

Getting By

Economic Rights and Legal Protections for People with Low Income

Helen Hershkoff
Stephen Loffredo

© Helen Hershkoff & Stephen Loffredo 2020. All rights reserved.

Oxford University Press has given permission to ClassAct HR73 to circulate this pamphlet, adapted from Chapter 10 of *Getting By: Economic Rights and Legal Protections for People with Low Income*, at no cost to persons and groups interested in achieving free, fair, and open elections in the United States.

No part of this publication otherwise may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior permission in writing of Oxford University Press.

ClassACT (Class—Achieving Change Together) HR73 is a registered 501(c)(3) initiative of members of the Harvard-Radcliffe Class of 1973.

10

The Right to Vote

Introduction

Does the federal Constitution guarantee a citizen the right to vote regardless of income or economic status?

Yes. The U.S. Supreme Court has held that the federal Constitution guarantees poor people the same right to vote as other citizens, and prohibits states from conditioning that right on property ownership, ability to pay poll taxes, or other criteria related to economic status.¹ The federal Constitution secures the right to vote on behalf of “qualified voters . . . in conformity to the requirements of state law,” subject to federal regulation.² Early in the nation’s history, states limited the franchise to white men who owned property,³ and barred other citizens from voting.⁴ Amendments to the federal Constitution have made it impermissible to condition the right to vote on a citizen’s financial status, race, or gender.⁵ The first federal expansion of the franchise came after the Civil War, when men of color, until then generally treated as property, were given the same voting rights as white men: the Fifteenth Amendment, ratified in 1870, extended the vote in state and federal elections to all male citizens, regardless of “race, color, or previous condition of servitude.”⁶ In 1920, the Nineteenth Amendment extended the vote to women.⁷ In 1924, the Citizenship Act extended the vote to any “member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.”⁸ However, property and other financial conditions continued to pose barriers to the right to vote. It was not until 1964 that the Twenty-Fourth Amendment secured the right to vote regardless of the ability “to pay any poll tax or other tax.”⁹ In addition, in 1971, the Twenty-Sixth Amendment extended the right to vote to citizens age 18 or older.¹⁰ The Constitution gives Congress the power to enforce the voting rights guaranteed by these amendments, and Congress has used that authority to enact legislation that is supposed to protect the right to vote. Of most importance, the Voting Rights Act of 1965 bars any “voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color.”¹¹ The Help America Vote Act of 2002, to take another example, requires the states to make

their voting equipment accessible to voters who are blind or physically disabled, or who have limited English proficiency.¹²

Despite these protections, persons with low income, and especially persons of color, continue to face barriers at the ballot box—which makes the right to vote even more important.¹³ As the U.S. Supreme Court has emphasized, “the right to exercise the franchise in a free and unimpaired manner” is critical because “it is preservative of other basic civil and political rights.”¹⁴ By voting, a citizen can improve the laws that secure the right to vote, ensure that the votes of all citizens count, and shape policy in support of social welfare, economic fairness, and individual dignity.¹⁵ This chapter surveys some of the laws that protect the right to vote, and highlights some of the many barriers that a person with low income nevertheless might face when trying to exercise the franchise.¹⁶ The U.S. Department of Justice is tasked with enforcing federal voting laws.¹⁷ Depending on the voter’s state of residence, consider contacting a state attorney general’s office or a local voter assistance organization, for example, a local League of Women Voters, for advice in dealing with unfair voting practices.¹⁸

Do citizens have to register in order to vote?

Yes. All states except North Dakota require individuals to register to vote before an election takes place.¹⁹ Seventeen states plus the District of Columbia allow “same day” registration on or before Election Day, so that qualified residents can register and then vote on the same day.²⁰

The National Voter Registration Act, enacted in 1993,²¹ makes voter registration automatic at the time that a driver’s license is renewed unless a person chooses to opt out (the act is known as the “motor voter law”).²² Moreover, when a driver updates address information with the state motor vehicle agency, the state must automatically update the driver’s voter registration record (again, unless the voter opts out).²³ The act requires states to allow voter registration by mail.²⁴ In addition, the act requires states to offer voter registration assistance at any government office that takes applications for public assistance programs²⁵ or services for the disabled (however, registering to vote is not a condition of eligibility for assistance or services).²⁶ A state may choose to designate other public agencies such as a library, unemployment office, or local school as sites where a person can register to vote.²⁷ Although voter registration has increased since the statute’s enactment, 22 states have reported that less than 3 percent of their new voter registrations were made through public assistance agencies—but in the 2016 election cycle, 25 million registration applications, accounting for one-third of all registrations, were done in a motor vehicle agency.²⁸

Can a newly arrived citizen vote in an upcoming election?

Only citizens who are residents of the state or district in which they seek to vote have a right to vote in an election in that state or district. Thus, a citizen who lives in Kansas cannot expect to vote in a school board election in Texas where the voter happens to be on vacation. The U.S. Supreme Court has held that a state may condition the right to vote on the citizen's meeting a "bona fide" residence requirement, justified as a way "to preserve the basic conception of a political community."²⁹ The validity of any waiting period to vote turns on the Court's assessment of whether the durational residence requirement is "necessary to promote a compelling governmental interest."³⁰ Under this "strict equal protection test," the Court invalidated a one-year requirement, finding that a shorter waiting period could serve the state's goals of preserving "purity" of the ballot box and a "knowledgeable voter."³¹ Election administrators are permitted to close the registration process for a brief period immediately prior to an election to prepare the lists of registered voters that must be sent to the polling places on Election Day.³²

Federal law regulates durational residence requirements for presidential elections and limits the waiting time to no more than 30 days.³³ Under the statute, a person who has recently relocated and is not able to vote in a presidential election in the current place of residence may still vote in the state of prior residence, either in person or by absentee ballot.³⁴

Can the right to vote be conditioned on payment of a "poll tax" or other fee?

No. A poll tax is a fee imposed on a person who seeks to vote and it is unconstitutional.³⁵ After adoption of the Fifteenth Amendment to the U.S. Constitution, which extended the franchise to men regardless of race, Southern states imposed poll taxes as a way to restrict voting by African Americans, and later extended the practice to exclude poor whites and Native Americans. In particular, the person seeking to vote was required to pay the poll tax in cash, but black men, many of whom worked as sharecroppers, often were cash-poor because wages typically were paid in-kind or in company scrip.³⁶ Miners and factory workers faced a similar barrier.

The Twenty-Fourth Amendment to the federal Constitution, adopted in 1964, prohibits the states and the United States from conditioning the right to vote in any federal election or primary on payment of "any poll tax or other tax."³⁷ The amendment does not eliminate the tax in state elections, and the practice persisted in Alabama, Mississippi, Virginia, and Texas.³⁸ In 1966, the

U.S. Supreme Court invalidated Virginia's poll tax (despite having upheld the law as constitutional 15 years earlier³⁹) under the Equal Protection Clause of the federal Constitution.⁴⁰ As the Court emphasized: "Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax."⁴¹ Nevertheless, as described later in this chapter, states have devised new forms of financial qualifications that burden or block low-income citizens from voting.

Do citizens who are unemployed or who receive government assistance have a right to register to vote and to vote?

The U.S. Supreme Court has never considered the specific question of whether the right to vote can be conditioned on a person's employment or source of income. But the Court has recognized that "there is no indication in the Constitution that . . . occupation affords a permissible basis for distinguishing between qualified voters within the State,"⁴² and it has emphasized that "wealth or fee paying has . . . no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned."⁴³ Congress has taken steps to encourage persons with low income to vote. In particular, the National Voter Registration Act (the "motor voter law"), discussed earlier in this chapter, authorizes states to register voters at public assistance offices, and some persons applying for assistance will be unemployed or not able to work.⁴⁴ However, practical barriers, sanctioned by law, persist.

Do citizens who reside in a district but do not own property have a right to register to vote and to vote?

The U.S. Supreme Court repeatedly has affirmed that the right to vote in general elections—including those for school boards—cannot be conditioned on property ownership or payment of taxes within the district in which the voter resides.⁴⁵ In *Kramer v. Union Free School District No. 15*, the Court struck down a New York statute that limited the vote in local school board elections to persons who owned or leased taxable real property in the school district or who had children enrolled in the district's public schools.⁴⁶ And in *Cipriano v. City of Houma*, the Court invalidated a Louisiana statute that limited the franchise in local revenue bond elections to "property taxpayers" of the district.⁴⁷ In a few limited circumstances, property-based conditions can be imposed on voters in special district elections; for example, a water district can allocate votes in an election for the board of directors according to the assessed value of each voter's land.⁴⁸ The

exception for special district elections does not justify restrictions that are based on race or ethnicity.⁴⁹

Do citizens who are homeless have the right to register to vote and to vote?

