

Rethinking Juror Impartiality

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ABSTRACT

Jury impartiality in the contemporary court often justifies the perpetuation of exclusionary selection practices that make juries more—not less—biased. This Article calls for a rethinking of this important but flawed concept. Constitutional interpretations and conceptions of “impartiality” frame it as a transient orientation toward particular evidence or parties. Yet, during voir dire, the prevailing conception of jury impartiality is that it is an immutable character trait that must be discovered—if not created—by professional legal actors. What voir dire creates is not an impartial jury, but precisely the opposite: a venire shaped by the strategic biases of lawyers.

This Article offers an alternative. The presumption of impartiality applied to judges should inspire a new approach to their lay counterparts. The norms of judicial impartiality show that the criminal legal system largely assumes judges are, unless shown otherwise, impartial actors who deserve discretion to decide whether their relationship to a case warrants recusal. In this way, impartiality is something a legal actor must take responsibility for in their role in the trial. Prospective jurors should be empowered in the same way. By reforming voir dire techniques already in use, courts can hold jurors to a comparable standard of impartiality and dispense with the advantage-seeking ethos of jury selection that allows lawyers to impute partiality to prospective jurors. This reform will help juries realize an ideal of impartiality premised on representativeness rather than exclusion and empower jurors to take greater responsibility for their special role in the legal process.

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INTRODUCTION

In 2016, a federal judge in Oregon dismissed a juror from a case for alleged bias.¹ The trial revolved around the occupation of the Malheur National Wildlife Refuge by members of a militia, and the juror in question was a longtime employee of the Bureau of Land Management—a fact shared but given little attention during voir dire.² During deliberations, however, other jurors wrote the judge a note suggesting that this juror’s involvement undermined the impartiality of the jury.³ Though subsequent questioning of the juror led the judge to conclude that the claim was groundless, the defense’s mistrial motion convinced the judge to remove the juror and summon an alternate.⁴ Pleased to proceed following this outcome, one defense attorney said of the new jury, “I don’t think anything tends to indicate a taint in the jury at this time.”⁵

But what exactly indicated a taint in the jury before? In this case and in others heard in the United States every day, critical decisions are made in the name of “impartiality.” Impartiality is held to be a sacrosanct feature of an empaneled jury.⁶ And yet, there is no consensus on the meaning of impartiality—the Appendix to this Article makes that clear⁷—or what kinds of breaches should lead to the dismissal of a juror or even a mistrial. In the Oregon case, it was easier to act *as if* the impartiality of the jury had been violated than to come to some shared understanding of what that violation was. Jury impartiality, it turns out, has the distinction of being both integral to the fair adjudication of criminal trials and deeply arcane. As a result, decisions made by courts on the basis of protecting impartiality can seem strikingly arbitrary.

¹ Scott Bransford, *Juror in Oregon Militia Conspiracy Trial Dismissed over Bias*, REUTERS (Oct. 26, 2016, 6:57 PM), <https://www.reuters.com/article/idUSKCN12Q30G/> [<https://perma.cc/JH6N-Q2XJ>].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See *infra* notes 8–12 and accompanying text.

⁷ See *infra* Appendix for an overview of distinct state conceptions of impartiality.

What is not in doubt is the constitutional necessity of impartiality. Under the Sixth Amendment, criminal defendants have the right to be tried by an impartial jury.⁸ For a jury to be considered “impartial,” each seated juror should be “free from any partiality whatsoever”⁹—that is, free from bias and prejudice and indifferent to the parties involved and the case to be tried.¹⁰ A juror determined to be biased introduces a “fundamental, structural defect” warranting dismissal.¹¹ The remedy for a jury tainted by bias is a new trial with an impartial jury.¹²

If only it were so simple. In reality, the contemporary court is one in which actors agree that juror impartiality is essential, but those same actors struggle to articulate what impartiality entails or how it is achieved.¹³ The result is a pernicious randomness of the kind described above: Juries are shaped by actions, including strikes, undertaken to create or preserve impartiality. And yet there is no consensus among the actors who take these actions on what impartiality means or how to tell if a jury is actually impartial.¹⁴ As impartiality cannot be measured objectively, it must be interpreted and, as will be shown, the prevailing view among legal actors holds that if the process of jury selection has involved a balanced competition between the prosecution and defense with peremptory strikes, then the jury that results can be said to be impartial.¹⁵ This Article contends that this view has it backward: The actions typically taken to turn partial juries into impartial ones are precisely those that take representative venires and deform them into decision-making bodies that reflect the biases of judges and lawyers.

The discussion that follows is organized into three parts. Part I documents interpretations of juror impartiality drawn from state constitutional provisions and illustrative cases with citations to the Appendix for reference. Part II turns to the production of impartial juries in practice, through voir dire. Here, the Article argues that the status quo justifies the perpetuation of an exclusionary system of jury empanelment that is more likely to introduce partiality than to dispense with it.

⁸ U.S. CONST. amend. VI; *Wainwright v. Witt*, 469 U.S. 412, 418 (1985); *United States v. Cooper*, 714 F.3d 873, 878 (5th Cir. 2013). This extends to civil litigants’ jury trials, too. *See McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 549 (1984); *see also infra* Appendix (quoting state constitutional provisions on the right to an impartial jury).

⁹ *State v. Dobbs*, 665 P.2d 1151, 1162 (N.M. Ct. App. 1983), *overruled on other grounds by State v. Tollardo*, 275 P.3d 110 (N.M. 2012).

¹⁰ *See, e.g., Sneed v. State*, 1 So. 3d 104, 136 (Ala. Crim. App. 2007); *People v. Peeples*, 616 N.E.2d 294, 308 (Ill. 1993); TEX. CODE CRIM. PROC. ANN. art. 35.16 (West 2025).

¹¹ *United States v. Dale*, 614 F.3d 942, 960 (8th Cir. 2010) (citing *Gray v. Mississippi*, 481 U.S. 648, 668 (1987)).

¹² *Fields v. Woodford*, 309 F.3d 1095, 1103 (9th Cir. 2002).

¹³ *See infra* Part II.

¹⁴ *See infra* Part II.

¹⁵ *See infra* Part II.

Part III discusses possible alternatives, identifying a superior approach to impartiality that already exists and applies to judges.

Part III concludes by proposing that prospective jurors be empowered in the same way. By impressing upon them the seriousness of their role and the importance of acting ethically, jurors can take on the same reflexive relationship to their bias or partiality that judges do. At the same time, the jury system can dispense with the advantage-seeking process of peremptory strikes and introduce judge-led rehabilitation in instances in which a question of bias arises. This, as the Article concludes, would reinforce that impartiality is a feature of the trial that arises through summoning a diverse public, rather than excluding parts of it. Further, it will empower jurors to take greater responsibility for their important role in a critical legal process.

I. THE LAW OF JURY IMPARTIALITY

Jury impartiality is an enduring object of interest for the U.S. Supreme Court, which has long affirmed the concept's significance while struggling to define it with precision. Modern impartiality jurisprudence is largely drawn from a mid-twentieth-century case, *Irvin v. Dowd*,¹⁶ in which the Supreme Court held that an Indiana prisoner's conviction was not impartial by constitutional standards.¹⁷ Citing its English roots, the Court noted that the jury right guarantees "indifferent" jurors" and offered further that "[a] fair trial in a fair tribunal is a basic requirement of due process."¹⁸ At the same time, the Court recognized that it would be "impossible" to require that a juror be free of "any preconceived notion as to the guilt or innocence of an accused."¹⁹ It was instead "sufficient" that a juror "lay aside his impression or opinion and render a verdict based on the evidence presented in court."²⁰ Circuit courts²¹

¹⁶ 366 U.S. 717 (1961).

¹⁷ *Id.* at 717.

¹⁸ *Id.* at 721–22 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

¹⁹ *Id.* at 723. Later, holding that the defendant's jury was unconstitutionally partial, the Court stated,

Where one's life is at stake—and accounting for the frailties of human nature—we can only say that in the light of the circumstances here the finding of impartiality does not meet constitutional standards. Two-thirds of the jurors had an opinion that petitioner was guilty and were familiar with the material facts and circumstances involved, including the fact that other murders were attributed to him, some going so far as to say that it would take evidence to overcome their belief.

Id. at 727–28.

²⁰ *Id.* at 723.

²¹ *See, e.g.,* *Hughes v. United States*, 258 F.3d 453, 459 (6th Cir. 2001) (reiterating the *Irvin* rule in the Sixth Circuit when a juror openly declared her "inability to be fair"); *United States v. Allsup*, 566 F.2d 68, 71 (9th Cir. 1977) ("A court must excuse a prospective juror if actual bias is discovered during voir dire. Bias can be revealed by a juror's express admission of that fact, but,

and state courts, including those of Louisiana²² and Nevada,²³ have cited *Irvin*'s formulation of jury impartiality with approval.

Other jurisdictions have attempted to come up with their own definitions of jury impartiality with reference to both federal and state constitutional provisions, as shown in the Appendix. Article XII of the Massachusetts Declaration of Rights, for example, states that “no subject shall be . . . deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land,”²⁴ and Article XXIX ensures “that there be an impartial interpretation of the laws, and administration of justice.”²⁵ Massachusetts courts have developed juror impartiality jurisprudence on commonwealth constitutional premises.²⁶ Oregon's constitution ensures “the right to [a] public trial by an impartial jury in the county in which the offense shall have been committed,”²⁷ which the Oregon Supreme Court said pursues two purposes: keeping jurors with a bias or “interest[] in the outcome” from the venire and establishing “the right to a change of venue if pretrial publicity prevents an impartial jury.”²⁸ Indiana,²⁹ Virginia,³⁰ Texas,³¹ Florida,³² and Montana³³ all have constitutional provisions guaranteeing an impartial jury, noted in the Appendix.

Although state constitutional provisions offer varying definitions of impartiality, nearly all state courts interpret it—and conceive of bias—as an *orientation* rather than an intrinsic characteristic,³⁴ a view aligning with Supreme Court jurisprudence.³⁵ Jurisdictions that subscribe to

more frequently, jurors are reluctant to admit actual bias, and the reality of their biased attitudes must be revealed by circumstantial evidence.”).

²² *State v. Sparks*, 68 So. 3d 435, 460 (La. 2011) (finding that defendant failed to prove that “pretrial publicity” about the case made voir dire unreliable and observing that “the mere existence of any preconceived notion as to the guilt or innocence of the accused, without more, is insufficient to rebut the presumption of the juror’s impartiality” (quoting *State v. Clark*, 851 So. 2d 1055, 1071 (La. 2003))).

²³ *Blake v. State*, 121 P.3d 567, 577 (Nev. 2005) (citing the *Irvin* rule and noting that “[c]learly, a qualified juror need not be completely unaware of the facts and issues of the case at hand”).

²⁴ MASS. CONST. pt. I, art. XII; *see infra* note 257 and accompanying text.

²⁵ MASS. CONST. pt. I, art. XXIX; *see infra* note 259 and accompanying text.

²⁶ *See, e.g., Commonwealth v. Long*, 647 N.E.2d 1162, 1165 (Mass. 1995); *Commonwealth v. Rios*, 135 N.E.3d 1056, 1063 (Mass. App. Ct. 2019).

²⁷ OR. CONST. art. I, § 11; *see infra* note 320 and accompanying text.

²⁸ *State v. Amini*, 15 P.3d 541, 545 (Or. 2000).

²⁹ IND. CONST. art. 1, § 13; *see infra* note 232 and accompanying text.

³⁰ VA. CONST. art. I, § 8; *see infra* note 359 and accompanying text.

³¹ TEX. CONST. art. I, § 10; *see infra* note 346 and accompanying text.

³² FLA. CONST. art. I, § 16(a); *see infra* note 213 and accompanying text.

³³ MONT. CONST. art. II, § 24; *see infra* note 278 and accompanying text.

³⁴ *See infra* Appendix.

³⁵ *See, e.g., Connors v. United States*, 158 U.S. 408, 413 (1895). State constitutions with definitions of juror impartiality that largely mirror the United States Constitution include Alabama, Arizona, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Michigan,

this predominant view leave open the possibility that even prospective jurors who “evinced[] enmity or bias toward the defendant or the state”³⁶ can render an impartial verdict if willing to “set aside any bias or preconceived notion.”³⁷ This includes prospective jurors who may—on the basis of “rumor, or reading the public press, or from notoriety”—have formed an opinion about a defendant’s guilt if such views “will not combat the testimony or resist its force.”³⁸ It has also been interpreted to prevent prospective jurors’ “[s]ingle isolated responses” to voir dire questions that evince bias from being “determinative” of their ability to serve fairly.³⁹ Instead, judges should exercise discretion to empanel jurors able to “set aside preconceptions” based on the whole jury selection examination.⁴⁰ On the more extreme end of this continuum, courts sometimes hold that the empanelment of a biased juror, in the absence of an affirmative showing of prejudice toward the defendant, does not undermine the right to an impartial jury.⁴¹

Citing *Garlitz v. State*,⁴² one Maryland judge explained that impartial jurors “always remain open to the correction of former impressions” and former interpretations without reference to their earlier views.⁴³ Jurors who explicitly share reservations or even doubts about their ability to serve impartially, as a result, may not face excusal as a matter of law.⁴⁴ Likewise, a court may still be satisfied with the impartiality

Nebraska, Nevada, New York, North Carolina, Ohio, Texas, Utah, Virginia, and Washington. See *infra* Appendix.

³⁶ COLO. REV. STAT. § 16-10-103 (2025).

³⁷ *People v. Drake*, 748 P.2d 1237, 1244 (Colo. 1988) (emphasis added); see also *Singer v. State*, 109 So. 2d 7, 24 (Fla. 1959) (“[T]he true test to be applied should be not whether the juror will yield his opinion, bias or prejudice to the evidence, but should be that whether he is free of such opinion, prejudice or bias or, whether he is infected by opinion, bias or prejudice, he will, nevertheless, be able to put such completely out of his mind and base his verdict only upon evidence given at the trial.”); *Holmes v. State*, 498 S.E.2d 732, 734 (Ga. 1998) (“For a juror to be excused for cause, it must be shown that he or she holds an opinion of the guilt or innocence of the defendant that is so fixed and definite that the juror will be unable to set the opinion aside and decide the case based upon the evidence or the court’s charge upon the evidence.”).

³⁸ *Scribner v. State*, 108 P. 422, 424 (Okla. Crim. App. 1910); see also *Commonwealth v. Smith*, 540 A.2d 246, 256 (Pa. 1988) (“It is true, of course, that an accused has the right to challenge a prospective juror for lack of impartiality. We do not expect jurors to be free from all prejudices, however; rather, the law requires them to be able to put aside their prejudices and determine guilt or innocence on the facts presented.”).

³⁹ *State v. Flack*, 89 N.W.2d 30, 32 (S.D. 1958).

⁴⁰ *State v. Muetze*, 368 N.W.2d 575, 585 (S.D. 1985).

⁴¹ *State ex rel. Kitchen v. Painter*, 700 S.E.2d 489, 507 (W. Va. 2010).

⁴² 18 A. 39 (Md. 1889).

⁴³ *Bristow v. State*, 219 A.2d 33, 36 (Md. 1966) (quoting *Garlitz*, 18 A. at 41).

⁴⁴ *Holmes v. State*, 498 S.E.2d 732, 734 (Ga. 1998) (“A prospective juror’s doubt as to his or her own impartiality does not demand as a matter of law that he or she be excused for cause. Nor is excusal required when a potential juror expresses reservations about his or her ability to put aside personal experiences.” (citation omitted)).

of a prospective juror who holds an “opinion or impression” about a defendant’s guilt⁴⁵ or even a relationship of consanguinity to a party in a case.⁴⁶ In a similar vein, courts have acknowledged that it is unrealistic and even untenable to expect jurors to be ignorant of the circumstances of a case for which they may be empaneled.⁴⁷

The premise of this approach is that juror *ignorance* is not a prerequisite for impartiality.⁴⁸ Or, as a Nebraska court put it, “The law does not require that a juror be totally ignorant of the facts and issues involved in the case; [rather,] it is sufficient if the juror can lay aside his or her impression or opinions and render a verdict based upon the evidence.”⁴⁹ Similarly, an Arkansas state court emphasized that jurors should approach their work as if their minds are a “blank sheet of white paper, so to speak, with no impressions written thereon *as to the merits of the cause*.”⁵⁰ According to this view, biased jurors are those “entertaining an actual bias against the accused.”⁵¹ In other words, for

⁴⁵ State v. Kang, 2002-2812, p. 3 (La. 10/21/03), 859 So. 2d 649, 652 (quoting LA. CODE CRIM. PROC. ANN. art. 797 (2025)); see also State v. Freeze, 438 So. 2d 1340, 1343–44 (La. Ct. App. 1983) (holding that a trial judge could reasonably conclude that a law enforcement officer who had previously arrested a defendant could serve as an impartial juror).

⁴⁶ See State v. Brandolese, 601 S.W.3d 519, 529 (Mo. 2020) (en banc) (“The constitutional right to a fair and impartial jury, however, does not itself require the exclusion of any juror within a certain degree of consanguinity or with another personal relationship to one of the parties.”). *But see* State v. McClear, 11 Nev. 39, 46 (1876) (holding that juries must consist of “twelve competent men who are free from all the ties of consanguinity”).

⁴⁷ State v. Johnson, 1 Miss. (1 Walker) 392, 400 (1831) (“[I]t is stretching presumption too far to suppose, that an atrocious deed can be committed and a jury obtained within the limits of the county, who have never heard of the transaction.”).

⁴⁸ The U.S. Supreme Court articulated this point in a case, arising from the 2013 Boston Marathon bombing, in which the Court concluded that the defendant, Tamerlan Tsarnaev, received a fair trial before an impartial jury. *United States v. Tsarnaev*, 595 U.S. 302, 324 (2022). Justice Thomas stated that although defendants have a right under the Sixth Amendment to an impartial jury, an *impartial* jury is not an *ignorant* one—and there is no requirement that a jury know *nothing* about the case. *Id.* at 312.

⁴⁹ State v. Galindo, 774 N.W.2d 190, 223 (Neb. 2009).

⁵⁰ See Lane v. State, 270 S.W. 974, 975 (Ark. 1925) (emphasis added); see also *People v. Runge*, 917 N.E.2d 940, 959 (Ill. 2009) (“The standard for juror impartiality is whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant. What is required for purposes of due process is ‘a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen.’” (citation omitted) (quoting *Smith v. Phillips*, 455 U.S. 209, 217 (1982))).

⁵¹ *Lane*, 270 S.W. at 975; see also *Commonwealth v. Williams*, 116 N.E.3d 609, 614 (Mass. 2019) (“[E]ach juror must be ‘impartial as to the persons involved and unprejudiced and uncommitted as to the defendant[’s] guilt or past misconduct.’” (second alteration in original) (quoting *Commonwealth v. Ricard*, 246 N.E.2d 433, 435 (Mass. 1969))); *Johnson*, 1 Miss. (1 Walker) at 400 (“The framers of [the Mississippi Constitution] certainly did not understand the words impartial jury, to mean any thing more or less, than that the accused should not be tried by men who had prejudged his case” (emphasis omitted)).

bias to be disqualifying, it must be narrowly directed at the case at hand.⁵² Such bias can result, for example, from jurors being subject to external influences that undermine a trial's integrity.⁵³

Along similar lines, a Montana court acknowledged both that the state constitution promised criminal defendants “a fundamental right to be tried by an impartial jury” and that “[f]ew people are entirely impartial regarding criminal matters.”⁵⁴ The same court held that the test of juror impartiality is “whether the totality of the juror’s statements raises a serious question or doubt about his or her willingness or ability to set aside personal biases and render a verdict based solely on the evidence presented.”⁵⁵ The court, however, provided no further guidance for identifying troubling statements or determining whether a response to a voir dire question should raise “serious” concern.

In addition to acknowledging that impartiality is a cultivated or adopted stance rather than an intrinsic characteristic, many state courts

⁵² See, e.g., *State v. Johnson*, 2019 MT 68, ¶ 9, 395 Mont. 169, 437 P.3d 147 (“A defendant may accordingly challenge a prospective juror for cause if the juror manifests ‘a state of mind’ regarding the case or either party ‘that would prevent the juror from acting with entire impartiality’ regarding the parties and material matters in the case.” (quoting MONT. CODE ANN. § 46-16-115 (2025))).

