

**THE CENTER ON
RACE
INEQUALITY
& THE LAW**
NYU SCHOOL OF LAW

**State Courts in the
Fight for Racial Justice**

**State Courts Organizing Network
Convening 2026 Companion Guide**

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State Courts as a Site of Rights-Making and Rights-Taking

The material circumstances and life chances of people of color in the United States are shaped, in part, by access to rights and to the process of claiming those rights. That access is never secure; it is a constant struggle against a racial-political economy that has historically thrived on the uncompensated and captive labor of people of color, and that continues to wind back material gains won through the struggle for a brighter future – one where all people live in freedom and dignity.

Part of this struggle is to secure the promise of inalienable guarantees of rights and entitlements capable of increasing the power and agency of the marginalized. State courts are one site where this can be achieved, securing rights to clean water and air, rights to privacy, and broader protections against police abuse. Yet, too, state courts can be a site through which much harm has been experienced, where a court order can determine if someone loses their housing, faces indefinite civil commitment, loses custody of their children, or is sent to spend 15 years to life in a facility.

This companion guide intends to provide a limited survey of how state courts participate in the struggle for racial justice, whether as an institution that defends our freedoms or as the site where rights and liberties are assigned away. The guide offers advocates a set of considerations regarding the interactions between state courts and the struggle for racial equity. As long as state courts are a venue to arbitrate legal disputes, they must too be places where the rights and dignity of all people are honored and protected.

State Courts and Our Private and Public Lives

Cases filed in state courts consistently account for at least 96% of the total caseload in the United States.¹ State courts are courts of general jurisdiction, that is, they can hear most types of cases — criminal, contract, probate, tort, family law, etc.;² this is generally responsible for the broad gap in caseload between federal and state courts.³ State courts are not just the final arbiters of state laws, but the final arbiters of their respective state constitutions.⁴ As state courts handle the vast majority of cases

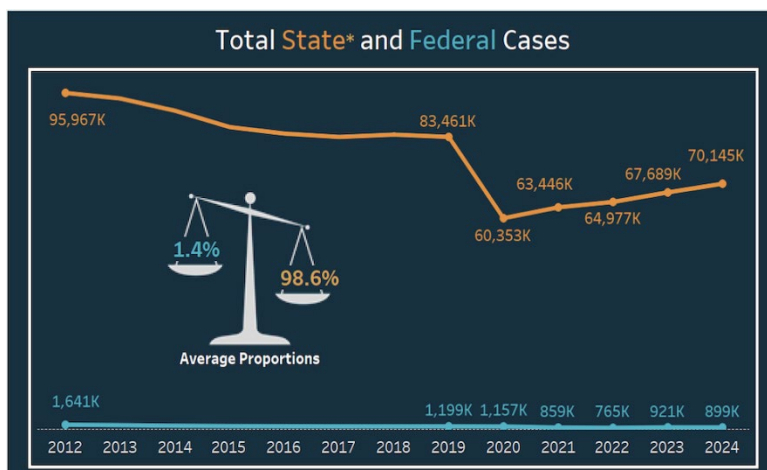


Figure 1 In 2024, there were 70,144,500 cases filed in state courts compared to 898,731 filed in federal courts. Photo by Court Statistics.

governed by their respective state laws,⁵ they are the primary forum in which our individual rights are defined and enforced.

A common sentiment in American constitutional law is that the “federal Constitution and interpretations of that Constitution by the Supreme Court of the United States set a ‘floor’ for personal liberties” that state courts and legislatures cannot go below.⁶ In 1977, United States Supreme Court Justice William Brennan, Jr. urged state courts to fill in the gaps left by SCOTUS when it comes to the protection of individual rights, leading to the reemergence of the theory of “judicial federalism.”⁷ Judicial federalism is “the practice of state courts interpreting their state constitutions to provide *greater* protections for individual rights than does the US Constitution” (emphasis added).⁸ Justice Brennan urged that, in an era where “the Supreme Court has gone on to limit the protective role of the federal judiciary,” it is increasingly important that “state courts thrust themselves into a position of prominence in the struggle to protect the people of our nation from governmental intrusions on their freedoms.”⁹ Indeed, Justice Brennan’s prescience is particularly well-taken today.

The theory of judicial federalism has remained a prominent tool for civil rights activists, especially as the U.S. Supreme Court issues rulings that increasingly strip away our civil protections.¹⁰ From *Dobb’s* elimination of a federal constitutional right to abortion,¹¹ to *Skrmetti’s*

deference to state bans on gender-affirming care for minors,¹² to *City of Grants Pass’s* allowance of criminalizing homelessness,¹³ to *Callais’s* abrogation of Section 2 protections against racial vote dilution,¹⁴ the Supreme Court has steadily narrowed the rights that the federal Constitution guarantees. Thus, turning to interpretations of state constitutions and state laws is an indispensable alternative that can be used by advocates for greater protection of individual rights.¹⁵

State constitutions are amended far more frequently than the federal Constitution,¹⁶ often supplying protections beyond their federal counterpart — even where a state provision mirrors federal

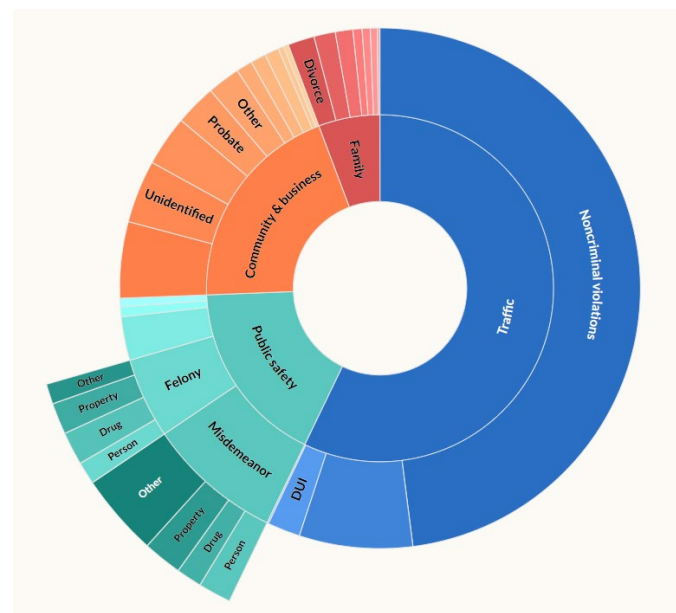


Figure 2 Breakdown and share of state court case types, 2025.
Photo by Pew.

constitutional language, courts may interpret it to provide more civil protections under independent state constitutional doctrine.¹⁷

State Courts and Criminal Legal Reforms

State courts adjudicate the vast majority of criminal matters and thus must be understood as venues that are not politically neutral but instead participate in the organization of racial and legal power relationships. Criminal courts have long functioned as instruments of racial subordination, from the enactment of the “Black Codes” that transformed “courthouses into clearinghouses for forced labor,”¹⁸ to the all-white juries that made conviction all but guaranteed for Black defendants throughout the Jim Crow South,¹⁹ to bail practices that translated a defendant's poverty directly into loss of liberty.²⁰

For most of this history, the federal Constitution offered only a partial check; decisions that deal with intra-state court processes, like *Batson v. Kentucky* and *United States v. Salerno*, established doctrinal floors below which states could not fall, but left states considerable latitude to determine how — and how faithfully — those floors would be enforced in practice.²¹ Many advocates in state courts recognize that latitude as a strategic tool to be affirmatively used, urging judges to interpret state constitutional provisions, court rules, and common law doctrines to impose protections that go beyond what the federal Constitution requires.

While the state court criminal legal process consists of myriad parts, there are three key stages of the criminal process that have evinced the sovereign decisional capacities of state courts to make liberative determinations around our rights to freedom and fairness: 1) pretrial detention and money bail, where courts have moved to prevent wealth from operating as a *de facto* detention mechanism; 2) jury selection, where courts have supplemented *Batson's* intent-based framework with tools aimed at implicit and structural bias; and 3) dispositional determinations on felony murder, where courts have begun to constrain some of the harshest and most racially disparate sentencing outcomes in the criminal punishment system.

