

ALASKA'S CONSTITUTION AND FELONY DISENFRANCHISEMENT: A HISTORICAL AND LEGAL ANALYSIS

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ABSTRACT

A disproportionately high segment of Alaska's incarcerated population is non-white, placing many of these citizens under the purview of the state's felony disenfranchisement statute. This Article argues that the Alaska legislature has impermissibly broadened the scope of the felony disenfranchisement provision over time. This provision, expressly included in the Alaska Constitution and specifically debated during the convention, permits the revocation of voting rights for a person convicted of a felony involving "moral turpitude." Rather than leave the definition of this provision to the courts, the Alaska legislature has toyed repeatedly with identifying the crimes that involve moral turpitude. Not only is the current statute impermissibly broad but its existence exceeds the legislature's authority and stands in contravention of several provisions in the state constitution. Combined, these realities warrant a challenge to the provision's validity under state law.

I. INTRODUCTION

Felony disenfranchisement, or taking the right to vote away from convicted felons, is a common practice in the United States, to varying degrees.¹ In Alaska, the practice likely has racially imbalanced impact, as evidenced by available, albeit clumsy, demographic statistics and

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1. See *Felony Disenfranchisement Laws in the United States*, THE SENTENCING PROJECT 1 (Apr. 28, 2014), <http://www.sentencingproject.org/publications/felony-disenfranchisement-laws-in-the-united-states> (noting that thirty-five states prevent those on parole from voting, eight states disenfranchise certain categories of felons or have waiting periods before re-enfranchisement, and four states entirely bar those with felony convictions from voting).

incarceration rates.² According to the United States Census Bureau, in 2019 American Indians and Alaska Natives make up 15.4% of the state's population, while Black Americans make up 3.8%.³ Whites made up 65.3% of the state population.⁴ In terms of the state's 2018 prison population, Alaska Natives made up 37.32% of the incarcerated population, while Black Americans made up 10.37%.⁵ Comparatively, whites made up 43.10% of the incarcerated population.⁶ It stands to reason that the state's felony disenfranchisement laws might affect these minority groups more significantly than they affect white Alaskans. However, if one wishes to challenge these laws, there are limited means to do so.

In 1974, the United States Supreme Court held felony disenfranchisement is constitutional, and that decision still stands.⁷ While at least one scholar proposed that Alaska's laws could be a violation of the Voting Rights Act of 1965, developments in the Ninth Circuit's jurisprudence nullifies this argument.⁸ It is likely felony disenfranchisement will continue to be allowed under federal law for the foreseeable future.

Given the concerning impact of Alaska's felony disenfranchisement laws and their legality under federal law, there appears to be only one source of law remaining in which they might be challenged: the state constitution. In other states, voting rights have been restored at the ballot box, by the executive branch, or by the legislature.⁹ But the Alaska

2. Christopher R. Murray, *Felon Disenfranchisement in Alaska and the Voting Rights Act of 1965*, 23 ALASKA L. REV. 289, 289 (2006). As Murray puts it, "[i]ncarceration rates are, at best, an imprecise proxy for felon disenfranchisement. They are over-inclusive in that they include those inmates who are ineligible to vote, as well as those incarcerated for misdemeanors, and they are under-inclusive in that they do not include parolees or Alaska felons incarcerated outside of the state who are also unable to vote." *Id.* at 295 n.41.

3. *QuickFacts Alaska*, U.S. CENSUS BUREAU, [https:// doc.alaska.gov/admin/docs/2018Profile.pdf?08072019](https://doc.alaska.gov/admin/docs/2018Profile.pdf?08072019) (last visited Nov. 19, 2019).

4. *Id.*

5. ALASKA DEP'T OF CORRS., 2018 ALASKA OFFENDER PROFILE 11 (2019), [https:// doc.alaska.gov/admin/docs/2018Profile.pdf?08072019](https://doc.alaska.gov/admin/docs/2018Profile.pdf?08072019).

6. *Id.*

7. *Richardson v. Ramirez*, 418 U.S. 24, 55-56 (1974).

8. For the argument that felony disenfranchisement violates the Voting Rights Act of 1965, see Murray, *supra* note 2, at 308-312. For a counterargument, see Deborah Periman, *9th Circuit Update: En Banc Order Vacates Felon Disenfranchisement Opinion*, 27(3) ALASKA JUSTICE FORUM 4, 4 (2010).

9. Greg Allen, *Florida Law Restoring the Vote To Felons takes Effect*, NPR (Jan. 8, 2019) <https://www.npr.org/2019/01/08/683108763/florida-law-restoring-the-vote-to-former-felons-takes-effect>; Laura Vozzella, *McAuliffe Restores Voting Rights to 13,000 Felons*, THE WASHINGTON POST (Aug. 22, 2016) <https://www.washingtonpost.com/local/virginia-politics/mcauliffe-restores-voting-rights-to-13000-felons/2016/08/22/2372bb72-6878-11e6-99bf->

legislature has been part of the problem, as discussed below, and there is currently no indication that the governor or voters will take any action in response. Frustrated activists in Minnesota confronted a similar situation, and are turning to the judiciary and the state constitution after inaction by the legislature.¹⁰

It is that method that this Article explores: the constitutionality of Alaska's system of felony disenfranchisement under the state constitution. This analysis can serve as a model for challenging the laws in the future and a method others could use to challenge felony disenfranchisement laws in other states.

At the outset, it is necessary to note that felony disenfranchisement is codified in the Alaska Constitution, although with qualifying language.¹¹ In order to gain an understanding of the current state of the system, we must first examine the history of felony disenfranchisement in the last frontier. Part II of this Article examines, in detail, how felony disenfranchisement came into being in Alaska and how it evolved to reach its modern form. Overall, the history shows growth in the breadth of the laws from statehood to today.

Next, Part III of this Article uses the evidence from the historical record, combined with additional sources, in order to advance three arguments that Alaska's system of felony disenfranchisement is unconstitutional under the state constitution. First, I argue that the legislature's statutory definition of the term "felony involving moral turpitude," which appears in the state constitution, exceeds the legislative body's powers.¹² Second, I argue that the legislative definition of "felony involving moral turpitude," regardless of the legislature's power to define the phrase, goes beyond the scope of the technical meaning and intent behind the qualifying phrase "moral turpitude." Third, I contend that the state's current structure of laws is inconsistent with two other provisions of the state constitution: state equal protections and the

f0cf3a6449a6_story.html; Connor Sheets, *Gov. Ivey Signs Bill Restoring 'Thousands' of Alabama Felons' Right to Vote*, AL.COM (Mar. 6, 2019) https://www.al.com/news/2017/05/gov_ivey_signs_bill_restoring.html; Eric Cox, *Released Felons Gain Right to Vote in Maryland After Veto Override*, THE BALTIMORE SUN (Feb. 9, 2016) <https://www.baltimoresun.com/politics/bs-md-felons-voting-20160209-story.html>.

