State constitutional amendment processes and development of state declarations of rights

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State declarations of rights not only look different from the federal bill of rights, by including a mix of hortatory and legally enforceable provisions and recognizing rights with no counterpart in the federal document, but they are also updated regularly via amendments. The Article V process for changing the U.S. Constitution is relatively inaccessible and, with the notable exception of the post-Civil War Amendments, has not been a vehicle for adding to the federal bill of rights. As a result, development of rights at the federal level takes place via the judicial process, primarily through U.S. Supreme Court decisions, rather than the amendment process. However, state constitutional amendments have served as a regular means of altering and adding to state declarations of rights.[1]

One purpose of this paper is to document and categorize various changes to state declarations of rights around the country since they were first adopted in 1776 in Virginia, Pennsylvania, Delaware, Maryland and North Carolina. Through the years, amendments have often empowered state courts to expand rights, by updating guarantees of religious liberty, private property, search and seizure, and the right to keep and bear arms, or adding new provisions guaranteeing equal protection, protecting crime victims, and guaranteeing personal autonomy. These court-empowering amendments are at times intended to provide stronger

[1] The role of state constitutional amendments in the development of state declarations of rights is treated in Janice C. May, "Constitutional Amendment and Revision Revisited," *Publius: The Journal of Federalism* 17 (1987): 153-179; John Dinan, "State Constitutional Amendments and Individual Rights in the Twenty-First Century" *Albany Law Review* 76 (2013): 2105-2140; Jonathan L. Marshfield, "America's Misunderstood Constitutional Rights," *University of Pennsylvania Law Review* 170 (2022): 853-936.

textual grounding for rulings that state courts are inclined to issue and sometimes have already issued, but at other times they seek to expand rights that state courts are not necessarily inclined to protect and therefore serve as an alternative means of expanding rights. Another group of amendments has changed state declarations of rights in order to constrain state courts by overturning or preempting rights-expansive rulings, especially regarding fair-trial provisions, the death penalty, and personal autonomy.

An additional purpose of this paper is to assess the consequences of relying on amendments to update state declarations of rights and, in particular, to identify leading benefits of this state-level approach. One benefit is to increase the pathways for bringing about changes in rights protection, by giving groups a chance to proceed not only through judicial processes but also through amendment processes, thereby increasing the prospects that groups will obtain outcomes that are otherwise unattainable. Bringing about changes in understandings of rights via amendments, which mut be approved by voters in nearly all states, also has other virtues such as increasing opportunities for the public to participate in the process in a meaningful way. Proceeding through amendment processes also increases the likelihood that changes in understandings of rights will be more enduring, because they are more solidly entrenched and viewed as more legitimate.

I, Changes to state declarations of rights via amendment processes

Although many provisions in states' original declarations of rights have remained virtually intact, amendment processes have been a vehicle for making a number of changes to other guarantees. Consider Virginia's June 12, 1776 declaration of rights, which was the first

state bill of rights and had a large influence on other early state bills of rights, after a draft version circulated widely to other constitution-makers.[2] Of the sixteen provisions in Virginia's original declarations of rights, half have been practically unaltered, including several that quickly became prominent features in other early state bills of rights, including guarantees of natural rights, free elections, and the right to reform, alter, or abolish governments.[3] Another half of them have been changed in notable ways, however, by recognizing rights that were initially absent from Virginia's declaration of rights but were included in some other early state bills of rights. These include free speech, assembly and petition, the right to keep and bear arms, the right to a public trial and protection against double jeopardy, and bans on bills of attainder and ex post facto laws.[4] Virginia's declaration of rights also came to include provisions that were not found in any of the original state bills of rights in the founding era but were often added over time, such as by guaranteeing an effective education, prohibiting gender and racial discrimination, protecting crime victims and (in an example of a provision that is now unenforceable and slated for formal repeal later this year) barring recognition of same-sex marriage.[5]

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[2] John Dinan, *Virginia's Constitution: An Influential and Recently Resurgent Declaration of Rights* STATE COURT REPORT (June 3, 2025), https://statecourtreport.org/our-work/analysis-opinion/virginias-constitution-influential-and-resurgent-declaration-rights

[3] Sections 1, 2, 3, 4, 5, 6, 7, 10, and 14 of Virginia's Declaration of Rights have been retained completely intact or with minor changes in wording and without meaningful implications.

[4] Section 8 was amended to include a right to a public trial and protection against double jeopardy. Section 9 was amended to prohibit bills of attainder and ex post facto laws. Section 12 was amended to protect freedom of speech, assembly, and petition. Section 13 was amended to protect the right to keep and bear arms.

[5] Section 15 was amended to guarantee an effective system of education. Section 11 was amended to add a prohibition on discrimination. Section 8-A was added to protect victims' rights. Section 15-A was added to bar recognition of same-sex marriage but was rendered unenforceable by the U.S. Supreme Court's 2015 *Obergefell* decision.

My purpose in this section is to survey the main changes made to state bills of rights through the years via amendments.[6] These changes have often been achieved through legislature-crafted amendments that are currently required in every state but Delaware to be approved by voters. In recent decades especially, legislature-crafted amendments are responsible for the vast majority of state constitutional changes, including changes to state bills of rights. However, some changes to state bills of rights have been enacted (in the seventeen states currently providing such a pathway to constitutional change) through voter-initiated and voter-approved amendments, or (in Florida, the only state to provide this process) through amendments crafted by commissions and approved by voters. Still other amendments have been crafted by conventions, which were held on 250 occasions in the 50 states, but have fallen out of favor in the last half century. Conventions sometimes undertook full-scale constitutional revisions and at other times made piecemeal changes through amendments generally but not always submitted to voters for ratification.[7]

A, Court-empowering amendments

Amendments to state bills of rights are not always enacted with the intent of instructing judges. Several changes have been made to various hortatory provisions in state declarations of rights that instruct citizens about the virtues required for sustaining republican government. For instance, a provision in Virginia's original declaration of rights proclaimed: "That no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence

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[6] The various state constitutional amendment processes discussed in this paragraph are analyzed in more detail in John Dinan, *Constitutional Amendment Processes in the 50 States*, STATE COURT REPORT (July 24, 2023), https://statecourtreport.org/our-work/analysis-opinion/constitutional-amendment-processes-50-states This discussion also draws on the data presented in tables 1.4, 1.5, and 1.6 in *The Book of the States*, https://bookofthestates.org/

[7] The role of conventions is discussed in John Dinan, "Explaining the Prevalence of State Constitutional Conventions in the 19th and 20th Centuries," *Journal of Policy History* 34 (Fall 2022): 297-335.

to justice, moderation, temperance, frugality, and virtue."[8] Frugality was dropped from this list of virtues as part of an 1870 constitutional revision, only to then be restored by a 1901-02 convention that produced a new 1902 constitution.[9] Aside from these rare exceptions, amendments to state bills of rights are generally adopted for the purpose of instructing courts, often seeking to empower them to expand rights, and sometimes confirming and entrenching rulings that state courts have issued or are already inclined to issue, but at other times acting to bypass courts and require them to expand rights beyond current jurisprudence.

