State Democracy Research Initiative
UNIVERSITY OF WISCONSIN LAW SCHOOL

Explainer: State Constitutional Standards for Adjudicating Challenges to Restrictive Voting Laws

Emily Lau, Staff Attorney

State constitutions are distinct from the U.S. Constitution in many ways—not least of which is their commitment to popular sovereignty, majority rule, and political equality.[1] State courts have commonly accounted for the unique text, structure, and history of state constitutions by diverging from federal courts in their review of right-to-vote challenges. This Explainer surveys and classifies the standards that state courts around the country use to adjudicate state constitutional challenges to restrictive voting laws.

The U.S. Constitution and the U.S. Supreme Court's *Anderson-Burdick* framework set a federal floor on top of which state courts may build. Taking its name from the U.S. Supreme Court's 1983 decision in *Anderson v. Celebrezze* and 1992 decision in *Burdick v. Takushi*, the *Anderson-Burdick* framework initially established a balancing standard for resolving challenges to candidate and political party ballot access regulations brought under the Equal Protection Clause of the U.S. Constitution.[2] In 2008, the U.S. Supreme Court in *Crawford v. Marion County Election Board* extended the framework to voting regulations, such as voter-ID laws, that are challenged under the Equal Protection Clause.[3] Federal constitutional challenges to voting regulations are primarily litigated as equal protection claims because the U.S. Constitution does not include an express, affirmative right to vote.

The contours of the *Anderson-Burdick* framework are somewhat nebulous, and scholars and judges have sometimes criticized it for its indeterminacy.[4] Courts have put at least two distinct glosses on the framework: one approach regards it as a flexible, sliding-scale test;[5] the second, as a two-track test.[6] The two-track test only subjects an election law to strict scrutiny if it imposes a severe burden on the right to vote; otherwise, the law is subject to rational basis review. In recent years, federal courts have frequently chosen the two-track test, typically leading, in practice, to rational basis review.[7]

While this "weak-form" *Anderson-Burdick* review has become common in federal courts, state courts are under no obligation to lockstep with their federal counterparts. Right-to-vote

challenges brought under state constitutions are often rooted in the distinctive democracy-promoting text, structure, and history of state constitutions. Unlike the U.S. Constitution, every state constitution affirmatively protects the right to vote and over half contain additional safeguards, such as guarantees that elections shall be "free," "free and equal," or "free and open."[8] Accordingly, state courts may, and most often do, adopt more stringent tests when reviewing state constitutional right-to-vote challenges.

A 50-state survey of this nature should not be taken to suggest that states fall neatly into hard-edged categories. Cases arise in a variety of distinct legal and factual circumstances, and courts in many states have not definitively articulated a standard of review for adjudicating state constitutional right-to-vote challenges. Note that this survey focuses on the standard applicable to laws that directly limit the ability to vote, as opposed to laws addressing matters such as ballot access for candidates. In some states, courts have invoked *Anderson-Burdick* in ballot-access and related contexts (the original domain of *Anderson* and *Burdick*), but without suggesting that they would extend the framework to claims that voting restrictions violate state constitutional right-to-vote provisions. Precedent in those states commonly supports a more stringent standard in that distinct context. Taken as a whole, the cases surveyed here reveal widespread recognition on the part of state courts that the robust right-to-vote guarantees contained in state constitutions call for heightened judicial skepticism of voting restrictions.

Based on a review of case law in every state (detailed state-by-state below), we have identified at least 21 states with at least some precedent that affirmatively points toward the application of strict scrutiny to restrictive voting laws.

In 21 additional states, at least some precedent affirmatively points toward a standard of review that, if not formally strict, would be more stringent than weak-form federal *Anderson-Burdick* review. This includes states with courts that have applied the sliding-scale version of *Anderson-Burdick* framework or that otherwise subject laws that non-trivially burden the right to vote to more than rational basis review.

In 6 states, the existing precedent offers no meaningful indication of the standard the courts would likely apply.

Only 2 states (Texas and Wisconsin) have supreme court precedent that directly embraces weak-form federal *Anderson-Burdick* review for adjudicating state constitutional right-to-vote challenges to restrictive voting laws.

State	Standard of Review
Alabama	Alabama courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. The Alabama Supreme Court has held that, for the purposes of state equal protection analysis, when a fundamental right guaranteed by the Alabama Constitution is impaired, strict scrutiny applies. *See, e.g.*, *Opinion of the Justices*, 624 So.2d 107, 156-57 (Ala. 1993). The Alabama Supreme Court has also held that federal standards of review do not control when evaluating claims brought under the Alabama Constitution. *Moore v. Mobile Infirmary Ass'n*, 592 So.2d 156, 170 (Ala. 1991). The Court has only applied the *Anderson-Burdick* test (two-tiered) when evaluating federal equal protection claims. *E.g.*, *Veitch v. Friday*, 314 So.3d 1232, 1239 (Ala. 2020) (regarding disenfranchisement of a subset of county residents in primary elections); *Blevins v. Chapman*, 47 So.3d 227, 231-32 (Ala. 2010) (ballot access challenge).
Alaska	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. The Alaska Supreme Court has applied a four-step analysis similar to the sliding-scale version of *Anderson-Burdick* (rather than the weaker two-tier approach) in a case brought under the state constitution's right-to-vote provision. The Court observed that its test is more rigorous than the prevailing federal approach, reflecting "the principle that Alaska's constitution is more protective of rights and liberties than is the United States Constitution." *State v. Arctic Village Council*, 495 P.3d 313, 321 (Alaska 2021); *see also Kohlhaas v. State*, 518 P.3d 1095 (Alaska 2022).
Arizona	Arizona courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state