10. Peter Callaghan, *Why the Push to Restore Felon Voting Went From a Political Issue to a Legal One*, MINNPOST (Oct. 29, 2019) <https://www.minnpost.com/state-government/2019/10/why-the-push-restore-felon-voting-rights-in-minnesota-went-from-a-political-issue-to-a-legal-one/>.

11. ALASKA CONST. art. V, § 2. (disenfranchising felons convicted of a "felony involving moral turpitude"). Much of this Article will focus on the meaning of qualifying phrase, "involving moral turpitude."

12. *Id.*

constitutional purpose of the state's criminal administration.¹³ While these arguments are not an exhaustive catalog of all possible challenges under state law, they seem to be the strongest arguments in light of the historical record and Alaska Supreme Court precedent. The ultimate hope behind advancing these arguments is that Alaska's laws will be challenged in state court in the near future.

II. HISTORY AND EVOLUTION OF FELONY DISENFRANCHISEMENT IN ALASKA

Since statehood, Alaska has established a mechanism for felony disenfranchisement.¹⁴ As this Article will demonstrate, the scope of the practice in Alaska largely hinges upon the specialized definition of the phrase "moral turpitude."¹⁵ This phrase was discussed and ultimately adopted by the state constitutional convention to modify what felonies merit disenfranchisement (although it was not adopted by the convention, despite being proposed, to modify recall of public officials). The state legislature has since defined and expanded the phrase. Overall, this historical narrative demonstrates a general expansion of felony disenfranchisement in Alaska from the early days of statehood to modern times. This historical section of the Article proceeds in two parts. First, I begin with an investigation of the concept at the Alaska Constitutional Convention. Second, I consider the Alaska legislature's interaction with the practice through the adoption and expansion of two key statutes.

A. State Constitutional Convention

Felony disenfranchisement is codified in the Alaska Constitution.¹⁶ It is paired with the loss of voting rights for those of "unsound mind" in article V, section 2.¹⁷ The full text reads, "[n]o person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined of unsound mind unless the disability has been removed."¹⁸ This language was adopted at the Alaska Constitutional Convention.¹⁹

13. For state equal protections, see ALASKA CONST. art. I, § 1. For the purpose of criminal administration, see *id.* art. I, § 12.

14. *Id.* art. V, § 2.

15. See *infra* Part III.

16. *Id.*

17. *Id.*

18. *Id.*

19. The actions, debates, and reports of the Alaska Constitutional Convention are contained in a multivolume series of documents and transcribed audio recordings. See generally ALASKA CONSTITUTIONAL CONVENTION, MINUTES OF THE

The framers used similar, though slightly different language from what was originally proposed by the Report of the Committee on Suffrage, Elections, and Apportionment.²⁰

The chairman of the Committee on Suffrage, Elections, and Apportionment was delegate John S. Hellenthal, an Alaska-born lawyer from Anchorage.²¹ In his cover letter to the Committee Report, he described the felony disenfranchisement provision as a measure that “disenfranchises those convicted of felonies involving moral turpitude, leaving the matter of restoration of civil rights to the responsible agencies of government.”²² The original text submitted by the Committee read, “[n]o person judicially determined to be of unsound mind and no person convicted of a felony involving moral turpitude, unless pardoned and restored to his civil rights, shall be qualified to vote in any State or local election.”²³ This was not the language adopted by the convention.

When the full convention discussed the provision, debate began by focusing upon the loss of voting rights for those of unsound mind. The convention turned to the felony disenfranchisement provision after Mildred R. Hermann, a delegate and lawyer from Juneau, proposed an amendment and asked unanimous consent.²⁴ Her amendment sought to delete the phrase “involving moral turpitude.”²⁵ Delegate George Sundborg, a newspaperman from Juneau, objected.²⁶ Mrs. Hermann responded by moving for the amendment, which was seconded by delegate Yule Kilcher, a farmer and journalist from Homer.²⁷ This triggered a discussion between the delegates over the amendment and the meaning of using “involving moral turpitude” to modify felony disenfranchisement.

At the prompting of Mr. Sundborg, Mrs. Hermann provided the reason for her amendment, stating, “I don’t think there is such a thing as a felony that does not involve moral turpitude, so I don’t see the necessity of the three words.”²⁸ Mr. Hellenthal argued, “not all felonies involve moral turpitude,” and pointed out the phrase was a commonly used

DAILY PROCEEDINGS (1965).

20. For the committee report, see *Article on Suffrage and Elections* (Dec. 5, 1955), in 6 ALASKA CONSTITUTIONAL CONVENTION MINUTES OF THE DAILY PROCEEDINGS 1-3 (1965) [hereinafter *Article on Suffrage and Elections*].

21. VICTOR FISCHER, ALASKA’S CONSTITUTIONAL CONVENTION 76, 271 (1975).

22. *Article on Suffrage and Elections*, *supra* note 20, at 66.

23. *Id.* at 3.

24. 2 ALASKA CONSTITUTIONAL CONVENTION MINUTES OF THE DAILY PROCEEDINGS 885-90 (1965) [hereinafter 2 PROCEEDINGS]; FISCHER, *supra* note 21, at 271.

25. 2 PROCEEDINGS, *supra* note 24, at 890.

26. *Id.*; FISCHER, *supra* note 21, at 274.

27. 2 PROCEEDINGS, *supra* note 24, at 890; FISCHER, *supra* note 21, at 271.

