

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

RICHARD GOODEN, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

NELL HUNTER, in her official capacity as
Jefferson County Registrar, and NANCY
WORLEY, in her official capacity as Alabama
Secretary of State,

Defendants.

Civil Action No.

**COMPLAINT FOR DECLARATORY JUDGMENT, TEMPORARY RESTRAINING
ORDER, MANDATORY INJUNCTION, AND WRIT OF MANDAMUS**

Plaintiff, Richard Gooden, alleges as his complaint for a declaratory judgment, temporary restraining order, mandatory injunction, and a writ of mandamus against Nell Hunter, Jefferson County Voter Registrar (“Defendant Jefferson County Registrar”) and Nancy Worley, Alabama Secretary of State (“Defendant Secretary of State”)(collectively “Defendants”), the following:

NATURE OF THE ACTION

1. This is an action seeking a declaratory judgment that individuals convicted of felonies not involving moral turpitude, as expressly set forth in the Alabama Attorney General’s Opinion, *see* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.), which is grounded in and supported by Alabama case law, are eligible to register and vote under Alabama law and need not apply to the Alabama Board of Pardons and Paroles (“Board” or “Board of Pardons and Paroles”) for a Certificate of Eligibility to Register to Vote (“Certificate of Eligibility”) as a prerequisite to registering or voting in

Alabama. This action also seeks a temporary restraining order, mandatory injunction, and a writ of mandamus against Defendant Jefferson County Registrar to permit Plaintiff, and all others similarly situated, to register to vote in Jefferson County by Friday, September 30, 2005, the close of registration for the October 11, 2005 municipal elections for residents of Birmingham, Alabama. Further, this action seeks a temporary restraining order, mandatory injunction, and writ of mandamus against Defendant Secretary of State to provide effective notice to Defendant Jefferson County Registrar by September 30, 2005, and to all County Registrars for the State of Alabama promptly thereafter, that Plaintiff, and all other similarly situated individuals with felony convictions not involving moral turpitude, as enumerated by the Attorney General, are eligible to register and vote, and are not required to apply for or obtain a Certificate of Eligibility from the Board of Pardons and Paroles. Finally, this action seeks a temporary restraining order, mandatory injunction, and a writ of mandamus against Defendant Secretary of State to direct Jefferson County Board of Registrars to register Plaintiff, and all other similarly situated individuals in Jefferson County by September 30, 2005, and direct all County Registrars for the State of Alabama to register promptly all similarly situated individuals in their respective counties.

PARTIES

Plaintiff

2. RICHARD GOODEN is a 64-year-old African American of lawful voting age, a citizen of the United States and a lifetime resident of Birmingham, Alabama. Though he wanted to register to vote when he turned 18, Mr. Gooden, like many other African Americans, was not permitted to register to vote in the State of Alabama until his mid-20s due to Alabama's relentless and systematic efforts to deny voting and office holding to Blacks. From Reconstruction until the passage of the Voting Rights Act of 1965, Alabama

utilized every state instrument of disfranchisement available to suppress the Black vote and to safeguard white supremacy, including terror and violence, literacy tests, poll taxes, and white-only primaries. Alabama also tailored its felon disfranchisement law to require the loss of voting rights for only those crimes committed primarily by Blacks. As a result, only 19 percent of the Black voting-age population in Alabama was registered to vote in 1964, one of the lowest proportions in the South. By contrast, 69 percent of the white voting-age population was registered at that time. It was not until the passage of the Voting Rights Act of 1965, which suspended literacy tests, that Mr. Gooden was finally permitted to vote in his home state. Mr. Gooden was registered to vote from the mid-1960s until 2000, when he was convicted of felony driving under the influence of alcohol (DUI), and told by the State of Alabama that his voting rights were revoked.

Defendants

3. NELL HUNTER is the Jefferson County Registrar, and, as such, is vested with the authority to grant or refuse an individual's application to register to vote in Jefferson County. She is sued in her official capacity in connection with actions taken under color of state law, including the refusal of her office to register Plaintiff on September 21, 2005.

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

FACTS

5. The Alabama Constitution, Article VIII, Section 177 (Recompiled), provides in pertinent part:

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

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

6. Ala. Code § 17-3-9 provides:

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

7. Ala. Code § 17-4-124 provides:

Any person to whom registration is denied shall have the right of appeal, without giving security for costs, within 30 days after such denial, by filing a petition in the circuit court in the county in which he or she seeks to register, alleging that he or she is a citizen of the United States over the age of 18 years having the qualifications as to residence prescribed by law and entitled to register to vote under the provisions of the Constitution of Alabama, as amended. Upon the filing of the petition, the clerk of the court shall give notice thereof to the district attorney authorized to represent the state in said county, who shall appear and defend against the petition on behalf of the state. The issues shall be tried in the same manner and under the same rules that other cases are tried in such court and by a jury, if the petitioner demands it. The registrars shall not be made parties and shall not be liable for costs. An appeal will lie to the Supreme Court in favor of the petitioner if taken within 42 days from the date of the judgment. Final judgment in favor of the petitioner shall entitle him or her to registration as of the date of his or her application to the registrars.