Pretrial Detention and Money Bail

The pretrial legal system is rife with racial inequities, from the use of AI risk assessment tools that obscure racially disparate release determinations behind a mechanized black box,²² to the overly punitive charging decisions that prosecutors disproportionately mete out on defendants of color.²³ Because the vast majority of criminal cases — and the pretrial decisions within them — are adjudicated in state court, state courts are a key site for organizing to resolve these inequities.

Racial inequities are particularly salient in matters of pretrial detention and money bail. A 2019 Prison Policy Initiative (“PPI”) survey noted that recent national pretrial data from the U.S. Department of Justice showed nearly 70% of people detained and awaiting trial or another hearing were people of color.²⁴ PPI additionally noted that Black and Brown defendants are at least 10-25% more likely than white defendants to be detained pretrial or to have to pay money bail.²⁵ A limited 2017 study conducted in Miami and Philadelphia suggested that “on average, [B]lack defendants

are [sic] 11.2 percentage points more likely to be assigned monetary bail compared to white defendants and receive bail amounts that are \$14,376 greater than white defendants.”²⁶ Over in New York State, a 2026 study noted the disparity rates between Black and white defendants in bail or remand determination for bail-eligible cases was five percentage points in New York City, ten percentage points in Suburban New York City, and twelve percentage points in Upstate New York.²⁷

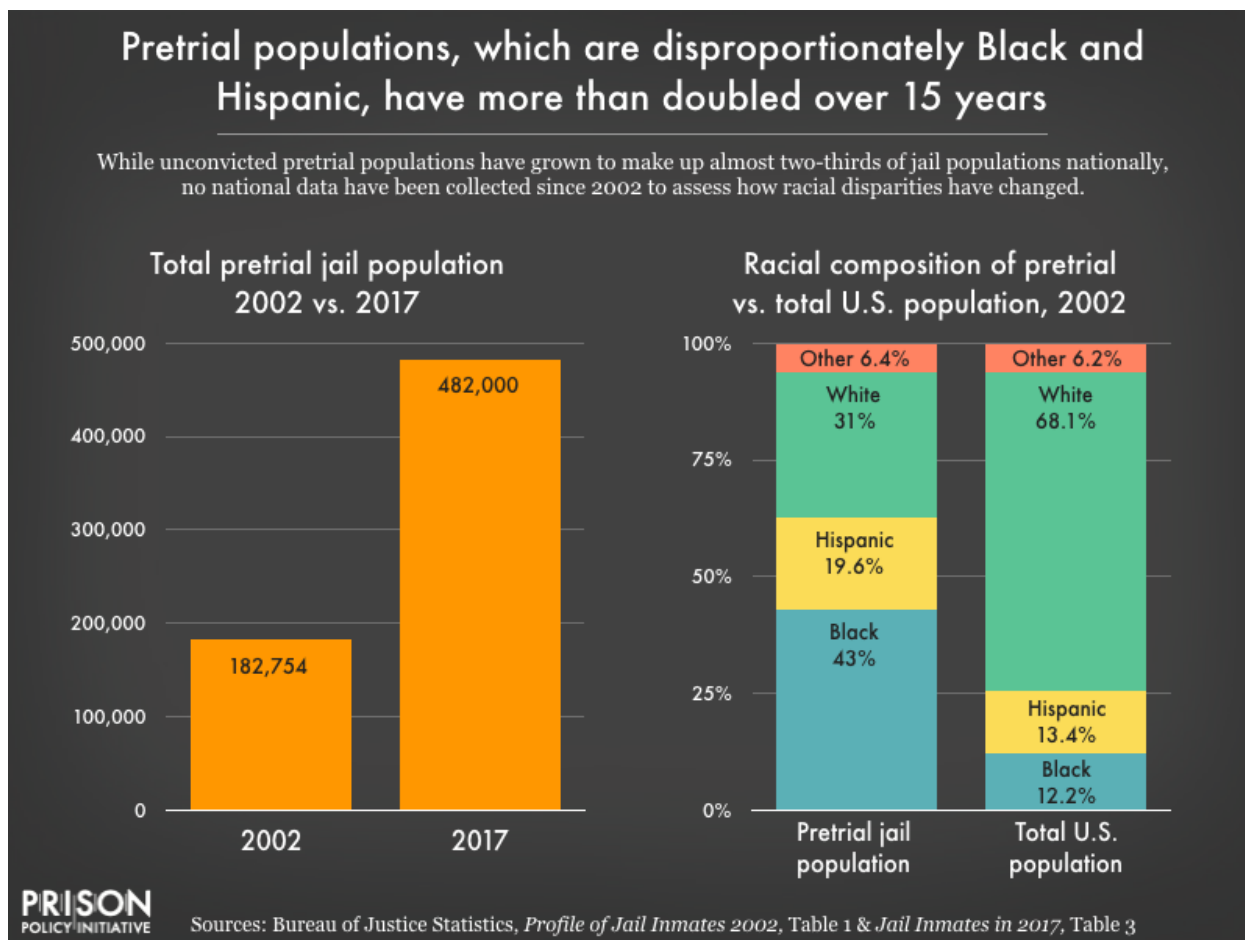


Figure 3 Photo by Prison Policy Initiative.

Some of these persistent racial disparities have been addressed by state court jurisprudence. In certain jurisdictions, state courts have tightened the substantive and procedural constraints on when/if pretrial detention and bail may be imposed at all.

California offers one of the more significant examples of this trend. Just this April 2026 in *In re Kowalczyk*, the California Supreme Court ruled that under the California State Constitution, “courts may detain only those eligible for pretrial detention as clearly defined under article I, section 12,” not through exorbitant cash bail.²⁸ Those that fall within the scope of this constitutional clause must be released with appropriate conditions which may include setting bail, but that “bail must generally be set in an amount that is reasonably attainable, in order to effectuate the defendant’s

constitutional right to pretrial release on bail.”²⁹ Indeed, the California high court found that money bail that a person could not afford was effectively no bail at all, and is unconstitutional.

Likewise, in *State v. Brown*, the Supreme Court of New Mexico found that setting high bail solely based on the severity of the charged offense was unconstitutional and contrary to the New Mexico rules of criminal procedure.³⁰ After this decision, New Mexico voters “overwhelmingly approved a constitutional amendment that moved the state’s pretrial system away from reliance on cash bail.”³¹

Other jurisdictions like Kentucky’s Supreme Court utilized administrative orders to implement mandatory release procedures, fast-tracking pretrial release without a judicial order for certain defendants.³²

These states provide advocates with a blueprint for organizing around affirming interpretations of state constitutions and around state court administrative processes to move towards a fairer pretrial and money bail system.

Jury Selection



Figure 4 The jury that convicted Walter Lee Irvin of the Groveland Four upon retrial in 1952 was composed of all white men. The Groveland Four were Black teens wrongfully accused of assaulting a white farmer’s wife. Photo by Bettman/Getty Images.

Jury selection is another stage of the criminal legal process where racial disparities persist, often shaped by both explicit and implicit bias. All-white or racially unrepresentative juries have been shown to approach fact-finding differently than diverse juries — considering less factual information and overlooking dynamics like racial profiling that a more diverse jury would be equipped to recognize.³³ The Equal Justice Initiative notes that “in contrast [to racially unrepresentative juries], racially representative juries engage in a more thoughtful and deliberative fact-finding process.”³⁴ This is especially necessary because “unrepresentative juries . . . produce wrongful convictions and excessive sentences that disproportionately burden Black people and people of color.”³⁵ Unlike many other stages of the criminal process, jury composition is governed almost entirely by state law; state courts control the procedures for summoning, questioning, and striking jurors.³⁶ The state court movements around *Batson* determinations are an apt window to understand the issues in racialized jury selections.

The 1986 landmark U.S. Supreme Court case *Batson v. Kentucky* held that utilizing a peremptory strike to remove a potential juror during *voir dire* on the basis of race is impermissible.³⁷ The Court set out a three-part test to resolve a *Batson* dispute: 1) the party challenging the strike makes a prima facie showing that the strike was based on race; 2) the striking party must give a race-neutral reason; 3) the court makes a determination about whether the strike was purposeful discrimination.³⁸ The SCOTUS three-part test aimed to reduce racially discriminatory uses of peremptory strikes in the jury selection process, yet even 40 years after this decision, “racially biased jury selection has remained embedded in modern courtrooms and continues to impede justices”— and justice.³⁹ Some state courts have honored a more expansive understanding about how racial bias appears in *voir dire*.

