

Report on the

**Office of the Secretary of State
State of Alabama
Montgomery, Alabama**

January 20, 2015 through September 30, 2019

Filed: January 15, 2021



**Department of
Examiners of Public Accounts**

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Rachel Laurie Riddle, Chief Examiner



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Honorable Rachel Laurie Riddle
Chief Examiner of Public Accounts
Montgomery, Alabama 36130

Dear Madam:

An examination was conducted on the Office of the Secretary of State, Montgomery, Alabama, for the period January 20, 2015 through September 30, 2019, by Examiners Manuel Anthony, Steven D. Grant and Melanie Pippen. I, Manuel Anthony, served as Examiner-in-Charge on the engagement, and under the authority of the *Code of Alabama 1975*, Section 41-5A-19, I hereby swear to and submit this report to you on the results of the examination.

Respectfully submitted,

Manuel Anthony
Examiner of Public Accounts

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Department of
Examiners of Public Accounts

SUMMARY

**Office of the Secretary of State
January 20, 2015 through September 30, 2019**

The Office of the Secretary of State (the “Office”) is a constitutional office responsible for the custody and use of the Great Seal of Alabama and for other duties concerning public documents. The *Code of Alabama 1975*, Sections 36-14-1 through 36-14-19, establishes the general duties and responsibilities of the Office of the Secretary of State. There are numerous other code sections that establish duties and responsibilities of the Office.

Included in the Secretary of State’s other responsibilities is serving as a member of the Alabama Athlete Agents Commission (the “Commission”) and providing administrative functions for the Commission. Statutory authority for the Commission is found in the *Code of Alabama 1975*, Sections 8-26B-1 through 8-26B-31.

This report presents the results of an examination of the Office and a review of compliance by the Department with applicable laws and regulations of the State of Alabama. This examination was conducted in accordance with the requirements of the Department of Examiners of Public Accounts under the authority of the *Code of Alabama 1975*, Section 41-5A-12. Our examination was performed to determine whether the public officers, agents, and employees of the Office properly and lawfully accounted for all money and other public assets or resources received, disbursed, or in the custody of the Office. Our examination included determining compliance by the Office with state laws and regulations that pertain to financial transactions; personnel; safeguarding of state-owned assets, property, and resources; information dissemination, processing, and retention; and official actions, rulemaking procedures, and meetings. As a part of our examination, we also reviewed internal control policies and procedures relating to the areas listed above. Our examination did not encompass managerial and operational matters, such as whether the Office accomplished its mission or its regulatory, enforcement, investigative, or other oversight activities in an efficient, fair, timely, or legal manner.

Tests performed during the examination did not disclose any significant instances of noncompliance with applicable laws and regulations.

Mr. John H. Merrill, Secretary of State was invited to an exit conference held on December 22, 2020. Individuals in attendance were David Brewer, Deputy Secretary of State and Chief of Staff, and Taylor Freeman, Chief Financial Officer, along with Leovetta Childrey, Manuel Anthony and Steven Grant from the Department of Examiners of Public Accounts.

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Department of
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COMMENTS

**Office of the Secretary of State
January 20, 2015 through September 30, 2019**

The Office of the Secretary of State (the “Office” or “Secretary of State”) is a constitutional office responsible for the custody and use of the Great Seal of Alabama and for other duties concerning public documents. The *Code of Alabama 1975*, Sections 36-14-1 through 36-14-19, establishes the general duties and responsibilities of the Office of the Secretary of State. There are numerous other code sections that establish duties and responsibilities of the Office.

The Secretary of State is elected by popular election for a four-year term of office, is eligible for one successive term, and may be removed by impeachment. If the Office becomes vacant due to death or resignation, the Governor appoints a Secretary of State to hold office until the next election.

The *Code of Alabama 1975* assigns more than 1,000 different duties to the Office of the Secretary of State which are divided among seven divisions: Executive, Elections, Finance, Government Support, Authentications and Trademarks, Business Services (Business Entities), Business Services (Uniform Commercial Code), and Information Systems. Each division is located in Montgomery, Alabama.

Executive Division – The Executive Division plans and directs the administrative, operational, and financial operations of all the divisions in the Secretary of State’s Office. The division is also responsible for maintaining the database of all commissioned Notary Publics and Civil Law Notaries.