⁵³ See, e.g., *People v. Marshall*, 790 P.2d 676, 700 (Cal. 1990) (“When . . . there is a substantial likelihood that at least one juror was impermissibly influenced to the defendant’s detriment, we are compelled to conclude that the integrity of the trial was undermined . . .”); *In re Hamilton*, 975 P.2d 600, 612 (Cal. 1999) (“An impartial jury is one in which no member has been improperly influenced and every member is ‘capable and willing to decide the case solely on the evidence before it.’” (citations omitted) (quoting *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554 (1984))); *George F. Craig & Co. v. Pierson Lumber Co.*, 53 So. 803, 805 (Ala. 1910) (“Aside from protecting the rights of parties, in the fair and impartial administration of justice, respect for the courts calls for their condemnation of any improper conduct, however slight, on the part of a juror, of a party, or of any other person, calculated to influence the jury in returning a verdict. . . . Not only the evil, in such cases, but the appearances of evil, if possible, should be avoided.”); *State v. Chung*, No. CAAP-14-0000894, 2015 WL 4756410, at *5 (Haw. Ct. App. Aug. 11, 2015) (noting that both the Hawaii Constitution and the United States Constitution “guarantee the criminally accused a fair trial by an impartial jury,” which requires a jury “free from outside influences” and a verdict “based upon evidence received in open court and not from outside sources” (first quoting *State v. Bailey*, 271 P.3d 1142, 1158 (Haw. 2012); and then quoting *State v. Keliioholokai*, 569 P.2d 891, 893–94 (Haw. 1977))); *Commonwealth v. Andrade*, 11 N.E.3d 597, 602 (Mass. 2014) (“The judge’s duty is to ‘examine jurors fully regarding possible bias or prejudice where “it appears that there is a substantial risk that jurors may be influenced by factors extraneous to the evidence presented to them.”’” (quoting *Commonwealth v. Garuti*, 907 N.E.2d 221, 226 (Mass. 2009))); *State v. Carmody*, 471 A.2d 1363, 1366 (R.I. 1984) (“In the prosecution of a criminal offense, the trial justice has a duty to keep jurors free from external influence, as well as from extraneous matters. A jury verdict must be based upon the ‘evidence received in open court, not from outside sources.’” (citation omitted) (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 351 (1966))); *State v. Kelly*, 502 S.E.2d 99, 104 (S.C. 1998) (“In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences.”).

⁵⁴ *State v. Morales*, 2020 MT 188, ¶¶ 9–10, 400 Mont. 442, 468 P.3d 355; see also *State v. Jay*, 2013 MT 79, ¶ 20, 369 Mont. 332, 298 P.3d 396 (“[E]very person comes to jury duty with preconceptions.”).

⁵⁵ *Morales*, ¶ 10.

also emphasize that an impartial jury is tied to the *representativeness* of the venire. For example, an Alaska court held that an impartial and “proper” jury—in the “constitutional sense”—is one that is “truly representative of the community,” which can be accomplished through random selection.⁵⁶ According to this view, and regardless of the “mix of individual viewpoints actually represented,” the summoning of jurors from a “fair cross section of the community” makes that body impartial.⁵⁷ Other jurisdictions emphasize the value of inclusion not only in the process by which jurors are summoned to constitute a venire but also in the manner in which voir dire is carried out. “The right to a completely impartial jury,” as one Kentucky court held, requires that venirepersons be “indifferently chosen”⁵⁸—a requirement that would seem antithetical to a system guided by the interests of adversarial parties.

The few jurisdictions that conceive of juror bias as an immutable feature of a juror’s outlook contend that such a trait can be uncovered through questioning.⁵⁹ In this view, disqualifying bias is a “state of mind”; it is either present or absent and is otherwise resistant to

⁵⁶ See *Green v. State*, 462 P.2d 994, 997 (Alaska 1969); see also *State v. Fredericks*, 507 N.W.2d 61, 64 (N.D. 1993) (“A criminal defendant’s right to an impartial jury trial under the Sixth Amendment requires the selection of the jury from a representative cross section of the community.”); *Rogers v. Commonwealth*, No. 2954-06-4, 2009 WL 2742563, at *2 (Va. Ct. App. Sept. 1, 2009) (“This [impartial jury] guarantee includes the right to a jury selected from a fair cross-section of the community utilizing a random selection process.” (citations omitted)).

⁵⁷ See *Lockhart v. McCree*, 476 U.S. 162, 184 (1986); see also *Blount v. State*, 511 A.2d 1030, 1038 (Del. 1986) (“[T]his Court is of the opinion that both the United States and Delaware Constitutions ‘presuppos[e] that a jury selected from a fair cross-section of the community is impartial, regardless of the mix of individual viewpoints actually represented on the jury, so long as the jurors can conscientiously and properly carry out their sworn duty to apply the law to the facts of the particular case.’” (second alteration in original) (quoting *Lockhart*, 476 U.S. at 184)); *State v. Plain*, 969 N.W.2d 293, 296 (Iowa 2022) (declaring that, under both the United States Constitution and the Iowa Constitution, “[t]he constitutional guarantees of an impartial jury entitle the accused to a jury ‘drawn from a fair cross-section of the community’” (quoting *State v. Plain*, 898 N.W.2d 801, 821 (Iowa 2017))); *Commonwealth v. Soares*, 387 N.E.2d 499, 510–11 (Mass. 1979) (“In various contexts, we have remarked that ‘[a] fair jury is one that represents a cross section of community concepts’; ‘[it] is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community’” (alterations in original) (citation omitted) (first quoting *Commonwealth v. Ricard*, 246 N.E.2d 433, 435 (Mass. 1969); and then quoting *Commonwealth v. Martin*, 257 N.E.2d 444, 446 (Mass. 1970))), *abrogated by Commonwealth v. Sanchez*, 151 N.E.3d 404, 424 (Mass. 2020) (changing the cross-section test to mirror that of *Batson v. Kentucky*, 476 U.S. 79 (1986), but maintaining the same reasoning). *But cf. Bridges v. State*, 695 A.2d 609, 613 (Md. Ct. Spec. App. 1997) (“The character of a jury as impartial is something quite distinct from the character of a jury as representative of a fair cross-section of the population.”).

⁵⁸ *Louisville Metro Gov’t v. Ward*, 610 S.W.3d 295, 311 (Ky. Ct. App. 2020) (quoting *Batson*, 476 U.S. at 87).

⁵⁹ *State v. Holmes*, 221 A.3d 407, 421 (Conn. 2019).

measurement.⁶⁰ An example of this bias is a prospective juror’s “animus or bias towards a racial group” that might influence their perceptions of “a party or the evidence.”⁶¹

Still, this is not the predominant approach. Neatly summarized by the Connecticut Supreme Court in its constitutional guarantee of jury impartiality,⁶² the more common view holds that a juror’s preconceived opinion about a defendant’s guilt is not, in itself, disqualifying.⁶³ What is essential is that the juror is *aware* of such a view and believes “she can set aside that opinion and render a verdict based on evidence in the case.”⁶⁴

Such a conception of impartiality should foster greater attention to the process of summoning prospective jurors, ensuring their representativeness, and examining their conscious biases. Contemporary practice, however, is inconsistent with the belief that impartiality is a cultivated or adopted stance.⁶⁵ From the moment jury selection begins, partiality becomes—troublingly—a condition *created* by challenges and strikes.⁶⁶

Circuit courts disfavor the use of voir dire to strategically attribute bias to otherwise eligible prospective jurors. In *United States v. Ehmer*,⁶⁷ for example, the Ninth Circuit held that courts should only cautiously identify “implied” biases and, instead, inquire into a juror’s ability to be fair during voir dire.⁶⁸ Likewise, the Fifth Circuit in *United States v. Dejean*⁶⁹ held that a juror’s ability to serve impartially could be established by asking such a juror to “put aside her personal views” and decide a case based only on the evidence.⁷⁰

The skepticism with which courts have responded to lawyers’ imputations of bias to jurors is unsurprising—there is no compelling evidence that lawyers are well suited to this task.⁷¹ A more sensible approach is to presume jurors’ impartiality. The Article discusses this further in Section III.B.⁷²

⁶⁰ *Miller v. State*, 904 P.2d 344, 352 (Wyo. 1995) (“An impartial jury consists of those jurors who will conscientiously apply the law and find the facts. Impartiality is not measured easily by tests as it is not a technical conception but rather a state of mind.” (citation omitted)).

⁶¹ *State v. Crump*, 851 S.E.2d 904, 910–11 (N.C. 2020).

⁶² CONN. CONST. art. I, § 8; *see infra* note 204 and accompanying text.

⁶³ *State v. Dixon*, 122 A.3d 542, 551 (Conn. 2015).

⁶⁴ *State v. Cubano*, 523 A.2d 495, 501 (Conn. 1987).

⁶⁵ *See infra* Part II.

⁶⁶ *See infra* Part II.

⁶⁷ 87 F.4th 1073 (9th Cir. 2023).

⁶⁸ *Id.* at 1150–51; *see also* *Fields v. Brown*, 503 F.3d 755, 772 (9th Cir. 2007) (noting that bias should only be imputed to jurors in “‘extreme’ or ‘extraordinary’ cases”).

⁶⁹ 988 F.3d 813 (5th Cir. 2021).

⁷⁰ *See id.* at 816.

⁷¹ *See* NANCY S. MARDER, *THE POWER OF THE JURY* 46–48 (2022).

⁷² *See infra* Section III.B.

II. JURY IMPARTIALITY IN PRACTICE: VOIR DIRE

The vast majority of prospective jurors who are dismissed from service are excused “for cause” on the ground that they cannot participate impartially.⁷³ Claims of partiality can be advanced against jurors for a number of reasons, including for having fixed opinions about the merits of a case, bias in favor of or against a party, pecuniary interests in the outcome of a case, or a close relationship with a party, among other reasons.⁷⁴ The task of excusing a juror on such grounds lies with the judge and hinges, at least officially, on consideration of whether a juror “can set aside [their] opinions and try the case fairly and impartially” in accordance with the law and evidence,⁷⁵ or, in some jurisdictions, a more definitive showing of prejudice.⁷⁶

⁷³ See, e.g., *Wainwright v. Witt*, 469 U.S. 412, 429–30 (1985). The trial court is charged with the duty to seat an impartial jury, even if it must act sua sponte. See *Frazier v. United States*, 335 U.S. 497, 511 (1948); *State v. Riley*, 459 P.3d 66, 85 (Ariz. 2020); *Wilson v. Commonwealth*, 342 S.E.2d 65, 67 (Va. Ct. App. 1986). In criminal cases, both the state and the defendant can raise cause challenges. *Withers v. State*, 17 S.W. 936, 938 (Tex. Ct. App. 1891). Appellate courts show deference to such determinations. See, e.g., *Poynter v. Ratcliff*, 874 F.2d 219, 222 (4th Cir. 1989); see also 50A C.J.S. *Juries* § 368 (2019) (“In order to be competent and qualified to serve as a juror in a case, a person must be capable of being fair and impartial . . .”).

⁷⁴ See, e.g., ALA. R. CRIM. P. 18.4(e); ALASKA R. CIV. P. 47(c)(3); ARIZ. R. CIV. P. 47(d)(1)(D); ARK. CODE ANN. § 16-33-304(2) (2025); CAL. CIV. PROC. CODE § 225(b)(1) (West 2025); COLO. R. CIV. P. 47(e)(7); COLO. REV. STAT. § 16-10-103(1)(j) (2025); IDAHO CODE § 19-2020 (2025); IDAHO R. CIV. P. 47(h); IND. JURY R. 17(a)(8); LA. CODE CRIM. PROC. ANN. art. 797 (2025); MINN. R. CRIM. P. 26.02(subd. 5)(1)(1); MONT. CODE ANN. § 46-16-115(2) (2023); NEV. REV. STAT. § 16.050 (2024); N.Y. CRIM. PROC. LAW § 270.20(1) (McKinney 2025); N.D. CENT. CODE § 29-17-35 (2025); OKLA. STAT. tit. 22, § 660 (2025); OR. R. CIV. P. 57(D)(1)(g); TEX. CODE CRIM. PROC. ANN. art. 35.16 (West 2025); UTAH R. CIV. P. 47(f)(6); WASH. REV. CODE § 4.44.170(1)–(2) (2025).

⁷⁵ *Knop v. McCain*, 561 So. 2d 229, 232 (Ala. 1989); see also *Wainwright*, 469 U.S. at 424; *Patton v. Yount*, 467 U.S. 1025, 1036 (1984); *United States v. Hager*, 721 F.3d 167, 190 (4th Cir. 2013); *Pietri v. State*, 885 So. 2d 245, 257 (Fla. 2004).

⁷⁶ See, e.g., *Woodall v. State*, 350 S.W.3d 691, 696 (Tex. App. 2011) (stating that when challenging a “prospective juror for cause whenever [the] juror has a bias or prejudice against any phase of the law applicable to the case upon which [the] defendant is entitled to rely,” the test is whether the perceived bias or prejudice would “prevent or substantially impair the prospective juror’s ability to fully follow the law as set out in the trial court’s instructions and as required by the juror’s oath”); *Cade v. State*, 716 S.E.2d 196, 200 (Ga. 2011) (“For a juror to be excused for cause, it must be shown that [the prospective juror] holds an opinion of the guilt or innocence of the defendant that is so fixed and definite that the juror will be unable to set the opinion aside and decide the case based upon the evidence and the court’s charge upon the evidence.” (quoting *Hyde v. State*, 572 S.E.2d 562, 565 (Ga. 2002))); *Stephens v. State*, 699 S.E.2d 558, 566–67 (Ga. Ct. App. 2010) (same); *Wood v. B & S Enters., Inc.*, 723 S.E.2d 443, 448 (Ga. Ct. App. 2012) (same); *In re Commitment of Curtner*, 972 N.E.2d 351, 355–56 (Ill. App. Ct. 2012) (“The standard for juror impartiality is whether the juror had such fixed opinions that he could not judge impartially.”); *Ellington v. State*, 735 S.E.2d 736, 763 (Ga. 2012) (establishing that when determining whether a prospective juror is biased, “[t]he question is whether the juror has a fixed and definite opinion, not whether he or she leans one way or another but nevertheless has an open mind”). Still, even with the more stringent tests, the central inquiry in all cases of assessing whether a juror should be

Yet, in all cases, prospective jurors can be excused for possessing “actual bias” or “implied bias.”⁷⁷ Both draw on subjective assessments of jurors’ states of mind, anticipated evidentiary interpretations, and disqualifying relationships.⁷⁸ Here, in practice, attorneys’ perceptions of juror bias can trump prospective jurors’ contentions that they can be fair.⁷⁹ In order to presume bias on the part of a juror, a judge need only find that “an average person in the position of the [prospective] juror in controversy would be prejudiced.”⁸⁰ Judges are afforded broad discretion when making such determinations.⁸¹

removed for cause remains “whether that [prospective] juror holds a particular belief or opinion that will ‘prevent or substantially impair the performance of [their] duties as a juror in accordance with [their] instructions and [their] oath.’” *United States v. Hayat*, 710 F.3d 875, 885 (9th Cir. 2013) (quoting *United States v. Padilla-Mendoza*, 157 F.3d 730, 733 (9th Cir. 1998)).

⁷⁷ See *infra* Appendix (demonstrating that state constitutions and pertinent case law consistently focus on the bias of a potential juror as a factor relevant to excusal).

⁷⁸ See, e.g., *State v. Odom*, 336 S.W.3d 541, 556 (Tenn. 2011) (“In determining whether a potential juror may properly be removed for cause, ‘the trial court makes a judgment based in part on the demeanor of the juror, a judgment owed deference by reviewing courts.’” (quoting *Uttecht v. Brown*, 551 U.S. 1, 9 (2007))); *Haley v. State*, 113 S.W.3d 801, 809 (Tex. App. 2003) (“When a trial court is faced with a vacillating prospective juror, elements such as demeanor and tone of voice are important factors in conveying the precise message intended . . .”), *aff’d*, 173 S.W.3d 510 (Tex. Crim. App. 2005); *Treesh v. Bagley*, 612 F.3d 424, 437 (6th Cir. 2010); *People v. McKinzie*, 281 P.3d 412, 445 (Cal. 2012) (“To find actual bias on the part of an individual juror, the court must find ‘the existence of a state of mind’ with reference to the case or the parties that would prevent the prospective juror ‘from acting with entire impartiality and without prejudice to the substantial rights of either party.’” (quoting *People v. Horning*, 102 P.3d 228, 245 (Cal. 2004))).

⁷⁹ See *State v. Massey*, 11-357, p. 27 (La. App. 5 Cir. 3/27/12), 91 So. 3d 453, 471 (“[A] prospective juror’s assertion that he or she will be fair and impartial despite [perceived] bias is not binding on the court.” (citing *State v. Lewis*, 391 So. 2d 1156 (La. 1980))); *Holmes v. State*, 498 S.E.2d 732, 734 (Ga. 1998) (“A prospective juror’s doubt as to his or her own impartiality does not demand as a matter of law that he or she be excused for cause.”).

⁸⁰ *United States v. Torres*, 128 F.3d 38, 45 (2d Cir. 1997); see also *Treesh*, 612 F.3d at 437 (noting that “[t]he doctrine of presumed or implied . . . bias” is applied in certain extreme or exceptional instances where it is “highly unlikely that the average person could remain impartial in his deliberations under the circumstances” (quoting *Johnson v. Luoma*, 425 F.3d 318, 326 (6th Cir. 2005))); *Tinsley v. Borg*, 895 F.2d 520, 528 (9th Cir. 1990) (noting situations in which the court may presume bias on the part of a juror, including contexts in which (1) “the juror is apprised of such prejudicial information about the defendant that the court deems it highly unlikely that he can exercise independent judgment even if the juror states he will,” (2) “[t]he existence of certain relationships between the juror and the defendant,” (3) “where a juror or his close relatives have been personally involved in a situation involving a similar fact pattern,” and (4) “where it is revealed ‘that the juror is an actual employee of the prosecuting agency, that the juror is a close relative of one of the participants in the trial . . . or that the juror was a witness or somehow involved in the [underlying] transaction’” (quoting *Smith v. Phillips*, 455 U.S. 209, 222 (1982) (O’Connor, J., concurring))).

⁸¹ See *Dennis v. United States*, 339 U.S. 162, 168 (1950) (“[W]hile impaneling a jury the trial court has a serious duty to determine the question of actual bias, and a broad discretion in its rulings on challenges therefor.”).

Nevertheless, attorneys motivated to impute bias to jurors can easily do so, even when faced with ambiguous or equivocal circumstances.⁸² The judge's duty in managing cause challenges extends beyond the task of ruling upon prospective jurors' impartiality to "balanc[ing] the parties' competing interests"⁸³ and deferring at times to lawyers' strategic agendas.⁸⁴ It is difficult to resist the conclusion that these agendas drive the selection process, transforming an institution supposed to ensure impartiality⁸⁵ into one in which attorneys eliminate prospective jurors according to their partial preferences.

Of course, the cause challenge is not the only instrument used to carve up jury pools to satisfy the court's opposed parties. Peremptory strikes allow parties in criminal⁸⁶ and civil⁸⁷ cases to excuse a designated number of jurors without offering reasons for doing so.⁸⁸ Though peremptory strikes cannot be based on race,⁸⁹ sex,⁹⁰ or ethnicity,⁹¹ they are readily deployed to distort the demographic composition of juries⁹² in ways that reflect the biases and advantage-seeking strategies of litigants.⁹³ As lawyers are under no obligation to justify their use of peremptory strikes, courts have limited ability to detect or redress their abuse.⁹⁴ Given that lawyers typically make excusal decisions to benefit their side,⁹⁵ peremptory strikes likely do not remove or reduce partiality from juries, but instead reinforce it.

Peremptory challenges have been legitimated and justified by arguments that they in fact enhance and protect impartiality. In *Holland v.*

⁸² See, e.g., *Joiner-Carosi v. Adekoya*, 850 S.E.2d 823, 827 (Ga. Ct. App. 2020) (holding that a trial court did not err in striking a prospective juror who stated that he felt suspicious of individuals who filed lawsuits despite contending that in the civil suit at hand he was not partial to the plaintiff or defendant).

⁸³ See *Walls v. Kim*, 549 S.E.2d 797, 799 (Ga. Ct. App. 2001), *aff'd*, 563 S.E.2d 847 (Ga. 2002).

⁸⁴ Memorandum from John Shapard & Molly Johnson, Fed. Jud. Ctr., to Advisory Comm. on Civ. Rules & Advisory Comm. on Crim. Rules 4 (Oct. 4, 1994), <https://www.fjc.gov/sites/default/files/2015/0022.pdf> [<https://perma.cc/YDY8-XWD4>].

⁸⁵ See *supra* Part I.