In 2018, Washington State Supreme Court became the first court in the U.S. to adopt a rule (General Rule 37) to address implicit racial bias in jury selection. While the *Batson* decision held *intentional* discrimination unconstitutional, it did not account for the implicit, systematic, and unconscious nature of racial bias.⁴⁰ Washington’s General Rule 37 allows judges to deny peremptory challenges if an “objective observer could view race or ethnicity as a factor in the use of the peremptory challenge . . . [t]he court need not find purposeful discrimination.”⁴¹ The rule also prohibits a variety of “race-neutral” justifications that have historically been used as a proxy to exclude jurors of color.⁴² State courts in New Jersey and Connecticut introduced similar reforms (Rules Governing the Court of the State of New Jersey Rules 1:8-3A and Section 5.12 of Superior Court Rules, respectively) following Washington’s General Rule 37.

There has been movement in other state courts as well. Arizona became the first state to abolish peremptory strikes outright in 2022.⁴³ Following this amendment to the state’s rules of civil and criminal procedure, a juror may only be struck for cause if it is shown “by a preponderance of the evidence that the juror cannot render a fair and impartial verdict.”⁴⁴ An early review of jury processes after the elimination of peremptories has found that it has been “fully compatible with strong protections for defendants.”⁴⁵ However, defendants still face challenges in the jury selection



process because of the discretion given to judges to comply with the safeguards.⁴⁶ Still, taken together, these reforms show how state courts have been a venue for greater jury selection protections than *Batson* provided, relying on a web of state constitutional interpretations, rulemaking, and legislative amendments.

Indeed, these examples evince how state courts can be a venue for responsive and evolving definitions of racial bias where the U.S. Supreme Court still has yet to be.⁴⁷

Dispositional Determinations of Felony Murder

The legal fictions surrounding felony murder have, in fact, created real disparate legal consequences for people of color. Felony murder is a legal doctrine that allows a person to be charged with murder if a death occurs during the commission of certain felonies, even if the person didn't intend to kill anyone and, in many jurisdictions, even if someone other than the person charged caused the death.⁴⁸ Because criminal homicide law is defined almost entirely by state statute rather than federal law, whether the felony-murder rule exists at all, which felonies trigger it, and what sentences it carries are all questions that individual state legislatures and state courts control.⁴⁹ The felony-murder rule has disproportionately funneled thousands of young people and Black Americans into the prison system.⁵⁰ Drawing on data from eleven states, the Yale Investigative Reporting Lab found that “racial disparities for felony-murder convictions were higher – sometimes far higher – than the already disproportionate rates of Black incarceration over all.”⁵¹ Compounding this disparity, the extreme sentences often handed down for felony-murder convictions⁵² mean the doctrine is frequently used “to impose some of our society’s harshest punishments on low-income defendants, young people, and defendants of color.”⁵³

There have been some reformative developments made through state courts on this issue. For example, just this March 2026, in *Commonwealth v. Lee*, the Pennsylvania Supreme Court barred mandatory life in prison without parole for defendants convicted of felony murder. The court grounded its decision in Article I, Section 13 of the Pennsylvania State Constitution⁵⁴ which omits the federal Eighth Amendment’s term “unusual” in the “cruel and unusual punishment” standard. This textual difference proved decisive; the Pennsylvania high court found its state protects against a broader set of punishments than those covered by the Eighth Amendment.

Michigan may be poised to follow suit. In the Michigan Supreme Court case *People v. Langston*, there is potential for the Michigan Supreme Court to interpret the state’s unique “cruel or unusual” punishment clause to prohibit the imposition of mandatory life sentences in felony-murder cases in the state.⁵⁵ Rather than moving in lock step with the Supreme Court’s interpretation of the Eighth Amendment, Michigan has been a frontrunner in building its own state-based jurisprudence to expand rights beyond the protection of the Eighth Amendment. *People v. Langston* was argued in December 2025 and is pending order as of this document.

Pretrial detention, jury selection, and felony murder are the sites where we have seen important movement in state courts, each showing that where the federal floor stops, state constitutions, court rules, and legislation can still reach further.

State Courts and Diversity on the Bench

In July of 2020, the Conference of Chief Justices and the Conference of State Court Administrators issued two resolutions addressing and recognizing the pervasive implicit and explicit racism embedded within state courts.⁵⁶ The Conferences set out several initiatives to address biases in the system which included, but were not limited to, facilitating conversations to identify and address unconscious racial bias, collecting data on race and ethnicity, and developing career pathways to improve diversity of the bench.⁵⁷

Share of People of Color on State Supreme Courts

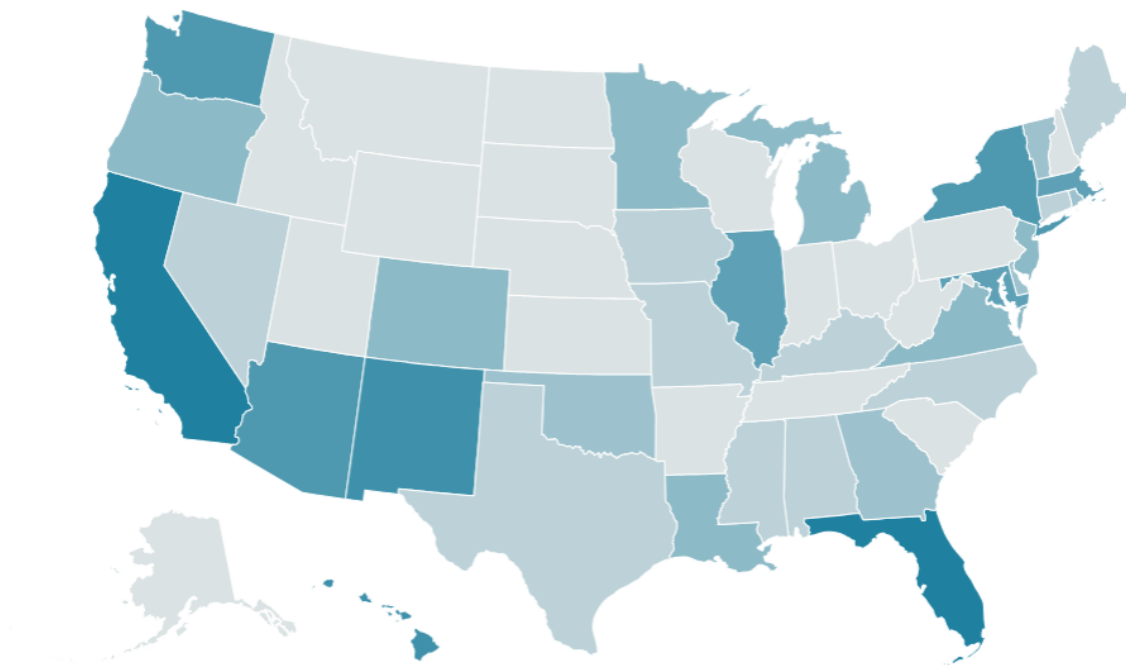
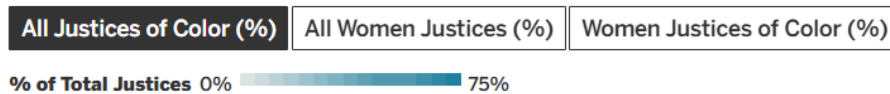


Figure 5 As of November 2025, eighteen states have no justices identify as a person of color. Photo by Brennan Center.

