Jury Duty is a Poll Tax: The Case for Severing the Link Between Voter Registration and Jury Service

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Federal jury service has been formally connected to voter registration since 1968. Congress intended for this linkage to improve the American jury system by increasing representation of groups previously excluded from the jury pool. However, as legislative inaction and judicial acquiescence have exacerbated the economic costs of jury service, this practice has also parasitically burdened the right to vote, creating a "self-disenfranchising incentive." This Note argues that jury duty is sufficiently burdensome, and that this burden sufficiently impacts voting, so as to constitute a poll tax in violation of the Twenty-Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment. There is a simple, effective solution to this problem: prohibiting the use of voter registration lists to create jury lists, and instead using any number of available alternative sources to create a representative jury pool.

I. INTRODUCTION

People hate getting jury duty.[1] Even those who enjoy serving on a jury report that they try to avoid it whenever possible.[2] One

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1. *See generally* K.B. Battaglini et al., *Jury Patriotism: The Jury System Should Be Improved for Texans Called to Serve*, 35 ST. MARY'S L. J. 117 (2003); Mark A. Behrens & M. Kevin Underhill, *A Call for Jury Patriotism: Why the Jury System Must be Improved for Californians Called to Serve*, 40 CAL. W. L. REV. 135 (2003) (both describing citizens' negative feelings about jury service and arguing for reforms to the jury system).

plausible explanation for this aversion is the significant financial burden jury duty poses for the average citizen. Some counties in South Carolina, for instance, pay jurors minimum wage for an eight-hour workday — as of 1938.[3] Although this pittance has been attacked for decades, jury service has been upheld as a "duty" required of citizens absent a showing of "financial embarrassment."[4] For many, this inadequate compensation is simply inconvenient, but for those who are self-employed, hold multiple part-time jobs, or are dependent on tips as part of their compensation, the potential loss of income is critical and they do whatever they can to avoid it.[5]

Compiling names from voter registration records is the near-universal method of creating a jury list; forty-two out of fifty states use voter registration lists to form jury lists,[6] and voter registration is still the only required source list for federal juries.[7] Despite the obscurity of this area of law, more citizens know how they get jury duty than know which party controls Congress.[8] Many of those who simply cannot afford to serve on juries make the most logical choice under the circumstances: they do not register to vote.[9]

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2. Judge Randy Wilson, *What Do Jurors Say About Trial Lawyers?*, 68 TEX. B.J. 152, 153 (2005) ("While people try to avoid jury service, once selected, they generally enjoy it and view it as worthwhile."); *Jury Service: Is Fulfilling Your Civic Duty a Trial?*, AM. BAR ASS'N 5–6 (2004), http://www.abanow.org/wordpress/wp-content/files_flutter/1272052715_20_1_1_7_Upload_File.pdf.

3. Fair Labor Standards Act, ch. 676, § 6, 52 Stat. 1062 (1938) (current version at 29 U.S.C. § 206 (2006)) (setting federal minimum wage at twenty-five cents per hour); S.C. CODE ANN. § 14-7-1370 (2011) (paying $2 per day for jury duty in some counties).

4. Thiel v. S. Pac. Co., 328 U.S. 217, 224 (1946). *But see* Frazier v. U.S., 335 U.S. 497, 516–17 (1948) (Jackson, J., dissenting) (arguing that juror compensation of $4 per day was insufficient).

5. Robert C. Walters, Michael D. Marin & Mark Curriden, *Jury of Our Peers: An Unfulfilled Constitutional Promise*, 58 SMU L. REV. 319, 330–32 (2005).

6. For a fifty-state survey of jury list construction methods, which, to the author's knowledge has never before been undertaken by legal scholarship, see *infra* Appendix.

7. 28 U.S.C. § 1863(b)(2) (2006).

8. Stephen Knack, *Deterring Voter Registration Through Juror Selection Practices: Evidence from Survey Data*, 103 PUB. CHOICE 49, 55 (2000) [hereinafter Knack, *Deterring Voter Registration*] (noting that 41% of the 1991 NES survey sample knew that voter registration was linked to jury service, while just 36% knew the Democrats controlled both the House and Senate in 1990).

9. *Id.* at 59. ("A preference for not serving was indicating by more than 35.4% of those responding. Of these 456 respondents, more than one-third (156) were aware of the use of voter registration lists for juror selection. This evidence indicates that the combination of awareness and aversion to jury duty is widespread enough to account for the sizeable deterrent effects estimated here.").

This Note argues that linking jury duty to voter registration places an impermissible economic burden on American citizens' right to vote, disenfranchising as much as seven percent of the U.S. population.[10] As such, this linkage violates the Twenty-Fourth and Fourteenth Amendments as a poll tax.[11] Part II explores the practice of using voter registration lists to populate jury pools, including the history of voter registration lists as a jury source list, the financial burden of jury duty, and the disenfranchising effect of this link. Part III argues that these elements, taken together, impose an impermissible burden on the right to vote, because the use of voter registration lists to populate the jury pool does not serve a governmental interest in election administration, and thus is per se discriminatory regardless of the degree of harm it inflicts. Part IV proposes a simple solution to this problem: banning the use of voter registration lists to create jury pools, and instead relying on the plethora of other available source lists.

II. JURY SERVICE AND VOTER REGISTRATION: A HISTORY

Although the practice of using voter registration lists to populate juries is longstanding, a thorough examination of this link reveals that it has not improved with age. Part II.A explores the history of linking jury duty to voter registration lists, and the near universal judicial support for this practice despite legal challenges and academic critique. Part II.B examines the state and federal statutes that create the financial burdens of jury duty, such as those relating to juror compensation, wage guarantee, and employment protection. Part II.C explains that the use of voter registration lists to create the jury list is a matter of public

10. *Id.*

11. There is no discrete definition of "poll tax" applicable across these statutory and constitutional provisions, particularly since the Fourteenth Amendment prohibition was judicially created in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 668 (1966). This Note argues that, as interpreted by the Supreme Court, using voter registration records to create the jury list satisfies the requirements for a poll tax under each of these provisions. *See infra* Part III; U.S. CONST. amend. XIV, § 1; U.S. CONST. amend. XXIV, § 1 ("The right of citizens of the United States to vote . . . shall not be denied or abridged . . . by reason of failure to pay any poll tax or other tax."); 42 U.S.C. § 1973h (2006) (stating that poll taxes interfere with citizens' constitutional right to vote, and authorizing the U.S. Attorney General to bring actions to enjoin the implementation of poll taxes).

knowledge, with such a strong "self-disenfranchising incentive"[12] that some states have eliminated reliance on voter registration lists in jury list construction in an attempt to raise voter turnout levels.

A. JURY DUTY IS BASED ON VOTER REGISTRATION

The U.S. Constitution says nothing about how states must create their jury lists, and beyond the traditional prohibition of discriminatory selection practices,[13] there is little to no Supreme Court guidance on the subject. There are, however, longstanding statutes and precedent indicating that states *should* create their jury lists from voter registration lists.

1. *The Jury Selection and Service Act of 1968 and the Uniform Jury Selection and Service Act of 1970*

In 1968, Congress passed the Jury Selection and Service Act (JSSA).[14] This legislation was designed to eliminate the so-called "key-man" system, which the Fifth Circuit had recently condemned as producing unrepresentative juries.[15] The key-man system required jury commissioners to select citizens who met the subjective standard of "good moral character."[16] Jury commissioners then subtly used this requirement to limit the jury pool to their own peers, and since commissioners were often white men, this standard typically discriminated against minorities.[17] The JSSA established an objective method for creating federal jury pools: drawing all names from the voter registration lists or actual voter lists,[18] and supplementing those records with other

12. This Note uses the term "self-disenfranchising incentive" to refer to the effect that jury service has on the right to vote: people actively disqualify themselves from voting, by failing to register, in order to avoid jury service.

13. *See*, *e.g.*, Carter v. Jury Comm'n of Greene Cnty., 396 U.S. 320 (1970); Strauder v. West Virginia, 100 U.S. 303 (1879) (both prohibiting exclusion from the jury pool on the basis of race).

14. Jury Selection and Service Act of 1968, Pub. L. No. 90-274, 82 Stat. 53 (current version at 28 U.S.C. § 1861 (2006)).

15. 114 CONG. REC. 3,990 (1968) (referencing Rabinowitz v. United States, 366 F.2d 34 (5th Cir. 1966)); 113 CONG. REC. 35,628 (1967).

16. Massachusetts still has a variant of the key-man system in place and includes morality as a jury-selection criterion. MASS. ANN. LAWS ch. 234, § 4 (LexisNexis 2009).

17. 114 CONG. REC. 3,990 (1968); 113 CONG. REC. 35,628 (1967).

18. 28 U.S.C. § 1863(b)(2) (2006); 113 CONG. REC. 35,625 (1967).

lists as needed to ensure a "fair cross-section of the community,"[19] as required by prior Supreme Court precedent.[20] The JSSA also mandated that juror selection be randomized, so as to give everyone an equal chance of selection.[21]

As Congress considered this legislation, there was little to no discussion about the use of voter registration lists over other sources, and there was certainly no opposition to doing so: the Senate noted that the Subcommittee on Improvements in Judicial Machinery (a subcommittee of the Judiciary Committee) had considered alternative source lists, but had determined that voter lists "provide the widest community cross section of any list readily available."[22] However, Congress never considered whether linking jury duty to voting would discourage voter registration.[23]

Furthermore, while the Act made the federal jury system more objective, it did nothing to fix the key-man problem in state courts, as noted by the Act's detractors.[24] That problem was addressed by model legislation passed in 1970 by the National Conference of Commissioners on Uniform State Laws, the Uniform Jury Selection and Service Act.[25] The Uniform Act was modeled heavily on the federal JSSA, and mandates the use of voter registration lists.[26] However, it also requires supplementation of voter registration with other lists,[27] a measure that was added in part to address concerns that linking voter registration to jury duty would have a "chilling effect" on voting.[28]

Several states adopted the Uniform Act, while others took their own approach to jury selection, with a significant degree of

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19. 28 U.S.C. § 1861; 114 CONG. REC. 3990 (1968); 113 CONG. REC. 35,625 (1967).

20. Thiel v. S. Pac. Co., 328 U.S. 217, 220 (1946) ("[T]rial by jury . . . necessarily contemplates an impartial jury drawn from a cross-section of the community.").

21. *See* 28 U.S.C. § 1863(b)(3) (2006); 113 CONG. REC. 35625 (1967).

22. 113 CONG. REC. 35,630 (1967). It is worth noting, however, how few alternatives were considered: census records, postal records, Social Security records, telephone books, and city directories. Of these choices, only Social Security records (or their Medicare/Medicaid equivalent) are used in any modern jury list statutes, and only by a handful of states. *See infra* Appendix.

23. *See* 113 CONG. REC. 35,630 (1967) (noting the "principles" giving rise to the legislation, but without any discussion of the potential consequences to voter registration).

24. 114 CONG. REC. 4007 (1968) (statement of Rep. Ryan).

25. Vincent McKusick & Daniel Boxer, *Uniform Jury Selection and Service Act*, 8 HARV. J. ON LEGIS. 280, 280 (1971).

26. *Id.* at 285.

27. *Id.* at 285–86.

28. *Id.* at 286.

variation and supplementation as the decades passed. As of 2011, only four states still had a subjective jury selection system in place, and only two retained some semblance of a key-man system.[29] On the other end of the spectrum, some states have mandated the use of every available source list to create the jury list. New York, for example, creates its jury list from no less than ten different source lists, including state unemployment records, tax records, and even lists of medical assistance recipients.[30] But the influence of the JSSA has not been lost: forty-two out of fifty states either allow or actively use voter registration lists in making their jury lists[31] and voter registration remains the only mandated source for federal jury lists.[32]

2. *Constitutional Challenges to the JSSA*

Constitutional challenges to the JSSA on Sixth Amendment grounds erupted almost immediately in courts around the country, claiming that voter registration was not representative of the population, and particularly under-representative of minorities.[33] However, these challenges have been almost universally unsuccessful[34] due to the evidentiary standard courts have required to prove that the jury is not a fair cross-section of the community.[35] For instance, in *United States v. Orange*, the Tenth Circuit failed to find that the use of voter registration lists to populate jury ve-

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29. Utah and Indiana source lists change every year at local discretion, but they still use objective lists to create the jury lists. *Infra* Appendix. Massachusetts's jury-selection statute has a morals clause, and Nevada calls jurors from all "qualified electors," allowing for subjective key-man selection problems. *Infra* Appendix.

30. N.Y. JUD. CT. ACTS LAW § 506 (McKinney 2011).

31. Eight states currently exclude voter registration lists: Alaska, Florida, Maine, Michigan, New Hampshire, Oklahoma, Tennessee, and Wisconsin. *Infra* Appendix.

32. 28 U.S.C. § 1863(b)(2) (2006).