⁸⁶ FED. R. CRIM. P. 24(b).

⁸⁷ FED. R. CIV. P. 47.

⁸⁸ See *McCleskey v. Kemp*, 481 U.S. 279, 337 (1987) (Brennan, J., dissenting) (noting that peremptory challenges are "normally exercised without any indication whatsoever of the grounds for doing so").

⁸⁹ *Batson v. Kentucky*, 476 U.S. 79, 99 (1986).

⁹⁰ *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 129 (1994).

⁹¹ *Hernandez v. New York*, 500 U.S. 352, 355 (1991).

⁹² Caren Myers Morrison, *Negotiating Peremptory Challenges*, 104 J. CRIM. L. & CRIMINOLOGY 1, 37–38 (2014).

⁹³ Anna Roberts, *Asymmetry as Fairness: Reversing a Peremptory Trend*, 92 WASH. U. L. REV. 1503, 1511 (2015).

⁹⁴ See *Batson*, 476 U.S. at 89.

⁹⁵ See, e.g., *United States v. Taylor*, 832 F.2d 1187, 1196 (10th Cir. 1987) (describing lawyers' use of peremptory challenges as "a tactical trial decision").

Illinois,⁹⁶ Justice Scalia argued that the fair-cross-section requirement is fulfilled through competition in which the prosecution and defense have the same number of strikes:

The Sixth Amendment requirement of a fair cross section on the venire is a means of assuring, not a *representative* jury (which the Constitution does not demand), but an *impartial* one (which it does). Without that requirement, the State could draw up jury lists in such manner as to produce a pool of prospective jurors disproportionately ill disposed towards one or all classes of defendants, and thus more likely to yield petit juries with similar disposition. The State would have, in effect, unlimited peremptory challenges to compose the pool in its favor. The fair-cross-section venire requirement assures, in other words, that in the process of selecting the petit jury the prosecution and defense will compete on an equal basis.⁹⁷

Here, Justice Scalia suggests that if juries were not required to be impartial, the state could in theory summon pools that reflect its biases.⁹⁸ A representative pool, he writes, is necessary to foster balanced competition between the prosecution and defense during jury selection.⁹⁹ Oddly, however, this competition is itself unjustified. Having summoned a representative jury, why then subject it to lawyer-led striking or any form of competition?

The explanation, it appears, is that representativeness and impartiality are opposed to one another. In fact, the *Holland* Court clarified in dicta that imposing a fair-cross-section requirement on petit juries would adversely affect jury impartiality and impede the use of peremptory strikes.¹⁰⁰ This interpretation exempts the petit jury from meaningful correspondence with the community from which it is drawn and does so in part on the basis of the potential effect it would have on the tool that allegedly fosters impartiality: “the device of peremptory challenge.”¹⁰¹ Here, *Holland* emphasizes that impartiality is not something found in populations or jury pools but *made through a competitive process* involving peremptory strikes by litigants whose bias is not in doubt or considered problematic.¹⁰² The Court theorized that peremptory strikes “enabl[e] each side to exclude those jurors it believes will be most partial toward the other side, . . . [thus] ‘eliminat[ing] extremes of partiality on

⁹⁶ 493 U.S. 474 (1990).

⁹⁷ *Id.* at 480–81.

⁹⁸ *Id.*

⁹⁹ *Id.* at 484.

¹⁰⁰ *Id.* at 483–84. The majority’s belief that the Sixth Amendment could not incorporate the *Batson v. Kentucky* doctrine rested on this belief. *Id.* at 477–78.

¹⁰¹ *Id.* at 484.

¹⁰² *Id.* at 480–81.

both sides,' [and] thereby 'assuring the selection of a qualified *and unbiased* jury.'"¹⁰³ Again, questions abound. Are the opposed parties equally competent at eliminating extremes? Are they consistent in doing so? What if the striking process itself is destructive to the impartiality of the remaining jurors, who might misinterpret the—secret—reasons for the excusal of their peers? What if peremptory strikes were being used to eliminate the truly impartial jurors to save ones who may be partial?

Federal courts seem unfazed by these issues and have almost universally applied the *Holland* Court's conception of the fair-cross-section requirement and, by extension, its implicit need for the peremptory strike. They do not always do so explicitly, instead merely affirming—as Justice Scalia did—that competition yields impartiality and is key to how courts strike a “balance designed to achieve the goal of a fair trial.”¹⁰⁴ In *Biros v. Bagley*,¹⁰⁵ for example, the Sixth Circuit suggested that the peremptory strike be given wide latitude, within constitutional limits.¹⁰⁶ “[R]estrictions would frustrate the purpose of peremptory challenges, which enable each side to ‘exclude those jurors *it believes* will be most partial *toward the other side*, . . . thereby assuring the selection of a qualified and *unbiased* jury.”¹⁰⁷ The Fourth Circuit articulated the similar view that Supreme Court jurisprudence has achieved the necessary balance for a fair trial and that “[t]he peremptory challenge is ‘one means of *assuring* the selection of a qualified and unbiased jury.”¹⁰⁸ The Eighth Circuit explained that our adversarial system of peremptory strikes allows counsel to dismiss a prospective juror from the jury pool “based entirely on [their] instinct or gut feeling that an individual would not be a *favorable* juror.”¹⁰⁹

The situation in state courts is no different. A telling example comes from the Alabama Court of Criminal Appeals in *Duncan v. State*,¹¹⁰ in which the court relied on *Holland* to assert that the Sixth Amendment permitted peremptory challenges even when such challenges were used

¹⁰³ *Id.* at 484 (fourth alteration in original) (citation omitted) (first quoting *Swain v. Alabama*, 380 U.S. 202, 219 (1965), *overruled by* *Batson v. Kentucky*, 476 U.S. 79 (1986); and then quoting *Batson*, 476 U.S. at 91).

¹⁰⁴ *United States v. Harbin*, 250 F.3d 532, 540 (7th Cir. 2001) (“Our system is not one of symmetry at every stage, but of an overall balance designed to achieve the goal of a fair trial.”).

¹⁰⁵ 422 F.3d 379 (6th Cir. 2005).

¹⁰⁶ *Id.* at 390.

¹⁰⁷ *Id.* (second alteration in original) (first and second emphases added) (quoting *Dennis v. Mitchell*, 354 F.3d 511, 525–26 (6th Cir. 2003)).

¹⁰⁸ *Brown v. Dixon*, 891 F.2d 490, 497 n.14 (4th Cir. 1989) (emphasis added) (quoting *Batson*, 476 U.S. at 91); *see also* *United States v. Thompson*, 76 F.3d 442, 451 (2d Cir. 1996) (“Peremptory challenges are a ‘means to the constitutional end of an impartial jury and a fair trial.’” (quoting *Georgia v. McCollum*, 505 U.S. 42, 57 (1992))).

¹⁰⁹ *Smulls v. Roper*, 535 F.3d 853, 858 (8th Cir. 2008) (emphasis added).

¹¹⁰ 575 So. 2d 1198 (Ala. Crim. App. 1990).

to systematically exclude jurors based on race.¹¹¹ The Georgia Court of Appeals adheres to *Holland* too, as seen in *Herrin v. State*.¹¹² Courts across the country routinely claim that peremptory strikes facilitate impartiality, but this belief is grounded in little more than faith in the adversarial process.¹¹³

Most courts believe that impartiality and the peremptory strike are inextricably intertwined,¹¹⁴ even as they fail to explain convincingly why the former requires the latter. If courts do not invoke the seemingly magical effect of competition, they appear to have only one other argument at their disposal: history.¹¹⁵ In other words, peremptory strikes continue because they have always existed, and there is no compelling case for stopping now.

The dissonant visions of impartiality reflected in justifications for jury selection practices and interpretations of federal and state constitutions highlight troubling instability in the jury as an institution. The very power vested in laypeople to participate in the legal process rests on professional legal actors' capricious, strategic interests—whether used to justify peremptory strikes or cause challenges.

III. TOWARD A PRESUMPTION OF JUROR IMPARTIALITY

The previous Section reviewed influential conceptions of juror impartiality. These conceptions draw explicitly or implicitly on Justice Scalia's commentary in *Holland*, which held strike-based competition to be a solution to a hypothetical problem in which the state has full control of the composition of the venire.¹¹⁶ Here, impartiality is concretized as the outcome of balanced competition, and the peremptory strike, which is deployed by biased actors, is reimagined as the instrument

¹¹¹ *Id.* at 1205–06. The court, however, did hold that such a use of peremptory challenges could violate the Equal Protection Clause. *Id.* at 1206–07.

¹¹² 471 S.E.2d 297, 300 (Ga. Ct. App. 1996) (“Peremptory challenges, by enabling each side to exclude those jurors it believes will be most partial toward the other side, are a means of eliminat[ing] extremes of partiality on both sides, thereby assuring the selection of a qualified and unbiased jury.” (alteration in original) (quoting *Holland v. Illinois*, 493 U.S. 474, 484 (1990))).

¹¹³ *See, e.g.*, *State v. Miller*, 427 P.3d 907, 927 (Kan. 2018) (“The purpose of voir dire is to enable *the parties* to select jurors who are competent and without bias, prejudice, or partiality. Peremptory challenges are one of the means to achieve an impartial jury.” (emphasis added) (citation omitted)); *Blake v. State*, 121 P.3d 567, 578 (Nev. 2005); *Phillips v. State*, 894 So. 2d 28, 36 (Fla. 2004); *State v. DiFrisco*, 645 A.2d 734, 752 (N.J. 1994).

¹¹⁴ *United States v. Puff*, 211 F.2d 171, 184–85 (2d Cir. 1954) (“It will be noted that all the cases above cited [in the opinion] stem from the fundamental theory that the American jury should be composed of impartial jurors. As a result, a party is entitled to an array of impartial jurors to which he may direct his peremptory challenges. To this a party is entitled as of right.”).

¹¹⁵ *See Batson v. Kentucky*, 476 U.S. 79, 91 n.15 (1986).

¹¹⁶ *See supra* notes 96–103 and accompanying text.

for dissolving partiality in the jury.¹¹⁷ In seeking advantage during jury selection, however, legal actors are more likely to undermine the impartiality of juries than to facilitate it.

Another approach is possible. This Section examines a different kind of impartiality in the contemporary court: *judicial* impartiality. In the United States, judges are afforded the chance to reflect critically on their own bias and participate in the process of determining whether their involvement in a trial is appropriate.¹¹⁸ This understanding of impartiality does not hold that bias is stripped away by competition—there is no pool of judges that is whittled down by lawyers, for instance. Rather, a legal actor is invited into the adjudication process and given the responsibility to determine if some aspect of their relationship to the case or its content might interfere with their ability to serve without favor for a particular side. This approach offers a viable and vital model for juror impartiality.

A. *Applying Norms of Judicial Impartiality to Jurors*

The Due Process Clauses of the Fifth and Fourteenth Amendments constitute the basis for the right to an impartial judiciary.¹¹⁹ *In re Murchison*¹²⁰ and *Tumey v. Ohio*¹²¹ together affirm that “[a] fair trial in a fair tribunal is a basic requirement of due process”¹²² and that proceedings should “have an impartial judge.”¹²³ *Tumey*’s conception of impartiality was narrow, however. Although it held that the Due Process Clause did in fact require an impartial judiciary, it established few criteria for removal, stipulating that judges with “direct, personal, substantial, and pecuniary interest[s]” in a case must recuse themselves.¹²⁴

¹¹⁷ See *supra* notes 96–103 and accompanying text.

¹¹⁸ See *infra* notes 120–37 and accompanying text.

¹¹⁹ The Framers held a steadfast belief in impartiality in the tribunal. See THE FEDERALIST No. 10, at 59 (James Madison) (Jacob E. Cooke ed., 1961) (“No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.”).

¹²⁰ 349 U.S. 133 (1955).

¹²¹ 273 U.S. 510 (1927).

¹²² *Murchison*, 349 U.S. at 136 (“A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases.”).

¹²³ *Tumey*, 273 U.S. at 535 (noting that there is “the right to have an impartial judge”); see also *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876–81 (2009) (discussing instances in which the Due Process Clause requires judges to recuse themselves); *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (“Due process guarantees ‘an absence of actual bias’ on the part of a judge.” (quoting *Murchison*, 349 U.S. at 136)); *Ward v. Village of Monroeville*, 409 U.S. 57, 59–60 (1972) (applying *Tumey* to hold that the Due Process Clause prohibited a mayor from adjudicating fines when the mayor’s responsibility for village finances gave him an interest in the proceeds of such fines).

¹²⁴ *Tumey*, 273 U.S. at 523.

As a result, disqualification on other grounds, including bias or prejudice, was a matter primarily “left to statutes and judicial codes.”¹²⁵ The Supreme Court has since clarified that “[p]ersonal bias or prejudice ‘alone would not be sufficient basis for imposing a constitutional requirement [of recusal] under the Due Process Clause.’”¹²⁶ This suggests that the Due Process Clause would apply only in egregious cases, leaving matters of “kinship, personal bias, state policy, and remoteness of interest” to “legislative discretion.”¹²⁷

More recently, in *Williams v. Pennsylvania*,¹²⁸ the Court read the Due Process Clause as requiring judicial recusal “when the likelihood of bias on the part of the judge ‘is too high to be constitutionally tolerable’”¹²⁹—creating more room for discretion. This case, which specifically focused on judicial partiality in criminal cases, found that a judge’s position as district attorney during a defendant’s capital conviction represented a meaningful and unacceptable source of bias when the same judge later presided over the defendant’s sentencing rehearing.¹³⁰ Applying an “objective standard,” the Court affirmed the requirement that a judge’s “significant, *personal* involvement in a critical trial decision” contributed to this “unconstitutional risk of bias.”¹³¹ The Court nonetheless has observed that only rare and extreme cases merit constitutional consideration.¹³²

The American Bar Association’s “objective standard” in the Model Code of Judicial Conduct Canon 1,¹³³ along with other state ethics reforms, can otherwise be applied for the purpose of “eliminat[ing] even the appearance of partiality.”¹³⁴ The statutory threshold for judicial

¹²⁵ *Caperton*, 556 U.S. at 877.

¹²⁶ *Id.* (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 820 (1986)).

¹²⁷ *Tumey*, 273 U.S. at 523.

¹²⁸ 579 U.S. 1 (2016).

¹²⁹ *Id.* at 4 (quoting *Caperton*, 556 U.S. at 872).

¹³⁰ *See id.* (noting that when the justice had been District Attorney of Philadelphia, he had given the trial prosecutor permission to pursue the death penalty against the defendant).

¹³¹ *Id.* at 4, 11 (emphasis added) (stating that the objective standard “requires recusal when the likelihood of bias on the part of the judge ‘is too high to be constitutionally tolerable’” (quoting *Caperton*, 556 U.S. at 872)).

¹³² *See Caperton*, 556 U.S. at 887; *see also* Bruce A. Green & Rebecca Roiphe, *Judicial Activism in Trial Courts*, 74 N.Y.U. ANN. SURV. AM. L. 365, 381–82 (2019) (discussing judges’ broad latitude to express emotion without facing imputations of bias).

¹³³ *See* MODEL CODE OF JUD. CONDUCT CANON 1 (AM. BAR ASS’N 2020) (“A judge shall . . . avoid impropriety and the appearance of impropriety.”); *id.* r. 1.2 cmt. (“The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”).

¹³⁴ *Caperton*, 556 U.S. at 888; *Liteky v. United States*, 510 U.S. 540, 558 (1994) (Kennedy, J., concurring in judgement) (“[U]nder [28 U.S.C.] § 455(a), a judge should be disqualified only if it appears that he or she harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute.”).

recusal, however, is broad and free-form, conferring discretion to judges to disqualify *themselves* in cases in which their impartiality “might reasonably be questioned.”¹³⁵

The Model Code of Judicial Conduct identifies various potential threats to judicial impartiality. These include personal bias or prejudice, relationships with individuals or organizations that present conflicts or concern related to judicial influence or control, and publicly accessible communications that could diminish confidence in judicial impartiality.¹³⁶ These are the same issues often seen as threats to a prospective juror’s impartiality.¹³⁷

Unlike jurors, judges are rarely removed from cases due to bias or partiality.¹³⁸ This is striking, as given their deeper involvement and experience with the legal process and its various actors, including prosecutors and defense attorneys, judges seem more likely to have ties, encounters, and tendencies that might raise questions about their involvement in a case. This double standard deserves critical attention. Jurors, like judges, bear responsibility for assessing the evidence and arguments in cases with an open mind; both swear an oath to that effect.¹³⁹ This responsibility is, in part, reinforced by the guarantee of impartiality in legal proceedings afforded to litigants.¹⁴⁰ The promise of impartiality assures litigants that the merits of their arguments will not be eclipsed by the elusive biases of judges and juries.¹⁴¹

¹³⁵ See 28 U.S.C. § 455(a) (“Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”).

¹³⁶ MODEL CODE OF JUD. CONDUCT r. 2.11 (AM. BAR ASS’N 2020).

¹³⁷ See LORI QUICK, JUROR MISCONDUCT: RECOGNIZING IT AND RAISING IT ON APPEAL 1–2 (2011), <https://sdap.org/wp-content/uploads/downloads/research/criminal/jmcdcu.pdf> [<https://perma.cc/9YYK-QCN6>].

¹³⁸ See, e.g., Michael Berens & John Shiffman, *Thousands of U.S. Judges Who Broke Laws or Oaths Remained on the Bench*, REUTERS (June 30, 2020, 12:00 PM), <https://www.reuters.com/investigates/special-report/usa-judges-misconduct/> [<https://perma.cc/4YLW-Z69U>]. Reuters compiled 1,509 cases from 2008 to 2019 “in which judges resigned, retired or were publicly disciplined following accusations of misconduct.” *Id.* The study concluded that “9 of every 10 judges were allowed to return to the bench after they were sanctioned for misconduct” *Id.* Though these cases did not all implicate issues of impartiality, the findings reflect the general leniency with which judges are treated with respect to ethical violations. *Id.*

¹³⁹ See 28 U.S.C. § 453 (establishing the federal judicial oath of service); TEX. CODE CRIM. PROC. ANN. art. 35.22 (West 2025) (establishing the Texas juror’s oath in criminal proceedings).

¹⁴⁰ See THE FEDERALIST NO. 83, *supra* note 119, at 562 (Alexander Hamilton) (“The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury: Or if there is any difference between them, it consists in this; the former regard it as a valuable safeguard to liberty, the latter represent it as the very palladium of free government.”); see also THE FEDERALIST NO. 78, *supra* note 119, at 527 (Alexander Hamilton) (“This independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humours”).

¹⁴¹ See THE FEDERALIST NO. 83, *supra* note 119, at 563 (Alexander Hamilton) (“The strongest argument in [the jury’s] favour is, that it is a security against corruption.”).

Both jurors and judges are capable of adopting the appropriate mindset for this work. And yet, the contemporary court holds that the impartiality of the former permits attorney involvement in cause challenges followed by peremptory striking.¹⁴² A more effective and ethical approach to jury impartiality would dispense with this idea and instead use judicial impartiality as a model. To make this new conception work, it would be necessary to rethink juror assessment. A better model of juror selection would enhance and standardize the role of judges in eliciting and mitigating evidence of potential bias.

B. Discouraging Lawyer-Initiated Questioning and Rehabilitation

It is not easy to discern whether prospective jurors' life experiences and opinions represent a threat to their impartiality. In practice, voir dire is set up—and peremptory strikes are justified—by an orientation to jury neutrality that emphasizes the importance of competition and the balanced pursuit of strategic advantage.¹⁴³ However, this process encourages juror questioning that seeks to identify potential bases for a person's disqualification, rather than confirm their open-mindedness.¹⁴⁴ Voir dire, intended to empanel an impartial jury, becomes a search for character evidence that shows that a person cannot, despite their claims to the contrary, be fair.¹⁴⁵

A more even-handed approach to eliciting information from prospective jurors would be initiated by judges. This would mean, as a preliminary matter, that the judge leads all questioning of a potential juror during voir dire.¹⁴⁶ This is already the primary approach taken in federal court.¹⁴⁷ A benefit of this practice is standardization: Judges can ask the same questions every time. Further, judges, who do not favor

¹⁴² See generally Robert T. Prior, Comment, *The Peremptory Challenge: A Lost Cause?*, 44 MERCER L. REV. 579 (1993) (exploring the history of peremptory challenges and analyzing pertinent Supreme Court cases from the late 1980s and early 1990s).

¹⁴³ See *supra* Part II.

¹⁴⁴ See Anna Offit, *The Character of Jury Exclusion*, 106 MINN. L. REV. 2173, 2188 (2022).

