

Right To Vote

**Key Decisions in
Felony Disenfranchisement Litigation**

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Richardson v. Ramirez

United States Supreme Court

Richardson v. Ramirez is the leading precedent courts use to reject constitutional challenges to disfranchisement laws. In it, the Supreme Court found that the Equal Protection clause of the U.S. Constitution does not require states to advance a “compelling” interest before denying the vote to citizens convicted of crimes.

Plaintiffs, who had been convicted of felonies and had completed their sentences, brought a class action against California’s Secretary of State and election officials, challenging a state constitutional provision and statutes that permanently disfranchised anyone convicted of an “infamous crime,” unless the right to vote was restored by court order or executive pardon. Typically in voting rights cases, states must show that the voting restriction is necessary to a “compelling state interest,” and is the least restrictive means of achieving the state’s objective. In this case, the plaintiffs argued that the state had no compelling interest to justify denying them the right to vote. The California Supreme Court agreed that the law was unconstitutional.

On appeal, however, the U.S. Supreme Court said that a state does not have to prove that its felony disfranchisement laws serve a compelling state interest. The Court pointed to Section 2 of the 14th Amendment to the U.S. Constitution to exempt felony disfranchisement laws from the heightened scrutiny given other restrictions on the right to vote. The Court said that section 2, which reduces a state’s representation in Congress if the state has denied the right to vote for any reason “except for participation in rebellion, or other crime,” distinguishes felony disfranchisement from other forms of voting restrictions, which must be narrowly tailored to serve compelling state interests in order to be constitutional.

Later courts have noted that Richardson v. Ramirez leaves open a valid claim that the unequal enforcement of disfranchisement laws is unconstitutional. Plaintiffs argued that California counties’ different interpretations of “infamous crime” meant that the law was unequally applied. The U.S. Supreme Court sent the case back to the California Supreme Court to decide this issue, but before it could rule, California changed its law.

O’Brien v. Skinner

United States Supreme Court

O’Brien v. Skinner, unlike many of the other cases summarized on this site, did not seek to strike down a disfranchisement law. But it is noteworthy because the U.S. Supreme Court recognized that once an incarcerated person is eligible to vote under state law, the state cannot prevent him or her from voting.

The plaintiffs, who were in jail awaiting trial or serving misdemeanor sentences, were eligible to vote under New York law. But county election officials refused to allow them to register and

vote by absentee ballots or any other means. The state did provide absentee ballots to other people who could not vote in person because of illness, disability, or work related obligations. Election officials also provided absentee ballots to certain inmates incarcerated outside of their home county.

The U.S. Supreme Court held that New York's absentee voting statutes violated the equal protection clause of the 14th Amendment to the U.S. Constitution, which protects individuals against unequal treatment by the state. The Court reasoned that New York's statute placed an "onerous burden" on plaintiffs' right to vote and arbitrarily prevented plaintiffs from voting by absentee ballot while allowing others who could not vote in person to cast absentee ballots.

Hunter v. Underwood

United States Supreme Court

In *Hunter v. Underwood*, the U.S. Supreme Court held that felony disfranchisement laws reflecting "purposeful racial discrimination" are unconstitutional.

Individuals convicted of misdemeanors brought a class action against Alabama election officials challenging a provision of the Alabama Constitution that disfranchised people convicted of "any crime . . . involving moral turpitude." The Supreme Court, ruling in favor of the plaintiffs, found that the provision violated the equal protection clause of the 14th Amendment to the U.S. Constitution, because it was intentionally enacted to prevent African Americans from voting and continued to have a racially disproportionate impact. The equal protection clause protects individuals against unequal treatment by the state and is often used to strike down laws that discriminate on account of race.

Hunter clarified an earlier court ruling in *Richardson v. Ramirez*, in which the U.S. Supreme Court held that section 2 of the 14th Amendment to the U.S. Constitution permitted states to deny the vote to citizens convicted of crimes. In *Hunter*, the U.S. Supreme Court made clear that section 2 did not protect laws intended to discriminate on account of race.