	constitutional right-to-vote provision, but some precedent points toward strict scrutiny. The Arizona Supreme Court has held that, for the purposes of state equal protection analysis, when a fundamental right—i.e., "a right explicitly or implicitly guaranteed by the constitution"—is burdened, strict scrutiny will apply. *Simat Corp. v. Arizona Health Care Cost Containment System*, 56 P.3d 28 (Ariz. 2002). An Arizona appellate court has discussed the fundamental right to vote in the equal protection context. *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission*, 121 P.3d 843, 851-52 (Ariz Ct. App. 2005). The same appellate court indicated that the two-tiered *Anderson-Burdick* test may apply to cases where plaintiffs bring equal protection claims under both the United States and Arizona Constitutions. *Arizona Minority Coal.*, 121 P.3d at 85. However, even in the context of federal claims, there are more recent indications that Arizona courts apply a more rigorous version of *Anderson-Burdick*. *See, e.g.*, *AZ Petition Partners LLC v. Thompson*, 530 P.3d 1144, 1151 (Ariz. 2023) ("approving of much of [the lower court's] reasoning," which included requiring more than the mere assertion of an interest in preventing fraud to satisfy the government's burden); *see also id*. at 1147 n.2 (clarifying that the Court's *Anderson-Burdick* analysis pertained only to the federal claim and that the Court was not reaching state constitutional questions).
Arkansas	Precedent does not clearly articulate standard of review. In *League of Women Voters of Arkansas v. Thurston*, 687 S.W.3d 805 (Ark. 2024), the Arkansas Supreme Court held that an absentee voter signature match requirement did not implicate the equal protection or voter qualification clauses because it was facially neutral. The court also held that signature matching requirements, photo ID requirements, and a prohibition against anyone except voters coming within 100 feet of a polling place did not implicate the free and equal election clause because the state constitution "does *not* confer a constitutionally protected right to absentee voting, voting without identification, or the right to 'support' while waiting in line to vote," thus rejecting the application

	of strict scrutiny. *Contra Martin v. Kohls*, 444 S.W.3d 844 (Ark. 2014) (invalidating a photo voter ID requirement). The court narrowly interpreted the free and equal election clause as a protection against fraud and voter intimidation. Because the court held that the statutes at issue did not implicate any constitutional provisions, the court did not address the standard of review issue except to reject the trial court's determination that strict scrutiny applies. The Arkansas Supreme Court had previously held that "When a statute infringes upon a fundamental right, it cannot survive unless 'a compelling state interest is advanced by the statute and the statute is the least restrictive method available to carry out [the] state interest.'" *Jegley v. Picado*, 80 S.W.3d 332, 350 (Ark. 2002).
California	California courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision. California "has followed closely the analysis of the United States Supreme Court" in addressing equal protection challenges to election laws. *Canaan v. Abdelnour*, 710 P.2d 268 (Cal. 1985) (abrogated on other grounds). The California Supreme Court also applied the two-tiered version of the *Anderson-Burdick* test to a state constitutional free speech challenge to a write-in voting law. *Edelstein v. City and County of San Francisco*, 56 P.3d 1029 (Cal. 2002).
Colorado	Some precedent points to strict scrutiny. Although an unpublished state trial court declined to recognize broader right-to-vote protections under the state constitution than the federal constitution and applied the two-tier the version of *Anderson-Burdick* test, *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *3 (Colo. Dist. Ct. Oct. 8, 2004), the Colorado Supreme Court has indicated a more rigorous approach. When considering a restriction on the initiative and referendum power, the Colorado Supreme Court applied strict scrutiny, writing, "Any law that limits this 'fundamental right at the very core of our

	republican form of government' is viewed with the closest scrutiny." *Urevich v. Woodard*, 667 P.2d 760, 762 (Colo. 1983). The Colorado Supreme Court has similarly held that "the right to vote is a fundamental right of the first order," *Erikson v. Blair*, 670 P.2d 749, 754 (Colo. 1983), and that, when considering equal protection claims, strict scrutiny applies to statutes impinging on fundamental rights. *Mayo v. National Farmers Union Property and Cas. Co.*, 833 P.2d 54, 57 (Colo. 1992).
Connecticut	Connecticut courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points to strict scrutiny. In the equal protection context, the Connecticut Supreme Court has written: "If, in distinguishing between classes, the statute . . . intrudes on the exercise of a fundamental right. . ., the court will apply a strict scrutiny standard." *Fay v. Merrill*, 256 A.3d 622, 642 (Conn. 2021). And the court has called the right to vote "fundamental." *Id*.
Delaware	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. The Delaware Court of Chancery has nominally adopted the sliding-scale version of *Anderson-Burdick* to analyze vote restriction claims brought under the Delaware Constitution's Elections and Right-to-Vote Clauses. *League of Women Voters of Delaware, Inc. v. Department of Elections*, 250 A.3d 922 (Del. Ch. 2020). However, the test appears to be more rigorous than its federal analog. According to the court, "the voting rights provided for and guaranteed in the Delaware Constitution" are "more robust than those in the U.S. Constitution." *Id.* at 936; *see also Young v. Red Clay Consolidated School District*, 122 A.3d 784, 812 (Del. Ch. 2015) ("Delaware jurisprudence generally favors the primacy model and resists the lockstep model. Skepticism about lockstep interpretations is particularly strong for provisions which, like the Elections Clause, appear in Delaware's Declaration of Rights.").
Florida	Florida courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state