Elections Division – The Elections Division oversees voter registration, photo identification for voting purposes, voter fraud, absentee voting, and campaign finance in the State of Alabama. The division manages the statewide voter registration and election management system, the online voter registration system, and the Alabama Fair Campaign Practices Act campaign finance reporting system. Furthermore, the division certifies and maintains all official election and voter registration records, including the results of elections, and provides uniform guidance on election procedures to constituents, voters, candidates, political parties, and elected officials throughout the state. The division provides assistance and administrative support to the State Voter Registration Advisory Board provided for at *Code of Alabama 1975*, Section 17-4-34.

Finance Division – The Finance Division develops budget requests, operational plans, and budget revisions for both the Office and the Alabama Athlete Agents Commission (AAAC). The division keeps accurate financial records on all financial transactions for both the Office and AAAC and organizes these materials for regular audits. Further, the division assists with the preparation and administration of rental leases/renewals, purchase/delivery orders, professional service contracts, orders supplies and equipment, prepares bid specifications for consumable orders, issues orders, and verifies deliveries for both the Office and AAAC.

Government Support, Authentications and Trademarks Division – The Government Support, Authentications and Trademarks Division is responsible for authenticating documents for use in foreign nations. The division is responsible for registering trademarks, trade names, and service marks, as well as creating a statewide database in accordance with state and federal guidelines. The division also assists with the administration of the clerical duties for the Alabama Athlete Agent Commission and validates and assigns act numbers to bills and Constitutional Amendments adopted by the Alabama Legislature during Session. Furthermore, the division distributes the Code of Alabama to various recipients entitled to the same under state law, ensures binding and distribution of House and Senate Journals, issues Public Officer Commission certificates to recipients in accordance with state law, issues Certificates of Service to judges relative to their retirement benefits for the Administrative Office of Courts, maintains the register of Alabama Board of Interior Design members, and registers Oaths of Offices for various state and county officials, both elected and appointed.

Business Services Division (Business Entities) – The Business Entities Section records domestic entity filings (formed in the State of Alabama) and foreign entity registrations (formed outside the State of Alabama) to the public record. The division reserves business entity names, provides both certified and non-certified copies of documents, and Certificates of Existence to the public. Further, the division provides the electronic means to obtain name reservation certificates, certificates of existence, certified or non-certified copies of documents, and certain formation/dissolution and registration filings.

Business Services Division (Uniform Commercial Code) – The Uniform Commercial Code (UCC) Section administrates UCC filings in accordance with Title 7, Article 9A of the *Code of Alabama 1975*. The division processes numerous UCC Filing Form Types, Search Requests and Farm Registry UCC Filings. These liens are usually placed on certain personal property, such as equipment, accounts receivable, etc., that normally cannot be titled or deeded, such as automobiles, aircraft, boats, and real estate. Each UCC is validated, the data is entered and scanned into the Secretary of State’s central computer system.

Information Systems Division – The Information Systems Division is responsible for supporting and maintaining the technical infrastructure for the office staff and the information technology systems. This encompasses supporting all web-based election activities and business filing processes. Staff in this division are also responsible for supporting county voter registrars as they access the statewide voter registration system.

The Office of the Secretary of State operates from several accounts/funds maintained in the State Treasury as follows:

OFFICE OF THE SECRETARY OF STATE NON-GENERAL FUNDS

Uniform Commercial Code Fund Code of Alabama 1975, Section 7-9A-525

All funds deposited in the State Treasury to the credit of the Uniform Commercial Code Fund shall be expended for the purpose of carrying out the provisions of the law authorizing the collection of such funds and shall be payable from said fund on the requisition of the Secretary of State; provided, however, commencing in the Fiscal year beginning October 1, 2003, and in subsequent fiscal years, no funds shall be withdrawn nor expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with the provisions of Article 4 of Chapter 4 of Title 41, and only in the amounts and for the purposes provided by the Legislature in the general appropriation bill.