33. *Right to a Jury Trial*, 38 GEO. L.J. ANN. REV. CRIM. PROC. 535, 542 n.1668 (2009) (noting a number of cases where challenges to jury venires called from voter registration lists have failed).

34. *Id.*

35. Duren v. Missouri formalized a three-pronged test for establishing a prima facie violation of the fair-cross-section requirement:

> [T]he defendant must show (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury selection process.

439 U.S. 357, 364 (1979).

nires led to the required "systematic exclusion" of a distinct group, even though those voter registration lists underrepresented minorities.[36] In so holding, the court stated that "[t]he circuits are 'in complete agreement that neither the Act nor the Constitution require that a supplemental source of names be added to voter lists simply because an identifiable group votes in a proportion lower than the rest of the population.'"[37] The Supreme Court has never taken up the issue, but through scattered opinions (including dissents from denials of certiorari) some Justices have at least questioned the use of voter registration lists to populate jury pools.[38]

While the link between jury duty and voter registration has been repeatedly attacked on Sixth Amendment grounds, only one case has challenged this practice based on its burdens to voting. In *Bershatsky v. Levin,* the Eastern District of New York considered a petition for a permanent injunction against the use of voter registration lists in jury selection, on the grounds that such a practice "infringe[d] upon [the plaintiff's] right to vote" due to the "onerous" burden of jury duty.[39] While the court acknowledged that "voting is a fundamental right" subject to strict scrutiny,[40] it nevertheless declined to issue the injunction.[41]

The court employed three lines of reasoning to justify dismissing the action. First, the court stated that the plaintiff "overlook[ed] the fundamental duty of a citizen," citing a number of

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36. 447 F.3d 792, 798 (10th Cir. 2006).

37. *Id.* at 800 (citing United States v. Test, 550 F.2d 577, 587 n.8 (10th Cir. 1976)).

38. *See* California v. Harris, 468 U.S. 1303, 1304 (1984) ("Whether this sort of jury selection procedure can be described as 'systematically' excluding classes that do not register to vote in proportion to their numbers, and whether the need for efficient jury selection may not justify resort to such neutral lists as voter registration rolls even though they do not perfectly reflect population . . . are by no means open and shut questions under *Duren*."); *Duren*, 439 U.S. at 365 (examining unequal voter registration rates between men and women); Test v. United States, 420 U.S. 28, 29–30 (1975) (allowing complete inspection of jury lists if challenging jury selection procedures); Donaldson v. California, 404 U.S. 968, 969–70 (1971) (Douglas, J., dissenting from denial of certiorari) (noting that low voter registration rates of minorities causes bias in the jury pool).

39. 920 F. Supp. 38, 39–40 (E.D.N.Y. 1996), *aff'd*, 99 F.3d 555 (2d Cir. 1996). The opinion does not indicate that the plaintiff invoked any particular constitutional provision, or that she provided any evidence to support these assertions. However, in ruling on the defendant's motion to dismiss, the court accepted the allegations in the plaintiff's complaint as true. *Id.* at 40.

40. *Id.*

41. *Id.* at 41.

cases discussing the societal importance of jury duty,[42] echoing the argument raised in Congress in support of the JSSA.[43] Second, the court deferred to Congress' choice of voter registration lists as "the most efficient method to obtain a jury representative of the community is to use voter registration lists as part of the selection process. And there is no reason to think that a similar judgment by the New York State Legislature is open to question."[44] Third, the court cursorily dismissed the comparison of jury duty to a poll tax despite the economic burdens of jury duty, stating that the goal of an improved jury venire is "a most worthy end."[45]

On appeal, the Second Circuit stated that Bershatsky's claims were under the Voting Rights Act, the Equal Protection Clause of the Fourteenth Amendment, and the Twenty-Fourth Amendment.[46] The court made no effort to directly address the Equal Protection Clause or Twenty-Fourth Amendment claims, but addressed the Voting Rights Act claim with a single, conclusory sentence: "A call to jury duty, to fulfill one's responsibility as a citizen, does not constitute coercion or intimidation within the meaning of 42 U.S.C. 1973i(b)."[47] The court determined that the needs of the jury venire trumped whatever burden this placed on voting rights, and affirmed the District Court's judgment.[48] The Supreme Court denied certiorari without comment.[49]

In sum, Congress determined in 1968 that voter registration lists best served the need for diverse juries, and the United States judiciary has deferred to that determination ever since. This practice has survived challenges on both Sixth Amendment grounds of distorting the jury pool and Twenty-Fourth Amendment grounds of burdening the right to vote. As a result, regis-

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42. *Id.* at 39–40 (citing Carter v. Jury Comm'n of Greene Cnty., 396 U.S. 320, 330 (1970); Thiel v. S. Pac. Co, 328 U.S. 217, 231 (1946); *In re* Grand Juror Webb, 586 F. Supp. 1480, 1483 (N.D. Ohio 1984).

43. 113 CONG. REC. 35,628 (1967).

44. *Bershatsky*, 920 F. Supp. at 40–41.

45. *Id.* at 41.

46. Bershatsky v. Levin, 99 F.3d 555 (2d Cir. 1996). Section 1973i(b) is a provision of the Voting Rights Act of 1965 that bans coercion and intimidation in the voting process. 42 U.S.C. § 1973(i) (2006).

47. *Bershatsky*, 99 F.3d at 557.

48. *Id.*

49. Bershatsky v. Levin, 521 U.S. 1105 (1996) (denying certiorari).

tering to vote remains the primary basis for an American's enlistment for jury duty.[50]

B. JURY DUTY IS AN ECONOMIC BURDEN

Practically since the foundation of the American jury system, jurors have been complaining about how little it pays.[51] The founding fathers,[52] legal scholars,[53] and Supreme Court justices[54] have written about the importance of jury duty in our society for centuries, and yet there has been no successful effort to mandate a fair wage for jurors. This is due in part to the Supreme Court's unwillingness to define what exactly jury service *is*. Jury service has been labeled alternatively a "burden,"[55] a "duty as well as a privilege,"[56] and an "honor" of citizenship second only to voting.[57] One case even goes so far as to deliberately *not* classify jury duty, finding it irrelevant "whether jury service [is] deemed a right, a privilege, or a duty."[58] These various characterizations rhetorically exalt jury service and betray an indifference to the economic harm to citizens that results from it.

1. Thiel v. Southern Pacific Co. *and the "Financial Embarrassment" Standard*

The key decision sanctioning the financial burdens imposed by jury service is *Thiel v. Southern Pacific Co.*[59] In *Thiel*, the clerk of the court and the jury commissioner for the Northern District of California systematically excluded from the jury pool all indi-

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50. *See infra* Appendix; *supra* Part I.

51. *See* Evan R. Seamone, *A Refreshing Jury Cola: Fulfilling the Duty to Compensate Jurors Adequately*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 289, 352 (2002).

52. Letter from Thomas Jefferson to Thomas Paine (July 11, 1789), *in* 3 THE WRITINGS OF THOMAS JEFFERSON 69, 71 (H.A. Washington ed., 1859) ("I consider [the trial by jury] as the only anchor ever yet imagined by man, by which a government can be held to the principles of it's [sic] constitution.").

53. Seamone, *supra* note 51, at 315–23.

54. *See, e.g.*, Powers v. Ohio, 499 U.S. 400, 402 (1991) ("Jury service is an exercise of responsible citizenship by all members of the community, including those who otherwise might not have the opportunity to contribute to our civic life.").

55. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947).

56. Thiel v. S. Pac. Co., 328 U.S. 217, 224 (1946).

57. *Powers*, 499 U.S. at 407.

58. Carter v. Jury Comm'n of Greene Cnty., 396 U.S. 320, 330 (1970).

59. 328 U.S. 217 (1946).

viduals earning a daily wage, on the grounds that such individuals could not afford the $4 per day juror compensation and if they were to appear would be excluded anyway for financial cause.[60] The plaintiff challenged this practice on the grounds that the jury pool contained mostly wealthy individuals partial to businesses.[61] The Court noted that "a federal judge would be justified in excusing a daily wage earner for whom jury service would entail an undue financial hardship,"[62] quoting judicial testimony made to the 79th Congress regarding the "thousands upon thousands of persons [who] simply cannot afford to serve" for $4 per day.[63] However, the Court still overturned the practice on overbreadth grounds, requiring instead an individual determination of financial hardship:

> Jury service is a duty as well as a privilege of citizenship; it is a duty that cannot be shirked on a plea of inconvenience or decreased earning power. Only when the *financial embarrassment* is such as to impose a real burden and hardship does a valid excuse of this nature appear.[64]

The majority was particularly concerned with the rights of the parties at trial, and feared that an automatic exemption would implement a "class" structure within the jury system "abhorrent to the democratic ideals of trial by jury."[65]

Justice Frankfurter's dissent, on the other hand, was much more concerned with those called to serve as jurors, stating that "it cannot be denied that jury service by persons dependent upon a daily wage imposes a very real burden," and relying upon a much more expansive excerpt of the congressional testimony on the financial hardships of jury service.[66] Justice Frankfurter as-

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60. *Id*. at 221–22.
61. *Id.* at 219–20.
62. *Id.* at 225.
63. *Id.* at 225 n.4.
64. *Id.* at 224 (emphasis added). Unfortunately, there are no precise guidelines for determining whether jury service would result in a prospective juror's "financial embarrassment," and since exemption determinations are made on a case-by-case basis, it is often discretionary. *See, e.g.*, State v. Morris, 160 P.3d 203, 213 (Ariz. 2007) (citing ARIZ. REV. STAT. ANN. § 21-315.A (Supp. 2006) ("[J]ury commissioners have broad discretion to excuse jurors from service.").
65. *Thiel*, 328 U.S. at 220.
66. *Id.* at 231–32.

serted that the *jury* should be the focus of individualized concern, rather than the source pool: "the Circuit Court of Appeals rightly found no evidence that the persons whose names were in the box, or the persons whose names were drawn therefrom and who thus became members of the panel, were mostly business executives or those having the employer's viewpoint."[67]

Both the majority and dissenting opinions in *Thiel* are based upon valid public policy concerns regarding the rights associated with a jury trial. In practice, however, the majority opinion has validated a system far different than the text of the opinion would indicate on its face. By requiring proof of "financial embarrassment" in order to receive an exemption for undue hardship, the *Thiel* majority implied that jury system is not constitutionally required to compensate beyond that minimal requirement. As a result, juror compensation has deplorably stagnated since *Thiel*.

2. *Juror Compensation Since* Thiel

In *Thiel*, the Court grappled with juror compensation of $4 per day — in 1946 dollars. Currently, some counties in Illinois *still* pay $4 per day,[68] while parts of South Carolina pay a mere $2 per day.[69] Only New Mexico currently mandates a minimum wage for jurors;[70] the maximum paid by any other state is $50 per day,[71] which still falls below the federal minimum wage for an eight-hour workday.[72] Commentators have argued that this problem primarily stems from a failure to adjust for inflation and increased cost of living.[73]

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67. *Id.* at 229 (citation omitted).

68. 55 ILL. COMP. STAT. ANN. 5/4-11001 (West 2007) (listing juror compensation rates by "class" of county, and paying $4 per day to counties of the "first class").

69. S.C. CODE ANN. § 14-7-1370 (1977) (setting compensation by county, and paying $2 per day to jurors in "Anderson, Calhoun, Clarendon, Dillon, Edgefield, Greenville, Greenwood, Lancaster, Laurens, Marion, Marlboro, Richland and York" counties).

70. N.M. STAT. ANN. § 38-5-15 (LexisNexis 1998).

71. *See, e.g.*, ARK. CODE ANN. § 16-34-103 (Supp. 2011).

72. 29 U.S.C. § 206(a)(1)(C) (2006) (setting current federal minimum at $7.25 per hour). Although jury duty may not actually require a full day's work, it will deprive the juror of a full day's wages, so the comparison is relevant.

73. *See, e.g.*, Seamone, *supra* note 51, at 298–99.

On the federal side, Congress sought to remedy this growing problem with the JSSA.[74] The original 1968 Act set federal juror compensation at $20 per day, and the legislative history makes clear that Congress believed "[i]t should not be a matter of financial sacrifice for a man to serve as a juror."[75] Twenty dollars in 1968 wages is roughly the equivalent of $130 today.[76] However, federal jury duty now pays just $40 per day,[77] lower than the highest state compensation rates[78] and well below federal minimum wage for a workday.[79]

A number of states have taken a more proactive approach to juror compensation, and have mandated jurors with full-time employment receive full wages while on jury duty.[80] The Supreme Court upheld such a statute in *Dean v. Gadsden Times Publishing Corp.*, rejecting the argument that employers who are forced to compensate employees without receiving labor are impermissibly deprived of property in violation of the Fourteenth Amendment.[81] Several other states have provided similar wage guarantees for state employees either through legislation[82] or employee handbooks,[83] and many private entities choose to adopt such policies of their own volition.[84] However, these protections have serious limits. First, they typically only mandate payment of full wages for the first few days of jury service, after which point jurors are compensated at a fixed rate comparable to other

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74. *See supra* Part II.A.1.