Those commitments have yet to close the racial and ethnic representational gap.⁵⁸ Nationally, the racial composition of state court benches bears little resemblance to the populations they serve: people of color constitute forty percent of the national population but fewer than twenty percent of state court judges throughout all levels of state court.⁵⁹ That disparity carries measurable consequences for sentencing decisions,⁶⁰ capacity to recognize and correct institutional bias,⁶¹ and public trust in the courts.⁶²

For example, Black people are incarcerated at a rate six times the incarceration rate of white people.⁶³ Studies have shown, however, that increasing judicial racial diversity narrows the disparity of incarceration between Black and white individuals by as much as seven percentage points.⁶⁴ More broadly, a racially diverse bench produces richer deliberation, more scrutiny of structural inequality embedded in legal doctrine, and greater perceived legitimacy among communities whose historical relationship with the courts has been one of subordination rather than protection.⁶⁵

Race, State Courts, and Civil Legal Matters

The racial compositions of state courts evince one aspect of the need for equity reforms, however, in some regards, court functions support and maintain “a system of racial capitalism.”⁶⁶

Civil courts are often treated as neutral forums for resolving private disputes between parties. However, legal scholar Cheryl Harris explored in her seminal work, *Whiteness as Property*, how civil courts have a long history of resolving everyday contract and property disputes in ways that solidify and entrench the power of white supremacy.”⁶⁷ The types of cases that are filed in the civil system involve “eviction, debt collection, or family law matters — legal matters likely to target poor and racialized litigants.”⁶⁸ All civil adjudication commodifies a litigant’s experience to some degree – that is, translating harms, injury, breach, and loss into dollar figures is simply how the system operates for every litigant regardless of race.⁶⁹

Yet, courts don't merely price harm, they price it *differently* depending on *who* is claiming harm, systematically discounting the claims of litigants of those pushed to the bottom of the white supremacist racial hierarchy.⁷⁰ This dynamic plays out across housing court and voting rights litigation, where the ordinary machinery of civil procedure becomes a vehicle for transferring wealth and power along racial lines.

Housing Court

People of color suffer discriminatory and burdensome housing policies and restrictions that shape where they can live, how secure that housing is, and how they are treated when disputes over their housing situations land in court.⁷¹ For example, across the United States, Black tenants face a disproportionately high risk of eviction. Black and Latinx renters, in particular, are more likely to be subject to “serial eviction filings,” a common predatory tactic in which landlords use repeated

eviction filings at the same address as a mechanism to collect rent and punitive late fees.⁷² This is done in lieu of having a genuine need or interest in removing the tenant; landlords who do this abuse the court process to extract additional fees even when they know their tenants can usually make rent, and that the cost becomes a burden on tenants and only serves to benefit the landlord.⁷³



Figure 6 Photo by Anthony Crider via Flickr/Creative Commons.

The dynamic is compounded by the often powerless posture tenants enter the system to begin with as “many racially and economically marginalized litigants, particularly Black individuals, enter the civil legal system involuntarily, often in a defensive or vulnerable posture.”⁷⁴ Unlike criminal matters, civil eviction proceedings carry no default right to appointed counsel, and no state court has issued a decision fully addressing this

matter.⁷⁵ Without the legal knowledge needed to navigate eviction proceedings on their own, unrepresented tenants routinely receive default judgments and unfavorable outcomes that a represented tenant could likely have avoided.

Rather than waiting for the right litigation, some state supreme courts have used their administrative and rulemaking authority to intervene and create eviction reform. For example, in 2021, the Michigan Supreme Court issued an administrative order barring courts from entering default judgments against a tenant who fails to file a written answer, requiring instead that the tenant actually appear and be heard before any default may be entered.⁷⁶ The order further mandates that courts advise tenants of their rights to counsel and available rental assistance at pretrial hearing.⁷⁷ This evinces how mechanisms within state courts may be used in interesting manners to partially respond to the failures in legal protection for people of color in vulnerable housing situations.

Voting Rights

Civil courts also function as gatekeepers of political power, adjudicating disputes over districting and ballot access that determine whose political choices are treated as legitimate. Thirty state constitutions contain some form of a “free elections” requirement, which oddly but perhaps not surprisingly, has no federal counterpart.⁷⁸ Article 1, Section 5 of the Pennsylvania Constitution is representative of the enfranchising power of this requirement: “[e]lections shall be free and equal;

and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”⁷⁹ This kind of textual divergence from the federal Constitution gives the state courts genuine room to develop protections unavailable under the federal doctrine. This is especially important since the Supreme Court “significantly weakened the 1965 Voting Rights Act through a landmark ruling in *Louisiana v. Callais*” in June of 2026.⁸⁰ Because of this, *Callais* inadvertently positions state courts as the primary, rather than secondary, forum for exactly the kind of claim *Callais* just foreclosed federally.⁸¹

In *Harper v. Hall*, North Carolina demonstrated this potential as well as its limits. In 2022, the North Carolina Supreme Court struck down the state’s congressional and legislative maps under the state’s Free Elections, Equal Protection, and Free Speech and Assembly Clauses, citing evidence of racial vote dilution.⁸² One year later, the court’s composition changed in the intervening election, and the views of the court flipped to be more deferential to the legislature’s authority in drawing electoral maps. The reconstituted court reversed itself and held partisan gerrymandering claims non-justiciable after all.⁸³ The reversal reopened the door for the same kind of map that the court struck down in 2022, leaving voters whose political power those maps had diluted with no state constitutional remedy going forward.

Despite the reversal, North Carolina helps to demonstrate that if federal law can no longer reliably check racial vote dilution, state courts and their interpretations of their respective constitutions should be understood as a potential avenue.



Figure 7 A line for a voter registration exam in 1965, Selma, Alabama. Photo by Associated Press.

State Constitutions and Greater Promise

State constitutions often better reflect the changing interests of their constituencies and (un)anticipated threats in ways the federal Constitution, which was last amended nearly thirty years ago in 1992, cannot.⁸⁴ State constitutions are amended far more frequently than their federal counterpart,⁸⁵ and state courts, freed from the constraint of federal stare decisis when interpreting

state-specific text, have increasingly used that flexibility to extend civil and racial protections that federal courts have declined to recognize or have affirmatively foreclosed.

For example, eleven states have a right to privacy clause, protecting decisional and informational privacy of their constituents: Alaska, Arizona, California, Florida, Hawai'i, Illinois, Louisiana, Montana, New Hampshire, South Carolina, and Washington.⁸⁶ Twelve states have recognized the fundamental right to abortion, protecting the choices of birthing people to make personal medical decisions for their bodies and families: California, Illinois, Kansas, Massachusetts, Minnesota, Mississippi, Montana, New Jersey, North Dakota, Oklahoma, and Wyoming.⁸⁷ Six states have environmental justice amendments, which guarantee the right to a clean and healthy environment: Hawai'i, Illinois, Massachusetts, Montana, New York, Pennsylvania, and Rhode Island.⁸⁸