8. In the 2003 Second Special Session, the Alabama legislature promulgated Act 2003-415, *codified at* Ala. Code § 15-22-36.1, a law enabling members of the Board of

Pardons and Paroles to provide a procedure for the restoration of voting rights — by issuing a Certificate of Eligibility — to individuals with felony convictions who satisfactorily complete the conditions of their sentences.

9. Upon information and belief, to implement Ala. Code § 15-22-36.1, and to determine which felonies require the issuance of a Certificate of Eligibility as a prerequisite to registering to vote, William Segrest, Executive Director of the Board of Pardons and Paroles, requested that Troy King, Attorney General for the State of Alabama, clarify which felonies did not involve moral turpitude.

10. The Attorney General, upon information and belief, in response to Segrest's request, issued an Opinion which explained that “[i]f a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply [to the Board of Pardons and Paroles] for a Certificate of Eligibility to Register to Vote.” *See* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.). (A copy of the Attorney General's Opinion is annexed as Exhibit A.) The Attorney General in that Opinion did not “provide an exhaustive list of every felony involving moral turpitude,” but listed a number of crimes that have been determined by Alabama courts not to involve moral turpitude, including “violation of liquor laws” and “driving under the influence.” *Id.* at 2 (citing *Parker v. State*, 280 Ala. 685, 198 So. 2d 261 (1967); *Finley v. State*, 661 So. 2d 1321 (Ala. Crim. App. 1995)). Thus, if “a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.” *Id.* at 3.

11. The Board of Pardons and Paroles issued a press release on May 17, 2005, upon information and belief, to effectuate the intent and substance of the Attorney General's Opinion. (The Board's press release is annexed as Exhibit B.) The press release noted that

as the Board worked to implement Ala. Code § 15-22-36.1, it “discovered that many eligible voters [were] unaware” that they did not need a “certificate from this agency in order to register to vote.” “Under the current law only felonies involving moral turpitude disqualify a person from voting. Convictions for other felonies do not disqualify a person from voting. If individuals who are already eligible to vote do not ask us for certificates, we can process the other applications more promptly.” While the press release did not provide an exhaustive list of felonies involving moral turpitude, it noted that “felony driving under the influence” and “felony possession of drugs” are offenses that do not involve moral turpitude.

12. Notwithstanding the clear direction provided by the Attorney General’s Opinion, and the press release that was issued by the Board of Pardons and Paroles, local Registrars represented to agents of Plaintiff’s counsel that Registrars in the following twenty counties: Bullock, Chilton, Choctaw, Dallas, Escambia, Greene, Houston, Jefferson, Lowndes, Macon, Madison, Marengo, Mobile, Montgomery, Pike, Randolph, St. Clair, Talladega, Tallapoosa and Tuscaloosa, were directed by the Secretary of State not to register people with felony convictions – whether or not the felony involved moral turpitude – without a Certificate of Eligibility.

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

14. Plaintiff was instructed by Defendant Jefferson County Registrar to apply to the Board of Pardons and Paroles for a Certificate of Eligibility.

15. Plaintiff was told later that day (September 21, 2005) by an employee of the Board of Pardons and Paroles that since his felony DUI conviction did not involve moral

turpitude, the Attorney General had determined that he, and similarly situated individuals, need not apply for a Certificate of Eligibility since their voting rights were never lost.

16. Upon information and belief, an employee of the Board of Pardons and Paroles telephoned Defendant Jefferson County Registrar on September 21, 2005 and explained that Plaintiff was not disqualified from voting since his felony conviction did not involve moral turpitude, and, therefore, that a Certificate of Eligibility was not necessary for him to register to vote. Upon information and belief, the employee of the Board of Pardons and Paroles also offered to fax Defendant Jefferson County Registrar a copy of the press release the Board had issued to this effect.

17. Upon information and belief, notwithstanding its concession that Plaintiff's felony DUI conviction did not involve moral turpitude, and that, in fact, his conviction was expressly identified in the Attorney General's Opinion as non-disqualifying crime, Defendant Jefferson County Registrar told the Board of Pardons and Paroles that the Defendant Secretary of State had directed them not to register individuals with felony convictions who had not obtained a Certificate of Eligibility, irrespective of whether or not such felony convictions involved moral turpitude.