Federal Court

Baker v. Pataki

Federal Court, 2nd Circuit

African American and Latino prisoners challenged New York's law denying the vote to persons in prison or on parole for a felony conviction. Plaintiffs claimed the law violated section 2 of the Voting Rights Act of 1968 and the 14th and 15th Amendments to the United States Constitution because it had a disproportionate racial impact. The lower court dismissed the complaint, reasoning that the U.S. Supreme Court in *Richardson v. Ramirez* upheld the constitutionality of disfranchisement laws. The lower court also found that the Voting Rights Act did not apply to such laws.

That decision was reversed by a three-judge panel of the Appeals Court for the Second Circuit. The panel said that plaintiffs had legitimate claims to re-plead their case under the 14th and 15th Amendments to allege that there was intentional racial discrimination, as long as they could demonstrate intentional racial discrimination and not just disproportionate racial impact. The panel also ruled that the plaintiffs should be given a chance to submit evidence to support their claim under the Voting Rights Act that the law had a disproportionate racial impact. The Second Circuit then agreed to have a complete 10-judge panel of its judges rehear the arguments under the Voting Rights Act. That panel was evenly divided, which means that the lower court's decision dismissing the Voting Rights Act claim was left to stand.

The five judges in favor of affirming the lower court decision concluded that the Voting Rights Act, which prohibits voting practices that result in a denial of the right to vote on account of race, did not apply to felony disfranchisement laws because Congress did not explicitly state its intention to do so. The judges explained that interpreting the Voting Rights Act to prohibit felony disfranchisement laws raises "serious constitutional questions" regarding Congress' authority to enforce the 14th and 15th Amendments prohibition against racial discrimination. As a result, it would disturb the balance between the states and the federal government.

The five judges in favor of reversing the lower court decision disagreed, concluding that the Voting Rights Act unambiguously applied to felony disfranchisement claims. The judges reasoned that while states may choose to disfranchise people with felony convictions, Congress had the authority and intended to bar disfranchisement laws that resulted in racial discrimination.

The New York statute central to the case still stands.

Green v. Bd. of Elections

Federal Court, 2nd Circuit

Plaintiff, who had completed a sentence for a felony conviction, challenged New York's felony disfranchisement laws on various constitutional grounds. At the time, New York law permanently denied the vote to those convicted of felonies unless they were pardoned or had

their rights restored by the President or Governor.

After the lower court dismissed the complaint, Plaintiff made three arguments on appeal. First, Plaintiff argued that New York's law violated Art. I § 10 of the Constitution, which prohibits states from passing a "bill of attainder" or statute that inflicts punishment without a trial. The Second Circuit rejected this argument, finding that felony disfranchisement laws were not punitive but served a legitimate government interest in determining voter eligibility. Second, Plaintiffs argued that denying voting rights to people with felony convictions violated the Eighth Amendment to the U.S. Constitution because it was cruel and unusual punishment. The Second Circuit disagreed, reasoning that felony disfranchisement laws were not punishment and their enactment by a vast majority of states signaled that they were not cruel and unusual by society's standards. Finally, Plaintiffs argued that New York's law violated the equal protection clause of section 1 the 14th Amendment. The equal protection clause protects individuals against unequal treatment by the states. The Second Circuit rejected this argument, too, explaining states could reasonably deny the vote to people convicted of felonies because those individuals give up the right to participate in society once they commit a felony.

The court also pointed to section 2 of the 14th Amendment, which reduced a state's representation in Congress if the state has denied the right to vote for any reason "except for participation in rebellion, or other crime." The Second Circuit's reading of section 2 approved felony voting disqualifications. Seven years later, the U.S. Supreme Court would follow this reasoning in *Richardson v. Ramirez*.

New York's current law denies the vote to people convicted of felonies while in prison and on parole, and automatically restores voting rights upon completion of their sentence.

Owens v. Barnes

Federal Court, 3rd Circuit

This lawsuit was brought by a person in prison for a felony conviction to challenge Pennsylvania's disfranchisement laws. Pennsylvania law permitted people with felony convictions to vote while on probation or parole, but denied the vote to people in prison.

