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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent

v.

PAUL RIVERS,

Petitioner.

AMENDED *AMICUS CURIAE* BRIEF OF THE CRIMINAL
DEFENSE LAWYERS OF WASHINGTON

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I. STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

The statement of identity and interest of *amicus curiae* Washington Association of Criminal Defense Lawyers (“WACDL”) is set forth in the Motion for Leave to File that accompanies this brief.

II. INTRODUCTION AND STATEMENT OF THE CASE

Paul Rivers (“Rivers”) was forced to select a jury from a panel with no Black potential jurors. Yet despite establishing under-representation in his own venire, and presenting evidence of under-representation of Black venirepersons in King County generally, Rivers’ fair cross section challenge failed. The jury convicted Rivers as charged.

The trial court found that Rivers failed to establish general under-representation of a distinctive group in his community or that this underrepresentation was due to systematic exclusion of the group in the jury selection process. He is not alone. Too many criminal defendants in this state are unable to mount a successful challenge when their constitutional right to a jury drawn from a fair cross section of their community has been violated. Successful fair cross section claims are, as the keynote speaker to this Court’s Minority &

Justice Commission Symposium described in 2017, “vanishingly rare.”¹

Successful claims are rare, despite the fact that the problem of under-representation of racial and ethnic minorities in jury pools is generally understood to persist, because the test set forth under *Duren v. Missouri*, 439 U.S. 357, 99 S. Ct. 664, 58 L. Ed. 2d 569 (1979) is so demanding that it offers no realistic chance at relief for defendants—and little incentive for courts to change practices that perpetuate improper representation in jury panels.

But this need not be the case in Washington, where the Article I, Sections 21 and 22 of the Constitution afford greater protection of a criminal defendant’s “inviolable” right to an impartial jury. Rivers thus proposes a revised test, eliminating the requirement that a defendant establish general under-representation over time so long as they can establish impermissible levels of under-representation in their own venire.² Alternatively, Rivers proposes that the Court eliminate the requirement that a defendant establish systematic exclusion.

¹ Wash. State Supreme Court, *Minority & Justice Commission Symposium* (May 24, 2017), <https://tvw.org/video/washington-state-supreme-courtminority-justice-commission-symposium-2017051090/?eventID=2017051090>. Keynote speaker Prof. Nina Chernoff presented to the Symposium on “Jury Diversity in Washington: A Hollow Promise or Hopeful Future?”

² Pet’r’s Br. 23–24.

WACDL agrees with and adopts Rivers' proposed test and alternative test, and believes that his proposal accurately reflects the mandate of Article I, Sections 21 and 22. To the extent that the Court agrees with Mr. Rivers that the *Duren* test is inappropriate but does not believe that his proposed solution is feasible to implement immediately, WACDL also offers an alternative, burden-shifting test that the Court may consider promulgating as an interim rule. Specifically, WACDL proposes that the Court hold that if a defendant can establish impermissible under-representation in their own venire, then the burden will shift to the state to establish that all reasonable steps have been taken to address systematic exclusion of the identified group.

To this end, WACDL submits this brief of *amicus curiae* to describe the steps and tools that courts across the country have implemented to improve racial and ethnic diversity of their jury pools. This brief first outlines the legal standard and the proposed alternative standards before the Court. Then, this brief identifies the steps courts across the country have taken to address three contributory causes of under-representative jury pools: (1) problems distributing jury summons to all eligible venirepersons; (2) lack of responsiveness from all potential jurors who received a summons; and (3) barriers to service that cause or are perceived to cause a hardship to jurors.

III. ARGUMENT

A. Rivers’ proposed test, and alternatively, WACDL’s proposed interim test, is the best way to protect Washington defendants’ inviolate right to an impartial jury drawn from a fair cross section of the community.

Under *Duren*, defendants must show the following to establish a *prima facie* violation of their fair cross section right:

[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 the systematic exclusion of the group in the jury-selection process.³

Under the third prong, the defendant must demonstrate both general and specific under-representation resulting from systematic exclusion.⁴ The vast majority of fair cross section challenges fail under this prong.⁵

For the reasons set forth in Rivers’ brief, WACDL agrees that the Washington Constitution is more protective of defendant’s “inviolable” right to an impartial jury drawn from their community. The *Duren* test fails to protect this right.

