

# The Importance of Involvement on the Local Level

AUDREY M. CALKINS<sup>\*±</sup>

Today, you get a thirty-minute presentation about that time I showed up to vote and was told: “No you can’t,” which is the less formal name of my presentation today: The Importance of Involvement on the Local Level. I do labor and employment defense. Voting rights is not my practice area, and having my right to vote denied is not something I had ever expected to experience. But I think it’s a good learning opportunity about how obstacles are in place to vote in this city, county, state, and country for everyone, and how we can work to change that.

I’m not from Memphis. I am from Sevier County in East Tennessee, a very different place from Memphis in every way. I moved here to clerk after law school for Judge Anderson in federal court from 2011 to 2012. Then I moved to Houston, Texas, to practice but decided I wanted to live in Memphis instead and do labor and employment law because those cases are interesting. I moved back to Memphis in March 2014. I bought a house in Evergreen,<sup>1</sup> which matters for reasons

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\* Ms. Calkins practices labor and employment defense at Ogletree, Deakins, Nash, Smoak & Stewart, P.C., in Memphis, Tennessee, and is licensed to practice law in Tennessee, Texas, and Arkansas. She graduated *summa cum laude* from the University of Tennessee College of Law in 2011 and *magna cum laude* from Wake Forest University in 2007. Ms. Calkins would like to thank Gary Peebles at Burch, Porter & Johnson, PLLC for representing her pro bono in her efforts to obtain public records from the Shelby County Election Commission.

± Editor’s Note: This is an edited transcript of Audrey Calkins’s remarks at *The University of Memphis Law Review’s* 2019 Symposium, *Barriers at the Ballot Box: Protecting or Limiting the Core of the American Identity*. To watch a video of this presentation, see Memphis Law Review, *Audrey Calkins: The Importance of Involvement at the Local Level*, YOUTUBE (Mar. 26, 2019), <https://www.youtube.com/watch?v=ORbI2UjsaPA>.

1. EVERGREEN HISTORIC DISTRICT ASSOCIATION, <https://evergreendistrict.org/> (last visited Apr. 14, 2019).

we will discuss later. Then, when I belatedly changed my driver's license, I registered to vote at the Department of Motor Vehicles.

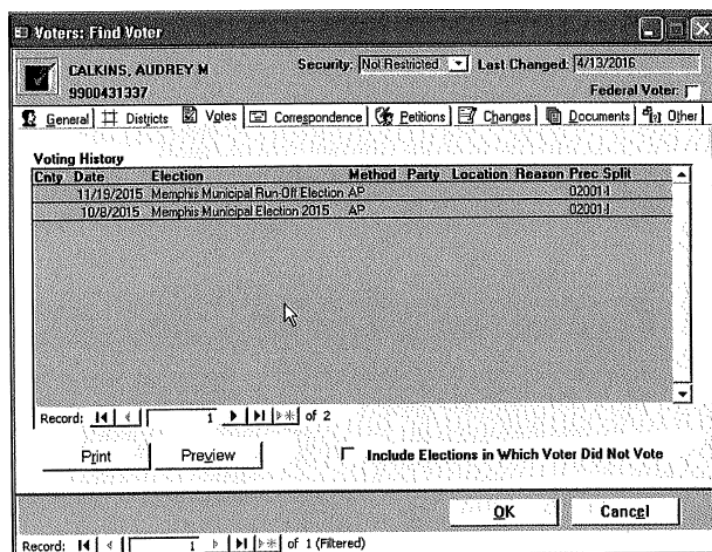
The screenshot shows a web application window titled "Voters: Find Voter". At the top, it displays the name "CALKINS, AUDREY M" and ID number "9900431337". Below this is a navigation bar with tabs: General, Districts, Votes, Correspondence, Petitions, Changes, Documents, and Other. The "General" tab is selected. The form contains the following fields and values:

- ID Number:** 9900431337
- Application Source:** NP
- Means of Regist:** 3/1/2016
- Registered:** 1/29/2015
- Status - Reason:** Active - Registered
- Title:** [Blank]
- Last Name:** CALKINS
- First Name:** AUDREY
- Middle Name:** M
- Suffix:** [Blank]
- Maiden Name:** [Blank]
- House #: 1/2:** [Blank]
- Street Name:** [Blank]
- Unit:** [Blank]
- Unit #:** [Blank]
- City:** MEMPHIS
- State:** TN
- Zip Code:** 38104
- Address Line 2:** [Blank]
- Mail Addr Line 1:** [Blank]
- Mail City:** [Blank]
- State:** [Blank]
- Mail Zip:** [Blank]
- Mail Country:** [Blank]
- Birthdate:** [Blank]
- Place of Birth:** [Blank]
- Social Sec.:** [Blank]
- Driver's Lic.:** [Blank]
- Sex:** [Blank]
- Race:** [Blank]
- Language:** English
- Assistance:** [Blank]
- Political Party:** [Blank]
- Phone:** [Blank]
- U:** [Blank]
- Last Voted:** 19-Nov-15
- Must Vote In Person:** [Blank]
- Poll Worker Interest:** [Blank]
- Poll Worker:** [Blank]
- Precinct Split:** 020013
- Insert:** [Blank]
- Clear:** [Blank]

At the bottom, there are buttons for "New Voter", "Delete Voter", "OK", and "Cancel". The status bar at the very bottom indicates "Record: 1 of 1 (Filtered)".

This screenshot shows the day, January 29, 2015, that I registered to vote in Shelby County and complied with Tennessee's voter registration requirements. I got this proof from the Shelby County Election Commission, after sending a couple of nastygrams. This screenshot shows affirmative proof of my registration on January 29, 2015—a thing that is important.

I also voted after I registered because voting is fun and important. I voted in a couple of elections in 2015. There was a municipal election, then there was a runoff—I voted in that too. Voting was great. I got to vote in all those elections, but only once per election!



So I have proof that I voted and proof that I was registered. The second election I voted in after registering in Tennessee was on November 19, 2015. So, then what happens?

It was Tuesday, March 1, 2016. It was raining, and it was cold. I remember those details because I had a client meeting, and I had to get to my polling place in time to vote and make it to the meeting by 10:00 a.m. I got to the poll very early. I vote at Trinity United Methodist. I had my driver license and my voter registration card because I knew what the law was, and I knew I need to be prepared. I walked up and handed the poll workers my registration. They said, "You're not in the system," and I replied, "What do you mean, try my last name? It doesn't have a 'u' in it. Just check the spelling." Again, they said, "It's still not there." Then I said, "Let me see the screen, my first name has an 'e' in it, it's not 'u-d-r-y.' Let's make sure." They turned the screen towards me, and they had spelled my name right. I wasn't in the system. Then I said, "Well then, search for my address." They searched for my address, and it wasn't there either. Then, I suggested, "Try adding 'North' instead of just the plain street name?" It still wasn't there. They then said, "You have your registration card, and it says that you're registered, but you're not in our system. So, all you can do today is cast a provisional ballot." I said "Okay." What choice did I have?

Has anybody had to cast a provisional ballot in this room? For the record, the answer is no, and there's probably around 100 people in this room. The provisional ballot looks kind of like the screens you see

on your electronic voting screen but it's on paper. You check the boxes, sign it, and say that you are who you say you are, are not a convicted felon, are a registered voter, are a U.S. citizen, are eligible to vote, and so on.

I cast the provisional ballot. I didn't come prepared to vote with proof of residency at my address or whatever you need to have to prove residency when you go to the DMV. I didn't come with two months of utility bills. I didn't come with a bank statement. I didn't come with all the documents that you need to prove where you live when I submitted my provisional ballot. I just folded my provisional ballot up and thought, "Whatever, I voted, and I will take care of this later." I went to my client meeting and then work—which is when I got on the phone. I called the Shelby County Election Committee and spoke to probably six different people. I demanded to know what was going on. I explained that I had tried to vote, was told that I couldn't, and asked why I wasn't in their system. Nobody had any earthly idea. Plus, it was Super Tuesday, and they were really busy.

Tennessee Code § 2-7-112 lays out what a provisional ballot is and the circumstances under which a voter is required to be given one.<sup>2</sup> If you show up to your polling place and are told you cannot vote because you're not a registered voter, you can say, "I want my provisional ballot." You fill it out, sign it, and put it in a box. But before you do that, you call one of your friends who is a lawyer and say, "Oh my God, I had to fill out a provisional ballot, what do I need to do?" Of course, if I had thought at the time my provisional ballot would have been an issue, I would have done that, but I didn't. I mean, I have law licenses in three states, which were apparently insufficient to vote in Shelby County. I think it was because at the time I only had two.