A lack of permanent housing or a fixed address in a state or district is not a ground for disenfranchisement. A person who is a citizen and a bona fide resident of the voting district has the right both to register to vote and to vote even without a fixed and permanent place to live.⁵⁰ However, in practice, a person who is homeless must hurdle many barriers when trying to register to vote or to vote because, among other things, of the difficulty of proving residence.⁵¹ Indeed, it is estimated that on average only 10 percent of homeless Americans vote.⁵²

The federal Voting Rights Act provides that a person who is homeless and may be without a current place of residence has a right to vote in a presidential election either in person or by absentee ballot in the last district of residence.⁵³ Residence for this purpose does not require a fixed address or a conventional home.⁵⁴ Rather, residence is the typical place where the person stays.⁵⁵ Documentation requirements vary. Some states will permit proof of residence in the form of a letter from a social service organization.⁵⁶ Other states require the registrant to provide a mailing address, but the person can provide the mailing address of the shelter in which the person sleeps.⁵⁷ For example, Colorado permits individuals who are homeless to use a shelter as the address for voting, but not a post office box or general delivery at the post office.⁵⁸ Some states allow a voter who is homeless to designate the office of the county clerk as the mailing address.⁵⁹ Rhode Island has enacted a “Homeless Bill of Rights” and guarantees that a person who is homeless has “the right to vote, register to vote, and receive documentation necessary to prove identity for voting without discrimination due to . . . housing status.”⁶⁰ A complaint should be lodged if a homeless person’s proof of residence is deemed insufficient and prevents the person from voting.⁶¹

Can the right to vote be conditioned on passing a literacy test?

Literacy tests are assessments used to determine whether a person can read and write English. Historically, states used literacy tests as a device to disenfranchise African Americans. The federal Voting Rights Act imposes a permanent, nationwide ban on the use of literacy tests as a condition for voting.⁶² In addition, the statute bars discrimination against persons who are members of language minorities and imposes affirmative duties on states to make the ballot accessible to

persons whose primary language is not English.⁶³ In particular, states are required to conduct bilingual elections where 5 percent or more than 10,000 persons of the voting-age citizens of a state or political subdivision are a single-language minority and cannot speak English proficiently.⁶⁴ This means that ballots and other materials must be provided in the applicable language of the relevant minority group.⁶⁵ The statute defines “language-minority” to include “persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage.”⁶⁶ To find out whether an election district must conduct bilingual elections, contact the U.S. Department of Justice, Civil Rights Division, in Washington, D.C.⁶⁷ In addition, complaints should be lodged with the Justice Department if a person with limited English proficiency is intimidated when trying to vote, or otherwise prevented from voting.⁶⁸ The integrity of elections depends on making sure that all votes are counted, including those of voters with limited English proficiency—estimated to be 5.78 million who do not receive language accommodations.⁶⁹ Various online resources may be helpful to voters in this situation.⁷⁰

Can a person who has been convicted of a felony be denied the right to vote?

The U.S. Supreme Court has held that it is constitutional for a state to deny the right to vote to a person who has been convicted of a felony—a practice called felony disenfranchisement.⁷¹ The Court based its holding on Section 2 of the Fourteenth Amendment, which bars any abridgement of the right to vote in federal elections, “except for participation in rebellion, or other crime.”⁷² In particular, the Court upheld the legality of a California statute that barred those convicted of an “infamous crime” from voting.⁷³ Nevertheless, a state’s disenfranchisement statute may be found unconstitutional if it is motivated by a desire to discriminate against racial minorities. On that basis, the Court struck down an Alabama law that was found to have been enacted with an animus against African Americans.⁷⁴ Moreover, felon-disenfranchisement statutes are vulnerable to legal challenge if their application has a disproportionate negative impact on minority voters.⁷⁵ Combined, felony disenfranchisement was estimated in 2016 to have barred 6.1 million citizens from voting.⁷⁶ Given the racialized nature of mass incarceration in the United States, the number of African Americans to have lost the right to vote is four times greater than that of non-African Americans.⁷⁷

As of 2018, all states other than Vermont or Maine bar a person who has been convicted of a felony from voting when the person is in prison,⁷⁸ and 34 states bar voting even after the convicted felon has been released from prison.⁷⁹

Two states—Iowa and Kentucky—impose a lifetime ban on voting by a person convicted of a felony, unless the government grants clemency.⁸⁰ Some states permit a person with a felony criminal conviction to apply for restoration of voting rights after completion of the sentence. However, restoration may be conditioned in some states on payment of all fees that the state has imposed in connection with the potential voter's incarceration. This includes fees for victim restitution and court fees. In addition, at least one state requires full payment of all child support that accrued during the person's prison term.⁸¹ The inability to pay these fees means that the former felon continues to be barred from voting. Challenges have been brought to some of these state laws on the ground that they are a poll tax in disguise⁸² or an impermissible form of wealth discrimination.⁸³ So far, courts that have considered the issue have held that payment of the fee is a part of discharging a felony criminal sentence rather than a condition for restoring voting,⁸⁴ a conclusion that assumes that a person with a criminal conviction does not have a constitutional right to vote. Political efforts are underway to try to reform felon disenfranchisement laws so that persons who have been released from prison or are serving probation sentences will be able to vote.⁸⁵

Can a person who has been convicted of a misdemeanor and is in jail vote?

Whether a person who has been convicted of a misdemeanor loses the right to vote depends on the state. In eight states, a person convicted of a misdemeanor cannot vote while incarcerated; some states disenfranchise only those prisoners who committed election-related misdemeanors.⁸⁶

Can a person who is in jail awaiting trial register and vote?

No state bars a person who is detained in jail awaiting trial from voting.⁸⁷ However, a person who is in jail faces practical barriers to voting because the detainee is confined and cannot vote at the local polling place. Three avenues are available:

- The jailhouse can be designated a polling place with an election official present;
- The local election agency can deliver and collect absentee ballots from those who are in the jail;

- The detainee can complete and mail an ordinary ballot, relying upon the jail's mail system, which may be unreliable.⁸⁸

Does a registered voter have to show identification papers in order to vote?

As of 2019, 35 states have laws requiring or requesting voters to show some form of identification at the polls.⁸⁹ The form of ID card that is required varies from state to state, and about half of the states require a photo ID.⁹⁰ Eighteen states require identification but permit a range of documentation,⁹¹ such as utility bills or bank statements.⁹² As many as 11 percent of eligible voters do not have government-issued photo IDs,⁹³ and the poor, people of color, seniors, the disabled, and the homeless are disproportionately affected by these policies.⁹⁴ In particular, obtaining even "free" ID cards generates significant costs that may, in practice, prevent a person who is entitled to vote from doing so.⁹⁵

Keep in mind that there is a difference between a state requesting ID and requiring ID as a condition to vote. Moreover, states differ on how they treat persons who arrive at the polls without identification. Some states allow voters to sign an affidavit of identity or poll workers to authenticate voters' identities. In seven states, voters without identification may vote on a provisional ballot. After Election Day, officials determine, using a signature check or other method, whether the voter was eligible and registered.⁹⁶ Other states use more restrictive methods of post-ballot verification; in Georgia, for example, an individual without the required identification may cast a provisional ballot, but must show acceptable identification at the county registrar's office within three days following the election to have the voted actually count.⁹⁷ One problem with provisional ballots is that they are not consistently counted,⁹⁸ so by effect those without ID cards run a high risk of being disenfranchised.

Whether a particular state's ID requirement is permissible is context-specific and depends on the form of the ID and the nature of its impact on racial minorities.⁹⁹ The U.S. Supreme Court upheld a photo-ID law that the state justified as promoting an important state interest.¹⁰⁰ However, it struck down a state requirement that a voter provide a passport, birth certificate, or other proof of citizenship both to register and on Election Day.¹⁰¹ Lower courts have disagreed whether voter ID requirements are impermissible as the equivalent of a poll tax.¹⁰² There is significant evidence that Republican state legislatures have adopted voter ID laws for the purpose of suppressing political participation by poor people and people of color.¹⁰³

What should a voter do if the voter's name has been dropped from the voting rolls?

