legal financial obligations.” Erika L. Wood & Neema Trivedi, *The Modern-day Poll Tax: How Economic Sanctions Block Access to the Polls*, 41 CLEARINGHOUSE REV. 39, n.79 (2007). See also *id.* at 38-39 (“By themselves economic sanctions create a substantial hurdle for people coming out of prison and trying to reenter the community. When coupled with voting qualifications, legal financial obligations can and do result in a person’s lifelong exclusion from the political process.”) and OVERTON, *supra* note 9, at 83 (explaining that poor whites are “more likely to be hindered” by permanent loss of voting rights than wealthier whites).

65. See Hull, *Disenfranchising Ex-Felons*, *supra* note 20, at 46.

66. ERIKA WOOD & RACHEL BLOOM, *DE FACTO DISENFRANCHISEMENT 1* (ACLU & Brennan Ctr. for Justice eds., 2008).

In the past decade, Alabama disenfranchised its citizens at a rate of 7%.⁶⁸ This rate is three times higher than the national average, placing Alabama among the top disenfranchising states in the nation.⁶⁹

Furthermore, when examining disenfranchisement through the lens of race, the impact of Alabama's policies are even more disturbing. Overall, disenfranchisement laws bar 13% of black men from voting in the U.S.⁷⁰ Among adolescents an estimated 40% of black youths will lose their rights to vote before reaching age eighteen.⁷¹ At this alarming rate, the Bureau of Justice predicts that a third of the upcoming generation of black men in America will lose their franchise during some point in their lives.⁷² Although these are predictions for the nation, in Alabama these statistics are already a reality. Black Alabamians are disenfranchised at a rate of 15%.⁷³ Currently, one out of three black men in Alabama cannot participate in the electoral process.⁷⁴ Rather than being able to choose a candidate who supports issues aligned with their interests, and with whom they possibly identify, one-third of black men in Alabama have no meaningful voice in government.⁷⁵

67. ALA. ALLIANCE, *supra* note 57, at 2.

68. *Id.*

69. *Id.* at 1, 2. Only Florida and Delaware have higher disenfranchisement rates than Alabama. *Id.* Alabama's rates are excessive, in part, because Alabama permits permanent disenfranchisement. John Kleinig & Kevin Murtagh, *Disenfranchising Felons*, 22 J. APPLIED PHIL. 218 (2005). This practice is only used in a few U.S. states and is almost non-existent in most parts of the world. Reiman, *supra* note 9, at 4. ACLU, *OUT OF STEP WITH THE WORLD: AN ANALYSIS OF FELONY DISENFRANCHISEMENT IN THE U.S. AND OTHER DEMOCRACIES* (2006). All foreign constitutional courts that have evaluated disenfranchisement laws determined that "automatic, blanket disqualification of prisoners" is a violation of "basic democratic principles" and "at least three high courts have condemned American-style blanket disenfranchisement policies as disproportionate penalties." *Id.* at 4, 8.

70. *Id.* at 3. Reiman, *supra* note 9, at 4. In 2004, black females were disenfranchised at rates four times that of non-black females. HULL, *THE DISENFRANCHISEMENT OF EX-FELONS*, *supra* note 20, at 27.

71. Hull, *Disenfranchising Ex-Felons*, *supra* note 20, at 46.

72. HULL, *THE DISENFRANCHISEMENT OF EX-FELONS*, *supra* note 20, at 27. Reiman, *supra* note 9, at 4. In states where ex-offenders remain disenfranchised, the estimate increases by 10%. THE SENTENCING PROJECT, *FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 1* (2008).

73. RYAN S. KING, *EXPANDING THE VOTE: STATE FELONY DISENFRANCHISEMENT REFORM, 1997-2008* 5 (The Sentencing Project 2008).

74. Reiman, *supra* note 9, at 4. Hull, *Disenfranchising Ex-Felons*, *supra* note 20, at 46.

75. This disproportionate and ironic result, stemming from disenfranchisement laws, has ignited serious concerns among civil rights organizations. The United States Civil Rights Commission insists that the disenfranchisement of ex-felons is "the biggest hindrance to black voting since the poll tax." Hull, *Disenfranchising Ex-Felons*, *supra* note 20, at 46. Likewise, the Civil Rights Coalition for the 21st Century maintains that the rate of disenfranchisement among blacks "threaten[s] to negate fifty years of hard-fought civil rights progress." HULL, *THE DISENFRANCHISEMENT OF EX-FELONS*, *supra* note 20, at 27.

III. CONSTITUTIONAL AND CIVIL RIGHTS CLAIMS

Alabama's current voting practices open the door for major constitutional and civil rights claims. Recently, the state has faced several challenges surrounding its felon voting laws. Such challenges have called into question the constitutionality of Alabama's disfranchisement practices. Despite these recent challenges, voting laws have not been fixed. As a result, the state is likely to be confronted with similar, if not more serious, claims in the future.

In the United States, the right to vote is an essential component of the democracy in which we live. The importance of such a right has been substantiated by two of the three branches of U.S. government. Congress validated the right to vote via the Voting Rights Act as well as the Fifteenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments.⁷⁶ The U.S. Supreme Court also recognized the importance of the right to vote in cases like *Yick Wo v. Hopkins* and *Wesberry v. Sanders*. In *Yick Wo*, the Supreme Court reasoned that the right to vote is "fundamental" because it is a "right preservative of all rights."⁷⁷ Similarly, in *Wesberry* the Court recognized that "no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."⁷⁸

Given the significance of the right to vote, the Constitution generally requires states to demonstrate a compelling interest for restricting citizens' franchise.⁷⁹ This is not true for restrictions on felons, however. Under Section Two of the Fourteenth Amendment, states are allowed to restrict voting rights for persons who have participated in "rebellion, or other crime."⁸⁰ In *Richardson v. Ramirez*, the Court upheld California's law which prevented three individuals from registering to vote due to past criminal records. The Court concluded that the Fourteenth Amendment expressly sanctions laws that deny voting rights to ex-felons.⁸¹ Notwithstanding this sanction, states must continue to honor other constitutional guarantees such as due process and equal protection of the law. When states fail to honor these guarantees, they, like Alabama, can and should expect to face challenges pursuant to the laws of this nation.