¹⁴⁵ See *id.* at 2188–2204.

¹⁴⁶ See WILLIAM W. SCHWARZER & ALAN HIRSCH, FED. JUD. CTR., *THE ELEMENTS OF CASE MANAGEMENT* 16 (3d ed. 2017) (“At trial, the court’s management power transcends the authority specifically conferred by rules, statutes, and decisions. The judge has broad inherent power over the management of cases, attorneys, and parties. That inherent power, employed judiciously, enables the court to do what is necessary to produce just, speedy, and economical trials.”).

¹⁴⁷ See FED. R. CRIM. P. 24 (permitting the court to lead voir dire); Gregory E. Mize & Paula Hannaford-Agor, *Building a Better Voir Dire Process*, JUDGES’ J., Winter 2008, at 4, 8 tbl.1 (providing that in federal court, voir dire is exclusively or predominantly led by judges 69.6% of the time, whereas in state court, voir dire is exclusively or predominantly led by judges 25.9% of the time and led by judges and lawyers equally in 19.4% of cases). Indeed, judges are already actively involved in state jury proceedings in many jurisdictions, either independently or alongside attorneys. *Id.*

either side, are better positioned to follow up on the answers they receive to determine whether a person's potential biases can in fact be held in check for the purpose of assessing evidence with an open mind.

A judge can honor a juror's sincere claim to impartiality, even if that person holds views or has had experiences that might lead an observer to conclude that the person in question has compromised judgment. For instance, a prospective juror might have personal and professional experience that leads them to believe that the legal system itself is unfair—a view that is not uncommon among segments of the public.¹⁴⁸ This is the kind of prospective juror who *should* be empaneled if they can affirm, as a judge might, that regardless of their views and experiences, they can be impartial in the case at hand.¹⁴⁹ Judge-led voir dire can facilitate rehabilitative lines of questioning aimed at reminding jurors of their duty to remain impartial. They are not dedicated, as lawyers might be, to seeking an advantage by trying to facilitate a prospective juror's empanelment or dismissal.

Lawyers are biased actors. And the conventional state court approach to voir dire yields a jury shaped by the preferences of those who manage it. Lawyers can adapt the wording of their questions—and follow-up questions—to elicit or discourage disqualifying evidence of bias. In their study of voir dire in twelve capital cases in North Carolina, Professors Catherine Grosso and Barbara O'Brien observed that the framing of lawyers' questions reflected the kinds of responses they hoped to elicit.¹⁵⁰ “[I]f a lawyer believes she can size a juror up based on demeanor, manner of dress, and other factors,” the authors write, “the lawyer may believe—consciously or subconsciously—that she knows how the prospective juror will answer, and frame the question accordingly.”¹⁵¹ In this manner, and in jury selection proceedings that give them free reign, lawyers can “use this control strategically to manipulate the flow of information in voir dire.”¹⁵² Each lawyer is looking to maximize partiality—albeit for their side.

¹⁴⁸ See Megan Brenan, *Americans More Critical of U.S. Criminal Justice System*, GALLUP (Nov. 16, 2023), <https://news.gallup.com/poll/544439/americans-critical-criminal-justice-system.aspx> [https://perma.cc/TGV3-8F8D].

¹⁴⁹ See, e.g., *Commonwealth v. Williams*, 116 N.E.3d 609, 613, 616 (Mass. 2019). In this case, a Massachusetts prospective juror was dismissed from jury service for cause after sharing her view that the justice system is rigged against young Black men. *Id.* Here, though the Supreme Judicial Court of Massachusetts did not overturn the defendant's conviction, it held that a prospective juror should be expected to “set aside an opinion born of the prospective juror's life experiences or belief system.” *Id.* at 616. Notwithstanding her experience, the prospective juror stated, “I think I can be unbiased—I think I can be—I think I can listen to the evidence.” *Id.* at 613.

¹⁵⁰ Catherine M. Grosso & Barbara O'Brien, *Lawyers and Jurors: Interrogating Voir Dire Strategies by Analyzing Conversations*, 16 J. EMPIRICAL LEGAL STUD. 515, 541 (2019).

¹⁵¹ *Id.*

¹⁵² *Id.*

By contrast, judge-led rehabilitative questioning would ask a juror who appears partial whether they can, in truth, “put aside opinions formed based on . . . life experiences or belief system[s].”¹⁵³ After the juror affirms a willingness to do so, the judge could ask whether that juror could “put aside” any sources of bias directed at the particular “case to be tried.”¹⁵⁴ The goal of these interactions would be to confirm that the jurors present understand and have adopted the disposition to the case that the Constitution requires.

A judge’s consistent use of this rehabilitative-questioning script could address the problem of improperly exercised cause challenges.¹⁵⁵ For example, acknowledging the capacity of laypeople to set aside prejudicial attitudes toward particular parties and cases is a critical step in preventing adversarial interests from dominating the jury selection process. Treating prospective jurors as agents of their own empanelment would more closely align the jury with its historical role as a check on the *professional* judiciary as well.¹⁵⁶

There is no empirical evidence that suggests litigants, rather than judges, are better equipped for the task of discerning and assessing bias on the part of prospective jurors.¹⁵⁷ If this were a serious concern, judge-led voir dire can also involve questioning jurors individually. This questioning can be carried out at sidebar, in the jury room, or in the judge’s chambers. This approach would both elicit more information from jurors than that provided in open court and mitigate the problem of affording partial actors the chance to formulate leading questions toward strategic ends. Research suggests that when asked, lawyers acknowledge their preference for jurors who will be most favorably inclined to their arguments or client.¹⁵⁸ And this makes sense: Their goal is not an impartial jury, but one that favors their side.

Encouraging judge-led jury selection proceedings could also mitigate the effects of pernicious and unfounded assumptions that might underlie lawyers’ claims of juror bias. The absence of any meaningful check on cause challenges during voir dire can result not only in the composition of juries being strategically skewed but also in baseless

¹⁵³ See *Williams*, 116 N.E.3d at 615.

¹⁵⁴ *Id.*

¹⁵⁵ See Thomas Ward Frampton, *For Cause: Rethinking Racial Exclusion and the American Jury*, 118 MICH. L. REV. 785, 788 (2020).

¹⁵⁶ See RENÉE LETTOW LERNER, *THE JURY: A VERY SHORT INTRODUCTION* 25–27 (2023) (“Blackstone was attuned to the dangers of lack of judicial independence and judges’ potential bias. . . . [H]e gave reasons for his high opinion of juries. By far the most important reason was their role as a check on judicial partiality and bias.”). Lerner notes that juries were perceived as a vital check on judicial class bias. *Id.*

¹⁵⁷ See, e.g., MARDER, *supra* note 71, at 46–48 (discussing empirical research on lawyers’ bias-predicting capacities and limitations).

¹⁵⁸ See *id.*

attributions of bias due to race, sex, or class.¹⁵⁹ Because there is no procedural recourse for the misuse of a cause challenge, unlike an illegal peremptory strike, jurors may be subject to excusal based on an attorney's or judge's belief—or tacit acceptance—that individuals could not be unbiased due to their race.¹⁶⁰

To this end, courts and attorneys would benefit from explicit guidance on how to recognize and respond to bias judgments that reflect bias in and of themselves. This could include instruction on words, phrases, and even certain reactions by attorneys that can have the cumulative effect of precluding particular groups from participating as jurors, as well as elaboration of the fact that race and sex are poor predictors of juror attitudes.¹⁶¹ This would result in the empanelment of jurors who—for example—initially express reservations about crediting law enforcement testimony above that of lay witnesses before confirming they will approach testimony and evidence in a case with an open mind.¹⁶² Facilitating greater jury representativeness would not only enhance the perceived legitimacy of the legal system¹⁶³ but also lead to fairer case outcomes for defendants.¹⁶⁴

C. *Dispensing with the Peremptory Strike to Enhance Jury Autonomy*

The jury should be an instrument of community justice. Today, it is impeded in this aim by the peremptory strike, which transforms juries that represent their communities into juries that reflect the interests and

¹⁵⁹ See Offit, *supra* note 144, at 2208–19; see also Frampton, *supra* note 155, at 788 (noting that jury exclusion arising from cause challenges is understudied and that “[o]ur myopic focus on peremptory strikes . . . has led to the neglect of an adjacent problem: equivalent racial disparities pervade the exercise of challenges for cause”); Thomas Ward Frampton, *The Jim Crow Jury*, 71 VAND. L. REV. 1593, 1630 (2018) (“Of the 975 potential jurors that prosecutors successfully challenged for cause, over 58.5% (n=570) were black jurors while only 34.2% (n=333) were white jurors.”).

¹⁶⁰ See Frampton, *supra* note 155, at 805–08.

¹⁶¹ Eric L. Muller, *Solving the Batson Paradox: Harmless Error, Jury Representation, and the Sixth Amendment*, 106 YALE L.J. 93, 101 (1996) (noting that social characteristics including race and gender are “flatly irrational predictors of juror perspective”).

¹⁶² See *Griffin v. Bell*, 694 F.3d 817, 824 (7th Cir. 2012) (suggesting that this type of response from a juror demonstrates “the opposite of bias, and [a] trial court [would] not abuse its discretion in refusing to strike [such a juror] for cause”); see also *United States v. Allen*, 605 F.3d 461, 466 (7th Cir. 2010) (upholding the trial court’s decision not to strike a juror who affirmed her ability to approach the evidence with an open mind even after originally expressing reservations about her ability to do so).

¹⁶³ Leslie Ellis & Shari Seidman Diamond, *Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy*, 78 CHI.-KENT L. REV. 1033, 1038 (2003) (noting that “unrepresentative juries potentially threaten the public’s faith in the legitimacy of the legal system and its outcomes” even if not directly threatening the verdict).

¹⁶⁴ See *Roberts*, *supra* note 93, at 1523.

advocacy of lawyers.¹⁶⁵ The defenses typically offered of the peremptory strike reflect a credulous belief in either the magical effects of competition or lawyers' sincere commitment to eliminating extremes of belief or perspective.¹⁶⁶ Neither is convincing. As part of rethinking jury impartiality, states should follow Arizona's lead and abolish the peremptory strike—a retrograde institution that has little justification aside from tradition.¹⁶⁷

Abolishing peremptory strikes will lead to juries that better represent the experiences, knowledge, and perspectives of the communities from which they are drawn. This flips a familiar view on its head. Community membership does not, as some have claimed, increase the risk of bias by impressing upon a person certain ideas, tendencies, prejudices, loyalties, and obligations.¹⁶⁸ Rather, it endows them with the first-hand familiarities that enable them to dispense justice in and for a particular place. The members of a community know about where they live, its history, and the normative conditions of life there. They know the people there. They have some idea of how their shared social world is structured, divided, and organized. They have beliefs and feelings about how it has changed—and whether it has been for the better.

In other words, at the very least, what laypeople bring to the jury pool, other than their unique personal biographies and characteristics, is some conception of the physical and social context within which a crime was committed or an action taken. This local knowledge is entwined in idiosyncratic ways with their formal knowledge, occupational knowledge, and cosmological knowledge—that is, the assemblage of metaphysical truths, beliefs, and related ideas a person has about good, bad, and justice. This knowledge, though distributed unevenly across the community, is the basis for the shared epistemic framework within which jurors come to consensus about what occurred and what it means.

The jury trial requires this kind of sharing. It is taken for granted, for instance, that prospective jurors have overlapping or compatible ideas about what motivates social behavior.¹⁶⁹ It is assumed that jurors know something of the material context within which a crime takes

¹⁶⁵ See *supra* Part II.

¹⁶⁶ See *Holland v. Illinois*, 493 U.S. 474, 484 (1990) (arguing that the peremptory strike creates impartiality through biased competition).

¹⁶⁷ See Thomas Ward Frampton & Brandon Charles Osowski, *The End of Batson? Rulemaking, Race, and Criminal Procedure Reform*, 124 COLUM. L. REV. 1, 6, 31–32 (2024) (noting the extent to which the erosion of “the very notion of a fair trial by an impartial jury” has contributed to efforts to pursue jury reforms, including the abolition of the peremptory strike (quoting *State v. Aziakanou*, 2021 UT 57, ¶ 69, 498 P.3d 391)).

¹⁶⁸ See generally LAWRENCE ROSEN, *LAW AS CULTURE* (2008) (exploring the interrelationship between culture and law as well as how this relationship affects legal decision-making).

¹⁶⁹ See Jason M. Solomon, *Juries, Social Norms, and Civil Justice*, 65 ALA. L. REV. 1125, 1172–74 (2014).

place.¹⁷⁰ Community members can often gauge whether an act falls within the realm of the ordinary, extraordinary, plausible, or probable. All this local knowledge is derived from everyday experience as a member of the community and not from materials presented at trial or their interpretation within the context of the law as presented by the court.

The border drawn between knowledge and experience that marks a person as suitable for jury service, on the one hand, and knowledge and experience that mark one as partial, on the other, has no sound basis in the contemporary court. A long-time employee of the Bureau of Land Management, for example, has experience that might give them a deeper understanding of what a militia occupation of a wildlife station would entail. At the same time, that juror's potential commitment to their employer or profession could raise questions about whether their decision-making process is oriented toward the evidence or motivated by retribution. The bare facts of a person's involvement in a community or group cannot by itself provide adequate information about their impartiality. The result might be the removal of an impartial juror.

This is why it is critical to treat jury impartiality like judicial impartiality. The latter holds impartiality to be not only the objective absence of material or social interest in the outcome of the trial but an ethical stance.¹⁷¹ This ethical stance requires its adopter to consciously deploy a frame of interpretation in which personal experience and local knowledge are used to evaluate the merits of a case with respect to the law in question. It is an approach that does not ask a person to be a blank slate—in fact, it holds that a person's perspective is valuable insofar as it corresponds to experiential and interpretive trends in the community. Furthermore, it introduces a critical form of expertise to the trial. A veteran judge, for instance, is no less impartial for having experience, both personal and professional. In fact, such experience may be valued insofar as it makes the judge more likely to understand how to adopt the appropriate ethical posture and know when circumstances might prevent them from doing so. Similarly, the great promise of the jury lies in the possibility that a variety of actors, drawn from the same community, will adopt a shared ethical stance while nevertheless bringing their various perspectives into dialogue with one another. If impartiality is to be made, it will be made by jurors themselves.

CONCLUSION

The current approaches to jury and juror impartiality help justify the perpetuation of a peremptory strike system, a discretionary institution whereby legal actors are permitted to participate in sculpting juries

¹⁷⁰ *See id.*

¹⁷¹ *See supra* notes 120–37 and accompanying text.

by seeking—very *partially*—to eliminate prospective jurors likely to view their case negatively.¹⁷² If bias is rampant and difficult to detect, the logic goes, then juries cannot simply be found but must be *made*. In the contemporary United States, the implicit—and sometimes explicit—justification for peremptory strikes is the need to excavate and excise bias.¹⁷³ The irony, of course, is that the actors involved in the process are explicitly biased. This has been defended by invoking the alchemical character of competition.¹⁷⁴ Through the biased but opposed actions of prosecutors and defense attorneys, the strike system diminishes the jury's correspondence with its community and somehow purifies it.

This approach is misguided. A rethinking of jury impartiality is necessary and possible. For judges, impartiality is not seen as a form of independence from community concern but as an ethical orientation.¹⁷⁵ To be an impartial judge is to commit to the fair and dispassionate consideration of evidence and argument. Unless judges remove themselves due to a self-identified conflict of interest, the default assumption is that the person who presides over a trial has, despite their own community entanglements, adopted this ethical orientation and its associated dispositions, assumptions, and tendencies to participate thoughtfully in the process of making justice. The system trusts judges to know when their impartiality is compromised. The same trust should be extended to prospective jurors.

Part of this reform should reflect critically on assumptions about impartiality and disentangle the various ideas that have become tangled in an essential but largely incoherent concept. Today, impartiality is viewed as an effect of competition—a quality that must be *created* in part through lawyer-led questioning and striking.¹⁷⁶ This system reflects the flawed idea that the encouragement of biased striking for advantage by opposed legal actors fosters a kind of contest in which each move is countered by another, creating balance by lopping off those jurors perceived to be most biased in favor of one's opponents.¹⁷⁷

But what does this hacking do to the balance that likely exists in a jury that represents its community? It seems far more likely that voir dire merely allows two sets of actors with various strategies, biases, prejudices, tricks of the trade, and false assumptions to doubly deform a jury. Impartial jurors are unlikely to be spared; their open-mindedness might be construed as a problem if it is extended to one's opponents. Lawyers might be satisfied with the result, but justice is not—not if the

¹⁷² See *supra* Part II.

¹⁷³ See *supra* notes 96–103 and accompanying text.

¹⁷⁴ See *supra* notes 96–103 and accompanying text.

¹⁷⁵ See *supra* notes 120–37 and accompanying text.

¹⁷⁶ See *supra* notes 96–103 and accompanying text.

¹⁷⁷ See *supra* notes 96–103 and accompanying text.

requirement for impartiality is a serious one. As legal scholars have shown, the diversity of the United States' jury pools is rarely replicated in its juries.¹⁷⁸ At least some of the blame must be laid on peremptory strikes, the legitimacy of which hinges on the perpetuation of outmoded ideas about the salutary effect of competition.¹⁷⁹ Dispensing with this fiction can at last begin the rethinking of impartiality and how it is to be achieved for the jury trial.

This Article opened with the story of a juror's removal from deliberation on the grounds of bias, even though the judge could not establish that this bias existed or constituted a real threat to the impartiality of the jury.¹⁸⁰ On the one hand, this shows that significant actions vis-à-vis the jury can be justified by arbitrary observations regarding impartiality. It was only because of the defense's threat to call for a mistrial that the judge decided to remove a juror *that she did not believe had compromised the jury*.¹⁸¹ Nevertheless, what the defense knew—and the judge understood—is that a partial jury would constitute a violation of the defendant's constitutional right and legitimate grounds for halting proceedings.¹⁸² The choice was seemingly between keeping a juror whose partiality had been called into question and summoning a substitute whose perspective was, as far as anyone knew, fair and unbiased. The swap allowed the trial to continue, even if its justification was dubious.

On the other hand, this story sketches a workable approach to rehabilitating a juror whose impartiality is in doubt. Judge-led questioning of a juror suspected of bias can probe potential sources of partiality and call upon the person in question to publicly reaffirm their commitment to an unprejudiced interpretation of evidence presented in court. This approach asks more of both judges and jurors—both prospective and empaneled. The former must take responsibility for determining whether a targeted juror is ultimately partial. The latter must, like any witness who swears an oath to tell the truth, commit to impartiality as an ethical and epistemological orientation to the trial and its outcome.

Treating jurors like judges would empower them. With the approach proposed in this Article, a pool of prospective jurors would be summoned, and twelve—plus alternates—would be selected at random. After a judge-led period of questioning in which jurors are asked

¹⁷⁸ See, e.g., Anna Roberts, *Disparately Seeking Jurors: Disparate Impact and the (Mis)use of Batson*, 45 U.C. DAVIS L. REV. 1359, 1399 (2012); Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, 97 IOWA L. REV. 1531, 1538–40 (2012); Mary R. Rose, *The Peremptory Challenge Accused of Race or Gender Discrimination? Some Data from One County*, 23 LAW & HUM. BEHAV. 695, 697 (1999).

¹⁷⁹ See *supra* notes 96–103 and accompanying text.

¹⁸⁰ See Bransford, *supra* note 1.

¹⁸¹ *Id.*

¹⁸² See *supra* notes 8–12 and accompanying text.

to reflect critically on their potential biases and affirm their impartiality, they would be sworn in as the jury. From that point, they would be responsible for maintaining the ethical and interpretive stance required by the trial—as judges are.¹⁸³

The shift, especially with respect to cause challenges, might seem subtle. But what distinguishes the proposed conception of juror impartiality from the extant one is its empowerment of lay decision-makers to reflect on their own biases and conflicts of interest given the nature of the trial and the actors involved. Through delegating this kind of responsibility to the jury, there would be a reciprocal kind of investment by jurors in both the substance and significance of their role. This perhaps represents a broader philosophical reorientation to the role of laypeople in the legal system. In contrast to approaches that describe and recommend various procedural prophylactics to deal with the inconvenient fact of lay participation, the one sketched here holds that giving jurors greater responsibility and discretion would strengthen the democratic nature and enhance the impartiality of the legal system.

¹⁸³ See *supra* notes 120–37 and accompanying text.