The National Voter Registration Act (“motor voter”) provides that any voter whose name is being “purged” from a voting roll (meaning, the name is dropped) must be notified and given the opportunity to correct any errors or omissions or demonstrate eligibility.¹⁰⁴ In addition, the federal Help America Vote Act of 2002 provides that anyone can cast a provisional ballot even if the person's name does not appear on the eligible voter list, so long as they fill out an affidavit stating they are a registered voter in the jurisdiction and eligible to vote.¹⁰⁵ Thus, by law, voters who believe themselves registered and eligible to vote have the right to a provisional ballot. Provisional ballots in some elections may be determinative of the result, but they are not consistently counted; moreover, if a voter's name has been purged from the rolls, the voter's provisional ballot will not be counted.¹⁰⁶

Are employers required to give a worker “time off” to vote?

Voting usually takes place during the work day. The law varies from state to state as to whether employers must give workers time off to vote. Thirty-one states have laws requiring some time off to vote.¹⁰⁷ Most of these laws require employers to give employees two hours off if there is not a two-hour window of time outside of working hours to cast a vote. As of 2016, laws in 22 states prohibit employers from withholding pay for time spent outside of work voting (but typically only up to two hours of wages).¹⁰⁸ Seventeen states require employees to give advance notice if they plan on taking time off from work to vote,¹⁰⁹ and in 15 states, employers may specify the hours in which the employee may take time off to vote.¹¹⁰ New York has amended its election law to require three hours of paid time off to vote, provided the employee makes the request at least two days before the election—and employers are required to post notices of the right to make the request.¹¹¹ If an employer is not required to give time off, consider whether the state allows for other ways to vote that do not require taking time off from work. These methods might be: early voting; absentee voting; or mail voting.¹¹²

What accommodations are made for voters with physical disabilities to make sure they can access the voting booth?

The Voting Accessibility for the Elderly and Handicapped Act of 1984 requires each state to ensure that polling places are physically accessible to people with disabilities for federal elections.¹¹³ This act also requires that voting aids, such as

“information by telecommunications devices for the deaf,” be available at polling sites.¹¹⁴ Furthermore, the Voting Rights Act established that a blind, disabled, or illiterate voter who requires assistance may choose anyone to provide assistance, provided the aide is not the voter’s employer or an agent of the voter’s employer or union.¹¹⁵

Do citizens living in long-term care facilities have the right to vote?

Citizens living in long-term care facilities have the right to vote. Facilities of this sort include nursing homes. However, residents may face practical barriers to being able to vote, including physical impairments and a lack of transportation to the voting booth.¹¹⁶ In addition, some residents may have impaired cognitive function; only a court can determine whether a person’s mental disabilities are grounds for disenfranchisement,¹¹⁷ but at a practical level the resident may be unable to obtain assistance in securing an absentee ballot even if the state would provide one.¹¹⁸ Some states have instituted mobile voting to enable those in long-term care to vote; in addition, some states have enacted legislation to ensure that residents are not subject to undue influence when they vote.¹¹⁹

What happens to voters who are dislocated by natural disasters and climate catastrophes?

Natural disasters can have a devastating impact on the voting rights of poor and low-income people, with significant racialized effects, as illustrated by the aftershocks of Hurricane Katrina in Louisiana (2005)¹²⁰ and Superstorm Sandy in New Jersey and New York (2012).¹²¹ Many poor people were mobilized to vote,¹²² but were displaced, without a permanent home, without access to transportation or the internet, and without documentation.¹²³ These catastrophes underscore the need for communities to insist that state and local officials plan for climate contingencies and consider the need for mobile voting, absentee voting procedures, and ID requirements that are adapted to and reasonable under such circumstances.¹²⁴

Is a candidate for office required to pay a filing fee?

A candidate for office cannot be required to pay a filing fee if payment would prevent the candidate from running for office. The U.S. Supreme Court has held that it is permissible for election officials to limit the ballot to “serious” candidates; but

election officials may not screen out candidates who cannot afford to pay a ballot access fee if payment is the exclusive method by which a candidate can secure a place on the ballot.¹²⁵ (Some states, including California, permit candidates to pay filing fees in lieu of petitioning their way onto the ballot.)¹²⁶ In limiting the use of filing fees, the Court has explained that “the process of qualifying candidates . . . may not constitutionally be measured solely in dollars.”¹²⁷

Do candidates have to own property to run for office?

No. In 1970 the U.S. Supreme Court invalidated a Georgia law requiring candidates for a local school board to own property. Even though the law required only “one square inch” of property, the Court found that it lacked any valid state purpose and could not be imposed to keep landless candidates off the ballot.¹²⁸ Thus, an individual does not have to own property to run for office. As a practical matter, however, poor and low-income people who seek electoral office must hurdle extreme economic barriers in the political process.¹²⁹ Money and politics have become synonymous in American elections.¹³⁰ Corporations are permitted to spend uncapped amounts of money in election campaigns;¹³¹ consider the fact that political action campaigns contributed \$1 billion in a five-year period on federal elections, with 60 percent of the money coming from 195 contributors.¹³² The corrupting role of money on political elections is a grave threat to American democracy, and requires extensive federal legislative reform addressing the financing of political campaigns. In the meantime, some states have tried to democratize the funding of elections through small-donor matching programs, public funding, and grants.¹³³

Can legal services lawyers represent clients seeking to challenge voter registration requirements or to remedy the denial of the right to vote?

Legal services lawyers that receive funding from the Legal Services Corporation are barred from using that money in litigation related to electoral redistricting.¹³⁴ However, legal services lawyers are not barred from undertaking other voter-related lawsuits. Nevertheless, legal services offices typically do not have sufficient funding to meet all of the legal needs of the persons seeking representation, and will accord a higher priority to cases involving immediate and pressing matters such as housing or government benefits. The combination of legal restriction and inadequate resources makes it highly unlikely that a voter who faces problems in registering to vote or barriers to voting will be represented by a

legal services lawyer.¹³⁵ However, people who believe their right to vote has been impaired may file an informal complaint with the U.S. Department of Justice, and the Department is expected to investigate reported problems.¹³⁶

May citizens conduct voter drives and help other citizens register to vote?

Yes. Through voter registration drives, community organizers can register citizens to vote. The National Voter Registration Act requires states to make federal election forms “available for distribution through governmental and private entities with particular emphasis on making them available for organized voter registration programs.”¹³⁷ But it is imperative that a person wishing to organize a voter-registration drive follow state requirements.¹³⁸ These restrictions vary. For example, 11 states require training, and Colorado requires a voting drive’s leader to obtain a perfect score on a mandatory examination. In New Mexico, a person registering others to vote must return the completed forms to the County Clerk or Secretary of State within 48 hours and can face civil and criminal penalties for failure to comply.¹³⁹ California requires individuals collecting state voter registration forms to place them in the postal service within three days of their receipt, and failure to do so is a misdemeanor punishable by a fine of up to \$1,000.¹⁴⁰

In a 2012 challenge to restrictions on Florida’s voter registration drive laws, a federal trial court emphasized that registration drives implicate protected First Amendment freedoms.¹⁴¹ Similarly, in a 2006 case, a federal court in Ohio invalidated various restrictions on that state’s registration drive laws, finding that they would “chill[] participation in the voter registration process,” and therefore violated the National Voter Registration Act.¹⁴² However, in 2013, the Fifth Circuit Court of Appeals found that a Texas ban on paying canvassers on a per-application basis and conditioning payment on the submission of a fixed number of applications did not violate the First Amendment.¹⁴³

Notes

1. *See, for example*, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 666 (1966) (invalidating poll tax on the ground that “a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of a fee an electoral standard”). Since the 1960s, the Court has repeatedly held that the right to vote is a “fundamental right” under the Constitution and that it must

be dispensed equally, “without regard to race, sex, economic status, or place of residence within a state.” *Reynolds v. Sims*, 377 U.S. 533, 561–562, 656–668 (1964).

2. *See United States v. Classic*, 313 U.S. 299, 310, 314–315 (1941) (interpreting U.S. Const. Art. I, § 2).