76. See 42 U.S.C. § 1973; U.S. CONST. amends. XV, XIX, XXIV, XXVI.

77. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

78. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

79. RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE 685 (vol. 3, 3d ed. 2000).

80. U.S. CONST. amend. XIV.

81. *Richardson v. Ramirez*, 418 U.S. 24, 54, 56 (1974).

Recent Claims against Alabama

Recently, Alabama faced a series of legal challenges arising from officials' conduct towards felon voters. In 2005, citizens filed a complaint, in *Chapman v. Gooden*, alleging that they had been barred from registering to vote even though their convictions were not felonies involving moral turpitude.⁸² According to the complaint, the Secretary of State directed County Registrars "not to register people with felonies—whether or not the felony involved moral turpitude."⁸³ The facts reveal that despite an official opinion from the Attorney General, a press release from the Board of Pardons and Paroles, and direct telephone calls from the Board, the Secretary of State advised County Registrars that unless the plaintiffs possessed a CERV, registrars were to "continue longstanding practice" and deny plaintiffs the right to vote.⁸⁴

The issue in *Chapman* arose, in part, because the Secretary of State was allegedly unclear as to which felonies involved moral turpitude.⁸⁵ However, rather than relying on the Attorney General's opinion, the Secretary unilaterally decided that no felon was entitled to vote. The Attorney General later intervened and the plaintiffs were allowed to register.⁸⁶ Based on these corrective measures, the Alabama Supreme Court dismissed *Chapman* on the grounds that there was no justiciable controversy.⁸⁷

The problem with such a decision is that, despite corrective measures taken in this instance, the problem in *Chapman* persists. Although ex-felons are not unilaterally denied the right to vote, they continue to encounter substantial voting delays and are often denied the right to vote even when they are eligible to do so. The process that ex-felons find themselves enduring, in effect, prevents them from voting altogether, just as if they were unilaterally denied their rights. Unfortunately, until the definition of felonies involving moral turpitude is made clear, or until use of the term becomes non-essential to the restoration of felons' voting rights, officials will continue to have a means to deny eligible citizens the right to vote.

82. *Chapman v. Gooden*, 974 So. 2d 972, 977 (Ala. 2007).

83. *Id.* at 978.

84. *Id.* at 978, 980.

85. In *Chapman*, the trial court concluded that "the definition of moral turpitude is so vague as to invalidate disenfranchisement . . . unless and until every felony involving that element has been expressly catalogued by the legislature." *Id.* at 982.

86. *Id.* at 979-80.

87. *Id.* at 988, 990-91 (explaining that the issue before the Court is moot and that the Court foresees "no reasonable likelihood that the wrong will be repeated"). In contrast, prior to the Supreme Court ruling, the trial court opined: "The court hereby declares that the policy and practice previously promulgated or employed by the defendants of denying voter registration to an individual otherwise qualified to vote, but who had been convicted of any felony, violated Amendment 579 to the Alabama Constitution. This policy and practice further violated the due process rights of the plaintiff class members provided by the Alabama Constitution." *Id.* at 982.

In 2008, the vagueness of the term “moral turpitude” and the proper method for defining the term became the center of controversy in *Baker v. Chapman*. In *Baker*, the American Civil Liberties Union (ACLU) filed an action charging that state officials denied voting rights “to people convicted of crimes which the Legislature has never defined as involving moral turpitude.”⁸⁸ According to the complaint, “thousands of Alabamians” were wrongfully disenfranchised because registrars were relying on invalid voter lists.⁸⁹ The ACLU explained that, without valid uniform procedures, Alabama voters will continue to have their rights infringed upon, because different counties use different standards for determining which ex-offenders have the right to vote. The problem, according to one ACLU representative is that a “person’s right to vote should not be determined based on the county in which he or she lives. A uniform standard of voter qualifications must be established so that all Alabama voters know their rights.”⁹⁰ The *Baker* claim was dismissed due to lack of standing.⁹¹

Finally, in 2008, the National Association for the Advancement of Colored People (NAACP) filed a suit against state officials after discovering that the Alabama Department of Corrections canceled a program that assisted inmates with absentee voting.⁹² The Department of Corrections allegedly canceled the program in response to pressure from Alabama’s Republican Party.⁹³ According to reports, Republican Party Chairman Mike Hubbard complained about prisoners receiving voter assistance, because he felt that “most Alabamians don’t want prison inmates casting ballots.”⁹⁴ The complaint was withdrawn when the Department of Corrections reinstated its program.⁹⁵ Nevertheless, this claim, like that of *Chapman* and *Baker*, raises concerns over

88. Complaint at 1-2, *Baker v. Chapman* (15th Cir. Ct. filed July 21, 2008), available at <http://www.aclu.org/votingrights/exoffenders/36053lg120080721.html>. The plaintiffs assert that the “Defendants are either outright disfranchising individuals....or, at a minimum, are requiring these individuals to go through an additional administrative process before allowing them to register to vote.” *Id.* at 2-3. The plaintiffs contend that such tactics raise questions as to whether the defendants are unlawfully refusing to register individuals as a means of undue delay. *Id.* at 6.

