VIRGINIA LAW REVIEW

VOLUME 112 MAY 2026 NUMBER 3

ARTICLES

DISENFRANCHISEMENT CREEP

*Bryna Godar**

Under federal law, states decide whether people lose their voting rights as a result of criminal convictions or mental incapacity. But states vary widely in whether they take federal law up on that offer of exclusion. In one state, you may never lose the right to vote for a felony conviction; in another, you might be disenfranchised for life. Existing literature has explored many facets of disenfranchisement, from analyzing its impacts to proposing reforms. But it has largely overlooked the key role of state constitutions in limiting disenfranchisement.

Unlike the U.S. Constitution, which has no explicit voting rights guarantee, state constitutions both affirmatively grant the right to vote and list explicit, enumerated exceptions to that right. But state actors routinely overstep those bounds—a practice this Article refers to as "disenfranchisement creep." Based on original analysis of all fifty state constitutions and the complex network of statutes, regulations, and practices that together constitute state disenfranchisement law, this Article identifies two primary ways in which state actors disenfranchise people beyond the scope of state constitutions. First, state actors explicitly disenfranchise groups of people beyond what

* Staff Attorney, State Democracy Research Initiative, University of Wisconsin Law School. For helpful comments and conversations, I thank Bree Grossi Wilde, Michael Morse, Kerrel Murray, Miriam Seifter, Rob Yablon, and the participants in the State Democracy Research Initiative's 2025 Public Law in the States conference. Thanks also to Judith Cusack, Anika Lillegard-Bouton, and Michael Weinrib for outstanding research assistance.

the constitutional texts seemingly allow. This Article newly identifies this phenomenon as de jure disenfranchisement creep. Second, state actors impose myriad burdens, large and small, that effectively disenfranchise those who supposedly have the right to vote. This Article newly explores this de facto disenfranchisement creep through the lens of state constitutions, concluding that it often violates existing voting rights guarantees. In identifying both types of overreaches, this Article offers an underexplored approach to reining in disenfranchisement: state constitutional claims in state court.

INTRODUCTION

The right to vote is not uniform across the United States. In one state, you might need to show a voter ID at the polls; in another you do not.[1] In one, you can register to vote on Election Day; in another, you must

[1] See Marni Rose McFall, Map Shows Voter ID Laws by State, Newsweek (Sep. 9, 2024, at 12:04 ET), https://www.newsweek.com/map-shows-voter-id-laws-state-1950691.

register weeks in advance.[2] But nowhere are the discrepancies more pronounced than on the basic question of who is eligible to vote to begin with.

Under federal law, states decide whether people lose their voting rights as a result of criminal convictions or determinations of mental incapacity to vote.[3] And states vary widely in whether they take federal law up on that offer of exclusion. Only two states—Vermont and Maine—do not disenfranchise anyone for criminal convictions,[4] and only a handful of states do not explicitly exclude anyone based on mental capacity.[5] Every other state disenfranchises people in one or both of these categories, and their reasons vary—Alaska's constitution says that no person who has been "convicted of a felony involving moral turpitude" or is "of unsound mind" may vote;[6] Michigan's says that the legislature can enact laws disenfranchising individuals "because of mental incompetence or commitment to a jail or penal institution."[7] The combined result of this patchwork of laws is profound—in 2024, approximately four million adults in the United States were not allowed to vote due to criminal convictions,[8] and tens or hundreds of thousands more were not allowed to vote due to determinations of mental incapacity.[9]

---

[2] See Aliss Higham, US Voter Registration Deadlines for All 50 States, Newsweek (May 26, 2024, at 04:00 ET), https://www.newsweek.com/us-voter-registration-deadline-all-50-states-1904415.

[3] See infra Section I.A.

[4] Christopher Uggen, Ryan Larson, Sarah Shannon, Robert Stewart & Molly Hauf, The Sent'g Project, Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction 3–4 (2024), https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction/ [https://perma.cc/3NST-VYB8]. The District of Columbia and the Commonwealth of Puerto Rico also do not restrict voting based on criminal convictions. Id. at 3.

[5] Sally Balch Hurme & Paul S. Appelbaum, Defining and Assessing Capacity to Vote: The Effect of Mental Impairment on the Rights of Voters, 38 McGeorge L. Rev. 931, 940 (2007) ("Of those twenty-eight states with no mental-status criteria in their election law provisions, eight have no constitutional mention of ineligibility due to mental status."). However, guardianship laws in some of these states may nevertheless permit the removal of various rights, potentially including the right to vote. See id. at 980–1014.

[6] Alaska Const. art. V, § 2.

[7] Mich. Const. art. II, § 2.

[8] Uggen et al., supra note 4, at 2.

[9] The number of people excluded from voting based on mental incapacity is not thoroughly tracked. According to one estimate, 32,000 Californians lost their right to vote based on mental capacity between 2008 and 2018. Matt Vasilogambros, Thousands Lose Right to Vote Under 'Incompetence' Laws, Stateline (Mar. 21, 2018, at 00:00 ET), https://st

The current landscape of disenfranchisement in the United States has made it an outlier in the international community and drawn widespread critiques and calls for reform.[10] Sociologists, for example, have highlighted the predominantly racist origins and racially disparate impact of many crime-based disenfranchisement laws.[11] Political scientists, sociologists, and legal scholars have debated whether anyone should be disenfranchised based on cognitive capacity or criminal convictions.[12] Other scholars have meanwhile examined the

ateline.org/2018/03/21/thousands-lose-right-to-vote-under-incompetence-laws/ [https://perma.cc/HS93-KMY3]. Nationwide, the number of adults living under guardianship or conservatorship was estimated to be approximately 1.3 million as of 2018. Nat'l Council on Disability, Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination 65 (2018), https://www.ncd.gov/assets/uploads/reports/2018/ncd_beyond_guardianship.pdf [https://perma.cc/AN8S-AMSE]. However, "[t]his estimate is based on the handful of states that do track and report reasonably reliable data on guardianships," and it does not provide information about how many of those under guardianship are ineligible to vote. Id.; see also Jim Berchtold, Just. in Aging, Guardianship Data Reform 1 (2024), https://justiceinaging.org/guardianship-data-reform/ [https://perma.cc/TE9R-ZNJD] ("Detailed data on guardianship is almost nonexistent and even basic information is largely unknown.").

[10] See Laleh Ispahani, ACLU, Out of Step with the World: An Analysis of Felony Disenfranchisement in the U.S. and Other Democracies 4 (2006), https://www.aclu.org/sites/default/files/pdfs/votingrights/outofstep_20060525.pdf [https://perma.cc/7X26-QG3R].

[11] Uggen et al., supra note 4, at 2 ("Among the adult African American population, 4.5% is disenfranchised compared to 1.3% of the adult non-African American population."); Angela Behrens, Christopher Uggen & Jeff Manza, Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850–2002, 109 Am. J. Socio. 559, 559 (2003) ("Many felon voting bans were passed in the late 1860s and 1870s, when implementation of the Fifteenth Amendment and its extension of voting rights to African-Americans were ardently contested."); Jeff Manza & Christopher Uggen, Locked Out: Felon Disenfranchisement and American Democracy 68 (2006) [hereinafter Manza & Uggen, Locked Out] (concluding based on statistical analysis that felon disenfranchisement "has to be viewed as one of the many side effects of the peculiar history of racial politics in the United States"); see also John Dinan, The Adoption of Criminal Disenfranchisement Provisions in the United States: Lessons from the State Constitutional Convention Debates, 19 J. Pol'y Hist. 282, 284 (2007) ("[S]cholars and litigants have argued that these [criminal disenfranchisement] provisions might have been motivated by a desire to reduce the voting power of African Americans, who are generally affected by these policies to a disproportionate extent.").

[12] For arguments against disenfranchisement, see, e.g., Elizabeth R. Schiltz, The Ties That Bind Idiots and Infamous Criminals: Disenfranchisement of Persons with Cognitive Impairments, 13 U. St. Thomas L.J. 100, 117 (2016) (questioning the presumption "that mental incapacity is a legitimate reason to deny[] a person the right to vote at all"); Boris Feldman, Note, Mental Disability and the Right to Vote, 88 Yale L.J. 1644, 1645 (1979) (arguing that "states should not disfranchise any persons on the grounds of mental disability"); Debra Parkes, Ballot Boxes Behind Bars: Toward the Repeal of Prisoner Disenfranchisement Laws, 13 Temp. Pol. & C.R. L. Rev. 71, 74 (2003) (arguing that "the

underappreciated impacts of disenfranchisement laws. Professors Beth Colgan, Michael Morse, and Marc Meredith, for example, have analyzed and critiqued the impact of what Colgan calls "wealth-based penal disenfranchisement"—the widespread practice of requiring individuals involved in the criminal legal system to pay all fines, court costs, fees, and restitution amounts before they can regain the right to vote.[13] Additionally, many scholars have highlighted possible paths to disenfranchisement reform, including litigation in federal court,

ballot box should be opened to all prisoners in the United States"); Carlos M. Portugal, Note, Democracy Frozen in Devonian Amber: The Racial Impact of Permanent Felon Disenfranchisement in Florida, 57 U. Mia. L. Rev. 1317, 1338 (2003) ("[F]elon disenfranchisement is anachronistic."); Mandeep K. Dhami, Prisoner Disenfranchisement Policy: A Threat to Democracy?, 5 Analyses Soc. Issues & Pub. Pol'y 235, 239–40 (2005) (critiquing common rationales for crime-related disenfranchisement); Pamela S. Karlan, Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement, 56 Stan. L. Rev. 1147, 1149 (2004) [hereinafter Karlan, Convictions and Doubts] ("Once voting is understood as a fundamental right, rather than as a state-created privilege, the essentially punitive nature of criminal disenfranchisement statutes becomes undeniable."); Note, The Disenfranchisement of Ex-Felons: Citizenship, Criminality, and "The Purity of the Ballot Box," 102 Harv. L. Rev. 1300, 1301–09 (1989) (arguing that the policy and theoretical rationales for criminal disenfranchisement fail to justify the practice); George P. Fletcher, Disenfranchisement as Punishment: Reflections on the Racial Uses of *Infamia*, 46 UCLA L. Rev. 1895, 1898 (1999) (critiquing "political disenfranchisement as a technique for reinforcing the branding of felons as the untouchable class of American society"); Alec C. Ewald, "Civil Death": The Ideological Paradox of Criminal Disenfranchisement Law in the United States, 2002 Wis. L. Rev. 1045, 1049 (arguing that "the modern commitments of both liberalism and republicanism should lead Americans to abandon the practice" of felon disenfranchisement). For arguments to the contrary, see, e.g., Roger Clegg, George T. Conway III & Kenneth K. Lee, The Case Against Felon Voting, 2 U. St. Thomas J.L. & Pub. Pol'y 1, 2 (2008) ("[A]llowing felons to vote is simply problematic both as a legal and a policy matter."); George Brooks, Felon Disenfranchisement: Law, History, Policy, and Politics, 32 Fordham Urb. L.J. 851, 899 (2005) ("Felon disenfranchisement is plainly constitutional and consistent with the intent of the framers of both the Fourteenth Amendment and the Voting Rights Act."); Mary Sigler, Defensible Disenfranchisement, 99 Iowa L. Rev. 1725, 1728 (2014) ("[O]ffenders who commit serious felonies are subject to regulatory disenfranchisement because they have violated the civic trust that makes liberal democracy possible.").

[13] Beth A. Colgan, Wealth-Based Penal Disenfranchisement, 72 Vand. L. Rev. 55, 60 (2019) (explaining that "wealth-based penal disenfranchisement is sanctioned under the laws of forty-eight states and the District of Columbia, potentially preventing up to a million people or more from voting" (footnote omitted)); Marc Meredith & Michael Morse, Discretionary Disenfranchisement: The Case of Legal Financial Obligations, 46 J. Legal Stud. 309, 310–12, 323–24 (2017) (collecting data on "legal financial obligations" that can burden the right to vote even after sentence completion).

executive pardons on a widespread basis, and state or federal legislation.[14]

But existing literature has largely overlooked an important piece of the disenfranchisement landscape: state constitutions. State constitutions have the potential to play a key role in setting the limits of disenfranchisement via state court litigation.[15] The literature on possible

[14] Lily Verbeck, Note, A Class Left Behind: An Assessment of State Voter Competency Laws and the Disenfranchisement of People with Mental Disabilities, 32 Geo. Mason U. C.R. L.J. 149, 151–52 (2022) (arguing that "courts should strike down general prohibition incompetency laws" and that "laws that allow judges to decide an individual's capacity to vote should implement a clear and convincing evidence standard"); Neil L. Sobol, Defeating De Facto Disenfranchisement of Criminal Defendants, 75 Fla. L. Rev. 287, 335–55 (2023) (identifying legislative, regulatory, and other mechanisms to address de facto disenfranchisement); Christian A. Johnson, Disenfranchisement, Voter Disqualifications, and Felony Convictions: Searching for State Law Uniformity, 32 Widener Commonwealth L. Rev. 35, 36 (2023) (arguing for greater uniformity in disenfranchisement laws across states); Christopher R. Murray, Note, Felon Disenfranchisement in Alaska and the Voting Rights Act of 1965, 23 Alaska L. Rev. 289, 290 (2006) (examining the validity of disenfranchisement laws under the Voting Rights Act); Manza & Uggen, Locked Out, supra note 11, at 227–28 (identifying "legislative change as the most likely source of policy change" for felon disenfranchisement); Amanda J. Wong, Note, Locked Up, Then Locked Out: The Case for Legislative—Rather than Executive—Felon Disenfranchisement Reform, 104 Corn. L. Rev. 1679, 1684–85 (2019) (surveying state gubernatorial re-enfranchisement actions and encouraging Congress to address disenfranchisement reform); Manoj Mate, Felony Disenfranchisement and Voting Rights Restoration in the States, 22 Nev. L.J. 967, 999–1003 (2022) (providing both short- and long-term strategies for ending felony disenfranchisement, including improved administrative processes, state and federal legislation, reshaping the federal judiciary, and federal constitutional amendment); John R. Cosgrove, Four New Arguments Against the Constitutionality of Felony Disenfranchisement, 26 T. Jefferson L. Rev. 157, 158, 175–95 (2004) (calling for lawyers to raise federal constitutional arguments against felony disenfranchisement); Daniel M. Katz, Article I, Section 4 of the Constitution, The Voting Rights Act, and Restoration of the Congressional Portion of the Election Ballot: The Final Frontier of Felon Disenfranchisement Jurisprudence?, 10 U. Pa. J.L. & Soc. Change 47, 50 (2007) (arguing that the Voting Rights Act is "the proper mechanism to invalidate disenfranchisement statutes"); see also Pamela S. Karlan, Framing the Voting Rights Claims of Cognitively Impaired Individuals, 38 McGeorge L. Rev. 917, 927–30 (2007) (discussing current statutory shortcomings); Hurme & Appelbaum, supra note 5, at 960–74 (formulating a standard for assessing capacity to vote); Richard M. Re & Christopher M. Re, Voting and Vice: Criminal Disenfranchisement and the Reconstruction Amendments, 121 Yale L.J. 1584, 1587–92 (2012) (discussing the promise and limits of claims under the Federal Constitution and the Voting Rights Act); Gabriel J. Chin, Reconstruction, Felon Disenfranchisement, and the Right to Vote: Did the Fifteenth Amendment Repeal Section 2 of the Fourteenth Amendment?, 92 Geo. L.J. 259, 263 (2004) (arguing for courts to reconsider the constitutionality of felony disenfranchisement).

[15] Cf. Nora V. Demleitner, Criminal Disenfranchisement in State Constitutions: A Marker of Exclusion, Punitiveness, and Fragile Citizenship, 26 Lewis & Clark L. Rev. 531, 533–34 (2022) ("[M]ost of the research on felon disenfranchisement focuses on the combined effect

litigation-based reforms has focused almost exclusively on federal law, including the Voting Rights Act, the Equal Protection Clause, and the Eighth Amendment's ban on cruel and unusual punishment.[16] But lawsuits bringing these federal claims have been largely unsuccessful;[17] federal courts have repeatedly given states wide latitude to disenfranchise anyone convicted of a crime or deemed to be mentally incapable of voting.[18]

In contrast, state constitutions enumerate specific permissible grounds for disenfranchisement that are typically narrower than the wide latitude afforded by federal law.[19] And they provide far more robust provisions on the right to vote. Whereas the U.S. Constitution contains no explicit guarantee of the right to vote, every state constitution contains a voting rights provision.[20] Many also contain free and fair elections clauses[21] and other provisions that evince overarching commitments to "popular sovereignty, majority rule, and political equality," which Professors Miriam Seifter and Jessica Bulman-Pozen have termed the "democracy principle."[22] These unique documents thus offer a starkly different lens

of state laws and constitutions without disaggregating the two different sources of law."). Professor Nora Demleitner's article "focuses on the current role of state constitutions in signaling the fragility of citizenship" and largely argues for state constitutional change rather than exploring the existing limits of state constitutions. Id. at 534, 536. Professors Sally Balch Hurme and Paul Appelbaum have also teased out state constitutional provisions from other laws in the context of mental capacity to vote, but their account is primarily descriptive and does not fully explore the ways in which states are overstepping these bounds. See Hurme & Appelbaum, supra note 5, at 934–36.

[16] See, e.g., Re & Re, supra note 14, at 1663–68 (Voting Rights Act); Katz, supra note 14, at 48–50, 48 n.10 (Voting Rights Act); Chin, supra note 14, at 272–81 (Section 2 of the Fourteenth Amendment and the Fifteenth Amendment); Sobol, supra note 14, at 330–33 (Equal Protection Clause); Karlan, Convictions and Doubts, supra note 12, at 1164–69 (Eighth Amendment); Pamela A. Wilkins, The Mark of Cain: Disenfranchised Felons and the Constitutional No Man's Land, 56 Syracuse L. Rev. 85, 88 (2005) (Eighth Amendment).

[17] See Wong, supra note 14, at 1691–92; Meredith & Morse, supra note 13, at 316; Katz, supra note 14, at 49.

[18] See infra Section I.A.

[19] See infra Section I.B.

[20] See Joshua A. Douglas, The Right to Vote Under State Constitutions, 67 Vand. L. Rev. 89, 101–02 (2014) [hereinafter Douglas, The Right to Vote]; see also infra notes 53–54 (discussing amendments since 2014).

[21] See Douglas, The Right to Vote, supra note 20, at 103.

[22] Jessica Bulman-Pozen & Miriam Seifter, The Democracy Principle in State Constitutions, 119 Mich. L. Rev. 859, 864 (2021) (emphasis omitted); see also Joshua A. Douglas, The Power of the Electorate Under State Constitutions, 76 Fla. L. Rev. 1679, 1687 (2024) [hereinafter Douglas, The Power of the Electorate] ("The combination of clauses that

through which to assess the legality of disenfranchisement schemes—one that in many instances is far more rights-protective than federal law.

Applying this lens to existing disenfranchisement schemes reveals serious shortcomings and attendant opportunities for state court litigation. Based on original analysis of all fifty state constitutions and the complex network of statutes, regulations, and practices that together constitute state disenfranchisement law, this Article finds that, in state after state, governmental actors and institutions arguably overstep the bounds of their state constitutions. The result is a phenomenon that this Article refers to as "disenfranchisement creep"—the practice of state actors denying more people the vote than the state constitution allows.[23] These failures manifest in two primary ways: de jure disenfranchisement creep and de facto disenfranchisement creep. Each offers a set of possible state constitutional claims to remedy them.

First, state actors in a series of states appear to be overstepping the bounds of their state constitutions by explicitly disenfranchising groups of people beyond the grounds listed in their constitutions. For example, the Missouri Constitution provides that "persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting."[24] But state law also disenfranchises anyone who is incarcerated for any type of misdemeanor—without any apparent constitutional authorization to do so.[25] This Article newly identifies this phenomenon of de jure disenfranchisement creep. Such overreaches—whether legislative or bureaucratic—can be challenged via relatively straightforward constitutional claims regarding the meaning of specific state constitutional terms or provisions. For

confer special rights and protections on voters reveals a multilayered right to vote under state constitutions.").

[23] The concept of disenfranchisement creep is not necessarily limited to the realms of criminal and competency-related disenfranchisement. For example, where states perpetuate misinformation about voter identification requirements, these practices may similarly amount to a type of de facto disenfranchisement creep. This Article, however, only focuses on disenfranchisement creep in the context of the two areas of criminal and competency-related disenfranchisement, given their unique status in federal law as permissible grounds for disenfranchisement.

[24] Mo. Const. art. VIII, § 2.

[25] Mo. Rev. Stat. § 115.133(2)(1) (2025); see also Know Your Rights, Mo. State Pub. Def., https://publicdefender.mo.gov/know-your-rights/ [https://perma.cc/FUJ2-CXF4] (last visited Apr. 7, 2026) (explaining that individuals "currently imprisoned for a crime for which [they] have been convicted (felony or misdemeanor)" are not eligible to vote in Missouri).

example, is the legislature's statutory definition of the constitutional term "felony involving moral turpitude" overbroad? Or, when a constitution provides that the legislature may disenfranchise those convicted of "infamous crimes," can it also disenfranchise those convicted of non-infamous crimes?

Second, state actors routinely impose myriad burdens, large and small, that lead to de facto disenfranchisement of those who supposedly have the right to vote. For example, ahead of the 2024 general election in New Mexico, election officials repeatedly denied online voter registration applications from those who had previously been convicted of felonies—despite the fact that the state had enacted a law allowing anyone convicted of a felony to vote as long as they were no longer incarcerated.[26] Many of these individuals understandably assumed based on their rejected applications that they were not in fact eligible to vote.[27] This phenomenon of de facto disenfranchisement creep has been explored elsewhere, including by Professors Jessie Allen and Neil Sobol,[28] but it has not been fully explored through the lens of state constitutional rights. Indeed, the obstacles at the federal level to claims based on de facto disenfranchisement have led scholars to advocate for legislation, rather than litigation, as a tool of reform.[29] But state constitutions offer a potentially powerful and underutilized tool for challenging these practices. This is because those facing de facto disenfranchisement creep technically have the right to vote under their state constitutions, and many state courts take a far more robust approach to protecting voting rights than their federal counterparts. Therefore, if de facto disenfranchisement practices are unduly impinging on the right to vote, such as in the New Mexico example described above,[30] impacted individuals may be able to vindicate that

[26] Lauren Gill, "A Year of Frustration": How New Mexico Kept Denying People Voting Rights Despite Reform, Bolts (Oct. 29, 2024), https://boltsmag.org/voting-rights-restoration-reform-in-new-mexico/ [https://perma.cc/4QTT-5QLS].