1, Subjects of court-empowering amendments

Court-empowering amendments take two main forms. Some of these amendments alter the language of existing rights provisions, for instance regarding religious liberty, the right to keep and bear arms, and private property. Another set of amendments adds new constitutional provisions, with the intent of protecting rights not previously recognized, for instance by prohibiting antidiscrimination, protecting crime victims, privacy, and the environment.

a, Amendments altering existing rights

Religious liberty: Amendments to state religious liberty guarantees have often strengthened prohibitions against religious establishments, especially in the nineteenth century when a proposed federal Blaine amendment barring public support of religious schools failed but similar efforts at the state level were often successful.[10] The specific wording of these state amendments varies, sometimes prohibiting aid of any kind to religious schools but frequently

[8] Virginia Constitution, Art. 1, sec. 15.
[9] See the discussion in John Dinan, *The Virginia State Constitution*, 2nd ed. (New York: Oxford University Press, 2014), p. 79.
[10] John Dinan, *State Constitutional Politics: Governing by Amendment in the American States* (Chicago: University Press of Chicago, 2018), pp. 75-79.

reaching more broadly and barring support of any religious institutions. Language added to Florida's bill of rights as part of an 1885 constitutional revision is typical, stipulating that "no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination, or in aid of any sectarian institution."[11]

Amendments adopted in the twentieth and twenty-first centuries have generally focused on strengthening protection for free exercise of religion, usually by requiring judges to adopt a high standard when considering the legitimacy of any policies that potentially limit religious worship. Along these lines, a 2023 Louisiana amendment proclaimed: "The freedom to worship in a church or other place of worship is a fundamental right that is worthy of the highest order of protection." Additionally, in adjudicating claims that government officials are violating this right, the amendment declares that "the court shall apply strict scrutiny in order to protect the fundamental right to worship in a church or other place of worship, unless there is a higher level of protection or scrutiny recognized and applied by the court."[12]

Right to keep and bear arms: Amendments have been enacted on a regular basis, especially in the late twentieth and early twenty-first century, to strengthen protection for individuals' right to keep and bear arms. Several amendments were adopted to clarify that this is an individual right to own firearms and not merely a collective right to serve in the militia. For instance, a 1987 Maine amendment removed the phrase "for the common defense" from an existing provision, so that the revised provision simply states, without qualification, that: "Every citizen has a right to keep and bear arms, and this right shall never be questioned."[13] A 2010 Kansas amendment sought, similarly, to broaden the purpose of the guarantee but took a slightly

[11] Florida Constitution (1885), Declaration of Rights, sec. 6.
[12] Louisiana Constitution (1975), art. 12, sec. 17 (amendment adopted 2023).
[13] Maine Constitution (1819), art. 1, Sec. 16 (amended 1987).

different approach, by adding to the list of legitimate purposes of keeping and bearing arms. Prior to passage of this amendment, the provision stated: "The people have the right to bear arms for their defense and security." The amended version now declares that: "A person has the right to keep and bear arms for the defense of self, family, home and state, for lawful hunting and recreational use, and for any other lawful purpose."[14] Still other amendments have made clear that this guarantee applies not only to firearms but also to "ammunition, and accessories typical to the normal function of such arms," in language added by a 2014 Missouri amendment.[15]

Other amendments have given judges guidance about how to interpret the right, by demanding that they adopt a strict scrutiny test when deciding cases asserting a violation of the right. A 2014 Alabama amendment is one of several recent amendments that have declared the right to keep and bear arms to be "fundamental" and required that "Any restriction on this right shall be subject to strict scrutiny."[16]

Property rights: Amendments have been adopted on various occasions for the purpose of strengthening protection of private property against government takings. In the late nineteenth century, amendments were enacted in a number of states to stipulate that individuals deserve just compensation not only when their property is taken but also when it is "damaged," one of several changes made to strengthen the language of Illinois's takings clause by a convention that crafted a new 1870 Illinois constitution.[17]

Another wave of amendments in the early twenty-first century limited the occasions when governments could rely on the eminent domain power to condemn private property, by

[14] Kansas Constitution (1859), Bill of Rights, sec. 4 (amended 2010).
[15] Missouri Constitution (1875), art. 1, sec. 23 (amended 2014).
[16] Alabama Constitution (2022), art. 1, sec. 26 (amended 2014).
[17] Compare Illinois constitution (1870), art. II, sec. 13, with Illinois Constitution (1848), art. VIII, sec. 11.

clarifying what constitutes "public use." After the U.S. Supreme Court held in the 2005 *Kelo* case that eminent domain takings for economic development purposes satisfy the Fifth Amendment's "public use" requirement, legislators and voters in a dozen states crafted amendments to clarify that taking private property for economic development purposes does not constitute "public use" under state bills of rights and is not permissible. A number of amendments of this kind were enacted in 2006, the year after the *Kelo* decision was issued, and several other amendments followed in the next several years.[18] A 2006 voter-initiated North Dakota amendment is typical, in declaring: "For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business."[19]

Search and seizure: Amendments have been adopted on a relatively regular basis to update state guarantees governing searches and seizures, usually for the purpose of adding to the list of items specifically protected by these guarantees, to take account of evolving technology. A 2022 Montana amendment is the most recently adopted measure; it adds "electronic data and communications" to a longstanding provision barring "unreasonable searches and seizures" of "persons, papers, homes, and effects."[20]

b, Amendments recognizing new rights

[18] Dinan, *State Constitutional Politics*, pp. 96-97.
[19] North Dakota Constitution (1889), art. I, sec. 16 (amended 2006).
[20] Montana Constitution (1972), art. II, sec. 11 (adopted 2022).