Plaintiff argued that this law violated the equal protection clause of the 14th Amendment, which protects individuals from unequal treatment by the state. The Third Circuit denied the plaintiff's claim, reasoning that a person could challenge a felony disfranchisement law under the equal protection clause only if the law was unequally enforced, discriminated on the basis of race, or if it determined voting rights based on completely arbitrary distinctions – like a person's eye color. None of those situations applied here, the court said.

Relying on the Supreme Court's decision in *Richardson v. Ramirez*, the court held that felony disfranchisement laws do not have to stand up to the careful scrutiny ordinarily applied to voting restrictions. The state does not have to show a compelling interest to justify its voting classifications for people convicted of felonies. Rather, the state must show that there is a rational reason for its voting distinctions.

The court concluded that Pennsylvania could rationally decide that incarcerated persons should lose their right to participate in the democratic process – just as it could restrict other freedoms and privileges. Similarly, Pennsylvania could rationally decide that those who had been released from prison, or whose crimes were not serious enough to warrant incarceration in the first place, should be permitted to vote.

NAACP Philadelphia Branch v. Ridge

Federal Court, 3rd Circuit

This lawsuit challenged the Pennsylvania Voter Registration Act, which imposed a five-year ban following release before anyone who had been incarcerated for a felony conviction could register.

The plaintiffs included formerly incarcerated individuals, organizations whose members or clients were affected by the ban, and legislators. Plaintiffs argued that the statute violated the equal protection clause and due process clause of the 14th Amendment, because it denied the vote to first-time voters, but not people who were registered prior to being convicted for a felony. In response, the state argued that the statute prohibited all persons convicted of a felony from voting, not just first-time voters. The court did not decide the merits of the case to permit Pennsylvania state courts in a separate lawsuit to interpret the statute. In October 2000, the Pennsylvania state court held that the five-year ban was irrational and later entered a permanent injunction against the ban.

Stephens v. Yeomans

Federal Court, 3rd Circuit

In this case decided before the U.S. Supreme Court's decision in *Richardson v. Ramirez*, the district court judge held that New Jersey's disfranchisement law violated the equal protection clause of the 14th Amendment to the US Constitution. Plaintiff, who had been convicted of larceny, challenged New Jersey's law, which denied the vote to those convicted of certain listed crimes unless their rights were restored by the Governor. The district court said that a law restraining the right to vote must be closely scrutinized. Although later cases have clarified that close scrutiny generally requires the state to demonstrate a "compelling interest," the New Jersey court said that the state must show that the restriction is rationally related to a permissible state goal. Finding the law unconstitutional, the court reasoned that New Jersey's selection of certain crimes but not others was irrational, and did not advance the goal of maintaining a "pure" election process.

Howard v. Gilmore
Federal Court, 4th Circuit

Plaintiff, who had been convicted of a felony, challenged Virginia's disfranchisement laws under the First, 14th, 15th, 19th and 24th Amendments to the U.S. Constitution, and under the Voting Rights Act, all of which the Fourth Circuit rejected when it upheld a lower court's dismissal of the complaint.

The Fourth Circuit found that the First Amendment's free speech and other protections did not give a person the right to bring a lawsuit seeking to restore previously denied voting rights. The court also rejected the 14th and 15th Amendment claims, which both required proof of intentional racial discrimination. Neither constitutional provision applied in this case, because Virginia's law was enacted before African Americans had the right to vote and therefore could not have been enacted to prevent them from voting. The Voting Rights Act claim, which requires a showing that the law had a disproportionate racial impact, was denied because the plaintiff had not alleged any relationship between the law and race. Similarly, the 19th Amendment protection against gender discrimination did not apply because plaintiff had not included any facts to suggest that the law discriminated on account of gender. The court also rejected Plaintiff's argument that a \$10 fee for reinstatement of civil rights constituted a prohibited poll tax in violation of the 24th Amendment.

