

VOTER ZONING

*Carla Laroche**

ABSTRACT

States are not only regulating who may vote, they are also zoning people with criminal convictions out of the electorate altogether. Using property and zoning law framing, this Article introduces the concept of “exclusionary voter zoning,” a framework that reveals how states use both location-based and election administrative acts and omissions to impose spatial and procedural barriers on millions of potential voters, beyond the obstacles often recognized as felony disenfranchisement. Whereas exclusionary zoning ordinances barred certain communities, especially Black people, from particular places and spaces, exclusionary voter zoning excludes individuals with convictions from electoral participation by controlling where and how they may vote. As described herein, *physical exclusionary voter zoning* includes legal restrictions related to location, like whether one is incarcerated, one’s state of residence, and any restrictions on movement because one is on probation. *Administrative exclusionary voter zoning* consists of invisible barriers that restrict one’s ability to access voting spaces, like bureaucratic confusion, misinformation, and targeted prosecution. Together, these obstacles create a disenfranchisement maze that zones out eligible voters.

By treating people with criminal convictions as risks to public health,

* Felder-Fayard Associate Professor of Law, Gordon Gamm Faculty Scholar 2024-25, Tulane University School of Law and The Murphy Institute, Tulane University; J.D., Columbia Law School; M.P.P., Harvard Kennedy School; B.A., Princeton University. This Article benefited from comments received at the Lutie A. Lytle Law Faculty Writing Workshop, Association of American Law Schools Annual Meeting Section on Civil Rights: New Voices in Civil Rights, Southeastern Association of Law Schools Annual Meeting, Tulane Law School Faculty Series, Junior Election Law Scholars Workshop, Poverty Law Workshop, and Society of American Law Teachers’ Progressive Scholars Workshop. I would like to thank Alice Abrokwa, Maryam Ahranjani, Evelyn Atkinson, Atanas Bakalov, Valena Beety, Zamir Ben-Dan, Stephen Bender, Carlos L. Bernal, Guy-Uriel Charles, Torey Dolan, Adam Feibelman, Daniel Farbman, Stephen Griffin, Richard Hasen, Shalay Jackson, Alexandra Klein, Ann Lipton, Paula Monopol, Tamika Moses, Sally Richardson, Zaneta Robinson, Maybell Romero, Stacy Seicshnaydre, Frédéric Sourgens, Doug Spencer, Trey Sullivan, India Thusi, Elizabeth Townsend Gard, Robert Westley, and Erika Wilson, for their time, wisdom, support, and suggestions as I developed this Article, and Katie Miller for her research guidance. Thank you to Francesqa Kaggwa, LeeAnn Trevino, Jacie Bellina, Ke’Lynn Enalls, and Alexandra Barnard for providing crucial research assistance and Tulane Law School, the Paul Verkuil Fund, and The Murphy Institute at Tulane University for the financial support.

safety, and welfare, states use their police power to exclude them from electoral spaces in ways that are arbitrary, racialized, and unrelated to public welfare. This Article proposes inclusionary voter zoning, drawing from state reforms and practices to outline how states may dismantle exclusionary voter zoning. Ultimately, explaining the restriction on people with convictions as a type of space and place exclusion illuminates who has a stake in public matters and governmental operations. Moreover, adopting a more inclusionary voter zoning system, in which all members of the citizenry have access to vote, allows the public to hold the state accountable more effectively.

TABLE OF CONTENTS

Abstract	1
Introduction	2
I. State Police Power	10
A. Zoning for the Benefit of Public Health, Safety, & Welfare	11
B. Racism through Exclusionary Zoning	14
1. Racial Exclusion Through History	14
2. The Racial Tool of Exclusionary Zoning	18
II. Map of Disenfranchisement: Voter Exclusion by Geography as Spatial Structural Racism.....	23
A. Physical Exclusionary Voter Zoning	28
B. Administrative Exclusionary Voter Zoning	32
III. Inclusionary Voter Zoning	40
A. Voter Zoning Harms & Benefits	41
B. Voter Zoning for Inclusion	45
Conclusion	51

INTRODUCTION

People with criminal records may be prohibited from entering numerous public places that others frequent freely and regularly: federally subsidized

housing,¹ schools,² other states,³ and the internet,⁴ to name just a few. This Article adds another location to that list: voting booths.

This Article offers a novel understanding of how space and place work to exclude people with convictions from voting. Building on prior scholarship on geography and civil rights,⁵ this Article analyzes another legal process that appears facially race-neutral⁶ but impacts racial groups differently, namely spatial restrictions that limit voting access for people with convictions.⁷

In the United States, approximately four million people cannot vote because the state in which they live bans people with criminal convictions from voting.⁸ Additionally there are an immeasurable number of people with

¹ Selena Muñoz-Jones & Emily Widra, *How Your Local Public Housing Authority Can Reduce Barriers for People with Criminal Records*, PRISON POL’Y INITIATIVE (Feb. 15, 2023), <https://www.prisonpolicy.org/blog/2023/02/15/publichousing>; Ashley De La Garza, Student Note, *The Never-Ending Grasp of the Prison Walls: Banning the Box on Housing Applications*, 22 THE SCHOLAR 409, 419 (2020).

² Jill S. Levenson, *Restricting Sex Offender Residences: Policy Implications*, AMER. BAR ASSOC’N (Apr. 1, 2009), <https://www.americanbar.org/groups/crsj/resources/human-rights/archive/restricting-sex-offender-residences-policy-implications>; FLA. STAT. § 775.215 (2025) (banning people convicted of certain enumerated sex offenses from living convicted of certain sex offenses from living “within 1,000 feet of any school, child care facility, park, or playground”); Rodricka Stevens, *Police Chief Explains the Misconception with Sex Offenders’ Law*, KLFY (Dec. 13, 2023), <https://www.klfy.com/local/vermillion-parish/police-chief-explains-the-misconception-with-sex-offenders-law>.

³ Ari Fife, *Oklahoma Considers a Pitch from a Private Company to Monitor Parolees with Artificial Intelligence*, THE FRONTIER (Sept. 11, 2025), <https://www.readfrontier.org/stories/oklahoma-considers-a-pitch-from-a-private-company-to-monitor-parolees-with-artificial-intelligence>.

⁴ *Id.*

⁵ See, e.g., Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 AMER. UNI. L. REV. 863, 871 (2020); Amy P. Meek, *Street Vendors, Taxicabs, and Exclusion Zones: The Impact of Collateral Consequences of Criminal Convictions at the Local Level*, 75 OHIO ST. L.J. 1, 5 (2014).

⁶ The term “facially race-neutral” applies to a policy or law that does not state a preference for one race over another. See Sonja Starr, *The Magnet School Wars and the Future of Colorblindness*, 76 STAN. L. REV. 161, 173 (2024) (defining the terms “‘race-neutral,’ ‘facially neutral,’ . . . or to the absence of racial classifications”); Deborah Hellman, *Diversity by Facially Neutral Means*, 110 VA. L. REV. 1901, 1903 (2024) (explaining that “‘facially neutral’ refers to a law or policy that does not explicitly classify on protected grounds”).

⁷ Scholars have used the term “colorblindness” to characterize people’s ability to implement policies and laws that do not seem to be race related on its face and “blindsight” to signify when people “have the ability to see but are not conscious of it. Essentially, they are blinded by the limitations of their cognitive experience.” Anne Bloom & Paul Steven Miller, *Blindsight: How We See Disabilities in Tort Litigation*, 86 WASH. L. REV. 709, 710 (2011). I will use the term “race-neutral” or its variants to represent these terms and move away from “using medical terminology to critique biases” and discrimination. *Id.* at 711.

⁸ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT’G PROJECT (Oct. 10, 2024),

convictions who are eligible to vote but do not do so for many reasons, including the fear of government prosecution.⁹ Both types of disenfranchisement impact Black communities disproportionately given the vast racial disparities of the criminal legal system.¹⁰

I use the term “exclusionary voter zoning” to conceptualize both types of disenfranchisement. The phrase encompasses how state actions and inactions signal, explicitly and implicitly, that otherwise eligible voters with criminal records are unwelcome.¹¹ Going beyond the argument that people with criminal convictions should not vote,¹² exclusionary voter zoning includes visible and invisible barriers that cordon off people with criminal convictions from the right to vote and normalize that separation. In analogizing to the zoning context, this Article focuses on tangible and intangible places and spaces, exploring the use of state police power to regulate the vote of systemically excluded citizens.¹³ States not only exclude voters from the

<https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>. Researchers have often used the term “felony disenfranchisement.” I, however, use the term “voter exclusion based on criminal convictions” to reflect that a person may be banned from voting for a misdemeanor conviction and that the active removal of people with criminal convictions from voting. Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2438 n.24 (2022).

⁹ Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 *FLA. L. REV.* 287, 292 (2023). As The Sentencing Report’s 2025 report on voting in prisons noted, “Today, very few jurisdictions in the United States can claim to have an inclusive democracy where every voting age citizen, regardless of conviction or incarceration status, has the right to vote.” Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 4 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>. In fact, only Maine, Vermont, the District of Columbia, and Puerto Rico allow all people with criminal convictions to vote, regardless of whether they are incarcerated or not. *Id.* And, according to The Sentencing Project’s findings, challenges limit people’s access to the ballot while incarcerated in Maine and Vermont even with the promise of voting rights. *Id.* at 3.

¹⁰ See Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 *SETON HALL L. REV.* 201, 215 (2025). According to one report, “[o]ne in 22 African Americans of voting age is disenfranchised, a rate more than triple that of non-African Americans.” Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT’G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>.

¹¹ See *infra* Sect. II.

¹² See Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2493-94 (2022) (explaining proposed reasons for excluding people with criminal convictions from the vote).

¹³ I use the term “citizen” in this Article to indicate a person, rather than a person’s immigration status. Several state constitutions and federal laws ban noncitizens from voting, though several jurisdictions authorize noncitizens to vote, including the District of Columbia. See *Laws Permitting Noncitizens to Vote in the United States*, BALLOTPEDIA, https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States (last

actual polling place, but they also zone people out of any attempts to access the vote altogether.¹⁴ Together, the government’s administrative voter zoning and physical voter zoning regulate the exercise of political power by people with convictions, practically treating their voting rights as public nuisances.¹⁵

Comparing voting and property access works because of the high priority society places on both.¹⁶ Property ownership and voting are fundamental rights.¹⁷ Access to land and particular spaces contributes to one’s identity and belonging, and access to the ballot affirms one’s connection to the populace and one’s communal efforts to hold politicians accountable.¹⁸ Both signal power and privilege and both have histories of racial exclusion.¹⁹ In zoning law, a person may own property, not own property, and own property but not be able to use it as they intended.²⁰ In voter exclusion based on criminal

visited Mar. 3, 2026). In fact, people have used the term “returning citizen” to describe individuals with criminal records and represent “their potential for redemption and meaningful participation in society.” *Returning Citizens*, JOBS FOR HUMAN., <https://www.jobsforhumanity.com/training/returning-citizens> (last visited Mar. 1, 2026); Clinton Yates, ‘Returning Citizens’ are Still One of D.C.’s Most Marginalized and Motivated Groups, WASH. POST (Jan. 16, 2015), <https://www.washingtonpost.com/news/local/wp/2015/01/16/returning-citizens-are-still-one-of-d-c-s-most-marginalized-and-motivated-groups>.

¹⁴ See *infra* Sect. II.

¹⁵ Public nuisance is “an unreasonable interference with a right common to the general public.” RESTATEMENT (SECOND) OF TORTS § 821B (AMER. L. INST. 1979). For a history of the public nuisance doctrine, see Leslie Kendrick, *The Perils and Promise of Public Nuisance*, YALE L.J. 702, 713-27 (2023).

¹⁶ Dylan C. Penningroth, *Police Power Affects All of Us*, TIME (May 1, 2025, 6:30 AM), <https://time.com/collections/george-floyd-america-reflection/7280515/police-power-public-safety-essay>. Philosophers like John Locke connected property ownership to legitimate political power. See JOHN LOCKE, TWO TREATISES OF GOVERNMENT 105, 115 (Ian Shapiro ed., 2003).

¹⁷ See *Shelley v. Kraemer*, 334 U.S. 1, 10 (1948) (discussing right to property); *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) (discussing right to vote).

¹⁸ DARON ACEMOGLU & JAMES A. ROBINSON, THE NARROW CORRIDOR: STATES, SOCIETIES, AND THE FATE OF LIBERTY 161 (2019); ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 182-84 (2015).

¹⁹ *Shelley v. Kraemer*, 334 U.S. 1, 10 (1948); Mae C. Quinn, *Black Women and Girls and the Twenty-Sixth Amendment: Constitutional Connections, Activist Intersections, and the First Wave Youth Suffrage Movement*, 43 SEATTLE U. L. REV. 1237, 1242-43 (2020) (voting exclusion). Although this Article focuses on government actions and its relationship with people with felony convictions, private individuals’ racist behavior has excluded Black people from accessing land and their voting rights. See, e.g., Erika K. Wilson, *White Cities, White Schools*, 123 COLUM. L. REV. 1221, 1242 (2023) (analyzing the tracking of school district zone boundaries and former sundown towns, which were localities that Black people could not be in after dark during the Jim Crow Era).

²⁰ To explain the power of zoning, Sara Bronin emphasized, “Zoning affects everything that is built in our society. . . . It dictates our economy. It dictates how we relate to each other. It dictates our personal choices, our employment opportunities, our educational

conviction, a person may vote, be banned from voting, and be eligible to vote but not be able to exercise their political power.²¹ Both depend on government permission and regulation.²² The state has the authority to determine people's accessibility to both property and voting. As such, applying zoning law to voting law is not a one-to-one analogy but a new way to consider the impact of voting bans on people with conviction records.

State officials, police, and private individuals who influence state laws employ a strategy I call "voter exclusion by geography" to regulate people with criminal convictions' right to vote along spatial lines through what I label physical and administrative exclusionary voter zoning.²³ Physical exclusionary voter zoning consists of the spaces eligible voters with criminal convictions may not enter and involves analyzing a person's location, for example, whether a person is detained in a prison or jail and what state a person lives in. These geographic spaces dictate whether people with criminal convictions may ever be eligible to vote and illuminate why freedom of movement (or lack thereof) and location matter. This Article also argues that administrative exclusionary voter zoning aims to signal rejection of the vote of people with criminal convictions, even if they are eligible to vote and are in a physical space where they may do so.²⁴ This particular voter zoning entails issues such as when a school is a polling place and a person's post-release conditions bar them from being near a school, elections officials refusing to help register people with convictions to vote, and prosecutors threatening to prosecute anyone with a criminal conviction who votes illegally even when they believe, mistakenly, that they are eligible to vote.

People directly impacted by voting exclusions, advocates, and scholars have described the obvious and hidden impediments that exclude people with criminal records from the ballot box.²⁵ Physical barriers consist of

opportunities, and so much more." BC LAW, *Zoning and Equity*, at 1:00:54-1:01:00, 1:01:12-1:01:23 (YouTube, Oct. 25, 2021), <https://youtu.be/l-CjFtLwmSc?si=ZgPOiG5yFIqO8SJp&t=3654>.

²¹ See Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 *FLA. L. REV.* 287, 292 (2023) (describing the ways eligible voters with criminal convictions are excluded from the ballot box).

²² QUENTIN SKINNER, *LIBERTY AS INDEPENDENCE: THE MAKING AND UNMASKING OF A POLITICAL IDEAL* 3-4 (2025).

²³ Instead of using the categories "de jure" and "de facto" to classify the exclusionary voter zoning, I use "physical" and "administrative." The latter taxonomy better aligns with how people are excluded from the vote than whether the barriers appear in a formal statute.

²⁴ See Page Dukes, *Ending Felony Disenfranchisement*, INQUEST (Jan. 20, 2026), <https://inquest.org/ending-felony-disenfranchisement>.

²⁵ Many people have delved into the issue of voter exclusion based on criminal convictions. For example, "Until We All Count," a short film Page Dukes directed that discusses the importance of voting rights and access to the ballot box through the words and experiences of people directly impacted by Georgia's voting ban and disenfranchisement

“registration requirements, lack of access to polling and registration venues, [and] voter identification requirements.”²⁶ This Article enlarges the list of barriers by looking at how prison and post-release policies restrict access to polling places and ballots. Discriminatory practices and maze-like procedures cause confusion, disinterest, fear, and distrust in the electoral and voting restoration processes for people with convictions. The application of zoning and public nuisance law to the voter exclusion of people with criminal convictions offers a new way of reviewing the relationship between the state and its residents.²⁷ This approach illuminates how the government signals, strongly, who belongs and who does not, as well as who is deemed invited into current and future political conversations and who is intentionally left off the ever important guest list for civic engagement.

This Article makes three contributions to voting rights scholarship. First, it exposes the spatial dimension of laws, policies, and regulations people with criminal records must follow should they seek to vote. In doing so, this Article identifies how voter exclusion by geography succeeds in the United States, reviewing the literal spaces and locked doors that stop eligible voters from voting. The spatial analysis this Article advances builds on a growing body of legal geography scholarship that has examined how place and space structure legal rights and legal exclusion. Legal geographers have documented how law “takes place,”²⁸ *i.e.*, how specific locations, boundaries, and spacing develops and spotlights legal importance.²⁹ Applying this framework to the voting context reveals what constitutional or criminal law analysis tends to miss: voter disenfranchisement is not only a legal status imposed on individuals but also a type of spatial arranging that sorts people

maze, including Dukes and Kareemah Hanifa. See REPRESENT JUSTICE, *Until We All Count*, at 0:43-2:10 (YouTube, Mar. 9, 2023), <https://youtu.be/WZRAIwW3Co?si=oN9dw0G7cYIesMrr>. See also Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 *FLA. L. REV.* 287, 322 (2023) (explaining the different ways that people with convictions are excluded from the ballot box).

²⁶ Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 *FLA. L. REV.* 287, 322 (2023).

²⁷ See STEPHANIE M. H. CAMP, *CLOSER TO FREEDOM: ENSLAVED WOMEN AND EVERYDAY RESISTANCE IN THE PLANTATION SOUTH* 6 (2004).

²⁸ See IRUS BRAVERMAN, NICHOLAS BLOMLEY, DAVID DELANEY, & ALEXANDRE KEDAR, *THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY* 1 (2014).