[27] Id.; see also infra text accompanying notes 243–50.

[28] See Jessie Allen, Documentary Disenfranchisement, 86 Tul. L. Rev. 389, 414 (2011); Sobol, supra note 14, at 292; see also Emily Rong Zhang, New Tricks for an Old Dog: Deterring the Vote Through Confusion in Felon Disenfranchisement, 84 Mo. L. Rev. 1037, 1039–40 (2019) ("As reforms slowly erode outright bans on voting for large swathes of the population, felon disenfranchisement laws increasingly suppress voting by confusing eligible voters.").

[29] See, e.g., Sobol, supra note 14, at 330–55.

[30] See supra text accompanying note 26.

claim in state court and seek affirmative changes in state practices to better facilitate their voting rights.

This state constitutional framework certainly has limits—in particular, it cannot be used to eradicate disenfranchisement where a state constitution expressly condones it. But it does offer a potentially powerful way to challenge the pervasive practices of disenfranchisement creep, requiring states to live up to their core democratic commitments for those who should not be excluded even under existing constitutional provisions.

Part I begins with a brief overview of the federal and state constitutional frameworks for disenfranchisement. Although federal law sets some guardrails around who states can or cannot exclude, it largely allows states to determine how or whether to disenfranchise anyone based on cognitive capacity or a criminal conviction. At the state level, state constitutions then further delineate who can or cannot be excluded from voting, coupling broad grants of the right to vote with specific, enumerated exclusions. Taken together, these state constitutional provisions offer a roadmap for understanding state voting rights: every citizen-resident of a certain age is entitled to vote, *unless* they are validly excluded under the state constitution's specific exceptions.

Applying this framework to existing practices, Part II outlines the first set of violations discussed above: de jure disenfranchisement creep. De jure disenfranchisement creep occurs in three primary ways: first, state statutes disenfranchise groups beyond those mentioned in the state constitution; second, state actors define or apply a constitutional term in an overbroad way; or third, state actors define or apply a constitutional term in an inconsistent way. This Part first identifies and provides examples of this phenomenon and then turns to the viability of state constitutional claims in state court as a way to rein in these practices.

Part III outlines the second set of violations discussed above: de facto disenfranchisement creep. In particular, it focuses on two ways state actors deny or suppress the right to vote of those involved in criminal or competency proceedings: first, some state actors directly deny the right to vote to those who technically retain it, such as by improperly turning someone away from the polls or denying a voter's registration application; second, some state actors deter individuals from voting or chill the right to vote, such as by perpetuating misinformation or failing to inform voters of their rights. After providing examples of these types

of failings, this Part again turns to state constitutions as a tool for reining in practices perpetuating de facto disenfranchisement creep.

I. CONSTITUTIONAL DISENFRANCHISEMENT

Like many policies in the United States, the determination of who can or cannot vote is a mixed question of state and federal law. But there are few federal guardrails on states' ability to remove the right to vote from individuals convicted of crimes or deemed incapable of voting. Instead, the guardrails largely stem from state constitutions. State constitutions confer the right to vote on large groups of people (typically adult citizen-residents), then enumerate specific, discrete permissible grounds for disenfranchisement. Read together, these provisions suggest that states cannot disenfranchise people unless they fall within the state constitution's specific exceptions. This Part provides an overview of the largely permissive federal constitutional guidelines on disenfranchisement and then turns to the more restrictive state constitutional frameworks.

A. Federal Disenfranchisement

The Federal Constitution does not contain an explicit guarantee of the right to vote. It instead leaves the question of voter qualifications up to the states within certain limits.[31] For example, the Constitution explicitly prohibits states from denying the right to vote based on race,[32] sex,[33] age (if over eighteen),[34] or failure to pay a poll tax.[35] And the U.S. Supreme Court has struck down states' denials of the right to vote to some additional groups, such as those who do not hold property or have children in a school district[36] and those living on a federal enclave in the

[31] Douglas, The Right to Vote, supra note 20, at 100–01 ("[T]he U.S. Constitution does not grant the right to vote. It instead defines the right through a negative gloss, detailing the various reasons states cannot *limit* the franchise."); see also Lassiter v. Northampton Cnty. Bd. of Elections, 360 U.S. 45, 50–51 (1959) ("The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns." (citations omitted)).

[32] U.S. Const. amend. XV, § 1.

[33] Id. amend. XIX.

[34] Id. amend. XXVI, § 1.

[35] Id. amend. XXIV, § 1.

[36] See Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621, 622, 633 (1969); see also City of Phoenix v. Kolodziejski, 399 U.S. 204, 205–07 (1970) (finding unconstitutional a

state.[37] However, when it comes to criminal or capacity-related grounds for eligibility, federal law largely allows states to set qualifications—for example, the National Voter Registration Act allows states to remove voters from the registration list "as provided by State law, by reason of criminal conviction or mental incapacity."[38] And federal courts have largely sanctioned state exclusions on these grounds. On the crime-based side, the U.S. Supreme Court concluded in *Richardson v. Ramirez* that the Fourteenth Amendment's Equal Protection Clause—from which the federal right to vote is largely drawn[39]—includes "an affirmative sanction" of felony-based disenfranchisement, even for those who have already completed their sentences.[40] In the decades since, federal courts have repeatedly relied on *Richardson* to support the idea that "the right of convicted felons to vote is not 'fundamental.'"[41] They are therefore largely deferential to states denying the right to vote for those convicted of felonies, as well as other crimes. This deferential approach was recently reinforced by the Fifth Circuit sitting en banc in *Hopkins v. Watson*, in which it concluded that Mississippi's permanent disenfranchisement of individuals convicted of certain felonies did not violate the Equal Protection Clause or the Eighth Amendment's ban on cruel and unusual punishment.[42] The U.S. Supreme Court denied certiorari.[43]

state law restricting the right to vote in certain elections to property owners); Cipriano v. City of Houma, 395 U.S. 701, 702 (1969) (per curiam) (same).

[37] See Evans v. Cornman, 398 U.S. 419, 424–26 (1970); see also Carrington v. Rash, 380 U.S. 89, 89, 96 (1965) (holding that a Texas law denying the right to vote to military service members stationed within the state violated the Fourteenth Amendment).

[38] 52 U.S.C. § 20507(a)(3)(B).

[39] See, e.g., Bush v. Gore, 531 U.S. 98, 104–05 (2000) (per curiam); Reynolds v. Sims, 377 U.S. 533, 561–62 (1964); Lassiter v. Northampton Cnty. Bd. of Elections, 360 U.S. 45, 51 (1959).

[40] 418 U.S. 24, 54 (1974).

[41] Owens v. Barnes, 711 F.2d 25, 27 (3d Cir. 1983). For similar formulations, see Hawkins v. Youngkin, 149 F.4th 433, 443 (4th Cir. 2025); Jones v. Governor of Fla., 975 F.3d 1016, 1029 (11th Cir. 2020) (en banc); Johnson v. Bredesen, 624 F.3d 742, 746 (6th Cir. 2010); Harvey v. Brewer, 605 F.3d 1067, 1079 (9th Cir. 2010); Wesley v. Collins, 791 F.2d 1255, 1261 (6th Cir. 1986); Thompson v. Alabama, 293 F. Supp. 3d 1313, 1325–26 (M.D. Ala. 2017); cf. Ray v. Pennsylvania, 263 F. Supp. 630, 631 (W.D. Pa. 1967) ("Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights . . . . It is only where fundamental, humane and necessary rights are breached that the constitutional protections become involved. These do not include the right to vote . . . .").

[42] 108 F.4th 371, 377–78, 381–83 (5th Cir. 2024) (en banc), *cert. denied*, 145 S. Ct. 1138 (2025).

[43] Hopkins v. Watson, 145 S. Ct. 1138 (2025) (mem.).

The one narrow exception to this broad deference has to do with racial animus—the U.S. Supreme Court in *Hunter v. Underwood* struck down an Alabama constitutional provision on disenfranchisement in 1985 because the law was originally "motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect."[44] But the standard for showing a racist motivation is high—the delegates at Alabama's constitutional convention explicitly stated that their goal was to "establish white supremacy."[45] And even where plaintiffs in other cases have uncovered explicitly racist motivations, lower federal courts have "interpreted *Hunter* such that a state can effectively save its law from its racist roots by subsequently modifying it."[46]

There has been far less litigation on the mental capacity front. Where it has occurred, federal courts have been slightly less deferential to states in determining who can or cannot be disenfranchised. A few cases suggest that states may only be allowed to disenfranchise those who are deemed incapable *of voting* rather than those who are otherwise subject

[44] 471 U.S. 222, 223, 233 (1985).

[45] Id. at 229 (quoting 1 Official Proceedings of the Constitutional Convention of the State of Alabama, May 21st, 1901, to September 3rd, 1901, at 8 (1940)).

[46] Meredith & Morse, supra note 13, at 332; see also Johnson v. Governor of Fla., 405 F.3d 1214, 1225 (11th Cir. 2005) (en banc) ("Florida's felon disenfranchisement provision is constitutional because it was substantively altered and reenacted in 1968 in the absence of any evidence of racial bias."); Cotton v. Fordice, 157 F.3d 388, 391 (5th Cir. 1998) (finding that although "the state was motivated by a desire to discriminate against blacks" in adopting a prior version of Mississippi's constitutional disenfranchisement provision, a later amendment "removed the discriminatory taint associated with the original version"). But see N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections, 155 F.4th 298, 310–12 (4th Cir. 2025) (rejecting defendant's claim that changes in 1971 to the North Carolina Constitution "purge[d] the taint" of an earlier racist statute related to voting where the legislature did not actually modify the prior statute (alteration in original)).

to competency or guardianship proceedings.[47] But federal courts do not always require a precise finding on this front.[48]

Lastly, federal constitutional challenges to de facto disenfranchisement similarly have faced significant hurdles in federal court. Although the U.S. Supreme Court has recognized the possible viability of such claims under the Equal Protection Clause, a series of cases has established substantial hurdles to actually vindicating voting rights in this realm.[49]

[47] See, e.g., Doe v. Rowe, 156 F. Supp. 2d 35, 56, 59 (D. Me. 2001) (invalidating overbroad capacity-related disenfranchisement laws on due process and equal protection grounds); Minn. Voters All. v. Ritchie, 890 F. Supp. 2d 1106, 1115, 1117 (D. Minn. 2012) (concluding that a state constitutional provision survived similar federal constitutional claims because it "applies only when there has been an individualized judicial finding of incapacity to vote"), *aff'd*, 720 F.3d 1029 (8th Cir. 2013); Manhattan State Citizens' Grp., Inc. v. Bass, 524 F. Supp. 1270, 1275 (S.D.N.Y. 1981) (striking down a portion of a disenfranchisement statute as applied to people who were involuntarily committed in hospitals but who had not been adjudged incompetent on the grounds that such individuals may still be able to make rational voting decisions).

[48] See, e.g., *Manhattan State Citizens' Grp., Inc.*, 524 F. Supp. at 1274 ("When one is declared incompetent, the court has found that person unable to conduct any of his personal or business affairs. Presumably, this includes the ability to cast a rational vote.").

[49] Sobol, supra note 14, at 331 (explaining that in order to prove an equal protection violation regarding de facto disenfranchisement, a detainee must "show that the law denied an absentee ballot," that the detainee had in fact submitted a ballot, and that the detainee "made and was denied requests for alternative methods of voting" upon denial of that absentee ballot); see also McDonald v. Bd. of Election Comm'rs of Chi., 394 U.S. 802, 809–11 (1969) (holding that the denial of absentee voting to those in pre-trial detention did not violate the Equal Protection Clause where the state could theoretically offer other means of voting); Goosby v. Osser, 409 U.S. 512, 521–22 (1973) (recognizing the possibility of a viable equal protection claim where those in pre-trial detention were excluded from absentee voting and where election officials had denied a request for alternate means of voting); O'Brien v. Skinner, 414 U.S. 524, 529–31 (1974) (finding an equal protection violation where those in jail in their county of residence could not vote absentee whereas those in jail outside their county of residence could); Mo. Prot. & Advoc. Servs., Inc. v. Carnahan, 499 F.3d 803, 811–12 (8th Cir. 2007) (concluding that the plaintiff's as-applied claim was moot because election officials later recognized his right to vote despite previously denying it and holding that he was not injured by the facial flaws in the state's regime because his own guardianship order expressly preserved his right to vote); Dana Paikowsky, Note, Jails as Polling Places: Living Up to the Obligation to Enfranchise the Voters We Jail, 54 Harv. C.R.-C.L. L. Rev. 829, 848 (2019) ("While *McDonald* and its progeny notably affirm that jailed eligible voters have a constitutionally protected right to vote while incarcerated, they also create a framework for vindicating that right that has been an impediment to litigation for more than 40 years.").

B. State Constitutional Frameworks

In contrast to the Federal Constitution, most state constitutions explicitly guarantee the right to vote and delineate specific acceptable exclusions from the franchise based on criminal or capacity-related grounds. This Section provides an overview of these provisions. For more detail, each state's affirmative voting rights and disenfranchisement provisions are included in the Appendix.

Explicit voting rights provisions in state constitutions most commonly confer the right to vote on every person who meets certain voter qualifications.[50] For example, Minnesota's constitution provides that "[e]very person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct."[51] The vast majority of state constitutions similarly include an explicit right to vote, providing that a person who meets similar basic qualifications of age, citizenship, and residency "shall be qualified to vote," "shall be entitled to vote," "may vote," or is in some way a qualified elector, though the language varies.[52] Ten states instead provide an implicit right to vote, providing that "only" people who meet certain age, residency, and citizenship qualifications shall be entitled to vote[53] or that "[n]o person shall be entitled to vote . . . unless" they meet

[50] See Douglas, The Right to Vote, supra note 20, at 101.

[51] Minn. Const. art. VII, § 1.

[52] Douglas, The Right to Vote, supra note 20, at 101 (collecting examples). Some of the provisions cited in Professor Joshua Douglas's article have been amended in recent years, as collected in the next footnote.

[53] See, e.g., Ala. Const. art. VIII, § 177(a); Colo. Const. art. VII, § 1; Fla. Const. art. VI, § 2; Iowa Const. art. II, § 1; Mo. Const. art. VIII, § 2; N.C. Const. art. VI, § 1; N.D. Const. art. II, § 1; Ohio Const. art. V, § 1; Okla. Const. art. III, § 1; Wis. Const. art. III, § 1(2). Some of these constitutions have been amended in recent years, changing "every" citizen or "all" citizens to the language "only" as part of efforts to restrict the ability of municipalities to extend the right to vote to noncitizens in local elections. See Bree Grossi Wilde, Explainer: The Proposed Constitutional Amendment on Noncitizen Voting on Wisconsin's November General Election Ballot, State Democracy Rsch. Initiative (Oct. 7, 2024), https://statedemocracy.law.wisc.edu/featured/2024/explainer-the-proposed-constitutional-amendment-on-noncitizen-voting-on-wisconsins-november-general-election-ballot/ [https://perma.cc/D2PG-27Q6]; see also Results for Voting-Related and Noncitizen Voting Ballot Measures, 2024, Ballotpedia, https://ballotpedia.org/Results_for_voting-related_and_noncitizen_voting_ballot_measures,_2024 [https://perma.cc/UT43-B7L9] (last visited Apr. 7, 2026) (discussing recent amendments on citizenship requirements). South Carolina voters also approved a similar amendment in 2024, id., but the legislature must ratify the amendment for it to go into effect. S.C. Const. art. XVI, § 1. As of publication, the ratification bill has not

these requirements.[54] But every other constitution guarantees the right to vote in positive terms.

In addition to these voting rights provisions, state constitutions contain other types of provisions committed to democratic principles. Twenty-six states have provisions "stating that elections shall be 'free,' 'free and equal,' or 'free and open.'"[55] And a host of other provisions—including those requiring popular elections, allowing the people to adopt initiatives and referenda, and guaranteeing equal rights—evince overarching "constitutional commitments to popular sovereignty, majority rule, and political equality," which Professors Seifter and Bulman-Pozen have identified and termed the "democracy principle."[56]

These overarching democratic guarantees and affirmative grants of the right to vote are then coupled with explicit, limited exclusions based on criminal and/or mental capacity grounds. On the criminal side, forty-six state constitutions[57] explicitly list various criminal

been passed. Voters in several states are voting on similar constitutional amendments in 2026. See, e.g., H.R.J. Res. 1018, 95th Gen. Assemb., Reg. Sess. (Ark. 2025); H.R. Con. Res. 5004, 2025 Leg., Reg. Sess. (Kan. 2025). Not all states that have put forward citizen-only amendments have done so by changing their primary rights-conferring language. Some instead add a prohibition on noncitizen voting while retaining the language conferring the right to vote on "every" qualified voter. See, e.g., Utah Const. art. IV, § 2 ("Every citizen of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, shall be entitled to vote in the election."); id. art. IV, § 5 ("No person shall be deemed a qualified voter of this State unless such person be a citizen of the United States."); Tex. Const. art. VI, § 2(a) ("Every person subject to none of the disqualifications provided by Section 1 of this article or by a law enacted under that section who is a citizen of the United States and who is a resident of this state shall be deemed a qualified voter . . . ."); id. art. VI, § 1(a) ("The following classes of persons shall not be allowed to vote in this State: . . . persons who are not citizens of the United States."); S.J. Res. 503, 100th Leg., Reg. Sess. (S.D. 2025) ("Every individual who is a citizen of the United States, is eighteen years of age or older, and has met all residency and registration requirements is entitled to vote in all elections and upon all questions submitted to the voters of the state. . . . An individual who is not a citizen of the United States is disqualified from voting in any election or upon any question submitted to the voters of this state.").

[54] Ariz. Const. art. VII, § 2.

[55] Douglas, The Right to Vote, supra note 20, at 103.

[56] Bulman-Pozen & Seifter, supra note 22, at 864 (emphasis omitted); see also Douglas, The Power of the Electorate, supra note 22, at 1693–1714 (discussing a range of state constitutional provisions that constitute "a multilayered right to vote").

[57] Of the remaining four state constitutions, Vermont and Oklahoma do not explicitly address criminal disenfranchisement at all, though Vermont's voting rights provision extends only to those who are "of a quiet and peaceable behavior." Vt. Const. ch. II, § 42. Pennsylvania and Maine do provide for disenfranchisement based on election bribery, but this narrow ground differs from the more general criminal disenfranchisement provisions in

disenfranchisement grounds, such as a felony conviction,[58] a felony conviction involving moral turpitude,[59] an infamous crime,[60] treason,[61] bribery,[62] an election-related crime,[63] incarceration,[64] or incarceration for a felony.[65] On the capacity side, thirty-seven state constitutions explicitly exclude or allow for excluding people based on some type of cognitive incapacity, such as those adjudged mentally "incompetent,"[66] "idiots and insane persons,"[67] or those who are under guardianship,[68] of "unsound mind,"[69] or "*non compos mentis*"[70] (which means "not sane or

other state constitutions. Pa. Const. art. VII, § 7; Me. Const. art. IX, § 13. Oklahoma and Pennsylvania nevertheless allow for disenfranchisement for a wide range of criminal convictions, while Vermont and Maine do not. See Uggen et al., supra note 4, at 4.

[58] Ark. Const. art. III, § 2; Del. Const. art. V, § 2(a); Fla. Const. art. VI, § 4(a); Haw. Const. art. II, § 2; Idaho Const. art. VI, § 3; Ill. Const. art. III, § 2; Kan. Const. art. V, § 2; Ky. Const. § 145(1); La. Const. art. I, § 10(A); Minn. Const. art. VII, § 1; Mo. Const. art. VIII, § 2; Neb. Const. art. VI, § 2; N.M. Const. art. VII, § 1(A); N.C. Const. art. VI, § 2(3); N.D. Const. art. II, § 2; Ohio Const. art. V, § 4; S.D. Const. art. VII, § 2; Tex. Const. art. VI, § 1(a)(3); Utah Const. art. IV, § 6; Va. Const. art. II, § 1; W. Va. Const. art. IV, § 1; Wis. Const. art. III, § 2(4)(a); Wyo. Const. art. VI, § 6.

[59] Ala. Const. art. VIII, § 177(b); Alaska Const. art. V, § 2; Ga. Const. art. II, § 1, ¶ III(a).

[60] Ind. Const. art. II, § 8; Iowa Const. art. II, § 5; Tenn. Const. art. IV, § 2; Wash. Const. art. VI, § 3; see also Md. Const. art. I, § 4 ("infamous or other serious crime"); N.Y. Const. art. II, § 3 ("bribery or . . . any infamous crime"); S.C. Const. art. II, § 7 ("serious crime").

[61] Ariz. Const. art. VII, § 2(C); Ky. Const. § 145(1); Minn. Const. art. VII, § 1; Neb. Const. art. VI, § 2; Nev. Const. art. II, § 1; N.H. Const. pt. 1, art. 11; Utah Const. art. IV, § 6; W. Va. Const. art. IV, § 1.

[62] Miss. Const. art. XII, § 241; N.H. Const. pt. 1, art. 11; N.Y. Const. art. II, § 3; Tex. Const. art. VI, § 1(b); see also Ky. Const. § 145(1) (election bribery); W. Va. Const. art. IV, § 1 (same); Me. Const. art. IX, § 13 (same); Pa. Const. art. VII, § 7 (same).

[63] N.H. Const. pt. 1, art. 11 ("any willful violation of the election laws of this state or of the United States"); Mo. Const. art. VIII, § 2 ("crime connected with the exercise of the right of suffrage"); Utah Const. art. IV, § 6 ("crime against the elective franchise").