	constitutional right-to-vote provision, but some precedent points toward strict scrutiny. Florida courts have frequently described voting as a fundamental right, *see, e.g.*, *Fields v. Askew*, 279 So.2d 822 (Fla. 1973); *City of Miami Beach v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in the City of Miami Beach*, 91 So.3d 237, 241 (Fla. Ct. App. 2012), and held that "'strict' scrutiny . . . applies to legislation impinging on certain fundamental rights," *North Florida Women's Health and Counseling Services, Inc. v. State*, 866 So.2d 612, 626 (Fla. 2003); *see also*, *Armstrong v. Harris*, 773 So.2d 7, 22 n.36 ("Special vigilance is required where the fundamental rights of Florida citizens . . . are concerned . . . ."). The Florida Supreme Court has held that the Florida Constitution's Political Power and Right-to-Assembly Clauses at least sometimes track the political association rights guaranteed under the First and Fourteenth amendments of the U.S. Constitution, and thus *Anderson-Burdick* may govern in those contexts. *Libertarian Party of Florida v. Smith*, 687 So.2d 1292, 1121 (Fla. 1996).
Georgia	Georgia courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. In a challenge to a photo voter ID requirement brought under the state's Equal Protection Clause, the Georgia Supreme Court held that the state constitutional equal protection guarantee is coextensive with the protections afforded by the federal Equal Protection Clause and adopted the reasoning in *Crawford*. *Democratic Party of Georgia, Inc. v. Perdue*, 707 S.E.2d 67, 74 (Ga. 2011); *see also Favorito v. Handel*, 684 S.E.2d 257, 260-61 (Ga. 2009) (holding that the state's Equal Protection Clause is co-extensive with federal protections and applying *Anderson-Burdick*). However, there is no indication whether a voting restrictions challenge brought under the state's right-to-vote clause would receive the same treatment.

	There is also reason to believe that, if Georgia courts were to adopt the *Anderson-Burdick* test to a challenge brought under the state's right-to-vote clause, they would apply the more stringent version of it. *See Rhoden v. Athens-Clarke County Board of Education*, 850 S.E.2d 141, 147 (Ga. 2020) (applying the stronger sliding-scale version of *Anderson-Burdick* and explaining that, "even when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden."); *Perdue*, 707 S.E.2d at 74-75 (adopting the more flexible *Anderson-Burdick* standard articulated by the *Crawford* plurality).
Hawaii	Hawaii courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. The Hawaii Supreme Court has written that when a statute "imping[es] upon fundamental rights expressly or impliedly granted by the [c]onstitution," strict scrutiny applies. *Baehr v. Lewin*, 852 P.2d 44, 63 (Haw. 1993). The Court has also previously held that the right to vote is fundamental. *See, e.g.*, *Ahia v. Lee*, No. SCEC-22-0000707, 2023 WL 334610 (Haw. Jan. 20, 2023); *Akizaki v. Fong*, 461 P.2d 221, 222-23 (Haw. 1969).
Idaho	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. The Idaho Supreme Court held that when the legislature passes a law that has a "reasonable relation to the purpose of regulating and conducting elections" and does not "effectively prevent" the exercise of suffrage, rational basis applies. BABE VOTE v. McGrane, 546 P.3d 694, 711 (Idaho 2024). The court held that removing student IDs as an eligible form of voter ID, "although burdensome to some, [did] not effectively annul the right to suffrage." *Id.* at 713. Nonetheless, the Court reaffirmed that challenges brought under the Idaho Constitution are not subject to weak-form *Anderson-Burdick*. *Id.* at 714 (articulating a three-tiered standard of review). The Idaho Supreme Court rejected the *Anderson-Burdick* test in the context of a challenge to a term limits pledge. The Court held

	that the statute infringes on the right to vote guaranteed by the Idaho Constitution's Right of Suffrage Clause. It wrote: "This Court has previously held that if a fundamental right is at issue, the appropriate standard of review to be applied to a law infringing on that right is strict scrutiny." *Van Valkenburgh v. Citizens for Term Limits*, 15 P.3d 1129, 1134 (Idaho 2000).
Illinois	Illinois courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. The Illinois Supreme Court has written: "Where challenged legislation implicates a fundamental constitutional right, . . . such as the right to vote, the presumption of constitutionality is lessened and a far more demanding scrutiny is required. When the means used by a legislature to achieve a legislative goal impinge upon a fundamental right, the court will examine the statute under the strict scrutiny standard." *Tully v. Edgar*, 664 N.E.2d 43, 47 (Ill. 1996).
Indiana	Indiana courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision. Addressing a challenge to a voter ID statute under the state constitution's elector qualifications and equal privileges and immunities provisions, the Indiana Supreme Court did not invoke *Anderson-Burdick*. It instead applied a distinctive state framework that asked whether "(a) the disparately treated classifications are rationally distinguished by distinctive, inherent characteristics, and (b) such disparate treatment is reasonably related to such distinguishing characteristics." *League of Women Voters of Indiana, Inc. v. Rokita*, 929 N.E.2d 758 (Ind. 2010); *see also Indiana Gaming Com'n v. Moseley*, 643 N.E.2d 296 (Ind. 1994) (writing in the context of an Equal Privileges and Immunities challenge that, "while voting is a fundamental right, not all restrictions trigger such strict scrutiny"). Plaintiffs did not bring a claim under the state's Free and Equal Elections Clause.
Iowa	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*.