²⁹ See IRUS BRAVERMAN, NICHOLAS BLOMLEY, DAVID DELANEY, & ALEXANDRE KEDAR, *THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY* 1-3 (2014); DAVID DELANEY, *THE SPATIAL, THE LEGAL AND THE PRAGMATICS OF WORLD-MAKING: NOMOSPHERIC INVESTIGATIONS* 2-3 (2010); NICHOLAS BLOMLEY, *LAW, SPACE, AND THE GEOGRAPHIES OF POWER* 3-4 (1994); see also Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 *AM. U. L. REV.* 863, 868-72 (2020) (analyzing as Black drivers risk criminalization because of their race).

into those who belong in political space and those who do not.³⁰

Second, this Article scrutinizes how public officials' conduct encourages fear and leads to the criminalization of the right of people with convictions to vote. Using property law, I demonstrate how state actors' language and actions construct the image of people with convictions voting as dangerous to public welfare.³¹ Third, this Article elaborates on the ethical critiques of voter exclusion based on criminal convictions and encourages the use of federal, state, and local protections to expand voting access.³²

To be clear, this Article argues neither that the right to vote is a property right nor that election and property laws are interchangeable. The goal is not to provide election litigation strategies to legal activists or model election law principles on property law. Rather, I analyze this issue through zoning laws to advance a new framing of voting policy. This analytical approach offers compelling evidence that the use of the police power determines the political citizenry.

The U.S. Supreme Court's April 29, 2026, decision in *Louisiana v. Callais*, intensifies the significance of this framing.³³ In a 6-3 decision, the Court held that Louisiana's congressional map creating a second majority-Black district was an unconstitutional racial gerrymander, and in doing so effectively gutted Section 2 of the Voting Rights Act.³⁴ As Justice Kagan observed in dissent, the majority's decision renders Section 2 "all but a dead letter;" the Court now requires plaintiffs to prove intentional racial discrimination rather than discriminatory effects.³⁵ *Callais* completes the

³⁰ See Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvestre, *Governing the Belongings of the Precariously Housed: A Critical Legal Geography*, 16 ANN. REV. L. & SOC. SCI. 165, 167–68 (2020); Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 679–80 (2020); Roland Neil & Joscha Legewie, *Policing Neighborhood Boundaries and the Racialized Social Control of Spaces*, 58 LAW & SOC'Y REV. 192, 193–94 (2024).

³¹ See IRUS BRAVERMAN, NICHOLAS BLOMLEY, DAVID DELANEY, & ALEXANDRE KEDAR, *THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY* 17 (2014).

³² See Rick Hasen, *Breaking: Eighth Circuit, on 2-1 Vote, Holds Private Plaintiffs Cannot Enforce Section 2 of the Voting Rights Act through a Section 1983 Action, a Ruling Which if Applied Nationally Would Devastate Voting Rights Act Enforcement in the United States*, ELECTION L. BLOG (May 14, 2025, 8:34 AM), <https://electionlawblog.org/?p=149897>; Franita Tolson, *The Spectrum of Congressional Authority over Elections*, 99 B.U. L. REV. 317, 323 (2019); Bryna Godar, *Disenfranchisement Creep*, 112 VA. L. REV. 577, 626-34 (2026) (proposing the use of state constitutional law to attack expansive voter exclusion on criminal conviction schemes in state courts).

³³ *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), judgment entered, 146 S. Ct. 1111 (2026).

³⁴ Sherrilyn Ifill, *SCOTUS Drops the Other Shoe on the Voting Rights Act*, SUBSTACK (Apr. 29, 2026), <https://sherrilyn.substack.com/p/scotus-drops-the-other-shoe-on-the>.

³⁵ *Louisiana v. Callais*, 146 S. Ct. 1131, 1190 (2026) (Kagan, J., dissenting). Justice Kagan characterized the majority as having "convert[ed] Section 2 into its opposite—a

dismantling of the federal statutory protections that previously constrained states' use of spatial tools, including district lines, geographic sorting, and place-based electoral arrangements, to dilute Black political power.³⁶ The *Callais* majority refuses to recognize that facially neutral spatial schemes produce racially disparate political outcomes, which this Article critiques.³⁷

This Article proceeds in three parts. In Part I, I explain the state's role and purpose in implementing zoning ordinances, while also delving into how zoning has allowed state and local governments to exclude communities, particularly Black people, from spaces and places to protect white communal and economic interests. Part II offers a brief history of mass incarceration in the United States and how states regulate voting access of people with a criminal conviction.³⁸ Then, I explain the physical and administrative restrictions people with criminal convictions face when voting because of

statute turning on discriminatory intent, not effects" and warned that the decision "threaten[ed] a half-century's worth of gains in voting equality." *Id.* at 1181, 1182.

³⁶ Pamela S. Karlan, *Bang, Bang, Bang: Callais Kills Off the Voting Rights Act*, JUST SECURITY (June 4, 2026), <https://www.justsecurity.org/140980/callais-kills-voting-rights-act>; Richard L. Hasen, *The Supreme Court's Conservatives Just Issued the Worst Ruling in a Century*, SLATE (Apr. 29, 2026, 1:16 PM), https://slate.com/news-and-politics/2026/04/scotus-voting-rights-section-two-ruling-history-worst-century.html?gift_token=jaZQBomHRPCU5IpEpdFCYQ; Richard L. Hasen, *Breaking: On 6-3 Party Line Vote, Supreme Court Drastically Weakens Voting Rights Act in Callais Case to Make It Much Harder for Minority Plaintiffs to Get Fair Representation in Redistricting*, ELECTION L. BLOG (Apr. 29, 2026, 7:15 AM), <https://electionlawblog.org/?p=155728>. Along with *Callais*, scholars have noted that the Court's recent holding in *Mullin v. Doe* that Executive Branch's decision to end Temporary Protected Status for Haitian citizens living in the United States was due to racial animus "will make it even harder to prove racially discriminatory intent in voting and other cases." Richard Hasen, *Justice Alito Sanewashes Trump Comments About Haiti and Somalia Being a "Shithole" Countries, Calling Such Comments Previously "scandalized" "political discourse" but Not Racist; What It Means for Proving Discriminatory Intent in Voting Cases*, ELECTION L. BLOG (June 25, 2026), <https://electionlawblog.org/?p=156917>; Adam Serwer, *The Court That Will Believe Absolutely Anything Is 'Race-Neutral'*, THE ATL. (June 27, 2026), https://www.theatlantic.com/ideas/2026/06/scotus-asylum-racial-discrimination/687710/?gift=Je3D9AQS-C17IUTOnl2W8H_BlxOeZnlyrtUdlnOgfEE&utm_source=copy-link&utm_medium=social&utm_campaign=share.

³⁷ *Louisiana v. Callais*, 146 S. Ct. 1131, 1142-43 (2026) (Alito, J.) ("[A]llowing race to play any part in government decision-making represents a departure from the constitutional rule that applies in almost every other context."); James Sample, *5 Things to Know About the Supreme Court's Landmark Decision on the Voting Rights Act*, ABC NEWS (Apr. 29, 2026, 9:27 AM), <https://abcnews.com/Politics/5-things-supreme-courts-landmark-decision-voting-rights/story?id=131396119> (arguing that the majority's approach "treats the Constitution as forbidding the very race-conscious measures designed to fulfill its promises"); Joey Fishkin, *Must-Read Joey Fishkin: "It's All Politics,"* ELECTION L. BLOG (June 4, 2026, 6:54 AM), <https://electionlawblog.org/?p=156586>.

³⁸ *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974).

racialized and ostensibly race neutral discriminatory practices.

In Part III, the Article introduces how physical and administrative exclusionary voter zoning that states have implemented to support voter exclusion by geography fosters racial separation and voter disengagement for Black people on one side and elevates white community interests on the other. Then, I propose implementing inclusionary voter zoning, which requires removing physical and administrative barriers to voting for people with convictions and dismantling of voter exclusion schemes altogether. Inclusionary voter zoning does away with discrimination based on race and other characteristics and produces more just voting norms for society as a whole.³⁹

I. STATE POLICE POWER

The zoning of people with criminal convictions out of the electoral system is not incidental; it is a deliberate exercise of state police power. Understanding how states zone people out of the ballot box first requires knowing how states zone people out of certain spaces generally. Property ownership is a fundamental right purportedly protected by the U.S. Constitution.⁴⁰ People have the right to the unencumbered use of their private property, and the government may not interfere with people's enjoyment of their property without due process and compensation.⁴¹ The government, however, may regulate how people use their land through zoning laws and its police power.⁴² States have broad authority to regulate people and property in the name of public health, safety, and welfare.⁴³ This authority provides states with expansive power that they have used to preclude Black people and other people of color from accessing spaces deemed suitable only for more privileged white people.⁴⁴

³⁹ Errin Haines explained the meaning of voting and access to the ballot box in this way, "In America, to vote is to belong. May we continue our journey towards belonging, away from exclusion, so that the promise of liberty and equality becomes real across our United States." Errin Haines, *Her Grandparents Fought to Join American Democracy. She's Fighting to Complete It.*, THE 19TH NEWS (July 1, 2026, 12:17 PM), <https://19thnews.org/2026/07/revolutionary-america-250-voting-equality>.

⁴⁰ U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

⁴¹ U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1; PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS 239 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025) (explaining that a property owner's right to use their property allows them to "serve their individual goals, and it allows for socially beneficial and economically desirable deployment of resources").

⁴² See, *infra* Part IA.

⁴³ *Berman v. Parker*, 348 U.S. 26, 33 (1954).

⁴⁴ See, *infra* Part IB.

A. Zoning for the Benefit of Public Health, Safety, & Welfare

Property owners expect the right to use their private property, without interference by other individuals and the government.⁴⁵ That right, however, is not unlimited; states and localities may enact laws and ordinances to restrict private property.⁴⁶ Zoning laws allow the government to regulate what type of functions and actions property owners may conduct on their property.⁴⁷

The Tenth Amendment of the U.S. Constitution reserves to the states the police power, which is a power of the sovereign.⁴⁸ In *Berman v. Parker*, the U.S. Supreme Court defined police power as “essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition.”⁴⁹ Under the power, state governments may enact laws and policies to address “[p]ublic safety, public health, morality, peace and quiet, law and order,” and so much more than the Court listed.⁵⁰ The Court has explained that “[t]he values [public welfare] represents are spiritual as well as physical, aesthetic as well as monetary.”⁵¹ This authority is expansive and may reach many areas of people’s lives. In the place and space context, the government implements zoning policies to promote economic prosperity, balance community needs,

⁴⁵ Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 [AMER. UNI. L. REV.](#) 863, 870 (2020) (“At its core, property law articulates the incidents, privileges, and limitations of ownership and use.”); *PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS* 239 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025) (“An individual property owner has the right to make sure of her property and to have her property uses protected from interference by others.”).

⁴⁶ *PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS* 239 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025).

⁴⁷ Christopher Serkin, *A Case of Zoning*, 96 [NOTRE DAME L. REV.](#) 749, 752 (2020) (describing zoning laws as “maintaining community character, enhancing property values, and allocating the costs of development between insiders and outsiders”); *THE RIGHT TO FAIR HOUSING: CASES, STATUTES, AND CONTEXT* 347 (Florence Wagman Roisman, Stacy E. Seicshnaydre, & Rigel C. Oliveri, eds. 2025) (explaining that zoning involves creating districts that municipalities keep “separate from one another, with the use of property withing each district being mostly uniform”).

⁴⁸ U.S. CONST. amend. [X](#) (“The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

⁴⁹ *Berman v. Parker*, 348 U.S. 26, 32 ([1954](#)).

⁵⁰ *Id.* (noting that defining the scope of the police power was “fruitless” and dependent on the facts). State courts have upheld the inherent and broad control states have under their police power. *See, e.g.*, *T-Mobile W. LLC v. City & Cnty. of San Francisco*, 6 Cal. 5th 1107, 1116 ([2019](#)) (quoting *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal.4th 729, 738 (2013)); *Abdow v. Att’y Gen.*, 468 Mass. 478, 489 (2014).

⁵¹ *Id.* at 32-33. States, the Court determined, should have the ability to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled” and alleviate the public from the “spread [of] disease and crime and immorality.” *Id.*

protect the environment,⁵² and prioritize “family values.”⁵³ These tangible and intangible goals allow for broad application.

States’ usage of their expansive police power includes addressing public nuisances. A public nuisance is tangible property or an intangible item that unreasonably interferes with the general public’s rights.⁵⁴ A public nuisance is not necessarily a harmful thing; instead, it is something the government has deemed harmful in a particular location. The U.S. Supreme Court noted this distinction in *Village of Euclid v. Ambler Realty Co.* when it stated, “A nuisance may be merely a right thing in the wrong place,—like a pig in the parlor instead of the barnyard.”⁵⁵ The Court does not reject the pig; it recognizes the state’s power to relocate it. What makes something a nuisance under the police power is its type and location. The nuisance’s presence in a space where the state has determined it does not belong is the issue.

Because of this calculation, the state does not need to establish that something is harmful altogether; it must establish that the item is harmful in a particular space and community.⁵⁶ And, to address that harm, the sovereign must exclude the nuisance from the protected space. Only when the state has removed the nuisance is that space restored to its respected status.

Though broad, the police power of the state has its limits.⁵⁷ State constitutions, explicit powers given to the federal government, and rights protected within the U.S. Constitution serve as guardrails against draconian state police power.⁵⁸ The government may not use its police power in an “arbitrary and unreasonable” manner with no “substantial relation to the public safety . . . or general welfare.”⁵⁹ Should the court find that a government law or ordinance falls within such restrictions, the policy will not stand; it would be a violation of the property owner’s due process rights under

⁵² PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS 301-02 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025).

⁵³ *Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974) (“The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.”).

⁵⁴ RESTATEMENT (SECOND) OF TORTS § 821B (AMER. L. INST. 1979).

⁵⁵ *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926); Kellen Zale, *The Government’s Right to Destroy*, 47 *ARIZ. STATE L.J.* 269, 291-92 (2015).

⁵⁶ *Vill. of Euclid*, 272 U.S. at 388.

⁵⁷ *Eubank v. City of Richmond*, 226 U.S. 137, 143 (1912) (stating that the government’s police power is “always one of the least limitable”). See June Murray, *Constitutional Law—Limitations on Police Power*, 6 *BUFF. L. REV.* 42, 42-44 (1956).

⁵⁸ *Nectow v. City of Cambridge*, 277 U.S. 183, 188 (1928) (stating zoning power is “not unlimited”); *Belle Terre*, 416 U.S. at 6 (describing instances where an ordinance or law went beyond the police power).

⁵⁹ *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926); *Nectow*, 277 U.S. at 187-88.

the Fourteenth Amendment.⁶⁰

Individuals have attempted to claim that states have exceeded their authority in numerous settings, yet the U.S. Supreme Court has emphasized regularly the almost unlimited nature of the police power. For example, in *Hadacheck v. Sebastian*, a property owner who used his land to make bricks was convicted of violating a Los Angeles ordinance that made manufacturing bricks in a particular area a misdemeanor offense and was sentenced to jailtime.⁶¹ The property owner filed a habeas corpus petition claiming that the city ordinance violated his Fourteenth Amendment rights.⁶² He argued that he had been manufacturing bricks on his land long before the city passed the ordinance, that the city was targeting him to remove competition and benefit other brickmakers, that his business operations were not health and safety issues, and that the city's actions were arbitrary.⁶³

In upholding the city ordinance, the Court stressed the vast extent of the city's police power and how limited the restrictions were on that power.⁶⁴ The U.S. Supreme Court recognized that one individual may experience harm because of the state's exercise of its police power, "but the imperative necessary for its existence precludes any limitation upon it when not exerted arbitrarily."⁶⁵ The police power allows for progress for the public, even at the expense of "private interests," and the state's power went beyond mitigating and addressing public nuisances.⁶⁶ As long as the state's policies were neither arbitrary nor unjustly discriminatory, their actions were not unconstitutional.⁶⁷

The Court noted that the property owner could still extract clay from his property, even if he had difficulty transporting the clay to another location to manufacture bricks; the city ordinance did not eliminate the property owner's use of his land overall.⁶⁸ Further, the Court reasoned that it would not invalidate the ordinance simply because the government could have used other means to regulate brickmaking in the district.⁶⁹ The state's police power is legitimate and assumed to be imposed in good faith.⁷⁰ Such a conclusion makes it easier for government officials to implement zoning provisions and harder for people to get courts to invalidate them.

⁶⁰ *Nectow*, 277 U.S. at 185.

⁶¹ *Hadacheck v. Sebastian*, 239 U.S. 394, 404-05 ([1915](#)).

⁶² *Id.* at 405-07.

⁶³ *Id.* at 406-07.

⁶⁴ *Id.* at 410.

⁶⁵ *Id.*

⁶⁶ *Id.* at 410-11.

⁶⁷ *Id.* at 411.

⁶⁸ *Id.* at 411-12.

⁶⁹ *Id.* at 413-14.

⁷⁰ *Id.* at 414.

And, across these cases, police power zoning appears to operate through a consistent structure. First, the state or municipality identifies a protected space whose character and welfare it wants to protect, for example a residential neighborhood or commercial district. It then identifies a threat that it characterizes as incompatible with that space's purported function or as a nuisance to those who belong there. Lastly, it uses spatial enforcement that removes the threat from the protected space and maintains the exclusion over time, through ordinances, prohibitions, and criminalization. This structure is the design of police power zoning, whether the protected space is a residential neighborhood and the threat is an industrial use, or the protected space is a political community and the threat is a category of people the state has decided do not belong within it.

B. Racism through Exclusionary Zoning

1. Racial Exclusion Through History

The United States has a long history of excluding Black people from public places and spaces. Beginning with enslavement, state and local governments ensured that Black people, whether enslaved or free, knew the literal and metaphorical boundaries of their movement and existence. For example, the 1857 Mississippi Slave Codes⁷¹ were specific in their racist requirements and demanded that white people enforce the laws “vigilantly.”⁷² The Codes placed on the enslaved person the burden of proving their innocence when charged with an offense, rather than the state.⁷³ The articles in the Code affirmed that enslaved people's actions were for the benefit of their enslavers⁷⁴ and that white people had the right to question any Black person they suspected of being in a space without permission or who was not following subordination norms and expectations.⁷⁵

Further, enslaved people had to be aware of how long they were in a public place, even when their enslavers had given them permission to be there, and who was around them.⁷⁶ For example, Article 42 banned an enslaved person from entering and remaining in a store with others for ten minutes; the assumption being that the enslaved person was up to no good if they stayed longer.⁷⁷ Along with outlawing rioting and trespassing, Article 50 made it illegal for an enslaved person to “use abusive, provoking or

⁷¹ MISS. CODE ANN. § 244-53 ([1857](#)).

⁷² MISS. CODE ANN. § 244 (1857).

⁷³ *Id.*

⁷⁴ MISS. CODE ANN. § 244 (1857).

⁷⁵ MISS. CODE ANN. § 244-47 (1857).

⁷⁶ MISS. CODE ANN. § 244-45 (1857).

⁷⁷ *Id.*

insulting language to any person not being a negro or mulatto.”⁷⁸ The law deemed Black people’s presence in public acceptable, but only if Black people did not offend white people’s sensibilities.

