CONNECTICUT PUBLIC INTEREST LAW JOURNAL

VOLUME 25 2025–2026 Number 1

From Property Ownership Requirements and Pauper Exclusions to Residency Requirements: How the United States Systematically Disenfranchises the Homeless Population

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> Who are to be the electors . . . ? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States.[1]

I. INTRODUCTION

"Homelessness is a reality for too many Americans."[2] Every night, over half a million people in the United States experience homelessness.[3]

[1] THE FEDERALIST No. 57 (James Madison or Alexander Hamilton).
[2] City of Grants Pass v. Johnson, 603 U.S. 520, 564 (2024) (Sotomayor, J., dissenting).
[3] *Id.* Ben Zimmer, *'Unhoused:" Without a Home but Without the Stigma,* THE WALL ST. J. (April 26, 2024, 8:57 AM), https://www.wsj.com/politics/policy/unhoused-without-a-home-but-without-the-stigma-ff8add87 (This author acknowledges that the term "homeless," while still generally acceptable according to the 2020 Associated Press Stylebook, is becoming less favored in advocacy circles who are instead opting for the term "unhoused" or "unhoused persons," which is seen "as a more accurate

The problem of homelessness is only getting worse:[4] more people than ever are experiencing homelessness for the first time,[5] and there are too few shelter beds to house all homeless individuals.[6] While homelessness happens for a myriad of reasons, many of which are outside of the homeless individual's control,[7] homeless individuals are "often overlooked, misunderstood, and marginalized."[8]

Federal, state, and local governments face the difficult task of "addressing the underlying causes of homelessness," while also "providing for public health and safety."[9] As the rates of homelessness increase across the country, "the number of homeless encampments across the country ha[ve] increased . . . 'in a number not seen in almost a century."[10] With

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and humanizing because it suggests more of a temporary condition to be addressed than in innate characteristic). Ann E. Marimow and Reis Thebault, *Supreme Court divided over homeless ban and rights. of the unhoused*, THE WASHINGTON POST (April 22, 2024), https://wapo.st/4jYymzH (The press uses the terms "homeless" and "unhoused" somewhat interchangeably). Zimmer, *supra*. Oral Argument at 18:23, City of Grants Pass v. Johnson, 603 U.S. 520 (2024), https://www.oyez.org/cases/2023/23-175 (Justice Brown Jackson used the word "unhoused" in an oral argument, "They have to eat in public because they're unhoused and they can't afford to go to a restaurant."). *Id.* at 565. (The Supreme Court defined homelessness as the "lack 'a fixed, regular, and adequate nighttime residence." For the purpose of this paper, the term "homeless" will be used to be consistent with Supreme Court precedent).

[4] Daniel Soucy, Makenna Janes & Andrew Hall, *State of Homelessness: 2024 Edition,* THE NAT'L ALL. TO END HOMELESSNESS (Aug. 5, 2024), https://endhomelessness.org/resources/research-and-analysis/state-of-homelessness-2024-edition/ (When referring to the "problem" of homelessness, this author is speaking on the frequency, duration, and expanding numbers of homelessness rates in the United States. For example, in 2023, there was a record high of 653,104 people experiencing homelessness on a single night). *Id.* (This was a 12.1% increase in the number of individuals experiencing homelessness from the previous year). *Id.* (At the time of writing, the most up-to-date statistics come from 2023, as the 2024 National Alliance to End Homelessness's State of Homelessness report is not yet published).

[5] Soucy, *supra* note 4. (Between 2022–2023, there was a 23% increase of individuals entering emergency shelters for the first time).

[6] Soucy, *supra* note 4. (A record high of 256,610 individuals, or 39.3% of all people experiencing homelessness, did not have a shelter in 2023).

[7] Grants Pass, 603 U.S. at 565–566. *Id.* at 528–529 (The economy plays a large role in the number of individuals experiencing homelessness). *Id.* at 566 (for example, "Every $100 increase in median rental price is associated with about a 9 percent increase in the estimated homelessness rate."). *Id.* at 529 (Some homeless individuals and families "have been forced from their homes to escape domestic violence and other forms of exploitation"). *Id.* at 529 (Other homeless individuals "struggle with drug addiction and mental illness . . . [b]y one estimate, perhaps 78 percent of the unsheltered suffer from mental-health issues, while 75 percent struggle with substance abuse"). Grants Pass, 603 U.S. at 566 (Veterans make up a large portion of the homeless population particularly "those with a history of mental health conditions, including post-traumatic stress disorder (PTSD)"). *Id.* at 566 (Almost 60 percent of women "experiencing homelessness report that fleeing domestic violence was the 'immediate cause"). *Id.* at 566–567 (Many youth and young adults are homeless as"'[f]amily dysfunction and rejection, sexual abuse, juvenile legal system involvement, 'aging out' of the foster care system, and economic hardship' make them particularly vulnerable to homelessness"). *Id.* at 567 (There is a large Native American homeless population for which "policies of removal and resettlement in tribal lands' have caused displacement, resulting in 'a disproportionately high rate of housing insecurity and unsheltered homelessness"). *Id.* (Individuals with disabilities also face homelessness which create unique challenges as "[l]ess than 5% of housing in the United States is accessible for moderate mobility disabilities, and less than 1% is accessible for wheelchair use").

[8] Jennie Miller & Peter Gonzales, *"I Matter! I Vote!": Overcoming the Disenfranchisement of Homeless and Formerly Homeless Voter*s, 11 TEMP. POL. & CIV. RTS. L. REV. 343, 343. (2002).

[9] Grants Pass, 603 U.S. at 567.

[10] *Id.* at 529. *Id.* at 565 (In Justice Sotomayor's dissent, she argues Justice Gorsuch's majority opinion underplays the factors that lead to homelessness, "The majority paints a picture of 'cities across the

increased number of encampments comes significant public health and safety concerns, such as "'a heightened risk of disease associated with living outside without bathrooms or washbasins,'" as well as "'deadly fires' from efforts to prepare food and create heat sources."[11] Additionally, with increased levels of homelessness comes "violen[t] crime, and drug distribution and abuse."[12]

To combat the negative effects of homelessness, while also trying to balance addressing the root cause of homelessness, federal, state, and local governments have placed specific regulations on where, when, and how homeless individuals may live.[13] However, many of these regulations have had a secondary effect of restricting homeless individuals' ability to exercise their fundamental right to vote. [14]

This paper will discuss how the United States has systematically disenfranchised the homeless population. The "system" that works to create disenfranchisement is voter registration forms that require an individual to list an address to prove their residence, which this paper will hereinafter refer to as "the residency requirement."[15]

To understand the systematic disenfranchisement of the homeless today, it is critical to first examine the history and the development of registration requirements in the United States. In Section II, this paper will analyze the development of two property-based requirements to qualify for suffrage: the property-ownership qualification and the pauper exclusion. This paper will then turn to the impact of the post-Civil War Fourteenth and Fifteenth Amendments and the Voting Rights Act of the civil rights era on expanding sovereignty for the homeless population. In Section III, this paper will outline how voter registration residency requirements systematically disenfranchises the homeless population. To do so, this paper will examine successful cases of combating residency requirement laws and suggest causes of action to expand homeless suffrage. Finally, in

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American West' in 'crisis; that are using criminalization [of homelessness] as a last resort . . .. That narrative then animates the majority's reasoning. This account, however, fails to engage seriously with the precipitating causes of homelessness, the damaging effects of criminalization, and the myriad [of] legitimate reasons people may lack or decline shelter").

[11] *Id.* at 567.

[12] *Id.*

[13] *See infra* Section III(B)–(D) for a continued discussion of specific policies federal, state, and local governments have created to address the homelessness problem. These sections will examine how regulations have a secondary effect of systematic disenfranchisement of the homeless population.

[14] *See infra* Section II(B)–(C) for continued discussion on the specific dynamics of the right to vote in the United States; *see infra* Section III–(A) for continued discussion on the standard of review courts apply to state election laws that regulating the fundamental right to vote.