Moreover, every state constitution guarantees the right to vote in state elections to citizens who are state residents and meet specific eligibility requirements. *See* Ala. Const. Art. 8, § 177; Alaska Const. Art. 5, § 1; Ariz. Const. Art. 7, § 2; Ark. Const. Art. 3, § 1; Cal. Const. Art. 2, § 2; Colo. Const. Art. 7, § 1; Conn. Const. Art. 6, § 1; Del. Const. Art. 5, § 2; Fla. Const. Art. 6, § 2; Ga. Const. Art. 2, § 1; Hawaii Const. Art. 2, § 1; Idaho Const. Art. 6, § 2; Ill. Const. Art. 3, § 1; Ind. Const. Art. 2, § 2; Iowa Const. Art. 2, § 1; Kan. Const. Art. 5, § 1; Ky. Const. § 145; La. Const. Art. 1, § 10; Me. Const. Art. 2, § 1; Md. Const. Art. 1, § 1; Mass. Const. Part 2, Ch. 1, § 3 Art. 4; Mich. Const. Art. 2, § 1; Minn. Const. Art. 7, § 1; Miss. Const. Art. 12, § 241; Mo. Const. Art. 8, § 2; Mont. Const. Art. 4, § 2; Neb. Const. Art. 6, § 1; Nev. Const. Art. 2, § 1; N.H. Const. Part 1, Art. 11; N.J. Const. Art. 2, § 1, ¶ 3; N.M. Const. Art. 7, § 1; N.Y. Const. Art. II, § 1; N.C. Const. Art. 6, § 1; N.D. Const. Art. 2, § 1; Ohio Const. Art. 5, § 1; Okla. Const. Art. 3, § 1; Or. Const. Art. 2, § 2; Pa. Const. Art. 7, § 1; R.I. Const. Art. 2, § 1; S.C. Const. Art. 2, § 4; S.D. Const. Art. 7, § 2; Tenn. Const. Art. 4, § 1; Tex. Const. Art. 6, § 2; Utah Const. Art. 4, § 2; Vt. Const. Ch. 2, § 42; Va. Const. Art. 2, § 1; Wash. Const. Art. 6, § 1; W. Va. Const. Art. IV, § 1; Wis. Const. Art. 3, § 1; Wyo. Const. Art. 6, § 2.

3. Chilton Williamson, *American Suffrage: From Property to Democracy 1760–1860* at 6–7 (Princeton 1960). *See also* James W. Fox, Jr., *Citizenship, Poverty, and Federalism: 1787–1882*, 60 *U. Pitt. L. Rev.* 421, 442–443 (1999).
4. For a history of the right to vote, *see* Michael Waldman, *The Fight to Vote* (Simon & Schuster 2016).
5. For a discussion of additional ways to improve protection of the right to vote, *see* Myrna Pérez, *Election Integrity: A Pro-Voter Agenda*, Brennan Center for Justice (2016), <https://www.brennancenter.org/publication/election-integrity-pro-voter-agenda>.
6. U.S. Const. Amend. XV, § 1 (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”).
7. U.S. Const. Amend. XIX, § 1 (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”).
8. 8 U.S.C. § 1401(b).
9. U.S. Const. Amend. XXIV, § 1 (“The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.”). In 1966, the Court interpreted the federal Constitution to bar states from restricting the vote in state elections based on “the affluence of the voter or payment of any fee.” *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 666 (1966). *See also* *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621 (1969) (invalidating

- property qualification for vote in school board elections); *Cipriano v. City of Houma*, 395 U.S. 701 (1969) (invalidating property qualification for vote on public bond issue); *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1969) (same).
10. U.S. Const. Amend. XXVI, § 1 (“The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”).
 11. 52 U.S.C. § 10301(a), formerly codified at 42 U.S.C. § 1973. The legislative history to the act specifically dismissed the long history of conditioning the right to vote on the ownership of property. *See* H. Rep. No. 439, 89th Cong., 1st Sess. 8–13 (1965), reprinted in 1965 U.S. Code Cong. & Ad. News 2437, 2439–2444. *See* Jamin Raskin & John Bonifaz, *Equal Protection and the Wealth Primary*, 11 *Yale L. & Pol’y Rev.* 273, 273 n.2 (1993) (“The property and wealth qualifications were dismantled by state constitution and statutory challenges.”).
 12. 52 U.S.C. §§ 21081–83, formerly codified at 42 U.S.C. §§ 15481–83. In addition, the states were required (1) to provide “provisional” ballots to voters whose names did not appear on the registration list at the time of voting, allowing the person to vote subject to later verification; and (2) to improve the accuracy of voting lists, by replacing local registration lists with state lists, verifying voting lists by cross-checking with car registration, and requiring identification from first-time voters who registered by mail. *See* Daniel P. Tokaji, *HAVA in Court: A Summary and Analysis of Litigation*, 12 *Election L.J.* 203 (2013).
 13. *See* Steven J. Mulroy, *Barriers at the Ballot Box Symposium Issue*, 49 *U. Mem. L. Rev.* 957, 958 (2019) (reporting that “the overall trend [in the states] is toward the diminution of the right to vote. More and more states are enacting restrictive voter ID laws, engaging in severe purges of voters from the registration rolls, and enacting gerrymandering districting laws.”). *See, for example*, Christopher Famighetti, Amanda Melillo, & Myrna Pérez, *Election Day Long Lines: Resource Allocation*, Brennan Center for Justice (2014), <https://www.brennancenter.org/sites/default/files/publications/ElectionDayLongLines-ResourceAllocation.pdf>. For a discussion of ways to improve protection of the right to vote, *see* Myrna Pérez, *Election Integrity: A Pro-Voter Agenda*, Brennan Center for Justice (2016), <https://www.brennancenter.org/publication/election-integrity-pro-voter-agenda>.
 14. *Reynolds v. Sims*, 377 U.S. 533, 561–568 (1964).
 15. For a skeptical view of this “pluralistic-democratic optic,” *see* Jeffrey A. Winters, *Oligarchy* xii–xiii 249–250 (“... the poor, despite their numbers, ... lose in the game of democratic participation”; they fail “to choose leaders who will advance their material welfare” or to punish “those who have undermined their financial welfare during the previous term in office”).
 16. *See generally* Jonathan Soros, *The Missing Right: A Constitutional Right to Vote, Democracy: A Journal of Ideas* (Spring 2013), <https://democracyjournal.org/magazine/28/the-missing-right-a-constitutional-right-to-vote/> (criticizing the absence of a right to vote in the U.S. Constitution and describing the “varieties of disenfranchisement” directed against the poor and people of color).

17. U.S. Department of Justice, Voting, <https://www.justice.gov/crt/how-file-complaint#nine>. The website states (as of Jan. 25, 2019):

The Voting Section accepts complaints about possible violations of the federal voting rights laws—

- By email at voting.section@usdoj.gov (link sends e-mail)
- By telephone at (800) 253-3931 (toll free)
- By telephone at (202) 307-2767
- By fax at (202) 307-3961
- By complaint form at <http://www.justice.gov/crt/complaint/votintake/index.php>
- By letter to the addresses below:

Voting Section
Civil Rights Division
U.S. Department of Justice
Room 7254 – NWB
950 Pennsylvania Ave., N.W.
Washington, DC 20530

18. Find a Local League, League of Women Voters, <http://lwv.org/get-involved/local-leagues>.
19. North Dakota Secretary of State, North Dakota. . . . The Only State without Voter Registration, <https://vip.sos.nd.gov/pdfs/portals/votereg.pdf>. See generally Voter Registration Rules, Vote.org (last updated Mar. 31, 2017), <https://www.vote.org/voter-registration-rules/>.
20. California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Montana, New Hampshire, North Carolina, Vermont, Wisconsin, and Wyoming, as well as the District of Columbia, have same-day registration; however, in North Carolina, same-day registration operates only during an “early voting” period. See Same Day Voter Registration, National Conference of State Legislatures (Jan. 25, 2019), <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.
21. 52 U.S.C. § 20501, formerly codified at 42 U.S.C. § 1973gg.
22. 52 U.S.C. § 20504.
23. *Id.* at § 20504(d).
24. 52 U.S.C. § 20505. For the national form, see U.S. Election Assistance Commission, National Mail Voter Registration Form, http://www.eac.gov/voter_resources/register_to_vote.aspx.
25. 52 U.S.C. § 20506. The statute does not define “public assistance,” but its legislative history explains that “[b]y public assistance agencies, we intend to include those State agencies in each State that administer or provide services under the food stamp, Medicaid, the Women, Infants and Children (WIC), and the Aid to Families With Dependent Children (AFDC) programs.” H.R. Conf. Rep. No. 103-66, 103rd Cong., 1st Sess. 144 (1993).
26. See Michael Alvarez & Jonathan Nagler, Declining Public Assistance Voter Registration and Welfare Reform: A Response, Demos (Oct. 6, 2009), <http://www>.

