

VOTING RIGHTS DENIED IN ALABAMA

**A Report by
The Alabama Alliance to Restore the Vote
and
The Brennan Center for Justice at NYU School of Law
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In September 2003, the Alabama Legislature passed a law intended to streamline the restoration of voting rights to people who have completed their sentences for certain offenses. The law created an expedited process for granting Certificates of Eligibility to Register to Vote to some people with felony convictions. The system was designed to restore the franchise more quickly than is possible through the general clemency process.¹

This report documents the failure of that expedited system. The Board of Pardons and Paroles receives thousands of applications each year from people who are doing all they can to regain their voting rights. Faced with overwhelming demand, the Board does not process applications within the statutory time frames. Nor does the Board consistently abide by the requirement that it respond to all applications.

Moreover, the process itself is flawed in ways that compromise the voting rights of people with criminal convictions. Ironically, individuals with the least serious convictions—for offenses that do *not* result in the loss of voting rights under the Alabama Constitution—remain disfranchised indefinitely. Election officials refuse to register these individuals without proof of restoration of their voting rights, but they cannot obtain such proof because the Board will not restore rights that they never forfeited in the first place. Certificates are also unavailable to those who cannot pay fines, fees, costs, and restitution, with the result that the right to vote in Alabama is conditioned on an otherwise eligible voter's financial status.

The Alabama Legislature has already recognized the importance of the timely restoration of voting rights, but the problem persists. Thousands of eligible voters remain barred from the polls, often for years. It is time to do away with the costly and cumbersome one-by-one restoration process and instead restore the vote automatically when a person is discharged from prison and re-enters the community to work, raise a family, and pay taxes alongside the rest of us.

The Law

A person loses the right to vote in Alabama when he or she is convicted of a felony involving “moral turpitude.” There is no complete list of felonies that involve

¹ Ala. Code 1975 § 15-22-36.1.

moral turpitude, but the Alabama Attorney General has compiled a list of the offenses that the state courts and legislature have defined as such.²

A person who has been convicted of a felony involving moral turpitude may apply to the Board of Pardons and Paroles (“Board”) for a Certificate of Eligibility to Register to Vote (“Certificate”). A person is eligible for this Certificate if he or she: (1) has no felony charges pending; (2) has paid all applicable fines, court costs, fees, and victim restitution; (3) has not been convicted of certain disqualifying crimes identified by the Legislature; and (4) has either been pardoned or has completed his or her sentence, including probation or parole.

If Board staff determines that an application meets the criteria outlined above, the Board has up to 50 days from the date of the application either to issue a Certificate or to refer the application for a hearing. If Board staff determines that the applicant is ineligible, the Board has 45 days from the date of the application to notify the applicant and explain the denial. An applicant may reapply once the conditions listed above are met.

Methodology

After learning that people who had applied for Certificates were waiting several months to hear from the Board, the Alabama Alliance to Restore the Vote and the NAACP Legal Defense & Educational Fund served a request pursuant to the Alabama Public Writings Act. The request sought information from the Board about the dispositions of all applications for restoration of voting rights. In response, the Board explained that producing all of the applications, responses, and associated paper work would overwhelm its limited capacity. Instead, on October 21, 2005, the Board produced a compilation of 7,635 applications and their dispositions. This report, and all of its conclusions, are based on the compilation of data the Board provided.

Findings

The data reveal a widespread determination to vote among people with criminal convictions in Alabama. With 192 applications filed on average each month, the existing system cannot absorb the load. The Board misses the statutory time limits in processing more than 80% of all applications and fails to respond at all in dozens of cases. Beyond violations of the 2003 law, the process itself frustrates the voting rights of thousands of applicants. Many are denied Certificates because their offenses were not serious enough to disfranchise them in the first place. They then face barriers when they try to register because election officials illegally demand proof of restoration of the rights these individuals never lost. In addition, thousands are barred from the polls because they are too poor to pay the money they owe in connection with their convictions.

² Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.).