28. 2 PROCEEDINGS, *supra* note 24, at 890.

qualification.²⁹ He then elaborated on the phrase's adoption. He noted that other language was considered but the Committee eventually "adopted this language on the advice of the [unnamed] adviser who agreed with that contention and who felt that we should not require all persons convicted of any felony to have to go before the pardon board."³⁰ He also stated the Committee wanted to disenfranchise only "those [felons convicted] of the more serious felonies."³¹ Finally, Mr. Hellenthal pointed to the different classifications of felonies throughout the country as a basis for the inclusion of the "moral connotation."³² When pressed further about which felonies involved "moral turpitude," Mr. Hellenthal pointed out that the question "comes under the decisions of the courts."³³

There is no other substantive discussion of felony disenfranchisement in the Alaska Constitutional Convention Proceedings. However, the delegates discussed the qualifier "involving moral turpitude" at another point in the convention, while debating recall of public officials.³⁴ The recall provision proposed by the Committee on Direct Legislation read: "[g]rounds for recall are malfeasance, misfeasance, nonfeasance, or conviction of a crime involving moral turpitude."³⁵ The "moral turpitude" language came under debate when Mr. Hellenthal, who had defended the phrase in the felony disenfranchisement context, moved to strike "involving moral turpitude" from the recall section.³⁶ He argued that recall should apply to "a public official . . . irrespective of the nature of the crime."³⁷ In other words, a public official "should be subject to recall for the slightest offense."³⁸ As he put it, "I know of no reason in logic or morality or common decency which requires us to protect legislators to the extent that they can only be recalled for heinous crimes or those involving moral turpitude."³⁹ Put simply, Mr. Hellenthal argued, "'[m]oral turpitude' is too high a standard."⁴⁰ After more debate, the convention voted down Mr. Hellenthal's amendment.⁴¹ However, the final recall section did not

29. *Id.*

30. *Id.* at 890-91.

31. *Id.* at 891.

32. *Id.*

33. *Id.*

34. See ALASKA CONST. art. XI, § 8.

35. *Report of the Committee on Direct Legislation, Amendment and Revision* (Dec. 9, 1955) in 6 ALASKA CONSTITUTIONAL CONVENTION MINUTES OF THE DAILY PROCEEDINGS 17-25, 20 (1965).

36. 2 PROCEEDINGS, *supra* note 24, at 1207.

37. *Id.*

38. *Id.*

39. *Id.* at 1210.

40. *Id.* at 1208.

41. *Id.* at 1212.

contain the language “involving moral turpitude.” Instead, it read, “[a]ll elected public officials in the State, except judicial officers, are subject to recall. . . . Procedures and grounds for recall shall be prescribed by the legislature.”⁴² The convention decided to give the legislature the power to define the parameters of recall, and not to use the qualifying language of “moral turpitude,” or any other specific grounds for recall. The convention made a different decision when it chose to qualify felony disenfranchisement by including a “moral turpitude” standard, without any provision giving the legislature an express role in defining the language.

B. Alaska Statutes

There are mainly two modern statutes involved when investigating Alaska’s felony disenfranchisement laws in the context of the state constitution. First, section 15.05.030(a) of the Alaska Statutes states: “a person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law may not vote in a state, federal, or municipal election[.]”⁴³ The statute also prescribes a period of disenfranchisement (“from the date of the conviction through the date of the unconditional discharge of the person”), and gives the commissioner of corrections the power to decide how to advise a newly-released individual on voter registration, without automatically registering them.⁴⁴ The second important statutory provision is the legislative definition of “felony involving moral turpitude,” under section 15.80.010(10) of the Alaska Statutes:

“felony involving moral turpitude” includes those crimes that are immoral or wrong in themselves such as murder, manslaughter, assault, sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion, coercion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a forgery device, offering a false instrument for recording, scheme to defraud, falsifying business records, commercial bribe receiving, commercial bribery, bribery, receiving a bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor, escape, promoting contraband, interference with official proceedings, receiving a bribe by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical evidence, hindering prosecution,

42. ALASKA CONST. art. XI, § 8.

43. ALASKA STAT. § 15.05.030(a) (2018).

44. ALASKA STAT. § 15.05.030(a)-(b) (2018).

terroristic threatening, riot, criminal possession of explosives, unlawful furnishing of explosives, sex trafficking, criminal mischief, misconduct involving a controlled substance or an imitation controlled substance, permitting an escape, promoting gambling, possession of gambling records, distribution of child pornography, and possession of child pornography[.]⁴⁵

The current versions of both section 15.05.030 and section 15.80.010(10) of the Alaska Statutes have not been in place since statehood. Both provisions have changed in significant ways. In order to understand the changes in the law over time, it is necessary to examine the history of each provision individually.

1. AS 15.05.030: Enacting Felony Disenfranchisement

After statehood, the first version of a felony disenfranchisement statute adopted by the legislature did not contain a bifurcation of disenfranchisement for felonies “involving moral turpitude” and the definition of that phrase. Instead, the original version of the statute, titled “Voter Disqualification for Felony Conviction,” and adopted in 1960, read:

No person may vote who has been convicted either by the state courts of Alaska, by the courts of any other state or by the federal courts, of a felony under Alaska law involving moral turpitude under Alaska law unless his civil rights have been restored by law or by the proper authority in the jurisdiction in which the person was convicted. Felonies involving moral turpitude include, but are not limited to, the crimes of murder, abortion, rape, robbery, kidnapping, burglary, incest, and other crimes which are punishable by imprisonment in the penitentiary under Alaska law and which involve conduct contrary to justice, honesty, modesty, or good morals.⁴⁶

Immediately after statehood, the Alaska legislature adopted a single felony disenfranchisement statute that took the vote away for certain felonies and defined what felonies might merit the loss of the right to vote. The legislature’s construction of the law at that point focused heavily upon Alaska state law, requiring the “felony involving moral turpitude” to both be a felony under Alaska law and to “involve moral turpitude” under Alaska law. Finally, the legislature created a short list of felonies that “involve moral turpitude,” meaning the list to be illustrative, not exclusive.

It was twenty years before the Alaska legislature altered the statute. In 1980, the legislature repealed section 15.05.030 of the Alaska Statutes

45. ALASKA STAT. § 15.80.010(10) (2018).

46. Act of Apr. 6, 1960, § 1.03, 1960 Alaska Sess. Laws ch. 83, 85.

and re-enacted it with a new title, “Loss and Restoration of Voting Rights.”⁴⁷ The new section separated felony disenfranchisement and the definition of “felony involving moral turpitude.”⁴⁸ In terms of felony disenfranchisement alone, the new law stated, “a person convicted of a crime that constitutes a felony involving moral turpitude under state law may not vote in a state or municipal election[.]”⁴⁹ Upon release, however, the new language implemented a linguistic change, requiring that “[t]he right to vote withdrawn under this section is automatically restored upon the unconditional discharge of the person.”⁵⁰ The section contained the same period of disenfranchisement as the law contains today. It also delegated advising released felons of voting registration to the commissioner of health and social services.⁵¹ The changes by the legislature effectively distilled what the prior provision contained: a “felony involving moral turpitude” must be so under Alaska law. The changes also expressly pointed to state and municipal elections as the focus of felony disenfranchisement under state law.