- demos.org/publication/declining-public-assistance-voter-registration-and-welfare-reform-response.
27. 52 U.S.C. § 20506(a)(3)(B). Overall, voter registration increased by 11.4% over a 20-year period beginning just before the statute's enactment. *See* Royce Crocker, *The National Voter Registration Act of 1993: History, Implementation, and Effects*, at 22–23 (2013), <http://fas.org/sgp/crs/misc/R40609.pdf>.
 28. Justin Weinstein-Tull, *Election Law Federalism*, 114 *Mich. L. Rev.* 747, 759–760 (2016) (public assistance agencies); National Conference of State Legislatures, *Automatic Voter Registration* (Apr. 22, 2019), <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>.
 29. *Dunn v. Blumstein*, 405 U.S. 330, 343–344 (1972).
 30. *Id.* at 342 (quoting *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969)).
 31. *Id.* at 342, 354. *See also* *Cody v. Andrews*, 405 U.S. 1034 (1972), affirming, 327 F. Supp. 793 (M.D. N.C. 1971) (one-year residency requirement contained in state constitution was unconstitutional when applied to right to vote in local elections); *Lester v. Board of Elections for District of Columbia*, 319 F. Supp. 505 (D.D.C. 1970) (one-year durational residency requirement violated Equal Protection Clause), judgment vacated and case remanded in light of *Dunn v. Blumstein*, 405 U.S. 1036 (1972). The U.S. Supreme Court has upheld a 50-day waiting period. *See* *Marston v. Lewis*, 410 U.S. 679, 681 (1973); *Burns v. Forston*, 410 U.S. 686, 687 (1973).
 32. *See, for example*, 52 U.S.C. § 10502(d), formerly cited as 42 U.S.C. § 1973aa-1 (codifying the Voting Rights Act Amendments of 1970, which prohibited states from cutting off registration more than 30 days in advance of presidential elections).
 33. 52 U.S.C. § 10502, formerly cited as 42 U.S.C. § 1973aa-1.
 34. 52 U.S.C. § 10502(e), formerly cited as 42 U.S.C. § 1973aa-1(e).
 35. *See* David Schultz & Sarah Clark, *Wealth v. Democracy: The Unfulfilled Promise of the Twenty-fourth Amendment*, 29 *Quinnipiac L. Rev.* 375 (2011) (providing a history of the poll tax and explaining how the post-Civil War tax differed in aim and effect from its earlier version).
 36. Drew Silver, *Anti-poll Tax Amendment Is 50 Years Old Today*, Pew Research Center (Jan. 23, 2014), <http://www.pewresearch.org/fact-tank/2014/01/23/anti-poll-tax-amendment-is-50-years-old-today/>.
 37. U.S. Const. Amend. XXIV, § 1.
 38. *See* *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 664 n.1, 666 n.4 (1966).
 39. *See* *Butler v. Thompson*, 341 U.S. 937 (1951). *See also* *Breedlove v. Suttles*, 302 U.S. 277 (1937) (upholding Georgia's poll tax).
 40. U.S. Const. Amend. XIV.
 41. *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 666 (1966).
 42. *Gray v. Sanders*, 372 U.S. 368, 380 (1963).
 43. *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 670 (1966).
 44. 52 U.S.C. § 20506.
 45. *See, for example*, *Hill v. Stone*, 421 U.S. 289 (1975) (Texas requirement that voters “render” or list real or personal property for taxation violates equal protection); *City*

- of *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970) (Phoenix law restricting vote on general obligation bonds to real property taxpayers violates equal protection).
46. *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969).
 47. *Cipriano v. City of Houma*, 395 U.S. 621 (1969).
 48. *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 728 (1973). Because of the water district's "special limited purpose and . . . the disproportionate effect of its activities on landowners as a group," the election of the Board was considered by the Court to be of sufficient "special interest" to a limited class of property owners as to allow restriction of the franchise.
 49. *Rice v. Cayetano*, 528 U.S. 495 (2000).
 50. See National Coalition for the Homeless, *Voter Rights: Registration Manual: You Don't Need a Home to Vote* (2012), http://www.nationalhomeless.org/projects/vote/Manual_2012.pdf.
Other resources include: Sarah Devlin, *I Lost My Home, Don't Take My Voice: Ensuring the Voting Rights of the Homeless through Negotiated Rulemaking*, 2009 J. Disp. Resol. 175, 177 (2009); Patricia M. Hanrahan, *No Home? No Vote*, 21 Hum. Rts. 8 (Winter 1994); Edward J. Smith, Note, *Disenfranchisement of Homeless Persons*, 31 Wash. U. J. Urban & Contemp. L. 225 (1987). See also Kristin Capps, *Voting While Homeless*, Citylab (Nov. 8, 2016), <https://www.citylab.com/equity/2016/11/voting-while-homeless/506972/>.
 51. For example, although Washington State permits a person to register to vote with a nontraditional address, a court affirmed the cancellation of a homeless person's registration when county officials discovered the location was a parking lot where an apartment building used to stand; the court held that the person was not actually residing there, and so the registration was properly cancelled. *Camarata v. Kittitas County*, 346 P.3d 822 (Wash. App. 2015). See also Jin Zhao, *Why We Should Care About the Homeless Vote*, *AlterNet* (Aug. 9, 2012), <http://www.alternet.org/activism/why-we-should-care-about-homeless-vote>.
 52. See Jin Zhao, *Why We Should Care about the Homeless Vote*, National Coalition for the Homeless (originally printed in *AlterNet*) (Aug. 9, 2012), <http://nationalhomeless.org/care-homeless-vote/> ("Although the homeless vote may not be a wild card for any candidate or party, with at least 1.6 million people experiencing homelessness nationwide, it does have the potential to change the game in some swing states.").
 53. 52 U.S.C. § 10502(e), formerly cited as 42 U.S.C. § 1973aa-1(e).
 54. See National Coalition for the Homeless, *Court Decisions on Homeless People's Voting Rights*, <http://www.nationalhomeless.org/projects/vote/court.html>.

The leading published cases are *Pitts v. Black*, 608 F. Supp. 696, 709 (S.D.N.Y. 1984), and *Collier v. Menzel*, 221 Cal. Rptr. 110 (App. 1985). See also *Constitution of Virginia: Franchise and Officers (Qualification of Voters)*, Op. Atty. Gen. No. 04-030, 2004 WL 1284006 (Va. May 19, 2004); *Voter Registration of Homeless Persons*, Op. Atty. Gen. No. 2, 1991 WL 527640 (N.J. Apr. 17, 1991); In the matter of: *The Application for Voter Registration of Willie R. Jenkins* (D.C. Board of Elections and Ethics, June 7, 1984) (unpublished), summary available in Edward J. Smith, Note,