89. *Id.* at 2. The plaintiffs in *Baker* argued that the state legislature is the only branch with the authority to determine which crimes bar individuals from voting. *Id.* The Attorney General refutes this claim, arguing that the responsibility belongs to the judiciary branch. Troy King, Letter to the Editor, *Felon Voting Rights*, HUNTSVILLE TIMES, Aug. 26, 2008, available at <http://www.al.com/opinion/huntsvilletimes/index.ssP?/base/opinion/1219742158217870.xml&coll=1>.

90. Turner, *supra* note 33.

91. ACLU-AL Friends, *supra* note 32. See Person, *supra* note 4 (reporting that Montgomery Circuit Judge Tracy McCooney wants to dismiss the *Baker* complaint as premature because allegedly not all parties to the class action filled out voter registration forms and were officially denied registration).

92. The Sentencing Project, Alabama: NAACP Settles Voting Rights Cases, Allows Inmate Voter Education to Continue.

93. Ehinger, *supra* note 31.

94. *Id.*

95. The Sentencing Project, *supra* note 92.

whether the continued denial of voting rights for eligible ex-felons is purposeful and intended to reestablish and maintain the discriminatory legacy of the 1901 Constitution.

Future Claims against Alabama

If Alabama fails to address current problems surrounding its felon disfranchisement laws, the state will almost certainly face future constitutional and civil rights claims. In the future, potential claims may arise under the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and Section Two of the Voting Rights Act.⁹⁶

In Alabama, considerable evidence suggests that state officials violated felons' rights to due process. Section One of the Fourteenth Amendment states that "No State shall . . . deprive any person of life, liberty, or property without due process of law."⁹⁷ In determining whether the Due Process Clause has been violated, courts traditionally examine two forms of due process—procedural and substantive. Procedural due process is limited to a review of fairness in the procedure. The court asks: "[W]as the process by which the government applied the rule fair?" A person is generally denied procedural due process when they have been deprived of a basic right without notice or a hearing.⁹⁸ Substantive due process requires a review of the law's substance. Under this review, the court examines whether government actions or the law itself comports with the U.S. Constitution. A person is denied substantive due process when the law or state action infringes upon an individual's fundamental rights.

Alabama citizens who were denied registration, even though they were legally entitled to vote in the 2008 election, have credible claims that state officials denied them both procedural and substantive due process. In Alabama, the law prohibits individuals from voting if they are "mentally incompetent" or convicted of "felonies involving moral turpitude."⁹⁹ If a person is not mentally incompetent or convicted of a felony involving moral turpitude, that person "shall have the right to vote in the county of his or her residence."¹⁰⁰ The problem is that several officials did not comply with state law when they prevented misdemeanants and qualified felons and ex-felons from voting. Under Alabama law, misdemeanants and felons, whose offenses do not involve moral turpitude, never lose their voting rights. As such, these

96. The future claims examined in this Part are applicable to ex-felons who have already been unfairly prevented from voting and to felons who will face future restrictions under the same or similar circumstances.

97. U.S. CONST. amend. XIV.

98. See generally RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE 529-30 (vol. 2, 3d ed. 2000).

99. ALA. CONST. art. VIII, § 177(b).

100. ALA. CONST. art. VIII, § 177(a).

individuals are legally entitled to vote and should never have been denied that right by state officials.

Under U.S. constitutional law, where individuals rightfully possess a fundamental right such as voting, the state has the burden of proving that it had a compelling interest in overriding the citizens' right. If the state has no compelling interest to justify the burdens it placed on citizens or if the state's actions were not narrowly tailored, officials may face liability under the substantive due process clause.¹⁰¹ In Alabama, it does not appear that state officials had a compelling interest in denying eligible citizens the right to vote. Instead, the facts suggest that election officials denied citizens of their fundamental right to vote due to failures in state procedure. If the court finds that these systemic failures do not amount to a compelling interest under federal law, Alabama officials may be liable for violating citizens' substantive due process rights.¹⁰²

In Alabama, officials may also face liability for violating citizens' procedural due process rights. The Due Process Clause of the Fourteenth Amendment requires that citizens receive reasonable notice regarding prohibited behaviors and their consequences under the law.¹⁰³ Unfortunately, prior to registering for the 2008 election, many qualified voters were not notified that their rights would be restricted and that they would not be allowed to vote. These voters differ significantly from the plaintiffs in *Richardson*, because under Alabama law they were legally entitled to vote.¹⁰⁴ In *Richardson*, the plaintiffs were not entitled to vote, because the law prohibited all felons from voting upon conviction.¹⁰⁵ As a result, once convicted, the plaintiffs in *Richardson* were fully aware that they could not vote. In contrast, Alabamians who were not convicted of felonies involving moral turpitude had no notice that the state would not allow them to vote until they were denied registration. Such a denial violates the principles of *ex post facto* and is therefore a violation of procedural due process.¹⁰⁶ Under *ex post facto*

101. ROTUNDA & NOWAK, *supra* note 98, at 686.

102. If it is found that state officials have violated citizens' due process rights, they may claim that they are immune from liability. The court will have to determine whether the violating officials are entitled to legal immunity.

103. See *Maynard v. Cartwright*, 486 U.S. 356 (1988) (explaining that notice, under the Due Process Clause, rests on whether reasonable persons would know that their conduct was at risk of criminal sanction); *Bouie v. City of Columbia*, 378 U.S. 347 (1964) ("The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.").

104. See *Richardson v. Ramirez*, 418 U.S. 24 (1974) (upholding a California law that prevented ex-felons from registering to vote).