Notably, even free Black people could not be residents of Mississippi without permission.⁷⁹ They were not allowed to move freely between states and had to leave Mississippi within ten days if they were visiting.⁸⁰ The slave codes authorized white private citizens to sell free Black people into slavery for life if a free Black person failed to leave the state, according to Article 80.⁸¹ The proceeds of the sale of that formerly-free person into slavery went to the county.⁸² If a Black person wanted to travel to another county, they had to have evidence that they had permission to be in the state. Being caught without that documentation would lead to the person’s arrest.⁸³ If they are unable to provide proof within sixty days, they were to be sold into slavery, under Article 81 of the Code.⁸⁴ The Code made clear that were the free Black person traveling as a white person’s servant, then these restrictions did not apply to them; free Black people could travel freely for the benefit of white people.⁸⁵

The slave ordinances passed in Richmond, Virginia, demonstrate the way local governments restricted Black people’s movement and reinforced the social and legal stratification of Black people in the United States.⁸⁶ The slave ordinances passed in the 1850s made it illegal for Black people to walk in certain public spaces, including parks, required them to move out of the way of a white person walking on the sidewalk, and banned Black people from “insolent or menacing gestures” and “blasphemous or indecent” words around white people.⁸⁷ Black people’s movement and actions had to fit within prescribed norms, otherwise they were deemed criminal.⁸⁸ Accordingly, during slavery, government laws and unwritten norms dictated where Black people could go and what little access they could have to land ownership; people who were enslaved were under the control of white people, especially

⁷⁸ MISS. CODE ANN. § 247 (1857).

⁷⁹ MISS. CODE ANN. § 253 (1857).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ MISS. CODE ANN. § 253 (1857).

⁸⁶ A RICHMOND READER, 1733-1983 107-113 (Maurice Duke & Daniel P. Jordan eds., 1983).

⁸⁷ *Id.*

⁸⁸ See, e.g., *Pass Permitting Travel by an Enslaved Man from Montpelier*, ENCYCLOPEDIA VA., <https://encyclopediavirginia.org/151-tif> (last visited Jan. 28, 2026) (displaying a pass enslaved people had to carry to confirm they had permission to leave the plantation).

landowning and wealthy white people.⁸⁹

After the U.S. Civil War and during the subsequent Reconstruction period, Congress passed legislation and constitutional amendments that were supposed to abolish racial discrimination and offer equal treatment for Black people under the law.⁹⁰ State and local government officials, however, still excluded Black communities for property and places.⁹¹ Through the use of law and language, the state found ways to degrade Black people even though the law had purported to make them free. Black people were excluded from owning and using land, and, when they overcame such barriers, the parcels of land they acquired were the least desirable.⁹² Government agencies made promises of land and freedom to newly-freed Black men and their families, but those efforts benefitted white communities more so.⁹³

⁸⁹ STEPHANIE M. H. CAMP, *CLOSER TO FREEDOM: ENSLAVED WOMEN AND EVERYDAY RESISTANCE IN THE PLANTATION SOUTH* 16 (2004) (explaining that the success of the “principles of restraint that criminalized and enslaved slave movement” depended on the state to implement the laws that benefitted enslavers).

⁹⁰ *Reconstruction in America: Racial Violence after the Civil War, 1865-1876*, EQUAL JUST. INITIATIVE (2020), <https://eji.org/report/reconstruction-in-america>.

⁹¹ Saidiya Hartman describes emancipation as a “nonevent;” she argues that Black people endured the “afterlife of slavery.” SAIDIYA HARTMAN, *THE HOLD OF SLAVERY* 5 (updated ed. 2022) (“The conviction that I was living in the world created by slavery propelled the writing of . . . my first book The hold of slavery was what I sought to articulate and convey.”); Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 [SETON HALL L. REV.](#) 201, 208, 222 (2025) (examining Saidiya Hartman’s afterlife of slavery concept).

⁹² Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community through Partition Sales of Tenancies in Common*, 95 [NW. U. L. REV.](#) 505, 525-27 (2001); Roy W. Copeland, *The Rise and Fall of Black Real Property Ownership: A Review of Black Land Ownership from the Rough Beginnings to the Great Gains; Dispossession via the Use of Legal Tactics and the Push for Black Land Retention*, 9 [BLACK L.J.](#) 51, 52-53 (1984); Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 [PUB. AFFS. Q.](#) 255, 260-63 (2007). The first racial zoning case, *In re Lee Sing*, 43 F. 359 (N.D. Cal. 1890), was regarding a local ordinance that ordered people of Chinese descent to leave the city and county of San Francisco, California. *THE RIGHT TO FAIR HOUSING: CASES, STATUTES, AND CONTEXT* 14 (Florence Wagman Roisman, Stacy E. Seicshnaydre, & Rigel C. Oliveri eds., 2025). The court held that the ordinance went beyond “any legitimate police power of the state.” *In re Lee Sing*, 43 F. at 362. After the invalidation of the ordinance in *In re Lee Sing*, local and state governments continued to pass racial exclusionary zoning policies. *THE RIGHT TO FAIR HOUSING* at 17. Accordingly, “Baltimore was the first jurisdiction to direct such ordinances at Black people.” *Id.* at 18.

⁹³ Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community through Partition Sales of Tenancies in Common*, 95 [NW. U. L. REV.](#) 505, 525-27 (2001) (describing how white people represented the majority of applicants that the government promised Black men and obstacles Black applicants endured in attempting to obtain land); Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 [PUB. AFFS. Q.](#) 255, 260

The infamous 1896 case, *Plessy v. Ferguson*, illustrated how the U.S. Supreme Court allowed states to regulate spaces based on race and white supremacy.⁹⁴ Plessy, a Black man, argued that Louisiana's law requiring Black and white people sit in separate railroad cars violated the Equal Protection Clause of the Fourteenth Amendment.⁹⁵ In ruling for the state, the Court held that separation by race was not unconstitutional as long as the accommodations were equal.⁹⁶ The decision not only "solidified racial separation in public and private life,"⁹⁷ but it also served an expansive role in how the state, judiciary, and private individuals defined roles and interacted based on race and racial status.⁹⁸ The decision's logic did not end with transportation; it migrated into every domain where the state had authority to regulate space and place.

Even as the U.S. Supreme Court banned government authorities from implementing racial zoning⁹⁹—which explicitly separate property and accommodations based on race¹⁰⁰—and judicially enforcing racial covenants—which are agreements between private parties restricting who property owners may sell land to based on race,¹⁰¹ researchers have determined that exclusionary zoning "has survived many court challenges and remains widespread today."¹⁰² As the formal tools of explicit racial

(2007) (explaining state and municipal government efforts to regulate access to certain neighborhoods by race).

⁹⁴ *Plessy v. Ferguson*, 163 U.S. 537, 563-64 (1896).

⁹⁵ *Id.* at 541-42.

⁹⁶ *Id.* at 549.

⁹⁷ John A. Powell et al., *Introduction to the Issue*, 7 RSF: RUSSELL SAGE FOUND. J. SOC. SCIENCE, 6 (2021), <https://www.rsffournal.org/content/rsfjss/7/1/1.full.pdf>.

⁹⁸ *Id.* at 2. ("Related issues that are part and parcel to the decision include definitions of whiteness and the relationship between white spaces and black bodies; the creation and sustaining of state-supported institutions; definitions of race and citizenship; and the role of the Court in creating, sustaining, or reversing social systems that reproduce racism, racial discrimination, and racial inequality.").

⁹⁹ *Buchanan v. Warley*, 245 U.S. 60, 82 (1917) (holding that a city ordinance banning people from buying real property based on race was not a legitimate exercise of the police power of the State, and "unconstitutional under the Fourteenth Amendment").

¹⁰⁰ *Brown v. Board of Education*, 347 U.S. 483, 495 (1954) (finding that "[s]eparate educational facilities are inherently unequal" and leading to holdings that segregation laws were unconstitutional).

¹⁰¹ *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948) (holding that government agencies may not enforce racial covenants).

¹⁰² Matthew Mleczko & Matthew Desmond, *Using Natural Language Processing to Construct a National Zoning and Land Use Database*, 60 *URB. STUD.* 2564, 2566 (2023); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA X-XIII*, 48-54 (2017). In *Arlington Heights*, the U.S. Supreme Court held that race-based discrimination claims under the Fourteenth Amendment require proof of discriminatory intent, which is difficult to achieve. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 270-71 (1977). Upon remand, the U.S. Court of

separation became vulnerable, states and municipalities adapted how they achieved their goals. Race-neutral zoning law became the prevailing instrument for the same spatial exclusion that *Plessy* had authorized explicitly. The protected spaces remained white. The sovereign now defined threats as economic or aesthetic rather than racial. The enforcement mechanisms were now zoning ordinances rather than segregation statutes. The structure was identical; only the terminology had changed.¹⁰³

2. The Racial Tool of Exclusionary Zoning

The extent of the police power allows states to regulate places and spaces broadly in the form of exclusionary zoning. Unfortunately, even though the power and the goals of zoning laws appear race-neutral and directed at land *use* in the post-Civil Rights era, state and municipal government have used their authority to exclude and control *people* based on race and other identities.¹⁰⁴ Access to land is not neutral; zoning and property laws necessarily aim to categorize and separate.¹⁰⁵ Legal scholars have described how states' use of their police power includes explicitly and implicitly keeping people and communities out of certain cities and areas.¹⁰⁶ While not

Appeals for the Seventh Circuit held that plaintiffs could establish violations of the Fair Housing Act “by a showing of discriminatory effect without a showing of discriminatory intent.” *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977). As such, today, claimants use the Fair Housing Act and its regulations’ disparate impact standard to prove that a race-neutral land use and housing practice is discriminatory. *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 534, 540-46 (2015) (holding that the Fair Housing Act allows disparate-impact claims and also explaining limitations to bringing such claims); see also *Understanding Disparate Impact in Housing*, ALLIANCE FOR HOUS. JUST. (Apr. 30, 2025), <https://www.allianceforhousingjustice.org/post/understanding-disparate-impact>; Leigh Poltrock et. al., *HUD Proposes to Rescind Fair Housing Act Disparate Impact Regulations*, CONSUMER FIN. SERVICES L. MONITOR (Jan. 16, 2026), <https://www.consumerfinancialserviceslawmonitor.com/2026/01/hud-proposes-to-rescind-fair-housing-act-disparate-impact-regulations>.

¹⁰³ Though analyzing the “Old South,” Stephanie M. H. Camp’s argument that “the privilege of locomotion was integral to freedom, just as its denial was an element of enslavement” rings true for state and private acts that limit Black people’s movement.

¹⁰⁴ Michael Allen Wolfe, *Goodbye, Zoning?*, 78 *VAND. L. REV.* 1077, 1083 (2025) (“Exclusionary zoning practices only serve to exacerbate separation by race and income, which in turn widens the education, housing, and wealth gaps.”); *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948) (barring government enforcement of racially restrictive covenants).

¹⁰⁵ See *PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS* 302 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas, eds. 2025).

¹⁰⁶ See Andrew H. Whittemore, *Exclusionary Zoning: Origins, Open Suburbs, and Contemporary Debates*, 87 *J. OF THE AMER. PLANNING ASSOC’N* 167, 168-69 (2020) (describing the history of exclusionary zoning in city planning and methods used to advocate against it); Matthew Mleczko & Matthew Desmond, *Using Natural Language Processing to Construct a National Zoning and Land Use Database*, 60 *URB. STUD.* 2564, 2566 (2023)

always stated as such, the application of exclusionary zoning laws and practices direct if, how, and when certain people may or may not access, own, and use property.¹⁰⁷ This exclusion establishes and furthers the distinction between the worthy and unworthy.¹⁰⁸ State and local governments around the nation have used and continue to use their police power to establish status levels based on race and other systemically excluded community identities; these rankings determine access to entry, ownership, and free movement within the broader community. Officials undertake these exclusionary zoning practices to the benefit of the state's prioritized citizens: wealthy white people.¹⁰⁹

(noting how municipalities used zoning in race-neutral ways originally, but quickly implemented policies “co-opted for exclusionary ends”); Christopher Serkin & Leslie Wellington, *Putting Exclusionary Zoning in Its Place: Affordable Housing and Geographical Scale*, 40 [FORDHAM URB. L. J.](#) 1667, 1668 (2013) (including urban and suburban zoning efforts in the definition of “exclusionary zoning”).

¹⁰⁷ Reva B. Siegel noted, “[O]ne needs a concept of social stratification-of status inequality among groups arising out of the interaction of social structure and social meaning-in order to make sense of the blindness trope at the heart of antidiscrimination law.” Reva B. Siegel, *Discrimination in the Eyes of the Law: How “Color Blindness” Discourse Disrupts and Rationalizes Social Stratification*, 88 CAL. L. REV. 77, 77 (2000). For example, Jamila E. Jefferson’s article, “*Driving While Black*” as “*Living While Black*,” explains how driving and traffic laws regulate Black people’s movement. Jamila E. Jefferson, “*Driving While Black*” as “*Living While Black*,” 106 IOWA L. REV. 2281, 2295 (2021). In *Anti-Segregation Policing*, Monica C. Bell delved into the intersection between residential segregation and policing by investigating how noncriminal police tactics regulated where Black families live and vice versa. Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 655 (2020) (“[P]olicing is one of many mechanisms that reinforce segregation, mechanisms that segregation reinforces in turn.”). Ana Muñiz demonstrated that Los Angeles state actors used injunctions against alleged gang members as “a tool of displacement rather than confinement—a way to rid populations from target areas.” ANA MUÑIZ, POLICE, POWER, AND THE PRODUCTION OF RACIAL BOUNDARIES 79 (2015) (analyzing how Los Angeles politicians, police, and white residents pushed for the municipality’s first gang injunction to criminalize usually legal acts and keep Black people out of white neighborhoods). Muñiz explained that the fear of Black boys in white rich neighborhoods led police officers and Los Angeles government lawyers to turn “the term ‘gang’” as a signal for “[B]lack men” *Id.* at 45. Instead of place, other scholars have analyzed how states have criminalized tattoos associated with particular communities. Beth Caldwell, *Reifying Injustice: Using Culturally Specific Tattoos as a Marker of Gang Membership*, 98 WASH. L. REV. 787, 791 (2023). And others have looked at and rap music. *See generally*, ANDREA L. DENNIS AND ERIK NIELSON, RAP ON TRIAL: RACE, LYRICS, AND GUILT IN AMERICA (analyzing the use of rap lyrics in criminal cases) (2019); Charis E. Kubrin et. al., *Rap Rhyme, Prison Time: How Prosecutors Use Rap Evidence in Gang Cases*, 27 [CHAP. L. REV.](#) 369, 376 (2024) (same).

¹⁰⁸ Reva B. Siegel, *Discrimination in the Eyes of the Law: How “Color Blindness” Discourse Disrupts and Rationalizes Social Stratification*, 88 CAL. L. REV. 77, 77 (2000); PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS 311 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas, eds. 2025).

¹⁰⁹ Roland Neil & Joscha Legewie, *Policing Neighborhood Boundaries and the Racialized Social Control of Spaces*, 58 [L. & SOC’Y REV.](#) 192, 194 (2024) (“Central to the

Various scholars have explained how hard it is for Black communities and other systemically excluded communities to protect their property rights, access property ownership, and be in certain places because of zoning regulation.¹¹⁰ For example, in *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, Deborah Archer demonstrates how state and local government use laws and policies to weaken Black communities and other communities of color, move Black households out of particular regions, and regulate their movement using laws that did not mention race, but impacted racial groups disproportionately.¹¹¹ The federal government supported race-neutral policies and programs that aimed to segregate neighborhoods by race and diminish Black people's quality of housing and property ownership.¹¹²

Court decisions in the Jim Crow era have recognized or enhanced the power of local governments to enact exclusionary zoning laws to the detriment of Black communities. For example, in 1926, in *Village of Euclid v. Ambler Realty*,¹¹³ the U.S. Supreme Court allowed jurisdictions to use their police power to zone separate single- and two-family residential districts, which, in concert with racial covenants and discrimination in providing housing financing, fueled segregation in housing.¹¹⁴ The ordinances allowed

policing function is the legal authority to control who is allowed to occupy certain spaces--a practice that is deeply racialized.”); Dylan C. Penningroth, *Police Power Affects All of Us*, TIME (May 1, 2025, 6:30 AM), <https://time.com/collections/george-floyd-america-reflection/7280515/police-power-public-safety-essay> (“Government decisions about zoning, permitting, and environmental regulation illuminate the vast scope of the police power and the thousand ways it touches the fabric of our lives.”).

¹¹⁰ See Andrew H. Whittemore, *Racial and Class Bias in Zoning: Rezoning Involving Heavy Commercial and Industrial Land Use in Durham (NC), 1945–2014*, 83 *J. AMER. PLAN. ASSOC'N* 235, 240 (2017). For a more land-focused discussion, see Avi Brisman, *Toward A More Elaborate Typology of Environmental Values: Liberalizing Criminal Disenfranchisement Laws and Policies*, 33 *NEW ENG. J. ON CRIM. & CIV. CONFINEMENT* 283, 293 (2007) (arguing that environmental rights advocates collaborate with people working to end state voter exclusion based on criminal convictions schemes to increase the electoral power of those seeking to address societal problems); Avi Brisman, *Double Whammy: Collateral Consequences of Conviction and Imprisonment for Sustainable Communities and the Environment*, 28 *WM. & MARY ENVTL. L. & POL'Y REV.* 423, 431 (2004) (“[I]f these laws [that exclude people with convictions from society] contribute to recidivism, and if crime is an impediment to sustainable development, then these laws impede sustainable development.”).

¹¹¹ Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 *MICH. L. REV.* 173, 208 (2019).

¹¹² Sarah J. Adams-Schoen, *The White Supremacist Structure of American Zoning Law*, 88 *BROOK. L. REV.* 1225, 1231 (2023); Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 *PUB. AFFS. Q.* 255, 260-62 (2007) (examining federal government lending policies that supported housing racial segregation).

¹¹³ *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 396-97 (1926).