[64] Colo. Const. art. VII, § 10; Idaho Const. art. VI, § 3; Ill. Const. art. III, § 2; Kan. Const. art. V, § 2; Ky. Const. § 145(2); Mich. Const. art. II, § 2; S.C. Const. art. II, § 7.

[65] Cal. Const. art. II, § 4; Mass. Const. amend. art. III; Mont. Const. art. IV, § 2; R.I. Const. art. II, § 1.

[66] Ala. Const. art. VIII, § 177(b); Ark. Const. amend. 51, § 11(a)(6); Cal. Const. art. II, § 4; Del. Const. art. V, § 2(a); Fla. Const. art. VI, § 4(a); Ga. Const. art. II, § 1, ¶ III(b); Iowa Const. art. II, § 5; La. Const. art. I, § 10(A); Mich. Const. art. II, § 2; Nev. Const. art. II, § 1; N.D. Const. art. II, § 2; S.C. Const. art. II, § 7; S.D. Const. art. VII, § 2; Tex. Const. art. VI, § 1(a)(2); Utah Const. art. IV, § 6; Va. Const. art. II, § 1; Wash. Const. art. VI, § 3; W. Va. Const. art. IV, § 1; Wis. Const. art. III, § 2(4)(b); Wyo. Const. art. VI, § 6.

[67] Ky. Const. § 145(3); Miss. Const. art. XII, § 241; Ohio Const. art. V, § 6; see also Minn. Const. art. VII, § 1 ("a person who is insane or not mentally competent").

[68] Md. Const. art. I, § 4; Mass. Const. amend. art. III; Mo. Const. art. VIII, § 2; Minn. Const. art. VII, § 1.

[69] Alaska Const. art. V, § 2; Mont. Const. art. IV, § 2.

[70] Haw. Const. art. II, § 2; Neb. Const. art. VI, § 2; R.I. Const. art. II, § 1.

in one's right mind"[71]). Of these, three state constitutions require a specific finding that someone is incompetent to vote, instead of tying voting rights to a general finding of cognitive incapacity.[72]

State constitutions also vary in whether they directly strip the right to vote based on the enumerated grounds, require the legislature to do so via a law, or merely allow the legislature to do so. The outright prohibitions provide, for example, that "no person" convicted of a certain crime or with a certain mental incapacity "shall be" qualified or permitted to vote.[73] The legislative prohibitions provide that the legislature "shall" disqualify individuals based on certain grounds.[74] And the permissive provisions generally provide that the legislature "may" suspend the right to vote based on certain grounds.[75] (Each state's constitutional provision is categorized according to this parameter in the Appendix.)

Looking again at Minnesota as an example, the state constitution provides that "[t]he following persons shall not be entitled or permitted to vote at any election in this state: . . . a person who has been convicted

[71] *Non compos mentis*, New Oxford American Dictionary (3d ed. 2010).

[72] These states provide for disenfranchisement only if the person "has been adjudicated incompetent to vote as provided by law," Or. Const. art. II, § 3; is both "unable to mark their ballot and . . . concurrently also unable to communicate their voting preference," N.M. Const. art. VII, § 1(A); or "has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting," N.J. Const. art. II, § I, ¶ 6.

[73] See, e.g., Ala. Const. art. VIII, § 177(b); Haw. Const. art. II, § 2; Kan. Const. art. V, § 2; Neb. Const. art. VI, § 2; Nev. Const. art. II, § 1; N.D. Const. art. II, § 2; R.I. Const. art. II, § 1; Va. Const. art. II, § 1; see also Wyo. Const. art. VI, § 6 ("All persons adjudicated to be mentally incompetent or persons convicted of felonies, unless restored to civil rights, are excluded from the elective franchise."); Ohio Const. art. V, § 6 ("No idiot, or insane person, shall be entitled to the privileges of an elector."). Some allow the legislature to make exceptions. See, e.g., Or. Const. art. II, § 3 ("The privilege of an elector, upon conviction of any crime which is punishable by imprisonment in the penitentiary, shall be forfeited, unless otherwise provided by law."); Tex. Const. art. VI, § 1 ("The following classes of persons shall not be allowed to vote in this State: . . . persons convicted of any felony, subject to such exceptions as the Legislature may make . . . .").

[74] See, e.g., Cal. Const. art. II, § 4; N.Y. Const. art. II, § 3.

[75] See, e.g., Md. Const. art. I, § 4 ("The General Assembly by law may regulate or prohibit the right to vote of a person convicted of infamous or other serious crime . . . ."); Tenn. Const. art. IV, § 2 ("Laws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes."); Wis. Const. art. III, § 2 ("Laws may be enacted: . . . [e]xcluding from the right of suffrage persons . . . [a]djudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside."); see also Ohio Const. art. V, § 4 ("The General Assembly shall have power to exclude from the privilege of voting . . . any person convicted of a felony.").

of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent."[76] Thus, taking both the voting rights provision and the exclusions altogether, the Minnesota Constitution provides that, subject to age, residency, and citizenship requirements, "[e]very person . . . *shall be entitled to vote*" unless they are (1) "convicted of treason or felony" and not restored to civil rights, (2) "under guardianship," or (3) "insane or not mentally competent."[77] On its face, this provision would seem to suggest that these are the only grounds on which someone who meets the age, citizenship, and residence requirements can be excluded from voting. Although the exact language of state constitutional voting provisions varies widely from state to state, this general structure is a common one. And it suggests a roadmap for understanding state voting rights: every citizen-resident of a certain age is entitled to vote, *unless* they are excluded based on a constitutionally enumerated ground.[78]

Even in states with constitutions that do not follow this general structure, voting rights provisions may lead to a similar understanding. As noted above, some state constitutions instead contain implicit voting rights protections, which provide a murkier roadmap. For example, in Wisconsin, the state constitution now provides that "[*o*]*nly* a United States citizen age 18 or older who is a resident . . . is a qualified elector"[79] and that "[l]aws may be enacted: . . . [e]xcluding from the right of suffrage persons . . . [c]onvicted of a felony, unless restored to civil rights" or "[a]djudged by a court to be incompetent."[80] This structure notably lacks the mandate that "every" adult citizen-resident is entitled to vote unless excluded, but it still may suggest limitations on what types of disenfranchisement laws can be enacted.[81] If the

[76] Minn. Const. art. VII, § 1.

[77] Id. (emphasis added).

[78] See, e.g., Page v. Allen, 58 Pa. 338, 347 (1868) ("[N]o constitutional qualification of an elector can in the least be abridged, added to, or altered, by legislation or the pretence of legislation."); Johnson v. City of New York, 9 N.E.2d 30, 32 (N.Y. 1937) ("No one can read the history of these changes in the early Constitution without realizing that the object of the change in the law made by these two Constitutions was to remove the disqualifications which attached to the person of the voter.").

[79] Wis. Const. art. III, § 1(2) (emphasis added).

[80] Id. § 2.

[81] See Clifton Williams, Expressio Unius Est Exclusio Alterius, 15 Marq. L. Rev. 191, 191 (1931) (discussing the Wisconsin Supreme Court's application of the *expressio unius* canon, which suggests that "the expression of one subject, object, or idea is the exclusion of other subjects, objects, or ideas"). Dean Clifton Williams notably found that the Wisconsin

affirmative voting rights provision did not confer protections from disenfranchisement, the constitution would not need an express authorization for the legislature to exclude certain subsets of individuals from the right to vote. Additionally, this implicit voting rights formulation—like most in other state constitutions—stems from a recent constitutional amendment aimed at prohibiting localities from allowing noncitizens to vote.[82] The amendment did not otherwise purport to change the scope of voting rights protections, and state courts would likely take this context into account.[83]

In sum, whereas federal law largely allows states to determine how or whether to disenfranchise anyone on the basis of a criminal conviction or cognitive capacity, state constitutions typically list specific criminal and capacity-related grounds on which the state can deny the right to vote. When read together with the rights-protective voting provisions in state constitutions, disenfranchisement provisions can readily be understood to set the outer bounds of who can be excluded from the right to vote. And this understanding is reinforced by overarching democratic commitments in state constitutions, including in free and fair elections clauses. But this is not always the approach that state actors take. The remainder of this Article turns to the ways in which state actors seem to be overstepping the bounds of their state constitutions and explores the viability of state constitutional claims as a way to rein them back in. Part II begins with a discussion of de jure disenfranchisement creep—situations where state actors explicitly disenfranchise individuals beyond the seeming limits of their state constitutions. Part III then turns to de facto disenfranchisement creep—where state actors deprive those who have the right to vote from

Supreme Court had applied the *expressio unius* canon when interpreting the state constitution, despite the fact that states are understood to be sovereign, and it is therefore "second nature to look for *prohibition* in the constitution," rather than an affirmative grant of power. Id. at 192 (emphasis added).

[82] Grossi Wilde, supra note 53.

[83] See, e.g., Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, ¶ 19, 295 Wis. 2d 1, 719 N.W.2d 408 (Wis. 2006) (noting the relevance of "the constitutional debates and practices of the time" of enactment to constitutional interpretation); id. ("The purpose of construing a constitutional amendment is to give effect to the intent of the framers and of the people who adopted it."); State v. Vasquez, 88 P.3d 271, 274 (Or. 2004) (considering "the historical circumstances that led to [a constitutional provision's] creation" (quoting Priest v. Pearce, 840 P.2d 65, 67 (Or. 1992) (en banc))).

exercising it, often in violation of state constitutional voting rights provisions.[84]

II. DE JURE DISENFRANCHISEMENT CREEP

State constitutions' disenfranchisement provisions leave many consequential details to be filled in by various state actors. For example, what constitutes a felony involving moral turpitude? Or what does it mean for someone to be of "unsound mind"? State constitutions also leave open key questions about who should take on that definitional role. For instance, do courts get to decide what qualifies as a felony involving moral turpitude, given their primary role interpreting state constitutions? Or is that a question best left to the legislature or even to individual election officials?

In practice, a wide range of state actors play a role in determining who can cast a vote. State legislatures and courts are the most obvious actors. Where state constitutions leave disenfranchisement optional, the legislature gets to determine whether anyone is disenfranchised to begin with.[85] In many states, the legislature also sets the grounds on which someone can be disenfranchised, such as by classifying certain crimes as felonies.[86] And where re-enfranchisement is not spelled out in the state constitution, the legislature can typically determine whether and how individuals are restored the right to vote.[87] State courts meanwhile interpret the bounds of the state constitution (at least in theory[88]) and can dictate the outer limits of what the legislature can enact.[89]

---

[84] See Sobol, supra note 14, at 292.

[85] For example, the Michigan Constitution provides that "[t]he legislature may by law exclude persons from voting because of mental incompetence." Mich. Const. art. II, § 2. But the legislature has not done so. See Hurme & Appelbaum, supra note 5, at 940; Mich. Comp. Laws § 168.10 (2025).

[86] See, e.g., N.C. Const. art. VI, § 2(3); N.C. Gen. Stat. § 14-1 (2025) (defining "felony"). But see King v. O'Bannon, No. 23-cv-00408, 2026 WL 172624, at *1 (E.D. Va. Jan. 22, 2026) (deciding that Virginia can only disenfranchise those convicted of felonies as they were defined at common law in 1870 under the terms of the Virginia Readmission Act).

[87] See, e.g., Minn. Stat. § 201.014(2a) (2025); Schroeder v. Simon, 985 N.W.2d 529, 545 (Minn. 2023) (noting that "a legislative act" can "generally restore[] the right to vote upon the occurrence of certain events").

[88] See infra Sections II.A–B.

[89] See, e.g., Griffin v. Pate, 884 N.W.2d 182, 185 (Iowa 2016) ("The legislature enacted a statute in 1994 defining an infamous crime as any felony. Yet under our democracy, people have the right to challenge the constitutionality of a legislative enactment that directly affects them, and the judicial branch of government has the responsibility to decide the question." (citation omitted)).

Numerous other actors are also involved in this process. State executives often have broad power under state constitutions to restore voting rights via pardons.[90] Some have used this power to issue blanket orders restoring the right to vote to those who have completed their sentences or are no longer incarcerated, thereby changing the duration of disenfranchisement in their states.[91] Other governors instead take an ad hoc approach, individually determining who can and cannot vote with no articulated standard for doing so.[92] Attorneys general, secretaries of state, and other officials meanwhile sometimes step in with their own interpretations of vague terms like "felony involving moral turpitude."[93] Sometimes these interpretations are binding on election officials;[94] other

[90] See Wong, supra note 14, at 1701.

[91] See, e.g., Iowa Exec. Order No. 7 (Aug. 5, 2020), https://governor.iowa.gov/sites/default/files/documents/EO7%20-%20Voting%20Restoration.pdf [https://perma.cc/7LN7-2PAE] (restoring voting rights to anyone who has completed their felony sentence, except if convicted of homicide or related crimes); Ky. Exec. Order No. 2019-003 (Dec. 12, 2019), https://governor.ky.gov/attachments/20191212_Executive-Order_2019-003.pdf [https://perma.cc/A2EP-GP8M] (restoring voting rights for those who have completed sentences for non-violent offenses); cf. Howell v. McAuliffe, 788 S.E.2d 706, 719 (Va. 2016) (concluding that the governor did not have the authority to issue a blanket order); Vann R. Newkirk II, How Letting Felons Vote Is Changing Virginia, The Atlantic (Jan. 8, 2018), https://www.theatlantic.com/politics/archive/2018/01/virginia-clemency-restoration-of-rights-campaigns/549830/ (noting that Governor Terry McAuliffe circumvented the decision in *Howell* by issuing individual orders to every person who would have been affected by his blanket pardon).

[92] Governor Glenn Youngkin rescinded his predecessor's automatic restoration policy in favor of an individualized pardoning scheme, thereby making Virginia the "only state where someone who is convicted today over *any* felony is presumed to be barred from voting *for life*, with no remedy other than receiving a discretionary act of clemency from the governor." Alex Burness, "Back to 1902": Virginia Governor Revives Lifetime Ban on Voting, Bolts (Mar. 28, 2023), https://boltsmag.org/virginia-governor-youngkin-rights-restoration/ [https://perma.cc/49LF-GFZ7]; see also Hawkins v. Youngkin, 149 F.4th 433, 442–43, 447 (4th Cir. 2025) (concluding that "Virginia's entirely discretionary system for voting-rights restoration, rooted in the executive clemency power, does not facially violate the First Amendment unfettered-discretion doctrine" but noting that "[j]udicial intervention might . . . be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process" (alterations in original) (quoting Oh. Adult Parole Auth. v. Woodard, 523 U.S. 272, 289 (1998) (O'Connor, J., concurring in part and concurring in the judgment))).

[93] See infra Subsection II.A.2.

[94] See, e.g., Mont. Att'y Gen. Op. No. 60-3, at 5–6 (Oct. 22, 2024), https://dojmt.gov/wp-content/uploads/2024/11/Vol.-60-No.-3-MSH-Eligibility-to-Vote-FINAL-Published.pdf [https://perma.cc/XN5W-4DWW]; see also Attorney General Opinions, Mont. Dep't of Just., https://dojmt.gov/attorney-generals-office/attorney-general-opinions/ [https://perma.cc/LYY3-GR7Z] (last visited Apr. 7, 2026) (noting the binding nature of Montana Attorney General opinions).

times they are merely advisory.[95] And, ultimately, individual judges, prosecutors, election officials, department of corrections officials, and state parole boards play a large role in making individualized determinations that impact whether someone is able to vote. Judges, for example, make decisions in guardianship cases and other competency proceedings that can determine whether the individual has the right to vote. On the criminal side, individual judicial determinations and prosecutorial decisions, such as plea deals, can influence both whether someone is convicted of a disenfranchising crime or whether someone is sentenced in a way that triggers disenfranchisement—for example, some states only disenfranchise those who are incarcerated.[96] Corrections officials meanwhile have day-to-day control over the ability of eligible incarcerated voters to request and mail ballots absentee, access to carceral facilities for voter registration, and the distribution of information about rights restoration.[97] And corrections officials and state parole or pardon boards can control whether individuals are released from imprisonment on parole or otherwise get their voting rights restored.[98] Lastly, election officials advise individuals on whether they are eligible to vote, approve or deny voter registration applications, and determine at the polls whether someone can vote.

These layers of bureaucracy contribute to disenfranchisement creep—the practice of state actors directly or indirectly denying more people the vote than the state constitution allows. At times, these failures may be intentional—for example, when the legislature passes a disenfranchisement law that arguably exceeds the limits of the state constitution, legislators are intentionally acting to exclude that swath of

[95] See infra Subsection II.A.3.

[96] See, e.g., Colo. Const. art. VII, § 10 ("No person while confined in any public prison shall be entitled to vote; but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom by virtue of a pardon, or by virtue of having served out his full term of imprisonment, shall without further action, be invested with all the rights of citizenship, except as otherwise provided in this constitution.").

[97] Kristen M. Budd & Rachel Didner-Jollie, The Sent'g Project, Voting From Prison: Lessons from Maine and Vermont 9–10, 15, 17–18 (2025); see also Marc Meredith & Michael Morse, Do Voting Rights Notification Laws Increase Ex-Felon Turnout?, 651 Annals Am. Acad. Pol. & Soc. Sci. 220, 221 (2014) (noting the lack of consistency in restoration notification procedures across states and the prevalence of misinformation regarding voting rights provided by correctional officers).

[98] See, e.g., Alabama Certificate of Eligibility to Register to Vote, Campaign Legal Ctr. (Nov. 9, 2017), https://campaignlegal.org/document/alabama-certificate-eligibility-register-vote [https://perma.cc/8747-9RZZ] (explaining the rights restoration process involving Alabama's Board of Pardons and Paroles).

would-be voters from the franchise. But, other times, disenfranchisement creep is instead perpetuated without any overt intent to engage in rights deprivation. As Professor Justin Weinstein-Tull has described, state bureaucracy can thwart federal civil rights "through inattention and disorganization" rather than outright hostility.[99] This is so because states routinely implement federal laws through decentralized bureaucracies that require coordination among many state actors, including different agencies, local governments, and multiple branches of state government.[100] The frictions that arise in this administrative "obstacle course" can lead to severe under-realization of federal civil rights—even where such rights deprivation is not intentional.[101]

So, too, in the realm of state constitutional voting rights.[102] Election administration in the United States is highly decentralized—there are more than 10,000 election administration jurisdictions nationwide.[103] Coordination across jurisdictions and among different agencies and branches of state government can lead to an abdication of responsibility to safeguard the rights of those on the borderlands of disenfranchisement—those in criminal or competency proceedings who should not be disenfranchised to begin with and those who technically have the right to vote but face de facto disenfranchisement. From the first steps of interpreting or writing the law to deciding whether a voter can cast a ballot on election day, there is all too often insufficient

[99] Justin Weinstein-Tull, State Bureaucratic Undermining, 85 U. Chi. L. Rev. 1083, 1084–85 (2018).

[100] See id. at 1099–1100.

[101] Id. at 1087 (quoting Jeffrey L. Pressman & Aaron Wildavsky, Implementation: How Great Expectations in Washington Are Dashed in Oakland 102 (3d ed. 1984)); see also Miriam Seifter, Further from the People? The Puzzle of State Administration, 93 N.Y.U. L. Rev. 107, 148 (2018) (arguing that "the lack of [public] attention to [state agencies'] work may result in underinvestment and neglect"); Bernadette Atuahene, Predatory Cities, 108 Calif. L. Rev. 107, 174 (2020) ("Detroit officials illegally assessed residents, not because they are evil people, but because they did not have the staff and budget to do what was legally required."); Matthew Shaer, How Cities Make Money by Fining the Poor, N.Y. Times Mag. (Jan. 8, 2019), https://www.nytimes.com/2019/01/08/magazine/cities-fine-poor-jail.html (discussing the ways court fines and fees can perpetuate deprivation of rights and freedom).

[102] See Jennifer L. Selin, The Best Laid Plans: How Administrative Burden Complicates Voting Rights Restoration Law and Policy, 84 Mo. L. Rev. 999, 1001–02 (2019).

[103] Brief, Election Administration at State and Local Levels, Nat'l Conf. of State Legislatures, https://www.ncsl.org/elections-and-campaigns/election-administration-at-state-and-local-levels [https://perma.cc/VHD7-DKFM] (last updated Jan. 13, 2026).

attention paid to ensuring that these individuals are not unduly deprived of their constitutional right to vote.[104]

Applying the lens of state constitutions to existing disenfranchisement schemes, this Part identifies and sheds light on the ways in which state actors perpetuate de jure disenfranchisement creep—whether intentionally or simply through an abdication of responsibility to protect the rights of those at the margins. Part III will then turn to discussion of de facto disenfranchisement creep.

De jure disenfranchisement creep occurs in three primary ways. First, some states statutorily disenfranchise groups beyond those discussed in their constitutions without any clear textual basis for doing so. Second, some state actors broadly construe the disenfranchisement grounds that do appear in their state constitutions, sweeping in individuals who arguably fall outside the constitutional terms. Third, some state actors construe and apply these disenfranchisement grounds inconsistently.

To be sure, interpretation of state constitutional provisions is routinely contested, so there is no fixed line for determining whether a certain state is overstepping its constitutional bounds. However, courts today frequently begin with the constitutional text, and the textual framework discussed in Section I.B provides a useful baseline for identifying states that may be engaging in de jure disenfranchisement creep. Under this framework, state constitutions typically confer the right to vote on a large group of people, subject to specific, enumerated exceptions. Where state actors disenfranchise groups beyond those explicitly listed in the constitution or apply the constitution's exclusionary terms in inconsistent or arguably overbroad ways, state constitutional claims offer a potentially fruitful path for reining in the scope of disenfranchisement. And, as long as the court centers its analysis on the state—instead of federal—constitution, this path may be promising regardless of whether the court applies originalism, textualism, living constitutionalism, or a different mode of constitutional interpretation.

[104] Cf. Joshua S. Sellers & Justin Weinstein-Tull, Constructing the Right to Vote, 96 N.Y.U. L. Rev. 1127, 1147 (2021) (discussing the fragility of the right to vote, stemming both from "election administration problems caused by systemic strain, including inadequate resources or mismanagement," and also from "intentional efforts to impede or undermine the right to vote").