105. See *id.* at 24.

106. See *Calder v. Bull*, 3 U.S. 386 (1798) (explaining that an *ex post facto* law is a law that is passed after the occurrence of an event or action which retrospectively changes the legal

principles, state officials cannot retrospectively revoke citizens' voting rights based on a previous conviction. To do so would be to change the legal consequences of an action that has already taken place.¹⁰⁷ Such action is prohibited by Article I, Section 9 of the U.S. Constitution, as well as by the Fourteenth Amendment's Due Process Clause.¹⁰⁸

In addition to claims under the Due Process Clause, ex-felons seeking to have their voting rights restored may challenge Alabama laws under the Fourteenth Amendment's Equal Protection Clause. The Fourteenth Amendment provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."¹⁰⁹ Plainly stated, the laws of a state should not generate uneven benefits or burdens for similarly situated classes.¹¹⁰ In *Harper v. Virginia State Board of Elections*, the U.S. Supreme Court found that disproportionate burdens are placed on the poor when the ability to vote is linked to wealth.¹¹¹ As such, the Court held that "a state violates the equal protection clause of the Fourteenth Amendment whenever it makes affluence of the voter or *payment of any fee* an electoral standard."¹¹²

In Alabama, ex-felons' voting rights are greatly dependent upon their socio-economic status. One of the requirements for voting restoration is that the person "has paid all fines, court costs, fees, and victim restitution ordered by the sentencing court."¹¹³ According to some, this requirement is nothing more than a "modern incarnation of the poll tax."¹¹⁴ When individuals are denied reinstatement of their voting privileges based on financial capability, states are accomplishing exactly what the Court in *Harper* prohibited.

Similar to the appellant in *Harper*, Alabama has made payment of fees an electoral standard. The only difference is that Alabama's condition only applies to ex-felons. As a result, Alabama's ex-felons will need to show that, despite the Constitution's endorsement of felon voting restrictions, financial requirements for felons are unconstitutional.¹¹⁵ By making the payment of

consequences of the event or action).

107. *Id.*

108. See U.S. Const. art. I, § 9.

109. U.S. CONST. amend. XIV.

110. JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW 680-81 (Hornbook Series, 7th ed. 2004).

111. See *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966). In *Harper*, the Court considered the constitutionality of imposing a poll tax in state elections. The Twenty-fourth Amendment of the U.S. Constitution prohibits poll taxes in presidential or congressional elections. U.S. CONST. amend. XXIV.

112. *Harper*, 383 U.S. at 666 (emphasis added).

113. ALA. CODE § 15-22-36.1(a) (1975).

114. Wood & Trivedi, *supra* note 64, at 31.

115. Ex-felons in Alabama may reasonably argue that the application of the Twenty-fourth Amendment is not constrained by Section Two of the Fourteenth Amendment. The Twenty-fourth Amendment was written long after the Fourteenth Amendment. Hence, the drafters had the opportunity to make it clear that the amendment was applicable, except as applied to state

one's legal debts a voting condition, Alabama effectively excludes the majority of ex-felons from the political process.¹¹⁶ Since Alabama's ex-felons are disproportionately poor and black, financial requirements produce results analogous to those intended and realized by whites who instituted the poll tax as a means of suppressing the poor and black vote.¹¹⁷ Hence, based on the principles in *Harper*, Alabama's ex-felons have a plausible argument that financial requirements for voting restoration violate the Fourteenth and Twenty-fourth Amendments.

Finally, African-American felons and ex-felons may challenge Alabama law under Section Two of the Voting Rights Act. The Voting Rights Act, as amended, provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color

(b) a violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice¹¹⁸

Based on Section Two of the Voting Rights Act, African Americans have a valid claim if they demonstrate that felon disfranchisement in Alabama decreases blacks' opportunity to participate in the political process.¹¹⁹ As explained in Part II, Alabama's felon disfranchisement laws have an extremely disproportionate impact on blacks. Alabama has one of the highest rates of

restrictions on those who participate in "rebellion, or other crime." The drafters did not make such a distinction, which suggests that a distinction was not intended. The merit of this argument becomes more substantial when viewed in light of other constitutional amendments. Like the Twenty-fourth Amendment, the amendments prohibiting voting restrictions based on race, sex, and age do not imply that the prohibitions are inapplicable to voting requirements for criminals. However, would it be permissible for states to reinstate felons' voting rights, except if they are black or female or over the age of sixty-five? It is unlikely that courts would be willing to adopt such a view. As such, it is likely that courts will also be resistant to the notion that states can effectively create a poll tax as a prerequisite for the restoration of felons' voting rights.

116. See Wood & Trivedi, *supra* note 64, at 39, n.79.

117. See *supra* Part II.

118. 42 U.S.C. § 1973 (Supp. 1984).

119. *Id.*

black disfranchisement in the country.¹²⁰ However, disparate impact alone is not enough to constitute a violation of Section Two. To raise a rebuttable presumption that Section Two has been violated, there must be “a finding that a state practice imposes a disproportionate impact on blacks and [that it] occurs in a social context characterized by a history of discrimination against blacks at the polls.”¹²¹

In *Wesley v. Collins*, felon plaintiffs alleged that Tennessee’s felon disfranchisement law violated the Voting Rights Act because it diluted voting strength in the black community.¹²² The court disagreed, finding that Tennessee’s disfranchisement of felons has never “been attributed to the discriminatory exclusion of racial minorities from the polls.”¹²³ In Tennessee, all persons who commit “infamous crimes” are prohibited from voting.¹²⁴ The Tennessee law is distinct from Alabama’s in that no historical record establishes the fact that the term “infamous crimes” was used to adversely affect blacks. In Tennessee, the term “infamous crimes” has always been interpreted by the state legislature to mean *all* convicted felons.¹²⁵ In contrast, Alabama’s constitutional drafters specifically used the term “moral turpitude” to disenfranchise *black* convicts. Hence, while the plaintiffs in *Wesley* could not demonstrate the necessary link between Tennessee’s felon disfranchisement law and racial discrimination, Alabama felons have much stronger evidence that a proximate relationship does in fact exist. As such, Alabama’s felon disfranchisement laws and practices pose potential litigation concerns for state officials.