- Disenfranchisement of Homeless Persons, 31 Wash. U. J. Urban & Contemp. L. 225, 235 n.65 (1987).
55. For example, *see* Iowa's provision, Iowa Code Ann. § 48A.5A(7) (“[T]he residence of a homeless person is in the precinct where the homeless person usually sleeps. Residence requirements shall be construed liberally to provide homeless persons with the opportunity to register to vote and to vote”).
 56. For an example of the kind of letter that should be sufficient, *see* State of Wisconsin, Wisconsin Elections Commission, Enabling Qualified Homeless Individuals to Vote—Sample Proof of Residence Letter, <http://elections.wi.gov/publications/brochures/enabling-homeless-voters>.
 57. For example, *see* Illinois Statute 10 I.L.C.S. 5/3-2(b) (“A mailing address of a homeless individual may include, but is not limited to, a shelter, a day shelter, or a private residence.”).
 58. *See* Colorado rules for determining residence, Colo. Rev. Stat. Ann. § 1-2-102.
 59. *See, for example*, Or. Rev. Stat. § 247.038(2)(a) (“The mailing address of a person who is homeless or resides in a shelter, park, motor home, marina or other identifiable location may be the office of the county clerk.”). *See also* Jeanne P. Atkins, Homeless Doesn't Mean Voiceless: Vote—Oregon's Secretary of State Explains How to Register to Vote Without a Permanent Address, Street Roots News (Sept. 29, 2016), <http://news.streetroots.org/2016/09/29/homeless-doesn-t-mean-voiceless-vote>.
 60. R.I. Gen. Laws 1956, § 34-37.1.3. Illinois has a similar Bill of Rights Provision, *see* 775 I.L.C.S. 45/10.
 61. Information about how to file a complaint is available from U.S. Department of Justice, Election Complaint Report, <https://www.justice.gov/crt/complaint/votintake/index.php>.
 62. Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314 (1970), codified as amended at 52 U.S.C. § 10303, formerly codified at 42 U.S.C. § 1973aa. The Voting Rights Act of 1965 limited the restriction on literacy tests to those states that had a history of voter disenfranchisement. *See* Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 438 (1965). The U.S. Supreme Court upheld the constitutionality of the provision abolishing literacy tests as requisite to vote in *Oregon v. Mitchell*, 400 U.S. 112 (1970). In 1965, the U.S. Supreme Court invalidated Louisiana's literacy test because it gave too much discretion to election officials, which could be, and was shown to have been, applied arbitrarily based on race. *Louisiana v. United States*, 380 U.S. 145, 153 (1965). However, the Court upheld literacy tests in *Lassiter v. Northampton Co. Bd. of Elections*, 360 U.S. 45 (1959).
 63. 52 U.S.C. § 10303(f), formerly codified at 42 U.S.C. § 1973b.
 64. 52 U.S.C. § 10503(b), formerly codified at 42 U.S.C. 1973aa-1a. The statute also requires that the illiteracy rate of the language minority be higher than that of the national average. The 2011 coverage list, based on the 2010 census, is published in the Federal Register, 76 Fed. Reg. 63602 (Oct. 13, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/10/13/2011_notice.pdf.

65. For more information, *see* United States Department of Justice, Minority Language Citizens, Section 203 of the Voting Rights Act, <https://www.justice.gov/crt/about-language-minority-voting-rights>.
- See also* James Thomas Tucker, Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act, 10 N.Y.U. J. Legis. & Pub. Pol'y 195 (2006).
66. 52 U.S.C. § 10503(e), formerly codified at 42 U.S.C. § 1973aa-1a(e).
67. The toll-free phone number is 1-800-253-3931.
68. For reports of such intimidation, *see* Allie Yee, Concerns Grow Over Voting Rights for the South's Language Minorities, The Institute for Southern Studies, Facing South (Mar. 2015), <https://www.facingsouth.org/2015/03/concerns-grow-over-voting-rights-for-the-souths-la.html>.
69. *See, for example*, Richard Salame, Vote Aquí? Limited-English-Proficiency Voters Could Help Determine Congress, The Nation (Nov. 5, 2018) (<https://www.thenation.com/article/limited-english-voters-investigation-election/>).
70. *See, for example*, Empire Justice Center, Voting Rights, http://onlineresources.wnyc.net/pb/orcdocs/LARC_Resources/LEPTopics/VO/Voting.htm (information about federal and New York LEP rules); Asian Americans Advancing Justice, Language Rights in Voting, <https://www.advancingjustice-aajc.org/language-rights> (fact sheets in English, Chinese simplified, Chinese traditional, Bangla, Hindi, Japanese, Khmer, Korean, Thai, and Vietnamese).
71. *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974).
72. U.S. Const. Amend. XIV, § 2.
73. *Richardson v. Ramirez*, 418 U.S. 24, 27 (1974).
74. *Hunter v. Underwood*, 471 U.S. 222, 233 (1985).
75. *See, for example*, Jamelia N. Morgan, Disparate Impact and Voting Rights, How Objections to Impact-based Claims Prevent Plaintiffs from Prevailing in Cases Challenging New Forms of Disenfranchisement, 9 Ala. C.R. & C.L. Rev. 93 (2018). The Trump administration has announced plans to eliminate disparate-impact regulations that would affect a broad range of civil rights enforcement. *See generally* P.R. Lockhart, The Trump administration is considering a major rollback of civil rights regulation, Vox (Jan. 7, 2019), <https://www.vox.com/policy-and-politics/2019/1/7/18167275/disparate-impact-civil-rights-trump-administration>.
76. Christopher Uggen, Ryan Larson, & Sarah Shannon, 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016, The Sentencing Project (Oct. 6, 2016), <http://www.sentencingproject.org/issues/felony-disenfranchisement/>. *See also* Brent Staples, The Racist Origins of Felon Disenfranchisement, N.Y. Times (Nov. 18, 2014), http://www.nytimes.com/2014/11/19/opinion/the-racist-origins-of-felon-disenfranchisement.html?_r=0.
77. The Sentencing Project, 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016, at 3, <https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

78. Jean Chung, *Felony Disenfranchisement: A Primer*, Table 1. Summary of Felony Disenfranchisement Restrictions in 2019, The Sentencing Project (June 27, 2019), <http://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer>. See also Prison Policy Initiative, *Felon Disenfranchisement*, https://www.prisonpolicy.org/research/felon_disenfranchisement/ (collecting reports and other resources).
79. These states also restrict voting while a person is on probation or parole. Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States* (Dec. 7, 2018), <http://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>.
80. Additionally, Alabama, Arizona, Delaware, Florida, Maryland, Mississippi, Missouri, Nevada, Tennessee, and Wyoming have permanent disenfranchisement for people with certain criminal convictions, unless the government approves individual rights restoration. *Id.*
81. Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117 Penn. St. L. Rev. 349, 387–393 (2012).
82. See, for example, *Howard v. Gilmore*, 205 F.3d 1333 (Table) (4th Cir. 2000).
83. See, for example, *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010).
84. *Madison v. State*, 163 P.3d 757, 771 (Wash. 2007) (en banc).
85. For example, in 2018, the governor of New York issued clemency for individuals under parole supervision, restoring voting rights to 35,000 persons. In 2016, the governor of Virginia issued clemency for individuals to restore voting rights. Michael Wines, *Virginia's Governor Restores Voting Rights for 13,000 Ex-Felons*, N.Y. Times (Aug. 2, 2016), <https://www.nytimes.com/2016/08/23/us/virginia-governor-mcauliffe-voting-rights-felons.html>. Also in 2018, Florida voters adopted a ballot measure restoring voting rights to 1.5 million people with felony convictions, but the Republican legislature promptly passed a law sharply narrowing those rights. See Patricia Mazzei, *Floridians Gave Ex-Felons a Right to Vote. Lawmakers Just Put a Big Obstacle in Their Way*, N.Y. Times (May 3, 2019), <https://www.nytimes.com/2019/05/03/us/florida-felon-voting-amendment-4.html>. For a state-by-state analysis of procedures to expunge criminal records and restore rights, see Collateral Consequences Resource Center, *Restoration of Rights Project*, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside>.
For more information, see Brennan Center for Justice, *Restoring Voting Rights*, <https://www.brennancenter.org/issues/restoring-voting-rights>.
86. Idaho, Illinois, Indiana, Kentucky, Michigan, Missouri, South Carolina, and South Dakota; Kentucky and Missouri require, for certain misdemeanors, an executive pardon to restore the right to vote even after the completion of the person's sentence. Iowa also restricts voting while in prison but only for "aggravated" misdemeanors. The District of Columbia also bars people convicted of lobbying and campaign-finance related crimes from voting while incarcerated. See PublicJail.com, *State Felon Voting Laws, II. Misdemeanor Convictions* (Oct. 27, 2016), <http://www.publicjail.com/state-felon-voting-laws/>. For more information on felony and misdemeanor