1. Thousands of Applications

Thousands of people with criminal convictions in Alabama are diligently trying to regain their right to participate in the democratic process. In the 22 months between December 24, 2003, when the time limits in the 2003 law took effect, and October 21, 2005, when the Board produced the data, 4,226 applications for restoration of voting rights were filed with the Board, at an average rate of 192 per month. Because more than 250,000 Alabamans are disfranchised by felony convictions, it seems likely that the flow will remain high as long as the existing restoration process is the only available path to regain the vote.

2. Illegal Delays

Illegal delay is the rule, rather than the exception, in the current process. Of the 4,226 applications filed after December 24, 2003, 3,483, or 82.4%, were processed outside the statutory time frames, and only 8.5% were processed within those limits. Five hundred thirty took more than a year to process. The longest processing time for an eligible application was 585 days, more than eleven times the 50 days allowed under the law. Illegal delays denied 599 eligible voters the right to vote in state and national elections on November 2, 2004.

Even longer delays are inherent in the clemency process that predates and still serves as an alternative to the expedited system created in 2003.³ Of the 3,010 applications filed before the expedited system took effect on December 24, 2003, 309 (10.3%) were still pending nearly two years later, when the data were provided on October 21, 2005. The earliest still-pending application was filed on March 1, 1998, almost eight years ago.

3. Illegal Failure to Respond

Alabama law requires the Board to respond to all applications. Yet the Board closed 39 eligible applications without sending—or at least without any record of having sent—a Certificate. As to ineligible applications, the Board closed 59 without notifying the applicants or providing legally mandated explanations for the denials.

4. Disfranchising People Who Have Never Lost Their Right to Vote

Hundreds of eligible voters have been caught in a Catch-22, required by election officials to provide a document that they are not eligible to receive. Those who are convicted of offenses that do *not* involve “moral turpitude” retain their right to vote in Alabama. Such offenses include driving while intoxicated, doing business without a license, and possession of marijuana, among others. Because people convicted of these offenses do not lose their right to vote, they are ineligible for restoration of that right and thus cannot receive a Certificate.⁴ In violation of the law, however, the Secretary of State has directed election officials not to register any new voter with a felony conviction—

³ See Ala. Code 1975 § 15-22-36.

⁴ Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G).

including a conviction that does not involve “moral turpitude”—unless the voter presents a Certificate.⁵

Of the 2,252 applicants who received denials, 363, or 16.1%, were denied because they were never disfranchised to begin with. In refusing to register people who were denied Certificates because their convictions do not involve “moral turpitude,” election officials violate their fundamental right to vote under both state and federal law.⁶

5. Disfranchising Poor People

Of the 2,252 applicants who received denials, 1,272, or 56.5%, were denied because they owed money to satisfy court-imposed restitution, fines, fees, and costs. An inability to pay thus prevents many people from voting. Yet the Supreme Court held decades ago, in striking down Virginia’s \$1.50 poll tax, that “[w]ealth, like race, creed, or color, is not germane to one’s ability to participate intelligently in the electoral process. . . . To introduce wealth or payment of a fee as a measure of a voter’s qualifications is to introduce a capricious or irrelevant factor.”⁷ Although Alabama’s poll tax was also invalidated forty years ago,⁸ the State once again conditions the right to vote on a person’s ability to pay.

6. Inadequate Record-Keeping

Poor data entry produced numerous unusable pieces of information in the Board’s compilation of data. Of the 7,635 total applications on file, 399, or 5.2%, lack an opening date, so that there is effectively no way to tell how long they took to process. Seventy-four of these applications are still pending, and the data provide no indication of how long the applicants have been waiting. Many applications are listed as closed before they were ever opened. One is recorded as opened in 1957 and another in 4054. One file was closed on 9/16/09 and another on 2/185/05. In all, 138 of the 3,267 processed applications filed after 12-24-03, or 4.2%, are fitted with meaningless dates that do not allow the proper tracking of response times.

In addition, many of the categories used to sort the applications are overlapping and confusing. For example, there is a “Closed” category although applications in the “Ineligible,” “Granted,” “Out of State,” and “No Disqualifying Crime” categories are also listed as closed. There is a “Pending” category, although applications in the “No Disqualifying Crime” and “Out of State” categories are also pending. These categories are so unclear as to frustrate careful oversight of the Board’s functioning.