Antidiscrimination: Although several early state declarations of rights proclaimed that individuals are by nature equal in possessing natural rights,[21] amendments enacted from the nineteenth century onward were responsible for introducing language explicitly barring discrimination, beginning with sex discrimination.[22] As part of a revision of California's constitution undertaken by a convention, a provision was inserted in California's new 1879 constitution guaranteeing that: "No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession."[23]

Nearly a century later, in the early 1970s, around the time that a federal Equal Rights Amendment (ERA) emerged from Congress but failed to secure ratification from enough states in a timely fashion, a number of similarly framed state amendments barring gender discrimination were adopted. Half of the states eventually approved amendments of this kind.[24] As a result of a revision of the Illinois constitution undertaken by a convention, Illinois's 1971 constitution included a provision declaring, in language that tracks the failed federal ERA: "The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts."[25]

Although some amendments in the late twentieth century focused only on sex discrimination, other amendments barred discrimination on the basis of a wide range of characteristics. Illinois's 1971 constitutional revision also led to adoption of a provision holding that: "All persons with a physical or mental handicap shall be free from discrimination in the sale

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[21] The First Article of the Massachusetts Declaration of Rights in 1780 began by declaring: "All men are born free and equal, and have certain natural, essential, and unalienable rights."
[22] Dinan, *State Constitutional Politics*, p. 81.
[23] California Constitution (1879), art. XX, sec. 18.
[24] As of 2018, 22 state had adopted such provisions. Dinan, *State Constitutional Politics*, p. 84. Since that time, Delaware (2019), Nevada (2022), and New York (2024) adopted such provisions.
[25] Illinois Constitution (1971), art. 1, sec. 18.

or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer."[26] Other amendments reach even more broadly, including a provision added to Virginia's declaration of rights as part of a 1971 constitutional revision. This provision declares that "the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged."[27] By the twenty-first century, amendments were enacted barring discrimination on additional characteristics, including a 2024 New York amendment that added ethnicity, national origin, age, disability, sex, sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy to the state's existing antidiscrimination provision.[28]

Victims' rights: Beginning in 1982, with California voters' approval of a voter-initiated amendment, and continuing through the early twenty-first century, two-thirds of the states enacted victims' rights amendments, occasionally via voter-initiated amendments but generally through legislature-crafted amendments.[29] North Carolina's 1996 amendment is typical in guaranteeing that crime victims have a right to timely "notice" of and to be "present" at and "reasonably heard" during court proceedings of the accused, among other guarantees.[30] A second wave of "Marsy's Law" victims' rights amendments was then enacted, once again beginning in California, in 2008, with a focus on strengthening victims' ability to enforce these rights, for instance by declaring: "A victim may assert and seek enforcement of these rights in

[26] Illinois Constitution (1971), art. 1, sec. 19.
[27] Virginia Constitution (1971), art. 1, sec. 11.
[28] New York Constitution (1895), art. I, sec. 11 (amended 2024).
[29] Dinan, *State Constitutional Politics*, pp. 97-98.
[30] North Carolina Constitution, art. I., sec. 37 (adopted 1996).

any court of competent jurisdiction, and a violation may be subject to remedies including injunctive relief or other enforcement mechanisms."[31]

Personal Autonomy: In the 1970s, voters in a handful of states approved amendments protecting personal autonomy, by explicitly guaranteeing a right to privacy. Delegates to a 1971-1972 convention in Montana were responsible for crafting one of the first privacy-rights provisions,[32] by including in the new 1972 Montana constitution a provision declaring: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."[33]

In response to the U.S. Supreme Court's June 2022 *Dobbs* decision declaring that the U.S. Constitution does not protect abortion rights, 10 states enacted amendments protecting abortion rights via state constitutions.[34] In November 2022, voters in Vermont, California, and Michigan approved amendments protecting reproductive autonomy. Vermont's amendment is typical in declaring: "That an individual's right to personal reproductive autonomy is central to the liberty and dignity to determine one's own life course and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means."[35] Over the next two years, seven more states enacted similar amendments, and many of them explicitly protect a right to abortion, including a 2024 voter-initiated Arizona amendment that declared: "Every individual has a fundamental right to abortion," and barred enactment of any law limiting

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[31] California Constitution (1879), art. 1, sec. 28(b) (adopted 2008).
[32] Several amendments had previously been adopted, one of which dated to the late nineteenth century, requiring protection for people in their "private affairs" or preventing "invasions of privacy," but all of these provisions were framed in the context of search-and-seizure guarantees rather than personal autonomy. Dinan, *State Constitutional Politics*, pp. 86-87, 90.
[33] Montana Constitution (1972), art. II, sec. 10.
[34] Cathren Cohen and Diana Kasdan, *The Power of State Reproductive Freedom Amendments, STATE COURT REPORT* (Sep. 23, 2025), https://statecourtreport.org/our-work/analysis-opinion/power-state-reproductive-freedom-amendments
[35] Vermont Constitution (1793), ch. I, art. 22 (amended 2022).

the exercise of this right "before fetal viability unless justified by a compelling state interest that is achieved by the least restrictive means" or limiting exercise of this right after fetal viability when "necessary to protect the life or physical or mental health of the pregnant individual."[36]

Environmental rights: Beginning in the early 1970s, amendments were enacted in a half dozen states explicitly protecting the right to a clean environment. Pennsylvania's 1971 amendment, one of the first environmental-rights amendments, is typical in declaring that: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment."[37] New York's 2021 amendment is the most recently adopted amendment of this kind, declaring that "Each person shall have a right to clean air and water, and a healthful environment."[38]

Additional rights: Amendments have also been a vehicle in recent decades for recognizing additional rights. Since the 1990s, amendments protecting a right to hunt and fish have been adopted in nearly half of the states, beginning with adoption of a 1996 Alabama amendment protecting the "right to hunt, fish, and harvest wildlife."[39] Meanwhile, a 2021 Maine amendment protecting the right of people to "grow, raise, harvest, produce and consume the food of their own choosing" is the lone right-to-harvest amendment enacted to date.[40] Finally, a 2025 Texas amendment is the first amendment to protect parental rights, declaring that a parent has a "fundamental right to exercise care, custody, and control of the parent's child, including the right to make decisions concerning the child's upbringing."[41]

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[36] Arizona Constitution (1911), art. 2, sec. 8.1 (amended 2024).
[37] Pennsylvania Constitution (1968), art. I, sec. 27 (amended 1971).
[38] New York Constitution (1895), art. I, sec. 19 (amended 2021).
[39] Alabama Constitution (2022), art. I, sec. 36.02 (adopted 1996).
[40] Maine Constitution (1819), art. I, sec. 25 (adopted 2021).
[41] Texas Constitution (1876), art. I, sec. 37 (adopted 2025).