³ 439 U.S. at 364.

⁴ *Id.*

⁵ Paula Hannaford-Agor, *Systematic Negligence in Jury Operations: Why the Definition of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded*, 59 Drake L. Rev. 761, 763 (2011).

Therefore, WACDL agrees that this Court should establish Rivers' new proposed test, under which:

[A] person is entitled to a new panel if they show impermissible underrepresentation in their own venire, without also having to prove general underrepresentation over time.⁶

Impermissible levels, Rivers proposes, are those about 20% comparative disparity.⁷

Alternatively, Rivers proposes that if the Court requires general underrepresentation over time, it should take judicial notice of the complex, cumulative contributions and jettison the requirement that a defendant establish direct systematic cause.⁸

The new tests accurately capture the mandate of Article I, Section 21, and the standards proposed by Mr. Rivers address the constitutional deficiencies of the *Duren* framework. This Court can and should adopt the framework proposed by Mr. Rivers to ensure that the guarantee to an impartial jury is not simply an illusory constitutional right.

Given that the *Duren* standard has been so ineffectual in promoting diverse jury venires, this Court may be concerned that adopting Mr. Rivers' proposed test will create short-term disruptions to the court system. To the extent the Court views

⁶ Pet'r's Br. 23.

⁷ *Id.* at 23–24.

⁸ *Id.* at 24.

such concerns are valid, this Court should not simply leave *Duren* in place, but instead adopt an alternative, interim rule: if underrepresentation in jury venire exceeds 20% comparative disparity, it is **presumptively unconstitutional** unless the state shows that **all reasonable steps** have been taken to overcome the history of systematic exclusion.

This proposed interim test strikes the right balance between protecting Washingtonian’s inviolate constitutional right to an impartial jury drawn from a fair cross section of their community with the practicalities that counties face in implementing transformative change to ensure this right. First, the proposed interim test aptly places the burden on the courts, rather than a defendant who often lacks readily available data to challenge the makeup of his or her venire.

Second, requiring that the steps be “reasonable” acknowledges and reflects demographic realities in counties across the state. As both parties highlight in their briefing, groups traditionally considered “distinctive” for fair cross section purposes appear in comparatively low percentages in the state.⁹ And different traditionally “distinctive” groups are reflected differently in different counties; approaches in Stevens County to address underrepresentation of Native American

⁹ See Pet’r’s Br. 26; Resp’t’s Br. 27.

citizens in jury pools may necessarily be different than Pierce County’s approaches to addressing underrepresentation of Black citizens and Yakima County approaches to addressing underrepresentation of Latinx citizens.

Third, by requiring that counties take **all** reasonable steps, this Court will make clear that good intentions, vague promises, and half-measures are insufficient to protect the right guaranteed in Article I, Sections 21 and 22. Appellate courts applying this standard will make clear that convictions obtained using juries drawn from venires that do not reflect their jurisdictions will be overruled unless the trial court has demonstrated that every reasonable tool is being applied to solve this problem.

As this Court recently recognized, this “a complex problem with many contributors.”¹⁰ With that said, when courts seriously engage with this complex problem from multiple angles—actually taking all reasonable steps to increase jury diversity—the outcome will follow. In other words, if the state can meet this burden under an interim test period, then defendants should be hard-pressed to establish the first prong(s) of *Duren* in the first instance.

¹⁰ *Rocha v. King Cnty.*, 195 Wn. 2d 412, 417, 460 P.3d 624 (2020).

While the need is great and the path may seem unclear, increasing jury diversity “is a problem with solutions. There is significant evidence that courts can change the racial and ethnic makeup of their jury pools.”¹¹ The following sections aim to provide courts with the tools needed to bring about this change, drawing from creative solutions implemented around the country.

B. States and courts around the country have implemented steps to strengthen the fair cross section guarantee.

There are tried and tested ways courts can show they are taking all reasonable steps necessary to meet this test. In fact, many of the below suggestions have already been identified by commissions convened by this Court.¹² This section outlines steps that states and courts across the country have taken to increase diversity in jury pools, many of which would be available to Washington courts seeking to avoid a fair cross-section challenge under the proposed burden-shifting test.