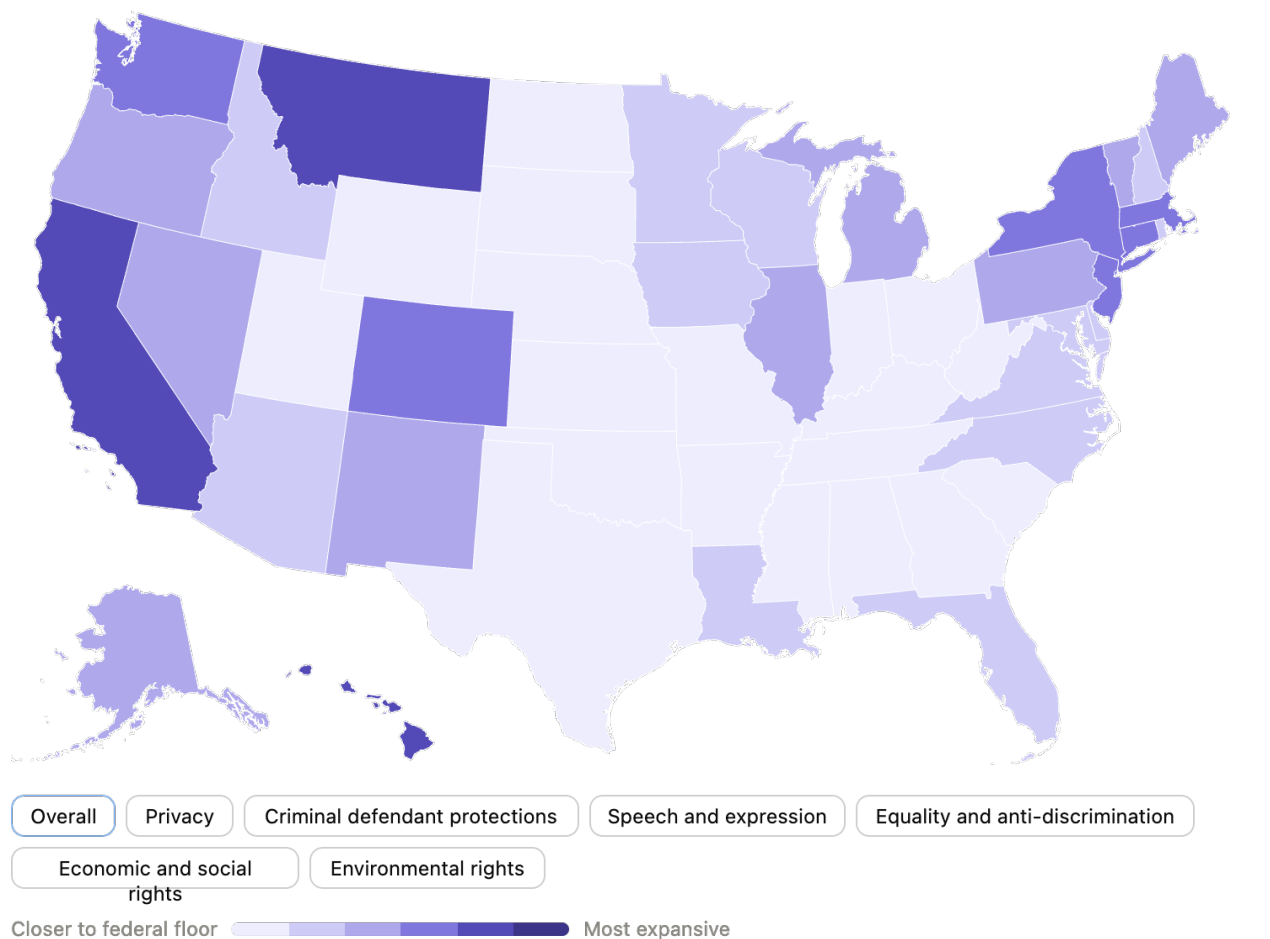


Figure 8 Autogenerated image. (Please note: the color indicates that the state constitution may offer more expansive affirmative rights, but that does not preclude nor indicate whether a state's supreme court will interpret it independently or in lockstep with the federal floor.)

Each of these unique, guaranteed rights have direct bearing on the quality of life of racially marginalized peoples as they are often subject to heightened government surveillance, restricted medical options, racialized health care with fatal outcomes, and relegated to unsafe and polluted



environments or zoned to bear the brunt of climate disasters. These state constitutions permit state courts to interpret our rights more generously.

The ability for the state constitution to function as a check on racial subordination is dependent on how willing a state's courts are to positively interpret their constitution independently of federal doctrine rather than in lockstep with it, how much textual room the constitution itself provides, and how durable the resulting protection proves to be when it collides with legislative or political resistance.

The states whose courts most consistently default to lockstep interpretation — the practice of construing a state constitutional provision as coextensive with its federal counterpart regardless of textual or historical differences between them — tend to not be as exploratory with their potential to expand civil rights.⁸⁹ The consequence is a kind of self-imposed ceiling: even when a state constitution's text would permit greater protection than the federal Constitution, courts following a lockstep approach treat federal doctrine not as a floor but as a ceiling. For example, Article 1, Section 13 of the Texas Constitution prohibits “cruel or unusual punishment,” but Texas's Court of Criminal Appeals (the highest court in the state for criminal matters) “interprets this provision in lockstep with the U.S. Supreme Court's treatment of Eighth Amendment's prohibition of ‘cruel and unusual punishment.’”⁹⁰

The states whose courts have done the most to realize this potential share a common interpretive posture rather than, necessarily, a common set of constitutional provisions. As noted earlier, California, Washington, New Jersey, and Pennsylvania have each, at different moments and in different doctrinal areas, treated textual divergence from the federal Constitution as an invitation to interpret in favor of expanding constitutional protections rather than an accident to be smoothed over. This is what scholars term “independent” or “primacy” interpretation: rather than beginning and ending the analysis with the U.S. Supreme Court's reading of a parallel federal provision, courts following this model treat the state constitutional text as the primary source of meaning.⁹¹ Instead, they consult federal doctrine as one interpretive aid among several others. *Kowalczyk's* reading of Article I, Section 12,⁹² *Lee's* reliance on the Pennsylvania Constitution's omission of the word “unusual,”⁹³ and Washington's adoption of GR 37 to address implicit bias where *Batson* addresses only intentional discrimination are all products of this posture.⁹⁴ What unites them is not any single substantive outcome, but a consistent willingness to ask what the state's own text and history require, in addition to what the federal floor happens to permit.

Some Takeaways

Understand State Courts as a Venue where Larger Power Struggles Play Out

State courts are the sites where much of our daily life is determined – whether we are caged, whether we are housed, whether we are able to vote to change our circumstances. State courts are one of the main administrative arteries of the government while also participating in the substantive

assignment of rights. Understanding state courts as a system and structure that can be used to achieve racial equity, but also acknowledging the harms it oversees, can help more clearly identify policy and organizing choices, connect and base build with impacted communities, and ultimately think more creatively about securing pro-people protections.

Mind Your State Constitution for Opportunities to Expand Racial Equity

Consider reviewing your state constitution and determining, in comparison to the U.S. Constitution, where your courts might be able to act more generously to protect racially marginalized peoples.

Consider the State Court Races on the Horizon

In 2026, 32 states are holding state supreme court elections, deciding over 60 seats.⁹⁵ A handful of races stand out as genuinely capable of shifting a court's balance of power or entrenching an existing one, each carrying direct stakes for racial justice litigation:

1. **North Carolina** — The current court since 2023 is composed of a 5-2 majority that has used procedural maneuvers to rehear and reverse voter ID and redistricting rulings issued by the previous majority⁹⁶ which worked to prevent the dilution of Black and Brown votes.⁹⁷ The current court has done similar damage in overturning a decision which enforced that the legislature “must transfer certain funds” to bring equal education opportunities to low-income communities.⁹⁸ Although this upcoming election will not flip the court’s current views and leaning, pro-enfranchisement voters can ensure the court does not fall into a “deeper hole than their current 5-2 deficit.”⁹⁹
2. **Washington** — An unusually large five of nine seats are on the ballot this November, following two justices’ resignations. According to the State Court Report, “the Washington State Supreme Court has been a national judicial leader advancing protections for rights under state law that other state courts have often drawn upon in their decisions.”¹⁰⁰ Even if the election does not cause major changes to the court’s ideological composition, the potential influx of new justices can impact the issues that the court will prioritize.¹⁰¹
3. **Montana** — This supreme court’s current composition tends to favor a more expansive reading of the Montana state constitution’s individual rights protections, but the seat up for election this year belongs to one of the justices associated with that approach. If the candidate with opposing views and backed by the opposing coalition wins this seat, “it would flip the court’s basic makeup to having a majority of justices who were elected with [that coalition’s] support.”¹⁰²
4. **Ohio, Michigan, Texas, Alabama, and Kansas** were also flagged as having “the clearest ideological or partisan stakes” in this election cycle.¹⁰³
5. **Kansas’s August 2026 ballot measure** is a rare chance to organize defensively at the structural level, rather than only within an existing electoral system — a vote to preserve

merit selection is a vote to keep Kansas's courts insulated from the boundless expansion of interest-group spending.¹⁰⁴ Preventing major donors and political parties from contributing millions in state supreme court elections can protect fair and impartial courts.¹⁰⁵

Engage in Affirmative Litigation to Protect Against Rights-Stripping in State Courts

1. Bring claims under state constitutional provisions with no federal analogue (Free Elections Clauses, explicit anti-discrimination clauses) precisely because they're insulated from unfavorable federal precedent — but recognize, per *Harper v. Hall*, that this insulation only lasts as long as a protective court's composition holds.
2. While your state has a favorable majority (those interested in strengthening civil rights) like in Wisconsin and Washington, focus on winning as much favorable litigation as you can. Since doctrine secured by 5-2 or 4-3 majorities can be reversed by the next composition shift, it is imperative to be aware of the current composition of your state supreme court and monitor cases going before it that may put fundamental questions of our civil rights at risk.
3. Organizing around judicial appointments and elections needs to happen while the window of opportunity to get justices in favor of expanding civil protections is open.