2, Purposes of court-empowering amendments

In considering why court-empowering amendments have been adopted, the usual motivation is to entrench understandings that courts were already inclined to embrace, and in some cases had already embraced in their rulings. The intent of resorting to the amendment process in these instances is to provide express and specific textual support in the constitution for expansions of rights that would otherwise rest solely on judicial interpretation of generally phrased provisions. In another set of cases, however, court-empowering amendments are adopted to require judges to adopt expansions of rights that they had not previously embraced and may even have been disinclined to adopt. In these latter cases, groups and officials turn to the amendment process as an alternative to relying on judicial interpretation to achieve expansions of rights.

a, Court-affirming amendments

Amendments are often enacted to affirm understandings of rights that courts have already embraced or seem inclined to embrace, and for the purpose of entrenching these understandings in the state declaration of rights. For instance, when delegates to Montana's 1971-72 convention considered whether to adopt a new provision recognizing a "right of individual privacy" and declaring that the right "shall not be infringed without the showing of a compelling state interest," a leading supporter, delegates Bob Campbell, argued that the Montana Supreme Court "has recognized the right of privacy, although it has not been expressly stated in the Montana Constitution." He supported adoption of "a carefully worded constitutional article reaffirming this right."[42]

[42] Quoted in Dinan, *State Constitutional Politics*, p. 88.

In some other instances, meanwhile, passing amendments has been seen as necessary to affirm expansive understandings of rights that commanded a majority of a state's high court but were nevertheless contested by other judges on the court. In these cases, the need for adopting amendments was particularly compelling, in the view of supporters, because of the real risk that the limited understanding of rights embraced by the dissenters might over time command a majority. This was the motivation for passage of a 2023 Louisiana amendment declaring that judges "shall apply strict scrutiny in order to protect the fundamental right to worship in a church or other place of worship." In the early months of the COVID-19 pandemic in spring 2020, after Louisiana's governor issued various orders limiting the number of people that could gather in one place, a pastor was charged with holding in-person worship services in violation of these orders. When the case came before the Louisiana Supreme Court in 2022, the majority adopted a strict-scrutiny standard and sided with the pastor and dismissed the charges; but two dissenting judges maintained that strict scrutiny was not the proper standard for judging the case.[43] The purpose of adopting this 2023 amendment was to affirm the expansive understanding of religious liberty embraced by the majority and entrench this understanding in the state constitution.[44]

b, Court-bypassing amendments

Some court-empowering amendments have been adopted for a very different purpose, when state courts have not shown an inclination to embrace an expansive understanding of rights and amendments have been seen as necessary to require judges to adopt such an understanding. Amendments strengthening right-to-keep-and-bear arms guarantees in recent decades have often been adopted because judges have been seen as insufficiently inclined to adopt an expansive

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[43] *Louisiana v. Spell*, No. 2021-KK-00876 (May 13, 2022).
[44] *PAR Guide to the 2023 Constitutional Amendments* (Public Affairs Research Council of Louisiana, 2023), pp. 4-5, https://parlouisiana.org/wp-content/uploads/2025/02/PAR_2023-Constitutional-Amendmentsone-pager1.pdf

understanding of these guarantees and supporters have resorted to passing amendments to expressly adopt an expansive understanding and remove any textual obstacles to judges embracing such an understanding. This was the motivation for adopting a 1987 Maine amendment removing the qualifying language "for the common defense" from Maine's right-to-keep-and-bear-arms guarantee. The prior year, the Maine Supreme Court relied on this qualifying language in concluding that the right should be understood as a collective right to serve in a militia and not as an individual right to possess firearms.[45] In passing an amendment to remove this qualifying language, so that the revised guarantee simply stated that "Every citizen has a right to keep and bear arms; and this right shall never be questioned," Maine voters expressed their support for viewing this as an individual right and signaled their expectation that judges would embrace such an understanding.[46]

The dozen amendments that were enacted to strengthen protections for private property in the several years following the U.S. Supreme Court's 2005 *Kelo* decision were similarly motivated by a concern that judges were not inclined to adopt sufficient guardrails against eminent domain takings. In one sense, of course, these amendments were enacted in response to the U.S. Supreme Court's unwillingness in *Kelo* to interpret the federal takings clause in an expansive fashion. But these amendments were in another sense enacted in response to state courts' unwillingness to interpret their own state takings clauses expansively.[47] To be sure, several state courts issued decisions around this time disallowing use of eminent domain for economic development purposes.[48] But in states where judges were not inclined to achieve these

[45] *State v. Friel*, 508 A.2d 123 (Me. 1986).
[46] Dinan, *State Constitutional Politics*, p. 93.
[47] Dinan, *State Constitutional Politics*, p. 96.
[48] Ibid. (noting court rulings in Michigan, Ohio, and Oklahoma).

outcomes, groups and officials turned to the amendment process to expressly disallow takings for this purpose.[49]

Several abortion-rights amendments enacted in the last few years offer the most recent example of court-bypassing amendments. To be sure, most of the post-*Dobbs* abortion-rights amendments were enacted in situations where state supreme courts were already inclined to protect abortion rights and had in some cases already done so, by interpreting natural rights, due process, privacy, and equal protection clauses to achieve this goal.[50] Amendments explicitly protecting abortion rights in these states therefore served to affirm and entrench expansive understandings of rights.[51] However, abortion-rights amendments were enacted in several states, including Ohio in 2023 and Missouri and Arizona in 2024, where state supreme courts had not shown and inclination to embrace expansive understandings of abortion rights and in fact had sometimes issued rulings rejecting such understandings. In Arizona, for instance, the state supreme court issued a ruling in April 2024 (admittedly on a complex statutory basis rather than a constitutional basis) that would have permitted enforcement of a complete ban on abortions. Passage of a voter-initiated amendment in Arizona in November 2024 served to bypass the state supreme court (as well as state legislators) and require an expansive understanding of abortion rights that the court had shown no sign of embracing.[52]