A. Identifying De Jure Disenfranchisement Creep

1. Statutory Disenfranchisement Beyond the State Constitution

The first type of de jure disenfranchisement creep involves state statutes that strip the right to vote from groups of people without any explicit constitutional text allowing the legislature to do so. Some of these laws have been challenged unsuccessfully in state court (albeit without much analysis of the state constitution[105]), while others have not been challenged under the relevant state constitutional provisions.

In New York, for example, the constitution does not mention incompetency as a basis for disenfranchisement—it merely provides that "[t]he legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime."[106] But the state election code disenfranchises anyone "who has been adjudged incompetent by order of a court of competent judicial authority," unless later adjudged to be competent.[107] This exclusion exists despite an overarching suffrage provision in the constitution providing that "[e]very citizen shall be entitled to vote at every election . . . provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election."[108] The Court of Appeals of New York has held that a similar, earlier version of this constitutional provision was designed "to remove the disqualifications which attached to the person of the voter in earlier times" and "to protect otherwise qualified voters from electoral discrimination."[109] Under a straightforward reading of the state constitution, one might therefore expect that it does not allow the legislature to list additional grounds for exclusion from the right to vote beyond conviction of bribery or an infamous crime. The competency-exclusion law has not been challenged in state court, however, and a federal court decision on the issue purported to address state constitutional claims but never discussed the text of the state constitution.[110]

---

[105] See infra text accompanying notes 161–81.

[106] N.Y. Const. art. II, § 3.

[107] N.Y. Elec. Law § 5-106(6) (McKinney 2025).

[108] N.Y. Const. art. II, § 1.

[109] Blaikie v. Power, 193 N.E.2d 55, 57 (N.Y. 1963).

[110] Manhattan State Citizens' Grp., Inc. v. Bass, 524 F. Supp. 1270, 1274–75 (S.D.N.Y. 1981).

Several states meanwhile disenfranchise those who are incarcerated for crimes beyond those listed in their constitutions. Some state constitutions list incarceration as a basis for disenfranchisement,[111] but most instead list specific types of criminal convictions that qualify. A few of these states without explicit exclusions based on incarceration nevertheless have laws that disenfranchise those who are incarcerated, regardless of conviction type. Missouri, for example, excludes anyone from voting who is incarcerated—whether for a misdemeanor or felony[112]—despite a constitutional provision that only provides that "persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting."[113] This law does not appear to have been challenged under the state constitution to date. Similarly, in Indiana, the legislature has disenfranchised anyone currently imprisoned, whether for a misdemeanor or a felony conviction.[114] This is the case despite the fact that the Indiana Constitution only gives the legislature the "power to deprive of the right of suffrage, and to render ineligible, any person convicted of an *infamous crime*,"[115] a term that, under Indiana Supreme Court precedent, does not even apply to all felonies, let alone all misdemeanors.[116]

Pennsylvania, meanwhile, has no constitutional provision explicitly allowing for disenfranchisement based on mental capacity or criminal convictions,[117] but a state law excludes from the ability to vote absentee those who are in a mental institution or who are incarcerated for a felony conviction or an election offense.[118] The state does not provide an

[111] See Colo. Const. art. VII, § 10; Idaho Const. art. VI, § 3; Ill. Const. art. III, § 2; Kan. Const. art. V, § 2; Ky. Const. § 145(2); Mich. Const. art. II, § 2; S.C. Const. art. II, § 7.

[112] Mo. Rev. Stat. § 115.133(2)(1) (2025); see also Know Your Rights, supra note 25 (explaining that those "currently imprisoned for a crime" are ineligible to vote).

[113] Mo. Const. art. VIII, § 2. Those convicted of felonies are disenfranchised until completion of their sentence, including probation or parole. Mo. Rev. Stat. § 115.133(2)(2) (2025). Those convicted of "a felony or misdemeanor connected with the right of suffrage" are disenfranchised indefinitely. Id. § 115.133(2)(3).

[114] Ind. Code § 3-7-13-4(a) (2025); see also id. § 3-7-13-5 (restoring right to vote when the person is no longer imprisoned or "otherwise subject to lawful detention").

[115] Ind. Const. art. II, § 8 (emphasis added).

[116] Snyder v. King, 958 N.E.2d 764, 782 (Ind. 2011). For more discussion of *Snyder*, see infra Section II.B.

[117] Pa. Const. art. VII, § 1. A provision does separately disqualify those involved in election bribery, but this is not specifically premised on a conviction. Id. art. VII, § 7.

[118] See 25 Pa. Cons. Stat. § 2602(w)(14) (2026) ("[T]he words 'qualified absentee elector' shall in nowise be construed to include persons confined in a penal institution or a mental

alternative method of voting, so this exclusion effectively disenfranchises such individuals.[119]

In each of these states, the legislature has passed laws excluding groups of people from the right to vote without any clear constitutional textual hook for doing so. To be sure, the exact contours of the right to vote under these state constitutions are open to debate. As discussed further in Section II.B, state courts in Indiana and Pennsylvania have approved the potentially overbroad disenfranchisement laws in their states, though they have done so without thorough analysis of their own state constitutions.[120] Regardless of litigation outcomes, however, each of these examples is notable for excluding people from this fundamental right without express constitutional authorization.

2. Overbroad Definitions or Applications of Constitutional Terms

The second type of de jure disenfranchisement creep involves state actors broadly construing the state constitutional grounds for disenfranchisement, encompassing individuals that arguably fall outside the constitutional definitions. Sometimes, this involves statutes or binding interpretations from courts or attorneys general that define a constitutional term in an overbroad way. Other times, it involves non-binding interpretations, such as election official guidance, that may be overbroad or inconsistent (as discussed in the next Subsection).

First, state statutes may define a constitutional term in a way that is overbroad. In Alaska, for example, the legislature has defined "felony involving moral turpitude" to include nearly all felonies.[121] This list

institution . . . ."); see also Pa. Const. art. VII, § 14(a) (constitutionally mandating absentee voting procedures).

[119] See C.R. Div., U.S. Dep't of Just., Guide to State Voting Rules That Apply After a Criminal Conviction 16 (2024), https://www.justice.gov/usdoj-media/crt/media/1332106/dl?inline [https://perma.cc/F7UX-XHXE].

[120] See infra text accompanying notes 161–86.

[121] Alaska Stat. § 15.80.010(10) (2025) (defining "felony involving moral turpitude" to include "those crimes that are immoral or wrong in themselves such as murder, manslaughter, assault, sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion, coercion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a forgery device, offering a false instrument for recording, scheme to defraud, falsifying business records, commercial bribe receiving, commercial bribery, bribery, receiving a bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor, escape, promoting contraband, interference with official proceedings, receiving a bribe by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical evidence, hindering prosecution, terroristic threatening, riot, criminal

arguably includes some crimes that are not contemplated by the constitutional provision as involving moral turpitude, as understood from both its plain meaning and historical context. For example, as Alaska attorney JC Croft argues, it is not clear that "possession of gambling records" is a crime that is "naturally evil" or wrong in itself, as "moral turpitude" is typically defined.[122] Further, the framers of the Alaska Constitution explained that the provision was aimed to disenfranchise only "those [convicted] of the more serious felonies" and that the modifier "involving moral turpitude" was necessary because "not all felonies involve moral turpitude."[123] The Alaska legislature's inclusion of nearly every felony as grounds for disenfranchisement thus arguably exceeds this constitutional limit and sweeps in felonies that do not involve moral turpitude, whether considered under standards applicable at the time of the constitution's adoption or under more contemporary standards of morality.

Other times, state statutes may not define the term in an overbroad way, but other state actors may do so in line with a court interpretation or attorney general opinion. In Georgia, for example, election officials treat all felonies as felonies involving moral turpitude because state law lacks a clear definition,[124] and the Georgia Supreme Court has ruled in a different context that all felonies are crimes involving moral turpitude.[125] This interpretation, however, would seem to contradict the

possession of explosives, unlawful furnishing of explosives, sex trafficking, criminal mischief, misconduct involving a controlled substance or an imitation controlled substance, permitting an escape, promoting gambling, possession of gambling records, distribution of child sexual abuse material, and possession of child sexual abuse material"); see also Murray, supra note 14, at 293 (noting that the phrase "is defined to include nearly all felonies").

[122] JC Croft, Alaska's Constitution and Felony Disenfranchisement: A Historical and Legal Analysis, 36 Alaska L. Rev. 133, 147 (2019).

[123] Id. at 147–48 (quoting Minutes to the Proceedings of the Alaska Constitutional Convention, 1955–56, at 890–91 (1965), https://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Proceedings/Proceedings%20-%20Complete.pdf [https://perma.cc/UN6V-WBFC]). But see Maureen E. Brady, Uses of Convention History in State Constitutional Law, 2022 Wis. L. Rev. 1169, 1172–80 (discussing some shortcomings in the reliability and usage of state constitutional convention records).

[124] See Online Voter Registration, Off. of Ga. Sec'y of State, https://mvp.sos.ga.gov/s/voter-registration?IsRegisterNow=true [https://perma.cc/YFP3-JJ6C] (last visited Apr. 7, 2026) ("The Georgia Supreme Court has ruled that in Georgia all felonies are crimes involving moral turpitude.").

[125] See Rehberger v. State, 502 S.E.2d 222, 223 (Ga. 1998) (per curiam) (noting in attorney disbarment context that "[i]n Georgia, all felonies are crimes involving moral turpitude"); Lewis v. State, 254 S.E.2d 830, 831 (Ga. 1979) (noting in witness impeachment

plain text of the provision, as it essentially nullifies the modifying language "involving moral turpitude."[126] Had the constitutional drafters sought to disenfranchise anyone convicted of a felony, they need not have included the moral turpitude qualification.[127] In Montana, meanwhile, the attorney general issued a binding opinion disqualifying those involuntarily committed to a state psychiatric hospital as part of a criminal sentence from voting,[128] even if a court has not specifically found the person to be "of unsound mind," as outlined in the state constitution.[129] As discussed further in the next Subsection, this interpretation is being challenged in state court.[130]

On the side of re-enfranchisement, meanwhile, some state actors may go beyond the state constitution by requiring an individual to satisfy additional requirements. For example, in Georgia, the constitution provides that "[n]o person who has been convicted of a felony involving

context that the definition of moral turpitude "is said to be restricted to the gravest offenses, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind"). Notably, however, when directly interpreting the voting provision as applied to a felony conviction of habitual impaired driving, the Georgia Supreme Court suggested a narrower test: whether "the [crime], disregarding its felony punishment, meet[s] the test as being contrary to justice, honesty, modesty, good morals or *man's duty to man*." Jarrard v. Clayton Cnty. Bd. of Registrars, 425 S.E.2d 874, 875 (Ga. 1993) (first alteration in original) (quoting *Lewis*, 254 S.E.2d at 832).

[126] See, e.g., Gwinnett Cnty. Sch. Dist. v. Cox, 710 S.E.2d 773, 779 (Ga. 2011) ("Established rules of constitutional construction prohibit us from any interpretation that would render a word superfluous or meaningless."); cf. Ga. Const. art. III, § 4, ¶ 9 (referring only to "felony" in a different provision); Chapman v. Gooden, 974 So. 2d 972, 980 (Ala. 2007) (noting the Alabama Attorney General's agreement with the plaintiff that not all felonies involve moral turpitude).

[127] Georgia's constitutional provision changed from "any crime involving moral turpitude" and some other enumerated crimes, like bribery, to "felony involving moral turpitude" in 1983. Compare Ga. Const. art. II, § 1, ¶ 3, with Ga. Const. of 1976, art. II, § 2, ¶ 1. The committee proposing the changes debated the meaning of "moral turpitude" but did not reach a clear conclusion. Compare State of Ga. Select Comm. on Const. Revision, Transcripts of Meetings of the Committee to Revise Article II, at 52 (Aug. 4, 1977) (suggesting that changing the term to include all felonies would "take away the right to vote from people who presently have it"), with State of Ga. Select Comm. on Const. Revision, Transcripts of Meetings of the Committee to Revise Article II, at 146 (July 7, 1977) (questioning whether there are any felonies that do not involve moral turpitude) and State of Ga. Select Comm. on Const. Revision, Transcripts of Meetings of the Committee to Revise Article II, at 7 (Sep. 10, 1977) (questioning whether anybody "knows what this term means").

[128] Mont. Att'y Gen. Op. No. 60-3, supra note 94, at 5–6.

[129] Mont. Const. art. IV, § 2.

[130] See infra text accompanying notes 155–66; Cypher v. Hofland, No. DV-12-2024-0000075-OC, slip op. at 8–10 (Mont. 3d Jud. Dist. Ct. Nov. 15, 2024).

moral turpitude may register, remain registered, or vote except upon completion of the sentence."[131] Georgia election officials have interpreted "completion of the sentence" to require the full payment of economic sanctions, like court costs, fines, and fees, in order for the right to vote to be restored.[132] But officials in some other states with similar language do not impose that requirement.[133] Georgia's requirements could therefore arguably be an overbroad interpretation of "completion of the sentence" and, by imposing a wealth-based requirement, may also violate the Georgia Constitution's equal protection clause.[134]

In each of these contexts, state actors are interpreting ambiguous or confusing constitutional terms in a way that potentially conflicts with what those terms mean. As discussed further in Section II.B, the specific definitions of the relevant constitutional terms are certainly open to debate, and some may argue that it is appropriate for the legislature or other actors to define ambiguous terms. But in each of these examples, prevalent textual and historical modes of constitutional interpretation raise serious questions about whether state actors are going beyond the scope of their state constitutional disenfranchisement provisions.

[131] Ga. Const. art. II, § 1, ¶ 3(a).

[132] See Colgan, supra note 13, at 66–67.

[133] Id. at 67.

[134] See Ga. Const. art. I, § 1, ¶ 2 ("No person shall be denied the equal protection of the laws."); Colgan, supra note 13, at 87–91 (discussing equal protection challenges to wealth-based penal disenfranchisement at the federal level). Such challenges have been largely unsuccessful in federal constitutional litigation. See Harvey v. Brewer, 605 F.3d 1067, 1079 (9th Cir. 2010) (characterizing the requirement to pay fees in order to restore voting rights as a "denial of the statutory benefit of re-enfranchisement," not subject to strict scrutiny under the Federal Constitution's Equal Protection Clause); Johnson v. Bredesen, 624 F.3d 742, 746 (6th Cir. 2010) (finding that Tennessee's law conditioning re-enfranchisement on payment of fines and fees "neither implicates a fundamental right nor targets a suspect class" and thus is not subject to strict scrutiny); Madison v. State, 163 P.3d 757, 768 (Wash. 2007) (concluding that "the right to vote is not fundamental for convicted felons" and, therefore, that conditioning re-enfranchisement on payment of financial obligations is subject only to rational basis review); Michael Morse, The Future of Felon Disenfranchisement Reform: Evidence from the Campaign to Restore Voting Rights in Florida, 109 Calif. L. Rev. 1143, 1192–96 (2021) (discussing failed equal protection litigation challenging the imposition of fines and fees requirements in Florida). In Florida, there is a similar question of whether a state statute conditioning voting rights restoration on the payment of all fines, fees, and restitution—including fines and fees converted to civil liens—goes beyond the scope of a state constitutional amendment that restored the right to vote upon "completion of all terms of sentence." Id. at 1182.

3. Inconsistent Definitions and Applications of Constitutional Terms

In addition to states with potentially overbroad definitions, some states lack clear definitions of constitutional terms. This lack of clarity can lead to inconsistent applications of constitutional disenfranchisement provisions, sometimes in ways that may also be overbroad.

Alabama provided the most egregious example of this up until 2017. Alabama's constitution disenfranchises those who have been "convicted of a felony involving moral turpitude."[135] But the state, for two decades, lacked a clear definition of what constitutes a felony involving moral turpitude or a clear delegation of authority to define the term.[136] Some election officials initially declined to register anyone convicted of a felony, whether or not it involved moral turpitude.[137] In an effort to provide more clarity, several government entities circulated lists of disqualifying crimes, each differing from the others: "The Legislature list[ed] fifteen felonies involving moral turpitude; the Attorney General list[ed] twenty-eight crimes; the Administrative Office of Courts list[ed] seventy; and the Governor's Office list[ed] nearly five hundred."[138] Alabama's Secretary of State meanwhile circulated a list of crimes involving moral turpitude based on a Wikipedia entry on federal immigration law.[139] Ultimately, it was up to individual election officials to determine whether a given felony involved moral turpitude or not. A later Alabama Secretary of State, John Merrill, said that registrars and election officials "repeatedly shared" that "they don't know what a crime of moral turpitude is because different people have different

[135] Ala. Const. art. VIII, § 177(b).

[136] The 1901 Alabama Constitution included a prohibition on voting for anyone convicted "of any infamous crime or crime involving moral turpitude," as well as a list of specific crimes. Ala. Const. of 1901, art. VIII, § 182. In *Hunter v. Underwood*, the U.S. Supreme Court invalidated this provision as applied to misdemeanors because it "was enacted with the intent of disenfranchising blacks." 471 U.S. 222, 229 (1985); see also Latasha L. McCrary, Suffering from Past Evils: How Alabama's 1901 Constitution Played a Hand in the 2008 Presidential Election, 12 Berkeley J. Afr.-Am. L. & Pol'y 4, 10 (2010) (discussing *Hunter*). The state then amended the constitution in 1996 to apply only to felonies involving moral turpitude. See Thompson v. Alabama, 65 F.4th 1288, 1295 (11th Cir. 2023).

[137] *Thompson*, 65 F.4th at 1296.

[138] McCrary, supra note 136, at 11.

[139] *Thompson*, 65 F.4th at 1296.

interpretations."[140] And one of the reasons he pushed for legislation defining the term was because officials "told him they felt uncomfortable with the broad leeway they had to determine which felons were allowed to vote."[141] In 2017, the Alabama legislature enacted a bill listing the felonies that involve moral turpitude and are therefore disqualifying,[142] providing much-needed clarity, though recent changes to that law may raise concerns about whether the list of disqualifying crimes is itself overbroad.[143]

A similar type of confusion has arisen in Mississippi. Unlike some states with general disqualifying grounds like "felony" convictions, the Mississippi Constitution specifically lists ten types of disqualifying crimes: "murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy."[144] In 2004, the Mississippi Attorney General issued an opinion listing eleven additional "crimes that should be considered disqualifying" under the state constitution.[145] And state election officials varied in which list they used. "Interviews conducted in 2005 revealed that about half of all Mississippi counties were using the list set forth in the Constitution, while the other half relied on the Attorney General's expanded list."[146] Today, state officials interpret the list of ten crimes in the state constitution to include "23 broad criminal categories and about 100 different specific charging statutes,"[147] including several—like receiving stolen property or tampering with physical evidence—that are related to the crimes listed in the state constitution but not necessarily covered by that list.

[140] Connor Sheets, Registering Felons to Vote in Jail: How a New Alabama Law Impacts Voting Rights, Politics, AL.com (June 29, 2017, at 12:17 ET), https://www.al.com/news/2017/06/registering_to_vote_in_jail_ho.html.

[141] Id.

[142] H.R. 282, 2017 Leg., Reg. Sess. (Ala. 2017) (codified as amended at Ala. Code § 17-3-30.1(c) (2026)).

[143] H.R. 100, 2024 Leg., Reg. Sess. (Ala. 2024) (adding new crimes to the list).

[144] Miss. Const. art. XII, § 241.

[145] Miss. Att'y Gen. Op. No. 2004-0171 (Apr. 23, 2004).

[146] Erika Wood & Rachel Bloom, ACLU & Brennan Ctr. for Just., De Facto Disenfranchisement 4 (2008), https://www.aclu.org/sites/default/files/field_document/defactodisenfranchisement_report.pdf [https://perma.cc/CZ3H-Z4X2].

[147] Caleb Bedillion, Who Can and Can't Vote in Mississippi: A Guide to the State's Lifetime Voting Ban, The Marshall Project, https://www.themarshallproject.org/2024/03/25/mississippi-voting-rights-ban-felony-conviction [https://perma.cc/Q2FV-QKWF] (last updated July 24, 2024, at 16:10 ET).

Lastly, in the competency context, the lack of a clear standard can mean that judges indiscriminately strip the right to vote from anyone in guardianship proceedings, without specifically addressing whether they are capable of voting.[148] Some judges meanwhile subject people in guardianship proceedings to arbitrary tests or heightened questioning, like whether "the person with a disability can name the mayor or president—something many people without disabilities can't do."[149]

The variation in how state actors define and apply these disenfranchisement provisions raises serious constitutional concerns in addition to the overbreadth concerns discussed in the preceding section. Although many of these interpretations may also be overbroad, inconsistent application works additional harms by administering the right to vote unevenly.

B. Challenging De Jure Disenfranchisement Creep

State constitutional voting rights provisions offer a path to challenge state laws and policies that explicitly exclude individuals from the right to vote in a way that seems to exceed the bounds of the state constitution. This may seem like an obvious or self-evident proposition, but, although there are cases taking this approach, it is one that appears to be underutilized. This approach has also remained largely unexplored in existing disenfranchisement literature. This Section provides some successful and unsuccessful examples of these types of claims, as well as an explanation of why state courts should place state constitutional interpretation front and center instead of deferring to federal law when navigating such claims.

As discussed in Section I.B, state constitutions typically confer the right to vote on a large group of people, subject to specific, enumerated exceptions. Reading these affirmative voting rights and exclusionary provisions together, a straightforward understanding of many state

[148] See Vasilogambros, supra note 9.