APPENDIX: SURVEY OF STATE CONSTITUTIONAL PROVISIONS
DEFINING JURY IMPARTIALITY WITH ILLUSTRATIVE CASES
THAT INTERPRET THEM

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Alabama</i>	
<p>Article I, Section 6: “[I]n all prosecutions by indictment, [the accused has a right to] a speedy, public trial, by an impartial jury of the county or district in which the offense was committed”¹⁸⁴</p> <p>Article I, Section 11: “[T]he right of trial by jury shall remain inviolate.”¹⁸⁵</p>	<p>“Alabama courts have consistently looked to the United States Supreme Court’s interpretation of the right to an impartial jury to define the scope of a defendant’s right to strike potential jurors.”¹⁸⁶</p> <p>“The plain meaning of this language is that the defendant is entitled only to an impartial jury and that unless the defendant can show that a trial court’s erroneous ruling during jury selection prevented the jury from being impartial, there is no violation of § 6.”¹⁸⁷</p>
<i>Alaska</i>	
<p>Article I, Section 11: “In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve, except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record.”¹⁸⁸</p> <p>Article I, Section 16: “In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law.”¹⁸⁹</p>	<p>“A jury under our constitution must be an ‘impartial’ one. This is an expression of the notion of what a proper jury is—a body truly representative of the community. . . . If it appeared that the jury selected for petitioners’ trial would not be ‘impartial’ in the constitutional sense because not truly representative of the community where petitioners are to be tried, then petitioners could make a valid argument that they were not accorded due process of law.”¹⁹⁰</p>

¹⁸⁴ ALA. CONST. art. I, § 6 (applying to criminal trials only).

¹⁸⁵ *Id.* art. I, § 11.

¹⁸⁶ *Akin v. State*, 698 So. 2d 238, 239 (Ala. 1997) (See, J., dissenting).

¹⁸⁷ *Evans v. State*, 794 So. 2d 411, 414 (Ala. 2000).

¹⁸⁸ ALASKA CONST. art. I, § 11 (applying to criminal trials only).

¹⁸⁹ *Id.* art. I, § 16.

¹⁹⁰ *Green v. State*, 462 P.2d 994, 997 (Alaska 1969).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Arizona</i>	
<p>Article II, Section 24: “In criminal prosecutions, the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed”¹⁹¹</p> <p>Article II, Section 23: “The right of trial by jury shall remain inviolate”¹⁹²</p>	<p>“[T]he impartial jury clause of the Arizona Constitution offers no greater protection than the impartial jury clause of the United States Constitution.”¹⁹³</p> <p>“However, our courts have held that Arizona’s right to an impartial jury is no broader than the Sixth Amendment.”¹⁹⁴</p>
<i>Arkansas</i>	
<p>Article II, Section 10: “In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial . . . by an impartial jury of the county in which the crime shall have been committed”¹⁹⁵</p> <p>Article II, Section 7: “The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy”¹⁹⁶</p>	<p>“To be strictly impartial, a jury should be composed of 12 men, each and all of whose minds when they enter the trial jury box should be like a blank sheet of white paper, so to speak, with no impressions written thereon as to the merits of the cause. A jury, to be impartial, must have the impressions of the merits of the cause written or stamped on their minds by hearing the testimony adduced before them at the trial, and <i>after</i> they enter the trial panel—not <i>before</i>. To be impartial, a jury must be composed of 12 impartial men. Even if one juror enters the jury box entertaining an actual bias against the accused and conceals such bias on his voir dire, the integrity of the trial panel is destroyed.”¹⁹⁷</p>

¹⁹¹ ARIZ. CONST. art. II, § 24 (applying to criminal cases only).

¹⁹² *Id.* art. II, § 23.

¹⁹³ State v. Rodarte, 842 P.2d 1344, 1349 (Ariz. Ct. App. 1992).

¹⁹⁴ State v. Carlson, 48 P.3d 1180, 1187 (Ariz. 2002).

¹⁹⁵ ARK. CONST. art. II, § 10 (applying to criminal cases only).

¹⁹⁶ *Id.* art. II, § 7.

¹⁹⁷ Lane v. State, 270 S.W. 974, 975 (Ark. 1925) (emphasis added).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>California</i>	
<p>Article I, Section 16: “Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict.”¹⁹⁸</p>	<p>“An impartial jury is one in which no member has been improperly influenced and every member is ‘capable and willing to decide the case solely on the evidence before it.’”¹⁹⁹</p> <p>“‘The ultimate issue of influence on the juror is resolved by reference to the substantial likelihood test, an objective standard. In effect, the court must examine the extrajudicial material and then judge whether it is inherently likely to have influenced the juror.’ . . . Any deficiency that undermines the integrity of a trial—which requires a proceeding at which the defendant, represented by counsel, may present evidence and argument before an impartial judge and jury—introduces the taint of fundamental unfairness and calls for reversal without consideration of actual prejudice. Such a deficiency is threatened by jury misconduct. When the misconduct in question supports a finding that there is a substantial likelihood that at least one juror was impermissibly influenced to the defendant’s detriment, we are compelled to conclude that the integrity of the trial was undermined: under such circumstances, we cannot conclude that the jury was impartial.”²⁰⁰</p>

¹⁹⁸ CAL. CONST. art. I, § 16. There is no explicit constitutional right to an impartial jury, but the California Supreme Court has held that Article I, Section 16 of the California Constitution creates such a right. *Lombardi v. Cal. St. Cable R. Co.*, 57 P. 66, 68 (Cal. 1899) (“The right to unbiased and unprejudiced jurors is an inseparable and inalienable part of the right to a trial by jury guaranteed by the constitution.”).

¹⁹⁹ *In re Hamilton*, 975 P.2d 600, 612 (Cal. 1999) (citations omitted) (quoting *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554 (1984)).

²⁰⁰ *People v. Marshall*, 790 P.2d 676, 700 (Cal. 1990) (citations omitted) (quoting 2 AM. BAR ASS’N, ABA STANDARDS FOR CRIMINAL JUSTICE standard 8-3.7 cmt. (2d ed. 1980)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Colorado</i>	
<p>Article II, Section 16: “In criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.”²⁰¹</p> <p>Article II, Section 23: “The right of trial by jury shall remain inviolate in criminal cases; but a jury in civil cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve persons, as may be prescribed by law.”²⁰²</p>	<p>“To secure that right [to an impartial jury], Colorado law requires courts, upon a party’s challenge, to remove jurors when particular circumstances implicate their ability to remain impartial. A court therefore must grant a challenge for cause to a prospective juror who ‘envinc[es] enmity or bias toward the defendant or the state,’ unless the court is satisfied that the prospective juror ‘will render an impartial verdict according to the law and the evidence submitted to the jury at the trial.’ To determine whether a prospective juror should be dismissed for cause, we analyze ‘whether the person would be able to set aside any bias or preconceived notion and render an impartial verdict based on the evidence adduced at trial and the instructions given by the court.’”²⁰³</p>

²⁰¹ COLO. CONST. art. II, § 16 (applying to criminal cases only).

²⁰² *Id.* art. II, § 23.

²⁰³ *People v. Clark*, 2022 COA 33, ¶¶ 13–14, 512 P.3d 1074, 1077–78 (second alteration in original) (citations omitted) (first quoting COLO. REV. STAT. § 16-10-103 (2025); and then quoting *People v. Drake*, 748 P.2d 1237, 1244 (Colo. 1988)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Connecticut</i>	
<p>Article I, Section 8: “In all criminal prosecutions . . . and in all prosecutions by indictment or information, [the accused shall have a right] to a speedy, public trial by an impartial jury.”²⁰⁴</p> <p>Article IV: “The right of trial by jury shall remain inviolate In all civil and criminal actions tried by a jury, the parties shall have the right to challenge jurors peremptorily, the number of such challenges to be established by law. The right to question each juror individually by counsel shall be inviolate.”²⁰⁵</p>	<p>“We conclude that article first, § 8, of the constitution of Connecticut incorporates the standard of ‘impartial jury’ provided by the federal constitution, namely, a jury that is: (1) composed of individuals able to decide the case solely on the evidence and in accordance with the court’s instructions regarding the law; and (2) properly selected from a venire panel that is composed of a representative cross section of the community.”²⁰⁶</p> <p>“[I]f there is any likelihood that some prejudice is in the [prospective] juror’s mind which will even subconsciously affect his [or her] decision of the case, the party who may be adversely affected should be permitted [to ask] questions designed to uncover that prejudice.”²⁰⁷</p>

²⁰⁴ CONN. CONST. art. I, § 8 (applying to criminal cases only).

²⁰⁵ *Id.* art. IV.

²⁰⁶ *State v. Griffin*, 741 A.2d 913, 934–35 (Conn. 1999); *cf.* *State v. Jose A.B.*, 270 A.3d 656, 677–78 (Conn. 2022) (upholding *Griffin* but stating that Connecticut’s Jury Selection Task Force established in *State v. Holmes*, 221 A.3d 407, 436–37 (Conn. 2019), may extend impartial jury requirements past those of federal law).

²⁰⁷ *Griffin*, 741 A.2d at 929–30 (first and third alterations in original) (quoting *State v. Hodge*, 726 A.2d 531, 539 (Conn. 1999)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Delaware</i>	
<p>Article I, Section 7: “In all criminal prosecutions, the accused hath a right to . . . a speedy and public trial by an impartial jury”²⁰⁸</p> <p>Article I, Section 4: “Trial by jury shall be as heretofore.”²⁰⁹</p>	<p>“Consequently, the right to a fair trial by an impartial jury in a criminal proceeding, that is guaranteed by both the United States Constitution and the Delaware Constitution requires that ‘the jury’s verdict be based on evidence received in open court, not from outside sources.’”²¹⁰</p> <p>“Aside from protecting the rights of the parties, in the fair and impartial administration of justice, respect for the courts calls for their condemnation of any improper conduct, however slight, on the part of a juror, of a party, or of any other person, calculated to influence the jury in returning a verdict. . . . Not only the evil, in such cases, but the appearances of evil, if possible, should be avoided.”²¹¹</p> <p>“[T]his Court is of the opinion that both the United States and Delaware Constitutions ‘presuppos[e] that a jury selected from a fair cross-section of the community is impartial, regardless of the mix of individual viewpoints actually represented on the jury, so long as the jurors can conscientiously and properly carry out their sworn duty to apply the law to the facts of the particular case.’”²¹²</p>

²⁰⁸ DEL. CONST. art. I, § 7 (applying to criminal cases only).

²⁰⁹ *Id.* art. I, § 4.

²¹⁰ Flonnory v. State, 778 A.2d 1044, 1052–53 (Del. 2001) (quoting Sheppard v. Maxwell, 384 U.S. 333, 351 (1966)).

²¹¹ Jackson v. State, 374 A.2d 1, 2–3 (Del. 1977) (emphasis omitted) (quoting George F. Craig & Co. v. Pierson Lumber Co., 53 So. 803, 805 (Ala. 1910)).

²¹² Blount v. State, 511 A.2d 1030, 1038 (Del. 1986) (second alteration in original) (quoting Lockhart v. McCree, 476 U.S. 162, 184 (1986)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Florida</i>	
<p>Article I, Section 16(a): “In all criminal prosecutions the accused shall . . . have the right . . . to have a speedy and public trial by impartial jury in the county where the crime was committed.”²¹³</p> <p>Article I, Section 22: “The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.”²¹⁴</p>	<p>“[T]he true test to be applied should be not whether the juror will yield his opinion, bias or prejudice to the evidence, but should be that whether he is free of such opinion, prejudice or bias or, whether he is infected by opinion, bias or prejudice, he will, nevertheless, be able to put such completely out of his mind and base his verdict only upon evidence given at the trial.”²¹⁵</p> <p>“To satisfy the state’s constitutional guarantee of an impartial jury, citizens who are otherwise qualified to serve as impartial jurors cannot be peremptorily challenged based on their membership in a particular ethnic group.”²¹⁶</p>
<i>Georgia</i>	
<p>Article I, Section I, Paragraph XI: “The right to trial by jury shall remain inviolate In criminal cases, the defendant shall have a public and speedy trial by an impartial jury”²¹⁷</p>	<p>“For a juror to be excused for cause, it must be shown that he or she holds an opinion of the guilt or innocence of the defendant that is so fixed and definite that the juror will be unable to set the opinion aside and decide the case based upon the evidence or the court’s charge upon the evidence. A prospective juror’s doubt as to his or her own impartiality does not demand as a matter of law that he or she be excused for cause. Nor is excusal required when a potential juror expresses reservations about his or her ability to put aside personal experiences.”²¹⁸</p>

²¹³ FLA. CONST. art. I, § 16(a) (applying to criminal cases only).

²¹⁴ *Id.* art. I, § 22. This provision also creates a right to an impartial jury in civil cases. *Frogel v. Philip Morris USA, Inc.*, 305 So. 3d 793, 797 (Fla. Dist. Ct. App. 2020).

²¹⁵ *Singer v. State*, 109 So. 2d 7, 24 (Fla. 1959).

²¹⁶ *State v. Alen*, 616 So. 2d 452, 454 (Fla. 1993). This was later expanded to include any cognizable class under a two-prong test. *Joseph v. State*, 636 So. 2d 777, 779–80 (Fla. Dist. Ct. App. 1994).

²¹⁷ GA. CONST. art. I, § I, para. XI.

²¹⁸ *Holmes v. State*, 498 S.E.2d 732, 734 (Ga. 1998) (citations omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Hawaii</i>	
<p>Article I, Section 14: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the district wherein the crime shall have been committed”²¹⁹</p> <p>Article I, Section 13: “In suits at common law where the value in controversy shall exceed five thousand dollars, the right of trial by jury shall be preserved.”²²⁰</p>	<p>“ “[T]he sixth amendment to the United States Constitution and article I, section 14 of the Hawai‘i Constitution guarantee the criminally accused a fair trial by an impartial jury.’ ‘Inherent in this requirement is that a defendant receive a trial by an impartial jury free from outside influences.’ ‘The jury’s verdict must be based upon evidence received in open court and not from outside sources.’”²²¹</p> <p>“However, when a defendant in a criminal case claims a deprivation of the right to a fair trial by an impartial jury, ‘the initial step for the trial court to take . . . is to determine whether the nature of the [alleged deprivation] rises to the level of being substantially prejudicial. If it does not rise to such a level, the trial court is under no duty to interrogate the jury. . . . And whether it does rise to the level of substantial prejudice . . . is ordinarily a question committed to the trial court’s discretion’</p> <p>‘Where the trial court does determine that such [alleged deprivation] is of a nature which could substantially prejudice the defendant’s right to a fair trial, a rebuttable presumption of prejudice is raised. The trial judge is then duty bound to further investigate the totality of circumstances surrounding the [alleged deprivation] to determine its impact on jury impartiality. The standard to be applied in overcoming such a presumption is that the [alleged deprivation] must be proved harmless beyond a reasonable doubt.’”²²²</p>

²¹⁹ HAW. CONST. art. I, § 14 (applying to criminal cases only).

²²⁰ *Id.* art. I, § 13.

²²¹ State v. Chung, No. CAAP-14-0000894, 2015 WL 4756410, at *5 (Haw. Ct. App. Aug. 11, 2015) (citations omitted) (first quoting State v. Bailey, 271 P.3d 1142, 1158 (Haw. 2012); and then quoting State v. Keliiholokai, 569 P.2d 891, 893–94 (Haw. 1977)).

²²² State v. Furutani, 873 P.2d 51, 59–60 (Haw. 1994) (alterations in original) (citation omitted) (first quoting *Keliiholokai*, 569 P.2d at 895; and then quoting State v. Williamson, 807 P.2d 593, 596 (Haw. 1991)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Idaho</i>	
<p>Article I, Section 18: “Courts of Justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay or prejudice.”²²³</p> <p>Article I, Section 7: “The right of trial by jury shall remain inviolate”²²⁴</p>	<p>“Appellant’s right to trial by jury is the right which is guaranteed to the American people by the Sixth Amendment to the Constitution of the United States, which was in force in Idaho Territory when our state came into existence, and is the right which Article I, § 7 of our constitution says, ‘shall remain inviolate.’”²²⁵</p> <p>“The Idaho Constitution states that ‘[t]he right of trial by jury shall remain inviolate.’ That a jury be ‘impartial,’ as ‘guaranteed by the Sixth Amendment of the United States Constitution, is made applicable to the individual states through the Fourteenth Amendment.’ ‘In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, indifferent jurors.’ ‘The failure to accord an accused a fair hearing violates even the minimal standards of due process.’ Thus, ‘the Due Process Clause protects a defendant from jurors who are actually incapable of rendering an impartial verdict, based on the evidence and the law.’”²²⁶</p>

²²³ IDAHO CONST. art. I, § 18. This provision, operating in conjunction with Idaho Constitution Article I, Section 13, has been interpreted to guarantee defendants “a fair and impartial trial.” See *State v. Ramirez*, 199 P. 376, 380 (Idaho 1921).

²²⁴ IDAHO CONST. art I, § 7.

²²⁵ *State v. Nadlman*, 118 P.2d 58, 61–62 (Idaho 1941) (quoting IDAHO CONST. art. I, § 7).

²²⁶ *State v. Moses*, 332 P.3d 767, 774 (Idaho 2014) (alteration in original) (citations omitted) (first quoting IDAHO CONST. art. I, § 7; then quoting *State v. Brooks*, 655 P.2d 99, 103 (Idaho Ct. App. 1982); then quoting *Irvin v. Dowd*, 366 U.S. 717, 722 (1961); and then quoting *Peters v. Kiff*, 407 U.S. 493, 501 (1972)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Illinois</i>	
<p>Article I, Section 8: “In criminal prosecutions, the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.”²²⁷</p> <p>Article I, Section 13: “The right of trial by jury as heretofore enjoyed shall remain inviolate.”²²⁸</p>	<p>“The standard for juror impartiality is whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant. What is required for purposes of due process is ‘a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen.’”²²⁹</p> <p>“Section 5 of article II of the Illinois constitution provides that ‘The right of trial by jury as heretofore enjoyed, shall remain inviolate.’ We have construed these words to mean the right of a trial by jury as it existed under the common law and as enjoyed at the time of the adoption of the respective Illinois constitutions. The right of trial by jury as it existed at common law is the right to have the facts in controversy determined, under the direction and superintendence of a judge, by the unanimous verdict of twelve impartial jurors who possess the qualifications and are selected in the manner prescribed by law.”²³⁰</p> <p>“[T]here is a difference in the substance of the right to a jury trial afforded under the state and federal constitutions, with our state’s constitution offering broader protections.”²³¹</p>

²²⁷ ILL. CONST. art. I, § 8 (applying to criminal cases only).

²²⁸ *Id.* art. I, § 13.

²²⁹ *People v. Runge*, 917 N.E.2d 940, 659 (Ill. 2009) (citation omitted) (quoting *Smith v. Phillips*, 455 U.S. 209, 217 (1982)).

²³⁰ *People v. Lobb*, 161 N.E.2d 325, 331 (Ill. 1959) (citations omitted) (quoting ILL. CONST. art. I, § 13).

²³¹ *People v. Moon*, 2022 IL 125959, ¶ 37, 215 N.E.3d 58, 73.

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Indiana</i>	
<p>Article 1, Section 13: “In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed”²³²</p> <p>Article 1, Section 20: “In all civil cases, the right of trial by jury shall remain inviolate.”²³³</p>	<p>“The Federal and Indiana Constitutions guarantee the right to an impartial jury. But selecting impartial juries depends upon the parties’ discernment and the trial court’s discretion to select a panel of objective and unbiased jurors ‘who will conscientiously apply the law and find the facts.’”²³⁴</p> <p>“The people of this state have reserved the right in criminal prosecutions to a trial before an impartial jury. We may therefore say that the law plainly entitles litigants to impartial, unbiased persons for jurors, and secondly, the right to peremptory challenges, the number depending upon the character of the case.”²³⁵</p> <p>“Jury selection systems are required to draw prospective jurors from a fair cross section of the community and the burden of demonstrating purposeful discrimination is on the defendant. Jurors need not be mathematically proportioned to the character of the community and there is no requirement that any particular class be represented on every jury. The jury panel must represent a reasonable cross section of the county and it must be apparent that there was no deliberate attempt to exclude certain groups from jury selection.”²³⁶</p>

²³² IND. CONST. art. 1, § 13 (applying to criminal cases only).

²³³ *Id.* art. 1, § 20.

²³⁴ *Oswalt v. State*, 19 N.E.3d 241, 245 (Ind. 2014) (citation omitted) (quoting *Wainwright v. Witt*, 469 U.S. 412, 423 (1985)).

²³⁵ *Foreman v. State*, 180 N.E. 291, 293 (Ind. 1932) (citation omitted).