Allen v. Ellisor
Federal Court, 4th Circuit

The plaintiff had been convicted of forgery, one of several crimes listed in a South Carolina statute that denied the right to vote to people convicted of specific crimes. The plaintiff claimed that South Carolina's law violated the equal protection clause of the 14th Amendment to the U.S. Constitution because it selected certain crimes, but not others, as a basis to deny the vote. Plaintiff also argued that South Carolina's statute violated the equal protection clause of the 14th Amendment because it was enacted to discriminate against African Americans on account of race. Plaintiffs pointed to *Hunter v. Underwood*, in which the Supreme Court said that felony disfranchisement laws may violate the equal protection clause if they reflect "purposeful racial discrimination."

Relying on *Richardson v. Ramirez*, the Fourth Circuit held that states are permitted to classify certain crimes but not others as disqualifying crimes. On the matter of discrimination, the court sent the case back to the lower court to consider evidence as to whether the statute was enacted to intentionally racially discriminate. Subsequently, South Carolina changed its law to deny the vote to those in prison for "conviction of a crime." On appeal, the U.S. Supreme Court asked the Fourth Circuit to reconsider its decision in light of this change in the law. There are no other reported decisions in the case.

Perry v. Beamer

Federal Court, 4th Circuit

Plaintiff had been convicted of a felony and under Virginia law could not vote unless his rights were restored by the governor. Plaintiff claimed that Virginia's law violated the equal protection clause of the 14th Amendment to the U.S. Constitution because the state required Plaintiff to pay taxes and denied Plaintiff the right to vote – taxation without representation. Relying on *Richardson v. Ramirez*, the Virginia federal court said that the state was permitted to deny the vote because of a felony conviction even to tax-paying citizens.

Thiess v. State Administrative Bd. of Election Laws

Federal Court, 4th Circuit

In the same year that the U.S. Supreme Court issued its decision in *Richardson v. Ramirez*, this challenge to Maryland's disfranchisement statute was considered by a Maryland lower federal court. Plaintiffs argued that the law violated the equal protection clause of the 14th Amendment and the Eighth Amendment.

The plaintiffs had been convicted of different crimes and were unable to vote under Maryland's law disqualifying those convicted of larceny or other "infamous crime" unless pardoned. Relying on *Richardson v. Ramirez*, the Maryland federal court held that Maryland's law was constitutional.

Plaintiff also argued that Maryland's law was unequally enforced. In *Richardson v. Ramirez*, the U.S. Supreme Court left open the possibility that such unequal enforcement may violate the equal protection clause of the 14th Amendment. But the Maryland court found that the plaintiff in this case had not introduced any evidence of unequal enforcement. The court also rejected Plaintiffs' argument that Maryland's law amounted to cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution. The court said that the being deprived of the right to vote was not a grossly disproportionate punishment for committing a crime. Finally, the court said that the law's use of the term "infamous crime" was not too vague to give people notice of when they might lose their voting rights because the attorney general had issued a laundry list of infamous crimes.

Cotton v. Fordice

Federal Court, 5th Circuit

Plaintiff, who was imprisoned for armed robbery, challenged Mississippi's law denying the vote to those convicted of certain listed crimes. Plaintiff argued that Mississippi's statute violated the equal protection clause of the 14th Amendment because it was enacted to discriminate against African Americans. The Fifth Circuit Court of Appeals said that although the original statute was discriminatory because it included only crimes thought to be committed primarily by African Americans, subsequent amendments broadening the list of crimes "removed the discriminatory taint associated with the original version."

Williams v. Taylor

Federal Court, 5th Circuit

This case involves a claim of unequal enforcement of disfranchisement laws in violation of the equal protection clause of the 14th Amendment. The Plaintiff was registered to vote prior to and after his conviction for grand larceny, despite Mississippi's law that permanently denied the vote to those convicted of certain listed crimes. However, 12 years after Plaintiffs' conviction, he was notified that he was being removed from the state's voter registration lists. Plaintiff argued that the county unequally enforced its disfranchisement laws, because the county had not followed the statutory procedure of automatically disfranchising people at the time of their conviction based on information from the courts. The Fifth Circuit sent the case back to the lower court for further evidence on whether defendants' failure to follow disfranchisement procedures created a pattern of selective enforcement. There are no other reported decisions in the case.