IV. MOVING THE STATE TOWARDS REFORM

The potential for litigation stemming from Alabama’s felon disfranchisement practices should foremost convince Alabamians that now is the time for change. Alabama should make efforts to correct its disfranchisement problems before thousands more citizens are subjected to the irreparable harm experienced by voters in the 2008 election. Thus far, the problems in Alabama have continued, because not enough people have taken a stand to say “enough is enough!”

In *Chapman v. Gooden*, the Alabama Supreme Court would not address the issue, reasoning that they could foresee “no reasonable likelihood that the wrong will be repeated.”¹²⁶ Yet, the wrong has been repeated. In 2005, registrars sweepingly denied voting rights to all felons, despite contrary law.

120. See *supra* Part II.

121. *Wesley v. Collins*, 605 F. Supp. 802, 812 (M.D. Tenn. 1985).

122. *Id.* at 802.

123. *Id.* at 813.

124. See *id.* at 807.

125. *Id.*

126. *Chapman v. Gooden*, 974 So. 2d 972, 988 (Ala. 2007).

Three years later, though not sweepingly, registrars continued to deny registration to individuals who legally had the right to vote. The result in both cases is that *eligible* Alabamians have continually been denied the right to vote. Despite the fact that the U.S. Supreme Court has recognized voting as the fundamental right that preserves all others,¹²⁷ some Alabama officials seem to have little regard for voting as a basic civil right or for the laws of the state. This disregard for citizens' rights violates constitutional and civil rights law and has made Alabama susceptible to numerous lawsuits.¹²⁸ To avoid future constitutional and civil rights claims against the state, Alabama must be willing to reform its law in a manner that is comprehensible and void of racial prejudice.

*Recommendations for Reform*¹²⁹

Alabama can create disfranchisement laws that are fair and understandable for election officials and voters as well as void of the 1901 Constitution's legacy of prejudice by adopting the following recommendations: (1) simplify the law; (2) provide adequate training to election officials; (3) make voter eligibility standards more accessible.

(1) Simplify the Law

The first recommendation for reform is to simplify the law. A large portion of the problems encountered by election officials throughout the nation can be traced to the complexity of the law.¹³⁰ This is certainly true in Alabama.

127. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

128. In addition to the fact that the conduct of Alabama's officials violated the law, there is an additional moral dilemma in Alabama, where many citizens proclaim extreme devotion to Christian principles. See Merriam Webster Online Dictionary, *Bible Belt*, <http://www.merriam-webster.com/dictionary/bible%20belt> (explaining that Alabama is part of the "Bible Belt," a southern region named for its inhabitants "ardent religious fundamentalism"). Not only is disregarding state law and citizens civil rights illegal; it is also morally hypocritical. It is disingenuous for state officials to penalize offenders who break the law, when they are allowed to disregard the law without penalty. Such action is contrary to the principles of Christianity, which teach that it is wrong to judge others for their misdeeds when we "pay no attention to" our own errors. See *Matthew 7:1-5*, (Life Application Study Bible) ("Do not judge, or you too will be judged. For in the same way you judge others you will be judged, and with the measure you use, it will be measured to you. *Why do you look at the speck of sawdust in your brother's eye and pay no attention to the plank in your own eye? How can you say to your brother, "Let me take the speck out of your eye," when all the time there is a plank in your own eye? You hypocrite, first take the plank out of your own eye, and then you will see clearly to remove the speck from your brother's eye.*") (emphasis added). Therefore, from a Christian standpoint, before we can respectfully impose legal penalties on criminals, we must also be willing to abide by the law. Moreover, even if one is not Christian, potential violations of constitutional principles alone should compel Alabama to reform its law in such a manner that is clear to all affected parties and void of racial prejudice.

129. As Alabama's disfranchisement law is codified in the 1901 Constitution, Alabama must adopt a constitutional amendment or a new constitution to change the law.

130. See ACLU, *supra* note 37, at 3.

In Alabama, the drafters of the 1901 Constitution made the disfranchisement provision vague and difficult to understand, and when a law cannot be understood, it also cannot be administered properly. As such, the construction and administration of Alabama's disfranchisement law must change.

Relying on election officials to decipher which felonies truly involve "moral turpitude" has proven to be too great a task. In 2005, the Secretary of State sought direction from the Attorney General regarding which crimes involved moral turpitude and subsequently advised officials to deny all felons the right to register, regardless of their eligibility.¹³¹ In 2008, three branches of government could not agree on which crimes involved moral turpitude, resulting in eligible felons and non-felons being denied voting privileges. These actions demonstrate that when officials face complex voting restrictions, uncertainty abounds and citizens are deprived of constitutional rights.¹³² To resolve this problem, the Legislature can simplify the law by automatically restoring voting rights to felons once they are released from prison. There are many advantages to automatic restoration. It "eliminates the need to coordinate complicated data matches, administer convoluted eligibility requirements, or sort through thousands of restoration applications, saving valuable time, money, energy and resources and avoiding burdensome lawsuits."¹³³

In Alabama, there is a need for a policy that will create such benefits. Currently, it costs the state \$2 million per year to administer the CERV process.¹³⁴ If ex-felons automatically regained their rights to vote, the state could save these funds and apply them to under-funded programs, such as education, civil justice for the poor, community corrections, and programs dedicated to revitalizing declining communities. Automatic restoration would also alleviate unnecessary delays in the CERV process and eliminate economic disparities resulting from existing criteria. This method would further relieve senseless burdens for voters and officials who struggle year after year to understand what the current law means. By adopting a more straightforward policy, Alabamians can be certain that individuals, who have the right to vote, are able to vote.