¹¹ Wash. State Supreme Court, *supra* note 1, at ~28:45.

¹² See Peter A. Collins & Brook Miller Gialopsos, *An Exploration of Barriers to Responding to Jury Summons* (June 24, 2021), https://www.courts.wa.gov/subsite/mjc/docs/2021_Jury_Study_Final_Report.pdf (collecting and assessing work conducted by the Minority and Justice Commission and the Gender and Justice Commission).

1. Steps to increase the pool of jury summons recipients.

The first barriers to a more representative jury pool concern procedural limits to jury source lists, preventing potential jurors from ever receiving a jury summons in the first instance.

Counties can employ a variety of tools to expand the pool of individuals who receive summons, increasing the inclusiveness of the list and thus providing a more representative jury pool.¹³ Two such viable methods for doing so are expanding the categories that make up the jury source list and increasing the frequency with which the list is updated.

Jury list sources. Presently, Washington’s jury source lists are drawn from registered voters and drivers’ license or identicard holders.¹⁴ However, this Court’s Jury Commission noted over twenty years ago that “[r]eference to additional lists may lead to the input of more current address information into the system, which would lead to more representative jury pools and a better response rate.”¹⁵ Two such examples recommended

¹³ William Caprathe, Paula Hannaford-Agor, Stephanie McCoy Loquvam, & Shari Seidman Diamond, *Assessing and Achieving Jury Pool Representativeness*, 55:2 Judges’ J. 16, 18 (2016) (“The more inclusive the master jury list, the more representative the jury pool.”).

¹⁴ RCW 2.36.055.

¹⁵ Wash. State Jury Comm’n, *Report to the Board for Judicial Administration* 8 (July 2000), https://www.courts.wa.gov/committee/pdf/jury_commission_report.pdf.

by the Commission to be considered were “those for unemployment compensation recipients and newly naturalized citizens.”¹⁶

Many states now use additional lists, allowing the inclusion of individuals who are missed by voter and driver lists. New York, for example, also includes individuals who have received state income tax forms.¹⁷ It also permits the chief administrator of the courts to draw from “other available lists of the residents of the county,” such as “lists of utility subscribers, . . . persons applying for or receiving family assistance, medical assistance or safety net assistance, persons receiving state unemployment benefits and persons who have volunteered to serve as jurors by filing with the commissioner their names and places of residence.”¹⁸

Connecticut uses four source lists—“registered voters, licensed drivers and those with DMV identification cards, unemployment lists, and lists from revenue services.”¹⁹

California recently expanded beyond DMV records and lists of

¹⁶ *Id.*

¹⁷ N.Y. Ct. Rules § 128.3.

¹⁸ N.Y. Jud. Law § 506.

¹⁹ *Report of the Jury Selection Task Force to Chief Justice Richard A. Robinson* 7 (Dec. 31, 2020),

https://jud.ct.gov/Committees/jury_taskforce/ReportJurySelectionTaskForce.pdf.

registered voters to include anyone who files state taxes.²⁰

Increasing the number of required sources for county jury lists, or allowing counties to choose from additional lists if needed, will capture potential jurors who are generally underrepresented on Washington juries.²¹

Jury list updates. Washington requires courts to update their source lists only annually.²² Studies point to this as a minimum and recommend further: “Courts that are located in states or metropolitan areas with higher than average migration rates should considered updating their master jury lists ...semi-annually or quarterly.”²³ In 2020, Washington net migration exceeded 134,000.²⁴

In addition to new residents, increasing the frequency with which jury lists are updated better captures populations

²⁰ S.B. 592, 2019-2020 Sess. (Cal. 2020).

²¹ See Peter A. Collins & Brooke Miller Gialopsos, *Answering the Call: An Analysis of Jury Pool Representation in Washington State*, 22 *Criminology, Crim. Just., L. & Soc’y* 36, 45–46 (2021) (“[P]eople of color, especially Black, Native, and Asian Americans, as well as Hispanic/Latinx Americans, are underrepresented in nearly all Washington jury pools.”).