After the 1980 amendments to section 15.05.030 of the Alaska Statutes, the state legislature made only two more changes to the law. In 1986, the legislature tweaked the statutory language to provide that a person “may register” to vote upon unconditional discharge, striking the text automatically restoring the right to vote upon unconditional discharge.⁵² The final change to the law occurred in 1994, when the legislature amended the section to disenfranchise an individual convicted of a “felony involving moral turpitude” under state or federal law and to bar voting in federal elections as well as state and municipal elections.⁵³ The 1994 changes altered what had been the rule in the state since the adoption of the felony disenfranchisement over thirty years earlier: rather than only disenfranchising for those felonies “involving moral turpitude,” under state law, the legislature instead expanded the statutory language to include felonies “involving moral turpitude” under federal law. The legislature also expanded the elections affected by the law in 1994.

2. AS 15.80.010(10): *Defining Who Cannot Vote*

As noted above, the legislature did not separate the specific section disenfranchising felons convicted of a “felony involving moral turpitude”

47. Act of June 20, 1980, § 4, 1980 Alaska Sess. Laws ch. 100, 2–3.

48. The change in the definition will be addressed below.

49. Act of June 20, 1980, § 4(a), 1980 Alaska Sess. Laws ch. 100, 2–3.

50. *Id.*

51. *Id.* § 4(b).

52. Act of June 5, 1986, § 1, 1986 Alaska Sess. Laws ch. 85, 1.

53. Act of June 10, 1994, § 3, 1994 Alaska Sess. Laws ch. 111, 1–2.

from the definition of the modifying phrase until 1980, when the legislature moved the definition to a different part of the Alaska Statutes.⁵⁴ The freshly created section defining “felony involving moral turpitude” stated, “‘felony involving moral turpitude’ includes those crimes which are immoral or wrong in themselves such as murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft, and forgery.”⁵⁵ While it remained very similar, this definition did not enumerate the same felonies as were listed in 1960. For instance, the 1960 version of the law denotes “abortion” as a “felony involving moral turpitude,”⁵⁶ while the 1980 version of the law removed “abortion” and added “arson,” “theft,” and forgery.”⁵⁷

Twenty years after the definition of “felony involving moral turpitude” gained its own section, the provision was vastly expanded by the state legislature. In 2000, the Alaska legislature passed a broader illustrative list:

“felony involving moral turpitude” includes those crimes that are immoral or wrong in themselves such as murder, manslaughter, assault, sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion, coercion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a forgery device, offering a false instrument for recording, scheme to defraud, falsifying business records, commercial bribe receiving, commercial bribery, bribery, receiving a bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor, escape, promoting contraband, interference with official proceedings, receiving a bribe by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical evidence, hindering prosecution, terroristic threatening, riot, criminal possession of explosives, unlawful furnishing of explosives, promoting prostitution, criminal mischief, misconduct involving a controlled substance or an imitation controlled substance, permitting an escape, promoting gambling, possession of gambling records, distribution of child pornography, and possession of child pornography.⁵⁸

The list adopted by the legislature in 2000 is obviously an expansion on the versions adopted in 1960 and 1980. It is also a slight expansion on

54. The definition was originally contained in ALASKA STAT. § 15.60.010(8). It is now contained in ALASKA STAT. § 15.80.010(10).

55. Act of June 5, 1986, § 1, 1986 Alaska Sess. Laws ch. 85, 1

56. Act of Apr. 6, 1960, § 1.03, 1960 Alaska Sess. Laws ch. 83, 85.

57. Act of June 20, 1980, § 207, 1980 Alaska Sess. Laws ch. 100, 2-3.

58. Act of May 24, 2000, § 79, 2000 Alaska Sess. Laws ch. 82, 30-31.

the version first submitted to the legislature by Representative Jeanette James.⁵⁹ While none of the lists were complete accounts of what could constitute a “felony involving moral turpitude,” the 2000 version contains many more specific crimes that merit the loss of the right to vote, while maintaining the illustrative function of the list through “such as” language.⁶⁰

The Alaska state legislature has expanded both of the relevant statutes. In terms of felony disenfranchisement as a concept itself, the legislature originally sought to disenfranchise for any “felony involving moral turpitude” under state law. Eventually, the legislature expanded the definition to include felonies “involving moral turpitude” under federal law. However, the most conspicuous expansion of Alaska’s felony disenfranchisement laws appeared in the definition of “felony involving moral turpitude.” From 1960 to 2000, the definition was short and simple, though expressly not complete. In 2000, however, the legislature added extensive crimes that constitute a “felony involving moral turpitude” for the purposes of felony disenfranchisement in Alaska.

III. EXAMINING THE CONSTITUTIONALITY OF FELONY DISENFRANCHISEMENT

In considering the constitutionality of Alaska’s felony disenfranchisement laws under the state constitution, there are three arguments that arise given the history of the laws and the state’s constitution. The following section describes and advances these three arguments. First, this investigation begins by looking into a separation of powers argument for the unconstitutionality of the relevant statutes. Second, this examination will flesh out the argument that the laws go beyond the constitutional meaning of “moral turpitude.” Finally, this analysis will seek to understand the argument that the laws are inconsistent with other provisions in the state constitution.

A. Felony Disenfranchisement and Separation of Powers: Legislative Authority to Define “Felony Involving Moral Turpitude”

The Alaska Supreme Court has stated, “the separation of powers and

59. The original draft of the bill did not include “misconduct involving a controlled substance, permitting an escape, promoting gambling, possession of gambling records, distribution of child pornography, and possession of child pornography.” H.B. 163, 21st Leg., 1st Sess. (Alaska 1999).