[15] *Resident*, BLACK'S LAW DICTIONARY (11th ed. 2019) (Black's Law Dictionary defines "resident" as "[s]omeone who lives permanently in a particular place," specifically, "a person who has established domicile in a given jurisdiction.") For the purpose of this paper, the "residency requirement" is the requirement many jurisdictions place as pre-requisite to voter registration. These policies state an individual must list a home address, or a "residence" to be able to register. As this paper discusses, there is no federal definition of what qualifies as a "residence" for voter registration purposes. This issue has not been addressed by the United States Supreme Court. Instead, state and local election codes control their definition of sufficient "residence," leading to vastly inconsistent requirements. There is no consistent definition among these regulations for "residence" or "resident."

Section IV, this paper will discuss two new federal actions and their potential negative effects on the continuing the systematic disenfranchisement of homeless individuals.

II. History and Development of the Residency Requirement: an Examination of Property Ownership Requirements and Pauper Exclusions

A. From the Revolutionary War to the Civil War

1. The Property-Ownership Exclusion

At the dawn of the American colonies in the mid-eighteenth century every colony, except for one,[16] adopted "property qualifications for suffrage."[17] Colonialists and writers of the time explained the rationale of property-ownership requirements for suffrage came out of the idea of dependence and personal autonomy.[18] Blackstone was heavily cited author, cited by both Alexander Hamilton[19] and John Adams,[20] for supporting this emphasis on personal autonomy, writing in 1765:

> The true reason of requiring any qualification, with regard to property, in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or another. This would give a great, an artful, or a wealthy man, a larger share in elections than is consistent with general liberty.[21]

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[16] Robert J. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 Stan. L. Rev. 335, 339–40 (1989). (By the Revolutionary War, South Carolina was the sole colony that did not have a property exclusion). *Id.* (In every other colony, the "election laws excluded the propertyless from the suffrage without distinction.")

[17] Miller, *supra* note 8 at 347–348.

[18] Steinfeld, *supra* note 16 at 340 ("Those who owned no property were powerless and dependent; they were nearly always subject to the will of those who commanded resources. Because they were not their own men, they lacked political capacity . . .. They would always be compelled to do the bidding of the wealthy.").

[19] *Id.* at 341. (citing Alexander Hamilton, The Farmer Refuted (1775), *represented in* 1 A. Hamilton, The Papers of Alexander Hamilton 81, 106 (H. Syrett & J. Cooke eds. 1961)) (The Blackstonian idea that "those without property lacked autonomy and would inevitably fall under the sway of others," since only 'free agents' could be allowed to vote, the propertyless could not be enfranchised," was cited by Alexander Hamilton).

[20] Steinfeld, *supra* note 16 at 341. In 1776, John Adams wrote, "Such is the frailty of the human heart. . . that very few men who have no property, have any judgment of their own. They talk and vote as they are directed by some man of property, who has attached their minds to his interest . . . [They are] to all intents and purposes as much dependent upon others, who will please to feed, clothe, and employ them, as women are upon their husbands, or children on their parents." *Id.* (citing Letter from John Adams to James Sullivan (May 26, 1776), *in* 9 The Works of John Adams, Second President of the United States: with a life of the author, notes and illustrations 375, 376–377 (C. Adams ed. 1864) (alterations in original)).

[21] Steinfeld, *supra* note 16 at 340 (citing I William Blackstone, Commentaries 171).

This conception of propertyless individuals as lacking personal autonomy continued through the American Revolution.[22] However, while the notion that "all men are created equal"[23] was a founding tenant of the United States, "In the decades after the Revolution, hardly anyone disputed the proposition that property ownership was necessary for personal independence."[24] Thus, "if independence was a prerequisite for political participation, as many Americans thought it should be, then those who owned no property could not reasonably expect to participate in political life."[25] The property-ownership exclusion continued "[f]or the better part of the first century of the new republic."[26]

2. The Pauper Exclusion

In the early to mid-nineteenth century, the nascent states began to adopt pauper[27] exclusions [28] to suffrage. The rationale behind the pauper exclusion was nearly identical to the rationale behind the property-ownership exclusion, "[t]he legal right to self-government [was] the primary test for separating those who were entitled to franchise from those who would continue to be disenfranchised."[29]

Paupers were viewed as lacking legal self-government because of their dependence on public resources as "they were legally obligated to obey the reasonable commands of their providers . . . [Paupers] could not dispose of their energies according to their own desires, [and] their labor was property of their providers."[30] Thus, because paupers depended on state resources and did not profit solely from their own labor, they were seen as significantly lacking autonomy and were therefore undeserving of suffrage under this Blackstonian-esque conception.[31]

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[22] *Id.* at 351.
[23] THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).
[24] Steinfeld, *supra* note 16 at 342.
[25] *Id.*
[26] Miller, *supra* note 8 at 347–348.
[27] *Pauper*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/pauper (last visited May 4, 2025) ("a person destitute of means except such as are derived from charity," who specifically "receives aid from funds designated for the poor."). The modern-day homeless individual is analogous to the paupers of this era.
[28] Steinfeld, *supra* note 16 at 335. ("In 1792, the state of New Hampshire amended its constitution to exclude 'paupers' from the suffrage," later followed by "South Carolina (1810), Massachusetts (1821), Virginia (1829), Delaware (1831), Rhode Island (1842), and New Jersey (1844) . . .. By the end of the nineteenth century, fourteen states had excluded either 'paupers' generally or inmates of poorhouses from the suffrage"). *Id.* (As late as 1934, all of these states continued to do so").
[29] Steinfeld, *supra* note 16 at 362.
[30] *Id.* at 361. (For example, in Connecticut, as late as 1884, "towns were . . . still assigning the rights of their labor . . .. 'The keeper of the town poor' still operated 'under written contract [by which he] reciev[ed] an annual compensation . . . and the services of the paupers' during those years").
[31] *See infra* notes 19–21 for a description of this Blackstonian ideal.

At the same time pauper exclusions were becoming favored by the states, many states began to relax their property-ownership qualifications.[32] This shift away from property-ownership exclusions toward pauper exclusions was the result of changing conceptions of personal autonomy.[33] Around this time, wage-earners, although propertyless, were considered to gain legal independence as "[t]he employment relationship no longer took the form of a legal relationship of dependence."[34] This meant "wage earners [were] legally autonomous"[35] while paupers remained "legally depend on and bound."[36] Thus, while paupers could not depend on their own labor, wage-earners who could contract for their own employment, although propertyless, gained suffrage as society accepted this more expansive view of "self-autonomous."

While property-ownership restrictions on suffrage continued to decrease at the turn of the nineteenth to mid-nineteenth century, pauper exclusions continued to be popular well into the late nineteenth century.[37]

B. From the Civil War to the Civil Rights Movement

After the Civil War, as the United States entered into the "Jacksonian world of the nineteenth century," the bright-line test for suffrage could no longer be explicitly race-dependent, but was still largely based on the Blackstonian distinction, the critical question for suffrage being "whether a person supported himself by earning wages or was dependent on poor relief."[38]

Some states began to decrease their use of the pauper and property exclusions as they became more difficult to delineate, "[t]he realities of cyclical and seasonal unemployment, and of poor relief, made it very difficult to keep the two categories of the propertyless-independent wage earners and dependent paupers-sealed tightly in separate compartments."[39] Thus, "the tendency of the bright line to blur posed the danger,"[40] that the Blackstonian-esque "universe constructed by the opposition of independent

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[32] Steinfeld, *supra* note 16 at 353. *Id.* at 338 (The expanding franchise to propertyless and expanding restrictions for paupers lead to a debate that lasted much of the nineteenth century). *Id.* ("On the one hand, Americans continued to adhere to the classical republican rotation that only property ownership conferred independence on the man," while "[o]n the other hand, [Americans] also had come to believe that 'all men were by nature equally free and independent and had certain inherent and inalienable rights").

[33] *Id.* at 361–362. (Even wage-earnings, although propertyless, were considered to gain legal independence because of their ability to enter into contracts for employment and "[t]he employment relationship no longer took the form of a legal relationship of dependence" so that "wage earners [were] legally autonomous" while paupers remained "legally depend on and bound").