75. 113 CONG. REC. 35,637 (1967).

76. *CPI Inflation Calculator*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/data/inflation_calculator.htm (last visited Mar. 3, 2012).

77. 28 U.S.C. § 1871 (2006).

78. *Supra* note 71.

79. *Supra* note 72.

80. *See, e.g.*, ALA. CODE § 12-16-8 (LexisNexis 2005) (full salary while on jury duty); N.H. REV. STAT. ANN § 275:43-b (2010) (full salary while on jury duty, but employer can offset that with the juror compensation).

81. 412 U.S. 543, 544–45 (1973) (per curiam).

82. *See, e.g.*, ARK. CODE ANN. § 21-5-104 (1999); GA. CODE ANN. § 20-2-870 (2012) (state teachers get paid salary while on jury duty); LA. REV. STAT. ANN. § 17:1210 (2001; WIS. STAT. ANN. § 230.35 (West Supp. 2011).

83. *See, e.g.*, STATE PERS. SYS., DEP'T OF JUVENILE JUSTICE, EMPLOYEE HANDBOOK 45 (2011), *available at* http://www.djj.state.fl.us/docs/department-forms/employee_handbook.doc?sfvrsn=2.

84. *See* Brian T. McMillan, *Managing the Risk of Employment-Related Practice Liabilities by Influencing the Behavior of Employee Claimants*, 21 W. NEW ENG. L. REV. 427, 431 (1999) (noting that company policies addressing jury duty are "desirable and often included in employment handbooks.").

states.[85] Furthermore, neither part-time employees nor independent contractors are typically covered by wage guarantee statutes.[86] These statutes also do not protect those who are not employed but still suffer economic burdens when called for jury service, such as parents who have to pay for child care.[87]

Most states also provide a number of "financial hardship" exemptions, but these, too, are inadequate. While some states do provide broad exemptions, qualification is still determined using the "financial embarrassment" framework of *Thiel*. Meeting this standard can be difficult unless a potential juror can clearly satisfy a delineated exemption or excuse.[88] Even then, the individual must still report to the courthouse in order to receive a final exemption, which imposes a financial burden in itself due to lost wages, child care and other financial hardships.[89]

3. *Employment Protection for Jurors*

There is also a greater risk than these immediate economic losses: termination of employment. Termination for answering a jury summons has been banned by federal statute[90] and in forty-nine states,[91] but these bans are piecemeal at best. For instance, while 28 U.S.C. § 1875 allows for a variety of remedies for federal jurors, including lost wages, injunctions, and a $5,000 fine

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85. *See, e.g.*, COLO. REV. STAT. ANN. § 13-71-126 (West 2005) (full salary up to $50 per day); CONN. GEN. STAT. ANN. § 51-247 (West 2005) (full salary for first five days of jury service, $50 per day every day thereafter).

86. *See, e.g.*, N.H. REV. STAT. ANN § 275:43-b (2010) (protecting only salaried employees, not all employees).

87. *See, e.g.*, TEX. GOV'T CODE ANN. § 62.106(a)(2) (West Supp. 2012) (covering only parents with children age twelve and under).

88. *See, e.g.*, Joanna Sobol, *Hardship Excuses and Occupational Exemptions: The Impairment of the "Fair Cross-Section of the Community,"* 69 S. CAL. L. REV. 155, 166–67 (1995).

89. Courts are typically not receptive to mailed-in applications for jury exemptions. *See, e.g.*, State v. Chidester, 570 N.W.2d 78, 80–81, 85 (Iowa 1997) (citing IOWA CODE ANN. § 607A.6 (West 1996) (finding that exemptions by the court attendant based on generalized written submissions violated Iowa's jury selection statute, which mandates that "the court shall exercise this authority [to excuse jurors] strictly.").

90. 28 U.S.C. § 1875 (2006).

91. Montana is the only state without formal employment protection for jury service, though the issue has reached Montana's highest court. *See* Gates v. Life of Mont. Ins. Co., 668 P.2d 213, 220 (Mont. 1983) (Gulbrandson, J. dissenting) (examining tort of wrongful discharge based on public policy).

against the employer,[92] New York only allows for the employer to be convicted of criminal contempt[93] and does not provide for a civil cause of action.[94] On the other hand, Texas does not provide for criminal sanctions against employers, but does allow for a private cause of action.[95] Furthermore, as with wage guarantees for jury duty, these statutes rarely protect part-time employees or independent contractors.[96]

An examination of the implementation of 28 U.S.C. § 1875 reveals how little protection even the broadest of these employment-protection statutes actually affords. There have been no Supreme Court decisions on the scope and application of § 1875, and only a handful of circuits have addressed it substantively.[97] Thus, federal courts have reached different conclusions as to the proper application of almost every key component of the statute, including the scope of injunctive relief,[98] the right to a jury trial,[99]

92. 28 U.S.C. § 1875(b) (2006).

93. N.Y. JUD. CT. ACTS LAW § 519 (McKinney 2011).

94. *See* Gomariz v. Foote, Cone & Belding Comms., Inc., 644 N.Y.S.2d 224, 225 (N.Y. App. Div. 1996).

95. *See* Fuchs v. Lifetime Doors, Inc., 717 F. Supp. 465, 467 (W.D. Tex. 1989), *aff'd in part, modified in part*, 939 F.2d 1275 (5th Cir. 1991).

96. 28 U.S.C. § 1875, for instance, has never been applied to a part-time employee or independent contractor, though the language of the statute itself could be construed to apply to such employees. *See, e.g.*, Madison v. District of Columbia, 593 F. Supp. 2d 278, 289–90 (D.D.C. 2009), *amended on recons. in part by* 604 F. Supp. 2d 17 (D.D.C.). (finding that the term "permanent employee" in § 1875 covers an employee with a definite term of employment of thirteen months).

97. *See* Hill v. Winn-Dixie Stores, 934 F.2d 1518, 1525 (11th Cir. 1991) (holding that § 1875's back-wages provision is legal, rather than equitable, in nature, and so Seventh Amendment jury-trial right attaches); Shea v. Rockland Cnty., 810 F.2d 27, 28–29 (2d Cir. 1987) (holding that employee was not entitled to compensatory damages for emotional distress under § 1875); Segal v. Gilbert Color Sys., Inc., 746 F.2d 78, 81, 84–87 (1st Cir. 1984) (holding that verdict against violation of § 1875 was not excessive and that employee was not entitled to prejudgment interest, and considering appropriate calculation of attorney's fees under the statute).

98. *Compare* Jeffreys v. My Friend's Place, Inc., 719 F. Supp. 639, 647 (M.D. Tenn. 1989) (allowing preliminary injunction based upon policy concerns created by § 1875 for injury "to the United States and its citizens"), *with* Rogers v. Comprehensive Rehab. Assocs., Inc., 808 F. Supp. 493, 499 (D.S.C. 1992) (denying preliminary injunction, distinguishing and rejecting the policy concerns of *Jeffreys*).

99. *Compare* Winn-Dixie Stores, 934 F.2d at 1523 (holding that § 1875 provides legal remedies, which guarantees Seventh Amendment right to jury trial), *with* McNulty v. Prudential-Bache Sec., Inc., 871 F. Supp. 567, 569–70 (E.D.N.Y. 1994) (finding that claims under § 1875 can be subject to arbitration and need not be resolved by a jury).

application against federal employers,[100] and availability of attorney's fees.[101]

Of particular note are the varying interpretations of § 1875(d)(1), which provides for the appointment of counsel upon application by the plaintiff and a showing of "probable merit,"[102] a provision designed specifically to protect low-income employees.[103] While the Northern District of Illinois has taken a particular interest in § 1875 generally, and in this subsection particularly,[104] its plaintiff-friendly acceptance of "probable merit" is far from universal.[105] Because of the general confusion and scarcity of jurisprudence in this area of law, courts have had to analogize to Title VII litigation.[106] Several courts have even begun to require

100. *Compare* Gleason v. U.S. Dep't of Homeland Sec., No. 06 Civ. 13115(DLC), 2007 WL 1597955, at *2 (S.D.N.Y. June 1, 2007) (holding that § 1875 does not abrogate sovereign immunity, and thus cannot be applied against federal employers), *with* Fanucchi v. Donahoe, No. C 11–0737(SBA), 2011 WL 4915810, at *2 (N.D. Cal. Oct. 17, 2011) (requiring further briefing on the issue of abrogation of sovereign immunity).

101. *Compare In re* Webb, 586 F. Supp. 1480, 1485 (C.D. Ohio 1984) (holding that attorney's fees provision of § 1875(d)(2) applies only to court-appointed counsel), *with* Flynn v. Am. Fire & Elec. Indus., Inc., 817 F. Supp. 63, 64 (C.D. Ill. 1993) (allowing for attorney's fees under § 1875(d)(2) for privately-retained attorney, rejecting *In re Webb*).

102. 28 U.S.C. § 1875(d)(1) (2006).

103. H.R. REP. NO. 95-1652 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5477.

104. The Northern District of Illinois has examined seven incidents in the last five years related to appointment of counsel under § 1875(d)(1), and has found "probable merit" in all of them. *See In re* Wallace, No. 10cv2564, 2010 WL 1688189, at *3 (N.D. Ill. April 26, 2010) (holding "probable merit" satisfied through "uncontradicted information provided to the court"); *In re* Geocaris, No. 1:08-cv-07213, 2008 WL 5263145, at *2 (N.D. Ill. Dec. 17, 2008) (holding "probable merit" established though suspicious "timing and circumstances"); United States v. Calabrese, Nos. 02 CR 1050-2, 3, 4, 10, 2008 WL 4274453, at *12 (N.D. Ill. Sept. 10, 2008), *aff'd sub nom.* United States v. Schiro, 679 F.3d 521 (7th Cir. 2012) (rejecting argument of improper influence on the jury when the judge helped two jurors retain counsel pursuant to § 1875(d)(1) due to issues with the jurors' respective employers); *In re* McCoy, No. 08cv2189, 2008 WL 4547226, at *3 (N.D. Ill. April 14, 2008) (holding "probable merit" established though suspicious "timing and circumstances"); *In re* Member of Special Grand Jury: Darren Blake, 485 F. Supp. 2d 892, 896 (N.D. Ill. 2007) (holding "probable merit" satisfied through evidence of modified work schedule); *In re* Bregar, 485 F. Supp.2d 897, 902 (N.D. Ill. 2007) (holding "probable merit" established through temporal proximity of disciplinary action by employer and notification of grand jury summons). No other district court has decided more than one case on § 1875(d)(1) since its enactment in 1978.

105. *See* Wongkiatkachorn v. Capital One Bank, No. 09 Civ. 9553(CM)(KNF), 2010 WL 4537826, at *1 (S.D.N.Y. Nov. 4, 2010) (denying "probable merit" based upon improper application); *In re* Scott, 155 F.R.D. 10, 13 (D. Mass. 1994) (holding that "probable merit" standard not met based on insufficient notice to employer).

106. *See, e.g.*, Ortiz-Skerrett v. Rey Enters., Inc., 692 F. Supp. 2d 201, 204 (D.P.R. 2010) ("In a case where a plaintiff alleges intimidation and coercion under the Jury Act, courts have turned to the Supreme Court's analysis of harassment claims under Title VII."); Lucas v. Matlack, Inc., 851 F. Supp. 231, 233–34 (N.D. W. Va. 1994).

proof of "but-for" causation (proof that the employee would not have been terminated but for his service on a jury) in juror protection cases brought under § 1875,[107] based on recent Supreme Court precedent on discriminatory treatment by employers.[108] In short, while the employment protections of § 1875 exist on paper, they may do little to actually prevent retaliatory discharge in practice, particularly for employees who work in low-paying jobs and thus have fewer available resources.

Despite the multitude of state and federal statutes that attempt to mitigate the damage, the fact remains that jury duty is an economic burden on citizens. This burden is a direct consequence of the stagnation in compensation rates beginning in the early 1900s,[109] and accelerating from the 1940s onward as a result of *Thiel*.[110] The current amalgam of jury service protections statutes largely presume full-time employment with honorable employers, and thus is inadequate to provide substantive financial security for citizens called to serve.

C. LINKING JURY DUTY TO VOTER REGISTRATION CREATES A SELF-DISENFRANCHISING INCENTIVE

Parts II.A and II.B have shown that jury duty derives from voter registration lists, and imposes an economic burden on citizens through direct financial losses and/or increased risk of losing employment. Part II.C examines the relationship between these two facts to determine whether citizens cancel their voter registration (or do not register in the first place) in order to avoid jury duty. This Part finds that, while there are certainly those who fail to register out of laziness or general disinterest in political participation, there is evidence that others avoid registering to vote due to the threat jury duty poses to their economic stability. This linkage between voter registration and jury service thus cre-

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107. *See, e.g.*, Williams v. District of Columbia, 646 F. Supp. 2d 103, 109 (D.D.C. 2009); Crowley v. Pinebrook, Inc., No. JKS 08-3427, 2010 WL 4963004, at *3 (D. Md. Dec. 1, 2010), *aff'd*, No. 10-2398, 2011 WL 2909109 (4th Cir. July 21, 2011).