60. The legislature’s one alteration was replacing the phrase “promoting prostitution” with “sex trafficking” in 2012. Act of June 19, 2012, § 22, 2012 3d Special Sess. Alaska Sess. Laws ch. 1, 12-13.

its complementary doctrine of checks and balances are part of the constitutional framework of this state.”⁶¹ This distribution of power is structured by the Alaska Constitution, which “vests legislative power in the legislature; executive power in the governor; and judicial power in the supreme court, superior court, and additional courts as established by the legislature.”⁶² The ultimate effect is that “[t]he separation of powers doctrine limits the authority of each branch to interfere in the powers that have been delegated to the other branches.”⁶³ One aspect of judicial power the state constitution gives the courts is “the solemn responsibility for interpreting and construing Alaska’s laws, including [the state] constitution. . . . Under Alaska’s constitution, as the highest court of the State of Alaska, the Supreme Court of Alaska is the final arbiter of the meaning of Alaska’s constitution.”⁶⁴ The Alaska Supreme Court “retains the same power to interpret constitutional terms regardless of the subject matter of the term,”⁶⁵ although the legislative interpretation of a term may receive more or less weight depending on the circumstances.⁶⁶

Because the primary interpretive authority of the Alaska Constitution resides with the courts, the Alaska legislature may never have had the power to define the phrase “felony involving moral turpitude.” A statement made by Mr. Hellenthal at Alaska’s Constitutional Convention supports this argument. When pressed to distinguish between felonies “involving moral turpitude,” Mr. Hellenthal replied in part, “[i]t comes under the decisions of courts.”⁶⁷ It is not clear whether or not Mr. Hellenthal meant this statement as an acknowledgment of the separation of powers in the state constitution or as a standard to be applied by the courts individually. In either case, Mr. Hellenthal’s statement indicates that determining the meaning of a “felony involving moral turpitude” is a task for the courts, not the legislature. That is the essential idea of this argument: Alaska’s legislature never had the power to define what felonies merit disenfranchisement and what do not. It has always been an issue for the courts.

61. Alaska Pub. Interest Research Grp. v. State, 167 P.3d 27, 34–35 (Alaska 2007).

62. *Id.* at 35.

63. *Id.*

64. Hootch v. Alaska State-Operated Sch. Sys., 536 P.2d 793, 815 (Alaska 1975) (Rabinowitz, C.J., dissenting).

65. Hickel v. Cowper, 874 P.2d 922, 925 (Alaska 1994).

66. *Id.* at 925 n.7; Wielechowski v. State, 403 P.3d 1141, 1146–47 (Alaska 2017).

67. 2 PROCEEDINGS, *supra* note 24, at 891.

B. Constitutional Limits on the Meaning of “Felony Involving Moral Turpitude”

The second argument examined by this Article seeks to apply Alaska Supreme Court principles of constitutional interpretation, with the ultimate goal of demonstrating the Alaska legislature’s current definition of “felony involving moral turpitude” goes beyond the constitutional meaning of the phrase. In order to do this, it is first necessary to examine the Alaska Supreme Court’s methods of constitutional interpretation. After constructing a picture of how that analysis would likely proceed, this Section will then look at the evidence the court might consider to discern the meaning of “felony involving moral turpitude.”

The Alaska Supreme Court has articulated its test for constitutionality in different ways. In *Hickel v. Cowper*, the court stated, “[t]he appropriate approach to interpreting language in the Alaska Constitution is well established. Constitutional provisions should be given a reasonable and practical interpretation in accordance with common sense. The court should look to the plain meaning and purpose of the provision and intent of the framers.”⁶⁸ However, in a very recent case the court articulated its constitutional analysis differently, writing:

Questions of constitutional and statutory interpretation, including the constitutionality of a statute, are questions of law to which we apply our independent judgment. We adopt the rule of law that is most persuasive in light of precedent, reason, and policy. Legislative history and the historical context, including events preceding ratification, help define the constitution. Statutes passed immediately after statehood grant insight into what the founders intended. We presume statutes to be constitutional; the party challenging the statute bears the burden of showing otherwise.⁶⁹

What is clear from both of these tests is that no one source is independently dispositive for Alaska’s constitutional analysis. Instead, the state court takes a holistic approach to constitutional questions. In order to straddle both of these formulations, this Article looks to four sources to try to discern the meaning of the phrase “felony involving moral turpitude.” First, it is necessary to look at the plain meaning of

68. *Hickel*, 874 P.2d at 926 (quoting *Arco Alaska, Inc. v. State*, 824 P.2d 708, 710 (Alaska 1992)).

69. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90–91 (Alaska 2016) (footnotes omitted).

“moral turpitude.” Second, this Section will look at the historical context and the intent of the framers to try to define the constitution’s felony disenfranchisement provision. Third, it is helpful to look at the policy concerns that surround felony disenfranchisement in Alaska. Fourth, this Section will look to the Alaska Supreme Court’s cases dealing with the qualifying language of “moral turpitude,” albeit not in the context of felony disenfranchisement. Finally, concluding remarks will complete this Article’s section analyzing the second argument for unconstitutionality.

1. *Plain meaning of “moral turpitude”*

The most important definition needed to understand Alaska’s felony disenfranchisement laws is what qualifies “felony” for the purposes of disenfranchisement in the constitution: “moral turpitude.” Under the state constitution, only those felons that committed a “felony involving moral turpitude,” lose their right to vote. According to the legislative definition, this “includes those crimes that are *immoral or wrong in themselves*.”⁷⁰ Definitions from several dictionaries can supplement this conception.

Black’s Law Dictionary defines “moral turpitude” as “[c]onduct that is contrary to justice, honesty, or morality; esp., an act that demonstrates depravity. In the area of legal ethics, offenses involving moral turpitude—such as fraud or breach of trust—traditionally make a person unfit to practice law. . . . Also termed moral depravity.”⁷¹ *Black’s* defines “depravity” as “[t]he quality, state, or condition of being morally bad, thoroughly evil, or ethically reprehensible; moral degeneracy; wickedness.”⁷² *The Merriam-Webster Online Law Dictionary*, on the other hand, offers two definitions for “moral turpitude.” First, it defines “moral turpitude,” as “an act or behavior that gravely violates the sentiment or accepted standard of the community.”⁷³ The dictionary’s second definition of “moral turpitude” states it is “a quality of dishonesty or other immorality that is determined by a court to be present in the commission of a criminal offense . . . compare *malum in se*.”⁷⁴ *Bouvier’s Law Dictionary* defines *malum in se* as “evil in itself.”⁷⁵ As an example,

70. ALASKA STAT. § 15.80.010(10) (2018) (emphasis added).

71. *Moral Turpitude*, BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis omitted). The dictionary’s definition of “moral depravity,” directs the reader to “moral turpitude,” see *Moral Depravity*, *Id.*

72. *Depravity*, BLACK’S LAW DICTIONARY (11th ed. 2019). This is the first definition. The second definition is “A wicked act or habit.” *Id.*

73. *Moral Turpitude*, MERRIAM-WEBSTER ONLINE LAW DICTIONARY.