Section 2-7-112 of the Tennessee Code lays out what happens when you cast a provisional ballot.<sup>3</sup> You have to complete a voter registration application. It asks whether you have moved and asks for your new address. So, I wrote down where I lived and my new address—

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2. TENN. CODE ANN. § 2-7-112(a)(3)(A) (2018) ("A person shall be entitled to vote a provisional ballot under the procedures of this section if the voter claims to be properly registered in the county and eligible to vote at the precinct in the election, but whose eligibility cannot be determined by the computer signature list or by examination of the permanent registration records on file with the county election commission.").

3. *Id.*

the same address because I've lived in the same house since September 2014. That was step one. I completed the application and then signed that I'm a citizen, not a felon, over 18. Then I got my provisional ballot, filled it out, and voted. So, the process was simple: complete the form, put it in the box, and move on.

At the end of the voting day, all the new documents are supposed to be taken somewhere, by some conveyer-belt magic carpet, to the Central Provisional Ballot Counting Board,<sup>4</sup> which is essentially the same thing as the Election Commission (as the same people can be on both). So, they get it, and then they are supposed to count the provisional ballots. Shelby County has a lot of provisional ballots. There were over a thousand provisional ballots cast in Shelby County in the November 2018 election.<sup>5</sup> And that is on top of all the different results from all the different polling places that have to be evaluated to certify the results of an election. The Secretary of State requires elections to be certified within three weeks after the election.<sup>6</sup> For a big county like Shelby County, that's very fast. For a small county, it's less of a challenge.

The Board gets the box of provisional ballots from every polling place in the county. They unlock the box in front of a majority of the members of the board. Then, they review the records. What records they review is important. What they look at to determine if a voter is eligible to cast a provisional ballot is very limited.<sup>7</sup> They look at their own records; this will matter later. They look at their own election records and an assortment of other records from different entities such as the Shelby County Election Commission, Tennessee Departments of Health, Human Services, Mental Health and Development Disabilities, Safety, and Veterans Affairs. They look at these records to determine whether the voter meets the statutory requirements for registration. If the voter meets the statutory requirements for registration in the precinct where she voted, the voter can only vote provisionally in the precinct where she is registered—her polling place. For example, I could

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4. See TENN. CODE ANN. § 2-6-302.

5. See *Provisional Ballots by Precinct*, SHELBY CTY. ELECTION COMM'N (2018), <https://www.shelbyvote.com/sites/default/files/documents/elections/2018/11.06%20State%20General/Provisional%20Summary.pdf> (reporting 1,888 total provisional ballots for the November 6, 2018 election).

6. TENN. CODE ANN. § 2-8-101.

7. TENN. CODE ANN. § 2-7-112(a)(3)(B)(i)–(v).

not go vote provisionally downtown at the election commission. I could not go vote out by work, where our offices are in East Memphis. I had to vote on Election Day in the place where I'm registered. If you're going to vote provisionally, you want it to count. But I voted in my polling place, so this shouldn't have been a problem—or so I thought!

You could have pinned your birth certificate to your provisional ballot, and the Board wouldn't look at it. It's irrelevant because it's not in their records. And probably from an evidentiary standpoint, because it's not an authenticated document.<sup>8</sup> Then, the Board looks at your ballot, to see whether your vote will count. They determine whether you should have been registered as a voter. I should have been registered: I had voted in November 2015, and March 2016 is only four months later. Four months is not enough time for me to be purged from the voting list for not voting.<sup>9</sup> Then the voter has to meet the statutory requirements for registration in the precinct where she would vote. I lived in the precinct then, I had lived in the precinct before March 2016, and I still live in the precinct now. Nothing has changed. Next, the Board decides whether to accept the ballot within that three-week period. No one knows when they actually consider your particular provisional ballot within that three-week period.

After I voted on March 1, in the three weeks after the election, I called the Commission several times and tried to talk to them. I told them that I had to vote provisionally and was told I wasn't registered, but I am. I asked if I could come down to provide proof, including my utility bill, a copy of my mortgage to show that I own the house, my phone bill, my internet bills, whatever they needed so that I could vote, because it was a presidential primary—my vote mattered!