	Addressing a challenge to a statute prohibiting county auditors from using voter registration databases to correct incorrect information or fill in missing information on absentee ballot requests without contacting the applicant, the Iowa Supreme Court adopted the stronger sliding-scale version of *Anderson-Burdick*. *League of United Latin American Citizens of Iowa v. Pate*, 950 N.W.2d 204, 209 (Iowa 2020). The Court did not specify, however, what constitutional provisions it was applying, so the scope of its ruling is not clear.
Kansas	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. The Kansas Supreme Court held that the right to suffrage is an enumerated political right protected by Article 5 of the Kansas Constitution. *League of Women Voters of Kansas v. Schwab*, 549 P.3d 363, 380 (Kan. 2024). However, the court declined to find that there is a fundamental, natural right to vote protected by the state constitution's Bill of Rights. *Id.* at 379. Nonetheless, the court emphasized that a law may be impermissible even if it does not violate Article 5 of the Kansas Constitution if the regime designed by the legislature fails to comply with other constitutional guarantees, such as those of equal protection, due process, and free speech. The court held that the challenged signature verification requirement was only constitutional if the requirement, and its implementation, "achieve[d] reasonable uniformity on objective standards" and "provide[d] reasonable notice of defects and an opportunity to cure." *Id.* at 384. This goes beyond mere rational basis review.
Kentucky	Kentucky courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points towards a standard more rigorous than weak-form *Anderson-Burdick*. In the state equal protection context, the Kentucky Supreme Court has indicated that strict scrutiny is the standard: "Statutes that substantially affect the exercise of a fundamental right, including the right to vote, are subject to strict scrutiny when challenged on

	equal protection grounds." Graham v. Adams, 684 S.W.3d 663 (Ky. 2023). *See also Mobley v. Armstrong*, 978 S.W.2d 307, 309 (Ky. 1998) ("Rational basis analysis is used when an equal protection claim does not involve a suspect class such as race or gender or interfere with a fundamental right such as the right to privacy or the right to vote. The right to candidacy is not a fundamental right. Therefore, the right to candidacy, unlike the right to vote, does not always require strict scrutiny.").
Louisiana	No relevant cases found.
Maine	Maine courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. When considering whether the COVID-19 pandemic required a modification of the deadline for receipt of absentee ballots to be compliant with the Maine Constitution's absentee voting provision, the Maine Supreme Court used a test modeled after the stronger sliding-scale version of *Anderson-Burdick*. *Alliance for Retired Americans v. Sec'y of State*, 240 A.3d 45, 54 (Me. 2020). Elsewhere, the Maine Supreme Court has stated that "[v]oting is a fundamental right, it is at the heart of our democratic process." *Opinion of the Justices*, 162 A.3d 188, 207 (Me. 2017). Separately, in the state due process context, it has stated that when a statute infringes a fundamental constitutional right, strict scrutiny applies. *Doe I v. Williams*, 61 A.3d 718 (Me. 2013) ("If state action infringes on a fundamental right or fundamental liberty interest, the infringement must be narrowly tailored to serve a compelling state interest.").
Maryland	Maryland courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. In the ballot access context, the Maryland Court of Appeals used *Anderson-Burdick*-type analysis to uphold petition signature requirements that it concluded were minimally burdensome. *Burruss v. Board of County Commissioners of Frederick County*, 46

	A.3d 1182 (Md. 2012). The Maryland Supreme Court, however, has subjected more burdensome ballot access rules to strict scrutiny and emphasized that "the federal and state guarantees of equal protection are obviously independent and capable of divergent application." *Maryland Green Party v. Maryland Bd. of Elections*, 832 A.2d 214, 232 (Md. 2003) (citations and internal quotation marks omitted).
Massachusetts	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. When considering a challenge to a voting restriction under the state constitution's right-to-vote provision, the Massachusetts Supreme Judicial Court has applied "different levels of scrutiny depending on the substantiality of the interference." *Chelsea Collaborative, Inc. v. Secretary of Commonwealth*, 100 N.E.3d 326, 331-32 (Mass. 2018). "Because the right to vote is a fundamental one . . ., a statute that significantly interferes with that right is subject to strict judicial scrutiny. . . . By contrast, statutes that do not significantly interfere with the right to vote but merely regulate and affect the exercise of that right to a lesser degree are subject to rational basis review to assure their reasonableness." *Id.*; *see also Grossman v. Secretary of the Commonwealth*, 151 N.E.3d 429 (Mass. 2020) (stating that the state framework may involve subjecting statutes to intermediate level scrutiny—rather than just either strict scrutiny or rational basis). This approach resembles the stronger sliding-scale version of *Anderson-Burdick* test, and the Court has observed that "there may be circumstances where the Massachusetts Declaration of Rights and art. 3 require application of this analysis in a manner that 'guard[s] more jealously against the exercise of the State's police power' than the application of the framework under the Federal Constitution." *Chelsea Collaborative*, 100 N.E.3d at 333.
Michigan	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*, and new constitutional provisions may point toward strict scrutiny. When considering a challenge to a voter ID statute that focused primarily on the state constitution's equal protection provision, the Michigan Supreme Court has applied the sliding-scale version of