¹¹⁴ See also Sarah J. Adams-Schoen, *The White Supremacist Structure of American*

jurisdictions to set up housing requirements available only to white wealthy families.¹¹⁵

One 1975 N.J. Supreme Court case, *Southern Burlington County NAACP v. Township of Mount Laurel*, demonstrated how local government officials attempted and failed to use race-neutral zoning policies to ensure only particular people lived in the municipality.¹¹⁶ The municipality passed specific ordinances that aimed to attract wealthy residents¹¹⁷ and made it “physically and economically impossible” for individuals of low and moderate incomes to find housing.¹¹⁸ The N.J. Supreme Court held that such targeted zoning policies were unconstitutional and that “municipalities must zone primarily for the living welfare of people and not for the benefit of the local tax rate.”¹¹⁹ In this case, the court seemed to find that the zoning ordinances hurt the public welfare.¹²⁰

In other instances, however, states have used and continue to use their police power to “banish” people of color and other systemically excluded groups from public spaces and private land.¹²¹ Police power “maroon[s] certain groups of people outside the protection of the police power.”¹²² The

Zoning Law, 88 [BROOK. L. REV.](#) 1225, 1275-76 (2023) [noting the impact of the U.S. Supreme Court’s decision in furthering exclusionary zoning]; Jade A. Craig, “Pigs in the Parlor”: *The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South*, 40 [MISS. C. L. REV.](#) 5, 9 (2022) (“These areas became the “barnyards” to which cities relegated African Americans while traditional single-family, single-use residential districts—the “parlors” of both a racial zoning ordinance and the general zoning ordinances that followed—were reserved for wealthy or upper class whites.”).

¹¹⁵ Jade A. Craig, “Pigs in the Parlor”: *The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South*, 40 [MISS. C. L. REV.](#) 5, 9 (2022).

¹¹⁶ *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.*, 67 N.J. 151, 159 (1975) (stating that plaintiffs in the lawsuit represented Black and Hispanic or Latine people in poverty but extending the court’s discussion to people prevented from “living the township because of the limited extent of their income and resources”). Though agreeing that the ordinances were discriminatory, the state court “accepted” that Mount Laurel did not pass its land use regulations with a racial intent. *Id.*

¹¹⁷ *Id.* at 167.

¹¹⁸ *Id.* at 173.

¹¹⁹ *Id.* at 188.

¹²⁰ *Id.*; see also *Surrick v. Zoning Hearing Bd. of Upper Providence Twp.*, 476 Pa. 182, 193-196 (1977) (holding that a township’s restriction on multi-family dwellings had an exclusionary impact such that the township must grant zoning approval for the developer seeking to build apartments and townhouses).

¹²¹ Roland Neil & Joscha Legewie, *Policing Neighborhood Boundaries and the Racialized Social Control of Spaces*, 58 [L. & SOC’Y REV.](#) 192, 194 (2024). A recent U.S. Supreme Court decision, *City of Grants Pass v. Johnson*, upheld a jurisdiction’s authority to zone people experiencing homelessness out of public spaces and places. *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 560-61 (2024).

¹²² Dylan C. Penningroth, *Police Power Affects All of Us*, TIME (May 1, 2025, 6:30 AM), <https://time.com/collections/george-floyd-america-reflection/7280515/police-power->

use of the police power in this way deems a space white to the exclusion of Black people, people of color, and other systemically excluded communities.¹²³ As Cheryl I. Harris noted in *Whiteness as Property*, whiteness became property protected by laws and policies and property that protected racism and power.¹²⁴

The continuous signaling of a certain space as worthy of protection and of particular groups as being unable to access that space is what philosopher Henri Lefebvre termed “spatial practice.”¹²⁵ As Lefebvre reasons, spatial practice “embraces production and reproduction, and the particular locations and spatial sets characteristic of each social formation.”¹²⁶ Spatial practice dictates who may enter a location, how people must behave, and who are the priorities.¹²⁷ White communities prevail because of this spatial practice; through this exclusion, white people’s interests and comforts take priority.¹²⁸

The spatial practice that has defined who belongs in a neighborhood, who may walk on a sidewalk, and who may sit in a railroad car, does not stop at the voting booth’s door. As Part II demonstrates below, the same construction of a protected space, the same definition of a group as threatening to that

[public-safety-essay](#) (examining how under-policing in Black neighborhoods signals a disinterest and neglect from the state).

¹²³ Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvestre, *Governing the Belongings of the Precariously Housed: A Critical Legal Geography*, 16 [ANN. REV. L. & SOC. SCI.](#) 165, 172-73 (2020) (exploring how “legal governance” regulates people through their property and behaviors in spaces); Roy W. Copeland, *The Rise and Fall of Black Real Property Ownership: A Review of Black Land Ownership from the Rough Beginnings to the Great Gains; Dispossession via the Use of Legal Tactics and the Push for Black Land Retention*, 9 [BLACK L. J.](#) 51, 52-53 (1984) (explaining that Black people were expected to “keep” or “know” their place after the banning of slavery and Black people’s attempts to own land).

¹²⁴ Cheryl I. Harris, *Whiteness as Property*, 106 [HARV. L. REV.](#) 1707, 1709 (1993).

¹²⁵ HENRI LEFEBVRE, *THE PRODUCTION OF SPACE* 33 (Donald Nicholson-Smith trans., 1991); see also Monica C. Bell, *Anti-Segregation Policing*, 95 [N.Y.U. L. REV.](#) 650, 679 (2020) (explaining how Black people felt excluded from certain spaces because of police practices); Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 [AM. U. L. REV.](#) 863, 870 (2020) (“This casting of Blackness as a property harm—an interference with existing (white) property entitlements—is a deep-seated phenomenon that has been pervasive throughout U.S. history.”).

¹²⁶ HENRI LEFEBVRE, *THE PRODUCTION OF SPACE* 33 (Donald Nicholson-Smith trans., 1991); see Ariel Aberg-Riger, *What is Loitering, Really?*, BLOOMBERG (May 21, 2018, 6:00 AM), <https://www.bloomberg.com/news/articles/2018-05-21/what-is-loitering-really>.

¹²⁷ Roland Neil & Joscha Legewie, *Policing Neighborhood Boundaries and the Racialized Social Control of Spaces*, 58 [L. & SOC’Y REV.](#) 192, 193 (2024) (noting that police power “influences societal interactions and reinforces racial stratification”).

¹²⁸ Cheryl I. Harris, *Whiteness as Property*, 106 [HARV. L. REV.](#) 1707, 1709 (1993); see Dylan C. Penningroth, *Police Power Affects All of Us*, TIME (May 1, 2025, 6:30 AM), <https://time.com/collections/george-floyd-america-reflection/7280515/police-power-public-safety-essay>.

space's order, and the same use of law to enforce the exclusion all operate in the voting context. This exclusionary voter zoning process produces and reinforces racial hierarchy through the disenfranchisement of people with criminal convictions.

II. MAP OF DISENFRANCHISEMENT: VOTER EXCLUSION BY GEOGRAPHY AS SPATIAL STRUCTURAL RACISM

Zoning Black people out of the ballot box is not a new endeavor.¹²⁹ Throughout this country's history, people have banned Black communities from voting or made it so difficult to vote that the turnout in the Black community was low, if not zero.¹³⁰ From enslavement to criminalization, physical exclusions to administrative barriers, state actors and private citizens have used the police, violence, and intimidation to restrict Black people's participation in the political process.¹³¹ Using voter exclusion based on criminal convictions today, states have employed another way of keeping Black communities out of exercising their political rights.¹³²

Other scholars have begun to map the geographic dimensions of political representation, and the U.S. Supreme Court's recent decision in *Louisiana v. Callais* makes that delineation urgent.¹³³ Doug Spencer analyzed what he calls "electoral maintenance," which is the ongoing governmental choices about districting, polling locations, registration deadlines, and ballot design that determine not just who may vote but also how accessible voting actually is for different communities.¹³⁴ Spencer's article reveals that geography is not neutral in electoral administration; the decisions that shape physical and procedural voting processes advantage some communities over others.¹³⁵ This Article extends Spencer's analysis from the administration of elections generally to the specific population. Voter exclusion based on criminal convictions occurs when states ban people from voting after they have been convicted of a criminal offense, and this Article explains that, for people with criminal convictions, disenfranchisement schemes embed structural space and place barriers to regulate their voting access. The argument developed

¹²⁹ See generally Carla Laroche, *Black Women & Voter Suppression*, 102 [B.U. L. REV.](#) 2431 (2022).

¹³⁰ *Id.* at 2447.

¹³¹ Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 [STAN. L. REV.](#) 1271, 1295 (2004).

¹³² In *Black Women & Voter Suppression*, I argued that voter exclusion based on criminal convictions has continued the history disenfranchising Black women, in particular, and their families and communities. See Carla Laroche, *Black Women & Voter Suppression*, 102 [B.U. L. REV.](#) 2431, 2439-40 (2022).

¹³³ *Louisiana v. Callais*, 146 S. Ct. 1131, 1143 (2026).

¹³⁴ Doug M. Spencer, *Electoral Maintenance*, 103 [B.U. L. REV.](#) 2199, 2201-04 (2023).

¹³⁵ *Id.* at 2212.

here is not a litigation strategy under existing federal law. It is an analytical framework for understanding and challenging the spatial design of voter exclusion through legislative, policy, and state-law channels that may remain open.

Within exclusionary voter zoning is voter exclusion by geography, which occurs when people's location and space determine their voter eligibility. While state laws vary across many areas, for example contracts, torts, and property requirements, geographic voting is different because it serves as a mechanism through which people hold the state itself accountable. When a citizen's ability to participate in federal democracy depends on which side of a state line they live, the geographic variation is a determination about who belongs to the national political community and who does not. The same person, with the same conviction, for the same conduct, is a full member of the federal democratic community in Maine and excluded in Florida.¹³⁶ Geography does not explain this difference, but power does. The state's authority to define the electorate, like its authority to zone residential neighborhoods, is an authority that it has used to protect political interests in the name of the public welfare.

Even though U.S. Supreme Court decisions have deemed the political franchise a fundamental right¹³⁷ and society considers voting a crucial act within society,¹³⁸ a person's location determines whether they may have access to that right at all. It determines their ability to vote. One criminal offense may take away a person's right to vote in one state and have no impact on a person's voting right in another. For example, a resident of Maine serving a criminal sentence on a felony conviction never loses their voting rights because of a conviction.¹³⁹ A resident of New York convicted of a

¹³⁶ *Criminal Disenfranchisement Laws Across the United States*, BRENNAN CTR. FOR JUST. 1, 2, 6 (2026), <https://www.brennancenter.org/media/15740/download/2026.06.05-bc-criminal-disenfranchisement-laws-map-1.pdf?inline=1>.

¹³⁷ See *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) (“[T]he right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (declaring that voting is a “fundamental political right” that protects all other rights).

¹³⁸ Benjamin Plener Cover, *Voter Fraud Mistake* 33 *WM & MARY BILL OF RTS.* J. 1, 14 n.69 (2025) (describing Brian Pinaire et al., *Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons*, 30 *FORDHAM URB. L. J.* 1519, 1533-34 (2003) (“noting that 93.2% of survey respondents believe that the right to vote is either the most important or one of the most important rights in a democracy”).

¹³⁹ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 20 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

felony is eligible to vote automatically upon release from prison.¹⁴⁰ An Alabama resident must request a Certificate of Eligibility to Register to Vote from the Alabama Board of Pardons and Paroles (ABPP) if they are convicted of any “crimes of moral turpitude,”¹⁴¹ but a person convicted of certain enumerated offenses within the moral turpitude category may never obtain their voting rights back unless the ABPP pardons them.¹⁴²

While voter exclusion by geography critiques and compares political franchise access across states, I use the term “disenfranchisement maze” to expose the web of laws and policies that people must follow in the hopes of restoring their voting rights within a particular jurisdiction. The maze begins as soon as a person is held in jail pending trial. Traveling the disenfranchisement maze may continue throughout a person’s detention, post-supervisory release, and beyond. Within a state, the ban on people voting may depend on their incarceration status, whether they have post-incarceration restrictions, the type of crime they were convicted of, and when they were convicted of that crime.¹⁴³ One person convicted in Tennessee may be able to vote, and another Tennessean convicted of the same crime may not be able to vote because their convictions occurred in different years.¹⁴⁴

States could abolish voter exclusion based on criminal convictions, like Vermont, Maine, DC, and Puerto Rico have done, but, instead, many choose to strengthen and enforce these laws and procedures and the stigma.¹⁴⁵ In

¹⁴⁰ Dinesh Napal et al., *New York Should Restore Voting Rights to Over 33,000 Citizens*, THE SENT’G PROJECT, 1 (2025), <https://www.sentencingproject.org/app/uploads/2025/04/New-York-Should-Restore-Voting-Rights-to-Over-33000-Citizens.pdf>.

¹⁴¹ ALA. CONST. art. VIII, § 177; ALA. CODE § 17-3-30.1, 17-3-31

¹⁴² ALA. CODE § 17-3-31; *Voting Rights: Certificate of Eligibility to Register to Vote*, ALA. BUREAU OF PARDONS & PAROLES, 1 (2025), <https://paroles.alabama.gov/wp-content/uploads/Voting-Rights-Final-Version.pdf> (outlining the Alabama statutes limit voting access and the process to restore voting rights).

¹⁴³ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT’G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>.

¹⁴⁴ People convicted before or on May 17, 1981, did not lose their political franchise, but those convicted after that date did. *Restoration of Voting Rights*, TENN. SEC’Y OF ST., <https://sos.tn.gov/elections/guides/restoration-of-voting-rights> (last visited Mar. 1, 2026); Press Release, Campaign Legal Ctr., VICTORY: Federal Court Affirms That Tennessee Election Officials Cannot Deny Voter Registration to Eligible Tennesseans with Past Felony Convictions, Must Inform Potential Voters of Eligibility (Apr. 19, 2024), <https://campaignlegal.org/press-releases/victory-federal-court-affirms-tennessee-election-officials-cannot-deny-voter>.

¹⁴⁵ See Dinesh Napal et al., *New York Should Restore Voting Rights to Over 33,000 Citizens*, THE SENT’G PROJECT, 1-3 (2025), <https://www.sentencingproject.org/app/uploads/2025/04/New-York-Should-Restore-Voting-Rights-to-Over-33000-Citizens.pdf>.

most cases, states limit the ban to felony convictions; usually, a person does not lose their right to vote if they are convicted of a misdemeanor.¹⁴⁶ Historical records indicate that voter bans proliferated after Reconstruction when former confederate soldiers wanted to disenfranchise Black men without violating the Fourteenth and Fifteenth Amendments.¹⁴⁷ They created and targeted crimes that they believed Black men were more likely to commit.¹⁴⁸ That historical racism continues today, though not so blatantly. The U.S. Supreme Court has held that states' use of voter exclusion schemes does not violate the Fourteenth Amendment's Equal Protection Clause.¹⁴⁹ The intersection between mass incarceration and criminal disenfranchisement, particularly of Black people, is hard to ignore based on the data. Currently, mass incarceration and voter exclusion based on criminal convictions ban four million people from voting.¹⁵⁰ The Sentencing Project's *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction* provides detailed examples and data to explain the impact. It notes that states, especially those in the South, have high rates of voter exclusion based on criminal conviction rates disproportionate to the demographic rates of Black people in those states.¹⁵¹

As in the case of prison gerrymandering, where and how the government counts people demonstrates another form of exclusion. Prison gerrymandering is when a person is counted as a resident of the jurisdiction

[Voting-Rights-to-Over-33000-Citizens.pdf](#) (advocating for the universal suffrage in New York because of the state's racist history of voter exclusion, its disproportionate impact on people of color, and the strengthening of democracy by doing so).

¹⁴⁶ When a conviction is an election law related offense, like bribery or voter fraud, certain states ban a person from voting no matter whether it is a misdemeanor or felony offense. See *Restoration of Voting Rights for Felons*, NAT'L CONF. OF STATE LEGIS., <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights> (Aug. 19, 2025).

¹⁴⁷ See Carla Laroche, *Black Women & Voter Suppression*, 102 [B.U.L. REV.](#) 2431, 2451 (2022).

¹⁴⁸ Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 [SETON HALL L. REV.](#) 201, 222-23 (2025).

¹⁴⁹ *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974). Federal appellate courts have applied the rational basis standard to review Equal Protection claims related to voter exclusion based on criminal convictions. See *Hayden v. Paterson*, 594 F.3d 150, 170 (2d Cir. 2010); *Owens v. Barnes*, 711 F.2d 25, 27 (3d Cir. 1983); *Hawkins v. Youngkin*, 149 F.4th 433, 443-44 (4th Cir. 2025), *cert. denied sub nom. Hawkins v. Spanberger*, 146 S. Ct. 1642 (2026); *Williams v. Taylor*, 677 F.2d 510, 514 (5th Cir. 1982); *Johnson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010); *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (O'Connor, J.); *Jones v. Governor of Fla.*, 975 F.3d 1016, 1029-30 (11th Cir. 2020) (en banc).

¹⁵⁰ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT'G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>.

¹⁵¹ *Id.*

they are incarcerated in, rather than their home addresses for purposes of drawing voting districts.¹⁵² This practice benefits rural localities where the prisons are, to the detriment of the people's hometowns.¹⁵³

While people's locations matter in both instances, prison gerrymandering and racial gerrymandering differ. While the former removes people who are incarcerated from their district of resident, the latter allows for the "manipulating [of] election maps in ways that favor particular outcomes" based on racial demographics.¹⁵⁴ Racial gerrymandering dilutes the voting power of eligible voters, which harms communities of color the most. Analysis of the recent U.S. Supreme Court case, *Louisiana v. Callais*,¹⁵⁵ confirms that this voter dilution, especially of Black voters, will increase as state legislators redraw voting district maps.¹⁵⁶

Along with explicit bans, under de facto disenfranchisement, state laws and policies cause people with criminal convictions and their family members

¹⁵² Aleks Kajstura, *An End to Prison Gerrymandering? Not in the 2030 Census*, PRISON POL'Y INITIATIVE (Apr. 1, 2026), <https://www.prisonersofthecensus.org/news/2026/04/01/2030-census-prep>; *Prison Gerrymandering Project: The Problem*, PRISON POL'Y INITIATIVE, <https://www.prisonersofthecensus.org/impact.html> (last visited Jun. 26, 2026); Peter Wagner and Daniel Kopf, *The Racial Geography of Mass Incarceration*, PRISON POL'Y INITIATIVE (2015), <https://www.prisonpolicy.org/racialgeography/report.html>.

¹⁵³ *Prison Gerrymandering Project*, PRISON POL'Y INITIATIVE, <https://www.prisonersofthecensus.org> (last visited May 1, 2026).

¹⁵⁴ Michael Li, *Gerrymandering Explained*, BRENNAN CTR. FOR JUST. (May 14, 2026), <https://www.brennancenter.org/our-work/research-reports/gerrymandering-explained>.

¹⁵⁵ *Louisiana v. Callais*, 146 S. Ct. 1131, 1143 (2026).