²³⁶ *Adams v. State*, 431 N.E.2d 820, 822 (Ind. 1982) (citation omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Iowa</i>	
<p>Article I, Section 10: “In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right to a speedy and public trial by an impartial jury”²³⁷</p> <p>Article I, Section 9: “The right of trial by jury shall remain inviolate”²³⁸</p>	<p>“The Sixth Amendment to the United States Constitution guarantees the right to ‘an impartial jury of the state and district wherein the crime shall have been committed.’ The Iowa Constitution similarly guarantees the right to a ‘trial by an impartial jury.’ The constitutional guarantees of an impartial jury entitle the accused to a jury ‘drawn from a fair cross-section of the community.’”²³⁹</p>
<i>Kansas</i>	
<p>Bill of Rights, Section 10: “In all prosecutions, the accused shall be allowed . . . to have compulsory process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.”²⁴⁰</p> <p>Bill of Rights, Section 5: “The right of trial by jury shall be inviolate.”²⁴¹</p>	<p>“Kansas caselaw has analyzed section 10’s jury trial right the same way as the federal jury trial right in the Sixth Amendment of the United States Constitution. . . . Thus, since section 10 encompasses section 5’s jury trial right and section 10 provides the same protection as the Sixth Amendment, it is a reasonable inference that section 5’s jury trial right is also interpreted the same as the Sixth Amendment to the United States Constitution.”²⁴²</p>

²³⁷ IOWA CONST. art. I, § 10 (applying to criminal cases only).

²³⁸ *Id.* art. I, § 9.

²³⁹ *State v. Plain*, 969 N.W.2d 293, 296 (Iowa 2022) (first quoting U.S. CONST. amend. VI; then quoting IOWA CONST. art. I, § 10; and then quoting *State v. Plain*, 898 N.W.2d 801, 821 (Iowa 2017)) (applying the test from *Duren v. Missouri*, 439 U.S. 357, 364 (1979), to analyze whether the jury fair-cross-section requirement was violated). The Iowa Supreme Court has routinely analyzed cross-section challenges under federal precedent and refused to analyze them under Iowa constitutional law. *See State v. Ary*, 877 N.W.2d 686, 699–700 (Iowa 2016); *State v. Veal*, 972 N.W.2d 728, 733 (Iowa 2022); *State v. Williams*, 972 N.W.2d 720, 724 (Iowa 2022).

²⁴⁰ KAN. CONST. bill of rights, § 10 (applying only to prosecutions).

²⁴¹ *Id.* bill of rights, § 5.

²⁴² *State v. Albano*, 464 P.3d 332, 340–41 (Kan. Ct. App. 2020).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Kentucky</i>	
<p>Section 11: “In all criminal prosecutions the accused . . . shall have a speedy public trial by an impartial jury of the vicinage”²⁴³</p> <p>Section 7: “The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.”²⁴⁴</p>	<p>““The right to a <i>completely impartial jury</i> is protected by Section Eleven of the Kentucky Constitution as well as the Sixth and Fourteenth Amendments to the U.S. Constitution.’ The right to an impartial jury, however, does not afford a litigant the right to a jury that includes one or more members of his or her ethnic or racial background, religious creed, gender, profession, or other personal characteristic by which one is identified. The impossibility of constructing a jury of 12 persons that ‘insure[s] representation of every distinct voice in the community’ is obvious and well recognized.”²⁴⁵</p> <p>“Both the United States and the Kentucky Constitutions establish and recognize the right to a completely impartial jury. ‘Those on the venire must be “indifferently chosen,” to secure the defendant’s right under the Fourteenth Amendment to “protection of life and liberty against race or color prejudice.”’²⁴⁶</p>

²⁴³ KY. CONST. § 11 (applying to criminal cases only).

²⁴⁴ *Id.* § 7.

²⁴⁵ Commonwealth v. Doss, 510 S.W.3d 830, 835 (Ky. 2016) (alteration in original) (citation omitted) (first quoting *Fugate v. Commonwealth*, 993 S.W.2d 931, 939 (Ky. 1999); and then quoting *Williams v. Florida*, 399 U.S. 78, 102 (1970)).

²⁴⁶ Louisville Metro Gov’t v. Ward, 610 S.W.3d 295, 311 (Ky. Ct. App. 2020) (citation omitted) (quoting *Batson v. Kentucky*, 476 U.S. 79, 86–87 (1986)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Louisiana</i>	
<p>Article I, Section 16: “Every person charged with a crime . . . is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred”²⁴⁷</p>	<p>“[A]s a starting point, we note that under [Louisiana statutory law], a defendant may challenge a juror for cause if: ‘(2) the juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient grounds for challenge to a juror, if he declares, and the court is satisfied, that he can render and [sic] impartial verdict according to the law and the evidence’ [An] inability to render a judgement according to law may be reasonably implied.”²⁴⁸</p> <p>“Both our federal and state constitutions guarantee the accused in a criminal proceeding the right to a trial by an impartial jury. Additionally, [Louisiana statutory law] protects the right to an impartial jury.”²⁴⁹</p>
<i>Maine</i>	
<p>Article I, Section 6: “In all criminal prosecutions, the accused shall have a right . . . [t]o have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity.”²⁵⁰</p> <p>Article I, Section 20: “In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced”²⁵¹</p>	<p>“We first address the various rights, protected by the United States Constitution, that the court sought to balance under the unusual circumstances of this case. Because the rights discussed in this opinion conferred by the Maine Constitution and the United States Constitution are generally coextensive, we focus on the language of the United States Constitution.”²⁵²</p>

²⁴⁷ LA. CONST. art. I, § 16 (applying to criminal trials only).

²⁴⁸ State v. Kang, 2002-2812, pp. 3–5 (La. 10/21/03), 859 So. 2d 649, 652–53 (quoting LA. CODE CRIM. PROC. ANN. art. 797 (2025)).

²⁴⁹ State v. Freeze, 438 So. 2d 1340, 1343 (La. Ct. App. 1983) (citations omitted).

²⁵⁰ ME. CONST. art. I, § 6 (applying only to criminal trials).

²⁵¹ *Id.* art. I, § 20.

²⁵² State v. Frisbee, 2016 ME 83, ¶ 14, 140 A.3d 1230, 1236 (discussing the balance between the right to a public trial and the right to an impartial jury).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Maryland</i>	
<p>Declaration of Rights, Article 21: “[I]n all criminal prosecutions, every man hath a right . . . to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.”²⁵³</p> <p>Declaration of Rights, Article 23: “The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State . . . shall be inviolably preserved.”²⁵⁴</p>	<p>“Article 21 guarantees a criminal defendant an <i>impartial</i> jury. The character of a jury as impartial is something quite distinct from the character of a jury as representative of a fair cross-section of the population. . . . ‘The minds of such men always remain open to the correction of former impressions, and remain entirely impartial, with power to hear and determine upon the real facts of the case, without the least bias in favor of former impressions, whatever they may have been. And therefore, in our present state of society, all that can be required of a juror is that he should be without bias or prejudice for or against the accused, and that his mind is free to hear and impartially consider the evidence, and render a verdict thereon without regard to any former opinion or expression existing in his mind.’”²⁵⁵</p> <p>“The lists of rights protected by Article 21 of the Maryland Declaration of Rights and the Federal Sixth Amendment are identical. The wording of the two constitutional provisions is virtually <i>verbatim</i>. Generally speaking, those entire respective packages of rights should be construed <i>in pari materia</i>. Specifically speaking, the <i>verbatim</i> guarantees of ‘trial by an impartial jury’ should indisputably be construed <i>in pari materia</i>.”²⁵⁶</p>

²⁵³ MD. CONST. declaration of rights, art. 21 (applying to criminal trials only).

²⁵⁴ *Id.* declaration of rights, art. 23.

²⁵⁵ *Bridges v. State*, 695 A.2d 609, 613 (Md. Ct. Spec. App. 1997) (quoting *Bristow v. State*, 219 A.2d 33, 36 (Md. 1966)).

²⁵⁶ *Id.* at 615 (citation omitted) (quoting MD. CONST. declaration of rights, art. 21).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Massachusetts</i>	
<p>Part I, Article XII: “[N]o subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges . . . but by the judgment of his peers, or the law of the land.”²⁵⁷</p> <p>Part I, Article XV: “In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred”²⁵⁸</p> <p>Part I, Article XXIX: “It is essential to the preservation of the rights of every individual . . . that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent”²⁵⁹</p>	<p>“A criminal defendant is entitled to a trial by an impartial jury pursuant to the Sixth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights. That is, each juror must be ‘impartial as to the persons involved and unprejudiced and uncommitted as to the defendant[’s] guilt or past misconduct.’”²⁶⁰</p> <p>“‘Article 12 of the Declaration of Rights of the Massachusetts Constitution and the Sixth Amendment to the United States Constitution, applied to the States through the due process clause of the Fourteenth Amendment, guarantee the right of a criminal defendant to a trial by an impartial jury.’ . . . The judge’s duty is to ‘examine jurors fully regarding possible bias or prejudice where “it appears that there is a substantial risk that jurors may be influenced by factors extraneous to the evidence presented to them.”’ ‘In deciding juror impartiality, it is sufficient for the judge to “determine whether jurors [can] set aside their own opinions, [properly] weigh the evidence . . . and follow the instructions of the judge.’”²⁶¹</p> <p>“Previous cases decided by this court delineate the characteristics of the jury contemplated by art. 12. In various contexts, we have remarked that ‘[a] fair jury is one that represents a cross section of community concepts’; ‘[it] is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community’; ‘[a] defendant is constitutionally entitled to a jury selection process free of discrimination against his grouping in the community.’”²⁶²</p>

²⁵⁷ MASS. CONST. pt. I, art. XII.

²⁵⁸ *Id.* pt. I, art. XV.

²⁵⁹ *Id.* pt. I, art. XXIX.

²⁶⁰ *Commonwealth v. Williams*, 116 N.E.3d 609, 614 (Mass. 2019) (alteration in original) (citation omitted) (quoting *Commonwealth v. Ricard*, 246 N.E.2d 433, 435 (Mass. 1969)).

²⁶¹ *Commonwealth v. Andrade*, 11 N.E.3d 597, 601–02 (Mass. 2014) (second, third, and fourth alterations in original) (citation omitted) (first quoting *Commonwealth v. McCowen*, 939 N.E.2d 735, 763 (Mass. 2010); then quoting *Commonwealth v. Garuti*, 907 N.E.2d 221, 226 (Mass. 2009); and then quoting *Commonwealth v. Perez*, 954 N.E.2d 1, 9 (Mass. 2011)).

²⁶² *Commonwealth v. Soares*, 387 N.E.2d 499, 510–11 (Mass. 1979) (alterations in original) (citations omitted) (first quoting *Ricard*, 246 N.E.2d at 435; then quoting *Commonwealth v. Martin*,

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Michigan</i>	
<p>Article I, Section 20: “In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury”²⁶³</p> <p>Article I, Section 14: “The right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law.”²⁶⁴</p>	<p>“Beginning with the text of the Michigan Constitution itself, it guarantees that ‘the accused shall have the right to a speedy and public trial by an impartial jury by an impartial trial’ This language is not materially different from that provided in the United States Constitution. Because the pertinent language of the Michigan Constitution is materially similar to that of the Sixth Amendment, the plain language of our Michigan Constitution manifests an intent to provide the same guarantees as those in the United States Constitution. . . . The language of the Michigan Constitution provides no textual reason why the Court should interpret [Article I, Section 20] in any way other than as consistent with the Sixth Amendment, which, as previously noted, is not implicated when a defendant’s peremptory challenge is erroneously denied.”²⁶⁵</p>

257 N.E.2d 444, 446 (Mass. 1970); and then quoting *Commonwealth v. Rodriquez*, 300 N.E.2d 192, 197 (Mass. 1973), *abrogated by* *Commonwealth v. Sanchez*, 151 N.E.3d 404, 424 (Mass. 2020) (changing the cross-section test to mirror that of *Batson v. Kentucky*, 476 U.S. 79 (1986), but maintaining the same reasoning).

²⁶³ MICH. CONST. art. I, § 20 (applying to criminal cases only).

²⁶⁴ *Id.* art. I, § 14.

²⁶⁵ *People v. Kabongo*, 968 N.W.2d 264, 294–95 (Mich. 2021) (first alteration in original) (footnote omitted) (citation omitted) (quoting MICH. CONST. art. I, § 20).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Minnesota</i>	
<p>Article I, Section 6: “In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed”²⁶⁶</p> <p>Article I, Section 4: “The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy.”²⁶⁷</p>	<p>“The United States Constitution and the Minnesota Constitution guarantee a criminal defendant the right to an impartial jury. ‘The bias of a single juror violates the defendant’s right to a fair trial,’ because the ‘impartiality of the adjudicator goes to the very integrity of the legal system.’ Permitting a biased juror to serve is structural error requiring automatic reversal.”²⁶⁸</p> <p>“A juror must simply undertake to try the case fairly, and the trial judge, being in the best position to observe and assess the demeanor of the prospective juror, is to be given deference in determining whether the juror should be removed for cause. In an appeal based on juror bias, appellant must show that: (1) the challenged juror was subject to challenge for cause; (2) actual prejudice resulted from the failure to dismiss the juror; and (3) an appropriate objection was made by appellant.”²⁶⁹</p>

²⁶⁶ MINN. CONST. art. I, § 6 (applying to criminal trials only).

²⁶⁷ *Id.* art. I, § 4.

²⁶⁸ *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015) (citations omitted) (quoting *State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007)).

²⁶⁹ *State v. Alladin*, 408 N.W.2d 642, 650 (Minn. Ct. App. 1987) (citation omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Mississippi</i>	
<p>Article 3, Section 26: “In all criminal prosecutions the accused shall have a right to . . . a speedy and public trial by an impartial jury of the county where the offense was committed”²⁷⁰</p> <p>Article 3, Section 31: “The right of trial by jury shall remain inviolate”²⁷¹</p>	<p>“[U]nder the Constitution of the United States and of this State, accused persons are entitled to a fair and impartial trial. That means fair, unprejudiced, unbiased individual jurors, who are willing to be guided by the testimony given by the witnesses and the law as announced by the Court. But, a fair trial means more than that. It means, in addition to the right to be tried by such individual jurors, the right to be tried in an atmosphere in which public opinion is not saturated with bias and hatred and prejudice against the defendant; where jurors do not have to overcome that atmosphere, nor the later silent condemnation of their fellow citizens if they acquit the accused.”²⁷²</p> <p>“The framers of [the Mississippi Constitution] certainly did not understand the words <i>impartial jury</i>, to mean any thing more or less, than that the accused should not be tried by men who had prejudged his case; he is to be tried in the county where the offence is committed, and it is stretching presumption too far to suppose, that an atrocious deed can be committed and a jury obtained within the limits of the county, who have never heard of the transaction.”²⁷³</p>

²⁷⁰ MISS. CONST. art. 3, § 26 (applying to criminal trials only).

²⁷¹ *Id.* art. 3, § 31.

²⁷² *Seals v. State*, 44 So. 2d 61, 67 (Miss. 1950) (citations omitted).

²⁷³ *State v. Johnson*, 1 Miss. (1 Walker) 392, 400 (1831).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Missouri</i>	
<p>Article I, Section 18(a): “[I]n criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury of the county.”²⁷⁴</p> <p>Article I, Section 22(a): “[T]he right of trial by jury as heretofore enjoyed shall remain inviolate”²⁷⁵</p>	<p>“The Sixth and Fourteenth Amendments to the United States Constitution and article I, section 18(a) of the Missouri Constitution guarantee a criminal defendant the right to a fair and impartial jury. The constitutional right to a fair and impartial jury, however, does not itself require the exclusion of any juror within a certain degree of consanguinity or with another personal relationship to one of the parties. Absent a federal constitutional violation, states have the power to decide whether an error in violation of state statute requires automatic reversal.”²⁷⁶</p> <p>“A defendant is entitled to a fair and impartial jury. One aspect of ‘the guarantee of a defendant’s right to an impartial jury is an adequate <i>voir dire</i> to identify unqualified jurors.’ The purpose of <i>voir dire</i> is to discover bias or prejudice in order to select a fair and impartial jury. ‘Without an adequate <i>voir dire</i> the trial judge’s responsibility to remove prospective jurors who will not be able impartially to follow the court’s instructions and evaluate the evidence cannot be fulfilled.’”²⁷⁷</p>

²⁷⁴ Mo. CONST. art. I, § 18(a) (applying to criminal trials only).

²⁷⁵ *Id.* art. I, § 22(a).

²⁷⁶ *State v. Brandolese*, 601 S.W.3d 519, 529–30 (Mo. 2020) (citations omitted).

²⁷⁷ *State v. Clark*, 981 S.W.2d 143, 146 (Mo. 1998) (citations omitted) (quoting *Morgan v. Illinois*, 504 U.S. 719, 729–730 (1992)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Montana</i>	
<p>Article II, Section 24: “In all criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed”²⁷⁸</p> <p>Article II, Section 26: “The right of trial by jury is secured to all and shall remain inviolate.”²⁷⁹</p>	<p>“Criminal defendants have a fundamental right under both state and federal constitutions to be tried by an impartial jury. ‘A defendant may accordingly challenge a prospective juror for cause if the juror manifests “a state of mind” regarding the case or either party “that would prevent the juror from acting with entire impartiality” regarding the parties and material matters in the case.’”²⁸⁰</p> <p>“The Montana Constitution guarantees that every criminal defendant has a fundamental right to a speedy public trial by an impartial jury. To secure this constitutional guarantee, ‘[t]he rule is that a defendant has a right to a fair and impartial jury selected from the proper place and drawn and summoned according to law. The systematic . . . exclusion of a class of persons . . . deprives a defendant of fundamental constitutional rights.’”²⁸¹</p>

²⁷⁸ MONT. CONST. art. II, § 24 (applying to criminal trials only).

²⁷⁹ *Id.* art. II, § 26.

²⁸⁰ *State v. Deveraux*, 2022 MT 130, ¶ 24, 409 Mont. 177, 512 P.3d 1198 (citations omitted) (quoting *State v. Johnson*, 2019 MT 68, ¶ 9, 395 Mont. 169, 437 P.3d 147).

²⁸¹ *State v. LaMere*, 2000 MT 45, ¶ 33, 298 Mont. 358, 2 P.3d 204 (alterations in original) (citation omitted) (quoting *State v. Coleman*, 579 P.2d 732, 747 (Mont. 1978)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Nebraska</i>	
<p>Article I, Section 11: “In all criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.”²⁸²</p> <p>Article I, Section 6: “The right of trial by jury shall remain inviolate”²⁸³</p>	<p>“It has been held that the use by a state of peremptory challenges to exclude from the jury members of the criminal defendant’s race solely on racial grounds violates the equal protection rights of both the defendant and the excluded venirepersons. That holding, however, does not prevent the use of peremptory challenges to exclude from a jury a venireperson who holds a point of view inimical to that espoused by the State. We do not read article I, § 6, of our Constitution to impose any greater restraint upon this state in this regard than does the U.S. Constitution.”²⁸⁴</p> <p>“The law does not require that a juror be totally ignorant of the facts and issues involved in the case; it is sufficient if the juror can lay aside his or her impression or opinions and render a verdict based upon the evidence.”²⁸⁵</p>
<i>Nevada</i>	
<p>Article 1, Section 3: “The right of trial by jury shall be secured to all, and remain inviolate forever”²⁸⁶</p>	<p>“We think that the term ‘jury,’ as it is used in the Constitution, means twelve competent men who are free from all the ties of consanguinity and all other relations that would tend to make them dependent on either party. It means twelve men who are not interested in the event of the suit, and who have no such bias or prejudice in favor of, or against, either party as would render them partial toward either party. These, among others, are the general definitions which we consider are guaranteed by the Constitution.”²⁸⁷</p> <p>“Nevada’s constitutional provision has been construed as confirming and securing the right to a jury trial as it was understood at common law. Thus, the right to a trial by jury under the Nevada Constitution is coextensive with that guaranteed by the federal constitution.”²⁸⁸</p>

²⁸² NEB. CONST. art. I, § 11 (applying to criminal trials only).

²⁸³ *Id.* art. I, § 6.

²⁸⁴ *State v. Peery*, 391 N.W.2d 566, 572 (Neb. 1986) (citation omitted).

²⁸⁵ *State v. Galindo*, 774 N.W.2d 190, 223 (Neb. 2009).

²⁸⁶ NEV. CONST. art. 1, § 3. Nevada has no express right to an impartial jury.