Advocate for Diversity on the Bench

People of color constitute forty percent of the national population but fewer than twenty percent of state court judges,¹⁰⁶ and increasing judicial racial diversity has been shown to close the gap in the probability of incarceration between Black and white people by as much as seven percentage points.¹⁰⁷ Judicial diversity advocacy is therefore not separate from substantive reform, but a lever for it. Where states use merit selection through judicial nominating commissions rather than elections, advocates can organize around who sits on those commissions and what diversity criteria they apply, since commission composition quietly shapes the entire bench pipeline in ways no single election can.

Create Coalitions with People Who Enter State Courts Advocacy from Different Spaces

When considering state court advocacy, think about it from a multi-dimensional vantage point. Whether they are impact litigators at the appellate level, practice direct representation on the lower court level, court watch in the administrative proceedings, or are someone who is directly impacted, each advocate understands a different piece of the court system, each that is fundamental to securing our rights.

Endnotes

1. *The who, what, when & how of state courts*, NAT'L CTR FOR STATE CTS., <https://www.ncsc.org/resources-courts/who-what-when-how-state-courts>, [https://perma.cc/CG68-59T3] (last visited July 13, 2026).
2. *Comparing Federal & State Courts*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts> [https://perma.cc/E9V9-8D4Y] (last visited July 13, 2026).
3. *Subject Matter Jurisdiction*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/subject_matter_jurisdiction [https://perma.cc/DPF4-AN8W] (last visited July 13, 2026).
4. *Michigan v. Long*, 463 U.S. 1032, 1033 (1983) (holding “If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.”); see generally Robert K. Fitzpatrick, *Neither Icarus nor Ostrich: State Constitutions as an Independent Source of Individual Rights*, 79 N.Y.U. L. REV. 1833 (2004).
5. See, e.g., *The who, what, when & how of state courts*, *supra*, note 1; *Contract*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/contract> [https://perma.cc/DW7Q-PJ3N] (last visited July 13, 2026); Ketan Ramakrishnan, *What is a Tort?*, 139 HARV. L. REV. 1011 (2026); PETER G. BARRIS & MICHAEL A. FOSTER, CONG. RSCH. SERV., COMPONENTS OF FED. CRIM. L. 2 (Sept. 2024), https://www.congress.gov/crs_external_products/R/PDF/R48177/R48177.1.pdf [https://perma.cc/377R-YC6E].
6. Marcus Gadson, *Perhaps Unexpectedly, State Constitutions Sometimes Offer Narrower Rights than the U.S. Constitution*, STATE CT. REP. (May 26, 2026), <https://statecourtreport.org/our-work/analysis-opinion/perhaps-unexpectedly-state-constitutions-sometimes-offer-narrower-rights> [https://perma.cc/7FC7-CMTY]; but cf. Mark L. Miller & Ronald F. Wright, *Leaky Floors: State Law Below Federal Constitutional Limits*, 50 ARIZ. L. REV. 227 (2008); *State v. Morris*, No. 2023-1614, 2026 WL 1180464 (Apr. 30, 2026).
7. Miller & Wright, *supra* note 6 at 1839-1840; William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 490 (1977).
8. Miller & Wright, *supra* note 6 at 1833. The reemergence of the theory of judicial federalism came after the liberal majority under the Warren Court transitioned to the more conservative Burger Court. Under the Burger Court, the Supreme Court’s jurisprudential progress regarding equal protection and substantive due process became stagnant.
9. Brennan, *supra* note 7 at 503 (referring to the Burger court).
10. See, e.g., *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (holding that the federal constitution does not provide a right to abortion, overturning *Roe v. Wade*); *Louisiana v. Callais*, No. 24-109, 2026 WL 1153054 (U.S. Apr. 29, 2026) (holding that compliance with the VRA is not a compelling interest to survive strict scrutiny for an equal protection violation). The decision in *Callais* essentially gutted Section 2 of the VRA which aimed to create fair congressional maps by protecting majority-minority districts. Madeleine Greenburg, *The U.S. Supreme Court Has Eviscerated the Voting Rights Act — What’s Next?*, CAMPAIGN LEGAL CTR. (Apr. 30, 2026), <https://campaignlegal.org/update/us-supreme-court-has-eviscerated-voting-rights-act-whats-next> [https://perma.cc/2MHE-6225].
11. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).
12. *United States v. Skrmetti*, 605 U.S. 495 (2025).
13. *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520 (2024).
14. *Callais*, 2026 WL 115305.
15. Marcia Coyle, *State courts, voters increasingly turning to state constitutions to protect rights*, NAT’L CONST. CTR. (Aug. 18, 2023), <https://constitutioncenter.org/blog/state-courts-voters-increasingly-turning-to-state-constitutions-to-protect-rights> [https://perma.cc/NX2U-HKCN].
16. John Dinan, *Constitutional Amendment Processes in the 50 States*, STATE CT. REP. (July 24, 2023), <https://statecourtreport.org/our-work/analysis-opinion/constitutional-amendment-processes-50-states> [https://perma.cc/D2GR-XKA6].

17. Coyle, *supra* note 15.
18. *Convict Leasing*, U.S. LAW EXPLAINED, https://uslawexplained.com/convict_leasing [https://perma.cc/FSW3-D2AX] (last visited July 13, 2026); *Convict Leasing*, EQUAL JUST. INITIATIVE, <https://eji.org/news/history-racial-injustice-convict-leasing/> [https://perma.cc/E7D3-BG8J] (Nov. 11, 2013).
19. Lauren Hill & Leah Roemer, “He Looks a Little Like the Defendant”: A Closer Look at the History of Racial Bias in Jury Selection, DEATH PENALTY INFO. CTR. (Mar. 25, 2026), <https://deathpenaltyinfo.org/news/he-looks-a-little-like-the-defendant-a-closer-look-at-the-history-of-racial-bias-in-jury-selection> [https://perma.cc/V86T-56GQ].
20. *Criminal Law—Money Bail—California Supreme Court Holds Detention Solely Because of Inability to Pay Bail Unconstitutional*. — *In re Humphrey*, 482 P.3d 1008 (Cal. 2021), 135 HARV. L. REV. 912 (2022).
21. *Batson v. Kentucky*, 476 U.S. 79 (1986) (“The Equal Protection Clause guarantees the defendant that the state will not exclude members of his race from the jury venire on account of race or on the false assumption that members of his race as a group are not qualified to serve as jurors.”); *U.S. v. Salerno*, 481 U.S. 739 (1987) (holding that the Bail Reform Act of 1984 which allows a federal court to detain an arrestee pending trial, with procedural restraints, is constitutional).
22. Brandon Buskey & Andrea Woods, *Making Sense of Pretrial Risk Assessments*, NAT’L ASSOC. OF CRIM. DEF. LAWS., <https://www.nacdl.org/Article/June2018-MakingSenseofPretrialRiskAsses> [https://perma.cc/L55B-7AA7] (last visited July 13, 2026).
23. *Race and Sentencing*, NAT’L ASSOC. OF CRIM. DEF. LAWS. (Nov. 23, 2022), <https://www.nacdl.org/Content/Race-and-Sentencing> [https://perma.cc/37S8-4S2G].
24. People of color were overrepresented in the pretrial detainee population. Wendy Sawyer, *How race impacts who is detained pretrial*, PRISON POL’Y. INITIATIVE (Oct. 9, 2019), https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/ [https://perma.cc/DX9A-9Y8P].
25. Sawyer, *supra* note 24; Traci Schlesinger, *Racial and ethnic disparities in criminal justice processing*, 22 JUST. QUARTERLY 170 (2005); Shima Baradaran Baughman & Frank McIntyre, *Race and Prediction* (July 13, 2011) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1884634 [https://perma.cc/L43F-RPE4].
26. David Arnold, Will Dobbie & Crystal Yang, *Racial Bias in Bail Decisions* (Nat’l Bureau of Econ. Rsch., Working Paper No. 23421, 2017), https://www.nber.org/system/files/working_papers/w23421/w23421.pdf [https://perma.cc/U84S-JGCV]; see also Denise-Marie Ordway, *Black and white bail judges show bias against black defendants*, JOURNALIST’S RESOURCE (July 16, 2018), <https://journalistsresource.org/race-and-gender/bail-judges-racial-bias-research/> [https://perma.cc/M3Y4-UVBS].
27. MICHAEL REMPEL, OLIVE LU, & SARAH MONAGHAN, BAIL REFORM AT FIVE YEARS: PRETRIAL DECISION-MAKING IN N.Y. STATE (Feb. 2026), https://datacollaborativeforjustice.org/wp-content/uploads/2026/02/Pretrial_DM_Report_Final.pdf [perma.cc/P5U9-KWYS].
28. Matt Alsdorf & Alison Shames, *California Court Upholds Constitutional Pretrial Decisions*, ADVANCING PRETRIAL POL’Y. & RSCH. (May 12, 2026), <https://www.advancingpretrial.org/news/california-court-upholds-constitutional-pretrial-decisions/> [https://perma.cc/R4QU-MQG9]; see also CAL. CONST. art.1, §12.
29. *In re Kowalczyk*, 587 P.3d 1205 (2026).
30. *State v. Brown*, 338 P.3d 1276, 1292 (2014) (“intentionally setting bail so high as to be unattainable is simply a less honest method of unlawfully denying bail altogether”).
31. Grace Spulak, *Pretrial Reform Toolkit*, NAT’L. CTR. FOR STATE CTS. (Nov. 2024), <https://nationalcenterforstatecourts.app.box.com/s/zx8qjhhfanc3yfl54m8mbqln8b2g6mtn> [https://perma.cc/KD26-L2ZL].
32. Authorization for the Non-Financial Uniform Schedule of Bail Administrative Release Program, Ky. Sup. Ct. Order No. 2017-19 (Dec. 5, 2017).
33. *Harm Caused by Racially Biased Jury Selection*, in RACE AND THE JURY (Equal Just. Initiative, 2021), <https://eji.org/report/race-and-the-jury/harm-caused-by-racially-biased-jury-selection/#wrongful-convictions-and-excessive-sentences> [https://perma.cc/AWS6-PLEX].