18. In an attempt to resolve this matter amicably on Friday, September 23, 2005, Plaintiff's counsel faxed two copies to a valid facsimile number and mailed, via next day service, a letter that sought the cooperation of Defendant Secretary of State in resolving the issues set forth herein in time for Plaintiff and similarly situated individuals in Jefferson County to register by Friday, September 30, 2005 and for all subsequent elections. (A copy of Plaintiff counsel's letter to the Defendant Secretary of State is attached as Exhibit C.) In light of the time-sensitive nature of this action, the letter requested a facsimile response from the Defendant Secretary of State by Monday, September 26, 2005.

19. Defendant Secretary of State did not respond to Plaintiff counsel's letter by late Monday afternoon, September 26, 2005, counsel for Plaintiff then contacted the office of Secretary of State. Counsel for Defendant Secretary of State explained that she was unaware of the letter, and was unfamiliar with Attorney General's Opinion. Plaintiff's counsel faxed additional copies of the letter to, and requested an opportunity to speak directly with, Defendant Secretary of State as quickly as possible. On Tuesday, September 27, 2005, when Plaintiff's counsel twice telephoned Defendant Secretary of State, the Defendant still had not responded to Plaintiff Counsel's letter, but counsel explained that Defendant Secretary of State had requested that the Attorney General further clarify his Opinion as to which crimes involve moral turpitude. Counsel for Defendant Secretary of State agreed to fax a copy of the Defendant Secretary of State's letter to the Attorney General. As of the time of filing of this complaint, Defendant Secretary of State had provided its clarification letter (a copy of which is annexed as Exhibit D), but repeated requests by Plaintiff's counsel to speak directly with Defendant Secretary of State have not been honored.

CAUSES OF ACTION

Count One

20. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 19 above.

21. Defendant Jefferson County Registrar's refusal to register Plaintiff, an otherwise eligible voter, violates his rights as guaranteed by Constitution of the State of Alabama, Ala. Const. art. VIII, § 177 (amend. 579), and Ala. Code 1975 § 17-3-9.

Count Two

22. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 19 above.

23. On information and belief, Defendant Jefferson County Registrar, and Registrars in 19 other counties in Alabama, represented that they were directed not to register people with felony convictions irrespective of whether or not such convictions involved moral turpitude, in violation of Plaintiff's rights, and similarly situated individuals, as guaranteed under the Constitution of the State of Alabama, Ala. Const. art. VIII, § 177 (amend. 579), and Ala. Code 1975 § 17-3-9.

24. This misrepresentation by the Secretary of State of the right of certain persons to register to vote has caused voter registrars in at least twenty counties to refuse to register to register persons who are eligible under the law. This misrepresentation by the Secretary of State may discourage eligible persons from registering to vote. This can only be counteracted by the Secretary of State giving notice to all voter registrars and to the public of the correct eligibility requirements.

Count Three

25. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 19 above.

26. Plaintiff, pursuant to § 17-4-124 of the Alabama Code, appeals Defendant Jefferson County Registrar's refusal to register him to vote.

Count Four

27. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 19 above.

28. Plaintiff is without an adequate remedy at law and will suffer irreparable damage unless the actions of the Defendants in violation of the Alabama Constitution and laws are enjoined. More specifically, Plaintiff and other similarly situated individuals are

entitled to register to vote in Jefferson County by September 30, 2005, the last day of registration for the October 11, 2005 municipal election in Birmingham, Alabama.

29. The gravity of the rights deprivation that would flow to Plaintiff and other similarly situated individuals from resolving this on Defendant Secretary of State's timetable necessitates immediate action.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests that the following relief be granted:

30. Plaintiff requests an order under Ala. Code § 17-4-124 reversing the refusal of the Jefferson County Registrar to register him.

31. Plaintiff seeks declaratory judgment that individuals convicted of felonies not involving moral turpitude, as enumerated by the Attorney General and grounded in Alabama case law, are eligible to register and vote under Alabama law, and that, accordingly, individuals with felony convictions not involving moral turpitude need not apply to the Board of Pardons and Paroles for a Certificate of Eligibility as a prerequisite to registering or voting in Alabama.

32. Plaintiff requests a temporary restraining order, mandatory injunction, and writ of mandamus to require Defendant Jefferson County Registrar to provide to Plaintiff, and similarly situated individuals in Jefferson County, by Friday, September 30, 2005, the registration deadline for the October 11, 2005 municipal elections in Birmingham, Alabama effective notice that individuals with felony convictions not involving moral turpitude are eligible to vote without a Certificate of Eligibility from the Board of Pardons and Paroles.

33. Plaintiff requests a temporary restraining order, mandatory injunction, and writ of mandamus to require Defendant Jefferson County Registrar to register Plaintiff, and similarly situated individuals in Jefferson County, by Friday, September 30, 2005, the registration deadline for the October 11, 2005 municipal elections in Birmingham, Alabama.