Three weeks later, on March 22nd, I got home from work, checked my mail, and lo and behold, I had a letter from the Shelby County Election Commission:

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8. See TENN. R. EVID. 901.


9. Cf. TENN. CODE ANN. § 2-2-106.

*Shelby County Election Commission*

ROBERT D. MEYERS  
Chairman

NORMA LESTER  
Secretary

DEE NOLLNER  
STEVE STANSON  
ANTHONY TATE



(901) 222-6821  
FAX (901) 222-6811

RICHARD L. HOLDEN  
Administrator of Elections

JOE WM. YOUNG, II  
Deputy Administrator  
of Elections

**SHELBY COUNTY NOTICE TO PROVISIONAL VOTER**

March 22, 2016

Dear Voter,

Pursuant to Tennessee Code Annotated 2-7-112 (3) (A) or 2-7-112 (e), you cast a provisional ballot in  
20-01 precinct in Shelby County on March 1, 2016.

This letter is to inform you that your ballot:

☐ Was counted.

☐ Was not counted due to the reason below.

☐ No voter registration application found.  
☐ You were not a registered voter prior to the registration deadline.  
☐ Your ballot was cast in the wrong precinct.  
☐ Records indicate you have already voted in this election.  
☒ You were not eligible to vote in the election. Reason below:  
     ☐ Not a United States citizen.  
     ☐ Not 18 years of age.  
     ☐ Been convicted of a felony and not had rights restored.  
     ☒ Other Moved out of county  
☐ You did not provide one of the following:  
     ☐ Valid Photo ID   ☐ Legal address   ☐ Social Security Number   ☐ Date of Birth  
     ☐ Other \_\_\_\_\_

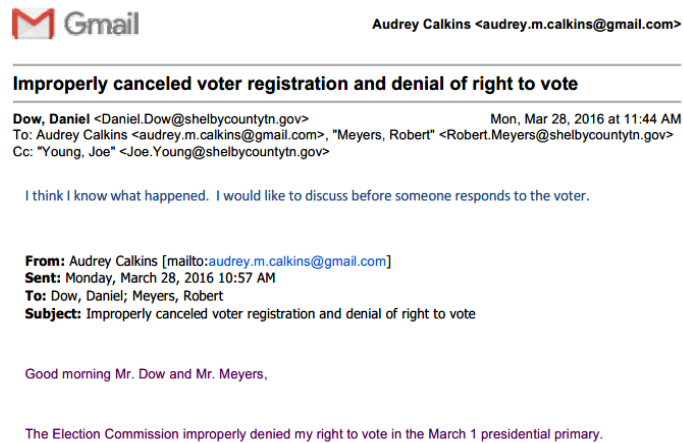
Signature of Election Official : Cavel J. Collinsworth

980 NIXON DRIVE • MEMPHIS, TENNESSEE 38134  
www.shelbyvote.com

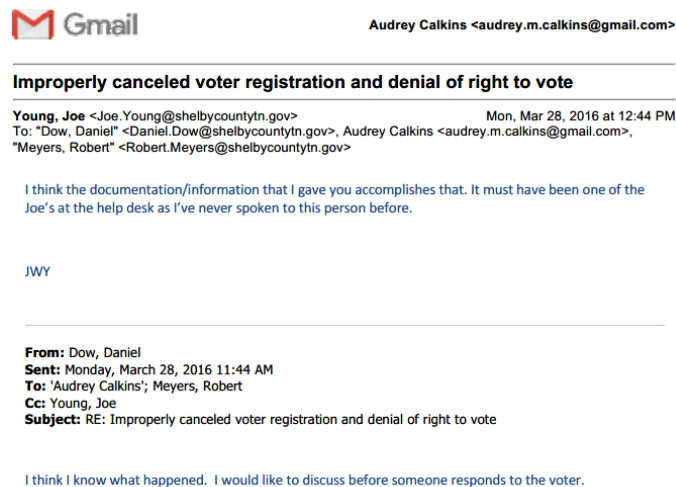
I am a proud Shelby County resident. I “chose 901,” let’s be clear. I have been a proud Shelby County resident since March 2014. I chose my neighborhood, my house, and this city on purpose. For the Election Board to think I had moved out of the county, when I showed up with a valid voter registration card and voted four months before with a valid driver license, blew my mind.