¹⁵⁶ Nick Corasaniti, *Voting Rights Ruling Could Fuel Era of Endless Redistricting Wars*, N.Y. TIMES (Apr. 30, 2026), <https://www.nytimes.com/2026/04/30/us/politics/supreme-courts-voting-rights-gerrymandering.html>; Rachel Leingang, *Push for State-Level Voting Rights Acts Renewed After Supreme Court Ruling*, GUARDIAN (May 1, 2026, 10:00 AM), <https://www.theguardian.com/us-news/2026/may/01/state-voting-rights-acts-supreme-court-ruling>. Scholars and advocates have explained that the U.S. Supreme Court in *Callais* has heightened the proof plaintiffs must show under Section 2 of the Voting Rights Act of 1965 to win lawsuits claiming racial gerrymandering in the way states redraw voter maps. Pamela S. Karlan, *Bang, Bang, Bang: Callais Kills Off the Voting Rights Act*, JUST SECURITY (June 4, 2026), <https://www.justsecurity.org/140980/callais-kills-voting-rights-act>; *What Louisiana v. Callais Means for the Voting Rights Act*, HARV. KENNEDY SCH. (Apr. 30, 2026), <https://www.hks.harvard.edu/faculty-research/policy-topics/fairness-justice/what-louisiana-v-callais-means-voting-rights-act>. Essentially, the *Callais* decision has "made it all but impossible" for plaintiffs to meet the test the Court imposed in *Thornburg v. Gingles*, 478 US 30 (1986), to show the states' redistricting was racially motivated. Kareem Crayton, *The Voting Rights Act, Explained*, BRENNAN CTR. FOR JUST. (April 29, 2026), <https://www.brennancenter.org/our-work/research-reports/voting-rights-act-explained>; Bertrall L. Ross II, *The Return of Pretexualism: How Callais Hollowed Out the Voting Rights Act*, CAL. L. REV. ONLINE (July 2026), <https://www.californialawreview.org/online/pretextualism>.

not to vote, even if they are eligible.¹⁵⁷ Exclusionary voter zoning is a more expansive term than de facto disenfranchisement. Through physical and administrative voter zoning, exclusionary voter zoning establishes a map of disenfranchisement and a cloud that hangs over people's heads, and a maze of different laws, policies, and behaviors that state and local actors and society use to regulate and ban the exercise of people's political power when they have criminal convictions.

A. Physical Exclusionary Voter Zoning

The laws on the books that determine people's location and movement demonstrate exclusionary voter zoning practices. Courts have confirmed that state constitutions and laws give them unfettered discretion to determine when, how, and if a person will ever get their voting rights restored.¹⁵⁸ States do not have to follow any criteria when implementing their voting bans, aside from U.S. constitutional protections,¹⁵⁹ and where a person resides dictates their possible path to the ballot box upon conviction.¹⁶⁰

Often confusing, these voter exclusion laws signal that states do not want people with criminal convictions in the ballot box, or, at the very least, states do not want to make it easy for them to vote.¹⁶¹ The most straightforward and repressive voter zoning regulation is the lifetime ban on voting for people with criminal convictions.¹⁶² Other conditions limit voting eligibility, including being incarcerated,¹⁶³ paying all legal financial obligations

¹⁵⁷ Neil Sobol explained the contours and impact of de facto disenfranchisement in his 2023 article, *Defeating De Facto Disenfranchisement of Criminal Defendants*. Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 [FLA. L. REV.](#) 287, 292 (2023).

¹⁵⁸ See, e.g., *In re Phillips*, 574 S.E.2d 270, 273 (Va. 2003) (finding the power to remove political disabilities, such as a restriction from voting, rests solely with the Governor).

¹⁵⁹ The U.S. Supreme Court has found only one state policy unconstitutional thus far. In *Hunter v. Underwood*, the Court ruled that Alabama's ban on voting for people with misdemeanor convictions violated. *Hunter v. Underwood*, 471 U.S. 222, 233 (1985).

¹⁶⁰ The National Council of State Legislatures maintains a detailed website describing the diverse ways states ban people from voting. *Restoration of Voting Rights for Felons*, NAT'L CONF. OF STATE LEGIS., <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>, (Aug. 19, 2025).

¹⁶¹ In critiquing voter access, Aleschia Hyde noted, "The degree of fragmentation exacerbates the disparities in political power between similar voting groups across different states." Aleschia Hyde, *Unequal Access: Federalism, Courts, and the Limits of Voting Rights*, 3 *THE CHICAGO BLACK POL'Y REV.* 24, 26 (2026).

¹⁶² For example, residents of Delaware convicted of the felony crimes of murder, bribery, or sexual offenses in Delaware or another U.S. jurisdiction will never regain their right to vote. DEL. CONST. art. 5, § 2(b) (allowing anyone who receives a pardon and those who has completed the terms of their sentence, including probation and parole, to vote, except if they were convicted of the enumerated felony offenses).

¹⁶³ NAT'L CONF. OF STATE LEGIS., *supra* note 160. As of August 2025, twenty-three

(LFOs),¹⁶⁴ and completing a waiting period.¹⁶⁵ Where a person's prior conviction occurred also matters; for example, a resident of Florida with an out-of-court felony conviction may be eligible to vote if that person obtained the felony in a state that would allow them to vote.¹⁶⁶

Another impediment to following these requirements is that the processes themselves may change frequently. If a person does not know or follow the procedures states implement properly, then that person cannot vote, even if they meet the eligibility criteria. While changing the laws to expand the vote to people is a positive move toward more access to the ballot box, the reforms cause confusion and uncertainty about what information people should trust.¹⁶⁷

states do not allow people to vote while they are incarcerated, but, upon release, they are eligible to vote automatically. *Id.* In several states, people must complete post-release surveillance requirements, including probation and parole, before they are eligible to register to vote. *Id.*

¹⁶⁴ One Wisconsinite advocate note that a 2025 state bill that would have imposed a requirement that people complete all court-ordered obligations, including LFOs and community service, “had as its goal to make it more difficult for long marginalized communities in Wisconsin who are disproportionately Black, Indigenous, and other people of color, as well as people living in poverty and those with disabilities, to be able to exercise their right to vote.” Frank Zufall, *Evers Vetoes Bill that Would Have Made Unpaid Court Fees a Barrier to Voting*, WISC. EXAMINER (Aug. 13, 2025, 5:02 PM), <https://wisconsinexaminer.com/briefs/evers-vetoes-bill-that-would-have-made-unpaid-court-fees-a-barrier-to-voting>. Though Wisconsin Governor Tony Evers vetoed the measure, other states, like Florida, continue to require the fulfillment of financial requirements prior to restoring people's voting rights. See Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. Rev.* 2431, 2461 (2022).

¹⁶⁵ In Wyoming, a person convicted of a second or more nonviolent felony or an enumerated violent felony in a Wyoming or out-of-state criminal case must wait at least five years before they may apply to regain their right to vote. WY Stat. §§ 7-13-105, 6-10-106; *Restoration of Rights*, WYO. DEP'T. OF CORRS, <https://corrections.wyo.gov/about-us/restoration-of-rights> (May 30, 2025).

¹⁶⁶ *Felon Voting Rights*, FLA. DIV. OF ELECTIONS, <https://dos.fl.gov/elections/for-voters/voter-registration/felon-voting-rights> (July 10, 2024); Patrick Berry, *Can Trump Vote Now That He Has Felony Convictions?*, BRENNAN CTR. FOR JUST. (July 29, 2024), <https://www.brennancenter.org/our-work/research-reports/can-trump-vote-now-he-has-felony-convictions>.

A person incarcerated in a federal prison can vote only if, prior to their incarceration, they were a resident of a jurisdiction that retains voting rights for people who are incarcerated. See *Voting Rights for Incarcerated Individuals*, DEP'T. OF JUST. BUREAU OF PRISONS, 1 (2022) https://www.justice.gov/d9/fieldable-panel-panes/basic-panes/attachments/2022/03/23/bop_voting_handout.pdf.

¹⁶⁷ Drew Shaw, *A Texas County Cuts Over 100 Polling Sites as Trump Attacks Mail-In Voting Nationally*, PROPUBLICA (Aug. 20, 2025, 6:35 PM), <https://www.propublica.org/article/tarrant-county-texas-polling-sites-early-voting-cuts> (quoting Brandon Rottinghaus as stating, “The more you move around how voting occurs, like the hours and the locations, the harder it is for voters to understand exactly what they’re

The ever-changing ban and restoration requirements in South Dakota, for example, demonstrate the disenfranchisement maze's challenges. Before 2012, people could not vote while incarcerated.¹⁶⁸ A person sentenced to probation, without a prison sentence, would still be able to vote, and a person serving time would have their rights restored once they were released or completed their parole.¹⁶⁹ In 2012, the South Dakota legislature changed voting eligibility so that everyone convicted of a felony would be banned from voting.¹⁷⁰ A person could seek to restore their voting rights upon release from prison or completion of probation and parole.¹⁷¹ This act reduced the number of eligible voters, but the pre-2012 rules still applied to anyone convicted of a felony before 2012.¹⁷² In 2018 and 2020, the Secretary of State imposed the requirements that people pay restitution imposed by their sentencing judge and pay the fines and fees associated with their conviction, respectively.¹⁷³ As such, even more people lost their right to vote who had previously been eligible since the 2012 legislative action.¹⁷⁴ The Secretary of State eliminated the delineation between pre-2012 and post-2012 convictions, meaning that anyone with a felony conviction had to abide by the state-imposed restrictions on their right to vote in 2021.¹⁷⁵ A year later, in December 2022, the Secretary of State withdrew the requirement that people had to pay their financial legal obligations prior to restoring their right to vote.¹⁷⁶ Over a ten-year period, the legislative and executive branches added and took away limitations on voter eligibility in South Dakota.

In New Mexico, the eligibility as well as the method of voter registration changed for people with criminal convictions.¹⁷⁷ A 2001 law allowed

supposed to do and when. . . . A confused voter is usually a nonvoter.”). For analysis of Florida governors’ history of changing the state’s disenfranchisement maze with each new administration, see Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2461 (2022), and for a description of Tennessee’s convoluted maze, see Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 *SETON HALL L. REV.* 201, 229 (2025).

¹⁶⁸ Blair Bowie, Director, Restore Your Vote, Campaign Legal Ctr., Address at the Sentencing Project’s 2025 Civic Power: Democracy Unchained! 6 (July 11, 2025) (on file with author).

¹⁶⁹ *Id.*

¹⁷⁰ *South Dakota Restoration of Rights & Record Relief*, RESTORATION OF RTS. PROJ. (June 24, 2026), <https://ccresourcecenter.org/state-restoration-profiles/south-dakota-restoration-of-rights-pardon-expungement-sealing>.

¹⁷¹ Blair Bowie, Director, Restore Your Vote, Campaign Legal Ctr., Address at the Sentencing Project’s 2025 Civic Power: Democracy Unchained! 6 (July 11, 2025) (on file with author).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Blair Bowie, Director, Restore Your Vote, Campaign Legal Ctr., Address at the

restoration after release from prison or the completion probation or parole.¹⁷⁸ A 2023 law expanded voter eligibility by authorizing automatic voter restoration after people had served their sentence.¹⁷⁹

Over a span of three years, North Carolina laws on voter disenfranchisement changed.¹⁸⁰ In 2022, a state trial court ruled that banning people on probation and parole from voting violated the state constitution's equal protection clause.¹⁸¹ This monumental decision "unlocked" the vote for 56,000 people who had been excluded from the ballot box.¹⁸² A year later, however, the Supreme Court of North Carolina reversed the trial court, holding that North Carolina's voting ban was not unconstitutional.¹⁸³ In the same period as this state lawsuit, North Carolina residents filed a federal lawsuit claiming that a North Carolina strict liability statute¹⁸⁴ that criminalized voting while ineligible because of a conviction was unconstitutional.¹⁸⁵ The appellate court affirmed the trial court's ruling, finding the strict liability statute violated the equal protection and due process clauses of the Fourteenth Amendment by discriminating against Black people.¹⁸⁶ Though the state and federal cases addressed different issues related to voter exclusion based on criminal convictions, the different decisions regarding whether a person may vote in North Carolina after a criminal conviction likely cause confusion, unintentionally.¹⁸⁷

If a person cannot afford to pay to obtain hard copies of required records or fees for accessing certain information for state agencies, then, again, that

Sentencing Project's 2025 Civic Power: Democracy Unchained! 11 (July 11, 2025) (on file with author).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Kelan Lyons, *In North Carolina, a Rush To "Restore Hope In The Vote" in People with Felony Convictions*, BOLTS (Nov. 4, 2022), <https://boltsmag.org/north-carolina-rights-restoration-unlock-the-vote>.

¹⁸¹ Community Success Initiative v. Moore, No. 19 CVS 15941, 2022 WL 17415364, at *9 (*N.C. Super. Mar. 20, 2022*), *rev'd*, 384 N.C. 194, 886 S.E.2d 16 (*N.C. 2023*) (stating that the voting restriction "continues to carry over and reflect the same racist goals that drove the original 19th century enactment").

¹⁸² Kelan Lyons, *In North Carolina, a Rush To "Restore Hope In The Vote" in People with Felony Convictions*, BOLTS (Nov. 4, 2022), <https://boltsmag.org/north-carolina-rights-restoration-unlock-the-vote>.

¹⁸³ Cmty. Success Initiative v. Moore, 384 N.C. 194, 199 (*N.C. 2023*).

¹⁸⁴ N.C. GEN. STAT. § 163-275(5) (2025).

¹⁸⁵ Blair Bowie, Director, Restore Your Vote, Campaign Legal Ctr., Address at the Sentencing Project's 2025 Civic Power: Democracy Unchained! 7 (July 11, 2025) (on file with author).

¹⁸⁶ *Id.*

¹⁸⁷ Anne Blythe, *A Knotty Felon Voting Rights Case Reaches the Court of Appeals*, THE ASSEMBLY (May 15, 2025), <https://www.theassemblync.com/news/politics/justice/felon-voting-rights-court-of-appeals>.

person who is eligible on paper cannot vote.¹⁸⁸ People with criminal records have a higher rate of unemployment and earn less income when employment than those without criminal records.¹⁸⁹ As such, the intersection of low financial access and the requirement to pay fees leads to disenfranchisement.¹⁹⁰

B. Administrative Exclusionary Voter Zoning

The criminal legal system and its actors impose numerous rules and requirements on people that result in the exclusion of eligible voters from exercising their political power. Some of these exclusions create access impediments for eligible voters, while others are targeted at chilling voters.

A person who is detained in jail pending trial is eligible to vote.¹⁹¹ The barriers to voting, including not being to access polling places and not having the resources to register from jail, however, influence the low voter turnout rate of people in jail.¹⁹²

Recently, the Sentencing Project released a report that investigated the barriers that people incarcerated in Maine and Vermont faced when attempting to access the vote.¹⁹³ Maine and Vermont, along with Washington, D.C., and Puerto Rico, never ban a person's right to vote because of a criminal conviction.¹⁹⁴ Still, the report identified mail and capacity as challenges to people's ability to exercise their right to vote while incarcerated.¹⁹⁵

Whether incarcerated or released, the criminal legal system restricts people's movement and voting access.¹⁹⁶ For people serving sentences, if the

¹⁸⁸ Nathan W. Link et al., *Monetary Sanctions, Legal and Collateral Consequences, and Probation & Parole: Where Do We Go From Here?*, 4 [UCLA CRIM. JUST. L. REV.](#) 199, 208 (2020).

¹⁸⁹ See Carla Laroche, *Black Women & Voter Suppression*, 102 [B.U. L. REV.](#) 2431, 2469 (2022).

¹⁹⁰ Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 [FLA. L. REV.](#) 287, 319-22 (2023).

¹⁹¹ Matthew Peljovich, *Can People Vote in Jail? Yes, But It's Very Challenging*, CAMPAIGN L. CTR. (Aug. 1, 2022), <https://campaignlegal.org/update/can-people-vote-jail-yes-its-very-challenging>.

¹⁹² *Id.*; Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 [FLA. L. REV.](#) 287, 312-19, 322-25 (2023).

¹⁹³ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT'G PROJECT, 6 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

¹⁹⁴ *Criminal Disenfranchisement Laws Across the United States*, BRENNAN CTR. FOR JUST., 1 (2026), <https://www.brennancenter.org/media/15740/download/2026.06.05-bc-criminal-disenfranchisement-laws-map-1.pdf?inline=1>.

¹⁹⁵ *Id.*

¹⁹⁶ See, e.g., *Post-Conviction Supervision*, U.S. COURTS,

local elections office does not know the registered voters are incarcerated and sends their mail-in ballots to their pre-incarceration residences, the ballots will not get to their intended eligible voters. Jails and prisons have largely eliminated in-person visits, so someone else cannot bring the ballot into the facility for the voters to complete and sign.¹⁹⁷ Prisons are often far away from voters' residences.¹⁹⁸ People in jails and prisons do not receive hard copy mail in a growing number of states.¹⁹⁹ Instead, administrators contract with a third-party company to scan mail and send it to people electronically.²⁰⁰

A person on probation or parole must follow rules imposed on them about curfews, banned locations, and movement out of state.²⁰¹ A person with a sentence that restricts them from being a certain distance from a school may not be able to vote if a school is their polling place, for example.²⁰² This

<https://www.uscourts.gov/about-federal-courts/probation-and-pretrial-services/post-conviction-supervision> (last visited Mar. 3, 2026); see generally *Overview of Probation and Supervised Release Conditions*, ADMIN. OFF. U.S. COURTS (2024), https://www.uscourts.gov/sites/default/files/overview_of_probation_and_supervised_release_conditions_0.pdf.

¹⁹⁷ Leah Wang, *Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and Their Families*, PRISON POL'Y. INITIATIVE (Dec. 21, 2021), https://www.prisonpolicy.org/blog/2021/12/21/family_contact; Shannon Sims, *The End of American Prison Visits: Jails End Face-to-Face Contact – And Families Suffer*, GUARDIAN (Dec. 9, 2017, 8:17 EST), <https://www.theguardian.com/us-news/2017/dec/09/skype-for-jailed-video-calls-prisons-replace-in-person-visits>.

¹⁹⁸ Carla Laroche, *The New Jim and Jane Crow Intersect: Challenges to Defending the Parental Rights of Mothers During Incarceration*, 12 *COLUM. J. RACE & L.* 517, 535 (2022) (describing the difficulties legal counsel and families have in visiting loved ones who are incarcerated because of the distance).

¹⁹⁹ Tamanika Ferguson, *New Prison Mail Policies Threaten Newsletters by and for Incarcerated People*, TRUTHOUT (Nov. 4, 2025), <https://truthout.org/articles/new-prison-mail-policies-threaten-newsletters-by-and-for-incarcerated-people>; Leah Wang, *Mail Scanning: A Harsh and Exploitative New Trend in Prisons*, PRISON POL'Y INITIATIVE (Nov. 17, 2022), <https://www.prisonpolicy.org/blog/2022/11/17/mail-scanning>.