34. Plaintiff requests a temporary restraining order, mandatory injunction, and writ of mandamus to require Defendant Secretary of State to provide effective notice to the Defendant Jefferson County Registrar by September 30, 2005, and each of the other counties promptly, that individuals with felony convictions not involving moral turpitude, as enumerated by the Attorney General, are eligible to register and vote, and are not required to apply for or obtain a Certificate of Eligibility from the Board of Pardons and Paroles.

35. Plaintiff requests a temporary restraining order, mandatory injunction, and writ of mandamus to require Defendant Secretary of State to direct the Defendant Jefferson County Registrar by September 30, 2005, and each of the other counties promptly, to permit individuals with felony convictions not involving moral turpitude, as enumerated by the Attorney General, to register to vote and expressly state that such individuals are not required to apply for or obtain a Certificate of Eligibility from the Board of Pardons and Paroles.

36. Plaintiff requests a temporary restraining order and mandatory injunction to require Defendant Secretary of State to give notice to the public by (a) posting a prominent notice on the Secretary of State website (<http://www.sos.state.al.us>) and (b) issuing a press release to all the usual news outlets notified by the Secretary of State that persons who have been convicted of a felony which does not involve moral turpitude and listing the examples of those crimes as discussed in the letter of Attorney General, Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005).

37. Plaintiff requests such other, further, and different relief as the facts and circumstances may warrant.

38. The following Exhibits are in the Appendix:

- a) Attorney General Opinion, *see* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.).
- b) Press Release Issued by the Alabama Board of Pardons and Paroles, dated May 17, 2005.
- c) Letter from Ryan P. Haygood, Assistant Counsel, NAACP Legal Defense & Educational Fund, Inc. to Nancy Worley, Alabama Secretary of State, dated September 23, 2005.
- d) Letter from Nancy Worley, Alabama Secretary of State to Troy King, Alabama Attorney General, dated May 11, 2005.

Dated: Birmingham, Alabama
September 29, 2005

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EXHIBIT A

Westlaw.

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Office of the Attorney General
State of Alabama

*1 Opinion No. 2005-092
March 18, 2005

Pardons and Paroles Board - Moral Turpitude - Felony - Electors - Voting

If a person is convicted of a felony involving moral turpitude, that person is ineligible to vote unless his or her civil and political rights have been restored. If, however, a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.

If a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply for a Certificate of Eligibility to Register to Vote.

A person must pay all fines, court costs, fees, and victim restitution for both disqualifying and non-disqualifying offenses to be eligible to apply for a Certificate of Eligibility to Register to Vote.

Honorable William C. Segrest
Executive Director
Board of Pardons and Paroles
Post Office Box 302405
Montgomery, Alabama 36130-2405

Dear Mr. Segrest:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Board of Pardons and Paroles.

QUESTION 1

What specific felonies do not include moral turpitude? If an individual has been convicted solely of one of these crimes, does he or she remain eligible to vote?

FACTS AND ANALYSIS

Section 177 of article VIII of the Recompiled Constitution of Alabama, as amended, provides that no person convicted of a felony involving moral turpitude shall be qualified to vote unless that person's civil and political rights have

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been restored. ALA. CONST. art. VIII, § 177 (amend. 579). This Office has previously stated that a person convicted of a felony involving moral turpitude is disqualified from voting in Alabama. Opinion to William L. Nix, Attorney, City of Lanett, dated September 12, 2001, A.G. No. 2001-276. The phrase "moral turpitude," however, is not defined in the Constitution of Alabama or in the Alabama Code.

The Alabama Supreme Court has defined moral turpitude as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general." *G.M. Mosley Contractors, Inc. v. Phillips*, 487 So. 2d 876 (Ala. 1986); *Meriwether v. Crown Inv. Corp.*, 289 Ala. 504, 512, 268 So. 2d 780, 787 (1972). An act involving moral turpitude is immoral in itself, regardless of the fact that it is punished by law. *Id.* The Court also notes that all felonies do not, per se, involve moral turpitude. *Owens v. State*, 291 Ala. 107, 278 So. 2d 693 (Ala. 1973).

The Alabama Supreme Court also has explained that, while a crime is not required to have fraud as an element to be considered a crime involving moral turpitude, the presence of fraud in a crime ensures a finding of moral turpitude: "Without exception, Federal and State Courts have held that a crime in which fraud is an ingredient involves moral turpitude." *Phillips*, 487 So. 2d at 878, citing *Jordan v. DeGeorge*, 341 U.S. 223, 227 (1951).

*2 Although this Office cannot provide an exhaustive list of every felony involving moral turpitude, we can provide a list of the crimes that Alabama courts have determined to be crimes involving moral turpitude. It is important to note that the following crimes will only prohibit a person from voting if that person has been convicted of a degree of one of these crimes that is considered a felony. The Alabama Supreme court stated that murder, rape, burglary, robbery, and income tax evasion have all been found to be crimes involving moral turpitude. *Ex parte McIntosh*, 443 So. 2d 1283 (Ala. 1983) (citations omitted).