So, what is a disenfranchised lawyer to do? What do you do when you get mad, have a law degree, and several law licenses? You write a nastygram, of course! In my practice, I respond to a lot of nastygrams, but they are way more fun to write than respond to. So, I

emailed the Election Commission. It took six days, because I had to digest what had occurred for a little bit. Then, I got an accidental reply-all from the Commission, which is the best thing:



Oops! Then, I got another reply-all from the Commission:



I had talked with someone named Joe, and there was apparently someone on the Commission named Joe.

After I got these two “oops” emails, *nothing happened*. So again, what is a disenfranchised lawyer to do? Lawyer up! My friend,



Gary Peeples at Burch Porter, took me on pro bono. This is the benefit of having resources. Let's pause and acknowledge that I am licensed to practice law in three states (two at that time), I'm a former federal law clerk, and I have friends who will take me on pro bono because they like writing nastygrams to government officials. *Not everybody has these resources.*

So, my lawyer wrote a nastygram to the Commission saying how dare you, we want public records, and other documents to help us figure out what happened. The Commission responded on May 17, 2016:

May 17, 2016

Gary S. Peeples, Esq.  
Burch Porter & Johnson, PLLC  
130 N. Court Avenue  
Memphis, Tennessee 38103

RE: Calkins / Election Commission

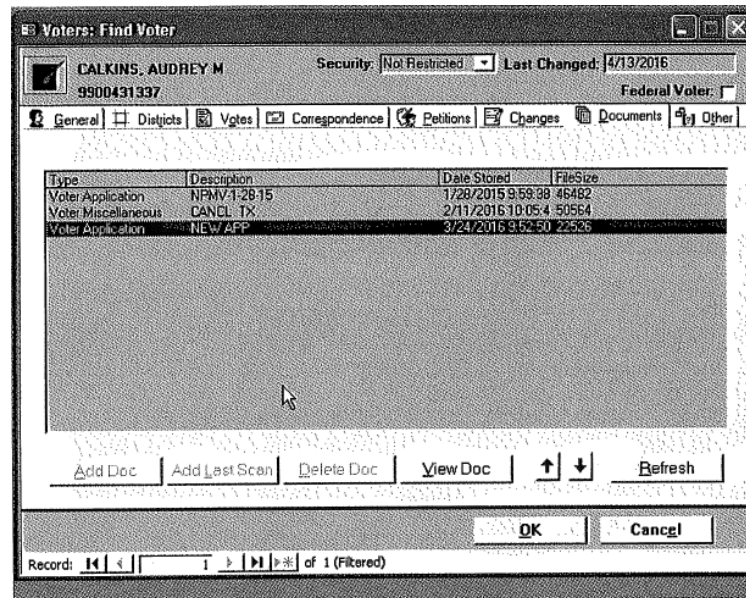
Dear Gary,

I represent the Election Commission in the above referenced matter. I have reviewed the information you provided in your letter of April 18, 2016 as well as the information provided by the staff of the Election Commission. As such, it appears that that based on the information that was available in the Election commission records, the cancellation of Ms. Calkins voter registration should not have occurred nor the exclusion of her Provisional Ballot. Regrettably, once this mistake was identified, the Commission had already certified the March 1 Presidential Primary Election. The records now reflect that a new Voter Registration Card has been issued to Ms. Calkins and she should experience no difficulty in the future.

It is rare that you will get a government entity to admit that it messed up. The "it appears that based on the information that was available in the Election Commission records" language is key: remember, the Board can only consider what is in *its records*. So now we know what happened: my registration got canceled—but why? Let's find out!

So, we send a public records request and another nastygram. They didn't respond. We sent another request, and then, they responded on July 20, 2016. They sent me three documents, two of which I already had and had sent them, and a copy of a voter registration form that I had completed in September 2015. But what they didn't send me was documents or information showing why my voter registration got canceled in the first place, any internal communications after that March 28 reply-all "oops" emails, or documents related to the Commission's consideration of my provisional ballot.

I was unsatisfied and told my lawyer we have some more work to do. We wrote another nastygram, and the Commission finally responded. What did I learn? I learned this: my *Texas* voter registration was supposed to be canceled.