B, Court-constraining amendments

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[49] John Dinan, "State Constitutional Amendment Processes and the Safeguards of American Federalism," *Penn State University Law Review* 115 (2011) 1007, p. 1015.
[50] John Dinan, "The Constitutional Politics of Abortion Policy After Dobbs: State Courts, Constitutions, and Lawmaking," *Montana Law Review* 84 (2023) 27, pp. 32-38.
[51] Ibid., p. 52.
[52] On the origin of the Arizona amendment, see Ballotpedia, *Arizona Proposition 139, Right to Abortion Initiative (2024)*, https://ballotpedia.org/Arizona_Proposition_139,_Right_to_Abortion_Initiative_(2024)#:~:text=This%20measure%20amended%20the%20Arizona,a%20treating%20health%20care%20professional.

Although the vast majority of amendments to state bills of rights have sought to empower state courts to expand rights, a fair number of other amendments have sought to constrain state courts and limit judges' ability to expand rights. At the federal level, these sorts of amendments have occasionally been proposed for the purpose of constraining U.S. Supreme Court interpretations of the federal bill of rights but have never emerged from Congress, much less been enacted. At the state level, court-constraining amendments have been proposed and enacted on a regular basis, at times for the purpose of overturning state court rulings and at other times with the intent of preempting them.[53]

1, Subjects of court-constraining amendments

Fair-trial guarantees: Some amendments have responded to state court decisions interpreting various fair-trial guarantees and have been enacted for the purpose of revising the language of these provisions to bring about a less-expansive understanding. For instance, although the federal bill of rights and most state bills of rights require that a criminal defendant be able to "confront" witnesses against him, several state bills of rights use different language and guarantee defendants a right to meet witnesses "face to face." Some state courts have interpreted this "face to face" language as disallowing arrangements where child victims of sexual crimes can give closed-circuit testimony rather than physically appearing in the courtroom. In response to decisions of this kind issued by state supreme courts in Illinois and Pennsylvania in the 1990s, legislatures crafted and voters in both states approved amendments

[53] Amendments enacted for the purpose of counteracting court decisions are discussed in John Dinan, "Court-constraining amendments and the state constitutional tradition," *Rutgers Law Journal* 38 (Summer 2007): 983-1039; Kenneth P. Miller, "Defining Rights in the States: Judicial Activism and Popular Response," *Albany Law Review* 76 (2013).

(in 1994 in Illinois and in 1995 and then again in 2003 in Pennsylvania) replacing the "face to face" language with a right to be "confronted" with the witnesses.[54]

Several other amendments have responded to state court decisions that prevent evidence that has been obtained improperly from being used against defendants in criminal proceedings. The best-known amendment of this kind is a 1982 voter-initiated amendment in California that contained a "truth-in-evidence" provision. This provision was part of a wide-ranging package of changes responding to and limiting the effects of California Supreme Court interpretations of fair-trial guarantees, in this case by preventing California judges from relying on the exclusionary rule in any way beyond what is required by U.S. Supreme Court rulings.[55] The key portion of this California amendment declared: "Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court."[56]

Amendments have also been adopted, in California among several other states, to authorize denial of bail, at times in response to and for the purpose of counter-acting state supreme court rulings. It is important to be clear that amendments to bail provisions in state bills of rights are adopted on a regular basis and usually for the purpose of updating these provisions for reasons unprompted by state court decisions.[57] However, some amendments to bail

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[54] Illinois Constitution (1971), art. I, sec. 8 (amended 1994); Pennsylvania Constitution (1968), art. I, sec. 9 (amended 1995 and 2003). Discussed in Dinan, *State Constitutional Politics*, pp. 123-124.
[55] Discussed in Kenneth P. Miller, "The California Supreme Court and the Popular Will," *Chapman Law Review* 19 (2015) 151, pp. 174-175.
[56] California Constitution (1879), art. I, sec. 28(d) (adopted 1982).
[57] Dinan, "State Constitutional Amendments and Individual Rights in the Twenty-First Century," p. 2115.

provisions are adopted in reaction to state court rulings limiting the occasions when bail can be denied. In a 1973 California Supreme Court decision, for instance, the court took note of the state's current right-to-bail guarantee, which declared, "All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great," and the court concluded that this provision "prohibits the denial of bail solely because of petitioner's dangerous propensities."[58] A 1982 California amendment amended the right-to-bail provision by authorizing courts to deny bail in additional cases, including when "there is a substantial likelihood the person's release would result in great bodily harm to others."[59] Amendments were also adopted in Vermont in 1982 and 1994 in response to a similar ruling, a 1975 Vermont Supreme Court decision limiting denial of bail because of a defendant's "dangerous propensities," and for a similar purpose: to allow denial of bail when a defendant "poses a substantial threat of physical violence to any person."[60]

Capital punishment: Amendments have been adopted on various occasions in the late-twentieth and twenty-first century to preserve the death penalty against state court rulings invalidating the practice. In the late twentieth century especially, courts in various states relied on state bills of rights in issuing decisions that sometimes prohibit capital punishment altogether and sometimes bar application of capital punishment to certain offenses or in certain circumstances. In reaching these decisions, which go beyond what the U.S. Supreme Court has interpreted the federal bill of rights as requiring, state courts have sometimes drawn on

[58] *In re Underwood*, 9 Cal.3d 345, 351 (Cal. 1973).
[59] California Constitution (1879), art. I, sec. 12 (amended 1982).
[60] The Vermont Supreme Court decision is *State v. Pray*, 346 A.2d 227, 229 (Vt. 1975). The amendments are Vermont Constitution (1793), ch. II, sec. 40 (amended 1982 and 1994).

provisions prohibiting "cruel *or* unusual punishment," which differs from the wording of the Eighth Amendment ban on "cruel *and* unusual punishment."