	Anderson-Burdick. *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 740 N.W.2d 444, 463 (Mich. 2007). The Michigan Constitution, however, was amended in 2022 to bolster its right-to-vote protections, so the continued force of this ruling is in doubt. *See* Mich. Const. art. II, § 4(1)(a) (prohibiting laws that have "the intent or effect or denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote").
Minnesota	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. When considering a state right-to-vote challenge to a statute limiting the number of absentee ballots that could be delivered by a single agent, the Minnesota Supreme Court applied the stronger sliding-scale version of *Anderson-Burdick*. *DSCC v. Simon*, 950 N.W.2d 280, 291-93 (Minn. 2020). The Court, however, has not committed to applying the test identically to federal courts. *Kahn v. Griffin*, 701 N.W.2d 815, 834 (Minn. 2005) (keeping the door open to finding, in the future, that the Minnesota Constitution grants greater protections than the U.S. Constitution).
Mississippi	Mississippi courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. However, the Mississippi Supreme Court has held that acts abridging fundamental rights are subject to strict scrutiny, *see, e.g.*, *Doe v. Doe*, 644 So.2d 1199, 1209 (Miss. 1994) ("[A]ny attempt to abridge this fundamental right is required to pass muster under "strict scrutiny" analysis.") (Lee, J., concurring). And, at least in the context of federal equal protection challenges, the Court has described the right to vote as fundamental. *Wells by Wells v. Panola County Bd. of Educ.*, 645 So.2d 883 (Miss. 1994).
Missouri	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. Although Missouri has adopted a two-tiered test similar to *Anderson-Burdick* for voting restriction claims brought under the state's Free Elections Clause, Missouri has applied rational basis review with more bite than the weak federal version of the

	standard. *Priorities USA v. State*, 591 S.W.3d 448, 453 (Mo. 2020). The Court held that the state's affidavit alternative to providing photo ID at polling locations was not rationally related to the interest of combating voter fraud. *Id*.
Montana	Montana courts apply a standard more rigorous than weak-form *Anderson*-Burdick. Voting is a fundamental right under the Montana Constitution. When a fundamental right is *impermissibly* burdened by a statute, the statute is subject to strict scrutiny. When a fundamental right is only *minimally* burdened by a statute, the statute is subject to middle-tier analysis. Under middle-tier analysis, first, the government must show that the statute is reasonable and non-arbitrary. Second, if the statute is reasonable, the asserted interest is then weighed against the burden on the right. When asserting an interest, mere recitation of a compelling state interest is not conclusive. *Montana Democratic Party v. Jacobsen*, 545 P.3d 1074, 1091 n.8 (Mont. 2024).
Nebraska	Nebraska courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision. In a redistricting case, the court applied the *Anderson-Burdick* test, but only in the context of explaining that the free speech guarantees of the state and federal constitutions were coextensive. *Pick v. Nelson*, 528 N.W.2d 309, 316-17 (Neb. 1995).
Nevada	Nevada courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. In the equal protection context, the Nevada Supreme Court has held that statutes implicating fundamental rights are subject to strict scrutiny. *Williams v. State*, 50 P.3d 1116, 1120 (Nev. 2002). The Nevada Supreme Court has also described the right to vote as fundamental. *E.g.*, *Clark County v. City of Las Vegas*, 550 P.2d 779, 792 (Nev. 1976) ("It is, of course, well established that the right to vote is fundamental in a free democratic society."). In an unpublished order, the court has indicated that a less stringent standard may be appropriate when reviewing laws that

	expand the franchise, but the court distinguished restrictive laws from non-restrictive ones. *Election Integrity Project of Nevada, LLC v. Eighth Judicial District Court in and for County of Clark*, 473 P.3d 1021, at *2 (Nev. 2020) (declining to repudiate lower court's rational basis review of a statute that *expanded* vote by mail where petitioners did not allege any burden imposed on the right to vote).
New Hampshire	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. Considering a challenge to a voting restriction brought under the state's Free Elections Clause, the New Hampshire Supreme Court has applied a flexible test "similar to intermediate scrutiny." *Guare v. State*, 117 A.3d 731, 736, 738, 740 (N.H. 2015); *New Hampshire Democratic Party v. Secretary of State*, 262 A.3d 366, 378 (N.H. 2021) (declining to overrule *Guare* and invalidating a residency-verification procedure for creating an unreasonable burden on the right to vote). This is a more rigorous analysis than the weak two-tiered version of *Anderson-Burdick*.
New Jersey	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. Considering a challenge to an advance-registration requirement under the state constitution's voter qualifications provision, a New Jersey appellate court applied the stronger sliding-scale version of *Anderson-Burdick*. *Rutgers University Student Assembly v. Middlesex County Bd. of Elections*, 141 A.3d 335 (N.J. Super. Ct. App. Div. 2016). Even after finding a minimal burden on the right to vote, the court still undertook a rigorous analysis of the evidence supporting the state's interest in advance registration. *Id.* at 344-47. The New Jersey Supreme Court has not directly addressed the proper standard of review in such a case.
New Mexico	Precedent points toward strict scrutiny. The New Mexico Supreme Court has recognized that the right to vote is "a fundamental personal right or civil liberty, which ordinarily . . . warrant[s] strict scrutiny." *Grisham v. Van Soelen*, No. S-1-SC-39481, 2023 WL 6209573, at *15 (N.M. Sept. 22, 2023); *see also Marrujo v. New Mexico State Highway Transp. Dept.*, 887 P.2d 747, 751 (N.M. 1994) ("Strict scrutiny applies when the violated interest