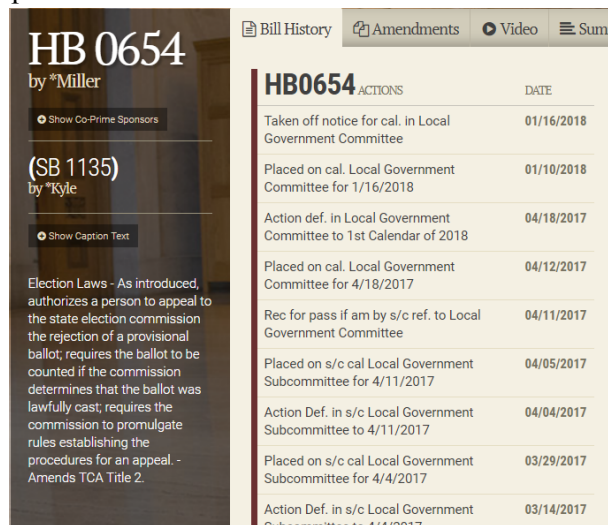


The Commission's information showed "CANCL TX." The date of the "CANCL TX" description line is February 11, 2016. What had happened? I got a letter in the mail from Texas saying "You haven't lived in Texas for a while, and your voter registration is in another state, so we need to cancel your Texas voter registration, please acknowledge." I said, "Okay that's fine, you can cancel my Texas voter registration." Texas sent a form to Tennessee that said, "Hey, Audrey doesn't live in Texas anymore, so we canceled her Texas voter registration." Someone at the Commission misread the form and thought that Audrey didn't live in Shelby County anymore, so they canceled my Tennessee registration too. I talked to Mark Goins,<sup>10</sup> the State Election Commissioner, and found out that this is not an isolated mistake. There are multiple instances of someone misreading this form from Texas and canceling a valid Tennessee voter registration. Let that simmer in your mind for a minute.

10. *About Elections*, TENN. SEC'Y OF STATE, <https://sos.tn.gov/content/about-elections> (last visited Apr. 14, 2019).

I registered to vote on January 29, 2015, and re-applied March 1, 2016, on Super Tuesday. Let's think about the significance of this. I had no notice that Tennessee had canceled my voter registration. It was canceled nineteen days before the presidential primary. It happened because the Commission can't read a form. Why do the nineteen days matter? Because I wouldn't have been able to re-register and vote in the presidential primary. Why is that? Thirty Days! The statute doesn't say thirty days.<sup>11</sup> The statute says that your registration has to be received so it can be processed at least twenty-nine days before. So that's where we get the thirty because thirty is the day before twenty-nine days. I would have been screwed out of voting even if I had known that they had canceled my registration.

So, what's a disenfranchised lawyer to do? Propose a bill! I called Larry Miller's office, my state representative,<sup>12</sup> and emailed him a lot. As a result, he proposed a bill for me. Did you know that legislators can only propose fifteen bills per session? He used one of his fifteen on me. He proposed a bill that would create an appeal procedure for denied provisional ballots.<sup>13</sup>



HB0654 ACTIONS	DATE
Taken off notice for cal. in Local Government Committee	01/16/2018
Placed on cal. Local Government Committee for 1/16/2018	01/10/2018
Action def. in Local Government Committee to 1st Calendar of 2018	04/18/2017
Placed on cal. Local Government Committee for 4/18/2017	04/12/2017
Rec for pass if am by s/c ref. to Local Government Committee	04/11/2017
Placed on s/c cal Local Government Subcommittee for 4/11/2017	04/05/2017
Action Def. in s/c Local Government Subcommittee to 4/11/2017	04/04/2017
Placed on s/c cal Local Government Subcommittee for 4/4/2017	03/29/2017
Action Def. in s/c Local Government Subcommittee to 4/4/2017	03/14/2017

11. TENN. CODE ANN. § 2-2-109(a) (2015). ("A qualified voter may register or have the voter's registration altered at the commission office at any time the office is open, except that applications for registration shall not be processed for twenty-nine (29) days before an election.").

12. *Representative Larry J. Miller*, TENN. GEN. ASSEMBLY, <http://www.capitol.tn.gov/House/members/h88.html> (last visited Apr. 14, 2019).