In addition, forgery (*Moton v. State*, 13 Ala. App. 43, 69 So. 235 (1915)), conspiracy to commit fraud (*Phillips*, 487 So.2d at 879), aggravated assault (*Johnson v. State*, 629 So. 2d 708 (Ala. Crim. App. 1993)), possession of marijuana for resale (*McIntosh*, 443 So.2d at 1286), sale of marijuana (*Gholston v. State*, 338 So. 2d 454 (Ala. Crim. App. 1976)), manslaughter (*Johnson v. State*, 357 So. 2d 162 (Ala. Crim. App. 1978)), theft (*Johnson v. State*, 292 Ala. 208, 291 So. 2d 336 (Ala. 1974)), transporting stolen vehicles across state lines (*Matthews v. State*, 286 So. 2d 91 (Ala. Crim. App. 1973)), unauthorized sale of a controlled substance (*Ex parte Bankhead*, 585 So. 2d 112 (Ala. 1991)), and bigamy (*Lawson v. State*, 33 So. 2d 388 (Ala. App. 1948)) have all been held to be crimes involving moral turpitude.

In addition, section 15-22-36.1 of the Code of Alabama provides the following list of felonies involving moral turpitude that will preclude an individual from applying to have his or her civil and political rights restored:

A person who has lost his or her right to vote by reason of conviction in a state or federal court for any of the following will not be eligible to apply for

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a Certificate of Eligibility to Register to Vote under this section: Impeachment, murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason.

ALA. CODE § 15-22-36.1(g) (Supp. 2004) (emphasis added).

Alabama courts have also discussed crimes that do not involve moral turpitude. In McIntosh, the Supreme Court stated that both assault and doing business without a license are not crimes involving moral turpitude. McIntosh, 443 So. 2d at 1286. In addition, violation of liquor laws (Parker v. State, 280 Ala. 685, 198 So. 2d 261 (1967)), aiding prisoner to escape (now listed in the Alabama Code as permitting or facilitating escape) (McGovern v. State, 44 Ala. App. 197, 205 So. 2d 247 (1967)), mere possession of marijuana (Neary v. State, 469 So. 2d 1321 (Ala. Crim. App. 1985)), and driving under the influence (Finley v. State, 661 So. 2d 762 (Ala. Crim. App. 1995)) have all been held to be crimes that do not involve moral turpitude.

*3 If a person is convicted of a felony involving moral turpitude, that person is ineligible to vote unless his or her civil and political rights have been restored. ALA. CONST. art. VIII, § 177 (amend. 579). If, however, a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.

CONCLUSION

If a person is convicted of a felony involving moral turpitude, that person is ineligible to vote unless his or her civil and political rights have been restored. If, however, a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.

QUESTION 2

Is an individual eligible under section 15-22-36.1 of the Code of Alabama to apply to the Pardons and Paroles Board for certification for eligibility to vote if he or she has not committed a crime involving moral turpitude?

FACTS AND ANALYSIS

Section 17-3-10 of the Code of Alabama provides for two methods by which a person who has lost his or her right to vote may have that right restored. ALA. CODE § 17-3-10 (Supp. 2004). The first method is to obtain a pardon that specifically restores the right to vote. Id. The second method is to receive a "Certificate of Eligibility to Register to Vote by the Board of Pardons and Paroles...." Id. Section 15-22-36.1(a) lists the requirements that a person must meet to apply to the Board of Pardons and Paroles for a "Certificate of

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Eligibility to Register to Vote":

(1) The person has lost his or her right to vote by reason of conviction in a state or federal court in any case except those listed in subsection (g).

(2) The person has no criminal felony charges pending against him or her in any state or federal court.

(3) The person has paid all fines, court costs, fees, and victim restitution ordered by the sentencing court.

(4) Any of the following are true:

a. The person has been released upon completion of sentence.

b. The person has been pardoned.

c. The person has successfully completed probation or parole and has been released from compliance by the ordering entity.

ALA. CODE § 15-22-36.1(a) (Supp. 2004) (emphasis added).

If a person has been convicted of a felony that does not involve moral turpitude, then that person has not "lost his or her right to vote." Accordingly, that person is ineligible to apply for a Certificate of Eligibility to Register to Vote.

CONCLUSION

If a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply for a Certificate of Eligibility to Register to Vote.

QUESTION 3

If an individual has been convicted of a crime involving moral turpitude and a crime not involving moral turpitude and he or she has satisfied the judgment, including payment of court-ordered monies, but has not satisfied the judgment in the non-disqualifying offense, including payment of court-ordered monies, is the individual eligible under section 15-22-36.1 of the Code of Alabama to apply for the certificate of eligibility to vote?