74. *Id.*

75. *Malum in se*, BOUVIER’S LAW DICTIONARY (6th ed. 1856), <http://www.constitution.org/bouv/bouvierm.txt>.

Bouvier's states "an offence *malum in se* is one which is naturally evil, as murder, theft, and the like; offences at common law are generally *mala in se*," while "[a]n offence *malum prohibitum*, on the contrary, is not naturally an evil, but becomes so in consequence of its being forbidden; as playing at games, which being innocent before, have become unlawful in consequence of being forbidden."⁷⁶

The legislative definition of the phrase seems to adhere to the *Bouvier* conception of *malum in se* in that it concerns the nature of the crime. The first *Merriam-Webster* definition, alternatively, contemplates the severity of the crime, while the second definition aligns generally with the legislative and *Bouvier* definitions. It is worth noting the second *Merriam-Webster* definition also contains a premier role for the courts in determining the meaning of the language. The *Black's Law Dictionary* definition finds importance in both the nature of the crime, or conduct, and the severity of the crime by including "depravity" in its definition.

It is the Alaska legislature's illustrative list of crimes that conflicts with all of these definitions. As Murray notes, in the Alaska Statutes "[t]he term felony involving moral turpitude is defined to include nearly all felonies."⁷⁷ For example, the legislature's list of felonies "involving moral turpitude," includes "gambling" and "possession of gambling records,"⁷⁸ which seem to be inconsistent with the *Bouvier* distinction.⁷⁹ While it is not possible to determine what felonies the Alaska Supreme Court would deem have an inherent aspect of "moral turpitude," the legislature's broad list might blur the distinction between a simple felony and a felony involving moral turpitude.

2. Intent of the framers and historical context

There are a few moments from the Alaska Constitutional Convention that illuminate the possible meaning and intent behind using the phrase "felony involving moral turpitude," in article V, section 2. All of these moments involve statements by Mr. Hellenthal, the Chairman of the Committee on Suffrage, Elections, and Apportionment.⁸⁰ When the qualifying language was challenged during the convention based upon the idea that all felonies involve moral turpitude, Mr. Hellenthal defended its inclusion, saying, "not all felonies involve moral turpitude."⁸¹ He noted the intent behind the phrase was to disenfranchise

76. *Id.* This distinction was discussed by the Alaska Constitutional Convention in the context of recall. 2 PROCEEDINGS, *supra* note 24, at 1210.

77. Murray, *supra* note 2, at 293.

78. ALASKA STAT. § 15.80.010(10) (2018).

79. See BOUVIER'S LAW DICTIONARY, *supra* note 70.

80. Article on Suffrage and Elections, *supra* note 20, at 1.

81. 2 PROCEEDINGS, *supra* note 24, at 890.

“those [felons convicted] of the more serious felonies.”⁸² The fact that the qualifying language was ultimately included in the state constitution demonstrates this rationale was accepted by the convention.

Although not in the context of felony disenfranchisement, Mr. Hellenthal’s beliefs in regard to the phrase “involving moral turpitude” in another part of the state constitution are educational. Mr. Hellenthal moved to strike any moral qualification in the context of public official recall. In his words, “I know of no reason in logic or morality or common decency which requires us to protect legislators to the extent that they can only be recalled for heinous crimes or those involving moral turpitude.”⁸³ In the eyes of Mr. Hellenthal, the “moral turpitude” qualification was “too high a standard” to apply to recall,⁸⁴ although it was not too high a bar in the felony disenfranchisement context.

A final piece of evidence regarding the historical context and the framers’ intent comes in the form of a statute passed right after statehood. As the Alaska Supreme Court stated, “[s]tatutes passed immediately after statehood give insight into what the founders intended.”⁸⁵ As noted above, the Alaska legislature passed its first felony disenfranchisement law in 1960. That law read:

No person may vote who has been convicted either by the state courts of Alaska, by the courts of any other state or by the federal courts, of a felony under Alaska law involving moral turpitude under Alaska law unless his civil rights have been restored by law or by the proper authority in the jurisdiction in which the person was convicted. Felonies involving moral turpitude include, but are not limited to, the crimes of murder, abortion, rape, robbery, kidnapping, burglary, incest, and other crimes which are punishable by imprisonment in the penitentiary under Alaska law and which involve conduct contrary to justice, honesty, modesty, or good morals.⁸⁶

This law does not contain the expansive list created by the Alaska legislature in 2000. Rather, it contains a short illustrative list of severe crimes and a description of what other felonies might “involve moral turpitude”: those that “involve conduct contrary to justice, honesty, modesty, or good morals.”⁸⁷

There are a couple thoughts that one can glean from this evidence.

82. *Id.* at 891.

83. *Id.* at 1210.

84. *Id.* at 1208.

85. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016).

86. Act of Apr. 6, 1960, § 1.03, 1960 Alaska Sess. Laws ch. 83, 85.

87. *Id.*

First, the Constitutional Convention's inclusion of "involving moral turpitude," was meant to create a substantive distinction between simple felonies and those meriting disenfranchisement. In other words, the framers did not believe all felonies involve moral turpitude, at least for the purposes of felony disenfranchisement. The second takeaway from this evidence comes from the law passed by the legislature immediately after statehood. That law did not contain an extensive list of felonies. Instead, it listed seven specific crimes meant to illustrate the severity of a crime necessary to lose the right to vote.⁸⁸

3. Policy concerns

As pointed out in the introduction to this article, a disproportionate number of Alaska Natives and African Americans are incarcerated in Alaska.⁸⁹ While the number of people jailed does not necessarily correlate to those disenfranchised for felony convictions, the disjoint between population numbers and incarceration rates should concern lawmakers. From a policy standpoint, it undermines the legitimacy of elections when minority groups are potentially kept from the ballot box in higher proportions by felony disenfranchisement laws. This policy argument against a broad legal regime is buoyed by the argument that felony disenfranchisement might be linked to higher recidivism rates.⁹⁰

However, the policy sword cuts both ways. It is conceivable that a new system of disenfranchisement, one in which the state must pay attention to those convicted of judicially-determined "felonies involving moral turpitude," as opposed to those convicted of simple felonies, would be a logistical nightmare come election day. However, without a study of this issue by the state, it is impossible to know what impact a change in the state's current felony disenfranchisement system would have, or even what the impact of the system is today.⁹¹

4. Alaska Supreme Court precedent

The Alaska Supreme Court has never directly addressed the meaning of "felony involving moral turpitude" under article V, section 2.