²² RCW 2.36.055.

²³ Nat’l Ctr. for State Cts., *Jury Managers’ Toolbox: Best Practices to Decrease Undeliverable Rates* 1 (2009), https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0020/6806/undeliverable-best-practices.pdf.

²⁴ *Population Change: Natural Increase and Net Migration* (last updated Dec. 30, 2021), <https://ofm.wa.gov/washington-data-research/statewide-data/washington-trends/population-changes/population-change-natural-increase-and-net-migration>.

that change residence *within* the county more often, such as renters. Statistically, homeownership rates are lower among Black and Latinx families, so capturing address updates more accurately can help ensure that these groups receive jury summons.²⁵

Relatedly, more frequent checks of the U.S. Postal Service address update system can increase the number of jurors receiving their summons.²⁶ In response to under-representative juries, the United States District Court for the Eastern District of Michigan implemented expanded jury lists and more frequent address checks.²⁷ The court saw greater minority representation on juries and drops in the non-response and undeliverable rates for jury summonses as well.²⁸

When a summons is returned as undeliverable, Massachusetts sends another summons to a different resident in that zip code,²⁹ a practice which may allow courts to capture

²⁵ See Dan Shafer, *The Minority Home Ownership Is Bad in the U.S. and Worse in Seattle*, Seattle Bus. Mag. (Dec. 19, 2017).

²⁶ See Collins & Gialopsos, *supra* note 21, at 51.

²⁷ U.S. Courts, *Courts Seek to Increase Jury Diversity* (May 9, 2019), <https://www.uscourts.gov/news/2019/05/09/courts-seek-increase-jury-diversity>.

²⁸ *Id.*

²⁹ *Id.*

additional diverse jurors particularly in segregated cities like Seattle.³⁰

2. Steps to increase responsiveness to summons.

In addition to collecting potential juror addresses from different sources and updating addresses more frequently (both of which will also increase responsiveness), other steps may increase the responsiveness rates when summonses do go out.

Community outreach programs. Community outreach programs focused on underrepresented communities can complement structural changes where public perception that a barrier exists prevents potential jurors from responding to summons even after courts have taken steps to remedy the barrier.

Efforts targeting potential jurors who have never served on a jury and are therefore most likely to have misconceptions about either “the reality of jury duty”³¹ or any recent changes the court has taken to remove perceived barriers. Such outreach could include “educational campaigns targeting high school

³⁰ See Jamala Henderson, *Why Is Seattle So Racially Segregated?*, KUOW (Sept. 20, 2016).

³¹ In 2000, the Washington State Jury Commission found that citizens who have served on a jury in the past are less reluctant to serve again and recommended: “It is important, therefore, to reach out to the large percentage of the public that has never served on a jury and provide them with as much information as possible about the reality of jury duty.” Wash. State Jury Comm’n, *supra* note 15, at 3.

students, new citizens and minority communities; public service campaigns to promote jury service on radio, television, print media, public transit and other outlets” and targeted outreach through community organizations and religious institutions.³²

Outreach efforts could emphasize when people who have previously convicted of a felony are eligible to serve on juries again, as Black men are more likely to have a felony conviction and the law on this may not be clear to the average Washington resident.³³

3. Steps to reduce barriers to participation.

Removing financial hardships and other barriers associated with in-person service reduces both the reality and the perception that the barriers are insurmountable. States (including Washington) have considered steps such as increasing *per diem* rates for decades. Other creative approaches have only recently been proffered as long-term solutions to low juror participation, as the pandemic cast light on how steps initially aimed to allow for remote participation in jury venire could ultimately address these historical barriers to participation.

³² Hong Tran, *Jury Diversity: Policy, Legislative and Legal Arguments to Address the Lack of Diversity in Juries*, Defense, May 2013, at 8; U.S. Courts, *supra* note 26.

³³ Minority & Just. Comm’n Jury Diversity Task Force, *2019 Interim Report* 4 (2019).

a. Adjusting reporting times.