²⁰⁰ Tamanika Ferguson, *New Prison Mail Policies Threaten Newsletters by and for Incarcerated People*, TRUTHOUT (Nov. 4, 2025), <https://truthout.org/articles/new-prison-mail-policies-threaten-newsletters-by-and-for-incarcerated-people>; Leah Wang, *Mail Scanning: A Harsh and Exploitative New Trend in Prisons*, PRISON POL'Y INITIATIVE (Nov. 17, 2022), <https://www.prisonpolicy.org/blog/2022/11/17/mail-scanning>.

²⁰¹ For a survey of state restrictions because of probation and parole, see *Post-Conviction Restrictions by Jurisdiction*, PROBATION INFO. NETWORK, <https://www.probationinfo.org/restrictions> (last visited Mar. 4, 2026); *Sex Offender Registry Requirements Across the United States*, PROBATION INFO. NETWORK, 1-2 (2025), <https://www.probationinfo.org/wp-content/uploads/2025/07/3-SOR-Residence-Distance-Restrictions-2025.pdf>.

²⁰² *Chapter 3: Place Restrictions (Probation and Supervised Release Conditions)*, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/probation-and-pretrial-services/post-conviction-supervision/overview-probation-and-supervised-release-conditions/chapter-3-place-restrictions-probation-and-supervised-release> (last visited Mar.

location likely adds more barriers to voting, even if a person is eligible to do so.²⁰³

Further, it may be hard to get to a polling place or access a mailbox to deliver their mail-in ballots. Recently, a large county in Texas, Tarrant County, voted to reduce the number of polling sites from 331 to 216.²⁰⁴ While these changes may seem to impact all voters equally,²⁰⁵ the consequence of this reduction would likely hit people with criminal convictions harder because of their inability to travel and to afford transportation to get to the polls that are farther away.²⁰⁶ With decisionmakers removing funding to help people get to the polls, they are making it harder for eligible voters with convictions to vote.²⁰⁷

For individuals released from incarceration, the requirements that eligible voters prove their address before they may vote represent another source of exclusion. Some states require that eligible voters submit hard copy or electronic documents that prove they are residents of the jurisdiction in which they seek to register to vote.²⁰⁸ Because people who have served prison sentences experience homelessness at a higher rate than the general public—seven times higher if they have been incarcerated once and thirteen times higher if they have been in prison more than once—²⁰⁹ they would likely have

3, 2026).

²⁰³ For discussions of additional barriers to accessing the ballot, see Robin Levinson-King, *US Election 2020: Why it Can be Hard to Vote in the US*, BBC NEWS (Oct. 20, 2020), <https://www.bbc.com/news/election-us-2020-54240651>; Brandon Tensley, *Why Voting Is Becoming Harder for Black Americans in Southern States*, CAP. B NEWS (Aug. 26, 2025), <https://capitalnews.org/black-voting-rights-threats-2025>.

²⁰⁴ Drew Shaw, *A Texas County Cuts Over 100 Polling Sites as Trump Attacks Mail-In Voting Nationally*, PROPUBLICA (Aug. 20, 2025, 6:35 PM), <https://www.propublica.org/article/tarrant-county-texas-polling-sites-early-voting-cuts>.

²⁰⁵ *Id.* (stating that Tarrant County’s changes “discourage people from voting”).

²⁰⁶ Brianna Borrelli, Student Note, *The Interplay of Mass Incarceration and Poverty*, XXX GEORGETOWN J. POVERTY L. & POL’Y 287, 296-97 (2023); Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, BRENNAN CTR. FOR JUST. (Sept. 15, 2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>; Drew Shaw, *A Texas County Cuts Over 100 Polling Sites as Trump Attacks Mail-In Voting Nationally*, PROPUBLICA (Aug. 20, 2025, 6:35 PM), <https://www.propublica.org/article/tarrant-county-texas-polling-sites-early-voting-cuts> (discussing the increase cost of voting, in money and time).

²⁰⁷ *Id.* In Tarrant County, Texas, the head of the commission responsible for election policies stated, “I don’t believe it’s the county government’s responsibility to try to get more people out to the polls.”

²⁰⁸ *Voter Registration and Proof of Residence*, WIS. ELECTIONS COMM’N, <https://elections.wi.gov/Register#230548828-870893236> (last accessed Sept. 24, 2025) (listing the types of documents a person in Wisconsin must submit before they are able to vote).

²⁰⁹ Selena Muñoz-Jones & Emily Widra, *How Your Local Public Housing Authority Can*

difficulty meeting this residency requirement.

In addition, state actors' acts and omissions work to stop people with convictions from voting. For example, elections officials may limit²¹⁰ and/or hide access to information and resources that would allow people with criminal convictions to register and vote.²¹¹

Laws and policies exist that ban or deter allowing prisons and jails to serve as official polling places.²¹² People in opposition to jail- and prison-based polling places may argue that people cannot be trusted or depended on to tabulate jail or prison votes in the correct voting district, for example.²¹³ People with convictions may have a harder time obtaining state identification²¹⁴ and their access may depend on finding a notary for absentee ballots as well.²¹⁵

While the complicated disenfranchisement maze has previously been

Reduce Barriers for People with Criminal Records, PRISON POL'Y INITIATIVE (Feb. 15, 2023), <https://www.prisonpolicy.org/blog/2023/02/15/publichousing>; Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL'Y INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>.

²¹⁰ David Wildstein, *Several Thousand N.J. Voters Received Letters Saying They Can't Vote in Primary*, N.J. GLOBE (June 8, 2025, 7:43 P.M.), <https://newjerseyglobe.com/campaigns/several-thousand-n-j-voters-received-letters-saying-they-cant-vote-in-primary> (noting that an elections official in New Jersey refused to include information on voters' right to appeal their removal from the voter rolls).

²¹¹ Alex Burness, *The Michigan Jail that Candidates Keep Visiting*, BOLTS (Nov. 26, 2024), <https://boltsmag.org/flint-michigan-jail-candidate-forums> ("People in jails are largely cut off from voter information. They seldom exercise the right to vote because actually casting a ballot from any of the roughly 3,000 jails across the country is usually an enormous struggle, if not practically impossible. This is due in major part to general indifference, and sometimes even [outright resistance](#), from local officials and sheriffs who oversee county jails and control ballot access for people in custody.").

²¹² Louisiana prohibits setting jail and prisons as polling places. *See* LA. STAT. § 18:533(C)(2) (2025); *Louisiana Jail Voting Restrictions Challenge*, DEMOCRACY DOCKET, <https://www.democracydocket.com/cases/louisiana-jail-voting-restrictions-challenge> (last visited Mar. 4, 2026).

²¹³ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT'G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction> (discussing voting in prison difficulties).

²¹⁴ Naila Awan, *Jail-Based Polling Locations: A Way to Fight Voter Disenfranchisement*, PRISON POL'Y INITIATIVE n.1 (Oct. 25, 2022), https://www.prisonpolicy.org/blog/2022/10/25/jail_voting/#lf-fnref:1.

²¹⁵ *What You Need to Know About Absentee Ballot Notary and Witness Signature Requirements*, U.S. VOTE FOUND., <https://www.usvotefoundation.org/absentee-ballot-notary-witness-requirements> (last visited Mar. 3, 2026); David Thun, *A Guide to State Vote-By-Mail Ballot Notarization Requirements*, NAT'L NOTARY ASSOC'N, <https://www.nationalnotary.org/notary-bulletin/blog/2020/09/guide-state-vote-by-mail-notarization?srsltid=AfmBOopLO9cZQ7gwpTMYhoRi5hyFIFEYUF-bMFNsZRTxVRVGGRT8O9SH> (Nov. 10, 2022).

addressed,²¹⁶ state officials also may use a variety of unwritten tactics to delay or deny eligible people's voting rights and reinforce the maze.²¹⁷ For example, when people have met the criteria that a jurisdiction has implemented and apply to have their voting rights restored, state actors prolong the time it takes to review and make decisions on those applications.²¹⁸ Virginia's law and policy excluded all people with felony convictions from the ballot box and only restored people's voting rights on a "case-by-case" basis.²¹⁹ This restriction meant that over 264,000 Virginians could not vote, with 46% of disenfranchised people being Black and "nearly 10% of voting-aged Black Virginians" unable to vote.²²⁰

In 2024, Virginia passed a law allowing people held in jail prior to a trial to vote by absentee ballot.²²¹ That push to grant otherwise eligible people to vote does not lead to automatic access to the absentee ballots. A Sentencing

²¹⁶ See *supra* Subpart IIA. for a discussion of the laws and policies states enact that makes determining one's eligibility to vote difficult.

²¹⁷ Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2451 (2022).

²¹⁸ Mallory Noe-Payne, *Branded: The Fight to Restore Voting Rights*, RADIO IQ (Oct. 25, 2023), <https://www.wvtf.org/branded-the-fight-to-restore-voting-rights> (analyzing voter exclusion through criminal convictions in Virginia and noting that the state administration made no indication of when it would decide whether it would restore applicants' votes); Mallory Noe-Payne, *Virginia NAACP Pushes for Clear Guidelines on Rights Restoration from Youngkin Administration*, RADIO IQ (July 18, 2023, 2:31 PM), <https://www.wvtf.org/news/2023-07-18/virginia-naacp-pushes-for-clear-guidelines-on-rights-restoration-from-youngkin-administration> (reporting that the then-governor's administration had slowed down the restoration process).

²¹⁹ Steve Thompson, *Federal Judge Bars Virginia From Keeping Thousands of Felons From Voting*, WASH. POST (Jan. 24, 2026, 5:00 AM), <https://www.washingtonpost.com/politics/2026/01/24/felon-voting-rights-youngkin-virginia/>; King v. Youngkin, 3:23-cv-00408-JAG, DE 222, at 6 (*E.D. Va.* Jan. 22, 2026).

²²⁰ King v. Youngkin, 3:23-cv-00408-JAG, DE 222, at 7 (*E.D. Va.* Jan. 22, 2026). Recently, a federal trial court found that Virginia's voter exclusion law violated a federal law passed to grant Virginia readmission to the United States after the U.S. Civil War banned the state from restricting the vote of people convicted of a crime outside of twelve felonies. King v. Youngkin, 3:23-cv-00408-JAG, DE 222, at 1-2, 32 (*E.D. Va.* Jan. 22, 2026). The Virginia Readmission Act demanded that Virginia never change its constitution to exclude a person with a conviction from voting "except as a punishment for such crimes as are now felonies at common law." Va. Readmission Act § 10, 16 Stat. 62, 63 (1870). The twelve felonies that existed at that time were "(1) arson; (2) burglary; (3) escape and rescue from a prison or jail; (4) larceny; (5) manslaughter; (6) mayhem; (7) murder; (8) rape; (9) robbery; (10) sodomy; and (11) suicide." King v. Youngkin, 3:23-cv-00408-JAG, DE 222, at 3, 26 (*E.D. Va.* Jan. 22, 2026). For further discussion about the enforceability of the Acts, see Franita Tolson, *'In Whom is the Right of Suffrage?': The Reconstruction Acts as Sources of Constitutional Meaning*, 169 *UNI. PENN. L. REV.* 212, 221-22 (2021).

²²¹ Amanda Hernández, *New Laws Restore Voting Rights to Residents With Felony Convictions*, SOURCE NM (Oct. 24, 2024, 4:30 AM), <https://sourcenm.com/2024/10/24/new-laws-restore-voting-rights-to-residents-with-felony-convictions>.

Project report on voting in Maine and Vermont prisons explains some of the reasons for that. The report emphasized the lack of staff training on voting deters people's ability to vote.²²² Staff were not aware of the two-step process people who are incarcerated must fulfill to obtain a ballot.²²³ First, potential voters must register to vote and then they have to request an absentee ballot.²²⁴ If a person thinks they will receive a ballot automatically after registering, they will not complete the second requirement, and, therefore, not be able to vote. This two-step process is especially important because of the delays and mandatory procedures associated with the mail system in prisons.²²⁵ Further, states transfer people to different facilities, and people must request a new ballot at a new prison or else they have no chance of receiving their ballot.²²⁶

Not only do individuals find it hard to access information pertinent to their local ballots and to acquire material on local issues while in prison,²²⁷ but, on a more basic level, they do not even learn that they are eligible to vote at all.²²⁸ Not knowing they can vote signals to people with convictions and who are incarcerated that their vote does not matter or even exist. Further, elections officials, including in Tennessee and Oklahoma, expressing their active disinterest and discriminatory feelings towards people with convictions being able to vote indicate hostility to their political rights.²²⁹ The process to restore one's vote is so complicated that it becomes a disenfranchisement maze.²³⁰

Instilling fear of prosecution and incarceration for voting serves as another exclusionary voter zoning tactic. Even if the laws do not change every four years, people interested in registering to vote may not be certain of

²²² Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT'G PROJECT, 11 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

²²³ *Id.* at 14, 17.

²²⁴ *Id.*

²²⁵ *Id.* at 17-18.

²²⁶ *Id.* at 18.

²²⁷ *Id.* at 12-13.

²²⁸ Nicole D. Porter & Morgan McLeod, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2023*, THE SENT'G PROJECT, 4 (2023), <https://www.sentencingproject.org/app/uploads/2024/03/Expand-the-Vote-State-Felony-Disenfranchisement-Reform-1997-2023.pdf>.

²²⁹ Erika Wood & Rachel Bloom, ACLU & BRENNAN CTR. FOR JUST., *DE FACTO DISENFRANCHISEMENT*, 7-8 (2008), <https://www.brennancenter.org/sites/default/files/legacy/publications/09.08.DeFacto.Disenfranchisement.pdf>.

²³⁰ For discussion of the disenfranchisement maze and its barriers to restoring a person's right to vote, see *supra* Subpart IIA.

whether they have followed the proper procedures once they receive a voter registration card.²³¹ Because of this disenfranchisement maze, states have targeted individuals with criminal prosecutions when those individuals thought they were eligible to vote then registered and casted their ballot, not realizing their ineligibility.²³² States have also created governmental agencies under the auspice of stopping voter fraud that have cast doubt on people's eligibility to vote. These agencies have gone after people in Florida who received a voter registration card from state officials and then voted only to learn that they were ineligible.²³³

This maze causes confusion regarding who and where to go to get their rights restored properly.²³⁴ In *Voter Emancipation in Slavery's Afterlife*, I detailed how Pamela Moses's efforts to certify her eligibility to have her rights restored led her to go to different government entities to obtain documents and certify her voting eligibility.²³⁵ Ms. Moses sought to run for mayor of Memphis, Tennessee, but elections officials indicated she was ineligible to do so because she was still on probation.²³⁶ Ms. Moses believed the government's records were incorrect and went to criminal court, the probation office, and back to the elections office to confirm her eligibility.²³⁷ Even with signed verification from the probations office, Ms. Moses was tried and convicted of voting while ineligible because the probation officer who reviewed her records did not search all databases that would have showed Ms. Moses was still on probation.²³⁸ Ms. Moses was sentenced to six years in prison, but the court granted her a new trial after evidence came to light that the probation officer was responsible for Ms. Moses's submission of her eligibility paperwork.²³⁹ Going to court and local government offices to confirm her eligibility took time and diligent effort. And even though Ms.

²³¹ For instance, see Steve Contorno & Geneva Sands, *Florida Police Cameras Show August Arrests for Alleged Voter Fraud*, CNN (Oct. 19, 2022, 6:40 AM), <https://www.cnn.com/2022/10/19/politics/tampa-police-body-cam-video-voter-fraud-arrest-florida-desantis>; Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 [SETON HALL L. REV.](#) 201, 230 (2025).

²³² Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 [SETON HALL L. REV.](#) 201, 230-31 (2025).

²³³ Steve Contorno & Geneva Sands, *Florida Police Cameras Show August Arrests for Alleged Voter Fraud*, CNN (Oct. 19, 2022, 6:40 AM), <https://www.cnn.com/2022/10/19/politics/tampa-police-body-cam-video-voter-fraud-arrest-florida-desantis>.

²³⁴ Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 [SETON HALL L. REV.](#) 201, 209 (2025).

²³⁵ *Id.* at 238-42.

²³⁶ *Id.* at 239.

²³⁷ *Id.* at 239-40.

²³⁸ *Id.* at 241.

²³⁹ *Id.*

Moses followed the process, she faced incarceration.²⁴⁰

Ms. Moses's experience demonstrates what the disenfranchisement maze does systematically, that is, it constructs the act of voting by a person with a conviction as illegitimate, places the burden of proving eligibility on the voter rather than the state, withholds the information necessary to meet that burden, and then treats the resulting errors as crimes. The state protects the ballot box protected space by formal legal prohibition and by the threat of prosecution for those who attempt to enter it without navigating the maze correctly.

People notice whom the state prosecutes and who gets harsher punishments after a conviction. The records reflect that people of color with convictions who register to vote and who vote without the intent to break the law get villainized for their acts and receive prison sentences while others who vote twice and who try to vote on behalf of dead relatives receive little, if any, punishment.²⁴¹ These selective prosecutions have had an impactful chilling effect on potential voters.²⁴²

On a level more directed the risk of physical harm, the influx of armed election watchers who claim to be protecting poll sites from fraud serve as another deterrent.²⁴³ These groups represent physical barriers to the ballot box. The fear of violence and vigilantes surveilling them at the election sites may cause people with criminal convictions to avoid voting altogether.²⁴⁴

²⁴⁰ *Id.* at 241-42.

²⁴¹ See *id.* at 229-30 (offering comparisons of Black women who were sentenced to yearslong sentences for voting while ineligible because of criminal convictions while white people who submitted ballots on behalf of relatives and who voted in two different jurisdictions received probation or other alternative to incarceration options).

²⁴² Faheem Mohammed, *Voting Rights Project: Florida Final Report*, WATSON INSTITUTE FOR INT'L AND PUB. AFFS. 7 (2024), <https://watson.brown.edu/taubman/files/taubman/imce/research/voting-rights-project/Florida%20Final%20Report.pdf> (on file with the author); Cecile Scoon & Debbie Chandler, *Florida's Voter Intimidation Crisis*, LEAGUE OF WOMEN VOTERS (Dec. 18, 2024), <https://www.lwv.org/blog/floridas-voter-intimidation-crisis> ("The arrests, conducted publicly just before an election, have sown mass confusion and fear, especially in Black and brown communities. The chilling effect has been profound, as vulnerable populations now hesitate to exercise their right to vote, fearing that doing so could lead to criminal charges."); Ashley Lopez, *Advocates in Florida Clamor for a Fix for the Formerly Incarcerated Who Want to Vote*, NPR (May 4, 2023, 5:01 AM), <https://www.npr.org/2023/05/04/1173786694/felon-voting-database-florida-registration-card-disclaimer>.

²⁴³ Allison Anderman, *Protecting Voters and Election Workers from Armed Intimidation*, BRENNAN CTR. FOR JUST. (Aug. 26, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/protecting-voters-and-election-workers-armed-intimidation>; Abby Vesoulis, *Vigilantes Are Intimidating Voters and Election Workers. That's Nothing New in America.*, MOTHER JONES (Nov. 8, 2022), <https://www.motherjones.com/politics/2022/11/poll-watchers-election-armed-vigilantes>.