[149] Id.; see also Jennifer Mathis & Lewis Bossing, Bazelon Ctr. for Mental Health L. & Nat'l Disability Rts. Network, VOTE. It's Your Right: A Guide to the Voting Rights of People with Mental Disabilities 13 (2008), https://www.psychrehabassociation.org/sites/default/files/series-documents/a-guide-to-the-voting-rights-of-people-with-mental-disabilities.pdf [https://perma.cc/JU6S-R2QX] ("[I]ndividuals are sometimes asked to provide the names of various federal, state or local office holders, to explain the voting process and to explain their political views."); cf. Sarah Lorr, The Capacity to Marry, 126 Colum. L. Rev. 485, 526–34 (2026) (discussing how courts handle capacity decisions in the context of marriage).

constitutions is that they provide limits on who can or cannot be excluded from the right to vote.[150] Where state actors overstep these bounds, state constitutional claims offer a path for reining in the scope of disenfranchisement—either because the constitution does not list the permissible ground for disenfranchisement (as discussed above in Subsection II.A.1) or because state actors are interpreting a constitutional term in an overbroad or inconsistent way (as discussed above in Subsections II.A.2 and II.A.3). Additionally, where states are interpreting a term inconsistently, equal protection clauses in state constitutions may offer an additional path for challenging these practices.[151]

As a successful example of an overbreadth claim, in *Boyd v. Board of Registrars of Voters of Belchertown*, the Supreme Judicial Court of Massachusetts interpreted the phrase "under guardianship" in the state constitution to require that someone be placed under guardianship in accordance with relevant statutory guardianship procedures in order to be deprived of the right to vote.[152] It was not sufficient that the individuals were residing in a mental treatment facility.[153] In upholding this strict meaning of "under guardianship," the court emphasized that it could not "read the language loosely because to do so would tend to deprive numerous persons of a basic right of citizenship."[154]

Similarly, litigation is ongoing in Montana over whether those who are involuntarily committed to the Montana State Hospital can be barred from voting under the state constitutional provision disenfranchising

[150] This analysis focuses on the combination of broad voting rights guarantees coupled with limited exclusions. It does not adopt an outright *expressio unius* approach to understanding state constitutional voting rights. For example, where state constitutions extend the right to vote to "every" citizen, the framework this Article advances would not necessarily preclude the expansion of the right to vote beyond citizens. See Lacy v. City & County of San Francisco, 312 Cal. Rptr. 3d 391, 397 (Ct. App. 2023), *modified on denial of reh'g* (Aug. 28, 2023) (finding that "the Citizen Voter Provision's identification of persons who 'may vote' does not, by its terms, preclude the expansion of the franchise to noncitizens"); Grossi Wilde, supra note 53 (discussing divergent court rulings on whether similar provisions preclude noncitizen voting). But see Fossella v. Adams, 272 N.E.3d 1118, 1122 (N.Y. 2025) (concluding that New York's constitutional provision establishing that "[e]very citizen shall be entitled to vote" impliedly means that noncitizens cannot vote).

[151] See, e.g., supra text accompanying note 138.

[152] 334 N.E.2d 629, 632 (Mass. 1975).

[153] Id. at 631–32.

[154] Id. at 631. But cf. Town of Lafayette v. City of Chippewa Falls, 235 N.W.2d 435, 440–41 (Wis. 1975) (interpreting "under guardianship" loosely to include residence in a state facility for those with mental disabilities).

those who are "of unsound mind, as determined by a court," or are "serving a sentence for a felony in a penal institution."[155] The plaintiffs in the case are arguing that those who are involuntarily committed, whether criminally or civilly, cannot be disenfranchised under the "unsound mind" provision "unless the individual has been specifically 'adjudicated to be of unsound mind' by a court of competent jurisdiction based on competent findings."[156] In other words, they argue that categorically excluding those committed to the hospital is an overbroad application of the "unsound mind" term found in the state constitution. They further argue that the state hospital is not a "penal institution" and therefore those convicted of a felony who are then committed to the state hospital cannot be disenfranchised for "serving a sentence for a felony in a penal institution."[157] In the course of litigation, the attorney general issued a binding legal opinion stating that people convicted of a felony and committed to the state hospital are not eligible to vote.[158] He concluded both that anyone committed to the hospital as part of a felony sentence is "serving a sentence for a felony in a penal institution" and that such individuals meet the definition of being "of unsound mind."[159] But a judge later disagreed and granted a preliminary injunction, giving a plaintiff in the case the right to vote in the November 2024 election.[160] Litigation is ongoing as of this Article's publication.

Similar overbreadth claims have been brought with mixed success regarding the meaning of "felony involving moral turpitude,"[161] "infamous crime,"[162] and other competency-related terms.[163] Overall,

[155] See First Amended Complaint for Injunctive Relief and Declaratory Judgment at 2–3, Cypher v. Hofland, No. DV-12-2024-0000075-OC (Mont. 3d Jud. Dist. Ct. Oct. 18, 2024) (citing Mont. Const. art. IV, § 2), https://disabilityrightsmt.org/wp-content/uploads/2024/10/2024-10-18-8-First-Amended-Complaint-cfmd.pdf [https://perma.cc/3EWP-CQRD].

[156] See id.

[157] Id. at 3.

[158] See Mont. Att'y Gen. Op. No. 60-3, supra note 94.

[159] Id. at 4–6.

[160] Cypher v. Hofland, No. DV-12-2024-0000075-OC, slip op. at 8–10 (Mont. 3d Jud. Dist. Ct. Nov. 15, 2024); Blair Miller, Judge Orders County Clerk to Count Ballot of Felon Committed to Montana State Hospital, Daily Montanan (Nov. 19, 2024, at 14:28 ET), https://dailymontanan.com/2024/11/19/judge-orders-county-clerk-to-count-ballot-of-felon-committed-to-montana-state-hospital/ [https://perma.cc/9FK6-6MVS].

[161] See Chapman v. Gooden, 974 So. 2d 972, 990–91 (Ala. 2007) (dismissing claims as moot where state officials had changed course and were no longer disqualifying anyone convicted of a felony, regardless of whether it involved moral turpitude or not).

[162] See, e.g., Chiodo v. Section 43.24 Panel, 846 N.W.2d 845, 853 (Iowa 2014) ("[T]he legislature's decision to define an 'infamous crime' as a 'felony' cannot stand alone to

however, these cases are generally few and far between, and many potentially overbroad laws or policies—like those in Missouri, Georgia, and Alaska—appear to have gone entirely unchallenged.[164]

Additionally, although some claims in this realm have been successful, others have run into hurdles due to some state courts unduly deferring to federal law. In various areas of constitutional law, federal principles sometimes infiltrate state courts' approaches to interpreting their own foundational documents.[165] At times, this manifests in outright lockstepping, whereby state courts tie their interpretation of state constitutional rights to the analogous federal counterparts and largely follow U.S. Supreme Court precedent.[166] But even where courts do not directly engage in lockstepping, federal principles and precedents can sometimes infiltrate their analyses.

This infiltration is exemplified in *Snyder v. King*, a 2011 Indiana Supreme Court case in which the plaintiff challenged a state statute disenfranchising him while he was incarcerated for a misdemeanor conviction.[167] As noted above, the Indiana Constitution gives the legislature the "power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime."[168] Explicitly "pursuant to" this clause, the legislature had enacted a statute depriving anyone who is imprisoned based on a misdemeanor or felony conviction of the right to vote.[169] In *Snyder*, the plaintiff argued that his misdemeanor battery conviction was not an "infamous crime" under the state constitution and that, therefore, he should not have been disenfranchised while incarcerated.[170] The Indiana Supreme Court

define the constitutional meaning of 'infamous crime' because the two terms unquestionably have different meanings."). But see Griffin v. Pate, 884 N.W.2d 182, 205 (Iowa 2016) ("[W]e conclude that infamous crime under the constitution means felony crime . . . .").

[163] See Hurme & Appelbaum, supra note 5, at 940–45 (collecting various competency-related state constitution provisions and cases interpreting them).

[164] See supra Section II.A.

[165] See Robert F. Williams, State Courts Adopting Federal Constitutional Doctrine: Case-by-Case Adoptionism or Prospective Lockstepping?, 46 Wm. & Mary L. Rev. 1499, 1502 (2005); Michael E. Solimine, Supreme Court Monitoring of State Courts in the Twenty-First Century, 35 Ind. L. Rev. 335, 338–39 (2002); James A. Gardner, Interpreting State Constitutions: A Jurisprudence of Function in a Federal System 47–48 (2005).

[166] See Douglas, The Right to Vote, supra note 20, at 106–10; Williams, supra note 165, at 1504–20.

[167] 958 N.E.2d 764, 768–69 (Ind. 2011).

[168] Ind. Const. art. II, § 8.

[169] Ind. Code § 3-7-13-4 (2025).

[170] See *Snyder*, 958 N.E.2d at 771.

agreed—with the first part. It concluded that "infamous crime" has a limited meaning—specifically, that it is a crime "involving an affront to democratic governance or the public administration of justice such that there is a reasonable probability that a person convicted of such a crime poses a threat to the integrity of elections."[171] In other words, not even all felonies are "infamous," and the plaintiff's conviction for a misdemeanor battery did not constitute an "infamous crime."[172] In conducting this analysis, the court examined "the text, the history surrounding the text, and the purpose and structure of the [Indiana] Constitution in general."[173]

But the court then abandoned its analysis of the state's constitutional text when turning to the question of whether the legislature could nevertheless disenfranchise those who are incarcerated, even if they have not been convicted of an infamous crime. Instead, it began its analysis with citations to federal cases for the idea that the loss of voting rights "is simply an incident to or a collateral consequence of . . . incarceration."[174] After citing several federal cases, the court concluded without citation: "The General Assembly's police power permits it to affix terms of incarceration for violating our criminal laws. We think it also permits the General Assembly to disenfranchise an incarcerated convict as a collateral consequence of imprisonment."[175] For further support, the court pointed to widespread disenfranchisement in other states and the lack of evidence on whether Indiana historically facilitated voting rights for those who were incarcerated.[176] It ultimately concluded that the Indiana General Assembly may "deprive *all* convicted prisoners of the right to vote for the duration of their incarceration," regardless of the severity of the crime.[177]

What the court failed to address is that the state's general "police power" is still subject to the constraints and rights outlined in the state constitution. Indiana's constitution explicitly confers the right to vote on Indiana residents who are U.S. citizens aged eighteen and older, providing: "A citizen of the United States, who is at least eighteen (18)

[171] Id. at 782.
[172] Id. at 771, 782.
[173] Id. at 772.
[174] Id. at 784 (first citing Hudson v. Palmer, 468 U.S. 517, 523–24 (1984); and then citing Owens v. Barnes, 711 F.2d 25, 27–28 (3d Cir. 1983)).
[175] Id.
[176] Id. at 784–85.
[177] Id. at 785 (emphasis added).

years of age and who has been a resident of a precinct thirty (30) days immediately preceding an election may vote in that precinct at the election."[178] At no point did the court discuss this provision or what it might mean. Instead, the court seemed to assume that, because those convicted of a crime have lesser voting rights under federal law and in other states, they also have lesser rights under Indiana state law.[179] The only Indiana Constitution-specific analysis it included was one paragraph on historical voting practices, discussed further below,[180] that again cited to federal case law and did not directly discuss the relevant state constitutional provisions.[181]

Similarly, the Supreme Court of Pennsylvania in *Ray v. Commonwealth* held in a five-paragraph opinion that the state legislature was free to exclude those who are "confined in a penal institution" from the right to vote absentee[182]—thereby effectively disenfranchising them—despite no clear state constitutional basis for doing so. Quoting language from a prior Pennsylvania opinion that noted that "elections are free and equal within the meaning of the Constitution when they are public and open to all qualified electors alike,"[183] the *Ray* court jumped to the conclusion that the legislature has the power to define "qualified electors" under the constitution's absentee voting provision, including by excluding "persons 'confined in a penal institution' from the class of 'qualified electors.'"[184] In reaching this conclusion, the Pennsylvania Supreme Court cited almost entirely to federal case law and provided scant analysis of its own state constitutional guarantees. Most notably, it did not mention the provision that "[e]very citizen 21 years of age" who meets certain residency requirements "*shall* be entitled to vote at all elections,"[185] and it did not discuss whether this provision might limit the legislature's ability to determine who counts as a "qualified elector" under the constitution's absentee voting provision.[186]

[178] Ind. Const. art. II, § 2(a).
[179] *Snyder*, 958 N.E.2d at 784–85.
[180] See infra text accompanying notes 191–92.
[181] *Snyder*, 958 N.E.2d at 785.
[182] 276 A.2d 509, 509–10 (Pa. 1971).
[183] Id. at 510 (emphases omitted) (quoting Winston v. Moore, 91 A. 520, 523 (Pa. 1914)).
[184] Id.
[185] Pa. Const. art. VII, § 1 (emphasis added).
[186] *Ray*, 276 A.2d at 510. Two Pennsylvania appellate court cases since *Ray* more directly addressed the state constitutional claims, but they continued to cite heavily to federal law and relied, in part, on stare decisis and *Ray* when concluding that the legislature is free to disqualify those who are incarcerated on felony convictions. Mixon v. Commonwealth, 759

In the disenfranchisement context, this approach of unduly deferring to federal law has worrisome implications for state voting rights, given that federal law broadly allows states to disenfranchise anyone based on a criminal conviction or mental incapacity. It is also wholly out of place when addressing de jure disenfranchisement. The U.S. Constitution expressly defers to state law for a determination of who is eligible to vote, providing that, for federal congressional elections, "Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."[187] State constitutions meanwhile provide limitations on who can or cannot be excluded from the right to vote—and these provisions are typically narrower than what is allowed by federal law.[188] Thus, where a state constitution provides specific limitations on excluding citizens from the right to vote, state courts cannot escape the effect of these constitutional provisions by referring to federal law, which itself refers back to state law. Furthermore, interpreting state constitutional voting rights protections to be coextensive with federal law would essentially nullify the numerous explicit exceptions outlined in state constitutions. The state legislature would not need state constitutional permission to disenfranchise someone for an "infamous crime," for example, if the state constitutional affirmative guarantee of voting rights never gave those convicted of crimes any voting rights to begin with.

Given this structural backdrop, state courts should place their own constitutional provisions front and center,[189] as many have already done

A.2d 442, 447–49 (Pa. Commw. Ct. 2000) ("[T]he Registered Felons' position cannot prevail under the rule of *stare decisis*."); Martin v. Haggerty, 548 A.2d 371, 374 (Pa. Commw. Ct. 1988) ("*Ray* is . . . controlling in this case."). The Pennsylvania Supreme Court denied appeal in *Haggerty*, 554 A.2d 512 (Pa. 1989) (unpublished table decision), and affirmed *Mixon* with a one-sentence per curiam order, 783 A.2d 763 (Pa. 2001) (per curiam).

[187] U.S. Const. art. I, § 2, cl. 1. Article I, Section 2 applies to elections for the House of Representatives. Id. Nearly identical language in the Seventeenth Amendment applies to the U.S. Senate. Id. amend. XVII; see also Douglas, The Right to Vote, supra note 20, at 123 ("If we are faithful to the U.S. Constitution's delegation of voter eligibility rules to the states, then there is nothing with which to lockstep.").

[188] See supra Section I.B. The primary exceptions occur in the competency context, where federal courts have sometimes struck down capacity-based state constitutional limitations on the right to vote. See supra note 47 and accompanying text. Perhaps in response to these federal cases, some states have enacted statutes limiting capacity-based grounds for disenfranchisement further than their state constitutions seem to allow. Hurme & Appelbaum, supra note 5, at 936–38.

[189] See Douglas, The Right to Vote, supra note 20, at 119–35 (advocating a state-constitution-centric approach to assessing voting rights); Douglas, The Power of the

when it comes to voting rights more broadly.[190] In the disenfranchisement context, this would require assessing both the extent of the right to vote under state constitutional guarantees and the contours of who can be excluded under the state constitution's enumerated exceptions. To be sure, this might involve some complex analysis, and the success of such claims would be highly dependent on the specific text, history, and context of the state constitution in question, as well as the interpretive methods of the state court.

For example, although the Indiana Supreme Court did not directly analyze its affirmative voting rights provision in *Snyder v. King*, it did note that historically, elections were all in person, and applicable state statutes did not provide a mechanism that would have facilitated the right to vote of those who were incarcerated.[191] It therefore may be open to debate whether Indiana's constitution was meant to affirmatively require the state to provide an accessible voting option for those who were incarcerated. But that history is not dispositive. For one, a state's failure to provide accessible voting presents a different question from that of a law that singles out a certain group for exclusion from a pathway available to others. For example, it is not clear that pre-trial detainees historically would have been able to access the voting booths either, but the *Snyder* court seemed to assume that such individuals should be able to vote while detained.[192] Although those who are convicted of crimes do have lesser voting rights under federal law than those in pre-trial detention, the Indiana Constitution does not provide a clear basis for distinguishing between the two groups' voting rights. Thus, a system that allows for pre-trial detention voting while explicitly

Electorate, supra note 22, at 1750 ("Courts should recognize the electorate as tantamount to a branch of state government, albeit one that has primacy over any other governmental actor. State constitutions elevate the importance of voter participation in state governance."); Robert F. Williams & Lawrence Friedman, The Law of American State Constitutions 170–71 (2d ed. 2023) (discussing the more state-centric "primacy" approach to state constitutional interpretation).

[190] See Emily Lau, Explainer: State Constitutional Standards for Adjudicating Challenges to Restrictive Voting Laws, State Democracy Rsch. Initiative (Feb. 3, 2025), https://statedemocracy.law.wisc.edu/wp-content/uploads/sites/1683/2024/06/Explainer-State-Constitutional-Standards-for-Adjudicating-Challenges-to-Restrictive-Voting-Laws.pdf [https://perma.cc/3EB3-8SFX] (noting many states' divergence from federal law when assessing state constitutional claims regarding restrictive voting laws).

[191] 958 N.E.2d 764, 785 (Ind. 2011).

[192] Id. ("A convicted prisoner is different from a pretrial detainee, who has yet to have his or her day in court.").

excluding those who are convicted of crimes may lack a state constitutional foundation.[193] Further, originalism is not the only available approach for state constitutional interpretation[194]—for example, a more literal textualist approach to understanding the Indiana Constitution would cut against the court's conclusion.

But that is not to say that originalism would be fatal to such claims. In the earliest years of the Union, for example, Vermont's Council of Censors concluded that a statute expanding the grounds for disenfranchisement beyond the state constitution's listed grounds of election-related corruption violated its guarantee of the right to vote.[195] Indeed, originalism may offer far more constrained understandings of state disenfranchisement provisions than are currently employed in some states. For example, the term "felony," which appears in many state constitutional disenfranchisement provisions,[196] applied to a much narrower subset of criminal activity at the time many state constitutions were drafted than it does now.[197] In an analogous argument based on federal law, Professor Franita Tolson has highlighted how the acts readmitting Confederacy states specified that these states could only disenfranchise individuals for "felonies at common law"—a narrow set

[193] Cf. Tate v. Collins, 496 F. Supp. 205, 206–11 (W.D. Tenn. 1980) (holding that because those convicted of non-infamous crimes in Tennessee were eligible to vote, they "must be afforded some method by which their elective franchise can be exercised," and a statute barring absentee voting by those who were incarcerated violated the Fourteenth Amendment); O'Brien v. Skinner, 414 U.S. 524, 530–31 (1974) (finding an equal protection violation where a New York statute mandated that those held in jail pending trial in their county of residence could not vote absentee whereas those held in jail outside their county of residence could).

[194] Jeremy M. Christiansen, Originalism: The Primary Canon of State Constitutional Interpretation, 15 Geo. J.L. & Pub. Pol'y 341, 359–62 (2017) (discussing other state court approaches, including living constitutionalism, "lockstep" interpretation, and a multi-factor approach); see also Brady, supra note 123, at 1180–87, 1191–93 (discussing varied state-court approaches to constitutional convention records).

[195] See Vermont, Maine Only States to Let Inmates Vote, S.D. Union-Trib. (Aug. 28, 2016, at 12:34 PT) https://www.sandiegouniontribune.com/2008/10/22/vermont-maine-only-states-to-let-inmates-vote/ [https://perma.cc/T5ZF-EWXE]. The Council of Censors was a "now-defunct fourth branch of government that met every seven years to decide constitutional questions." Id.

[196] See supra note 58.

[197] Manza & Uggen, Locked Out, supra note 11, at 31 ("When the Fourteenth Amendment was adopted, disenfranchisement applied only to those convicted of felonies at common law, a far more limited class of offenses than the modern conception of 'felony.'").

of crimes as of 1870.[198] Yet several of these states now disenfranchise individuals for crimes well beyond that narrow set.[199] A challenge to Virginia's disenfranchisement scheme based on this theory recently prevailed in federal district court.[200]

Ultimately, regardless of whether state courts determine that their constitutions allow for certain grounds for disenfranchisement, they should engage with this analysis primarily on the basis of their own state constitutional texts, histories, and interpretive traditions, instead of deferring to federal law. When read alongside state voting rights protections, enumerated state constitutional exclusions can readily be understood as setting the outer limits of state disenfranchisement. And where state actors overstep those bounds to exclude swaths of people beyond the terms of the state's constitution, state court claims may offer a path for reining in that disenfranchisement creep.

III. DE FACTO DISENFRANCHISEMENT CREEP

A second way in which state actors appear to be exceeding the bounds of their constitutions is via policies and practices that unduly deprive those who supposedly have the right to vote from exercising that right in practice. This phenomenon of de facto disenfranchisement creep impacts a wide range of individuals involved in criminal or competency proceedings, including those who are in jail pre-conviction, those convicted of crimes that do not result in disenfranchisement, those who have had or are eligible to have their right to vote restored post-conviction, or those under guardianship or competency-related orders who nevertheless retain the right to vote.[201] Such individuals should be able to vote but are often directly or indirectly denied the ability to exercise that right in practice.

The phenomenon of de facto disenfranchisement has been detailed elsewhere, including by Professors Allen and Sobol.[202] But it has not

[198] Franita Tolson, "In Whom Is the Right of Suffrage?": The Reconstruction Acts as Sources of Constitutional Meaning, 169 U. Pa. L. Rev. Online 211, 214 (2021).

[199] Id.

[200] See King v. O'Bannon, No. 23-cv-00408, 2026 WL 172624 (E.D. Va. Jan. 22, 2026).

[201] See Sobol, supra note 14, at 307–12; Mo. Prot. & Advoc. Servs., Inc. v. Carnahan, 499 F.3d 803, 811 (8th Cir. 2007) (noting that election officials denied the plaintiff the right to vote even though his guardianship order "expressly provided that [he] retained the right to vote").