²⁸⁷ *State v. McClear*, 11 Nev. 39, 46 (1876).

²⁸⁸ *Blanton v. N. Las Vegas Mun. Ct.*, 748 P.2d 494, 497 (Nev. 1987) (citation omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>New Hampshire</i>	
<p>Part 1, Article 17: “[N]o crime or offense ought to be tried in any other county or judicial district than that in which it is committed; except in any case . . . that a fair and impartial trial cannot be had where the offense may be committed, the court shall direct the trial to a county or judicial district in which a fair and impartial trial can be obtained.”²⁸⁹</p> <p>Part 1, Article 15: “No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges . . . but by the judgment of his peers, or the law of the land”²⁹⁰</p> <p>Part 1, Article 35: “It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit.”²⁹¹</p> <p>Part 1, Article 20: “In all controversies concerning property, and in all suits between two or more persons . . . the parties have a right to a trial by jury. This method of procedure shall be held sacred”²⁹²</p>	<p>“Part I, Article 35 of the State Constitution provides, ‘It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit.’ ‘This provision for judicial impartiality is applicable as well to jurors.’ ‘[I]t is a fundamental precept of our system of justice that a defendant has the right to be tried by a fair and impartial jury.’”²⁹³</p> <p>“Because the State Constitution provides at least as much protection as the Federal Constitution on this issue, we reach the same conclusion under the Federal Constitution.”²⁹⁴</p> <p>“The defendant bases his claim [of an impartial jury] on both the State and Federal Constitutions. Because we believe the principles are the same, and because we believe that the New Hampshire Constitution provides at least as much protection as does the Federal Constitution on this issue, we address the defendant’s claims under State law, looking to federal law only for guidance.”²⁹⁵</p>

²⁸⁹ N.H. CONST. pt. 1, art. 17 (applying to criminal trials only).

²⁹⁰ *Id.* pt. 1, art. 15 (creating an impartial jury right).

²⁹¹ *Id.* pt. 1, art. 35 (applying to jurors as well as judges).

²⁹² *Id.* pt. 1, art. 20.

²⁹³ *State v. Tabaldi*, 77 A.3d 1124, 1131 (N.H. 2013) (alteration in original) (citations omitted) (first quoting N.H. CONST. pt. 1, art. 35; and then quoting *State v. Town*, 48 A.3d 966, 970–71 (N.H. 2012)).

²⁹⁴ *Id.* at 1132.

²⁹⁵ *State v. Weir*, 645 A.2d 56, 57 (N.H. 1994) (citation omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>New Jersey</i>	
<p>Article I, Paragraph 10: “In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury”²⁹⁶</p> <p>Article I, Paragraph 9: “The right of trial by jury shall remain inviolate”²⁹⁷</p>	<p>“[W]e base our decision on the New Jersey Constitution, which protects fundamental rights independently of the United States Constitution. We previously have construed our state constitution as providing greater protection to our citizens’ individual rights than accorded them under the federal constitution. We do so here as well. In this regard, the Appellate Division tersely and aptly summarized the history of our state constitutional right to trial by an impartial jury drawn from a representative cross-section of the community. We refer to federal constitutional law only as establishing the floor of minimum constitutional protection.”²⁹⁸</p>

²⁹⁶ N.J. CONST. art. I, para. 10 (applying to criminal trials only).

²⁹⁷ *Id.* art. I, para. 9.

²⁹⁸ *State v. Gilmore*, 511 A.2d 1150, 1157–58 (N.J. 1986) (citations omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>New Mexico</i>	
<p>Article II, Section 14: “In all criminal prosecutions, the accused shall have the right to . . . a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.”²⁹⁹</p> <p>Article II, Section 12: “The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate.”³⁰⁰</p>	<p>“In <i>Aragon</i> our supreme court held that a defendant’s right to an impartial jury, guaranteed to him by article II, section 14 of the New Mexico Constitution, prohibits the prosecution from using its peremptory challenges to deprive a defendant of a jury reflecting a fair cross section of the community. We further read <i>Aragon</i> to hold that the right to a jury reflecting a fair cross section of the community under the New Mexico Constitution is at least as broad as that guaranteed by the sixth amendment of the federal constitution.”³⁰¹</p> <p>“Article II, § 14, provides, among other things, that the trial shall be by an ‘impartial’ jury. By impartial jury is meant a jury where each and every one of the twelve members constituting the jury is totally free from any partiality whatsoever. ‘Impartial’ is defined in Webster’s New International Dictionary (2nd Ed.), as ‘not partial; not favoring one more than another; treating all alike; unbiased; equitable; fair; just.’ Accordingly, the jury which one charged with crime is guaranteed, is one that does not favor one side more than another, treats all alike, is unbiased, equitable, fair and just. If any juror does not have these qualities, the jury upon which he serves is thereby deprived of its quality of impartiality.”³⁰²</p>

²⁹⁹ N.M. CONST. art. II, § 14 (applying to criminal trials only).

³⁰⁰ *Id.* art. II, § 12.

³⁰¹ *State v. Gonzalez*, 808 P.2d 40, 48 (N.M. Ct. App. 1991).

³⁰² *State v. McFall*, 354 P.2d 547, 548–49 (N.M. 1960) (citations omitted) (quoting WEBSTER’S NEW INTERNATIONAL DICTIONARY (2d ed. 1957)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>New York</i>	
<p>Article I, Section 2: “Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever”³⁰³</p>	<p>“They first refer to section 2 of article I of the New York Constitution, which guarantees the right to trial by jury, and section 1 of that same article, which appears to specify that conviction of a defendant must be by ‘the judgment of his peers.’ In <i>Taylor v. Louisiana</i>, the court held that the Sixth Amendment right to a jury trial, a right which obviously and necessarily implies the right to a judgment of one’s peers, requires only that distinctive groups in the community may not be systematically excluded from the jury pool. Nothing in the language of our State’s counterpart to the Sixth Amendment right to a jury trial suggests that the framers of our State Constitution intended a more expansive interpretation.”³⁰⁴</p> <p>“The <i>Harris</i> court also rejected the claim that New York’s Constitution required a greater degree of protection than that contemplated by the Sixth Amendment of the federal Constitution and the Supreme Court’s holding in <i>Lockhart</i>.”³⁰⁵</p>

³⁰³ N.Y. CONST. art. I, § 2. Note that New York has no express constitutional right to an impartial jury, but it does have a statute that guarantees an impartial jury. N.Y. CIV. RIGHTS LAW § 12 (McKinney 2025) (“In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury . . .”).

³⁰⁴ *People v. McCray*, 443 N.E.2d 915, 919 (N.Y. 1982) (citation omitted).

³⁰⁵ *Parker v. Phillips*, 717 F. Supp. 2d 310, 324 (W.D.N.Y. 2010).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>North Carolina</i>	
<p>Article I, Section 24: “No person shall be convicted of any crime but by the unanimous verdict of a jury in open court”³⁰⁶</p> <p>Article I, Section 25: “In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.”³⁰⁷</p>	<p>“Article I, § 24 of the North Carolina Constitution states that ‘[n]o person shall be convicted of any crime but by the unanimous verdict of a jury in open court.’ The Sixth Amendment of the United States Constitution, applicable to the states via the Fourteenth Amendment, guarantees ‘that the accused shall enjoy the right to a speedy and public trial, by an impartial jury[.]’ As a general matter, our constitution provides a higher level of protection on issues regarding the right to a jury trial than does the federal counterpart.”³⁰⁸</p> <p>“Under both the Federal Constitution and the North Carolina Constitution, every criminal defendant has the right to be tried by a fair and impartial jury. An essential feature of the right to a fair and impartial jury is the right to be tried by jurors who do not judge a party or the evidence based on animus or bias towards a racial group. A defendant is permitted to challenge any individual prospective juror who he or she believes is ‘unable to render a fair and impartial verdict.’ In order to ‘exercise intelligently . . . their challenges for cause,’ defendants typically may inquire into prospective jurors’ morals, attitudes, and beliefs during voir dire, provided that the inquiry is relevant to a subject at issue at trial. In this manner, ‘[v]oir dire plays an essential role in guaranteeing a criminal defendant’s Sixth Amendment right to an impartial jury’ – and the defendant’s concomitant rights under the North Carolina Constitution – ‘because it is the means by which prospective jurors who are unwilling or unable to apply the law impartially may be disqualified from jury service.’”³⁰⁹</p>

³⁰⁶ N.C. CONST. art. I, § 24. This provision does not explicitly guarantee an impartial jury but was held to create such a right in *State v. Chandler*, 376 S.E.2d 728, 737 (N.C. 1989).

³⁰⁷ N.C. CONST. art. I, § 25.

³⁰⁸ *State v. Jackson*, 659 S.E.2d 73, 75 (N.C. Ct. App. 2008) (alterations in original) (citation omitted) (first quoting N.C. CONST. art. I, § 24; and then quoting U.S. CONST. amend. VI).

³⁰⁹ *State v. Crump*, 851 S.E.2d 904, 910–11 (N.C. 2020) (alterations in original) (citations omitted) (first quoting N.C. GEN. STAT. § 15A-1212 (2025); then quoting *State v. Carey*, 206 S.E.2d 213, 221 (N.C. 1974); and then quoting *State v. Wiley*, 565 S.E.2d 22, 37 (N.C. 2002)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>North Dakota</i>	
Article 1, Sections 7, 13: “The right of trial by jury shall be secured to all, and remain inviolate” ³¹⁰	“A criminal defendant’s right to an impartial jury trial under the Sixth Amendment requires the selection of the jury from a representative cross section of the community. The Fourteenth Amendment makes the provisions of the Sixth Amendment binding upon the states. Although the North Dakota Constitution’s guarantee of the right to a jury trial does not explicitly require an impartial jury, we would read the Sixth Amendment’s impartiality and fair-cross-section requirements into our state constitution.” ³¹¹

³¹⁰ N.D. CONST. art. 1, §§ 7, 13. Although this provision does not explicitly provide a right to an impartial jury, courts have interpreted it to encompass that right. *See State v. Fredericks*, 507 N.W.2d 61, 64–65 (N.D. 1993).

³¹¹ *Fredericks*, 507 N.W.2d at 64–65 (citations omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Ohio</i>	
<p>Article I, Section 10: “In any trial, in any court, the party accused shall be allowed . . . a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed”³¹²</p> <p>Article I, Section 5: “The right of trial by jury shall be inviolate”³¹³</p>	<p>“[T]here has been a trend for state courts to rely on their own constitutions to provide broader protection for individual rights, independent of protections afforded by the United States Constitution. . . . [T]his court has determined that protections afforded by Ohio’s Constitution are coextensive with those provided by the United States Constitution.”³¹⁴</p> <p>“With respect to the Due Process Clause’s guarantee of a fair trial, the Ohio Constitution provides a broader right than the federal Constitution for two reasons. First, under the approach the Ohio Supreme Court outlines, the federal due-process protections and the operative provisions of Article I, Section 10 are not similar. Unlike the federal Constitution’s fairly anodyne language protecting a general right to due process of law, the Ohio Constitution ensures a defendant the right to an impartial jury. This provision of the Ohio Bill of Rights ensures that, among other things, ‘under all the circumstances, . . . [the defendant] had a fair trial and substantial justice was done.’ . . . Indeed, the text of Article I, Section 10 extends further than just the right to counsel and guarantees the right to an impartial finder of fact. Accordingly, the plain language of the Ohio Constitution and the Ohio Supreme Court’s interpretation of it secure the right to a fair trial that reaches more broadly than the more constrained guarantee of due process in the federal Constitution. Second, Ohio courts interpreting the provisions of the Ohio Constitution go beyond the federal precedents and extend the guarantee to circumstances involving the appearance of impropriety.”³¹⁵</p>

³¹² OHIO CONST. art. I, § 10 (applying to criminal trials only).

³¹³ *Id.* art. I, § 5.

³¹⁴ *State v. Robinette*, 685 N.E.2d 762, 766 (Ohio 1997) (footnote omitted).

³¹⁵ *State v. Metz*, No. CR-17-618532-C, 2020 Ohio Misc. LEXIS 108, at *27–29 (Ct. Com. Pl. June 29, 2020) (first and second alterations in original) (citations omitted) (quoting *State v. Hester*, 341 N.E.2d 304, 306 (Ohio 1976)), *rev’d on other grounds sub nom.* *State v. Tenney*, Nos. 109797, 109798, 109799, 109800, 2021 Ohio App. LEXIS 3579 (Ct. App. Oct. 14, 2021).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Oklahoma</i>	
<p>Article II, Section 20: “In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed”³¹⁶</p> <p>Article II, Section 19: “The right of trial by jury shall be and remain inviolate”³¹⁷</p>	<p>“Ordinarily, where a juror testified that he believes he can, and the court finds as a matter of fact that he would, if selected, render an impartial verdict upon the evidence, he is an impartial juror, under our Constitution and the statutes of this state.”³¹⁸</p> <p>“Although a juror may know absolutely nothing about the facts of the case, and may not have the slightest opinion as to the guilt of the defendant, yet if from any cause or upon any ground it appears to the trial court that the juror is biased or prejudiced against the defendant, it cannot be said that he would be a fair and impartial juror, and he should be excluded from the jury; otherwise the Constitution of the state would be disregarded and trampled upon. The trial court should resolve all doubts upon this matter in favor of the defendant. Upon the other hand, when no personal, class, or race bias or prejudice appears to exist in the mind of the juror against the defendant, but it does appear that from rumor, or reading the public press, or from notoriety, the juror has an opinion as to the guilt of the defendant, but that such opinion will not combat the testimony or resist its force, and the court is satisfied that the juror can and will lay this opinion aside, and base his verdict alone upon the testimony of the witnesses and the instructions of the court, then the juror is competent.”³¹⁹</p>

³¹⁶ OKLA. CONST. art. II, § 20 (applying to criminal cases only).

³¹⁷ *Id.* art. II, § 19.

³¹⁸ *Int'l News Serv. v. News Publ'g Co. of Enid*, 247 P. 87, 89 (Okla. 1926).

³¹⁹ *Scribner v. State*, 108 P. 422, 424 (Okla. Crim. App. 1910).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Oregon</i>	
<p>Article I, Section 11: “In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed”³²⁰</p> <p>Article I, Section 17: “In all civil cases the right of Trial by Jury shall remain inviolate.”³²¹</p>	<p>“We conclude that the guarantee of trial by an ‘impartial jury’ means trial by a jury that is not biased in favor of or against either party, but is influenced in making its decision only by evidence produced at trial and legal standards provided by the trial court.”³²²</p> <p>“Indeed, . . . ‘fairness’ under the Fourteenth Amendment is a broader concept, that is, one that requires a fair and impartial trial or hearing according to the due and orderly course of the law. The Court of Appeals majority erred in . . . committ[ing] this court to an interpretation of Article I, section 11, that is synonymous with the fairness standards embodied in the Sixth and Fourteenth Amendments to the federal constitution. The guarantee of the right to trial by an impartial jury encompasses trial in a venue that is not biased or prejudiced against the defendant, not a trial that is fair in all respects.”³²³</p>

³²⁰ OR. CONST. art. I, § 11 (applying to criminal trials only).

³²¹ *Id.* art. I, § 17.

³²² *State v. Amini*, 15 P.3d 541, 545 (Or. 2000).

³²³ *Id.* at 547 (citation omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Pennsylvania</i>	
<p>Article I, Section 9: “In all criminal prosecutions the accused hath a right to . . . a speedy public trial by an impartial jury of the vicinage”³²⁴</p> <p>Article I, Section 6: “Trial by jury shall be as heretofore, and the right thereof remain inviolate.”³²⁵</p>	<p>“It is true, of course, that an accused has the right to challenge a prospective juror for lack of impartiality. We do not expect jurors to be free from all prejudices, however; rather, the law requires them to be able to put aside their prejudices and determine guilt or innocence on the facts presented.”³²⁶</p> <p>“The right to an ‘impartial’ jury is guaranteed by the Pennsylvania Constitution and the Sixth Amendment of the United States Constitution applied to the states through the Due Process Clause of the Fourteenth Amendment. Thus, the minimal standard of constitutional due process guarantees to the criminally accused a fair trial by a panel of impartial and ‘indifferent’ jurors.”³²⁷</p> <p>“An analysis of case law indicates that there are two types of situations in which challenges for cause should be granted: (1) when the potential juror has such a close relationship, be it familial, financial or situational, with parties, counsel, victims, or witnesses, that the court will presume the likelihood of prejudice; and (2) when the potential juror’s likelihood of prejudice is exhibited by his conduct and answers to questions at <i>voir dire</i>.”³²⁸</p>

³²⁴ PA. CONST. art. I, § 9 (applying to criminal trials only).

³²⁵ *Id.* art. I, § 6.

³²⁶ Commonwealth v. Smith, 540 A.2d 246, 256 (Pa. 1988).

³²⁷ Commonwealth v. Brown, 332 A.2d 828, 830–31 (Pa. Super. Ct. 1974) (footnotes omitted).

³²⁸ Commonwealth v. Colon, 299 A.2d 326, 327 (Pa. Super. Ct. 1972) (footnote omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Rhode Island</i>	
<p>Article I, Section 10: “In all criminal prosecutions, accused persons shall enjoy the right to a speedy and public trial, by an impartial jury”³²⁹</p> <p>Article I, Section 15: “The right of trial by jury shall remain inviolate.”³³⁰</p>	<p>“While the General Assembly may impose reasonable conditions on the exercise of the right to a trial by jury, the inviolate clause of our constitution prohibits any legislative attempt to abolish or alter this right. The Legislature may not deprive a litigant of any of the essential features of a jury trial that were available to a litigant at the time the Rhode Island constitution was adopted in 1842.”³³¹</p> <p>“The right to a fair trial by an impartial jury is guaranteed by the Sixth Amendment to the United States Constitution and is applied to the states through the Fourteenth Amendment and art. I, sec. 10, of the Rhode Island Constitution. In the prosecution of a criminal offense, the trial justice has a duty to keep jurors free from external influence, as well as from extraneous matters. A jury verdict must be based upon the ‘evidence received in open court, not from outside sources.’”³³²</p> <p>“‘[U]nder our State Constitution, an accused is entitled to such jury-trial right as was enjoyed at the time of the adoption of the Rhode Island Constitution.’ ‘Incidents of the jury-trial right embodied in our . . . Constitution cannot be abridged even though they may not be embodied in the Federal Constitution.’”³³³</p>

³²⁹ R.I. CONST. art. I, § 10 (applying to criminal trials only).

³³⁰ *Id.* art. I, § 15.

³³¹ Advisory Op. to the Senate, 278 A.2d 852, 855 (R.I. 1971) (citation omitted).

³³² *State v. Carmody*, 471 A.2d 1363, 1366 (R.I. 1984) (citations omitted) (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 351 (1966)).

³³³ *State v. Garcia*, No. P3/96-3559A, 1998 WL 241631, at *1 (R.I. Super. Ct. 1998) (alterations in original) (citation omitted) (quoting Advisory Op. to the Governor, 437 A.2d 542, 545 (R.I. 1981)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>South Carolina</i>	
<p>Article I, Section 14: “The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury”³³⁴</p>	<p>“In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. Unless the misconduct affects the jury’s impartiality, it is not such misconduct as will affect the verdict. The trial court has broad discretion in assessing allegations of juror misconduct. Relevant factors to be considered in determining whether outside influences have affected the jury are the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice. Generally, the determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court.”³³⁵</p> <p>“It should be noted that the two Constitutions mandate jury trial in the most general terms. The respective legislatures and the congress may legislate relative to the details of conducting trials. In like fashion, the court may promulgate rules. At the same time, the mandates for conducting jury trials are basically of common law origin. The customs, traditions, and precedents have come into being as law by reason of the development of the common law. We appreciate the fact that the two Constitutions mandate that a jury trial shall be conducted so that no person shall be deprived of his liberty without due process of law. Simply put, and in laymen’s language, this merely means that every defendant is entitled to a fair trial.”³³⁶</p> <p>“Appellant acknowledges, however, that the right to a jury trial under Article I, section 14 turns on whether a right to a jury trial was in existence at the time the Constitution was enacted. Indeed, this provision ‘securing the right of trial by jury, [is] to be read in the light of the law existing at the adoption of the constitution. [It was] not designed to <i>extend</i> the right of trial by jury, but simply to <i>secure</i> that right as it then existed.’”³³⁷</p>

³³⁴ S.C. CONST. art. I, § 14.

³³⁵ State v. Kelly, 502 S.E.2d 99, 104 (S.C. 1998).

