



November 12, 2021

**WRITTEN TESTIMONY OF THE LEAGUE OF WOMEN VOTERS OF NEW JERSEY  
JUDICIAL CONFERENCE ON JURY SELECTION**

Thank you, Chief Justice Rabner, Judge Grant, distinguished participants and the organizers of the Judicial Conference on Jury Selection for allowing me the opportunity to testify today and participate in this Conference on behalf of the League of Women Voters of New Jersey (the “League”).

My name is Henal Patel and I sit on the Board of Directors of the League. For over 100 years, the League of Women Voters of New Jersey has empowered voters and defended democracy.

The League mission, both in New Jersey and around the country, is to encourage informed and active participation in government. While voting is the foundation of this mission, it goes beyond that. Democracy is multi-faceted and could not function without a judiciary that serves, reflects, and engages the people. This is a principle that the League has long recognized – from being at the center of the fight to allow women to serve on juries to encouraging our members to heed the call of jury service.

Our testimony and recommendations today are intended to 1) help create a jury selection system that truly reflects the diversity of New Jersey so people throughout the state can participate and all defendants may have a *jury of their peers*;<sup>1</sup> and 2) to address the systemic racism and other barriers that not only lead to unfair outcomes for defendants – particularly Black and Brown defendants – but sow distrust of the system in the broader public.

**Source Lists and Legal Barriers to Service**

*A. Improving Voter Rolls*

During the first day of this conference, we heard from people like Dr. Nina Chernoff in her excellent presentation, that a major problem for the Judiciary is jury service notices coming back as undeliverable. One of the likely reasons for this issue is that a major source list for jury pools are voter registration rolls. We have long seen issues in our voter rolls with outdated information,

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<sup>1</sup> Duncan v. State of La., 391 U.S. 145, 156 (1968) (“Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.”); State v. Williams, 171 N.J. 151, 170 (2002) (“Jury of one’s peers requires inclusion of all members of the community.”).

including people who have moved and people who have passed away. We are fortunate that in New Jersey we do not aggressively purge our voter rolls as some other states do – which most often lead to Black and other voters of color being removed.<sup>2</sup> However, this does mean that we end up having voter rolls that are out of date. We see these same problems with voter registration and vote-by-mail.

There has been progress. Automatic voter registration<sup>3</sup> and online voter registration<sup>4</sup> provided voters with tools to update their registrations more effectively. This year a law went into effect allowing New Jersey to join the Electronic Registration Information Center (“ERIC”).<sup>5</sup> Once fully implemented – which we understand will be next year – New Jersey will be able to safely and securely update our voter rolls with information from other states regarding people who have moved.<sup>6</sup> We are also working with our partner, the New Jersey Institute for Social Justice, to advocate for same-day registration. Same-day registration has been shown to update voter rolls in the 20 states and D.C., which already have that option for voters.<sup>7</sup>

These voter reforms not only expand access for voters, but they lead to more accurate voter rolls, which in turn lead to more accurate jury pool source lists.

Improving our voter rolls will not alone fix the issues with our source lists. The greater challenges are the legal barriers for those who can serve on juries.

#### B. Allowing People with Criminal Convictions to Serve on Juries

New Jersey bars people with criminal convictions from serving on juries for life.<sup>8</sup> A barrier that effects hundreds of thousands of people – and as New Jersey has the worst Black to white racial disparity in incarceration in the country,<sup>9</sup> this disproportionately effects Black people in the state.

New Jersey recently restored the right to vote for people on parole and probation.<sup>10</sup> This was crucial is recognizing that people on parole and probation are still part of our community and should have opportunities for civic engagement.

A lifetime ban from serving on a jury hurts the justice system and undermines efforts to civically engage returning citizens. We urge this Conference to recommend that we end this practice in New Jersey.

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<sup>2</sup> JONATHON BRATER ET AL., BRENNAN CENTER FOR JUSTICE, PURGES: A GROWING THREAT TO THE RIGHT TO VOTE (2019), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Purges\\_Growing\\_Threat.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Purges_Growing_Threat.pdf).

<sup>3</sup> N.J.S.A. 19:31-31

<sup>4</sup> N.J.S.A. 19:31-6.4c

<sup>5</sup> N.J.S.A. 19:31-34.1

<sup>6</sup> ELECTRONIC REGISTRATION INFORMATION CENTER (ERIC), <https://ericstates.org/>.