	is a fundamental personal right or civil liberty—such as . . . voting . . . ."); *Torres v. Village of Capitan*, 582 P.2d 1277, 1283 (N.M. 1978) (declining to apply strict scrutiny because the statute at issue did not infringe on "the fundamental right to vote.").
New York	New York courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. In the equal protection context, the New York Court of Appeals has held that when a statute infringes on a fundamental right, strict scrutiny applies, *Golden v. Clark*, 561 N.E.2d 611, 613 (N.Y. 1990), and that voting is a fundamental right, *id.* at 614. The Court of Appeals has invoked *Anderson-Burdick* in cases raising federal constitutional challenges to ballot access laws, but even in these federal-law cases the Court's review appears to have been more stringent than the weak two-tiered form of the standard. *See LaBrake v. Dukes*, 758 N.E.2d 1110 (N.Y. 2001) (finding a severe burden and applying strict scrutiny).
North Carolina	North Carolina courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. However, in a redistricting challenge brought under the state constitution's Whole-County Provisions, the Court wrote: "It is well settled in this State that 'the right to vote on equal terms is a fundamental right. The classification of voters into both single-member and multi-member districts within plaintiffs' proposed remedial plans necessarily implicates the fundamental right to vote on equal terms, and thus strict scrutiny is the applicable standard." *Stephenson v. Bartlett*, 562 S.E.2d 377, 378 (2002) (citations omitted).
North Dakota	North Dakota courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny.

	However, the North Dakota Supreme Court has held that "[a] statute which restricts a fundamental right is subject to strict scrutiny standard of review which will only be justified if it furthers a compelling government interest and is narrowly tailored to serve that interest." *Wrigley v. Romanick*, 988 N.W.2d 231, 242 (N.D. 2023). And the Court has elsewhere held that the right to vote is fundamental. *E.g.*, *Poochigian v. City of Grand Forks*, 912 N.W.2d 344, 349 (N.D. 2018).
Ohio	Ohio courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. In a voting rights challenge brought under both the state and federal Equal Protection Clauses, an Ohio appellate court wrote that, "once a fundamental right . . . is shown to be involved, the state must assume the heavy burden of proving that the legislation is constitutional," and the court subjected the statute to strict scrutiny. *Bd. of Lucas Cty. Comm'rs v. Waterville Twp. Bd. of Trustees*, 870 N.E.2d 791, 798 (Ohio Ct. App. 2007). This is consistent with statements from Ohio Supreme Court that, "[i]f the challenged legislation impinges upon a fundamental constitutional right, courts must review the statutes under the strict-scrutiny standard," *Harrold v. Collier*, 836 N.E.2d 1165, 1171 (Ohio 2005), and, in the equal protection context, that "[t]he right to vote is a fundamental right," *Desenco, Inc. v. Akron*, 706 N.E.2d 323, 332 (Ohio 1999). In a recent case involving election observers (rather than a voting restriction), the Ohio Supreme Court applied rational basis after concluding that the law did "not burden the right vote." *State ex rel. Maras v. LaRose*, 213 N.E.3d 672, 678 (Ohio 2022).
Oklahoma	Precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. Considering a challenge to voter ID brought under the state's right-to-vote provision, the Oklahoma Supreme Court applied a balancing test that "consider[ed] whether the law was designed to protect the purity of the ballot, not as a tool or instrument to impair

	constitutional rights" and whether it "reflects a conscious legislative intent for electors to be deprived of their right to vote." *Gentges v. State Election Bd.*, 419 P.3d 224, 228 (Okla. 2018). The analysis cited federal cases such as *Anderson*, *Burdick*, and *Crawford*, but did not purport to proceed in lockstep with those cases. *Id.* at 230.
Oregon	Oregon courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. The Oregon Supreme Court has previously rejected federal balance-of-interests analysis when considering a ballot access case under Oregon law. Instead, the Court wrote that its proper function was "to determine what the specific provisions of the constitution require and to apply those requirements to the case before it." The Court proceeded to consider "whether a purpose of these [challenged] statutes [was] to [unconstitutionally] protect the major political parties from rival political organizations." *Libertarian Party of Oregon v. Roberts*, 750 P.2d 1147, 1151, 1153 (Ore. 1988).
Pennsylvania	Precedent points toward strict scrutiny. A Pennsylvania Commonwealth Court most directly addressed the standard of review question in a voting restriction case brought under the state constitution's right-to-vote provision, holding that a voter ID law was subject to strict scrutiny because it infringed on the fundamental right to vote guaranteed by the state's Free and Equal Elections Clause. *Applewhite v. Commonwealth*, 2014 WL 184988 (Pa. Cmwlth. 2014) (unpublished). The Pennsylvania Supreme Court has not squarely addressed the question. However, the Court has stated that voting is a fundamental right guaranteed by the state's Free and Equal Elections Clause. *Banfield v. Cortes*, 110 A.3d 155, 178 (Pa. 2015). And the Court has held, in the equal protection and due process contexts, that acts impinging on fundamental rights are subject to strict scrutiny. *See, e.g.*, *Shoul v. Commonwealth, Dept. of Trans., Bureau of Driver Licensing*, 173 A.3d 669, 677 (Pa. 2017); *William Penn School Dist. v. Pennsylvania Dept. of Educ.*, 170 A.3d 414 (Pa.