²⁴⁴ Recent discussions of the Trump Administration deploying U.S. Immigration and Customs Enforcement agents to polling places elevates that concern even further. Sean

At the community level, silence about banning people with criminal convictions from voting normalizes the exclusion. Even if people do not express support for state actors' rhetoric against people with convictions voting explicitly, the public remains quiet about these attacks on the franchise. In doing so, their silence may serve as implicit approval of zoning individuals out of the ballot box.

III. INCLUSIONARY VOTER ZONING

Many citizens, especially Black people, in this country are not allowed to vote based on criminal history, and that is wrong. Many people have the right to vote even though they commit crimes; they are able to do so, however, because they were never prosecuted for said crimes.²⁴⁵ Like exclusionary zoning, exclusionary voter zoning affects Black communities disproportionately in this context because the criminal legal system targets Black people and because of the deep-rooted desire to prevent systemically excluded communities from exercising their right to vote. Exclusionary voter zoning has a noxious effect on Black communities, to the benefit of white communities and spaces. The protected space is the electorate. The threat is the person with a criminal conviction, constructed through law, policy, and prosecution as a public nuisance whose presence in the electoral space disrupts the community's racial order. Spatial enforcement in the disenfranchisement maze removes people with convictions from the protected space and maintains that removal across time, jurisdiction, and changing laws and administrations. This exclusion is not a set of policy failures; it is a system meant to produce and maintain an electoral space that excludes a racially defined population.

Morales-Doyle, *Federal and State Election Laws Ban Federal Forces from Polling Places*, BRENNAN CTR. FOR JUST. (Feb. 10, 2026), <https://www.brennancenter.org/our-work/research-reports/federal-and-state-election-laws-ban-federal-forces-polling-places>; Paul Blumenthal, *ICE Is Already Impacting Elections — Even If They Don't Show Up At The Polls*, HUFFPOST (Feb. 15, 2026, 8:00 AM), https://www.huffpost.com/entry/ice-polls-election-2026_n_6990ccdee4b0d24cb0c4ba61; Alexandra Berzon & Nick Corasaniti, *Initial Review Finds No Widespread Illegal Voting by Migrants, Puncturing a Trump Claim*, N.Y. TIMES (Jan. 14, 2026), <https://www.nytimes.com/2026/01/14/us/politics/noncitizen-voters-save-tool.html>.

²⁴⁵ There is a myth about the high prevalence of voter fraud when, in reality, it is very minimal. Matt Barreto et al., *Debunking the Myth of Voter Fraud in Mail Ballots*, UCLA VOTING RTS. PROJECT, 6 (2020), <https://latino.ucla.edu/wp-content/uploads/2021/08/LPPI-VRP-Voter-Fraud-res.pdf>; *The Myth of Voter Fraud*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/topics/voting-elections/vote-suppression/myth-voter-fraud> (last visited Mar. 4, 2026); Mitchell A. Sobieski, *Why Republicans Invented the Myth of Voter Fraud to Justify Laws That Keep American Citizens From Voting*, MILWAUKEE INDEP. (Jan. 26, 2026), <https://www.milwaukeeindependent.com/featured/republicans-invented-myth-voter-fraud-justify-laws-keep-american-citizens-voting>.

Yet some U.S. states and jurisdictions have attempted to increase ballot access, which I build on to develop the inclusionary voter zoning concept. The concept borrows the affirmative mandate structure from housing law: rather than simply asking whether exclusion is discriminatory, it asks what affirmative obligation the state has to provide access.²⁴⁶ In the same vein that zoning law has its own reform tradition that mandates inclusionary zoning that offers a vocabulary of remedy that voting rights law currently lacks and that federal courts have now made even less available.

A. Voter Zoning Harms & Benefits

Thus far, this Article has discussed state police power and zoning authority separately from the exclusion of people from the ballot box. Here, it will demonstrate how the use of the former tools works to enforce the latter. The actions of the state regarding exclusionary voter zoning indicate that the state seeks to remove people with convictions from the ballot box as though exercising their political will represent a blight to the public welfare. How states use exclusionary voter zoning to regulate voter exclusion based on criminal convictions demonstrates that states likely perceive access to the vote for people with criminal convictions as analogous to an eyesore. In one case, the U.S. Supreme Court reasoned that states may use their police power to address awful housing conditions that “may. . . be an ugly sore [and] a blight on the community which robs it of charm.”²⁴⁷ The goal of the police power and zoning regulation is to protect the public welfare, including removing blight. The state does not argue, in most cases, that people with convictions are incapable of voting categorically. It acts as if people with convictions do not belong in this voting space, that the ballot box is a protected space, and their presence in it constitutes a kind of nuisance.

To be clear, this Article does not contend that the public nuisance doctrine, as constituted, provides a direct cause of action against voter exclusion schemes. Individuals have contested the doctrine’s expansion into non-traditional contexts; as Leslie Kendrick’s recent analysis demonstrates, historically, public nuisance has applied to interferences with physical space and has been subject to substantial criticism when extended beyond that domain.²⁴⁸ Rather, the zoning and public nuisance framing function here as

²⁴⁶ See *S. Burlington Cnty. N.A.A.C.P. v. Twp. of Mount Laurel*, 67 N.J. 151, 191 (1975).

²⁴⁷ *Berman v. Parker*, 348 U.S. 26, 32 (1954).

²⁴⁸ Leslie Kendrick, *The Perils and Promise of Public Nuisance*, 132 *YALE L.J.* 702, 702–05 (2023); see also, Victor E. Schwartz & Phil Goldberg, *The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort*, 45 *WASHBURN L. J.* 541, 545–48 (2006) [(explaining the progress of public nuisance law in the United States); Richard O. Faulk & John S. Gray, *Alchemy in the Courtroom? The Transmutation of Public Nuisance Litigation*, 2007 *MICH. ST. L. REV.* 941, 944–47 (2007) (describing of plaintiffs seeking to

diagnostic tools; they reveal the implicit logic that underlies states' use of police power to exclude people with criminal convictions from the electorate.²⁴⁹ Naming that logic makes it available for critique and redress.

Like the fears and realities associated with regulation of property,²⁵⁰ the government uses exclusionary voter zoning to move eligible votes away from exercising their potential political power.²⁵¹ The unpredictability, confusion, and degradation of the disenfranchisement maze and exclusionary voter zoning, more generally, show just how irrational, arbitrary, and unrelated they are to the public safety and welfare.²⁵² In the short film, *Until We All Count*, Kareemah Hanifa, a Georgian voting rights advocate and a person on parole, noted that the state has met her attempts to have her voting rights restored with “opposition.”²⁵³ Yet, film director and advocate Page Dukes explained that Georgia restored her voting rights after she requested the early termination of her probation. Hanifa is Black and Dukes is white. Dukes highlighted that the restoration of her voting rights represents a “success story” and, at the same time, “shows how arbitrary rights restoration can be.”²⁵⁴

In zoning eligible voters out of political participation, they are zoning them into isolation and criminalization. Tiffany Shaw stated, “I had recognized my mistake and served my time. However, dread, low self-esteem

apply public nuisance liability to nontraditional issues).

²⁴⁹ See Cheryl I. Harris, *Whiteness as Property*, 106 [HARV. L. REV.](#) 1707, 1714–16 (1993); Reva B. Siegel, *Discrimination in the Eyes of the Law*, 88 [CAL. L. REV.](#) 77, 80–82 (2000); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 [STAN. L. REV.](#) 581, 615–17 (1990).

²⁵⁰ See PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS 301–02 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025) (describing the “strengths and weaknesses” of government regulation of property).

²⁵¹ Compare Boyoung Kang, *Felon Disenfranchisement as a Legitimate State Regulation*, 4 [J. RACE, GENDER, & ETHNICITY](#) 77, 78–79 (2009) (discussing the arguments of people who support the use of voter exclusion based on criminal convictions) with Alec C. Ewald, *Civil Death: The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 [WIS. L. REV.](#) 1045, 1049 (2002) (explaining why voter exclusion based on criminal convictions is not in the best interests of individuals and society); Nora Demleitner, *Felon Disenfranchisement*, 49 [U. MEM. L. REV.](#) 1275, 1276, 1290 (2019) (same). Recognizing the reasons people favor voter exclusion is not an attempt to promote or validate them. I provide the information to highlight that supporters of the exclusion exist, and, like zoning laws, states have the authority to implement voter exclusion.

²⁵² *Nectow v. City of Cambridge*, 277 U.S. 183, 187–88 (1928) (internal quotation omitted) (noting the standard to determine whether a government regulation should continue it “is clear that their action has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare”).

²⁵³ REPRESENT JUSTICE, *Until We All Count*, at 8:10–8:20 (YouTube, Mar. 9, 2023), https://www.youtube.com/watch?v=_WZRAlwW3Co.

²⁵⁴ *Id.* at [7:41–8:09](#).

and a sense of exclusion communicated a repetitive, singular message: ‘your voice, your beliefs, your opinions don’t matter.’”²⁵⁵ This exclusionary voter zoning normalized regarding people with criminal records as not part of electorate and society, more generally.²⁵⁶ As Benjamin Plener Cover notes, voter exclusion “threatens overdeterrence, chilling democratic participation by eligible voters. Democracy cannot thrive when eligible voters are scared to vote.”²⁵⁷

State actions and policies through voter exclusion by geography create unjustified burdens and stigmatize individuals with criminal convictions. Diana Powell, executive director of Justice Served NC, Inc., asks people who are eligible but unwilling to register to vote, “If our vote wasn’t so important, . . . why would they fight us so hard to silence our voice and take that right away?”²⁵⁸ Exclusionary voter zoning offers a cyclic and reconfirming paradox: when the state zones eligible voters with criminal records out of the voting citizenry, then candidates and campaigns are disincentivized to assess their interests and earn their vote.²⁵⁹ Those within the political power structure may point to the low voter turnout as evidence that people held in prisons and jails do not want to vote and should be excluded from consideration.²⁶⁰

²⁵⁵ Tiffani Shaw, *Opinion: Would Voting Send Me Back to Prison? No One in Local Government Can Answer*, THE OKLAHOMAN (Oct. 20, 2024, 8:01 AM), <https://www.oklahoman.com/story/opinion/columns/2024/10/20/oklahoma-former-prisoner-incarcerated-vote/75717897007>.

²⁵⁶ Benjamin Plener Cover, *Voter Fraud Mistake*, 33 WM. & MARY BILL OF RTS. J. 1, 70 (2025) (emphasizing the “chilling effect” on voter turnout for people with convictions because of the arrests of people with convictions who voted or registered to vote while ineligible and without the intent to break the law).

²⁵⁷ *Id.* (promoting methods “[t]o protect democracy” by addressing laws that keep eligible voters from casting ballots).

²⁵⁸ Kelan Lyons, *In North Carolina, a Rush To “Restore Hope In The Vote” in People with Felony Convictions*, BOLTS (Nov. 4, 2022), <https://boltsmag.org/north-carolina-rights-restoration-unlock-the-vote>.

²⁵⁹ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 12 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf> (quoting people who are incarcerated who noted that candidates did not campaign within their facilities and that candidates did not “care about winning [their] vote”).

²⁶⁰ A North Carolina state court decision on voter exclusion based on criminal convictions explained the lower voter turnout in this way, “People who served probation sentences for misdemeanors are 15% less likely to vote following their sentence, whereas people who served probation sentences for felony convictions (and thus were denied the franchise) are 40% less likely to vote following their sentence. This 25% differential in turnout rates can be attributed to the experience of felony disenfranchisement.” *Cnty. Success Initiative v. Moore*, No. 19 CVS 15941, 2022 WL 17415364, at *19 (N.C. Super. Mar. 20, 2022), *rev’d*, 384 N.C. 194, 199, 886 S.E.2d 16, 24 (N.C. 2023).

Ultimately, exclusionary voter zoning works to nullify and frustrate the exercise of political power for individuals with criminal records. It also harms republican ideals. Exclusionary voter zoning increases citizen distrust of the criminal legal system and the political process.²⁶¹ In an accusatory system, people with convictions have an uphill battle reentering society; they may believe that the “cards” are stacked against them already, and risking their freedom so they may vote is not worth it.²⁶² As such, eligible voters do not participate in the political process.²⁶³ And while we know that four million people cannot vote because of voter exclusion based on criminal convictions, it is impossible to assess the extent exclusionary voter zoning has excluded voters each election cycle; removing eligible voters from the electorate, by law or by practice, goes beyond those four million people.²⁶⁴

All in the citizenry may not vote²⁶⁵ and must depend on other individuals to express their interests. This exclusion signals to all that only certain people have access to political power. Like exclusionary zoning, white people benefit from exclusionary voter zoning. In *Black Women & Voter Suppression*, I analyzed how racism functioned as a key driver of voter exclusion based on criminal convictions.²⁶⁶ Researchers and advocates have demonstrated that one “advantage” to the barriers to voting is that the higher voter turnout for “white Americans, and particularly affluent white

²⁶¹ See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 [YALE L.J.](#) 2054, 2085-86 (2017); Monica C. Bell, *Legal Estrangement: A Concept for These Times*, FOOTNOTES, July-Aug. 2020, at 7, 8, <https://www.asanet.org/news-events/footnotes/jul-aug-2020/features/legal-estrangement-concept-these-times> (explaining the concept of “legal estrangement” as “a process by which the law and its enforcers signal to marginalized groups that they are not fully part of American society”).

²⁶² In 2016, Texan Crystal Mason voted while still on federal supervision, which made her ineligible to vote in the state. Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 [SETON HALL L. REV.](#) 201, 207 (2025). After she was charged with voter fraud, Ms. Mason admitted that she never would have tried to vote had she known doing so would risk incarceration and, thereby, the state taking her away for her children again. *Id.*

²⁶³ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 11 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

²⁶⁴ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT’G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>; Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 FLA. L. REV. 287, 292 (2023).

²⁶⁵ Some countries, including Australia and France, have mandatory voting, and impose financial and other sanctions for not voting. See *Compulsory Voting*, INT’L IDEA, <https://www.idea.int/data-tools/data/voter-turnout-database/compulsory-voting> (last assessed Mar. 20, 2026).

²⁶⁶ Carla Laroche, *Black Women & Voter Suppression*, 102

Americans.”²⁶⁷

As Georgian voting rights advocate Kareemah Hanifa expressed, exclusionary voter zoning “conditions people to believe that there is no hope.”²⁶⁸ Exclusionary voter zoning burdens people without true justification.²⁶⁹ Each of the government’s actions and inactions described in Part II illustrates the arbitrary nature of these laws and their disproportionate impact on people, especially the Black community.²⁷⁰ Analyzing the state’s zoning out of people with criminal convictions from the polity calls for a remedy.

B. Voter Zoning for Inclusion

The state’s exclusionary voting zoning is impactful to those who experience it. Corey Purdie admitted that he did not vote for years after getting his voting rights back in North Carolina, but he did vote for the first time in 2008.²⁷¹ Purdie described the experience as “traumatizing and liberating at the same time,” and he explained, “When I walked out, I said, ‘Man, I did it. I got a piece of myself back.’”²⁷² People with convictions should be part of the polity and should not have to navigate the disenfranchisement maze to prove their worth.²⁷³

Supporters of voter exclusion based on criminal conviction claim it is a legitimate exercise of the police power to protect public safety, but the empirical record refutes that argument. People with convictions who vote are less likely to recidivate than those who do not.²⁷⁴ As such, rather than viewing

²⁶⁷ Sean McElwee, *Why Voting Matters: Large Disparities in Turnout Benefit the Donor Class*, DEMOS (Sept. 16, 2015), <https://www.demos.org/research/why-voting-matters-large-disparities-turnout-benefit-donor-class>; Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2484-86 (2022).

²⁶⁸ REPRESENT JUSTICE, *Until We All Count*, at 11:42-11:46 (YouTube, Mar. 9, 2023), https://www.youtube.com/watch?v=_WZRAIwW3Co.

²⁶⁹ See Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2493-95 (2022) (critiquing the alleged reasons that people use to support voter exclusion based on criminal convictions).

²⁷⁰ See *supra* Sect. II.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 *SETON HALL L. REV.* 201, 226 (2025) (describing how people with criminal convictions must prove their worth before the state restores their vote).

²⁷⁴ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 4 n.15 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf> (citing Kristen M. Budd & Niki Monazzam, *Increasing Public Safety by Restoring Voting Rights*, THE SENT’G PROJECT, 3 (2023), <https://www.sentencingproject.org/app/uploads/2023/07/Increasing-Public-Safety-by-Restoring-Voting-Rights.pdf>); Tova Wang, *Jail-Based Voting in Denver: A Case Study*, ASH

people with criminal records voting as a public nuisance, states should affirm their right to vote. Voting is a public safety intervention. If the police power authorizes states to act in ways that promote public health, safety, and welfare, and if the evidence shows that voting participation reduces recidivism, then the police power supports inclusionary voter zoning. The state that genuinely exercises its police power in good faith to protect the public welfare should expand ballot access for people with convictions, not contract it. Exclusionary voter zoning fails the arbitrariness test it claims to satisfy.²⁷⁵

Inclusionary voter zoning would address the discriminatory and exclusionary issues that exist in voting. In considering the real property context, scholars have indicated that inclusionary zoning “requires extensive revisions in zoning and land use programs.”²⁷⁶ State and local governments have removed barriers to certain types of land uses.²⁷⁷ For example, Minneapolis passed legislation in 2019 that banned single-family zoning, which is the type of zoning that supported wealthy families to the detrimental of multi-family homes.²⁷⁸ Other jurisdictions implement “affirmative inclusionary zoning” tactics, like requiring that new developments include affordable housing units.²⁷⁹ Addressing “overly restrictive exclusionary laws and regulations can make an enormous difference in the lives of even the most vulnerable Americans”; these efforts are significant and effective to achieving just property use and access.²⁸⁰

To create inclusionary voter zoning requires zoning, in physical and administrative form, all voters into the electorate, to encourage people to vote and to enhance voting accessibility and convenience. Inclusionary voter zoning ensures the health and welfare of democratic accountability. For a person with a criminal conviction, inclusionary voter zoning includes them as part of the electorate, with no mazes to navigate, no doors to unlock, and no cloud of exclusion hanging over their heads.²⁸¹ Voting should be a place

CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION: HARV. KENNEDY SCH., 3 (2024), <https://ash.harvard.edu/wp-content/uploads/2024/08/240573-Hvd-Ash-Jail-Voting-Denver-Final-8-4-24.pdf>; Tova Wang, *Jail-Based Voting in the District of Columbia: A Case Study*, ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION: HARV. KENNEDY SCH., 2 (2024), <https://ash.harvard.edu/wp-content/uploads/2024/02/jail-based-voting-in-the-district-of-columbia-case-study-2.6.24-1.pdf>).