On several occasions when state courts have drawn on state bills of rights to invalidate death penalty statutes, legislators and voters have responded by adopting amendments insulating the death penalty against state court reversal. In 1972, six months after California's Supreme Court invalidated the death penalty in that state, a voter-initiated amendment reinstated the death penalty, by adding a new section to the state bill of rights declaring that the death penalty "shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishments . . . nor shall such punishment for such offenses be deemed to contravene any other provision of this constitution."[61] A decade later, after the Massachusetts Supreme Court had issued several rulings finding fault with the death penalty in that state, legislators crafted and voters approved a similar amendment in 1982 declaring: "No provision of the Constitution . . . shall be construed as prohibiting the imposition of the punishment of death. The general court may, for the purpose of protecting the general welfare of the citizens, authorize the imposition of the punishment of death . . ."[62]

Personal Autonomy: In the twenty-first century, the most prominent use of court-constraining amendments has been for counteracting state court decisions protecting personal autonomy rights. During a time when some state supreme courts began relying on state bill of rights guarantees to require recognition of same-sex marriage, thirty-one states adopted amendments between 1998 and 2012 limiting state courts' ability to issue these kinds of rulings.[63] The first amendment of this kind was adopted in Hawaii in 1998, at a time when the

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[61] California Constitution (1879), art. I, Sec. 27 (adopted 1972).
[62] Massachusetts Constitution (1780), Articles of Amendment, Amendment CXVI (adopted 1982).
[63] Dinan, *State Constitutional Politics*, p. 138.

state supreme court appeared poised to issue a ruling recognizing same-sex marriage. In an effort to head off such a ruling, the amendment (which was eventually repealed in 2024) added a section to the state's bill of rights declaring that: "The legislature shall have the power to reserve marriage to opposite-sex couples."[64] All of the other amendments passed in subsequent years simply barred recognition of same-sex marriages, and in some cases civil unions, thereby preventing state courts as well as legislatures from achieving such an outcome. Virginia's 2006 amendment adding a section to the state declaration of rights is typical, declaring that "only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions."[65]

During the several decades prior to the *Dobbs* decision, a half-dozen amendments were adopted to limit state courts' ability to draw on state bills of rights to expand protection for abortion rights beyond what was required by U.S. Supreme Court interpretations of the federal bill of rights. These amendments were occasionally adopted to counteract state court decisions invalidating specific abortion restrictions. After the Florida Supreme Court relied on the state's privacy guarantee to invalidate a parental-notification requirement for minors seeking abortions, legislators crafted and voters approved a Florida amendment that added a section to the state constitution declaring: "Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy."[66] Other amendments sweep more broadly and bar state courts from drawing on any provisions in the state bill of rights to recognize a right to abortion, as in the case of a 2018 Alabama amendment that added a

[64] Hawaii Constitution (1950), art. I, sec. 23 (adopted 1998, repealed 2024).
[65] Virginia Constitution (1971), art. I, sec. 15-A (adopted 2006).
[66] Florida Constitution (1968), art. X, sec. 22 (adopted 2004).

section to the state bill of rights declaring, in part: "Nothing in this constitution secures or protects a right to abortion or requires the funding of an abortion."[67]

2, Purposes of court-constraining amendments

As should be evident from this review of amendments limiting protection of abortion rights, court-constraining amendments are motivated by two different kinds of purposes. One group of amendments is enacted to counteract a particular rights-expansive ruling or string of rulings issued by a state's high court, as with Florida's 2004 amendment that was passed in direct response to and for the purpose of counteracting recent Florida Supreme Court rulings that expanded protection for abortion rights. In another set of cases, amendments are enacted for preemptive purposes, out of a fear that the state's high court might follow other state courts around the country by issuing a rights-expansive ruling or simply to prevent any possibility of such a ruling being issued in the state, as with Alabama's 2018 amendment ensuring that the state constitution did not provide any protection for abortion rights. .

a, Court-overturning amendments

Most court-constraining amendments are enacted to overturn state supreme court decisions. For instance, amendments limiting protections for criminal defendants and declaring the death penalty to be legitimate are invariably enacted in reaction to and with the aim of counteracting specific state court rulings. In many of these instances, supreme court judges make clear their commitment to embracing a particular understanding of a guarantee, for instance regarding a requirement that defendants be able to meet witnesses "face to face," or a ban on "cruel or unusual punishment." When legislators and voters hold a different

[67] Alabama Constitution (2022), art. I, sec. 36.06 (c) (adopted 2018).

understanding of how to interpret these provisions, they are led to enact amendments making clear that their understanding should prevail.[68]

In some instances, it should be noted, court-overturning amendments are adopted at the court's invitation or suggestion. That is, state courts will at times adopt an expansive understanding of a right but will indicate to legislators and the public that the amendment process offers a path for revising this understanding. Consider the Vermont Supreme Court's approach to interpreting that state's bail provision holding that: "All prisoners, unless in execution, or committed for capital offences, when the proof is evident or presumption great, shall be bailable by sufficient sureties." The court had in several rulings in the early 1970s allowed defendants charged with non-capital crimes to be denied bail if their release would pose a danger to the public. However, in a 1975 case, *State v. Pray*, the Court reached a different conclusion and held that the state constitution did not allow denial of bail for this reason. Notably, the Court made clear that if the public held a different understanding, the amendment process offered a path for reversing the court's interpretation. "We hold that, under the Vermont Constitution, bail may not be entirely denied a defendant on grounds that his release would constitute a danger to the public. To the extent that *State v. McGinnis*, . . . intimates that a defendant may be denied release on bail after a finding of danger to the public, it is hereby overruled. If the constitutional guarantees of bail applicable to the cases at bar are in error, then it is up to the people to effect change, since the right to amend the constitution rests solely with the electorate." Legislators and voters took the court's suggestion and approved amendments in 1982 and then again in 1994 to allow denial of bail to protect the public.[69]

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[68] Dinan, "Court-constraining amendments and the state constitutional tradition," pp. 1006-1009, 1011-1016.
[69] *State v. Pray,* 346 A.2d 227, 230. Discussed in Alice E. DeTora, "Restricting the Right to Bail: Vermont's New Constitutional Bail Amendment," *Vermont Law Review* 8 (1983): 347, p. 357.