[34] Steinfeld, *supra* note 16 at 361–362.

[35] *Id.*

[36] *Id.*

[37] *Id.* at 373.

[38] Steinfeld, *supra* note 16 at 364.

[39] *Id.* at 370.

[40] *Id.*

wage earner and dependent pauper might collapse back into a world of the undifferentiated propertyless and the propertied."[41]

Some state courts began to relax pauper exclusions, allowing for paupers to escape their disenfranchisement if they were able to successfully support themselves.[42] For example, in 1878, the Massachusetts Supreme Court ruled that and individual who was once a pauper, but had since been "able to earn more than enough to support himself and had found an employer," was no longer considered a pauper.[43] Thus, the court held, paupers should be disenfranchised only "so long as they were in actual receipt of assistance, and no longer."[44] However, for the remainder of the nineteenth century until the passage of the Fourteenth and Fifteenth Amendments, the debate over pauper suffrage continued.[45]

1. The Fourteenth and Fifteenth Amendments

The Fourteenth Amendment to the United States Constitution was ratified in 1868.[46] The Amendment created a fundamental protection for *all* citizens of the United States:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[47]

The Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment have been used by litigants to "challenge unfair state suffrage laws,"[48] as "[t]he Equal Protection and Due Process Clauses are interpreted as guaranteeing fundamental principles of fairness, liberty, and self-government."[49] Specifically, the Equal Protection Clause "prevents governments from adopting laws that invidiously discriminate between persons."[50]

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[41] *Id.*
[42] *Id. See also* Hutchings v. Thompson, 64 Mass. 238, 241 (1852).
[43] Steinfeld, *supra* note 16 at 373 (citing Opinion Justices, 124 Mass. 596, 597 (1878) (advisory opinion)).
[44] *Id.* at 373.
[45] *Id.* at 375.
[46] SAM R. GARRETT, CONG. RSCH. SERV., RL47520, THE VOTING RIGHTS ACT: HISTORICAL DEVELOPMENT AND POLICY BACKGROUND (2023). While the Amendment was ratified in 1868 and called for universal suffrage and "supersed[ed] previous 'three-fifths' apportionment for congressional representation," suffrage did not extend to women or those under 21 years of age. *Id.* Women did not receive suffrage until the ratification of the Nineteenth Amendment in 1920. H.R.J. RES. 1, 66TH CONG. (1919).
[47] U.S. CONST. amend. XIV, § 1.
[48] Miller, *supra* note 8 at 348–49.
[49] *Id.*
[50] Grants Pass, 603 U.S. at 541; *see also* Harper v. Va. State Bd. of Elections, 383 U.S. 663, 666 (1966).

In 1886, only two years after the Amendment's passage, the Supreme Court "referred to 'the political franchise of voting' as a 'fundamental political right,"[51] stating "[t]hough not regarded strictly as a natural right, but as a privilege merely conceded by society, according to its will, under certain conditions, nevertheless it is regarded as a fundamental political right, because [it is] preservative of all rights."[52] Thus, while the Supreme Court did not explicitly say that the right to vote was a fundamental right, the Court suggested that the right to vote was considered a right that came from the penumbra of the Fourteenth Amendment.

The Fifteenth Amendment, ratified in 1870, explicitly enumerates the United States citizen's voting right protections,[53] "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."[54] The Amendment provides for "[t]he concept of political equity in the voting booth . . . [that] extends to all phases of state elections."[55] While the Fifteenth Amendment was motivated by racial protections, it remains a helpful cause of action and tool litigants have used to challenge impermissible voter qualifications and procedures.[56] These challenges continued through the nineteenth and to the mid-twentieth century.[57]

While the Fifteenth Amendment has been specifically used to overturn methods of explicit voter suppression, case law challenging voter qualifications on the basis of discrimination are largely brought as Fourteenth Amendment Equal Protection Clause challenges rather than Fifteenth Amendment challenges.[58]

With the establishment of these acts, any *explicit* pauper exclusions would be unconstitutional under the Equal Protection Clause, because pauper exclusions "invidiously discriminate" against those who are poor

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[51] Reynolds v. Sims, 377 U.S. 533, 562 (1964) (citing Yick Wo. v. Hopkins, 118 U.S. 356, 370 (1886)).
[52] Yick Wo, 118 U.S. 356, 370. (Yick Wo also spoke on as-applied discriminatory impact of election regulations, stating that if a law is "applied and administered by a public authority with an evil eye and an unequal hand so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution. This principle of interpretation has been sanctioned by this court.") *Id.* at 373–374.
[53] The Fifteenth Amendment was specifically created to grant African American men the right to vote after the Thirteenth Amendment prohibited slavery and the Fourteenth Amendment granted former slaves citizenship. Gen. Rep. of the U.S. Gov't Nat'l Archives, THE HOUSE JOINT RESOL. PROPOSING THE FIFTEENTH AMEND. TO THE CONST. at 11 (Enrolled Acts and Resol. of Congress Print 1789–1999). While the Amendment was motivated by racial protections, it is a helpful cause of action and tool litigants have used to challenge impermissible voter qualifications and procedures, such as later literacy tests and grandfather clauses.
[54] U.S. CONST. amend. XV, § 1.
[55] Gray v. Sanders, 372 U.S. 368, 380 (1963) (citing Terry v. Adams, 345 U.S. 461 (1953)).
[56] GEN. REP. OF THE U.S. GOV'T NAT'L ARCHIVES REP. 11, *supra* note 49. Some impermissible voting qualifications and procedures that have been struck down as unconstitutional under the Fifteenth Amendment, including the requirement of literacy tests and the use grandfather clauses. *Id.*
[57] *See infra* Section II(2) on the fundamental role the Voting Rights Act of 1965.
[58] *See infra* Reynolds v. Sims, 377 U.S. 533 (1964); Pitts v. Black, 608 F. Supp. 696, (S.D.N.Y. 1984); Collier v. Menzel, 176 Cal. App. 3d 24 (1985).

and depend on public aid,[59] the stigma that followed the pauper, which is today analogous to the homeless individual, remained engrained in the minds of society.

The creation of suffrage under the Fourteenth and Fifteenth Amendments also did not guarantee pauper *access* to voting. The Fifteenth Amendment's language was specific: it protected against voter discrimination based "of race, color, or previous condition of servitude."[60] Paupers, and the homeless of today, are not a protected class[61] and do not fall under one of these three explicit categories. Thus, paupers remained subject to secondary effects of impermissible voter qualifications and procedures through the twentieth century up until the Voting Rights Act of 1965.[62]

2. The Voting Rights Act

Congress passed the Voting Rights Act ("VRA") in 1965, "abolishing all remaining deterrents to exercising the right to vote."[63] The Act supports the Fifteenth Amendment's mission by, "prevent[ing] states from enforcing discriminatory tactics designed to keep [minorities] from voting."[64] Section 2 specifically addresses denial of the right to vote because of impermissible voter qualification standards, "No voting qualifications or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of *any citizen* of the United States to vote . . . ."[65] This section addresses "the denial or abridgment of the right to vote in any part of the country."[66]

Section 202, added with the 1970 Amendment of the VRA, directly addresses *durational* residency requirements.[67] Durational residency