34. *A History of Discrimination in Jury Selection*, in RACE AND THE JURY (Equal Just. Initiative, 2021), <https://eji.org/report/race-and-the-jury/a-history-of-discrimination-in-jury-selection/> [https://perma.cc/5KT3-6AJZ].
35. *Id.*
36. *Jury Selection in U.S. Criminal Trials*, NAT'L CRIM. L., <https://nationalcriminallawauthority.com/jury-selection-criminal-trials/> [https://perma.cc/269U-59PE] (last visited July 13, 2026).
37. *Batson v. Kentucky*, 476 U.S. 79 (1986).
38. *Id.*
39. Alyxaundria Sanford, *Batson Was Supposed to End Racially Biased Jury Selection. 40 Years Later Its Promise Is Unfulfilled*, INNOCENCE PROJECT (Apr. 30, 2026), <https://innocenceproject.org/news/batson-v-kentucky-racially-biased-jury-selection-40-years-later/> [https://perma.cc/24Q9-2YCQ].
40. *Discrimination in Jury Selection*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/policy-issues/policy/prosecutorial-accountability/discrimination-in-jury-selection> [https://perma.cc/CM29-DH6M].
41. WASH. GEN. R. 37.
42. *Id.*; *Washington Supreme Court Is First in Nation to Adopt Rule to Reduce Implicit Racial Bias in Jury Selection*, ACLU (Apr. 9, 2018, at 15:45 ET), <https://www.aclu.org/press-releases/washington-supreme-court-first-nation-adopt-rule-reduce-implicit-racial-bias-jury> [https://perma.cc/W8PS-CELR].
43. Order Amending Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure, No. R-21-0020 (Ariz. 2021), 135 HARV. L. REV. 2245 (2022).
44. ARIZ. R. PROC. EVICTION ACTIONS 12.
45. Hailey Badger Gordon, *Evaluative the Elimination of Peremptory Challenges in Arizona*, 58 UNIV. MICH. J. L. REFORM 229, 260 (2024).
46. *Id.*, at 254.
47. Tyler Rose Clemens, *Blind Injustice: The Supreme Court, Implicit Racial Bias, and the Racial Disparity in the Criminal Justice System*, 51 AM. CRIM. L. REV. 689 (2014).
48. *Felony Murder*, RESTORE JUST., <https://restorejustice.org/issues/sentencing/felony-murder/> [https://perma.cc/8RY5-RB23] (last visited July 13, 2026).
49. *Felony Murder Rule*, Legal Info. Inst., https://www.law.cornell.edu/wex/felony_murder_rule [https://perma.cc/75CT-8WRT] (last visited July 13, 2026).
50. Sarah Stillman, *Sentenced to Life for an Accident Miles Away*, NEW YORKER (Dec. 11, 2023), <https://www.newyorker.com/magazine/2023/12/18/felony-murder-laws> [https://perma.cc/G24Y-JW9H].
51. Stillman, *supra* note 47; *State Data*, FELONY MURDER REPORTING PROJECT, <https://felonymurderreporting.org/states/> [https://perma.cc/5V32-H85N] (last visited July 13, 2026).
52. Nazgol Ghandnoosh, Ph.D., Emma Stammen & Connie Budaci, *Felony Murder: An On-Ramp for Extreme Sentencing*, SENTENCING PROJECT (Mar. 31, 2022), <https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing/> [https://perma.cc/XT37-8RFE].
53. Stillman, *supra* note 50.
54. *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026).
55. Kyle C. Barry, *Michigan High Court Could Break New Ground in Limiting Excessive Sentences*, STATE CT. REPORT (Jan. 22, 2026), <https://statecourtreport.org/our-work/analysis-opinion/michigan-high-court-could-break-new-ground-limiting-excessive-sentences> [https://perma.cc/RTB2-SHQ7].
56. *Resolution 1: In Support of Racial Equality and Justice for All*, CONF. OF CHIEF JUDGES (July 30, 2022), <https://ccj.ncsc.org/resources-courts/support-racial-equality-and-justice-all> [https://perma.cc/6KGJ-MXLE]; *Resolution 2: In Support of the Guiding Principles for Post-Pandemic Court Technology*, CONF. OF CHIEF JUDGES (July 30, 2020), <https://ccj.ncsc.org/resources-courts/support-guiding-principles-post-pandemic-court-technology> [https://perma.cc/WF7P-2PJM].
57. *Resolution 2: In Support of the Guiding Principles for Post-Pandemic Court Technology*, *supra* note 56.