[202] See generally Allen, supra note 28; Sobol, supra note 14.

been explored through the lens of state constitutional voting rights. While federal courts have taken a relatively deferential approach to state laws and policies that hinder the right to vote,[203] many state courts hold state actors to a higher standard when they engage in acts that may hinder the full exercise of that right.[204] This difference in understanding is key when it comes to de facto disenfranchisement, because those who face such disenfranchisement technically do have the right to vote. As discussed in Section I.B, state constitutions generally confer the right to vote on a broad group of people, subject to specific, enumerated exceptions. Under this framework, anyone who is not validly excluded under disenfranchisement laws should, in theory, be entitled to the same voting rights protections under the state constitution as anyone else with the right to vote. Where state courts are highly protective of that right, constitutional claims in state court can be utilized to walk back harmful de facto disenfranchisement creep and can even be a tool for requiring the state to affirmatively facilitate the right to vote for those impacted.

This Part first provides an overview of certain types of de facto disenfranchisement that may be vulnerable to being challenged via state constitutional claims. The following Section then turns to the viability of state constitutional claims as a way to challenge these actions. The success of such claims will be highly dependent on how robustly a state court interprets the right to vote under its constitution, but many state courts already have precedent suggesting far more robust protection of this right than federal law affords.[205]

A. Overview of De Facto Disenfranchisement Creep

This Section provides an overview of two broad types of de facto disenfranchisement that can constitute state constitutional violations:

[203] See Richard L. Hasen, The Stagnation, Retrogression, and Potential Pro-Voter Transformation of U.S. Election Law, 134 Yale L.J. 1673, 1678–79 (2025) (noting how recent Supreme Court election-related decisions have been "state-protective," resulting in more restrictive voter laws); Douglas, The Right to Vote, supra note 20, at 98–100 (exploring various ways in which the Supreme Court has made it more difficult for plaintiffs to vindicate their voting rights under federal law); Sobol, supra note 14, at 330–34 (discussing hurdles to de facto disenfranchisement claims under the Federal Constitution); cf. Edward B. Foley, Voting Rules and Constitutional Law, 81 Geo. Wash. L. Rev. 1836, 1839–40 (2013) (discussing "indeterminacy" and lack of clear guidelines in voting rights cases).

[204] See Lau, supra note 190.

[205] See id.; see also infra notes 257–64 and accompanying text.

(1) direct denial of the right to vote to those who have it and (2) chilling the right to vote via misinformation or a lack of information. In doing so, it compiles examples involving criminal disenfranchisement that have already appeared elsewhere[206] and synthesizes these with more recent examples and examples from the competency context.

1. Denial of the Right to Vote to Those Who Have It

One type of de facto disenfranchisement creep involves states denying the right to vote to those who technically retain or have regained that right. This category includes state officials improperly denying voter registration applications, requiring documentation for re-enfranchisement that is difficult or impossible to obtain, providing incorrect information to those seeking to vote, and turning voters away from the polls. These practices affect those who never lost the right to vote to begin with and those who have supposedly regained the right to vote or should, in theory, be eligible to do so.

First, incorrect administration of disenfranchisement laws can erroneously deprive the right to vote from those who never became ineligible. A study conducted by the ACLU and the Brennan Center in the 2000s compiling interviews of election officials in fifteen different states found widespread confusion among election officials about the basic voter eligibility rules and registration procedures for people with criminal convictions.[207] In Ohio, for example, where individuals are disenfranchised only for felony—not misdemeanor—convictions,[208] thirty percent of local election officials interviewed in 2008 "responded incorrectly or expressed uncertainty about whether or not individuals with misdemeanor convictions could vote."[209] Similarly, in some Alabama counties in 2008, "persons with misdemeanor convictions were advised that they were ineligible to vote, even though Alabama law

[206] See generally Allen, supra note 28 (describing the practice of "documentary disenfranchisement," wherein officials demand nonexistent voting eligibility documents from people with criminal convictions); Sobol, supra note 14 (detailing confusing voting rights restoration requirements and physical barriers preventing individuals from exercising their right to vote); Wood & Bloom, supra note 146 (describing confusion among election officials, resulting misinformation, and bureaucratic practices as de facto barriers to the exercise of voting rights by those with criminal convictions).

[207] Wood & Bloom, supra note 146, at 1–2.

[208] Ohio Const. art. V, § 4.

[209] Wood & Bloom, supra note 146, at 3.

does not bar such individuals from voting."[210] And in Colorado, where, at the time, those on probation were allowed to vote but those on parole were not,[211] interviews in 2004 and 2007 showed that half of the local officials interviewed did not know that those on probation could vote.[212] On the competency side, election officials meanwhile may make mistakes when deciphering whether a court order on competency or guardianship bars voting. For example, the Kansas City Election Board advised a voter in 2004 "that he was not eligible to vote because he was under a guardianship order"—despite the fact that "the order expressly provided that [he] retained the right to vote."[213] He was not allowed to vote in the 2004 election.[214]

Similarly, misinformation about re-enfranchisement processes and policies can lead to de facto disenfranchisement of those who have supposedly regained the right to vote or should, in theory, be eligible to do so. For example, even after Alabama codified a list of felonies involving moral turpitude,[215] some local officials denied voting registration applications from individuals who were convicted of felonies that were not on that list, incorrectly telling them they needed to pay off legal financial obligations before they could vote.[216] Another way this occurs is through what Professor Jessie Allen calls "documentary disenfranchisement": a process in which election officials deny applications from those who should be eligible to re-register to vote and demand additional documents, which "are always burdensome to obtain, and that, in many cases, are entirely fictional, unavailable by law, or available only as a matter of pure official discretion."[217] This practice can convert temporary disenfranchisement laws into permanent disenfranchisement for many individuals. In a series of interviews with each county election board in New York in 2002 and 2003, for example, Allen found that officials in almost half of the counties demanded

[210] McCrary, supra note 136, at 11.

[211] Wood & Bloom, supra note 146, at 3. As discussed further below, the Colorado legislature passed a bill in 2019 that restored the right to vote to those convicted of felonies once they are no longer incarcerated, even if they are still on parole. H.R. 19-1266, 72d Gen. Assemb., 1st Reg. Sess. (Colo. 2019).

[212] Wood & Bloom, supra note 146, at 3.

[213] Mo. Prot. & Advoc. Servs., Inc. v. Carnahan, 499 F.3d 803, 811 (8th Cir. 2007).

[214] Id.

[215] See supra notes 135–43 and accompanying text.

[216] See Sheets, supra note 140.

[217] Allen, supra note 28, at 394.

documentation showing that a person with a felony conviction had completed their sentence, despite the lack of any statutory requirement for such individuals to document eligibility.[218] Additionally, some of the documents that officials asked for "were entirely fictional," while others are only rarely provided and are only ever available to certain individuals with multiple felony convictions.[219] In response to these findings, the New York State Board of Elections issued a memo to all county commissioners directing them to change practices and clarifying that "everyone who presents themselves to register, completes the [registration] form and signs the affidavit, is presumed to be eligible and should be registered."[220] But in 2006 interviews, according to the ACLU and Brennan Center study, the situation had not resolved—more than a third of the local election offices continued to require documentation.[221]

Even in states with relatively straightforward re-enfranchisement laws, misinformation persists. In Wisconsin, for example, the right to vote is automatically restored once someone completes their entire sentence, including parole.[222] But when one woman who had fully completed her sentence went to vote, an election clerk threatened to charge her with a felony.[223] And in New Mexico, where the legislature enacted a law in 2023 allowing anyone convicted of a felony to vote as long as they are no longer incarcerated, election officials ahead of the 2024 general election repeatedly denied online voter registration applications from those who had previously been convicted of felonies and were no longer incarcerated.[224] (A lawsuit challenging this practice is discussed further below.[225])

In these states and others, state laws and policies do not necessarily extend beyond the scope of state constitutional provisions—rather, bureaucratic practices and misinformation lead to de facto disenfranchisement in a way that extends both beyond state law and

[218] Id. at 417.

[219] Id.

[220] Id. at 419 (alteration in original) (quoting Memorandum from N.Y. State Bd. of Elections to Cnty. Comm'rs (Oct. 29, 2003)).

[221] Wood & Bloom, supra note 146, at 6.

[222] Wis. Stat. § 304.078(1)(a), (3) (2023–24).

[223] Joe Tarr, Wisconsinites Who Lost Voting Rights After Felonies Share What Voting Means to Them, Wis. Pub. Radio (Jan. 14, 2025, at 13:45 ET), https://www.wpr.org/news/wisconsinites-who-lost-voting-rights-after-felonies-share-what-voting-means-to-them [https://perma.cc/N39E-ZHAM].

[224] See Gill, supra note 26.

[225] See infra text accompanying notes 243–52.

state constitutions. The result is that those who should be able to vote under state law are directly deprived of that right.

2. Chilling the Right to Vote via Misinformation or Lack of Information

Even where state actors do not directly deny the right to vote by rejecting a voter registration application, turning someone away from the polls, or requesting unnecessary or fictional documentation, state-perpetuated misinformation or states' failure to provide accessible information and processes can further suppress the right to vote of those who should be able to exercise that right under state law.[226] This type of de facto disenfranchisement creep overlaps with some of the practices outlined in the preceding Subsection. However, whereas the preceding Subsection focused primarily on rights deprivation for voters who seek to register or to vote, this Subsection focuses primarily on those who are deterred from even attempting to exercise their right to vote.

First, state and local officials routinely provide incomplete or incorrect information about voter eligibility via state-provided registration forms and voter guides.[227] In Colorado, for example, the legislature passed a bill in 2019 that restored the right to vote to those convicted of felonies once they are no longer incarcerated, even if they are still on parole.[228] But three years later, some state officials were still distributing voter registration forms that failed to reflect the change.[229] The outdated form provided that "[y]ou are eligible to register to vote if you: . . . [a]re NOT serving a sentence (including parole) for a felony conviction," thereby leading eligible voters on parole to question their eligibility.[230] A 2008 ACLU study found that twenty-two states' registration forms provided "inaccurate, incomplete or misleading

[226] Cf. Shannon E. Martin & Gerry Lanosga, The Historical and Legal Underpinnings of Access to Public Documents, 102 Law Libr. J. 613, 634 (2010) (discussing the longstanding importance of public information in the context of governmental records, both to educate the public and to hold government officials accountable).

[227] See Nicole Kief, ACLU, Voting with a Criminal Record: How Registration Forms Frustrate Democracy 10 (2008), https://www.aclu.org/sites/default/files/field_document/votingwithacriminalrecord_report.pdf [https://perma.cc/HKE4-XYW7].

[228] H.R. 19-1266, 72d Gen. Assemb., 1st Reg. Sess. (Colo. 2019); Colo. Rev. Stat. § 1-1-104(49.3) (2025).

[229] Ilica Mahajan, Andrew Rodriguez Calderón, Alexandra Arriaga & Weihua Li, Paroled People Can Vote in Colorado. Why Did Forms Say They Couldn't?, The Marshall Project (Mar. 24, 2022, at 06:00 ET), https://www.themarshallproject.org/2022/03/24/paroled-people-can-vote-in-colorado-why-did-forms-say-they-couldn-t [https://perma.cc/T3BD-MWKJ].

[230] Id.

explanations of who is ineligible to vote and for how long"[231] and that eleven states' forms included "incorrect or misleading references to how voting rights are restored."[232] Such forms may contain imprecise or misleading descriptions of crimes that disqualify voters, imply that voting rights restoration is not automatic when it is, or provide inaccurate procedural information.[233] And election officials do not necessarily help clarify confusion. Tennessee, for example, has a complex rights restoration scheme that considers both the type of offense and the year of conviction and requires some eligible individuals to apply for a "Certificate of Restoration."[234] In interviews in 2007, nearly two-thirds of local election officials interviewed "could not provide the specific years and offenses that would permanently disenfranchise individuals," and "not one of the 95 election officials interviewed was able to list the four key requirements that individuals must satisfy before they can apply for a Certificate of Restoration."[235]

In addition to misinformation that deters would-be voters from seeking to register, a lack of accessible information and processes can have the same effect. For example, after the Alabama legislature enacted a law in May 2017 that recognized voter eligibility for tens of thousands of people convicted of felonies, many of those impacted were entirely unaware of the law in advance of Alabama's special election for a U.S. Senate seat, and a federal lawsuit seeking to require the state to notify affected voters was unsuccessful.[236] Even in Vermont, where those who are convicted of crimes and incarcerated do not lose the right to vote, those who are incarcerated must still request mail-in ballots and face obstacles to obtaining information about elections or navigating the voting process.[237] Meanwhile, on the rights restoration side, as Professor

[231] Kief, supra note 227, at 4.
[232] Id. at 10.
[233] Id. at 6–12.
[234] Wood & Bloom, supra note 146, at 4.
[235] Id.
[236] Thompson v. Alabama, No. 16-cv-00783, 2017 WL 3223915, at *1–2 (M.D. Ala. July 28, 2017); see also Recent Case, Thompson v. Alabama, No. 2:16-CV-783, 2017 U.S. Dist. LEXIS 118606 (M.D. Ala. July 28, 2017), 131 Harv. L. Rev. 2065 (2018) (describing the lawsuit and arguing that the court should have recognized de facto disenfranchisement as an irreparable harm).
[237] See Riley Board, What Does an Election Look Like Inside a Prison?, Burlington Free Press, https://www.burlingtonfreepress.com/story/news/politics/elections/2020/08/24/vermont-inmates-can-vote-how-elections-prison-mail-in-ballot/3326694001/ [https://perma.cc/8PCS-EAET] (last updated Aug. 24, 2020, at 13:00 ET).

Jennifer Selin has written, the process "requires that citizens have accurate information about eligibility, have the ability to allocate resources for compliance with eligibility requirements, and are able to overcome the frustration, stress, and sense of helplessness that often results from government interaction."[238] For example, in the many states where individuals are required to pay fines and fees before regaining the ability to vote, the difficulty of even determining how much one owes can pose a significant hurdle to obtaining the right to vote[239] (beyond the additional burden of whether one is able to pay, which others have written about more extensively[240]). In Florida, for example, a "district court found that 'even with a team of attorneys and unlimited time, the State has been unable to show how much each plaintiff must pay to vote under the State's view of the law.'"[241]

The result of these various informational and bureaucratic hurdles is that countless individuals who should be able to exercise the right to vote both under state statutes and state constitutions are deterred from doing so in practice.

B. Challenging De Facto Disenfranchisement Creep

Although de facto disenfranchisement has been discussed elsewhere, it has not been fully analyzed through the lens of state constitutional voting rights. And federal disenfranchisement litigation has met significant hurdles, spurring some commentators to favor suggestions for legislation rather than litigation as a tool of reform.[242] To be sure, legislation has many benefits as a general matter, but the idea that litigation is a dead end overlooks the fact that state constitutional voting rights provisions may offer a far more robust way to challenge de facto

[238] Selin, supra note 102, at 1002.

[239] See, e.g., Jones v. DeSantis, 462 F. Supp. 3d 1196, 1250 (N.D. Fla.) ("The requirement to pay, as a condition of voting, amounts that are unknown and cannot be determined with diligence is unconstitutional."), *rev'd and vacated en banc sub nom.*, Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020) (reversing trial court's determination that requirement to pay violated Fourteenth Amendment and Twenty-Fourth Amendment), *and aff'd*, 15 F.4th 1062 (11th Cir. 2021) (affirming trial court's rejection of plaintiffs' claim that requirement to pay was discriminatory against women of color under Equal Protection Clause and Nineteenth Amendment).

[240] See generally Colgan, supra note 13; Morse, supra note 134, at 1182–92.

[241] Morse, supra note 134, at 1195 (quoting *Jones*, 462 F. Supp. 3d at 1208).

[242] See Allen, supra note 28, at 412 ("[A]fter the most recent round of federal court losses, felony disenfranchisement appears doctrinally untouchable . . . ."); see also supra note 49.

disenfranchisement creep than federal law currently allows. Such litigation can potentially be utilized both to halt unlawful practices and to require the state to take affirmative steps to better facilitate voting rights.

Under the overarching framework discussed in Section I.B, state constitutions generally confer the right to vote on a broad group of people, subject to specific, enumerated exceptions. Under this framework, anyone who is not validly excluded under disenfranchisement laws should, in theory, be entitled to the same voting rights protections under the state constitution as anyone else with the right to vote. In other words, if someone is not validly excluded, then they have the right to vote as it is understood in their state. Those who are facing de facto disenfranchisement through additional procedural hurdles or outright denials of their voter registration applications may therefore be able to bring claims under state constitutional voting rights provisions, claiming that their right to vote—which, remember, they still have—is being unconstitutionally abridged. And, importantly, many state courts interpret their state constitutions as conferring more robust protection than the U.S. Constitution, thereby offering this avenue as a promising alternative to the watered-down protections and steep procedural hurdles of federal constitutional claims.

A recent New Mexico lawsuit illustrates this approach. The lawsuit, filed in September 2024, claimed that county clerks were denying online and mail voter registrations from people with past felony convictions, despite the fact that voting rights in New Mexico are restored upon release from prison.[243] Plaintiffs alleged that clerks were requiring individuals with felony convictions to appear in person to prove that they were not actively incarcerated, whereas other voters were able to register remotely.[244] It further alleged that the denial letters sent in response to attempts to register online or via mail explained that the rejected voters were "[n]ot [e]ligible" because they "have been incarcerated for a felony," thereby leading potential voters "to erroneously believe that having a felony or having been incarcerated

[243] Complaint for Declaratory Relief & Injunctive Relief at 1, Millions for Prisoners N.M. v. Oliver, No. D-101-CV-2024-02341 (N.M. 1st Jud. Dist. Ct. Sep. 26, 2024) [hereinafter *Oliver* Complaint], https://campaignlegal.org/sites/default/files/2024-09/Millions%20for%20Prisoners%20New%20Mexico%20v.%20Toulouse%20Oliver%20Complaint.pdf [https://perma.cc/9NXH-DNAV].

[244] Id. at 4–5, 18.

means they can never vote again."[245] The plaintiffs argued that the challenged policies "amount to outright denials of, or at least severe restrictions on, the right to vote" and therefore should be found to be unconstitutional.[246]

The plaintiffs' claims centered in part on the New Mexico Constitution, which grants the right to vote to all citizens who meet various residency and registration requirements, "except as restricted by statute either by reason of criminal conviction for a felony or by reason of mental incapacity."[247] Because the legislature had enacted a law "remov[ing] almost all statutory restrictions on the right to vote for individuals with felony convictions" who were no longer incarcerated,[248] such individuals were no longer "restricted by statute"[249] from voting. The plaintiffs therefore argued for the state courts to apply New Mexico's robust understanding of the right to vote under the state constitution, which typically involves applying strict scrutiny to restrictions on voting rights.[250] The parties reached a stipulated agreement on the case in October 2024,[251] so the court did not directly analyze the state constitutional claims (at least so far[252]), but the case

[245] Id. at 5.

[246] Plaintiffs' Emergency Motion for Temporary Restraining Order & Preliminary Injunction & Memorandum of Law in Support at 17, Millions for Prisoners N.M. v. Oliver, No. D-101-CV-2024-02341 (N.M. 1st Jud. Dist. Ct. Oct. 1, 2024) [hereinafter *Oliver* Emergency Motion], https://campaignlegal.org/sites/default/files/2024-10/24.10.01%20Plaintiffs%20Emergency%20Motion%20for%20TRO%20and%20Preliminary%20Injunction.pdf [https://perma.cc/X9P3-UCPL].

[247] *Oliver* Complaint, supra note 243, at 16 (quoting N.M. Const. art. VII, § 1(A)).

[248] Id. at 17.

[249] N.M. Const. art. VII, § 1(A).

[250] *Oliver* Emergency Motion, supra note 246, at 17 (quoting Grisham v. Van Soelen, 2023-NMSC-027, ¶ 59, 539 P.3d 272).

[251] Stipulated Order Resolving Plaintiffs' Motion for a Temporary Restraining Order & Preliminary Injunction, Millions for Prisoners N.M. v. Oliver, No. D-101-CV-2024-02341 (N.M. 1st Jud. Dist. Ct. Oct. 8, 2024) [hereinafter *Oliver* Stipulated Order], https://campaignlegal.org/sites/default/files/2024-10/D101CV2024-02341%20Order%20Resolving%20TRO%20and%20Preliminary%20Injunction10082024075117916_0001.pdf [https://perma.cc/8BVA-36YT].

[252] An amended complaint filed in March 2025 alleges that several county clerks have failed to implement the New Mexico Secretary of State's updated guidance, meaning "dozens of eligible voters" were "denied the right to register and vote" in the November election. Amended Complaint for Declaratory & Injunctive Relief at 8, Millions for Prisoners N.M. v. Oliver, No. D-101-CV-2024-02341 (N.M. 1st Jud. Dist. Ct. Mar. 18, 2025), https://campaignlegal.org/sites/default/files/2025-03/25.03.18%20Amended%20Complaint.pdf [https://perma.cc/8TLK-3KWR]. The case was still pending as of publication.

illustrates how this type of claim can be used to challenge de facto disenfranchisement practices.

Notably, this type of claim can both be used to halt unlawful state practices (like improper denials) and to require the state to affirmatively act to remedy de facto disenfranchisement. In the stipulated order in the New Mexico case, for example, the court ordered the state to improve record-sharing between the Department of Corrections and the Secretary of State's office in a way that would better facilitate proper registration of voters.[253] Additionally, a few state constitutions contain language more strongly suggesting that the state has an affirmative duty to facilitate rights restoration.[254] Rhode Island's constitution, for example, provides that "[n]o person who is incarcerated in a correctional facility upon a felony conviction shall be permitted to vote until such person is discharged from the facility," but, "[u]pon discharge, such person's right to vote *shall be restored*."[255] This provision could be understood as affirmatively requiring the state to restore the person's voting rights in a way that is actually effective, rather than solely in theory. Although this understanding has not been tested in court, Rhode Island does in fact have an affirmative rights-restoration process: when someone convicted of a felony is released from incarceration and thereby regains the right to vote, "the department of corrections shall notify that person in writing that voting rights will be restored, provide that person with a voter

[253] *Oliver* Stipulated Order, supra note 251, at 3–6.