- franchise criteria, *see* John Boston & Daniel E. Manville, *Prisoners' Self-Help Litigation Manual* 227–228 (Oceana 4th ed. 2010).
87. An exception would be if the detainee were already barred in that state from voting because of a prior felony conviction or for being on probation or parole. *See* American Civil Liberties Union, *VWI: Voting While Incarcerated, A Tool Kit for Advocates Seeking to Register, and Facilitate Voting by Eligible People in Jail* (2005), https://www.aclu.org/files/pdfs/votingrights/votingwhileincarc_20051123.pdf.
 88. Danielle Root & Lee Doyle, *Protecting the Voting Rights of Americans Detained While Awaiting Trial*, Center for American Progress (Aug. 23, 2018), <https://www.americanprogress.org/issues/democracy/reports/2018/08/23/455011/protecting-voting-rights-americans-detained-awaiting-trial/>. Long Distance Voter maintains a website that enables voters to obtain information about absentee ballots. Long Distance Voter, <http://www.longdistancevoter.org/#.VyPVtmf2Y-E>.
 89. Wendy Underhill, *Voter Identification Requirements—Voter ID Laws*, National Council of State Legislatures (Jan. 17, 2019), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Info>.
 90. The 17 states that ask for a photo ID are: Arkansas, Alabama, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, Rhode Island, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. *See* Wendy Underhill, *Voter Identification Requirements: Voter ID Laws*, National Council of State Legislatures (Jan. 17, 2019), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Info>. If a voter fails to show the ID, some states have less onerous photo ID laws which allow some voters without acceptable identification to cast a ballot that will be counted without further action on the part of the voter. For example, a voter may sign an affidavit of identity or cast a provisional ballot, and election officials will later determine whether the voter was eligible and registered. *Id.*
 91. The 17 states that ask for a nonphoto ID are: Alaska, Arizona, Colorado, Connecticut, Delaware, Iowa, Kentucky, Missouri, Montana, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, Utah, Washington, and West Virginia. Wendy Underhill, *Voter Identification Requirements: Voter ID Laws*, National Council of State Legislatures (Jan. 17, 2019), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Info>.
 92. *See, for example*, Alaska Stat. Ann. § 15.15.225 (Prior to being allowed to vote, voters must show identification from an enumerated list, which includes a copy of a current utility bill, bank statement, paycheck, government check, or other government document.); Ariz. Rev. Stat. Ann. § 16-579 (Voters may present valid photo identification or two items that contain the name and address of the voter, such as a utility bill, bank statement, or Arizona vehicle registration.).
 93. *Voter ID*, Brennan Center for Justice (Oct. 15, 2012), <https://www.brennancenter.org/analysis/voter-id>.
 94. For studies of the effects of voter ID laws on the poor and people of color, *see* *Research on Voter ID*, Brennan Center for Justice (Aug. 11, 2017), <http://www.brennancenter.org/analysis/research-and-publications-voter-id>.

95. Richard Sobel, The High Cost of “Free” Photo Voter Identification Cards, Charles Hamilton Houston Institute for Race & Justice Harvard Law School (June 2014), <http://today.law.harvard.edu/wp-content/uploads/2014/06/FullReportVoterIDJune20141.pdf>.
96. Colorado, Florida, Montana, Oklahoma, Rhode Island, Utah, and Vermont. Wendy Underhill, Voter Identification Requirements: Voter ID Laws, National Council of State Legislatures (Jan. 17, 2019), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Info>.
97. Ga. Code Ann. § 21-2-417. For a state-by-state analysis of provisional ballots, see National Conference of State Legislatures, Provisional Ballots, <http://www.ncsl.org/research/elections-and-campaign-provisional-ballots.aspx>.
98. U.S. Government Accountability Office, Issues Related to State Voter Identification Laws (2014), <http://www.gao.gov/assets/670/665966.pdf>.
99. Nicholas O. Stephanopoulos, Disparate Impact, Unified Law, 128 Yale L.J. 1566, 1570 (2019) (explaining that the U.S. Supreme Court has not yet decided whether the Voting Rights Act is violated “if an electoral policy (1) has a disparate racial impact that (2) is attributable to the policy’s interaction with discriminating conditions” such as persistent poverty).
100. *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). The Court acknowledged that in some cases, requiring a photo ID could burden the right of a person with lower income to vote, but held the requirement in this case was not shown to be an excessive burden “on any class of voters.” *Id.* at 202. See Cary Franklin, The New Class Blindness, 128 Yale L.J. 2, 87 (2018) (stating that *Crawford* “upheld a voter ID law that impeded the ability of poor and otherwise disadvantage citizens to vote, and it enabled the spread of such laws throughout the country”).
101. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).
102. *Compare Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006), with *City of Memphis v. Hargett*, 414 S.W.3d 88 (Tenn. 2013).

For example, Texas adopted a law in 2013 that required a voter to present one of six forms of photo ID before voting (with a few exceptions). A federal appeals court struck down the requirement as invalid under the Voting Rights Act; among other reasons for the court’s decision, persons of color in Texas made up a disproportionate portion of the poor and low-income voting population, and they were found to be eight times less likely to be able to afford the required ID and so thereby denied the right to vote. Finally, the court did not accept Texas’s justification that the ID was needed to prevent voter fraud. *Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015). However, the same federal appeals court accepted a version of the same law, which allows voters unable to present one of seven forms of ID to cast a ballot if they sign an affidavit stating why they were unable to obtain an approved ID and present an alternative form of identification such as a bank statement. *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018). Similarly, in *Common Cause/Georgia v. Billups*, 554 F.3d 1340 (11th Cir. 2009), the appeals court upheld Georgia’s voter ID law. The law required every voter to present a photo ID, and also required state officials to issue, free of charge, a photo ID to any registered voter. Also, the Fourth Circuit Court of

- Appeals invalidated as racially discriminatory a photo ID requirement imposed by the North Carolina legislature; the provision allowed types of ID disproportionately held by white voters and barred those that are disproportionately held by African Americans, such as “public assistance IDs.” *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).
103. *See, for example*, *Frank v. Walker*, 773 F.3d 783 (7th Cir. 2014) (Posner, J., dissenting from denial of rehearing en banc) (“The data imply that a number of conservative states try to make it difficult for people who are outside the mainstream, whether because of poverty or race or problems with the English language . . . , to vote . . .”).
 104. 52 U.S.C. § 20507, formerly codified at 42 U.S.C. § 1973gg-6. *See* Naila S. Awan, *When Names Disappear: State Roll-Maintenance Practices*, 49 *U. Mem. L. Rev.* 1107 (2019).
 105. 52 U.S.C. § 21082 (“If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot . . . upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is . . . a registered voter in the jurisdiction in which the individual desires to vote; and . . . eligible to vote in that election.”).
 106. *See* Matt Vasilogambros, *Provisional Ballots Protect Voting Rights—When They Are Counted*, *Pew* (Nov. 16, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/11/16/provisional-ballots-protect-voting-rights-when-they-are-counted>; Ryan P. Haygood, *The Past as Prologue: Defending Democracy Against Voter Suppression Tactics on the Eve of the 2012 Election*, 64 *Rutgers L. Rev.* 1019, 1046 (2012); Myrna Pérez, *Letter to Mississippi Secretary of State with Recommendations to Protect Against Improper Purges*, *Brennan Center for Justice* (Mar. 26, 2008), <http://www.brennancenter.org/analysis/letter-mississippi-secretary-state-recommendations-protect-against-improper-purges>. In some states, litigation has been critical in restoring “purged” citizens to the voting rolls. *See, for example*, *American Civil Liberties Union, Settlement Reached to End Voter Purge and Protect Voting Rights* (Apr. 26, 2019), <https://www.aclu.org/press-releases/settlement-reached-end-texas-voter-purge-and-protect-voting-rights>. A copy of the settlement is available at https://www.aclutx.org/sites/default/files/4-25-10_voter_purge_settlement_agreement.pdf.
 107. *Wolters Kluwer, Reminder: Many States Require Employers to Provide Time Off to Vote*, <http://www.employmentlawdaily.com/index.php/news/reminder-many-states-require-employers-to-provide-time-off-to-vote/>. For a state-by-state list, *see* *Workplace Fairness, State Laws on Voting Rights/Time Off To Vote*, <https://www.workplacefairness.org/voting-rights-workplace>.
 108. Alaska, Arizona, California, Colorado, Hawaii, Illinois, Iowa, Kansas, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming. *See* Kenneth Quinnell,