108. These courts have cited *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009), which held that in, discrimination cases brought under the Age Discrimination and Employment Act of 1967, the plaintiff must show that the employer would not have made an adverse employment decision but for the plaintiff's age.

109. Seamone, *supra* note 51, at 342–44.

110. *Id.*

ates the same effect which makes poll taxes so concerning: an unnecessary self-disenfranchising incentive.

1. *The Link Between Voter Registration and Jury Service Is a Matter of Public Knowledge, Motivating Citizens to Avoid Both Voting and Jury Duty*

The connection between jury duty and voter registration has been portrayed in public media since as early as 1950.[111] The JSSA formalized the connection on a national level, and as more and more states followed the Uniform Jury Selection and Service Act of 1970 or a variant thereof, public awareness has only become stronger. That public perception has been reinforced by popular media, including through such innocuous sources as TV sitcoms.[112] In fact, this belief persists even in states which now use alternative source lists.[113] Some jurisdictions have even taken action to correct this public misperception.[114]

A mere seven years after the passage of the JSSA, the issue of whether this linkage deters voter registration had become serious enough to warrant a congressional investigation. Senator Ted Kennedy's office, in conjunction with the Office of Federal Election in the General Accounting Office, surveyed 6,700 election boards nationwide in 1975.[115] Over 75% of the responding boards reported that citizens were discouraged from registering to vote by the fear of jury duty.[116] Some boards reported a disenfranchising rate of "as high as 5 to 10 percent or more," and "the larger

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111. *See, e.g.*, PERFECT STRANGERS (Warner Bros. Pictures 1950) (showing in detail the list of jurors being compiled randomly from voter registration records).

112. For instance, on two different episodes of the television show *30 Rock*, the characters note as a matter of course that where you are registered to vote determines where you are called for jury duty. *See 30 Rock: Believe in the Stars* (NBC television broadcast Nov. 8, 2008); *30 Rock: The Funcooker* (NBC television broadcast Mar. 12, 2009). Even at its ratings nadir, *30 Rock* attracted 3.2 million viewers. *'30 Rock' Season 6: Ratings Hit New Series Low*, HUFFINGTONPOST.COM (Feb. 3, 2012, 1:37 PM), http://www.huffingtonpost.com/2012/02/03/30-rock-season-6-ratings_n_125288.html.

113. *See* Buckley v. Am. Constitutional Law Found., Inc., 525 U.S. 182, 219–20 (1999) (O'Connor, J., concurring in part and dissenting in part) (noting that Colorado citizens failed to register to vote under the "misconception" that they would avoid jury duty, despite the fact that Colorado also uses DMV and tax records to populate jury pools).

114. *See, e.g.*, *Jury Duty and Your Voter Registration*, REGISTRAR OF VOTERS, COUNTY OF ORANGE, CAL., http://www.oc.ca.gov/election/general/1b-10.htm (last visited Jan. 28, 2012).

115. 121 CONG. REC. S5985 (daily ed. April 15, 1975) (statement of Sen. Kennedy).

116. *Id.* at S5985.

the board the larger the estimated percentage of discouraged registrants."[117] On the basis of these findings, Senator Kennedy recommended that Congress switch to using "motor vehicle registration lists or other available lists" instead of voter registration lists.[118] Although Congress did not act on Senator Kennedy's recommendation, it did exempt his home state (Massachusetts) from the voter-registration-list requirement in 1992.[119]

Although this phenomenon has not received significant attention from legal scholars, it has been the subject of empirical social science research. In 1993, Professor Stephen Knack conducted a statistical analysis, comparing voter turnout in the 1976 and 1988 elections with jury list procedures by state.[120] Controlling for other factors such as education and socioeconomic background, Knack determined that voter registration had declined by over 7% in that period, due to the increased use of voter registration–based jury lists by states.[121] However, in another study, Professors J. Eric Oliver and Raymond E. Wolfinger challenged this conclusion, primarily on the basis that people are not aware that voter registration leads to jury duty.[122] They found that only 42% of polled responders to the 1990 National Election Studies (NES) Pilot Study reported that they knew voter registration led to jury duty, and found less than a 1% influence in voter registration rates overall.[123]

Using the data from the 1990 elections, Knack replicated his findings and rebutted Oliver and Wolfinger's argument by adding a control for "jury aversion" among responders. Knack found that there was a 15% difference in registration rates between those living in "voter list" states and "other list" states.[124] Furthermore, Knack cited the same statistic that Oliver and Wolfinger had relied on, but in support of his own conclusions — 42% percent of

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117. *Id.* at S5985–86.
118. *Id.* at S5986.
119. Jury Selection and Service Act, Pub. L. No. 102-572, § 1569, 106 Stat. 4506, 4511 (1992) (codified as amended at 28 U.S.C. § 1863(b)(2) (2006)).
120. Stephen Knack, *The Voter Participation Effects of Selecting Jurors from Registration Lists*, 36 J.L. & ECON. 99, 102–03 (1993).
121. *Id.* at 105.
122. J. Eric Oliver & Raymond E. Wolfinger, *Jury Aversion and Voter Registration*, 93 AM. POL. SCI. REV. 147 (1999).
123. *Id.* at 151.
124. Knack, *Deterring Voter Registration*, *supra* note 8, at 59.

responders knew that voter registration led to jury duty, while "[i]n contrast, less than 25% of the same NES sample knew that Senate terms are six years. Only 36% of the 1990 NES sample knew that the Democrats controlled both houses of the U.S. Congress."[125] Knack argued that this statistic in fact represents an impressive display of knowledge about a relatively obscure area of law, lending credence to his argument that this knowledge is based on citizens' desire to avoid jury duty.[126] Furthermore, over 35% of responders indicated a preference for not serving on a jury, and a third of these responders were aware that voter registration led to jury duty, which is sufficient to cover Knack's determination in his 1993 study of 7% self-disenfranchisement.[127] In short, Knack presents compelling statistical evidence that citizens both want to avoid jury duty and know how to avoid it, and thus do not register to vote.

2. *State Action Eliminating Reliance on Voter Registration Lists*

While Congress has remained committed to using voter registration lists through several subsequent amendments to the JSSA since 1968,[128] states have been more willing to reconsider the issue. Tennessee and New York, for instance, have recently taken action to eliminate the use of voter registration lists for populating the jury pool, showing that this issue has bipartisan support.

In the 2004 election, Tennessee ranked forty-ninth in the nation in voter turnout, at under 55%.[129] The Volunteer State did not fare much better in the 2006 elections: its ranking improved to thirty-seventh, but as 2006 was not a presidential election

125. *Id.* at 55.
126. *Id.*
127. *Id.* at 59.
128. 28 U.S.C. § 1863 has been amended four times since its enactment in 1968. *See* Federal Courts Administration Act of 1992, Pub. L. 102-572, § 401, 106 Stat. 4506, 4511 (amending 28 U.S.C. § 1863 (1988)); Judicial Improvements and Access to Justice Act of 1988, Pub. L. 100-702, § 802(b), 102 Stat. 4642, 4657-58 (amending 28 U.S.C. § 1863 (1982)); Jury System Improvement Act of 1978, Pub. L. 95-572, § 2, 92 Stat. 2453 (amending 28 U.S.C. § 1863 (**1976**)); Act of Apr. 6, 1972, Pub. L. 92-269, § 2, 86 Stat. 117 (amending 28 U.S.C. § 1863 (1970)).
129. Kelly Holder, *Voting and Registration in the Election of November 2004*, U.S. CENSUS BUREAU 9 (Mar. 2006), http://census.gov/prod/2006pubs/p20-556.pdf.

year, overall turnout fell to just over 45%.[130] Distressed by this state of affairs, State Senator Mae Beavers proposed that Tennessee prohibit the use of voter registration in creating the jury pool.[131] The amendment passed and became effective January 1, 2009.[132]

Similarly, in the 2008 election, New York ranked forty-third in voter turnout, at under 59%,[133] and slipped to forty-eighth in the 2010 election, at just under 35%.[134] New York Assembly member William Colton was also concerned with this poor turnout and, citing Professor Knack's 2000 study, proposed legislation on January 21, 2011 to eliminate the use of voter registration lists to create the jury list.[135] The New York Assembly has yet to take up the bill for consideration.

Politically, however, Senator Beavers and Assemblyman Colton are polar opposites. Senator Beavers, who has represented Tennessee Senate District 17 since 2002, is solidly conservative: pro-life, anti-gun control, anti–large government and in favor of tough immigration laws.[136] In the 2008 presidential election, every county Senator Beavers represents voted Republican, in some cases by a margin of 32%.[137] Assemblyman Colton, on the other hand, is a Democrat representing a portion of Kings County (Brooklyn), supporting issues such as improved public transportation, environmental activism, and improved access to healthcare.[138] In the 2008 presidential election, Kings County voted Democrat by a margin of nearly 60%.[139]

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130. Thom File, *Voting and Registration in the Election of November* 2006, U.S. CENSUS BUREAU 10 (June 2008), http://census.gov/prod/2008pubs/p20-557.pdf.

131. Tenn. S. Journal, 105th Gen. Assemb., 2008 Sess., No. 86, 42 (Tenn. 2008).

132. H.B. 3638, 105th Gen. Assemb., Reg. Sess. (Tenn. 2008).

133. Thom File & Sarah Crissey, *Voting and Registration in the Election of November 2008*, U.S. CENSUS BUREAU 11 (July 2012), http://census.gov/prod/2010pubs/p20-562.pdf.

134. *2010 General Election Turnout Rates*, UNITED STATES ELECTION PROJECT, http://elections.gmu.edu/Turnout_2010G.html (last visited Jan. 28, 2012).

135. A.B. 2372, 234th Gen. Assemb., Reg. Sess. (N.Y. 2011); A.B. 2372, 234th Gen. Assembly, Reg. Sess. (N.Y. 2011) (comm. rep.).

136. *Where I Stand*, MAE BEAVERS, STATE SENATE, http://www.maebeavers.com/issues/ (last visited Oct. 6, 2012).

137. *Election Results 2008*, N.Y. TIMES, http://elections.nytimes.com/2008/results/president/map.html (last visited Oct. 5, 2012).

138. *Assemblyman William Colton: Fighting for Us and Our Community*, N.Y. STATE ASSEMBLY, http://assembly.state.ny.us/member_files/047/20100720/ (last visited Jan. 28, 2012).

139. *Election Results 2008*, N.Y. TIMES, http://elections.nytimes.com/2008/results/president/map.html (last visited Oct. 5, 2012).

In sum, linking voter registration to jury duty has a discouraging effect on voter turnout. United States citizens on the whole are more aware of jury list procedures than they are of which party controls Congress.[140] Furthermore, a substantial percentage of those who seek to avoid jury service are acutely aware of these procedures.[141] Although scholars disagree about the magnitude of this "chilling effect," the empirical research available suggests that it could deter between 7% and 15% of the voting-eligible population.[142] States with low voter turnout are aware of this problem, and have begun to consider corrective measures regardless of party affiliation.[143]

III. JURY DUTY BASED ON VOTER REGISTRATION IS A POLL TAX

Part II determined that jury duty is predominantly based on voter registration, that jury service entails various financial burdens on jurors, and that, consequently, some citizens do not register to vote in order to avoid jury service, even when they are called for jury duty by some other method. Part III now shows that linking jury service to voter registration constitutes a poll tax. Part III.A discusses the most significant precedents in this area, while Part III.B argues that, under the standards developed by these cases, the connection between jury service and voter registration imposes an unconstitutional burden on voting under the Twenty-Fourth and Fourteenth Amendments.