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[59] Grants Pass, 603 U.S. at 541.
[60] U.S. CONST. amend. XV, § 1.
[61] "Protected classes" for the purpose of this paper are sub-groups of individuals who are specifically enumerated under the Voting Rights Act of 1965 as most recently amendment in 2006. *Section 2 of the Voting Rights Act*, U.S. DEP'T OF JUST., CIV. RTS. DIV. (April 5, 2023), https://www.justice.gov/crt/section-2-voting-rights-act. Protected classes under Section 2 of the Voter Rights Act, and as defined in Section 4(f)(2) of the voter rights act are race, color, or membership in a language-minority group. *Id.* The VRA does not protect *specifically* against discrimination based on socioeconomic statutes or need for public assistance and housing. *Id.*
[62] *See infra* Section III(C)(A) for a discussion of post-Voting Rights Act franchise.
[63] GEN. REP. OF THE U.S. GOV'T NAT'L ARCHIVES REP. 11, *supra* note 48.
[64] Miller, *supra* note 8 at 348. The Act has since been amended by Congress in 1970, 1975, 1982, 1992, and 2006. Garrett, *supra* note 46; *see also* Brnovich v. Democratic National Committee, 594 U.S. 647 (2021). The only part of the Voting Rights Act that has been struck down, which was struck down by the Supreme Court in 2013, was the "provision of [the] act involving federal oversight." GEN. REP. OF THE U.S. GOV'T NAT'L ARCHIVES REP. 11, *supra* note 48.
[65] *Brnovich*, 594 U.S. at 656–57 (citing 79 Stat. 437) (emphasis added). The Voting Rights Act of 1965 is codified at 52 U.S.C. § 10502; *see also* 52 U.S.C. §§ 10502(a)(1), 10502(a)(4) and 10502(a)(6).
[66] *Brnovich*, 594 U.S. at 656.
[67] 52 U.S.C. § 10502(a).

requirements[68] are impermissible under Section 202 if they require a citizen of the state to be a resident of that state for more than 30 days prior to a presidential and vice-presidential election."[69]

Thus, while the VRA does explicitly discuss *durational* residency requirements as an infringement on the right to vote, "residence" is not defined by the VRA. Instead, states have been left to define "residence," leading to inconsistent requirements and standards, many systematically disenfranchised homeless individuals who cannot meet the requirements.[70]

C. Franchise After the Voting Rights Act

While "[t]he right to vote is not explicitly granted in the U.S. Constitution," the right to vote "is an implied right found in the terms of Article IV, 4, which guarantees to every state 'a Republic Form of Government' and in Article I, 2."[71] The right to vote is a fundamental right.[72] This right to vote is personal.[73] Thus," [u]ndeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections."[74]

Implicit within the penumbra of the right to vote is "the right of qualified voters within a state to cast their ballots and have them counted."[75] As the United States Supreme Court articulated in *Reynolds v. Sims*, 377 U.S. 533 (1964):

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[68] Durational residency requirements are distinct from the residency requirements at issue in this paper. Durational residency requirements are permissible time limits placed on the amount of time a voter must live in the state they are trying to vote in. Dunn v. Blumstein, 405 U.S. 330, 344 (1972). The residency requirement at issue in this paper is the requirement of listing an address to a residence on a voter application form.

[69] *Dunn*, 405 U.S. at 344. In amending this Section, Congress "made a specific finding that durational residency requirements and more restrictive registration practices do 'not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections. *Id.* (citing 42 U.S.C. § 1973aa-1(a)(6)). The Supreme Court later held that this provision of the Voting Rights Act was constitutional.

[69] Dunn, 405 U.S. at 334.(citing Oregon v. Mitchell, 400 U.S. 112, 144 (1970)). Additionally, it is key to note that this was not the ban of all durational residency requirements, but rather subsection (c) of Section 202 is only violated "if the durational residency requirement bars a citizen from voting for president." N.C. All. for Retired Ams. v. Hirsch, 741 F. Supp. 3d 318, 341 (E.D.N.C 2024) (citing 52 U.S.C. § 10502(c)).

[70] Hirsch, 741 F. Supp. at 341. For example, North Carolina, "voter registration application requires an applicant to attest that he or she 'will have lived at the residence identified on this form for 30 days before the date of the election which [he or she] intends[s] to vote." *Id. at 343*.; *see* Pitts v. Black, 608 F. Supp. 696 (S.D.N.Y. 1984).

[71] Miller, *supra* note 8 at 347. This provision states "which states that 'the House of Representatives shall be composed of Members chosen every second Year by the People of the several States.'" U.S. CONST. art. I § 2.

[72] Reynolds v. Sims, 377 U.S. 533, 554 ("A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have the constitutionally protected right to vote. . . and to have their votes counted.").

[73] United States v. Bathgate, 246 U.S. 220, 227 (1918).

[74] *Reynolds*, 377 U.S. at 554; *see also Gray*, 372 U.S at 380.

[75] United States v. Classic, 313 U.S. 299, 315 (1941).

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the 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.[76]

While *Reynolds* discussed apportionment, the Court's language can be aptly applied to the discussion of protections for the homeless right to vote. Specifically, the Court emphasized that where an individual resides should not inhibit their fundamental right to vote, "[T]here is no indication in the Constitution that *homesite* or occupation affords a permissible basis for distinguishing between qualified voters within [a] State."[77]

III. THE VOTER REGISTRATION RESIDENCY PROBLEM

As discussed above, an examination of the development of voter qualifications over the nation's two-hundred-fifty year history shows two seemingly mutually exclusive, yet concurrent, truths emerge: (1) every citizen in the United States has a constitutionally protected fundamental right to vote, while (2) "[p]ersons who are homeless experience unique challenges to the voting process,"[78] such as significant procedural and administrative hurdles in registering to vote. These hurdles "are often most apparent during voter registration, when an address is primarily used as an identifying element."[79] The effect of these address and residency requirements "have left homeless people marginalized"[80] and systematically disenfranchised. Yet, only a few cases in recent history have addressed this issue.

A. The Residency Requirement: Standard of Review

The Supreme Court has "articulated a 'flexible standard,'" much like rational basis review, to apply to challenges of state election law.[81] Under this standard, the court:

> Must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interest put forward by the States as justifications for the burden imposed by its rule,' taking into

[76] 377 U.S. at 561–62.
[77] *Id.* at 558 (citing *Gray*, 372 U.S. at 380) (emphasis added).
[78] Miller, *supra* note 8 at 344.
[79] *Id.*
[80] *Id.*
[81] Ne. Ohio Coal. for the Homeless v. Husted, 837 F.3d 612, 630 (6th Cir. 2016).

> consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'[82]

However, the court applies a strict scrutiny when the regulation infringes on the fundamental right to vote. For example, in *Dunn v. Blumstein*, 405 U.S. 330 (1972), the petitioner challenged the constitutionality of a Tennessee Election law's imposition of a one-year residency requirement in order to vote in Tennessee.[83] The Court held, after concluding that strict scrutiny applies, that the durational residency requirement was not "necessary to further a compelling state interest," thus the durational residency requirement was unconstitutional.[84]

The Court found that strict scrutiny applied in this case, and in future durational residency requirement cases, stating "durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are 'necessary to promote a compelling governmental interest.'"[85] Thus, "[i]t is not sufficient for the State to show that durational residence requirements further a very substantial state interest . . . . [T]he State cannot choose means that unnecessarily burden or restrict constitutionally protected activity" so that "[i]f it acts at all, it must choose 'less dramatic means.'"[86]

Recently, in *N.C. All. for Retired Ams. v. Hirsch*, 741 F. Supp. 3d 318 (E.D.N.C 2024), the Eastern District of North Carolina upheld a 30-day durational residency requirement as constitutional under the Fifth and Fourteenth Amendments and Section 202 of the Voting Rights Act.[87] In *Hirsch*, the District Court outlined the Fourth Circuit's test for evaluating a state election law. The Fourth Circuit created what is known as the *Anderson-Burdick* framework,[88] through the analysis of two Supreme Court precedents. Under the *Anderson-Burdick* framework, when a court is reviewing a challenged election law, courts should balance the burden placed on the plaintiff with the state's justifications for that burden."[89] A