[254] See, e.g., Fla. Const. art. VI, § 4 ("[A]ny disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation."); Ill. Const. art. III, § 2 ("A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence."); Cal. Const. art. II, § 2 ("An elector disqualified from voting while serving a state or federal prison term . . . shall have their right to vote restored upon the completion of their prison term."); Colo. Const. art. VII, § 10 ("[E]very such person who was a qualified elector prior to such imprisonment, and who is released therefrom by virtue of a pardon, or by virtue of having served out his full term of imprisonment, shall without further action, be invested with all the rights of citizenship, except as otherwise provided in this constitution.").

[255] R.I. Const. art. II, § 1 (emphasis added). This provision was amended via a ballot measure in 2006 to provide for restoration upon discharge from a correction facility instead of completion of an entire sentence, including probation and parole. H.R.J. Res. 6579, 2005 Gen. Assemb., Jan. Sess. (R.I. 2005); see also Voting Rights Restoration Efforts in Rhode Island, Brennan Ctr. for Just. (Apr. 20, 2018), https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-rhode-island [https://perma.cc/PG35-R33G] (discussing the history of the constitutional amendment).

registration form and a declination form, and offer that person assistance in filling out the appropriate form."[256] The department then must send the completed voter registration form to the relevant election officials where the registrant resides, unless the registrant "refuses to permit it to do so."[257]

As with challenges to de jure disenfranchisement creep, these claims can run into hurdles based on how state courts approach constitutional interpretation—in particular, the infiltration of federal law into state court interpretation. But the interpretive issues are slightly more complex when it comes to de facto disenfranchisement creep. Whereas challenges based on de jure disenfranchisement creep involve asking whether someone can be explicitly excluded from the right to vote, challenges involving de facto disenfranchisement creep often require a more complex analysis of whether the state is unduly burdening the right to vote. In other words, those who face de facto disenfranchisement do technically have the right to vote, so the question is whether the state's actions have nevertheless deprived them of or unduly burdened that right.

The specifics of that analysis vary widely state to state. On the least protective end, some state courts lockstep their understanding of voting rights under their state constitutions to the U.S. Supreme Court's interpretation of voting rights under the U.S. Constitution's Equal Protection Clause.[258] Although the federal right to vote initially gained robust recognition under the Warren Court, it has since been watered down.[259] In particular, under the *Anderson-Burdick* balancing test adopted via two Supreme Court cases in the 1980s and 1990s, federal courts only apply strict scrutiny to a voting regulation if the challenged regulation imposes a "severe" restriction on voters.[260] If it does not, then courts apply a more lenient approach that involves balancing a state's interests in enacting a regulation with the extent of the burden on the voter[261]—an assessment that frequently amounts to nothing more than

[256] 17 R.I. Gen. Laws § 17-9.2-3(c) (2026).

[257] Id.

[258] See Douglas, The Right to Vote, supra note 20, at 106 (finding that, as of 2014, "[l]ockstepping [was] fairly common with regard to the right to vote").

[259] See id. at 98; Hasen, supra note 203, at 1684–91 (chronicling doctrinal setbacks in voter protection).

[260] See Burdick v. Takushi, 504 U.S. 428, 434 (1992) (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)); Anderson v. Celebrezze, 460 U.S. 780, 793 (1983).

[261] *Burdick*, 504 U.S. at 434 (citing *Anderson*, 460 U.S. at 788).

rational basis review.[262] This test has been criticized as being both overly lenient and indeterminate, leading to inadequate protection of the federal right to vote.[263] Thus, in states where courts interpret their voting rights provisions in lockstep with the U.S. Constitution or with outsized deference to federal precedent, claims challenging de facto disenfranchisement creep may face steeper hurdles.[264]

Above and beyond the critiques of the *Anderson-Burdick* framework, however, claims challenging de facto disenfranchisement have faced additional hurdles in federal courts under existing jurisprudence. For one, federal courts have erected substantial evidentiary hurdles to such claims brought under the Equal Protection Clause.[265] For example, several U.S. Supreme Court cases recognized that those in detention who retained the right to vote could bring equal protection challenges if denied that right in practice, but "a detainee had to show that the law denied an absentee ballot; that the detainee submitted a ballot; and that upon rejection of the ballot, [the detainee] made and was denied requests for alternative methods of voting."[266] Additionally, federal courts frequently do not treat the voting rights of those convicted of crimes—particularly felonies—on par with the voting rights of others. Because federal courts have concluded that the right to vote is not "fundamental" for those convicted of felonies, they routinely only apply rational basis

[262] See Jessica Bulman-Pozen & Miriam Seifter, State Constitutional Rights and Democratic Proportionality, 123 Colum. L. Rev. 1855, 1917 (2023) (arguing that the *Anderson-Burdick* test "has come to function as a sort of rational basis review"); Joshua A. Douglas, Undue Deference to States in the 2020 Election Litigation, 30 Wm. & Mary Bill of Rts J. 59, 62 (2021) [hereinafter Douglas, Undue Deference to States] (arguing that courts have given "undue deference" to states under *Anderson-Burdick* in a way that "devalues the right to vote"). Courts have, at other times, described *Anderson-Burdick* as a sliding-scale test, but federal courts in recent years have frequently opted for the two-track version. See Lau, supra note 190.

[263] Douglas, The Right to Vote, supra note 20, at 98–99 (referring to *Anderson-Burdick* as a "lenient balancing test"); Douglas, Undue Deference to States, supra note 262, at 60 ("[T]here is little federal judicial protection for the constitutional right to vote."); Foley, supra note 203, at 1839 ("Currently prevailing Fourteenth Amendment jurisprudence lacks clear guidelines for determining when a state's administration of the voting process violates federal constitutional law."); Hasen, supra note 203, at 1691 ("[E]qual-protection challenges to election-administration rules have proceeded asymmetrically.").

[264] According to a fifty-state survey from February 2025, only two states—Wisconsin and Texas—had "supreme court precedent that directly embraces weak-form federal *Anderson-Burdick* review for adjudicating state constitutional right-to-vote challenges to restrictive voting laws." Lau, supra note 190.

[265] See supra note 49 and accompanying text.

[266] Sobol, supra note 14, at 331.

review to claims brought by such individuals.[267] This sets the bar of review for these cases in federal courts even lower than the supposed sliding scale in *Anderson-Burdick*. Neither of these aspects—not the high evidentiary hurdles nor the low standard of review—are necessarily elements of voting rights adjudication under *state* constitutions. And, for the reasons outlined in Section I.B and throughout this Article, such hurdles would be out of sync with the structure and democratic commitments of state constitutions. Thus, even in states that utilize the *Anderson-Burdick* framework, de facto disenfranchisement claims should warrant a closer look than federal courts typically afford.

Claims are, however, most likely to succeed in states where courts have adopted or are open to a state-centric approach to constitutional interpretation—an approach that has gained ground in recent years.[268] Instead of the unduly deferential, rational-basis-type review of federal courts, many states apply a version of strict scrutiny to restrictions on voting rights under their state constitutions.[269] Under New Mexico's strict scrutiny test, for example, "the burden is placed upon the state to show that the restriction of a fundamental right or the delineation of suspect classes supports a compelling state interest" and that it does so "by the least restrictive means."[270] Similarly, in Montana, legislation infringing a fundamental right "must be justified by a compelling state interest and must be narrowly tailored to effectuate only that compelling interest."[271] Other states apply tests that fall somewhere between

[267] See supra notes 39–41 and accompanying text.

[268] Douglas, The Right to Vote, supra note 20, at 119–35 (advocating for the state-centric approach); Loretta H. Rush & Marie Forney Miller, A Constellation of Constitutions: Discovering & Embracing State Constitutions as Guardians of Civil Liberties, 82 Alb. L. Rev. 1353, 1354 (2018–19) (arguing more generally for state constitutionalism); Robert F. Utter & Sanford E. Pitler, Presenting a State Constitutional Argument: Comment on Theory and Technique, 20 Ind. L. Rev. 635, 638 (1987) ("Undoubtedly, a resurgence has occurred in the amount of attention paid to, and the importance of, state constitutions."); William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489, 502–03 (1977); see also Paul H. Anderson & Julie A. Oseid, A Decision Tree Takes Root in the Land of 10,000 Lakes: Minnesota's Approach to Protecting Individual Rights Under Both the United States and Minnesota Constitutions, 70 Alb. L. Rev. 865, 879 (2007) (discussing various interpretive approaches).

[269] See Lau, supra note 190; see also supra notes 258–62 and accompanying text (describing the federal standard of review).

[270] Marrujo v. N.M. State Highway Transp. Dep't, 887 P.2d 747, 751 (N.M. 1994).

[271] Planned Parenthood of Mont. v. State, 2024 MT 178, ¶ 25, 417 Mont. 457, 554 P.3d 153 (quoting Armstrong v. State, 1999 MT 261, ¶ 34, 296 Mont. 361, 989 P.2d 364), *cert. denied*, 145 S. Ct. 2627 (2025).

Anderson-Burdick and strict scrutiny.[272] Under these heightened tests and others like them, claims of de facto disenfranchisement creep are far more likely to succeed than under the highly deferential standards of current federal voting rights precedents.[273]

This more rights-protective approach is also entirely consistent with both the federal and state constitutions, lending strong support to its adoption even more widely. In particular, Professor Joshua Douglas has argued that state courts should reject lockstepping in the voting rights realm given the different constitutional frameworks involved.[274] For one, as detailed above, state constitutions contain express voting rights provisions, whereas the U.S. Constitution does not.[275] Additionally, as noted in Section II.B, the U.S. Constitution explicitly points to state law for voter eligibility rules.[276] Further, Douglas argues that "the right to vote is so foundational to our democratic system that it deserves the most robust protection possible."[277] In short, states are free to interpret their voting rights provisions as providing more robust protections than federal law, and, moreover, that interpretive approach is more consistent with the text, context, and history of both the Federal Constitution and state constitutions.

In state courts that are open to this approach, claims challenging de facto disenfranchisement creep via misinformation, denials of voter

[272] See Lau, supra note 190 (identifying twenty-two states "with at least some precedent that affirmatively points toward the application of strict scrutiny to restrictive voting laws" as of February 2025 and another twenty states where "at least some precedent affirmatively points toward a standard of review that, if not formally strict, would be more stringent than weak-form federal *Anderson-Burdick* review"); see also, e.g., Vet Voice Found. v. Hobbs, 564 P.3d 978, 988–89 (Wash. 2025) (en banc) ("Given the uncertainty of the *Anderson-Burdick* framework, we decline to adopt it at this time. We conclude that laws that are alleged to burden the right to vote must be carefully examined to determine what level of scrutiny is appropriate. If a law imposes a heavy burden on the right, it is properly subject to strict scrutiny. If the law imposes a lesser burden, a lesser degree of scrutiny is required.").

[273] Cf. Douglas, Undue Deference to States, supra note 262, at 60 (explaining that many voting rights plaintiffs in the lead-up to the 2020 election lost due to unduly deferential standards applied by federal courts).

[274] Douglas, The Right to Vote, supra note 20, at 119–35.

[275] See supra Section I.B; see also Douglas, supra note 20, at 123 ("It is incongruent to lockstep a state's more specific voting rules with a completely different provision of the U.S. Constitution that actually says nothing specifically about the right to vote.").

[276] See supra note 187 and accompanying text.

[277] Douglas, The Right to Vote, supra note 20, at 120. Douglas also argues that "the history of the constitutional structure for voting rights portends a greater role for state definitions of the right to vote" and that "lockstepping goes against the ideal of judicial federalism." Id. at 122.

registration applications, and other practices may be more likely to succeed than in federal court. To be sure, the remedial effect of litigation aimed at de facto disenfranchisement may be limited. Much de facto disenfranchisement stems from confusion or lack of resources on the part of voters, which can be difficult to remedy via orders directed at the state. Additionally, the decentralized nature of election administration in the United States can make these issues difficult to remedy in a consistent way. For example, in the New Mexico case discussed above, plaintiffs filed an amended complaint in March 2025 alleging that several county clerks failed to implement the secretary of state's updated guidance in the wake of the court's stipulated order, meaning "dozens of eligible voters" were "denied the right to register and vote" in the November election.[278] Despite these challenges, however, state constitutions offer a much more promising alternative than federal law for reining in de facto disenfranchisement creep, thereby offering at least some measure of accountability for state officials.

CONCLUSION

Analyzing existing state disenfranchisement schemes requires far more attention to state constitutions than has been dedicated thus far. With their unique texts, histories, and contexts, state constitutions provide a far more robust way to challenge overreaching disenfranchisement practices than federal law currently allows. And state courts may have at their disposal a wide range of options for addressing voting rights violations, from the possibility of monetary damages for improper deprivation of the right to vote[279] to orders requiring state officials to affirmatively facilitate the right to vote[280] to

[278] Amended Complaint for Declaratory and Injunctive Relief, supra note 252, at 8.

[279] See, e.g., Sanders v. Getchell, 76 Me. 158, 167 (1884); Wayne v. Venable, 260 F. 64, 66 (8th Cir. 1919); see also Complaint at 22–24, Ayodabo v. City of Madison, No. 2025CV003082 (Wis. Cir. Ct. Sep. 17, 2025), https://www.lawforward.org/wp-content/uploads/2025/09/Dkt.-006-Summons-Compl-202509.17.pdf [https://perma.cc/E3Z9-TFP2] (seeking monetary damages for the City of Madison's failure to count 193 absentee ballots in the November 2024 election).

[280] See, e.g., *Oliver* Stipulated Order, supra note 251; Bulman-Pozen & Seifter, supra note 262, at 1918 (discussing state court decisions requiring states "to affirmatively facilitate voting" during the COVID-19 pandemic).

even potentially allowing for claims involving non-state actors who infringe on the right to vote.[281]

To be sure, state constitutional protections are not a cure-all. Any type of litigation involves practical and financial hurdles,[282] remedies may not fully address the harms of de facto disenfranchisement,[283] and state constitutions themselves sanction a wide range of disenfranchisement. Legislation and constitutional amendments may therefore generally be more effective at achieving sweeping reform. Since 2016, at least a dozen states and Washington, D.C., have passed laws restoring the right to vote to many individuals who were previously disenfranchised,[284] and voters in California and Florida have likewise passed constitutional amendments in recent years expanding voting rights for those convicted of crimes.[285] Similar efforts are underway in Kentucky, Virginia, and elsewhere.[286]

[281] See Carlos Chèvere-Lugo, No State Actor, No Problem: State Constitutional Rights and Private Actors, 75 Syracuse L. Rev. 607, 610 (2025) (discussing "how state constitutional rights can be applied in contexts where the traditional state action requirement is absent").

[282] Sobol, supra note 14, at 334–35.

[283] See supra text accompanying note 278.

[284] Brief, Restoration of Voting Rights for Felons, Nat'l Conf. of State Legislatures (Aug. 19, 2025), https://www.ncsl.org/elections-and-campaigns/felon-voting-rights [https://perma.cc/NAC2-UCQ3].

[285] Id.; see also Cal. Legis. Analyst's Off., Proposition 17 (2020), https://lao.ca.gov/ballot/2020/Prop17-110320.pdf [https://perma.cc/8TM7-HQQX]; Fla. Dep't of State, Div. of Elections, Constitutional Amendment Petition Form for Voting Restoration Amendment (2014), https://dos.elections.myflorida.com/initiatives/fulltext/pdf/64388-1.pdf [https://perma.cc/EL3W-X7A9]. The impact of Florida's amendment was severely curtailed by subsequent legislation defining "completion of all terms of sentence" to include full payment of any restitution, fines, fees, or costs. See Morse, supra note 134, at 1184–92 (presenting data on fines and fees). Virginia voters will also take up a constitutional amendment in November 2026 that would restore the right to vote to those convicted of felonies "upon release from incarceration for that felony conviction and without further action required of him." S.J. Res. 248, 2025 Leg., Reg. Sess. (Va. 2025).

[286] See, e.g., McKenna Horsley, KY Senate Committee Backs Bill to Restore Voting Rights to Some with Felony Convictions, Ky. Lantern (Feb. 18, 2026, at 15:30 ET), https://kentuckylantern.com/2026/02/18/ky-senate-committee-backs-bill-to-restore-voting-rights-to-some-with-felony-convictions/; Charlotte Rene Woods, Spanberger Signs Bills to Send Constitutional Amendments to Voters This Year, Va. Mercury (Feb. 6, 2026, at 14:08 ET), https://virginiamercury.com/2026/02/06/spanberger-signs-bills-to-send-constitutional-amendments-to-voters-this-year/; Chris Lisinski, Effort Underway to Reinstate Voting Rights of Incarcerated Felons, WWLP (July 11, 2025, at 12:26 ET), https://www.wwlp.com/news/massachusetts/effort-underway-to-reinstate-voting-rights-of-incarcerated-felons/ [https://perma.cc/2E3P-32LT].

But where litigation can play a vital role is in ensuring that states are not overstepping existing guarantees. Via the pervasive practices of disenfranchisement creep outlined in this Article, states are perpetuating the harmful exclusion of hundreds of thousands—if not millions[287]—of people from the core mechanism of participation in democracy, despite state constitutional guarantees to the contrary. By taking state constitutions more seriously, litigators and state courts have an opportunity to rein in these unconstitutional overreaches and ensure more meaningful access to the right to vote for those on the borderlands of disenfranchisement.

[287] A comprehensive analysis of the number of people impacted is beyond the scope of this Article, and it is particularly difficult to quantify the scope of de facto disenfranchisement creep. According to one assessment by The Marshall Project, millions of formerly incarcerated people were restored the right to vote between 2016 and 2020, but no more than one in four people who were formerly incarcerated had registered to vote by the 2020 election in each state analyzed, compared to a registration rate of almost three in four eligible voters in each state among the general public. Nicole Lewis & Andrew Rodriguez Calderón, Millions of People with Felonies Can Now Vote. Most Don't Know It., The Marshall Project (June 23, 2021, at 06:00 ET), https://www.themarshallproject.org/2021/06/23/millions-of-people-with-felonies-can-now-vote-most-don-t-know-it [https://perma.cc/LY7Y-U2TJ]. Another estimate from the Campaign Legal Center suggests that as many as nineteen million people could be impacted by de facto disenfranchisement, but it is not clear how many of these people ultimately do exercise their right to vote. Restore Your Vote: I Have a Felony Conviction. Can I Vote?, Campaign Legal Ctr., https://campaignlegal.org/restoreyourvote [https://perma.cc/GL36-5RV6] (last visited Apr. 7, 2026). In addition to those impacted by de facto disenfranchisement creep, de jure disenfranchisement creep impacts those who are excluded under overbroad state laws, but a full assessment of these impacts is beyond the scope of this Article.

APPENDIX

This Appendix includes each state constitution's affirmative grant of the right to vote and its grounds for disenfranchisement (emphasized in bold). It also includes classifications based on how each state constitution handles criminal and competency-related grounds for disenfranchisement. These classifications appear in the final two columns and have four categories: constitutional text that directly strips the right to vote ("Direct"), that requires the legislature to do so ("Mandatory Leg"), that allows the legislature to do so ("Permissive Leg"), or that does not mention the ground of disenfranchisement ("Not Mentioned").

For the purposes of space and readability, this chart does not include every relevant voting rights provision. For compilations of additional relevant provisions, see Professor Joshua Douglas's articles *The Right to Vote Under State Constitutions*, which includes a table of free and equal election clauses in its appendix,[288] and *The Power of the Electorate Under State Constitutions*, which discusses the wide range of state constitutional protections for voter participation.[289] See also *The Democracy Principle*,[290] a website compiled by the State Democracy Research Initiative, which catalogues many different types of state constitutional provisions relevant to Professors Miriam Seifter and Jessica Bulman-Pozen's work describing the democracy principle that pervades state constitutions.[291]

[288] Douglas, The Right to Vote, supra note 20, at 144–49.

[289] Douglas, The Power of the Electorate, supra note 22, at 1685–1709.

[290] State Democracy Rsch. Initiative, The Democracy Principle, https://democracyprinciple.law.wisc.edu/ [https://perma.cc/7H6W-34CA] (last updated Feb. 7, 2025).

[291] See generally Bulman-Pozen & Seifter, supra note 22.