A. SIGNIFICANT RULINGS ON POLL TAXES AND USES OF VOTER REGISTRATION LISTS

1. *Poll Tax Case Law Under the Twenty-Fourth and Fourteenth Amendments*

The Twenty-Fourth Amendment prohibits restrictions on the right to vote in a federal election based on "failure to pay any poll

140. Knack, *Deterring Voter Registration*, *supra* note 8, at 55.
141. *Id.* at 56.
142. *Id.* at 59.
143. *Supra* notes 131, 132, and 135.

tax or other tax."[144] Ratified by thirty-eight states in a fifteen-month span from 1962 to 1964,[145] the Twenty-Fourth Amendment was quickly interpreted by the Supreme Court. In *Harman v. Forssenius*, the Court considered a 1963 Virginia statute passed in anticipation the Twenty-Fourth Amendment's ratification, which required citizens who had not paid a traditional poll tax to file a witnessed or notarized certificate of residence in order to vote in federal elections.[146]

The *Harman* Court struck down this statute, citing the importance of voting rights as "fundamental because preservative of all rights."[147] The Court found it particularly significant that the Twenty-Fourth Amendment provides that the right to vote shall not be "denied *or* abridged" and "thus, like the Fifteenth Amendment, the Twenty-fourth nullifies sophisticated as well as simple-minded modes of impairing the right guaranteed. It hits onerous procedural requirements which effectively handicap exercise of the franchise by those claiming the constitutional immunity."[148] The court then ruled that the statute constituted a "material requirement" with a "cumbersome procedure," thus "perpetuating one of the disenfranchising characteristics of the poll tax which the Twenty-fourth Amendment was designed to eliminate."[149] Finally, the Court rejected the argument that this procedure was "necessary to the proper administration of [Virginia's] election laws," given the multitude of other methods of determining residency.[150]

The Twenty-Fourth Amendment only proscribes poll taxes in federal elections, and thus allows for the continued use of poll taxes in state elections.[151] However, the year after the Twenty-Fourth Amendment was ratified the Supreme Court ruled that the use of poll taxes in state elections violated the Equal Protec-

144. U.S. CONST. amend. XXIV, § 1.

145. *24th Amendment, Banning Poll Tax, Has Been Ratified; Vote in South Dakota Senate Completes the Process of Adding to Constitution; 24th Amendment is Now Ratified*, N.Y. TIMES, Jan. 24, 1964, at A1.

146. 380 U.S. 528, 531–32 (1965).

147. *Id.* at 537 (citations omitted).

148. *Id.* at 540–41 (citations omitted).

149. *Id.* at 540–42.

150. *Id.* at 543 (suggesting that residency may permissibly be determined through "registration, use of the criminal sanction, purging of registration lists, challenges and oaths, public scrutiny by candidates and other interested parties . . . .").

151. U.S. CONST. amend. XXIV, § 1.

tion Clause of the Fourteenth Amendment.[152] In *Harper v. Virginia State Board of Elections*, the Court considered Virginia's entire poll tax structure, finding that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized" for its burdens on citizens.[153] The Court then struck down the Virginia state poll tax regime:

> To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. *The degree of the discrimination is irrelevant.* In this context — that is, as a condition of obtaining a ballot — the requirement of fee paying causes an "invidious" discrimination that runs afoul of the Equal Protection Clause. . . .
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> . . . .
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> . . . [T]he right to vote is too precious, too fundamental to be so burdened or conditioned.[154]

So, although the Court made clear that the Constitution only grants an affirmative right to vote in federal elections, and the Twenty-Fourth Amendment proscribes only taxing voters in federal elections, "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment."[155] Congress codified this ruling in the Voting Rights Act amendments of 1975.[156]

But the Twenty-Fourth Amendment has not reached much more broadly than that. Although scholars have criticized the narrow interpretation given to the Twenty-Fourth Amendment,[157]

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152. Harper v. Va. State Bd. of Elections, 383 U.S. 663, 667 (1966).

153. *Id.* (citing Reynolds v. Sims, 377 U.S. 533 (1964)).

154. *Harper*, 383 U.S. at 668–70 (emphasis added) (citations omitted).

155. *Id.* at 665.

156. S. REP. NO. 94-295 (1975); 42 U.S.C. § 1973(h) (2006) ("Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.").

157. *See* Allison R. Hayward, *What is an Unconstitutional "Other Tax" on Voting? Construing the Twenty-Fourth Amendment*, 8 ELECTION L.J. 103, 103–04 (2009); David Schultz & Sarah Clark, *Wealth v. Democracy: The Unfulfilled Promise of the Twenty-Fourth Amendment*, 29 QUINNIPIAC L. REV. 375, 414–15 (2011) (both arguing that the Supreme Court has very narrowly construed the term "other tax," in contradiction to the language of *Harman*).

the Court has analyzed most restrictions on the right to vote under the Equal Protection Clause of the Fourteenth Amendment. Since *Harper*, the Supreme Court has taken up a number of issues related to voting rights,[158] but none of these cases dealt with voter qualifications,[159] focusing instead on issues related to election administration such as independent candidates' rights to appear on the ballot[160] and write-in voting.[161] However, the Supreme Court recently examined such a burden, and in doing so provided useful methodology for defining what qualifies as a poll tax.

The 2008 case of *Crawford v. Marion County Election Board* considered a challenge to a Marion County, Indiana election law that required voters to present a state-issued photo identification in order to vote.[162] Although the plaintiffs argued that the law "should be judged by the same strict standard applicable to a poll tax,"[163] the Court narrowly upheld the statute.

Justice Stevens, writing the lead opinion for a three-Justice plurality, began by weaving together *Harper*'s adjudicatory requirements for a poll tax with subsequent election law cases, but carefully avoided ruling that any particular scrutiny standard applied.[164] Justice Stevens did, however, reaffirm *Harper*'s dictate that "even rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications."[165] But he also credited the government's asserted interests in deterring voter fraud and improving voter confidence.[166] Justice Stevens

158. *See Burdick v. Takushi*, 504 U.S. 428 (1992), *Norman v. Reed*, 502 U.S. 279 (1992), *Anderson v. Celebrezze*, 460 U.S. 780 (1983), *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621 (1969).

159. One possible exception is *Kramer v. Union Free School District No. 15*, which ruled that states may not limit the franchise in school district elections to property owners/lessees and parents. 395 U.S. at 633. However, the complexities of *Kramer*'s application are beyond the scope of this Note.

160. Jenness v. Fortson, 403 U.S. 431, 442 (1970) (upholding state statute predicating independent candidates' access to the ballot on collecting a certain number of signatures); *see also Norman*, 502 U.S. at 294 (ballot-access signature requirement for new political parties was unconstitutional).

161. *Burdick*, 504 U.S. at 438–39 (upholding state ban on write-in voting).

162. 553 U.S. 181 (2008).

163. *Id.* at 188.

164. *Id.* at 189–91.

165. *Id.* at 189.

166. *Id.* at 194–97.

then turned to the burden on the franchise disincentive to voting created by the ID law, and found that:

> The fact that most voters already possess a valid driver's license, or some other form of acceptable identification, would not save the statute under our reasoning in *Harper*, if the State required voters to pay a tax or a fee to obtain a new photo identification. But . . . the photo identification cards issued by Indiana are . . . free. For most voters who need them, the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.[167]

Justice Stevens's plurality opinion thus upheld the statute as an acceptable restriction on the right to vote.[168]

Justice Scalia, writing for another three-justice plurality, concurred in the judgment.[169] Justice Scalia argued that Justice Stevens's opinion gave too much deference to the plaintiffs' alleged injury, holding that "strict scrutiny is appropriate only if the burden is severe. Thus, the first step is to decide whether a challenged law severely burdens the right to vote."[170] Justice Scalia quickly determined that the plaintiffs had not satisfied this requirement, and relied upon other Equal Protection Clause rulings since *Harper* to find that, without evidence of discriminatory intent, a disparate impact claim could not survive.[171] Justice Scalia then dispensed with the broad protections of *Harper* in a footnote: "[I]t suffices to note that we have never held that legislatures must calibrate *all* election laws, even those totally unrelated to money, for their impacts on poor voters or must otherwise accommodate wealth disparities."[172]

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167. *Id.* at 198.
168. *Id.*
169. *Id*. at 204. (Scalia, J., concurring).
170. *Id.* at 205.
171. *Id.* at 207 (citing Gregory v. Ashcroft, 501 U.S. 452, 473 (1991); Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 442 (1985); Harris v. McRae, 448 U.S. 297, 323 n. 26, (1980); Washington v. Davis, 426 U.S. 229, 248 (1976)).
172. *Id.* at 208 n.*.

Justice Souter, joined by Justice Ginsberg, dissented.[173] Justice Souter drew a distinction between voting rights and other rights protected under the Fourteenth Amendment, noting Supreme Court precedents that have held that "voting is of the most fundamental significance under our constitutional structure."[174] Justice Souter then determined that the travel costs of obtaining a photo ID in Marion County (a rural area without convenient public transportation) are significant, particularly when combined with the actual expenses of obtaining the documents necessary to receive a photo ID.[175] Justice Souter then found the proffered state justifications insufficiently compelling, and would have held that this scheme violated the Equal Protection Clause.[176] Justice Breyer also dissented, on the grounds that the requirements of Indiana's photo ID law were not necessary when compared to similar ID requirements in other states, and thus were insufficiently tailored to the proffered state interests to be sustained.[177]

2. *Synthesizing* Harman*,* Harper*, and* Crawford*: Evaluating Poll Taxes Under the Twenty-Fourth and Fourteenth Amendments*

Harman, *Harper*, and *Crawford* make clear that, when evaluating restrictions on the right to vote that can be construed as poll taxes, the Court follows three steps of analysis.[178]

First, the state must show that the burden is related to a compelling state interest in election administration or voter qualifica-

173. *Id.* at 209. (Souter, J., dissenting).

174. *Id.* at 210 (citing Purcell v. Gonzalez, 549 U.S. 1, 3–4 (2006); Burdick v. Takushi, 504 U.S. 428, 433 (1992); Ill. Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979); Dunn v. Blumstein, 405 U.S. 330, 336 (1972); Reynolds v. Sims, 377 U.S. 533, 561–62 (1964); Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886)).

175. *Id.* at 214–15.

176. *Id.* at 237.

177. *Id*. 240–41 (Breyer, J., dissenting).

178. The Court has adopted a "more flexible standard" to evaluate even-handed restrictions with merely incidental effects on the right to vote. *See, e.g.*, Burdick v. Takushi, 504 U.S. 428, 434 (1992) (quoting Anderson v. Celebrezze, 460 U.S. 780, 788–89 (1983)) ("A court considering a challenge to a state election must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule' . . . ."). That standard does not apply here because (1) people who avoid registering to vote in order to avoid jury service are absolutely barred from voting, and (2) the government interests justifying the rule are not related to voting. *See infra* Part III.B.

tions.[179] In all voting rights cases since *Harper*, this has been a low hurdle for the state: the Supreme Court has legitimized a variety of election-related state interests, such as regulating candidates' access to the ballot[180] and avoiding voter confusion,[181] and preventing voter fraud.[182] But, it has never examined an instance where the state is burdening voting to serve a different, yet compelling state interest, and the state's burden in such a case would presumptively be higher, if not insurmountable. This issue will be thoroughly discussed in Part III.B.1.

Second, if the practice serves a compelling state interest, it must not be overly "cumbersome"[183] or a "significant increase over the usual burdens of voting"[184] — generally, it may not constitute a "substantial" burden on voting.[185] *Crawford* makes clear that the analysis of the magnitude of the restriction on the right to vote goes a long way toward determining the constitutionality of a statute. Most of the disagreement among the Justices was over how much a burden actually existed; Justice Stevens's lead opinion was unwilling to find that the photo ID requirement constituted a substantial burden in the form of a poll tax because photo ID was free to obtain, and voters without such ID could still cast provisional ballots.[186]

Third, assuming that there is a substantial burden on voting, the Court will then analyze whether the law is sufficiently tailored to serve the proffered government interest.[187] The standard of review as to this element has ranged from "reasonable relationship" to "least restrictive means."[188]

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179. *See Crawford*, 553 U.S. at 189; *Harper*, 383 U.S. at 667–68; Harman v. Forssenius, 380 U.S. 528, 543 (1965).

180. Jenness v. Fortson, 403 U.S. 431, 442 (1970) (upholding state statute predicating independent candidates' access to the ballot on collecting a certain number of signatures).

181. *See* Bullock v. Carter, 405 U.S. 134, 145 (1972) (striking down state statute that required candidates to pay a filing fee in order to appear on the ballot).

182. *Crawford*, 553 U.S. at 196 (upholding state statute requiring voters to show photo identification in order to vote).

183. *Harman*, 380 U.S. at 540.

184. *Crawford*, 553 U.S. at 198.

185. *See, e.g.*, Greidinger v. Davis, 988 F.2d 1344, 1352 (4th Cir. 1993) (conducting a detailed analysis of the various burdens of proof required by the Supreme Court in voting cases up to that point, and settling on the term "substantial").

186. *Crawford*, 553 U.S. at 198–99.

187. *Id.* at 200–02; *id.* at 238–39 (Breyer, J., dissenting); *Harper*, 383 U.S. at 668.

188. Hayward, *supra* note 157, at 119.

It is also worth noting that although this three-step analysis parallels the criteria for heightened scrutiny under the Fourteenth Amendment, the lead opinion in *Crawford* deliberately avoided stating it was using a particular scrutiny standard, and these three elements should be considered the key components of a poll tax analysis rather than a discrete "test."