To reduce the number of jurors reporting at the same time and reduce overcrowding during the pandemic, many counties around the country (including in Washington)³⁴ staggered reporting days and times.³⁵ But staggering jurors' initial appearance times, for example, by summoning small groups of prospective jurors at one- to two-hour intervals or in morning or afternoon groups has broader benefits.

For example, a California workgroup on post-pandemic initiatives found that “staggering juror appearance times reduces the impact of jury service on people’s schedules, whether those are related to their jobs, families, or other commitments.”³⁶ This, the workgroup concluded, “may therefore significantly lower barriers for participation in jury service and increase diversity within jury pools.”³⁷

³⁴ Clark Cnty. Superior Court, *Jury Service COVID-19 Response*, <https://clark.wa.gov/superior-court/jury-service-covid-19-response>.

³⁵ Illinois, for example, issued model COVID-19 juror summons for remote selection and in-person service that counties and courts could adopt. Illinois Courts, *Model COVID-19 Juror Summons for Remote Selection and In-Person Service (if selected)*, [https://www.illinoiscourts.gov/Resources/2a86a1d3-306c-4bcd-8a00-d013c48d0750/Appendix%20-%20Model%20COVID-19%20Juror%20Summons%20for%20Remote%20Selection%20and%20In-Person%20Service%20\(if%20selected\).pdf](https://www.illinoiscourts.gov/Resources/2a86a1d3-306c-4bcd-8a00-d013c48d0750/Appendix%20-%20Model%20COVID-19%20Juror%20Summons%20for%20Remote%20Selection%20and%20In-Person%20Service%20(if%20selected).pdf).

³⁶ Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Improving the Juror Experience* 14 (Mar. 2022), https://www.courts.ca.gov/documents/Ad-Hoc-Workgroup-on-Post-Pandemic-Initiatives_Improving-the-Juror-Experience-Report.pdf.

³⁷ *Id.*

b. Providing remote options for jury venire participation.

Trial courts' response to the pandemic has provided fresh insight into creative approaches to the early jury selection process.

As a California workgroup on post-pandemic jury initiatives noted, some courts had already begun to transition some components of jury service online prior to the pandemic:

Many courts across the state already utilize public-facing portals that allow prospective jurors to quickly access or request information related to their summonses online. Many of these online tools also allow jurors to request a postponement or excusal of their service.³⁸

During the pandemic, online services were expanded to include versions of juror questionnaires and hardship forms.³⁹

Hybrid models pose challenges as well as solutions. While moving online may significantly reduce hardships to in-person service faced disproportionately by low-income jurors, it is unclear whether moving online will improve jury summons-- while moving online reduces the risk that jurors with higher geographic mobility will not receive their summons in the first

³⁸ *Id.*

³⁹ *Id.*

instance, the technology gap between low- and high-income jurors remains.⁴⁰

One California workgroup asked judicial officers, court executives, criminal and civil attorneys and court staff to comment on juror selection practices adopted during the pandemic.⁴¹ One of the suggestions was to develop tools for courts to conduct voir dire remotely, which helps streamline the juror selection process and gather information related to for-cause and peremptory challenges.

Harris County, Texas increased juror registration rates by using an e-jury system for pre-registration, as those who fear showing up only to be dismissed are more likely to respond to summons. The District Clerk hopes to continue and expand the use of the e-system.⁴²

⁴⁰ See Collins & Gialopsos, *supra* note 12, at 34 (noting a surprisingly small percentage of reported technology-related issues with some jurors suggesting providing potential jurors with technology).

⁴¹ Based on the comments, the workgroup report recommended to (1) raise juror pay and travel reimbursement to reduce financial hardships and improve options for getting to the courthouse; (2) allow jurors to complete juror questionnaires and hardship forms online before being required to physically appear in court for voir dire; (3) stagger jury service appearance times with varying panel sizes in order to maximize efficiency for court staff and the summoned jurors; and (4) develop tools for courts to conduct voir dire remotely, which helps streamline the juror selection process and gather information related to for-cause and peremptory challenges. Ad Hoc Workgroup on Post-Pandemic Initiatives, *supra* note 35, at 3.