State Entity Fund (Corporations) Code of Alabama 1975, Section 10A-1-4.31 (c) - (e)

All funds deposited in the State Treasury to the credit of the Secretary of State Entity Fund shall not be expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with the provisions of Article 4 of Chapter 4 of Title 41, and only in the amounts and for the purposes provided by due Legislature in the general appropriation bill or this section. Seventy percent of funds collected by the Secretary of State in relation to entities during the fiscal year shall be deposited to the credit of the State General Fund.

Electronic Voting Fund Code of Alabama 1975, Section 17-7-23

The vendor submitting a system for certification shall pay to the State of Alabama by depositing with the State Treasury for distribution to reimburse the committee in an amount equal to the actual costs, if any, incurred in examining the system. Such reimbursement shall be made whether or not the system is certified.

Voter Registration Fund Code of Alabama 1975, Section 17-4-62

The receipts shall be disbursed only by warrant of the State Comptroller drawn upon the State Treasury supported by itemized vouchers approved by the Secretary of State. No funds shall be withdrawn or expended except as budgeted and allotted according to the *Code of Alabama 1975*, Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in amounts as stipulated in the general appropriations act, or other appropriations acts.

Help America Vote Act (HAVA) Fund Code of Alabama 1975, Section 17-2-1

The receipts shall be disbursed only by warrant of the State Comptroller drawn upon the State Treasury supported by itemized vouchers approved by the Secretary of State. No funds shall be withdrawn or expended except as budgeted and allotted according to the *Code of Alabama 1975*, Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in amounts as stipulated in the general appropriations act or other appropriation acts.

Pew Charitable Trust Grant Fund

Pursuant the authority contained in Act Number 2015-459, the Secretary of State entered into an Agreement with the Electronic Registration Information Center, Inc. (ERIC) on October 6, 2015, related to strengthening the integrity of Alabama's computerized statewide voter registration list, Related to implementing ERIC, the Secretary of State entered into a grant agreement with The Pew Charitable Trusts (Pew) on January 11, 2016 to be provided certain grant funding to implement a portion of ERIC. This fund contains the Pew grant funds.

Farmers Credit Protection Fund Code of Alabama 1975, Section 7-9A-320

All funds deposited in the State Treasury to the credit of the Alabama Farmers Credit Protection Fund shall be expended for the purpose of administering the provisions of law authorizing the collection of such funds and shall be payable from the fund on the requisition of the Secretary of State. Such funds shall be exempt from the provisions of subsection (g) of the *Code of Alabama 1975*, Section 7-9A-525. Commencing October 1, 2003, no funds shall be withdrawn nor expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with Article 4 of Chapter 4 of Title 41, and only in the amounts and for the purposes provided by the Legislature in the general appropriations act.

Information Bulk Sales Fund Code of Alabama 1975, Section 7-9A-523 (f)

The *Code of Alabama 1975*, Section 7-9A-525, or any other law to the contrary notwithstanding, all funds, fees, charges, costs and collections accruing to or collected by the office of the Secretary of State under the provisions of this section shall not be expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with the provisions of Article 4 of Chapter 4 of Title 41, and only in the amounts and for the purposes provided by the Legislature in the general appropriation bill or this section.

Homeowner's Association Act Supplement Filing Fee

Pursuant to the authority contained in Act Number 2015-292 and codified at the *Code of Alabama 1975*, Section 35-20-1, et seq., the Secretary of State is required to accomplish certain duties related to Alabama Homeowner Associations and, further, may adopt rules necessary for the implantation of this law, including the adoption of reasonable fees for the filing of documents related thereto. There is a \$50.00 supplemental filing fee related to the aforesaid law as prescribed by new Administrative rule. The administrative rule became effective April 18, 2016.

Due to the fact that this supplemental fee is associated to the fees prescribed at the *Code of Alabama 1975*, Section 10A-1-4.31, seventy percent of funds collected by the Secretary of State shall be deposited to the credit of the State General Fund.

OFFICE OF SECRETARY OF STATE GENERAL FUNDS

Training of Election Officials

The Alabama Legislature appropriates funds for the training of election officials pursuant to the court order entered by the U. S. District Court, Middle District of Alabama, in *Harris v. Siegelman*.