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[82] *Id.* (citing Burdick v. Takushi, 504 U.S. 428, 434 (1992)).
[83] *Dunn*, 405 U.S. at 331.
[84] *Id.* at 360.
[85] *Id.* at 342 (citing Shapiro v. Thompson, 394 U.S. 618, 634 (1969)); (citing Kramer v. Union Free Sch. Dist., 395 U.S. 621, 627 (1969)).
[86] *Dunn,* 405, U.S. at 343 (citing Shelton v. Tucker, 364 U.S. 479, 488 (1960)).
[87] *Hirsch*, 741 F. Supp at 335.
[88] *Id.* While the plaintiffs in this case challenged the *Anderson-Burdick* framework's denial of the applicability of strict scrutiny by using the Supreme Court's holding in Dunn, the District Court points out that *Dunn* predated both *Anderson* and *Burdick*. *Id.* at 336–37. Thus, "after *Anderson-Burdick*, *Dunn* demonstrates that a three-month or year-long durational residency requirement is a 'severe' burden warrant strict scrutiny, but a 30-day durational residency requirement is a 'modest' burden warranting 'less-exacting review.'" *Id.* at 337 (citing *Libertarian Party of Va.*, 826 F.3d at 716-17).
[89] *Hirsch*, 741 F. Supp at 335 (citing Anderson v. Celebreze, 460 U.S. 780). In Anderson v. Celebreze, 460 U.S. 780, 789 (1983), the Supreme Court stated, "Constitutional challenges to specific provisions of a State's election laws" courts "must resolve such a challenge by an analytical process that parallels ordinary litigation" where the court "must first consider the character and magnitude of the asserted in-

reviewing court needs only to balance these factors and should not subject these rules and regulations to strict scrutiny.[90]

However, under the *Anderson-Burdick* framework, strict scrutiny does apply once the regulation reaches a critical tipping point.[91] The distinction is "whether the statute at issue imposes a substantial burden on the associational rights or voting rights at stake."[92] If the court determines a "substantial burden" exists, the challenge has reached the strict scrutiny tipping point, and thus "the restrictions on the right to vote must serve a compelling state interest and be narrowly tailored to serve that state interest."[93]

Thus, it appears consistent among courts that there is a critical point at which an analysis of voting regulations changes from rational basis review to strict scrutiny review. While the Supreme Court has not reviewed any challenge to a state's definition of "residence" in the voter registration context, both the articulated standards act as a guide to interpret which standard of the review Court may apply.

B. Challenging the Residency Requirement

1. Federal Legislation Protecting the Homeless Right to Vote

Homelessness has been a long-standing significant socio-political issue in the United States, but only entered the cultural zeitgeist in the 1970s "when homelessness emerged as a social crisis on a national scale," leading to "state and local governments. . . le[a]d[ing] the way in grassroots responses to one of the most complex and seemingly intractable urban problems."[94]

Throughout the 1980s, "most programs to address the problems associated with homelessness were created, funded, and administered at the grassroots level." The Reagan Administration viewed the issue best solved by state and local governments who were "better equipped than the federal government to handle their own homeless problem."[95] A federal task force on homelessness was created in 1983 to "provide information to

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jury to the rights protected by the First and Fourteenth Amendments" and then must "identity and evaluate the precise interests put forward by the State as justifications for the burden imposed by the rule." It is only with balancing these two factors that "the reviewing court is in a position to decide whether the challenged provision is unconstitutional." *Anderson*, 460 U.S at 789.

[90] *Hirsch*, 741 F. Supp at 335. In Burdick v. Takushi, 504 U.S. 428, 433 (1992), the Supreme Court analyzed the *Anderson* framework and rejected the argument that strict scrutiny must be applied to state election laws burdening the right to vote, explaining that, "Common sense, as well as constitutional law, compels the conclusion that the government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Burdick*, 504 U.S at 433.

[91] *Hirsch*, 741 F. Supp. at 338.

[92] *Id.* (citing Greidinger v. Davis, 988 F.2d 1344, 1352 (4th Cir. 1993)).

[93] *Id.* (citing Greidinger v. Davis, 988 F.2d 1344, 1352 (4th Cir. 1993)).

[94] Miller, *supra* note 8 at 345.

[95] *Id.*

local governments and interested parties on how to obtain surplus federal property."[96]

In 1987, Congress passed what is now known as the McKinney-Vento Homeless Assistance Act, which "provide[d] the best first step to address the needs of a population that is, by and large, unknown and underrepresented." Congress acknowledged in the passing of this act that the lack of a residence, which Congress deemed as "a national crisis" was also a "major barrier for people when it comes to voting,"[97] but did not provide any explicit protections for the homeless right to vote in the Act.[98]

In 1997, Representative John Lewis introduced to the House the Voting Rights of Homeless Citizens Act of 1997.[99] While this bill did not pass the House of Representatives,[100] it acts as a strong example of what protections the federal government can impose to protect the homeless right to vote. Section 2 of the act articulated specific language to protect the homeless right to vote, for example, "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because that citizen resides at or in a nontraditional abode."[101]

Today, "[w]ithout a binding piece of federal legislation, the states are free to determine residential criteria for eligible voters."[102] With this lack of federal guidance, from state to state "laws vary on rules that affect whether or not a homeless person may vote."[103] Many states specifically use residency requirements to "disenfranchise homeless voters, arguing that granting the right to vote to individuals who do not have a permanent residence increases the risk of voter fraud and is administratively unfeasible."[104]

2. Administrative Remedies

There are two primary exemplary cases in the early 1980s that addressed the administrative issues of the residency requirement. In both cases, two local Board of Elections created new definitions of "residence" to increase suffrage for the homeless populations.

First, in 1984 the District of Columbia Board of Election and Ethics changed their definition of "residence," extending the meaning so that

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[96] *Id.*
[97] *Id.* at 346.
[98] *Id.*
[99] H.R. 74, 105th Cong. (1997) (as reported by S. Comm. on the Constitution, Jan. 28, 1997).
[100] *Id.* The Act did not pass the House of Representatives. Miller, *supra* note 8 at 349.
[101] H.R. 74, 105th Cong. (1997). The Act defined "nontraditional abode" as: "(1) A supervised publicly or privately operated shelter designated to provide temporary living accommodations (including welfare hotels, congregate shelters, and traditional housing for the mentally ill); and (2) a public or private place not designated for, or ordinarily used as, regular sleeping accommodations for human beings." *Id.*
[102] Miller, *supra* note 8, at 349.
[103] *Id.*
[104] *Id.*

"'intent to reside in a place could constitute a place of residence for voting purposes.'"[105] This policy "allowed a homeless person to use the location where they slept as a residence, but required that the person identify the actual location and provide a mailing address for a place where they had sufficient ties."[106]

Second, also in 1984, the Philadelphia Board of Elections settled a class action lawsuit brought by four individuals who alleged that they were "denied the right to register after listing street corners . . . as places of residence."[107] In reviewing this claim, the District Court for the Eastern District of Pennsylvania held that "'any applicant who is homeless shall be deemed to have satisfied the residency requirements . . . by declaring on the Voter Registration Application the address of the shelter with which the applicant has an established relationship . . . and which accepts . . . mail for the applicant."[108]

The Philadelphia policy is similar to the District of Columbia's policy, however the Philadelphia policy "requires a person who is experiencing homelessness to use a shelter for both an actual residence and a mailing address when registering."[109] Both the District of Columbia and Philadelphia cases have hence been seen as two shining examples of distinct systems the government can use to address the issue of the residency requirement for homeless individuals in the voter registration process.[110]

3. Equal Protection Clause Remedies

In *Pitts v. Black*, 608 F. Supp. 696 (S.D.N.Y. 1984), the Southern District of New York faced a challenge from a class of homeless individuals, arguing that the City's denial of their voter registration application, because they lacked a permanent residence, was a violation of the their rights under the Equal Protection Clause of the Fourteenth Amendment.[111] Specifically, the plaintiffs argued "but for the fact that they do not live in traditional residences," the plaintiffs "meet the statutory requirements for eligibility to register to vote in all other respects,"[112] and thus sought a permanent injunction and declaratory judgment "prohibiting the present practice of the New York City Board of Elections . . . from applying the New York State Election Law in such a manner as to completely disenfranchise the plaintiff class."[113]

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[105] *Id.* at 350 (citing In re Application for Voter Registration of Willie R. Jenkins (D.C. Bd. Of Elections and Ethics (June 7, 1984) [hereinafter *Jenkins*]).
[106] Miller, *supra* note 8, at 350 (citing *Jenkins*).
[107] Miller, *supra* note 8, at 350 (citing Comm. for Dignity and Fairness for the Homeless v. Tartaglione, 1984 U.S. Dist. LEXIS 23612 (E.D. Pa. Sept. 14, 1984)).
[108] Miller, *supra* note 8, at 350 (citing *Tartaglione*, 1984 U.S. Dist. LEXIS at 23612).
[109] Miller, *supra* note 8, at 350 (citing *Tartaglione*, 1984 U.S. Dist. LEXIS at 23612).
[110] *See, e.g.,* Pitts v. Black, 608 F. Supp. 696 (S.D.N.Y. 1984).
[111] *Id.* at 697.
[112] *Id.*
[113] *Id.*