FACTS AND ANALYSIS

*4 For a person to be eligible to apply for the "Certificate of Eligibility to Register to Vote," that person must have "paid all fines, court costs, fees, and victim restitution ordered by the sentencing court." ALA. CODE § 15-22-36.1(a) (3) (Supp. 2004) (emphasis added). You ask whether that requirement applies to any crime that person has committed, or only applies to any felonies involving moral turpitude that person has committed.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. Ex parte Cove Properties, Inc., 796 So. 2d 331, 334 (Ala. 2000); Ex parte T.B., 698 So. 2d 127, 130 (Ala. 1997); State Dep't of Transp. v.

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McLelland, 639 So. 2d 1370, 1371 (Ala. 1994). Section 15-22-36.1 requires that "all" fines, court costs, fees, and victim restitution must be paid. ALA. CODE § 15-22-36.1(a)(3) (Supp. 2004). The statute does not limit this requirement to disqualifying offenses. Accordingly, it is the opinion of this Office that a person must pay all fines, court costs, fees, and victim restitution for both disqualifying and non-disqualifying offenses to be eligible to apply for a Certificate of Eligibility to Register to Vote.

CONCLUSION

A person must pay all fines, court costs, fees, and victim restitution for both disqualifying and non-disqualifying offenses to be eligible to apply for a Certificate of Eligibility to Register to Vote.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Rushing Payne of my staff.

Sincerely,

Troy King

Attorney General

By: Brenda F. Smith

Chief

Opinions Division

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

END OF DOCUMENT

EXHIBIT B

**FOR IMMEDIATE RELEASE
MAY 17, 2005**

**CONTACT: CYNTHIA DILLARD
(334) 242-8713
OR
PHIL BRYANT
(334) 353-8768**

AS WE HAVE WORKED TO IMPLEMENT 15-22-36.1, THE LAW PROVIDING FOR CERTIFICATION OF ELIGIBILITY TO VOTE, WE HAVE DISCOVERED THAT MANY ELIGIBLE VOTERS ARE UNAWARE OF AMENDMENT 579 OF THE ALABAMA CONSTITUTION, RATIFIED ON JUNE 19, 1996. THIS CONSTITUTIONAL AMENDMENT RESTORED THE VOTING RIGHTS OF MANY ALABAMIANS, WHO DO NOT NEED A CERTIFICATE FROM THIS AGENCY IN ORDER TO REGISTER TO VOTE.

UNDER THE CURRENT ALABAMA LAW, ONLY FELONIES INVOLVING MORAL TURPITUDE DISQUALIFY A PERSON FROM VOTING. CONVICTIONS FOR OTHER FELONIES DO NOT DISQUALIFY A PERSON FROM VOTING.

IF PEOPLE WHO ARE ALREADY ELIGIBLE TO VOTE DO NOT ASK US FOR CERTIFICATES, WE CAN PROCESS THE OTHER APPLICATIONS MORE PROMPTLY.

THERE IS A LOT OF GRAY AREA IN THE LAW REGARDING CRIMES OF MORAL TURPITUDE. IN THEORY, THE DISTINCTION IS BETWEEN CRIMES THAT ARE INHERENTLY WRONG AND CRIMES THAT ARE FELONIES ONLY BECAUSE THEY ARE PROHIBITED. WHILE THERE ARE SOME CASES THAT ARE NOT CLEAR, FELONIES INVOLVING THEFT, FRAUD OR DISHONESTY WOULD CAUSE THE PERSON TO LOSE HIS VOTING RIGHTS. SIMILARLY, FELONIES INVOLVING VIOLENCE DISQUALIFY THE PERSON FROM VOTING.

FOR A LIST OF CRIMES INVOLVING MORAL TURPITUDE, I WOULD REFER YOU TO THE AG'S OPINION ADDRESSED TO WILLIAM SEGREST, DATED MARCH 18, 2005, OPINION # 2005-092.

HOWEVER, WHILE NOT AN EXHAUSTIVE LIST, THE FOLLOWING HAVE BEEN DETERMINED TO INVOLVE MORAL TURPITUDE:

1. BURGLARY
2. ROBBERY
3. FORGERY (TO INCLUDE PRESCRIPTIONS)

4. **CRIMINAL POSSESSION OF FORGED INSTRUMENT**
5. **SALE OF MARIJUANA OR OTHER DRUGS**
6. **(POSSESSION OF MARIJUANA OR OTHER DRUG) FOR
RESALE AND POSSESSION WITH INTENT TO
DISTRIBUTE**
7. **THEFT**
8. **RECEIVING STOLEN PROPERTY, ANY DEGREE**
9. **VIOLENT OR SEX OFFENSES**

THE FOLLOWING CONVICTIONS, WHILE NOT AN EXHAUSTIVE LIST,
HAVE BEEN DETERMINED NOT TO INVOLVE MORAL TURPITUDE:

1. **FELONY DRIVING UNDER THE INFLUENCE**
7. **FELONY POSSESSION OF DRUGS**

PLEASE NOTE THAT A MISDEMEANOR OR A CONVICTION OF A VIOLATION
DOES NOT DISQUALIFY A PERSON FROM REGISTERING TO VOTE.