	2017). The Court has not indicated that the right to vote is an exception to this general rule. As with other courts, the Pennsylvania Supreme Court reviews election laws that do not restrict the vote more permissively. *See, e.g.*, *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Penn. 2020) (citing *Anderson* and *Burdick* approvingly in discussion of poll watcher requirements and applying rational basis because no fundamental right was involved); *Banfield v. Cortes*, 110 A.3d 155 (Pa. 2015) (declining to subject implementation of electronic voting systems to strict scrutiny).
Rhode Island	Rhode Island courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. In the state constitutional equal protection and due process context, the Rhode Island Supreme Court has written: "If a statute impinges on a fundamental right . . . this Court must examine the statute with 'strict scrutiny.'" *Cherenzia v. Lynch*, 847 A.2d 818, 823 (R.I. 2004); *see also Federal Hill Capital, LLC v. City of Providence by and through Lombardi*, 227 A.3d 980 (R.I. 2020). The Court has described voting as a fundamental right with reference to federal case law and has noted that it retains the "prerogative to interpret its equal protection and due process provisions in a manner "more protective" than the federal constitution. *Id*. at 989; *see also Providence Teachers' Union Local 958, AFL-CIO, AFT v. City Council of City of Providence*, 888 A.2d 948, 956 (R.I. 2005) (noting that federal constitutional guarantees "in no way limit" those protections secured by analogous provisions in the Rhode Island Constitution).
South Carolina	South Carolina courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. The South Carolina Supreme Court has written: "The right to vote is a fundamental right protected by heightened scrutiny under the [state and U.S.] Equal Protection Clause[s]." *Sojourner v. Town of*

	St. George, 679 S.E.2d 182 (S.C. 2009); *see also State v. Thompson*, 563 S.E.2d 325, 329-30 (S.C. 2002) ("The fundamental rights which usually are protected by heightened scrutiny are personal rights such as the rights to vote . . ."). In the equal protection and due process context, the Court has stated: "Legislation restricting or impairing a fundamental right or implicating a suspect class is subject to "strict scrutiny" to determine its constitutionality," *Planned Parenthood South Atlantic v. State*, 882 S.E.2d 770, 804 (S.C. 2023). The Court has not indicated that a less stringent standard would apply to a state constitutional voting rights challenge.
South Dakota	No relevant cases found.
Tennessee	Tennessee courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. *Cf. Fisher v. Hargett*, 604 S.W.3d 381, 398 (Tenn. 2020) ("This Court has not definitively determined the appropriate analytical framework by which to evaluate claims alleging violations of the Tennessee constitutional right to vote.") In a challenge to the state's absentee and mail-in voting regulations during the COVID-19 pandemic, the Tennessee Supreme Court assumed *without deciding* that the *Anderson-Burdick* framework applied to claims brought under the state's Free Elections Clause. *Id.* at 400. Additionally, the version of the test described by the Court calls for more than mere rational basis review even when the burden on the right is only "moderate," making it more rigorous than the two-tiered federal version of *Anderson-Burdick*. *Id.*
Texas	Precedent points toward weak-form *Anderson-Burdick*. Texas has applied what appears to be the two-tiered version of *Anderson-Burdick* to vote restriction claims brought under the state Equal Protection Clause. *Abbott v. Anti-Defamation League, Austin, Southwest, and Texoma Regions*, 610 S.W. 3d 911, 920 (Tex. 2020). It is not entirely clear that the Court would apply the same test if presented with a claim brought under another constitutional provision, such as the state's Free Elections Clause.

Utah	Utah courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. However, the Utah Supreme Court has indicated that the appropriate standard of review is heightened scrutiny. *See Gallivan v. Walker*, 54 P.3d 1069, 1086 (Utah 2002) (explaining that heightened scrutiny applies in a challenge to an act that restricts a fundamental right guaranteed by the Utah Constitution, such as the right to initiative, which the Court analogized to the right to vote). The Court has also reiterated that the right to vote is fundamental: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right." *Id.* at 1080-81 (citations and quotation marks omitted).
Vermont	Vermont courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but precedent points toward a standard more rigorous than weak-form *Anderson-Burdick*. If the Vermont Supreme Court were to apply a standard akin to *Anderson-Burdick* to state constitutional claims, there are indications that its review would be more rigorous than the weak two-tiered version of the test. When applying the *Anderson-Burdick* test to federal constitutional claims, the Court held that some evidence is required to support the state's claimed interests even when applying rational basis review. *Anderson v. State*, 82 A.3d 577, 582 (Vt. 2013) (explaining that "deferential review is not shorthand for 'rubber stamp'" and "the State 'cannot rely on hollow or contrived arguments as justifications.'").
Virginia	Virginia courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny.