13. H.R. 0654, 108th Gen. Assemb., Reg. Sess. (Tenn. 2014).

I went and testified in front of the General Assembly and told the same story I just told you, but in a more formal way. I wore suffragette white. I am not kidding; you can look online at the video! Y'all, I am a lady lawyer, and I know how to work the system. I wore a navy dress with a suffragette white jacket, with Tennessee and American flags on my lapel. That's what I was there to do. You have to put on the image to make it the way you need it to be and that's what I did. Did it work? No. But, in any case, that is something you need to remember: look and act the part for the result you want.

I am a Shelby County resident. The chair of the committee was from Sevierville, my home town. I told them that I'm a University of Tennessee alum, and now I live in Memphis. All the Memphis folks on the panel (Antonio Parkinson<sup>14</sup> was up there too) were like "Yeah, all right Memphis, a Shelby County voter." Rep. Miller read my proposed bill and led me up to speak. I had exhibits for the committee, similar to the screenshots I shared with you today. They said at the end, "Oh my God, you were so prepared," to which I thought, "I am licensed to practice law in two states . . . of course I'm prepared." But they ended up sending the bill to committee for further study, which means it died in committee. That's the day I got to sit down with Mark Goins and get told no a lot to all my ideas for how to make an appeal process from denied provisional ballots work. But that's how it goes sometimes.

This is why I am here today. I'm not here to talk about changing the registration guidelines or requirements. I am here today to say if you are, as I was, a duly registered voter in the State of Tennessee, your vote should count. It does not matter whether you vote in person on election day. It doesn't matter whether you vote absentee. It doesn't matter whether you vote on Election Day and don't use the machine but vote provisionally. That's the take away from this presentation.

How can this happen? How can this work? What can we do? If your provisional ballot is denied or if the Commission's information is not correct or sufficient to uphold your registration such that you will be able to have your vote counted, there should be a way for you to get that information to the Commission so they can make the correct informed decision.

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14. *Representative Antonio Parkinson*, TENN. GEN. ASSEMBLY, <http://www.capitol.tn.gov/house/members/h98.html> (last visited May 13, 2019).

Other places do this. The District of Columbia has a lot more people than Shelby County, and D.C. has a procedure for this.<sup>15</sup> You can file a complaint. Their provisional ballot is called a special ballot. Virginia has a statewide way to get information.<sup>16</sup> There's a way so that you can provide information to the government so that they can make the right choice. Of course, California has a way to sue for a civil right.<sup>17</sup> They have a way to go to court to get their vote to count. Georgia has something.<sup>18</sup> If Georgia can do it, we can. Florida, the state of election problems, has this.<sup>19</sup> Florida's is an example of a non-solution that says something like if you feel your provisional ballot is going to be denied, you should present information at this appointed time or by this appointed date. Other states, if you show up without valid proof of identification or registration, they require you to go by a specific time to a place to present the information. That's an impediment to voting because not everyone can go within a week after an election to a place at a specific time to present the required information. This requirement is not what I'm advocating. I am advocating that procedure as an option, if you want to be sure, you can go do this. But it would not be a requirement to have a provisional ballot count.

Would I have gone to court and filed a complaint? Absolutely. I would have paid the filing fee. But that's because I am a practicing attorney with lawyer friends who I can rely on for things like this—I am not your average voter. The reason we need laws like the one Rep. Miller proposed is because not all voters are lawyers with friends that can help them challenge the system when something goes awry. The situation that happened to me is not a problem that occurs often, but it

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15. See *Voting by Special Ballot*, D.C. BOARD OF ELECTIONS, <https://www.dcboe.org/Voters/How-to-Vote/Special-Ballot-Voting> (last visited Apr. 17, 2019).

16. See *Regulations and Policies*, VA. DEP'T OF ELECTIONS, <https://www.elections.virginia.gov/election-law/regulations-and-policies/index.html> (last visited Apr. 17, 2019).

17. See *Provisional Voting*, CAL. SECRETARY OF ST., <https://www.sos.ca.gov/elections/voting-resources/provisional-voting/> (last visited Apr. 17, 2019).

18. GA. CODE ANN. § 21-2-230 (2019).

19. Santa Rosa Cty. Supervisor of Elections, *What Is a Provisional Ballot?*, VOTE SANTA ROSA <https://www.votesantarosa.com/Election-Information/Provisional-Ballot> (last visited Apr. 17, 2019).

does happen, and we should do something about it. Thank you so much for your attention.