88. *Id.* Of course, those actions that previously were thought to demonstrate "moral turpitude" could change over time as society progresses. For instance, the Alaska legislature's 1960 version of the statute lists "abortion." *Id.* This version of the statute was published before the United States Supreme Court's *Roe v. Wade* decision, 410 U.S. 113 (1973), and the Alaska Supreme Court's decision in *Valley Hospital Association, Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963 (Alaska 1997).

89. Compare U.S. CENSUS BUREAU, *supra* note 3 with ALASKA DEP'T OF CORRS., *supra* note 5, at 10.

90. Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of the Voicelessness*, 22 BERKELEY LA RAZA L.J. 407, 429 (2012).

91. There have been no "comprehensive studies of racial disparity in felon disenfranchisement in Alaska." Murray, *supra* note 2, at 295.

However, the court has had occasion to address the meaning of “moral turpitude” in various other contexts, discussed below. When taken as a whole, these cases highlight a few crimes that involve moral turpitude in the eyes of the court. Many of these cases deal with felonious conduct, though not all.

The court has held that theft is a crime involving moral turpitude. In *Kenai Peninsula Borough Board of Education v. Brown*, a teacher was convicted of a misdemeanor for illegally diverting electricity from a utility company.⁹² The court wrote, “[a]n act of theft is commonly held to be an act involving moral turpitude” in upholding the teacher’s dismissal.⁹³ Additionally, in *Disciplinary Matter Involving Schuler*, an attorney attempted to steal cassette tapes from a Bethel store.⁹⁴ While punishing the lawyer under bar rules, the court wrote, “misdemeanor theft constitutes a violation of disciplinary rules prohibiting illegal conduct involving moral turpitude.”⁹⁵

Another common crime involving moral turpitude according to the Alaska Supreme Court is misapplication of property, which in at least two cases resulted from illegal conduct by attorneys. In the first, a lawyer used money from his firm to make a payment on his mortgage.⁹⁶ The court found he had violated a bar rule prohibiting lawyers from engaging in “illegal conduct involving moral turpitude.”⁹⁷ In the second, an attorney paid himself from a settlement check that was supposed to be held in trust for multiple plaintiffs and their attorneys.⁹⁸ In suspending him for three years,⁹⁹ the court found, as above, that the attorney had violated a bar rule prohibiting lawyers from engaging in “illegal conduct involving moral turpitude.”¹⁰⁰

There is evidence from court opinions that find sexual abuse of a minor, accessory after the fact to murder, embezzlement, and falsification of documents are crimes involving moral turpitude. In *Toney v. Fairbanks North Star Borough School District, Board of Education*, a case involving the sexual abuse of a minor, the court stated that a conviction is not necessary for teacher dismissal if there is “sufficient evidence to conclude that [the teacher] committed an act or acts which constituted a crime of moral

92. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034, 1036 (Alaska 1984).

93. *Id.* at 1039.

94. *In re Schuler*, 818 P.2d 138, 138–39 (Alaska 1991).

95. *Id.* at 144.

96. *In re Mann*, 853 P.2d 1115, 1116 (Alaska 1993).

97. *Id.* at 1117 n.2.

98. *In re Friedman*, 23 P.3d 620, 622–24 (Alaska 2001).

99. *Id.* at 634.

100. *Id.* at 629–30.

turpitude.”¹⁰¹ In *In re Webb*, the court disbarred an attorney convicted of “accessory after the fact to first degree murder,” which the court held “constitutes engaging in illegal conduct involving moral turpitude.”¹⁰² Embezzlement is likely a crime involving moral turpitude, although the court has not explicitly held this.¹⁰³ Finally, a lawyer who falsified documents was found to have committed a crime involving moral turpitude for the purposes of bar punishment.¹⁰⁴

The crimes highlighted by these cases are not a complete representation of those that involve moral turpitude. There are undoubtedly more. It is likely the court has not had the opportunity to hear other cases that would add crimes to the list. However, with those reservations in mind, it is apparent the legislative definition of “felony involving moral turpitude” is far more expansive and detailed than any specific definition hinted at by the court in over thirty years of jurisprudence.

Overall, these four areas the Alaska Supreme Court would look to in construing “felony involving moral turpitude” appear to cut towards unconstitutionality. The plain meaning of the phrase “moral turpitude” envisions a substantive distinction in regard to the nature of the crime. Felonies do not always involve moral turpitude. The historical context behind the phrase points to a higher standard than the one adopted by the state legislature. Policy concerns, namely the possibility that felony disenfranchisement has a disproportionate impact on certain minority groups, could give the court pause. Finally, prior cases by the Alaska Supreme Court defining “moral turpitude” seem to point to a narrower definition of “moral turpitude” than the one adopted by the state legislature.

C. State Constitutional Conflicts with Felony Disenfranchisement

The third argument this Article advances in regard to the constitutionality of Alaska’s felony disenfranchisement system looks to the consistency of the state statutes with provisions in the state constitution. In particular, two constitutional provisions appear to be inconsistent with the modern system: state equal protections and the purpose of criminal administration in the state. This Section will proceed

101. 881 P.2d 1112, 1114 (Alaska 1994). The defendant did not dispute that sexual abuse of a minor constitutes a crime of moral turpitude. *Id.*

102. 602 P.2d 408, 410 (Alaska 1979).

103. See *In re Buckalew*, 731 P.2d 48, 49 n.1, 50 (Alaska 1986) (noting the court did not determine whether embezzlement involves moral turpitude because parties stipulated it did).

104. *In re Stump*, 621 P.2d 263, 263–64 (Alaska 1980).

by examining each provision individually.

1. State Equal Protections

The Alaska Constitution provides for equal protections under the law in article I, section 1. That provision, titled “Inherent Rights,” reads in part, “[t]his constitution is dedicated to the principles that . . . all persons are equal and entitled to equal rights, opportunities, and protection under the law.”¹⁰⁵ The Alaska Supreme Court has interpreted the state’s equal protection clause differently than the federal constitution’s equal protection clause. In fact, “[t]he equal protection provision of article I, section 1 has in some instances been interpreted more broadly than its federal counterpart.”¹⁰⁶ In conjunction with this departure from federal law, the state court has adopted a different test for state equal protection:

We have adopted a flexible sliding scale test for reviewing equal protection claims. First, we determine what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of this interest is the most important variable in fixing the appropriate level of review. Second, we examine the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest. Third, an evaluation of the state’s interest in the particular means employed to further its goals must be undertaken.¹⁰⁷

In the context of felony disenfranchisement, the constitutional interest the state limits is the right to vote, which is “fundamental.”¹⁰⁸ As a fundamental right, the Alaska Supreme Court has stated, “we review ballot access restrictions with strict scrutiny.”¹⁰⁹ In order to survive this scrutiny, the state government must make two showings. First, the state must “show a compelling interest in order to justify infringements of these [voting] rights.”¹¹⁰ Second, the state must show “whether less restrictive alternatives would have adequately protected the asserted governmental interests.”¹¹¹ However, when it comes to voting rights, the Alaska Supreme Court has noted, “the language of heightened scrutiny

105. ALASKA CONST. art. I, § 1.

106. *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982).