58. Tracey E. George & Albert H. Yoon, *Gavel Gap: The differences between the race & gender composition of the courts & the communities they serve*, AM. CONST. SOC'Y, <https://www.acslaw.org/analysis/reports/gavel-gap/> [https://perma.cc/946W-3HDL] (last visited July 13, 2026) (finding only 8% of state court judges are women of color and 12% are men of color, while the state populations are 19% and 19% respectively).
59. *Id.*
60. Allison P. Harris, *Can Racial Diversity Among Judges Affect Sentencing Outcomes*, 118 AM. POL. SCI. REV. 940, 942 (2024) (finding that “officials who are members of a majority racial group, especially in jobs that require them to make decisions or judgements about others may make decisions that are less biased against minority racial groups as they gain more colleagues who are minority-racial-group members.”).
61. See Daniel Fernandez, *The Shocking Lack of Diversity on State Supreme Courts*, IN THESE TIMES (Sept. 20, 2019), <https://inthesetimes.com/article/lack-of-diversity-state-supreme-courts> [https://perma.cc/DY2P-K8EA]; *Resolution 2: In Support of the Guiding Principles for Post-Pandemic Court Technology*, *supra* note 56.
62. LAILA ROBBINS & ALICIA BANNON, STATE SUP. CT. DIVERSITY (Brennan Center for Justice at N.Y.U. Sch. of L., 2019), https://www.brennancenter.org/sites/default/files/2019-08/Report_State_Supreme_Court_Diversity.pdf [https://perma.cc/F2AA-K8EM].
63. Leah Wang, *Updated charts show the magnitude of prison and jail racial disparities, pretrial populations, correctional control, and more*, PRISON POL'Y. INITIATIVE (Apr. 1, 2024), <https://www.prisonpolicy.org/blog/2024/04/01/updated-charts/> [https://perma.cc/33NJ-ZPTS].
64. Harris, *supra* note 60, at 942 (finding that “officials who are members of a majority racial group, especially in jobs that require them to make decisions or judgements about others may make decisions that are less biased against minority racial groups as they gain more colleagues who are minority-racial-group members.”).
65. ROBBINS & BANNON, *supra* note 62; See, e.g., Harry T. Edwards, *Race and the Judiciary*, 20 YALE L. & POL'Y. REV. 325, 329 (2002) (“And in a judicial environment in which collegial deliberations are fostered, diversity among the judges makes for better informed discussion. It provides for constant input from judges who have seen different kinds of problems in their pre-judicial careers, and have sometimes seen the same problems from different angles.”); James Andrew Wynn, Jr. & Eli Paul Mazur, *Judicial Diversity: Where Independence and Accountability Meet*, 67 ALBANY L. REV. 775, 789 (2004) (“However, it is generally difficult for a homogenous judiciary of affluent white men to understand and explain the socially diverse realities of poverty, race, and gender. For instance, a recent study of one federal circuit reveals that female judges are more likely than male judges to observe, report, and intervene when instances of gender-related incivility are directed at women.”); Sandra Day O'Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 STAN. L. REV. 1217-1218, 1220 (1992) (“Although all of us come to the Court with our own personal histories and experiences, Justice Marshall brought a special perspective... At oral arguments and conference meetings, in opinions and dissents, Justice Marshall imparted not only his legal acumen but also his life experiences, constantly pushing and prodding us to respond not only to the persuasiveness of legal argument but also to the power of moral truth...Occasionally, at Conference meetings, I still catch myself looking expectantly for his raised brow and his twinkling eye, hoping to hear, just once more, another story that would, by and by, perhaps change the way I see the world.”).
66. Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243 (2022).
67. Brito, Sabbeth, Steinberg & Sudeall, *supra* note 66; Cheryl Harris, *Whiteness As Property*, 106 HARV. L. REV. 1707 (1993).
68. Brito, Sabbeth, Steinberg & Sudeall, *supra* note 66, at 1246.
69. See Brito, Sabbeth, Steinberg & Sudeall, *supra* note 66, at 1270.
70. *Id.* at 1270–73.
71. *The Ghosts of Housing Discrimination Reach Beyond Redlining*, URB. INST. (Mar. 15, 2023), <https://www.urban.org/stories/ghosts-housing-discrimination-reach-beyond-redlining> [https://perma.cc/KT6F-HML4].

72. Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction/> [https://perma.cc/6T5A-NKBW]; Lillian Leung, Peter Hepburn & Matthew Desmond, *Serial Eviction Filings: How Landlords Use the Courts to Collect Rent*, EVICTION LAB (Sep. 15, 2020), <https://evictionlab.org/serial-eviction-filings/> [https://perma.cc/6G6X-ZNZN].
73. *Id.*
74. Brito, Sabbeth, Steinberg & Sudeall, *supra* note 66.
75. John Pollock, *Right to Counsel for Tenants Facing Eviction*, NAT'L LOW INCOME HOUSING COAL., https://nlihc.org/sites/default/files/AG-2024/7-5_Right-to-Counsel-for-Tenants-Facing-Eviction.pdf [https://perma.cc/5JHX-54XL].
76. *Michigan eviction court procedure reforms*, EVICTION INNOVATION (July 20, 2021), <https://evictioninnovation.org/2021/07/20/michigan-eviction-court-procedure-reforms/> [https://perma.cc/S5H6-8F47].
77. *Id.*
78. *Free and Equal Election Clauses in State Constitutions*, NAT'L CONF. OF STATE LEGISLATURES (Nov. 4, 2019), <https://www.ncsl.org/redistricting-and-census/free-and-equal-election-clauses-in-state-constitutions> [https://perma.cc/CZ9Y-B3KE].
79. *Id.*
80. *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> [https://perma.cc/JD6H-VRFM].
81. See generally, Madeleine Greenberg, *The U.S. Supreme Court Has Eviscerated the Voting Rights Act – What's Next?*, CAMPAIGN LEGAL (Apr. 30, 2026), <https://campaignlegal.org/update/us-supreme-court-has-eviscerated-voting-rights-act-whats-next> [https://perma.cc/TCD3-RYLL] (stating states can also adopt their own voting rights protections)
82. *Harper v. Hall*, 881 S.E.2d 15 (N.C. 2022) (later reversed)
83. *Harper v. Hall*, NAT'L REDISTRICTING FOUND. (Apr. 28, 2023), <https://redistrictingfoundation.org/court-cases/harper-v-hall/> [https://perma.cc/2G3C-4TA2].
84. Emily Lau, *Fifty Unique, Ever-Changing State Constitutions*, STATE CT. REP. (Feb. 10, 2025), <https://statecourtreport.org/our-work/analysis-opinion/fifty-unique-ever-changing-state-constitutions> [https://perma.cc/ABF5-RAW4].
85. *Id.*
86. Tiffany C. Li, *State Constitutional Rights to Privacy*, 59 GA. L. REV. 1307, 1307 (2025).
87. *State Constitutions and Abortion Rights*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/state-constitutions-and-abortion-rights/> [https://perma.cc/FGS7-Q7UA].
88. *Environmental Rights Amendments*, STATE CLIMATE POL'Y DASHBOARD (Mar. 5, 2026), <https://www.climatepolicydashboard.org/policies/climate-governance-equity/environmental-rights-amendments?progress%5B0%5D=enacted&keyword=> [https://perma.cc/K6ZU-5CUW].
89. Michael Smith, *The Many Versions of State Constitutional Lockstepping*, STATE CT. REP. (June 10, 2026), <https://statecourtreport.org/our-work/analysis-opinion/many-versions-state-constitutional-lockstepping> [https://perma.cc/NC92-VM4E].
90. *Id.*
91. Robert F. Williams, *State Courts Adopting Federal Constitutional Doctrine: Case-by-Case Adoptionism or prospective Lockstepping?*, 46 WM. & MARY L. REV. 1499 (2005).
92. *In re Kowalczyk*, 587 P.3d 1205 (Cal. 2026).
93. *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026).
94. WASH. GEN. R. 37.

95. Douglas Keith, *State Supreme Court Races to Watch in 2026*, STATE CT. REP. (Feb. 10, 2026), <https://statecourtreport.org/our-work/analysis-opinion/state-supreme-court-races-watch-2026> [https://perma.cc/Z7W9-KD7U].
96. *Id.*
97. Robyn Sanders, *Voter ID Law Struck Down by North Carolina Supreme Court*, STATE CT. REP. (Jan. 17, 2023), <https://statecourtreport.org/our-work/analysis-opinion/voter-id-law-struck-down-north-carolina-supreme-court> [https://perma.cc/95EP-7VG3].
98. Erin Geiger Smith, *North Carolina High Court Set to Backtrack on School Funding*, STATE CT. REP. (Feb. 21, 2024), <https://statecourtreport.org/our-work/analysis-opinion/north-carolina-high-court-set-backtrack-school-funding> [https://perma.cc/D66E-3NKC].
99. Daniel Nichanian, *Your State-by-State Guide to the 2026 Supreme Court Elections*, BOLTS (Apr. 20, 2026), <https://boltsmag.org/your-state-by-state-guide-to-the-2026-supreme-court-elections/> [https://perma.cc/7URN-NRKA].
100. Douglas Keith, *supra* note 95.
101. *Id.*
102. Daniel Nichanian, *supra* note 99.
103. *Id.*
104. Michael Milov-Cordoba & Douglas Keith, *Kansas Vote Could Lead to Wisconsin-Level Spending in Judicial Elections*, STATE CT. REP. (July 8, 2026), <https://statecourtreport.org/our-work/analysis-opinion/kansas-vote-could-lead-wisconsin-level-spending-judicial-elections> [https://perma.cc/JKF9-89XT].
105. *Id.*
106. George & Yoon, *supra* note 58.
107. Allison P. Harris, *Can Racial Diversity among Judges Affect Sentencing Outcomes?*, 118 AM. POL. SCI. REV. 940 (2024).