3. Greidinger v. Davis*: Use of Voter Registration Lists for Non-Voting Purposes*

As noted in Part II.A.2, there have been no Supreme Court cases directly related to the use of voter registration lists for non-voting purposes. This is unsurprising because non-voting uses of voter registration lists (beyond jury pool population) are extremely limited. For instance, while many jurisdictions allow open access to voter registration records,[189] most states limit the use of such materials to "bona fide political candidates" or non-profit organizations seeking to "promote voter participation and registration."[190] Furthermore, several states have explicit bans on the use of voter registration lists for commercial purposes.[191] While these provisions appear to be primarily based on policy rather than constitutional requirements, one circuit court has addressed the constitutional limits to using voter registration lists for non-voting purposes.

In *Greidinger v. Davis*, the Fourth Circuit examined Virginia's voter registration scheme, which required voters to disclose their Social Security numbers in order to register to vote, and then allowed public access to the voter registration lists.[192] The court interpreted this system as "condition[ing] the right to vote on the consent to the public disclosure of a would-be voter's SSN."[193] The court found that the plaintiffs had a significant privacy interest in their Social Security numbers, and that conditioning the right to vote on consent to disclosure presented a substantial burden on a Virginian's right to vote, in violation of the First and Four-

189. *See, e.g.*, W. VA. CODE ANN. § 3-2-30 (LexisNexis 2011).
190. *See, e.g.*, VA. CODE ANN. § 24.2-405 (2011).
191. *See, e.g.*, KAN. STAT. ANN. § 25-2320a (2000).
192. 988 F.2d 1344, 1345 (4th Cir. 1993).
193. *Id.* at 1352.

teenth Amendments.[194] The court then found that although Virginia had an interest in preventing voter fraud, that interest could not be served through disclosure of Social Security numbers on voter registration lists: "Virginia's interest in preventing voter fraud and voter participation could easily be met without the disclosure of the SSN and the attendant possibility of a serious invasion of privacy that would result from that disclosure."[195] The court then struck down the scheme and remanded for further proceedings.[196]

In short, *Harman*, *Harper*, and *Crawford* each provide key insights into the scope of poll tax prohibitions, and supply the relevant tools to conduct an analysis of what burdens on voting violate these prohibitions. *Greidinger*, likewise, is a helpful case comparator when examining the appropriate uses of voter registration lists. Part III.B proceeds to discuss these elements in detail, and argues that jury service based on voter registration meets the necessary requirements for a poll tax under Supreme Court doctrine.

B. JURY DUTY BASED ON VOTER REGISTRATION IS UNCONSTITUTIONAL

Part III.A.2 establishes that courts will assess state interests, burden on the franchise, and tailoring of state interests when evaluating the constitutionality of alleged poll taxes. Based on these requirements, linking jury duty to voter registration constitutes an impermissible burden on a citizen's right to vote. The JSSA therefore violates the Twenty-Fourth Amendment. Furthermore, state laws which implement such procedures are in violation of the Equal Protection Clause of the Fourteenth Amendment.

Part III.B.1 argues that the non-voting use of voter registration lists to populate the jury pool serves no compelling state interest related to voting, and thus is automatically discriminatory. However, even if the government is permitted to burden voting rights in the service of a compelling interest unrelated to voting,

194. *Id.* at 1354.
195. *Id.*
196. *Id.* at 1355.

Part III.B.2 argues that this practice still fails because jury duty is a substantial burden beyond the norms of voting procedures, as demonstrated in Part II. Finally, Part III.B.3 argues that, because the government has several alternative source lists available which serve its interest in representative jury pools equally as well as voter registration lists, there is no need to burden voting. As a result, under the third step of analysis, the government's non-voting use of voter registration lists to populate the jury pool is not sufficiently tailored to its asserted interests.

1. *Compelling State Interest Related to Voting*

Every one of the court's rulings on this point has been consistent, even among the divided justices in *Crawford*: the government interest advanced to support the restriction on voting must bear a relationship to the administration of elections or the qualifications of voters.[197]

It is true that the government has an appropriate administrative interest in creating voter registration lists, and in requiring all voters to be registered.[198] However, using those lists to populate jury pools confers absolutely no benefit to the government in administering the voting process or determining if voters are qualified to vote. It is a non-voting use of the voter registration list, and thus, as long as it imposes even the slightest burden on the voting process, according to the logic of *Harper*, it is invidiously discriminatory and cannot be justified.[199]

But the Supreme Court has not yet confronted a case in which the government has even attempted to assert a non-voting re-

197. Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 189 (2008) ("[E]ven rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications."); *id.* at 205 (Scalia, J., concurring) ("The Indiana photo-identification law is a generally applicable, nondiscriminatory *voting regulation*") (emphasis added); *id.* at 237 (Souter, J., dissenting) (rejecting as insufficient the four voting-related state interests in the Voter ID law); *id.* at 241 (Breyer, J., dissenting) (concurring with Justice Stevens' and Justice Souter's opinions regarding the examination of the state's voting interest as to the "necessity of ensuring that all those eligible to vote possess the requisite IDs"); Harper v. Va. State Bd. of Elections, 383 U.S. 663, 668 (1965) ("the interest of the State, when it comes to voting, is limited to the power to fix qualifications"); Harman v. Forssenius, 380 U.S. 528, 543 (1965) ("[T]he State has not demonstrated that the alternative requirement is in any sense necessary to the proper administration of its election laws").

198. *Crawford*, 553 U.S. at 192.

199. *Id.* at 189 (citing *Harper*, 383 U.S. at 666–67) ("[E]ven rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications.").

lated interest in order to justify burdening voting, so it is still unsettled whether government interests in jury pool creation are compelling. Interpreting the lead opinions in *Crawford* and *Harper* strictly, the asserted government interest must relate to "qualifications" of voting,[200] which protects citizens' fundamental right to vote.[201] This implies that the government can only burden voting to advance a government interest in voting.[202] However, the Supreme Court has listed jury duty and voting in the same breath as fundamental rights of citizenship,[203] and the government may have significant interests in utilizing voter registration lists to create a representative jury pool.[204] Still, the Court has never expressly stated that jury duty and the right to vote are equivalent, and it has implied several times that voting is the more important concern.[205] Therefore, absent a specific ruling to the contrary, burdens on voting should be restricted to administering the vote itself, and cannot be extended to include other state interests, no matter how compelling.

The only ascertainable government interests in voting that are furthered by tethering registration to jury service have expired over time. The committee report accompanying the JSSA noted that linking jury duty to voter registration would promote par-

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200. *Crawford*, 553 U.S. at 189; *Harper*, 383 U.S. at 668.

201. *See* Greidinger v. Davis, 988 F.2d 1344, 1348–49 (4th Cir. 1993) ("[N]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." (quoting Wesberry v. Sanders, 376 U.S. 1, 17 (1976))); Reynolds v. Sims, 377 U.S. 533, 555 (1964) ("[A]ny restrictions on that right [to vote] strike at the heart of representative government."); Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886) (right to vote regarded as a fundamental right because it preserves all other rights). It is worth noting, however, that Court cites these provisions selectively, particularly in cases applying rational basis review, and thus the significance of the "right to vote" remains somewhat undefined. *See generally* Joshua A. Douglas, *Is the Right to Vote Really Fundamental?*, 18 CORNELL J.L. & PUB. POL'Y 143 (2008).

202. *Harper*, 383 U.S. at 670 (rejecting argument that government revenue interest justifies poll tax).

203. *See, e.g.*, Powers v. Ohio, 499 U.S. 400, 407 (1991) ("Indeed, with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process.").

204. 113 CONG. REC. 35,628 (1967). *But see* Cynthia A. Williams, Note, *Jury Source Representativeness and the Use of Voter Registration Lists*, 65 N.Y.U. L. REV. 590, 624–26 (1990) (arguing that "governmental interests sought to be advanced by the use of voter registration lists are not vindicated in fact" due to voter registration lists' systematic exclusion of distinctive groups).

205. *See Powers*, 499 U.S. at 407; *Wesberry*, 376 U.S. at 17; *Reynolds*, 377 U.S. at 555; *Yick Wo*, 118 U.S. at 370.

ticipation of a civic-minded population in both activities, which was believed to have two corollary benefits.[206] First, Congress believed that drawing jurors from voter registration lists would promote juror fairness by eliminating jurors who were uninterested in political involvement.[207] Second, because of its faith in civic-mindedness (and the relatively high juror compensation for 1968 dollars), Congress believed that people who *wanted* to serve on juries would then register to vote, thereby improving the representativeness of both registered voters and jury selection pools.[208] However, neither of these justifications makes sense. First, the level of civic interest or disinterest as an indicator of juror fairness does not account for the harm this policy inflicts on voter registration and turnout rates. As for the second point, this idealism is precisely the cause of the current dilemma. When juror compensation failed to keep pace with inflation, jury service became a burden rather than a reward, and thus discouraged voter registration and turnout.[209]

2. *Substantial Burden on the Right to Vote*

The burden that jury service imposes on the right to vote is substantial and not merely incidental. Jury duty is a cumbersome responsibility, with obligations well beyond the standard requirements for voting. As described in Part II.B, the financial costs of jury duty can be diverse and long-lasting: loss of wages,[210] insufficient direct compensation,[211] and reprisal by employers[212] all have significant economic consequences. The Supreme Court has acknowledged the obligatory nature of jury duty,[213] and has not required states to raise the wage requirements for jury service above the barest threshold of "financial embarrassment."[214] Many state courts have even acknowledged this economic burden

206. 113 CONG. REC. 35,628 (1967).
207. 114 CONG. REC. 3,999 (1968) (statement of Rep. Machen).
208. *Id.* at 3999–4001.
209. *Supra* Part II.B.
210. *See supra* Part II.B.2.
211. *See supra* Part. II.B.2.
212. *See supra* Part II.B.3.
213. *Powers*, 499 U.S. at 406.
214. Thiel v. S. Pac. Co., 328 U.S. 217, 224 (1946).

outright[215] and state legislatures have cited it as justification for wage protection statutes.[216] Furthermore, as detailed in Part II.C, these costs have a measurable negative effect on voter turnout, thus violating the principle that wealth should not be relevant to a citizen's right to vote.[217]

The standard counter-argument is that jury service is a civic responsibility of all citizens, and thus using voter registration lists to select jurors places no additional burden on citizens' rights.[218] This argument, however, ignores reality: in jurisdictions that exclusively use voter registration lists to populate the jury, citizens can avoid jury duty entirely if they relinquish their right to vote. Therefore, the burdens of jury service can only be applied to registered voters, and thus jury duty exclusively burdens voting as opposed to citizens generally.

A similar counter-argument is that many jurisdictions supplement their voter registration lists with other records such as DMV and tax records, which eliminates the exclusivity of the burden on voting.[219] This argument has some merit, as voting rates in states that use multiple source lists are higher than those in "voter only" states.[220] However, both of these figures still fall short of voter turnout rates in states that do not use voter lists at all.[221] Therefore, even if the deterrent effect is lessened by supplementation, it is far from eliminated, and remains a real

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215. *See, e.g.*, Juneman Elec. Inc., v. Cross, 414 So. 2d 108, 112 (Ala. Civ. App. 1982) ("Full-time employees stand to lose the most in compensation. The likelihood of lengthy jury service accentuates the problem, and imposes a more [onerous] burden on full-time employees, especially the longer the duty required of a person."); Cassim v. Allstate Ins. Co., 94 P.3d 513, 518 n.2 (Cal. 2004) ("Although we are aware of the burden jury service can sometimes pose to jurors, their families and their employers . . . such difficulties are a necessary consequence of our jury system.").

216. *See, e.g.*, MASS. ANN. LAWS ch. 234A, § 47 (LexisNexis 2009) ("Where financial hardship exists, the court shall attempt to place the juror into the same financial position as such juror would have been were it not for the performance of juror service."); WASH. REV. CODE ANN. § 2.36.080(2) (West 2004) ("It also is the policy of this state to minimize the burden on the prospective jurors, their families, and employers resulting from jury service.").

217. Harper v. Va. State Bd. of Elections, 383 U.S. 663, 668–70 (1966)

218. *See, e.g.*, Bershatsky v. Levin, 920 F. Supp. 38, 39 (E.D.N.Y. 1996), *aff'd*, 99 F.3d 555 (2d Cir. 1996); Bershatsky v. Levin, 99 F.3d 555, 557 (2d Cir. 1996).

219. *See, e.g.*, *Bershatsky*, 920 F. Supp. at 39, 41.

220. Knack, *Deterring Voter Registration*, *supra* note 8, at 59.

221. *Id.*

burden on the right to vote in the minds of the public.[222] It is also important to note the difference between supplementation and list merging. Simply ordering supplementation *as needed*, as is the case under the JSSA,[223] only alleviate the burden once the voter list is found insufficiently representative of the community. List merging (continuous use of two or more lists and eliminating any duplication) is the only way this method can truly reduce the burden.