To assess the constitutionality of the statute, the District Court had to analyze New York City's definition of "residence" under New York Election Law Section 1-104(22).[114] The term "residence" was defined as "'that place where a person maintains a fixed, permanent and principal home and to which he, whether temporarily located, always intends to return.'"[115]

The plaintiffs viewed "residence" as "the act of being in one geographical locale, where one performs the usual functions of sleeping, eating, and living in accordance with one's lifestyle, and a place to which one, 'wherever temporality located' always intends to return."[116]

Defendants argued that the term "residence" "necessarily implies the occupancy of a fixed premises" meaning that it was the defendants' contention that the homeless who did not reside in a shelter or welfare hotel could not register to vote.[117]

The District Court held for the plaintiffs, ruling that the New York Election Law was in violation of the Fourteenth Amendment and 42 U.S.C. § 1983 and thus permanently enjoined defendants from "refusing to allow homeless individuals to register to vote on the ground that they fail to inhibit traditional residences."[118]

Likewise, the court concluded on what the term "residence" means, stating that "[h]omeless individuals identifying a specific location within a political community which they consider their "home base," to which they return regularly, manifest an intent to remain for the present, and a place from which they can receive messages and be contacted, satisfy the more stringent domicile standard and should not be disenfranchised solely because they lack a non-traditional residence."[119]

In reaching this conclusion, the Court stated that strict scrutiny applied.[120] In applying strict scrutiny, the District Court looked to expert testimony discussing both the District of Columbia and Philadelphia systems as examples of "more narrowly tailored means to bring about the legitimate government interest of verifying elections."[121]

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[114] *Id.* at 698.
[115] *Pitts*, 608 F. Supp. at 698.
[116] *Id*.
[117] *Id.* Betty Dolan, Executive Director of the New York City Board of Elections, testified to this fact. *Id.*
[118] *Id.* at 710.
[119] *Id.*
[120] *Pitts*, 608 F. Supp. at 699.
[121] *Id.* at 709. During trial, the plaintiffs called an expert witness on voting practices who discussed successful plans to protect suffrage of the homeless population in Washington D.C. and Philadelphia. *Pitts*, 608 F. Supp. at 701. In Washington D.C., the plan "permits the homeless person to use as his voting address the place where he sleeps, whether it is a park bench or any other non-traditional accommodation." *Id.* In Philadelphia, the plan "requires that a homeless person designate a particular shelter, regardless of where he sleeps, as a voting address." *Id.* Election districts align with place of residence, meaning in Washington D.C., "the location of the park bench would designate the election district," whereas in Philadelphia, "the location of the shelter would designate the election district." *Id.* The ex-

Since the decision in *Pitts*, the case has been largely cited across the country to support broadening residency requirements to protect the homeless right to vote. For example, in *Collier v. Menzel,* 176 Cal. App. 3d 24 (1985), the California Court of Appeals heard a challenge brought by a class of homeless individuals, arguing that rejection of their voter registration, because plaintiffs listed an improper residence of a public park, was a violation of their fundamental right to vote under the Equal Protection Clause. [122] While the plaintiffs listed a public park as their residence, they did also list a post office box number.[123]

The Court of Appeals agreed, holding that the plaintiffs were "unjustifiably deprived of their right to vote on an equal basis with other citizens,"[124] stating:

> Whether people sleep under a bush or a tree or in the open air is immaterial regarding their right to vote. The type of place a person calls home has no relevance to his/her eligibility to vote if compliance with registration has been achieved, that is, the designation of a fixed habitation, the declaration of an intent to remain at that place and to return to it after temporary absences, and the designation of an address where mail can be received.[125]

Thus, both *Pitts* and *Collier* show successful uses of the Equal Protection Clause to protect franchise of homeless individuals. When analyzing *Pitts* and *Collier* together, it is clear that district courts and state courts can use the Philadelphia and District of Columbia policies as examples of less restrictive means policymakers may utilize to increase franchise of the homeless population. *Collier* and *Pitts* also exemplify the application of these standards in two distinct scenarios showing the diverse applicability of the Philadelphia and District of Columbia policies.

In *Collier*, the court adopts the Philadelphia model of thinking. Because California required a mailing address, the plaintiffs were able to meet the residency requirements, showing a mere failure in review of the system. *Collier* shows these policies can be used to protect *individuals* subject to incidental failures of a functioning system.

However, in *Pitts*, the court uses both Philadelphia and District of Columbia policies as proof of alternative residency requirement systems to hold the city's restrictive system, because of its definition of residence,

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pert then testified that Philadelphia-style system could be adopted in New York "by having the homeless person designate a shelter (in which he would not be required to live) for receipt of mail and voting," which would provide a "verifiable nexus for the homeless person to a given locale." *Id.*

[122] Collier v. Menzel, 176 Cal. App. 3d 24, 29-30 (1985). For example, one member of the class listed a city park as his residence, which was denied as an improper residence. *Id.*

[123] *Id.* at 32.

[124] *Id.* at 30.

[125] *Id.* at 35 (citing Cal. Elec. Code, § 200(b)) (internal citations omitted).

unconstitutional. Thus, *Pitts* shows these policies can also be used to gain injunctive relief to *change* an unconstitutional voter registration system.

While *Pitts*, *Collier*, the District of Columbia ruling, and the Philadelphia ruling are all positive examples of using legislation to change election law to be more inclusive of homeless individuals, it is key to note that all four of these actions took place between 1984–1985. In the four decades following this critical line of decisions, there has been little to no case law specifically discussing overly restrictive or unconstitutional voter residency requirements as applied to the homeless population. Thus, for continuing analysis of the effects of residency requirements on homeless franchise, it is key to look at recent policies and case law that may have a secondary effect of continuing to systematically disenfranchise homeless individuals.

C. The Continuing Challenge of the Residency Requirement: The Trump Era

While the residency requirement remains a systematic issue for homeless individuals, new federal legislation, executive orders, and a conservative Supreme Court have created even more challenges for the homeless who seek to exercise their fundamental right to vote, as anti-camping laws work to criminalize homelessness and standards of proof of residency may soon get extremely strict.

1. City of Grants Pass v. Johnson

Recently, in *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024), the Supreme Court determined whether the Cruel and Unusual Punishment Clause of the Eighth Amendment prohibited the enforcement of public-camping laws.[126] The Supreme Court held that public-camping laws were constitutional, overturning the Ninth Circuit's holding in *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), which held that under *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2018),[127] that "the City of Grants Pass

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[126] *Grants Pass*, 603 U.S. at 557. *Id.* at 537 (Specifically, the challenged public-camping law was the Grants Pass Municipal Code § 5.61.010, which prohibited: "sleeping 'on public sidewalks, streets, or alleyways;'" "[c]amping on public property;" and "'[c]amping' and '[o]vernight parking' in the city's parks.")(alterations in original). *Id.* (Under Ore. Rev. Stat §§164.245, 161.615(3), 161.635(1)(c) (2023), an initiation violation of the statute results in a fine whereas multiple violations can lead to "barring from city parks for 30 days" and violations of the orders "can constitute criminal trespass, punishable by a maximum of 30 days in prison and a $1,250 fine").