Shepherd v. Trevino

Federal Court, 5th Circuit

Texas law denied the vote to all persons convicted of a felony unless their voting rights were restored either by executive pardon or for probationers convicted in Texas, by a Texas court. Plaintiffs, who were convicted of felonies in federal court, argued that the law violated the equal protection clause of the 14th Amendment by providing a means to restore voting rights to those convicted in state, but not federal, court. Relying on the Supreme Court's decision in *Richardson v. Ramirez*, the Fifth Circuit said that the state does not have to show a "compelling interest" to justify its voting classifications for people convicted of felonies. Rather, the state must show that there is a rational reason for its voting distinctions. In this case, the court concluded it was reasonable for Texas to provide that a state court could restore voting rights to probationers under the court's supervision because the court was uniquely situated to make that determination.

McLaughlin v. City of Canton

Federal Court, 5th Circuit

Plaintiff had been convicted of a misdemeanor for bouncing a bad check, and was disqualified both from voting and from running for public office. Mississippi denied the vote to persons convicted of specific listed crimes, including obtaining money or goods under false pretenses. In addition to finding that the Plaintiff's misdemeanor was not one of the disqualifying crimes listed in the statute, the court found that denying Plaintiff the vote for a misdemeanor offense violated the equal protection clause of the 14th Amendment. The court said that the U.S. Supreme Court's statement in *Richardson v. Ramirez* that Section 2 of the 14th Amendment to the U.S. Constitution permitted states to deny the vote was limited to felony convictions, rather than misdemeanors. As a result of *Richardson v. Ramirez*, a state does not have to show a "compelling state interest" to justify denying the vote to those convicted of felonies, and must instead show that there was a rational reason for the law. The Fifth Circuit said that the higher standard ordinarily applied in voting rights cases applied when a state denies the vote for misdemeanors: the state must show a compelling reason for the restriction, and that it used the

least restrictive means to achieve that goal. The court concluded that there was no compelling reason to deny the vote for certain misdemeanors but not others. While the court also said that there is some legislative history to suggest that the law was originally enacted to discriminate against African Americans, it deferred decision on that issue for a trial.

Murphree v. Winter

Federal Court, 5th Circuit

Plaintiff, who was in jail awaiting trial and eligible to vote under Mississippi law, challenged the state's refusal to provide an absentee ballot. Ruling in Plaintiff's favor, the court said that Mississippi's refusal to provide Plaintiff with some method to vote violated the equal protection clause of the 14th Amendment to the US Constitution.

Texas Supporters of Workers World Party Presidential Candidates v. Strake

Federal Court, 5th Circuit

Plaintiffs, who were incarcerated or formerly incarcerated for felony convictions, challenged a Texas law that prohibited them from voting unless they were pardoned. Plaintiffs argued that the law violated the equal protection clause of the 14th Amendment. Relying on *Richardson v. Ramirez*, the Fifth Circuit said that Texas was permitted to deny the vote to people convicted of felonies.

Wesley v. Collins

Federal Court, 6th Circuit

A prisoner brought this lawsuit claiming that Tennessee's law denying the vote to those convicted of a felony violated the Voting Rights Act, as well as the 14th and 15th Amendments. The Sixth Circuit Court of Appeals affirmed the lower court decision dismissing the complaint, finding no evidence that the law was intentionally enacted to discriminate against African Americans. The court also rejected the claim under the Voting Rights Act, which prohibits voting practices that result in denial of the vote on account of race. The court said that states have a legitimate interest in denying the vote to those who commit crimes, and the plaintiff was denied the vote because he committed a crime, not because of his race. Although the court ultimately rejected the merits of the Voting Rights Act claim, it is significant that the court recognized that such a claim is valid.