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
Alabama Ala. Const. art. VIII, § 177	Art. VIII, § 177(a): Only a 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. **Art. VIII, § 177(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.**	Direct	Direct
Alaska Alaska Const. art. V, §§ 1–2	Art. V, § 1: Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. . . . **Art. V, § 2: No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.**	Direct	Direct
Arizona Ariz. Const. art. VII, § 2	Art. VII, § 2(A): No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of eighteen years or over, and shall have resided in the state for the period of	Direct	Direct

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
	time preceding such election as prescribed by law, provided that qualifications for voters at a general election for the purpose of electing presidential electors shall be as prescribed by law. **Art. VII, § 2(C): No person who is adjudicated an incapacitated person shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.**		
Arkansas Ark. Const. art. III, §§ 1–2; Ark. Const. amend. 51, § 11	Art. III, § 1(a): Except as otherwise provided by this Constitution, any person may vote in an election in this state who is: (1) A citizen of the United States; (2) A resident of the State of Arkansas; (3) At least eighteen (18) years of age; and (4) Lawfully registered to vote in the election. Art. III, § 2: Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby such right shall be impaired or forfeited, except for the commission of a felony, upon lawful conviction thereof. Amend. 51, § 11(a): It shall be the duty of the permanent registrar to cancel the registration of voters: . . . **(4) Who have been convicted of a felony and have not discharged their sentence or been pardoned; . . .** **(6) Who have been adjudged mentally incompetent by a court of competent jurisdiction . . .**	Direct	Direct
California	Art. II, § 2(a): A United States citizen 18 years of age and resident in this State may vote.	Mandatory Leg	Mandatory Leg

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
Cal. Const. art. II, §§ 2, 4	Art. II, § 2(b): An elector disqualified from voting while serving a state or federal prison term, as described in Section 4, shall have their right to vote restored upon the completion of their prison term. Art. II, § 4: The Legislature shall prohibit improper practices that affect elections and **shall provide for the disqualification of electors while mentally incompetent or serving a state or federal prison term for the conviction of a felony.**		
Colorado Colo. Const. art. VII, §§ 1, 10	Art. VII, § 1: Only a citizen of the United States who has attained the age of eighteen years, has resided in this state for such time as may be prescribed by law, and has been duly registered as a voter if required by law shall be qualified to vote at all elections. **Art. VII, § 10: No person while confined in any public prison shall be entitled to vote; but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom by virtue of a pardon, or by virtue of having served out his full term of imprisonment, shall without further action, be invested with all the rights of citizenship, except as otherwise provided in this constitution.**	Direct	Not Mentioned
Connecticut Conn. Const. art. VI, §§ 1, 3	Art. VI, § 1: Every citizen of the United States who has attained the age of eighteen years, who is a bona fide resident of the town in which he seeks to be admitted as an elector and who takes such oath, if any, as may be prescribed by law, shall be qualified to be an elector. **Art. VI, § 3: The general assembly shall by law prescribe the offenses on conviction of which the right to be an**	Permissive Leg	Not Mentioned

State & Provision	*Constitutional Text (disenfranchisement grounds in bold)*	*Criminal*	*Competency*
	elector and the privileges of an elector shall be forfeited and the conditions on which and methods by which such rights may be restored.		
Delaware Del. Const. art. V, § 2 See also Del. Const. art. V, § 7 on election betting (not included here).	Art. V, § 2(a): Every citizen of this State of the age of 21 years who shall have been a resident thereof 1 year next preceding an election, and for the last 3 months a resident of the county, and for the last 30 days a resident of the hundred or election district in which the citizen may offer to vote, and in which the citizen shall have been duly registered as hereinafter provided for, shall be entitled to vote at such election in the hundred or election district of which the citizen shall at the time be a resident, and in which the citizen shall be registered, for all officers that now are or hereafter may be elected by the people and upon all questions which may be submitted to the vote of the people; provided, however, that . . . **no person adjudged mentally incompetent or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector; and the General Assembly may impose the forfeiture of the right of suffrage as a punishment for crime.** Art. V, § 2(b): Any person who is disqualified as a voter because of a conviction of a crime deemed by law a felony shall have such disqualification removed upon being pardoned, or after the expiration of the sentence, whichever may first occur. The term "sentence" as used in this Section shall include all periods of modification of a sentence, such as, but not limited to, probation, parole, and suspension. The provision of this subsection shall not apply to (1) those persons who were convicted of any felony of murder or manslaughter, (except vehicular	Direct (felony); Permissive Leg (other crimes)	Direct

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
	homicide); or (2) those persons who were convicted of any felony constituting an offense against public administration involving bribery or improper influence or abuse of office, or any like offense under the laws of any state or local jurisdiction, or of the United States, or of the District of Columbia; or (3) those persons who were convicted of any felony constituting a sexual offense, or any like offense under the laws of any state or local jurisdiction or of the United States or of the District of Columbia.		
Florida Fla. Const. art. VI, §§ 2, 4	Art. VI, § 2: Only a citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered. **Art. VI, § 4(a): No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.** Art. VI, § 4(b): No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.	Direct	Direct
Georgia Ga. Const. art. II, §§ 1–3	Art. II, § 1: Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the	Direct	Direct

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
	people. The General Assembly shall provide by law for the registration of electors. **Art. II, § 3(a): No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence.** **Art. II, § 3(b): No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.**		
Hawaii Haw. Const. art. II, §§ 1–2	Art. II, § 1: Every citizen of the United States who shall have attained the age of eighteen years, have been a resident of this State not less than one year next preceding the election and be a voter registered as provided by law, shall be qualified to vote in any state or local election. **Art. II, § 2: No person who is non compos mentis shall be qualified to vote. No person convicted of a felony shall be qualified to vote except upon the person's final discharge or earlier as provided by law.**	Direct	Direct
Idaho Idaho Const. art. VI, §§ 2–3	Art. VI, § 2: Every male or female citizen of the United States, eighteen years old, who has resided in this state, and in the county where he or she offers to vote for the period provided by law, if registered as provided by law, is a qualified elector. . . . **Art. VI, § 3: No person is permitted to vote, serve as a juror, or hold any civil office who has, at any place, been convicted of a felony, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense.**	Direct	Not Mentioned
Illinois	Art. III, § 1: Every United States citizen who has attained the age of 18	Direct	Not Mentioned

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
Ill. Const. art. III, §§ 1–2	or any other voting age required by the United States for voting in State elections and who has been a permanent resident of this State for at least 30 days next preceding any election shall have the right to vote at such election. . . . **Art. III, § 2: A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence**.		
Indiana Ind. Const. art. II, §§ 2, 8	Art. II, § 2(a): A citizen of the United States, who is at least eighteen (18) years of age and who has been a resident of a precinct thirty (30) days immediately preceding an election may vote in that precinct at the election. **Art II, § 8: The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.**	Permissive Leg	Not Mentioned
Iowa Iowa Const. art. II, §§ 1, 5	Art. II, § 1: Only a citizen of the United States of the age of eighteen years, who shall have been a resident of this state for such period of time as shall be provided by law and of the county in which the citizen claims the citizen's vote for such period of time as shall be provided by law, shall be entitled to vote at all elections which are authorized by law. **Art II, § 5: A person adjudged mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled to the privilege of an elector.**	Direct	Direct
Kansas Kan. Const. art. V, §§ 1–2	Art. V, § 1: Every citizen of the United States who has attained the age of eighteen years and who resides in the voting area in which he or she seeks to vote shall be deemed a qualified elector. Laws of this state relating to	Direct (felony); Permissive Leg (commitment	Not Mentioned

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
	voting for presidential electors and candidates for the office of president and vice-president of the United States shall comply with the laws of the United States relating thereto. . . . **Art. 5, § 2: The legislature may, by law, exclude persons from voting because of commitment to a jail or penal institution. No person convicted of a felony under the laws of any state or of the United States, unless pardoned or restored to his civil rights, shall be qualified to vote.**	to jail or penal institution)	
Kentucky Ky. Const. § 145	§ 145: Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and the precinct in which he or she offers to vote sixty days next preceding the election, shall be a voter in said precinct and not elsewhere. **No person who is not a citizen of the United States shall be allowed to vote in this state. The following persons also shall not have the right to vote:** **1. Persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon.** **2. Persons who, at the time of the election, are in confinement under the judgment of a court for some penal offense.** **3. Idiots and insane persons.**	Direct (treason, felony, bribery in an election, or confinement for a penal offense); Permissive Leg (high misdemeanors)	Direct
Louisiana La. Const. art. I, § 10	Art. I, § 10(A): Every person who is both a citizen of the state and of the United States, upon reaching eighteen years of age, shall have the right to register and vote, **except that this**	Permissive Leg	Permissive Leg

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
	right may be suspended for a person who is interdicted and judicially declared mentally incompetent or who is under an order of imprisonment for conviction of a felony. Art. I, § 10(B): No person who is not a citizen of the United States shall be allowed to register and vote in this state.		
Maine Me. Const. art. II, § 1	Art. II, § 1: Every citizen of the United States of the age of 18 years and upwards, **excepting persons under guardianship for reasons of mental illness,** having his or her residence established in this State, shall be an elector for Governor, Senators and Representatives, in the city, town or plantation where his or her residence has been established, if he or she continues to reside in this State; and the elections shall be by written ballot. . . .	Not Mentioned	Direct
Maryland Md. Const. art. I, §§ 1, 4	Art. I, § 1: Except as provided in Section 2A or Section 3 of this article, every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State. . . . **Art. I, § 4: The General Assembly by law may regulate or prohibit the right to vote of a person convicted of infamous or other serious crime or under care or guardianship for mental disability.**	Permissive Leg	Permissive Leg
Massachusetts Mass. Const. amend. art. III (amendments incorporated for	Amend. art. III: Every citizen of eighteen years of age and upwards, **excepting persons who are incarcerated in a correctional facility due to a felony conviction, and, excepting persons under guardianship and persons temporarily or permanently**	Direct	Direct

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
ease of reading)	**disqualified by law because of corrupt practices in respect to elections** who shall have resided within the town or district in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant governor, senators or representatives, shall have a right to vote in such election of governor, lieutenant governor, senators and representatives; and no other person shall be entitled to vote in such election.		
Michigan Mich. Const. art. II, §§ 1–2	Art. II, § 1: Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes. **Art. II, § 2: The legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.**	Permissive Leg	Permissive Leg
Minnesota Minn. Const. art. VII, § 1	Art VII, § 1: Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. . . . **The following persons shall not be entitled or permitted to vote at any election in this state:** A person not meeting the above requirements; **a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.**	Direct	Direct
Mississippi Miss. Const.	Art. XII, § 241: Every inhabitant of this state, except idiots and insane persons, who is a citizen of the United States of America, eighteen (18) years old and	Direct	Direct

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
art. XII, § 241	upward, who has been a resident of this state for one (1) year, and for one (1) year in the county in which he offers to vote, and for six (6) months in the election precinct or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and **who has never been convicted of murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy,** is declared to be a qualified elector, except that he shall be qualified to vote for President and Vice President of the United States if he meets the requirements established by Congress therefor and is otherwise a qualified elector.		
Missouri Mo. Const. art. VIII, § 2	Art. VIII, § 2: Only citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote at all elections by the people, if the election is one for which registration is required if they are registered within the time prescribed by law, or if the election is one for which registration is not required, if they have been residents of the political subdivision in which they offer to vote for thirty days next preceding the election for which they offer to vote: **Provided however, no person who has a guardian of his or her estate or person by reason of mental incapacity, appointed by a court of competent jurisdiction and no person who is involuntarily confined in a mental institution pursuant to an adjudication of a court of competent jurisdiction shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by**	Permissive Leg	Direct

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
	law from voting.		
Montana Mont. Const. art. IV, § 2	Art. IV, § 2: Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector **unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.**	Direct	Direct
Nebraska Neb. Const. art. VI, §§ 1–2	Art. VI, § 1: Every citizen of the United States who has attained the age of eighteen years on or before the first Tuesday after the first Monday in November and has resided within the state and the county and voting precinct for the terms provided by law shall, except as provided in section 2 of this article, be an elector for the calendar year in which such citizen has attained the age of eighteen years and for all succeeding calendar years. **Art. VI, § 2: No person shall be qualified to vote who is non compos mentis, or who has been convicted of treason or felony under the laws of the state or of the United States, unless restored to civil rights.**	Direct	Direct
Nevada Nev. Const. art. II, § 1	Art. II, § 1: All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; *provided*, that **no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights, and no person who has been adjudicated incompetent, unless restored to legal capacity, shall be entitled to the**	Direct	Direct

State & Provision	*Constitutional Text (disenfranchisement grounds in bold)*	*Criminal*	*Competency*
	privilege of an elector. . . .		
New Hampshire N.H. Const. pt. 1, art. 11	Pt. 1, Art. 11: All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile. **No person shall have the right to vote under the constitution of this state who has been convicted of treason, bribery or any willful violation of the election laws of this state or of the United States; but the supreme court may, on notice to the attorney general, restore the privilege to vote to any person who may have forfeited it by conviction of such offenses. . . .**	Direct	Not Mentioned
New Jersey N.J. Const. art. II, § 1, ¶¶ 3, 6–7	Art. II, § 1, ¶ 3(a): Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people . . . . **Art. II, § 1, ¶ 6: No person who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage.** **Art. II, § 1, ¶ 7: The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.**	Permissive Leg	Direct
New Mexico	Art. VII, § 1(A): Every person who is a qualified elector pursuant to the constitution and laws of the United	Permissive Leg	Permissive Leg

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
N.M. Const. art. VII, § 1	States and a citizen thereof shall be qualified to vote in all elections in New Mexico, subject to residency and registration requirements provided by law, **except as restricted by statute either by reason of criminal conviction for a felony or by reason of mental incapacity, being limited only to those persons who are unable to mark their ballot and who are concurrently also unable to communicate their voting preference. . . .**		
New York N.Y. Const. art. II, §§ 1, 3	Art. II, § 1: Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election. Art. II, § 3: No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his or her vote, shall swear or affirm before such officers that he or she has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a	Mandatory Leg	Not Mentioned

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
	compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. **The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.**		
North Carolina N.C. Const. art. VI, §§ 1–2	Art. VI, § 1: Only a citizen of the United States who is 18 years of age and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided. **Art. VI, § 2(3): Disqualification of felon. No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.**	Direct	Not Mentioned
North Dakota N.D. Const. art. II, §§ 1–2	Art. II, § 1: Only a citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident, shall be a qualified elector. . . . **Art. II, § 2: No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. No person convicted of a felony shall be qualified to vote until his or her civil rights are restored.**	Direct	Direct
Ohio Ohio Const.	Art. V, § 1: Only a citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as	Permissive Leg	Direct

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
art. V, §§ 1, 4, 6	may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. No person who lacks those qualifications shall be permitted to vote at any state or local election held in this state. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless the elector again registers to vote. **Art. V, § 4: The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.** **Art. V, § 6: No idiot, or insane person, shall be entitled to the privileges of an elector.**		
Oklahoma Okla. Const. art. III, § 1	**Art. III, § 1: Subject to such exceptions as the Legislature may prescribe,** only citizens of the United States who are over the age of eighteen (18) years and who are bona fide residents of this state are qualified electors of this state.	Not Mentioned (but text includes provision allowing for legislature to make exceptions)	Not Mentioned (but text includes provision allowing for legislature to make exceptions)
Oregon Or. Const. art. II, §§ 2–3	Art. II, § 2(1): Every citizen of the United States is entitled to vote in all elections not otherwise provided for by this Constitution if such citizen: (a) Is 18 years of age or older; (b) Has resided in this state during the six months immediately preceding the election, except that provision may be made by law to permit a person who has resided in this state less than 30 days immediately preceding the election, but who is otherwise qualified under this subsection, to vote in the election for candidates for	Direct (but allows legislature to make exceptions)	Direct

State & Provision	*Constitutional Text (disenfranchisement grounds in bold)*	*Criminal*	*Competency*
	nomination or election for President or Vice President of the United States or elector of President and Vice President of the United States; and (c) Is registered not less than 20 calendar days immediately preceding any election in the manner provided by law. **Art. II, § 3: A person suffering from a mental handicap is entitled to the full rights of an elector, if otherwise qualified, unless the person has been adjudicated incompetent to vote as provided by law. The privilege of an elector, upon conviction of any crime which is punishable by imprisonment in the penitentiary, shall be forfeited, unless otherwise provided by law.**		
Pennsylvania Pa. Const. art. VII, § 1	Art. VII, § 1: Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact. 1. He or she shall have been a citizen of the United States at least one month. 2. He or she shall have resided in the State ninety (90) days immediately preceding the election. 3. He or she shall have resided in the election district where he or she shall offer to vote at least sixty (60) days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within sixty (60) days preceding the election.	Not Mentioned	Not Mentioned
Rhode Island	Art. II, § 1: Every citizen of the United States of the age of eighteen years or over who has had residence and home	Direct	Direct

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
R.I. Const. art. II, § 1	in this state for thirty days next preceding the time of voting, who has resided thirty days in the town or city from which such citizen desires to vote, and whose name shall be registered at least thirty days next preceding the time of voting as provided by law, shall have the right to vote for all offices to be elected and on all questions submitted to the electors, except that **no person who has been lawfully adjudicated to be non compos mentis shall be permitted to vote. No person who is incarcerated in a correctional facility upon a felony conviction shall be permitted to vote until such person is discharged from the facility. Upon discharge, such person's right to vote shall be restored. . . .**		
South Carolina S.C. Const. art. II, §§ 3–4, 7	Art. II, § 3: Every citizen possessing the qualifications required by this Constitution and not laboring under the disabilities named in or authorized by it shall be an elector. Art. II, § 4: Every citizen of the United States and of this State of the age of eighteen and upwards who is properly registered is entitled to vote as provided by law. **Art. II, § 7: The General Assembly shall establish disqualifications for voting by reason of mental incompetence or conviction of serious crime, and may provide for the removal of such disqualifications. Persons who are confined in any penal institution under the judgment of a court shall not be entitled to vote.**	Direct (confinement in a penal institution); Mandatory Leg (conviction of serious crime)	Mandatory Leg
South Dakota S.D. Const. art. VII, § 2	Art. VII, § 2: Every United States citizen eighteen years of age or older who has met all residency and registration requirements shall be entitled to vote in all elections and upon all questions submitted to the voters of the state **unless disqualified**	Permissive Leg	Permissive Leg

State & Provision	*Constitutional Text (disenfranchisement grounds in bold)*	*Criminal*	*Competency*
	by law for mental incompetence or the conviction of a felony. The Legislature may by law establish reasonable requirements to insure the integrity of the vote. . . .		
Tennessee Tenn. Const. art. IV, §§ 1–2	Art. IV, § 1: Every person, being eighteen years of age, being a citizen of the United States, being a resident of the State for a period of time as prescribed by the General Assembly, and being duly registered in the county of residence for a period of time prior to the day of any election as prescribed by the General Assembly, shall be entitled to vote in all federal, state, and local elections held in the county or district in which such person resides. All such requirements shall be equal and uniform across the state, and there shall be no other qualification attached to the right of suffrage. The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box. . . . **Art. IV, § 2: Laws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes.**	Permissive Leg	Not Mentioned
Texas Tex. Const. art. VI, §§ 1–2	**Art. VI, § 1(a): The following classes of persons shall not be allowed to vote in this State:** (1) persons under 18 years of age; **(2) persons who have been determined mentally incompetent by a court, subject to such exceptions as the Legislature may make;** **(3) persons convicted of any felony, subject to such exceptions as the Legislature may make; and** **(4) persons who are not citizens of the United States.** **Art. VI, § 1(b): The legislature shall**	Direct (but allows legislature to make exceptions); Mandatory Leg (bribery, perjury, forgery, or other high crimes)	Direct (but allows legislature to make exceptions)

State & Provision	*Constitutional Text (disenfranchisement grounds in bold)*	*Criminal*	*Competency*
	enact laws to exclude from the right of suffrage persons who have been convicted of bribery, perjury, forgery, or other high crimes. Art VI, § 2(a): Every person subject to none of the disqualifications provided by Section 1 of this article or by a law enacted under that section who is a citizen of the United States and who is a resident of this state shall be deemed a qualified voter; provided, however, that before offering to vote at an election a voter shall have registered, but such requirement for registration shall not be considered a qualification of a voter within the meaning of the term "qualified voter" as used in any other Article of this Constitution in respect to any matter except qualification and eligibility to vote at an election. Art. VI, § 2(b): The Legislature may authorize absentee voting. Art. VI, § 2(c): The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence in elections from power, bribery, tumult, or other improper practice.		
Utah Utah Const. art. IV, §§ 2, 5–6	Art. IV, § 2: Every citizen of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, shall be entitled to vote in the election. Art. IV, § 5: No person shall be deemed a qualified voter of this State unless such person be a citizen of the United States. **Art. IV, § 6: Any mentally incompetent person, any person**	Direct	Direct

State & Provision	*Constitutional Text (disenfranchisement grounds in bold)*	*Criminal*	*Competency*
	convicted of a felony, or any person convicted of treason or a crime against the elective franchise, may not be permitted to vote at any election or be eligible to hold office in this State until the right to vote or hold elective office is restored as provided by statute.		
Vermont Vt. Const. ch. II, § 42	Ch. II, § 42: Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this state: You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person. Every person who will attain the full age of eighteen years by the date of the general election who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the oath or affirmation set forth in this section, shall be entitled to vote in the primary election.	Not Mentioned (except "of a quiet and peaceable behavior")	Not Mentioned (except "of a quiet and peaceable behavior")
Virginia Va. Const. art. II, § 1	Art. II, § 1: In elections by the people, the qualifications of voters shall be as follows: Each voter shall be a citizen of the United States, shall be eighteen years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this article. **No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate**	Direct	Permissive Leg

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
	authority. As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished. . . .		
Washington Wash. Const. art. VI, §§ 1–3	Art. VI, § 1: All persons of the age of eighteen years or over who are citizens of the United States and who have lived in the state, county, and precinct thirty days immediately preceding the election at which they offer to vote, except those disqualified by Article VI, section 3 of this Constitution, shall be entitled to vote at all elections. **Art. VI, § 3: All persons convicted of infamous crime unless restored to their civil rights and all persons while they are judicially declared mentally incompetent are excluded from the elective franchise.**	Direct	Direct
West Virginia W. Va. Const. art. IV, § 1	Art. IV, § 1: The citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside; but **no person** who is a minor, or **who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony or bribery in an election,** or who has not been a resident of the state and of the county in which he offers to vote, for thirty days next preceding such offer, **shall be permitted to vote while such disability continues;** but no person in the military, naval or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein.	Direct	Direct
Wisconsin Wis. Const. art. III, §§ 1–2	Art. III, § 1(2): Only a United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district who may vote in an election for national, state, or local office or at a statewide or local referendum. Art. III, § 2: Laws may be enacted:	Permissive Leg	Permissive Leg

State & Provision	***Constitutional Text (disenfranchisement grounds in bold)***	***Criminal***	***Competency***
	(1) Defining residency. (2) Providing for registration of electors. (3) Providing for absentee voting. **(4) Excluding from the right of suffrage persons:** **(a) Convicted of a felony, unless restored to civil rights.** **(b) Adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside.** (5) Subject to ratification by the people at a general election, extending the right of suffrage to additional classes.		
Wyoming Wyo. Const. art. VI, §§ 2, 5–6	Art. VI, § 2: Every citizen of the United States of the age of twenty-one years and upwards, who has resided in the state or territory one year and in the county wherein such residence is located sixty days next preceding any election, shall be entitled to vote at such election, except as herein otherwise provided. Art. VI, § 5: No person shall be deemed a qualified elector of this state, unless such person be a citizen of the United States. **Art. VI, § 6: All persons adjudicated to be mentally incompetent or persons convicted of felonies, unless restored to civil rights, are excluded from the elective franchise.**	Direct	Direct