<sup>7</sup> SAME DAY REGISTRATION, DEMOS (Marcy 18, 2014), <https://www.demos.org/sites/default/files/publications/SameDayRegistration-2015.pdf>.

<sup>8</sup> N.J.S.A. 2B:20-1(e)

<sup>9</sup> The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, Oct. 13, 2021 <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnicdisparity-in-state-prisons/>.

<sup>10</sup> Vanessa Romo, *New Jersey Governor Signs Bills Restoring Voting Rights To More Than 80,000 People*, NPR (Dec. 18, 2019, 6:29 PM), <https://www.npr.org/2019/12/18/789538148/new-jersey-governor-signs-bills-restoring-voting-rights-to-more-than-80-000-peop>.

### C. Expanding Jury Service to Non-Citizens

Civic engagement and democracy must not and should not be limited to people eligible to vote. We already recognize this by using lists other than voter rolls for jury service source lists. We should go further and acknowledge the many residents of New Jersey we are *per se* denying from service.

Last year Connecticut's Supreme Court convened a Task Force to address racial bias with Jury Selection.<sup>11</sup> In their report, the Task Force found that limiting service to citizens particularly effects the Latinx population and recommended that jury service be extended to include non-citizens, such as legal permanent residents.<sup>12</sup> This recommendation was endorsed by the Chief Justice of the Connecticut Supreme Court and is currently pending in the state legislature.<sup>13</sup>

Over 22% of New Jersey is foreign born<sup>14</sup> but the numbers are much higher in some counties around the state. Non-citizens are subject to our justice system – both in criminal and civil parts. Denying them the right to serve on juries denies them the opportunity to engage in the communities that they live in and it denies defendants are true jury of their peers.

Now that we have discussed source lists and statutory limitations on who can serve, I would like to turn to systemic barriers to service for people who do make it onto source lists.

#### **Systemic Barriers**

As has been discussed throughout this conference, one of the biggest barriers for service in this state is how little we pay jurors. \$5 is so little as to be insignificant. While this may not pose problems for white collar employees whose salaries are not affected, this creates major challenges for hourly wage employees and other front line workers. In New Jersey, jury pay creates the biggest challenge to communities of color. While the individual net worth for white people in New Jersey is \$106,210, it is just \$179 for Black and Latina/Latino residents.<sup>15</sup> We must provide fair compensation for our jurors, such as tying jury service to the minimum wage for jurors who do not otherwise get paid for those days. We should also provide childcare to jurors to alleviate the real burdens that fall on parents – disproportionately mothers.

We must also do better with language access. Based on the 2020 Census, New Jersey is over 48% people of color. Middlesex and Essex Counties are two of the most diverse counties in the

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<sup>11</sup> Report of the Jury Selection Task Force to Chief Justice Richard A. Robinson (Dec. 31, 2020) [https://jud.ct.gov/Committees/jury\\_taskforce/ReportJurySelectionTaskForce.pdf](https://jud.ct.gov/Committees/jury_taskforce/ReportJurySelectionTaskForce.pdf).

<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> Rich Scinto, *CT Bill Would Allow More Black, Hispanic People On Juries*, PATCH (Jan. 13, 2021, 4:02 pm), <https://patch.com/connecticut/across-ct/bill-would-change-jury-duty-connecticut>.

<sup>14</sup> U.S. CENSUS BUREAU, QUICKFACTS: NEW JERSEY, <https://www.census.gov/quickfacts/fact/table/NJ/POP815218> (last visited Nov. 11, 2021). Not all foreign born people are non-citizens.

<sup>15</sup> Laura Sullivan, N.J. INST. FOR SOC. JUST., BLACK AND BROWN IN NEW JERSEY: THE GARDEN STATE'S SHAMEFUL RACIAL WEALTH GAP (2020), [bit.ly/NJISJWealthGap](http://bit.ly/NJISJWealthGap).

country.<sup>16</sup> Hudson, Mercer, and Union also have significant populations of communities of color.<sup>17</sup> We are doing a disservice to the people of those counties and to defendants in those counties by not providing more language access tools.