Tate v. Collins

Federal Court, 6th Circuit

Plaintiffs did not bring this lawsuit to strike down a disfranchisement law. Rather, Plaintiffs who were not in prison for felonies and eligible to vote under Tennessee law, brought this case to force the state to allow them to vote by absentee ballot. Relying on the Supreme Court's decision

in *O'Brien v. Skinner*, which dealt with similar facts, the Sixth Circuit said that Tennessee's refusal to provide Plaintiffs with some method to cast their vote violated the equal protection clause of the 14th Amendment.

Jones v. Edgar

Federal Court, 7th Circuit

The plaintiff, a prisoner, argued that an Illinois law denying the vote to those convicted of felonies violates the 15th Amendment, which prohibits states from relying on race to restrict the right to vote. The Seventh Circuit dismissed the complaint, concluding that Plaintiff did not make a connection between the historical discrimination against African Americans and the denial of the vote.

Gage v. Hawkins

Federal Court, 9th Circuit

The Ninth Circuit affirmed the dismissal of a prisoner's claim that he was denied the vote, even though he paid taxes. Plaintiff's claim was brought under the equal protection clause of the Fourteenth Amendment. Relying on *Richardson v. Ramirez*, the court said that states are permitted to deny the vote to those convicted of felonies.

Woodruff v. Wyoming

Federal Court, 10th Circuit

The Seventh Circuit affirmed the dismissal of prisoners' claims that Wyoming's law denying the vote to those convicted of felonies violated the Eighth Amendment and the equal protection clause and due process clause of the 14th Amendment. Relying on *Richardson v. Ramirez*, the court said that the state had a rational reason to deny the vote to those convicted of felonies.

Hobson v. Pow

Federal Court, 11th Circuit

This class action lawsuit was brought on behalf of all male Alabama residents denied the vote because of a conviction for "assault and battery on the wife," one of the disqualifying crimes under Alabama law. Plaintiff argued that the law violated the equal protection clause of the 14th Amendment, because it denied the vote to men who had been convicted of assault and battery, but not to women. Acknowledging that the state may have a rational reason to exclude all persons convicted of a felony under the Supreme Court's decision in *Richardson v. Ramirez*, the 11th Circuit said that a voting restriction that excluded some, but not all, people convicted of misdemeanors must be justified by a compelling state interest. The court also said that there must be a rational basis to make gender-based classifications. In this case, the court concluded that

there was no compelling or rational reason to deny the vote to men, but not women, convicted of the same crime, and ruled in favor of the plaintiff class.

Beacham v. Brateman

Federal Court, 11th Circuit

In this case, which was decided before *Richardson v. Ramirez*, the U.S. Supreme Court affirmed without discussion a lower court's dismissal of Plaintiff's class action complaint challenging Florida's felony disfranchisement law. The lower court rejected Plaintiff's argument that the law violated the equal protection clause of the 14th Amendment, reasoning that denying the vote for felony convictions is a common and longstanding practice.

State Court

Flood v. Riggs

State Court, California

The California Court of Appeal, an intermediate appeals court, affirmed a lower court judgment that Plaintiff was ineligible to register and vote. At the time, California's Constitution explicitly denied the vote to persons convicted of felonies while in prison and on parole, whereas California's legislature denied the vote to those convicted of an "infamous crime." Plaintiff, who was on parole for a felony conviction, argued that people on parole were not disqualified from voting under California law because the statute did not specify that it applied to parolees. Based on the history surrounding the constitution and statute, the court in 1978 concluded that people on parole are disqualified from voting under California law. Current California law disqualifies people from voting while in prison or on parole. Plaintiff also argued that California's law was unconstitutional because the states were permitted to deny the vote only in national elections. Relying on the U.S. Supreme Court's decision in *Richardson v. Ramirez*, the court said that states were permitted to deny the vote in both national and state elections.

Ramirez v. Brown

State Court, California

The U.S. Supreme Court in *Richardson v. Ramirez* asked the California Supreme Court to consider Plaintiffs' claim that California's disfranchisement law violated the equal protection clause of the 14th Amendment because it was unequally enforced in different counties. In *Ramirez v. Brown*, the California Supreme Court dismissed the case because of a change in the state constitution that provided for only temporary denial of voting rights while people were incarcerated or on parole.