In addition to these benefits, there is evidence that supporting such a practice will not disappoint constituents. In 2004, social scientists conducted an empirical study on public attitudes towards felon disfranchisement.¹³⁵ The study concluded that 80% of U.S. citizens support ex-felons' right to vote and 60% support voting rights for probationers and parolees.¹³⁶ This suggests that

131. *Chapman v. Gooden*, 974 So. 2d 972, 977-78 (Ala. 2007).

132. *See supra* Part II.

133. WOOD & BLOOM, *supra* note 66, at 9.

134. ALA. ALLIANCE, *supra* note 57, at 5.

135. Jeff Manza, Clem Brooks & Christopher Uggen, *Public Attitudes Toward Felon Disenfranchisement in the United States*, 68 PUB. OPINION Q. 281 (2004).

136. *Id.* at 280-81, 283.

not only is automatic restoration practically and economically efficient; it is favorable among the American public as well.¹³⁷ The acceptance of such a policy can be evidenced by the fact that fifteen states as well as the District of Columbia and Puerto Rico, restore voting rights to criminal offenders upon release from prison.¹³⁸ These states include: Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Maine, and Vermont.¹³⁹ Moreover, automatic restoration has been advanced by the National Commission on Election Reform, the Brennan Center for Justice, the American Bar Association, the American Law Institute, the American Probation and Parole Association, and the Association of Paroling Authorities International.¹⁴⁰

Admittedly, there are alternatives to automatic restoration.¹⁴¹ These alternatives can be observed in the thirty-five states that continue to disenfranchise offenders after incarceration.¹⁴² Nevertheless, automatic

137. There are even more benefits to automatic restoration, both tangible and intangible. Based on research and historical analysis, the Brennan Center concluded that “post-incarceration voting rights builds a stronger democracy, advances civil rights, ends second-class citizenship, aids law enforcement, empowers family and communities, and assures fair and accurate voter rolls.” ERIKA WOOD, BRENNAN CTR. FOR JUSTICE, *RESTORING THE RIGHT TO VOTE 2* (2d ed. 2009). Similarly, Erika Wood and Rachel Bloom in their study concluded that “restoring voting rights to people who are living in the community helps to build a stronger democracy, protect public safety, and empower families and communities.” WOOD & BLOOM, *supra* note 66, at 9.

138. WOOD & BLOOM, *supra* note 66, at 9.

139. WOOD & BLOOM, *supra* note 66, at n.25.

140. Stephen J. Fortunato, Jr., *Corporate Crime and Voting Rights*, DISSENT, Summer 2002, at 56, 61. THE 2009 CRIMINAL JUSTICE TRANSITION COAL., SMART ON CRIME: RECOMMENDATIONS FOR THE NEXT ADMINISTRATION AND CONGRESS 124 (2008); BRENNAN CTR. FOR JUSTICE, *POST-INCARCERATION RESTORATION OF VOTING RIGHTS*, http://www.brennancenter.org/content/pages/post_incarceration_restoration_of_voting_rights (last visited Feb. 19, 2010). According to a report from the Brennan Center for Justice, “Increasingly, officials with deep experience in law enforcement are speaking out against disenfranchisement, not only because they believe in democracy, but also because they are committed to protecting public safety. They recognize that bringing people into the political process makes them stakeholders, which helps steer former offenders away from future crimes.” ERIKA WOOD, BRENNAN CTR. FOR JUSTICE, *RESTORING THE RIGHT TO VOTE 9* (2d ed. 2009). In addition to law enforcement officials, Congress introduced “The Democracy Restoration Act” in 2008. This bill seeks to restore the right to vote in federal elections to all felons who are no longer incarcerated. THE 2009 CRIMINAL JUSTICE TRANSITION COALITION, SMART ON CRIME: RECOMMENDATIONS FOR THE NEXT ADMINISTRATION AND CONGRESS 122-23 (2008).

141. Alternatives to automatic restoration include: (1) full restoration, including the right to vote from prison, (2) restoration upon completion of parole or probation, (3) restoration upon completion of sentence, including the payment of restitution, and (4) restoration upon completion of sentence and expiration of a waiting period. WOOD & BLOOM, *supra* note 66, at 13.

142. Thirty-five states continue to disenfranchise criminal offenders post-incarceration. ERIKA WOOD, BRENNAN CTR. FOR JUSTICE, *RESTORING THE RIGHT TO VOTE 1* (2d ed. 2009). The disenfranchisement policies of these states are as follows: Kentucky and Virginia permanently disenfranchise all felons unless the government approves restoration of voting rights; Alabama, Arizona, Delaware, Florida, Mississippi, Nevada, Tennessee, and Wyoming permanently disenfranchise certain criminal offenders unless the government approves restoration of voting rights; and Arkansas, Alaska, Georgia, Idaho, Iowa, Kansas, Louisiana, Maryland,

restoration is most advantageous for the reasons mentioned above and because it synthesizes the concerns of our nation's most notable penal theories—retribution, deterrence, and rehabilitation.

The theory of retribution is the view that criminal sanctions should be used to punish or pay back a criminal for his actions.¹⁴³ Automatic restoration is consistent with this view in that it allows disfranchisement to be used as a penal sanction for the time in which the offender is incarcerated. Under automatic restoration, retribution is tempered, however, because such a policy does not allow states to use disfranchisement in such a manner that will make a punishment disproportionately severe.¹⁴⁴ Under automatic restoration policies, ex-felons would not be permanently punished for an offense long after they have served the sentence imposed by the court and/or jury.