Distribution of Public Documents Fund

The *Code of Alabama 1975*, Section 36-14-1, it is the duty of the Secretary of State to keep the original statutes and public records of the state, and the records and papers belonging to the Legislature, keeping the papers of each house separate.

The *Code of Alabama 1975*, Section 36-14-11, the Secretary of State shall retain for the use of the executive offices and the two houses of the Legislature the number of copies of all volumes of the acts and resolutions of each session necessary to provide for distribution pursuant to law.

The *Code of Alabama 1975*, Section 17-5-11, the expenses incurred by the Secretary of State in furnishing forms, accepting statements and reports, filing statements and reports, and making such statements and reports available to the public shall be paid from moneys designated to the distribution of public documents.

The *Code of Alabama 1975*, Section 41-21-8, out of the moneys in the State Treasury not otherwise appropriated, such amounts of money as are, or may be, necessary to distribute the sets of code to the several state and county officers, agents and employees.

Printing of Code (of Alabama) and Supplements

The *Code of Alabama 1975*, Sections 41-21-1 through 41-21-8, out of the moneys in the State Treasury not otherwise appropriated, such amounts of money as are, or may be, necessary to distribute the sets of code to the several state and county officers, agents and employees.

Printing of Acts and Journals

The *Code of Alabama 1975*, Section 36-14-11, the Secretary of State shall retain for the use of the executive offices and the two houses of the Legislature the number of copies of all volumes of the acts and resolutions of each session necessary to provide for distribution pursuant to law.

Registration of Voters Fund

The *Code of Alabama 1975*, Section 17-3-5, each registrar shall receive a salary in the amount of eighty dollars (\$80) per day for each day's attendance upon business of the board, to be paid by the state and disbursed to the county commissions and disbursed by the county commissions to each registrar on order of a quorum of the board of registrars for the county. The state Comptroller shall issue to each county commission on a monthly basis an amount sufficient to fund these payments plus the employer share of the Social Security or Federal Insurance Corporation Act tax. Travel and other expenses shall be paid by the county commissions to the boards of registrars and the state shall reimburse the county commissions based on a written request submitted by the county commissions to the state Comptroller.

The *Code of Alabama 1975*, Section 17-3-57, the Secretary of State shall furnish to each board of registrars the necessary forms and supplies for effectuating the purposes of this chapter, and the expense incurred thereby shall be paid by the state. The cost of the publication of the notices required to be given by the registrars shall be paid by the state.

The *Code of Alabama 1975*, Section 17-9-30, the expenses for the production of the Alabama photo voter identification card shall be paid from funds appropriated in the state General Fund for Registration of Voters.

Registration of Voters Fund – Photo Voter Identification Fund

The *Code of Alabama 1975*, Section 17-9-30, (m) the Secretary of State is authorized to contract with a private provider for the production of the Alabama photo voter identification card pursuant to any applicable state bid laws.

The *Code of Alabama 1975*, Section 17-9-30, (n) the expenses for the production of the Alabama photo voter identification card shall be paid from funds appropriated in the state General Fund for Registration of Voters.

The *Code of Alabama 1975*, Section 17-9-30, (o) the Secretary of State is directed to inform the public regarding the requirements of subsection (a) through whatever means deemed necessary by the Secretary of State.

Alabama Fair Campaign Practices Fund

The *Code of Alabama 1975*, Section 17-5-19.1, (f) all penalties collected by a judge of probate shall be distributed to the county's general fund, and all penalties collected by the Secretary of State shall be distributed to the State General Fund.

The Alabama Athlete Agents Commission was established by the Alabama Legislature in 1988 through the Alabama Athlete Agents Regulatory Act. In 1994, the administrative functions for the Commission were transferred to the Office of the Secretary of State. In 2001, the Legislature adopted further amendments to the state law governing athlete agents through the Alabama Uniform Athlete Agents Act. Current statutory authority for the Commission is found in the *Code of Alabama 1975*, Sections 8-26B-1 through 8-26B-31. Any individual who operates as an athlete agent in Alabama is required by the Alabama Athlete Agents Regulatory Act to be licensed by the Commission.