Emery v. State

State Court, Montana

Plaintiff, who was serving a prison sentence for a felony conviction claimed that Montana's law denying him voting rights while incarcerated violated the equal protection clause of the U.S. and Montana Constitutions. Relying on *Richardson v. Ramirez*, the court said that Montana's law was constitutional.

Fischer v. Governor

State Court, New Hampshire

The New Hampshire Supreme Court reversed a lower court decision, which found that New Hampshire's law denying the vote to those convicted of a felony while in prison violated the

New Hampshire Constitution. New Hampshire's Constitution grants the right to vote to all residents over 18, except those convicted of treason, bribery or violation of state or federal election laws. New Hampshire's election law is broader, denying voting rights to all persons convicted of felonies while in prison. Plaintiff, who was in prison for a felony assault conviction, argued that the election law violated the New Hampshire Constitution by denying the vote for a broader class of crimes than listed in the constitution. After reviewing the history of the constitutional provision relating to voting rights, the court concluded that the provision granted the legislature authority to determine voter qualifications beyond those specified in the constitution, and it was reasonable for New Hampshire to use that authority to deny the vote to people convicted of crimes while in prison.

Chochrek v. Cupp

State Court, Oregon

A prison inmate challenged Oregon's law denying the vote to people convicted of a felony. Relying on the U.S. Supreme Court's decision in *Richardson v. Ramirez*, the Oregon Court of Appeals said the law did not violate the equal protection clause of the 14th Amendment.

Mixon v. Commonwealth

State Court, Pennsylvania

Plaintiffs, who were currently or previously incarcerated for felony convictions, argued that Pennsylvania's disfranchisement scheme violated the state constitution. Although Pennsylvania's Constitution does not deny the vote for commission of a crime, Pennsylvania election law denied absentee ballots to people in prison, and prevented from registering anyone who had been in prison for a felony conviction within the last five years. The currently incarcerated Plaintiffs argued that the Pennsylvania legislature could not deny them the vote when the Pennsylvania Constitution does not bar them from voting. Rejecting this argument, the court held that the Pennsylvania Constitution granted the legislature authority to determine the qualifications of voters, and the legislature could permissibly deny the vote to persons in prison. The Plaintiffs who had been released argued that the law preventing them from registering for five years violated the right to vote guaranteed by the state constitution. The Commonwealth Court of Pennsylvania agreed, reasoning that there was no rational reason to deny the vote for five years to those who were not registered prior to their incarceration, but to permit people who were previously registered to vote immediately upon release.

Martin v. Haggerty

State Court, Pennsylvania

Prisoners convicted of felonies brought a class action arguing that Pennsylvania's election law banning them from voting by absentee ballot violated the state constitution. Pennsylvania's Constitution provides that every citizen who meets the age and residency requirement is entitled to vote, subject to any laws requiring and regulating the registration of voters. Because the

Pennsylvania Constitution does not deny the vote to people who commit crimes, Plaintiffs argued that the election law could not deny them an absentee ballot and opportunity to vote. Rejecting this argument, the Commonwealth Court of Pennsylvania held that the state Constitution granted the legislature authority to determine the qualifications of voters, and the legislature could decide to exclude people in prison. The court referred to the decision in *O'Brien v. Skinner*, where the U.S. Supreme Court held that inmates convicted of misdemeanors and awaiting trials, who were eligible to vote under state law, must be provided an absentee ballot or other means to vote. But found that here, unlike in *O'Brien*, the Plaintiffs were not otherwise eligible to vote under state law.

Fernandez v. Kiner

State Court, Washington

The Washington Court of Appeals, an intermediate appellate court, upheld dismissal of a prisoner's claim that Washington's law denying the vote to persons convicted of an infamous crime violated the equal protection clause of the 14th Amendment and the Eighth Amendment. Relying on the U.S. Supreme Court's decision in *Richardson v. Ramirez*, the court said that Washington's law was constitutional. The court also cited the fact that many states had enacted similar provisions, and therefore Washington's law was not cruel and unusual punishment barred by the Eighth Amendment.