107. *Harrod v. State*, 255 P.3d 991, 1001 (Alaska 2011) (citations omitted).

108. *Vogler*, 651 P.2d at 3.

109. *State v. Metcalfe*, 110 P.3d 976, 979 (Alaska 2005).

110. *Id.*

111. *Id.*

guides our analysis; it does not sound a death knell for the state," especially given the presumption of constitutionality for a "duly-enacted statute."¹¹²

Without knowing the governmental purpose the state would advance in a challenge to the constitutionality of felony disenfranchisement, theorizing a potential outcome is difficult. However, given the test and the level of scrutiny the court has articulated in the context of voting rights and state equal protections, it is at least possible the court would find the state's statutes are unconstitutional. The government's modern conception of felony disenfranchisement is broad, perhaps overbroad, and possibly takes the right to vote away from felons that have not been convicted of a felony involving moral turpitude.¹¹³ This notion is buoyed by the possibility that the laws have a disproportionate impact upon Alaska Natives and Black Americans residing in the state.¹¹⁴ The state's modern felony disenfranchisement laws are disconcerting in the context of state equal protections.

2. Purpose of Criminal Administration

The second constitutional provision that appears to be inconsistent with Alaska's modern regime of felony disenfranchisement is article I, section 12, which dictates the intent behind criminal administration in Alaska. It reads in part, "[c]riminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation."¹¹⁵ Additionally, the Alaska Supreme Court has observed that "the twin goals of penal administration in Alaska" are "reformation of the offender and the need to protect the public."¹¹⁶ Further, the Court has noted that "the principle of 'reformation' enunciated in [the Alaska] constitution is worth the effort, for when it works, it reduces crime." The end sought by rehabilitation is a stable individual returned to community life. . . . [T]he direction of the correctional process must be back toward the community."¹¹⁷ More recently, the court, while discussing factors in criminal administration that the legislature promulgated, wrote, "the most relevant factors often

112. *Id.* at 980.

113. *See Murray, supra* note 2, at 293 (explaining that the term "felony involving moral turpitude" has been statutorily defined to include nearly all felonies).

114. U.S. CENSUS BUREAU, *supra* note 3; ALASKA DEP'T OF CORRS., *supra* note 5, at 10.

115. ALASKA CONST. art. I, § 12.

116. *Cleary v. State*, 548 P.2d 952, 956-57 (Alaska 1976).

117. *Id.* at 955.

will be public safety and potential for rehabilitation.”¹¹⁸

When these “twin goals” are considered in light of felony disenfranchisement laws in Alaska, it is not clear the goals are compatible with the laws. As noted above, there is some evidence that felony disenfranchisement is linked to higher rates of recidivism.¹¹⁹ Taking the right to vote away from convicted felons could therefore mitigate against the “principle of reformation.” The counterbalance to rehabilitation and the right to vote is that the safety of the public, and the counterpoint to recidivism rates and reformation is the threat to public safety posed by allowing felons to vote. In either case, there is at least some question as to whether or not felony disenfranchisement in Alaska achieves the state constitution’s stated purposes of criminal administration.

Felony disenfranchisement in itself is not inconsistent with the Alaska Constitution. It is an explicit part of the document. However, the modern formulation of the practice in Alaska might be inconsistent with other provisions of the constitution. Specifically, state equal protections and the purpose of criminal administration might be at odds with the current structure of felony disenfranchisement.

IV. CONCLUSION

The historical record concerning the adoption, and expansion, of felony disenfranchisement in Alaska supports at least three arguments for unconstitutionality under the state constitution. First, it is possible the state legislature never had the power to enact the felony disenfranchisement laws. Second, the state’s laws might exceed the constitutional meaning and intent of felony disenfranchisement. Third, the laws might be inconsistent with other provisions in the state constitution. These arguments are not the only arguments that could be raised against taking the right to vote away from convicted felons in Alaska. In light of the historical record, however, the three arguments raised by this Article seem to be the strongest.

This Article hopes to spark a necessary challenge to felony disenfranchisement in Alaska. In the future, if a challenge is brought against Alaska’s laws, it is possible one of these arguments could carry the day. It is also possible that the Alaska Supreme Court will reject these arguments outright. Either way, if a challenge to the laws is brought in the near future, this Article will have served the purpose of triggering consideration of the connection between voting rights and criminal justice.

118. *State v. Korkow*, 314 P.3d 560, 565 (Alaska 2013).

119. *Hamilton-Smith & Vogel*, *supra* note 90, at 429.

Setting aside the specific theater of Alaska, this Article might also serve a larger purpose. For those that wish to see the suffrage returned to the “estimated 5.85 million Americans” unable to vote today as a result of felony convictions, this Article might provide the impetus for a state-by-state approach to reform.¹²⁰ In some contexts, political solutions might arise to confront the problem of felony disenfranchisement, as happened in Virginia.¹²¹ But in those areas where there does not appear to be a political solution, the next logical battleground against felony disenfranchisement comes in the form of state constitutions. Federal law will not help in the fight. It is therefore necessary to move to state law. The methods used by this Article – investigation of the state constitution and research into the state’s constitutional history and its supporting jurisprudence – will be useful for fighting felony disenfranchisement in other states. Hopefully this will result in returning the vote to those who have not been able to exercise their right for some time. It is time to use state courts to effectuate progression towards justice at the American ballot box.

120. THE SENTENCING PROJECT, *supra* note 1, at 1.

121. Sheryl Gay Stolberg & Erik Eckholm, *Virginia Governor Restores Voting Rights to Felons*, N.Y. TIMES (Apr. 22, 2016), http://www.nytimes.com/2016/04/23/us/governor-terry-mcauliffe-virginia-voting-rights-convicted-felons.html?_r=0.