The Board consist of the Secretary of State and 18 members to be appointed as follows:

- (1) One member appointed by the Governor.
- (2) One member appointed by the Lieutenant Governor.
- (3) One member appointed by the Speaker of the House of Representatives.
- (4) The athletic director or an individual appointed by the athletic director at each of the following institutions of higher education:
 - a. Auburn University
 - b. University of Alabama, Tuscaloosa
 - c. University of South Alabama
 - d. Alabama State University
 - e. Alabama A&M University
 - f. Tuskegee University
 - g. Troy State University
 - h. Jacksonville State University
 - i. University of North Alabama
 - j. University of West Alabama
 - k. Miles College
 - l. University of Montevallo
 - m. University of Alabama, Huntsville
 - n. University of Alabama, Birmingham
- (5) One member appointed by the Alabama High School Athletic Association.

The Alabama Athlete Agent Commission operates from a single fund maintained by the State Treasury as follows:

Alabama Athlete Agents Fund

The *Code of Alabama 1975*, Section 8-26B-31, (a) All moneys collected for registration and all fines collected for violations of this chapter shall be paid to the Secretary of State, who shall deposit them in a special fund in the State Treasury for the use of the commission.

(b) There is hereby created in the State Treasury a fund to be known and designated as the Alabama Athlete Agents Fund. All funds, fees, charges, costs and collections accruing to or collected under the provisions of this chapter shall be deposited into the State Treasury to the credit of the Alabama Athlete Agents Fund.

(c) Funds now or hereafter deposited in the State Treasury to the credit of the Alabama Athlete Agents Fund may not be expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with Article 4 of Chapter 4 of Title 41, and only in the amounts and for the purposes provided by the Legislature in the general appropriation bill or other appropriation bills.

Act Number 2016-414, Acts of Alabama, repealed the *Code of Alabama 1975*, Chapter 26A and created Chapter 26B, now known as the Revised Uniform Athlete Agents Act.

The Office owned nonconsumable personal property consisting of automobiles, office furniture, computers, and equipment. Nonconsumable personal property in the custody of the Commission was compared with property records maintained by the Property Inventory Control Division of the State Auditor's Office.

We noted in our selection of property tested that the serial numbers for two of the fifteen items were incorrectly entered when they were originally entered into the inventory system. When brought to the Office attention, both items were updated with the correct serial numbers in the inventory system and all other property serial numbers were verified.

Schedule of Cash Receipts, Disbursements and Balances
Office of the Secretary of State
For the Period October 1, 2017 through September 30, 2019

	2018-2019	2017-2018
<u>Receipts</u>		
General Fund Allotments	\$ 2,446,478.00	\$ 2,258,461.00
Investment Income	116,140.19	1,933.56
Other Nonoperating Revenues	4,417,484.50	4,274,063.51
Grants	19,651.30	6,160,393.00
Insurance Recovery Proceeds		1,208.00
Total Receipts	<u>6,999,753.99</u>	<u>12,696,059.07</u>
<u>Disbursements</u>		
Personnel Costs	1,774,192.69	1,656,720.45
Employee Benefits	792,409.58	754,320.22
In-State Travel	9,375.91	9,141.84
Out-of-State Travel	28,007.54	16,202.17
Repairs and Maintenance	23,076.05	21,903.20
Rentals and Leases	192,811.24	184,119.35
Utilities and Communication	886,671.91	690,134.50
Professional Services	1,372,917.79	2,370,227.39
Supplies, Materials, and Operating Expenses	891,471.65	552,278.61
Transportation Equipment Operations	11,115.34	14,948.42
Grants and Benefits	45,598.41	434,638.74
Other Equipment Purchases	13,590.85	30,630.90
Prior Year General Fund Reversion	26,933.72	62,956.74
Current Year General Fund Reversion	1,404,359.29	1,393,480.35
Total Disbursements	<u>7,472,531.97</u>	<u>8,191,702.88</u>
Excess (Deficiency) of Receipts Over Disbursements	(472,777.98)	4,504,356.19
Cash Balances at Beginning of Year	18,393,721.28	13,778,020.06
Balance Sheet Activity Impacting Total Ending Cash	<u>(191,083.11)</u>	<u>111,345.03</u>
Cash Balances at End of Year	<u>\$ 17,729,860.19</u>	<u>\$ 18,393,721.28</u>