Another significant counter-argument is logistical: jury service is not required in order to vote, and thus does not satisfy the temporal standard for a poll tax because it comes *after* voting.[224] This argument fails to appreciate the intent of the poll tax prohibition. The Twenty-Fourth Amendment was not enacted because the actual cost of paying the tax acted as a practical bar to the franchise; rather, its intent was to eliminate the financial disincentive to voting.[225] The mere presence of such a disincentive acts to discourage turnout, regardless of whether people are capable of paying it.[226] Thus, it is irrelevant whether the tax is applied as one enters the voting booth or after leaving it, so long it functions to discourage turnout.

The final counter-argument of merit is that simply appearing on the jury roll as a result of registering to vote does not guarantee service on a jury, and the mere *risk* of financial harm is insufficient to qualify as a poll tax.[227] Justice Stevens's opinion in *Crawford* appears to take this position, as it concluded that the burden of acquiring a photo ID — the cost of traveling to a designated government office to pick one up — was too minimal and attenuated to constitute a true bar to the franchise, especially

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222. *See* Buckley v. Am. Constitutional Law Found., Inc., 525 U.S. 182, 201–02 (1999) (O'Connor, J., concurring in part and dissenting in part) (noting that Colorado citizens failed to register to vote under the "misconception" that they would avoid jury duty, despite the fact that Colorado also uses DMV and tax records); Knack, *Deterring Voter Registration*, *supra* note 8, at 60.

223. 28 U.S.C. § 1863(b)(2) (2006).

224. *See* Harman v. Forssenius, 380 U.S. 528, 539–40 (1965) (discussing whether poll taxes must be paid "in advance" to act as a bar to voting); *Bershatsky*, 920 F. Supp. at 39.

225. Harper v. Va. State Bd. of Elections, 383 U.S. 663, 668 (1966); *Harman*, 380 U.S. at 539.

226. *See supra* Part II.C.

227. *See* Rose Jade, *Voter Registration Status as a Jury Service Employment Test: Oregon's Retracted Endorsement Following* Buckley v. American Constitutional Law Foundation, Inc., 39 WILLAMETTE L. REV. 557, 729–32 (2003).

since most people already possessed appropriate identification, and the photo ID itself was free.[228] This argument, too, ignores the relevant question — does the policy in place discourage voter turnout for financial reasons? Given the significant financial injury that jury duty can inflict upon a citizen, the mere risk of jury service is a sufficiently compelling disincentive to registering to vote. The logic of *Greidinger* is directly applicable here: in that case, the mere "possibility of a serious invasion of privacy" was deemed a substantial burden on voting rights because voters had to consent to such a risk when they registered.[229] Similarly, here, there is only a chance that a given registered voter will be called in for jury service, and thus suffer economic harm due to jury service, but voters have to consent to that risk in order to exercise the franchise.[230] Therefore, the specter of financially costly jury service "place[s] a rather burdensome condition on the exercise of the fundamental right to vote."[231] This is especially significant because the asserted state interest in *Greidinger* and *Crawford* (voter fraud)[232] was related to voting, while jury service is not, and therefore the threshold of permissible burden on the franchise is even lower. Thus, although the average citizen may not serve on a jury as many times as he or she votes, a single instance of jury service can have a significant financial disincentive over multiple elections.

3. *Sufficient Tailoring to Serve Compelling State Interest*

Finally, if the government's interest in maintaining a convenient list of citizens from which to populate jury pools is sufficient to justify burdening voting to some degree, the substantial burden it places on voting is not sufficiently tailored to the asserted governmental interest, because alternative source lists accomplish the same goals without placing any burden on voting. In

228. Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 192 (2008).
229. Greidinger v. Davis, 988 F.2d 1344, 1348–49 (4th Cir. 1993).
230. But although there is only a chance that a given voter will be called in for jury service, most jury systems are designed to call everyone on the jury list at some point, whether or not each person actually serves. *See*, *e.g.*, ME. REV. STAT. ANN. tit. 14, § 1252-A (2003) (providing that all residents shall be notified that their names may be placed on the source list for prospective jurors at least once per years).
231. *Greidinger*, 988 F.2d at 1350.
232. *Crawford*, 553 U.S. at 192; *Greidinger*, 988 F.2d at 1348–49.

1968, Congress seriously considered only three potential source lists under the JSSA: voter registration lists, tax records, and the phone book.[233] The primary justification for using the voter registration list was convenience; voter registration was the only source list considered that exclusively contains citizens, whereas using other lists would involve some administrative hassle in eliminating ineligible residents.[234] But mandating the use of voter registration lists is overbroad, because there are other ways to serve the government interest in implementing the right to a jury trial that do not burden the right to vote. Justice Breyer, the only Justice to reach the issue in *Crawford*, would have invalidated the Indiana photo ID system because "the record nowhere provides a convincing reason why Indiana's photo ID requirement must impose greater burdens than those of other States."[235] Similarly, that several other states operate constitutionally adequate jury venires without the use of voter registration lists[236] demonstrates that a fair cross-section is realistically attainable without burdening voting in this manner.

Applying similar logic, the court in *Greidinger* found that "Virginia's interest in preventing voter fraud and voter participation could easily be met without the disclosure of the SSN and the attendant possibility of a serious invasion of privacy that would result from that disclosure."[237] The court found that an address, date of birth, or voter registration number "would sufficiently distinguish among voters that shared a common name."[238]

In sum, since the enactment of the Twenty-Fourth Amendment, the Supreme Court has made three major rulings on unconstitutional burdens on the individual right to vote amounting to a poll tax — *Harman v. Forssenius*,[239] *Harper v. Virginia State Board of Elections*[240] and *Crawford v. Marion County Election Board.*[241] The Court's voting rights jurisprudence has provided three stages of analysis for determining if a statute is an uncon-

233. 113 CONG. REC. 35,630 (1967).
234. *Id.*
235. *Crawford*, 553 U.S. at 240 (Breyer, J., dissenting).
236. *See infra* Appendix.
237. Greidinger v. Davis, 988 F.2d 1344, 1354 (4th Cir. 1993).
238. *Id*. at 1355.
239. 380 U.S. 528 (1965).
240. 383 U.S. 663 (1966).
241. 553 U.S. 181 (2008).

stitutional poll tax: (1) whether the state can provide a compelling interest in voter qualifications to justify the statute; (2) whether the statute imposes a substantial burden on the right to vote; and (3) whether the statute is sufficiently tailored to the proffered state interest in voting.[242] The use of voter registration lists to populate the jury pool fails at each step of the inquiry, because it bears no relationship to any state interest in the administration of voting, it imposes significant economic hardship on potential voters resulting in a disenfranchising incentive, and it does so needlessly since other lists would operate just as well in populating the jury pool. *Greidinger v. Davis*[243] provides insight into how to treat such a non-voting burden on voting, and strongly supports the argument that such statutes fail the heightened scrutiny requirements applicable to uses of voter registration lists.

IV. SEVERING THE LINK BETWEEN JURY DUTY AND VOTING

There are two potential remedies to the constitutional problems posed by linking voter registration to jury service. The first, consistent with the legislative intent of the JSSA,[244] would be to remove the economic burdens associated with jury duty. This requires three layers of additional legislation. First, federal legislation is needed to ensure that jury duty compensation is commensurate with the original standard set by the JSSA — $20 per day in 1968 dollars — and that it is adjusted for inflation regularly and in a self-executing manner, as proposed by other scholarship.[245] Second, federal legislation should mandate that, in the event that a person's wages exceeds compensation for jury duty, the remainder will be paid by his or her employer, for as long as the employee serves on a jury.[246] Third, states should enact pro-

242. *Crawford*, 553 U.S. at 189–90.

243. 988 F.2d 1344 (4th Cir. 1993).

244. *See supra* Part II.A.1.

245. *See* Seamone, *supra* note 51, at 298–99. Twenty 1968 dollars are equivalent to approximately $130 today. *CPI Inflation Calculator*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/data/inflation_calculator.htm (last visited Mar. 3, 2012).

246. Most states that have such protection only cover a few days of employment, although the Supreme Court has set no limit to the length of time an employer must pay for an employee's jury service. *See* Dean v. Gadsden Times Pub. Corp., 412 U.S. 543, 544 (1973) (per curiam) (upholding Alabama statute providing that employers must pay employees who serve on juries the difference between employment wages and juror compen-

visions matching 28 U.S.C. § 1875, allowing for legal, equitable and criminal remedies against an employer who takes adverse action against an employee for attending jury duty, including a broader provision for appointing counsel for indigent plaintiffs.[247] These are the minimum requirements necessary in order to alleviate the burdens of jury duty on voting.

The second solution is far quicker and simpler: prohibit the use of voter registration lists in creating jury lists.

Administratively, eliminating the use of voter registration lists would not require significant changes to existing statutes. Only four states do not currently specify by statute how their jury pools are created;[248] these statutes would thus require some additional language prohibiting the use of voter registration lists.[249] The remainder of state statutes and federal guidelines could be updated though very simple edits such as redlining a few words.[250]

Furthermore, there are a large number of alternative source lists from which to choose. In 1968, Congress only had a few alternatives to consider, a number of which were clearly impractical.[251] Today, however, there are a large number of readily accessible sources, as demonstrated by the plethora of lists utilized in New York, such as DMV, tax, and utility records.[252]

Also, the administrative concern of creating a list solely comprised of citizens is no longer of practical significance. With the dawn of the electronic age, government databases can readily record citizenship, and sorting such databases to exclude non-

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sation, but failing to discuss whether an employer would be required to compensate employee-jurors indefinitely).

247. 28 U.S.C. § 1875 (2006).

248. Massachusetts, Indiana, Nevada and Utah still use key-man systems. S*ee infra* Appendix.

249. *See, e.g.*, TENN. CODE ANN. § 22-2-301(a) (2009) ("The jury coordinator is prohibited from using the permanent voter registration records as a source to compile the jury list.").

250. The other forty-six states mention source lists in some way, lending themselves to easy revision. *See infra* Appendix.

251. 113 CONG. REC. 35,630 (1967).

252. N.Y. JUD. CT. ACTS LAW § 506 (McKinney 2011) (specifying nine permissible source lists in addition to voter registration lists: DMV records, photo ID, taxpayers, utility subscribers, family aid recipients, medical aid recipients, "safety net" aid recipients, registered car owners, and volunteers).

citizens is relatively simple.[253] Therefore, even if such measures are not currently in place, the limited administrative burden of adding a "citizens filter" to DMV records, for example, is negligible. Some states have already implemented such a filter for other reasons, in particular out of a growing concern that non-citizens are registering to vote.[254]

Thus, even states that exclusively utilize voter registration lists require local officials to filter those lists to exclude non-citizens and others who have been excused from jury service,[255] and using alternative source lists would not change this procedure. Even if utilizing alternative source lists would result in more non-citizens being called for jury duty by accident, those individuals would be automatically excused since citizenship is a prerequisite for serving on a jury.[256] While non-citizens should certainly receive similar treatment to citizens as a matter of law, burdening a fundamental right of citizens in order to avoid inconveniencing non-citizens cannot be maintained as a legitimate concern necessitating the use of voter registration lists to populate the jury pool.

There is also no consensus as to whether voter registration lists are actually more representative of the community than other source lists.[257] Many courts have assumed that they are

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253. *See, e.g.*, FLA. STAT. ANN. § 40.011 (West 2012) (directing the procedures for DMV's to create a source list of citizens).

254. For instance, there has been significant controversy recently in Florida regarding the state's so-called "voter purge," after the discovery that non-citizens had registered to vote. *See* United States v. Florida, No. 4:12cv285-RH/CAS, 2012 WL 2457506 (N.D. Fla. June 28, 2012) (ruling that the National Voter Registration Act did not preclude Florida from eliminating non-citizens from its voter registration lists).

255. *See* MISS. CODE ANN. § 13-5-8 (Supp. 2011) (requiring the circuit clerk to exclude any person who has been "permanently excused"); MISS. CODE ANN. § 13-5-23(4) (Supp. 2011) (permanently excusing all persons who are ineligible to serve); MISS. CODE ANN. § 13-5-1 (Supp. 2011) (stating that only citizens are eligible to serve as jurors).

256. *See*, *e.g.*, Duren v. Missouri, 439 U.S. 357, 360 n.8 (1979) (noting that only Missouri citizens had the right to serve on a jury under state law).

257. *Right to a Jury Trial*, *supra* note 33, at 546 n.1678. In fact, census numbers demonstrate that voter registration lists are *not* statistically representative of the community, as different racial and ethnic groups register to vote at different rates. File & Crissey, *supra* note 133, at 4 (noting that 73.5% of white citizens were registered to vote for the 2008 election, as compared to 69.7% of blacks, 59.4% of Hispanics, and 55.3% of Asians); *see also* Williams, *supra* note 204, at 605–08 (arguing that the problem of underrepresentation is exacerbated by inaccurate census data, which underestimates distinctive groups' size relative to the overall population while simultaneously overestimating those groups' voter registration levels).

because of the JSSA's strong preference for use of voter registration lists.[258] However, the consensus among courts is that representativeness is a case-by-case concern requiring an evidentiary showing by the specific party asserting bias that the jury pool is not a fair cross-section of the community,[259] and this question would persist regardless of which source lists are utilized. Furthermore, some states have exclusively used alternative source lists for over twenty-five years,[260] and the composition of their jury pools has been upheld against fair-cross-section attacks in both state[261] and federal courts.[262] It is also worth noting that a number of the states that do not rely on voter registration lists use a very limited number of alternate sources and still pass constitutional muster.[263] Therefore, there is no need to mandate which source lists are used so long as the jury pool is adequately representative and does not include the use of voter registration lists.