⁴² Nat'l Ctr. for State Courts, *Harris County (Texas) Takes Steps to Improve Jury Diversity and Participation*,

c. Paying jurors.

Nominal juror compensation places a significant financial burden that prevents many low-income people from serving on a jury.⁴³ Income inequality is strongly correlated with race and ethnicity.⁴⁴ The result is juries that are wealthier, whiter, and do not reflect the diverse communities.⁴⁵ There are a few approaches courts may take, including: increasing the *per diem* rate (over which counties exercise at least some control); increasing compensation for travel costs; and providing or reimbursing for care of dependents.

Washington lags behind other states in compensating jurors for jury service. According to a May 2022 article by the National Center for State Courts: Center for Jury Studies, of the twenty-nine states (including the District of Columbia) that use

<https://www.ncsc.org/newsroom/jure/2021/harris-county-texas-takes-steps-to-improve-jury-diversity-and-participation>.

⁴³ Treasure & Tax Collector, City & Cnty. of S.F., *New CA Bill Pilots Higher Compensation for Low-Income Jurors in San Francisco* (June 30, 2021), <https://sftreasurer.org/new-ca-bill-pilots-higher-compensation-low-income-jurors-san-francisco>.

⁴⁴ *Id.*

⁴⁵ “Because income inequality is strongly correlated with race and ethnicity, juries have become less racially diverse due to an inability to afford to participate. Juries are disproportionately composed of people who have the financial means to serve despite being unpaid or who have employers who will pay them during their jury service.” Treasure & Tax Collector, City & Cnty. of S.F., *New CA Bill Pilots Higher Compensation for Low-Income Jurors in San Francisco* (June 30, 2021), <https://sftreasurer.org/san-francisco-launch-be-jury-pilot-program-monday-compensate-low-income-jurors-100-day>.

a flat rate *per diem* fee, twenty states paid higher rates than Washington, including North Dakota, Nebraska, Mississippi, Louisiana, Wisconsin, Oklahoma, Minnesota, West Virginia, Kentucky, and Tennessee.⁴⁶

Washington was one of eleven states that established a minimum daily rate but that allows local courts or legislative bodies to set a higher *per diem* rate. Jurors in Washington receive between \$10 and \$25, a rate that has not changed *since 1959*.⁴⁷ By contrast, *per diem* rates for state employee travel ranges between \$96 and \$126 between counties,⁴⁸ and Washington's minimum wage of \$14.49 equates to \$101.43 for a seven-hour work day.⁴⁹

⁴⁶ Brendan W. Clark, *Juror Compensation in the United States* (May 25, 2022), <https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/juror-compensation-in-the-united-states>

⁴⁷ RCW 2.36.150; Clark, *supra* note 45; Wash. State Ctr. for Court Rsch., *Juror Research Project: Report to the Washington State Legislature* (Dec. 24, 2008), <https://www.courts.wa.gov/subsite/wscrr/docs/Juror%20Research%20Report%20Final.pdf>. As noted in the Juror Research Project Report: “If juror pay in Washington State today [2008] as \$10 did in 1959, we would pay our jurors \$70.14 a day.” *Id.* at 5. King Cnty. Superior Court, *Jury Service - Frequently Asked Questions*, <https://kingcounty.gov/courts/superior-court/juror-information/FAQ.aspx>; Steve Miletich, *Suit Seeks Higher Pay for King County Jurors to Boost Poor, Minority Participants*, *Seattle Times* (Aug. 8, 2016), <https://www.seattletimes.com/seattle-news/law-justice/suit-seeks-higher-pay-for-king-county-jurors-to-boost-poor-minority-participants/>.

⁴⁸ Wash. State Office of Financial Mgmt., *Per Diem Rates - As of July 1, 2022* (July 1, 2022), <https://ofm.wa.gov/sites/default/files/public/resources/travel/colormap.pdf>.

⁴⁹ RCW 49.46.020(1)(c).

Prohibitively low juror pay has been top of mind in Washington for over two decades. In 2000, the Washington State Jury Commission identified increased pay as the foremost jury reform needed in the state.⁵⁰ In 2006, the Washington State Legislature piloted an increase to \$60 per day in select courts to broaden citizen participation.⁵¹ The study demonstrated “[l]ittle impact ... on jury yield”⁵² but also found that most jurors who did not respond or serve on a jury were unaware of the increase.⁵³ It was not aimed specifically at low-income jurors.