[127] Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2018). In *Martin*, the Ninth Circuit ruled that a public-camping ordinance that "made it a misdemeanor to use 'streets, sidewalks, parks, or public places' for 'camping'" was a violation of the Eighth Amendment's Cruel and Unusual Punishments Clause and prohibited the City of Boise, Idaho from "enforcing its public-camping ordinance against homeless individuals who lacked 'access to alternative shelter.'" *Grants Pass*, 603 U.S. at 533–34. *Id.* (citing *Martin*, 920 F.3d at 599–602) (The Ninth Circuit later denied a rehearing of Martin en banc, with many judges writing in dissent. *Id.* Specifically, Judge Bennett "argued Martin was inconsistent with the Cruel and Unusual Punishment Clause" because this Clause "prohibits certain methods of punishment a

cannot, consistent with the Eighth Amendment, enforce anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there is no other place in the City for them to go."[128]

The Court addressed the problem of homelessness and emphasized that the important interest states have in managing the effects of homelessness on the population. Specifically, the discussed the dangers encampments can bring, "With encampments dotting neighborhood sidewalks, adults and children . . . are sometimes forced to navigate around used needles, human waste, and other hazards to make their way to school, the grocery store, or work."[129] Additionally, " Those with physical disabilities report th[ese dangers] can pose a special challenge for them, as they may lack the mobility to maneuver safely around the encampments."[130] To address these issues that "provide for public health and safety,"[131] the Court emphasized that "local governments need a wide latitude, including to regulate when, where, and how homeless people sleep in public."[132]

The majority framed anti-camping laws as a useful tool many cities employ across the nation, "[b]y one count, 'a majority of cities have laws restricting camping in public spaces,' and nearly forty percent 'have one or more laws prohibiting camping citywide.'"[133] The majority stated, "[T]hese public-camping regulations are not usually deployed as a front-line response 'to criminalize homelessness,'" but instead "they are used to provide city employees with the legal authority to address 'encampments that pose significant health and safety risks' and to encourage their

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government may impose after conviction, but it does not 'impose [any] substantive limits on what conduct a state may criminalize.'") (alterations in original). *Grants Pass*, 603 U.S. at 533–34 (citing *Martin*, 920 F.3d at 599–602) (Additionally, Judge Smith argued "Martin had 'shackle[d] the hands of public officials trying to redress the serious societal concern of homelessness" which he predicted "would 'wrea[k] havoc on local governments, residents, and business.'") (alterations in original).

[128] Johnson v. City of Grants Pass, 50 F.4th 787, 813 (9th Cir. 2022). Before going to the Supreme Court, the Ninth Circuit remanded to the district court to "narrow its injunction to the anti-camping ordinances and enjoin enforcement of those ordinances *only* against involuntarily homeless person[s] for engaging in conduct necessary to protect themselves from the elements when there is no shelter space available." *Id.* The Ninth Circuit found that "everyone without a shelter in Grants Pass was 'involuntarily homeless' because the city's total homeless population outnumbered its 'practically available' shelter beds." *Grants Pass,* 603 U.S. at 539.

[129] *Grants Pass*, 603 U.S. at 530 (internal citations omitted).

[130] *Id.* (internal citations omitted).

[131] *Id.* at 564.

[132] *Id.* at 532 (The majority notes additional policies states have taken to address "challenges associated with homelessness" including: "reinvest[ing] mental health and substance-abuse treatment programs;" "train[ing] employees in outreach tactics designed to improve relations between governments and the homeless they serve'" and, as challenged here, "pair[ing] these efforts with the enforcement of laws that restrict camping in public places, like parks, streets, and sidewalks").

[133] *Id.* at 532.

inhabitants to accept other alternatives like shelters, drug treatment programs, and mental-health facilities."[134]

The majority reasoned that the Eighth Amendment was the improper provision to bring these challenges under as "[t]he Cruel and Unusual Punishment Clause focuses on the question what 'methods or kind of punishment' a government may impose after a criminal conviction, not the question whether a government may criminalize particular behavior in the first place or how it may go about securing a conviction of that offense."[135] Here, reasoned the Court, "[n]one of the city's sanctions qualifie[d] as cruel because none [were] designed to 'superad[d]' 'terror, pain, or disgrace.'"[136] Additionally, the majority reasoned, the city's anti-camping laws are not "unusual, because similar punishments have been and remain among 'the usual mode[s]' for punishing offenses throughout the country."[137]

Additionally, the majority refused to apply *Robinson v. California*, 370 U.S. 660 (1962), where the Supreme Court "addressed a challenge to a criminal conviction under a California statute providing that '[n]o personal shall . . . be addicted to the use of narcotics.'"[138] The *Robinson* Court reasoned the Cruel and Unusual Punishments Clause did apply, holding that California's law made "the 'status' of narcotic addiction a criminal offense" thus making "the mere status of being an addict a crime."[139] The majority found that *Robinson* did not apply because "[u]nder the city's laws, it makes no difference whether the charged defendant is homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest on the lawn of the municipal building."[140] Thus, the City of Grant Pass's ordinances "parallel those found in countless jurisdictions across the country"[141] and "do not criminalize mere status,"[142] meaning "*Robinson* is not implicated."[143]

After *Grants Pass*, homeless individuals must now worry about being arrested for being victims of their own circumstance and sleeping outside while also having a lack of access to the ability to establish themselves as residents of their districts and states in order to register to vote.

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[134] *Grants Pass*, 603 U.S.at 532–33. *Id.* at 533 (citing 6 CFR §§7.96(i), (j)(1) (2023))(The majority points out that the federal government is "not alone in pursuing this approach," as "[t]he federal government also restricts 'the storage of . . . sleeping bags,' as well as 'sleeping activities' on park lands"). *Id.* ("And, it too, has exercised that authority to clear certain 'dangerous' encampments").
[135] *Id.* at 542–43 (citing Powell v. Texas, 392 U.S. 514, 531–32 (1968) (plurality opinion)).
[136] *Grants Pass*, 603 U.S. at 543 (citing Bucklew v. Precynth, 587 U.S. 119, 130 (2019)).
[137] *Grants Pass*, 603 U.S. at 543 (citing Pervear v. Commonwealth, 72 U.S. 475 (1867)).
[138] *Grants Pass*, 603 U.S. at 544 (citing Robinson v. California, 370 U.S. 660, n. 1. (1962)).
[139] *Grants Pass*, 603 U.S. at 544 (citing *Robinson*, 370 U.S. at 666–667). *Grants Pass*, 603 U.S. at 564 (The plaintiffs and the dissent argued that, as in Robinson, the public-camping laws operate to criminalize the status of being homeless, arguing this is impermissible criminalization of a status under the Cruel and Unusual Punishment Clause of the Eighth Amendment, "Punishing people for their status is 'cruel and unusual' under the Eighth Amendment").
[140] *Id.* at 546–547
[141] *Id.*
[142] *Id.*
[143] *Id.* (internal citations omitted).

Justice Sotomayor, in dissent, called out the majority's reasoning and the negative impact this holding will have on the homeless population, stating, "Grants Pass's Ordinances criminalize being homeless."[144] Thus, Justice Sotomayor explains, while "[t]he majority protests that the Ordinances 'do not criminalize mere status'. . . . Saying so does not make it so."[145] Instead, "Every shred of evidence points the other way," as "[t]he Ordinance's purpose, text, and enforcement confirm that they target status, not conduct."[146] Thus, for a homeless individual to comply with the anti-camping ordinances, "the only way to comply . . . is to leave Grants Pass altogether."[147]

2. The SAVE Act

Beyond *Grants Pass*, a second recent barrier to the ability of the homeless to register to vote is developing at the time of writing. On April 10, 2025, the United States House of Representatives passed the Safeguard American Voter Eligibility Act ("SAVE Act").[148]

The SAVE Act's stated purpose is "[t]o amend the National Voter Registration Act of 1993 to require proof of United States citizenship to register an individual to vote in elections for Federal office."[149] In Section 2, the SAVE Act details how the federal government plans to "ensure only citizens are registered to vote in elections for federal office," by specifically detailing what documentary proof of United States citizenship will now be required when registering to vote.[150] The Act directs the states specifically that "[u]nder any method of voter registration in a State, the State shall not accept and process an application to register to vote in an election for Federal office unless the applicant presents documentary proof of United States citizenship with the application."[151]

Section 2(e)(2) discusses that there is a notification requirement that would presumably require a mailing address for a voter registering to vote in a federal election, "[u]pon receiving an otherwise completed mail voter registration application form . . . the appropriate election official shall transmit a notice to the applicant of the requirement to present documentary proof of United States citizenship under this subsection, and

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[144] *Id.* at 575. *Grants Pass*, 603 U.S. at 575 (Justice Sotomayor further explains how these ordinances criminalize being homeless, explaining, "The status of being homeless (lacking available shelter) is defined by the very behavior singled out for punishment (sleeping outside)").
[145] *Id.*
[146] *Id.*
[147] *Id.* (internal citations omitted).
[148] *See* H.R. Res. 22, 119th Cong. (2025). While the House has passed the Act, the Act is currently sitting in the Senate waiting for approval. If the senate passes the SAVE Act, it will then go to the President to sign into law. *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.*

shall include in the notice instructions to enable the applicant to meet the requirement."[152]

3. Future Implications of City of Grants Pass and the SAVE Act

While the implications of these two new federal restrictions are not yet clear, it is clear they will have a substantive impact on the franchise of homeless individuals.