Deterrence is the idea that criminal activity can be discouraged by fear of punishment.¹⁴⁵ According to the Brennan Center for Justice, “there is no basis for concluding that continuing to disenfranchise people after release from prison serves to deter them from committing new crimes. Deterrence flows from the other penal consequences of a felony conviction.”¹⁴⁶ Nevertheless, if we assume that future criminal activity is deterred by the loss of voting rights, automatic restoration policies still allow for the disfranchisement of offenders while incarcerated.

In addition to retribution and deterrence, rehabilitation is satisfied under automatic restoration policies. After incarceration, part of the rehabilitation process is the successful reintegration of offenders. Automatic restoration assists with successful reintegration, because it creates the opportunity for ex-felons to become invested in the community in which they live. According to social scientist Christopher Uggen, the permanent loss of voting rights makes it more difficult for ex-felons to transition back into society.¹⁴⁷ Other scholars

Montana, Nebraska, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, Washington, West Virginia, and Wisconsin allow criminal offenders' voting rights to be restored only after completion of sentence, including time on parole or probation. *Id.* at 3. Although thirty-five states have not yet adopted automatic restoration, according to the ACLU, over the past decade, nineteen states have moved towards automatic restoration by adopting policies to ease the restoration process. THE 2009 CRIMINAL JUSTICE TRANSITION COAL., SMART ON CRIME: RECOMMENDATIONS FOR THE NEXT ADMINISTRATION AND CONGRESS 123 (2008).

143. See Merriam-Webster's Online Dictionary, *Retribution*, <http://www.merriam-webster.com/dictionary/retribution>.

144. “The law enforcement community and society at large now recognize that a punishment can be morally justified as retribution only if it is proportionate in severity and duration to the crime in question. Continuing to disenfranchise people who have been released from prison is unjustifiably severe.” ERIKA WOOD, BRENNAN CTR. FOR JUSTICE, RESTORING THE RIGHT TO VOTE 11 (2d ed. 2009).

145. See Merriam-Webster's Online Dictionary, *Deterrence*, <http://www.merriam-webster.com/dictionary/deterrence>.

146. ERIKA WOOD, BRENNAN CTR. FOR JUSTICE, RESTORING THE RIGHT TO VOTE 11 (2d ed. 2009).

147. Deane Morrison, *Felons on the Fringe*, UMNEWS, Mar. 7, 2006, available at

tend to agree.¹⁴⁸ Rather than reintegrating felons, “felony voting restrictions only serve to reaffirm their feelings of alienation and isolation.”¹⁴⁹ Therefore, when states disenfranchise felons long after they complete their sentences, they send the message that individuals can never repay their debt to society.¹⁵⁰ However, when states give citizens the opportunity to vote once they have rejoined the community, they reinforce the notion that the offender has paid his/her debt and that s/he is now capable of being as productive as his/her fellow citizens. Given these benefits along with reductions in administrative costs, mishaps, and potential suits, Alabama should simplify its law by adopting a policy that automatically restores felons’ voting rights.

(2) *Provide Adequate Training to Election Officials*

The second recommendation is to provide election officials with adequate training on felon voting laws. In 2008, a study conducted by the ACLU and the Brennan Center for Justice found that most election officials do not understand basic eligibility rules and registration procedures for people with criminal convictions.¹⁵¹ This is critical, because without a basic understanding of the law, officials cannot properly administer the law or inform citizens about what the law says. Such deficiencies in voter administration are problematic, because they create the potential for voters to be wrongfully denied voting rights. As described in Part II, Alabama’s election officials recently denied registration to thousands of eligible voters generally because they did not

http://www1.umn.edu/umnnews/Feature_Stories/Felons_on_the_fringe.html.

148. The National Advisory Commission on the Criminal Justice Standards and Goals concluded that “if correction is to reintegrate an offender into free society, the offender must retain all attributes of citizenship.” HULL, *THE DISENFRANCHISEMENT OF EX-FELONS*, *supra* note 20, at x. *See also id.* at 30 (arguing that disenfranchisement laws “foster recidivism by sapping the political power of former prisoners, as a class, making them easy targets for politicians who can restrict their access to jobs and social service benefits whenever they must cut the budget or brandish their ‘get tough’ credentials”); Stephen J. Fortunato, Jr., *Corporate Crime and Voting Rights*, *DISSENT*, Summer 2002, 56 (“Although not as brutally final as capital punishment or as gratuitously cruel as the incarceration of a person for addiction to drugs, the obliteration of the franchise of a person who has completed ‘hard time’ is every bit as illogical and pointless. If one of the objectives of incarceration is the rehabilitation of the convict so that he or she can rejoin society as a constructive, contributing individual, marginalizing the marginalized even more is, to say the least, counterproductive.”).

149. HULL, *THE DISENFRANCHISEMENT OF EX-FELONS*, *supra* note 20, at x.

150. *See* Andrew Altman, *Democratic Self-Determination and the Disenfranchisement of Felons*, 22 *J. APPLIED PHIL.* 269 (2005) (“Revocation of the right to vote for life in the case of crimes that do not receive lifetime imprisonment would arguably be disproportionate and create a kind of internal inconsistency in the system [I]t is difficult to square disenfranchisement of ex-felons with otherwise permitting them to be participants in the life of society. The disenfranchisement would not be an expression of respect for the values violated by the ex-felon but a superfluous stigma officially branding the ex-felon as someone not fit to regain the status of equal citizen. Yet, once the ex-felon has returned to society and been released from court supervision, any such branding could not be consistently defended by the enfranchisement of citizenry.”).

151. WOOD & BLOOM, *supra* note 66, at 2, 8-9.

understand the law. The fault does not lie solely with election officials. However, by equipping officials with proper training, the state can be more confident that its officials will not face the same avoidable dilemmas that they have encountered in the past.