B, Court-preempting amendments

Amendments passed in anticipation of and for the purpose of preempting rights-expansive court rulings are less common than court-overturning amendments. Several amendments (in Florida, Oklahoma, and Oregon) that aim to insulate state death penalty statutes against state court overruling fall in this category,[70] along with several pre-*Dobbs* amendments (in Alabama and Louisiana) that seek to preserve restrictive abortion policies against state court invalidation.[71] For instance, Alabama's 2018 amendment declaring that the state constitution does not protect abortion was prompted less by any sense that the Alabama Supreme Court was poised to invalidate Alabama abortion policies than by an awareness that state supreme courts in other states had interpreted their state bills of rights as recognizing a right to abortion and an intent to close off this possibility in Alabama.[72]

The most prominent court-preempting amendments were passed to prevent recognition of same-sex marriage. Only one of the 31 amendments adopted between 1998 and 2012 to limit recognition of same-sex marriage was enacted to overturn a supreme court ruling: a voter-initiated California amendment in 2008 that was approved six months after a May 2008 California Supreme Court ruling, *In re Marriage Cases*, drawing on the state bill of rights to legalize same-sex marriage. Two other amendments, the first of this kind to be adopted, in Hawaii and Alaska in 1998, were enacted in response to state court rulings that cast doubt on the

[70] Although supreme court rulings in each of these states had signaled the possibility that state death-penalty statutes might be vulnerable to invalidation, none of these courts had actually issued such a decision, and therefore the amendments were seeking to preempt a possible future decision of this kind. Discussed in Dinan, *State Constitutional Politics*, pp. 129-131.

[71] Prior to passage of a 2018 Alabama amendment and a 2020 Louisiana amendment limiting recognition of abortion rights, neither of the high courts in these states had signaled an inclination to invalidate these states' abortion restrictions. This is in contrast with amendments limiting abortion rights in Tennessee in 2014 and West Virginia in 2018, which were in both cases intended to overturn prior state supreme court rulings. Discussed in Dinan, "The Constitutional Politics of Abortion Policy After Dobbs: State Courts, Constitutions, and Lawmaking," pp. 54-55.

[72] Ibid., p. 55.

legitimacy of these states' marriage laws; but neither state supreme court had actually required recognition of same-sex marriage, and therefore these amendments were seeking to preempt such rulings.[73] All of the other twenty-eight same-sex marriage-limitation amendments were clear court-preempting amendments, enacted because courts in other states had issued rulings recognizing same-sex marriage and with the intent of heading off similar rulings.[74] Of course, state constitutional amendments can preempt state court rulings, but they have no bearing on and cannot prevent the U.S. Supreme Court from recognizing rights. The Court's *Obergefell v. Hodges* (2015) ruling rendered unenforceable all contrary state laws and constitutional provisions.

II, Benefits of amendment processes as forums for development of declarations of rights

Having shown that state declarations of rights are changed on a regular basis via amendments, it is important to now consider the consequences of relying in such a prominent fashion on amendments, rather than alternative mechanisms, to update understandings of rights. We do not have to look far – in fact, we need not even venture outside the U.S. – to encounter an approach that relies heavily on other mechanisms. At the federal level, as Jill Lepore has shown in a recent comprehensive account, amendments play a very modest role in the development of the U.S. Bill of Rights. Changes in understandings of rights at the federal level invariably take place through U.S. Supreme Court decisions interpreting constitutional provisions, rather than through the Article V amendment process.[75]

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[73] Dinan, *State Constitutional Politics*, pp. 138-140.
[74] Dinan, *State Constitutional Politics*, pp. 140-143.
[75] Jill Lepore, *We the People: A History of the U.S. Constitution* (New York: Liveright, 2025), pp. 12-13.

In assessing the consequences of updating rights via amendments, which are a regular occurrence in the states, compared with relying primarily on judicial interpretation, which is the norm at the federal level, several notable benefits of relying on amendments are evident. First, the availability of amendment processes, in addition to judicial processes, offers groups and officials a wider range of avenues for bringing about changes in understandings of rights. When their path is blocked through one of these processes, they can still find success through another process, in a way that is beneficial in a pluralist system. Second, because state constitutional amendments are, with rare exception, required to be approved by voters, updating understandings of rights via amendment processes ensures that the public voice is expressed in deciding the meaning of rights, in a way that is appropriate for a republican form of government. Third, updating rights through formal changes to the language of constitutional provisions increases their legitimacy and endurance, and in a way that is appropriate in a constitutional system.

A, Expanding pathways for updating understandings of rights

One benefit of the approach taken in the states is to expand the pathways for groups to bring about changes in understandings of rights, because enacting amendments offers a viable and regular option, in addition to pursuing favorable court decisions. When amendment processes are inaccessible or seen as inappropriate means of altering rights, it generally falls to judges to update understandings of rights. As a result, groups focus nearly all of their energy on influencing the judiciary. Especially when judges serve for good behavior, as at the federal level, the combination of an inaccessible amendment process and a life-tenure court can place extraordinary – and extraordinarily unhealthy – weight on filling judicial vacancies. Groups

understandably view the infrequent opportunity to shape selection of judges as their main avenue for wielding meaningful influence in the development of rights.

When amendment processes are accessible and amendments are a regular vehicle for updating rights, as in the states, groups benefit from additional opportunities to shape the protection of rights. Certainly, attention is paid to state courts and selection of state judges, in hopes of securing favorable judicial interpretations of rights. However, significant energy is also devoted to enacting constitutional amendments. Groups build support for amendments by persuading legislators to place them on the ballot or (where this is an option) attracting enough voters to sign petitions to qualify amendments for the ballot) and then trying to persuade voters to vote for them.

On various occasions, as we have seen, when groups seeking to alter existing rights or recognize new rights have been unsuccessful in persuading judges to adopt these changes via interpretation of existing rights provisions, they have achieved their goals by turning to the amendment process. A leading example is the passage of amendments limiting economic-development takings when state judges were seen as insufficiently protective of property rights in the early 2000s. Groups seeking heightened protection for firearms followed a similar path when some state courts issued rulings affording limited protection for the right to keep and bear arms, and supporters of a broader interpretation enacted amendments requiring heightened protection.

In short, a leading consequence of relying regularly on amendments to update rights is increasing the likelihood that political energy and activity will focus on attracting support from legislators and voters for amendments rather than persuading judges to issue favorable rulings. This has the benefit of increasing the pathways for groups to wield meaningful influence in

determining the meaning of rights, and in a way that is consistent with a pluralist system that disperses power and provides varied pathways of influence.