	In the due process and equal protection contexts, Virginia courts have written that fundamental rights are subject to strict scrutiny. *E.g.*, *F.E. v. G.F.M.*, 547 S.E.2d 531 (Va. Ct. App. 2001). The Virginia Supreme Court has also described voting as a fundamental right. *Pulliam v. Coastal Emergency Services of Richmond, Inc.*, 509 S.E.2d 307 (Va. 1999). When applying *Anderson-Burdick* to federal constitutional claims, lower Virginia courts have split on which version of the *Anderson-Burdick* test to use. *Compare Omari Faulkner for Virginia v. Virginia Department of Education*, 104 Va. Cir. 373, 2020 WL 8971534 (Va. Cir. 2020) (unpublished) (using the sliding-scale version of *Anderson-Burdick*), *with Williams v. Legere*, 886 S.E.2d 292 (Va. App. 2023) (applying the two-tiered version).
Washington	In the case involving a challenge to an absentee signature verification law, the Washington Supreme Court declined to adopt *Anderson-Burdick* and instead adopted a sliding scale test where the degree of scrutiny is proportional to the burden. *Vet Voice Foundation v. Hobbs*, 564 P. 3d 978, 989 (Wash. 2025). The court noted "that for more than a century, this court has carefully scrutinized statutes that exclude a category of otherwise-eligible voters and effectively applied strict scrutiny, even before the term was coined." *Id*. at 988. Even if strict scrutiny is not applied to every regulation that touches about elections and voting, precedent strongly suggests that Washington courts will apply a standard more vigorous than federal *Anderson-Burdick*. *Id.* ("Given the uncertainty of the *Anderson-Burdick* framework, we decline to adopt it at this time.").
West Virginia	West Virginia courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. In the equal protection context, the West Virginia Supreme Court has held that "the strict scrutiny test is required when the law or governmental action at issue impinges upon a fundamental right." *Board of Educ. of County of Kanawha v. West Virginia Bd. of Educ.*, 639 S.E.2d 893, 899 (W.Va. 2006). The West Virginia Constitution includes a right to vote, and the Court has elsewhere described

	fundamental rights as those "explicitly or implicitly protected by the West Virginia Constitution." *Phillip Leon M. v. Greenbrier County Bd. of Educ.*, 484 S.E.2d 909, 913 (W.Va. 1996). In a ballot access case, the West Virginia Supreme Court applied *Anderson-Burdick* analysis to the plaintiff's joint federal and state constitutional freedom of association claim. *State ex rel. Blankenship v. Warner*, 825 S.E.2d 309, 318-19 (W. Va. 2018).
Wisconsin	Precedent points toward weak-form *Anderson-Burdick*. The Wisconsin Supreme Court adopted the two-tiered approach to *Anderson-Burdick* and applied it to a vote restriction claim brought under the state's right-to-vote provision. *Milwaukee Branch of NAACP v. Walker*, 851 N.W.2d 262, 279 (Wis. 2014) ("Strict scrutiny applies only when a statute imposes a severe burden on the exercise of the franchise.").
Wyoming	Wyoming courts have not directly addressed the standard of review that applies when voting restrictions are challenged under a state constitutional right-to-vote provision, but some precedent points toward strict scrutiny. In a challenge to a law that expanded access to the franchise, the Wyoming Supreme Court carefully distinguished between election statutes that do and do not burden the right to vote, explaining that, "The right to vote is fundamental, and we construe statutes that confer or extend the elective franchise liberally (*as opposed to those limiting the right to vote in some way, which then invokes strict scrutiny*)." *Shumway v. Worthey*, 37 P.3d 361, 366 (Wyo. 2001) (emphasis added).

[1] *See, e.g.*, Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 MICH. L. REV. 859, 879-81 (2021) (discussing state constitutions' strong commitments to popular sovereignty, majority rule, and political equality); Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 VAND. L. REV. 89, 129 (2014) ("[S]tate constitutions go well beyond the U.S. Constitution in granting voting rights. Judicial interpretation should follow suit.").
[2] *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992).
[3] *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

[4] *See, e.g.*, Edward B. Foley, Voting Rules and Constitutional Law, 81 GEO. WASH. L. REV. 1836, 1847-51, 1854-59 (2013) (discussing the indeterminacy of the *Anderson-Burdick* test and its application by federal courts).
[5] *See, e.g.*, *Crawford*, 553 U.S. at 190 n.8 (plurality opinion).
[6] *See, e.g.*, *id.* at 205 (Scalia, J., concurring).
[7] *See generally* Joshua A. Douglas, *Undue Deference to States in the 2020 Election Litigation*, 30 WM. & MARY BILL OF RIGHTS J. 59 (2021) (explaining how courts have largely abandoned the flexible standard originally articulated in *Anderson* that subjected even those election laws that did not impose a severe burden to intermediate scrutiny).
[8] Bulman-Pozen & Seifter, *The Democracy* Principle, supra note 1, at 870-71; Douglas, *The Right to Vote*, supra note 1, at 104; The Democracy Principle, *Suffrage*, https://democracyprinciple.law.wisc.edu/category?c=su.