²⁷⁵ See *Nectow v. City of Cambridge*, 277 U.S. 183, 187–88 (1928).

²⁷⁶ DANIEL R. MANDELKER, *LAND USE LAW* 7-23 (5th ed. 2023).

²⁷⁷ *THE RIGHT TO FAIR HOUSING: CASES, STATUTES, AND CONTEXT* 351 (Florence Wagman Roisman, Stacy E. Seicshnaydre, & Rigel C. Oliveri eds., 2025).

²⁷⁸ *Id.*

²⁷⁹ RICHARD D. KAHLENBERG, *EXCLUDED: HOW SNOB ZONING, NIMBYISM, AND CLASS BIAS BUILD THE WALLS WE DON’T SEE* 144-45 (2023).

²⁸⁰ *Id.* at 143.

²⁸¹ Kelan Lyons, *In North Carolina, a Rush to “Restore Hope in the Vote” in People*

and source of power rather than fear.

People who are incarcerated and who have criminal convictions have used “rival geographies” to contradict exclusionary voter zoning. Coined by Edward Said, Stephanie M. H. Camp has applied the term to explained how enslaved people used space and place to create their own form of movement in the face of the legal and cultural restrictions on their movement.²⁸² As Camp explained, “The rival geography . . . provide[d] space for private and public creative expression, rest and recreation, alternative communication, and importantly, resistance to planters’ domination of slaves’ every move.”²⁸³ In today’s context, “modern-day rival geography” may include the work and advocacy of groups that people who are incarcerated create and lead that focus on providing voting access and election information to others in prisons and jails, as well as organizations created and run by people with criminal convictions on the outside. In Maine, for example, people held in the prisons share crucial information and host registration drives, among other efforts, through the National Association for the Advancement of Colored People (NAACP) branch within the prison.²⁸⁴ Though considered restricted and restrictive spaces, volunteers’ electoral resistance within the prisons make the exclusionary voting zoning less obstructive.

Prison administrators and outside organizations recognized the power and importance of the NAACP prison branch’s work.²⁸⁵ And decisionmakers should not ignore their responsibility to include those that the exclusionary voter zoning has impacted directly and indirectly when developing inclusionary practices.²⁸⁶

To achieve inclusionary voter zoning holistically requires an explicit U.S. constitutional right to vote; an amendment that bans denying the vote to people with criminal convictions would confirm the power of the collective.²⁸⁷ With an explicit federal constitutional right in place, the ability

with *Felony Convictions*, BOLTS (Nov. 4, 2022), <https://boltsmag.org/north-carolina-rights-restoration-unlock-the-vote>.

²⁸² STEPHANIE M. H. CAMP, CLOSER TO FREEDOM: ENSLAVED WOMEN AND EVERYDAY RESISTANCE IN THE PLANTATION SOUTH 7 (2004).

²⁸³ *Id.*

²⁸⁴ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 9 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

²⁸⁵ *Id.*

²⁸⁶ Government agencies should consider working with other advocates and lawyers to support voter turnout as well. Cory Sharber, *Pennsylvania Updates Guidance for Incarcerated Voters*, WHYY (Oct. 21, 2024, 12:25 PM), <https://whyy.org/articles/incarcerated-voters-pennsylvania-election-2024>.

²⁸⁷ Maureen A. Edobor, *Brnovich: Extratextual Textualism*, 26 J. CONST. L. 1495, 1552-55 (2024) (proposing language for a constitutional amendment that “round[s] out the

to zone people out of the electorate becomes harder. People with criminal convictions would have more authority to demonstrate governmental acts that limited their movement into voting spaces.²⁸⁸ Legislators and elected officials would have to explain any laws or policies they implemented that people alleged would zone them out of their political participation.

Because states would use their police power to implement an open electoral space, inclusionary voter zoning does not require a federal doctrine to achieve the goals. As such, the rest of this subsection identifies methods states and municipalities may use to foster inclusionary voter zoning.

In 2018, the Center for American Progress (CAP) issued a report with key measures every jurisdiction should take to increase voter turnout.²⁸⁹ Their election law reforms included implementing automatic voter registration (AVR) and same-day registration, increasing access to early voting and mail ballots without a need to provide a reason, and offering voter accessibility and election information.²⁹⁰ These policies would increase inclusionary voter zoning overall, and especially for people with criminal convictions. CAP cited Oregon's AVR process, which began in 2016, to make voter turnout more accessible.²⁹¹

Rather than having people go through the mail-in ballot registration and voting process, the jail in Washington, D.C., provides voting machines in the facility; people may vote in person.²⁹² A Colorado law requires proactive

electorate by eliminating state felon disenfranchisement laws (which operate as mass electoral suppression laws")); *see also* RICHARD L. HASEN, A REAL RIGHT TO VOTE: HOW A CONSTITUTIONAL AMENDMENT CAN SAFEGUARD AMERICAN DEMOCRACY 101, 128 (2024) (proposing draft constitutional amendment language); Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 SETON HALL L. REV. 201, 254-55 (2025) (emphasizing the need for a constitutional amendment to eliminate voter exclusion based on criminal convictions)

²⁸⁸ *See generally* RICHARD L. HASEN, A REAL RIGHT TO VOTE: HOW A CONSTITUTIONAL AMENDMENT CAN SAFEGUARD AMERICAN DEMOCRACY (2024) (examining the necessity of a constitutional amendment protecting the right to vote).

²⁸⁹ Danielle Root & Liz Kennedy, *Increasing Voter Participation in America*, CTR. FOR AMER. PROGRESS (July 11, 2018), <https://www.americanprogress.org/article/increasing-voter-participation-america>.

²⁹⁰ Other recommendations consisted of restoring the voting rights of people with incarceration histories, bolstering civics education, and voter outreach. *Id.*

²⁹¹ According to CAP, "[a]s a result of AVR, Oregon's electorate is now more representative of the state's population, as citizens registered through the program are younger, more rural, lower-income, and more ethnically diverse." *Id.* Because AVR depends on records people submit to the Department of Motor Vehicles, however, people without access to private vehicles or who cannot afford to pay for state identification through the DMV remain left out of this inclusionary voter zoning.

²⁹² *Implementation of Recommendations Regarding Restore the Vote Amendment Act 2020 as of 2024 General Election*, D.C. CORR. INFO. COUNCIL & BD. OF ELECTIONS, 8 (2024), https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/Voting%20Report

planning to give people detained in jails access to voting.²⁹³ In addition to onsite voter registration and making facilities official polling places, legislators should make voter restoration automatic, or at the very least, offer a simple application restoration process. The process should mandate a specific deadline by which the state must abide by when reviewing and granting people's voting rights restoration. Application deciders should include people who have also gone through the voter restoration process, so that they can hold the state accountable. In addition, the legislature should remove the risk of criminal prosecution when people believed, incorrectly, that they can vote and attempt to do so while ineligible because of their criminal convictions.²⁹⁴ Further incarceration because of their desire to be part of the political citizenry would not serve inclusionary voter zoning.

Proper notification and explanation of the voter restoration process by the government would signal to people with convictions that they are welcomed and encouraged to exercise their political power. Late last year, the Florida administration agreed to tell individuals whether they are eligible to vote, if they requested that information from the Department of State.²⁹⁵ While taking a step in positive direction, other states have taken a more proactive role in ensuring people know of their eligibility.²⁹⁶ In 2005, New Mexico

[t%204.2.25.pdf](#); *Report on Primary and General Elections*, D.C. DEP'T. OF CORR., 2 (2022), <https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DOC2022VotingReport.pdf>; *Inmate Voting Process*, D.C. DEP'T OF CORR., 9 (2025), <https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204020.4%20Inmate%20Voting%20Process.%20OPP.%20DIRcopy%20%20wsig%209-17-25%20complete.pdf>.

²⁹³ Alex Burness, *Jail Voting Soars in Colorado After State Mandates Polling Places in County Lockups*, BOLTS (Mar. 4, 2025), <https://boltsmag.org/jail-voting-soars-in-colorado> (“Local officials had claimed they were already giving detained people ballot access, but the first-in-the-nation mandate forced their hands and increased turnout across the state.”).

²⁹⁴ For a discussion on why mistake of law defenses and heightened mens rea proposals will not be effective, see Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 *SETON HALL L. REV.* 201, 259 (2025).

²⁹⁵ Mitch Perry, *Floridians with Felony Convictions Can Now Contact the State to Learn if They are Eligible to Vote*, FLA. PHOENIX (Oct. 14, 2025, 1:33 PM), <https://floridaphoenix.com/2025/10/14/floridians-with-felony-convictions-can-now-contact-the-state-to-learn-if-they-are-eligible-to-vote>.

²⁹⁶ A future article will analyze the way that other countries allow people who are incarcerated to vote and have involved people who are incarcerated and not incarcerated in supporting political participation. For example, under Article 3 of Protocol No. 1 to the European Convention on Human Rights, member states must ensure free and fair elections. Article 3 of Protocol No. 1 to the European Convention on Human Rights states, “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” European Convention on Human Rights, page 35, https://www.echr.coe.int/documents/d/echr/Convention_ENG. The European Court of

made it a requirement that the Department of Corrections had to inform people of their eligibility to vote and let the Secretary of State know that individuals are eligible.²⁹⁷

Further, inclusionary voter zoning should include laws that hold elections officials accountable in helping people register and providing ballots. For example, Georgia law establishes strict deadlines that elections officials must follow to mail absentee ballots.²⁹⁸ In 2024, Georgia voters sought injunctive relief against the Cobb County Board of Elections and Registration after election officials admitted that they had not issued absentee ballots as the law

Human Rights has interpreted this provision to require signatories to hold an adversarial proceeding to determine whether a person loses their right to vote upon conviction of a criminal. *Hirst (n° 2) v. the United Kingdom*, [Grand Chamber judgment](#) of 6 October 2005, §§ 58-61, 69-71. For further discussion of the *Hirst* decision and the subsequent cases applying its holding, see *Fact Sheet – Prisoners’ Right to Vote*, EUR. CT. H. R., 4 (2022), https://www.echr.coe.int/documents/d/echr/FS_Prisoners_vote_ENG. They restore the vote automatically to people upon their release from incarceration. Voting is mandatory, so not voting would risk civil and/or criminal penalties, rather than the other way around. Martina Prpic, *Prisoners’ Voting Rights in European Parliament Elections*, EUR. PARL., 2 (2024), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751459/EPRS_BRI\(2023\)751459_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751459/EPRS_BRI(2023)751459_EN.pdf) (describing the various voting accessibility laws within member states of the European Union). A potential concern would be giving the court too much discretion that would allow bias and exclusionary voter zoning to influence restoration decisions. As this Article exposes, voting by geography inhibits people’s ability to vote. See *supra* Sect. II. According to The Sentencing Project, “Chile, Croatia, and the Netherlands,” among other countries, have made prisons official polling places, making some of the logistical issues nonexistent. Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 20 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>. Other countries, like Canada and Germany, have over 90 percent registration rates, even though voting is not mandatory. HEATHER MCGHEE, THE SUM OF US 147 (2021); Maureen A. Edobor, *Brnovich: Extratextual Textualism*, 26 *J. Const. L.* 1495, 1556 (2024) (noting that requiring people to opt into voting “sets American democracy apart” from other democracies in the world). Australia, with its compulsory voting, has an almost 97 percent voter registration rate. HEATHER MCGHEE, THE SUM OF US 147 (2021). The country, however, excludes people with convictions from the ballot box depending on the length of their sentences and their location. *The Right to Vote is Not Enjoyed Equally by All Australians*, AUSTRALIAN HUM. RTS. COMM’N (2010), <https://humanrights.gov.au/resource-hub/by-resource-type/publications/rights-and-freedoms/policy-reports-rights-and-freedoms/right-vote-not-enjoyed-equally-all-australians>; *Prisoners*, AUSTRALIAN ELECTORAL COMM’N (Feb. 3, 2025), https://www.aec.gov.au/Enrolling_to_vote/special_category/Prisoners.htm.

²⁹⁷ Nicole D. Porter & Morgan McLeod, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2023*, THE SENT’G PROJECT, 17 (2023), <https://www.sentencingproject.org/app/uploads/2024/03/Expand-the-Vote-State-Felony-Disenfranchisement-Reform-1997-2023.pdf>. Louisiana requires the Department of Public Safety and Corrections to notify people with convictions of their eligibility to vote as well. *Id.* at 14.

²⁹⁸ See GA. CODE ANN. § 21-2-384(a)(2) (2021).

provided.²⁹⁹ The trial court required the Board to extend the mailing deadline to receive mail-in ballots by several days as a result of the Board's failures.³⁰⁰ In inclusionary voter zoning, citizens would have a similar private right of action if the state government fails to support registration and ballot access to people with criminal convictions.³⁰¹

CONCLUSION

Legal scholars and journalists have analyzed and exposed how state legislatures have restricted access to the ballot box to eligible voters, especially those in systemically excluded communities, and quieted dissenters.³⁰² These voting controls help legislatures coalesce political power and dilute voters' interests.³⁰³ Limiting, rather than eliminating, exclusionary voter zoning would allow expansion of the voter restrictions in other places and communities.³⁰⁴ Though this Article focused on the disparities in access between Black and white individuals, exclusionary voter zoning applies to other systemically excluded groups with criminal records as well. As the non-reformist reforms concept holds, reforming the status quo may invite the implementation of different, not-yet-as-prominent types of voter zoning

²⁹⁹ *Ayota v. Fall*, No. 24GC08111, 2024 WL 4656718, at *1 (Ga. Super. Nov. 1, 2024); *Republican Nat'l Comm., Inc. v. Ayota* No. S25M0319, 2024 WL 4720145, at *2 (Ga. 2024).

³⁰⁰ *Ayota v. Fall*, No. 24GC08111, 2024 WL 4656718, at *6-8 (Ga. Super. Nov. 1, 2024); *Republican Nat'l Comm., Inc. v. Ayota* No. S25M0319, 2024 WL 4720145, at *5 (Ga. 2024).

³⁰¹ The federal Uniformed and Overseas Citizens Absentee Voting Act authorizes the Attorney General to sue election administrators for failing to follow ballot requirements to people seeking to vote while overseas, including members of the military. Uniformed & Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20307(a) (2009).

³⁰² Robert Downen, *It's Not Just Redistricting. Here Are All the Ways the Texas GOP Is Consolidating Power.*, TEXASMONTHLY (Sept. 8, 2025), <https://www.texasmonthly.com/news-politics/texas-gop-power-grab> (“Redrawing congressional maps for Trump is just one part of a decades-long attempt to end fair elections in the state.”); Hansi Lo Wang, *A GOP Push To Restrict Voting by Overseas U.S. Citizens Continues Before 2026 Midterms*, NPR (Oct. 1, 2025, 5:00 AM), <https://www.npr.org/2025/10/01/nx-sl-5542344/overseas-active-duty-military-voting-uocava>.

³⁰³ Michael Waldman, *The Lasting Effects of Voter Suppression*, BRENNAN CTR. FOR JUST. (May 28, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/lasting-effects-voter-suppression>; *Block the Vote: How Politicians are Trying to Block Voters from the Ballot Box*, AM. C.L. UNION, <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020> (last visited on Mar. 4, 2026); Joshua Clark, *Widening the Lens on Voter Suppression: From Calculating Lost Votes to Fighting For Effective Voting Rights*, HASS INSTITUTE FOR A FAIR & INCLUSIVE SOC'Y AT UNI. CAL. BERKELEY, 15 (2018), https://belonging.berkeley.edu/sites/default/files/haas_institute_wideningthelensonvotersuppression_july2018_publish.pdf?file=1&force=1.

³⁰⁴ Ekow N. Yankah, *Deputization and Privileged White Violence*, 77 *STAN. L. REV.* 703, 769-73 (2025) (expansion to other places and communities).

against people with criminal convictions.³⁰⁵ Avoiding the expansion of the exclusionary practices requires addressing barriers to the right to vote and accessing the vote for all.

Inclusionary voter zoning is ultimately not about an individual voter; it is about democratic accountability. When people with convictions are excluded from the electorate, candidates and policymakers face no electoral incentive to address the interests of people most directly subjected to the criminal legal system's operations. And a political process from which those most harmed by exclusion have been removed cannot be trusted to remedy its own exclusions.

Because of our current political landscape, which includes diluting the votes of communities of color, is inclusionary voter zoning possible? Is it naïve to propose this framework when our electoral system is going in the opposite direction?³⁰⁶ To both questions, I answer yes. Yes, inclusionary voter zoning is possible, and yes, it is a naïve idea. Though those answers may seem to conflict, they do not. Poet Langston Hughes's powerful words guide me in this conviction. In the poem "I, Too," a Black person describes how white people treat them poorly, yet they do not fall into despair.³⁰⁷ Rather, the narrator chooses joy and confidence in their identity.³⁰⁸ The speaker predicts, confidently, that society will affirm their equal status one day.³⁰⁹ The narrator knows that those who reject them today will regret it because "I, too, am America."³¹⁰

Even though exclusionary voter zoning exists currently, it is possible for inclusionary voter zoning to occur. It is our responsibility to bear witness to the injustices today and to work to create a more just voting system. Advocating for increased voter rights may seem silly in the face of powerful

³⁰⁵ Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2568 (2023).

³⁰⁶ See Michael Scherer et al., 'The Trust Has Been Absolutely Destroyed', ATL (Feb. 8, 2026), <https://www.theatlantic.com/politics/2026/02/trump-gabbard-election-investigations-states/685922>; Samuel Benson, *A MAGA push to erase a Dem House seat is triggering accusations of fraud and violence in Utah*, POLITICO (Feb. 7, 2026 12:00 PM), <https://www.politico.com/news/2026/02/07/trump-backed-redistricting-initiative-in-utah-goes-sideways-00767959>.

³⁰⁷ Langston Hughes, *I, Too*, in THE COLLECTED POEMS OF LANGSTON HUGHES (Arnold Rampersad & David Roessel eds., 1994).

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.* The idea of including *I, Too*, came while I was working on this Article at a Black-owned independent coffee shop and bookstore, Baldwin & Co., in New Orleans, Louisiana. *About Us*, BALDWIN & CO., <https://www.baldwinandcobooks.com/about> (last visited Aug. 3, 2026). Painted on the wall directly behind me was an image of Langston Hughes alongside his poem. I appreciate that Baldwin & Co. has been a source of inspiration for so many writers and thinkers.

political forces. Yet, to implement the inclusionary voter zoning measures I propose would entail resisting the tangible and intangible barriers to the vote for all. And having this type of voting environment requires a collective appreciation of the value of including people with criminal convictions in the electorate, for they, too, are America.

DRAFT