⁵ See *Gooden v. Worley*, No. CV 05-5778 (Ala. Cir. Ct., Jefferson County, first amended complaint filed Dec. 19, 2005); *Gooden v. Worley*, No. CV-05-AR-2562-S (N. D. Ala. filed Dec. 19, 2005).

⁶ *Id.*

⁷ *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 668 (1966).

⁸ *United States v. Alabama*, 252 F. Supp. 95 (M. D. Ala. 1966).

7. **Tables Summarizing the Data:**

Table 1. Illegal Delays and Failures to Respond

Date of filing	Status of application	Timing of response	Failure to respond	Meaningless dates	
Applications filed after 12-24-03 4,226	Eligible applications 1,889	Certificates issued within 50 days 163 (8.6%)	Closed with no indication of Certificate issued 39 (2.1%)	93 (4.9%)	
		Certificates issued after 50 days 1,594 (84.4%)			
	Ineligible applications 1378	Notified of ineligibility within 45 days 115 (8.3%)	Closed with no notice of ineligibility 59 (4.3%)		45 (3.3%)
		Notified of ineligibility after 45 days 1,159 (84.1%)			
	Pending applications; undetermined eligibility 959	Time limits had already expired as of 10-21-05, when data were provided 730 (76.1%)			
	Applications filed before 12-24-03 3,010	All applications (Eligible, Ineligible, and Undetermined)	Applications still pending as of 10-21-05 309 (10.3%)		
Total applications without opening dates 399					
TOTAL Applications filed 7,635				Total meaningless dates 155 (2.0%)	

Table 2. Reasons for Denials

Total Applications Denied	Reason for denial
2,252	No disqualifying offense 363 (16.1%)
	Money owed 1,272 (56.5%)

Conclusion

The system for restoring voting rights in Alabama is broken. Thousands of eligible citizens wait months beyond the period authorized by statute to learn whether they can vote. Some never receive a response at all. Hundreds are barred from the polls although they were never legally disfranchised in the first place, and thousands are excluded because they cannot pay costs, fees, fines, and restitution.

The Alabama Legislature enacted an expedited restoration process to give people with criminal convictions a second chance to assume the duties of citizenship by exercising the right to vote. But the promise of their reintegration into the democratic process remains unfulfilled. The Board does not process the applications it receives in a manner that complies with the law.

Restoring voting rights one applicant at a time is slow, inefficient, and expensive.⁹ It is time for a solution that can work. Like a dozen other states, Alabama should restore voting rights automatically when a person with a disqualifying felony conviction is released from incarceration. Automatic restoration would enrich Alabama's democracy by increasing voter participation and sharpening the responsiveness of government to the state's diverse constituencies. At the same time, exercising the right to vote would help people with criminal convictions to reintegrate into the communities where they live, work, raise families, and pay taxes. And a streamlined restoration process would relieve administrative burdens and their associated costs. Alabama can and should lead the region in fostering inclusive democracy by restoring the franchise to people with convictions when they reenter society.

⁹ Of the total \$43,330,238 appropriation to the Board in 2006, it is unclear what portion is devoted to the rights restoration process. *See* State of Alabama General Fund, Fiscal Year 2005–2006, as of October 31, 2005, *available at* <http://www.budget.state.al.us/GF2006.pdf>. The fiscal note associated with the 2003 bill calculated that it “would increase the expenses of the Board of Pardons and Paroles by an estimated \$4.6 million annually.” Fiscal Note for HB3 (Second Special Session 2003) (Yvonne Kennedy, sponsor), *available at* <http://alisd.b.legislature.state.al.us/acas/ACASLogin.asp?SESSION=1028>. The Accounting Division Director of the Board informs us that the Board does not maintain separate figures on the overall cost of rights restoration, but that it is spending \$250,000 on the salary and benefits of the employees who work on this issue. Interview with Carolyn Courson, Accounting Division Director, Board of Pardons and Paroles, in Montgomery, Ala. (Jan. 11, 2006). The disparity between the high costs estimated in the fiscal note and the Board's low actual expenditures on the salaries and benefits of employees dedicated to rights restoration may help to explain why the Board is overwhelmed by the demand.