Concededly, the Supreme Court has recognized constitutionally protected interests in government-regulated services such as Social Security benefits[264] and drivers' licenses.[265] Therefore, linking jury service to obtaining government assistance or a driver's license could also have the same burdensome effect on those activities, such as encouraging unlicensed driving or unduly bur-

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258. *Right to a Jury Trial, supra* note 33, at 546 n.1678.

259. *Id.*

260. *See, e.g.*, MICH. COMP. LAWS. ANN. § 600.1310 (West Supp. 2012). Michigan juries have been drawn exclusively from DMV and photo ID records since 1986. *See id.*

261. *See, e.g.*, Lestenkof v. State, 229 P.3d 182 (Alaska Ct. App. 2010); Woodel v. State, 985 So. 2d 524 (Fla. 2008); State v. Addison, 13 A.3d 214 (N.H. 2010).

262. *See* Berghuis v. Smith, 130 S. Ct. 1382, 1395 (2010) (upholding Michigan jury venire as representative for murder conviction).

263. Michigan and New Hampshire only use DMV and photo ID records, and Oklahoma and Florida only expand beyond that to include volunteers. *See infra* Appendix. Note, though, that shifting from voter registration lists to licensed driver lists, for example, may affect different groups differently. For example, one statistical study (of an admittedly small sample size of Lucas County, Ohio) found that such a shift would improve representation of Hispanics but harm representation of blacks. Ronald Randall, et al., *Racial Representation of Juries: An Analysis of Source List and Administrative Effects on the Jury Pool*, 29 JUST. SYS. J. 71, 80–81 (2008).

264. *E.g.*, Mathews v. Eldridge, 424 U.S. 319, 332 (1976) (holding that Social Security disability benefits are "a statutorily created 'property' interest protected by the Fifth Amendment.").

265. Bell v. Burson, 402 U.S. 535, 539 (1971) ("Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.").

dening welfare recipients. However, constitutionally, alleviating the restriction on voting is sufficient cause to burden other rights and privileges enjoyed by citizens, as none of those bear the same significance as the right to vote, which "preserves all other rights."[266] All other potential source lists, such as tax records, DMV records, utility records and welfare records, involve rights which are already regulated and burdened by the government; the additional burden of jury duty may seem cumbersome to drivers or benefit recipients, but would not pose a constitutional problem akin to a poll tax.

V. CONCLUSION

When Congress passed the JSSA in 1968 mandating that federal jury lists be based on voter registration rolls, President Johnson blessed the union as "advanc[ing] the civil rights of those who still reach for their full, and what we believe their proper, place in our society."[267] The JSSA was designed to reform the jury system, and to provide sufficient compensation to protect citizens from economic harm. A number of states followed this mandate and enacted similar legislation (though without as much concern for adequate compensation). Although the wisdom of this marriage of jury service and voter registration has been questioned many times for its potential ill effects on the jury system, courts have upheld the practice under the traditional "fair cross-section of the community" test. Over the intervening forty-four years, voter registration has become deeply intertwined with jury duty, as the only mandated source list for compiling federal juries, and as a source utilized by at least forty-two states. However, there has been little to no discussion of whether this link is unduly burdensome on citizens' right to vote.

Under current Supreme Court doctrine, the burdens of jury service, when linked to voter registration, are sufficient to constitute a poll tax under the Twenty-Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment. This link serves no compelling state interest in voting while substan-

266. Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).

267. *Lyndon B. Johnson: Remarks Upon Signing the Jury Selection and Service Act of 1968*, THE AMERICAN PRESIDENCY PROJECT, http://www.presidency.ucsb.edu/ws/?pid=28758 (last visited March 4, 2012).

tially burdening voting rights, and alternative source lists would equally serve government interests in creating representative jury lists while avoiding any detrimental impact on the franchise. There is a relatively painless solution to this problem: prohibiting the use of voter registration lists in populating jury pools, and instead using any number of available alternative sources such as DMV and tax records.

This Note has spent a great deal of time establishing the burdens that the American jury system places on its citizens. These burdens have been sanctioned by the Supreme Court for decades as an honor and privilege of citizenship and this Note does not quarrel with that position. Jury duty is a burden, but one which a concerned citizenry should gladly bear. However, jury service should not be allowed to parasitically burden other civil rights. The economic burdens of jury duty do not pose constitutional problems so long as they remain separate from voting; the problem is the link itself. The JSSA amplified the very problem it sought to correct: lack of political participation. As a matter of policy, the United States should not allow its citizens to abandon their most precious civil right in order to avoid a civic obligation. Such a choice, in itself, transforms political participation into a commodity to be traded rather than a privilege to be embraced.

APPENDIX — FIFTY-STATE SURVEY OF JURY-LIST CONSTRUCTION METHODS

State	Relevant Statutory Provision	Source Lists Used
Alaska	ALA. CODE. § 12-16-57 (LEXISNEXIS 2005)	Voter registration, DMV, tax, utility, and other records as needed
Arizona	ARIZ. REV. STAT. ANN. § 21-301(B) (2002)	Voter registration and DMV records
Arkansas	ARK. CODE ANN. § 16-31-101 (1999)	Primarily voter registration, supplemented with DMV records as needed
California	CAL. CIV. PROC. CODE § 197 (West 2006)	Voter registration, DMV, and photo ID records

State	Relevant Statutory Provision	Source Lists Used
Colorado	COLO. REV. STAT. ANN. § 13-71-107 (West 2005)	Primarily voter registration, supplemented with DMV, tax, and other records as needed
Connecticut	CONN. GEN. STAT. ANN. § 51-222a (West 2005)	Voter registration, DMV, tax, and aid recipient records
Delaware	DEL. CODE. ANN. tit. 10, § 4503 (1999)	Primarily voter registration, supplemented with other records as needed
Florida	FLA. STAT. ANN. § 40.011 (West 2012)	DMV, photo ID, and volunteer records
Georgia	GA. CODE ANN. § 15-12-40 (2012)	Voter registration, DMV, photo ID, and other records as needed
Hawaii	HAW. REV. STAT. ANN. § 612-11 (LexisNexis 2007)	Primarily voter registration, supplemented with DMV, tax, and other records as needed
Idaho	IDAHO CODE ANN. § 2-206 (2010)	Primarily voter registration, supplemented with DMV, photo ID, tax, utility, and other records as needed
Illinois	705 ILL. COMP. STAT. ANN. 305/1 (West 2007)	Voter registration, DMV, photo ID, and disability records

State	Relevant Statutory Provision	Source Lists Used
Indiana	IND. CODE ANN. § 33-28-5-13 (LexisNexis Supp. 2012)	No mandatory lists; local officials have discretion to choose from lists approved by the Indiana Supreme Court. The Indiana Supreme Court has recently approved the creation of the 2013 master list from DMV and tax records.[268]
Iowa	IOWA CODE ANN. § 607A.22 (West 1996)	Voter registration, DMV, and utility records
Kansas	KAN. STAT. ANN. § 43-162 (2000)	Voter registration, photo ID, and census records
Kentucky	KY. REV. STAT. ANN. § 29A.040 (LexisNexis Supp. 2011)	Voter registration, DMV, and tax records
Louisiana	LA. CODE CRIM. PROC. ANN. art. 408.1 (2001)	Primarily voter registration, supplemented with DMV and other records as needed
Maine	ME. REV. STAT. ANN. tit. 14, § 1252-A (2003)	DMV, photo ID, and volunteer records, supplemented with other records specified by the Maine Supreme Judicial Court as needed
Maryland	MD. CODE ANN. CTS. & JUD. PROC. § 8-206 (LexisNexis 2006)	Voter registration, DMV, photo ID, and other records as needed

268. Order Approving the 2013 Master List for Jury Pool Assembly (Ind. Sept. 19, 2012), *available at* http://www.in.gov/judiciary/files/order-other-2012-94s00-1209-ms-527.pdf.

State	Relevant Statutory Provision	Source Lists Used
Massachusetts	MASS. ANN. LAWS ch. 234, § 4 (LexisNexis 2009)	No mandatory lists; local officials have discretion to find "moral" citizens
Michigan	MICH. COMP. LAWS ANN. § 600.1310 (West Supp. 2012)	DMV and photo ID records
Minnesota	MINN. GEN. R. PRAC. 806 (2011)	Voter registration, DMV, and other records as needed
Mississippi	MISS. CODE ANN. § 13-5-8 (Supp. 2011)	Voter registration records only
Missouri	MO. ANN. STAT. § 494.410 (West 2011)	Voter registration, DMV, tax, and other records as needed
Montana	MONT. CODE ANN §§ 3-15-402, 61-5-127 (2011)	Voter registration, DMV, and photo ID records
Nebraska	NEB. REV. STAT. § 25-1628 (2008)	Voter registration and DMV records
Nevada	NEV. REV. STAT. ANN. § 6.045 (LexisNexis 2008)	No mandatory lists; local officials have discretion to select jurors from qualified electors, "whether registered as voters or not"
New Hampshire	N.H. REV. STAT. ANN. § 500-A:1 (2010)	Voter registration, DMV, and photo ID records
New Jersey	N.J. STAT. ANN. § 2B:20-2 (West 2012)	Voter registration, DMV, and tax records
New Mexico	N.M. STAT. ANN. § 38-5-3 (Supp. 2012)	Voter registration, DMV, and tax records

State	Relevant Statutory Provision	Source Lists Used
New York	N.Y. JUD. CTS. ACTS LAW § 506 (McKinney 2011)	Primarily voter registration, supplemented with DMV, photo ID, tax, utility, family aid, medical aid, "safety net" aid, volunteer, and other records as needed
North Carolina	N.C. GEN. STAT. ANN. § 9-2 (2011)	Voter registration, DMV, and other records as needed
North Dakota	N.D. CENT. CODE. § 27-09.1-05 (2006)	Primarily voter registration, supplemented with DMV, tax, and utility records as needed
Ohio	OHIO REV. CODE ANN. § 2313.06 (West 2004)	Voter registration and DMV records
Oklahoma	OKLA. STAT. ANN. tit. 38, § 18 (West 2009)	DMV, photo ID, and volunteer records
Oregon	OR. REV. STAT. § 10.215 (2011)	Voter registration, DMV, photo ID, and any other records approved by the Chief Justice of the Supreme Court "that will furnish a fair cross section of the citizens of the county"
Pennsylvania	42 PA. CONS. STAT. ANN. § 4521 (West Supp. 2012)	Primarily voter registration records, supplemented by names in directories, school census lists, and participants in government programs as needed
Rhode Island	R.I. GEN. LAWS § 9-9-1 (Supp. 2011)	Voter registration, DMV, photo ID, tax records, and unemployment compensation recipient records

State	Relevant Statutory Provision	Source Lists Used
South Carolina	S.C. CODE ANN. § 14-7-130 (Supp. 2011)	Voter registration, DMV, and photo ID records
South Dakota	S.D. CODIFIED LAWS § 16-13-4.1 (2004)	Primarily voter registration, supplemented with DMV records as needed
Tennessee	TENN. CODE ANN. § 22-2-301 (2009)	DMV, tax, and other records as needed
Texas	TEX. GOV'T CODE ANN. § 62.001 (West 2005)	Voter registration, DMV, and photo ID records
Utah	UTAH CODE ANN. § 78B-1-106 (LexisNexis 2009)	No mandatory lists; source list "shall be as inclusive of the adult population of the county as is reasonably practicable"
Vermont	VT. STAT. ANN. tit. 4, § 953 (2011)	Voter registration, DMV, tax, health, and election records, as well as records kept by the department for children and families, census enumerations, and telephone directories
Virginia	VA. CODE ANN. § 8.01-345 (2007)	Primarily voter registration, supplemented with DMV, tax, and other records as needed
Washington	WASH. REV. CODE ANN. § 2.36.054 (West Supp. 2012)	Voter registration, DMV, and photo ID records
West Virginia	W. VA. CODE ANN. § 52-1-5 (LexisNexis Supp. 2008)	Voter registration, DMV, and tax records

State	Relevant Statutory Provision	Source Lists Used
Wisconsin	WIS. STAT. ANN. § 756.04 (West Supp. 2010)	Primarily DMV and photo ID, supplemented with voter registration, tax, child support payor and payee, and unemployment compensation recipient records, as well as lists from the Department of Natural Resources as needed
Wyoming	WYO. STAT. ANN. § 1-11-106 (2011)	Primarily voter registration, supplemented with other records as needed