B, Enhancing the role of the public in determining the meaning of rights

Another benefit of updating rights via amendments is to enhance the role of the public in shaping the meaning and scope of protection for rights. When amendment processes are inaccessible and the task of updating rights is seen as the purview of the judiciary, as at the federal level, the public has limited opportunities to shape understandings of rights. Voters can cast ballots in presidential elections that determine who will nominate judges. They can also vote in senate elections to determine who will decide whether to confirm or reject judicial nominees. But this is the extent of the opportunities for the public to influence the understanding of rights.

By contrast, when amendment processes are a regular vehicle for updating rights, as in the states, voters have more meaningful opportunities to influence development of rights. Voters have to approve all constitutional changes in every state but Delaware. Moreover, in one-third of the states, voters can both place amendments on the ballot and approve them. Updating rights via amendments ensures that the public has regular and meaningful opportunities to shape the meaning of rights and, therefore, can be seen as consistent with a republican form of government.

Moreover, as we have seen, when state courts have issued rulings embracing a certain understanding of rights and this interpretation has not commanded popular support, amendments have been a vehicle for ensuring that the public's understanding prevails. This is particularly

evident in several cases where judges interpreted guarantees against cruel or unusual punishment as barring capital punishment, only for the voters to adopt amendments overturning this understanding. Amendments have also served occasionally as a vehicle for the public to overturn judges' interpretation of search-and-seizure guarantees when judges have interpreted these guarantees as requiring exclusion of evidence obtained through improper searches.

The benefits of allowing regular resort to amendments for shaping rights are particularly evident in these cases where judges' commitment to a particular interpretation of a right proves to be at odds with the interpretation embraced by the public. Certainly, in a republican government, there is no expectation that the level of protection for rights should mirror public opinion exactly or that any distance between the respective understandings embraced by the judiciary and the public should be a ground for concern and in need of addressing. The intent should always be to obtain the "deliberate sense of the community" in this and other areas of governance, and to prefer the deliberative and reflexive views of the public to their immediate and reflexive sentiments. Nevertheless, when the judiciary retains nearly exclusive responsibility for shaping rights and amendments are not a viable means for the public to update rights or respond to judicial interpretations of rights, this runs the risk of producing a significant and unhealthy gap between the understanding of rights embraced by judges and the understanding of the public. Relying on amendments to shape the meaning of rights is consistent with republican government in this sense, by ensuring that understandings of rights are ultimately grounded in popular sovereignty.

C, Increasing the endurance of changes in understandings of rights

Another benefit of updating rights by enacting amendments is to render changes in understandings of rights more enduring. When amendment processes are inaccessible or viewed as an inappropriate means of altering rights, the task of updating rights falls to and is undertaken primarily by judges through interpretation and application of existing constitutional provisions. In some cases, judges expand the reach of longstanding rights by reinterpreting them or applying them to new circumstances. In other cases, judges recognize new rights by drawing on generally phrased guarantees and concluding that these guarantees are broad enough to encompass previously unrecognized rights. Much of the development of the U.S. Bill of Rights takes place through judicial rulings of this kind.

When amendment processes are accessible, as in the states, changes in understandings of rights can be achieved through formal changes in the text of constitutional guarantees, and in a way that is consistent with a constitutional form of government. One advantage of expanding rights via amendments, rather than judicial rulings, is to entrench new understandings against the possibility of a change in the composition or disposition of the court that could lead to retrenchment at a later time. Additionally, when expansions of rights are achieved through formal constitutional processes, rather than through judicial interpretation, these changes are rendered more legitimate and more likely to endure.

On various occasions, as we have seen, supporters of expansive understandings of rights have pursued their goals through the amendment process, rather than relying on judicial rulings, with the intent of achieving more stability and legitimacy. Consider the motivations for enacting a 2023 Louisiana amendment that strengthened protection for free exercise of religion by requiring application of a strict-scrutiny standard. The Louisiana Supreme Court had several years earlier adopted such a standard in dismissing charges brought against a pastor for violating

an executive order by holding religious services during the pandemic. Amendment supporters nevertheless chose to entrench this standard in the constitution, in part because the court ruling was not unanimous and could have been reversed if the dissenters were ever to ascend to the majority.

Consider also a number of amendments adopted between 2022 and 2024 explicitly protecting abortion rights. Several of these amendments, as discussed earlier, were enacted when state courts were not inclined to protect abortion rights through judicial interpretation. But other amendments were enacted when state supreme courts had shown no opposition to recognizing abortion rights and were generally favorably disposed to doing so via interpretation of existing rights guarantees, whether through privacy rights, as in Montana and California, or natural rights, due process, and equal protection guarantees, as in other states. Supporters of amendments in these latter states were not content to allow protection for abortion rights to be achieved through judicial interpretation of generally phrased guarantees. Proceeding through the amendment process was seen as entrenching this specific right against the possibility of reversal by a future court and also granting this right even more legitimacy, because it would be guaranteed through a formal change in the text of the bill of rights.

III, Conclusion

The prominent role of amendments at the state level in contrast with their insignificance at the federal level might be best appreciated by considering how differently one would tell the story of the development of state declarations of rights on one hand and the U.S. Bill of Rights on the other hand. State constitutional amendments would have to feature prominently in any

account of the development of state declarations of rights. Certainly, a full account would also take note of consequential state supreme court rulings interpreting state declarations of rights. But amendments would figure at least as prominently, if not more prominently, than court decisions, in tracing development of rights at the state level. By contrast, constitutional law treatises tracing the development of the U.S. Bill of Rights focus invariably on U.S. Supreme Court decisions and take little notice of enactment of constitutional amendments, aside from the notable exception of the Fourteenth Amendment.[76]

Relying on amendments to update understandings of rights, rather than relying almost entirely on judicial rulings, has several notable benefits. It is more consistent with a pluralist form of government, by offering a wider range of pathways for groups seeking to bring about a change in the understanding of rights. This approach can also be seen as more consistent with a republican form of government, by ensuring that the public can play a meaningful role in shaping development of rights and that the public understanding will prevail in conflicts between the understandings held by the public and the judiciary. Finally, updating understandings of rights by altering the text of constitutional provisions or adding new provisions can be seen as most consistent with a constitutional form of government.

[76] Howard Gillman, Mark A. Graber, and Keith E. Whittington, *American Constitutionalism, vol. II*, 3rd ed. (New York: Oxford University Press, 2020) is a significant and notable exception.