EXHIBIT C



NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

99 Hudson Street, Suite 1600 • New York, NY 10013 • 212.965.2200 • Fax 212.226.7592 • www.naacpldf.org

Direct Line: 212.965.2235

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rhaygood@naacpldf.org

September 23, 2005

By Facsimile and First-Class Mail

Nancy Worley
Alabama Secretary of State
Office of the Secretary of State
Post Office Box 5616
Montgomery, Alabama 36103-5616

Re: ***Voter Registration for Felonies Not Involving Moral Turpitude***

Dear Ms Worley:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) is working with the Alabama Alliance to Restore the Vote to assist eligible people with felony convictions in applying for restoration of their voting rights. As you know, in the 2003 Second Special Session the Alabama legislature enacted Act 2003-415, Ala. Code § 15-22-36.1, a law enabling members of the Alabama Board of Pardons and Paroles (“Board” or “Board of Pardons and Paroles”) to, among other things, provide a procedure for the restoration of voting rights — by issuing a Certificate of Eligibility to Register to Vote (“Certificate of Eligibility”) — to people with felony convictions who satisfactorily complete the conditions of their sentences.

In its attempt to implement Ala. Code § 15-22-36.1, and to determine which felonies require the issuance of a Certificate of Eligibility as a prerequisite to registering to vote, William Segrest, Executive Director of the Board of Pardons and Paroles, requested that Troy King, Attorney General for the State of Alabama, clarify which felonies did not involve moral turpitude. In response to Segrest’s query, the Attorney General issued an opinion, attached as Exhibit A, which explained that “[i]f a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply [to the Board of Pardons and Paroles] for a Certificate of Eligibility to Register to Vote.” *See* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.). Though the Attorney General noted that he could not “provide an exhaustive list of every felony involving

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The NAACP Legal Defense and Educational Fund, Inc. (LDF) is not a part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. Since 1957, LDF has been a completely separate organization. Contributions are deductible for U.S. income tax purposes.

moral turpitude,” the opinion listed a number of crimes that have been determined not to involve moral turpitude, including “violation of liquor laws” and “driving under the influence.” *Id.* at 2 (citing *Parker v. State*, 280 Ala. 685, 198 So. 2d 261 (1967); *Finley v. State*, 661 So. 2d 1321 (Ala. Crim. App. 1995)). Thus, the opinion concluded, if “a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.” *Id.* at 3.

To effectuate the intent and substance of the Attorney General’s opinion, the Board of Pardons and Paroles issued a press release on May 17, 2005, attached as Exhibit B. The press release noted that as the Board worked to implement Ala. Code § 15-22-36.1, it “discovered that many eligible voters [were] unaware” that they did not need a “certificate from this agency in order to register to vote.” “Under the current law,” the press release said, “only felonies involving moral turpitude disqualify a person from voting. Convictions for other felonies do not disqualify a person from voting. If people who are already eligible to vote do not ask us for certificates, we can process the other applications more promptly.” While the press release did not provide an exhaustive list of felonies involving moral turpitude, it noted that “felony driving under the influence” and “felony possession of drugs” are offenses that do not involve moral turpitude.

Notwithstanding the clear direction provided by the Attorney General’s opinion, and the press release that was issued by the Board of Pardons and Paroles, it has come to LDF’s attention that your office has directed the Registrars to refuse to register people with felony convictions **not involving moral turpitude** without a Certificate of Eligibility in the following (and very likely other) counties: Bullock, Chilton, Choctaw, Dallas, Escambia, Greene, Houston, Jefferson, Lowndes, Macon, Madison, Marengo, Mobile, Montgomery, Pike, Randolph, St. Clair, Talladega, Tallapoosa and Tuscaloosa.

As the Attorney General’s opinion and the Board’s press release makes plain, a person convicted of a felony not involving moral turpitude is not required to obtain a Certificate of Eligibility from the Board of Pardons and Paroles, since that individual never lost his or her right to vote as a result of the conviction for that particular crime. As you know, the Attorney General’s opinion is not only entitled to careful consideration but should also be regarded as highly persuasive on matters of Alabama law. *See Nat’l R.R. Passenger Corp. v. Rountree Transport & Rigging, Inc.*, 286 F.3d 1233 (11th Cir. 2002).