California is trying a different approach. The state’s *Be The Jury* pilot program (AB 1452) will test in San Francisco whether increasing the daily rate for low to moderate income jurors from \$15 to \$100 improves demographics and whether it

⁵⁰ Wash. State Ctr. for Court Rsch., *supra* note 46, at 4.

⁵¹ *Id.* For 12 months, the study piloted a pay increase from \$10 to \$60 per day in courts in Clark County, Franklin County, and the City of Des Moines.

⁵² *Id.* The study concluded: 1) juror compensation is one of several factors affecting juror participation, 2) there is no clear association of increased pay with higher juror yield, 3) increased pay is noticed and appropriated by those who serve, and 4) expanded public awareness efforts may enhance the impact of increased juror pay.

⁵³ *Id.*

results in fairer verdicts.⁵⁴ The program launched on March 7, 2022.⁵⁵

d. Providing scheduling for dependent care.

In a study conducted of jurors in King, Snohomish and Pierce Counties in 2021 (aimed at identifying barriers during remote jury service throughout the pandemic) found that one of the most frequently reported categories of barriers was care-related.⁵⁶ In kind, one of the top recommended solutions was to provide for or reimburse childcare (16.8%) and allow potential jurors to have a voice in all scheduling related decisions (14.2%).⁵⁷ While most obstacles to service disproportionately affect communities of color, some of the largest effects are regarding childcare.⁵⁸

⁵⁴ Jurors would be eligible if their household income was less than 80% Area Median Income, which in San Francisco was defined as \$71,000 for a single person and \$102,500 for a household of four and if they met one of the following criteria: (1) their employer does not compensate for jury service; (2) their employer does not compensate for the estimated duration of jury service; (3) they are self-employed; or (4) they are unemployed. Treasure & Tax Collector, City & Cnty. of S.F., *San Francisco to Launch the “Be The Jury” Pilot Program on Monday to Compensate Low-Income Jurors \$100 a Day* (Mar. 3, 2022), <https://sftreasurer.org/san-francisco-launch-be-jury-pilot-program-monday-compensate-low-income-jurors-100-day>.

⁵⁵ *Id.* Governor Newsom signed AB 1452 into law in October 2021.

⁵⁶ Collins & Gialopsos, *supra* note 12, at 5.

⁵⁷ *Id.*

⁵⁸ *See* Collins & Gialopsos, *supra* note 12, at 5; *see also* See Collins & Gialopsos, *supra* note 21, at 17 (highlighting Washington state’s proposed law to either exempt breastfeeding women from serving on jury duty or

States have several approaches. Massachusetts only reimburses childcare expenses for retired or unemployed jurors.⁵⁹ D.C. courts offer free childcare services to any member of the public that has in-person business with the Courts, including jurors.⁶⁰ Washington does not require counties offer dependent care or provide reimbursement, and few counties offer it voluntarily.

IV. CONCLUSION

Paradoxically, the ultimate goal of the proposed tests is not to make it easier for defendants such as Rivers to establish fair cross section claims, but rather, to eliminate the basis for such claims in the first instance. The steps described above are far from exhaustive. They offer a framework for courts engaged in the serious and vital task of upholding Washingtonians' inviolate right to an impartial jury representative of their community.

providing designating private spaces for pumping and/or breastfeeding as a “step in the right direction.”).

⁵⁹ *Learn About Compensation for Jury Duty*, Mass.gov, <https://www.mass.gov/service-details/learn-about-compensation-for-jury-duty>.

⁶⁰ D.C. Courts, *Child Care*, <https://www.dccourts.gov/jurors/arranging-child-care>.

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RESPECTFULLY SUBMITTED this 1 day of August,
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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on August 1, 2022, the foregoing document was electronically filed with the Washington State Supreme Court Portal, which will effect service of such filing on all attorneys of record.

Signed in Seattle, Washington, on August 1, 2022,

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