First, the Supreme Court's holding in *Grants Pass* practically makes sleeping outside illegal. This holding allows state and local governments to make homeless individuals, who do not have access to shelters, criminals because of their unfortunate circumstances. If banning sleeping outside and anti-camping ordinances are now constitutionally permissible, the rate of arrests of homeless individuals for being victims of their circumstance will take away a vast amount of personal autonomy as they will have to constantly work to try and find *permissible* shelter when it is that shelter that they cannot gain access to.

And what effect on suffrage? If a homeless individual is required to list an address to register to vote, and they cannot access a shelter, and they are no longer legally to sleep outside in previously held permissible places, such as public parks,[153] the result is disenfranchisement. When the homeless individual is disqualified from being able to register to vote because of their lack of legally permissible residence, they cannot then exercise their fundamental right to vote, leading to systematic disenfranchisement of the entire homeless population who cannot find space in a shelter, particularly in a national system that has 218,118 too few beds.[154]

The effect of *Grants Pass* is likely to be drastic, increasing mass amounts of incarceration of an incredibly vulnerable population. It appears the Supreme Court is now valuing state interests over the criminalization of being homeless, which is sure to have drastically negative effects on franchise in the coming years.

Second, while the SAVE Act has passed the House of Representatives but has yet to pass the Senate,[155] if the SAVE Act is signed into law by President Trump, the impact will likely be drastic for homeless populations.

Additionally, given *Grants Pass*, "[w]hen a homeless person is arrested" they are "separated from their property,"[156] and items are

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[152] *Id.*

[153] *Pitts*, 608 F. Supp. at 706. The plaintiff in *Pitts* lived in a public park in New York City, which he considered his home. *Id.*

[154] TANYA DE SOUSA ALYSSA ANDRICHIK, ED PRESTERA, KATHERINE RUSH, COLETTE TANO, AND MICAIAH WHEELER & ABT ASSOCIATES U.S. DEP'T OF HOUS. AND DEV.: ANN. HOMELESSNESS ASSESSMENT REP. TO CONG. (2023). In 2023, there were 218,118 too few beds in shelters to accommodate the national homeless population. *Id.*

[155] H.R. Res. 22, 119th Cong. (2025); CONG. RSCH. SERV., ALL ACTIONS: H.R.22—119TH CONG. (last visited May 5, 2025), https://www.congress.gov/bill/119th-congress/house-bill/22/all-info.

[156] *Grants Pass*, 603 U.S. at 568.

"frequently destroyed,"[157] such as "personal documents needed for accessing jobs, housing, and services such as IDs, driver's licenses, financial documents, birth certificates, and benefits cards."[158] Therefore, *Gates Pass* allows for, and will increase the frequency of, the destruction of the documents that would be required for the homeless individual to prove citizenship under the SAVE Act's standards,[159] resulting in denial of voter registration. With the compounding effects of the Act's increased restrictions with the Supreme Court's new policy of constitutionalizing the criminalization of homelessness, the barriers to exercise the right to vote are increasing drastically. The likely result is the increased systematic disenfranchisement of the homeless population.

These two new prohibitive barriers only work to re-emphasize the pattern of systematic disenfranchisement of the homeless by changing the nature of the "qualified" voter, thus working systematically to prevent the "most vulnerable in our society"[160] from exercising their fundamental right to vote.

IV. CONCLUSION

It is critical to protect the homeless right to vote as the population has faced systematic and administrative barriers in exercising franchise for two-hundred-fifty years. While "[i]ndividually, homeless people are often overlooked, misunderstood, and marginalized,"[161] history has shown "[w]hen the right to participate in the democratic process is fully granted, homeless and formerly homeless people have proven to be invaluable in shaping public policies that promote real solutions to homelessness . . . . The process begins with the right to vote."[162]

The solution to protecting homeless franchise will take systematic support, with all sectors of society working together. As Justice Sotomayor wrote in dissent of *Grants Pass*:

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[157] *Id.*

[158] *Id.*

[159] H.R. Res. 22 § 2(b)(3)(b), 119th Cong. (2025) ("Requiring applicants to present documentary proof of United States citizenship.—Under any method of voter registration in a State, the State shall not accept and process an application to register to vote in an election for Federal office unless the applicant presents documentary proof of United States citizenship with the application."); *see also id.* at § 2(b)(1)–(5) (detailing the specific documents that would certify United States citizenship for the purposes of the SAVE Act).

[160] *Grants Pass*, 603 U.S. at 566.

[161] Miller, *supra* note 8 at 343.

[162] *Id.* at 358. *Id.* at 343–44 (For example, in the 1999 mayoral elections in Philadelphia, "the homeless community organized the city's first Mayoral Candidates Forum for Housing, Jobs, and Services." Because of these efforts, "over 800 homeless people, service providers, and advocates attended the forum," and was the "best-attended forum of that primary." Consequently, the newly elected mayor "appointed the first-ever Mayoral Transition Team on Homelessness in Philadelphia . . . . [W]hich included City officials, business leaders, homeless service providers, advocates, and formerly homeless individuals").

> I remain hopeful that our society will come together to 'address the complexities of the homelessness challenges facing the most vulnerable among us . . . . That responsibility is shared by those vulnerable populations, the States and cities in which they reside, and each and every one of us. It is only after we begin to see a street as our street, a public park as our park, a school as our school, that we can become engaged citizens, dedicating our time and resources for worthwhile causes.[163]

Federal and state governments must not turn an eye to the issue of homeless disenfranchisement. The government must "enact laws that guarantee the right to vote regardless of one's housing situation."[164] These efforts must be combined with "grassroots support that emphasizes voter education and registration."[165] This public support is critical as "[v]oter education, registration, and mobilization are necessary to help the homeless overcome . . . disenfranchisement."[166]

With the current socio-political culture under the Trump Administration of cracking down on "voter fraud," which is "exceedingly rare but constantly cited by [President] Trump as a reason he lost the 2020 election,"[167] expected regulations, such as the SAVE Act, work to combat the progress evidenced in this paper from the ratification of the Fourteenth Amendment in 1868 through the 1980s line of cases explicitly protecting the homeless right to vote through expansive interpretations of the residency requirement.

Additionally, with a conservative Supreme Court holding protections as unconstitutional, secondary effects are likely to significantly impact the homeless voter's ability to participate in upcoming elections, only amplifying the historic systematic disenfranchisement of the homeless population in the United States. While much is up in the air, one thing remains perfectly clear: the homeless have the fundamental right to vote which must be protected.

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[163] *Grants Pass*, 603 U.S. at 343–44 (citing Matthew Desmond, Evicted: Poverty and Profit in the American City 294 (2016)).
[164] Miller, *supra* note 8, at 357.
[165] *Id.* at 351.
[166] *Id.* at 351.
[167] Erica L. Green, *"Trump Signs Order Calling for Citizenship Proof to Vote in Federal Elections*," N.Y. TIMES (Mar. 25, 2025), https://www.nytimes.com/2025/03/25/us/politics/trump-elections-executive-order.html. The claims by President Trump that "illegal votes contributed to his losing the 2020 election and the popular vote in 2016" are false. *Id.*