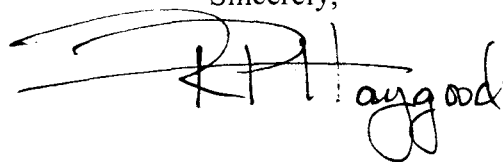
Under these circumstances, we believe it is imperative that your office correct the erroneous direction it has given to Registrars concerning this issue, modify its policies and procedures as necessary, and provide prompt and effective notice of the changes.

Nancy Worley
Alabama Secretary of State

September 23, 2005
Page 3

In light of the quickly approaching September 30th registration deadline for the October 11th municipal election for residents of Birmingham, we are hopeful that we can resolve this issue promptly and amicably. Please provide me with your response by facsimile no later than Monday, September 26, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read "RH Haygood". The signature is written in a cursive style with a large, sweeping initial "RH" and the name "Haygood" written in a more legible, though still cursive, script.

Ryan P. Haygood

Enclosures

cc: Troy King, Attorney General for the State of Alabama
William Segrest, Executive Director, Alabama Board of Pardons and Paroles

EXHIBIT D

L. WORLEY
SECRETARY OF STATE



First Floor, State Capital
 Suite 5-105
 600 Dexter Avenue
 P.O. Box 5616
 Montgomery, Alabama 36103-5616

State of Alabama

May 11, 2005

VIA HAND DELIVERY

The Honorable Troy King
 Attorney General
 11 South Union Street - 3rd Floor
 Montgomery, Alabama 36130

Re: Request for an Attorney General's Opinion - Felony Convictions

Dear General King:

On March 18, 2005, your office issued an Opinion which concluded, "If a person is convicted of a felony involving moral turpitude, that person is ineligible to vote unless his or her civil and political rights have been restored." The Opinion further concludes that "If a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply for a Certificate of Eligibility to Register to Vote." The Opinion provides a "list of the crimes that the Alabama courts have determined to be crimes involving moral turpitude." The Opinion provides an extensive listing of crimes which involve moral turpitude; however, you clearly establish that the listing is not "an exhaustive list of every felony involving moral turpitude."

As the State's Chief election official, I am seeking clarification on behalf of all local election officials and the Boards of Registrars in each Alabama county. I am concerned that if a uniform listing of felonies involving moral turpitude is not established, distributed and publicly posted; interpretations could potentially vary in each county. A uniform listing would be helpful to the Boards of Registrars when a registered voter is convicted of a qualifying felony of moral turpitude and removal from the list of registered voters is legally necessary. The uniform listing would also be beneficial to a private citizen when he or she registers to vote initially. The uniform listing should be available to the potential registrant prior to his or her signing the prescribed voter declaration, a sworn statement, on the voter registration form. The current declaration on the Voter Registration Forms includes the following statement, "I am not barred from voting by reason of a felony conviction" which could be confusing or misleading to the potential registrant. I shall appreciate your consideration of my request that you modify the March

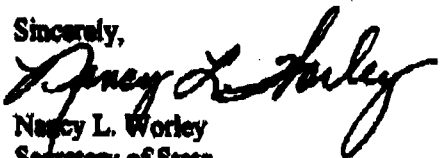
18, 2005, Opinion to provide a complete and comprehensive list of felonies involving moral turpitude. The current Opinion is confusing to many Registrars and other election officials.

In a 1999 Opinion to Mr. Lindbergh Jones, Chairman of the St. Clair County Board of Registrars, the Attorney General broadly concluded that "A person convicted of a felony is prohibited from voting." The Opinion contemplated the decision of the United States Supreme Court in Hunter v. Underwood, 471 U.S. 222 (1985), the repeal of Section 182 of the Alabama Constitution and subsequent ratification of Amendment 579. It is my understanding that since 1999 many Registrars may have improperly relied upon the conclusion in the Jones Opinion and removed all persons convicted of a felony from the State's list of registered voters. Accordingly, we seek clarification of the following:

1. *Should your Opinion of March 18, 2005, to the Honorable William Sogrest be submitted for pre-clearance by the United States Department of Justice since the interpretation may cause a change in voting practice within the State of Alabama?*
2. *Will you modify your Opinion of March 18, 2005, and provide a comprehensive listing of felonies involving moral turpitude?*
3. *If a determination is made that individuals have been improperly removed from the State's List of Registered Voters by the various county Boards of Registrars, what legal procedures should be utilized by the Boards of Registrars to accurately restore the names of those voters improperly removed?*

I shall appreciate your consideration and review of this matter and will look forward to receiving an Opinion at your first convenience. We plan to update the State's voter registration forms prior to the next election cycle and shall withhold submitting them to the Alabama Supreme Court for approval and the United States Department of Justice for pre-clearance until this matter is resolved.

Sincerely,



Nancy L. Worley
Secretary of State