- Know Your Rights: State Laws on Employee Time Off to Vote, AFL-CIO (Nov. 5, 2016), <https://aflcio.org/2016/11/5/know-your-rights-state-laws-employee-time-vote>.
109. Alabama, Arizona, California, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Missouri, Nebraska, Nevada, New York, Oklahoma, Tennessee, Utah, West Virginia, and Wisconsin. *See* Workplace Fairness, State Laws on Voting Rights/Time Off to Vote, <https://www.workplacefairness.org/voting-rights-workplace>.
 110. Arizona, Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Missouri, Nebraska, New York, Oklahoma, South Dakota, Utah, West Virginia, and Wisconsin. *See* Workplace Fairness, State Laws on Voting Rights/Time Off to Vote, <https://www.workplacefairness.org/voting-rights-workplace>.
 111. *See* N.Y. Election L. § 3-110; Laura A. Stutz, New York Mandates 3 Hours Paid Time Off to Vote, *National L. Rev.* (Apr. 10, 2019), <https://www.natlawreview.com/article/new-york-mandates-3-hours-paid-time-to-vote>.
 112. For a state-by-state list of options, *see* National Conference of State Legislatures, Absentee and Early Voting, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#early>. *See also* Kenneth Quinnell, Know Your Rights: State Laws on Employee Time Off to Vote, AFL-CIO (Nov. 5, 2016), <https://aflcio.org/2016/11/5/know-your-rights-state-laws-employee-time-vote>.
 113. 52 U.S.C. § 20102.
 114. 52 U.S.C. § 20104.
 115. 52 U.S.C. § 10508.
 116. Nina A. Kohn, Preserving Voting Rights in Long-Term Care Institutions: Facilitating Resident Voting While Maintaining Election Integrity, 38 *McGeorge L. Rev.* 1065 (2007).
 117. For further information on the right of persons with mental disabilities to vote, *see* Bazelon Center for Mental Health Law, VOTE. It's Your Right. A Guide to the Voting Rights of People with Mental Disabilities (2018), <https://www.bazelon.org/wp-content/uploads/2018/10/2018-Voter-Guide-plain-language-Updated.pdf>.
 118. U.S. Government Accountability Office, Elderly Voters: Information on Promising Practices Could Strengthen the Integrity of the Voting Process in Long-term Care Facilities (Nov. 2009), <http://www.gao.gov/new.items/d106.pdf>.
 119. For further discussion, *see* Sean Flynn, One Person, One Vote, One Application: District Court Decision in *Ray v. Texas* Upholds Texas Absentee Voting Law that Disenfranchises Elderly and Disabled Voters, 11 *Scholar St. Mary's L. Rev. on Minority Issues* 469 (2009).
 120. Peter Dreier, Katrina: A Political Disaster, National Housing Institute, Shelterforce (Apr. 23, 2006), https://shelterforce.org/2006/04/23/katrina_a_political_disaster/.
 121. The Editorial Board, Hurricane Sandy and the Poor, *N.Y. Times* (Sept. 18, 2013), <http://www.nytimes.com/2013/09/19/opinion/hurricane-sandy-and-the-poor.html>; Alice Hines, Hurricane Sandy Aftermath Presents Difficulties for Voters in New York, New Jersey, *Huffington Post* (Nov. 6, 2012), http://www.huffingtonpost.com/2012/11/06/hurricane-sandy-aftermath-voters-new-york-new-jersey_n_2084358.html.

122. For further discussion, see Betsy Sinclair, Thad E. Hall, & R. Michael Alvarez, *Flooding the Vote: Hurricane Katrina and Voter Participation in New Orleans*, 39(5) *Am. Pol. Res.* 921 (2011), <http://apr.sagepub.com/content/39/5/921.abstract>.
123. William P. Quigley, *Katrina Voting Wrongs: Aftermath of Hurricane and Weak Enforcement Dilute African American Voting Rights in New Orleans*, 14 *Wash. & Lee J. C.R. & Soc. Just.* 1 (2007).
124. In the wake of Katrina, the Federal Emergency Management Agency, the federal agency that supervised disaster relief, refused to support procedures for absentee voting by dislocated families and did not provide relocation addresses. For further information, see *The Opportunity Agenda, Voice: Voting and Political Expression in the Gulf*, IssueLab (Aug. 1, 2006), <https://www.issuelab.org/resource/voice-voting-and-political-expression-in-the-gulf.html>.
125. See, for example, *Bullock v. Carter*, 405 U.S. 134 (1972) (invalidating ballot access fee on the ground that it discriminates against candidates “lacking both personal wealth and affluent backers” and “has a real and appreciable impact on the exercise of the franchise . . . related to the resources of the voters supporting a particular candidate”).
126. See *Adams v. Askew*, 511 F.2d 700 (5th Cir. 1975); *Matthews v. Little*, 498 F.2d 1068 (5th Cir. 1974); *Cassidy v. Willis*, 323 A.2d 598 (Del. 1974), *aff’d*, 419 U.S. 1042 (1974).
127. *Lubin v. Parish*, 415 U.S. 709, 716 (1974). See also *Bullock v. Carter*, 405 U.S. at 144 (filing fees imposed on potential candidates may “tend [] to deny some voters the opportunity to vote for a candidate of their choosing”).
128. *Turner v. Fouche*, 396 U.S. 346 (1970).
129. See, for example, David Adamany, *PAC’s and the Democratic Financing of Politics*, 22 *Ariz. L. Rev.* 569, 571 (1980).
130. See Brennan Center for Justice, *Money in Politics*, <https://www.brennancenter.org/issues/money-politics> (advocating for small-donor public financing; improved disclosure laws so the public knows the sources of contributions; and overturning *Citizens United*); see also Ronald Dworkin, *The Curse of American Politics*, *N.Y. Review of Books* (Oct. 17, 1996), <http://www.nybooks.com/articles/1996/10/17/the-curse-of-american-politics/> (“The power of money in our politics, long a scandal has now become a disaster.”).
131. *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2009).
132. See David Cole, *The Supreme Court’s Billion-Dollar Mistake*, *N.Y. Review of Books* (Jan. 19, 2015), <http://www.nybooks.com/daily/2015/01/19/citizen-united-billion-dollar-mistake/>.
133. See, for example, Alex Tausanovitch & James Lagasse, *The Small-Donor Antidote to Big-Donor Politics*, *Center for American Progress* (June 11, 2018), <https://www.americanprogress.org/issues/democracy/reports/2018/06/11/451787/small-donor-antidote-big-donor-politics/>; Demos, *Everyone’s America: State Policies for an Equal Say in Our Democracy and an Equal Chance in Our Economy* (Summer 2018), <https://www.demos.org/research/everyones-america>. See generally Brennan

- Center for Justice, A Civil Rights Perspective on Money in Politics, <https://www.brennancenter.org/a-civil-rights-perspective-money-in-politics>.
134. 45 C.F.R. § 1632.3.
 135. For further discussion, *see* Cody Gray, A New Proposal to Address Local Voting Discrimination, 50 U. Richmond L. Rev. 611 (2016).
 136. For further information, *see* U.S. Department of Justice, Election Complaint Report, <https://www.justice.gov/crt/complaint/votintake/>.
 137. 52 U.S.C. § 20505.
 138. State laws are collected in Diana Kasdan, State Restrictions on Voter Registration Drives, Brennan Center for Justice, <http://www.brennancenter.org/sites/default/files/legacy/publications/State%20Restrictions%20on%20Voter%20Registration%20Drives.pdf>. *See also* AAUW, How to Organize a Voter Registration Drive, <https://www.aauw.org/resource/organize-a-voter-registration-drive/>; National Voter Registration Day, Rules for Voter Registration Drives in Your State, <https://www.nationalvoterregistrationday.org/partner-tools/rules-for-voter-registration-drives>; Maggie Bush, Planning a Voter Registration Drive, League of Women Voters (Apr. 26, 2018), <https://www.lwv.org/blog/planning-voter-registration-drive>.
 139. A federal court upheld this requirement, *see* American Ass'n of People with Disabilities v. Herrera, 580 F. Supp. 2d 1195, 1235 (D. N.M. 2008).
 140. *See* Cal. Elec. Code §§ 18103, 18104 (Deering 2012).
 141. League of Women Voters of Florida v. Browning, 863 F. Supp. 2d 1155, 1157–58 (N.D. Fla. 2012).
 142. Project Vote v. Blackwell, 455 F. Supp. 2d 694, 705 (N.D. Ohio 2006).
 143. Voting for America, Inc. v. Steen, 732 F.3d 382 (5th Cir. 2013). *See also* Democratic National Committee v. Reagan, 329 F. Supp. 3d 824 (D. Ariz. 2018), *aff'd*, 904 F.3d 686 (9th Cir. 2018), rehearing en banc granted, 911 F.3d 942 (9th Cir. 2019) (challenge to state criminal statute making it a felony for a third party to collect early ballots from voters).