(3) Make Voter Eligibility Standards More Accessible

The final recommendation is to make voter eligibility standards more accessible. A 2008 study found that a recurring problem among states is that election officials are resistant and sometimes unwilling to answer basic questions on felon voting procedures. Researchers discovered that officials repeatedly failed to “answer the phone, hung up on callers, advised that there was no staff to answer the questions, or referred interviewers to other officers that were unable to answer the questions.”¹⁵² As a result, the study recommends that states immediately make information about the eligibility of felons available through election websites, phone recordings, and staff.¹⁵³ This practice would be useful in Alabama, because it would further eliminate confusion among voters who are uncertain about which felonies disqualify persons from voting. When combined with clear and concise information on registration forms, these changes can alleviate a significant amount of de facto disfranchisement within the state.

CONCLUSION

A century after its inception, Alabama still suffers from the evils of the 1901 Constitution. When the Constitution was drafted, its primary purpose was to disenfranchise Alabama’s poor and black citizens. Today, Alabama bears witness to the realization of this intent. Alabama’s felon voting laws have a disproportionate impact on the poor and black. A third of Alabama’s black males cannot vote and more than half of the state’s applicants will not have their rights restored due to financial requirements.¹⁵⁴ Additionally, there are thousands of citizens who have the right to vote, yet they are prohibited from exercising it. They have been refused registration by officials who do not understand the law or simply disregard it. They are victims of ambiguity in the law, failures in administration, and political manipulation.¹⁵⁵

The consequences to these realities are disturbing. To take away a person’s right to vote is to “reduce a man to slavery.”¹⁵⁶ With no vote,

152. *Id.* at 7.

153. ACLU, *supra* note 37, at 15-16.

154. See *supra* Part II.

155. *Id.*

156. THOMAS PAINE, DISSERTATION ON FIRST PRINCIPLES OF GOVERNMENT (1795) (“The right of voting for representatives is the primary right by which other rights are protected. To take

individuals have no power to protect themselves or their children. Such protection is critical for those most likely to be disenfranchised. In Alabama, the tax burden is borne largely by those who are “least able to pay.”¹⁵⁷ Poor children are taught in one of the most deficient public school systems in the nation and rural blacks suffer from failures to institutionalize successful criminal justice programs.¹⁵⁸ Yet, despite the impact that these policies have on the poor and black, voting restrictions largely eliminate them from making changes in the law. While most disenfranchised citizens live in our communities and pay taxes like their neighbors, they have no power to affect how their tax dollars will be spent.¹⁵⁹ They cannot choose the officials that will oversee their children’s education nor can they press for better school funding. They have no political voice.

Such a political voice was particularly important in the 2008 presidential election. In 2008, voters had the opportunity to elect an African-American democrat as the president of the United States. Such an opportunity was likely significant given the fact that most ex-felons in Alabama are predominantly African American and poor. In the past, no African-American candidate has served as the nominee for a major political party. As such, many African Americans took pride in the fact that they had the power to finally elect a candidate of their own race. In a nation clouded by a history of slavery and racial prejudice, such power cannot be assessed too highly. Additionally, in a declining economy with rising unemployment rates and deteriorating housing and stock markets, President Obama’s platforms on tax breaks for the poor and middle classes, affordable healthcare, and the creation of government-funded jobs likely resonated with the poorest citizens.¹⁶⁰ Criminologist Jeffrey Reiman asserts that the same factors that make one more likely to be an ex-felon also make one more likely to vote for a democratic candidate like Obama.¹⁶¹ Yet, thousands of disenfranchised citizens, who likely would have voted in favor of President Obama, were denied the right to do so at a critical point in history. In Alabama, thousands of citizens’ voices—most of whom were African-

away this right is to reduce a man to slavery, for slavery consists in being subject to the will of another, and he that has not a vote in the election of representatives is in this case.”)

157. Susan Pace Hamill, *Constitutional Reform in Alabama: A Necessary Step Towards Achieving a Fair and Efficient Tax Structure*, 33 CUMB. L. REV. 447 (2003).

158. See Alabamian Education Stats, <http://www.statemaster.com/red/state/AL-alabama/edu-education&all=1> (last visited Mar. 13, 2009); ALA. DEP’T OF EDUC., STATE BOARD OF EDUCATION REPORT CARD: A STATE SUMMARY 36 (2006-2007) (reporting that Alabama’s spending per student gets the grade D when compared to other states). See also Latasha McCrary, *Grassroots Drug Court Policies Have Significant Impact on Rural Blacks: Alabama’s Ongoing Concern for Equal Protection Under the Law*, 5 INT’L J. PUNISHMENT & SENT’G (vol. 2, 2009).

159. See ALA. ALLIANCE, *supra* note 57, at 2 (noting that 71% of Alabama’s disenfranchised have completed their sentences and 16% are on probation or parole).

160. See Organizing for America, Organizing on the Issues, <http://www.barackobama.com/issues/> (last visited Feb. 19, 2010).

161. Reiman, *supra* note 9, at 5.

American—went unheard.

Unfortunately, in Alabama, these citizens' voices will remain unheard until we finally take a stand. Now is the time for Alabamians to support policies that reduce harm to their fellow citizens and lessen inequality within their state. Alabamians must reaffirm the value of the right to vote. Citizens must rise up and move forward from a past that has held the state captive for so long. It is time for the state to restructure its policies and embrace reform. "This is not to give an excuse to those [who are] guilty, but to restore integrity to a system that has gone unchecked since 1901."¹⁶²

162. The Sentencing Project, *Alabama: Restore Voting Rights* (Oct. 31, 2008), http://www.sentencingproject.org/detail/News.cfm?News_id=508.