Schedule of Cash Receipts, Disbursements and Balances
Athlete Agents Commission
For the Period October 1, 2017 through September 30, 2019

	2018-2019	2017-2018
<u>Receipts</u>		
Other Nonoperating Revenues	\$ 17,130.00	\$ 14,400.00
Total Receipts	<u>17,130.00</u>	<u>14,400.00</u>
<u>Disbursements</u>		
Personnel Costs		370.74
Employee Benefits		79.12
In-State Travel	4,083.57	5,973.76
Professional Services	1,645.19	14,668.46
Supplies, Materials, and Operating Expenses	28.44	
Total Disbursements	<u>5,757.20</u>	<u>21,092.08</u>
Excess (Deficiency) of Receipts Over Disbursements	11,372.80	(6,692.08)
Cash Balances at Beginning of Year	10,251.52	17,343.60
Balance Sheet Activity Impacting Total Ending Cash	258.02	(400.00)
Cash Balances at End of Year	<u>\$ 21,882.34</u>	<u>\$ 10,251.52</u>

Athlete Agents Commission Members and Official
January 20, 2015 through September 30, 2019

Commission Members		Term Expires
Hon. Santiago Pinzon	Chair	2022
Hon. Todd Vardaman	Vice-Chair	2022
Hon. Julie Woltjen	Secretary/Treasurer	2022
Hon. John Merrill	Member	2023
Hon. Jared White	Member	2022
Hon. Gerald Allen	Member	2022
Hon. Chris Blackshear	Member	2022
Hon. Marques Dantzler	Member	2022
Hon. Jaqueline Freeman	Member	2022
Hon. Stephen Lautz	Member	2022
Hon. Dave Didion	Member	2022
Hon. Alvin Briggs	Member	2022
Hon. Greg Bonds	Member	2022
Hon. Deborah Rodgers	Member	2022
Hon. Nicholas Brown	Member	2022
Hon. Tiffini Grimes	Member	2022
Hon. Corey Bray	Member	2022
Hon. David M. Derringer	Member	2022
Hon. Jasmine Thomas	Member	2022
Hon. Christopher Moore	Member	2022

Athlete Agents Commission Members and Official
January 20, 2015 through September 30, 2019

Commission Members		Term Expires
Hon. Mike Jones	Member	2022
Hon. Tatiana Cummings	Member	2019
Hon. Kendra Greene	Member	2019
Hon. J. Cherrelle Leslie	Member	2019
Hon. Matt Self	Member	2019
Hon. Jack Williams	Member	2018
Hon. Dana Gillis	Member	2018
Hon. Kevin Kendrick	Member	2018
Hon. Anthony Stallworth	Member	2018
Hon. Kit Alewine	Member	2018
Hon. Jonathan Bowling	Member	2018
Hon. Benjamin Gearhart	Member	2018
Hon. Kristina Villavicencio	Member	2017
Hon. Ken Burroughs	Member	2016
Hon. Phillip Wallace	Member	2016

Official

Hon. John H. Merrill
Secretary of State
Office of the Secretary of State
Alabama State Capitol
600 Dexter Avenue
Suite S-105
Montgomery, AL 36130

Voter Registration Advisory Board Members and Official
January 20, 2015 through September 30, 2019

Board Members		Term Expires
Hon. Jo Stiefel	Chair	Indefinite
Hon. Suzanne Williams	Member	2015
Hon. Fay Poole	Member	Indefinite
Hon. Kathy Thompson	Member	2020
Hon. Josh Summerford	Member	2016
Hon. Robert (Bob) Sanders	Member	Indefinite
Hon. Benjamin Jones, PhD	Member	Indefinite
Hon. Terry Lathan	Member	2015
Hon. Alleen Barnett	Member	2020
Hon. Don Milligan	Member	Indefinite
Hon. Debbie Page	Member	Indefinite
Hon. Deborah Howard	Member	2019
Hon. Lynda Hairston	Member	2017
Hon. Adonis Bailey	Member	Indefinite

Official

Hon. John H. Merrill	Secretary of State Office of the Secretary of State Alabama State Capitol 600 Dexter Avenue Suite S-105 Montgomery, AL 36130
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