Earlier this year, the National Center for Access to Justice ranked New Mexico has #1 in the nation for language access in the justice system.<sup>18</sup> While New Jersey is hardly the worst – we were ranked 10<sup>th</sup> with California<sup>19</sup> – we can certainly do much better. New Mexico’s Administrative Office of the Court has a Language Access Services program that “coordinates and funds interpreter and translation services, including on-demand video remote interpreting. The program also recruits, trains and qualifies interpreters. It offers a wide range of other services, including online American Sign Language classes for court employees, translations of web content and training court staff to serve as Language Access Specialists who provide out-of-courtroom help to people in their native language.”<sup>20</sup> New Jersey should follow New Mexico’s lead and adopt a similar program.

Finally, I would like to turn to barriers – racist barriers – that are enacted during the course of jury selection.

### **Racism in the Process**

We have discussed peremptory challenges extensively during this conference – and undoubtedly will continue to discuss the issue after today. In Batson v. Kentucky, the United States Supreme Court held that excluding a juror solely on the basis of their race was a violation of the Fourteenth Amendment.<sup>21</sup> While the decision focused primarily on the violation of the defendant’s rights, the Court noted that jury “selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice.”<sup>22</sup>

How juries are selected and who gets to serve on juries is foremost about defendant rights, but is also a broader issue of democracy. We cannot nourish public trust in this process, and thereby hope for excitement and engagement from the public, if they do not think the process is fair. We are seeing that right now in the trial about the murder of Ahmaud Arbery.<sup>23</sup> At the first day of this conference, Dr. Rose, who conducted this summer’s study commissioned by the Supreme Court, acknowledged that if and when peremptory challenges are used more aggressively, they have a racial impact. The public does not follow most jury trials. They do follow the most high profile

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<sup>16</sup> Colleen O’ Dea, *Two NJ counties now rank among nation’s most diverse*, NJ SPOTLIGHT NEWS (Aug. 26, 2021), <https://www.njspotlightnews.org/2021/08/two-nj-counties-now-rank-as-nations-most-diverse/>.

<sup>17</sup> *Id.*

<sup>18</sup> Language Access - 2020, State Scores and Rankings, National Center for Access to Justice, <https://ncaj.org/state-rankings/2020/language-access> (last visited Nov. 11, 2021).

<sup>19</sup> *Id.*

<sup>20</sup> Administrative Office of the Courts, *New Mexico ranked #1 in nation for language access in the justice system*, KRWG (Jun. 15, 2021), <https://www.krwg.org/post/new-mexico-ranked-1-nation-language-access-justice-system>,

<sup>21</sup> Batson v. Kentucky, 476 U.S. 79 (1986), holding modified by Powers v. Ohio, 499 U.S. 400 (1991).

<sup>22</sup> *Id.* at 87.

<sup>23</sup> Silvia Foster-Frau & Hannah Knowles, *Nearly all-White jury in Arbery killing highlights long-standing fears of racial bias in jury selection*, WASH. POST (Nov. 4, 2021, 7:52 PM), <https://www.washingtonpost.com/nation/2021/11/04/arbery-juries-race/>.

cases. When peremptory challenges are used by both sides as pretext for race, as seen in various studies throughout the country,<sup>24</sup> it sows distrust in the system for the broader public.

Justice Marshall recommended in his *Batson* concurrence, the only way to truly prohibit racial discrimination in this process is to end the practice of peremptory challenges.<sup>25</sup> We urge this conference to listen to him.

## **Conclusion**

Jury service is crucial to an effective judicial system, which is foundational for our democracy. We are grateful the Judiciary has called for his Conference to discuss how we can improve our process. The League is especially thankful to be invited to provide testimony here about how to engage the public and how to reform this process so it is fair and representative of the diversity of our state.

Thank you.

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<sup>24</sup> Anne M. Eisenberg, Removal of Women and African Americans in Jury Selection in South Carolina Capital Cases, 1997-2012, 9 *Ne. U. L. Rev.* 299, 339 (2017) (prosecution eliminated 12% of Whites and 35% of Blacks; defense eliminated 35% of Whites and 3% of Blacks); Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, 97 *IOWA L. REV.* 1531, 1539 (2012), <https://poseidon01.ssrn.com/delivery.php?ID=788024004085068114067071119115080014018059046068005069022080029023003121104121005106096055049121118013030088121095113117078091006041089092044064068096005024097100024000094098068126115127080003069115107100103124121022066001023093085119080027103115027&EXT=pdf&INDEX=TRUE>

<sup>25</sup> *Batson*, 476 U.S. at 103.