³³⁶ State v. Bonneau, 276 S.E.2d 300, 302 (S.C. 1981).

³³⁷ *In re Stephen W.*, 761 S.E.2d 231, 233 (S.C. 2014) (alterations in original) (quoting City Council of Anderson v. O’Donnell, 7 S.E. 523, 528 (S.C. 1888)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>South Dakota</i>	
<p>Article VI, Section 7: “In all criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.”³³⁸</p> <p>Article VI, Section 6: “The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy”³³⁹</p>	<p>“Both the federal and our state constitutions guarantee trial by an impartial jury. However, a clear-cut test for determining juror impartiality does not exist. But, in any event, ‘mere expression of a predetermined opinion as to guilt during voir dire does not disqualify a juror per se.’ A potential juror should be excused for cause if that juror is unable to ‘set aside preconceptions and render an impartial verdict.’ Furthermore, determination of a juror’s qualifications must be based upon ‘the whole voir dire examination’ and ‘[s]ingle isolated responses are not determinative.’ Lastly, we emphasize that a trial judge is vested with broad discretion in determining juror qualifications.”³⁴⁰</p> <p>“The United States Constitution and the South Dakota Constitution guarantee the right to an impartial jury. This means in part that ‘the minds of the jurors [should] be without bias or prejudice[.]’ However, when bias is alleged to exist, ‘[t]here should be an actual showing of prejudice before a mistrial is granted.’ Prejudice arises when an error ‘ . . . produced some effect upon the jury’s verdict and is harmful to the substantial rights of the party assigning it.’”³⁴¹</p>

³³⁸ S.D. CONST. art. VI, § 7 (applying to criminal trials only).

³³⁹ *Id.* art. VI, § 6.

³⁴⁰ *State v. Hansen*, 407 N.W.2d 217, 220 (S.D. 1987) (citations omitted) (first quoting *State v. Muetze*, 368 N.W.2d 575, 585 (S.D. 1985); and then quoting *State v. Flack*, 89 N.W.2d 30, 32 (S.D. 1958)).

³⁴¹ *State v. Packard*, 2019 SD 61, ¶ 15, 935 N.W.2d 804, 809 (first, second, and third alterations in original) (citations omitted) (first quoting *State v. Dillon*, 2010 SD 72, ¶ 32, 788 N.W.2d 360, 370; then quoting *State v. Garnett*, 488 N.W.2d 695, 698 (S.D. 1992); and then quoting *State v. Williams*, 2008 SD 29, ¶ 14, 748 N.W.2d 435, 440).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Tennessee</i>	
<p>Article I, Section 9: “[I]n prosecutions by indictment or presentment, [the accused hath the right to] a speedy public trial, by an impartial jury of the County in which the crime shall have been committed”³⁴²</p> <p>Article I, Section 6: “[T]he right of trial by jury shall remain inviolate”³⁴³</p>	<p>“Both the United States and the Tennessee Constitutions guarantee a defendant’s right to trial ‘by an impartial jury.’ Our state constitution guarantees every defendant a trial by a jury free from ‘disqualification on account of some bias or partiality toward one side or the other of the litigation.’ In protection of this right, ‘[t]he essential function of voir dire is to allow for the impaneling of a fair and impartial jury through questions which permit the intelligent exercise of challenges by counsel.’ A defendant may challenge a juror’s qualifications post-verdict when bias or prejudice is actually shown to exist or can be presumed from the circumstance. Likewise, a post-verdict challenge may be lodged ‘when a juror conceals or misrepresents information tending to indicate a lack of impartiality.’”³⁴⁴</p> <p>“Both the Sixth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution guarantee the right to a trial by an impartial jury. Challenges to juror qualifications generally fall into the following two categories: <i>propter defectum</i>, ‘on account of defect,’ or <i>propter affectum</i>, ‘on account of prejudice.’ General disqualifications based upon alienage, family relations, or some other statutory mandate are classified as <i>propter defectum</i> and must be challenged before the return of a jury verdict. An objection based upon bias, prejudice, or impartiality is classified as <i>propter affectum</i> and may be made after the jury verdict. A claim of juror bias or impartiality, therefore, may be asserted in a post-conviction relief petition.”³⁴⁵</p>

³⁴² TENN. CONST. art. I, § 9 (applying to criminal trials only).

³⁴³ *Id.* art. I, § 6.

³⁴⁴ *State v. Stanhope*, 476 S.W.3d 382, 403 (Tenn. Crim. App. 2013) (alteration in original) (citations omitted) (quoting *State v. Akins*, 867 S.W.2d 350, 354–55 (Tenn. Crim. App. 1993)).

³⁴⁵ *Faulkner v. State*, No. W2012-00612-CCA-R3-PD, 2014 Tenn. Crim. App. LEXIS 855, at *213–14 (Aug. 29, 2014) (citations omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Texas</i>	
<p>Article I, Section 10: “In all criminal prosecutions the accused shall hav [sic] a speedy public trial by an impartial jury.”³⁴⁶</p> <p>Article I, Section 15: “The right of trial by jury shall remain inviolate.”³⁴⁷</p>	<p>“The Texas Constitution guarantees that, ‘In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury.’ The Sixth Amendment to the United States Constitution similarly provides that, ‘In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed[.]’ We have previously noted that ‘there is no significant textual difference between the two constitutional provisions which would indicate that different standards of protection should be applied.’ As a result, there is ‘no reason why the impartial-jury requirements in the two constitutions should be different.’ ‘The people of Texas have the authority to provide greater protections to criminal defendants than those provided in the federal constitution. But as to trial by an impartial jury in criminal cases, they have not.’”³⁴⁸</p> <p>“The Texas Constitution guarantees an accused the right to trial by an impartial jury. This provision means that the jury must not be partial, must not favor one party more than another, must be unprejudiced and disinterested, and should be equitable and just, deferring judgment on the merits of a case until after the presentation of all the evidence.”³⁴⁹</p>

³⁴⁶ TEX. CONST. art. I, § 10 (applying to criminal trials only).

³⁴⁷ *Id.* art. I, § 15.

³⁴⁸ *Jacobs v. State*, 560 S.W.3d 205, 210 (Tex. Crim. App. 2018) (alteration in original) (footnotes omitted) (first quoting TEX. CONST. art. I, § 10; then quoting U.S. CONST. amend. VI; and then quoting *Jones v. State*, 982 S.W.2d 386, 391 (Tex. Crim. App. 1998)).

³⁴⁹ *Uranga v. State*, 247 S.W.3d 375, 377 (Tex. App. 2008) (citation omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Utah</i>	
<p>Article I, Section 12: “In criminal prosecutions the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed”³⁵⁰</p> <p>Article I, Section 10: “In capital cases the right of trial by jury shall remain inviolate. . . . A jury in civil cases shall be waived unless demanded.”³⁵¹</p>	<p>“[T]his court has ‘not hesitated to interpret the provisions of the Utah Constitution to provide more expansive protections than similar federal provisions.’ Still, the Sixth Amendment right to an impartial jury was incorporated against the states through the Fourteenth Amendment As such, the Sixth Amendment forms the ‘floor’ below which the Utah Constitution’s protections cannot fall.”³⁵²</p> <p>“As under the Sixth Amendment, an impartial jury under article I, section 12 ‘consists of . . . ‘jurors who will conscientiously apply the law and find the facts.’”³⁵³</p> <p>“In support of this argument, however, Defendants do little more than quote Article I, Section 12, of the Utah Constitution, which states in pertinent part: ‘In <i>criminal prosecutions</i> the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed’ But the Sixth Amendment to the United States Constitution is very similar, providing: ‘In all <i>criminal prosecutions</i>, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed’ And Defendants make no effort to demonstrate that the term ‘criminal prosecutions’ in the Utah Constitution is so different in scope from the ‘criminal prosecutions’ referenced in the Federal Constitution as to suggest a different standard.”³⁵⁴</p>

³⁵⁰ UTAH CONST. art. I, § 12 (applying to criminal trials only).

³⁵¹ *Id.* art. I, § 10.

³⁵² *State v. Soto*, 2022 UT 26, ¶¶ 20–21, 513 P.3d 684 (citation omitted) (quoting *State v. Briggs*, 2008 UT 83, ¶¶ 24, 26, 199 P.3d 935).

³⁵³ *State v. Alvarez*, 872 P.2d 450, 455 (Utah 1994) (alteration in original) (quoting *State v. Valdez*, 748 P.2d 1050, 1057 (Utah 1987)).

³⁵⁴ *Valerios Corp. v. Macias*, 2015 UT App 4, ¶ 21, 342 P.3d 1127 (alterations in original) (citations omitted) (first quoting UTAH CONST. art. I, § 12; and then quoting U.S. CONST. amend. VI).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Vermont</i>	
<p>Chapter I, Article 10: “[I]n all prosecutions for criminal offenses, a person hath a right to . . . a speedy public trial by an impartial jury of the country”³⁵⁵</p> <p>Chapter I, Article 12: “[W]hen any issue in fact, proper for the cognizance of a jury is joined in a court of law, the parties have a right to trial by jury, which ought to be held sacred.”³⁵⁶</p>	<p>“Criminal defendants have a constitutional right to trial by an impartial jury, and courts ‘must safeguard this right by excluding from the jury persons who evince bias against the defendant.’ We generally divide juror challenges for cause into two categories: ‘(1) those based on actual bias, and (2) those grounded in implied bias.’ A prospective juror has an actual or fixed bias ‘when, through his or her answers to questions posed on voir dire, the potential juror evinces a state of mind inconsistent with deciding the case fairly.’ This may take the form of statements suggesting that a juror ‘may have trouble putting aside . . . prejudices, making a decision based only on the evidence, or applying a burden of proof or law.’ The second category of cases, involving an ‘implied’ or presumed bias, is generally found where a juror has ‘some relationship to a participant’ in the trial from which the court will infer bias as a matter of law.”³⁵⁷</p> <p>“Article 6, of the amendments to the constitution of the United States, provides that ‘in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury.’ This article, it is believed, has always been construed to include prosecutions for every grade of offense where the proceedings are <i>in personam</i>. And although it has been held that the provisions of the constitution of the United States, so far as they relate to trial by jury, have no application to the legislative powers of state governments, we may infer that the framers of our state constitution intended its provisions should be in conformity to the federal constitution, in respect to trials by jury.”³⁵⁸</p>

³⁵⁵ VT. CONST. ch. I, art. 10 (applying to criminal trials only).

³⁵⁶ *Id.* ch. I, art. 12.

³⁵⁷ *State v. Atherton*, 2016 VT 25, ¶ 10, 201 Vt. 512, 144 A.3d 311 (alteration in original) (citations omitted) (first quoting *State v. Sharrow*, 2008 VT 24, ¶¶ 6–8, 183 Vt. 306, 949 A.2d 428; and then quoting *State v. Percy*, 595 A.2d 248, 254 (Vt. 1990)).

³⁵⁸ *State v. Peterson*, 41 Vt. 504, 514–15 (Vt. 1869) (quoting U.S. CONST. amend. VI).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Virginia</i>	
<p>Article I, Section 8: “[I]n criminal prosecutions a man . . . shall enjoy the right to a speedy and public trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty.”³⁵⁹</p> <p>Article I, Section 11: “[I]n controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred.”³⁶⁰</p>	<p>“To be impartial, [e]very prospective juror must stand indifferent to the cause, “and any reasonable doubt as to a juror’s qualifications must be resolved in favor of the accused.””³⁶¹</p> <p>“To ‘stand indifferent to the cause,’ a venireperson must not have ‘any interest in the cause,’ must not have ‘expressed or formed any opinion’ about the case, and must not be ‘sensible of any bias or prejudice.’”³⁶²</p> <p>“‘The right to a trial by an impartial jury is guaranteed under both the United States and Virginia Constitutions.’ This guarantee includes the right to a jury selected from a fair cross-section of the community utilizing a random selection process.”³⁶³</p> <p>“‘[U]nder the Federal and State Constitutions, an accused has a right to trial by an “impartial jury.”’ As illustrated by the majority opinion, we frequently apply federal decisions construing the Sixth Amendment right to an impartial jury in construing this same right under art. 1, § 8 of the Virginia Constitution.”³⁶⁴</p>

³⁵⁹ VA. CONST. art. I, § 8 (applying to criminal trials only).

³⁶⁰ *Id.* art. I, § 11.

³⁶¹ Terry v. Commonwealth, No. 0187-21-3, 2022 WL 17586764, at *5 (Va. Ct. App. Dec. 13, 2022) (alteration in original) (quoting Taylor v. Commonwealth, 733 S.E.2d 129, 134 (Va. Ct. App. 2012)).

³⁶² Harris v. Commonwealth, No. 1413-21-4, 2022 WL 6572251, at *2 (Va. Ct. App. Oct. 11, 2022) (quoting VA. CODE ANN. § 8.01-358 (2025)).

³⁶³ Rogers v. Commonwealth, No. 2954-06-4, 2009 WL 2742563, at *1 (Va. Ct. App. Sept. 1, 2009) (citations omitted) (quoting Reeves v. Commonwealth, 593 S.E.2d 827, 832 (Va. Ct. App. 2004)).

³⁶⁴ Mu’Min v. Commonwealth, 389 S.E.2d 886, 900 (Va. 1990) (Whiting, J., dissenting) (citations omitted) (quoting Patterson v. Commonwealth, 283 S.E.2d 212, 215 (Va. 1981)).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Washington</i>	
<p>Article I, Section 22: “In criminal prosecutions the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed”³⁶⁵</p> <p>Article I, Section 21: “The right of trial by jury shall remain inviolate”³⁶⁶</p>	<p>“[O]ur state constitutional right to an impartial jury should be interpreted as providing the same degree of protection as the parallel federal constitutional right. . . . We similarly hold that article I, section 22’s right to an impartial jury does not provide any more protection than the Sixth Amendment.”³⁶⁷</p> <p>“An ‘impartial jury’ means ‘an unbiased and unprejudiced jury,’ and allowing bias or prejudice by even one juror to be a factor in the verdict violates a defendant’s constitutional rights and undermines the public’s faith in the fairness of our judicial system. As such, this court recognized long ago that ‘[a] trial by a jury, one or more of whose members are biased or prejudiced, is not a constitutional trial.’”³⁶⁸</p>
<i>West Virginia</i>	
<p>Article III, Section 14: “Trials of crimes, and of misdemeanors, unless herein otherwise provided, shall be by a jury of twelve men, public, without unreasonable delay, and in the county where the alleged offence was committed”³⁶⁹</p> <p>Article III, Section 13: “In suits at common law, where the value in controversy exceeds twenty dollars exclusive of interest and costs, the right of trial by jury, if required by either party, shall be preserved”³⁷⁰</p>	<p>“The right to a trial by an impartial, objective jury in a criminal case is a fundamental right guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article III, Section 14 of the West Virginia Constitution.”³⁷¹</p> <p>“[A] trial court’s failure to remove a biased juror from a jury panel does not violate a defendant’s right to a trial by an impartial jury as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Section 14 of Article III of the West Virginia Constitution. In order to succeed in a claim that his or her constitutional right to an impartial jury was violated, a defendant must affirmatively show prejudice.”³⁷²</p>

³⁶⁵ WASH. CONST. art. I, § 22 (applying to criminal trials only).

³⁶⁶ *Id.* art. I, § 21.

³⁶⁷ *State v. Munzanreder*, 398 P.3d 1160, 1167 (Wash. Ct. App. 2017), *cert. denied*, 406 P.3d 280 (Wash. 2017).

³⁶⁸ *State v. Berhe*, 444 P.3d 1172, 1178 (Wash. 2019) (alteration in original) (citation omitted) (first quoting *Alexson v. Pierce County*, 57 P.2d 318, 320 (Wash. 1936); and then quoting *City of Seattle v. Jackson*, 425 P.2d 385, 389 (Wash. 1967)).

³⁶⁹ W. VA. CONST. art. III, § 14 (applying to criminal trials only). This provision also creates a right to an impartial jury. *See State v. Peacher*, 280 S.E.2d 559, 570 (W. Va. 1981).

³⁷⁰ W. VA. CONST. art. III, § 13.

³⁷¹ *Peacher*, 280 S.E.2d at 570 (W. Va. 1981).

³⁷² *State v. Phillips*, 461 S.E.2d 75, 93 (W. Va. 1995).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Wisconsin</i>	
<p>Article I, Section 7: “In all criminal prosecutions the accused shall enjoy the right . . . to a speedy public trial by an impartial jury of the county or district wherein the offense shall have been committed”³⁷³</p> <p>Article I, Section 5: “The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy”³⁷⁴</p>	<p>“To be impartial, a juror must be indifferent and capable of basing his or her verdict upon the evidence developed at trial. . . . [T]he terms ‘statutory,’ ‘subjective,’ and ‘objective’ a[re] the proper terms to use in referring to juror bias.”³⁷⁵</p> <p>“‘[S]tatutory bias’ is the most easily described form of juror bias. With Wis. Stat. § 805.08(1), the legislature deemed biased those who were related by ‘blood or marriage to any party or to any attorney appearing in [the] case’ and those who ‘[have] any financial interest in the case.’ Therefore, a person meeting one of these descriptions is statutorily biased and may not serve on a jury regardless of his or her ability to be impartial.”³⁷⁶</p> <p>“We intend the term ‘subjective bias’ to describe bias that is revealed through the words and the demeanor of the prospective juror. . . . [S]ubjective bias refers to the bias that is revealed by the prospective juror on <i>voir dire</i>: it refers to the prospective juror’s state of mind.”³⁷⁷</p> <p>“On the other hand, the focus of the inquiry into ‘objective bias’ is not upon the individual prospective juror’s state of mind, but rather upon whether the reasonable person in the individual prospective juror’s position could be impartial. When assessing whether a juror is objectively biased, a circuit court must consider the facts and circumstances surrounding the <i>voir dire</i> and the facts involved in the case.”³⁷⁸</p> <p>“We decline to extend the Supreme Court’s reasoning in <i>Williams</i> to the Defendant’s state constitutional argument in this case. Although <i>Williams</i> is binding authority regarding challenges to six-person juries premised upon the Sixth and Fourteenth Amendments to the United States Constitution, we recognize that the Wisconsin Constitution may afford greater protection than the United States Constitution.”³⁷⁹</p>

³⁷³ Wis. CONST. art. I, § 7 (applying to criminal trials only).

³⁷⁴ *Id.* art. I, § 5.

³⁷⁵ *State v. Faucher*, 596 N.W.2d 770, 777 (Wis. 1999).

³⁷⁶ *Id.* at 778 (second and third alterations in original) (citation omitted) (quoting Wis. STAT. § 805.08(1) (1998) (amended 1999)).

³⁷⁷ *Id.*

³⁷⁸ *Id.* at 778–79.

³⁷⁹ *State v. Hansford*, 580 N.W.2d 171, 178 (Wis. 1998) (footnote omitted) (citation omitted).

Text of Constitutional Provision Bearing on Jury Impartiality or, if None, the Right to a Jury	Illustrative State Case(s) Applying Definition of “Impartial” Jury or Juror
<i>Wyoming</i>	
<p>Article 1, Section 10: “In all criminal prosecutions the accused shall have the right . . . to a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed.”³⁸⁰</p> <p>Article 1, Section 9: “The right of trial by jury shall remain inviolate in criminal cases.”³⁸¹</p>	<p>“‘An impartial jury consists of those jurors who will conscientiously apply the law and find the facts.’ ‘Impartiality is not measured easily by tests as it is not a technical conception but rather a state of mind.’ The mechanism that assures a defendant’s right to a fair and impartial jury is voir dire, which affords each party an opportunity to examine the venire to discover whether potential jurors have biases and prejudices which would prevent them from deciding the case fairly.”³⁸²</p> <p>“The decision of whether or not a particular situation requires the implication of unfair bias must be made in view of the United States Supreme Court’s warning that ‘[i]f the mere opportunity for prejudice or corruption is to raise a presumption that they exist, it will be hard to maintain jury trial under the conditions of the present day.’”³⁸³</p>

³⁸⁰ WYO. CONST. art. 1, § 10 (applying to criminal cases only).

³⁸¹ *Id.* art. 1, § 9.

³⁸² *Brown v. State*, 2015 WY 4, ¶¶ 22–23, 340 P.3d 1020, 1027–28 (Wyo. 2015) (citations omitted) (quoting *Miller v. State*, 904 P.2d 344, 352 (Wyo. 1995)).

³⁸³ *Miller*, 904 P.2d at 353 (Wyo. 1995) (alteration in original) (citations omitted) (quoting *Holt v. United States*, 218 U.S. 245, 251 (1910)).